



TIR EXECUTIVE BOARD (TIRExB)

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Administrative Committee for the TIR Convention, 1975

TIR Executive Board (TIRExB)

Fifty-sixth session

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Agenda item IV

Procedures to follow in communicating measures that affect the functioning of the TIR system

Note by the secretariat

I. Introduction and background

1. TIRExB, at its 55th session, considered Informal document No. 23 (2013) regarding, inter alia, the possible need for clarification of the meaning of Article 42 bis on the obligation to communicate national control measures that may affect the functioning of the TIR system to the TIRExB. The Board was of the opinion that further elaboration of the proposal was required in order to better align it with the mandate of TIRExB as well as to include a wider variety of possible scenarios. Furthermore, the TIRExB thought it would be necessary to also include reference to the communication between TIRExB and other stakeholders in the context of article 42 bis (See TIRExB/REP/2013/55, paras. 20 and 21).

2. As a result, TIRExB requested the secretariat to prepare the present revised version of Informal document No. 23 (2013), taking account of the above comments, for discussion at its fifty-sixth session. For the sake of easy reference, deletions with regard to the original document are in ~~strike through~~ and amendments in **bold underline**.

II. Obligation to communicate and discuss national control measures: Article 42 bis of the TIR Convention

3. As per Article 42 bis of the TIR Convention, national measures to ensure proper use of the TIR carnet are allowed as long as they are first communicated to and discussed by the TIRExB as to their conformity with the TIR Convention. More specifically, the article reads as follows:

“The competent authorities, in close cooperation with the associations, shall take all necessary measures to ensure the proper use of TIR Carnets. To this effect they may take appropriate national and international control measures. National control measures taken in this context by the competent authorities shall be communicated immediately to the TIR Executive Board which will examine their conformity with the provisions of the

Convention. International control measures shall be adopted by the Administrative Committee”.

4. Article 42 bis makes reference to a series of actions that should be taken when a government decides to introduce national control measures; the first of these actions is to immediately inform the TIR Executive Board. The word “immediately” in itself does not provide sufficient clarity, in that it could mean “immediately upon the decision to introduce but before entry into force” or “immediately upon entry into force”. However, the requirement for the TIRExB to examine the measure in question, provides a logical succession of events; for the TIRExB to be in a position to advise as to the conformity of the measure with the Convention, it logically has to have sufficient time to do so before any measure that could potentially have a disruptive effect is enacted. As a result, the TIRExB would - again, logically - have to be informed about the intention to introduce such measures, as well as about the nature and scope of the measures and the reason for their introduction, so that their conformity with the TIR Convention can be determined.

5. It is important to note that the TIR Convention stipulates, in rather specific terms, what are the rights and obligations of the Contracting Parties and other parties involved, as well as what is the scope of the actions that can be taken within its framework. It is for this reason, and in order to ensure that there are no disruptions to the smooth functioning of the system, that additional national measures ought to be examined by the TIRExB as early as possible and, if necessary, examined also by the Administrative Committee.

6. Furthermore, it should be recalled that the TIRExB is vested with the responsibility to supervise the application of the TIR convention and to facilitate the settlement of disputes between contracting parties, associations, insurance companies and international organizations, as per Annex 8, Article 10 of the TIR Convention. As such, Contracting Parties and other stakeholders are expected to inform the TIRExB of any problems they identify or consider to have in the application/functioning of the system on their territory, in accordance with the Terms of Reference of the TIRExB in Annex 8 of the TIR Convention. Consequently, before any new national measures are taken, a consultation with TIRExB is required, particularly if the measure is linked to a problematic situation or a dispute that may have repercussions for the TIR system.

7. It may be worth further noting that the International Convention on the Harmonization of Frontier Controls of Goods (Harmonization Convention, 1982) also highlights the importance of timely transmittal of information regarding controls and requirements under national law (Annex 1, Articles 1 and 2).

III. Relationship/communication between TIRExB and other stakeholders/bodies

8. The TIRExB was established in accordance with Article 58 ter of the TIR Convention as a subsidiary body of the Administrative Committee (AC.2). As such it is charged with specific functions, laid down in Annex 8 of the TIR Convention. Among these responsibilities are the following:

- **Supervision of the application of the Convention and the operation of the guarantee system, as well as of the centralized printing and distribution of TIR Carnets (See Annex 8, Article 10, paras. (a) and (b));**
- **Coordination and fostering of the exchange of intelligence and other pertinent information among competent authorities of Contracting Parties, associations and international organizations (See Annex 8, Article 10, paras. (c) and (d));**

- Facilitation of the settlement of disputes between all parties involved in the TIR system (See Annex 8, Article 10, para. (e)); this would-by definition- only be possible if the Board is privy to all the necessary information;
- Maintenance of a central record for the dissemination of information to Contracting Parties from all relevant actors (See Annex 8, Article 10, para. (g)).

