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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION on the position to be adopted on behalf of the European Union within the Administrative Committee for the TIR Convention as regards the proposal to amend the Customs Convention on the International Transport of Goods under Cover of TIR Carnets of 1975

COUNCIL DECISION (EU) 2017/...

of ...

**on the position to be adopted on behalf of the European Union
within the Administrative Committee for the TIR Convention
as regards the proposal to amend the Customs Convention
on the International Transport of Goods
under Cover of TIR Carnets of 1975**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Customs Convention on the International Transport of Goods under Cover of TIR carnets ('TIR Convention') of 14 November 1975 was approved on behalf of the European Economic Community by Council Regulation (EEC) No 2112/78¹ and entered into force as regards the Community on 20 June 1983.
- (2) A consolidated version of the TIR Convention was published as an Annex to Council Decision 2009/477/EC², according to which the Commission is to publish future amendments to the TIR Convention in the *Official Journal of the European Union* indicating their date of entry into force.
- (3) It is necessary to broaden the scope of subparagraph (q) of Article 1 of the TIR Convention to allow other authorities than customs authorities to authorise an association to act as guarantor for persons using the TIR procedure. Such flexibility is necessary due to the different administrative arrangements that exist in various Contracting Parties to the TIR Convention.
- (4) The word 'frontiers' currently used in Article 2 of the TIR Convention may lead to different interpretations. The text of Article 2 should be amended to specify that the word 'frontiers' refers to customs frontiers.

¹ Council Regulation (EEC) No 2112/78 of 25 July 1978 concerning the conclusion of the Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention) of 14 November 1975 at Geneva (OJ L 252, 14.9.1978, p. 1).

² Council Decision 2009/477/EC of 28 May 2009 publishing in consolidated form the text of the Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention) of 14 November 1975 as amended since that date (OJ L 165, 26.6.2009, p. 1).

- (5) For the sake of terminological consistency in the TIR Convention, the term ‘approved’ should be replaced by ‘authorised’ and the words ‘Contracting Parties’ should be replaced by ‘each Contracting Party’.
- (6) An amendment to Article 11(3) of the TIR Convention will shorten the period at the end of which a claim for payment of the sum referred to in Article 8(1) of the TIR Convention may be made against a guaranteeing association. The Administrative Committee for the TIR Convention (‘Administrative Committee’) consulted that proposal with the International Road Transport Union (IRU), which is the international organisation referred to in Article 6(2) and (2 *bis*) of the TIR Convention, authorised to take responsibility for the effective organisation and functioning of the international guarantee system. The IRU confirmed that the shortening of that period is not likely to have any operational impacts on the functioning of the TIR guarantee chain. The proposed shortening from three to one month is likely to make the procedure more efficient and will not prevent the customs authorities from submitting their claims at a later date.
- (7) Apart from a serious offence against the customs laws or regulations applicable to the international transport of goods, a repeated offence against those laws or regulations may be a reason for the temporary or permanent exclusion of a TIR Carnet holder from the TIR regime in accordance with Article 38(1) of the TIR Convention. Article 38(1) of the TIR Convention should explicitly clarify that the Contracting Parties decide on the criteria to define the degree of seriousness of an offence. That amendment is designed to eliminate the ambiguity as to whether any discretion is given to the Contracting Parties in that respect.

- (8) In order to align the text of the TIR Convention with the increase in the maximum amount per TIR Carnet by the guarantee chain, Annex 6 to the TIR Convention should be amended to refer to EUR 100 000 rather than USD 50 000.
- (9) Amendments to Annex 6, Article 1 *bis* of Annex 8 and paragraph 2 of Part III of Annex 9 to the TIR Convention are to increase the transparency of the financial issues related to the functioning of the IRU. The amendment to Annex 6 to the TIR Convention is to specify how the additional examinations are to be performed. The amendments to Article 1 *bis* of Annex 8 to the TIR Convention are to introduce a requirement for the annual financial statements and audit reports submitted by the authorised international organisation in accordance with the obligations under Part III of Annex 9 to the TIR Convention, to be examined or even verified by the Administrative Committee. The Administrative Committee is to be given the right to request additional examinations if justified on the basis of risk assessment. The amendment to paragraph 2 of Part III of Annex 9 to the TIR Convention is to set new rules on audit requirements as well as conditions and requirements for an authorised international organisation, with the aim of ensuring transparency and good governance of the relevant records and accounts and for the printing and distribution of TIR Carnets.
- (10) An amendment to the subtitle and paragraph 1 of Part I of Annex 9 to the TIR Convention to add the word ‘minimum’ is to eliminate the inconsistent use of the expressions ‘conditions and requirements’ and ‘minimum conditions and requirements’ in Article 6 and Annex 9 to the TIR Convention.

