



# Economic and Social Council

Distr.: General  
17 December 2013

Original: English

---

## Economic Commission for Europe

### Inland Transport Committee

#### Seventy-sixth session

Geneva, 25–27 February 2014

Item 4 (h) of the provisional agenda

#### Strategic questions of a sectoral nature:

#### Strengthening border crossing facilitation

(Harmonization Convention, TIR Convention, eTIR Project  
and other Customs transit facilitation measures)

### TIR crisis

#### Note by the secretariat

#### *Summary*

The present document outlines the TIR crisis in the Russian Federation with the major milestones, latest updates and actions by UNECE and other stakeholders to solve it. An analysis of the reasons for the crisis is also provided, together with the potential solutions. The document is submitted to the Committee for information.

The Committee may wish to provide guidance on further actions by the Working Party on Customs Questions affecting Transport and the secretariat as well as on strategic directions in further improving the TIR system and increasing its sustainability.

## I. Synopsis of the crisis

1. In July 2013, the Federal Customs Service of Russia (FCS) decided not to accept the TIR guarantee. The intergovernmental bodies of the TIR Convention have all come to a common opinion that this measure is in breach of the TIR Convention and have called for its immediate withdrawal. In spite of this, FCS began its step-by-step implementation in various regions of the Russian Federation with the practical impact of phasing out the use of the TIR procedure in the country. FCS has not communicated its planned measures to the TIR bodies or to the secretariat, as required by the TIR Convention. FCS also notified the national TIR guaranteeing association (ASMAP) that the agreement between them will be terminated on 1 December 2013, increasing the risk of TIR becoming inoperable in the

Russian Federation. At the end of November 2013, FCS postponed the termination of the guarantee agreement with ASMAP to 1 July 2014, thus leaving the question open what will happen to TIR in the Russian Federation after that date, while simultaneously ensuring that Russian operators can continue to use the TIR Carnets and guarantee outside of the Russian Federation.

## **II. Ramifications**

2. Every year, around 3,000,000 TIR transport operations take place, carrying goods worth an annual value of more than EUR 500 billion. The Russian Federation has been the biggest user of the TIR system where nearly 50 per cent of TIR operations (1,500,000 annually) are terminated. In addition, the Russian Federation has an important geostrategic position for Euro-Asian transport and trade. The TIR Convention has been pivotal in this respect. The current situation may jeopardize the progress made in recent years in connecting Europe and Asia through land transport routes. More specifically, the crisis may lead to the following negative impacts:

- loss of a unique trade and transport facilitation tool for many countries and trade partners, including the vulnerable landlocked economies of Central Asia;
- long delays and queues at borders as well as impeded road freight movement in Europe and the entire Eurasian region;
- social and economic disparity;
- some 50 per cent reduction of global use of the TIR procedure.

## **III. Officially stated reasons for the FCS actions**

3. As a justification for this measure, two arguments have been put forward by FCS:

(a) A large and increasing number of unpaid Customs claims and financial debts due to frequent TIR infringements; and

(b) The guarantee agreement between FCS and the national guaranteeing association ASMAP seems to be based on outdated national legislation. In particular, the way in which ASMAP covers its guarantee and liabilities under the TIR Convention does not correspond to the current Customs Code of the Customs Union of Belarus, Kazakhstan and the Russian Federation and the new national legislation of the Russian Federation.

## **IV. Analysis of the causes and reasons for the crisis**

4. There seems to be a confidence crisis between FCS, on the one hand, and ASMAP and the International Road Transport Union (IRU), on the other hand. This has evolved and deepened over the years. According to FCS, controversial issues, which have been piling up, include the accumulation of considerable Customs debts due to TIR infringements, the insufficient TIR guarantee level, the burden of proof put by the international TIR guarantee chain on FCS in case of infringements, lengthy court proceedings, and lack of transparency on behalf of ASMAP. Below, some of these issues are analysed, together with additional factors which could have contributed to the crisis.

*2002 TIR crisis in the Russian Federation*

5. From 1994–2002, the Russian Customs lodged a large number of Customs claims against ASMAP which IRU and ASMAP did not consider to be legitimate. At the end of 2002, IRU announced that, unless these claims were withdrawn, IRU would suspend the TIR guarantee coverage on the Russian territory as of 1 January 2003 and, as a result, there would be no TIR procedure in the Russian Federation and for the Russian transport operators. Because of the significance of TIR for the Russian economy, the lack of alternative guarantee solutions and under great pressure, both nationally and internationally, the Customs administration felt compelled to sign with IRU and ASMAP the so-called “global settlement agreements” which provided a lump-sum payment of USD 12,000,000 for the claims supposedly worth USD 60,000,000. The legitimacy of these agreements seems to be questioned by FCS.

