

BORDER CROSSING FACILITATION

SUMMARY OF REPLIES TO THE TIR QUESTIONNAIRE

Note by the Secretariat

A. INTRODUCTION

1. The ITC Bureau, at its meeting on 21 February 2003, requested the secretariat, in cooperation with the Chairman of WP.30, to prepare a questionnaire to be sent to all Contracting Parties to the TIR Convention. On the basis of the replies to the questionnaire the secretariat was requested to prepare a note containing, *inter alia*, information about 7 specific issues (TRANS/BUR.2003/1, 5(a)).

B. SUMMARY OF REPLIES TO THE QUESTIONNAIRE

2. On 15 April 2003 the secretariat sent the questionnaire to all 65 Contracting Parties of the TIR Convention.

3. By 25 June 2003 the secretariat had received 41 replies to the questionnaire. The questions contained in the questionnaire and summaries of the replies received by the secretariat from Contracting Parties to the TIR Convention are reproduced in the table below.

1. Which official language version of the TIR Convention, 1975, (English, French, Russian) was used in your country when translating the Convention into your national language?

	<u>English</u>	<u>French</u>	<u>Russian</u>
• Body of the Convention	28	8	6
• Annexes to the Convention	24	8	6
• Amendment 19, Phase I of the TIR revision process	24	7	5
• Amendment 21, Phase II of the TIR revision process	25	6	5

2. Given the fact that there exist three official language versions (English, French and Russian) of the TIR Convention, have difficulties been experienced in your country

a. when translating the text of the Convention, and its annexes, into your national language?

Yes 6 No 34

If yes, please indicate the difficulties:

Two Contracting Parties indicated that minor discrepancies have been observed between the French and English language versions of the Convention, one Contracting Party indicate that minor discrepancies exists between the Arabic version and other language versions. None of the Contracting Parties have provided details about the discrepancies.

b. when communicating with other Contracting Parties to the Convention?

Yes 5 No 35

If yes, please indicate the difficulties:

Only one Contracting Party has indicated difficulties concerning this question.

3. With regard to the implementation in your country of Article 8, para. 7 of the TIR Convention, 1975, are there measures to identify the person(s) directly liable?

Yes 32 No 8

If yes, please describe these measures and indicate if they are prescribed in national legislation:

In the large majority of Contracting Parties the person directly liable is defined as the one who introduced goods unlawfully into the Customs territory. This person is notified in case of an infringement. In the European Community, not only this person but also any person(s) who participated in the unlawful introduction of the goods and any persons who acquired or held the goods in question, who were aware or should reasonably have been aware that the goods were introduced unlawfully are considered debtors (Community Customs Code para. 202/204) and thus persons directly liable.

If no, please indicate the reasons:

None of the replies provide details.

4. Please describe how the competent authorities of your country interpret and apply
- a. article 11, para. 2 of the TIR Convention, 1975 in relation to the issue of non-discharge becoming the subject of legal proceedings in your country?

There seems to be no uniform application of the Convention concerning this point. Most Contracting Parties indicate that cases of non-discharge of TIR Carnets can become the subject of legal proceedings. However, a large number of these countries also indicate that they have no practical experience in this field, as such action has never been taken.

- b. Article 11, para. 3 of the TIR Convention, 1975, specifying if the right of appeal is allowed by national legislation in your country?

Yes, by Customs law 14 Yes, by Civil law 15 No 0

Please comment if necessary:

Fifteen Contracting Parties indicate that the right to appeal is based on provisions regulating Civil law in the countries in question.

5. With regard to Article 38, para. 1 of the TIR Convention, 1975 do the competent authorities in your country make use of the provision?

Yes, for national operators 10 Yes, for foreign operators 5 No 9

If yes, please indicate

- (i) in which circumstances:

In cases of serious (false declaration, smuggling, drugs) and for some Contracting Parties repeated offences against Customs legislation. For many Contracting Parties such actions must be based on a Court decision. Some Contracting Parties also apply the provision in case of failure to pay outstanding Customs debts.

- (ii) if exclusions are temporary or permanent:

Both permanent and temporary exclusions are applied depending on the seriousness of the offence committed.

6. With regard to Annex 9, part II of the TIR Convention, 1975

- a. do the competent authorities in your country apply additional and more restrictive conditions and requirements according to Paragraph 2?

Yes 13 No 27

If yes, please indicate these:

In cases where more restrictive conditions apply, these concern the guarantee and/ or detailed requirements concerning prior experience in international road transport.

