Council of Ministers

CRIME AND FRAUD IN THE TRANSPORT SECTOR

Background Report

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It is presented to Ministers for information.
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SUMMARY

Governments should look more closely at the widespread fraud and growing number of offences and crimes in the transport sector. This report is restricted to crime and fraud in inland goods transport, with particular reference to road haulage. It discusses two areas:

-- the theft of goods and vehicles and assaults on drivers;
-- fraud in transit procedures.

The information available on the theft of goods and vehicles is very limited, but it does show that this chronic complaint affecting road transport is tending to spread, despite the precautions taken by carriers to protect themselves. This trend can, however, be countered by a series of practical measures, many of which are based on two requirements: greater co-operation at international level between the parties concerned; fuller information, so as to improve prevention and clamp down harder on these offences.

We know more about fraud in transit procedures although, surprisingly, it is not possible to say exactly how serious it is or give a reliable estimate of its effects. According to the information available, however, the impact of fraud is considerable since transit systems are in an extremely critical position. It is no exaggeration to say that the collapse of these systems is possible, for there is a risk that the operators guaranteeing the payment of duties and taxes to the customs authorities will be unable to meet their commitments.

The forms taken by this kind of fraud and its direct and underlying causes are quite well known. For several years the operators concerned have proposed technical measures which could reduce fraud by making it more difficult. It must be admitted that it is taking much too long to adopt these measures, considering the seriousness of the situation and the urgency of finding a solution. More importantly, there is little hope of significantly reducing fraud unless the checks for which governments, and especially the customs authorities, are responsible are more thorough, and unless a better balance in combatting fraud is found between the efforts of customs authorities and the private operators who issue transit permits.

INTRODUCTION

The transport sector is one of the main targets for crime and fraud. Passenger and freight transport creates opportunities for malpractice, and at the same time makes it difficult to carry out the monitoring, inspection and investigation procedures enabling offenders to be identified. The many
regulations to which transport is subject inevitably lead to fraud aimed at evading the costs that would be incurred by keeping to these regulations.

A classification of crime and fraud cannot be drawn up, and all that can be said is that some offences come under criminal law (assaults and theft of goods), while others are breaches of the legal provisions -- whether specific to this sector or not -- governing transport operation (legislation on competition, labour, safety, the environment, etc.). It is also no doubt possible to differentiate between offences against transport users (theft from and assaults on public transport passengers, for example), those in which the carriers are the victims (theft of goods, etc.), and those in which they are the offenders (non-observance of the highway code or European safety regulations, etc.), although such a breakdown is shaky for the apparent victim may have unintentionally or deliberately encouraged the offence, may be in league with the offender or even be the culprit himself.

This report discusses only two types of crime and fraud concerning freight transport: theft of vehicles and goods from them and, separately, fraud relating to transit procedures. Such offences exist in all transport modes, but their frequency and seriousness are probably very uneven. Here we shall limit ourselves to inland transport and more precisely to road haulage, despite some references to other modes.

THEFT OF GOODS OR VEHICLES AND ASSAULTS ON DRIVERS

Crime in the rail freight sector exists and is a matter of concern to the UIC. A working group known as COLPOFER has been set up to assemble information from member railways on all aspects of crime: incidents involving safety, assaults, theft from travellers, theft of goods, vandalism and fraud. Information on the theft of goods has been compiled for the period 1991-1995 and ratios for the number of thefts to traffic have been worked out. These ratios differ greatly from one country to another, ranging as they did in 1995 from 1 (Belgian Railways) to 90 (Hungarian Railways). The range of figures is so wide, even in the case of comparable national networks, and the change in these figures over time is so marked that the tendency is to ask whether exactly the same definitions are being used. The average European ratio for 12 national networks was 151 in 1995. The trend since 1993 shows a slight decrease for most countries, but a spectacular increase in France between 1993 and 1994, so that in 1995 the SNCF had one of the highest ratios.

In December 1996, the UIC working group defined an action programme covering all aspects of railway crime. It was submitted for approval to the national networks in January 1997 and should be submitted to the Board of UIC in March. This programme contains proposals for the exchange of information between networks and the co-ordination of protection measures, and provides for studies to be carried out on methods and systems aimed at improving the situation.

But without underestimating the effects of offences, rail seems in a much better position than the road haulage sector as regards the theft of goods, and the authorities seem to be less directly concerned. In road transport, the theft of goods and vehicles and assaults on drivers have always existed and can be seen

1. Traffic expressed in billions of tonne-kilometres.
as a chronic complaint. But owing to the recent increases in this form of crime, they should be given more attention.

1.1 Characteristics of crime

These characteristics can be shown by considering the extent and forms of crime.

1.1.1 Scale of crime

Information on the number of offences committed in the various European countries is very patchy and mainly concerns France and the United Kingdom. The available figures are certainly underestimated, for the offences are not always reported to the police.

In France, the official number of lorry thefts per year is between 2,100 and 2,200\(^2\); less than 60 per cent of the lorries are recovered. Thefts of loads reportedly number about 1,200 a year. The available statistics do not include thefts of part of the lorry loads and thefts on the carriers’ premises. It is estimated that the annual cost of stolen vehicles and goods is over FF 5 billion.

Owing to the lack of overall data and the seriousness of the problem in the UK, the police have carried out a study on the year 1994. According to the findings, the number of lorries stolen in that year was 3,047, of which only 360 were recovered. The insurance value of the non-recovered vehicles, which is no doubt far less than their replacement value, was over £30 million. According to official sources\(^3\), thefts of goods and lorries amount to about 40,000 a year, at a cost of £1.6 billion.

