



# Economic and Social Council

Distr.: General  
28 March 2011

Original: English

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## Economic Commission for Europe

### Inland Transport Committee

#### Working Party on Customs Questions affecting Transport

##### 128th session

Geneva, 7 – 10 June 2011

Item 9 (b) (ii) of the provisional agenda

##### **Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention, 1975):**

##### **Revision of the Convention – Amendment proposals for the Convention**

### **Amendment proposals for the Convention**

#### **Note by the secretariat**

#### **I. Background**

1. The Working Party, at its 127th session, continued its discussions on items (o), (p) and (q) of the proposed new Annex 9, Part III (ECE/TRANS/WP.30/2010/4/Rev.2) which introduces audit requirements for an authorized international organization. WP.30 noted that, in general, the different opinions expressed at the previous session (ECE/TRANS/WP.30/252, paras. 30–34) remain unreconciled.
2. The delegations of Georgia, Kazakhstan and Kyrgyzstan saw no need for the introduction of audit provisions (o), (p) and (q). They stated that they fully trust IRU, as this organization has a long standing reputation in the TIR system, provides transparency and is regularly audited by the world's leading auditing companies according to Swiss law.
3. The delegations of Belarus, Germany, Netherlands, Russian Federation and the European Union pointed out that the underlying audit provisions are not linked to the issue of trust to IRU, but aim at ensuring transparency and good governance and establishing a solid legal basis that would allow the Contracting Parties to verify, in case of need, how an authorized international organization, not necessarily IRU, uses the privileges and financial tools granted by the authorization.
4. The delegation of Iran (Islamic Republic of) supported transparency and international cooperation, but reiterated its reservation that the adoption of (o), (p) and (q) is premature until the legal and financial implications of the new audit provisions have been studied in detail.

5. IRU reiterated its previous proposal to adopt Annex 9, Part III without (o), (p) and (q). IRU also reconfirmed that it is not against audits as, by virtue of Swiss law, its accounts are in any case subject to external audits, currently by PriceWaterhouseCoopers. Finally, IRU stated that more clarity is needed, notably on the issue of confidentiality of audit results and what to do in case there are inconsistencies between its external audit and the audit by the competent United Nations services.
6. As a possible compromise, some delegations proposed to keep (o) and (q), but to delete either the whole item (p) or, at least, the reference to "other persons duly authorized by the United Nations" therein. It was also suggested that item (r) should be complemented with a deadline for the conclusion of a written agreement.
7. Finally, the Working Party stressed the need make progress in this area and called upon all Parties involved to find a compromise wording. As a first step, the secretariat was requested to prepare a document which would summarize and analyse the pros and cons of introducing of audit provisions. The delegations were invited to provide the secretariat with their views and/or comments by 15 March 2011 at the latest. Armenia, as well as some other delegations, proposed that a small drafting group with the participation of the secretariat, IRU, EU and other volunteers be established to prepare a compromise proposal for consideration already for the next session of WP.30 (ECE/TRANS/WP.30/254, paras. 27–31).
8. In this document, the secretariat reproduces the views/comments submitted by delegations.

## II. Inputs received

9. The secretariat has received inputs from the following countries (in English alphabetical order): Iran (Islamic Republic of), Kazakhstan, Russian Federation, Turkey and Ukraine. A summary of their comments is given below.
10. Iran (Islamic Republic of) is of the view that the provisions of the Agreement between IRU and UNECE meet all the requirements of transparency and strong financial position and, because of that, it would be appropriate to consider new Annex 9, Part III without (o), (p) and (q).
11. Kazakhstan feels that, in substance, the draft new Annex 9, Part III duplicates the provisions of the UNECE–IRU Agreement which meet all the requirements of transparency and sound financial standing. For this reason, Kazakhstan sees no need for introducing (o), (p) and (q), as the requirements therein have been already fulfilled by the international organization and included in the UNECE–IRU Agreement.
12. The Russian Federation proposes to keep (o) unchanged and to delete in (p) reference to other persons duly authorized by the United Nations. To streamline audits by various actors and keep to a minimum possible differences between the outcome of external audits and audits by the United Nations services, it is also suggested that (p) be complemented with a new provision stipulating that audits by the United Nations services should be conducted upon request and according to the guidelines of the TIR Administrative Committee. Thus, the following wording of (p) is proposed: "allow access to the above records and accounts to the United Nations Office of Internal Oversight Services (OIOS), the United Nations Board of Auditors (BOA) and at all times facilitate inspections and audits performed by them on the basis of guidelines and terms of reference established by the TIR Administrative Committee". The Russian Federation supports the proposed wording of (q), but feels that the issue of correspondence between the

International Standards on Auditing (ISA) and the national law of the country where the international organization is resident should be studied further.

