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Item 4 (c) of the provisional agenda

Activities and administration of the TIR Executive Board:

Proposals to modify the format, representation and election procedure of the TIR Executive Board

Election of members of the TIR Executive Board

Note by the TIR secretariat

I. Background and mandate

1. At its forty-eighth session, the TIR Executive Board (TIRExB) requested the secretariat to prepare 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 (Informal document TIRExB/REP/2011/48final, para. 35).
2. At its forty-ninth session, the Board requested the secretariat to prepare a document, outlining the professional requirements of prospective TIRExB members (Informal document TIRExB/REP/2012/49final, para. 30).
3. At its fiftieth session, TIRExB decided to further amend its existing Rules of Procedure, in order to address, for the future, the professional requirements for the nomination of TIRExB members. Although TIRExB agreed that any such rule would only be provisional, considering that, ultimately, Contracting Parties are free to nominate any person of their choice as candidate for TIRExB, the Board was of the opinion that including a reference to the professional requirements of prospective TIRExB members would give a positive sign to Contracting Parties on how best to proceed when nominating a candidate. Thus, TIRExB requested the secretariat to add these proposals to the already adopted draft Explanatory Note to Annex 8, Article 9, paragraph 2 and amendments to the Rules of Procedure, as adopted at its forty-ninth session and transmit the complete package to the Administrative Committee for the TIR Convention, 1975 (AC.2) for adoption or information.
4. At its fifty-fourth session, the Committee considered the above package of proposals for a new Explanatory Note and amendment to the TIRExB Rules of Procedure with regard

to the election of a replacement member and representation, as contained in document ECE/TRANS/WP.30/AC.2/2012/11. Following a preliminary exchange of views, the Committee noted that the amendment to the TIRExB Rules of Procedure on representation goes beyond the competence of TIRExB and should be upgraded to become a draft Explanatory Note. The secretariat was requested to issue a revised document for consideration at the next session (ECE/TRANS/WP.30/AC.2/111, para. 28).

5. At its fifty-fifth session, AC.2 considered a revised proposal for new Explanatory Notes and amendment to the TIRExB Rules of Procedure with regard to the election of a replacement member and representation (ECE/TRANS/WP.30/AC.2/2012/11/Rev.1). The Committee pointed out that mentioning resignation in draft Explanatory Note 8.9.2 as the only case that may necessitate by-elections does not cover all circumstances under which a member of TIRExB might not be in a position to continue his/her activities before the completion of his/her term of office. The secretariat was requested to revise the proposals and submit a new version for the next session (ECE/TRANS/WP.30/AC.2/113, para. 27). AC.2 also noted that the French text of draft Explanatory Note 8.9.1 needs improvement.

6. In accordance with the above mandate, at the fifty-sixth session, the secretariat introduced document ECE/TRANS/WP.30/AC.2/2012/11/Rev.2, which proposed two new Explanatory Notes to Annex 8, Article 9 of the TIR Convention, as well as including the text of the proposed Explanatory Notes in the Rules of Procedure of the TIRExB so as to ensure uniformity of the applicable rules. The delegation of Iran (Islamic Republic of), expressed concerns as to which body (if any) would be competent to assess the professional qualifications of TIRExB candidates and/or members, particularly in cases where they have already been elected. Linguistic inaccuracies in the French and Russian versions of the document were pointed out and the secretariat was requested to correct the French and Russian text for the next session (see ECE/TRANS/WP.30/AC.2/115, para.38).

7. The Committee decided to refer the issue for further discussion to the next session and requested the secretariat to prepare a revised document, addressing the concerns raised by Iran (Islamic Republic of) (see ECE/TRANS/WP.30/AC.2/115, para.38). In line with this request, the secretariat has prepared the present revised document. The additional considerations as expressed by the delegation of Iran (Islamic Republic of) are addressed in a new section IV of the present document.

II. Election of a TIR Executive Board replacement member

8. In 2011, AC.2 and TIRExB were confronted with the situation of early termination of the term of office of a TIRExB member. In the absence of any specific legal provision in the TIR Convention on the issue and considering that the current provision in the TIRExB's Rules of Procedure, stipulating that "in case one of the members 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 as soon as possible" seemed unsatisfactory to accommodate various possible scenarios, TIRExB decided, at its forty-ninth session, to adopt a draft Explanatory Note to Annex 8, Article 9, paragraph 2. Further to this legal clarification, TIRExB decided to amend its Rules of Procedure accordingly. The text of the draft Explanatory Note and the amended Rules of Procedure are contained in the annex to this document.

9. At its fifty-fifth session, the Committee pointed out that mentioning resignation in draft Explanatory Note 8.9.2 does not cover all circumstances under which a member of TIRExB might not be in a position to continue his/her activities before the completion of his/her term of office. In this respect it should be noted that resignation does cover in fact a variety of reasons. A member may resign from the Board due to a change of post in his/her

administration, or because the member may resign from his/her post in national administration (followed by de facto resignation from the Board), due to retirement, due to a conflict of interest or simply because the member individually decides that he/she is no longer in a position or no longer wants to continue for personal or family reasons. An exhaustive list of possibilities is unfeasible.

10. In addition, retirement is usually foreseen and it stands to reason that someone who is expected to retire would most likely not be nominated by his/her government as a candidate for election. The more likely scenario would be an unexpected decision to go into early retirement, which would be followed by a resignation from the board. Thus resignation as a term already includes a variety of possibilities.

11. Other possibilities that are not included in the term “resignation” is (i) extended medical leave for health reasons (which in most cases would anyway result in resignation), or (ii) death. These possibilities may be covered in the new Explanatory Note, albeit in a flexible manner. A new proposal of the secretariat is contained in Annex.

