



**Economic and Social
Council**

Distr.
RESTRICTED

Informal document No. 10 (2006)
26 May 2006

ENGLISH ONLY

ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions Affecting Transport

One-hundred-and-thirteenth session
Geneva, 30 May-2 June 2006
Item 9 (b) (iii) 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 Article 11 of the Convention

Note by the secretariat

Following a request of the Working Party, the secretariat has prepared document ECE/TRANS/WP.30/2006/5, containing a consolidated overview of all amendment proposals with a view to making further progress in their considerations. When incorporating the extensive amendment proposals on Article 11 (pages 15 to 31 of the above document), the secretariat realized that the underlying proposals often address the same issues, but in a different sequence and in a different form (body text, explanatory note or comment). To facilitate the comparison of various proposals, the secretariat has prepared a table (annex) where all proposals have been cut into pieces and aligned according to the issues they address. This approach has not made it possible to keep the numbering and order of the original proposals.

ARTICLE 11 AND MOVED ARTICLE 8.7
(legend: main text of Articles, *explanatory notes*, *comments*)

<i>Original text</i>	<i>Netherlands TRANS/WP.30/GE.2/2005/2</i>	<i>European Commission TRANS/WP.30/GE.2/2005/8</i>	<i>IRU (ECE/TRANS/WP.30/2006/) and the Russian Federation (TRANS/WP.30/2005/19)</i>	<i>Other proposals (Germany, TRANS/WP.30/GE.2/2005/2) (Germany, Finland and the Netherlands, Informal document No. 4 (2006))</i>
<p>11-1. Where a TIR operation has not been discharged, the competent authorities shall</p> <p>not have the right to claim payment of the sums mentioned in Article 8, paragraphs 1 and 2, from the guaranteeing association unless, within a period of one year from the date of acceptance of the TIR Carnet by those authorities, they have notified the association in writing of the non-discharge. The same provision shall apply where the certificate of termination of the TIR operation was obtained in an improper or fraudulent manner, save that the period shall be two years.</p>	<p>Where a TIR operation has not been discharged, the competent authorities shall:</p> <p>- notify the guaranteeing association in writing of the non-discharge, within a period of one year from the date of acceptance of the TIR Carnet by those authorities. The same provision shall apply where the certificate of termination of the TIR operation was obtained in an improper or fraudulent manner, save that the period shall be two years;</p>	<p>Where a TIR operation has not been discharged the competent authorities shall:</p> <p>- notify the guaranteeing association of the non discharge as soon as possible and not later than a period of one year from the date of acceptance of the TIR carnet by those authorities. In cases where the certificate of termination of the TIR operation was obtained in an improper or fraudulent manner the period for notification shall be two years.</p>	<p>Where a TIR operation has not been discharged and a payment obligation for import or export duties and taxes has arisen, the competent authorities shall:</p> <p>- notify the guaranteeing association in writing of the non-discharge, as soon as possible and not later than a period of one year from the date of acceptance of the TIR Carnet by those authorities. The same provision shall apply where the certificate of termination of the TIR operation was obtained in an improper or fraudulent manner, save that the period shall be two years;</p>	<p>Where a TIR operation has not been duly discharged, this including cases in which the certificate of termination of the TIR operation was obtained in an improper or fraudulent manner or no termination has taken place, the competent authorities shall, without prejudice to any additional rights they may have according to their national legislation, at least fulfil the following conditions in order to maintain their right to claim payment of the sums mentioned in Article 8, paragraph 1, from the guaranteeing association:</p> <p>- notify the guaranteeing association in writing of the non-proper discharge, within a period of one year from the date of acceptance of the TIR Carnet by the authorities. The same provision shall apply where the certificate of termination of the TIR operation was obtained in an improper or fraudulent manner or where a counterfeit certificate of termination resulted in an unjustified discharge of the TIR operation, save that the period shall be two years;</p>
<p align="center">New concept (not included in the current text)</p>	<p>[Where a TIR operation has not been discharged, the competent authorities shall:]</p> <p>- in accordance with the provisions of paragraph 2, have the right to claim payment of the sums mentioned in Article 8, paragraph 1, from the guaranteeing association.</p>	<p>Having complied with the requirements of paragraph 1 (a) and (b) and paragraph 2, the competent authorities shall</p> <p>have the right to claim payment of the sums mentioned in Article 8, paragraph 1 from the guaranteeing association.</p>	<p>[Where a TIR operation has not been discharged and a payment obligation for import or export duties and taxes has arisen, the competent authorities shall:]</p> <p>- provided that the conditions mentioned under subparagraphs (a) to (c) above* have been implemented, have the right to claim, in accordance with the provisions of paragraphs 2 and 3 of this Article, payment of the sums mentioned in Article 8, paragraph 1, from the guaranteeing association</p>	