9. Finally, it should be highlighted that in accordance with Annex 8, Article 11:

- The Board reports to the AC.2; and
- The Board can consider any matter transmitted to it by the AC.2, Contracting Parties, the TIR Secretary, national associations and international organizations.

10. From the above it may be concluded that the TIRExB, in order to effectively carry out its functions, is required to have as much information as possible at its disposal. In addition, it appears from Annex 8 of the TIR Convention that AC.2 established the TIRExB as a smaller, more flexible body that would coordinate, on its behalf, the exchange of information with other bodies, Contracting Parties, actors and stakeholders and would facilitate discussions on matters related to the functioning of the TIR system and the TIR Convention by providing informed opinions and expert assessments.

IV. Considerations by the TIR Executive Board

11. The reading and analysis of the above-mentioned requirements under the TIR Convention, as well as established practice over the years may provide the logical combination/series of actions to be performed as a best practice in such cases that fall within the meaning of Article 42 bis. Against this background, the secretariat provides in the Annex to the present document an example of guidelines/best practice procedure based on the requirements of the TIR Convention. The TIRExB is invited to take note of the above information and to consider whether it wishes to propose a comment or an example of best practice communication procedure in the TIR handbook to further clarify the communication and the introduction of control measures.

12. The TIRExB may also wish to consider the necessity to introduce an explanatory note to clarify the meaning of the word “immediately”. An example for the explanatory note is also provided in the Annex.

Annex

Proposal/example explanatory note to article 42 bis

The term “immediately” in Article 42 bis is understood to mean that national measures that may affect the application of the TIR Convention and/or functioning of the TIR system, ought to be communicated to the TIRExB as soon as possible and in any case prior to its entry into force so as to allow the TIRExB to efficiently discharge its supervisory functions and fulfil its responsibility to examine the measure as to its conformity with the TIR Convention in accordance with Article 42 bis and its Terms of Reference as laid down in Annex 8 of the TIR Convention.

Guidelines/best practice procedure in accordance with the legal requirements of the TIR Convention for communicating and introducing new control measures

Step 1: An official written communication to the TIRExB and the UNECE secretariat, informing of the planned measure. The secretariat, upon receipt of the communication, shall circulate it to TIRExB members and place the issue on the agenda for the next planned session, in accordance with the rules of procedure of the TIRExB.

Step 2: The TIRExB shall start discussing the proposed measure at its next regular or, if deemed necessary, extraordinary session. As part of its assessment, the TIRExB may resort to

- (a) Conducting surveys;**
- (b) Inviting experts;**
- (c) Requesting additional information from the Contracting Party(ies) and other stakeholders involved;**
- (d) Conducting consultations on site;**
- (e) Any further activity falling within its field of competence.**

In accordance with article 42 bis and Annex 8 of the TIR Convention, the TIRExB, shall finalize its assessment as to whether the proposed measure is in conformity with the provisions of the TIR Convention

The TIRExB will discuss the proposed measure at its next session and examine whether the measure is in conformity with the TIR Convention. This assessment could involve, among any other pertinent factor the TIRExB wishes to consider, looking at the following questions:

- (a) Whether the new measure is linked to problematic situation; in such a case the TIRExB in its advisory capacity may wish to make proposals for alternative solutions;**
- (b) If it is necessary to introduce an additional measure, whether the proposed measure is in line with the TIR Convention.**

Step 3: On the basis of step 2, the TIRExB shall ~~transmit~~ **report** its findings to the Administrative Committee (AC.2) in accordance with Annex 8, Article 11, paragraph 4 of the TIR Convention.

Step 4: AC.2, in accordance with Annex 8, Article 1 bis, para. 2¹ of the TIR Convention, shall consider the information provided by the country concerned as well as the TIRExB and decide on the conformity of the proposed measure(s). It should be noted that the highest authority rests with the AC.2.

~~**Step 5:** In the case that the A.C.2 finds the measure not to be in conformity with the TIR Convention, it should not be implemented.~~

¹ Article 1 bis (2), Annex 8, TIR Convention: *The Committee shall monitor the application of the Convention and shall examine any measure taken by Contracting Parties, associations and international organizations under the Convention and their conformity therewith.*