



**Economic and Social  
Council**

Distr.  
GENERAL

TRANS/WP.30/AC.2/2004/14  
5 August 2004

Original: ENGLISH

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**ECONOMIC COMMISSION FOR EUROPE**

Administrative Committee for the TIR Convention, 1975  
(Thirty-seventh session, 14-15 October 2004,  
agenda item 3 (a) (i))

**ACTIVITIES AND ADMINISTRATION OF THE TIR EXECUTIVE BOARD (TIRExB)**

**Activities of the TIRExB**

**Report by the Chairman of the TIRExB**

**Report of the TIRExB at its twentieth session**

**ATTENDANCE**

1. The TIR Executive Board (TIRExB) held its twentieth session on 19 and 20 November 2003 in Baku (Azerbaijan).
2. The following members of the TIRExB were present: Mr. M. Amelio (Italy); Mr. S. Bagirov (Azerbaijan); Mr. G.-H. Bauer (Switzerland); Mr. R. Boxström (Finland); Mrs. Y. Kasikçi (Turkey); Mr. J. Marques (European Community); Mrs. H. Metaxa-Mariatou (Greece); Mrs. N. Rybkina (Russian Federation). Mr. O. Fedorov (Ukraine) was absent.
3. The International Road Transport Union (IRU) attended the session as observer in accordance with Annex 8, Article 11, paragraph 5 of the Convention and was represented by Mr. S. Rasmussen, Deputy Head, TIR System.

## **ADOPTION OF THE AGENDA**

4. The TIRExB adopted the agenda of the session as prepared by the TIR secretariat (TIRExB/AGE/2003/19) with the inclusion of the following subject:

Under agenda item 9                      Application of the TIR Convention in Serbia and Montenegro in cases where the commercial value of goods exceeds EURO 150,000.

## **ADOPTION OF THE REPORT OF THE NINETEENTH SESSION OF THE TIRExB**

Documentation: TIRExB/REP/2003/19draft.

5. The TIRExB adopted the report of its nineteenth session as prepared by the TIR secretariat (TIRExB/REP/2003/19draft), subject to minor technical corrections. The revised text of the report of the nineteenth session of the Board is contained in document TIRExB/REP/2003/19.

## **PREPARATION OF AN EXAMPLE OF A TIR CARNET DULY FILLED-IN**

Documentation: Informal document No. 25 (2003).

6. The TIRExB took note of Informal document No. 25 (2003) by the TIR secretariat, containing a modified example of a TIR Carnet duly filled-in as well as a number of introductory remarks for inclusion into the TIR Handbook. The Board recalled that, according to its Programme of Work for 2003-2004, the example of a TIR Carnet duly filled-in should be finalized in 2003. Given the complicated technical nature of the subject, the TIRExB invited its members to scrutinize thoroughly the example and transmit their written comments, if any, to the TIR secretariat by 19 December 2003 at the latest.

## **EXAMPLE PROCEDURE FOR EFFECTIVE COMMUNICATION BETWEEN CUSTOMS AUTHORITIES AND THE NATIONAL GUARANTEEING ASSOCIATION**

Documentation: Informal document No.14/Rev.1 (2003).

7. The TIRExB held an in-depth discussion on the issue, carefully considering each of the elements contained in the tables for effective communication attached to Informal document No.14/Rev.1 (2003). The TIRExB adopted the tables, but requested the secretariat to amend the introductory part of draft paragraph 5.6 of the best practices with more information, taking account of the fact that the concept of pre-notification is not a legal requirement and may be used

in national procedures in different ways and at different times, thus having different repercussions on the availability of some recommended elements. In addition, some doubts were raised with regard to the application of the stages of pre-notification, notification and claim at the national level, as contained in tables I and II. The complete text of draft paragraph 5.6., including the amendments requested by the Board, is contained in the annex to this report. The newly adopted paragraph 5.6 would be forwarded to the TIR Administrative Committee for further discussion and, eventually, endorsement.

