



TIR EXECUTIVE BOARD (TIRExB)

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COMMISSION DE CONTROLE TIR (TIRExB)

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ИСПОЛНИТЕЛЬНЫЙ СОВЕТ МДП (ИСМДП)

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Administrative Committee for the TIR Convention, 1975

TIR Executive Board (TIRExB)

Fifty-first session

Geneva, 8 October 2012

Agenda item 11

Other matters

Below, the secretariat reproduces, at the request of the Polish Customs administration, a letter from the European Commission on the use of authorized consignor / consignee within the context of the TIR Convention, as well as excerpts from past TIRExB reports dealing with the issue, for consideration by the Board.



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Customs Policy, Legislation, Tariff
Customs Legislation

Brussels, 31 JUL. 2012
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By e-mail: secretariat.PC@mofnet.gov.pl

Ministry of Finance
Mr Tomasz Michalak, Director
Customs Policy Department
Republic of Poland

Subject: Simplification in the TIR system through authorised consignors /consignees

Thank you for your letter of 19 June 2012 (ref. PC11/8610/39/GBT/12/1866), in which you raise the possibility of introducing the simplification "authorised consignor" in TIR transports starting in the EU.

In addition, you would like to see that for the existing simplification "authorised consignee" it would no longer be necessary for the trader to present the TIR carnet at the office of destination for completion of counterfoil No 2 of the TIR carnet.

As a starting point I have sympathy with providing more facilitation in the TIR procedure if this can be achieved without creating additional risk and when the facilitation is supported by the appropriate legal framework.

In 2001, the TIR Executive Board (TIRExB) discussed the possibility of introducing the authorised consignor in the TIR procedure and reached the conclusion, which was supported by the IRU, that the concept of authorised consignor was not in line with the provisions and spirit of the TIR Convention. In particular, the role of the customs office of departure (control of cargo and vehicle, seals and endorsements) was considered essential in guaranteeing the correct application of the procedure.

Indeed, the concept of authorised consignor is more far-reaching than the authorised consignee, as the former has implications not only in the Contracting Party granting the simplification but also in all the other Contracting Parties involved in the TIR transport, in particular when irregularities have occurred.

I note that the enclosed letter of the IRU seems to suggest that the introduction of the authorised consignor could be achieved without a modification of the TIR Convention and with only a clarification to the EU legislation. I cannot share this analysis in view of the implications I have set out above.

As it would be of no avail to introduce the concept of authorised consignor in the EU in isolation given the implications for other Contracting Parties I would suggest asking the TIRExB to consider again a possible introduction of this concept in the TIR Convention.

I suggest that this request be made by the EU TIRExB member, Mrs Manuela Manta, in co-operation with Mrs Anna Dubielak.

As regards your suggestion to make it no longer necessary for the authorised consignee to present the TIR carnet at the office of destination for customs to make endorsement and formally terminate the TIR operation, I note that this requirement is linked to Article 1 (d) of the TIR Convention defining the termination of a TIR operation. I consider that Article 49 of the TIR Convention, providing for the application of greater facilities by Contracting Parties, does not cover simplifications that potentially alter the system of liability by replacing customs control with controls by private operators. Therefore, it would appear that the specific agreement of national guaranteeing associations would be required at least before this simplification could be introduced.

Yours sincerely,

Jean-Michel Grave

Head of Unit

A handwritten signature in black ink, consisting of the initials 'J.M.' followed by a stylized, cursive name.

Excerpts from TIRExB reports on authorized consignor/consignee of 2001-2003

TIRExB/REP/2001/8

Possibility of granting specially authorized consignees and consignors permission to terminate and to open TIR operations at their premises

Documentation: TIRExB/AGE/2001/8.

21. The TIRExB took note that such a possibility was provided in some national and international Customs transit procedures, for instance, in the Community Transit regime, but not in the TIR Convention. Such a possibility allowed for simplified administrative procedures and would be to the benefit of the transport industry.

22. However, it was pointed out that this issue was closely linked to the different responsibilities and obligations under the TIR Convention of all actors involved in TIR operations. A further analysis would be needed to consider all pros and cons of the issue. Therefore, the TIR Secretary was requested to prepare, in consultation with the IRU, a relevant document for consideration by the TIRExB at one of its next sessions.

TIRExB/REP/2001/10

Possibility of granting specially authorized consignors and consignees permission to open and to terminate TIR operations at their premises

Documentation: Informal Document No. 9 (2001).

