



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

TIR Executive Board (TIRExB)

(Thirtieth session, 29 and 30 November 2006,
agenda item 4)

**HARMONIZED APPLICATION OF ANNEX 9, PART II OF THE TIR CONVENTION
(CONTROLLED ACCESS TO THE TIR PROCEDURE)**

Note by the TIR Secretary

A. BACKGROUND

1. In 2004, at the request of the TIRExB, the secretariat conducted a survey of the Contracting Parties with regard to the application of Annex 9, part II of the Convention. The final results of the survey were published as Informal document No.6 (2005) where, in particular, the secretariat had drawn the following conclusions:

- Generally, the application of Annex 9, part II of the TIR Convention seems to be at a reasonable level. The Contracting Parties take seriously their obligations according to the relevant provisions of the TIR Convention. A very important contribution is made by the national guaranteeing associations which, through the unified rules established by the IRU, provide for harmonized conditions for admission of their members to the TIR system. In some countries, however, the Customs authorities (probably, due to lack of resources) rely too much on the guaranteeing association when authorizing persons for access to the TIR procedure. Although concerted actions by the Customs and national association are indispensable for the smooth implementation of the access procedure, the Customs authorities represent the Government and should not outsource their official functions to the private sector. It is remarkable that some countries even consider the national association as a governmental authority;
- When a person applies for authorization to the TIR system for the first time, he is checked rather thoroughly by various bodies. However, a posteriori checking of TIR Carnet holders seems to leave much to be desired, as most countries do not implement regular checks, unless there is information on some problems (infringements, insolvency, etc.). Thus,

infringers may have enough time to commit repeated fraud before being expelled from the system;

- With regard to possible amendments to the TIR Convention containing additional and more restrictive conditions and requirements for access to the TIR procedure, the Contracting Parties almost unanimously indicated that there is no such need. Apparently, the present Convention already provides the sufficient legal basis for a strict authorization procedure. Thus, it may be concluded that further improvement and harmonization of the application of Annex 9, Part II at the national level should be conducted not through the legal text, but by means of comments, examples of best practices, etc.

2. At its twenty-fifth session (27 and 28 January 2005), the TIRExB considered Informal document No.6 (2005) and, in particular, noted with concern the above shortcomings in the application of Annex 9, Part II of the TIR Convention at the national level. The Board agreed that harmonization of the application of Annex 9, Part II at the national level should be conducted through examples of best practice. In this context, the IRU recalled its earlier proposals, as contained in Informal document No. 19 (2003). The TIRExB decided that the main results of the survey should be reported to the TIR Administrative Committee (TIRExB/REP/2005/25, paras.16-18).

3. The TIR Administrative Committee, at its October 2005 session, noted the results of the Board's survey of Contracting Parties on the application of controlled access to the TIR procedure for natural and legal persons. The Committee felt that a number of replies to the survey gave rise to concern about the proper application of the Convention and invited the TIRExB to consider the elaboration of a set of best practices for the proper application of Annex 9, Part II (TRANS/WP.30/AC.2/79, para.15). Against this background, the TIRExB, at its twenty-seventh session (17-19 October 2005), requested the TIR secretariat, in cooperation with the IRU, to draft an example of best practices for consideration at one of the future sessions (TIRExB/REP/2005/27, para.14). Following this request, the secretariat and the IRU prepared Informal document No.1 (2006).

4. At its twenty-eighth session, the TIRExB considered Informal document No.1 (2006), containing an example of best practice with regard to the application of Annex 9, Part II of the TIR Convention. The Board generally advocated the example, but felt that it should be elaborated further with a view to better defining the responsibilities of the competent authorities. The TIRExB invited its members to transmit written comments on the document until 1 March 2006 and requested the secretariat to update the example accordingly, in order to adopt it at the next session of the Board (TIRExB/REP/2006/28, para.10). In line with that request, Informal document No.1 (2006)/Rev.1 was prepared and subsequently considered by the Board at its twenty-ninth session. The Board delivered a number of remarks concerning the form and content of para.7 of the above document and decided to complement para.10 with the following sentence: "It is up to the competent authorities to arrange a procedure for regular checks." Finally, the TIRExB requested the secretariat, in cooperation with the IRU, to revise the document with a view to submitting a

modified draft for consideration at the next session of the Board (TIRExB/REP/2005/29draft, para.8).

5. Against this background, the TIRExB may wish to consider a modified example of best practice, as contained in the annex to the present document.