## **RESULTS OF THE ITC BUREAU SURVEY ON THE FUNCTIONING OF THE TIR CONVENTION**

Documentation: TRANS/BUR.2003/3; TRANS/BUR.2003/4; TRANS/BUR.2003/11.

8. The TIRExB was informed that the UNECE Working Party on Customs Questions affecting Transport (WP.30), at its September 2003 session, invited the TIRExB to consider the underlying documents of the ITC Bureau in further detail and to report back to the TIR Administrative Committee with its findings. The Chairman of the TIRExB accepted this invitation (TRANS/WP.30/210, para.7).

9. Given the large number of problems raised by the ITC Bureau, the TIRExB felt that, with a view to making substantive progress, some key issues should first be selected for further in-depth discussion. In this regard, the Board welcomed the initiative of its Chairman to study the results of the survey on the functioning of the TIR Convention undertaken by the UNECE secretariat (TRANS/BUR.2003/3) and to propose some items for further consideration by the TIRExB.

## **PREVENTION OF CUSTOMS FRAUD WITHIN THE TIR SYSTEM**

### **Cooperation with other international organizations in the field**

Documentation: Informal document No. 23 (2003).

10. The TIRExB expressed its great satisfaction with the letters received from both WCO and OLAF in reply to the request, made by the Board, to strengthen the collaboration with both organizations in the fight against fraud (Informal document No. 23 (2003)). Concerning cooperation with WCO, the Board stressed the importance of the ongoing participation of the secretariat in the work of WCO, in particular the Enforcement Committee, the Permanent Technical Committee and the Taskforce on Security in the Supply Chain and decided to send a letter to WCO stressing the importance of cooperation.

11. Regarding the letter by OLAF, the TIRExB recognized the need for further analysis of the confidential information on fraud patterns in the TIR procedure in the territory of the European Union, as outlined by OLAF. The Board was of the view that any substantial reaction to OLAF's letter would require extensive study of the issue within the Board. The TIRExB decided to address a survey to Directors-General of Customs, aimed at obtaining more detailed information on TIR fraud patterns discovered and/or analyzed by national enforcement agencies. The Board requested the secretariat to prepare a draft letter to this extent, to be discussed at one of its forthcoming meetings. As a first step, the members of the Board were requested to establish contact with their national enforcement agencies concerned, in order to obtain some preliminary information on the issue which could serve as a basis for first discussion and which could also provide input to the letter to the Directors-General of Customs. The Board also requested the secretariat to send a letter of thanks to OLAF, outlining the follow-up steps to be undertaken by the TIRExB to advance on the issue.

12. IRU expressed its willingness to contribute to further discussions of the issue by providing information on recent fraud cases, as established by its own risk management unit, which worked in close cooperation with OLAF, WCO, Europol and Interpol. Such information could assist in building up a systematic file of fraud related data.

### **Proposals by the IRU on preventing and combating Customs fraud within the TIR system**

Documentation: Informal document No. 19 (2003), Informal document No. 27 (2003).

13. The TIRExB held a short exchange of views regarding IRU's proposals on preventing and combating Customs fraud within the TIR system (Informal document No.19 (2003)). The TIRExB decided to continue its deliberations at the next session and requested Board members to transmit written comments on the content of Informal document No.19 (2003).

14. The TIRExB welcomed Informal document No.27 (2003) prepared by the TIR secretariat, containing a first draft survey on the application of Annex 9, Part II of the TIR Convention at national level. It was stressed that, although the questionnaire is intended for the Customs authorities, it should be completed in close cooperation with the respective national associations. In this context, the TIRExB also recalled that, to complement the results of the above survey, the IRU should provide information on common rules and procedures prescribed for the issue of TIR Carnets by associations, as far as they relate to the minimum conditions and requirements laid down in Annex 9.

15. Finally, the Board delivered a number of remarks concerning the structure and content of Informal document No.27 (2003). TIRExB members were also invited to transmit their written comments to the TIR secretariat by 19 December 2003 at the latest, with a view to preparing an updated version of the survey for consideration at the next session of the Board.

