



**ADMINISTRATIVE COMMITTEE
FOR THE TIR CONVENTION, 1975**

TIR Executive Board (TIRExB)

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PREVENTION OF CUSTOMS FRAUD WITHIN THE TIR SYSTEM

Transmitted by the International Road Transport Union (IRU)

1. Since 1975, the geographical scope of the TIR Convention has been considerably expanded. The trade and business practices have changed. In parallel, the fraud mechanisms, which were very primitive (falsification of Customs stamps, seals and commercial documents), have become very sophisticated: for example, the creation of "one day" companies, whose only purpose is to abuse the trade facilitation established through the TIR system, is taking place in many countries.
2. The IRU would like to underline that prevention of Customs fraud within the TIR system is a key element for consideration to ensure the sustainability of the TIR system in the long term.
3. The most effective way to prevent abuses of the TIR system by organised crime is via a public/private partnership approach where all partners involved act in a coordinated and open manner according to clear principles. For this to be successful, it is essential that clear instructions, guidelines and best practices are defined, agreed and implemented by Competent Authorities, Associations and the transport operators engaged in TIR transports.
4. In this context, prevention of Customs fraud within the TIR system should be considered at various levels, for example by:
 - Harmonising the implementation of Annex 9, Part II of the TIR Convention to prevent access to the TIR procedure by undesirable operators (*See Annex 1 to this document*);
 - Implementing principles of Risk assessment, fraud prevention measures and examination of new trends of fraud to avoid abuses of the TIR system as much as possible (*See Annex 2 to this document*);
 - Allowing the immediate identification and sanctioning of fraudsters and infringers to discourage attempts to abuse the TIR system (*See Annex 3 to this document*).
5. It is essential, in a real spirit of partnership, to undertake immediate action, at least in the 3 above-mentioned areas.

ANNEX 1

HARMONISED IMPLEMENTATION OF ANNEX 9, PART II OF THE TIR CONVENTION TO PREVENT ACCESS TO THE TIR PROCEDURE BY UNDESIRABLE OPERATORS

3 years after the entering into force of Article 6.3 and Annex 9, Part II, access to the TIR system is, in a number of countries, still not regulated, nor implemented as strictly as foreseen in the Convention, and the necessary communication between various national Competent Authorities and Associations involved are not really organised in a efficient manner.

It is essential that Competent Authorities and national Associations have a coordinated approach of the admission procedures to protect the TIR system. The careful selection of transport operators is the first opportunity to efficiently prevent fraud.

Annex 9, Part II lists the minimum conditions and requirements a candidate should meet, in order to be authorized to the TIR procedure, but there is no real guidelines on the checks to be performed, nor on the shared involvement of Associations and Authorities.

With 3 years experience, it appears clearly that the checking of those minimum conditions and criteria and their continuous monitoring is not the sole task and responsibility of the Associations or of the Authorities alone, but for an efficient functioning of the admission procedure, both partners have a key role to play.

For each criteria established by Annex 9, Part II, action to be undertaken has been identified, as well as the respective role of Associations and Authorities.

1. Annex 9, Part II - a): Proven experience

Action	Association	Competent Authorities (Customs Authorities, Ministry of Transport, ...)
Check official company registration	Collect documents	Validate
Verify the International License of the company	Collect documents and information	Validate
Conduct active research for reputation	Collect and monitor	Provide information
Control the numbers and TIR certification of vehicles	Collect and analyse	Validate
Check Certificate of Professional Competence of directors and main shareholders (CPC)	Collect and analyse	Validate
Check proof of past business operations, CMR, orders and other documents	Collect and analyse	Validate when appropriate

2. **Annex 9, Part II - b): Sound financial standing**

Action	Association	Competent Authorities (Customs Authorities, Ministry of Transport, ...)
Demand proof of financial viability: Société de renseignements commerciaux, bank reference, credit rating	Collect and check	Validate as required
Verify the financial status with National Authorities, tax office, commercial registers	Request	Validate as required
Check annual company accounts	Collect and analyse	Validate as required

3. **Annex 9, Part II - c): Proven knowledge in the application of the TIR Convention**

Action	Association	Competent Authorities (Customs Authorities, Ministry of Transport, ...)
Check the knowledge of the Transport Operator	Verify CPC and Interview	-
Provide training for management and staff	Provide	Co-operate
Keep informed of changes in directors, the main shareholders, the staff	Monitor and check	Inform and confirm

