

TIR EXECUTIVE BOARD (TIRExB)
COMMISSION DE CONTROLE TIR (TIRExB)
ИСПОЛНИТЕЛЬНЫЙ СОВЕТ МДП (ИСМДП)



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

TIR Executive Board (TIRExB)

(Thirty-sixth session, 14-15 May 2008,
agenda item 5)

MONITORING THE PRICE OF TIR CARNETS

Transmitted by the European Commission

Note: The secretariat reproduces below a letter transmitted by the European Commission, containing the results of a legal study on the issue of monitoring the price of TIR Carnets.



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Customs Policy
Customs Procedures

Brussels, 18-02-2008
TAXUD/C4 JP/mc **D(2008)21051**

Mrs. Eva Molnar
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United Nations Economic
Commission for Europe (UNECE)
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Subject: The powers of the TIR Executive Board to collect and the obligation of the International Road Transport Union to provide information regarding the price of TIR carnets.

Dear Madam,

The TIR Executive Board has been extensively discussing the issue of its right to monitor the price of TIR Carnets and the obligation of the international organization to provide this information.

DG TAXUD of the European Commission after analyzing the problem in detail would like to share its opinion on this extremely important issue.

In order to answer the question on the provision of the price of TIR carnets, it is necessary to examine three distinct issues:

- first, is the TIRExB empowered under the provisions of the TIR Convention to collect information regarding the ex-national association prices of TIR carnets? If so,
- second, is the IRU in principle under a legal obligation to provide such information? If so,
- would the provision of such information entail a violation of Swiss law (in particular, on the protection of commercial secrets)?

Before examining those issues, it should be noted that:

- The IRU is a legal person incorporated under Swiss law which has been authorized, as reflected in an agreement between the IRU and UNECE, to take on responsibility for the effective organization and functioning of an international guarantee system.

- The final (ex-national association) price of a TIR carnet, which is paid by transporters, consists of (a) the price charged by the IRU (covering, mainly, printing and distributing the document) to a national association in the contracting party in question (hereafter the "ex-IRU price") and (b) an amount charged by a national association (covering, mainly, insurance premium and administration costs).

With respect, first, to the powers of the TIRExB to collect information on the ex-national association price of TIR carnets, it is sufficient to refer to Article 10 of Annex 8 of the TIR Convention, according to which the TIRExB shall:

"- supervise the application of the Convention, including the operation of the guarantee system, and fulfill the functions entrusted to it by the Administrative Committee,

- monitor the price of TIR Carnets".

The phrase "monitor the price of TIR Carnets" covers, according to its natural meaning, the collection of information regarding ex-IRU as well as ex-national association prices. There is nothing in other provisions of the TIR Convention, or in the negotiating history of the TIR Convention to contradict that interpretation.

It follows that the TIR Executive Board is empowered to collect such information.

With respect, secondly, to the obligations of the IRU, reference must be made to the provisions in the above-mentioned agreement between the IRU and UNECE.

It appears that those provisions must be interpreted in accordance with Swiss law. Article 7.2 of the Agreement refers to the UNCITRAL Arbitration Rules which refer to general conflicts of law rules. According to those rules, a contract is governed by the law of the country to which it has the closest link. Since the IRU is the Swiss legal person, the UN ECE administration is situated in Switzerland, and the Agreement was signed in Switzerland, it arguably has closer links with Switzerland than any other country.

With respect to the Agreement the following comments may be made.

The preamble to the Agreement states, *inter alia*:

"... Whereas in accordance with Explanatory Note 0.6.2bis-2 of the TIR Convention, the authorization granted in accordance with Article 6.2bis shall be reflected in a written

Agreement between the UNECE and the international organization. The Agreement shall stipulate that the international organization shall fulfill the relevant provisions of the Convention, shall respect the competencies of the Contracting Parties to the Convention and shall comply with the decisions of the Administrative Committee and the requests of the TIR Executive Board. By signing the Agreement, the international organization confirms that it accepts the responsibilities imposed by the authorization.

The operative provisions of the Agreement provide, *inter alia*:

" Without prejudice to the provisions of the TIR Convention, in particular to Article 6.2bis and Explanatory Note 0.6.2bis-2 thereto, the IRU, taking into account and in the light of the above preambles, accepts to:

Provide, at the request of the TIRExB, full and complete information on the functioning of the TIR system, provided such request does not infringe legislation concerning confidentiality and/or data protection; in case such information cannot be given, IRU will specify the legal provisions or other reasons prohibiting the exchange of information;

Provide the TIRExB with details of the distribution price by the IRU of each type of TIR Carnet; ..."

It's clear from the second bullet-point cited above that the IRU is obliged, at least, to provide information regarding the IRU price of TIR carnets, and it is understood that the IRU accepts to provide such information to the TIRExB.

However, the obligations of the IRU go further. Under the first bullet-point cited above, the IRU is obliged to "provide, at the request of the TIRExB, full and complete information on the functioning of the TIR system". That wording may reasonably be interpreted as covering requests for formation regarding ex-national association prices, in selected or indeed all Countries Parties to the TIR Convention, since these (final) prices may be regarded as an integral and certainly important aspect of the "functioning" of the TIR system.

Contrary to what has been argued in the legal opinion submitted by the IRU, it cannot be inferred from the second bullet-point cited above that the IRU is not obliged to provide information on ex-national association prices. All the bullet-points are explicitly stated to be "without prejudice to" Explanatory Note 0.6.2bis-2 to the TIR Convention according to which "The authorization granted in accordance with Article 6.2bis shall stipulate that the International Organization shall comply with the requests of the TIR Executive Board." Moreover, the obligation to comply with the requests of the TIR Executive Board is mentioned in the preamble to the Agreement itself.

Based on Explanatory Note 0.6.2bis-2 and the preamble to the Agreement, it may thus be argued that the IRU is obliged to (a) provide information about ex-IRU prices *at its own*

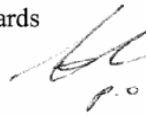
initiative and (b) provide information about ex-national association prices at the request of the TIRExB.

On the third point it should be recalled that, according to the second bullet point of the Agreement cited above, the IRU is not obliged to meet requests for information by the TIRExB if the IRU would thereby "infringe legislation concerning confidentiality and/or data protection".

However, national associations' prices of TIR carnets are publicly available information (by definition, the prices are disclosed to transporters when they purchase the carnets) and such prices are therefore very unlikely to be protected by (Swiss) legislation concerning confidentiality and/or data protection.

On the basis of the above, we believe that the TIRExB is empowered under the provisions of the TIR Convention to collect information regarding the national association prices of TIR carnets and the international organization is obliged to provide this information.

Regards



Michael Lux