



TIR EXECUTIVE BOARD (TIRExB)
COMMISSION DE CONTROLE TIR (TIRExB)
ИСПОЛНИТЕЛЬНЫЙ СОВЕТ МДП (ИСМДП)

Distr.: General
30 May 2017

ENGLISH ONLY

Administrative Committee for the TIR Convention, 1975

TIR Executive Board (TIRExB)

Seventy-third session

Geneva, 12 June 2017

Agenda item VI (b)

Submission of data using the International TIR Data Bank (ITDB)

Note by the secretariat

I. Background

1. In 1997, the Administrative Committee for the TIR Convention 1975 (AC.2) adopted Annex 9, Part II to the TIR Convention, setting out minimum conditions and requirements for the authorization of natural and legal persons to utilize TIR Carnets as well as the Model Authorization Form (MAF) to implement the element of controlled access to the TIR regime (see TRANS/WP.30/AC.2/45, para. 17). The introduction of Annex 9 was part of a set of measures to allow for the harmonized application and implementation of some major elements of the Convention by all Contracting Parties as well as to safeguard the system against fraudulent activities. Those measures were necessary in view of the changed political, economic and social situation in Europe in the early 1990's, the increase in the number of Contracting Parties to the Convention and the dramatic increase in customs fraud.

II. Purpose of the ITDB

2. The International TIR Data Bank (ITDB) was developed by the UNECE TIR secretariat in 1999 at the request of the TIR Executive Board (TIRExB) to help coordinating and fostering the exchange of information between competent authorities of Contracting Parties, associations and international organizations (TIR Convention, Annex 8, Article 10 (d)). The ITDB is an international repository of information containing, inter alia, all persons authorized by Contracting Parties to use the TIR procedure. In line with Annex 9, Part II of the TIR Convention, the UNECE TIR secretariat hosts the ITDB on behalf of TIRExB and ensures that TIR focal points can consult and update information about their national TIR Carnet holders and access contact information of all TIR Carnet holders (see TIRExB Informal document No. 10 (2016), para. 3).

3. To further facilitate the usage of the ITDB by customs authorities and national associations, TIRExB endorsed, in October 2016, the efforts of the TIR secretariat to modernize, improve and integrate all the tools composing the ITDB into a single online platform (ECE/TRANS/WP.30/AC.2/2016/12, para. 15). This new version of the ITDB, launched on 9 May 2017, not only offers new functionalities and improves ease of use but will also allow, in the future, the seamless addition of new modules, such as the Register of approved customs offices for accomplishing TIR operations.

4. All these improvements greatly contribute to the general goal of computerization of the TIR procedure by further facilitating the real time electronic data exchange between Contracting Parties, associations and international organizations through the ITDB. Hence, it has a positive impact on the timing of the data submission and processing. In addition, it relieves the administrative burden for the Contracting Parties and for the TIR secretariat in processing data.

III. Current issues related to the submission of TIR Carnet holders' data to TIRExB

5. The proper usage of the ITDB by customs administrations and associations renders the submission to TIRExB of authorized TIR Carnet holder data in any other form, such as paper, redundant (see ECE/TRANS/WP.30/AC.2/111, para. 15). To clarify that principle in the text of the Convention, AC.2 adopted, on 6 February 2014, Explanatory Notes with regard to: (a) Annex 9, Part II, paragraph 4; (b) Annex 9, Part II, paragraph 5; and (c) Article 38, paragraph 2 of the Convention (see ECE/TRANS/WP.30/AC.2/117, para. 38, ECE/TRANS/WP.30/AC.2/113, paras. 30-31). The Explanatory Notes entered into force on 1 January 2015.

1. Annex 9, Part II, paragraphs 4 and 5

6. The Explanatory Note to paragraph 4 states that “[t]he legal requirements for data submission, as set out in paragraph 4 are deemed to be fulfilled by means of the proper use of electronic applications developed to this end by the TIR secretariat.” The Explanatory Note to paragraph 5 reads: “Explanatory Note 9.II.4 applies mutatis mutandis to paragraph 5.” This means that the requirements under paragraph 5 can also be fulfilled through the proper use of the ITDB. During its consideration of the Explanatory Notes, AC.2 also noted that, at some point in the future, the transmission of data into the ITDB by electronic means could become mandatory (see ECE/TRANS/WP.30/AC.2/111, para. 15).

a. Annex 9, Part II, paragraph 4

7. At the seventieth session of TIRExB, the secretariat pointed out that the MAF, contained in Annex 9, Part II, still allowed countries to submit ITDB data on paper. In the view of the secretariat, such practice was resource consuming for countries as well as for the secretariat and led to delays in keeping the ITDB up to date. Therefore, it should be phased out and replaced by electronic submission only. At that session, TIRExB reiterated the requirement for countries to send any data or update related to authorized TIR Carnet holders to the TIR secretariat, preferably by means of the proper use of electronic applications developed to that end by the TIR secretariat as stipulated by Explanatory Note 9.II.4 (TIRExB/REP/2016/70final, para. 17). At the seventy-first session, a proposal was made that the next composition of TIRExB could study the prospect of amending Annex 9, Part II, towards making the use of the ITDB mandatory in order to have an accurate source of information (TIRExB/REP/2016/71draft, para. 16). Against this background, the secretariat would like to reiterate its concern that keeping the MAF specimen in the Convention runs counter to the principle on which the Explanatory Note 9.II.4 is based (see paragraph 5 above).

b. Annex 9, Part II, paragraph 5

8. In addition, the secretariat would like to bring to the attention of TIRExB that the processing of the annual list submitted pursuant to Annex 9, Part II, paragraph 5, not using the ITDB, raises similar issues as those with regard to the data submission by means of the MAF.