Although these data are very patchy, the general view of the carrier associations is that crime has increased considerably in recent years.

1.1.2 Types of crimes

Various types of crime are committed: vandalism generally involving the vehicle, theft of goods from the vehicle (tarpaulin slashed, doors forced, etc.), and theft of the vehicle itself with or without the driver being assaulted. The vehicle may be stolen so that it can be driven to a quiet spot where it is unloaded and abandoned; the vehicle itself may be stolen and not recovered. Thefts occur in the carriers’ warehouses, from lorries while they are parked in streets or on motorway parking areas and even in parking lots with an attendant. They often occur at night while the driver is resting.

The goods stolen are mainly final products with a high value added which can be easily sold illegally (hi-fi and video equipment, foodstuffs and in particular wines and spirits, clothing). But industrial products are also sometimes stolen, which obviously requires the existence of receivers in the industrial sector who can use these products.

Large-scale thefts are almost invariably the work of a criminal organisation which has programmed the theft, planned the sale of the products and has been tipped off about the vehicle’s contents. This information may be provided by the carrier’s staff, but also by the consignor or the

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2. These figures are incomplete as they do not include those of the Paris Criminal Investigation Department.

3. Road Haulage Association.
consignee. In some countries it even seems that the information is passed on by customs officials. According to the police specialising in this type of crime, the information channels set up by these criminal organisations are at least as efficient as those used by the police themselves.

It seems that two changes in the forms taken by such crime can be highlighted:

- The fact that increasingly the vehicle is stolen as well as the goods. The lorry is driven to another country where it is given a new look and re-registered with the use of forged papers, if it is not taken to pieces and sold as spare parts. The vehicles find their way to Central and Eastern Europe but the components go to markets all round the world with particular emphasis on Eastern Europe and the Far East.

- The fact that hold-ups in which drivers are injured and sometimes killed are increasingly frequent, particularly in Russia and the Ukraine.

1.2 The fight against crime

1.2.1 Action already taken

The first step in the fight against crime is prevention. It must be stressed that the legal provisions in transport law (and particularly in the CMR), the way in which they are applied by the courts, and the behaviour of insurance companies impress on the carrier the precautions which should be taken.

The CMR imposes a performance requirement on the carrier so that it is liable for any losses occurring while the consignment is in its hands. It can be exempted from this liability only by proving that the theft of the consignment was a case of force majeure. But the courts are in fact very unlikely to grant this exemption and do so -- and not in every case -- only if the driver is attacked. In addition, the carrier is often found guilty of wilful misconduct in cases of negligence, so that he is deprived of protection under the CMR liability limitation and required to pay full compensation for the loss sustained, which may considerably exceed the value of the goods stolen.

Carriers obviously have third party insurance cover. But owing to the frequency of thefts and their effects, insurance companies have included in their contracts clauses stating that compensation will not be paid unless the carriers take a number of precautions relating to the vehicle’s equipment, parking arrangements, driver behaviour, etc. For example, French insurance companies cover the risks of theft in road haulage operations subject to a clause stating that, if the precautions to which it refers are not taken, compensation is automatically reduced. A variant of this clause applicable to Italy, where the risks are higher, imposes stricter requirements and states that compensation will not exceed 90 per cent at most, and will not be paid unless the carrier can prove that all the necessary precautions have in fact been taken.

The attitude of the courts and insurance companies to the carriers may seem very harsh. But it does bring home to them the problem of theft and is a powerful incentive for them to take all the desirable precautions. In some countries, such as the United Kingdom, the carrier associations publish very detailed brochures advising their members on how to limit theft.

The authorities have not turned a blind eye to the increase in theft. In particular, the United Kingdom set up a databank in 1992 on stolen goods so that, when a product of doubtful origin appears on the market, it is possible to check whether it has not been stolen.
1.2.2 Action to be taken

There is probably no single way of significantly reducing the theft of vehicles and goods. But a very wide range of ad hoc measures can have positive effects. These measures apply to all the parties concerned and should be aimed at:

− ensuring the carriers have vehicles equipped with more reliable protection systems;
− ensuring their vehicles are better identified and more difficult to re-register after they have been stolen;
− ensuring parking areas are better protected;
− heightening the carriers’ awareness of the theft problem.

But what are probably the most effective ways of preventing and punishing theft should be based on two key ideas: co-ordination and information. Better co-ordination among all the parties concerned, i.e. the transport authorities responsible for vehicle registration, the police, the carriers and their professional associations, etc. Like the criminal organisations themselves, this co-ordination must be international. Better information, which is a requirement for improved co-ordination. The recommendations submitted to Transport Ministers fully reflect these two major policy approaches.

FRAUD IN TRANSIT PROCEDURES

2.1 Transit systems

2.1.1 Definition of transit

Transit is a customs procedure which suspends all customs duties and taxes on goods, as well as any non-tariff barriers applicable to them, while they are being carried in the territory of a State or a number of States belonging to a customs union. The goods are carried in sealed vehicles and under cover of a customs document which describes these goods, states the customs office at which these goods come under the transit procedure, the customs office after which they will come under another customs regime, the time within which the goods are to be carried from one office to the other and, where appropriate, the itinerary stipulated for this transport operation.

