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Proposal for a

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The Customs Convention on the International Transport of goods under cover of TIR carnets of 14 November 1975 was approved on behalf of the European Union by way of Council Regulation (EEC) No 2112/78¹. The Convention entered into force in the European Union on 20 June 1983.

The purpose of the proposed Decision is for the European Union to adopt the latest amendments to the TIR Convention agreed by the United Nations Economic Commission for Europe (UNECE) Working Party on Customs Questions Affecting Transport and further accepted by the Administrative Committee for the TIR Convention.

- **Consistency with existing policy provisions in the policy area**

There are no other existing provisions in the area of the proposal than Council Regulation (EEC) No 2112/78, except the Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, which links the TIR procedure to its concept of internal and external transit.

- **Consistency with other Union policies**

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 more than 50 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 Europe 2020 strategy as efficient border crossing procedures are essential for the economy and may support job creation.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Articles 207 and 218 (9) of the Treaty on the Functioning of the European Union.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

Consultations were carried out with the Member States within the Customs Expert Group – TIR and other UNECE Conventions meetings. Further consultations took place during sessions of the UNECE Working Party on Customs Questions Affecting Transport and the Administrative Committee for the TIR Convention with all Contracting Parties to the TIR Convention. The consulted stakeholders supported the envisaged amendment.

- **Collection and use of expertise**

The proposal for an amendment to Article 11, paragraph 3 of the TIR Convention was transmitted by the Russian Federation. The Administrative Committee for the TIR Convention asked the international organisation referred to in Article 6 of the TIR

¹ OJ L 252, 14.9.1978, p. 2.

Convention, being authorised to take responsibility for the effective organisation and functioning of the international guarantee system (International Road Transport Union (IRU)), to provide statistical information in order to assess the period of time when customs administrations send claims for payment of the sum referred to in Article 8 paragraph 1 of the TIR Convention to the associations. The Committee was of the view that the guarantee chain is in a position to operate efficiently with an earlier deadline as proposed by the Russian Federation.

4. BUDGETARY IMPLICATIONS

The proposal has no implication for the European Union budget.

5. OTHER ELEMENTS

The proposal for an amendment to Article 1 (q) of the TIR Convention on a definition of a term 'guaranteeing association' is based on a proposal from the Russian Federation to delete the words 'customs authorities'. As the Russian Federation clarified, due to peculiarities relating to mandates and structure at the governmental level, it is possible that the authority, competent to authorise a guaranteeing association, may not always be the customs administration. As such the proposal would broaden the scope of the provision to provide the flexibility deemed necessary, given the different administrative arrangements that exist in various Contracting Parties. Several Contracting Parties, including the European Union, expressed their concerns that due to requirements of national or international legislation, it would be necessary to maintain the term 'customs authorities'. As a compromise, and in order to accommodate legal requirements of other Contracting Parties, the Administrative Committee for the TIR Convention agreed not to delete the term 'customs authorities', but to add the term 'or other competent authorities'.

The Russian Federation proposed to the Administrative Committee for the TIR Convention to better clarify which frontier (customs or state) applies in Article 2 of the TIR Convention. According to the Russian Federation the current text leads to divergent interpretations and different practices in defining the possibility of transporting goods in the territory of two or more member states of the Customs Union. The proposal for an amendment to Article 2 of the TIR Convention would specify that the word 'frontier' refers to a customs frontier. The European Union designated its customs territory as a single territory for the purpose of the rules governing the use of the TIR procedure. The fact that the European Union forms one single market without internal borders excludes the possibility to use TIR carnets for internal transports. The proposed amendment to Article 2 of the TIR Convention would not change the application of TIR procedure in the Union as for the European Union the term 'customs frontier' means the external border of the Union.

The proposals for amendments to Article 3 (b), Article 6 paragraph 2, Annex 9, Part II of the TIR Convention to replace the word 'approved' by 'authorised', amendment to Annex 9, Part I, paragraph 7 to the TIR Convention to replace the words 'Contracting Parties' by 'each Contracting Party', are amendments of editorial nature which would align the terms within the TIR Convention.

The proposal for an amendment to Article 11, paragraph 3 of the TIR Convention would reduce the earliest point in time at which customs authorities can send a claim for payment of the sum referred to in Article 8 paragraph 1 of the TIR Convention to a guaranteeing association. The proposed decrease of deadline from three to one month would not prohibit customs administration from submitting their claims at a later date as usually they firstly seek the payment from a person directly liable. It would still give sufficient time for the

guaranteeing association to operate efficiently after being notified that the TIR operation had not been discharged in accordance with Article 11, paragraph 1 of the TIR Convention.

The proposal for an amendment to Article 38 of the TIR Convention would extend the right of the Contracting Parties to exclude TIR holders to cover cases of repeated offences against the customs laws or regulations applicable to the international transport of goods. It would also unequivocally entitle Contracting Parties to assess whether a customs offence is serious enough to constitute grounds for exclusion. The second amendment does not change the substance of this Article as such competence exists already, but would ensure that there is no interpretative ambiguity in as far as mandate is concerned in the national law-making processes of some Contracting Parties, in particular in the Russian Federation who proposed it, and would clarify the current text of the Article.

