

**TIR EXECUTIVE BOARD (TIRExB)**

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COMMISSION DE CONTROLE TIR (TIRExB)

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ИСПОЛНИТЕЛЬНЫЙ СОВЕТ МДП (ИСМДП)

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Administrative Committee for the TIR Convention, 1975**TIR Executive Board (TIRExB)****Forty-ninth session**

Geneva, 6 February 2012

Agenda item 10

Election of replacement TIRExB members**Note by the secretariat****I. Background and mandate**

1. At its forty-eighth session, TIRExB, in the absence of time and written documentation, requested the secretariat to prepare, for discussion at the current session, a document providing a summary of the Board's past discussions on the intermediate election of replacement TIRExB members, including considerations how to amend the existing Rules of Procedure (TIRExB/REP/2011/48draft, paragraph 35).

2. In this document, the secretariat provides references to all documents and summaries of the main discussions on the issue of by-elections conducted by the Board in the years 2003–2004 as well as considerations or proposals to amend, inter alia, the Rules of Procedure of TIRExB.

2. Summary of discussions on the issue of by-elections

3. At its twentieth session (November 2003), 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 the purpose of voting and taking decisions. The Board felt that, in order to avoid such situations happening in the future, the Rules of Procedure of TIRExB should be modified. In particular, the following issues needed to be addressed:

- (a) an earlier termination of the term of office of a TIRExB member in case he/she is repeatedly absent from TIRExB sessions for no specific reason;
- (b) a practical procedure for by-election of another candidate to replace the resigned member;
- (c) the term of office for the newly elected substitute (TIRExB/REP/2003/20, paragraph 27).

4. At its twenty-second session (May 2004), TIRExB discussed Informal document No. 2 (2004) by the secretariat. In this document, the secretariat outlined the legal situation (Annex 8, Article 9) and submitted some proposals for amendment, in particular the introduction of a new Explanatory Note 8.9.2 stipulating "In case of replacement, the

elected member shall only hold office for the unexpired portion of the term of office of his/her predecessor.” In addition, the secretariat proposed amending the existing Rule of Procedure on representation to also include issues such as the establishment by the TIR Administrative Committee (AC.2) of a list of replacement members and a procedure for replacement in case of prolonged absence of a member from sessions of the Board. Upon analysis of the proposals, the Board was of the opinion that a more simple and straightforward approach was required, in which the election of both regular and replacement members would be covered (See: TIRExB/REP/2004/22, paragraph 38).

5. At its twenty-third session (June 2004), TIRExB discussed Informal document No. 15 (2004) and came to the conclusion that it had reached fundamental agreement on the introduction of a procedure for by-elections. As of the next election for new TIRExB members (spring 2005), AC.2 would be requested to equally elect, at the same time but in a separate election round, two replacement members, who would be elected from those candidates who had postulated to become member of TIRExB, but who had not been elected. The secretariat would announce the order in which the replacement members had been elected. In addition, TIRExB agreed on a procedure in case of regular absence of a member from sessions of the Board. As the Board was not sure whether or not the amended Rules of Procedure would require a change in the legal text of the Convention, the secretariat was requested to seek the opinion of the Office of Legal Affairs (OLA) in New York (See TIRExB/REP/2004/23, paras. 7–9).

6. At its twenty-fourth session (October 2004), TIRExB, although having reached principal agreement over the proposed replacement procedure, as contained in Informal document No. 16 (2004), decided that the proposals needed further discussion considering that OLA had pointed at possible negative repercussions of the amended Rules of Procedure (See: TIRExB/REP/2004/24, paras. 7–8).

