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Item 8 (e) of the provisional agenda

**Best practices: Procedure prior to the suspension  
of the guarantee in the territory of a Contracting Party****Procedure prior to the suspension of the guarantee in the  
territory of a Contracting Party****Note by the TIR secretariat***Summary*

At its fiftieth session, the TIR Executive Board (TIRExB) confirmed its approval of the text of the draft example on the procedure prior to suspending the guarantee in the territory of a Contracting Party, as contained in the annex to the report of its previous session (Informal document TIRExB/REP/2012/49final) and requested the secretariat to transmit the example to the TIR Administrative Committee (AC.2) for consideration and endorsement.

The purpose of this example of best practice is to provide Contracting Parties with guidelines procedures to be followed under normal circumstances, and to comply with the provisions of the TIR Convention, once the guarantee chain has decided to suspend the guarantee in a Contracting Party.

Examples of best practices are included in the TIR Handbook to facilitate the application of the Convention in countries that have newly acceded to the Convention and/or in which TIR operations can be newly undertaken.

## I. Background

1. At its thirty-second, TIRExB adopted its programme of work for the years 2007–2008 (ECE/TRANS/WP.30/AC.2/2007/7, para. 11).

2. At its forty-fourth session (September 2007), AC.2 agreed, upon request of the European Community, to include an additional activity in TIRExB's 2007–2008 programme of work. Consequently, under point 7 of the TIRExB's 2007–2008 programme of work, the Administrative Committee decided to add: "Clarify procedures prior to a suspension of the guarantee on the territory of a Contracting Party". The Committee approved the programme of work of the TIRExB for the years 2007–2008 (ECE/TRANS/WP.30/AC.2/2007/8) subject to the above amendment (ECE/TRANS/WP.30/AC.2/91, para. 8).

3. At its thirty-eighth session (December 2008), the Board considered Informal document No. 14 (2008) (restricted) prepared by the representative of the European Commission and the secretariat, aimed at clarifying the procedure prior to suspending the guarantee on the territory of a Contracting Party. The Board thanked the authors for providing its considerations on this sensitive issue and agreed that the main focus of its work should be aimed at ensuring that all parties involved in the TIR system fulfil their roles and responsibilities to the extent that they, at all times, provide the relevant bodies in the TIR Convention, in particular the TIRExB, with timely and complete information. Only in doing so, the TIR system will become fully transparent, thus providing the best opportunities to stop a crisis from developing to a point where the guarantee chain could consider the possibility of suspending the guarantee for a specific country. The Board realized that, although the purpose of the exercise – the development of a set of 'early warning' tools – might seem straightforward, the methods on how to achieve this were not (ECE/TRANS/WP.30/AC.2/2009/4, paras. 24 and 25).

4. At its thirty-ninth session (March 2009), the Board considered Informal document No. 3 (2009) (restricted), prepared by the secretariat on the basis of contributions submitted by various members of the Board, in which they had outlined their ideas on how to encourage countries, national associations and the international organization to improve their information supply to the TIRExB, aimed at ensuring that the TIRExB could fulfil its mandates under Annex 8 of the TIR Convention. Having considered the various contributions, the TIRExB confirmed that, under application of the provisions of Annex 8, Article 10, it had a role to play in contributing to the possible early solution of a potential crisis situation which could endanger the continuity of the TIR system. However, the Board could only fulfil this function, if parties concerned would commit themselves to informing the TIRExB at the earliest possible moment of any event which might impact on the functioning of the TIR system (ECE/TRANS/WP.30/AC.2/2009/5, paras. 19 and 20).

5. At its fortieth session (June 2009), the Board considered Informal document No. 3/Rev. 1 (2009) and an Addendum thereto (restricted), prepared by the secretariat on the basis of contributions submitted by various members of the Board, in which they had outlined their ideas on how to encourage countries, national associations and the international organization to improve their information supply to the TIRExB, aimed at ensuring that the TIRExB could fulfil its mandates under Annex 8 of the TIR Convention. The Board also considered Informal document No. 14 (2008) (restricted), with particular focus on the formalities to suspend the guarantee on the territory of a Contracting Party. Having considered the various contributions at length, the TIRExB decided to focus its discussions on the following aspects:

(a) Establishment of an information exchange mechanism between parties concerned and the TIRExB, highlighting the functions and responsibilities of the TIRExB in the process;

(b) Procedure and deadlines for suspending the guarantee under normal circumstances;

(c) Suspending the guarantee under exceptional circumstances, including the event of force majeure.

