



Economic and Social Council

Distr.: General
9 December 2010

Original: English

Economic Commission for Europe

Administrative Committee for the TIR Convention, 1975

Fifty-first session

Geneva, 3 February 2011

Item 5 of the provisional agenda

Authorization for printing and distribution of TIR Carnets and the organization and functioning of the guarantee system

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Note by the secretariat*

I. Background

1. At its forty-ninth session, the TIR Administrative Committee (AC.2) authorized the International Road Transport Union (IRU) to centrally print and distribute TIR Carnets and to organize the effective functioning of the guarantee system for the period 2011–2013 (ECE/TRANS/WP.30/AC.2/101, para. 19). At its fiftieth session, the Committee recalled that, according to Explanatory Note 0.6.2 bis-2, the above authorization shall be reflected in an agreement between United Nations Economic Commission for Europe (UNECE) and IRU. By signing the agreement, IRU confirms that it accepts the responsibilities imposed by the authorization (ECE/TRANS/WP.30/AC.2/103, para. 25).

2. In this context, the Committee may wish to consider this document by the secretariat, containing considerations regarding the history of the authorization of an international organization and the written agreement between this organization and UNECE and the relationship between them.

II. The authorization(s)

3. In 1999 (Amendment 19), new Annex 8, Article 10 (b) introduced the provision that the TIR Executive Board (TIRExB) shall supervise the centralized printing and distribution to the associations of TIR Carnets which may be performed by an agreed international

* The present document has been submitted after the official document deadline due to resource constraints.

organization as referred to in Article 6 of the Convention. At its twenty-sixth session (February 1999), AC.2 decided that, at its annual spring sessions, it would authorize an international organization to centrally print and distribute TIR Carnets for the following year in accordance with Annex 8, Article 10 (b) of the Convention under the condition that:

(a) the concerned international organization declares in writing its acceptance of this authorization within 30 days following the decision of the AC.2;

(b) on the basis of the relevant decisions of the AC.2 at its annual autumn session, the required funds, in accordance with Annex 8, Article 13, will have been effected by the authorized international organization by 15 November each year for the operation of the TIRExB and the TIR secretariat during the following year (TRANS/WP.30/AC.2/55, paras. 19–20).

4. Following the entry into force of a new Article 6.2 bis in 2002 (Amendment 21), stipulating that an international organization shall be authorized by the AC.2 to take on responsibility for the effective organization and functioning of an international guarantee system provided that it accepts this responsibility, the AC.2 decided to follow the same procedure as adopted for the authorization to print and distribute TIR Carnets (TRANS/WP.30/AC.2/67, paras. 39–42).

5. As of the thirty-eighth session of AC.2 (February 2005), reference is made to a single agenda item covering the authorization (for printing and distribution of TIR Carnets and the organization and functioning of the guarantee system) rather two separate agenda-items.

6. In 2006, a new Explanatory Note 0.6.2 bis-2 entered into force (Amendment 27), stipulating that “the authorization granted in accordance with Article 6.2bis shall be reflected in a written agreement between the UNECE and the international organization. The agreement shall stipulate that the international organization shall fulfil the relevant provisions of the Convention, shall respect the competences of the Contracting Parties to the Convention and shall comply with the decisions of the AC.2 and the requests of the TIRExB. By signing the agreement, the international organization confirms that it accepts the responsibilities imposed by the authorization. The agreement shall also apply to the responsibilities of the international organization set out in Annex 8, Article 10 (b), in case the centralized printing and distribution of TIR Carnets is performed by the above-mentioned international organization. The agreement shall be adopted by the AC.2.”

III. The United Nations Economic Commission for Europe – International Road Transport Union agreement

7. At its twenty-fourth session (February 1998), the AC.2, inter alia, authorized the UNECE, on its behalf, to negotiate and arrange the required arrangements for the transfer of funds, in accordance with Annex 8, Article 13 (TRANS/WP.30/AC.2/49, paragraph 31). The original agreement was concluded in the autumn of 1999 (document TRANS/WP.30/AC.2/1999/2) and has been extensively revised several times, notably:

(a) On 18 September 2003, after extensive discussions, including consultations with the United Nations Office of Legal Affairs (OLA) to cover the period 2003–2005. Since that time, the agreement reflects the authorization granted by the AC.2 to the IRU in accordance with Article 6.2 bis of the Convention to take on responsibility for the effective organization and functioning of an international guarantee system and contains a detailed enumeration of functions to be performed by the IRU (document TRANS/WP.30/AC.2/2003/14).