4. **Annex 9, Part II - d): Absence of serious or repeated offences against Customs or tax legislation**

Action	Association	Competent Authorities (Customs Authorities, Ministry of Transport, ...)
Check absence of previous offences by all involved in the company - Obtain positive evidence of "clean sheet"	Request	Confirm
Check the reputation	Interview	Confirm
Be aware, keep verifying and monitor with public information		

5. **Annex 9, Part II - e): An undertaking in a written declaration of commitment to the Association**

A specific clause should be inserted in the Deed of Guarantee signed by the Association in favour of Customs Authorities, stipulating that, prior to the issuance of TIR Carnets to authorized Holders, the Association will obtain from the Holders the undertaking in a written declaration of commitment, as foreseen by Annex 9, Part II - e).

Conclusion:

On the above-mentioned bases, guidelines or best practices should be defined. However, it should not be forgotten that continuous monitoring of the status of Holders should be performed in close cooperation to efficiently prevent abuses.

It should also be reminded that Annex 9, Part II, Article 6 provides:

"The authorization for access to the TIR procedure does not constitute in itself a right to obtain TIR Carnets from the associations".

It should be therefore recognised that Associations have the absolute right to refuse authorization, to suspend or to exclude a transport company at any time.

Full support from Authorities is therefore indispensable.

ANNEX 2

RISK ASSESSMENT, FRAUD PREVENTION MEASURES, EXAMINATION OF NEW TRENDS OF FRAUD

In the daily work with TIR operations various indications should be used systematically by the Authorities, Associations and operators as warnings to prevent and fight fraud. The systematic and permanent observation of such signals, like suspect itineraries, repeated violations by certain companies and thefts at well-known parking areas are usually neglected.

It is important that Competent Authorities implement Risk Assessment methods and preventive measures to ensure that fraudsters and smugglers are deterred from abusing the TIR system due to the risks of early detection of irregularities and their consequences in terms of financial losses and subsequent sanctions. In this respect the IRU and its Associations have introduced preventive measures for transport operators approved to use TIR Carnets travelling to countries which are the target of organised crime. In order to support these measures and make them truly effective, in the framework of a real public/private partnership, the Competent Authorities should assist national Associations and operators in implementing the following measures:

1. Introduce credibility checks to test routings, accompanying paperwork and driver's instructions by:
 - Giving additional attention to unusual routings (*Example: TIR Carnet taken into charge in Lithuania with transit through Belarus, Ukraine, for TIR termination in Moscow*);
 - Giving additional attention to uneconomic loads (*Example: Recycled cardboard transported under the cover of TIR from Belarus to UK*);
 - Giving additional attention to information contained in the accompanying documents such as origin of goods, state of residence of the shippers, consignees, ... (*Example: Shipper established in Bahamas or Delaware, consignee resident in Isle of Man, transport order for sensitive goods from EU to Central Asia*).
2. Ensure that Customs staff have the information, knowledge and skills to identify false or stolen TIR Carnets and Customs stamps by:
 - Carrying out appropriate training;
 - Developing user guides on TIR Carnet security features.
3. Keep up to date with new trends of fraud and disseminate them without delay within the Customs points, the national Associations and the IRU, for example:
 - Information on "cover loads" being used by fraudsters and smugglers;
 - Information on current "hotspots";
 - Information on current illogical routings;

- Information on current seizures; or
 - Any other information of value.
4. Promote the establishment of "Memorandum of Understanding" between Competent Authorities, national Issuing Associations and the IRU, committing parties to the prompt exchange of information, related to new trends of fraud and relevant information on potential irregularities.
 5. Ensure that a list of up to date TIR suspended and excluded transport operators is available at national level by:
 - Collating and distributing information on suspended and excluded transport operators without delay.
 6. Ensure the proper transmission, daily in real time, of all electronic data (SafeTIR) regarding the termination of each TIR Carnet at each Customs office of destination in all countries using TIR1.
 7. Ensure that proper access to CUTE-Wise is granted in each TIR Customs office to allow extensive use of this tool to:
 - Consult the status of a Carnet, including the Customs electronic information related to the termination of a TIR Carnet;
 - Consult and use the list of invalidated TIR Carnets in order to facilitate each detection of potential irregularities.
 8. Promote the implementation of quick procedure of pre-notifications to allow Associations to properly assist Customs Authorities in their task to identify and sanction the person(s) directly liable and take appropriate measures towards non cooperative Holders.
 9. Ensure that effective "Schemes of Control" exist at Customs offices (border crossings, ports, inland offices) to effectively manage the traffic and identify high risk consignments by:
 - Introducing proper traffic management procedures to identify vehicles selected for examination;
 - Introducing "offline working" procedures to move selected vehicles away from the main traffic flow;
 - Introducing fast tracking procedures for low risk traffic.
 10. Ensure that efficient risk profiling and intelligence led targeting takes place by:
 - Creating an infrastructure to gather, collate and distribute relevant information;
 - Delivering appropriate professional training.