*Court cases and outstanding claims*

6. In 2004–2006, FCS tried to enforce payment of some 600 Customs claims through national courts, but in all cases the courts ruled in favour of ASMAP for various reasons, including procedural ones. Thus, in legal terms, ASMAP is not liable for the payment of these claims. However, the debts – as uncollected Customs revenues – are still on FCS accounts towards the state budget and FCS insists that these Customs debts should be paid, if not by ASMAP, then by other representatives of the international TIR guarantee chain. FCS is convinced that if the TIR guarantee chain does not pay, the facilitation component of the TIR Convention fails to prevail.

7. On the positive side, in the period of 2007–2012, the number and amount of Customs claims have substantially reduced in the Russian Federation and does not raise any concerns. It shows that the management and the security of TIR have significantly improved, both at the national and international levels.

*TIR guarantee level*

8. The TIR Convention prescribes a flat-rate guarantee per TIR Carnet, irrespective of the goods transported and their itinerary. In the Russian Federation, European Union (EU) and some other countries the level of the guarantee is fixed at EUR 60,000. It is sufficient to cover revenue losses in most cases, but for some high-value goods the actual amount of Customs duties at stake may go above this level, thus making Customs authorities feel insecure. On the other hand, for several goods and countries, EUR 60,000 is way too much. Therefore, the introduction of a flexible guarantee level would be warranted. Although the relevant discussions already started some time ago in various TIR bodies, they have not yet led to tangible results.

*Centralized guarantee system*

9. At present, IRU is the only authorized international organization and, with few exceptions, there is only one national guaranteeing association (member of IRU) per country. This structure was created a long time ago as it best met the governmental requirements at that time. However, with the liberalization of the road freight transport market and the availability of electronic tools, such a centralized system may no longer be warranted. It is also making the Contracting Parties vulnerable to local crises like the Russian one, when the authorization of the only national guarantor is being withdrawn. In principle, the TIR Convention allows for multiple guaranteeing chains and national guarantors. However, so far, there have not been serious attempts of other potential service providers to join the system, partly because of the image of complexity to organize printing, selling and distribution of paper TIR Carnets, being both a guarantee document and a Customs transit declaration.

10. Before the TIR crisis in the Russian Federation started, another Russian entity had applied for the right to join the TIR international guarantee chain. This request was in fact rejected by IRU.

*National transit system and commercial factors*

11. FCS promotes a nationally designed transit system. The Customs transit market of the Russian Federation is huge and very attractive to national guarantors who want to sell their services. However, before the current crisis started, 80–90 per cent of this market was occupied by TIR (i.e. ASMAP and IRU), thus leaving only the remaining 10–20 per cent for the national guarantors. Since the beginning of the TIR crisis, the share of national guarantors has substantially increased.

*Geopolitical aspects*

12. The Russian Federation, its Customs Union partners (Belarus and Kazakhstan) and the Eurasian Economic Commission would like to create a regional transit system that will be built around the principles of the European Union Community/Common Transit System (NCTS) and with the final objective to be connected with NCTS.

13. EU, being a Customs union as of 1968, used to allow TIR transports also for its domestic transports until the end of the eighties, when it decided, as part of the process of establishing a single Customs territory per 1 January 2002 (where there would be no more Customs offices at its internal borders) to no longer accept TIR Carnets for domestic transports within the EU territory, but only the Community/Common Transit System. However, this did not preclude the use of the TIR procedure for transport operations starting in or ending outside the European Union or passing in transit through its territory. Thus, the Eurasian Customs Union transport operators would also benefit from the opportunity to choose the best suitable option for Customs transit: either TIR or the national transit procedure or the one at the Union level.

*Positions of Russian authorities*

14. The Russian government (Ministry of Foreign Affairs, Ministry of Transport, and Federal Customs Service) has confirmed on several instances that it is committed and supportive to maintaining the Russian Federation in the TIR Convention. At the same time, so far, no official position of the Russian government has been publicly announced as to the solutions of the crisis.

15. On 14 October 2013, the Supreme Arbitration Court of the Russian Federation declared null and void the 4 July 2013 FCS decision not to accept the TIR guarantee. In reply, FCS cancelled this decision, but immediately published a new one with the same content but different reference number.

## **V. Recent developments**

16. FCS put forward several strict principles that should be met by a national TIR guarantor (ASMAP and/or another association) in the future: settlement of outstanding debts; full financial coverage of the liabilities of a national guaranteeing association by means of a bank guarantee; granting the right of direct debit to the Customs authorities; full financial transparency of the association with regard to the accounts and records kept in relation to the TIR procedure. FCS pointed out that these conditions are required because the Customs authorities are mandated to protect the government's revenue interests, but have no means and resources to do so. FCS also expects that the TIR guarantee chain would undertake the collection of missing revenues in cases of TIR infringements.