III. Professional requirements for the nomination of members of the TIR Executive Board

12. At its twenty-fourth session (February 1998), AC.2 provisionally endorsed the Rules of Procedure of TIRExB (TRANS/WP.30/AC.2/49, para. 25 and Annex 4), pending the establishment of TIRExB. At its twenty-fifth session (June 1998), AC.2 adopted a comment to the provisional Rules of Procedure on representation, to read as follows:

(a) Board members should be competent and experienced in the application of Customs procedures, particularly the TIR transit procedure, both at national and international levels;

(b) Board members should be nominated by their respective Governments or organizations being Contracting Parties to the Convention. They should represent the interests of the Contracting Parties to the Convention and not the specific interests of any one individual Government or organization (TRANS/WP.30/AC.2/51, para. 22 and annex).

13. At its first session (March 1999), TIRExB adopted its Rules of Procedure, without the above-mentioned comment thereto. Since then, the professional requirements for the nomination of members of TIRExB are contained in and have been consistently reproduced as part of AC.2 Informal document No. 1 of the years 2001, 2003, 2005, 2007, 2009 and 2011.

14. At its fiftieth session, TIRExB, considering that this situation was unsatisfactory, decided to further amend its existing Rules of Procedure, in order to address, for the future, the professional requirements for the nomination of TIRExB members. Although TIRExB agreed that any such rule would only be provisional, considering that, ultimately, Contracting Parties are free to nominate any person of their choice as candidate for TIRExB, the Board was of the opinion that including in the Rules of Procedure a reference to the professional requirements of prospective TIRExB members would give a positive sign to Contracting Parties on how best to proceed when nominating a candidate (TIRExB/REP/50draft, para. 25). For the text of the amended Rule of Procedure on representation, reference is made to the annex to this document.

15. Following the discussion at the fifty-fourth session of the Committee, as referred to in para. 4 of the present document, the secretariat has also prepared a draft Explanatory Note on representation for Annex 8, Article 9, paragraph 1 (see annex).

IV. Competency to assess the professional qualifications of TIRExB candidates and/or members

16. The comment mentioned in paragraph 12 has developed into a general practice and expectation for governments (i.e. to ensure that the nominees they put forward for election are suitably qualified and experienced). The adoption of this requirement as an Explanatory Note will reiterate and crystallize the responsibility of Contracting Parties to make such an assessment as objectively and accurately as possible, as well as confirm its inclusion in the Rules of Procedure of the Board.

17. It is, thus, the responsibility of the nominating Government to make an initial assessment and to select a suitable candidate to participate in the election process. Further to this, the qualifications and experience of each candidate are published and are subsequently assessed by the electorate body, i.e. the Administrative Committee. The election is the process by which each Contracting Party casts its votes in favour of those whom it considers the most suitable candidates on the basis of their qualifications and expertise and, thus, the election itself comprises a second level assessment of competence of the candidates. Consequently, there is no requirement for candidates to undergo any kind of interview or to in any way prove that they are qualified experts in the field. They are put forward/proposed by their governments, who consider them to be appropriately qualified, and it is up to the voters to decide through the election process.

18. Once the TIRExB composition is elected, there is currently no provision that would allow the challenging of the competence, qualifications or expertise of an elected member. The results of the election are considered to reflect the collective views of AC.2 and are, thus, final.

V. Considerations by the Committee

19. AC.2 is invited to consider the additional elements introduced in this revised document as well as to reach a decision on the adoption of the proposed draft Explanatory Notes to Annex 8, Article 9, paragraphs 1 and 2 as introduced at the last session and reproduced in the Annex. The Committee may also wish to confirm the text of the TIRExB Rule of Procedure on representation.

Annex

New Explanatory Note to Annex 8, Article 9, paragraph 1

“Explanatory Note to Article 9, paragraph 1

- 8.9.1 The members of the TIR Executive Board shall be competent and experienced in the application of Customs procedures, particularly the TIR transit procedure, both at national and international levels. Board members shall be nominated by their respective Governments or organizations being Contracting Parties to the Convention. They shall represent the interests of the Contracting Parties to the Convention and not the specific interests of any one individual Government or organization”.

New Explanatory Note to Annex 8, Article 9, paragraph 2

“Explanatory Note to Article 9, paragraph 2

- 8.9.2 In case a member of the TIR Executive Board 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. In the event that a member of the TIR Executive Board is unable, for reasons other than resignation, to complete his or her term of office, this information should be transmitted in writing to the TIR Executive Board and the TIR secretariat by the national administration of the member concerned. In this case, the Administrative Committee may elect a replacement member for the unexpired portion of the term of office”.

Amended Rule of Procedure of the TIR Executive Board on representation

“Representation

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

Board members shall be competent and experienced in the application of Customs procedures, particularly the TIR transit procedure, both at national and international levels.

Board members shall be nominated by their respective Governments or organizations being Contracting Parties to the Convention. They shall represent the interests of the Contracting Parties to the Convention and not the specific interests of any one individual Government or organization.¹

The members of TIRExB shall be elected by the Administrative Committee by a majority of those present and voting (Annex 8, Article 9, paragraph 2).

The term of office of each member of TIRExB shall be two years. The members of TIRExB may be re-elected (Annex 8, Article 9, paragraph 2).

¹ Adopted by TIRExB at its fiftieth session (TIRExB/REP/2012/50draft, para. 25)

In case a member of the TIR Executive Board 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”.²

² Adopted by TIRExB at its forty-ninth session (TIRExB/REP/2012/49final, para. 29)