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Item 4 (a) (i) of the provisional agenda

Activities and administration of the TIR Executive Board –

Activities of the TIR Executive Board:

Report by the Chair of the TIR Executive Board

Report of the sixty-first session of the TIR Executive Board (TIRExB)

Summary

The present document is submitted pursuant to Annex 8, Article 11, paragraph 4 of the TIR Convention, 1975, which stipulates that the TIR Executive Board (TIRExB) “shall report on its activities to the Administrative Committee at least once a year or at the request of the Administrative Committee”.

I. Attendance

1. The TIR Executive Board (TIRExB) held its sixty-first session on 2 and 3 December 2014 in Geneva.
2. The following members of TIRExB were present: Mr. M. Ciampi (Italy), Mrs. D. Dirlik (Turkey), Mrs. B. Gajda (Poland), Mrs. L. Jelínková (European Commission), Mr. H. Lindström (Finland), Mr. V. Milošević (Serbia) and Mr. S. Somka (Ukraine).
3. The International Road Transport Union (IRU) attended the session as observer and was represented by Mrs. Kseniya Kasko.
4. At the invitation of the Chair, His Excellency Mr. I. Tymofeev, Acting Director of the Department for Customs Development of the State Fiscal Service (SFS) of Ukraine, participated in the session under item III of the agenda, accompanied by Mr. M. Harmash, Counsellor for Economic Issues at the Permanent Mission of Ukraine.

II. Opening statement

5. In his opening statement, Mr. Pesut, TIR Secretary, expressed a special thanks to Mr. Tymofeef for having accepted the invitation of the Board to participate in a dedicated part of the session, in which the Board, inter alia, would discuss the Ukrainian measure. He further pointed at the important ongoing discussions on introducing (a) a more flexible application of the guarantee in the context of the TIR Convention and (b) the concept of authorized consignor. Finally, he congratulated TIRExB on having started the recurrent exercise of self-evaluation, in preparation of finalizing its activities during the 2013–2014 term of office.

III. Adoption of the agenda

Documentation: Informal document TIRExB/AGE/2014/61

6. TIRExB adopted the agenda of the session as contained in Informal document TIRExB/AGE/2014/61. However, at the proposal of Mrs. Jelínková (European Commission), the Board decided that, due to the absence of any further development, there was no need to discuss, under agenda item III, the situation in the European Union (EU).

IV. Adoption of the report of the sixtieth session of TIRExB

Documentation: Informal document TIRExB/REP/2014/60 draft with comments

7. The Board adopted the draft report of its sixtieth session (Informal document TIRExB/REP/2014/60draft with comments), subject to the following amendments:

Page 2, paragraph 9–10

For existing text inverse order

Page 2, new paragraph 9, last phrase

Delete phrase

Page 2, new paragraph 10, first phrase

For existing text substitute In reply to a question from the secretariat and IRU, Mrs. Jelínková (European Commission) informed the Board that the European Commission is, indeed, preparing a proposal for a Council decision on a possible suspension of TIR operations between the European Union (EU) and the Russian Federation and has discussed this possibility with the member States and with traders. Mrs. Jelínková stressed that the proposal is still under consideration.

Page 3, paragraph 12, line 4

After Convention). insert TIRExB also considered that the current guarantee system seems sufficiently flexible, as it allows each Contracting Party to decide on the recommended limit of the guarantee. However, some TIRExB members expressed the fear that higher guarantee limits could lead to higher prices for TIR Carnets and, consequently, increased costs of TIR transports

Page 3, paragraph 14, line 6–7

For a limit of 20,000 Euros, 60,000 Euros as well as 200,000 Euros substitute various limits such as 20,000, 60,000, 100,000 or even 200,000 Euros

Page 5, paragraph 21, last line

After_would insert ,possibly,

Page 5, paragraph 23, penultimate phrase

For existing phrase substitute The Board requested the secretariat to revise Informal document No. 29 (2014) accordingly and submit it to the Board for approval. Mrs. Jelínková offered her assistance to the secretariat

Page 6, paragraph 26, second phrase

Delete phrase

Page 6–7, paragraph 28, line 1–4

For existing text substitute Mrs. Kasko (IRU) informed the Board that, while in the past, road carriers had reported problems between Tajikistan and Uzbekistan with regard to the application of the TIR Convention, at present

Page 7, paragraph 29

For existing paragraph substitute Mrs. Kasko (IRU) informed the Board that the situation concerning the change in management of the International Association of Road Hauliers (AITA) of the Republic of Moldova, as reported at previous sessions of the Board, had been resolved in early July 2014 and is now stable. A new management of AITA had been appointed and the changes had been confirmed by the Moldovan competent authorities. IRU has carried out an audit of the association and organized training sessions for the new management, thus ensuring that they fully comply with the requirements imposed on them by the TIR Convention and as member association of IRU.

