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Item 4 (b) (iv) of the provisional agenda

**Customs Convention on the International Transport of Goods  
under Cover of TIR Carnets (TIR Convention, 1975):****Revision of the Convention****Draft Annex 11 to the TIR Convention****Note by the secretariat****I. Background and mandate**

1. The Group of Experts on the Legal Aspects of Computerization of the TIR procedure (GE.2) was established in May 2015, under the purview of the Working Party on Customs Questions affecting Transport (WP.30). GE.2 was mandated to develop, within two years, the legal framework required for the implementation of the computerized TIR procedure (eTIR). GE.2 has held five sessions, namely on 16 and 17 November 2015, 4 and 5 April 2016, 12 and 13 December 2016, 16 and 17 May 2017, and 30 and 31 October 2017 in Geneva.<sup>1</sup>

2. Early on in the course of its work, GE.2 considered a proposal, submitted by the delegation of Switzerland, to introduce the eTIR legal framework in the form of an optional Annex to the TIR Convention, as opposed to an additional, albeit also optional, Protocol. After assessing the advantages of this approach, notably that (i) it builds on the existing TIR system; (ii) interested countries can join at any time; (iii) it maintains the administrative structure of the TIR Convention; and (iv) it would not require complex national ratification processes, GE.2 came to the conclusion that an optional Annex to the

<sup>1</sup> For detailed information on the discussions leading to the development of the draft legal framework for eTIR, see: ECE/TRANS/WP.30/GE.2/2, ECE/TRANS/WP.30/GE.2/4, ECE/TRANS/WP.30/GE.2/6, ECE/TRANS/WP.30/GE.2/8 and ECE/TRANS/WP.30/GE.2/10.

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TIR Convention would be the most appropriate format for the eTIR legal framework. Importantly, it would allow Contracting Parties that wish to move forward with computerization to do so, while Contracting Parties that are not yet ready may join eTIR at a later stage. In line with its Terms of Reference, GE.2 brought its conclusions on the format to the attention of WP.30 which, at its 146th session, endorsed the decision of GE.2 to develop an optional Annex (see ECE/TRANS/WP.30/292, para. 22).

3. Against this background, GE.2 drafted the eTIR legal framework, taking stock of the following main considerations: national legal requirements and current practices in Contracting Parties with regard to electronic authentication mechanisms; financing options for the eTIR international system; required amendments to the main body of the TIR Convention; provisions to be included in the text of Annex 11 referring to definitions, scope of application, legal status of the conceptual, functional and technical specifications (formerly the eTIR Reference Model), amendment procedures, establishment, composition and functions of a technical implementation body, responsibilities of the United Nations Economic Commission for Europe (UNECE), data handling and storage, fall-back procedure, submission of advance cargo information and authentication of the holder, among others. At its fourth session, GE.2 was of the view that the work on the draft legal framework had advanced and met the requirements of the two year mandate. As such, GE.2 decided to transmit draft Annex 11 and the related amendments to the TIR Convention to WP.30 for further consideration (see ECE/TRANS/WP.30/GE.2/8, para. 29).

4. During its 147th session (October 2017), WP.30 considered the proposed draft legal framework for eTIR (ECE/TRANS/WP.30/2017/24), including questions on specific provisions. In general, WP.30 concluded that GE.2 had successfully fulfilled its mandate by developing a mature draft legal framework for eTIR and that further work should continue within the framework of the Working Party. WP.30 invited delegations to transmit their views, positions or proposals on the draft to the secretariat no later than 25 November 2017 to be considered by at its session in February 2018. At the time of submission of this document, no comments were received by the secretariat.

5. At its fifth session, GE.2 considered the draft legal framework for eTIR based on the deliberations of WP.30 at its 147th session (see ECE/TRANS/WP.30/2017/294, para. 29). In conclusion, GE.2 slightly modified the draft legal framework and decided to submit draft Annex 11 and the related revisions to the main body of the TIR Convention to WP.30.

6. In line with the decision of GE.2 and further to the decision of WP.30 at its 147th session (see ECE/TRANS/WP.30/292, paras. 29 and 30), the present document contains the draft legal framework for eTIR and provides brief annotations on each proposed new article or amendment to an existing article. The annotations serve to summarize the objective and rationale of the provisions and, thus, to facilitate the discussions. The Annex to this document contains a consolidated version of the draft eTIR legal framework.

## **II. Amendments to the main body of the Convention<sup>2</sup>**

7. The TIR Convention would require four amendments to existing articles and the introduction of two new articles. On the basis of the *mutatis mutandis* application, no other articles would appear, at this stage, to be affected by the introduction of eTIR in Annex 11.

