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Economic Commission for Europe**Inland Transport Committee****Working Party on Customs Questions affecting Transport****Group of Experts on Legal Aspects of Computerization of the TIR Procedure****Second session**

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Item 9 of the provisional agenda

Format and administrative structure of the eTIR legal framework**Optional Annex to the TIR Convention, 1975****Submitted by the Government of Switzerland****I. Background**

1. At its first session, the Group of Experts on Legal Aspects of Computerization of the TIR Procedure (GE.2) had the opportunity to exchange views on the format and administrative structure of the future legal framework for the implementation of eTIR. During the discussions, GE.2 was of the view that the adoption of a protocol to the TIR Convention would potentially entail a lot more complexity than originally assessed by WP.30 and decided to consider alternative formats for the legal framework of eTIR. Within this context, the Government of Switzerland offered to table a number of considerations regarding the merits of an optional Annex to the TIR Convention, 1975 (see ECE/TRANS/WP.30/GE.2/2, para. 8(f)). The present document, in Annex, contains the proposals submitted by the Government of Switzerland for the consideration of GE.2.

II. Considerations by the Group of Experts

2. GE.2 is invited to consider the proposals made by the Government of Switzerland and to decide on whether these proposals should also be considered by WP.30.

Annex

Proposals submitted by the Government of Switzerland

Advantages of an optional Annex to the TIR Convention

1. As pointed out during the first meeting of GE.2, an additional protocol is likely to present a difficult challenge to the Expert Group, due to its potential complexity. In this regard, the Government of Switzerland would like to invite other Contracting Parties to carefully consider this proposal in light of its potential advantages and limited number of challenges in relation to the development of an adequate legal framework for the computerization of the TIR Convention.
2. The aim of the proposal is to add a new Annex 11 to the TIR Convention on eTIR (see Appendix A), with the eTIR Reference model attached to it as Appendix 1, and at the same time introducing in the Convention the possibility for every Contracting Party to make a reservation, through an “opting-out” clause. Minor other changes may also be required to the main body of the TIR Convention (see Appendix B).
3. The main advantages of an optional Annex are:
 - (a) Simplified process
 - (i) An Annex would require less time to come into force than a protocol, which would allow the provisions related to eTIR to respond to the economic needs and necessary changes related to the modernization of the TIR procedure.
 - (ii) A limited number of changes to the existing Articles of the TIR Convention may achieve a similar purpose to a new protocol.
 - (iii) No need to modify or amend the governance structure of the TIR Convention. The governing bodies remain unchanged (i.e. AC.2, TIRExB).
 - (b) Coherence and legal significance
 - (i) Since eTIR would, at least initially, require a system based on both electronic messages and paper it will be useful and coherent to have both types covered under the same legal basis.
 - (ii) A new Appendix I to the proposed optional Annex, containing the eTIR Reference Model, would require stricter compliance by Contracting Parties, since it would become part of the Convention.
 - (iii) A simplified amendment procedure for the Appendix could dispense with the need for the lengthy amendment process as currently foreseen by Article 59 and 60 of the Convention.
 - (c) Flexibility and possibility to opt-out
 - (i) The opting-out clause would allow for greater flexibility for the Contracting Parties, which is expected to facilitate the necessary consensus for its approval in AC.2.
 - (ii) Article 58 on reservations could be revised in order to facilitate Contracting Parties to opt out of the eTIR related provisions and, whenever a Contracting Party would be ready, to be bound by the rules on eTIR.
 - (d) Financing

- (i) A new Annex would not require a separate financial mechanism. An increase in the amount per TIR Carnet would potentially be sufficient for the financing of the implementation of eTIR.
 - (ii) Since the financing of eTIR through other sources could be a difficult task, it is recommended that all Contracting Parties, even those that would initially not be interested in implementing eTIR, should accept that an increase in the price of the TIR Carnet is the best way to finance eTIR implementation.
4. In contrast, the following challenges remain:
- (a) Any amendment to the TIR Convention will need to be accepted by all the Contracting Parties.
 - (b) Any Contracting Party interested in making a reservation in relation to the application of the proposed Annex 11 and its Appendix 1 would have to do so along with the requirements of the proposed revised text of article 58.
 - (c) Transport operators will have to bear the costs for the implementation of eTIR due to the higher price of the TIR Carnet.