As required by Article 8 paragraph 3 of the TIR Convention, each Contracting Party shall determine the maximum sum per TIR Carnet, which may be claimed from the guaranteeing association. The Explanatory Note to this Article states that Contracting Parties are recommended to limit to a sum of USD 50 000. Since 2003 the maximum amount that the guaranteeing associations in the European Union are required to pay when they incur liability has been expressed in euro and set at EUR 60 000 per TIR carnet. As a result of the announcement by the IRU that its global insurer has increased, for all Contracting Parties to the TIR Convention, the amount of covered guarantee to EUR 100 000 per TIR carnet, the Administrative Committee for the TIR Convention proposed to align the text of the TIR Convention. Therefore the Explanatory Note to Article 8 paragraph 3 of the TIR Convention should be amended.

The proposals to amend Annex 8, Article 1 bis to the TIR Convention with new paragraphs 4-6 and to amend Annex 9, Part III, paragraph 2 to the TIR Convention with new subparagraphs (o), (p) and (q) aim to increase the transparency of the financial issues related to the functioning of an international organisation referred to in Article 6 of the TIR Convention, being authorised to take responsibility for the effective organisation and functioning of the international guarantee system (IRU). The amendment to Annex 9 to the TIR Convention would introduce new rules on audit requirements as well as conditions and requirements for an authorised international organisation with the objective to ensure transparency and good governance of the records and accounts related to the organisation and functioning of an international guarantee system and the printing and distribution of TIR carnets. New paragraphs of Annex 8, Article 1 bis to the TIR Convention would establish a requirement for the Administrative Committee for the TIR Convention to examine and, in case of need, further verify, the annual financial statements and audit reports submitted by the international organisation in accordance to the obligations under Annex 9, Part III to the TIR Convention. The Administrative Committee would also have the right, if justified by performed risk assessment, to request additional examinations to be carried out. A proposed new Explanatory Note to Annex 8, Article 1 bis, paragraph 6 of the TIR Convention would further specify how the additional examinations shall be performed. In the course of the discussions at the Working Party on Customs Questions Affecting Transport the amendment proposals of Annex 9, Part III to the TIR Convention were discussed with the IRU which stated that it was not opposing to the idea of including more transparency requirements in the TIR Convention and that it was fully prepared to comply with the new requirements. The TIR Secretariat, mandated by the TIR Executive Board, consulted the United Nations Office for internal oversight services (OIOS) with regard to the proposed subparagraphs (o), (p) and (q) of Annex 9, Part III, paragraph 2 to the TIR Convention. OIOS informed that it was not available to serve as regular auditor of IRU as an authorised international organisation but that it selects its audits on the basis of a risk analysis.

The proposal for amendments to Annex 9, Part I, subtitle and Annex 9, Part I, paragraph 1 to the TIR Convention to add the word 'minimum' would achieve linguistic consistency in the use of phrases 'conditions and requirements' and 'minimum conditions and requirements' that appear mainly in Article 6 and Annex 9 to the TIR Convention without major amendments to the text of the TIR Convention.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 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 2112/78² and entered into force in the Community on 20 June 1983³.
- (2) A consolidated version of the TIR Convention was published as an Annex to Council Decision 2009/477/EC⁴, 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 the provision of Article 1 (q) 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.
- (4) The word 'frontier' 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 'frontier' refers to a customs frontier.
- (5) For the sake of creating consistency in terminology applied throughout the TIR Convention the term 'approved' shall be replaced by 'authorised' and the words 'Contracting Parties' by 'each Contracting Party'.
- (6) An amendment to Article 11, paragraph 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, paragraph 1 of the TIR Convention may be made against a guaranteeing association. The Administrative Committee for the TIR Convention consulted that proposal with

² 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).

³ OJ L 31, 2.2.1983, p. 13.

⁴ 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).

the International Road Transport Union (IRU), which is the international organisation referred to in Article 6 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 administration 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, also a repeated offence against those laws or regulations may be a reason for a temporary or permanent exclusion of a TIR carnet holder from the TIR regime in accordance with Article 38, paragraph 1 of the TIR Convention. That Article 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, or not.
- (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 international organisation authorised to take responsibility for the effective organisation and functioning of the international guarantee system. The amendment to 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 to ensure transparency and good governance of the relevant records and accounts and for the printing and distribution of TIR carnets. 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 Annex 9, Part III 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 Annex 6 to the TIR Convention is to specify how the additional examinations are to be performed.
- (10) An amendment to Annex 9, Part I, subtitle and Annex 9, Part I, paragraph 1 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 – TIR and other UNECE Conventions.
- (12) The next session of the Administrative Committee for the TIR Convention, during which the proposed amendments are to be presented for adoption, is scheduled for October 2017.
- (13) The position to be adopted on behalf of the Union within the Administrative Committee for the TIR Convention should therefore be based on the draft amendments attached to this Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on behalf of the European Union 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 for the TIR Convention 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 day of its adoption.

Done at Brussels,

For the Council
The President