

**Economic and Social Council**Distr.: General  
13 July 2011

Original: English

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**Economic Commission for Europe****Administrative Committee for the TIR Convention, 1975****Fifty-second session**

Geneva, 6 October 2011

Item 3 (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 forty-fifth session of the TIR Executive Board***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. TIR Executive Board (TIRExB) held its forty-fifth session on 31 January 2011 in Geneva.
2. The following members of TIRExB were present: Mr. S. Baghirov (Azerbaijan), Mrs. A. Dubielak (Poland), Mr. H. Köseoğlu (Turkey), Mr. H. Lindström (Finland), Mr. V. Luhovets (Ukraine), Mr. I. Makhovikov (Belarus), Mrs. H. Metaxa Mariatou (Greece) and Mr. V. Milošević (Serbia). Mrs. J. Popielek (European Commission) was excused.
3. The International Road Transport Union (IRU) attended the session as observer and was represented by Mr. Muratbek Azymbakiev.

**II. Adoption of the agenda**

*Documentation:* Informal document TIRExB/AGE/2011/45draft

4. TIRExB adopted the agenda of the session, as prepared by the secretariat, without amendments (Informal document TIRExB/AGE/2010/45draft).

### III. Election of the Chair

5. The Board recalled its earlier decision that, when a new composition of TIRExB is elected at the spring session of the TIR Administrative Committee (AC.2), the Chair elected last year should continue until the first meeting of the newly elected TIRExB (Informal document TIRExB/REP/2005/25, paragraph 5).

### IV. Adoption of the report of the forty-fourth session of the TIRExB

*Documentation:* Informal document TIRExB/REP/2010/44draft with comments)

6. TIRExB adopted the report of its forty-fourth session (Informal document TIRExB/REP/2010/44draft with comments), subject to the following changes:

**Page 3, paragraph 10, second line**

*For* Chapter 5 *read* Chapter 7

**Page 3, paragraph 10, title**

*After* Filling in of the TIR Carnet *add* a footnote to *read* In case of consecutive use of two TIR Carnets, please refer to paragraph 25 of this Chapter

**Page 3, paragraph 10 (a), (b) and (c)**

*For* or their agents *read* or their representatives

**Page 3, paragraph 10 (d)**

*For* or his agent *read* or his representative

### V. Best practices with regard to the use of the TIR Carnet

7. Subject to the changes mentioned in paragraph 6 of the present report, TIRExB confirmed the text of the best practice with regard to the use of the TIR Carnet and decided, for the time being, to close this agenda item.

### VI. Current status of the eTIR Project

8. The secretariat informed TIRExB of the latest developments in the eTIR Project. TIRExB took note that since the seventeenth session of the Informal Ad hoc Expert Group on Technical and Conceptual Aspects of Computerization (GE.1), which had taken place in Helsinki on 8 and 9 February 2010, intersessional work had taken place through the network of eTIR focal points and by means of working meetings with experts.

9. The Board was also informed that the eighteenth session of GE.1 will take place in Geneva on 9 and 10 March 2011 and that the annotated provisional agenda is available on the UNECE website in document ECE/TRANS/WP.30/GE.1/2011/1. It took note that the meeting will focus on the final updates to Chapter 3 of the eTIR Reference Model and work on the UN/EDIFACT and XML messages for Chapter 4 as well as the financial aspects of the establishment and maintenance of the eTIR international system. The latter will be supported by the experience-sharing of various representatives of the private sector and national Customs administrations in implementing and maintaining large scale Information Technologies (IT) systems.

10. Finally, it welcomed the willingness of IRU to reopen the discussion on the so called “IRU’s blocking factors”, which prevent IRU from supporting the eTIR Project, and took note that a meeting was planned with the UNECE secretariat on 15 February 2011. TIRExB concluded by reiterating the importance of the eTIR Project and supported the proposal from the secretariat to strengthen TIRExB's involvement in the computerization process as of its next term of office.

