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Istanbul, 3 October 2013

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## 24<sup>th</sup> MEETING OF THE BSEC-URTA GENERAL ASSEMBLY

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Radisson Blu Iveria Hotel  
Tbilisi - Georgia  
Friday, 25 October 2013, at 09:00 hrs

### STATE OF AFFAIRS REGARDING IMPLEMENTATION OF THE TIR CONVENTION ON THE TERRITORY OF THE RUSSIAN FEDERATION

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*(Information Paper prepared in coordination with the IRU)*

#### Introduction

On 5 July 2013, the Russian Federal Customs Service (FCS-RF) posted on its website information about a unilateral decision from the Head of FCS-RF, Mr Belyaninov stating notably: "... in order to ensure compliance with the customs legislation of the Customs Union and to ensure full and timely payment of customs duties to the federal budget, starting from 14 August 2013, placement of goods under the TIR procedure shall be performed under the condition that customs transit is secured by measures indicated in Article 217 § 1 of the Customs Code of the Customs Union".

In practice this may mean that, from 14 August, each TIR Carnet used to transport goods to or through Russia would be subject to national customs guarantee requirements in addition to the TIR Carnet.

#### **The FCS RF's decision dated 4 July 2013 and its subsequent actions are in violation of the UN TIR Convention.**

Since the announcement of the FCS RF's decision, numerous governments from various countries, as well as the European Commission and the United Nations, have directly addressed the Russian Government stating that this decision was in breach of the UN TIR Convention and calling for its definitive withdrawal.

On 27 August 2013, the supervising body of the UN TIR Convention - the TIR Executive Board – held an extraordinary emergency session and concluded unequivocally, that the FCS decision was at least on five counts in violation of the UN TIR Convention and thus called for its withdrawal.

#### **FCS RF justification of an alleged ASMAP debt of RUB 20 billion is a complete fabrication as ALL old TIR claims have been fully settled through global agreements**

The FCS RF's justification of a pending debt of ASMAP amounting to more than RUB 20 billion (USD 650 million) is completely groundless and defamatory.

The FCS RF decision of 4 July has not been, to date, substantiated by any evidence, despite numerous requests from ASMAP, IRU and the UN TIR Executive Board.

The figure of RUB 20 billion in no way corresponds to actual figures notified to the TIR recorded in the IRU statistics, which are verified by independent international auditors and duly reported every year to the United Nations, without any contestations by the Russian Federation.

The FCS RF fails to mention that all old claims addressed to ASMAP since the 1990s have been settled to the satisfaction of all parties, through legally binding settlement agreements concluded between 1998

and 2003, duly signed by the Head of the Russian State Customs Committee, the IRU and ASMAP. These global agreements were also endorsed by the Russian Government, as was confirmed by the Russian Ministry of Transport - the competent authority for the TIR Convention in Russia - in its official communication to the UNECE in April 2003

Since the signature of these global agreements, no Russian authority has contested their validity, despite having had since then over 40 occasions to do so during UN meetings dedicated to addressing any problems in the TIR System.

**FCS RF justification that there is an increase in claims is unfounded as actual figures show the exact opposite trend.**

Since the signature of the global agreements, the number of TIR irregularities in Russia has decreased dramatically since 2004, thanks in great part to the implementation of TIR-IT risk management tools by Russian Customs in partnership with the IRU, to such a point that Russian Customs have become an example for other countries on how to manage the TIR System most effectively and securely.

TIR statistics show that the number of TIR irregularities is now negligible and that the international TIR guarantee chain has been fulfilling all of its obligations in full compliance with the provisions of the TIR Convention and applicable Russian legislation.

In 2012, only 33 claims were addressed by FCS RF to ASMAP, of which 30 were duly paid. Taking into account that 1.5 million TIR operations are terminated every year in Russia, these 3 remaining cases represent only 1 in 500,000 operations on Russian territory.

