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Item 3 (a) (i) of the provisional agenda

Activities and administration of the TIR Executive Board:

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Report by the Chair of the TIR Executive Board

Report of the seventy-first session of the TIR Executive Board

I. Attendance

1. The TIR Executive Board (TIRExB) held its seventy-first session on 13 February 2017 in Geneva.
2. The following members of TIRExB were present: Mr. S. Amelyanovich (Russian Federation), Mr. G. Andrieu (France), Mr. M. Ciampi (Italy), Mrs. D. Dirlik Songür (Turkey), Mr. S. Fedorov (Belarus), Mrs. B. Gajda (Poland), Mrs. L. Jelínková (European Commission), Mr. V. Milošević (Serbia) and Mr. S. Somka (Ukraine).
3. The International Road Transport Union (IRU) attended the session as observer and was represented by Mr. Y. Guenkov.

II. Opening statement by Mrs. Molnar, Director Sustainable Transport Division

4. In her opening statement, Mrs. Molnar thanked TIRExB for the progress it had made in the course of its term of office despite, often, having to deal with strategic problems. She further informed the Board, that Mr. A. Bouten had been selected as Economic Affairs Officer in the Sustainable Transport Division and that Ms. Y. Brynkina had also been promoted to a regular post in the division. With regret, she announced the departure of the Chief of Section and TIR Secretary, Mr. M. Pesut, who would retire by the end of February 2017. She further informed the Board of the latest developments in the preparation of the 2017 anniversary session of the Inland Transport Committee.
5. TIRExB thanked Mr. M. Pesut for having led so professionally the TIR secretariat for many years, wishing him all the best in his retirement and congratulated Mr. A. Bouten

and Ms. Y. Brynkina for having secured regular posts at the United Nations Economic Commission for Europe secretariat.

III. Adoption of the agenda

Documentation: Informal document TIRExB/AGE/2017/71

6. TIRExB adopted the agenda of the session as contained in Informal document TIRExB/AGE/2017/71, with the addition that the recent allegations against IRU and its management would be discussed under “Other matters”.

IV. Adoption of the report of the seventieth session of TIRExB

Documentation: Informal document TIRExB/REP/2016/70 draft with comments/Corr.1

7. The Board adopted the draft report of its sixty-ninth session (Informal document TIRExB/REP/2016/69draft with comments/Corr.1), subject to some minor amendments.

V. Application of specific provisions of the TIR Convention

Consideration of amendment proposals

A. Proposals to introduce more flexibility in the guarantee system

Documentation: TRANS/WP.30/2005/15, Informal document No. 1 (2017)

8. In introducing this agenda item, the Chair recalled that TIRExB had exhausted its assessment at its previous session and had transmitted its considerations to the TIR Administrative Committee (AC.2) for further discussion. She called upon the new composition of TIRExB to pursue the issue of increasing further flexibility in the guarantee system from new angles.

9. Mr. S. Fedorov (Belarus), referring to Informal document No. 1 (2017), containing an excerpt of the Transit Manual, describing the common and European Union procedure (New Computerized Transit System - NCTS) on guarantee management, remarked that its core component was full guarantee coverage at all times for each transport. Mr. S. Amelyanovich (Russian Federation) fully supported this view and encouraged the next composition of TIRExB to continue discussing the issue of introducing more flexibility into the TIR guarantee system. He further stated that, according to his understanding, the Common Transit Convention (CTC) requires that guarantee for the full amount of the customs debt must be furnished. In case of absence of information on full guarantee coverage, the customs office of departure must not release the goods for transit. Referring to document TRANS/WP.30/2005/15, he was of the view that, due to the great number of conditions to be fulfilled, the authenticity of the three official languages of the TIR Convention and the differences in various national legal systems (France, United Kingdom, United States of America), Contracting Parties should better clarify which of the two concepts (guarantee or surety) is applicable to the TIR Convention. Mrs. L. Jelínková (European Commission) clarified that, indeed, the calculation of customs duties and other charges corresponding to the potential customs debt was at the heart of the NCTS guarantee system, however that the legislation also provided for a flat rate of 10,000 Euros (only compared to 60,000 Euros used in the TIR system) in case it was not possible to calculate the exact rate due to absence of relevant data, such as is the case for some transit declarations. In addition, any calculation was performed by the office of departure and