### **Fraudulent acceptance of a TIR Carnet at the Customs office of departure**

Documentation: Informal document No. 31 (2003).

16. The TIRExB recalled that, at its eighteenth session, the Board adopted and decided to submit to the TIR Administrative Committee for approval a comment to Article 19 of the TIR Convention (TIRExB/REP/2003/18, para.29). At the September 2003 meeting of the TIR Administrative Committee, some delegations pointed out that the phrase "verified by the Customs office of departure" from the third sentence of the comment could be misleading when applied to accompanying documents (e.g., goods export declaration, CMR consignment note, etc.) as these documents are normally checked but not necessarily stamped by the Customs office of departure. AC.2 decided to postpone to its next session the endorsement of the above comment (TRANS/WP.30/AC.2/71, para.72).

17. Having considered Informal document No. 31 (2003) by the secretariat containing proposals to solve the outstanding issue, the TIRExB decided to slightly modify the comment to read as follows:

#### *"Falsified acceptance of a TIR Carnet at the Customs office of departure*

*With a view to avoiding strict controls at the Customs office of departure, fraudsters may attempt to falsify the acceptance of a genuine TIR Carnet at the Customs office of departure by using false Customs stamps and seals. Such malpractices are very dangerous as, according to the provisions of the TIR Convention, the Customs authorities of countries in transit and of countries of destination normally rely on checks carried out at the Customs office of departure. Therefore, the Customs office(s) of exit, located in the country(ies) of departure, play(s) a crucial role in revealing such fraudulent activities and should check the authenticity of the Customs seals and stamps and, if possible, verify that the particulars in the goods manifest of the TIR Carnet tally with those in the accompanying documents (e.g., goods export declaration, CMR consignment note, etc.) which are normally checked by the Customs office of departure in line with Explanatory Note 0.19. If necessary, the said Customs office(s) of exit should carry out all other Customs procedures required in connection with a TIR operation in the country(ies) of departure."*

## NATIONAL CONTROL MEASURES

### **Practical application of the TIR procedure in the Customs Union between the Russian Federation and the Republic of Belarus**

Documentation: TRANS/WP.30/2004/5; Informal document No. 32 (2003).

18. The Board took note that WP.30, at its September 2003 session, was orally informed by the delegations of the Russian Federation and the Republic of Belarus of the background of the Customs Union between the Republic of Belarus and the Russian Federation as well as of the consequences for the TIR system. The Working Party, after an in-depth discussion, invited the delegations of the Republic of Belarus and the Russian Federation to submit, in writing, the information, which had been provided orally during the meeting. The Working Party also invited the TIRExB to consider the issue further in close cooperation with the Republic of Belarus and the Russian Federation, in particular concerning the issue of claims handling, and to report back to the Administrative Committee on the matter (TRANS/WP.30/210, para. 50).

19. Following the above WP.30 session, the UNECE secretariat had issued document TRANS/WP.30/2004/5, containing the information provided orally by the Russian delegation. In addition, the IRU transmitted Informal document No. 32 (2003) on a number of practical and legal questions that the IRU had in connection with the application of the TIR procedure in the Republic of Belarus and the Russian Federation. On the basis of these documents as well as oral explanations by Mrs. N. Rybkina (Russian Federation), the TIRExB preliminarily considered the particulars of the TIR procedure in the Customs Union between the Republic of Belarus and the Russian Federation.

20. The TIRExB agreed that it should focus on the practical implications of the Customs Union for TIR operations, rather than on general principles of its functioning. In particular, the Board identified the following Customs procedure applicable in the West - East direction, which did not seem to be common for two countries with a single Customs territory. The Byelorussian Customs office of entry (en route) fills in a set of vouchers No.1/No.2 and detaches voucher No.1 of the TIR Carnet. On leaving the territory of Belarus, the corresponding voucher No.2 is not cleared by the Byelorussian Customs as there are no Byelorussian Customs authorities at the Russian-Byelorussian border. At the Russian-Byelorussian border, the Russian Customs office of entry (en route) leaves the uncoupled "Byelorussian" voucher No.2 in the TIR Carnet, fills in the next set of vouchers No.1/No.2 and detaches voucher No.1. The Russian Customs office of destination fills in and detaches two vouchers No.2. Thus, on the whole, two sets of vouchers No.1/No.2 are used.