V. Settlement of disputes between Contracting Parties, associations, insurance companies and international organizations

Documentation: Informal document No. 31 (2014)

8. The State Fiscal Service (SFS) of Ukraine, has instructed customs offices, as of 2 October 2014, to no longer accept, temporarily, TIR Carnets issued by the Association of International Road Carriers (ASMAP) of the Russian Federation. TIRExB discussed this measure on the basis of Informal document No. 31 (2014) prepared by the secretariat and providing a preliminary assessment of the situation at hand, together with copies of a letter by Mr. Makarenko, Deputy Chairman of SFS of 15 October 2014 to Mrs. Molnar, Director Transport division of UNECE, and her letter of reply of 30 October 2014.

9. In a first reply, Mr. Tymofeef (representing SFS Ukraine) stated that the purpose for his presence was to properly introduce the measure to TIRExB rather than justifying its reasons. The measure to no longer accept TIR Carnets issued by ASMAP of the Russian Federation neither as guarantee document nor as customs declaration had been taken by SFS pursuant to the order of the cabinet of Ministers of Ukraine (dated 12 September 2014), at the advice of the Interdepartmental Commission under the Ministry of Economic Development and Trade and had been accepted by all governmental agencies. Mr. Tymofeef also emphasized that the above measures were temporary and might be revised or cancelled as soon as the Russian Federation would accept the guarantee for all TIR Carnets issued by ASMAP of Ukraine, i.e. as soon as the Russian Federation would again fulfill the provisions of Article 6, paragraph 2 and Annex 9, Part 1, paragraph 3 (iv) of the TIR Convention with respect to Ukraine as a Contracting Party to the TIR Convention. The measure, according to their interpretation, was justified by Articles 60 and 62 of the Vienna Convention on the Law of Treaties (VCLT).

10. Although ultimately based on the provisions of VCLT, the main reasoning of the Ukrainian authorities, in their view, was that ASMAP of the Russian Federation no longer fulfilled the criteria of being an authorized association in accordance with Article 6, paragraph 2 and Annex 9, Part 1, paragraph 3 (iv) of the Convention. The restrictions placed by the Federal Customs Service (FCS) of the Russian Federation negatively impact ASMAP of the Russian Federation to perform its duties under its agreement with FCS and, by extension, also under the provisions of the TIR Convention. This inability to perform should, according to the Ukrainian authorities, result in the termination of the agreement and the revocation of the authorization to act as guarantor, in accordance with Annex 9, Part I, Article 5.

11. The Board regretted that the measure had not been communicated by the competent national authorities of Ukraine in accordance with the provisions of Article 42 bis of the Convention for examination at a moment when the Board's considerations could still have been taken into account. At the same time, the Board recalled that, at its sixtieth session, Mr. Somka (Ukraine) had informed the Board that the Ukrainian government was considering the adoption of the above-mentioned measure (see ECE/TRANS/WP.30/AC.2/2015/2, para. 8). The Board reiterated its position, formulated at its fifty-eighth session, that, in general, as long as the authorization and agreement are intact, customs authorities of other Contracting Parties should respect their international commitments under the Convention and accept TIR Carnets issued by foreign associations (see ECE/TRANS/WP.30/AC.2/2014/9, para. 15). In addition, various TIRExB members expressed the view that the status of a national guaranteeing association is strictly under the jurisdiction and competence of the Contracting Party in which the association is established. At the same time, the TIR Convention does not contain any provision giving authorities of other Contracting Parties competence to assess the validity of any authorization granted outside its jurisdiction. Mr. Timofeef and Mr. Somka expressed the view that, in the context of the TIR Convention, the only criterion for competent national authorities to authorize a national guaranteeing association to issue TIR Carnets and to act as guarantor should be the full and unconditional compliance with all conditions and requirements as defined by the Convention, in particular by Article 6 and Annex 9. Consequently, any failure to comply with the conditions and requirements set forth by the TIR Convention should lead to the revocation of the association's authorization.