would not be repeated en route. Mrs. B. Gajda (Poland) warned drawing premature conclusion with regard to the similarities between the TIR guarantee system and NCTS, as their principles were completely different. For example, in NCTS, guarantees can be deposited in cash, there are options to work with an individual guarantee (valid for one movement) or comprehensive guarantee which is valid for an unspecified number of transit operations, the amount of which can even be reduced or waived in case principals fulfil certain criteria; the legislation also provides for a guarantee waiver for certain types of transport. Mr. S. Somka (Ukraine) also underlined the difference between both systems, mentioning, in particular, the authorized access for operators to use TIR Carnets, a concept unknown in the common transit system. Mr. V. Milošević (Serbia) remarked that, apart from apparent similarities between the TIR guarantee and the individual guarantee, the common transit Convention was completely different from the TIR Convention and, therefore, there was no use in even trying to compare both systems. Mr. M. Ciampi (Italy) fully supported previous speakers, recalling, once more, that in the whole discussion on flexibility in the guarantee system the aspect of the TIR Carnet holder as liable debtor for the payment of the full amount of customs duties and taxes continued to be disregarded. Mr. G. Andrieu (France) also supported previous speakers, adding that in NCTS it was not necessarily the transporter who was responsible for providing the guarantee. In addition, any advance guarantee management by customs requires a fully computerized system, such as is the case for NCTS but not for TIR. Mr S. Amelyanovich (Russian Federation) agreed with the other speakers that NCTS is different from the TIR system. At the same time, this should not keep the Board from trying to seek full guarantee coverage for the TIR system by studying other transit systems

10. Mr. Y. Guenkov (IRU) informed the Board that IRU is studying the introduction of an online facility to calculate customs duties and taxes in various countries. However, he wondered, were such facility to be made available to transport operators, to which extent customs would accept the information as valid and if yes, would customs IT systems be able to respond online, thus accepting the advance cargo declaration with an upgraded guarantee level. Otherwise, such a duties and taxes calculator would have limited impact and not be of any value as a flexible or full guarantee solution. TIRExB expressed an interest to be briefed by IRU, at future sessions, on developments in this field.

11. In conclusion, TIRExB noted the NCTS system, requires, on the one hand, full guarantee coverage, calculation of guarantee per each transit operation and identification of the debtor, whereas, on the other hand, the level of the guarantee may vary and can, ultimately, even be waived. And although similarities with the TIR procedure may exist at face value, the basic principles are different. Therefore, restraint should be applied when comparing the two systems, as it could lead to wrong conclusions. However, this should not discourage the new composition of the Board to have a fresh approach towards introducing more flexibility into the guarantee system, also by studying other transit systems such as, but not limited to, NCTS.

B. Proposals to introduce authorized consignor

Documentation: ECE/TRANS/WP.30/AC.2/2017/6

12. The Board recalled that document ECE/TRANS/WP.30/AC.2/2017/6, containing proposals for an Explanatory Note and comment to Article 49 of the Convention to introduce greater facilitations in the TIR Convention, such as, but not limited to, authorized consignor and consignee had been transferred to AC.2 for consideration. The Board decided to first await reactions or feedback from AC.2 before reverting to this issue in the future.

VI. Computerization of the TIR procedure

A. Current status of the eTIR Project

13. The Board took note that Step 2 of the UNECE-IRU eTIR pilot project between Iran (Islamic Republic of) and Turkey will end on 20 February 2017. A preliminary analysis of the results of the survey carried out among all stakeholders indicates a great level of satisfaction and the need to continue to improve the systems to include new functionalities and, possibly, involve additional Customs administrations. The final report of the project as well as a new Memorandum of Understanding between UNECE and IRU are under preparation. The Board also took note that the eTIR pilot between Georgia and Turkey was continuing. The Board also recalled that the twenty-sixth session of the Informal Ad hoc Expert Group on Conceptual and Technical Aspects of Computerization of the TIR Procedure (GE.1) will take place on 18 and 19 May 2017, in conjunction with the fourth session of the Group of Experts on Legal Aspects of Computerization of the TIR Procedure (GE.2).

B. Activities of the Group of Experts on Legal Aspects of Computerization of the TIR procedure

14. The secretariat briefed the Board about the outcome of the third session which took place in Geneva on 12 and 13 December 2016. Among others, GE.2 had reviewed the results of the survey on authentication mechanisms and had decided to conclude its considerations at the next session after reviewing replies from a broader geographical distribution of Contracting Parties. GE.2 had also placed particular emphasis on the discussion of possible financing mechanisms for eTIR and had, in this respect, transmitted document ECE/TRANS/WP.30/GE.2/2016/7 for consideration, to the Working Party. GE.2, after extensive discussions, had further recommended to the Working Party on Customs Questions affecting Transport (WP.30) that it should focus its efforts on developing an optional Annex, rather than a Protocol. Mr. Y. Guenkov (IRU) highlighted the importance of a swift shift to a fully electronic TIR procedure, particularly in light of developments in various Contracting Parties that would make the use of electronic declarations mandatory within a relatively short time frame. Against that background, he repeated his proposal to study the example of eATA (i.e. a single generic provision in the body of the TIR Convention) as immediate and intermediate solution. TIRExB reiterated its call to members of the Board to encourage their (and other) administrations to contribute actively to the activities of GE.1 and GE.2 in order to speed up the computerization process.