21. The IRU pointed out that the above procedure, in particular the systematic lack of the termination of a TIR operation at the exit from Belarus, had resulted in a number of duplicate claims and/or notifications raised by both Byelorussian and Russian Customs authorities. Although the situation had recently improved, the IRU was concerned about the negative consequences of this practice for the TIR guarantee chain as well as for road transport operators (Informal document No. 32 (2003)).

22. Mrs. N. Rybkina (Russian Federation) informed the TIRExB that the above procedure had been introduced as a short-term measure to provide evidence of the validity of Customs claims against the national guaranteeing associations of the Russian Federation or the Republic of Belarus. At present, the Russian and Byelorussian Customs authorities are discussing medium-term solutions as to how to distinguish between the liability of the national guaranteeing associations ASMAP and BAIRC. In this context, the principle applied in the European Community (liability of associations according to the country of entry) was under study. The ultimate solution to the problem would be merging the Customs territories of the two countries into a single one and making the Customs Union into a legal entity.

23. Finally, the TIRExB decided to continue its considerations at its next session. In order to facilitate the discussion, Mrs. N. Rybkina (Russian Federation) proposed to deliver a presentation on the issue.

#### **BY-ELECTIONS IN CASE OF RESIGNATION OF A TIRExB MEMBER**

24. The Board was informed that, following a request by the TIRExB at its previous session, the TIR secretariat had contacted the competent Ukrainian authorities in order to find out whether or not Mr. O. Fedorov (Ukraine) would be in a position to participate in future sessions and, thus, continue as TIRExB member. No reply had yet been received to this inquiry.

25. At the present session, the TIRExB again noted with concern the absence of Mr. O. Fedorov who had not participated in three sessions in a row, without any particular reason. The TIRExB requested the TIR secretariat to send a reminder to the competent Ukrainian authorities and set up a deadline for reply. If no response would be given before the deadline, Mr. O. Fedorov should be considered by the TIR Administrative Committee as having resigned.

26. The TIRExB was of the view that the lack of participation of a TIRExB member could jeopardize the well-functioning of the Board as it should consist of an odd number of members for purposes of voting and taking decisions. The Board also felt that, in order to avoid such situations happening in the future, the Rules of Procedure of the TIRExB should be modified. In particular, the following issues have to be addressed:

- an earlier termination of the term of office of a TIRExB member in case he/she is repeatedly absent at TIRExB sessions for no specific reason;
- a practical procedure for by-elections of another candidate to replace the resigned member;
- the term of office for the newly elected substitute.

27. The TIRExB invited its members, as well as the TIR secretariat, to submit their written proposals on how to tackle the issue, bearing in mind that this matter should be brought to the attention of the TIR Administrative Committee at its February 2004 session.

## **OTHER MATTERS**

### **Restriction on the distribution of documents**

28. The TIRExB recalled its earlier decision that, for the sake of transparency, all its documents should be unrestricted, unless they contain confidential information and a special decision is taken by the Board at the end of each session (TIRExB/REP/2003/18, para.16). In this context, the TIR secretariat pointed out that, while awaiting a relevant decision by the Board at its upcoming session, all new TIRExB documents should provisionally be considered restricted. However, some Board members pointed out that they might wish to discuss specific TIRExB documents with their colleagues prior to the respective session. Thus, they would prefer to know in advance the restrictive status of such documents and not to wait until the end of the session.

29. The TIRExB felt that, from experience, only a few documents should be given the restrictive status. Therefore, the Board was of the view that most of its documents should be unrestricted from the date they are produced. In case a document contains clear confidential information or there is a request by a third party, or in case of doubt, the Board mandated the TIR secretariat to restrict the distribution of the document, pending a final decision by the TIRExB.

