



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

TIR Executive Board (TIRExB)

(Twenty-seventh session, 17-19 October 2005,
agenda item 4 (b))

PREVENTION OF CUSTOMS FRAUD WITHIN THE TIR SYSTEM

Harmonized application of Article 38 of the TIR Convention

Note by the secretariat

A. BACKGROUND

1. The TIRExB, at its twenty-sixth session, considered at length Informal document No.10 (2005) drafted by the secretariat in cooperation with the IRU, containing an example of best practices regarding the application of Article 38 of the Convention. The Board delivered a number of remarks concerning the form and content of the example and requested the secretariat to modify the draft accordingly. In particular, the TIRExB felt that a standard notification form should be developed to inform the person being excluded from the TIR procedure (TIRExB/REP/2005/26draft, para.23). In addition, the TIRExB was of the view that part B of Informal document No.10 (2005) should also be included into the example of best practice.

B. GENERAL CONSIDERATIONS ON THE APPLICATION OF ARTICLE 38

2. Chapter IV "Irregularities" of the TIR Convention contains references to national legislation of the Contracting Parties. In particular, in accordance with Article 36, *"any breach of the provisions of this Convention shall render the offender liable, in the country where the offence was committed, to the penalties prescribed by the law of that country"*. Article 38 constitutes in itself a framework provision which also relies on national legislation for practical implementation. For example, the gravity of an infringement ("serious offence against Customs

laws or regulations applicable to the international transport of goods ") can only be determined within national law.

3. In general, Article 38 should be considered as a tool to protect and prevent the TIR procedure from abuses, rather than as an automatic mechanism of sanction in any circumstances. The application of Article 38 should be justified according to the gravity of the infringement.

4. Article 38 is closely linked to the provisions of Article 6 and of Annex 9, part II which govern the procedure of access of physical and legal persons to the TIR procedure. This relation is highlighted by two comments to Article 38 "Cooperation between competent authorities" and "Exclusion of a domestic transport operator from the TIR procedure".

5. Apart from the person being excluded, the following actors are mentioned in Article 38:

- the competent authorities of the Contracting Party where the offence has been committed and where Article 38.1 is implemented;
- the competent authorities of the Contracting Party on whose territory the excluded person is established or resident;
- the association(s) in the country where the offence has been committed;
- the TIR Executive Board.

In addition, the national association of the Contracting Party where the excluded person is established or resident is involved in the implementation of Article 38, although not mentioned explicitly in the text.

6. Because of the involvement of various actors, the close cooperation between them is indispensable for the smooth application of Article 38. Such cooperation should be based on two major elements:

- duly fulfilment by the actors involved of their respective functions;
- a fast and transparent exchange of information.

An example of best practices in this respect is given below* .

* According to the comment "Exclusion of a domestic transport operator from the TIR procedure", Article 38.1 should be applicable against foreign transport operators only. The proposed example of best practice addresses such a situation.

C. EXAMPLE OF BEST PRACTICE

7. The competent authorities of the Contracting Party where an infringement of the TIR Convention was committed should consider, in line with national legislation, whether this infringement constitutes "a serious offence against Customs laws or regulations applicable to the international transport of goods" and whether the TIR Carnet holder should be excluded from the TIR procedure according to Article 38.1.

8. If a decision is taken to implement Article 38.1, the person being excluded should be notified without delay. The notification should be made in any of the three official languages of the TIR Convention (English, French or Russian) and should contain at least the following particulars^{**}:

- Date and place of issuance of the document;
- Name and official address of the competent authority;
- Name, address, country and ID-number of the person being excluded;
- TIR Carnet reference number;
- Registration No(s) of road vehicle(s) (if applicable);
- Identification No(s) of container(s) (if applicable);
- Description of the goods;
- Date and place of the infringement;
- Detailed description of the infringement;
- Motivation for the application of Article 38.1;
- Type of the exclusion (temporary or permanent) and the date of its entry into force;
- Duration of the exclusion (for temporary exclusions only);
- Information on possible appeal procedures (deadline, appeal bodies, etc.).

Where possible, a copy of the TIR Carnet should be attached to the decision.

9. The notification should be transmitted to the excluded person by the fastest available means of communication (fax, electronic mail, etc.). Within one week, a copy of the notification should also be forwarded by registered mail to the person being excluded or should be handed over to his legal representative against signature on receipt.

^{**} A specimen of notification is given in the annex to the present document.

10. Within one week, copies of the decision should also be transmitted by the fastest available means of communication (fax, electronic mail, etc.) to the competent authorities of the Contracting Party on whose territory the person concerned is established or resident, to the association(s) in the country or Customs territory where the offence has been committed, to the TIR Executive Board and to the association of the Contracting Party where the excluded person is established or resident (issuing association).

11. In case of any changes in the status of the original exclusion (e.g., cancellation or suspension, etc.), the competent authorities, which have excluded the person, should keep the addressees mentioned in paras. 9 and 10 above informed of these changes.

12. The competent authorities of the Contracting Party on whose territory the excluded person is established or resident should consider whether the committed infringement can affect the minimum conditions and criteria set out in Annex 9, part II, that persons have to meet in order to have access to the TIR procedure. If the person concerned no longer fulfils these requirements, his authorization should be withdrawn. Such a withdrawal should be reported within one week to the TIR Executive Board. It is also recommended to inform the competent authorities which have issued the exclusion.

13. Irrespective of the possible decision on withdrawal of authorization by the competent authorities of the Contracting Party on whose territory the person concerned is established or resident, the issuing association should assess the reliability of the holder and may impose on him some sanctions in compliance with the association's internal rules, for example, suspend the issuance of TIR Carnets.

NOTIFICATION OF EXCLUSION FROM THE TIR PROCEDURE
(in accordance with Article 38, para.1 of the TIR Convention)

To:

(name, address, country and ID-number of the person being excluded)

This is to notify that you have been excluded from the TIR procedure on the territory of

_____ *(name of the country)*

This exclusion comes into force on _____ *(date)*

and is permanent temporary until _____ *(date)*

Appeal against the exclusion can be launched with _____
(name of appeal body)

before _____ *(deadline for appeal, if any)* possibly, by registered mail

The exclusion has been a result of the TIR infringement whose details are given below:

TIR Carnet reference number

Registration No(s) of road vehicle(s) (if applicable)

Identification No(s) of container(s) (if applicable)

Description of goods

Date and place of the infringement

Description of the infringement:

Motivation for the application of Article 38.1:

Attachments (if any)

Name and official address of the competent authority:

Date and place

Signature

Stamp (if applicable)