



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

TIR Executive Board (TIRExB)

(Twenty-eighth session, 26-27 January 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 leaves 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 also 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.

4. Following this request, the secretariat and the IRU have prepared the proposals as follows.

B. 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

5. 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.

6. 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 with the competent authorities. Thus, the competent authorities should not outsource their official functions and responsibilities to the association.

Verifying minimum conditions and requirements

7. The tables 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.

Table 1. Proven experience or, at least, capability to engage in regular international transport

Action	Association	Competent authorities
Check the official company registration	Collect documents	Validate, verify if necessary
Verify the licence for carrying out international transport	Collect documents and information	Validate, verify if necessary
Check the plate numbers and approval certificates of road vehicles	Collect and analyse	Validate, verify if necessary
Check Certificates of Professional Competence (CPC) of the senior management	Collect and analyse	Validate
Check proof of past business operations, CMR, orders and other documents	Collect and analyse	Validate when appropriate

Table 2. Sound financial standing

Action	Association	Competent authorities
Demand proof of financial viability, e.g. bank reference, credit rating, etc.	Collect and check, as far as national legislation permits	Validate
Verify the financial status with the national tax authorities, commercial registers	Request, as far as national legislation permits	Validate, request if necessary

Check annual company accounts	Collect and analyse, as far as national legislation permits	Validate, request if necessary
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Table 3. Proven knowledge in the application of the TIR Convention

Action	Association	Competent authorities
Check the knowledge of the transport operator	Verify CPC's and/or certificates issued by Customs, interview	Validate
If required, provide training for the management and staff	Provide	Co-operate
Keep informed of changes in the management and staff	Monitor and check	Inform and confirm

Table 4. Absence of serious or repeated offences against Customs or tax legislation

Action	Association	Competent authorities
Check the absence of serious or repeated Customs offences	1. Verify, as far as national legislation permits, the absence of serious or repeated Customs offences 2. Monitor the performance of transports operators via SafeTIR	1. Collect and consider relevant information from local Customs offices, establish a database 2. Take into due account any information on Customs offences committed abroad
Check the absence of serious or repeated tax offences	Verify, as far as national legislation permits	Request and consider, both on a case-by case and regular basis, information from tax authorities
Check the absence of previous offences against Customs and tax legislation by the management and shareholders - obtain positive evidence of "clean sheet"	Verify, as far as national legislation permits	Request and consider information from the tax authorities, police, etc.
Conduct active research for reputation	Collect and monitor	Provide information

Table 5. Undertakings in a written declaration of commitment to the Association

Action	Association	Competent authorities
Insert into a written declaration (Deed of Engagement) the appropriate undertakings stipulated in para. 1 (e) of Annex 9, part II	Make transport operators sign the declaration	Verify, if necessary

8. 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.

9. 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.

10. 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.).

Procedure

11. 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.