34. Taking note of Informal Document No. 9 (2001) prepared by the TIR Secretary, the TIRExB held an exchange of views on the subject. The Board agreed in principle that the Convention should provide for the establishment of certain simplifications which are in line with current trade practices and the existence of the 24-hour economy, as long as these additional facilities are not in contradiction with the text and the spirit of the Convention.

35. On the other hand, some members of the TIRExB felt that, given various national regulations and practical situations throughout Contracting Parties to the TIR Convention, this issue should be treated with great care as it is directly linked to the question of responsibilities of different actors involved in the TIR regime (TIR Carnet holders, national associations, Customs authorities) and thus could have implications on the current guarantee system. It was also recalled that in the early 1980's the UN/ECE Working Party on Customs Questions affecting Transport (WP.30) already considered the facility in question and, at that time, had rejected it.

36. Some members informed the Board that the notion of authorized consignee within the TIR procedure had already been introduced in their countries by virtue of Article 49 of the Convention. However, other members argued that Article 49 was not meant to include simplifications such as authorized consignor or authorized consignee, because their introduction touched the essence of the TIR Convention, as Customs controls were being replaced by controls by third parties and as it influenced the existing liability system.

37. The Board felt that this item should be included in Phase III of the TIR revision process, in particular in relation with the introduction of the computerized TIR system and the analysis of the functioning of the guarantee system. As a first step, the TIRExB decided to analyze the situation in various Contracting Parties which already today accept authorized consignees for TIR operations. To this end, the Board invited members from these countries as well as the IRU to furnish the TIRExB with information on the issue. The Board also agreed that only after it had finalized its discussions, the subject would be brought to the attention of WP.30.

TIRExB/REP/2001/11

Possibility of granting specially authorized consignors and consignees permission to open and to terminate TIR operations at their premises

Documentation: Informal Document No. 18 (2001).

26. The Board discussed Informal Document No. 18 (2001), which contained detailed information on the use of the concept of authorized consignee at the national level in Germany and Poland as well as giving an outline of the position of the IRU on the matter. In order not to further complicate its discussion, the Board decided to continue using the wording "authorized consignor/consignee" although the term as such is not used in the TIR Convention and to limit its discussion to the concept of authorized consignee, stressing that the concept of authorized consignor was not in line with the provisions and spirit of the TIR Convention.

27. From statements from various members of the Board it became clear that in one form or other the concept of authorized consignee does already exist in a number of countries, whereas other countries do not acknowledge its use on account of the fact that it might be in contradiction with the text or spirit of the TIR Convention. The Board felt therefore that it was its task to give uniform guidance to all Contracting Parties in this matter.

28. As a first step the Board acknowledged that a distinction should be made between two different situations. In the first situation goods and documents are delivered and unloaded directly at the consignee's premises in the presence of Customs. In the view of the Board, this type of situation is covered by Article 46 of the Convention, which provides for Customs attendance at other places than at the Customs office of destination (at the cost of the TIR Carnet holder). In the second situation goods and documents are delivered and unloaded directly at the consignee's premises without Customs officials being present. In the opinion of the Board, it is the latter situation which it has to address, as there is no clarity so far as to whether this is in line or not with the spirit and text of the TIR Convention.

29. The Board considered that the concept of authorized consignee was complicated by two factors. Firstly, the fact that it involves an actor (the consignee, the recipient of the goods) which is not yet recognized in the TIR Convention. Secondly, the possible repercussions it might have on the guarantee chain due to the fact that there is a close link between the authorized consignee and the proper termination of the TIR operation.

30. The Board decided to continue its discussion at its next session on the basis of a document to be prepared by the TIR secretariat, which would reflect the different opinions and the various positive and negative aspects of the concept.

TIRExB/REP/2002/12

Concept of authorized consignee in the TIR convention

Documentation: Informal document No. 1 (2002).

27. The TIRExB welcomed Informal document No. 1 (2002) prepared by the TIR Secretary, which outlined that the use of some types of simplifications at the premises of the consignee was permissible under the current text of the TIR Convention, but that the introduction of an explanatory note (or comment) into the TIR Convention would be advisable in order to ensure a minimum level of harmonized approach by all Contracting Parties.