If there are cases unknown to IRU and ASMAP where amounts still need to be paid to the FCS RF in line with the TIR Convention and applicable Russian law, the TIR guarantee chain is of course ready to proceed immediately with such payments in full respect of all its legal and financial obligations within the TIR System. This commitment was officially confirmed by the IRU to Prime Minister Medvedev in a letter dated 2 August 2013.

To decrease even further the already negligible number of contested claims, IRU and ASMAP have presented to the FCS RF very concrete constructive proposals, which could be included in an updated ASMAP-FCS RF TIR guarantee agreement, notably:

- definition of a standard set of documents to be provided by FCS RF to ASMAP, to ensure immediate payment of all valid Customs claims;
- clarification of deadlines within which Russian Customs may appeal to Russian courts, in case of any disagreement between the parties regarding the legitimacy of a Customs claim;
- increase the TIR guarantee level in specific cases of transport of high-value goods.

The IRU is hopeful that the FCS RF will accept to implement these constructive proposals as soon as possible.

**FCS RF justification that the TIR guarantee agreement between FCS RF and ASMAP is not in line with national or Customs Union legislation is unfounded and ignores the supremacy of international law.**

The existing TIR guarantee agreement between ASMAP and the Federal Customs Service of Russia is similar to other TIR guarantee contracts signed in 58 operational TIR countries, and is in full conformity with the provisions of the UN TIR Convention, which are quoted in the agreement.

Since the entry into force of the Customs code of the Customs Union on 1 July 2010, no allegation has ever been made by any authority from the Customs Union about a non-compliance of the ASMAP TIR guarantee contract with applicable legislation.

The TIR guarantee contract is in fact fully in line with the Customs code of the Customs Union, which foresees that “the Customs authorities of the Customs Union shall not require any additional guarantees if that is established by the international treaty”.

The TIR guarantee contract directly results from the TIR Convention, which is an international treaty, which has supremacy over any national or regional legislation. This fundamental legal principle is clearly recognised by the Constitution of the Russian Federation, which clearly stipulates that “The commonly recognised principles and norms of the international law and the international treaties of the Russian Federation shall be a component part of its legal system”. If an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty shall apply.

**Contrary to the FCS RF’s defamatory statements, ASMAP is an exemplary TIR issuing and guaranteeing association.**

ASMAP has been an IRU Member Association and the authorised TIR association in Russia for almost 40 years. ASMAP has fulfilled all of the TIR-related requirements and obligations.

ASMAP’s professionalism in its TIR activities has contributed significantly to the development of the Russian road transport industry and, moreover, to Russian trade and its economy.

ASMAP has 1,689 active TIR Carnets holders and, through its 13 TIR issuing offices, ASMAP currently issues, in full security, more than 600,000 TIR Carnets per year and acts as a guarantor for more than 1.5 million TIR operations on Russian territory. This represents an amount of EUR 90 billion (almost RUB 4 trillion) annually in financial guarantees which are provided directly to Russian Customs authorities.

Neither the IRU nor the UNECE TIR bodies have ever been informed about any complaint regarding the work of ASMAP in its effective management of the TIR System.

The IRU carries out regular operational TIR Audits of its associations in order to ensure their full compliance with the TIR Convention, as well as with the IRU Rules and Regulations in the management of TIR Carnets. The most recent audit of ASMAP was carried out by the IRU Audit Commission in November 2012 at both its headquarters in Moscow and its St. Petersburg branch office. The IRU audit concluded that the UN TIR Convention as well as all IRU Rules and Regulations are being fully respected by ASMAP to the total satisfaction of the IRU.

**Conclusion:**

All the justifications put forward by the FCS RF for the planned implementation of additional security measures for all TIR transports, as well as the termination of the TIR guarantee agreement with ASMAP, are completely unfounded.

Therefore, in the interest of the Russian economy and international trade between Russia and its partners, the FCS RF’s illegal and unfounded decision to place restrictions on the TIR System should be withdrawn immediately.