C. International TIR Data Bank / Central database on certificates of approval / Central database on customs offices

15. TIRExB was informed about the progress in implementing the new International TIR Data Bank (ITDB) and the new ITDB web service. The secretariat provided detailed explanations on the new design and features of the new ITDB web application and the ITDB web service. The secretariat stressed the importance for Contracting Parties to connect their national systems to the ITDB web service in order to have a database with accurate data. A live demo of the new ITDB web application was conducted.

16. In reply to questions from the Board, the secretariat informed that an official letter providing all details about the ITDB rollout and further information related to its use would

be sent to the Directors-General of all Contracting Parties. The Board thanked the secretariat for the presentation. Mrs. L. Jelínková (European Commission) proposed that the next composition of TIRExB study the prospect of amending Annex 9, Part II, making the use of ITDB mandatory in order to have an accurate source of information.

VII. Adaptation of the TIR procedure to modern business, logistics and transport requirements

Implementation of the intermodal aspects of the TIR procedure

Documentation: Informal document No. 2 (2017)

17. TIRExB discussed the scenario of an intermodal container transport between two inland customs offices with a sea leg, as elaborated in Informal document No. 2 (2017) by the secretariat, in close consultation with IRU. Most TIRExB members expressed their full consent with the example, which now includes a clear description about the suspension of the TIR transport during the sea leg, references to applicable provisions of the Convention and information on the competence of Governments to accept, or not, the use of subcontractors. Mr. S. Amelyanovich (Russian Federation) reiterated his position that, in his view, the example of best practice was not covered by the TIR Convention. Mr. S. Fedorov (Belarus) clarified his position as not disagreeing with the scope of the example as such. However, in his view, this example of best practice was not applicable under the TIR Convention. TIRExB agreed that the example could be transmitted to AC.2 for endorsement, on the understanding that the absence of clear provisions in the TIR Convention on the use of subcontractors would be highlighted when introducing the item at AC.2.

VIII. Settlement of disputes between Contracting Parties, associations, insurance companies and international organizations

Documentation: Informal document No. 3 (2017)

18. Under this agenda item, the Board reverted to the issue of application of the TIR Convention on the territory of Belarus. In this context, the Board took note of an assessment by the secretariat of valid reasons for competent bodies to refuse to accept TIR Carnets in accordance with the provisions of the TIR Convention. Mrs. L. Jelínková (European Commission) appreciated the clarity of the assessment and proposed that the document be transmitted to WP.30 for further consideration. Mr. S. Fedorov (Belarus), supported by Mr. S. Amelyanovich (Russian Federation) completely disagreed with the assessment, as lacking any logic. In addition, the document did not address the right of customs to assess the required amount of duties and taxes nor the fact that the Convention would allow for partial guarantee coverage.

19. The secretariat raised the question what the value was of any international transit system with an internationally valid guarantee, if each Contracting Party involved in a TIR transport would individually assess the level of the guarantee for the potential payment of national customs duties and taxes in case an infringement would occur on its territory.

20. In the view of Mr. S. Amelyanovich (Russian Federation) raising the level of the guarantee up to 100,000 Euros, as proposed by various members of the Board, would not solve the issue of transporters risking refusal from customs authorities to accept a TIR

Carnet. In his view, in case a TIR transport starts, for example, in Portugal with destination the Russian Federation, Portuguese authorities should check the maximum level of customs duties and taxes at risk in transiting countries before deciding to accept a TIR Carnet as valid customs document for the transport. In case customs would find that in any country involved in the TIR transport the level of customs duties and taxes at stake would exceed 60,000 Euros they should not accept the TIR Carnet as the TIR procedure did not provide the suitable guarantee for that specific transport. He, once more, referred to Article 3 (b), which stipulates that transport operations must be guaranteed by associations. This in his view, should be understood as providing full guarantee. Mr. M. Ciampi (Italy) pointed out that the provision of Article 3 (b) should be read and understood in its full context, meaning that, one, a TIR transport should be performed by certain types of vehicles (Article 3 (a) (i) to (iii)), two, be guaranteed by a national association authorized in accordance with Article 6 and, three, under cover of a TIR Carnet in accordance with Annex 1 of the Convention. By no means, this provision states anything about the level of the guarantee itself. On the other hand, and this is the only reference in the text of the Convention, Article 8, para. 3 stipulates that Contracting Parties must determine a maximum guarantee, meaning that the Convention recognizes, in principle, that there may be situations where the potential level of customs duties and taxes at stake are beyond the established maximum. Finally, Explanatory Note 0.8.3. provides guidelines to customs authorities which amount should be considered as a suitable amount, leaving it up to individual countries to fix the nationally applicable maximum. In the view of Mr. Y. Guenkov (IRU), the discussions had landed the Board in a dead end street. He reiterated the availability of IRU, together with the national association of Belarus to raise the guarantee amount to 100,000 euros as an immediate solution for the problem, even if discussions about a long term solution of this problem would need to be continued.