## **VII. Procedure prior to suspension of the guarantee on the territory of a Contracting Party**

*Documentation:* Informal document No. 1 (2011) (restricted)

11. TIRExB continued its discussions on this issue on the basis of a document submitted by IRU. The Board expressed its disappointment with the quality of the document, as it did not shed any light on the activities of the guarantee chain prior to the decision by the global insurer to suspend the guarantee on the territory of a Contracting Party. The Board pointed to the fact that, in accordance with Annex 9, Part I, article 1 (f) (v), national associations must cover the totality of their liabilities vis-à-vis Customs. However, in case it is correct that any payment by the national association requires the prior consent of the guarantee chain that the payment request is legitimate, then there seems to be a gap between the guarantee system stipulated by the TIR Convention and the international insurance system established by IRU and its affiliated national associations. Moreover, the international insurance system, under no circumstances, seems to provide TIR Carnet holders with any solace for the fact that they pay twice an insurance premium (once to the national insurer and once to the international insurer), as they are never considered beneficiary and will always remain liable, towards Customs as well as towards the guarantee chain. Finally, the Board pointed out that the document did not contain any information how to act in case of potential risk of suspension of the guarantee. Thus, the Board, once more, requested IRU to submit proposals how to streamline the dissemination of information (and to which parties) at a stage in the evolution of a potential crisis situation, where any consultation with or involvement of other parties might, potentially, contribute to the non-manifestation of the suspension of the guarantee on the territory of a Contracting Party.

12. In reply and by means of example how the guarantee chain went about in the past, in situations where the guarantee coverage on the territory of a single Contracting Party was under threat, IRU referred to the situation in 2006 leading up to the so-called Bulgarian crisis. It explained that the situation escalated within such a short time frame that it would not have been possible for IRU to duly consult with all parties involved in the TIR system before taking decisions. However, IRU had informed the United Nations Economic Commission for Europe (UNECE), but – because of the short time span – had not been in a position to await any reply before being forced to take further action and announce the suspension of the guarantee (which, ultimately, was withdrawn prior to the manifestation of the suspension).

13. With regard to the above issue, TIRExB was interested to receive more information on the correspondence between IRU and Zurich prior to the surfacing of the 275 alleged claims (including legal steps in accordance with the provisions of the TIR Convention and national legislation) as well as the communication by Zurich which had triggered the suspension of the guarantee in Bulgaria as of 15 July 2006. In addition, TIRExB was of the opinion that it was the task of IRU, as the international organization responsible for the effective organization and functioning of an international guarantee system under Article 6.2 *bis* of the Convention, to undertake all efforts to ensure uninterrupted guarantee coverage on the territory of a Contracting Party rather than just transmitting the suspension by Zurich to all parties involved in the TIR system.

14. In conclusion, TIRExB decided to continue its discussions at the next session, upon the understanding that it could rely on a written contribution from IRU.

## **VIII. Change of the global insurer of the TIR system from 1 January 2011**

*Documentation:* Informal document No. 2 (2011) (restricted)

15. TIRExB was informed by IRU that, early 2010, Zurich insurance had indicated that it was not interested in continuing the global insurance contract and was seeking termination, which, in effect, took place per 31 December 2010. Zurich had not provided any tangible reasons for the loss of interest. At a meeting with the UNECE secretariat in July 2010, IRU had already referred to the problems in its negotiations with Zurich (without, actually, mentioning that, at that time already, Zurich had terminated the contract in accordance with its Article 11, paragraph 2). Further to this, IRU had actively sought an alternative insurer, which it had found in AXA Assurances SA. The contract with AXA was signed on 18 November 2010. The contract is based on the same principles and contains, except for minor amendments, the same provisions as the contract with Zurich.

16. In a first reaction, TIRExB congratulated IRU with having found a new insurer. However, at the same time, the Board expressed its dissatisfaction with the fact that IRU had kept any information on the ongoing issue from the other parties involved in the TIR system, although, as the Board was informed, already at the beginning of 2010 Zurich had clearly expressed its wish to terminate the global insurance contract with IRU. This prolonged lack of transparency could have seriously jeopardized the continuity of the international guarantee chain, considering the risks at stake in case IRU would not have managed to find an alternative insurer.

17. The Board acknowledged that, *prima facie*, the new insurance contract seemed very similar to the old one. This, however, immediately led to the question why certain changes had been introduced. TIRExB raised the following issues:

(a) Cover page: why is IRU referred to as “implementing partner of the TIR system”? It seems premature to refer to oneself like that, considering that a request to that extent has been submitted by IRU to the TIR Administrative Committee (AC.2), where it is still under consideration.

(b) Article 2: Why is the list of beneficiary associations no longer attached to the contract?

(c) Article 3: Why has the term “TIR Carnets régulièrement créés par IRU [TIR Carnets lawfully created by IRU] been introduced?