- (11) All Member States of the Union expressed their positive opinion as regards the proposed amendments within the Customs Expert Group, section 13. TIR Convention and other UNECE Customs Conventions.
- (12) The next session of the Administrative Committee, during which the proposed amendments are to be presented for adoption, is scheduled for October 2017.
- (13) The position of the Union within the Administrative Committee should therefore be based on the attached draft amendments,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on the Union's behalf within the Administrative Committee for the TIR Convention shall be based on the draft amendments attached to this Decision.

Minor changes to the draft amendments may be agreed to by the representatives of the Union in the Administrative Committee without further decision of the Council.

Article 2

After their adoption, the amendments shall be published in the *Official Journal of the European Union* indicating their date of entry into force.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

For the Council

The President

DRAFT

**Amendments to the Customs Convention on the International Transport of Goods
under cover of TIR carnets of 14 November 1975 ('TIR Convention')**

Amendments to the main body of the TIR Convention,
subject to the amendment procedure of Article 59

Article 1, paragraph (q)

After customs authorities *add* or other competent authorities.

Article 2

Before frontiers *insert* customs.

Article 3, paragraph (b)

For approved *read* authorized.

Article 6, paragraph 2

For approved *read* authorized.

Article 11, paragraph 3

For three months *read* one month.

Article 38, paragraph 1

For the existing text read

Each of the Contracting Parties shall have the right to exclude temporarily or permanently from the operation of this Convention any person guilty of a serious or repeated offence against the customs laws or regulations applicable to the international transport of goods. The conditions in which the offence against the customs laws or regulations is considered to be serious shall be decided by the Contracting Party.

Amendments to the Annexes of the TIR Convention,
subject to the amendment procedure of Article 60

Annex 6, Explanatory Note 0.8.3

For \$US50,000 read EUR 100,000.

Annex 6, Explanatory Note 8.1 bis.6

Add a new Explanatory Note 8.1 bis.6 to read

The Committee may ask the competent United Nations services to perform the additional examination. The Committee may, alternatively, decide to engage an independent external auditor and mandate the TIR Executive Board to prepare the terms of reference of the audit, based on the object and purpose of the audit as determined by the Committee. The terms of reference shall be approved by the Committee. The additional examination by an external independent auditor shall result in a report and a management letter that shall be submitted to the Committee. In such a case, the financial cost of engaging an independent external auditor, including the related procurement procedure, shall be incurred by the budget of the TIR Executive Board.

Annex 8, Article 1 bis

After the existing text insert new paragraphs 4, 5 and 6 to read

4. The Committee shall receive and examine the annual audited financial statements and audit report(s) submitted by the international organization pursuant to the obligations under Annex 9, Part III. In the course and within the scope of its examination, the Committee may request that additional information, clarifications or documents be provided by the international organization or the independent external auditor.

5. Without prejudice to the examination mentioned in paragraph 4, the Committee shall, on the basis of a risk assessment, have the right to request additional examinations to be carried out. The Committee shall mandate the TIR Executive Board or request the competent United Nations services to carry out the risk assessment.

The scope of additional examinations shall be determined by the Committee, taking into account the risk assessment of the TIR Executive Board or of the competent United Nations services.

The results of all examinations referred to in this article shall be kept by the TIR Executive Board and provided to all Contracting Parties for due consideration.

6. The procedure for undertaking the additional examinations shall be approved by the Committee.

Annex 9, Part I, subtitle

Before conditions and requirements add Minimum.

Annex 9, Part I, paragraph 1 (first line)

After The *add* minimum.

Annex 9, Part I, paragraph 7

For Contracting Parties *read* that each Contracting Party.

Annex 9, Part II, Procedure, Model Authorization Form, paragraph 1

For approved *read* authorized.

Annex 9, Part III, paragraph 2

After subparagraph (n) *insert* new subparagraphs (o), (p) and (q) to *read*

- (o) maintain separate records and accounts containing information and documentation which pertain to the organization and functioning of an international guarantee system and the printing and distribution of TIR Carnets;
- (p) provide its full and timely cooperation, including, but not limited to, allowing access to the above records and accounts to the competent United Nations services or to any other duly authorized competent entity and, at all times, facilitating additional inspections and audits performed by them on behalf of Contracting Parties, pursuant to Annex 8, Article 1 bis, paragraphs 5 and 6;
- (q) engage an independent external auditor to conduct annual audits of the records and accounts mentioned under subparagraph (o). The external audit shall be performed in accordance with International Standards on Auditing (ISA) and shall result in an annual audit report and a management letter which shall be submitted to the Administrative Committee.