* Actually reproduced below in the present document

<i>Original text</i>	<i>Netherlands TRANS/WP.30/GE.2/2005/2</i>	<i>European Commission TRANS/WP.30/GE.2/2005/8</i>	<i>IRU (ECE/TRANS/WP.30/2006/) and the Russian Federation (TRANS/WP.30/2005/19)</i>	<i>Other proposals (Germany, TRANS/WP.30/GE.2/2005/2) (Germany, Finland and the Netherlands, Informal document No. 4 (2006))</i>
<p><i>Explanatory Note 0.11-1: In addition to the notification to the guaranteeing association, Customs authorities should also notify the TIR Carnet holder as soon as possible when a TIR operation has not been discharged. This could be done at the same time as the notification to the guaranteeing association</i></p> <p><i>Comment to Article 11, paragraph 1: Notification to (a) guaranteeing association(s) Customs authorities should notify their respective national guaranteeing association(s) as soon as possible of cases covered by Article 11, paragraph 1, that is when a TIR operation has not been discharged.</i></p>	<p>- notify the holder of the TIR carnet in writing of the non-discharge, as soon as possible;</p>	<p>- notify the holder of the TIR carnet in writing of the non discharge, as soon as possible;</p> <p><i>The notifications to the TIR Carnet holder and the guaranteeing association should be sent at the same time.</i></p>	<p>- notify the holder of the TIR carnet in writing of the non discharge, as soon as possible;</p>	<p>- notify the holder of the TIR Carnet in writing of the non-proper discharge;</p> <p><i>Time frame for notification It is recommended that the notifications for the discharge are made as soon as possible.</i></p>
<p>New concept (not included in the current text)</p>		<p><i>[Without prejudice to any national provisions concerning the right of appeal, should the guaranteeing association obtain alternative proof of the termination of the TIR operation it should refer that proof to the competent authorities who notified the non discharge of the TIR operation].</i></p>	<p><i>Once the guaranteeing association has been notified of the non discharge it should make its own enquiries concerning the apparent irregularity and, if possible, obtain alternative proof of termination of the TIR operation. Any relevant information so obtained should be referred to the competent authorities who notified the non-discharge.</i></p>	
<p><i>Comment to Article 11, paragraph 1: Payment of duties and taxes The competent authorities should restrict themselves in their recourse to the guaranteeing associations to the payment of the duties and taxes evaded applying to the portion of goods for which irregularities have been committed.</i></p>	<p><i>Payment of duties and taxes The competent authorities should restrict themselves in their recourse to the guaranteeing associations to the payment of the duties and taxes evaded applying to the portion of goods for which irregularities have been committed.</i></p>	<p><i>In cases where part of the goods has been subject to an irregularity, the competent authorities should apportion the claim for payment of the evaded duties and taxes referred to in Article 8, paragraph 1 accordingly.</i></p>	<p><i>Payment of duties and taxes The competent authorities should restrict themselves in their recourse to the guaranteeing associations to the payment of the duties and taxes evaded applying to the portion of goods for which a payment obligation for import or export duties and taxes has arisen.</i></p>	<p><i>Payment of duties and taxes The competent authorities should restrict themselves in their recourse to the guaranteeing association to the payment of the duties and taxes evaded, applying to the portion of goods for which irregularities have been committed.</i></p>
<p><i>Comment to Article 11, paragraph 1: Time limit for notifications As regards the time limit for the notification to the national guaranteeing association of the non-discharge of TIR Carnets the date of receipt but not the date of dispatch is the decisive one. However, the method of proof of notification is left to the Customs administration concerned (registered mail, for example being one example of proof of reception). If the time limit is exceeded the national guaranteeing</i></p>	<p><i>Time limit for notifications As regards the time limit for the notification to the national guaranteeing association of the non-discharge of TIR Carnets, the date of receipt and not the date of dispatch is the decisive one. However, the method of proof of notification is left to the Customs administration concerned (registered mail, for example being one example of proof of reception). If the time limit is exceeded the national guaranteeing association is not liable anymore.</i></p>	<p><i>The notifications should be sent by registered mail. With regard to the time limits for notifying the guaranteeing association, the use of registered mail shall establish proof of the date of receipt.</i></p>	<p><i>Time limit for notification As regards the time limit for the notification to the national guaranteeing association of the non-discharge of TIR Carnets the date of receipt but not the date of dispatch is the decisive one. However, the method of proof of notification is left to the Customs administration concerned (registered mail, for example being one example of proof of reception). If the time limit is exceeded the national guaranteeing association is not liable any more.</i></p>	<p><i>Decisive point in time for notifications As regards the time limit for notifications to the national guaranteeing association of the non-discharge of TIR Carnets, the date of receipt and not the date of dispatch is the decisive one. However, the method of proof for notification is left to the Customs administration concerned (registered mail, for example being one example of proof of reception)</i></p>