In the case of transit in European countries, there are two different systems which comply with this general definition: the first, which applies to all transport modes, concerns countries in the European Community, EFTA and recently the Visegrad countries (Czech Republic, Hungary, Poland and the Slovak Republic); the second, which has a wider geographical coverage but is limited to road transport or to multimodal transport that includes sections of the journey by road, is known as the TIR (Transport International Routier) system.
2.1.2 **Community transit and common transit**

2.1.2.1 **Definition**

In the Community transit system, the goods carried are exempt from duties and taxes in the following cases:

- on the import side, goods from a third country entering the Community but bound for a third country ("transit" in the usual meaning of the term);

- on the import side, goods from a third country bound for the Community, with transit ending, and customs duties and other taxes therefore being paid, in the destination country;

- on the export side, goods originating in the Community which are the subject of an export declaration and are exempt from VAT, as well as any agricultural products eligible for an export subsidy.

There are two kinds of procedures, known respectively as external transit and internal transit.

Internal transit applies to Community goods (and those in free circulation within the Community, i.e. non-Community goods on which duties and taxes have been paid on entry into the Community) bound for another country in the Community. Owing to the establishment of the internal market on 1 January 1993, internal transit now applies to only a few special cases, in particular to the transport of goods from one Community country to another via a third country (e.g. Italy-Germany via Switzerland). As a rule the Community transit system is compulsory for all Community countries.

The common transit system is the outcome of an agreement between the Community and EFTA which came into force on 1 January 1987. It therefore applies to trade with EFTA countries and, except for some particularities, its provisions are identical to those of the Community transit system. Its use is not, however compulsory, and it is therefore an alternative to the TIR system in the case of road transport.

In road haulage, the goods are accompanied by a Community transit declaration which appears in the Single Administrative Document. It is marked T1 for an external transit operation and T2 for an internal transit operation. Of the eight pages in the SAD, four are used for Community external transit:

- Page 1 is kept by the customs office of departure; it states that the goods have been placed in Community transit and it is filed following notification that the operation has been performed. The remaining three pages accompany the goods.

- Page 4 is kept by the customs office of destination.

- Page 5 is stamped by the customs office of destination and returned to the office of departure to certify the performance of the operation.

- Page 7 is used for statistical purposes.

4. In the other transport modes, the documents accompanying the goods -- waybills, transfer notes, etc. -- are equivalent to a transit permit; they are marked T1 or T2 as the case may be.
It is estimated that the goods in Community transit in 1995 involved 18 million transactions, and the figure is continually rising.

2.1.2.2 Guarantee system

As the payment of duties and taxes of all kinds is suspended until the transit operation is completed, the customs authorities must have guarantees that these duties will be subsequently paid. The procedure is usually opened by a forwarder known as the “principal”, who issues the T form, guarantees the performance of the operations with regard to the customs authorities and is liable for the duties and taxes payable in the event of irregularities or offences.

In air, sea, rail and inland waterway transport, no particular guarantee is required of the companies which issue the T form and are therefore their own insurer. In road transport, the customs authorities require the principal to provide additional security in the form of a joint guarantee to which another natural or legal person is a party.

There are three types of guarantees:

- A comprehensive guarantee which applies to firms regularly carrying out transit operations. The guarantee required is usually based on the company’s average liability; it is valid for two years.

- A flat-rate guarantee of ECU 7 00 for smaller companies.

- A single-operation guarantee calculated on the basis of the duties the principal might have to pay in the operation.

If, in the first two cases, the customs office of departure considers that the comprehensive or flat-rate guarantee is insufficient for the risks involved, it may require a higher guarantee.

The guarantee is lifted when page 5 of the T form, which is stamped by the customs office of destination and certifies that the transit operation has been performed, is returned to the customs office of departure. It is also lifted after a period of 12 months from the date at which the T form was registered in the office of departure if the principal has not been informed within that time limit that page 5 has not been cleared by the customs office of destination.

When the principal has been informed within the time limit that the operation does not seem to have been properly conducted, customs have three years from the date at which the T form was registered by the office of departure to claim payment of the sums due.

2.1.3 The TIR system

The TIR system is based on an international convention which was negotiated under the auspices of the United Nations Economic Commission for Europe. The first TIR Convention entered into force in 1960. The present TIR entered into force in 1978 and covers not only road, but also container and

5. As the time limit for the arrival of the goods at the office of destination is usually one month, the customs authorities therefore have 11 months after the date at which the transit operation was completed to inform the principal that the operation has not been cleared.
combined transport operations. Sixty states and the European Community are Contracting Parties to the Convention world-wide; forty-five countries in Europe and the Near and Middle East actually apply the TIR Customs transit procedure. This system applies to all traffic provided that a part of the journey is by road. As routes covered by the Community transit system are excluded, its geographical coverage is mainly limited to routes between the Community and third countries, and to those between third countries.

The operation of the TIR system is based on co-ordination between the customs authorities and the guarantor associations which run the system (issue of documents, selection of operators, etc.).

The customs authorities approve the vehicles used (lorries and containers) which should enable the goods to be sealed, so that it is impossible to remove them without breaking the seals or leaving signs of damage, or to conceal goods.

Goods are carried under cover of a TIR carnet issued by associations that are approved by the national customs authorities. In practice these associations are members of the IRU (International Road Transport Union), although this body does not in any way monopolise the management of the system. Each TIR carnet covers a vehicle’s load. It is issued by the association to an enterprise authorised by it on the basis of criteria relating to the enterprise’s moral, professional and financial guarantees.

