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Activities and administration of the TIR Executive Board:

Activities of the TIR Executive Board:

Report by the Chair of the TIR Executive Board

Report of the seventy-third session of the TIR Executive Board (TIRExB)

I. Attendance

1. The TIR Executive Board (TIRExB) held its seventy-third session on 12 June 2017 in Geneva.
2. The following members of TIRExB were present: Mr. S. Amelyanovich (Russian Federation), Mr. G. Andrieu (France), Mr. M. Ayati (Iran (Islamic Republic of)), Ms. D. Dirlik Songür (Turkey), Mr. S. Fedorov (Belarus), Ms. B. Gajda (Poland), Ms. L. Jelinková (European Commission), Mr. S. Somka (Ukraine) and Ms. E. Takova (Bulgaria).
3. The International Road Transport Union (IRU) attended the session as observer and was represented by Mr. Y. Guenkov.
4. At the invitation of the Chair, Mr. C. Șerban, Deputy Secretary General of the Romanian Association for International Road Transport (ARTRI), accompanied by Mr. G. Diaconu, Board Counsellor (ARTRI), and Mr. D. Sculati, Head TIR Insurance at IRU, participated in the session (related to item 7 (a) of the agenda).

II. Adoption of the agenda (agenda item 1)

Documentation: Informal document TIRExB/AGE/2017/73

5. TIRExB adopted the agenda of the session as contained in Informal document TIRExB/AGE/2017/73, with the addition of the activities of the Ad hoc Expert Group on Conceptual and Technical Aspects of Computerization of the TIR Procedure (GE.1) and the Group of Experts on Legal Aspects of Computerization of the TIR Procedure (GE.2) under agenda items 5 (c) and (d).

III. Adoption of the report of the seventy-second session of TIRExB (agenda item 2)

Documentation: Informal document TIRExB/REP/2017/72draft with comments

6. The Board adopted the draft report of its seventy-second session (Informal document TIRExB/REP/2017/72draft with comments), subject to some minor amendments.

IV. Programme of work 2017-2018 (agenda item 3)

Documentation: Informal document No. 6 (2017)/Rev.1

7. The Board considered Informal document No. 6 (2017)/Rev.1, containing the draft programme of work for its 2017-2018 term of office, revised pursuant to the decisions at its last session (see Informal document TIRExB/REP/2017/72final, paras. 12-18). The Board noted that the draft programme of work contained all the changes agreed to at its previous session. In that light, TIRExB adopted its draft programme of work and requested the secretariat to submit it to the TIR Administrative Committee (AC.2) at its autumn 2017 session for endorsement.

V. Application of specific provisions of the TIR Convention (agenda item 4)

Consideration of amendment proposals

A. Proposals to introduce more flexibility in the guarantee system

8. TIRExB recalled that the previous composition of the Board, towards the end of its mandate, had exhausted its assessment of increasing further flexibility in the guarantee system and had transmitted its considerations to AC.2 for further discussion (TIRExB/REP/2017/71/final, paras. 8-11). The Board agreed to commence consideration of that matter only subsequent to the deliberations of AC.2. In addition, the Board requested the secretariat to distribute documents related to previous considerations of increasing further flexibility in the guarantee system to TIRExB, so that new Board members would be aware of the discussions having taken place previously.

B. Proposals to amend Article 18 with a new Explanatory Note

Documentation: Informal document No. 12 (2017)

9. The Board continued its considerations on a draft Explanatory Note to Article 18, to accompany and clarify the application of the original proposal to increase the number of places of loading and unloading from four to eight. To that end, the secretariat introduced Informal document No. 12 (2017), which outlined a revised draft Explanatory Note, in accordance with the drafting guidelines provided at the previous session. As a first reaction, the Board was of the view that the first paragraph of the draft Explanatory Note was not sufficiently clear, notably, whether the limitation introduced by a single Contracting Party would apply to that portion of the journey only or to the whole TIR transport. After discussion, the Board agreed that it would be preferable to refer to the entire TIR transport, rather than introduce a mechanism requiring complicated calculations for operators and customs alike.