13. Turkey fully supports the proposal for a separate and detailed description of the authorization and duties of an international organization through the introduction of a new Part III to Annex 9. Turkey is also of the view that, to ensure efficiency and transparency of the TIR system, it is necessary that the authorized international organization be subject to audit according to the TIR Convention. In parallel with Article 1 (f) (vi) of Annex 9, Part I which requires that the national guaranteeing associations "...allow the competent authorities to verify all records and accounts kept relating to the administration of the TIR procedure", records and accounts of the international organization should be audited as well. To this end, Turkey supports the draft new Annex 9, Part III, including items (o), (p) and (q). On the other hand, taking into account the discussions at the 127th session of WP.30, it is considered that in (p) reference to "other persons duly authorized by the United Nations" should be deleted.

14. Ukraine proposes to delete item (p) and modify (q) to read "engage an independent external auditor to conduct annual audits of the above records and accounts. The external audit shall result in an annual audit report to the Administrative Committee to confirm that the accounts of the international organization comply with the applicable national legislation".

### **III. Further considerations**

15. In the course of WP.30 discussions and from the contributions received, a number of issues have been raised which might need to be addressed. To facilitate considerations of the Working Party, the secretariat has taken the liberty to provide a few preliminary observations below:

#### **A. Confidentiality of audit results**

16. At the 126th session, the secretariat informed the Working Party that the issue of confidentiality is duly reflected in the International Standards on Auditing and in the Code of Ethics for Professional Accountants (ECE/TRANS/WP.30/252, para. 30). It transpired, however, that the concerns over confidentiality relate not to the auditors of an international organization, but to the TIR Administrative Committee which would receive an annual audit report in a certain form. To relieve these concerns, it may be proposed that such audit reports should be issued as restricted documents and without publication on the UNECE website. The members of the Administrative Committee are entitled to have access to full audit results.

#### **B. Possible inconsistencies between external audit and the audit by the competent United Nations services**

17. This problem appears rather hypothetical, as audits by the United Nations Office of Internal Oversight Services (OIOS) or by the United Nations Board of Auditors (BOA) only take place occasionally, compared to regular annual audits by an independent external auditor. The proposal of the Russian Federation, as contained in para. 12 above, seems to aim at removing any theoretical possibility of inconsistency.

### **C. Sound financial standing and items (o), (p) and (q)**

18. According to item 1 (a) of the draft Annex 9, Part III, proof of sound financial standing is done by means of annual submission of consolidated financial statements duly audited by internationally recognized independent auditors. Consolidated financial statements should concern all accounts of an international organization, not only TIR-related. Items (o), (p) and (q) aim not at establishing sound financial standing, but at a different objective: ensuring transparency of the records and accounts which pertain to the organization and functioning of an international guarantee system and the printing and distribution of TIR Carnets, as covered by the authorization.

### **D. Audits and current UNECE–IRU agreement**

19. The audit requirements, as stipulated in Annex 5 to the current UNECE–IRU agreement, cover the accounts kept by the IRU for recording the money transferred and the total amount invoiced to finance the operation of the TIRExB and TIR secretariat, the resulting balance as well as the actual number of TIR Carnets distributed by the IRU in the corresponding year. In other words, the current audit requirements focus only on the amount per TIR Carnet (around US\$ 0.33) collected by IRU and transferred to UNECE. Given the fact that the average IRU price per TIR Carnet is about US\$ 50.00, this means that less than 1 per cent of the TIR revenues is now subject to audit. Items (o), (p) and (q) have been drafted with a view to ensuring full audit of TIR-related revenues.

### **E. National audit requirements and items (o), (p) and (q)**

20. Audits, by virtue of national law, seem to be indispensable for providing proof of the sound financial standing of an international organization as well as of the absence of serious or repeated offences against tax legislation, as respectively mentioned under item 1 (a) and 1 (b) of the draft Annex 9, Part III. Thus, national audits serve another purpose and are not designed to ensure transparency and good governance and to verify, if need be, how an authorized international organization uses the financial tools granted by the authorization. If adopted, (o), (p) and (q) would become a mechanism to protect consumers of the TIR system (TIR Carnet holders), being at the same time taxpayers in the Contracting Parties, from potential abuses of the TIR system by the authorized service providers.

## **IV. Possibility of a compromise**

21. A possibility for a compromise wording of (o), (p) and (q) does not exist, as long as there are countries who propose to delete these items all together. The views of other countries leave a reasonable chance for a compromise and could be summarized as follows: (i) they generally agree to item (o), (ii) they either propose to delete reference to "other persons duly authorized by the United Nations" under (p) or to delete (p) as a whole, and (iii) they agree under (q) that an independent external auditor should be engaged to conduct annual audits of the records and accounts mentioned in (o).

## **V. Considerations of the Working Party**

22. The Working Party is invited to consider the current document with a view to exploring if a compromise wording of (o), (p) and (q) could be found.

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