6. To facilitate discussion at its next session, the TIRExB requested the secretariat to consolidate all previously prepared documents according to the above identified aspects. The observer from the IRU was requested to provide observations from the private sector, on suspension under exceptional circumstances, with particular focus on the application of provisions of national private law, on guarantee and on insurance (ECE/TRANS/WP.30/AC.2/2010/1, paras. 21–23).

7. At its forty-first session (October 2009), the Board considered Informal document No. 15 (2009) (restricted) in which the secretariat had regrouped the contributions submitted by various members of the Board according to the above-mentioned aspects. The Board continued its work by revisiting the contributions according to their regrouped order. However, despite some valuable comments from members of the Board as well as from the IRU, the Board was of the opinion that further discussion needed an even more structured approach. Thus, the Board requested the secretariat to review the contributions, provide comments and present them in a better (chrono)logical order, together with a proper introduction for discussion at the Board's next session. The Board remained interested in obtaining from the IRU the observations from the private sector, on suspension under exceptional circumstances, with particular focus on the application of provisions of national private law, not only on guarantee but also on insurance (ECE/TRANS/WP.30/AC.2/2010/8, paras. 14–16).

8. At its forty-second session (February 2010), the Board considered Informal document No. 1 (2010) (restricted). In this document the secretariat had reviewed the contributions submitted by members of the Board and presented them in a (chrono)logical order, together with the secretariat's own, preliminary considerations. The TIRExB was of the opinion that the description of the various activities to establish an ongoing information exchange mechanism between parties concerned and the TIRExB constituted a good basis to continue discussions on the issue. In particular, the TIRExB stressed that it was important for the continuity of the international guarantee mechanism that the national association kept the competent TIR bodies (national Customs administrations and TIR Administrative Committee or TIRExB) informed of any disruption in the regular claim settlement procedure, in order to provide them with an opportunity to undertake any required action. In case national associations failed to do so, this should be done by IRU, pursuant to the UNECE/IRU agreement, which stipulates that the authorized international organization accepts "to provide the competent bodies of the TIR Convention with timely and well-founded information on trends in the number of non-terminated TIR operations, claims lodged and pending that might give rise to concerns with regard to the proper functioning of the TIR system or that could lead to difficulties for the continued operation of its guarantee system". The Board pointed out that it was crucial for the well-functioning of any information exchange mechanism that relevant deadlines (in the Convention, national agreements and insurance contracts, etc.) were common knowledge and respected (ECE/TRANS/WP.30/AC.2/2010/9, paras. 12–14).

9. At its forty-third session (May 2010), the Board considered Informal document No. 7 (2010) (restricted), transmitted by the IRU. In this document, the IRU provided an overview of the main contractual arrangements constituting the guarantee chain, together

with their termination clauses. The TIRExB expressed its appreciation for the informative nature of the document. At the same time, the Board regretted that the document did not clarify the correlation between the various applicable deadlines. Nor did it address the issue of suspending the guarantee under exceptional circumstances (including ‘force majeure’) nor contain an outline of the functioning of the guarantee system at the national and international level, as the IRU had been requested to do. The IRU informed the Board that the international insurance contract between the international global insurers on the one hand and each of the member associations of the IRU as beneficiaries on the other hand, was concluded in accordance with the provisions of Annex 9, Part I. The application of Swiss law and the designation of Swiss courts as competent courts was a logical consequence of the international global insurers’ establishment in Switzerland. According to the IRU, Swiss insurance law is not fundamentally different from insurance law in other countries and provisions similar to Article 30, paragraph 2 of the Swiss Insurance Law, which provides insurers the opportunity (in the case of aggravation of risk) to terminate the contract with a deadline of 14 days, can be found in other national legal systems.