- b. how is the final decision concerning the acceptance of an operator in the TIR procedure taken in your country?

- By competent authorities 13
- By competent authorities on proposal by the national association 19
- By an authorization Committee 4

- c. in case of exclusion or proposal for exclusion of an operator by the association, have the competent authorities in the past reversed this exclusion or proposal?

Yes 6 No 30

If yes, please explain under which circumstances:

No replies provided

- d. Have difficulties been encountered in your country when excluding operators from the TIR procedure?

If yes, please explain:

Only a few Contracting Parties have replied to this question. In particular, it seems that it is difficult to exercise an exclusion of the holder if it can only be proved that the driver is involved in/has knowledge of a smuggling attempt.

7. In the view of your administration, what were the reasons for the recent crisis in the TIR system?

- a) *The increase in the number of infringements and claims in certain countries.*
- b) *Lack of proper access and authorization controls for operators in certain countries.*
- c) *Lack of transparency in the TIR system, not providing for trustworthy "early warning" mechanisms.*
- d) *Lack of proper implementation of the Convention and relevant Resolutions and Recommendations, including SAFETIR in certain countries*
- e) *Lack of implementation of Article 8.7*

8. Is the Recommendation of 20 October 1995 concerning the introduction of a control system for TIR Carnets implemented in your country?

Yes, 40 No 0

If no, please indicate the reasons:

9. What are in the view of the competent authorities in your country the main weaknesses in the TIR guarantee chain

- a. with regard to its implementation by national guaranteeing association(s) of your country?

Contracting Parties mainly seem to be satisfied with the implementation by national associations. A few Contracting Parties have pointed out that national associations are too dependent of the international guaranteeing chain.

- b. with regard to its implementation by the international organization?

- i.) Lack of transparency. Contracting Parties/TIRExB not sufficiently informed.*
- ii.) Too much influence of the international organization. Centralized guarantee system*
- iii) Systematic refusal of paying payment demands for very formalistic reasons.*

10. Based on the experience of your administration, what measures are needed to reduce the current levels of irregularities?

Changes to the TIR Convention (please specify), *3 replies*

a) Strengthen the procedure for authorising holders and for excluding high-risk operators;

b) Article 8.7 - to clarify what is meant by those "directly liable" to pay the charges due;

c) Article 28.2 - to draw a clearer distinction between the termination of the TIR procedure and the start of the following customs procedure in order to eliminate irregularities, which should not be attributed to the TIR procedure

d) Computerize the TIR system and include SAFETIR in the Convention;

Changes to the application of the TIR Convention (please specify), *8 replies*

Harmonized and proper application of the existing provisions is essential for the correct functioning of the Convention. Furthermore, it is necessary to closely monitor the correct application (TIRExB), to provide guidance in cases of where the Convention is not applied (TIRExB) and for Contracting Parties to respect guidance/interpretation by the TIRExB.

Increased public-private cooperation (please specify), *1 reply*

Improved transparency between the international organization and Contracting Parties. Article 6.2bis of the Convention should be used to define the cooperation requirements.

Others (please specify), *7 replies*

Provide increased transparency about the processes in the guaranteeing chain and claims handling/payment conditions

11. What else needs to be done to ensure the sustainability of the TIR system?

Focus on prevention and "early-warning"

C. INFORMATION REQUESTED BY THE BUREAU

4. In reply to the 7 specific issues contained in the report of the meeting of the ITC Bureau report (TRANS/BUR.2003/1, 5(a)), the Bureau will find below information on each of the issues prepared by the secretariat.

a. Information on the various official language versions of the TIR Convention and on the consistency among them and the causal connection to the resent crisis.

5. The TIR Convention, Article 64 of the Convention stipulates that the Convention is in the English, French and Russian languages, the three texts being equally authentic.

6. From the replies of the Contracting Parties to the questionnaire (questions 2), three Contracting Parties have indicated inconsistencies between the different language versions, two Contracting Parties indicated inconsistencies between the English and French versions and one Contracting Party indicated inconsistencies with the Arabic version.

7. The IRU has raised a specific question in relation to the non-conformity of the Russian text of the TIR Convention with the English and French text concerning the English term used in the Convention "joint and several" and the possible repercussions this lack of conformity could have on the application of the TIR Convention in some Contracting Parties.