**Actions**

Many actions have been undertaken by the IRU and ASMAP through letters to the Prime Minister of the Russian Federation, various Ministries and Agencies, EU and Eurasian Economic Commissions. Various meetings took place, both in Moscow and Geneva with UNECE, EU Embassies, as well as with the Russian Business Community. Various legal actions have been initiated by ASMAP towards various Russian Courts to request the invalidation of this FCS Decision. It is worth to be mentioned the IRU coordination with BSEC-URTA resulted in a letter campaign addressed to BSEC Organization, Minister of Foreign Affairs and Minister of Transport of Russian Federation, the UNECE Executive Secretary, the EU Commission. These coordinated actions led the IRU to obtain support from the UNECE Executive Secretary, the EU Commission, and thanks to Associations’ actions at national level, several Governments addressed the Russian Authorities to request the cancellation of the FCS Decision. Finally,

some information indicated that the issue was raised by some Governments at the G20 meeting in St Petersburg (5-6 September 2013). On 27 August, the TIR Executive Board considered officially that the FCS Decision broke the TIR Convention and called on the FCS to properly apply the TIR Convention and abandon the introduction of the announced measures. However, on the 29 August 2013, the FCS announced that it had notified ASMAP of the termination of its TIR Guarantee Agreement to take effect on the 1 December 2013.

## **Developments**

The Head of the FCS RF addressed on 13 September 2013, to all regional Customs offices of the Russian Federation a letter pursuant to its decision of 4 July 2013.

In this letter, the FCS RF states that the **additional guarantee measures foreseen by the FCS RF shall apply in the Customs offices “subordinate to the Siberian and Far Eastern regional Customs Departments”**.

On 3<sup>rd</sup> October 2013, the IRU was informed that FCS RF has extended the scope of its illegal restriction on TIR guarantees to the Privolzhsky Customs Directorate, further defying the UN's and the international community's conclusion that this action is in breach of the TIR Convention and international law.

These unilateral restrictions will notably impact the Bashkortostan, Nizhegorodskaya, Orenburg, Perm, Samara, Saratov, Tatarstan, Ulyanovsk and Privolzhskaya Operativnaya regional customs offices. Overall, the FCS RF's illegal restriction on TIR guarantees now applies to Siberian, Far East, Ural and Privolzhsky Customs Directorates.

## **UNECE Working Party on Customs Questions affecting Transport-135<sup>th</sup> Session Geneva, 1-4 October 2013**

The representatives of FCS RF, IRU and ASMAP informed WP30 about the activities of the Task Force established between FCS and ASMAP with the participation of IRU as Observer, aimed to clarify the amount of outstanding customs debt, as well as to review the TIR Guarantee Agreement according to FCS RF wishes.

The Working Party noted that so far no major progress had been achieved by the Task Force and that Parties still maintain diverse positions on the figures for settled claims and outstanding debts, responsible debtors and mechanics of claims settlement and financial coverage of ASMAP's liabilities.

The Delegation of the Russian Federation informed W30 about ongoing domestic inter-ministerial dialogue aimed at achieving the common position of the government on the related issues and observing the international obligations of the Russian Federation under the TIR Conventions.

Numerous delegations pointed out severe negative implications of the situation with the TIR in Russian Federation for Trade and Transport from/to through the Russian Federation, such as business uncertainty due to lack of information and unexpected decisions reducing trade volumes and number of contracts, additional cost for buying national guarantee, etc.

The delegation of EU also pointed out that they were studying the possibility of evoking WTO mechanisms in relation to the Russian Federation.

WP30 urged all stakeholders in the Russian Federation and IRU to find solutions that would ensure on uninterrupted applications of the TIR Procedure in the Russian Federation.

The Working Party called for withdrawal of the FCS measure and regretted it that in spite of non-compliance of the Russian Federation measure with provisions of TIR Conventions the FCS has started its limited implementation in four regions.

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