Original text	Netherlands TRANS/WP.30/GE.2/2005/2	European Commission TRANS/WP.30/GE.2/2005/8	IRU (ECE/TRANS/WP.30/2006/ and the Russian Federation (TRANS/WP.30/2005/19)	Other proposals (Germany, TRANS/WP.30/GE.2/2005/2) (Germany, Finland and the Netherlands, Informal document No. 4 (2006))
<p><i>association is not liable any more. Comment to Article 11, paragraph 1: Notification to the TIR Carnet holder The requirement of notification to the TIR Carnet holder referred to in Explanatory Notes 0.8.7 and 0.11-1 could be fulfilled by transmission of a registered letter.</i></p>				
<p>8-7. When payment of sums mentioned in paragraphs 1 and 2 of this Article becomes due, the competent authorities shall so far as possible require payment from the person or persons directly liable before making a claim against the guaranteeing association.</p>	<p>when payment of sums mentioned in Article 8, paragraph 1, becomes due, as far as possible, require payment from the person or persons directly liable before making a claim against the guaranteeing association;</p>	<p>Where the payment of the sums mentioned in Article 8, paragraph 1 becomes due, the competent authorities shall, so far as possible, require payment from the person or persons directly liable for the payment of the sums before making a claim against the guaranteeing association.</p>	<p>make every effort to ensure that the payment is made by the identified person or persons directly liable before making a claim against the guaranteeing association for the payment of the sums mentioned in Article 8, paragraph 1.</p>	<p>transmit a claim for payment at least to the TIR Carnet holder before making a claim against the guaranteeing association;</p>
<p>New concept (not included in the current text)</p>		<p><i>Identification of person or persons directly liable In the majority of cases it should be envisaged that the person directly liable for the payment of the sums due shall be the TIR Carnet holder. However, and without prejudice to national legislation, other parties may also be identified as being directly liable; these parties could include the person(s) who unlawfully removed the goods from the sealed compartment of the road vehicle or who participated in the removal.</i></p>	<p><i>In the majority of cases it should be envisaged that the person or persons directly liable shall be the TIR Carnet holder or his representative. However, and without prejudice to national legislation, other parties may also be identified as being directly liable for the payment of sums due. These other parties may include: - the person/persons who unlawfully removed the goods from Customs supervision, or - the person/persons who knowingly participated in the removal, or - the person/persons who knowingly acquired or held the goods so removed.</i></p>	
<p><i>Explanatory Note 0.8.7: Measures to be taken by the competent authorities in order to require payment from the person or persons directly liable shall include at least notification of the non-discharge of the TIR operation and/or transmission of the claim for payment to the TIR Carnet holder.</i></p>		<p><i>The efforts to be made by the competent authorities to require payment from the person or persons directly liable shall include, at least, the transmission of the claim for payment to the TIR Carnet holder or the person(s) directly liable, if different. The claim should be transmitted by registered mail in order to establish proof of receipt. In addition the competent authorities should avail themselves of other measures that are available under national law to obtain the payment of the sums due.</i></p>		