17. ASMAP and IRU seem to be of the opinion that the FCS requirements are not proportionate to the current level of risks of TIR infringements. At the end of October 2013, ASMAP submitted to FCS its counter-proposals for a revised guarantee agreement which include some elements to partly meet the FCS requirements. In particular, ASMAP agreed to give FCS the right to directly debit a special fund of EUR 1,000,000 as well as to raise the TIR guarantee to EUR 160,000 in certain cases, compared to the 'regular' EUR 60,000 guarantee. The reaction of FCS to these proposals is not yet known. In November 2013, FCS and IRU started direct negotiations which are still going on.

18. A new enquiry was submitted to IRU by another Russian association. UNECE has also received information about the interest of the association to become an authorized TIR national guarantor. It remains to be seen if this association meets the minimum conditions set out in the TIR Convention and if it gets the authorization of the Russian Government.

19. To further promote the national transit procedure, FCS has announced a pilot under which the majority of Russian transport companies (around 500) will be granted an opportunity to carry goods under Customs control with a complete guarantee waiver. Foreign carriers cannot take part in this pilot.

20. On 26 November 2013, the Government of the Russian Federation held an interdepartmental meeting with all ministries and agencies concerned, to discuss the current situation with the implementation of the TIR procedure in the Russian Federation and to elaborate a common position on the underlying issues. As a result of that meeting, FCS postponed the termination of the guarantee agreement with ASMAP to 1 July 2014, but kept in force the restrictions imposed on the acceptance of the TIR guarantee. Other decisions taken by the Government had not been made public by the date this document was finalized.

21. At its most recent session (Rome, 3–4 December 2013), the TIR Executive Board (TIRExB) adopted a statement on the functioning of the TIR Convention in the Russian Federation after 1 December 2013, in which TIRExB appealed to the Russian government to ensure that the introduced restrictions are abolished and the principles of international law are respected.

## **VI. UNECE actions**

22. As the custodian of the TIR Convention, UNECE has been undertaking numerous activities with a view to safeguarding the TIR Convention as a unique facilitation tool and assisting the parties concerned (FCS, ASMAP and IRU) in finding a solution. Inter alia, these activities included asking to cancel (or at least postpone) the measure and to act according to the TIR Convention in letters to FCS, to Foreign Minister Lavrov and to the Russian Permanent Mission in Geneva, several memos to the United Nations Secretary-General about the situation, organization of various TIR intergovernmental meetings and preparation of numerous analytical papers, reporting to EXCOM, close and regular contacts with all stakeholders, monitoring and analysing the crisis etc.

## **VII. Lessons learned and strategic issues to be addressed**

23. The crisis has highlighted a number of strategic issues which are already under consideration by the TIR intergovernmental bodies:

- further transparency in the functioning of the TIR system on the side of IRU and its member associations;

- need to increase the TIR guarantee level which no longer seems to correspond to the modern Customs requirements, or alternatively, the need for flexible guarantee levels;
- need to fully computerize the TIR procedure by gradually replacing the paper TIR Carnet with a set of electronic messages in order to make TIR responsive to the needs of supply chains and to stay competitive with modern electronic transit systems like NCTS. Or, alternatively, keeping the current paper-based TIR system in parallel with the launch of an eTIR facilitation tool;
- need to reduce the vulnerability of countries and traders to an emerging crisis in the system, the solution of which is not in their hands. Thus, consider progressive decentralization of the TIR system, e.g. require more than one national association to be included in the TIR guarantee chain.

24. To computerize TIR, Contracting Parties and the secretariat have already developed technical provisions and conducted a cost-benefit analysis for the eTIR project. Now governments must decide in which legal form they wish to proceed.

## **VIII. Considerations of the Inland Transport Committee**

25. The main objective of the present document is to provide ITC with information about the evolving and deepening crisis in the application of the TIR transit facilitation which may or may not be solved by the Committee's session at the end of February 2014. Therefore, in light of the actual situation at that time, the Committee is invited to provide guidance on:

- any further actions by the Working Party on Customs Questions affecting Transport (WP.30) and the secretariat;
- strategic directions towards further improving the TIR system and increasing its resilience by taking stock of the lessons learned from the crisis.

26. Furthermore, the Committee may wish to act as a catalyst for political lead by the most interested governments in reviewing challenges and opportunities in transit facilitation through the TIR Convention.

---