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Item 6 (a) of the provisional agenda

Revision of the Convention:

**Amendments to the Convention with regard to
transmitting data to the International TIR Data Bank**

Amendments to the Convention with regard to transmitting data to the International TIR Data Bank

Note by the secretariat

I. Mandate

1. At its previous session, the Committee provisionally adopted two new Explanatory Notes to Annex 9, Part II. The Committee decided not to fix the two deadlines, as provided for in Article 60 of the TIR Convention, and await other amendment proposals in order to consolidate a larger package, determine the deadlines for the whole package and send it to the Depository for processing and issuing a Depository Notification. Finally, the Committee mandated the secretariat to prepare a similar Explanatory Note to paragraph 2 of Article 38 regarding transmission of data on exclusions to TIRExB (ECE/TRANS/WP.30/AC.2/113, paras. 30 and 31). Following this request, the secretariat has prepared the present document (ECE/TRANS/WP.30/AC.2/2013/12) which the Committee is invited to consider.

II. Background

2. At its fifty-third session, the Committee took note that the ITDB online+ web application had been successfully launched (ECE/TRANS/WP.30/AC.2/109, para. 11). The ITDB online+ web application facilitates the management of the national TIR Carnet holder's data, where Customs authorities manage data modifications and modifications requests submitted by national associations in the ITDB. Customs authorities can also upload information on article 38 exclusions via the ITDB online+ web application. This information will then be visible for all competent authorities of Contracting Parties of the TIR Convention and for the national association where the excluded person is affiliated to.

3. Serious or repeated offences against customs or tax legislation is a reason to revoke an authorization for access to the TIR procedure (Article 6 , paragraph 4 and Annex 9, Part II, article 1,d). Thus competent authorities of the Contracting Party on whose territory an excluded person is established or resident need to be informed as soon as possible of an exclusion on basis of Article 38, paragraph 2 in another Contracting Party.

4. Article 38, paragraph 2 stipulates that the exclusion of a person from the operation of the convention shall be notified within one week to:

- The competent authorities of the Contracting Party on whose territory the person concerned is established or resident;
- To the national associations in the country or Customs territory where the offence has been committed and to;
- TIR Executive Board.

A revised text of the existing Example of best practice on the application of Article 38, as contained in Chapter 5.8 of the TIR handbook was adopted by AC.2 in 2012 (ECE/TRANS/WP.30/AC.2/2012/14 and ECE/TRANS/WP.30/AC.2/211, para. 42). In this example it is advised to inform also:

- The person being excluded;
- The association of the Contracting Party where the excluded person is established.

5. Customs authorities can transmit via ITDB online+ the required data on excluded TIR operators to the TIR Executive board. This makes submission of such data in any other form, for example, on paper or by e-mail, redundant. To clarify this principle in the text of the Convention, new Explanatory Notes into Article 38, paragraph 2 should be introduced.

6. Customs authorities cannot transmit via ITDB online+ the required data on excluded foreign TIR operators to the national association in their own country seen information related to exclusions, is only visible for the national association where the excluded person is affiliated to.

7. As it is not guaranteed that Customs authorities regularly check the status of the operators authorized by them in ITDB, it remains advisable to notify on paper or by e-mail the competent authorities of the Contracting Party on whose territory the person being excluded is established.

II. Proposal

8. As a consequence of the introduction of ITDB online+ web application, a new Explanatory Note to Article 38, paragraph 2 can be included

Article 38, New Explanatory Note 0.38.2

Add a new Explanatory Note to Article 38, paragraph 2 to read

Explanatory Note to paragraph 2

0.38.2 The legal provision to notify the TIR Executive Board (and solely the TIR Executive board) of the exclusion of person temporarily or permanently from the operation of the Convention can be deemed to be fulfilled by means of the proper use of electronic applications developed to this end by the TIR secretariat under the supervision of the TIR Executive Board.

III Considerations by the Administrative Committee

9. In accordance with the provisions of Article 60, amendments to, inter alia, Annex 6 “shall come into force on a date to be determined by the Administrative Committee at the time of its adoption, unless by a prior date determined by the Administrative Committee at the same time, one-fifth or five of the States which are Contracting Parties, whichever number is less, notify the Secretary-General of the United Nations of their objection to the amendment.”

10. In order to avoid a lengthy legal and administrative procedure for this single amendment, Contracting Parties to the Convention may wish to postpone the above decision until further amendment proposals have been adopted by the Administrative Committee, so that a complete package of amendments can be submitted to the Secretary-General for circulation and issuance of depositary notifications. In the meantime, however, the Committee, may wish to decide that the above procedure shall apply provisionally, pending the entry into force of the provisions of Explanatory Note 0.38.2.