<i>Original text</i>	<i>Netherlands TRANS/WP.30/GE.2/2005/2</i>	<i>European Commission TRANS/WP.30/GE.2/2005/8</i>	<i>IRU (ECE/TRANS/WP.30/2006/) and the Russian Federation (TRANS/WP.30/2005/19)</i>	<i>Other proposals (Germany, TRANS/WP.30/GE.2/2005/2) (Germany, Finland and the Netherlands, Informal document No. 4 (2006))</i>
<p>11-2. The claim for payment of the sums referred to in Article 8, paragraphs 1 and 2 shall be made to the guaranteeing association at the earliest three months after the date on which the association was informed that the operation had not been discharged or that the certificate of termination of the TIR operation had been obtained in an improper or fraudulent manner and at the latest not more than two years after that date. However, in cases which, during the above-mentioned period of two years, become the subject of legal proceedings, any claim for payment shall be made within one year of the date on which the decision of the court becomes enforceable.</p>	<p>The claim for payment of the sums referred to in Article 8, paragraph 1, shall be made to the guaranteeing association at the earliest three months after the date on which the association has been notified that the operation had not been discharged or that the certificate of termination of the TIR operation had been obtained in an improper or fraudulent manner and at the latest not more than two years after that date. However, in cases which, during the above-mentioned period of two years, become the subject of legal proceedings, any claim for payment shall be made within one year of the date on which the decision of the court becomes enforceable.</p>	<p>The claim for payment of the sums referred to in Article 8, paragraph 1 shall be made to the guaranteeing association at the earliest three months after the date on which the association was notified that the operation had not been discharged or that the certificate of termination of the TIR operation had been obtained in an improper or fraudulent manner and at the latest not more than two years after that date. However, in cases which, during the above-mentioned period of two years, become the subject of legal proceedings, any claim for payment shall be made within one year of the date on which the decision of the court becomes enforceable.</p>	<p>The claim for payment of the guaranteed amount referred to in Article 8, paragraph 1, shall be made to the guaranteeing association at the earliest three months after the date on which the association has been notified that the TIR operation had not been discharged or that the certificate of termination of the TIR operation had been obtained in an improper or fraudulent manner and at the latest not more than two years after that date. However, in cases which, during the above-mentioned period of two years, become the subject of legal proceedings, any claim for payment shall be made within one year of the date on which the decision of the court becomes enforceable.</p>	<p>[make the claim for payment to the guaranteeing association at the earliest three months after the date on which the association has been notified that the operation had not been duly discharged and at the latest not more than two years after that date. If the competent authorities make the claim for payment too early it will be effective only after the above mentioned period of three months. However, in cases which, during the above mentioned period of two years, become the subject of legally based administrative opposition proceedings or of court proceedings, any claim for payment shall be made within one year of the date on which the final decision of the competent authority or a court becomes enforceable. A claim that is made too early will be effective only when the decision becomes enforceable.]</p> <p>or (alternative proposal):</p> <p>2. The claim for payment of the sums referred to in Article 8, paragraphs 1 and 2 shall be made to the guaranteeing association at the earliest three months after the date on which the association was informed that the operation had not been discharged or that the certificate of termination of the TIR operation had been obtained in an improper or fraudulent manner and at the latest not more than two years after that date. However, in cases in which, during the above-mentioned period of two years, the debt of the sums referred to in Article 8, paragraph[s] 1 [and 2] is challenged, any claim for payment shall be made within one year of the date on which the decision of the competent authority or the court, confirming the debt, becomes enforceable. A premature claim for payment shall be deemed null and void if the competent authorities, having been informed by the guaranteeing association of the untimely submission, do not repeat that claim within the applicable time limits.</p>
<p>New concept (not included in the current text)</p>		<p><i>Claim for payment of duties and taxes Before making a claim against the guaranteeing association the competent authorities should make full use of the time scales offered under this paragraph in order to identify the person or persons directly liable.</i></p>	<p>Before making a claim against the guaranteeing association the competent authorities should make full use of the time scales offered under the paragraph in order to identify the person or persons directly liable. Subject to and in accordance with national legislation, the guaranteeing association may have the right to contest the claim</p>	