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<sup>2</sup> Deletions are marked in strikethrough and new text in bold italics.

## A. Definition of the eTIR procedure

8. The introduction of a definition of the eTIR procedure in Article 1 of the TIR Convention is intended to indicate that the electronic exchange of data is the functional equivalent of the TIR Carnet and to provide the basis for the mutatis mutandis application of the provisions referring to the TIR Carnet. As such, it will be clear that the paper TIR Carnet will not be used in the context of applying the provisions of Annex 11, without affecting any other procedural or legal requirements of the TIR Convention at large.

### *Article 1, new paragraph (s)*

*“(s) The term “eTIR procedure” shall mean the TIR procedure, implemented by means of electronic exchange of data, which provides the functional equivalent to the TIR Carnet. The eTIR procedure is carried out in accordance with the provisions of Annex 11.”*

## B. Reservations

9. Contracting Parties to the TIR Convention will have the possibility to “opt-out” from Annex 11 by means of a reservation pursuant to Article 58. A reservation is defined in the Vienna Convention on the Law of Treaties (1969) as a “unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State”.<sup>3</sup> The TIR Convention currently only allows for one reservation, namely to the arbitration procedure stipulated in Article 57, paragraphs 2-6 on the settlement of disputes. It is, therefore, necessary to amend Article 58 to accommodate the optional nature of the new Annex. It should be noted that the reservation can only be deposited after the entry into force of Annex 11, and subsequently withdrawn at any time.

10. At its fourth session, GE.2 proposed a draft Article 58, paragraph 1 *bis*, including the wording that a Contracting Party may declare a reservation “at any time”. However, at its fifth session, GE.2 deleted those words as redundant (see ECE/TRANS/WP.30/GE.2/10, para. 25).

11. In considering the amendment to Article 58, GE.2 also considered questions of time-frame for implementing Annex 11. The new Annex shall come into force pursuant to the deadlines stipulated in Article 59 of the TIR Convention. This means that after the issuance of the depositary notification, there will be a period of twelve months during which Contracting Parties will have the right to notify an objection. If no objection is received, the Annex will enter into force, together with all other amendments to the body of the TIR Convention, three months after the expiration of the twelve month period. Taking this into account, GE.2 noted that Contracting Parties should ensure that they are ready to implement Annex 11 at the time of its entry into force. In addition, GE.2 noted that those Contracting Parties that “opt-out” of Annex 11 and, therefore, extend the length of time at their disposal for making the necessary preparations and adjustments, should ensure that they are ready to implement Annex 11 at the time they decide to withdraw their reservation.

12. It should also be noted that Contracting Parties to the TIR Convention would have no reasons to object to the entry into force of the new provisions, considering that the new Annex will be optional and that Contracting Parties that do not wish to join it may do so by

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<sup>3</sup> For more information on Reservations, see the United Nations Treaty Handbook available at: [treaties.un.org/doc/source/publications/thb/english.pdf](http://treaties.un.org/doc/source/publications/thb/english.pdf)

means of reservation. In this regard, it would be important that Contracting Parties are duly informed of the possibility to “opt-out”, as well as acknowledge the importance of allowing those Contracting Parties that are ready to move to computerization to do so.

**Article 58**

“1. Any State may, at the time of signing, ratifying or acceding to this Convention, declare that it does not consider itself bound by Article 57, paragraphs 2 to 6, of this Convention. Other Contracting Parties shall not be bound by these paragraphs in respect of any Contracting Party which has entered such a reservation.

***1 bis.*** ***Any Contracting Party may declare that it does not consider itself bound by Annex 11. Other Contracting Parties shall not be bound by Annex 11 in respect of any Contracting Party which has entered such a reservation.***

2. 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.

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

### **C. Special procedure for amending Annex 11**

13. Since no other Annexes to the TIR Convention are optional, its amendment procedure would be different and, thus, would have to be dealt with in a separate article. Therefore, a new Article 60 ***bis*** was formulated, to ensure that the decision-making process for amending the optional Annex 11 would be clear. The discussions on the amendments would take place during the meetings of the Administrative Committee and be inclusive. This would give the opportunity to Contracting Parties that have “opted-out” to follow the developments and to, hopefully, facilitate their preparations for, eventually, withdrawing their reservation and implementing eTIR. However, only those Contracting Parties bound by Annex 11 would have decision-making powers on amendments.

