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Identification of the holder and verification of the integrity of electronic data interchange messages

Identification of the holder and verification of the integrity of electronic data interchange messages

Note by the secretariat

I. Mandate

1. At its first session, the Group of Experts on Legal Aspects of Computerization of the TIR Procedure (GE.2) considered the ways in which the eTIR legal framework can address the issues of identification of the holder, particularly in view of the difficulties with the international recognition of electronic signatures. At the outset, GE.2 was of the view that, notwithstanding various technical and, possibly, national legal issues that may still need to be addressed, the principle of mutual recognition of the authentication of the declarant in the country of departure should be maintained. At the same time it was pointed out that the corresponding legal provision should provide for all the means available for submitting a declaration as foreseen in the eTIR Reference Model and, therefore, draft Article 8 should be amended accordingly. In concluding the discussions, the secretariat was requested to prepare a document for the next session, building on the comments received, to serve as a basis for further discussions on this issue (see ECE/TRANS/WP.30/GE.2/2 para. 8(d)). In line with this request, the secretariat has prepared the present document.

II. Authentication of the identity of the holder

2. The eTIR Reference Model introduces, as new requirement, that customs should receive advance cargo information prior to the physical presentation of the vehicle and goods at the customs office of departure or entry en route. In line with the objectives of the

eTIR Project, the purpose of this is to allow customs to perform certain checks (including the validity of the guarantee) and to determine the risk profile of the TIR transport prior to its arrival at the customs office concerned.

3. In the paper-based TIR system, the TIR Carnet bears the signature of the holder, which, among others, serves to identify him as the person directly liable in case an irregularity occurs. In the eTIR system, this manual signature is to be replaced by a mechanism that serves the same purpose, and which, for legal purposes, would have the same validity as a handwritten signature on a TIR Carnet. However, early on in the course of its work, Informal Ad hoc Expert Group on Conceptual and Technical Aspects of Computerization of the TIR Procedure (GE.1) already identified that the main problem with the use of electronic signatures in the context of eTIR is the absence of global international agreements on electronic signatures. Pursuant to a survey conducted by GE.1 (see ECE/TRANS/WP.30/GE.2/2016/1), in most countries that responded to the survey, only national (or at best, regional) electronic signatures are accepted and, at present, only a few countries recognize foreign certification authorities (CA) for the issuance of legally binding electronic signatures. Against this background, GE.1 confirmed that, as long as internationally recognized CA's have not been developed and recognized, it will be extremely difficult to implement the cross-border use of electronically signed documents. GE.1 further noted that an international CA could be used if recognized by an international agreement, such as, for example, the TIR Convention. Such international CA could, possibly, be established directly in the eTIR international system, linked to the TIR Carnet holder authorization procedure (see ECE/TRANS/WP.30/2012/7, para. 10).

4. The eTIR system is designed in such a way that the holder only needs to submit his advance cargo information once, thus avoiding the multiple, unsolicited and, possibly even erroneous, submission to various national customs systems. The customs office of departure, by registering all relevant TIR transport information in the eTIR international system (which will then transmit this information to all customs offices along the route), ensures that the data required for lodging the declaration, as well as other TIR transport information (e.g. seals), are provided to all consecutive countries involved in the TIR transport prior to the arrival of the vehicle so that customs can perform advance risk assessment. As it is the case today, the holder remains responsible for the presentation of the vehicle, load and guarantee reference in accordance with the principles set out in Article 21 of the TIR Convention at each customs office.

5. With this design, it could arguably suffice that the customs office of departure could verify/authenticate the identity of the holder, either by means of a nationally valid electronic signature, or by any other electronic means recognized by the national law of the country of departure. This has to be the case as it is possible that the customs office of departure is in a different country than that where the holder may be registered. At the same time, it is argued, if the country of departure enters all the information in the secure eTIR international system, which will then transmit the information to all other customs offices involved, there would be no need to verify the identity of the holder again, just as it would not be necessary to perform checks again, in line with the principle of mutual recognition of controls.

6. Considering the difficulty with electronic signatures at the international level, and the cost and complexity of setting up alternatives (such as systems similar to those used for e-banking for example), GE.2 is invited to consider the possibility of, essentially, extending the principle of mutual recognition to the verification of the identity of the holder in the context of eTIR. In legal terms, this would mean that the mutual recognition will only take effect in the case of eTIR transports carried out under the relevant legal framework and it would not set a precedent or extend to other legal instruments or interfere with otherwise valid national legislation.

7. As an end note, GE.2 is invited to determine whether or not this proposal represents a viable solution to the problem of authenticating the identity of the holder; or to identify alternative solutions. For ease of reference, the proposed provision was worded as follows:

“The Parties to this [Protocol] or [Annex] shall recognize the authentication of the holder performed by the competent authorities of the country to which the advance cargo information is submitted”.

III. Mechanisms for submitting advance cargo information

8. Annex VI of the eTIR Reference Model specifies that the holder can make use of a variety of mechanisms to submit advance cargo information: a) the one provided by the eTIR international system, b) the customs system of his country of residence (if available) or c) third party solutions provided by the private sector (including by the guarantee chains).

9. The eTIR Reference Model also specifies that:

“For the eTIR procedure, the declaration is made by presenting the reference to the submitted advance cargo information to the customs office of departure. The term “advance cargo information” shall mean the information provided to the competent customs authorities within the prescribed deadlines and in the prescribed form and manner of the intention of the holder to place goods under the TIR procedure or pursue a TIR transport”

10. The prescribed form and manner as per the above definition would be one of the three above-mentioned available options, which are included in the eTIR Reference Model (Annex VI) which is to become a binding technical document. The above definition has been included as a provision in the draft Protocol, and it could be presumed that this would overall include all the options, as well as any others that may become available in time and included in the eTIR Reference Model.

11. At its previous session, however, GE.2 was of the view that these options should be expressly outlined in the legal framework, possibly under the same provision that governs the authentication of the identity of the holder (see para. 7 above). While it would be beneficial to include such a provision, it could be contended that the ways in which the advance cargo information can be submitted could be the subject of a separate article/provision, under the same chapter. This would be recommended to avoid misunderstanding in the reading/interpretation of the provisions. An example could be:

Submission of advance cargo information

The advance cargo information shall be provided to the competent customs authorities by means of:

- (a) The eTIR international system; or
- (b) The customs system of the country of residence of the holder; or
- (c) Third party service providers recognized by the Contracting Parties; in accordance with the eTIR Reference Model.

IV. Considerations by the Group of Experts

12. GE.2 is invited to continue its discussions under this agenda item, taking stock of the additional information provided in the present document.