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ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

Administrative Committee for the

TIR Convention, 1975

(Thirty-sixth session, 5 and 6 February 2004,
agenda item 8 (a))

REVISION OF THE CONVENTION

Implementation of Phase I of the TIR revision process

Controlled access to the TIR procedure

Note by the TIR Secretary

A. BACKGROUND

In the process of maintaining the International TIR Data Bank (ITDB), the TIR secretariat has noted that Contracting Parties make a different use of terms such as temporary/permanent withdrawal of authorization to utilize TIR Carnets, exclusion from the TIR procedure, etc. In order to harmonize the terminology used in the TIR Convention and the ITDB, the TIR secretariat prepared and submitted to the TIRExB, Informal document No. 6 (2003).

The TIRExB, during its eighteenth session (Geneva, 16, 17 and 19 June 2003), adopted the above-mentioned document stressing that, according to para. 6, part II, Annex 9 to the Convention, the authorization for access to the TIR procedure does not constitute in itself a right to obtain TIR Carnets from the associations.

The aim of this document is to explain the use of the various terms against the background of the legal provisions of the TIR Convention, amended with comments by the TIR Secretary.

B. INTRODUCTION

In order to control the access to the TIR system, associations and Customs authorities have to store, update and exchange, on a regular basis, a number of information on TIR Carnet users. In addition to contact information and other business related data, information on the status of each transport operators has to be collected and transmitted to the TIRExB, within one week from the date of authorization or withdrawal of authorization, as well as annually as per 31 December, of all authorized persons and persons whose authorization has been withdrawn, in line with the provisions of Annex 9, Part II, Articles 4 and 5 of the Convention. With regard to the transmission of such information, it is extremely important that the various actors of the TIR procedure agree on a harmonized use of the various terms, in order to avoid misunderstanding, which could lead to confusion and an incorrect application of the system.

In the underlying document, the TIR Secretary introduces the conflicting terms. In as far as possible, reference is made to the applicable provisions in the TIR Convention to clarify their use.

C. TERMS UNDER CONSIDERATION

(a) Authorized TIR Carnet user

Article 6, paragraph 4, of the TIR Convention stipulates that the “Authorization for access to the TIR procedure shall be granted only to persons who fulfil the minimum conditions and requirements laid down in Annex 9, Part II to this Convention”. Therefore, transport operators who would like to be authorized to use the TIR system, have to meet the minimum conditions and

requirements, as contained in Annex 9, Part II, Article 1^{1/}. Competent authorities of Contracting Parties and the associations themselves may introduce additional and more restrictive conditions and requirements, unless the competent authorities decide otherwise (Annex 9, Part II, Article 2). This means that all those authorized to access the TIR procedure, under the conditions and requirements of the TIR Convention and, if appropriate, additional and more restrictive national conditions and requirements, are considered to be authorized TIR Carnet users.

(b) Withdrawal of authorization (revocation)

The term 'withdrawal of authorization' (revocation) is used in Annex 9, Part II, and in the MAF Form (model authorization form) when referring to transport operators who are no longer authorized to use the TIR regime because they have committed a serious offence against the Customs laws or regulations applicable to the international transport of goods or which no longer fulfil the other minimum conditions and requirements, as specified in the Convention. The use of the term in this way can be deducted (a contrario) from Article 6, paragraph 4 of the Convention. Withdrawal of authorization can be temporary (in this case the transport operator is eligible for renewed access (rehabilitation) into the TIR system), or permanent. Within this context, it may be important to stress that the act of withdrawal of authorization is a prerogative of the competent authorities.

(c) Exclusion

The concept of exclusion is contained in Article 38: "Each of the Contracting Parties shall have the right to exclude temporarily or permanently from the operation of this Convention any person guilty of a serious offence against the Customs laws or regulations applicable to the international transport of goods". The scope of the term is explained in a comment to Article 38, which stipulates that the concept of exclusion should be applied to foreign TIR Carnet holders, specifying that, in order to exclude a national transport operator guilty of a serious offence against the Customs laws committed in the territory of the country where he is resident or established from using the TIR regime, Customs authorities are recommended to use the provisions of Article 6, paragraph 4 and Annex 9, Part II, paragraph 1 (d) rather than the provisions of Article 38, paragraph 1.

^{1/} The minimum conditions and requirements to be complied with by persons wishing to have access to the TIR procedure are:

- (a) Proven experience or, at least, capability to engage in regular international transport (holder of a licence for carrying out international transport, etc.).
- (b) Sound financial standing.
- (c) Proven knowledge in the application of the TIR Convention.
- (d) Absence of serious or repeated offences against Customs or tax legislation.
- (e) An undertaking in a written declaration of commitment to the association that the person:
 - (i) will comply with all Customs formalities required under the Convention at the Customs offices of departure, en route and of destination;
 - (ii) will pay the sums due, mentioned in Article 8, paragraph s 1 and 2 of the Convention, if requested to do so by the competent authorities in line with Article 8, paragraph 7 of the Convention;
 - (iii) will, as far as national legislation permits, allow associations to verify information on the above minimum conditions and requirements.

In line with the provisions of Article 38, paragraph 2 and one of its comments, the competent authorities of the Contracting Party on whose territory the person concerned is established or resident will have to be informed of the exclusion so as to allow them to take into due account any information notified by the other Contracting Party in accordance with Article 38, paragraph 2 on serious or repeated offences against Customs legislation committed by that person.

(d) End of activity

The term “end of activity”, even if not specified in the Convention, should be used when referring to TIR transport operators who (of their own accord) have decided to stop performing TIR operations (i.e. the company has decided to terminate its commercial activity or a transport operator is no longer interested in using TIR Carnets, etc). Even though such transport operators are still fulfilling the minimum conditions and requirements, they should no longer be considered authorized and for that reason it is important to apply a different term than withdrawal to distinguish this specific situation.

D. FURTHER CONSIDERATIONS

The Administrative Committee is requested to discuss and, possibly endorse, the various terms against the background of the legal provisions of the TIR Convention.