**EXAMPLE OF BEST PRACTICE WITH REGARD TO
THE APPLICATION OF ANNEX 9, PART II OF THE TIR CONVENTION
(CONTROLLED ACCESS TO THE TIR PROCEDURE)**

General remarks

1. Controlled access to the TIR procedure for natural and legal persons is one of the five pillars of the TIR Convention which distinguishes the TIR procedure from many other systems of Customs transit. Controlled access was introduced into the TIR Convention in 1999 with a view to safeguarding the system against fraudulent activities by means of the careful selection of transport operators on the basis of a set of minimum conditions and requirements laid down in Annex 9, Part II of the Convention.

2. There are two major players involved into the authorization procedure: the competent authorities (Customs, Ministry of Transport, etc.) and the national TIR issuing association. Their close cooperation is indispensable and could be organized, for example, through the establishment of a national authorization committee, as recommended by Explanatory Note 9.II.3 of the Convention. According to Annex 9, Part I of the Convention, the association shall verify continuously and, in particular, before requesting authorization for access of persons to the TIR procedure, the fulfilment of the minimum conditions and requirements by such persons as laid down in Part II of this annex. However, only the competent authorities representing the Government can validate any finding by the association in this respect and take a legal decision concerning the access to the TIR procedure. In addition, some information indispensable for the purposes of authorization can only be available within the competent authorities. Thus, the competent authorities should not outsource their official functions and responsibilities to the association.

Verifying minimum conditions and requirements

3. The table below shows the distribution of labour between the competent authorities and the association when checking the minimum conditions and requirements to be fulfilled by natural and legal persons applying for access to the TIR procedure.

Documents/information to be provided	Actions by association	Action by competent authorities
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Proven experience or, at least, capability to engage in regular international transport

Official company registration	Collect documents, analyze information	Verify if necessary, accept or reject
Licence for carrying out international transport		
Plate numbers and approval certificates of road vehicles		
Certificates of Professional Competence (CPC) of the senior management		
Proof of past business operations, CMR, orders and other documents		

Sound financial standing

Proof of financial viability, e.g. bank reference, credit rating, etc.	As far as national legislation permits, collect documents and analyze information	Verify if necessary, accept or reject
Financial status as reported by the national tax authorities, commercial registers		
Annual company accounts		

Proven knowledge in the application of the TIR Convention

Knowledge of the transport operator	Verify CPC's and/or certificates issued by Customs, interview	Verify if necessary, accept or reject
Training for the management and staff	Provide, if required	Co-operate
Changes in the management and staff	Monitor and check	Be informed

Absence of serious or repeated offences against Customs or tax legislation

Absence of serious or repeated Customs offences	<p>1. Monitor, as far as national legislation permits, and transmit relevant information to competent authorities.</p> <p>2. Monitor the performance of transports operators via SafeTIR.</p>	<p>1. Collect and consider relevant information from local Customs offices, establish a database.</p> <p>2. If necessary, verify relevant information from the national association.</p> <p>3. Take into due account any information on Customs offences committed abroad.</p>
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Documents/information to be provided	Actions by association	Action by competent authorities
Absence of serious or repeated tax offences	Monitor, as far as national legislation permits, and transmit relevant information to competent authorities	Request and consider, both on a case-by-case and regular basis, information from tax and other authorities. If necessary, verify relevant information from the national association
Absence of previous offences against Customs and tax legislation by the management and shareholders – obtain positive evidence of a "clean record"		
Active research for reputation	Collect and monitor	Be informed

Undertakings in a written declaration of commitment to the Association

Insertion of the appropriate undertakings (Annex 9, part II, para. 1 (e)) into a written declaration (Deed of Engagement)	Make the transport operator sign the declaration	Verify, if necessary
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4. Additional and more restrictive conditions and requirements for access to the TIR procedure may be introduced by the competent authorities of Contracting Parties and by the associations themselves unless the competent authorities decide otherwise. The competent authorities, in cooperation with the national association, have to publish all additional conditions and requirements at national level.

5. The authorization for access to the TIR procedure does not constitute in itself a right to obtain TIR Carnets from the associations. For this reason, any authorized person must follow the regulations established by the national association and/or international organization to which it is affiliated.

6. The fulfilment of the above conditions and requirements must be insured not only before requesting authorization for access to the TIR procedure, but also continuously after such authorization has been granted. These a posteriori checks should be done on a regular basis and not only if there is information on some problems (infringements, insolvency, etc.). It is up to the competent authorities to arrange a procedure for regular checks.

Procedure

7. The competent authorities, together with the national association, should determine, in line with national legislation, the procedures to be followed for access to the TIR procedure on the basis of the above conditions and requirements. These procedures should in particular specify a deadline for consideration of applications for access to the TIR procedure, following which the applicant should be informed in writing of the decision taken. In case of refusal, the applicant should also be informed of possible appeal procedures.