7. At its twenty-fifth session (January 2005), TIRExB took note of the views of OLA, contained in Informal document No. 2 (2005) (See Annexes 1 and 2¹), pointing out various complications which could accompany the introduction of the proposed procedure for by-elections. It particularly noted OLA’s opinion that the proposal would require an amendment to the legal text of the TIR Convention. In view of this, TIRExB decided not to pursue the issue for the time being, as it had always been its intention to find a workable solution for the replacement of TIRExB members within the framework of the current text of the TIR Convention. However, TIRExB recalled the seriousness of the situation it had faced in the course of its mandate, where one member repeatedly had not taken part in meetings without providing information regarding the background of his absence. Considering that the reoccurrence of this or a similar situation could seriously impede the well-functioning of the Board, TIRExB stressed the importance of Contracting Parties ensuring the effective participation of the TIRExB member from their country in the meetings of TIRExB. The Chair was requested to transmit the Board’s considerations and concerns to AC.2. Finally, TIRExB requested the secretariat to prepare a document on conduct of business and voting procedures, to be discussed at one of the future sessions (TIRExB/REP/2005/25, paragraph 9).²

3. Further considerations by the Board

8. Considering the above, and in particular the fact that, so far, it has been TIRExB’s “intention to find a workable solution for the replacement of TIRExB members within the

¹ For information purposes, the secretariat has attached underlying memo from the director of the Transport Division UNECE to the Director of OLA as Annex 2 to this document.

² Note by the secretariat: Due to the fact that TIRExB’s programme of work for the years 2005–2006 did not contain a reference to the said issue, aforementioned document has not been submitted.

framework of the current text of the TIR Convention”, the secretariat proposes the following line of action:

(a) adoption of a draft Explanatory Note to Annex 8, Article 9, paragraph 2 to read as follows:

“Explanatory Note to Article 9, paragraph 2

8.9.2 In case a member of the TIRExB resigns before the completion of his/her mandated term of office, the TIR Administrative Committee may elect a replacement member. In that case, the elected member shall only hold office for the unexpired portion of the term of office of his/her predecessor.”

9. In the view of the secretariat, the text of such Explanatory Note falls within the scope of paragraph 4 of the memo by OLA, stipulating that the usual procedure of AC.2 in case of replacement “does not require the amendment of the Convention or the Rules of Procedure”.

(b) Amendment of the Rules of Procedure (amended text in bold, deletions in strike through):

“Representation

The TIRExB shall be composed of nine members, each from different Contracting Parties to the Convention. The TIR Secretary will attend the session of the Board (Annex 8, Article 9, paragraph 1)

The members of the TIRExB shall be elected by the Administrative Committee by a majority of those present and voting (Annex 9, Article 9, paragraph 2).

The term of office of each member of the TIRExB shall be two years. The members of the TIRExB may be re-elected (Annex 9, Article 9, paragraph 2).

In case ~~of the members~~ **a member** of the TIRExB resigns before the completion of his/her mandated term of office, ~~a replacement member shall be elected by~~ the TIR Administrative Committee **may elect as soon as possible a replacement member. In that case, the elected member shall only hold office for the unexpired portion of the term of office of his/her predecessor.”**

10. In the view of the secretariat, such wording best reflects that for a number of reasons, such as the relatively short term of office of TIRExB members or the moment when such resignation/replacement occurs, AC.2 should also have the freedom to decide not to elect a replacement member, as long as absence of members does not impede TIRExB from conducting its business, for which a quorum of five members is required.

11. Finally, within the context of the current discussion on resignation, TIRExB may also wish to express its views on the considerations by OLA, in paragraph 5 of its memo, stating that “we wish to confirm that the members of the TIRExB are elected by the TIR Administrative Committee in their personal capacity and not as representatives of their respective Governments or organizations. If that is indeed the case, a member of TIRExB, once elected by the TIR Administrative Committee, could not be removed by his or her Government or organization.”