14. For reasons of simplification, Article 60 ***bis*** does not use the reference “Contracting Parties that have not entered a reservation as provided for in Article 58, paragraph 1 ***bis***”, which would have to be repeated several times and make the reading of the Article more complex. Conversely references have been streamlined to refer to “Contracting Parties to Annex 11”. Finally, the procedure for setting a deadline for objections as well as the number of objections required to prevent the entry into force of an amendment are the same as for the other Annexes of the TIR Convention (see Article 60). The difference is that for the purpose of amending Annex 11, a simple majority will be required, as opposed to the qualified majority of two-thirds required under Article 59 for the TIR Convention and its other Annexes.

***New Article 60 bis***

***1. Any proposed amendment to Annex 11 shall be considered by the Administrative Committee. Such amendments shall be adopted by a majority of the Contracting Parties to Annex 11 present and voting.***

***2. Amendments to Annex 11 considered and adopted in accordance with paragraph 1 of this Article shall be communicated by the Secretary-General of the United Nations to the Contracting Parties to Annex 11 for their acceptance.***

***3. The date of entry into force of such amendments shall be determined at the time of their adoption, by a majority of the Contracting Parties to Annex 11 present and voting.***

4. *Amendments shall enter into force in accordance with paragraph 3 of this Article unless, by a prior date determined at the time of adoption, one-fifth or five of the States which are Contracting Parties to Annex 11, whichever number is less, notify the Secretary-General of the United Nations of their objection to the amendments.*

#### **D. Alignments to Article 59**

15. Following from the introduction of Article 60 bis, Article 59 would need to be amended to contain the appropriate references.

##### *Article 59*

1. This Convention, including its Annexes, may be amended upon the proposal of a Contracting Party by the procedure specified in this Article.

2. *Except as provided for under Article 60 bis*, any proposed amendment to this Convention shall be considered by the Administrative Committee composed of all the Contracting Parties in accordance with the rules of procedure set out in Annex 8. Any such amendment considered or prepared during the meeting of the Administrative Committee and adopted by it by a two-thirds majority of the members present and voting shall be communicated by the Secretary-General of the United Nations to the Contracting Parties for their acceptance.

3. Except as provided for under Articles 60 *and 60 bis*, any proposed amendment communicated in accordance with the preceding paragraph shall come into force with respect to all Contracting Parties three months after the expiry of a period of twelve months following the date of communication of the proposed amendment during which period no objection to the proposed amendment has been communicated to the Secretary-General of the United Nations by a State which is a Contracting Party.

4. If an objection to the proposed amendment has been communicated in accordance with paragraph 3 of this Article, the amendment shall be deemed not to have been accepted and shall have no effect whatsoever.

#### **E. Establishment of a subsidiary body related to Annex 11**

16. The complexity of the eTIR conceptual, functional and technical specifications will warrant the establishment of an appropriate technical body to manage and maintain them. To this end, Article 58 quater proposes the establishment of a new body. Similarly to the Committee and the TIR Executive Board, its composition, functions and Rules of Procedure will be outlined in a separate Article to be included in Annex 11, and not in the main body of the TIR Convention.

##### *New Article 58 quater*

*“A Technical Implementation Body shall be established. Its composition, functions and rules of procedure are set out in Annex 11”.*

#### **F. Explanatory Notes to the Articles of Annex 11**

17. Currently, Explanatory Notes are part of Annex 6 and Annex 7, Part III of the TIR Convention and thus subject to the amendment procedure stipulated in Article 60. Taking into account that not all TIR Contracting Parties will be bound by Annex 11 or affected by

its provisions, Explanatory Notes to the articles of Annex 11 should be subject to a separate decision-making process and contained within Annex 11 itself rather than in Annex 6, similarly to the case of the Explanatory Notes contained in Annex 7, Part III. This would entail an amendment to Article 43 of the TIR Convention which deals with Explanatory Notes. In order to be consistent with what is the case for Annex 7, Explanatory Notes referring to provisions in Annex 11 can be contained in Annex 11, Part II. In the current drafting of Annex 11, only three Explanatory Notes have been elaborated, for the purpose of clarifying elements that were not deemed suitable for inclusion in the articles themselves.

*Article 43*

The Explanatory Notes set out in Annex 6, ~~and~~ Annex 7, Part III, *and Annex 11, Part II* interpret certain provisions of this Convention and its Annexes. They also describe certain recommended practices.

### **III. Draft Annex 11, Part I, “The eTIR procedure”<sup>4</sup>**

18. GE.2 developed thirteen articles to be included in the new Annex 11, which would cover the full range of issues associated with implementing a computerized TIR procedure as outlined in the conceptual, functional and technical specifications.