<i>Original text</i>	<i>Netherlands TRANS/WP.30/GE.2/2005/2</i>	<i>European Commission TRANS/WP.30/GE.2/2005/8</i>	<i>IRU (ECE/TRANS/WP.30/2006/ and the Russian Federation (TRANS/WP.30/2005/19)</i>	<i>Other proposals (Germany, TRANS/WP.30/GE.2/2005/2) (Germany, Finland and the Netherlands, Informal document No. 4 (2006))</i>
		<p><i>The claim for payment should be supported by copies of the relevant documentation required to demonstrate the justification and validity of the claim</i></p> <p><i>Without prejudice to any national provisions concerning the right of appeal, should the guaranteeing association obtain alternative proof of the termination of the TIR operation it should refer that proof to the competent authorities who notified the non discharge of the TIR operation.</i></p>		
<p><i>Explanatory Note 0.11-2: In deciding whether or not to release the goods or vehicle, Customs authorities should not, when they have other means in law of protecting the interests for which they are responsible, be influenced by the fact that the guaranteeing association is liable for the payment of duties, taxes and default interest payable by the holder of the Carnet.</i></p>	<p><i>In deciding whether or not to release the goods or vehicle, Customs authorities should not, when they have other means in law of protecting the interests for which they are responsible, be influenced by the fact that the guaranteeing association is liable for the payment of duties, taxes and default interest payable by the holder of the Carnet.</i></p>		<p><i>In deciding whether or not to release the goods or vehicle, Customs authorities should not, when they have other means in law of protecting the interests for which they are responsible, be influenced by the fact that the guaranteeing association is liable for the payment of the guaranteed amount of duties, taxes and default interest payable by the holder of the Carnet.</i></p>	<p><i>In deciding whether or not to release the goods or vehicle, Customs authorities should not, when they have other means in law of protecting the interests for which they are responsible, be influenced by the fact that the guaranteeing association is liable for the payment of duties, taxes and default interest payable by the holder of the Carnet</i></p>
<p>11-3. The guaranteeing association shall have a period of three months, from the date when a claim for payment is made upon it, in which to pay the amounts claimed.</p>	<p>The guaranteeing association shall have a period of three months, from the date when a claim for payment is made upon it, in which to pay the amounts claimed, or to send to the competent authorities a motivated opposition to the claim for payment.</p>	<p>The guaranteeing association shall have a period of three months, from the date when a claim for payment is made upon it, in which to pay the amount claimed.</p>	<p>The guaranteeing association without delay informs the international organization referred to in Article 6, paragraph 2bis of the reception of a claim for payment. The international organization shall have a period of one month to inform the guaranteeing association of its position concerning the claim for payment. The guaranteeing association shall have a period of three months, from the date when the claim for payment is made upon it, in which to pay the amounts claimed, or to send to the competent authorities a motivated opposition to the claim for payment. If the competent authorities consider the reasons of opposition as ungrounded, they have the right to start legal proceedings against the guaranteeing association according to the national legislation.</p>	<p>The guaranteeing association shall have a period of three months, from the date when a claim for payment is made upon it, in which to pay the amounts claimed, or to send to the competent authorities a motivated opposition to the claim for payment.</p>