12. The Board took due account of the position of SFS that its actions are a direct result of and a reaction to the violation of the provisions of the TIR Convention by the Russian Federation since September 2013. This violation by one Contracting Party to the TIR Convention negatively impacts the interests of all other Contracting Parties.

13. Under this agenda item, TIRExB considered that the situation in the Russian Federation should also be discussed. The Board took note of the communication of 25 November 2014 by FCS to ASMAP of the Russian Federation, informing of the extension of the existing guarantee agreement until 28 February 2015. While welcoming this information, TIRExB reiterated that FCS continues to implement measures that contradict the provisions of the TIR Convention and that lead to severe restrictions on the use of TIR Carnets in all regions and almost all customs offices of the Russian Federation (see for more details ECE/TRANS/WP.30/AC.2/2014/2, ECE/TRANS/WP.30/AC.2/2014/3, ECE/TRANS/WP.30/AC.2/2014/7, ECE/TRANS/EP.30/AC.2/2014/8, ECE/TRANS/WP.30/AC.2/2014/9, ECE/TRANS/WP.30/AC.2/2015/1 and ECE/TRANS/WP.30/AC.2/2015/2). TIRExB reiterated its appeal to the Russian government to restore the proper functioning of the TIR system on the whole territory of the Russian Federation by lifting, without further delay, the restrictions imposed on TIR Carnet holders. In this context, TIRExB recalled the, as yet unfulfilled, commitment of FCS, made at the 138th session of the Working Party on Customs Questions affecting Transport (WP.30), to provide, by 15 November 2014, more information on the actual

situation, for distribution to Contracting Parties to the TIR Convention. The Board noted, with regret, that an invitation to FCS to participate in the current session of the Board had remained unanswered.

14. As a conclusion under this agenda item, the Board expressed the view that the measure introduced by the competent authorities of Ukraine is in contradiction with the provisions of Articles 3, paragraph (b), 4 and 6 of the Convention. At the same time, while taking note that the Ukrainian authorities founded the measure on the application of the VCLT, and, in particular, its Articles 60 and 62, TIRExB was of the opinion that any assessment to that extent would exceed the mandate of the Board.

15. Mr. Somka (Ukraine) disagreed with the conclusion of the Board, emphasizing that, in the view of the Ukrainian authorities, the examination by TIRExB should not be based on the application of the TIR Convention only but should also include other relevant international treaties, such as, but not limited to, the VCLT.

16. The Board requested the secretariat to publish the part of the report related to this agenda item on the TIRExB website, as well as to send it to the customs administrations of the Russian Federation and Ukraine.

VI. Application of specific provisions of the TIR Convention

Use of additional guarantees

Documentation: Informal document No. 26/Rev.1 (2014), Informal document No. 32 (2014)

17. The Board took note of Informal document No. 26/Rev.1 (2014), which, further to considerations by the Board on the recommended amount of the guarantee, now also contains considerations by WP.30 as well as AC.2 on the issue. TIRExB recalled that the level of the guarantee would again be on the agenda of AC.2 at its forthcoming session. In addition, the proposals to amend the TIR Convention as submitted by the Government of the Russian Federation (ECE/TRANS/WP.30/AC.2/2014/14) contain, inter alia, proposals to introduce the possibility for Contracting Parties to set the level of the guarantee at the full amount of customs duties and taxes due.

18. Mrs. Kasko (IRU) informed the Board that, as of 1 December 2014, the guarantee amount for Iran (Islamic Republic of) and Kyrgyzstan had been raised from 50,000 United States dollars to 60,000 euros. In reply to a question from the secretariat, she confirmed that of the eight countries having raised an objection to increasing the level of the guarantee to 60,000 euros in 2009, only Armenia, Georgia, Syrian Arab Republic and Tajikistan still maintained a guarantee level of US\$ 50,000. Further to the request of TIRExB at its sixtieth session to IRU to provide an assessment of the cost of TIR Carnets with various guarantee limits (20,000, 60,000, 100,000 and 200,000 euros), she informed the Board that internal consultations were still ongoing, but that intermediate or final results would be made available to TIRExB in time for discussion at its next session.

