



Economic Commission for Europe**Administrative Committee for the TIR Convention, 1975****Seventy-third session**

Geneva, 14 and 15 October 2020

Item 5 (b) of the provisional agenda

Revision of the Convention:**Amendment proposals to the Convention transmitted
by the TIR Executive Board****Draft new Explanatory Note to Article 6, paragraph 2 of the
TIR Convention****Note by the secretariat****I. Mandate**

1. At the sixty-seventh session (February 2018) of the TIR Administrative Committee (AC.2), in relation to the exclusion of the Romanian national association, namely the Asociația Română Pentru Transporturi Rutiere Internaționale (ARTRI), the Chair of TIR Executive Board (TIRExB) informed the Committee that it was considering a proposal by the Romanian customs authorities to clarify the reasons for termination of the written agreements between the international organization and its national associations in a new Explanatory Note to Article 6. The Committee requested TIRExB to study E.N. 0.6.2 bis to assess whether or to which extent it would be possible to include provisions on the relations between the international organization and its national associations in the text of the TIR Convention (ECE/TRANS/WP.30/AC.2/137, paras. 16 and 39).

2. TIRExB completed its consideration of the item at its eighty-fourth session (February 2020) and requested the secretariat to submit its assessments to the next session of AC.2.

II. Background and discussions

3. From its seventy-second to seventy-sixth sessions, TIRExB considered the relationship between ARTRI and the International Road Transport Union (IRU), including the termination by IRU of the deed of engagement with ARTRI (ECE/TRANS/WP.30/AC.2/2017/11, paras. 19–24, ECE/TRANS/WP.30/AC.2/2018/1, paras. 24–28, ECE/TRANS/WP.30/AC.2/2018/2, paras. 17–26, ECE/TRANS/WP.30/AC.2/2018/4, paras. 27–37, ECE/TRANS/WP.30/AC.2/2018/5, paras. 22–31).

4. The Board, at its seventy-fourth session, decided to bring to the attention of AC.2 that the reference in the TIR Convention regarding the relationship between the international



organization and its national associations was in the Explanatory Note to Article 6, paragraph 2 bis, which states that “the relationship should be defined in written agreements on the functioning of the international guarantee system” (ECE/TRANS/WP.30/AC.2/2018/2, paras. 25–26).

5. At its seventy-sixth session, TIRExB considered a letter by the Romanian customs authorities proposing that TIRExB clarify the reasons for termination of those agreements in a new Explanatory Note to Article 6, paragraph 2 of the TIR Convention (ECE/TRANS/WP.30/AC.2/2018/5, para. 29).

6. At its sixty-seventh session, AC.2 took note of the report by the Chair of TIRExB and the proposal by the Romanian customs authorities (Informal document WP.30/AC.2 (2018) No. 4). Consequently, AC.2 mandated TIRExB to assess whether and to which extent it would be possible to include provisions on the relation between the international organization and its national associations in the text of the TIR Convention and to report back to the Committee at one of its future sessions (ECE/TRANS/WP.30/AC.2/137, paras. 16 and 39).

7. From its seventy-seventh to eightieth sessions, the Board held discussions to fulfil the mandate by AC.2. The Board agreed that, indeed, the events in Romania had led to an unprecedented situation. However, this should not prevent the Board or, eventually, contracting parties from drawing lessons from it which could provide guidance for any (similar or other) future complication in the public-private partnership. Further, the Board concluded that the contract between the international organization and its national associations is primarily a contractual relation under private law and that any involvement from governments in the drafting of new provisions should be limited to customs-related issues only. Therefore, TIRExB was of the opinion that, in order to address the issues raised by the Romanian customs authorities or similar cases, it seemed more appropriate to develop some type of early warning mechanism or guidelines, in which all stakeholders (international organization, national associations and customs authorities) would be urged to inform each other as well as TIRExB well in advance of any change in circumstance that could run the risk of leading, potentially, to the termination of the relation between the international organization and a national association on the one hand, and the termination of the agreement between the customs authorities and the national association on the other hand. The Board also underlined that, at all times, the international organization and the associations should have a cooperative relationship (ECE/TRANS/WP.30/AC.2/2019/1, paras. 23–24, ECE/TRANS/WP.30/AC.2/2019/2, paras. 28–29, ECE/TRANS/WP.30/AC.2/2019/11, paras. 28–31, ECE/TRANS/WP.30/AC.2/2019/12, paras. 15–20).

8. Mr. Amelyanovich (Russian Federation) did not consider an early warning mechanism sufficient to prevent instances similar to what the Republic of Moldova and Romania had experienced from happening in the future. Additionally, he did not agree with the conclusion that the relationship between the international organization and the association was private in nature as these two were actors regulated in the Convention with their roles and responsibilities. Therefore, he was of the view that an amendment to Article 6 of the Convention should be made to assure that an association could be excluded by the international organization only based on a violation of the agreement between the international organization and the national association on the functioning of the international guarantee system as required by Explanatory Note 0.6.2 bis-1 to Article 6, para. 2, but not a violation of the internal documents of IRU which were not referred to in the Convention. He was of the view that drafting an example agreement could also be considered as already done for the agreement between competent authorities and national associations (ECE/TRANS/WP.30/AC.2/2019/12, para. 19).