8. In Article 8, paragraph 1 the wording "joint and several" is used in English, "conjointement et solidairement" in French and "солидарный" in Russian. It is important to point out at the outset that it is not the words as such that are important, but the meaning of the concept as a whole. Joint and several liability is a general, legal concept describing the liability of compromisors of the same performance when each of them, individually, has the duty of fully performing the obligation and the obligee can sue all or any of them upon breach of performance (Black's Law Dictionary). This concept, which may be defined differently according to the specific provisions of national legislation, is generally translated in French as "responsabilité solidaire et conjointe" and in Russian as "солидарная ответственность".

b. Information on the implementation of the TIR Convention, including amendments, in each Contracting Party and the causal connection to the resent crisis.

9. The Legal Office of the United Nations in New York has expressed the view that Contracting Parties to the Convention are bound by the amendments of the Convention notwithstanding that a Contracting Party has not completed the necessary national legal requirements (such as, for instance, publication in the national legal journal).

10. However, at the request of the IRU, the secretariat has initiated a procedure for monitoring how amendments to the Convention are implemented at national level. The success of this procedure depends on information to be provided by Contracting Parties. So far, the secretariat has only received very little information concerning this issue.

c. Information on risk management measures applied at national level.

11. The secretariat has not received any information on risk management measures applied at national level from the replies to the questionnaire apart from the implementation of the IRU operated SAFETIR system, based on the Recommendation of 20 October 1995 by the TIR Administrative Committee concerning a control system for TIR Carnets. It is well-known that a number Contracting Parties to the Convention apply various risk assessment tools in their application of the Convention.

12. As it appears from the replies to question 8 of the questionnaire, all Contracting Parties that have replied have implemented the Recommendation.

13. In order to optimize the application of the SAFETIR system at national level the UNECE secretariat together with the IRU have established a so-called "SAFETIR Task Force" with the view, in a cooperative approach, to focus on particular questions needing attention.

14. In addition, a process is underway in the competent bodies of the Convention to include the principles of the Recommendation of 20 October 1995 in the main text of the Convention with the view to provide greater emphasis to the obligation to implement the provisions contained therein and, thus to apply SAFETIR.

d. Functions of each body involved in the TIR system.

15. An overview of the administrative structure of the TIR Convention is provided below.

The TIR Administrative Committee

16. The Administrative Committee, composed of all Contracting Parties to the Convention, at present sixty-five, is the highest organ under the Convention. It usually meets twice a year in spring and autumn under the auspices of the UNECE in Geneva to approve amendments to the Convention and to give all countries, competent authorities and concerned international organizations an opportunity to exchange views on the functioning of the system. Until today more than twenty amendments to the TIR Convention have been adopted and numerous resolutions, recommendations and comments have been approved by the Committee.

TIR Executive Board (TIRExB)

17. The TIR Executive Board (TIRExB) has been established by the Contracting Parties to the Convention in 1999. Its objective is to enhance international cooperation among Customs authorities in the application of the TIR Convention and to supervise and to provide support in the application of the TIR system and the international guarantee system. The TIRExB is composed of 9 members who are elected in their personal capacity by the Governments, which are Contracting Parties to the Convention for two-year terms of office.

18. The TIRExB is inter alia mandated to supervise the centralized printing and distribution of TIR Carnets, to oversee the operation of the international guarantee and insurance system and to coordinate and foster exchange of intelligence among Customs and other Governmental authorities.

19. The decisions of the TIRExB are executed by the TIR Secretary who is assisted by the TIR secretariat. The TIR Secretary shall be a member of the UNECE secretariat.

20. The operation of the TIRExB is financed, for the time being, through a levy (tax) on each TIR Carnet issued.

The UNECE Working Party on Customs Questions Affecting Transport (WP.30)

21. The work of the TIR Administrative Committee is supported by the UNECE Working Party on Customs Questions affecting Transport (WP.30) which holds between two and three sessions a year in Geneva, usually in conjunction with the sessions of the TIR Administrative Committee. Participation in the Working Party is open to all member States of the United Nations and to interested international organizations.

22. The Working Party also regularly adopts comments on certain provisions of the Convention. These comments are not legally binding for the Contracting Parties to the Convention, such as are the Articles and the Explanatory Notes of the Convention.

23. However, they are important for the interpretation, harmonization and application of the TIR Convention because they reflect a consensus opinion of the Working Party in which the majority of the Contracting Parties and the major users of the TIR system are represented (comments adopted by the Working Party are usually transmitted to the TIR Administrative Committee for consideration and endorsement).