19. The Board considered Informal document No. 32 (2014). In the document, the secretariat, at the request of TIRExB, proposes a new comment to Explanatory Note 0.23, recommending customs authorities to consider the use of modern facilities, such as Global Positioning System (GPS) tracking devices or the use of e-seals before prescribing escort. The Board agreed with the text of the proposal, subject to replacing “should” by “are recommended to”. In view of the considerable costs to apply GPS tracking devices or e-seals, TIRExB was of the opinion that, at present, it seemed premature to propose the inclusion of the wording in the current text of the comment to Article 23. TIRExB

requested the secretariat to transmit the draft comment to Article 23 to the TIR Administrative Committee for further consideration.

VII. Computerization of the TIR procedure

A. Current status of the eTIR Project

20. The Board was informed about the outcome of the twenty-fourth session of the Informal Ad hoc Expert Group on Conceptual and Technical Aspects of Computerization of the TIR Procedure (GE.1) (25 and 26 September 2014, Antalya, Turkey), hosted by the Ministry of Customs and Trade of Turkey. It took note that thirty-one experts had attended the session and welcomed the participation for the first time of Georgia and Iran (Islamic Republic of). It also noted that GE.1, inter alia, provisionally had endorsed version 4.1a of the eTIR Reference Model and had requested the secretariat to circulate it among eTIR focal points. Furthermore, the Board noted that GE.1 had held first technical considerations on proposals by Turkey to slightly amend the standard eTIR declaration message, including a proposal to make the Harmonized System (HS) code mandatory. The Board took note that version 4.1a of the eTIR Reference Model, together with a summary of the activities and results of GE.1, as well as its recommendations on how to pursue the computerization process, would be submitted to WP.30 for consideration and, possibly, endorsement at its February 2015 session.

21. The Board took note of the progress in the UNECE/IRU eTIR Pilot Project, in which Iran (Islamic Republic of) and Turkey participate as pilot countries and was informed that on 26 September 2014 a first meeting had taken place in Antalya (Turkey) to discuss the preliminary steps of the project as well as a tentative time-schedule.

B. Central database for certificates of approval

Documentation: Informal document No. 34 (2014)

22. The Board welcomed Informal document No. 34 (2014), containing a proposal by the secretariat to integrate the central database for Certificates of Approval (CoA) into the current International TIR Data Bank (ITDB) framework. TIRExB confirmed that, for now, the electronic copy of the CoA would not replace the paper CoA, issued to the manufacturer, owner or operator of the vehicle and kept on the road vehicle (as stipulated by Annex 3, paragraph 3 of the Convention) but stressed that the main purpose of such an international database would be its contribution to the overall computerization of the TIR procedure. It requested the secretariat to issue a revised version of the document for its next session while continuing, at the same time, to work towards the integration of the CoA database into the ITDB.

VIII. Adaptation of the TIR procedure to modern business, logistics and transport requirements

A. Implementation of the intermodal aspects of the TIR procedure

23. The Board was informed of the ongoing cooperation between the secretariat and IRU to facilitate the use of the TIR Carnet for intermodal transport. Mrs. Kasko (IRU) informed the Board about a study “Economic and competitiveness gains from the adoption of best practices in intermodal maritime and road transport in the Americas: the TIR system as

an example of a best practice” which had concluded that the TIR system could be an efficient transit instrument for the region, published at the IRU website at: www.iru.org/cms-file-system-action/mix-publications/oasfinalreport.pdf.

24. TIRExB reconfirmed its mandate to the secretariat to continue cooperating with IRU, in particular to follow up on the outcome of the survey of 2013 and looked forward to receiving a document for consideration at one of its future sessions.

B. Authorized consignor and consignee

Documentation: Informal document No. 35 (2014); Informal document No. 29/Rev. 1 (2014)

25. The Board considered Informal document No. 35 (2014) by the secretariat, containing a proposal for a new Explanatory Note to Article 49 of the Convention. The Board generally supported the approach taken by the secretariat. At the same time, the Board requested the secretariat to see if an even more appropriate choice of words could be found. Mrs. Jelínková (European Commission) felt that the proposed text did not adequately address issues related to the filling in of the TIR Carnet and the application of stamps. Mrs. Somka (Ukraine) was of the opinion that, in view of the generic nature of the text, a reference to customs offices of exit/entry en route should be included.