(d) Article 5, paragraph 2: TIRExB established that, unfortunately, the position of Customs under the new insurance contract has not improved.

(e) Article 9, paragraph 5: TIRExB questioned the purpose of this provision, which undermines the position of national associations, considering that they have a legal obligation to pay a claim to Customs within a period of three months, in accordance with Article 12, paragraph 3 of the TIR Convention.

(f) Article 9, paragraph 11: Why has this clause changed to the effect that any non-observation by IRU of the provisions of the contract’s Article 9 will allow AXA to take recourse against all insured parties, including national associations?

18. TIRExB requested IRU to reply in writing to this non-exhaustive list of issues, pending further discussion by TIRExB at its next session.

## **IX. Invalidation of TIR Carnets issued to excluded TIR Carnet holders**

19. TIRExB continued its discussion of the issue on the basis of the report of its forty-fourth session (Informal document TIRExB/REP/2010/44, paras. 21–24). It took note of the information by IRU that TIR Carnets are not issued to TIR Carnet holders in ‘batches’ as described in paragraph 23 of the said report, but rather in ‘quota’ of maximally two TIR Carnets per vehicle, taking also into account certain performance criteria.

20. TIRExB questioned the obligation for Customs to systematically check the validity of a TIR Carnet at the Customs office of departure for other reasons than to establish that its final date has not yet expired, as stipulated by Article 9 of the Convention. There is no legal obligation to check the validity of the TIR Carnet at Customs offices en route, nor is this a feasible option in practice. At the same time, TIRExB confirmed that it is also in the interest of Customs to know if a TIR Carnet, prior to acceptance by the Customs office of departure, has been invalidated by the guarantee chain. In this context, TIRExB recalled that the issue will be solved with the establishment of the eTIR international system, which, inter alia, provides for the centralized management by Customs of data on guarantees.

21. In conclusion, TIRExB established that there seems to be a divergence between the legal provisions of Article 3, 6 and 9 of the Convention, which clearly stipulate that TIR Carnets, upon issuance by national associations, bear a valid guarantee provided they are accepted by Customs before or on the final date of validity set by the association and the practice, where Customs agree to take account of information distributed by IRU through its CUTEWISE system on invalid and invalidated TIR Carnets, in as far as such information has been duly transmitted to the Customs authorities and been properly disseminated at the national level.

## **X. Problems encountered by TIR Carnet holders**

22. Mrs. Dubielak (Poland) informed the Board of problems faced by Polish operators on the territory of the new Customs union between Belarus, Kazakhstan and Russian Federation. Upon entry in Belarus, operators need to submit their TIR declaration in electronic format. When entering the Russian Federation, the operator has to repeat this procedure against a fee of RUB 1000 (around 25 €), although Russian Customs receive the TIR declarations in electronic format from Belarus Customs. TIRExB invited Mrs. Dubielak to raise the issue at the forthcoming meeting of the Working Party on Customs Questions affecting Transport (WP.30).

23. The TIR secretariat informed the Board that, so far, it had not received information from the competent authorities about changes in the application of the TIR procedure on the territory of the Customs union.

## **XI. WCO e-learning course on TIR**

*Documentation:* Informal document No. 3 (2011) (restricted)

24. TIRExB thanked the TIR secretariat for compiling all comments and instructions by individual TIRExB members into a consolidated and well-structured document and adopted the document, without further amendments, including the draft letter to be addressed to the Secretary-General of the World Customs Organization (WCO).

25. In conclusion, TIRExB expressed the view that;

(a) the course seems to be mainly aimed at the private sector and requires numerous amendments before it can become really useful for Customs officials. For

example, a number of TIR Customs issues, such as, in particular, the approval of vehicles, are not addressed by the course.

(b) the course does not always follow the provisions, principles or terminology of the TIR Convention.

(c) certain parts seem to be more aimed at promoting IRU and its IT tools, such as SafeTIR or TIR-Electronic Pre Declaration (EPD), rather than reflecting the official WCO position (as in the case, for example, of the module on the WCO Safe Framework of Standards).

## **XII. Self-evaluation**

*Documentation:* Informal document No. 18/Rev.1 (2010) (restricted)

26. TIRExB reviewed and adopted Informal document No. 18/Rev.1 (2010), prepared by the secretariat and containing the main accomplishments of the Board against each work programme item. In addition, further to a request by AC.2, TIRExB agreed on a qualitative assessment of its achievements, resulting in the following issues for consideration by future TIRExB's:

(a) Considering the practical need for guidance on issues regarding the application of the TIR Convention, future TIRExB's are recommended to dedicate a substantial part of their activities to the development of best practices.

