



**ADMINISTRATIVE COMMITTEE
FOR THE TIR CONVENTION, 1975**

TIR Executive Board (TIRExB)

(Fortieth session, 15 and 16 June 2009,
agenda item 10)

NATIONAL CONTROL MEASURES

Note by the secretariat

A. INTRODUCTION

1. At its thirty-ninth session, the Board considered Informal Document No. 4 (2009) containing a letter by the European Commission together with the text of Commission Regulation (EC) 1192/2008. After extensive discussions, the Board invited its members, as well as the observer, to provide the secretariat with their considerations regarding the conformity of Regulation 1192/2008 with the provisions of the Convention, not later than 1 May 2009, with the aim to finalize discussions at the current session (TIRExB/REP/2009/39draft, paras 22-27).

2. On the basis of contributions received, the secretariat has prepared Informal document No. 13 (2009) for discussion by the Board.

B. CONTRIBUTIONS BY MEMBERS OF THE BOARD

3. Mr. Baghirov (Azerbaijan) is of the opinion that, whereas he can accept the new regulation and its provisions, the requirements set by the TIR Convention should be duly studied. At this moment, it is difficult for him to judge to real impact of the new regulation on national transport operators. In general, however, he thinks that transport operators are well capable to cope with the new regulation and that it should, in no way, create problems for the transport industry in general. At the same time, he thinks that the matter deserves further study. In his view, it is of the utmost importance that various means of training, presentations, workshops and other forms of information supply are used to inform the transport industry of any new development.

4. Mr. Makhovikov (Belarus) informs the Board that the analysis of the EU Regulation 1192/2008 did not reveal that it contains provisions which put an obstacle to the proper use of TIR Carnets in EU countries. The application of NCTS and the elimination of the return of Vouchers № 2 between the Customs offices of the Customs Administrations of the Community do not contradict the TIR Convention. The use of the electronic notifications will speed up the information exchange between Customs offices, will increase the efficiency of Customs control and will decrease the risks of commercial fraud occurring.

C. CONTRIBUTION BY THE OBSERVER

I. Introduction

5. A deep and detailed analysis has been carried out to identify the facilities, conditions, restrictions applied in the 27 EU Member States to allow the TIR Carnet holders to lodge their TIR electronic pre-declarations directly and without intermediaries or without recourse to third parties and without any additional cost or legal obligations. From this analysis, it appears that only one EU Member State allows, via a simple internet connection, to lodge an electronic TIR pre-declaration without any access restriction or specific conditions, except that the interface and electronic form to be filled-in are only available in the national language. In the remaining 26 EU Member States several conditions and restrictions hamper the ability of non-national residents to lodge their TIR electronic pre-declarations directly.

II. Access restrictions

6. With the exception of one EU Member State, all kinds of access restrictions are imposed such as:

- Mandatory registration in the country for electronic Customs declarations
- Prohibition to non-nationals and non-residents to lodge electronic Customs declarations
- Need to obtain a mandatory authorization from Customs to lodge electronic declarations
- Mandatory national electronic signature and digital certification
- Compulsory registration of TIR Carnet holders with the National Chamber of Commerce of the given EU Member State

7. Those registrations are accompanied by costs which the applicant has to pay in general on a yearly basis to get the necessary access, authorization, registration, or certification. In addition, in a number of Member States, charges and connectivity costs are imposed for each pre-declaration.

III. Language restrictions

8. A majority of the interfaces are only available in the national language of the concerned Customs Administration. Only one Member State allows English and Russian and only a handful provide English in addition to their national language.

IV. Data elements to be provided

9. The data elements required to lodge a TIR electronic pre-declaration vary on a country to country basis.

- Some EU Member States require 6 digit HS Code for the description of the goods, others require 8 digits.
- Some EU Member States require the identification code of the principal, some do not.
- Some EU Member States require Consignee / Consignor details, some do not.
- Some EU Member States require the declaration place, some do not.
- Some EU Member States require the place of loading, some do not.
- Etc.

10. Not only do the data elements vary from country to country, but also the order in which they are required varies from country to country.

V. Exchange of messages from Customs to declarants

11. No harmonization exists among EU Member States as far as acceptance and exchange of messages between Customs and declarants are concerned.

- Some EU Member States accept amendment messages, some do not.
- Some EU Member States accept cancellation messages, some do not.
- Some EU Member States send acceptance, confirmation, error messages, some do not.
- Etc.

VI. Format of the TIR electronic pre-declaration (EPD)

12. No harmonization exists among EU Member States as far as the format of the TIR electronic pre-declaration is concerned.

- Some EU Member States use XML, but no harmonization exists in the used XML format which varies on a country-to-country basis.
- Some EU Member States use EDIFACT format.

VII. Communication methods and protocols

13. No harmonization exists among EU Member States as far as communication methods and protocols are concerned for lodging a TIR electronic pre-declaration.

- Some EU Member States use X400
- Some EU Member States use FTP
- Some EU Member States use Web services.

14. Furthermore, some EU Member States allow direct communications between the declarant and the Customs system while others impose an intermediary service provider (with additional costs).

VIII. Conclusion

15. If the above-mentioned restrictions could be considered as acceptable in a strictly national environment where procedures are carried out only by national residents (such as for import / export procedures) in the framework of an international transit system governed by an international convention they cannot be justified:

- The direct legal link that exists between the TIR Carnet holder and Customs authorities as per the TIR Convention is broken due to the responsibility imposed on the holder to lodge his electronic declaration himself, due to the above-mentioned restrictions;
- The TIR Carnet holder is therefore obliged to use the services of third parties (forwarders, Customs brokers, ...);
- These third parties, whose role has now become fundamental in the transport process are involving themselves in the TIR liability chain where the TIR Convention does not provide for such intervention;
- In the majority of cases, the procedure for the electronic declaration takes place at the border (for movements into the European Union) which generates additional procedures/cost/waiting times, thereby fully contradicting the principles of the TIR Convention and of the UN International Convention on the Harmonization of Frontier Controls of Goods, 21 October 1982;
- The various restrictions imposed on non-national / EU residents creates a discrimination and an additional barrier to trade and transport which, in the future, could lead to retaliatory measures.

16. Furthermore, it is expected that the same restrictions will also apply when the summary Entry/Exit declarations become compulsory at the end of 2010. In that case, it is difficult to argue that the compulsory involvement of third parties in the electronic security declarations will contribute to reinforcing the security of the Global Supply Chain.

17. Finally, it is to be noted with regret that the European Commission introduced the new regulation without considering neither the existing international legal framework nor the consequences of the proposed legislation on non-EU residents.

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