#### **A. Scope of application**

19. Article 1 of draft Annex 11 aims to clearly define the scope of its application. Thus, the appropriate link is made to the “opt-out” clause as contained in the amended Article 58. For this reason full reference to the qualifying factor, i.e. being a Contracting Party to the TIR Convention that has not “opted-out” of Annex 11, is made. Therefore, references to “Contracting Parties to Annex 11” in the other articles of the Annex are intended to mean those Contracting Parties that are bound by Annex 11. This dispenses with the need to qualify the applicability of each article by repeating the scope every time.

*Article 1*

*The provisions in this Annex govern the implementation of the eTIR procedure as defined in Article 1, paragraph (s) of the Convention and shall apply in the relations between Contracting Parties to this Convention that have not entered a reservation as provided for in Article 58, paragraph 1 bis.*

#### **B. Definitions**

20. GE.2 concluded that there are three key terms included in the eTIR conceptual, functional and technical specifications that would need to, also, be defined in the legal framework, namely the eTIR international system, the meaning of advance cargo information and the term “declaration”. In addition, it would be necessary to include a definition of the accompanying document, as to clearly demarcate its function in cases of fall-back or certified report. GE.2 was of the view that the fall-back procedure as such could be described in the conceptual, functional and technical specifications and, thus, the proposed limited reference would, in principle, be sufficient for the legal framework. The Informal Ad hoc Expert Group on Conceptual and Technical Aspects of Computerization

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<sup>4</sup> All new articles; marked in *bold italics*.

of the TIR procedure (GE.1) is in the process of developing a model accompanying document, which will be included in the conceptual, functional and technical specifications. In order to maintain consistency throughout the Convention, the article on definitions follows the drafting style of Article 1 of the TIR Convention.

21. At its fifth session, GE.2 considered the question raised at the 147th session of WP.30 (October 2017) whether the definition of the “eTIR international system” in Article 2, paragraph (a) should list all actors, including the international organization (see ECE/TRANS/WP.30/294, para. 29). GE.2 decided to leave the provision unchanged, since the phrase had been derived from defining the scope of the eTIR project and was contained as such in the conceptual, functional and technical documentation (ECE/TRANS/WP.30/GE.2/10, para. 15).

#### **Article 2**

*For the purposes of this Annex:*

(a) *The term “eTIR international system” shall mean the Information and Communication Technology (ICT) system devised to enable the exchange of electronic information between the actors involved in the eTIR procedure.*

(b) *The term “advance cargo information” shall mean the information provided to the competent authorities in the prescribed form and manner of the intention of the holder, or his or her representative, to place goods under the eTIR procedure or pursue a TIR transport.*

(c) *The term “declaration” shall mean the act whereby the holder, or his or her representative, indicates in the prescribed form and manner an intent to place goods under the eTIR procedure.*

(d) *The term “accompanying document” shall mean the paper document printed in line with the guidelines contained in the eTIR technical specifications and used for the fall-back procedure as set out in Article 9 of this Annex. The accompanying document shall also be used to record incidents en route pursuant to Article 25 of this Convention.*

### **C. Implementation of the eTIR procedure**

22. The main responsibility of Contracting Parties for implementing Annex 11 is formulated in Article 3. This article creates an obligation for Contracting Parties to ensure the connection of their national customs systems to the eTIR international system in line with the conceptual, functional and technical specifications. It is worth noting that GE.1 decided to separate the “eTIR Reference Model” into three separate documents, namely one describing the conceptual specifications of the eTIR international system, another one dealing with the functional specifications and, lastly, a separate document containing the technical specifications. Therefore, there are no longer any references in the draft legal provisions to the eTIR Reference Model, but to the conceptual, functional and technical specifications. This was done for the purpose of simplifying the document, as each part thereof addresses different audiences.

23. This decision is consistent with the considerations of GE.2, namely that different importance would have to be attached to each type of specification when it comes to their amendment. For example, amending the conceptual specifications was considered to have a broader legal impact than amending the purely technical specifications. It is therefore practical that each type of these specifications is contained in separate documents.

24. At its fifth session, GE.2 considered a proposal to include the words “For the purpose of electronic data exchange” at the beginning of Article 3 to better clarify the meaning of the provision. In response, it was said that such clarification was not necessary, since (a) the definition of “eTIR international system” in Article 2, paragraph (a) already referred to the exchange of electronic information; and (b) Article 3 specified the requirement for the connection of the customs systems to be in line with the conceptual, functional and technical specifications (ECE/TRANS/WP.30/GE.2/10, para. 14). After discussion, GE.2 agreed to retain the provision unchanged and to leave the matter to WP.30 for further discussion. Thus, WP.30 may wish to consider whether these words should be included at the beginning of Article 3.

