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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-sixth 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. The TIR Executive Board (TIRExB) held its forty-sixth session on 5 and 6 April 2011 in Geneva.
2. The following members of TIRExB were present: Mrs. A. Dubielak (Poland), Mr. H. Köseoğlu (Turkey), Mrs. L. Korshunova (Russian Federation), Mr. H. Lindström (Finland), Mr. V. Luhovets (Ukraine), , Mr. I. Makhovikov (Belarus), Mrs. M. Manta (European Commission), Mrs. H. Metaxa Mariatou (Greece) and Mr. V. Milošević (Serbia).
3. The International Road Transport Union (IRU) attended the session as observer and was represented by Mr. Muratbek Azymbakiev.

## II. Statement by Ms. E. Molnar, Director Transport Division, United Nations Economic Commission for Europe

4. Ms. Molnar welcomed the new composition of TIRExB and stressed the importance of the Board for the long-term continuity and stability of the TIR Convention. She praised the Board's achievements over the years, but, at the same time, recommended to continue looking for further improvement of efficiency and transparency, stressing the need to make

the activities and achievements of the Board more visible to all stakeholders and the general public. Referring to the programme of work 2011-2012, she underlined the importance of increasing the Board's contribution to the computerization of the TIR procedure at this critical stage of the eTIR Project, thus ensuring its speedy finalization.

### **III. Adoption of the agenda**

*Documentation:* Informal document TIRExB/AGE/2011/46draft

5. TIRExB adopted the agenda of the session, as prepared by the secretariat, with the inclusion of the following issues:

Under agenda item 13 "Other matters:

(a) Application of the TIR Convention on the territory of the Customs Union of Belarus, Kazakhstan and Russian Federation;

(b) Letter from the Association of the Bulgarian Enterprises for International Road Transport and the Roads (AEBTRI).

### **IV. Election of a Chair**

6. The Board recalled that, in accordance with its Rules of Procedure "a Chair shall be elected at the first meeting each year, who shall hold office until his/her successor is elected. He/she shall be eligible for re-election" and recalled that, at its constituting informal session on 3 February 2011, it had elected Mrs. Helen Metaxa Mariatou (Greece) to chair the Board's meetings in 2011.

### **V. Adoption of the report of the forty-fifth session of the TIRExB**

*Documentation:* Informal document TIRExB/REP/2011/45draft with comments

7. TIRExB adopted the report of its forty-fifth session (Informal document TIRExB/REP/2011/45draft with comments), subject to the following changes:

#### **Page 5, paragraph 22, line 5**

*For* have direct access to the Belarus Customs data system *read* receive the TIR declarations in electronic format from Belarus Customs

### **VI. Programme of work for 2011–2012**

8. The Board extensively discussed its programme of work for the years 2011–2012. The outcome of the discussions is attached in Annex<sup>1</sup> to the report. The Board requested the secretariat to submit the programme of work to the TIR Administrative Committee, for approval at its autumn 2011 session.

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<sup>1</sup> Annex is issued separately as document ECE/TRANS/WP.30/AC.2/2011/9 and not reproduced in the present document.

## VII. Current status of the eTIR Project

*Documentation:* ECE/TRANS/WP.30/GE.1/2011/6

9. The secretariat informed TIRExB of the latest developments in the eTIR Project. TIRExB took note of the outcome of the eighteenth session of the Informal Ad hoc Expert Group on Technical and Conceptual Aspects of Computerization (GE.1), which took place in Geneva on 9 and 10 March 2011. The Board welcomed the information provided and reiterated its willingness to contribute further to the activities of the GE.1. The TIRExB was particularly interested in the discussions on “eTIR in a Single Window environment” and on “dematerialization of documents attached to the TIR Carnet” that will take place at the next session of the GE.1 and requested the secretariat to be kept informed of any development in these areas. The report of the session is contained in document ECE/TRANS/WP.30/GE.1/2011/6.

10. TIRExB recalled that, within the framework of its activities, it had renewed its engagement to encourage Information Technologies (IT) experts to participate, as national representatives, in the activities undertaken by the GE.1 and called upon individual TIRExB members to actively seek participation of representatives from their respective countries in future GE.1 sessions. Finally, TIRExB members, who had not yet done so, were requested to ascertain that their country would nominate a national eTIR Focal point.