Every carnet is an authentic document which is signed and numbered. It consists of vouchers with odd numbers for taking the goods under customs control and vouchers with even numbers for discharging them. It comprises two vouchers with even and odd numbers for the customs office of departure, for each country traversed and for the office of destination. The customs office of departure takes control of the goods, checks the load, affixes the seals, countersigns and stamps all the vouchers in the carnet, as well as the counterfoil of voucher 1 which remains in the carnet, and keeps the odd-numbered voucher 1; where appropriate, it fixes the itinerary and the time limit for the transport operation; the offices en route (office used on leaving a country) sign and stamp the carnet, check the seals but do not, except in special cases, inspect the goods. In the destination country, the arrival office makes sure that the lead seals have not been tampered with, checks the load, signs and stamps the counterfoil and detaches voucher No. 2 or the even numbered voucher which is intended for this office. This voucher is sent to the customs office of entry into this country and, once it has been received, the operation is considered to have been completed. The carnet is kept by the carrier who should return it to the issuing association which checks the carnet to verify its proper use.

Every association approved by its national customs authority is accountable to it for the performance of every TIR operation within its country’s frontiers. More precisely, an association therefore guarantees the payment of the customs duties and taxes payable in connection with any carnet which it issues, or which is issued by another association but is accompanying goods that are either in transit through its country or bound for its country. The guarantee associations are therefore jointly liable, and any carelessness in the issue of the transit permit by one of them may mean that all those in the countries traversed by the vehicle are held liable under the guarantee.

Release from the guarantee is obtained after the TIR carnet and the vehicle are presented to the customs office at a point of exit from its territory or to the customs office of destination if the TIR operation ends in its country and once the Customs authorities have determined that no irregularity has occurred during the transit operation. This guarantee is limited to an average ceiling of US$50 000 per carnet.

Starting from the date at which the carnet is taken over by the office of departure or the office at the point of entry into the country concerned, the customs authorities have twelve months to notify the
guarantor association that the carnet has not been discharged. This period is increased to two years if a
discharge has been obtained fraudulently. The time limit for a claim by the customs authorities for
payment of the duties and taxes payable by the guarantor association is two years starting from the
notification of non-discharge, so that a claim for payment can be made up to four years following the issue
of the carnet.

The management and the issue of the carnets are centralised by the IRU. The guarantor
associations and the IRU itself take out insurance to cover their liability.

The trend in the number of carnets slowed down with the introduction and extension of
Community transit and common transit. Now that their impact has been absorbed, growth in the number
of carnets is strong and a figure of 2.1 million was recorded in 1995 and one of 2.4 million in 1996.

2.2 Malfunctions in transit systems

The two systems we have just described are in a critical position. Organised fraud has developed
in recent years and is now extremely serious. Although the Community system and the TIR system use
different provisions, fraud takes the same forms, for in both cases the preventive measures are ineffective.
The basic causes of these malfunctions are the same.

2.2.1 Fraud mechanisms

The weakness of any transit system is due to the possibility of diverting goods before they go
through the customs office of destination, and of putting them on the market without paying duties. In the
Community transit system, the goods are sold illegally within the Community; in the TIR system, the
goods are sold illegally either within or outside the Community. In order to attain their ends, the offenders
can use a variety of methods.

The simplest method is to get rid of the goods during the journey, whether or not by simulating a
theft; the vehicle does not turn up at the customs office of destination and the fraud will inevitably be
detected when the office of departure realises that it has not received the voucher certifying that the
operation has been cleared.

A more complex method is to get rid of the goods and conceal the fraud. It is then necessary to
have a customs stamp on voucher 5 of the T1 or on the TIR carnet. The first technique is to turn up with
the vehicle, but without the goods it should be carrying -- which may have been replaced by others -- at
the official customs office of destination or at another office, and count on negligence or connivance on
the part of the customs officers. Negligence if the customs officers do not carry out the normal checks,
simply examine the papers without inspecting the goods and without checking the seals (which may have
been replaced by false seals). Connivance if the customs officers have been bribed. Another technique is
to obtain a genuine customs stamp by means of theft or connivance, or even to have a stamp forged. The
last possibility is the “forged stamps-bogus customs officers” combination: the driver, who is taken in by
appearances, turns up with the vehicle at places which look like customs offices for checks by individuals
who seem to be customs officers but who are not. The stamped papers are sometimes returned to the

6.  This method has to be used when offenders have to justify the export of goods in order to obtain
    a VAT refund or an export subsidy.
7.  The transit systems give the carrier the possibility of using an office other than the one stated on
    the T1 form or on the carnet.
customs office of departure, and although the risk of the fraud being detected cannot be ruled out, it is very small. The issuer of the transit permit, acting in good faith since he is convinced that the operation has taken place in the normal way, will therefore issue further permits for similar operations; he belatedly discovers he has been duped when the customs authorities submit a claim for payment on the grounds that the discharge was fraudulent.

These tactics obviously require connivance on the part of one of the participants in the goods marketing or transport chain.

No system can prevent such frauds which are all the more profitable as high duties are levied on the goods concerned or the Community policies concerning them are highly protective. This is why fraud is particularly frequent in the case of tobacco and spirits as well as agricultural products. These frauds are organised on a large scale and mobilise substantial resources, drawn by the size of the illicit profits that can be made.

2.2.2 Ineffectiveness of preventive measures

The mechanisms of a transit system may or may not have a deterrent effect. It must be admitted that the measures in use do not work or do not work properly, and that some of them even have unwanted effects which, it may be said without undue exaggeration, encourage fraud in that they make it more difficult to identify and prosecute offenders.