28. The Board, aware that the use of facilities at the premises of the consignee often meets today's transport requirements and convinced that the framework of the TIR Convention was flexible enough to accept such facilities, requested the TIR Secretary to prepare for the next session a new document, which, on the assumption of acceptance of the principle, would analyze in detail the consequences on the provisions of the TIR Convention, in particular with regard to the process of termination and discharge. On the basis of the outcome of this document, the TIRExB would have to decide what kind of measures would be required to ensure a harmonized approach in all Contracting Parties. As a next step, the UNECE Working Party on Customs Questions affecting Transport (WP.30) could provide further guidance on this matter.

TIRExB/REP/2002/14

Concept of authorized consignee in the TIR convention

Documentation: Informal document No. 13 (2002).

9. At the request of the Board, the TIR Secretary had prepared Informal document No. 13 (2002), which, on the assumption that the concept of authorized consignee was in line with the spirit of the TIR Convention, analyzed in detail the repercussions on the provisions of the Convention, in particular with regard to the termination and discharge of a TIR operation.

10. The TIRExB endorsed the general idea, expressed in the document, that the existing provisions of the TIR Convention are flexible enough to take account of the concept of authorized consignee. Knowing that a number of countries already today implement the concept in their territory to the satisfaction of all parties concerned, the Board felt it may not be necessary to prepare comments as a means to clarify the use of the concept of authorized consignee within the context of the TIR Convention and to harmonize its application. The Board agreed to ask the opinion of the UNECE Working Party on Customs Questions affecting Transport (WP.30) whether or not comments with regard to the acceptance of authorized consignees in general and with regard to a possible harmonized authorization procedure in particular were deemed necessary and/or useful.

11. The Board was of the opinion that the description of the termination of a TIR operation, as contained in Informal document No. 13 (2002), needed further clarification. Some members indicated that their national Customs legislation did not allow authorized consignees to stamp and sign vouchers No.2 and Counterfoils No.2. These tasks were considered to be clear prerogatives of Customs. In this context, particular reference was made to the provisions of the Customs Code of the European Union (Regulation 2454/93) which does not allow authorized consignees to affix stamps or to sign the SAD. In this context the TIR Secretary drew attention to the fact that the TIR procedure may be different

from other similar Customs procedures to the extent that it provides for the return of the TIR Carnet to the TIR Carnet holder by the Customs office of destination (Comment to Article 28). Finally, the Board requested the TIR Secretary to elaborate the issue of liability of the authorized consignee against the background of Article 8, paragraphs 1 and 7 and Explanatory Note 0.8.7.

12. The TIRExB took note of IRU's remark that the transport industry so far had not expressed any wish for direct delivery at the premises of consignees. IRU warned for the possible negative implications the (mis)use of the concept of authorized consignee might have on the TIR procedure, its security and on the guarantee system and asked that a further study on the concept would also take account of the repercussions of the use of the concept for the SafeTIR system. The TIRExB took note of these observations, but stressed that trade and industry in general kept asking for a speedy introduction, pointing out that the current use of authorized consignees in a number of countries had not led to (an increase in) claims against the guarantee system. On the contrary, the fact that authorized consignees were under strict surveillance by Customs authorities had so far ensured a smooth functioning of the concept.

13. Concluding the issue, the TIRExB endorsed the general idea of the document and requested the TIR Secretary to prepare a working document for consideration by the WP.30, also taking account of the initial analysis on the subject, contained in Informal document No. 1 (2002) and the various remarks and observations made by the Board and IRU during the session.

TIRExB/REP/2003/15

Concept of authorized consignee in the TIR convention

Documentation: Informal document No. 24 (2002).

8. The TIRExB welcomed Informal document No. 24 (2002) prepared by the TIR Secretary which had consolidated all papers produced by the TIRExB on the issue. Having introduced some changes into the document, in particular with regard to the basic approach by the TIRExB on the issue and the use of the term "authorized consignee" as explained in Informal document No. 1 (2002), the Board decided not to continue further deliberations on the subject and to submit Informal document No. 24 (2002) to the UNECE Working Party on Customs Questions affecting Transport (WP.30) for consideration.

9. The majority of the TIRExB expressed the view that the Authorized Consignee should not be permitted to sign and stamp the TIR Carnet. In this regard the TIRExB supported the option described under point (a) of paragraph 23 of Informal document No. 24 (2002). The IRU recalled its earlier reservations (see, for example, TIRExB/REP/2002/14/Rev.1, para.12) concerning the concept of authorised consignee in the TIR Convention and informed the TIRExB that this issue had been studied in detail by the IRU's Commission on Customs Matters which was of the view that it would be too premature to introduce such a facilitation within the TIR system.