*Article 3*

*Contracting Parties to Annex 11 shall connect their customs systems to the eTIR international system in line with the conceptual, functional and technical specifications.*

**D. Composition, functions and rules of procedure of the Technical Implementation Body**

25. GE.2 elaborated the composition and functions of the Technical Implementation Body in Article 4 of Annex 11. The Article endeavours to establish a clear link between the legal framework and the technical basis for implementation. In addition, it intends to introduce a simplified amendment procedure in those cases where it would be warranted for the benefit of the system, with the possibility for transitional implementation periods to allow for the necessary technical adaptations. The Technical Implementation Body would have the responsibility (a) to decide upon amendments to technical specifications and the implementation deadlines for those amendments; and (b) to decide upon amendments to functional specifications which will be subject to final approval by the Administrative Committee which will also specify the deadlines for entry into force of such amendments. Any amendment proposals for the conceptual specifications will be initiated and approved by the Administrative Committee. In this case, the Administrative Committee may request the Technical Implementation Body to contribute its expertise and provide considerations on these proposals.

26. The formulation of Article 4 is, thus, intended to afford enough flexibility to the Technical Implementation Body to manage, amend and update the relevant documentation as necessary, dispense with the complex and lengthy process of attaching all the technical documents to the TIR Convention but still ensure that compliance with the specifications therein is a legal obligation.

*Article 4*

*1. The Contracting Parties to Annex 11 shall be members of the Technical Implementation Body. Its sessions shall be convened at regular intervals, as required for the maintenance of the conceptual, functional and technical specifications of the eTIR procedure. The Administrative Committee shall be regularly informed of the activities and considerations of the Technical Implementation Body.*

*2. Contracting Parties which have entered a reservation provided for in Article 58, paragraph 1 bis or representatives of international organizations may attend sessions of the Technical Implementation Body as observers.*



3. *The Technical Implementation Body shall monitor the functional and technical aspects of implementing the eTIR procedure, as well as coordinate and foster the exchange of information on matters falling within its competence.*

4. *The Technical Implementation Body shall propose, discuss and adopt amendments to the technical specifications of the eTIR procedure and decide on the appropriate transitional periods for their implementation.*

5. *The Technical Implementation Body shall propose, discuss, and adopt amendments to the functional specifications of the eTIR procedure, which shall be transmitted to the Administrative Committee and approved by a majority of Contracting Parties to Annex 11 and implemented at a date to be determined at the time of approval.*

6. *The Technical Implementation Body may consider amendments to the conceptual specifications of the eTIR procedure if so requested by the Administrative Committee. Amendments to the conceptual specifications of the eTIR procedure shall be approved by a majority of Contracting Parties to Annex 11 and implemented at a date to be determined at the time of approval.*

## **E. Submission of Advance Cargo Information**

27. Advance cargo information is defined in Article 2, paragraph (b) as having to be provided to the competent authorities “in the prescribed form and manner”. The form and manner of this submission is stipulated in Article 5. GE.2 was of the view that information provided via the secure eTIR international system should be accepted, and that Contracting Parties would have discretion to determine, at the national level, other means for submitting advance cargo information.

### *Article 5*

1. *Advance cargo information shall be submitted in electronic form.*
2. *Contracting Parties to Annex 11 shall accept the submission of advance cargo information via the eTIR international system.*
3. *The competent authorities shall publish the list of other electronic means by which advance cargo information can be submitted.*

## **F. Authentication of the holder**

28. The survey conducted by GE.2 on electronic authentication mechanisms revealed that authentication is a legal requirement in all respondent Contracting Parties. On this basis, GE.2 developed Article 6 on authentication.

### *Article 6*

1. *The holder, or his or her representative, submitting advance cargo information directly to the competent authorities shall be authenticated in accordance with applicable national legislation.*
2. *Contracting Parties to Annex 11 shall recognize authentications performed by the eTIR international system.*
3. *The competent authorities shall publish a list of authentication mechanisms other than that specified in paragraph 2 of the present Article that may be used for authentication.*

## **G. Mutual recognition of the authentication of the holder**

29. GE.2 confirmed the recommendation of GE.1 that, in line with the principle of mutual recognition of controls, authentications performed at departure should be accepted throughout the transport.