2.2.2.1 Accountability of the parties issuing customs transit documents

The selection of users is a vital aspect of any transit system: the system must ensure that transit permits are not issued to users who are likely to be responsible for or involved in fraud, or who may encourage fraud because they are negligent. More precisely, Article 38 of the Convention creating the TIR system states that the customs authorities may prevent users from holding a TIR carnet if their behaviour seems suspicious. Despite the IRU’s insistent demand that this Article be used, in practice it is not, since customs rely on the issuers to make the selection.

As we have seen, the parties issuing transit permits guarantee the payment of duties and taxes should the operation not be above board. This provision has a dual effect: it ensures that the customs authorities will be paid no matter what happens (though the customs due can be much higher than the US$50 000 guarantee); it obliges the bodies concerned to be extremely careful when issuing documents, and should discourage them from issuing a T1 or a TIR carnet for an operation which, in the light of their experience, seems suspicious. Transit procedures, and more precisely the guarantee systems set up by them, are in fact intended to make the issuing bodies play the main deterrent role.

In practice the guarantor associations and some forwarders have become extremely suspicious, particularly when an operation concerns “sensitive” products or destinations. Forwarders no longer take responsibility for transit operations involving tobacco and spirits, agricultural produce and goods bound for Eastern Europe. Similarly, under the TIR system, special carnets with a higher guarantee, which are therefore more costly, have been created for transit involving tobacco and spirits. But fraud has assumed such proportions that the insurance companies will not provide cover for these carnets. The guarantor associations and the IRU have therefore suspended their issue. Operators are increasingly loathe to have transport operations carried out by sub-contractors, or they step up the checks concerning them. They send their goods to themselves, as their office at the arrival point is responsible for customs clearance.
These operators are, however, in a difficult position. Owing to the marked increase in fraud and the resources used by criminal organisations, forwarders do not necessarily have the know-how enabling them to detect fraudulent operations, and the cost of countering them is rapidly increasing. The fact that they are in a very competitive market makes things worse. By refusing to issue a T1 or increasing the number of internal checks the cost of which has to be passed on to the customer, they may lose a contract and perhaps also lose a perfectly honest customer to a less scrupulous competitor. By agreeing to take control of an operation, they run the risk of having to pay duties and taxes, subsequently having to pay a higher insurance premium, and perhaps being unable to find an insurance company willing to provide cover, having to withdraw from the market or even going bankrupt. Despite the great pressure on bodies issuing transit permits, the fact remains that the selection of users is not strict enough.

Moreover, the weight of their responsibility has undesirable effects. The forwarders who have organised a transit operation and suspect that the transit permit has been cleared fraudulently are sorely tempted not to report their suspicions to the customs authorities, in the hope that they will not realise that the customs stamp used was forged.

But, more seriously, it is in the attitude of the customs authorities themselves that the most detrimental effects of the guarantee mechanism are seen, given that they have no incentive to carry out checks conscientiously, open an investigation or crack down offenders as the duties will in any case be settled. On discovering that a transit permit has been discharged fraudulently, they often simply fall back on the guarantee. And the forwarders or the associations issuing TIR carnets have to pay out instead of the offenders.

It is therefore no exaggeration to say that the accountability of the issuing bodies is offset by the inadequate accountability of the customs authorities.

2.2.2.3 Rapid detection of fraud

If fraud control is to be effective, the authorities must be rapidly notified so that they can start an investigation to identify the offenders and prosecute them. It is perhaps in this respect that the transit systems are at their weakest.

In both systems customs authorities have a year or even two years to express any reservations to the party that has taken control of the goods, i.e. the forwarder who has issued the T1 form or the authorised association guaranteeing the TIR carnet. Such a generous time limit is intended to give the customs authorities the possibility of protecting their interests when they discover, even very belatedly, that a fraud has been committed. But this measure has an undesirable effect in that it also enables the customs authorities to go slow, and wait until the last minute before dealing with the problem. In many customs offices the discharge vouchers are allowed to pile up; they are sent to the offices of departure, simply by mail, only several months after the vehicle has passed through. The issuing body is frequently notified of the non-discharge of an operation which he believes was quite above board only a few weeks or

8. It is estimated that the number of non-discharged forms are equivalent to a year’s issue of transit permits, without it being possible to know the proportion involving frauds and the proportion which have simply not been returned soon enough to the offices of departure. The result is that, because they have not received the voucher certifying the discharge of the TIR carnet, the customs authorities systematically file a complaint with the guarantor association. In 1995, the IRU processed 100 000 non-discharge notifications by sending the customs authorities a copy of the duly discharged counterfoil from the TIR carnet.
a few days before the date at which he would be released from his guarantee obligation. According to the IRU, it takes on average over nine months for the discharge voucher of the TIR carnet to arrive at the office of departure.

It must be added that fraudulent operations often have the same characteristics: the consignors and sometimes the consignees are the same, as are the customs offices used. If fraud was detected more rapidly, transit permits would not be issued for operations resembling those which have not been discharged or have been fraudulently discharged.

2.2.2.4 The threat of prosecution and sanctions

We shall not dwell on this point, which has already been addressed indirectly, for if fraud is identified belatedly and is difficult to locate, the investigations have little chance of being successful. The offenders’ ingenuity and ability to disappear without trace once profitable operations have been carried out -- even if it means resurfacing shortly afterwards under a new identity -- adds to the difficulty of investigations. And customs authorities are loathe to embark on difficult investigations with little chance of success, when it is so easy to rely on the guarantee. Prosecutions are therefore few and far between: according to the Commission of the European Communities, out of the 1 000 cases of fraud of which it was notified in accordance with Regulation No. 1552/89, legal proceedings were brought in only 22 cases.