10. Although the TIRExB took note of the information provided by the IRU that the relationship between IRU and the international global insurers was governed by Swiss law, it was not sure this was correct with regard to the relationship between the international global insurers and (all) national associations. And should the latter be the case, then the issue would need to be addressed for the future as, in line with the principles of consumer protection, it seemed to the TIRExB to be undesirable that the international global insurers as professionals and as the economically stronger party would benefit from their position to enforce the designation of a Swiss court and the application of Swiss law on the economically weaker and less defensible party of the national associations. In conclusion, the TIRExB reiterated its request to the IRU to submit a document outlining the functioning of the guarantee system at national and international level, the applicable deadlines and their interaction as well as the suspension of the guarantee under exceptional circumstances (including ‘force majeure’), for consideration by the Board at its next session (ECE/TRANS/WP.30/AC.2/2011/1, paras. 10–14).

11. At its forty-fourth session (September 2010), the Board regretted not being able to continue its discussions due to the absence of the requested written contribution from the IRU. According to IRU, it had not fully understood the request. Thus, it had preferred to limit itself to giving an oral introduction instead. In general, IRU stated that its prior written information on the functioning of the guarantee system from 1997 (TRANS/WP.30/R.195) and 2004 (TRANS/WP.30/216, para. 53) still remained accurate, as no significant changes had been introduced into the guarantee system since then.

12. The Board repeated its commitment to cooperate with IRU, but, at the same time, called upon IRU to be more active in future, not only during meetings but also in submitting substantial written contributions, thus allowing the TIRExB to fulfil its mandate to supervise the application of the Convention, including the operation of the guarantee system, as stipulated in Annex 8, Article 10 (a) of the Convention. Further to the request by IRU to provide more details on the information which the Board expected from IRU, the Board agreed to specify its outstanding questions, as follows:

(a) Functioning of the guarantee system at national and international level: although much is known about the functioning at the international level (relationship between IRU and Zurich), this does not apply to the relationship between IRU and the national associations or between the national associations and their national insurer. The same holds true for the position of the transport operators. Even though their liability seems to be covered both nationally (through the national insurer) and internationally (through Zürich), under no circumstance do they seem to be considered as beneficiary to an insurance contract.

(b) Suspension under exceptional circumstances: the TIRExB is not so much interested in the application of Swiss law by the international insurer, but in the repercussions thereof for the interaction between national associations and competent national authorities in the implementation of a suspension at national level, in particular taking into account the provisions of Annex 9, Part I, Article 1 (f) (v) of the written agreement between Customs authorities and the national association. Moreover, the TIRExB would like to be better informed about proceedings between the international insurer, IRU and the national associations in the period prior to any decision to suspend the guarantee in a given country.

(c) Considerations from the IRU with regard to the specific questions raised in Part (IV) of Informal document No. 1 (2010) (restricted).

13. The TIRExB recalled that it first started discussing the underlying issue in 2008 during its previous term of office. The TIRExB regretted not having made more progress towards the goal of establishing a well-defined procedure, but, at the same time, pointed out the complexity of the issue, in particular the analysis of the functioning of the guarantee system as well as the need for active cooperation from IRU. The TIRExB looked forward to receiving a written contribution from IRU for its next session, providing extensive replies to the above raised issues together, possibly, with further relevant information (ECE/TRANS/WP.30/AC.2/2011/6, paras. 14–18).

14. At its forty-fifth session (January 2011), TIRExB continued its discussions on this issue on the basis of a document submitted by IRU. The Board expressed its disappointment with the quality of the document, as it did not shed any light on the activities of the guarantee chain prior to the decision by the global insurer to suspend the guarantee on the territory of a Contracting Party. The Board pointed to the fact that, in accordance with Annex 9, Part I, article 1 (f) (v), national associations must cover the totality of their liabilities vis-à-vis Customs. However, in case it is correct that any payment by the national association requires the prior consent of the guarantee chain that the payment request is legitimate, then there seems to be a gap between the guarantee system stipulated by the TIR Convention and the international insurance system established by IRU and its affiliated national associations. Moreover, the international insurance system, under no circumstances, seems to provide TIR Carnet holders with any solace for the fact that they pay twice an insurance premium (once to the national insurer and once to the international insurer), as they are never considered beneficiary and will always remain liable, towards Customs as well as towards the guarantee chain. Finally, the Board pointed out that the document did not contain any information on how to act in case of potential risk of suspending the guarantee. Thus, the Board, once more, requested IRU to submit proposals on how to streamline the dissemination of information (and to which parties) at a stage in the evolution of a potential crisis situation, where any consultation with or involvement of other parties might, potentially, contribute to the non-manifestation of suspending the guarantee on the territory of a Contracting Party.