30. The TIRExB decided that there should be no restrictions with respect to the distribution of documents issued in connection with its current session, except for Informal document No. 23 (2003) on Customs fraud within the TIR system.

31. The TIRExB expressed its deep appreciation to the State Customs Committee and the Ministry of Transport of the Republic of Azerbaijan for the excellent organization of the session and the hospitality extended to all participants.



## **DATE AND PLACE OF NEXT SESSIONS**

32. The TIRExB decided to hold its twenty-first session during the week from 5 to 9 January 2004. The Board mandated the TIR secretariat, in consultation with the Chairman, to choose the exact date and venue for the meeting.

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## Annex

### **5.6. RECOMMENDATIONS FOR IMPROVEMENT OF COMMUNICATION BETWEEN NATIONAL COMPETENT AUTHORITIES AND NATIONAL GUARANTEEING ASSOCIATIONS**

1. It is the competence of Contracting Parties to establish, in line with the provisions of national legislation and established procedures, the content of the communications, which are addressed to the national guaranteeing association in the course of a claim procedure. However, in order to avoid any misunderstanding on nature, amount and justification of any alleged irregularity, the competent authorities and national guaranteeing associations of Contracting Parties are invited to review and update their various communications to the extent that they refer at least to the stages recognized by the TIR Convention and/or described in its best practices and contain, as far as possible, the following minimum information (see table below).

2. The stages recognized by the TIR Convention are:

- (a) Notification: Within a period of one year from the date of acceptance of the TIR Carnet, the competent authorities of the Contracting Party, in which the TIR Carnet has not been discharged, have to notify the association in writing of the non-discharge (Article 11, paragraph 1 of the Convention);
- (b) Claim for payment: Competent authorities dispose of a period between three months and two years after the date on which the association has been informed that the TIR operation has not been discharged (or that the certificate of termination of the TIR operation has been obtained in an improper or fraudulent manner), within which to submit a claim for payment to the association (Article 11, paragraph 2 of the Convention).

3. Preceding these legal obligations, various Contracting Parties have introduced as a best practice:

- (c) Pre-notification: Although not a legal requirement, it has become a standing procedure in various Contracting Parties to inform the guaranteeing association at the earliest possible stage of the fact that Voucher No. 2 has not been returned to the Customs office of departure or entry en route, inviting it to furnish proof that the TIR operation has been terminated. This communication, which has become known as “pre-notification” is sent without prejudice to the notification to be made in accordance with Article 11, paragraph 1 of the Convention. However, as not all Contracting Parties apply this concept in the same way and/or at the same time, the degree of compliance with the recommended elements may vary considerably from country to country. Contracting Parties and national associations are recommended to bear this in mind when applying the best practices of Chapter 5.6.

4. It should be noted that Contracting Parties are under no legal obligation to comply with the recommendations set out in paragraph 5.6. Only the provisions of the TIR Convention and national legislation decide on the legality of any communication between the competent authorities of Contracting Parties and the national guaranteeing associations.

5. In general, Customs authorities and national guaranteeing associations of Contracting Parties are recommended:

- to limit any communication to one single TIR Carnet only;
- to make use at all times, but in particular before making enquiries, to the extent possible, of any information available in an authorized international control system, such as the SafeTIR system operated by the IRU.

**Table I**  
**Recommended elements for effective communication by**  
**competent authorities to national guaranteeing associations**