The TIR Contact Group

24. The TIR Contact Group was been established in October 1994 by the UNECE Working Party on Customs Questions affecting Transport (WP.30) to provide for a consultative mechanism among UNECE member Governments, Contracting Parties to the TIR Convention and non-governmental organizations concerned in order to react quickly to new emerging problems in the application of the TIR system and to provide an internationally harmonized approach in the implementation of the TIR Convention at the national level.

25. The TIR Contact Group reports directly to the UNECE Working Party on Customs Questions affecting Transport (WP.30) and is serviced by the UNECE secretariat.

e. Results achieved in the TIR system, so far, through revisions (Phase I and II) and recommendations for future action (Phase III).

26. The number of amendments to the 1975 Convention is 22.

27. Although not an part of Phases I and II of the TIR revision process it is worth mentioning that the TIR Administrative Committee adopted the Recommendation on the control system for TIR Carnets of 20 October 1995, whereby it is recommended that Customs authorities send vital information concerning the termination(s) of the TIR transports, as early as possible, to the national guaranteeing association in the country of termination. The IRU has based its SAFETIR computerized risk management system on the data provided though this recommendation.

i) Phase I (1995-1997) Entry into force 17.2.1999

28. Establish control over the TIR procedure at the national and international levels for Customs authorities and the private sector and ensure transparency, particularly of the international guarantee system, at all levels. The following elements are part of Phase I of the revision process:

- Controlled access to the TIR procedure
 - Operators, associations, IRU
- Transparency
 - International guarantee contracts and insurance certificates deposited with the TIRExB
 - National TIR measures according to Article 42 bis are permitted, but must be communicated to the TIRExB
- International cooperation and coordination
 - Establishment of the TIRExB and TIR secretariat
 - Supervision of the application of the Convention, including the operation of the TIR guarantee system
 - Supervise centralized printing and distribution of TIR Carnets
 - Coordinate exchange of information between Customs authorities, associations and international organization (IRU)
 - Support training of Customs personnel and of other interested parties
 - Maintain central records on rules for issuance of TIR Carnets prescribed by int. organization for their national associations
 - TIR Secretary and TIR secretariat. Mandate: Execution of decisions of the TIRExB
 - International TIR Databank (ITDB) containing information of all operators approved for the TIR procedure

ii) Phase II (1998-2000) Entry into force 12.5.2002

29. Define responsibilities of all Parties involved and clarify and harmonize key legal and administrative procedures at national and international levels. Establish examples of best practice.

- Identify responsibilities of all Parties involved and clarify and harmonize key legal and administrative procedures at national and international levels.
- Define key terms and concepts
- Clarify responsibility of international organization for international guarantee system (Article 6.2bis)
- Best practices for termination, discharge and inquiry procedures
- Example Authorization and Agreement at national level.

iii) Phase III (2001-2005?) Entry into force 2006 ?

30. Allow for use of modern procedures and technologies (e-TIR)

f. Identification of current weaknesses encountered in the application of the TIR system.

31. According to the replies provided to questions 7 and 9 to the questionnaire, the main weaknesses in the application of the Convention are the following:

- Lack of proper access and authorization controls for operators in certain countries.
- Lack of proper implementation of the provisions of the Convention and relevant Resolutions and Recommendations, including SAFETIR in certain countries.
- The increase in the number of infringements and claims in certain countries.
- Lack of transparency in the TIR system, including the lack of trustworthy "early warning" mechanisms.
- Systematic refusal of paying payment demands for very formalistic reasons and not based on the merits of each case.
- Lack of a clear definition and harmonized implementation of provisions to identify the person(s) directly liable.
- Centralized guarantee system

g. Proposals to resolve those weakness including possible new amendments to the TIR Convention.

32. According to the replies provided to questions 9, 10 and 11 to the questionnaire, Contracting Parties to the Convention have provided the following proposals:

- Strengthen the procedure for authorising operators
- Clarification of what is meant by those "directly liable" to pay the charges due.
- Draw a clear distinction between the termination of the TIR procedure and the start of the following customs procedure in order to eliminate irregularities, which should not be attributed to the TIR procedure.
- Computerize the TIR system and include SAFETIR in the Convention.
- Focus more on the proper implementation and application of the Convention, including monitoring thereof by the competent organs, in particular the TIRExB.
- Focus on fraud prevention and "early-warning"
- TIRExB to provide guidance on the implementation and application of the Convention and Contracting Parties to adhere to guidance provided by the TIRExB.

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