15. In reply to and by means of example of how the guarantee chain went about in the past, in situations where the guarantee coverage on the territory of a single Contracting Party was under threat, IRU referred to the situation in 2006 leading up to the so-called Bulgarian crisis. It explained that the situation escalated within such a short time frame that it would not have been possible for IRU to duly consult with all parties involved in the TIR system before taking decisions. However, IRU had informed the United Nations Economic Commission for Europe (UNECE), but – because of the short time span – had not been in a position to await any reply before being forced to take further action and announce the suspension of the guarantee (which, ultimately, was withdrawn prior to the manifestation of the suspension).

16. TIRExB was interested in receiving more information on the above issue, the correspondence between IRU and Zurich prior to the surfacing of the 275 alleged claims (including legal steps in accordance with the provisions of the TIR Convention and national legislation) as well as the communication by Zurich which had triggered the suspension of the guarantee in Bulgaria as of 15 July 2006. In addition, TIRExB was of the opinion that it was the task of IRU, as the international organization responsible for the effective organization and functioning of an international guarantee system under Article 6.2 bis of the Convention, to undertake all efforts to ensure uninterrupted guarantee coverage on the territory of a Contracting Party rather than just transmitting the suspension by Zurich to all parties involved in the TIR system (ECE/TRANS/WP.30/AC.2/2011/7, paras. 11–13).

17. At its forty-sixth session (April 2011), TIRExB expressed its appreciation of Informal document No. 6 (2011) (restricted), transmitted by IRU. In the document, IRU provides extensive information on the background of and information flows around the crisis situation, which emerged in Bulgaria in 2006 as a consequence of increased risk for the international guarantee system. TIRExB confirmed that it did not intend to analyse any particular crisis situation (although there seems to be some sort of recurrence in them, with intervals of three or four years), but that its focus was to find, in cooperation with IRU, a mechanism ensuring that the various TIR bodies, and in particular TIRExB, are informed at the first opportunity by the guarantee chain, once it has detected first signs of a possible anomaly in the TIR system. But based on the given example, the Board noted the following issues of relevance for its more generic discussions:

(a) Emergency situation: although the information on the approaching crisis was presented within a short time-frame of about one month in 2006, the concerned infringements dated back several years (2002–2003). As a consequence, the statement that the ensuing claims were illegitimate did not manifest itself at a specific, isolated, point in time, but must have developed itself also in the course of a given period. Thus, the time span over which the whole issue developed itself cast doubts over the emergence of an ‘essential aggravation of risk’, which would allow the international insurers in their relation to their beneficiaries to cancel all or part of the global insurance contract, pursuant to Article 30 of the Swiss Federal Law on insurance contracts. In addition, information is missing which would clarify that the situation was so critical that no further delay could be tolerated and that, thus, the situation could be qualified as constituting an ‘emergency’.

(b) Insurance vs. guarantee: the situation as described by IRU refers to developments in the international insurance system, which has been established by IRU, national associations and the international insurer to back up the national association’s liabilities, as required by Annex 9, Part 1 (f) (v). Thus, the suspension of the insurance (on the territory of a given country) is a matter which only regards the parties to the insurance contract and, as such, has no direct legal consequences for the position of Contracting Parties, whose position is governed by the provisions of the TIR Convention. At the same time, the situation in 2006 made clear, once more, that the contractual relations between the private partners in the international insurance contract influence the application of the legal provisions of the TIR Convention.

(c) Late submission of info to UNECE: IRU did inform UNECE, but the first communication dated back to one month prior to the announced suspension of the insurance coverage on the territory of the country concerned. It should, however, be noted that none of the official TIR bodies (AC.2 or TIRExB) were formally notified, neither by IRU, nor by the concerned national association or national authorities. At the same time, it should be noted that UNECE has no legal mandate to intervene in such situations, whereas the official TIR bodies would have such mandate, within the framework of their tasks to monitor the application of the Convention (Annex 8, Articles 1 bis and 10 (a)).