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

*Documentation:* Informal document No. 6 (2011) (restricted)

11. TIRExB expressed its appreciation of Informal document No. 6 (2011), transmitted by IRU. In the document, IRU provides extensive information on the background of and information flows around the crisis situation, which emerged in Bulgaria in 2006 as a consequence of increased risk for the international guarantee system. TIRExB confirmed that it did not intend to analyse any particular crisis situation (although there seems to be some sort of recurrence in them, with intervals of three or four years), but that its focus was to find, in cooperation with IRU, a mechanism ensuring that the various TIR bodies, and in particular TIRExB, are informed at the first opportunity by the guarantee chain, once it has detected first signs of a possible anomaly in the TIR system. But based on the given example, the Board noted the following issues of relevance for its more generic discussions:

(a) Emergency situation: although the information on the approaching crisis was presented within a short time-frame of about one month in 2006, the infringements concerned dated back several years (2002–2003). As a consequence, the statement that the ensuing claims were illegitimate did not manifest itself at a specific, isolated, point in time, but must have developed itself also in the course of a given period. Thus, the time span over which the whole issue developed itself cast doubts over the emergence of an ‘essential aggravation of risk’, which would allow the international insurers in their relation to their beneficiaries to cancel all or part of the global insurance contract, pursuant to Article 30 of the Swiss Federal Law on insurance contracts. In addition, information is missing which would clarify that the situation was so critical that no further delay could be tolerated and that, thus, the situation could be qualified as constituting an ‘emergency’.

(b) Insurance vs. guarantee: the situation as described by IRU refers to developments in the international insurance system, which has been established by IRU, national associations and the international insurer to back up the national association’s

liabilities, as required by Annex 9, Part 1 (f) (v). Thus, the suspension of the insurance (on the territory of a given country) is a matter which only regards the parties to the insurance contract and, as such, has no direct legal consequences for the position of Contracting Parties, whose position is governed by the provisions of the TIR Convention. At the same time, the situation in 2006 made clear, once more, that the contractual relations between the private partners in the international insurance contract influence the application of the legal provisions of the TIR Convention.

(c) Late submission of info to UNECE: IRU did inform UNECE, but the first communication dated back to one month prior to the announced suspension of the insurance coverage on the territory of the country concerned. It should, however, be noted that none of the official TIR bodies (AC.2 or TIRExB) were formally notified, neither by IRU, nor by the concerned national association or national authorities. At the same time, it should be noted that UNECE has no legal mandate to intervene in such situations, whereas the official TIR bodies would have such mandate, within the framework of their tasks to monitor the application of the Convention (Annex 8, Articles 1bis and 10 (a)).

12. In conclusion, TIRExB established that

(a) Informal document No. 6 (2011) made clear that UNECE had been informed, but only one month prior to the (near) suspension of the insurance coverage in a given country. This means that the various time-limits, as contained in legal instruments provided for by the TIR Convention (the agreement between the national competent authorities and the national association – see Annex 9, paragraph 1 (f) (v) – in combination with the contract between the IRU and the international global insurers – see comment to Annex 9, paragraph 1 (f) (v) – had not been respected.

(b) It should be clear that, unless raised within the context of legal proceedings, only the TIR bodies have the competence to judge the application and interpretation of provisions and procedures of the TIR Convention. Such function cannot be performed by any other party (such as, in this case, the international insurer).

(c) TIRExB, within its activity to assess the suspension of the guarantee coverage in the territory of a given country, focuses its discussions on the obligation of national associations to provide guarantee for all its liabilities, in accordance with the provisions of Annex 9, Part 1 (f) (iv). Aspects related to the functioning of the underlying insurance system at national and international level are welcome and can be analysed for their relevance, but, at no time, can they take precedence over the application of the legal provisions (including time limits) of the TIR Convention.

(d) TIRExB remains interested in finding a mechanism how the various bodies of the TIR Convention (first and foremost TIRExB) can be informed in time, meaning as of the first occasion where IRU or the guarantee chain experiences any anomaly in the TIR system.

13. As a next step, TIRExB requested the secretariat to submit, for discussion at the next session, proposals how to find a mechanism, based on the guarantee aspects contained in all previous documents on the issue, leaving aside the private law aspects of insurance. The document should, inter alia, provide considerations with regard to the questions raised in Part IV of Informal document No. 1 (2010).

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

*Documentation:* Informal document No. 7 (2011) (restricted)

14. TIRExB thanked IRU for the submission of Informal document No. 7 (2011), in which IRU replied to a number of questions formulated by TIRExB (See TIRExB/REP/2011/45, paragraph 17). TIRExB took note of the fact that the use of the term “implementing partner” in reference to IRU as one of the contractual partners in the contract with AXA only regarded the parties in the private contract and remains without relevance for third parties. TIRExB requested IRU to submit a list of beneficiary associations (including modifications thereto) to TIRExB as part of the obligation in accordance with Annex 9, Part 1 (f) (v) to deposit a certified copy of the insurance contract with TIRExB. Finally, TIRExB would appreciate if, in case of future prolongation of the contract, the draft text could be presented to TIRExB at an appropriate moment, when there would still be room for its considerations to be taken into account.