Appendix A

Proposal for a New Annex 11

(The proposals are based on the draft provisions presented in document ECE/TRANS/WP.30/2014/7)

Article 1: Scope of application - *Proposal*:

The Contracting Parties that wish to implement the eTIR procedure shall be subject to the provisions of the present Annex *and its Appendix 1*.

Article 2: The eTIR procedure - *Proposal*:

The eTIR procedure shall mean the Customs transit procedure under cover of an electronic TIR guarantee, implemented by means of electronic data exchanged in accordance with the provisions of this Annex *and its Appendix 1*.

Article 3: Conceptual, functional and technical specifications of the eTIR procedure

The conceptual, functional and technical specifications of the eTIR procedure are laid down in *Appendix 1 of this Annex* (eTIR Reference Model). The Contracting Parties shall apply the eTIR procedure in conformity with the specifications contained therein ~~eTIR Reference Model~~.

~~The procedure for amending or endorsing the specifications contained in the eTIR Reference model shall be approved by the Administrative Committee.~~

Comment:

Due to the new Article 60, paragraph 1 bis, (see Appendix B, below) Article 3 (b) is redundant. As written in the comment of the TIR secretariat, all the provisions, administrative structure, legal rights and obligations of the Convention will remain intact.

Articles 4-6:

Remain as proposed in document ECE/TRANS/WP.30/2014/7 i.e:

Article 4: The eTIR international system

The eTIR international system is an Information and Communication Technology (ICT) system devised to facilitate the exchange of electronic information between the actors involved in the eTIR procedure. It is under the responsibility of Contracting Parties and managed by the UNECE secretariat.

Article 5: Administration of the eTIR international system

1. The eTIR international system shall be hosted by UNECE. Under the responsibility of the Parties to this Annex, the UNECE secretariat shall ensure that the eTIR international system is appropriately maintained and staffed.
2. UNECE shall also provide a helpdesk to assist countries in connecting their IT systems to the eTIR international system.
3. Pursuant to paragraphs 1 and 2 of this Article, unless the eTIR international system is financed by resources of the United Nations regular budget, the required resources shall be subject to the financial rules and regulations for extra-budgetary funds and projects of the United Nations. The financing mechanism and budget for the operation of the eTIR international system at the UNECE shall be decided and approved by the Parties to this Annex.

Article 6: Mutual recognition of authentication mechanisms

The Contracting Parties that apply the eTIR procedure shall recognize the authentication of the TIR Carnet holder performed by the competent authorities of the country to which the advance cargo information is submitted.

Appendix B

Proposed amendments to the TIR Convention

In document ECE/TRANS/WP.30/2014/7, the secretariat had proposed the following text:

Annex I, Article 1 (a)

The term "TIR transport" shall mean the transport of goods from a Customs office of departure to a Customs office of destination under the procedure, called the TIR procedure, laid down in this Convention; and performed either by means of a TIR Carnet, which shall conform to the model reproduced in Annex 1 to this Convention, or by means of the eTIR procedure in accordance with the provisions of Annex 11 to this Convention".

Based on the above, the government of Switzerland proposes the following:

Article 1 (a) - **Proposal (bold and italic):**

The term "TIR transport" shall mean the transport of goods from a Customs office of departure to a Customs office of destination under the procedure, called the TIR procedure, laid down in this Convention; and performed either by means of a TIR Carnet, which shall conform to the model reproduced in Annex 1 to this Convention, or by means of the eTIR procedure in accordance with the provisions of **Annex 11 and its Appendix 1** to this Convention".

Comment:

The eTIR Reference Model should be attached as an Appendix 1 to the new Annex 11. The new Appendix 1 is strongly connected to Annex 11, but should allow for a separate procedure of amendment (see below).