9. The secretariat would also like to bring to the attention of TIRExB that the submission of the annual list is further aggravated by the fact that Annex 9, Part II does not contain any specification with regard to the exact content or the format of the annual lists. This results in making their processing extremely time consuming and prone to errors. This

is different from the transmission of the authorization to use TIR Carnets, for which the MAF explicitly sets out the required information. In addition, TIRExB may wish to note that, currently, there is no requirement to include exclusions in the annual list.

10. TIRExB might wish to note that making data submission via the ITDB mandatory would address those difficulties. This constitutes another benefit of the mandatory usage of the ITDB and would practically result in rendering the requirement under paragraph 5 to submit an updated list annually redundant. However, the legal requirement, i.e. transmitting the updated information pertaining to persons authorized as such annually, still remains in place. TIRExB may wish to take note of this issue for future considerations, i.e. when use of the ITDB for data submission to TIRExB has been made mandatory, whether paragraph 5 requiring to submit an updated list annually, would warrant modification or merger with paragraph 4 requesting information to be updated at regular intervals.

2. Article 38, paragraph 2

11. The Explanatory Note to Article 38, paragraph 2 reads: “The legal provision to notify the TIR Executive Board that a person has been temporarily or permanently excluded from the operation of the Convention is deemed to be fulfilled by means of the proper use of electronic applications developed to this end by the TIR secretariat under the supervision of the TIR Executive Board.”

12. Hence, it pursues the same purpose as the Explanatory Notes 9.II.4 and 5, *i.e.* allowing customs administration to use the ITDB for data submission to TIRExB. In this light, the secretariat wishes to draw the attention of TIRExB to the continued use of paper for the submission of data related to exclusions under Article 38, paragraph 2.

IV. Proposal by the secretariat

13. Against this background and considering the advancement of technology since the adoption of the MAF in 1997, the positive results from the introduction of the Explanatory Notes 9.II.4 and 9.II.5, as well the launch of the new ITDB on 9 May 2017, TIRExB may wish to recommend the mandatory usage of the ITDB for all data submission to TIRExB. Further, TIRExB may wish to consider a suitable transition period, which would allow Contracting Parties to gradually extend their usage of the ITDB. In the view of the secretariat, this approach would contribute to the computerization of the TIR system, avoid delays and greatly improve the quality of the data contained in the ITDB. Furthermore, this approach would boost the outreach of the Convention to non-Contracting Parties.

V. Possibilities to implement the secretariat’s proposal

1. Approaches to address the concerns expressed

14. In the view of the secretariat, there are two different ways to address the aforementioned issues, either by amendments to the Convention or by adopting comments.

a. Amendments to the Convention

15. The reference to the MAF in Annex 9, Part II, paragraph 4, “in conformity with the specimen authorization attached (MAF)”, and, accordingly, the MAF specimen reproduced in Annex 9, Part II would be deleted. The substance of the text following the MAF specimen would appear under a new heading “Information to be provided by competent authorities” setting out a list of data requirements.

16. To make the use of the ITDB for data submission mandatory, either the word “only” might be placed before the word “fulfilled” in the Explanatory Note to Article 38, paragraph 2 and in the Explanatory Note to Annex 9, Part II, paragraph 4. Alternatively, the word “mandatory” might be placed before the words “by means of proper use of electronic

applications” in the Explanatory Note to Article 38, paragraph 2 and the Explanatory Note to Annex 9, Part II, paragraph 4.

b. Comments

17. TIRExB could adopt comments to Article 38, paragraph 2, Annex 9, Part II, paragraph 4 and 5. The comments would indicate that data submission should be done via the ITDB: (a) under Annex 9, Part II, paragraphs 4 and 5; and (b) for the exclusions to be submitted under Article 38, paragraph 2.

18. In order to avoid having several comments with nearly identical content in the text of the Convention, TIRExB may wish to consider issuing one comment addressing the issue of data submission under the TIR Convention generally in reference to Article 38, paragraph 2 and Annex 9, Part II, paragraphs 4 and 5. This approach would have the benefit to address the data submission to TIRExB in one place, but it might be less clear for the reader of the TIR Handbook.

2. Advantages and disadvantages of each approach

19. The secretariat would like to bring to the attention of TIRExB that each of the possible options outlined above, legal amendments or comments, has certain advantages and disadvantages.

a. Legal amendments

20. The advantage of legal amendments to address the aforementioned issues is their legal nature (legally binding). However, the disadvantage of any legal amendment is that there are more procedural requirements (see Articles 59 and 60 of the Convention) than for issuing a comment and a risk of a possible objection to the amendments.

b. Comments

21. The advantage of adopting a comment is a simple procedure. However, the disadvantage of the approach of adopting comments is that, notwithstanding their importance for the interpretation, harmonization and application of the Convention, they are not legally binding for Contracting Parties (see TRANS/GE.30/55, para. 40). Therefore, their effect would only amount to strongly recommending the usage of the ITDB.

c. Preliminary view of the secretariat

22. In the preliminary view of the secretariat, legal amendments seem to be the preferable approach, since they would ensure the mandatory usage of the ITDB for the data submission to TIRExB. Through legal amendments, the mandatory requirement for data submission via the ITDB would be clearly set out in the Convention. Therefore, this approach would provide for legal certainty and clarity.

VI. Considerations by TIRExB

23. TIRExB is invited to consider and comment on the issues raised in this document and to provide guidance on the way forward.

24. Finally, TIRExB is also invited to consider whether and how the ITDB should become mandatory for the submission of data related to: (a) the customs office list (Art. 45); (b) stamps and seals; (c) certificates of approval for road vehicles pursuant to Annex 3; and (d), possibly at a later stage, certificates of approval for containers pursuant to Annex 7 (see also ECE/TRANS/WP.30/AC.2/2016/1, para. 14).