### *Article 7*

*The authentication of the holder performed by the competent authorities of the Contracting Party to Annex 11 which accepts the declaration shall be recognized by the competent authorities of all subsequent Contracting Parties to Annex 11 throughout the TIR transport.*

## **H. Additional data requirements**

30. Draft Article 8 refers to data that is requested or required, but not necessarily included in the standard information relating to TIR transports, such as safety and security data; phytosanitary or veterinary data, among others. The views of GE.1 and GE.2 on this issue varied. Specifically, the majority recommendation was to leave the submission of such additional information to the transport operator, although some delegations considered that there would be benefits to including them in the eTIR messages as optional data elements. For the purposes of the present draft Annex 11, the following formulation has been proposed:

### *Article 8*

*Competent authorities should limit data requirements to those contained in the functional and technical specifications. However, if additional data requirements are imposed, the competent authorities shall endeavour to facilitate the submission of such data so as not to impede TIR transports carried out in accordance with this Annex.*

## **J. Fall-back procedure**

31. The accompanying document, defined in Article 2, paragraph (d), is to be used by customs authorities only in the course of a fall-back procedure, i.e. if technical difficulties prevent the normal conduct of the eTIR procedure. The technical and operational details of the fall-back procedure will be described in the functional and technical documentation and are still under discussion and development by GE.1. It is to be understood that the eTIR procedure would not normally require that any paper document is processed by customs during the transport.

### *Article 9*

*In the event that an eTIR procedure is impeded for technical reasons, the competent authorities:*

*(a) may use the electronic fall-back system as defined in the functional and technical specifications; or*

*(b) shall accept the accompanying document in line with the procedure described in the functional and technical specifications.*

## K. Hosting of the eTIR international system

32. Contracting Parties have decided that the eTIR international system should be hosted and administered by the United Nations. Against this background, Articles 10 and 11 stipulate the responsibilities of UNECE in that regard. Article 10, paragraph 3 on financing remains tentative and in brackets, pending the conclusion of the discussions by the Working Party on this topic. It is worth noting that there is preliminary agreement on financing the maintenance costs of the eTIR international system through an amount per transport. IRU has agreed to finance the initial and development costs of the eTIR system (ECE/TRANS/2017/294, paras. 4-6).

33. The purpose of Article 10, paragraph 2 is that Contracting Parties to Annex 11 have IT systems that are actually connected to the eTIR international system. To this end, GE.2 agreed at its fifth session to include wording in paragraph 2 to specify that the assistance provided by UNECE should include conformance testing as a mandatory step prior to the operational connection to the eTIR international system (ECE/TRANS/WP.30/GE.2/10, para. 13).

34. At its fifth session, GE.2 considered the question raised at the 147th session of WP.30 (October 2017), whether Article 11, paragraph 3 could be modified to include the possibility to provide information also to the private sector in case of administrative or legal proceedings (see ECE/TRANS/WP.30/294, para. 29). After discussion, and recalling that the eTIR international system was designed for customs-to-customs information exchange, GE.2 decided (a) to leave it to the international organization to share information with national associations and transport operators; and (b) to retain Article 11, paragraph 3 unchanged (ECE/TRANS/WP.30/GE.2/10, para. 19).

35. WP.30 may wish to note that GE.2 had considered the question raised at the 147th session of WP.30 (October 2017) on whether the procedure for handling claims in the eTIR system should be addressed in draft Annex 11 (see ECE/TRANS/WP.30/294, para. 29). GE.2 noted that claims were in the national sphere and would not need to be dealt with any differently in the eTIR system than in the current system (ECE/TRANS/WP.30/GE.2/10, para. 20).

### *Article 10*

*1. The United Nations Economic Commission for Europe (UNECE) shall be responsible for hosting and administering the eTIR international system.*

*2. UNECE shall assist countries in connecting their customs systems to the eTIR international system, including by means of conformance tests to ensure their proper functioning prior to the operational connection.*

*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 Contracting Parties to the TIR Convention].*

### *Article 11*

*1. UNECE shall make the appropriate arrangements for the storage and archiving of the data in the eTIR international system for a minimum period of 10 years.*

2. *All data stored in the eTIR international system may be used by UNECE on behalf of the competent bodies of this Convention for the purpose of extracting aggregated statistics.*

3. *The competent authorities of Contracting Parties involved in a TIR transport carried out under the eTIR procedure which becomes the subject of administrative or legal proceedings concerning the payment obligation of the person or persons directly liable or of the national guaranteeing association, may request UNECE to provide information stored in the eTIR international system pertaining to the claim in dispute for verification purposes. This information may be produced as evidence in national administrative or legal proceedings.*

4. *In cases other than those specified in this Article, the dissemination or disclosure of information stored in the eTIR international system to non-authorized persons or entities shall be prohibited.*

#### **L. Publication of the customs offices capable of handling eTIR**

36. GE.2 decided that, for the optimal implementation of the eTIR procedure, the use of the International TIR Data Bank should be made mandatory and drafted Article 12 accordingly.