2.2.3 The basic causes

The malfunctions we have just described are due to more basic causes which must be discussed.

Firstly, it must be remembered that that transit systems were set up at a time when the number of operations and countries concerned was much smaller.

The Community transit system was founded in the 1960s for six Member States which were separated by frontiers with customs checks. Community and common transit now applies to an area comprising, in addition to the European Union’s 15 Member States, the EFTA countries and, since July 1996, the so-called Visegrad States9. Moreover, trade flows to and from Eastern Europe have increased considerably, as have the number of preferential association agreements with new countries. Within this area the ground rules are complex, the number of different cases to be taken into account is high and, paradoxically enough, the trend towards trade liberalisation has made the customs officers’ task more difficult.

The increase in the number of States concerned and the fact that in some of them customs officers are not very familiar with the procedures they should be applying, that their working conditions and pay expose them to attempted bribery, that the political stability of these States is fragile, etc., already create the kind of environment which criminal organisations have been able to exploit. The all-out liberalisation of economies in Central and Eastern Europe and the uncontrolled increase in the number of operators authorised to carry out international transport provides ample scope for private initiatives in which all the rules are ignored.

9 Poland, Hungary, the Czech Republic and the Slovak Republic.
But it seems that the vast majority of frauds take place within the Community itself\(^\text{10}\). Within this area, border checks between Member States have been abolished, which has many consequences:

- It is no longer possible to keep track of a lorry, and it cannot be located until it turns up, if it does turn up, at the Community’s frontier customs office, whether it is the official one or not. If it transpires that an operation has been fraudulently discharged and that the goods have been put on the market within the Community, it is impossible to know where the fraud has been committed and which State should conduct the investigation and try to identify the offenders. In addition, co-operation between the customs authorities of different States is often poor.

- The “customs disarmament process” has enabled many States to reduce the staff, equipment and appropriations for their customs authorities, which are therefore unable to do their job and cannot keep up with the increase in traffic and the resulting management workload involving documentary procedures. The staff are, moreover, quite demoralised, especially as they were under the impression that they were in no case to interfere with the smooth flow of trade.

In a statement of 29 March 1995, the Commission stressed that the customs authorities in the various States were responsible for the deterioration of the situation. According to the Commission, the quality of checks had progressively declined in recent years. The investigation procedures concerning operations in abeyance had not been initiated soon enough and had not been conducted with the required urgency and energy. Finally the existing administrative regulations and provisions had not always been implemented by Member States in a way that guaranteed sound management.

2.3 The issues

2.3.1 The scale of fraud and the sums involved

One of the main difficulties with this brief is that it seems impossible to gauge the extent of fraud or estimate the sums involved. At most we can give a rough idea of the scale, which is quite staggering.

It is easier to assess the extent of the problem with the TIR system, because TIR carnets are centrally administered. Up until the early 1990s, there were never more than 40 claims filed\(^\text{11}\) per year (i.e. claims for payment filed by customs for undischarged carnets). By 1994, the number had risen to 600 but it was in 1995 that the real explosion came, with a total of 2761 claims. In 1996, based on the figures for the first few months, the total is likely to be 3 700 claims. We may be sure that this escalation is not because customs services are being more vigilant and bringing more cases of fraud to light than in previous years. Currently the TIR guarantee system is having to meet claims for payment at a rate of 3 000 to 4 000 per year, i.e., 0.15 per cent of the total number of TIR carnets issued.

Turning to the amounts involved in the guarantee system, given that the ceiling on each carnert is $US 50 000 and that the associations approved by the IRU issue between 8 000 and 10 000 carnets per day, the total covered amounts to an estimated $US 400 to 500 million per day. In a year like 1996, when

\(^{10}\) IRU estimates that 80 per cent of frauds involving the TIR system occur within the Community.

\(^{11}\) A claims file covers from 1 to 50 carnets involving the same principals.
2.4 million carnets were issued, the sum guaranteed would be around $US 120 billion. As things now stand, such a long time elapses between the delivery of a carnet and notification by the customs services of outstanding undischarged carnets that guarantees may still be valid for up to three or four years after the carnet is issued. The uncleared amounts could therefore total an estimated $US 400 billion. If we multiply this figure by 0.15 per cent (number of claims as a percentage of total carnets issued) the approved associations, the IRU and the insurance companies that provide them with cover might have to meet claims totalling an estimated $US 600 million.

With regard to the Community and Common Transit systems, we know that 18 million T1 documents were issued recently. Duties and taxes payable average out at ECU 24 000 per T1, bringing the total duties and taxes on goods in transit guaranteed by freight forwarders to ECU 432 billion per year. What we do not know is how many of these operations involve fraud, so we cannot estimate the total amount that might have to be paid out in customs claims under the guarantees. Assuming that fraud is on exactly the same scale as under the TIR system, the total amount that could be demanded from forwarders on the basis of annual volume is in excess of ECU 600 million. However, given the time that can elapse before customs services are required to give notice of undischarged carnets, plus the time they then have to issue a demand for settlement of duties and taxes, forwarders can still be liable five years on.

These are only very rough approximations since it is impossible, as things stand, to tell whether claims are due to administrative hold-ups or because loads have really gone missing. They are probably underestimates, since the International Chamber of Commerce estimates forwarders’ potential liability at ECU 8 billion.

2.3.2 The implications of fraud

A distinction should be made between the direct implications of the current situation and the potential implications in the event of the total collapse of the transit system, a possibility which can only be ruled out if the situation improves rapidly.

