
BEST PRACTICES – EXAMPLES TO BE PUBLISHED IN THE TIR HANDBOOK

Application of Article 38 of the Convention

Transmitted by the Government of Turkey

Turkey would like to contribute to the discussions on application of Article 38. We welcome the document ECE/TRANS/WP.30/2006/17/Rev.2 and we propose two insertions to the Annex II ``Example of Best Practice with Respect to the Application of Article 38`` of this document in order to guide more comprehensively to the Contracting Parties.

A. INTRODUCTORY REMARKS

2. In general, Article 38 should be considered as a tool to protect and prevent the TIR procedure from abuses, rather than as an automatic mechanism of sanction in any circumstances. The application of Article 38 should be justified according to the gravity of the infringement.

New text proposed to be inserted –

In this context, competent authorities should take into consideration necessity and proportionality criteria in each and every case.

This will include investigation of holder's and/or its shareholders degree of involvement to the infringement, possibility of driver's realizing the infringement on his own account, existence of any negligence on the part of the holder as to taking reasonable measures to prevent such infringements, former record of the holder as an international transporter etc.

Before taking a decision for "permanent" or "long term" exclusion of the holder, in order to prevent any unintended consequences, competent authorities are advised to consider outcomes of criminal proceedings related to the case,

Any exclusion longer than 6 months is advised to be considered as “long term exclusion” within the application of Article 38 of TIR Convention.

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B. EXAMPLE OF BEST PRACTICE

New item proposed to be inserted as new Para. 8:

8. If the holder applies for an appeal of the decision, competent authorities are advised to postpone the implementation of permanent “or” long term exclusion, until a decision of the appeal body on e.g. interim orders for rejection of injunction relief request/continuation of the procedure or final decision for the appeal, depending on national appeal procedure legislation.

During this period, it is under the discretion of competent authorities whether to apply other restrictive measures against the holder as a special case under Article 23 of TIR Convention.

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(Paragraph number 8 of document ECE/TRANS/WP.30/2006/17/Rev.2 becomes 9 and succeeding paragraphs follow.)