(b) On 6 October 2005, to cover the years 2006–2010 (document TRANS/WP.30/AC.2/2005/4).

(c) On 29 October 2007, to cover the years 2008–2010 (document ECE/TRANS/WP.30/AC.2/2007/14). This revision includes, for the first time, the exact wording of the newly introduced Explanatory Note 0.6.2 bis-2, stipulating, inter alia, that the international organization, by signing the agreement, confirms that it accepts the responsibilities imposed by the authorization. The agreement also introduces a post calculation mechanism (see Annex 4 of the agreement) as well as detailed audit requirements (see Annexes 3 and 5 thereof), further to the audits performed by the Board of External Auditors (BOA) in 2005 and the Office of Internal Oversight (OIOS) in 2006. Moreover, the agreement since then contains the phrase that any failure on the part of the IRU to pay the amount due by 15 November may be considered by UNECE as IRU's intention to terminate the agreement. OLA was consulted at various stages of the drafting process. On 19 November 2010, the agreement was prolonged for the years 2011–2013 (ECE/TRANS/WP.30/AC.2/2007/14/Rev.1).

III. The relationship between authorization and agreement

8. Ever since the concept of authorization was introduced in 1999, it has been linked with the confirmation in written form from the side of the international organization (at present: IRU) that it accepts the authorization. In the beginning, for the year 2000 and for the period 2001–2005, this was done by means of a separate communication in which IRU declared its acceptance of the authorization. At the thirty-third session of the AC.2 (October 2002), IRU informed AC.2 that it also accepted the authorization (for the period 2003–2005) with regard to the effective organization and functioning of an international guarantee system. As of the thirty-sixth session of AC.2 (February 2004), this approach was discontinued. Instead, since then, IRU's acceptance of its responsibilities under the two authorizations is reflected in the UNECE–IRU agreement by means of a reference to the applicable provisions in the Convention (6.2 bis and Annex 8, Article 10 (b)) followed by the phrase: "The IRU hereby accepts these responsibilities." After the entry into force of Amendment 27 on 12 August 2006, introducing Explanatory Note 0.6.2 bis-2 (and corresponding Explanatory Note 8.10 (b) – see paragraph 6 above), this statement was replaced by the text of the said Explanatory Note, which stipulates, inter alia, "by signing the agreement, the international organization confirms its responsibilities imposed by the authorization".

IV. Considerations by the secretariat

9. In the view of the secretariat, above background information clarifies that there has always been a direct link between the granting of the authorization(s) by AC.2, on the one hand, and the written acceptance by the international organization of its responsibilities, on the other hand. Whereas, at first, the international organization confirmed the acceptance of its responsibilities under the authorization by means of a separate written statement, the text of the Convention now contains a specific clause, stating that "by signing the agreement, the international organization confirms its responsibilities imposed by the authorization".

10. When reading the text of Article 6.2 bis and its Explanatory Note 0.6.2 bis-2 in conjunction, the following conclusions can be drawn:

(a) The authorization granted by the AC.2 remains without effect until the international organization has accepted its responsibilities;

(b) The Convention stipulates that the only legally acceptable form of acceptance for the international organization is by signing the agreement with UNECE, leaving any other form of acceptance (orally or in writing) without legal consequence.

11. The above requirements are without prejudice to the international organization's obligation to transfer, by 15 November of each year, the required funds for the operation of the TIRExB and the TIR secretariat, as referred to in paragraph 3 (b) above.

V. Further considerations by the Administrative Committee

12. AC.2 is invited to discuss and, possibly, endorse the considerations by the secretariat in paragraphs 10 and 11 above.