18. In conclusion, TIRExB established that:

(a) Informal document No. 6 (2011) made clear that UNECE had been informed, but only one month prior to the (near) suspension of the insurance coverage in a given country. This means that the various time-limits, as contained in legal instruments provided for by the TIR Convention (the agreement between the national competent authorities and the national association – see Annex 9, paragraph 1 (f) (v) – in combination with the contract between the IRU and the international global insurers – see comment to Annex 9, paragraph 1 (f) (v) – had not been respected.

(b) It should be clear that, unless raised within the context of legal proceedings, only the TIR bodies are competent to judge the application and interpretation of provisions and procedures of the TIR Convention. Such function cannot be performed by any other party (such as, in this case, the international insurer).

(c) TIRExB, within its activity to assess suspending the guarantee coverage in the territory of a given country, focuses its discussions on the obligation of national associations to provide guarantee for all its liabilities, in accordance with the provisions of Annex 9, Part 1 (f) (iv). Aspects related to the functioning of the underlying insurance system at national and international level are welcome and can be analysed for their relevance, but, at no time, can they take precedence over the application of the legal provisions (including time limits) of the TIR Convention.

(d) TIRExB remained interested in finding a mechanism on how the various bodies of the TIR Convention (first and foremost TIRExB) could be informed in time, meaning as of the first occasion where IRU or the guarantee chain experiences any anomaly in the TIR system (ECE/TRANS/WP.30/AC.2/2011/8, paras. 11 and 12).

19. At its forty-seventh session (June 2011), TIRExB considered Informal document No. 11 (2011) (restricted), submitted by the secretariat and containing a succinct summary of the Board's main findings on the issue so far. The Board generally supported the document and was of the opinion that Part III (a) and (b) of the document provided a useful basis for the development of an information exchange mechanism between various parties concerned and TIRExB prior to the suspension of the guarantee on the territory of a Contracting Party. However, some TIRExB members questioned the usefulness of such mechanism unless it would obtain sufficient formal support from all Contracting Parties. In addition, various TIRExB members commented that, so far, no attention had been paid to the instrument of Article 38 of the Convention, which provides competent authorities with an important tool to improve the sustainability of the guarantee system in their country. With regard to the questions, raised in Part IV of the document, TIRExB members agreed that the longer the period between notification of termination of the agreement under Annex 9, Part I, Article 1, paragraph (f) (v) and actual termination, the higher the risk exposure for the national association. There was general agreement that a three month period, as already exists in a number of countries, seems to be a reasonable period (ECE/TRANS/WP.30/AC.2/2012/1, para. 9).

20. At its forty-eighth session (October 2011), TIRExB considered Informal document No. 15 (2011) (restricted), submitted by the secretariat and containing a proposal for an example of best practice on a procedure prior to suspending the guarantee in the territory of a Contracting Party. TIRExB noted that the presented draft constituted a solid basis for further discussion. TIRExB stressed that, in its view, the guarantee coverage in a given country can only be suspended/terminated by either party to the agreement, concluded between national competent authorities and the authorized national association in accordance with the provisions of Annex 9, Part I, Article 1 (e) and subject to the provisions of the TIR Convention and national legislation (Informal document TIREx/REP/48final, para. 12).

21. At its forty-ninth session (February 2012), TIRExB considered Informal document No. 1 (2012)/Rev.1 (restricted), submitted by the secretariat and containing an amended proposal for an example of best practice on a procedure prior to the suspension of the guarantee in the territory of a Contracting Party, which took note of comments made by TIRExB at its previous session as well as of additional proposals submitted by members of the Board. TIRExB expressed its general satisfaction with the presented draft. However, the Board was of the opinion, that, considering that the revocation of the authorization pursuant to Article 6.2 bis should be avoided at all costs as being detrimental to the international transport industry as a whole, the text should put more stress on the importance of joint efforts by national competent authorities and the international organization to find solutions to ensure the uninterrupted guarantee coverage in the territory of a particular Contracting Party (Informal document TIRExB/REP/2012/49final, para. 12)

22. At its fiftieth session (May 2012), TIRExB confirmed its approval of the text of the draft example on the procedure prior to suspension of the guarantee in the territory of a Contracting Party, as contained in the Annex to the report of its previous session (Informal document TIRExB/REP/2012/49final) and requested the secretariat to transmit the example to the TIR Administrative Committee (AC.2) for consideration and endorsement (Informal document TIRExB/REP/2012/50draft, para. 12).