	Data to be included, in as far as available at moment of issuance of communication	<u>Pre-notification</u> of non-discharge to the guaranteeing association ( <i>Best practice</i> )	<u>Notification</u> of non-discharge to the guaranteeing association ( <i>Article 11.1</i> )	<u>Claim</u> for payment to guaranteeing association ( <i>Article 11.2</i> )
1	Clear and legible date and reference	v <sup>1</sup>	v	v
2	Name, address and unique ID number (as far as available in the TIR Carnet) of the TIR Carnet holder	v	v	v
3	TIR Carnet Number (2 letters and 8 digits)	v	v	v
4	Date when the TIR Carnet was accepted by Customs	v	v	v
5	Main points of infringement and legal references (justification)	v	v	v
6	Return /reply address and recommended deadline for reaction (if appropriate)	v	v	v
7	Copy of voucher No. 1	v	v	v
8	List of possible/recommended documents to be provided by national associations, as mentioned under point 5 of Table II, including, if possible, documentation with regard to other person(s) directly liable	v	v	-
9	Reaction to documents submitted i.e. acceptance, closure or refusal, if any <sup>2</sup>	-	v	-
10	Reference to and/or copy of the notification to the TIR Carnet holder (Expl. Notes 08.7 and 0.11-1)	-	v	v
11	Reference to and/or copy of the request for payment from the person(s) directly liable (Article 8.7) if available	-	v	v
12	Reference to and/or copy of the pre-notification to the guaranteeing association if available	-	v	-
13	Reference to and/or copy of the notification to the guaranteeing association	-	-	v
14	Reference to existing guarantee agreement or any other type of legal instrument	-	-	v
15	Reference to indicative amount of the potential claim	-	v	-
16	Detailed calculation of Customs duties and taxes, including determination of the Customs value of the goods, tariff rates applied and applicable default interest rates	-	-	v
17	Time limits for payment (Article 11.3)	-	-	v
18	Payment particulars	-	-	v
19	Information on possible appeal procedures	-	-	v

<sup>1</sup> v = Recommended element;

<sup>2</sup> acceptance = confirmation that authorities have accepted the information provided by the association at an earlier stage; closure = information that authorities have decided not to pursue the alleged irregularity and have closed the file; refusal = information that the information provided by the association at an earlier stage has not been accepted by the authorities, including the reasons for refusal;

**Table II**  
**Recommended elements for effective communication by**  
**national guaranteeing associations to competent authorities**

	Data to be included, in as far as available at moment of issuance of communication	<u>Reaction</u> to Pre-notification of non- discharge to the guaranteeing association ( <i>Best practice</i> )	<u>Reaction</u> to Notification of non- discharge to the guaranteeing association ( <i>Article 11.1</i> )	<u>Reaction</u> to Claim for payment to guaranteeing association ( <i>Article 11.2</i> )
1	Clear and legible date and reference	v	v	v
2	Name, address and unique ID number (as far as available in the TIR Carnet) of the TIR Carnet holder	v	v	v
3	TIR Carnet Number (2 letters and 8 digits)	v	v	v
4	Return address	v	v	v
5	Documents indicating the regular termination of the concerned TIR operation, such as: <ul style="list-style-type: none"> <li>• any official certificate or confirmation of the termination of a TIR operation covered by the same transport made out by another Contracting Party following the respective TIR operation or confirmation of the transfer of the goods in question to another Customs procedure or another system of Customs control, e.g clearance for home use;</li> <li>• the duly stamped corresponding counterfoils No. 1 or No. 2 in the TIR Carnet by that Contracting Party or a copy thereof provided by the international organization;</li> <li>• records about the termination of the TIR operation, as found in the so-called "IRU SafeTIR system";</li> <li>• any additional document, issued by the Customs office of destination or exit (<u>en route</u>) to the person presenting the TIR Carnet (e.g. receipt on request to be completed in advance by the person concerned);</li> <li>• any document allowing the identification of possible person(s) directly liable<sup>3</sup>.</li> </ul>	v	v	v
6	Reference to the pre-notification to the guaranteeing association if available	v	-	-
7	Reference to the notification to the guaranteeing association	-	v	-
8	Reference to the claim for payment to the association	-	-	v
9	Reaction to claim for payment (acceptance or refusal)	-	-	v
10	Reference to specific provisions in the existing guarantee agreement or any other type of legal instrument	-	-	v

<sup>3</sup> Submission of documents under point 5 is not limited to any of the three identified stages, but can take place at any time, as soon as available.