##### *Article 12*

*The competent authorities shall ensure that the list of customs offices of departure, customs offices en route and customs offices of destination approved for accomplishing TIR operations under the eTIR procedure is, at all times accurate and updated in the electronic database for approved customs offices, developed and maintained by the TIR Executive Board.*

#### **M. Legal requirements for data submission under Annex 10 of the TIR Convention**

37. GE.1 decided to introduce a “termination type” field in the termination message. As a consequence, Contracting Parties implementing Annex 11 may be considered to be, simultaneously, in line also with the requirements stemming from Annex 10, paragraphs 1, 3 and 4. GE.2 agreed that the obligation related to the reconciliation procedure in Annex 10, paragraph 2 remained outside the scope of eTIR and would continue to be used for paper-based TIR transports. GE.2 also agreed that ways to adapt the reconciliation procedure for eTIR transports could be considered at a later stage (ECE/TRANS/WP.30/GE.2/10, paras. 21 and 22).

##### *Article 13*

*The legal requirements for data submission, as set out in Annex 10, paragraphs 1, 3 and 4 of this Convention, are deemed to be fulfilled by implementing the eTIR procedure in accordance with Annex 11.*

#### **IV. Draft Annex 11, Part II, Explanatory Notes**

38. As mentioned above (see para. 17 above), in order to maintain consistency and logic, Explanatory Notes that are meant to clarify the provisions of Annex 11 are to be adopted by the Contracting Parties to Annex 11 and contained in Annex 11. This would avoid any confusion that may be caused from considering them a part of Annex 6. In line

with the approach taken for Annex 7, Part III, Explanatory Notes to Annex 11 articles may be contained in Part II of the Annex.

39. GE.2 has already elaborated three Explanatory Notes. The first two refer to Articles 5 and 6, respectively. GE.1 has elaborated a list of alternative ways by which advance cargo information can be submitted. GE.2 was of the view that submissions via the secure eTIR international system should be accepted and formulated this as an obligation in Article 5. However, GE.2 also agreed that an Explanatory Note, recommending that the other methods identified by GE.1 and listed in the functional and technical specifications would have value added.

40. Similarly, Article 6 stipulates that Contracting Parties to Annex 11 should accept authentications performed by the eTIR international system. Other possible means of authentication identified by GE.1 and listed in the functional and technical specifications are recommended, in an Explanatory Note, to be recognized by Contracting Parties.

41. The third Explanatory Note refers to Article 10, paragraph 3. While GE.2 was of the view that the current text of Annex 11, paragraph 3 provided flexibility in the financing mechanisms, it felt that transparency and sustainability of the eTIR international system required a specific reference to the financing of the eTIR international system in Annex 11 (ECE/TRANS/WP.30/GE.2/10, para. 10).

42. Pursuant to the request of GE.2, the Explanatory Note refers to the financing of the operational costs of the eTIR international system (ECE/TRANS/WP.30/GE.2/10, para. 10). The Working Party may wish to note that the first sentence of the Explanatory Note currently provides two options on the financing for its consideration: by an amount (a) per TIR transport, or (b) per eTIR transport. Thus, the Working Party may wish to consider which of the two options is appropriate.

43. The Working Party may also wish to note that the words “on the appropriate time at which” are included to address the potential transition between the financing by IRU and that by TIR transports.

44. In addition, the Working Party may wish to note that the second sentence of the Explanatory Note contains two options on the decision-making process of the modalities of the financing: (a) all Contracting Parties, or (b) only the Contracting Parties bound by Annex 11. Thus, the Working Party may wish to consider which of the two options is appropriate.