9. Mr. Ayati (Iran (Islamic Republic of)) considered the issue closely linked with Annex 9 of the Convention, both in terms of responsibilities of the associations vis-a-vis their national authorities as regulated in Part I and responsibilities of the international organization as regulated in Part III of Annex 9. He was of the view that making an amendment to Article 6 without taking those aspects into consideration would be immature and incomplete. He also considered that, even if the relationship between private actors may not be regulated, the position of the national authorities in accession to or exclusion from the TIR system of an association should be valued in order to have mutual understanding (ECE/TRANS/WP.30/AC.2/2019/12, para. 19).

10. Mr. Guenkov (IRU) informed the Board about the legal framework of the relationship between IRU and its member associations and emphasized the private nature of this relationship. He stated that the relationship between IRU and the national associations was governed by the IRU Constitution and the Swiss Civil Code, in terms of membership, and the written agreements, in terms of Explanatory Note 0.6.2 bis- 1. These written agreements were the Deeds of Engagement which were signed between IRU and the associations. He stated that whereas some aspects of the TIR Convention related to public law, others related to private law. He added that the relationship between IRU and the national associations as well as all other contractual relationships entered into by IRU and its members, ensuring a safe implementation and functioning of the guarantee chain, pertained to private law. He emphasized that neither IRU nor the national associations could be obliged to work together due to the principle of contractual freedom. He pointed out that the mere affiliation of a national association to IRU did not suffice to authorize such association to issue TIR Carnets and belong to the international guarantee chain. Thus, it was the sum of private and public relationships and decisions that enabled the functioning of the international guarantee chain. He further stated that not respecting the aforementioned legal framework and roles would be both an infringement of public and private law and could also lead to disruption of the delicate balance between the roles of the public and private actors in the TIR system (ECE/TRANS/WP.30/AC.2/2019/12, para. 16).

11. The Board, at its eightieth session, reiterated its previous conclusion that an early warning mechanism and a best practice or guiding principles should be developed in order to address future complications in the relationship between the international organization and the national associations. The Board deemed it not appropriate to consider amendments to Article 6 or Annex 9 at this stage and, in the absence of amendment proposals submitted to this end, preferred not discussing further the binding provisions of the Convention. (ECE/TRANS/WP.30/AC.2/2019/12, para. 20).

12. At its following sessions, the Board considered a document drafted by the secretariat in line with its previous conclusions that comprised also a draft text for an early warning mechanism and guidelines. The Board was of the view that the issue was a sensitive one and the draft by the secretariat reflected a balanced approach. The representative of IRU made suggestions to amend the text of the early warning mechanism and guidelines to further improve it especially based on the lessons drawn from the case with the Romanian association. TIRExB observed that suggestions by IRU mainly related to introducing following points in the text:

- National association's putting TIRExB and the international organization in copy of the correspondence with its competent authorities.
- A statement about the private nature of the relationship between the international organization and its member associations.

13. TIRExB pointed out the purpose of the early warning mechanism as to urge stakeholders inform each other as well as TIRExB well in advance of any change in circumstance that could run the risk of leading, potentially, to the termination of the relation between the international organization and a national association on the one hand, and the termination of the agreement between the customs authorities and the national association on the other hand. In this regard, it did not consider appropriate to remark on the nature of the relationship between the international organization and national associations in the text. Further, the Board underlined the need to respect also the privacy of the relationship between a competent authority and its national association. Finally, regarding the lessons referred to by IRU from past cases, TIRExB stressed that it had always provided its good office to all stakeholders for the settlement of disputes and that it would continue to consider any information provided by the stakeholders as per Annex 8 of the TIR Convention. TIRExB requested the secretariat to submit its conclusions to AC.2 at its October 2020 session (ECE/TRANS/WP.30/AC.2/2019/13, paras. 25–26, ECE/TRANS/WP.30/AC.2/2020/13, paras. 32–35).

III. Early warning mechanism and the guidelines

14. In accordance with Annex 8, Article 10, paras. (a) and (e) of the TIR Convention, TIRExB shall supervise the application of the Convention, including the operation of the guarantee system, and facilitate the settlement of disputes between Contracting Parties, associations, insurance companies and international organizations.

15. In view of its mandate and taking into account above discussions, TIRExB considers the following course of action appropriate about the relationship between the international organization and the national associations:

“The international organization and its member associations, at all times, maintain a cooperative relationship for the effective functioning of the international guarantee system.

In case of circumstances that could run the risk of leading, potentially, to the termination of the relationship between the international organization and an association on the one hand, and the termination of the agreement between the customs authorities and the association on the other hand, all stakeholders are urged to inform each other as well as the TIR Executive Board (TIRExB) well in advance. Notwithstanding the right of all stakeholders to contact TIR governing bodies at any time about issues of their concern:

- The national association informs its competent authorities, without delay, about such a dispute with the international organization and keeps them informed about further developments,
- The international organization informs the TIR Administrative Committee and TIRExB, without delay, together with details of the dispute to avail consideration thereof,
- TIRExB considers the dispute between the international organization and a national association as a priority to facilitate its settlement, when necessary collecting information also from the national association and/or the competent authorities. TIRExB keeps the TIR Administrative Committee informed about the progress achieved in the settlement of the dispute.”

IV. Considerations by the Committee

16. The Committee may wish to take note of the summary of the discussions and consider and possibly approve the draft early warning mechanism and guidelines.
