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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.10.2009
COM(2009)587 final

Proposal for a

COUNCIL DECISION

**on the position to be taken by the Community concerning the proposal to amend the
Customs Convention on the International Transport of goods under cover of TIR
carnets (TIR Convention 1975)**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Grounds for and objectives of the proposal

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 way of Council Regulation (EEC) No 2112/78. The Convention entered into force in the Community on 20 June 1983.

The purpose of the proposed Decision is for the Community to adopt the latest amendments to the TIR Convention agreed by the UNECE Working Party on Customs Questions Affecting Transport.

1.2. General context

The TIR Convention, which is administered by the United Nations Economic Commission for Europe (UNECE), based in Geneva, has established a customs transit procedure for the international movement of goods by road. The Convention enables goods, which are under customs and tax suspension, to cross international borders with a minimum of intervention en route by the customs authorities. By easing traditional impediments to the international movement of goods, the TIR system encourages the development of international trade. By reducing delays in transit, it enables significant economies to be made in transport costs. The most important advantage of the system is the fact that the TIR Convention provides, through its international guarantee chain, relatively simple access to the required guarantees.

The UNECE Working Party on Customs Questions Affecting Transport agreed that some modifications of the TIR Convention are necessary. These modifications concern Part I of Annex 9 to the TIR Convention. This part deals with the process of authorisation for associations to issue TIR Carnets and to act as guarantor. The Working Party decided to reorganize this part of the Convention and to add some new elements that exist in practice but were never clearly defined by the legal text. According to the proposal associations will be obliged to submit to competent authorities true and certified copies of the full and integral text of the global insurance contract concluded by them with the international global insurers. The associations must now inform the international organization of requests for payment submitted to them by customs authorities. Additionally, access to the TIR system is now open to associations others than those representing the interests of the transport sector.

1.3. Existing provisions in the area of the proposal

Part I of Annex 9 to the TIR Convention.

1.4. Consistency with the other policies and objectives of the Union

The proposed Decision is consistent with the common policy in trade and transport. The TIR system, providing facilitation in road transport, allows goods to travel across 68 Contracting Parties with a minimum of interference by customs administrations and provides, through an international guarantee chain, relatively simple access to the required guarantees. The simplifications achieved through the TIR Convention are in line with the revised Lisbon strategy.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

2.1. Consultation of interested parties

Consultation methods, main sectors targeted and general profile of respondents

Consultations on the proposal were carried out with the International Road Transport Union IRU. Consultations took place within the Customs Code Committee meetings and sessions of the UNECE Working Party on Customs Questions Affecting Transport.

Summary of responses and how they have been taken into account

Favourable opinion.

2.2. Collection and use of expertise

There was no need for external expertise.

2.3. Impact assessment

The proposed amendments do not change the substance of Part I of Annex 9 to the TIR Convention, but reorganize it so that it is easier to understand and apply the authorization procedure for associations to issue TIR Carnets and to act as guarantor. Additionally, some new elements are added. According to Article 1 of Part I to Annex 9, access to the TIR system is now open for associations others than those representing the interests of the transport sector. The obligation for associations to submit to competent authorities true and certified copies of the full and integral text of the global insurance contract concluded by them with the international global insurers is introduced in this part of Annex 9. The associations must now inform the international organization of requests for payment submitted to them by customs authorities.

By introducing these amendments the authorization procedure for associations to issue TIR Carnets and to act as guarantor is more clearly described by the Convention. Open access to the TIR system for associations others than those representing the transport sector is ensured. Practical arrangements that are already in use by the main actors of the system are now clearly defined by the legal text of the Convention.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Summary of the proposed action

The proposed Decision lays down the position to be taken by the Community concerning the proposal to amend the Customs Convention on the International Transport of goods under cover of TIR carnets.

3.2. Legal basis

Articles 133 and 300 (2) second subparagraph of the Treaty establishing the European Community

3.3. Subsidiarity principle

The proposal is in conformity with the principle of subsidiarity. It allows the implementation of an amendment to the international agreement which as such respects the principle of subsidiarity.

The proposed amendments were preliminarily adopted by the UNECE Working Party on Customs Questions Affecting Transport.

3.4. Proportionality principle

The proposal is in conformity with the principle of proportionality. It allows the implementation of an amendment to the international agreement which as such respects the principle of proportionality.

3.5. Choice of instruments

Proposed instrument: Decision.

International agreements and amendments to these arrangements are normally introduced into the Community's legal order by way of a Decision.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133, in conjunction with the second subparagraph of Article 300 (2) thereof,

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 Community by Council Regulation (EEC) No 2112/78 of 25 July 1978¹ and entered into force in the Community on 20 June 1983².
- (2) A consolidated version of the TIR Convention was published as Annex to Council Decision 2009/477/EC of 28 May 2009³, according to which the Commission shall publish future amendments to the Convention in the Official Journal of the European Union indicating their entry into force.
- (3) In June 2009 the UNECE Working Party on Customs Questions Affecting Transport decided that some modifications of the TIR Convention are necessary. These modifications concern Part I of Annex 9 to the TIR Convention, which deals with the process of authorisation for associations to issue TIR Carnets and to act as guarantor.
- (4) The proposed amendments do not change the substance of Part I of Annex 9 to the TIR Convention but reorganize it so that it is easier to understand and apply the authorization procedure for associations to issue TIR Carnets and to act as guarantor. Additionally, some new elements are added. One of them is open access to the TIR system for associations others than those representing the transport industry. Other amendments concern practical arrangements already in use but not prescribed by the legal text of the Convention.
- (5) All Member States expressed their positive opinion as regards the amendment proposal. The draft produced by the Working Party on Customs Questions Affecting Transport was already discussed within the Customs Code Committee and it was approved.