Annex 1

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



GENERAL
Informal document No. 2 (2005)
24 November 2004
ENGLISH ONLY

ADMINISTRATIVE COMMITTEE

FOR THE TIR CONVENTION, 1975

TIR Executive Board (TIRExB)

(Twenty-fifth session, 27-28 January 2005,
agenda item 4)

BY-ELECTIONS IN CASE OF RESIGNATION OF A TIRExB MEMBER

Submitted by the secretariat

A. INTRODUCTION

1. At its twenty-fourth session, the TIRExB discussed at length the proposal to amend its existing Rules of Procedure on representation, as contained in Informal document No. 16 (2004), submitted by the secretariat. Although the TIRExB basically agreed with the proposed procedure, it felt that some further issues needed to be taken into account. In view of the opinion received from the UN Office of Legal Affairs (OLA) with regard to the possible repercussions of the to be adopted amended Rules of Procedure, the TIRExB felt that the proposal needed further discussion and, therefore, decided to revert to the issue at its forthcoming session (TIRExB/REP/2004/24 draft, paras. 7 and 8).

2. In underlying document the secretariat reproduces the opinion of the OLA for further consideration by the Board.

UNITED NATIONS  NATIONS UNIES
POSTAL ADDRESS-ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
TELEPHONE NO: (212)-963-1234; FAX NO. (212)-963-3155

TO: Mr. J. Capel Ferrer Director Transport Division/ECE Geneva	FROM: Daphna Shraga Principal Legal Officer in charge of the Office of the Legal Counsel
Fax : 4122-917-0039	Fax : (212) 963-6430 Tel : (212) 963-2250
Info:	Drafted by: Mona Khalil
Date: 11 October 2004	Total no. of pages including this page: 2

1. This is with reference to your memorandum to Mr. Rashkow of 19 August 2004 which we received on 8 October 2004 concerning the draft amendments to the Rules of Procedure of the TIR Executive Board (TIRExB). In particular, you seek our advice on the proposal to amend the rules of procedure of the TIRExB to introduce the election of replacement members in order to fill vacancies arising out of the resignation of members, their removal by their respective Governments and/or their lack of regular participation in the work of the TIRExB. In the event that the Rules of Procedure can be amended as proposed, you also seek our advice whether such amendments would necessitate amendments to Annex 8, Article 9 of the Customs Convention on the Transport of International Goods (the Convention). Our comments are as follows.

2. At the outset, we wish to point out that the election of replacement members may raise financial and other implications that need to be addressed and clearly understood prior to the adoption of any such amendments. For instance, if such replacement members were expected or invited to attend TIRExB meetings prior to assuming actual membership, their travel and per diem costs would need to be approved and allocated. If that is not the intention of the proponents of the amendment, it should be clearly specified that such replacement members would have no official functions, duties or rights unless and until they become actual members.

3. The concept of replacement members is relatively unheard of in the UN system. The only possibly related precedent could be the election of *ad litem* judges of the International Criminal Tribunals for the former Yugoslavia and for Rwanda. The latter judges are elected as a pool from which the two Tribunals could draw in the event that the proceedings require replacement or additional judges. Such judges as indicated in paragraph 2 above have no functions, duties or rights unless and until they are called upon to serve. It should be noted that the introduction of *ad litem* judges was effectuated by Security Council resolution amending the Statutes of the two Tribunals respectively. The introduction of replacement members onto the TIRExB would similarly require amendment of the Convention.

4. In the event of the death or resignation of any of the nine members of the TIRExB, the usual procedure would be to convene the TIR Administrative Committee (TIRAC) to fill the casual vacancy arising from such death or resignation. The application of such procedure would be automatic and would not require the amendment of the Convention or the rules of procedure.

5. As for the replacement of those members whose Government or organization informs the TIRExB that they no longer hold office, we wish to confirm that the members of the TIRExB are elected by the TIR Administrative Committee in their personal capacity and not as representatives of their respective Governments or organizations. If that is indeed the case, a member of TIRExB, once elected by the TIR Administrative Committee, could not be removed by his or her Government or organization.