26. As a step forward, TIRExB requested the secretariat to review the wording of the draft Explanatory Note in line with the Board’s above comments and to provide a detailed justification of the various aspects contained therein.

27. IRU offered to cooperate with the secretariat in collecting and exchanging information on known applications of the concepts of authorized consignor and consignee (such as in, for example, Belarus, Latvia, Poland, Republic of Moldova and Turkey) in preparation of the establishment of examples of best practice for such facilities.

28. The Board shortly touched upon Informal document No. 29/Rev.1 (2014) by the secretariat, containing an amended version of an example of best practice on authorized consignee in the European Union (EU). In view of the fact that the issue is currently under review in the EU as part of the preparation of the new Union Customs Code, the Board decided, for now, not to pursue the finalization of the example but to wait for the outcome of the review by the EU.

IX. Self-evaluation

Documentation: Informal document No. 36 (2014)

29. The Board considered Informal document No. 36 (2014) by the secretariat, containing a succinct summary of the main achievements of TIRExB during its 2013–2014 term of office. The Board agreed with the summary provided by the secretariat. However, in view of the substantial amount of time and effort dedicated to the Russian issue, the Board requested the secretariat to provide a more in-depth reflection of its considerations. In addition, the Board was of the view that under item (5) ‘promotion of the geographical expansion of the TIR Convention’, the various seminars organized or attended by the TIR secretariat should be included, as they contribute to expanding the use of the TIR system. In this context, Mrs. Dirlik (Turkey) reported about an extensive study visit of Chinese customs officials to Turkey on 23 and 24 September 2014. In addition to theoretical training and visits to various facilities, such as a logistics centre and a major border crossing, the prospective accession of China to the TIR Convention had been evoked at various instances.

30 The Board requested the secretariat to amend the document accordingly, to include the main findings of the current session, as well as to amend it with the outcome of a short self-evaluation survey among TIRExB members.

X. Activities of the secretariat

A. General activities of the secretariat

31. Under this agenda item, the secretariat reported on its latest activities with regard to the application of Annex 9, Part III of the Convention. The secretariat contacted the Office of Internal Oversight Services (OIOS), which had clarified that it will only audit IRU accounts based on its own criteria, viz. when(ever), based on its mandate, OIOS sees fit to do so. As a consequence, OIOS would not be available to serve as regular auditor of IRU as authorized international organization pursuant to the provisions of Annex 9, Part III. The secretariat informed the Board that OIOS had confirmed that the audited accounts, submitted by IRU, seemed, at face value, to be in conformity with the provisions of Annex 9, Part III.

32. The TIR secretariat informed the Board of the plans to organize, from 18 to 22 May 2015, at the Organization for Security and Cooperation in Europe (OSCE) Border Management Staff College in Dushanbe a regional TIR seminar for customs officials from, in particular, Afghanistan, Pakistan and Tajikistan. TIRExB members would also be invited.

B. United Nations Development Account

33. The Board took note of the progress in the United Nations Development Account project: “Strengthening the capacities of developing countries and countries with economies in transition to facilitate legitimate border crossing, regional cooperation and integration” for which, further to the finalization of the “gap analysis” for Georgia, Turkey had expressed its willingness to take part in an exchange of TIR related data with Georgia. The first interregional Expert Group meeting for this project would take place in Geneva on 8 December 2014.

XI. Other matters

Documentation: Informal document No. 37 (2014)

34. The Board was informed by IRU about problems faced by transporters from the Republic of Moldova when transiting the territory of Ukraine with wine-making materials and unbottled wine, with HS codes 22.04, 22.05 and 22.06. According to the TIR Convention, such goods can be transported under cover of a TIR Carnet. However, SFS of Ukraine requires the use of a national guarantee for such transports. The measure appears to be based on newly adopted provisions of the Customs Code of Ukraine. SFS has been repeatedly addressed about the issue, but, so far, without success.

35. TIRExB requested the secretariat to transmit the issue via Mr. Somka (Ukraine) to SFS, trusting that his intervention would facilitate finding a solution.

XII. Restriction in the distribution of documents

36. TIRExB decided to keep Informal documents No. 31, 35 and 36 (2014), issued with reference to the current session, restricted. In addition, TIRExB decided to lift the restricted status of Informal document No. 26/Rev.1 (2014).

XIII. Date and place of next session

37. TIRExB decided to hold its sixty-second session on 2 February 2015 in Geneva.