<i>Original text</i>	<i>Netherlands TRANS/WP.30/GE.2/2005/2</i>	<i>European Commission TRANS/WP.30/GE.2/2005/8</i>	<i>IRU (ECE/TRANS/WP.30/2006/ and the Russian Federation (TRANS/WP.30/2005/19)</i>	<i>Other proposals (Germany, TRANS/WP.30/GE.2/2005/2) (Germany, Finland and the Netherlands, Informal document No. 4 (2006))</i>
The sums paid shall be reimbursed to the association if, within the two years following the date on which the claim for payment was made, it has been established to the satisfaction of the Customs authorities that no irregularity was committed in connection with the transport operation in question.	The sums paid shall be reimbursed to the association if, within the two years following the date on which the claim for payment was made, it has been established to the satisfaction of the Customs authorities that no irregularity was committed in connection with the transport operation in question.	<i>The sums paid shall be reimbursed to the association if, within the two years following the date on which the claim for payment was made, it has been established to the satisfaction of the Customs authorities that no irregularity leading to a payment obligation of import or export taxes and duties was committed in connection with the transport operation in question.</i>	The sums paid shall be reimbursed to the association if, within the two years following the date on which the claim for payment was made, it has been established to the satisfaction of the Customs authorities that no irregularity leading to a payment obligation of import or export taxes and duties was committed in connection with the transport operation in question.	The sums paid shall be reimbursed to the association if, within the two years following the date on which the claim for payment was made, it has been established to the satisfaction of the Customs authorities that no irregularity was committed in connection with the transport operation in question
New concept (not included in the current text)		<i>The reimbursement of the sums paid shall also be possible in cases where the person or persons directly liable subsequently pays the sums mentioned in Article 8 paragraph 1. The two-year time limit prescribed in Article 11 paragraph 6 may be extended in accordance with national legislation or administrative practice.</i>	<i>The reimbursement of the sums paid shall also be granted in cases where the person or persons directly liable subsequently pays the sums mentioned in Article 8, paragraph 1.</i>	
<i>Explanatory Note 0.11-3: If a guaranteeing association is asked, in accordance with the procedure set out in Article 11, to pay the sums referred to in Article 8, paragraphs 1 and 2, and fails to do so within the time-limit of three months prescribed by the Convention, the competent authorities may rely on national regulations in requiring payment of the sums in question because what is involved in such cases is a failure to carry out a contract of guarantee entered into by the guaranteeing association under national law.</i>	<i>If a guaranteeing association is asked, in accordance with the procedure set out in Article 11, to pay the sums referred to in Article 8, paragraph 1, and fails to do so within the time-limit of three months prescribed by the Convention, the competent authorities may rely on national regulations in requiring payment of the sums in question because what is involved in such cases is a failure to carry out a contract of guarantee entered into by the guaranteeing association under national law.</i>	<i>If a guaranteeing association is asked, in accordance with the procedure set out in this Article, to pay the sums referred to in Article 8, paragraph 1, and fails to do so within the time limit of three months prescribed by the Convention, the competent authorities may rely on national regulations in requiring payment of the sums in question because what is involved in such cases is a failure to carry out a contract of guarantee entered into by the guaranteeing association under national law. The three month time limit also applies in the event that the guaranteeing association, on receipt of the claim, consults the international organization referred to in Article 6.2 over its position concerning the claim. In cases where the guaranteeing association submits a reasoned appeal against the claim, the procedures laid down in national regulations shall apply.</i>	<i>If a guaranteeing association, in accordance with the procedure set out in Article 11, is asked to pay the sums referred to in Article 8, paragraph 1, and fails to do so within a period of three months prescribed by the Convention and the competent authorities do not receive a motivated opposition to the claim for payment, the competent authorities may rely on national regulations in requiring payment of the sums in question because what is involved in such cases is a failure to carry out a contract of guarantee entered into by the guaranteeing association under the national law.</i>	<i>If a guaranteeing association is asked, in accordance with the procedure set out in Article 11, to pay the sums referred to in Article 8, paragraph 1, and fails to do so within the time-limit of three months prescribed by the Convention, the competent authorities may rely on national regulations in requiring payment of the sums in question because what is involved in such cases is a failure to carry out a contract of guarantee entered into by the guaranteeing association under national law</i>
New concept (not included in the current text)				The competent authorities can make good for the measures contained in paragraphs (a) to (d) above at any time within the respective time limit.