21. The Chair, in concluding this agenda item, repeated that there are only limited grounds for customs authorities to refuse to accept a TIR Carnet and that an insufficient level of guarantee was not among them. She recommended Belarus to raise the national amount of the guarantee to 100,000 Euros or the equal amount in national currency.

IX. Problems reported by transport companies from the Republic of Moldova in Ukraine

22. Mr. S. Somka (Ukraine) informed the Board that the Parliamentary Committee for Tax and Customs Policy of Ukraine had approved a draft new law, lifting restrictions for the transport of alcohol and tobacco products on the territory of Ukraine under cover of TIR Carnets, but that this law was still waiting for adoption by the Parliament. Mr. S. Somka promised to keep the Board informed about any further development in this field.

X. Price of TIR Carnets

Documentation: Informal document No.4 (2017)

23. The Board took note that the secretariat had transmitted the 2016 TIR carnet prices to AC.2 and published them on the TIRExB website, together with the disclaimer that the Board had agreed on at its last session. The Board considered Informal document No. 4 (2017) and approved the questionnaire contained therein, pending a slight change in the question about Value Added Tax (VAT). Furthermore, it requested the secretariat, possibly with the assistance of IRU, to circulate the questionnaire, in electronic form, to issuing associations before 1 March 2017.

24. Under this agenda item, Mr. Amelyanovich (Russian Federation) reiterated his request to IRU to provide a breakdown of the TIR Carnet distribution prices. With reference to Article 7 of the Convention, he raised the question why IRU charges 25 SwF for the distribution of a TIR Carnet form, which costs 1,79 SwF to produce, as confirmed by IRU, whereas any true value of the form as a guarantee bearing TIR Carnet only occurs, after it has been accepted by the customs office of departure. Russian customs authorities have concerns regarding the accuracy of the current practice where the exemption of import duties and taxes is based on the IRU distribution price rather than on the production price. In a first reaction, Mr. Y. Guenkov (IRU) stated that IRU was looking into the matter in close collaboration with Swiss tax authorities, which had already indicated their willingness to adapt the necessary export documents to reflect the full invoiced amount of 25 SwF per TIR Carnet.

XI. Example agreement

Documentation: Informal document No. 5 (2017)

25. Due to a lack of time, TIRExB decided to revert to this issue at its next session.

XII. Self-evaluation

Documentation: Informal document WP.30/AC.2 (2017) No. 3

26. The Board endorsed the consolidated replies to the self-evaluation survey, including recommendations for future compositions of the Board, as contained in Informal document WP.30/AC.2 (2017) No. 3 and mandated the Chair to introduce it at the session of AC.2

XIII. Issues regarding the consecutive use of two TIR Carnets for a single TIR transport

Documentation: Informal document No. 30 (2016)

27. Due to a lack of time, TIRExB decided to revert to this issue at its next session.

XIV. Activities of the secretariat

General activities of the secretariat

28. The Board was informed that, since its previous session, the TIR secretariat had participated in the following event: workshop on the World Customs Organization (WCO) transit guidelines (23-27 January 2017, La Paz).

XV. Other matters

29. Due to a lack of time, the Board was not in a position to discuss the Executive Summary of the IRU external audit report, trusting that there would be sufficient time during WP.30 or AC.2 to address this issue in depth. The Board requested the secretariat to dedicate a separate agenda item to this issue in future agendas.

XVI. Restriction in the distribution of documents

30. TIRExB decided to keep Informal documents No. 30 (2016), No. 3, No. 4 and No. 5 (2017) issued in relation to the current session, restricted.

XVII. Date and place of next session

31. The Board decided not to fix a date for its seventy-second session, but leave it up to the new composition of the Board to take a decision on this matter.¹

¹ By email of 22 February 2017, TIRExB decided to conduct its seventy-second session on Monday 15 May 2017, in Geneva.