15. TIRExB closed the agenda-item for now but decided to revert to it in future, when the occasion would arise.

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

16. In conclusion of the issue, TIRExB confirmed the findings at its forty-fifth session 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 (See TIRExB/REP/2011/paragraph 21).

## **XI. World Customs Organisation e-learning course on TIR**

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

17. The secretariat informed TIRExB that, as requested, the Director of the UNECE Transport Division had sent a letter containing the findings of TIRExB on the World Customs Organization (WCO) e-learning course on TIR to the Secretary-General of WCO on 16 February 2011. TIRExB decided to revert to this issue, once the secretariat would have received a reply from WCO.

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

*Documentation:* Informal document No. 9 (2011) (restricted)

18. TIRExB considered Informal document No. 9 (2011), transmitted by IRU and providing additional information to its Informal document No. 4 (2011) on certain problems raised by the Greek national association (OFAE):

- (a) The fact that Greek authorities set the price of TIR Carnets;
- (b) The conditions and requirements of the agreement between Greek Customs authorities and OFAE, obliging OFAE to annually deposit 20 per cent of its revenue on TIR Carnets with the Greek government, in addition to the guarantee of € 600,000 deposited with the Greek Ministry of Finance.

19. With reference to her statement at the forty-fifth session of the Board (TIRExB/REP.2011/45, paragraph 29), Mrs. Metaxa Mariatou (Greece) reminded the Board of the long-standing contractual relations between OFAE and the Greek authorities, dating back to 1980 when a first contract was concluded, which has been renewed twice since then. All the problems now raised by OFAE have been in the contract since its inception and have been fully accepted by OFAE. In addition, she explained that the conditions and requirements in the contract have been introduced in order to maintain a healthy financial position of OFAE at all times and with the aim to ensuring an equitable use of TIR Carnets for authorized TIR Carnet holders in Greece. Furthermore, she clarified that the deposited amount did not only cover the liability for guarantees under the TIR system, but also included guarantees issued by OFAE under the Community and Common Transit system. Finally, she referred once more 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.

20. Other TIRExB members confirmed that also in their countries there was, or had existed, the requirement for national associations to deposit an amount of money as security for their liabilities in order to become authorized by the national competent authorities. In general, the members agreed that the proceedings in Greece do not seem to be in contradiction with the provisions of the TIR Convention.

21. IRU confirmed that it had received information from OFAE that, since recently, the issue seemed to be moving and that there was constructive cooperation from the side of the Greek Ministry of Finance to settle the problems.

22. Further to this latest news, TIRExB decided to close the agenda-item.

### **XIII. Monitoring the functioning of the TIR guarantee system**

*Documentation:* Informal document No. 8 (2011)

23. TIRExB considered Informal document No. 8 (2011), submitted by the secretariat and containing a draft survey on Customs claims, covering the years 2007–2010. For the sake of facilitating the organization by the secretariat and the processing of the replies by Customs authorities and in order to achieve a maximum opportunity to compare the results with those of previous surveys, TIRExB requested the secretariat to repeat the survey, including questions on the guarantee level at national level, and prepare it for distribution, possibly before summer 2011. In any case, the deadline for replies should not be shorter than three months. As minor suggestions, TIRExB felt that the US dollar should no longer be qualified as ‘preferred’ currency to provide data and requested the secretariat to add the euro to the list. Finally, TIRExB asked the secretariat to have a close look at question B7 (“In 2010, what was the percentage of TIR operations where the amount of Customs duties and taxes exceeded the established guarantee level?”) to see if, either, its formulation could be improved (number of cases seems more relevant than percentage) or the question could be deleted all together.

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

24. The Board was informed of the organization of a regional TIRExB seminar in Sarajevo (Bosnia and Herzegovina) on 29 and 30 March 2011. It noted with pleasure that the seminar had attracted a wide interest, including the Chair and another member of TIRExB, as well as the Chair of the TIR Administrative Committee (AC.2) and various delegations from outside the Balkan region.

25. TIRExB took particular note that part of the seminar had been dedicated to issues specific for the region, including the technical approval and inspection of vehicles under the TIR procedure. A presentation to that extent had been given by the well-known technical expert, Mr. Bent Rasmussen of the Danish Customs authorities, followed by a practical demonstration during the technical visit to a Customs terminal in Sarajevo, which had been organized as part of the seminar. TIRExB stressed the importance of continuing technical capacity building. The Board noted with satisfaction that the technical standard of Turkish registered vehicles, which very often used to show technical defects in the past, has greatly improved over the last few years, due to strict monitoring by both the Customs authorities and the Turkish transport industry.

