



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

TIR Executive Board (TIRExB)

(Twenty-second session, 24 and 25 May 2004,
agenda item 6)

BY-ELECTIONS IN CASE OF RESIGNATION OF A TIRExB MEMBER

Submitted by the secretariat

A. INTRODUCTION

1. At its twentieth session, the TIRExB was of the view that the lack of participation of a TIRExB member could jeopardize the well-functioning of the Board as it should consist of an odd number of members for purposes of voting and taking decisions. The Board felt that, in order to avoid such situations happening in the future, the Rules of Procedure of the TIRExB should be modified, in particular, the following issues needed to be addressed:

- an earlier termination of the term of office of a TIRExB member in case he/she is repeatedly absent at TIRExB sessions for no specific reason;
- a practical procedure for by-elections of another candidate to replace the resigned member;
- the term of office for the newly elected substitute (TIRExB/REP/2003/20, para. 27).

2. At its twenty-first session, the TIRExB held a short exchange of views regarding proposals by some Board members on how to modify the Rules of Procedure of the TIRExB with a view to replacing a Board member who is not in a position to continue his or her activities within the term of office. On the basis of these discussions, the TIR secretariat was requested to produce a document for the next session of the TIRExB and consult, in case of need, the UN Legal Office in New York. (TIRExB/REP/2004/21, para. 35).

3. Underlying documents reflects the opinion of the TIR secretariat, based on proposals submitted by various members of the Board.

B. LEGAL SITUATION

4. Annex 8, Article 9 stipulates inter alia:

1. The TIRExB (...) shall be composed of nine members, each from different Contracting Parties to the Convention.
2. The members of the TIRExB shall be elected by the Administrative Committee by a majority of those present and voting.

The term of office of each member of the TIRExB shall be two years.

5. These provisions are equally contained in the Rules of Procedure of the TIRExB. In addition, the Rules of Procedure contain the provision that in case one of the members of the TIRExB resigns before the completion of his/her mandated term of office, a replacement member shall be elected by the TIR Administrative Committee as soon as possible. This additional Rule of Procedure was adopted by the TIRExB at its first session (TIRExB/REP/1999/2) and endorsed by the Administrative Committee at its twenty seventh session (TRANS/WP.30/AC.2/55, para. 16).

C. PROPOSALS

6. The secretariat has carefully reviewed the contributions submitted by various members of the Board. In an effort to take account of the various proposals, while at the same time ensuring a simple and straightforward solution for a whole complex of situations, the secretariat proposes the following:

- (A) To amend Annex 8, Article 9, para. 2 of the TIR Convention with an Explanatory Note, stipulating:

“Explanatory Note to Annex 8, Article 9, para. 2

- 8.9.2 In case of replacement, the elected member shall only hold office for the unexpired portion of the term of office of his/her predecessor.”

7. The aim of the proposed Explanatory Note 8.9.2 is to make the contents, meaning and the scope of Annex 8, Article 9, para. 2 more precise without modifying the provision itself.

(B) To replace the existing Rule of Procedure of the TIRExB on representation by the following^{*/}:

“Representation

The TIRExB shall be composed of nine members, each from different Contracting Parties to the Convention. The TIR Secretary will attend the sessions of the Board (Annex 8, Article 9, paragraph 1).

The members of the TIRExB shall be elected by the Administrative Committee by a majority of those present and voting. *The Administrative Committee shall establish a list of replacement members from those candidates who have postulated but who have not been elected because other candidates have obtained more votes or because they have not obtained a majority of those present and voting.*

The Term of office of each member of the TIRExB shall be two years. The members of the TIRExB may be re-elected (Annex 8, Article 9, paragraph 2).

In case a member of the TIRExB is so incapacitated that he/she can no longer hold office, the Chairman, on behalf of the TIRExB, may request him/her to step down, by means of a registered letter. In case the member concerned fails to react to this request within one month from the date of dispatch of the registered letter or in case the TIRExB considers the reason(s) provided not valid, the TIRExB shall remove him/her from the Board. Consequently and in case a member of the TIRExB resigns before the completion of his/her mandated term of office, the TIRExB shall invite the person with the highest number of votes from the list of replacement members, established by the Administrative Committee, to temporarily serve as member until election of a replacement member by the Administrative Committee has taken place.

A replacement member shall be elected by the Administrative Committee as soon as possible.

In case of replacement, the elected member shall only hold office for the unexpired portion of the term of office of his/her predecessor.”

^{*/} Proposed new text in bold italics

8. In accordance with the current text of the Rules of Procedure, the TIRExB has the right to amend or suspend any Rule of Procedure, provided that the proposed amendments and suspensions do not attempt to set aside the provisions contained thereon in the Convention or the Terms of Reference laid down by the Administrative Committee. The wording with regard to the incapacity of a TIRExB member is taken from a corresponding Rule of Procedure of the ECE (Rule 15). The secretariat feels that any attempt to further specify the circumstances under which a TIRExB member could be removed, would only complicate the situation unnecessarily, without providing a feasible solution to the issue.

9. The proposed procedure does not provide a solution in case the Administrative Committee fails to establish a list of replacement members when electing the new members of the TIRExB. Contracting Parties should, however, regard it as their joint responsibility to ensure that at each election more than nine persons are nominated for membership of the Board.

D. FURTHER CONSIDERATIONS BY THE TIRExB

10. The TIRExB may wish to review and/or amend the proposal, submitted by the secretariat. In case the TIRExB is in a position to finalize its discussions, it could adopt the new Rule of Procedure. The adopted Rule of Procedure could then be sent to the Administrative Committee for endorsement, together with the proposal to introduce a new Explanatory Note to the text of Annex 8, Article 9, paragraph 2 along the lines of the proposed amendment to the Rules of Procedure. Of course, in case of need, the secretariat, at the request of the TIRExB, will not hesitate to consult the UN Legal Office in New York.