The most immediate result of fraud is a loss of revenue for Member States and a loss of funds for the Community. The situation is not so serious in cases where fraud has been detected, since the guarantee systems go some way to compensating for the duties and taxes that should have been collected. However, even in such cases the losses are not negligible, because the sums involved are so large that it is becoming more and more difficult, not to say impossible, to demand full payment of the amounts guaranteed. Moreover, it is reasonable to assume that some fraud goes undetected, even if it is not possible to say exactly how much. In addition to lost revenues, tax refunds paid out for goods that have supposedly been exported but which were never shipped also have to be taken into account. In its Communication of 29 March 1995, the Commission estimates that at least ECU 750 million was lost through fraud over the period 1990-1995; ECU 320 million in own resources and ECU 430 million in VAT and excise duties to Member States.

But society stands to lose much more than just the revenues lost by governments. Because of fraud, goods on which the taxes and duties due have not been paid -- or for which refunds have been paid out -- come onto the market through underground distribution channels and compete with goods that are produced and sold legally. The ‘official’ production and distribution channels therefore suffer losses which are unquantifiable and which, while they may be negligible in terms of turnover, are substantial in
Apart from the financial and economic consequences, the moral consequences also have to be taken into consideration from the point when people get the idea that complying with the regulations is handicapping them, that fraud pays and that there is no danger of prosecution. Fraud and anarchy are highly contagious.

The economic actors who suffer the most direct and heaviest losses are international transit operators, forwarders and hauliers, T1 issuers and those purchasing T1 documents from associations issuing TIR carnets. They are the ones who foot the bill for the internal controls that are designed to reduce risks and for escalating insurance costs. They pass the costs on to their customers, in turn, pushing up the costs of international transactions. Obviously, forwarders who have been “let down” by their insurance companies would face bankruptcy if the customs authorities were actually to demand payment of the sums guaranteed.

Lastly, we cannot rule out the possibility that the transit systems could collapse, that freight forwarders could pull out of a business that is becoming steadily more expensive and risky (some national associations of forwarders are already considering the possibility) or that the TIR guarantee system could cease to exist if insurance companies were to refuse to provide cover.

Without wishing to be a prophet of doom, clearly the consequences would be extremely serious. It is difficult to see how freight traffic could be insured without the transit systems, since customs authorities would be quite unable to cope with the vastly increased workload that would fall to them. We would either have to abandon all checks or make do with the bare minimum (which would have much more serious consequences than the failings of the present system as regards the non-collection of duties and taxes and the growth of underground channels for flows of goods). Or, if relatively tight checks were maintained, we could expect to see customs operating costs escalate along with the costs to operators and hauliers of delays at customs posts as traffic at Community borders ground to a halt.

All of the experts, and the Commission of the European Communities, stress that keeping the transit regimes working properly is one of the pillars of the common trade policy as well as a prerequisite for the gradual integration of European economies. In its Communication of 29 March 1995, the Commission stated that there was no viable alternative to transit and therefore no option but to take the decision to modify the system as rapidly and as efficiently as possible.

Under the circumstances, we can see why the Commission drew the Council of Minister’s attention to fraud in transit in two Communications (29 March 1995 and 3 April 1996), stressing how serious the situation was and how urgently remedial action was needed; why the Court of Auditors also expressed concern in its 1994 report; why the Parliament set up a committee of enquiry; and, why the Commission finally brought the matter to the attention of the ECOFIN Council at its meeting on 8 July 1996.

2.4 Fraud prevention

As early as 1994, the deteriorating situation had prompted the organisations involved (particularly the IRU) to propose the adoption of fraud prevention measures. Following these proposals a number of decisions relating to both the Common Transit system and the TIR system were adopted.
2.4.1 Action taken

A number of legislative and administrative measures relating to the Community Transit system have been taken in the past three years. We will confine ourselves here to just the broad outlines: further details can be found in annex 1 of SEC(96)290 Final.

Most of the provisions adopted are technical and many of them concern the guarantees that forwarders are required to provide: among other things, they increase the level of comprehensive cover, prohibit the use of the comprehensive guarantee for sensitive goods and increase the flat-rate guarantee.

Other provisions are aimed at improving and speeding up procedures where sensitive goods are concerned: setting up computerised or fax information systems so that the customs office of departure is able to send advance information on shipments to the customs office of destination so that the latter can react quickly should the goods fail to appear on schedule; cutting the time within which the forwarder is required to present the goods at the destination office; prohibiting a change of destination office; setting compulsory routes; procedures for clearing and speeding up the return of cleared documents, etc. The list of measures looks impressive. However, what we should be looking at is the time-frame: the date set for amending the legislation that provides the legal basis for the introduction of a new measure, the date on which the decision to adopt the measure was taken, the date set for its implementation and the date on which it was actually implemented. For most of the above measures the first step was taken in late 1994 or in the course of 1995, the second in late 1995 or sometime in 1996, with a 1996 implementation date. Some of the measures have, in fact, been implemented in some Member States, but not in all. Although these measures may make life difficult for those committing fraud by forcing them to set up new networks, it is quite clear that they will be largely ineffectual unless they are uniformly implemented.

