



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

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TIR Executive Board (TIRExB)

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Agenda item 6

Issues raised by the Turkish authorities

Note by the secretariat

I. Background and mandate

1. At its previous session, TIRExB extensively discussed various issues, raised by the Association of the Bulgarian Enterprises for International Road Transport and the Roads (AEBTRI) and related to the exclusion of some Bulgarian hauliers by Turkish Customs authorities under application of Article 38 of the TIR Convention. The Board expressed its satisfaction with the detailed reply by the Turkish authorities, as contained in Informal document No. 14 (2011). As a next step, TIRExB requested the secretariat to convey the information to AEBTRI. In addition, considering that the Turkish authorities in their reply had raised some issues with regard to the application of the example of best practices on Article 38, TIRExB requested the secretariat to submit an informal document for discussion at the Board's next meeting (see TIRExB/REP/2011/47draft, paras 12–18).

2. In line with the request by TIRExB, the secretariat prepared Informal document No. 16 (2011), elaborating issues with regard to the application of the example of best practices, as raised by the Turkish authorities, for discussion by the Board.

II. Application of Article 38, paragraph 1 of the Convention

3. Turkish Customs authorities excluded a particular TIR Carnet holder from the TIR system, although the pertaining serious offence had not been committed during a transport under cover of a TIR Carnet.

4. Article 38, paragraph 1 stipulates that “Each of the Contracting Parties shall have the right to exclude temporarily or permanently from the operation of this Convention any person guilty of a serious offence against the Customs laws or regulations applicable to the international transport of goods.” This wording seems to indicate that the application of Article 38 is not limited to infringements against the TIR Convention.

5. Paragraph 6 of the Example of best practice with regard to the application of Article 38 (Chapter 5.8 of the TIR Handbook) states “The competent authorities of a Contracting Party where an infringement of the TIR Convention was committed should consider [...] whether this infringement constitutes “a serious offence against Customs laws or regulations applicable to the international transport of goods”. Paragraph 7 of the said Example, containing the particulars of any exclusion, refers to the indication of the TIR

Carnet reference number as an option (“where applicable”), seems to confirm that exclusions under Article 38 of the TIR Convention are not necessarily limited to infringements having taken place under the TIR procedure. Finally, the wording of paragraph 12 of the Example (“Irrespective of the possible decision on withdrawal of authorization by the competent authorities of the Contracting Party on whose territory the person concerned is established or resident, the issuing association should assess the reliability of the holder and may impose on him some sanctions in compliance with the association’s internal rules, for example, suspend the issuance of TIR Carnets.”) seems to indicate that national associations can take actions against any TIR Carnet holder, including the suspension of the issuance of TIR Carnets, during a temporary exclusion and prior to a possible withdrawal of the authorization by the competent authorities.

III. Consequences of deletion of Explanatory Note 0.38–1

6. With the entry into force of Amendment 23 on 7 November 2003, Explanatory Note 0.38-1 to Article 38 (stipulating “A business enterprise should not be excluded from the TIR system because of offences committed by one of its drivers without the knowledge of the management”) was deleted from the text of the Convention. At its ninety-seventh session, the Working Party on Customs Questions affecting Transport (WP.30) took note of the consideration by the TIR Administrative Committee (AC.2) that “the reasons for exclusion are quite different in the Contracting Parties to the Convention. This is mainly due to different national interpretations of the conditions for such exclusion, as stipulated in Article 38, i.e. guilty of a serious offence (TRANS/WP.30/194, paragraph 74).” Following a recommendation by TIRExB (TRANS/WP.30/2000/14 and Corr.1¹), WP.30 agreed, at its ninety-eighth session that, as a first step to facilitate the application of national legislation with regard to Article 38, to consider the deletion of Explanatory Note 0.38-1 (TRANS/WP.30/196, paragraph 75). At its ninety-ninth session, WP.30 took note that Explanatory Note 0.38-1 seemed not to be in line with the philosophy of the TIR Convention, which was based on the notion that as much competence as possible should be left to national legislation, particularly with regard to irregularities contained in Articles 36 and 38 of the Convention (TRANS/WP.30/198/paragraph 94). The proposal to delete Explanatory Note 0.38-1 was adopted by AC.2 at its thirty-third session (October 2002) (TRANS/WP.30/AC.2/67, paragraph 57).

7. Turkish Customs found a truck, carrying a huge quantity of undeclared cigarettes (2,000,000 pieces). Turkish Customs authorities excluded the company for six months from the TIR system. However, the 13th Administrative Tribunal in Ankara stopped its implementation, on the ground that the application of the decision “may incur irreparable losses to the company”, pending a final decision by the tribunal on the merits of the case.

8. Turkish Customs authorities are puzzled by this court decision. As reasons, Turkish Customs refer to the following:

- (a) Explanatory Note 0.38.1 has been deleted, inter alia, to avoid that an individual driver would have to bear all the consequences of an infringement, which was committed with the knowledge/involvement of the TIR Carnet holder. In this particular situation, the amount of undeclared goods (2,000,000 pieces) was such that, in the view of Turkish Customs authorities, the transport could not have taken place without the knowledge of the transport company.
- (b) The fact that the Letter of Undertaking, concluded between the national association and each individual TIR Carnet holder, clearly stipulates that the TIR Carnet holder

¹ Note by the secretariat: the document in reference does not contain any proposal to delete Explanatory Note 0.38-1.

shall abide by the international rules and national regulations and fulfil all relevant responsibilities. The Letter of Undertaking contains a provision to the extent that the TIR Carnet holder is responsible for the acts and faults of his staff, representatives and officers as if such acts were directly committed by him.

IV. Transfer of vehicle fleet

9. Turkish Customs authorities excluded a TIR Carnet holder A temporarily from the TIR system. For the period of the exclusion, holder A transferred his vehicle fleet to holder B. Holder B was in possession of valid documents regarding the lease of the vehicles. During the period of exclusion of A, one of the vehicles leased by B was detained by Turkish Customs. Turkish Customs is of the view that conducting transport by means of TIR Carnets issued to or vehicles leased by another TIR Carnet holder in the aftermath of an exclusion should be considered as an infringement against the TIR system, as it bypasses the sanction of exclusion imposed under application of the provisions of the TIR Convention.

V. Consideration by the Board

10. TIRExB may wish to provide its views on the above issues.