10. Considering that Explanatory Notes did not modify the provisions of the Convention but merely made their contents, meaning and scope more precise, the Board was of the view that the wording of the Explanatory Note would need to be further considered. Some Board members raised the question of whether Article 18 should instead be amended. Taking into account that observation, the Board agreed that the current mandate from AC.2 referred to the elaboration of an Explanatory Note and, to that extent, decided to continue its work in that direction. The delegation of IRU offered a proposal for an alternative formulation for the Explanatory Note, as follows:

“Customs authorities may limit the total number of customs offices of departure and destination on their territory, which thus shall not exceed three without prejudice to the right of the customs authorities of other Contracting Parties, which allow the total number for the entire TIR transport not to exceed eight customs offices of departure and destination”.

11. As the proposal had not been submitted in writing in advance of the current session, the Board members decided to consider it after the session, and to transmit their comments to the secretariat no later than 15 July 2017 for consolidation and inclusion in a new document.

12. Concerning the second paragraph of the draft Explanatory Note as contained in Informal document No. 12 (2017), although scope for improvement in the wording was identified, there was general consensus on the merit of ensuring appropriate mechanisms for disseminating information on any limitations to all Contracting Parties and to TIRExB.

13. In conclusion, TIRExB requested the secretariat to collect the comments on the proposal of the delegation of IRU and to take account of the aforementioned discussions (see paras. 9-12) in preparing a new version of the draft Explanatory Note to Article 18.

VI. Computerization of the TIR procedure (agenda item 5)

A. International TIR Data Bank (ITDB)

14. The Board took note that the secretariat had a meeting with the European Commission (EC) in Brussels on 30 May 2017 to work on connecting the ITDB with the central repository of Customs Offices of the European Union. The Board was also informed that the secretariat had been invited to make a presentation of the ITDB at the meeting of the Customs Expert Group (CEG/TIR/01) in Brussels on 31 May 2017. The secretariat reported that the feedback received was very positive. The secretariat further informed the Board that the work on the customs offices database progressed steadily with the aim to have a prototype ready for presentation at the Board’s next session.

15. The Board also took note of the progress achieved in the eTIR pilot between Georgia and Turkey, in particular the imminent migration of the Central Exchange Platform from the test to production environment.

B. Mandatory submission of data using the ITDB

16. TIRExB commenced considerations on how to achieve mandatory usage of the ITDB on the basis of Informal document No. 11 (2017) prepared by the secretariat. TIRExB noted that the matter was very important and had thus been included in its programme of work 2017-2018. TIRExB noted that the Model Authorization Form (MAF), contained in Annex 9, Part II, still allowed countries to submit ITDB data on paper. That practice was resource consuming for Contracting Parties and the secretariat. In addition, it

delayed the timing of data submission and processing. TIRExB was also informed that the same issues existed with regard to submission of the annual list under Annex 9, Part II, paragraph 5 and with regard to exclusions under article 38, paragraph 2 of the Convention, although AC.2 had adopted Explanatory Notes with regard to those three provisions clarifying that proper usage of the ITDB by customs administrations and associations rendered the submission to the Board of authorized TIR Carnet holder data in any other form, such as paper, redundant (see ECE/TRANS/WP.30/AC.2/111, para. 15).

17. The Board noted that Informal document No. 11 (2017) outlined two possibilities on how to make usage of the ITDB mandatory with regard to the three provisions: (a) legal amendments to the Convention; or (b) comments. The Board also noted that the advantage of amendments to the Convention was their legally binding nature as opposed to comments, but that comments offered a simpler procedure for adoption than legal amendments. In addition, the Board noted that Informal document No. 11 (2017) also invited consideration of making ITDB usage mandatory for data submission with regard to other provisions (see Informal document No. 11 (2017), para. 24).

18. There was general agreement that the moment had come to make data submission via ITDB mandatory, since the ITDB existed already since 1999 and was available online since 2012. In that regard, Mr. G. Andrieu (France) expressed a preference for the approach of a legal amendment. Ms. B. Gajda (Poland) raised the question on the number of States that were currently not using the ITDB at all, since that information had an impact on the consideration, in particular any transitional period. Ms. L. Jelínková (European Commission) said that introducing mandatory usage of the ITDB by all European Union Member States was currently under discussion as well as possible connection of ITDB with national transit systems. However, such interconnection could only be realized when all Contracting Parties were using the ITDB since it could otherwise cause problems at borders. Ms. L. Jelínková also said that it would be helpful to have proposals by the secretariat for the wording of legal amendments or comments at the next session. Mr. Y. Guenkov (IRU) stated that IRU fully supported computerization and pointed out the importance of accurate information.