¹ OJ L 252, 14.09.1978, p. 1.

² OJ L 31, 2.2.1983, p. 13.

³ OJ L 165, 26.6.2009, p. 1.

- (6) The next session of the Administrative Committee for the TIR Convention is scheduled for September 2009 and it is expected that all Contracting Parties to the Convention will be ready to formally adopt proposed amendments of the TIR Convention.
- (7) Therefore, the Community position concerning the proposed amendment should be determined,

HAS ADOPTED THIS DECISION:

Article 1

The Community's position within the Administrative Committee shall be based on the draft amendment annexed hereto.

Article 2

This Decision is addressed to the Member States.

The Commission shall publish the amendment, once adopted, in the Official Journal of the European Union indicating its date of entry into force.

Done at Brussels,

*For the Council
The President*

ANNEX

In Annex 9, Part I is replaced as follows:

"PART I

AUTHORIZATION FOR ASSOCIATIONS TO ISSUE TIR CARNETS AND TO ACT AS GUARANTOR

CONDITIONS AND REQUIREMENTS

1. The conditions and requirements to be complied with by associations in order to be authorized by Contracting Parties to issue TIR Carnets and to act as guarantor in accordance with Article 6 of the Convention are:
 - (a) Proven existence for at least one year as an association established in the Contracting Party where the authorization is issued.
 - (b) Proof of sound financial standing and organizational capabilities enabling the association to fulfil its obligations under the Convention.
 - (c) Absence of serious or repeated offences against Customs or tax legislation.
 - (d) Establishment of a written agreement or any other legal instrument between the association and the competent authorities of the Contracting Party in which it is established including the acceptance by the association of its duties as set out in paragraph 3 of this Article.
2. A certified copy of the written agreement or any other legal instrument referred to under paragraph 1(d) together, if necessary, with a certified translation into English, French or Russian, shall be deposited with the TIR Executive Board. Any changes shall be immediately brought to the attention of the TIR Executive Board.
3. The duties of the association are to:
 - (i) comply with the obligations laid down in Article 8 of the Convention;
 - (ii) accept the maximum sum per TIR Carnet determined by the Contracting Party which may be claimed from the association in accordance with Article 8, paragraph 3 of the Convention;
 - (iii) verify continuously and, in particular, before requesting authorization for access of persons to the TIR procedure, the fulfilment of the minimum conditions and requirements as laid down in Part II of this Annex;
 - (iv) provide its guarantee for all liabilities incurred in the country in which it is established in connection with operations under cover of TIR Carnets issued by

itself and by foreign associations affiliated to the same international organization as that to which it is itself affiliated;

- (v) cover its liabilities to the satisfaction of the competent authorities of the Contracting Party in which it is established with an insurance company, pool of insurers or financial institution. The insurance or financial guarantee contract(s) shall cover the totality of its liabilities in connection with operations under cover of TIR Carnets issued by itself and by foreign associations affiliated to the same international organization as that to which it is itself affiliated.

The time to give notice for the termination of the insurance or financial guarantee contract(s) shall be not less than the time to give notice for the termination of the written agreement or any legal instrument as referred to in paragraph 1(d). A certified copy of the insurance or financial contract(s) as well as all subsequent modifications thereto shall be deposited with the TIR Executive Board, including a certified translation, if necessary, into English, French or Russian;

- (vi) provide the TIR Executive Board annually, as per 1 March, with the price of each type of TIR Carnets it issues;
- (vii) allow the competent authorities to verify all record and accounts kept relating to the administration of the TIR procedure;
- (viii) accept a procedure for settling efficiently disputes arising from the improper or fraudulent use of TIR Carnets, whenever possible without recourse to courts;
- (ix) comply strictly with the decisions of the competent authorities of the Contracting Party in which it is established concerning the revocation of the authorization or the exclusion or withdrawal of persons in line with Article 6 and Article 38 of the Convention and Part II of this Annex;
- (x) agree to implement faithfully all decisions adopted by the Administrative Committee and the TIR Executive Board in as much as the competent authorities of the Contracting Party in which the association is established have accepted them.

4. When a guaranteeing association is asked, in accordance with the procedures set out in Article 11, to pay sums referred to in Article 8 paragraphs 1 and 2, it shall, in accordance with the written agreement referred to in Explanatory Note 0.6.2bis-1 to Article 6, paragraph 2bis, inform the international organization of the reception of the claim.
5. The Contracting Party in which the association is established shall revoke the authorization to issue TIR Carnets and to act as guarantor in case of non-compliance with these conditions and requirements. Should a Contracting Party decide to revoke the authorization, the decision will become effective at the earliest three (3) months after the date of revocation.

6. The authorization of an association under the terms set out above shall be without prejudice to that association's responsibilities and liabilities under the Convention.
7. The conditions and requirements laid down above are without prejudice to additional conditions and requirements Contracting Parties may wish to prescribe."