26. TIRExB took note that in the week of 21–25 March 2011, the TIR secretariat had provided training to Customs officials, border police and border guards from the region, attending the Organization for Security and Co-operation in Europe (OSCE) Border Management Staff College in Dushanbe, Tajikistan as part of UNECE's commitment to OSCE to regularly participate in activities of the college.

## **XV. Other matters**

### **A. Application of the TIR Convention on the territory of the Customs Union of Belarus, Kazakhstan and the Russian Federation**

*Documentation:* Informal document No. 10 (2011)

27. TIRExB took note of Informal document No. 10 (2011), submitted by IRU and containing copies of letters from the national associations of Latvia and Lithuania, asking for clarification of the treatment of TIR Carnets on the territory of the Customs Union.

28. In her statement, Mrs. Korshunova (Russian Federation), informed the Board that letters of reply had been sent to both associations. She clarified that upon entry in the Customs Union through Belarus a first Voucher No. 1 is removed from the TIR Carnet. Upon entry into the Russian Federation a second Voucher No. 1 is removed. Upon passage of the Russian/Kazakh border, the TIR Carnet remains untouched. Thus, the two concerned Vouchers No. 2 remain in the TIR Carnet until the final Customs office of destination in Kazakhstan, where they are taken out of the TIR Carnet in order to terminate both TIR operations. She further informed that, as of 1 July 2011, the checkpoints at the internal Customs borders will be discontinued. As of that moment, only one set of Vouchers No. 1 and 2 will be required for any transport from or to the Customs Union. Mr. Makhovikov (Belarus) confirmed this practice. The secretariat reminded the TIRExB members of the member States of the Customs Union to transmit national control measures to TIRExB for examination and international control measures to AC.2 for adoption. Both confirmed that this would be done and that they would remain available to provide more information.

29. Until further notice, TIRExB decided not to include this issue in future TIRExB agendas.

### **B. Letter by AEBTRI**

*Documentation:* Letter by the Association of the Bulgarian Enterprises for International Road Transport and the Roads (AEBTRI)

30. TIRExB shortly discussed a letter by AEBTRI with numerous annexes, in which it asked for the Board's attention with regard to – in a nutshell – the following three issues:

(a) The reception by AEBTRI of notifications that Turkish authorities have decided to exclude several Bulgarian holders after the decision had entered into force and the absence of any information on possible appeal procedures, as recommended by the example of best practice on the application of Article 38 of the Convention;

(b) The fact that in one situation a Bulgarian company had been excluded from the TIR procedure, although no infringement under the TIR procedure had been committed;

(c) The situation where vehicles from company B were detained in Turkey, although the company was not excluded, because the vehicles used had been officially hired from company A, which was excluded.

31. In a preliminary reply, Mr. Köseoğlu (Turkey) informed the Board that Turkish authorities take the application of Article 38 and the corresponding example of best practices extremely serious. The decision to apply Article 38 is taken on a case by case basis, taking all relevant information into careful consideration. In general, it should be noted, that in the past period there has been an increasing tendency with serious offences by Bulgarian holders and, as a precautionary measure to avoid this from continuing, Turkish authorities have taken a number of decisions to exclude Bulgarian holders for a period of 60 days. The Turkish authorities work closely together with their Bulgarian counterparts on this issue.

32. With regard to the specific issues raised, he informed the Board that (i) notifications of exclusion were sent to holders without delay, by the fastest means possible and that these letters did contain information on applicable appeal procedures.; (ii) exclusions in accordance with Article 38 can be imposed when serious offences have been committed against Customs law or regulations applicable to the international transport of goods and, thus, the measure is not limited to offences under the TIR procedure only; (iii) it had been established that company A had transferred the vehicles to company B for the purpose of by-passing the exclusion.

33. TIRExB thanked Mr. Köseoğlu for his preliminary but extensive reply, recognizing that not all information was available to consider the issues in full. Thus, TIRExB requested the secretariat to send a letter to AEBTRI acknowledging receipt of the letter and asking, at the same time, more information on the cases, in particular with regard to the correspondence addressed by the Turkish authorities to the excluded holders, as well as to send a letter to the Turkish authorities, passing on the file and, equally, asking for clarifying information on the situation. TIRExB decided to revert to the issue once more information would be received.

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

34. TIRExB decided that the distribution of the following documents, issued for the present session, should be restricted: Informal document 6, 7 and 9 (2011).

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

35. TIRExB decided to hold its forty-seventh session on Monday 6 June 2011, in conjunction with the 128th session of the Working Party on Customs Questions affecting Transport (WP.30).