19. In conclusion, the Board agreed to request the secretariat, for its next session, to (a) provide statistical information on the number of countries that did not use the ITDB, and in particular which countries still submitted annual lists on paper; and (b) prepare proposals on legal amendments or comments with the aim to make data submission via the ITDB mandatory. In addition, the Board recommended to IRU to request national associations to keep the ITDB updated and underscored the need for all parties to sustain efforts to that end for the benefit of all.

C. Activities of the Ad hoc Expert Group on Conceptual and Technical Aspects of Computerization of the TIR Procedure

20. The Board was informed of the outcome of the twenty-sixth session of GE.1 which took place on 18 and 19 May 2017. The Board took note, among others, of (a) the subdivision of the eTIR Reference Model in four documents, i.e. eTIR introduction, eTIR concepts, eTIR functional specifications and eTIR technical specifications; (b) the recommendation to leave, for the time being, the responsibility of the submission of any additional information to the transport operator; and (c) the request for a new message to be sent by customs in case of refusal to start a TIR operation. The Board took also note that the report of the session would be submitted to the October 2017 session of the Working Party on Customs Questions affecting Transport (WP.30).

D. Activities of the Group of Experts on Legal Aspects of Computerization of the TIR Procedure

21. TIRExB noted that GE.2 had held its fourth session on 16 and 17 May 2017. At that session, GE.2 continued its work on the development of an optional Annex to the TIR Convention and necessary amendments to the main body of the TIR Convention. The Board took note that those amendments included, among others (a) the establishment of a Technical Implementation Body (TIB) tasked with maintaining and updating the functional and technical documentation of the eTIR international system; and (b) a definition of the eTIR procedure to be included in Article 1 of the TIR Convention. Concerning financing, GE.2 confirmed the recommendation by GE.1 that the maintenance costs of the eTIR international system could be covered by means of an amount per transport. However, GE.2 was of the view that a decision on the required funds for the initial development and deployment of the system should be taken by the Contracting Parties. To that effect, the issue was going to be brought to the attention of WP.30 at its next session in June 2017.

22. TIRExB was briefed about other outcomes of the session including (a) the decision to elaborate a definition of the accompanying document and fall-back procedure in the legal framework; (b) the decision to stipulate in the legal framework that other than the mandatory acceptance of data submitted via the eTIR international system, national authorities could decide on other nationally applicable methods of submitting advance cargo information, as well as other authentication methods; and (c) the decision to make the use of the ITDB mandatory for those Contracting Parties applying the optional Annex.

23. Further, TIRExB noted that GE.2 had requested to hold virtual consultations for finalizing the draft Annex and necessary amendments to the TIR Convention to transmit a complete draft for the consideration of WP.30 at its October 2017 session. Against that background, GE.2 was of the view that an extension of its mandate would not be necessary with any further work on the draft taking place within the forum of WP.30, pending any final decision by WP.30. TIRExB took note of the dates for the next session of GE.2 (30 and 31 October 2017).

VII. Settlement of disputes between Contracting Parties, associations, insurance companies and international organizations (agenda item 7)

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

Documentation: Informal document No. 10 (2017); material circulated to Board members by email of 23 May 2017

24. The Board continued its consideration of the matters raised in the joint letter by the Moldavian Association for International Road Transport (AITA) and the Romanian Association for International Road Transport (ARTRI) as contained in Informal document No. 10 (2017) (see TIRExB/REP/2017/72final, paras. 19-24). The Board noted that the national associations had complied with the request made at its previous session to provide all documents referred to in their letter to the Board (see TIRExB/REP/2017/72final, para. 23). The Board noted that the delegation of IRU did not consent to the distribution of those documents outside TIRExB.

25. Against that background, the Board heard a presentation by Mr. C. Șerban (ARTRI). The presentation provided an overview on allegations from the perspective of AITA and

ARTRI pertaining to, among others, financial mismanagement at IRU. The two national associations asked TIRExB to (a) request IRU to provide the full insurance documents, the external audit report, financial statements and audits of all its entities; (b) oblige IRU to inform TIR bodies about the status of pending criminal proceedings and to take responsibility for their action; (c) support all current actions towards transparency and legality from all actors of the TIR system; and (d) ensure that IRU respected the provisions of the TIR Convention in particular Annex 9, Part III. TIRExB thanked ATRI for the presentation and requested to have the presentation and the copy of the statement for further consideration. ATRI clearly indicated its consent to that end.

26. With respect to the global insurance contract, it was clarified that IRU had provided it to all national associations. However, ARTRI and AITA considered the document provided as not complete, lacking certain annexes and information.