(b) Future TIRExB's are recommended to make maximum use of the Board's geographical, economic and political diversity when analysing issues brought to the Board's attention.

(c) In order to be in a position to dedicate more time and effort to both the legal analysis and the practical implications of issues and the formulation of corresponding considerations, future TIRExB's are recommended to convene, at least once a year, a three day meeting, or, alternatively, increase the number of meetings per year.

(d) Considering that the TIR procedure does not function in isolation but is part of a chain of Customs procedures, it is recommended that future TIRExB's also study possible repercussions on preceding or consecutive Customs procedures before finalizing its discussion of issues, where appropriate.

(e) In order to improve the functioning of TIRExB and the impact of its considerations, it is recommended that future TIRExB's ensure full and equal engagement of all individual TIRExB members in its discussions and, at the same time, stress the importance of qualitative and constructive contributions by the observer.

(f) In view of its relevance for the future of the TIR system, it is recommended that AC.2 provides a clear mandate to TIRExB which will allow it to reinforce its role in the process of computerization of the TIR procedure and to dedicate more time and resources towards the establishment of the eTIR international system.

(g) TIRExB, during its 2011–2012 mandate, is invited to address the following issues:

- New survey on Customs claims (2011);
- New survey on the price of TIR Carnets (2012);
- Review of the best practices on enquiry procedures (Chapter 5.4 of the TIR Handbook);
- Analyse problems faced by Customs authorities in recovering claims for payment from national associations.

27. TIRExB requested the secretariat to transmit both the review of its programme of work and the recommendations from its self-evaluation to AC.2 for information and, possibly, further action when discussing the programme of work of the 2011–2012 TIRExB.

### **XIII. Problems raised by the Greek national association**

*Documentation:* Informal document No. 4 (2011) (restricted)

28. TIRExB considered Informal document No. 4 (2011), submitted by IRU and outlining the following problems raised by the Greek national association (OFAE):

(a) The financial constraints imposed by the Greek authorities on the national association;

(b) The long decision-making process within the Greek administrative system.

29. In her reply, Mrs. Metaxa Mariatou (Greece) stressed that she considered these issues rather as problems raised by OFAE than as problems between OFAE and the Greek authorities. She explained that the relationship between the Greek authorities and OFAE had been governed for more than thirty years by the same conditions and requirements and had always met with the full satisfaction and approval of OFAE. She referred to the provisions of Annex 9, Part I, Article 4 which authorize Contracting Parties to impose additional conditions and requirements to those contained in Annex 9, Part I. Thus, considering that this is a matter of national competence, she felt there was no requirement for TIRExB to intervene. Furthermore, she mentioned that the price of TIR Carnets in Greece has always been subject to a decision by the Ministry of Economy and Finance. The recent intervention by the Ministry was due to the fact that, contrary to a decision taken by the IRU competent bodies, OFAE had not introduced the so-called “4 volets pilot” TIR Carnets for its operators. Finally, she expressed the view that it does not seem appropriate for OFAE and IRU to involve TIRExB in problems related to the application of TIR-EPD in Greece, as this is a matter of national competence.

30. TIRExB took note of Informal document No. 4 (2011) and the statement by Mrs. Metaxa Mariatou (Greece).

### **XIV. Activities of the secretariat**

31. The Board noted, with satisfaction, the organization of a regional TIRExB seminar in Sarajevo (Bosnia and Herzegovina) on 29 and 30 March 2011 and encouraged members to participate.

### **XV. Restriction in the distribution of documents**

32. TIRExB decided that the distribution of the following documents, issued for the present session, should be restricted: Informal document No. 18/Rev.1 (2010) and Informal documents No. 1, 2, 3 and 4 (2011).

### **XVI. Date and place of next session**

33. In view of the expiry of the mandate of its present composition, TIRExB decided not to fix a date for its next session and accepted the offer of the secretariat to organize a short

TIRExB meeting, immediately following the election of the new TIRExB on 3 February 2011 in which to decide on date and venue for the Board's next session.<sup>1</sup>

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<sup>1</sup> At its first, informal session on 3 February 2011, TIRExB decided to hold its forty-sixth session on 5 and 6 April 2011, in Geneva