Conclusion:

Guidelines could be issued to help Associations, the International Guarantee Chain and Authorities to better define the conditions of their partnership.

ANNEX 3

IDENTIFICATION AND SANCTIONING OF FRAUDSTERS AND INFRINGERS

It should also be considered that a proper fraud prevention policy should include clear mechanisms to identify and apply sanctions to infringers or fraudsters. In this framework, the TIR Convention provides for legal basis, for example, Articles 6.4, 38, 8.7, which are often not applied.

This lack of action constitutes in itself a passive approach and acts as a direct encouragement to fraudsters to act in total impunity. This is in perfect contradiction, not only with the TIR Convention and its spirit, but with general principles of law.

1. Implementation of Article 6.4

Due to the fact that Annex 9, Part II is not really implemented as it should, the part of Article 6.4 dealing with revocation of authorization to use the TIR procedure is not implemented, or is implemented so late that the concerned company can easily disappear in the meantime.

Therefore, it should be recommended that Customs Authorities and Associations shall establish proper procedures to exchange information to ensure that the minimum conditions and requirements are permanently met by approved Holders.

As soon as those conditions appear not to be met, revocation of the authorization should take place.

This should be the norm, for example, in cases of unresolved alleged irregularities, or in cases of implementation of Article 38 by a foreign Contracting Party.

2. Implementation of Article 38

Only few Contracting Parties are implementing Article 38 in a timely manner.

In a vast majority of Contracting Parties, Article 38 is purely neglected, which means that Holders not respecting the rules can continue their activities.

But whatever the reasons, it is not reasonable that an operator for which several irregularities have been detected and not resolved can, in total impunity, continue to trade instead of being immediately subject to the implementation of proper mechanism to obtain payment from him if he appears to be the debtor, and to sanctions.

3. Implementation of Article 8.7

Wrongly, it is often considered easier to present the claim directly to the Guaranteeing Association, being only a civil debtor acting as surety according to the Deed of Guarantee, without any serious attempt to require payment from the real fiscal / Customs debtors.

By making sure that the real fiscal Customs debtors will be identified without delay and that payment will be requested to them, will have an immediate effect in terms of preventing them from continuing to abuse the system. In this framework, the transport company, Holder of TIR Carnets, has a key role to play.

The art. 1(o) of the TIR Convention defines the Holder of TIR Carnets. The Holder is the declarant of the transit operation and is responsible for the presentation of the goods, vehicle and TIR Carnet at Customs offices (Departure, en route, destination).

In case of incident, he is the legitimate contact person for Customs Authorities and should assist them to solve any problem related to a TIR operation he has carried out.

In particular he should provide all commercial documentation at his disposal to allow the proper identification of the person(s) directly liable (importer, consignor, consignees, ...) who is (are), in most cases, the real beneficiary(ies) of a fraudulent act and to allow the Authorities to collect taxes and duties from those persons.

This is why the timing is of extreme importance. All actions should be undertaken without delay.

Conclusion:

It is clear that without proper and timely implementation of sanctions, prevention of fraud will be limited.

A clear message should be given to that effect, and best practices or guidelines could be defined.

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SafeTIR is a unique example of concrete realisation resulting from common efforts by public and private sector to put in place a simple tool allowing early detection of potential irregularities and to avoid their repetition.

However, after 8 years of implementation of the Recommendation regarding a control system for TIR Carnets (called the SafeTIR Recommendation) by the Administrative Committee, only 0.4 % of termination data are transmitted within 24 hours, instead of 100 %.

In addition, the Reconciliation process needed when SafeTIR data is not available or differs from the information contained on the Carnet is far from satisfactory (only 9 % of requests are answered within 24 hours instead of 100 %).

Despite the huge investment and human resources made available by the IRU and many of the Customs Authorities, the current situation makes the SafeTIR data of little or no value in terms of effective risk management procedures.