27. There was general agreement among TIRExB that the matter was of high importance. It was stated that the allegations with regard to criminal misconduct were serious, but for the Swiss authorities and not the Board to investigate. It was also stated that the monitoring role of TIRExB under the Convention regarding the insurance system was linked to ensuring that the guarantee chain functioned satisfactorily with regard to customs debt. Therefore, the view was expressed that insurance premiums, investments and other financial issues were outside the scope of responsibilities of TIRExB. A further consideration was that the Board was not composed of financial but customs experts. However, it was pointed out that increasing transparency had been explicitly included in the Board's programme of work 2017-2018. Thus, the Board would have to fulfil its monitoring function in that regard. To that end, it was proposed to recommend an audit of IRU to AC.2. The Board recalled that AC.2 would consider a package of amendments for adoption at its October 2017 session, including on Annex 8, mandating TIRExB to carry out external audits on the international organization. With regard to the prices of TIR Carnets, IRU clarified that they were fixed by the IRU General Assembly. In addition, the Board was cautioned by the secretariat not to let itself be dragged into internal matters between the international organization and its national associations.

28. After discussion, the Board agreed that (a) the letter by the two national associations warranted a reply to be prepared by the secretariat and considered by the Board at a future session; (b) careful consideration and analysis on whether the matters fell within its competence was needed; and (c) the level of competence of the Board on the matters at stake should be carefully outlined. In addition, TIRExB agreed, further to the provision of Annex 9, Part III, paragraph 2 (a) of the TIR Convention, to request IRU to submit directly to TIRExB a certified copy of the full set of the global insurance contract, for consideration by the Board at its next session. With regard to the external audit report, the Board recalled its decision at its previous session (see TIRExB/REP/2017/72final, para. 24; see also para. 29 below). Upon request of IRU to also have the copy of the presentation made by Mr. C. Şerban (ARTRI), the secretariat was requested to seek clarification from ARTRI.

B. The IRU external audit report

29. With regard to the IRU external audit report, the Board recalled its decision to discuss the Executive Summary of the IRU external audit report at a future session subsequent to the consideration of the matter by WP.30 at its June 2017 session (TIRExB/REP/2017/72final, para. 24).

VIII. Adaptation of the TIR procedure to modern business, logistics and transport requirements (agenda item 6)

Implementation of the intermodal aspects of the TIR procedure

30. Due to a lack of time, TIRExB decided to discuss the issue at its next session.

IX. Price of TIR Carnets (agenda item 8)

Documentation: Informal document No. 8 (2017), Informal document No. 9 (2017)

31. The Board thanked IRU for sending a reminder to issuing associations on 31 May 2017 and took note of the TIR Carnet prices for 2017 (39 associations compared to 51 in 2016) contained in Informal document No. 8 (2017). Taking note that the number of replies had increased subsequent to the reminder but that the number of replies was still lower as compared to the previous year, the Board mandated the secretariat to send another reminder to associations, possibly with the assistance of IRU, and prepare an analysis of the prices for its next session. Furthermore, the Board decided to postpone the discussion on the survey on TIR Carnet prices to its next session.

32. Pursuant to a request by AC.2, the Board commenced consideration of the issue of TIR Carnets prices as contained in Informal document No. 9 (2017) by the Russian Federation. In the view of the Russian Federation, there was a confusion between the concept of the TIR Carnet price under Article 7 of the Convention, namely whether it was to be considered as a (a) product of printing (i.e. currently valued at 1,79 SwF) or (b) guarantee document which included insurance payment and other elements (i.e. IRU distribution price currently at 25 and 59 SwF, depending on the number of volets). The customs authorities of the Russian Federation had concerns regarding the accuracy of the current practice where the exemption of import duties and taxes was based on the IRU distribution price rather than on the production price. Therefore, the Russian Federation proposed instructing IRU to (a) provide a separate indication in the invoice for the TIR Carnet price, the value of the form as well as the cost of other expenses and services; (b) submit to AC.2 details on the elements of the cost of TIR Carnets, precisely on each type of Carnet issued in accordance with Annex 9, Part III, paragraph 2 (f) of the TIR Convention; and (c) make available to the customs authorities of the Russian Federation the export declarations for the TIR Carnets processed by the customs office in Switzerland that were sent by IRU to the Russian Federation covering the period starting from 2013 up until the present moment.