With regard to the TIR system, the IRU had proposed urgent measures both to the administering bodies of the TIR Convention (UN/ECE - WP 30 and the Administrative Committee) and the European Community as far back as 1994: the introduction of a register of official customs stamps of all countries, the use of security inks, the adoption of measures to speed up cleared documents, computerised procedures, the implementation of Article 38 of the Convention and the prosecution of anyone committing fraud. It was only in March 1995 that the Administrative Committee for the TIR Convention adopted resolution 49 containing some of those measures. But that resolution has not yet been formally approved by all of the signatories and its implementation has been very limited. To be exact, it was in October 1995 that the Administrative Committee approved a recommendation that confirmations of discharge be reported to the IRU on the computer network that it had set up (SAFETIR) or, failing that, by mail to the guaranteeing associations, which were to be responsible for logging them on the network. Out of the 35 countries linked to the network, information is transmitted by 23 but is only considered really reliable and usable in 13 cases.

Much remains to be done to improve confidence in the transit systems.

2.4.2 Action to be taken

All of the actors and bodies involved agree on the need to differentiate between short-term measures -- even if they do not always agree on how urgent those measures are -- and long-term measures.
2.4.2.1 Short-term measures

The list of proposed measures is long. It includes regulatory measures, on which all parties are agreed, essentially the implementation or extension of measures that have already been implemented: the forwarding of information to the office of destination by the office of departure; the prohibition of a change of destination office; compulsory routing; shorter time limits for the presentation of goods at the office at the point of exit; shorter time limits for the return of cleared transit documents, etc. These measures are all either part of the Commission’s programme or are contained in resolution 49 of the TIR Administrative Committee.

Opinion is divided on guarantee systems. The Commission’s proposals tend to favour higher guarantees for sensitive goods, the extension of Community and Common Transit measures that have already been implemented or that have still to be implemented and the involvement of an additional guarantor (the carrier). The IRU and FFE want a register of all transit documents not cleared so that it will be possible to estimate the sums for which the various guarantors may still be liable. They also want a stay on demands for payment pending a compromise agreement between the IRU and Finance Ministers of the countries that are parties to the Convention.

All are agreed on the need to step up the exchange of information between the parties concerned: the economic agents, the IRU, the customs authorities, the Commission of the European Communities, etc., and on the need to strengthen co-operation between national customs services in order to improve fraud prevention.

These measures are far from insignificant and could improve the situation if implemented rapidly and strictly enforced. However, we have to remember that most of them were proposed in 1995 and, considering the time needed to approve them and then implement them, the fear is that it will be a case of too little, too late unless there is the political will at the highest levels.

2.4.2.2 Longer-term measures

The medium-term answer would seem to be to set up a centralised control system using electronic data interchange, in accordance with the TIR Convention Administrative Committee’s recommendation of 20 October 1995 and the project approved by the Commission of the European Communities on 8 December 1994. The principle behind the project is simple: it involves the on-line transmission of data inputted by the office of departure and the return transmission of data on cleared transit documents. Such a system would ensure the integrity of the data that now appear in written form on the T1 document and would eliminate the problem of forged stamps. In addition it would speed up the transmission of data and make it possible to set up a data bank that could be used to analyse cases of fraud and to assess the risks for future operations.

The Commission estimates the investment costs for this project at ECU 23 million (ECU 10 million from the Community; ECU 13 million for Member States) and believes that they will be easily recouped.

There may be some doubt as to when such a system would be put in place. The Commission thinks that it should come on line in 1988, but Member States are resisting this either for budgetary reasons.

14. Freight Forward Europe, a trade association grouping a few of the major European operators.
reasons or because fraud prevention is not a priority for them. Setting up such a system is a complicated exercise and it will probably not be operational immediately.

Meanwhile, the IRU and guaranteeing associations have paved the way by setting up their own system in some 30 countries, in accordance with TIR Convention Administrative Committee’s recommendation of 20 October 1995.

Whatever the advantages of computerised procedures, they are not a miracle solution. Computerisation simply provides the means, which then have to be used to proper effect. Computerisation will not eradicate fraud committed with the active collusion of customs officers and will not do away with the need to inspect goods at the destination office.

This is why the IRU and forwarders’ representatives are pressing for discussions on the organisation of transit systems to continue, particularly in order to ensure a fairer division of liability between transit document issuers and governments. They also want the TIR Convention review process to be completed with a view to correcting the underlying causes of the crisis.
CONCLUSION

There are three major conclusions that we can draw from an analysis of the present transit systems crisis:

- Information is increasingly considered as an essential factor of production and modern technologies have enabled dramatic advances in managing both data flows and data analysis. Customs services in Europe today are still using antiquated systems, filling out forms and sending them by post.

- Despite the probably inevitable progress towards vast economically integrated blocks, co-operation between the countries concerned on an issue of vital importance for the growth of trade, is woefully inadequate. Apart from the technical problems, it is quite evident that there are also political reasons behind the lack of co-operation, since different States do not all accord the same importance to the problem and so do not give it the same priority.

- While the end of the 20th century has seen the triumph of the market economy, there sometimes appears to be a major contradiction in the philosophy behind its operation: deregulation and non-intervention by government are seen as necessary, and all that is necessary, to bring our economies into line with the market economy philosophy. But, in a market economy, government has a role to play which consists of defining and enforcing the rules of the game. This is not to say that it should be one of the economic operators, but it must not abandon its duty to govern. The transit regimes are conceived as concessions given by states and customs authorities to international commercial operators. Under this view, the operators alone are responsible for the use to which the concessions are put and the costs and responsibility for fraud prevention lies upon them. The crisis in the transit system illustrates the weakness of this view. An alternative vision is possible -- one that considers that in the interest of the national economy, and secondly of economic operators, transit systems are organised with reciprocal obligations and with shared responsibilities. Moving towards this latter, more balanced concept is without doubt the route to finding solutions to the present difficulties.

Unless active measures are taken soon, the danger is that we will see the collapse of the transit system.