## Annex

After Chapter 5.10 of the TIR Handbook *insert*

### **“5.11 Procedure prior to suspension of the guarantee coverage in the territory of a Contracting Party**

1. In accordance with the provisions of Article 6 of the Convention, each Contracting Party may authorize national associations to issue TIR Carnets and act as guarantors, as long as the minimum conditions and requirements, as laid down in Annex 9, Part I, are complied with. Pursuant to Annex 9, Part I, Article 1 (e), the establishment of a written agreement or any other legal instrument between the association and the competent authorities of the Contracting Party in which it is established constitutes one of these minimum conditions and requirements. The guarantee coverage in this country can only be suspended by either party to the above written agreement by means of termination of the agreement or through revocation of the authorization.

2. In case the national association wishes or finds itself compelled (e.g. due to the large number of claims or undischarged TIR operations) to suspend its guarantee in that given country, it can do so by means of a written notification to the competent authorities informing of its intention to terminate the written agreement, in accordance with Annex 9, Part I, Article 1 (f) (v).

3. Competent authorities can either terminate the agreement, in accordance with Annex 9, Part I, Article 1 (f) (v) or revoke the authorization, in accordance with Annex 9, Part I, Article 1 (b), in case they decide that the national association can no longer fulfil its obligations under the Convention.

4. The time to give notice for the termination of the agreement shall be longer than the time to give notice for the termination of the insurance or financial guarantee contract as referred to Annex 9, Part I, Article 1 (f) (v). However, in order to limit the financial exposure of the national association (and the international organization, referred to in Article 6 of the Convention), the time to give notice for the termination of the written agreement should be short, and should preferably, in accordance with national law, not exceed a period of three months;

5. The time to give notice for the revocation of the authorization is determined by provisions of national law.

6. Prior to entering into the formalities leading up to the termination of the agreement or the revocation of the authorization, it is recommended to apply the following procedure:

- Whenever in a Contracting Party the number of undischarged TIR operations has increased to a level where, according to the national association, there is a potential threat that the association would be no longer in a position, if so required, to provide its guarantees, the association (possibly upon initiative or with the support of the international organization) shall immediately send an official letter to the national competent authorities, highlighting the data of all relevant cases and substantiating how they might jeopardize its obligation to provide guarantee. Further to the regular enquiry procedures conducted by them, national competent authorities have to meticulously follow each individual case reported by the national association. In parallel, the national association shall inform AC.2 and TIRExB;

- TIRExB shall study each and every potential emerging crisis situation without delay (possibly by means of questionnaires, information from national associations, national competent authorities, the international guarantee chain or others) and report its findings to AC.2; in parallel, AC.2 shall monitor the information submitted to it by the national association.
- If despite examinations by Customs authorities and TIRExB, the national association still feels compelled to initiate the termination of the agreement, it shall inform the international organization of this intention, in order to allow the latter to take appropriate actions to maintain, in accordance with Article 6.2 bis, the effective organization and functioning of the guarantee system at the national and international level. Pending termination of the agreement or revocation of the authorization, the international organization, in close cooperation with the Customs authorities concerned, shall undertake all efforts to find a new national guaranteeing association which meets all established criteria, in order to ensure uninterrupted guarantee coverage in that Contracting Party. AC.2 shall closely monitor the situation and take all measures to ensure continuation of the authorization granted to the international organization to take on responsibility for the effective organization and functioning of an international guarantee system, pursuant to Article 6.2 bis of the Convention;
- The above procedure is without prejudice to the right of Contracting Parties to apply, at any time, the provision of Article 38 or Article 6, paragraph 4 as well as Annex 9, Part II, Article 1 (d), with the aim to maintain the sustainability of the TIR procedure on their territory.”

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