6. The proposal to remove a member for lack of regular participation is unprecedented in the practice of the UN system and, as such, raises serious concern. If accepted, the proposal would empower the

TIRExB to remove an existing member and replace him or her with an elected-replacement leaving the TIR Administrative Committee merely with the right, indeed the obligation, to endorse that replacement. As the members are elected by the TIR Administrative Committee, it should be for the TIR Administrative Committee not TIRExB to remove any such members from office. In any event, the exercise of such power by the TIRExB was clearly not envisaged under the Convention and would clearly require amendment of Annex 8, Article 9 thereof. While we understand the concerns and frustrations expressed in respect of those who do not fully perform their obligations as members of TIRExB, given the relatively short term of office, it is preferable to deny such members re-election than to amend the Convention and rules of procedure in such an unprecedented manner. Moreover, given that, according to the TIRExB Rules of Procedure, only five members constitute the required quorum for decision-making, the absence of up to four members would not impede the TIRExB from conducting its business.

7. Based on the foregoing, and as indicated in paragraph 4 above, we would recommend that the TIRExB rely on existing rules and practices of the UN system to fill vacancies if and when they arise. If despite the foregoing comments, the TIR Administrative Committee or TIRExB decide to proceed with the proposed amendments to the rules of procedure, it would be equally necessary to amend the Convention in which case reference should be made to the applicable amendment procedures and entry into force provisions of Articles 59 and 60 of the Convention.

Annex 2



NATIONS UNIES
COMMISSION ÉCONOMIQUE
COMMISSION
POUR L'EUROPE

ОБЪЕДИНЕННЫЕ НАЦИИ
ЭКОНОМИЧЕСКАЯ КОМИССИЯ
ДЛЯ ЕВРОПЫ

UNITED NATIONS
—x§—
ECONOMIC
FOR EUROPE

MEMORANDUM

A - TO: Mr. Bruce Rashkow
Director, General Legal Division
Office of Legal Affairs, United Nations, New York

GENÈVE, 16 August 2004

THROUGH
DE - FROM: J. Capel Ferrer,
Director, Transport Division

REF: TRANS-E.A.1.1.
c.c. Mr. P. Kohona
Mr. U. von Blumenthal
Mr. P. Hansen

A handwritten signature in black ink, appearing to read 'J. Capel Ferrer', is placed below the typed name.

OBJET -SUBJECT: **Customs Convention on the International Transport of Goods under Cover of TIR
Carnets (TIR) Convention, Geneva 1975**

Dear Mr. Rashkow,

On behalf of the TIR Executive Board, the inter-governmental organ established by the Administrative Committee of the TIR Convention by virtue of Annex 8, Article 9 of the TIR Convention, I should like to request the advice of your services.

The situation is that at its twentieth session (19-20 November 2003), the TIRExB was of the view that the lack of participation of a TIRExB member could jeopardize the well-functioning of the Board, in particular as it should consist of an odd number of members for purposes of voting and taking decisions. The Board 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 needed to be addressed:

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

- the term of office of the newly elected substitute.

To this end, the secretariat drafted a proposal to amend the rules of procedure of the TIRExB, which you will find enclosed (Informal document 16 (2004)).

Your advice with regard to the proposal would be highly appreciated.

In addition, the TIRExB would greatly welcome your advice on the question whether the amended rules of procedure require a change to the legal text of Annex 8, Article 9 of the Convention (by means of the introduction of a new Explanatory Note (for a text proposal, I refer to para. 7 of the concerned informal document)).

As you you will see from the rules of procedure of the TIRExB "any of these rules of procedure may be amended or suspended by the TIRExB provided that the proposed amendments and suspensions do not attempt to set aside the provisions contained thereon in the Convention or the Terms of Reference laid down by the Administrative Committee." I add a copy of the Terms of Reference and Rules of Procedure of the TIRExB to my mail, for your information.

In case of any question, do not hesitate to contact directly Mr. Poul Hansen of my Division for any further clarification (Tel: intern: 73258).

I look forward to receiving your opinion..

Thank you for your continued cooperation.

Attachments:

- Informal TIRExB document 16 (2004)
- Terms of Reference and Rules of Procedure of the TIRExB
- Annex 8, TIR Convention, 1975