33. In response, Mr. S. Somka (Ukraine) stated that it would be advisable to analyze the question more broadly. More specifically, he added that the TIR Carnets were the object of international trade operations and thus provisions of national law linked to the General Agreement on Tariffs and Trade (GATT) were applicable. Against that background, Mr. S. Somka was of the view that there should be no analysis of separate parts of the customs value of the TIR Carnet. In addition, the delegation of IRU provided information on the legal opinion of a former Head of IRU Legal Services on a similar case in the past, stating that taxation of TIR Carnets by customs authorities would be against Article 7 of the Convention and taxation by the tax authorities of the TIR Carnets issued by an issuing association would be considered as a means of circumventing the requirements of Article 7. Mr. S. Amelyanovich (Russian Federation) asked the delegation of IRU about the value declared by the Swiss customs authorities for the TIR Carnet forms imported into the Russian Federation in 2014, 2015 and 2016. Mr. Y. Guenkov (IRU) responded that, only as preliminary information, the total amount calculated by the Swiss customs was SwF 1.79,

as it was considered in the category of printed material. Mr. Y. Guenkov pointed out that he was not in a position to confirm that at the current session, since it pertained to the particular invoice and a total lump-sum amount declared. However, he informed the Board that it had been recently agreed with the Swiss customs to have the amount corresponding to the invoice value stated in the export documents to accommodate the request of the Russian Federation.

34. The Board agreed that (a) the legal opinion referred to by Mr. Y. Guenkov (IRU) should be shared with the Board members; and (b) the matter be considered further at a future session.

X. Example agreement (agenda item 9)

Documentation: Informal document No. 5 (2017)

35. Due to a lack of time, TIRExB decided to discuss the issue at its next session.

XI. Issues regarding the consecutive use of two TIR Carnets for a single TIR transport (agenda item 10)

Documentation: Informal document No. 30 (2016)

36. The Board recalled that, at its previous session, it had requested further information on the case of two TIR Carnets used for one TIR transport contained in Informal document No. 30 (2016) submitted by the Government of Germany to enable it to reach an informed final decision (see TIRExB/REP/2017/72final, paras. 21-23).

37. At the current session, Mr. M. Ayati (Iran (Islamic Republic of)) and Mr. Y. Guenkov (IRU) notified the Board that the case had been caused by mere human error according to the information they had received. Against that background, the Board requested the secretariat to prepare a response to the Government of Germany informing about the Board's assessment on the case with a clear statement when consecutive use of TIR Carnets was permitted under the Convention.

38. Mr. Y. Guenkov (IRU) pointed out the possibility of cases with a trailer and a semi-trailer, in which the issuance of subsequent TIR Carnets might bring some difficulties. Mr. S. Fedorov (Belarus) responded that, although not that common, there might be some issues in relation to those cases that merit discussion. Considering that there was no written submission on that matter, the Board agreed to address the use of two TIR Carnets and the issue of registration of road vehicles at a future session.

XII. Activities of the secretariat (agenda item 11)

General activities of the secretariat

39. The Board was informed that, since its previous session, the TIR secretariat had participated in the following events: (a) International Transport Forum (Leipzig, 31 May-2 June 2017); (b) Meeting with the EC for the customs offices database (Brussels, 30 May 2017); (c) Meeting of the Customs Expert Group (CEG/TIR/01) (Brussels, 31 May 2017); (d) European Grails Conference (GR8Conf) (Copenhagen, 1 and 2 June 2017); and (e) World Customs Organization IT Conference 2017 (Tbilisi, 7-9 June 2017).

40. The Board was also informed that the preparations of the National TIR Seminar on the Control of Road Vehicles in Tashkent (4 and 5 July 2017)¹ jointly organized by the secretariat and the Customs Administration of the Republic of Uzbekistan continued and that Mr. M. Ayati (Iran (Islamic Republic of)) would participate as expert to share the experiences of the Iranian customs. In that regard, the Board noted a proposal to discuss the findings and conclusions from the Tashkent seminar, together with those from previous events.

XIII. Other matters (agenda item 12)

41. TIRExB did not consider any other matter.

XIV. Restriction in the distribution of documents (agenda item 13)

42. TIRExB decided to keep Informal documents No. 8 and 11, 12 (2017) issued in relation to the current session, restricted.

XV. Date and place of next session (agenda item 14)

43. The Board decided to have its next session on Monday, 9 October 2017, in Geneva.

¹ Comment by the secretariat: since then, the seminar had to be postponed for administrative reasons.