Article 1 (o) and Explanatory Note, Article 3 (b), Article 45 and comment:

Remain as proposed in document ECE/TRANS/WP.30/2014/7i.e.:

Article 1(o)

"the term "holder" of a TIR Carnet shall mean the person to whom a TIR Carnet has been issued in accordance with the relevant provisions of the Convention and on whose behalf a Customs declaration has been made, **either** in the form of a TIR Carnet **or by electronic means using the eTIR procedure**, indicating a wish to place goods under the TIR procedure at the Customs office of departure. He shall be responsible for presentation of the road vehicle, the combination of vehicles or the container together with the load and the TIR Carnet relating thereto at the Customs office of departure, the Customs office en route and the Customs office of destination and for due observance of the other relevant provisions of the Convention;

Explanatory Note to Article 1(o) to read:

"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"

Article 3(b):

“the transport operations must be guaranteed by associations approved in accordance with the provisions of Article 6 and must be performed under cover of a TIR Carnet **or by the eTIR procedure**, ~~which shall conform to the model reproduced in Annex 1 to this Convention~~”.

Article 45

Each Contracting Party shall cause to be published the list of the Customs offices of departure, Customs offices en route and Customs offices of destination approved by it for accomplishing TIR **or eTIR** operations. The Contracting Parties of adjacent territories shall consult each other to agree upon corresponding frontier offices and upon their opening hours.

Insert comment to Article 45 to read:

“Contracting Parties which decide to implement the eTIR procedure, shall also accept and process paper TIR Carnets issued, not only for TIR transports involving Contracting Parties that have not yet implemented the eTIR procedure but also for those passing by Customs offices not yet able to handle the eTIR procedure.”

New Article 58 (Reservation) para. 1 bis - **Proposal:**

Any Contracting Party can declare that it does not consider itself bound by Annex 11 and its Appendix 1

Comment:

*To add an Appendix 1 to Annex 11 and the "opting out clause" in this new Article 58 para. 1 **bis** is a sign to all Contracting Parties that there is a distinct intention to implement the eTIR procedure. Nevertheless, every Contracting Party will have the right to make a reservation to this Annex 11 (including its Appendix 1), but it needs to take an action in order not to participate in the eTIR procedure.*

Article 58, par. 2 - **Proposal:**

*Any Contracting Party having entered a reservation as provided for in paragraphs 1 **and 1 bis** of this Article may at any time withdraw such reservation by notifying the Secretary-General of the United Nations.*

Article 58, par. 3 - **Proposal:**

*Apart from the reservations provided for in paragraph 1 **and 1 bis** of this Article, no other reservation to this Convention shall be permitted.*

Article 60 - **Proposal:**

Modify the title of Article 60 to read:

“Special procedure for amending Annexes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, **11 and its Appendix 1**

Modify paragraph 1, **line 1** as proposed by the TIR secretariat i.e:

“Any proposed amendment to Annexes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 **and 11 [...]”**

New Article 60, par. 1 **bis** - **Proposal:**

Appendix 1 to Annex 11 may be amended upon proposal of a Contracting Party which applies the eTIR procedure according to Annex 11 and its Appendix 1 and has not made a reservation according to Article 58, paragraph 1 **bis**. Proposals by a Contracting Party shall be submitted to the TIR secretariat. All Contracting Parties shall give a written statement to the proposed amendments. The amendments shall only enter into force with

a unanimous decision of all participating Contracting Parties. The date of entry into force will be determined by the participating Contracting Parties and communicated by the TIR secretariat after its adoption.

Comment:

To react quicker to changes in ICT matters it will be useful to establish a procedure, in a defined framework, which allows an amendment without adoption/confirmation by AC.2.

We prefer, therefore, to add a new Article 60 para. 1 bis, describing the procedure to amend Appendix 1 (to be decided/accepted only by the involved Contracting Parties, which have not made a reservation to Annex 11 and Appendix 1)

Comment:

Contracting Parties can create the body/group of specialists which is qualified to make changes to the eTIR Reference Model.

This new Article (procedure of amendment) has to be elaborated seriously and discussed as a next step. Especially which body/group of specialists is qualified to propose changes to the eTIR Reference Model. Perhaps it is necessary to establish a permanent group of specialists on this matter.