## ***Part II***

### ***Explanatory Notes***

#### ***1. Part I - Article 5, paragraph 3***

***Contracting Parties to Annex 11 are recommended to allow, in as far as possible, the submission of advance cargo information by the methods indicated in the functional and technical specifications.***

#### ***2. Part I - Article 6, paragraph 2***

***Contracting Parties to Annex 11 are recommended to recognize, in as far as possible, the authentications performed by the methods indicated in the functional and technical documentation.***

#### ***3. Part I - Article 10, paragraph 3***

***Contracting Parties shall decide on the appropriate time at which the operational costs of the eTIR international system shall be financed through an amount per TIR transport [carried out under the eTIR procedure]. The exact modalities of***

*such financing shall be decided by the Administrative Committee [in accordance with Article 60 bis].*

## **V. Considerations by the Working Party**

45. The Working Party may wish to consider the draft legal framework for eTIR and provide guidance on the way forward. The Working Party may wish to note that the secretariat has submitted the draft eTIR framework to the Treaty Section of the Office of Legal Affairs of the United Nations (OLA-TS) to receive its assessment on the draft. At the same time, it should be noted that OLA-TS will, most likely, limit its comments to issues which affect its role as depositary. The Working Party may wish to factor this into the envisaged timeline for concluding the legal framework for eTIR.

## Annex

### I. Consolidated draft eTIR legal framework<sup>5</sup>

#### Amendments to the TIR Convention

##### A. Article 1, new paragraph (s)

(s) *The term “eTIR procedure” shall mean the TIR procedure, implemented by means of electronic exchange of data, which provides the functional equivalent to the TIR Carnet. The eTIR procedure is carried out in accordance with the provisions of Annex 11.*

##### B. Article 43

The Explanatory Notes set out in Annex 6, ~~and~~ Annex 7, Part III, *and Annex 11, Part II* interpret certain provisions of this Convention and its Annexes. They also describe certain recommended practices.

##### C. Article 58

1. Any State may, at the time of signing, ratifying or acceding to this Convention, declare that it does not consider itself bound by Article 57, paragraphs 2 to 6, of this Convention. Other Contracting Parties shall not be bound by these paragraphs in respect of any Contracting Party which has entered such a reservation.

*1 bis. Any Contracting Party may declare that it does not consider itself bound by Annex 11. Other Contracting Parties shall not be bound by Annex 11 in respect of any Contracting Party which has entered such a reservation.*

2. 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.

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

##### D. New Article 58 quater

A Technical Implementation Body shall be established. Its composition, functions and rules of procedure are set out in Annex 11.

##### E. Article 59

1. This Convention, including its Annexes, may be amended upon the proposal of a Contracting Party by the procedure specified in this Article.

2. *Except as provided for under Article 60 bis*, any proposed amendment to this Convention shall be considered by the Administrative Committee composed of all the Contracting Parties in accordance with the rules of procedure set out in Annex 8. Any such amendment considered or prepared during the meeting of the Administrative Committee and adopted by it by a two-thirds majority of the members present and voting shall be

<sup>5</sup> Deletions are marked in ~~strike through~~ and new text in ***bold italics***.

communicated by the Secretary-General of the United Nations to the Contracting Parties for their acceptance.

3. Except as provided for under Articles 60 *and* 60 *bis*, any proposed amendment communicated in accordance with the preceding paragraph shall come into force with respect to all Contracting Parties three months after the expiry of a period of twelve months following the date of communication of the proposed amendment during which period no objection to the proposed amendment has been communicated to the Secretary-General of the United Nations by a State which is a Contracting Party.

4. If an objection to the proposed amendment has been communicated in accordance with paragraph 3 of this Article, the amendment shall be deemed not to have been accepted and shall have no effect whatsoever.

#### **F. New Article 60 *bis***

1. Any proposed amendment to Annex 11 shall be considered by the Administrative Committee. Such amendments shall be adopted by a majority of the Contracting Parties to Annex 11 present and voting.

2. Amendments to Annex 11 considered and adopted in accordance with paragraph 1 of this Article shall be communicated by the Secretary-General of the United Nations to the Contracting Parties to Annex 11 for their acceptance.

3. The date of entry into force of such amendments shall be determined at the time of their adoption, by a majority of the Contracting Parties to Annex 11 present and voting.

4. Amendments shall enter into force in accordance with paragraph 3 of this Article unless by a prior date determined at the time of adoption, one-fifth or five of the States which are Contracting Parties to Annex 11, whichever number is less, notify the Secretary-General of the United Nations of their objection to the amendments.

## **II. Annex 11 The eTIR procedure**

### **A. Part I**

#### *Article 1*

##### *Scope of application*

*The provisions in this Annex govern the implementation of the eTIR procedure as defined in Article 1, paragraph (s) of the Convention and shall apply in the relations between Contracting Parties to this Convention that have not entered a reservation as provided for in Article 58, paragraph 1 *bis*.*

#### *Article 2*

##### *Definitions*

*For the purposes of this Annex:*

*(a) The term "eTIR international system" shall mean the Information and Communication Technology (ICT) system devised to enable the exchange of electronic information between the actors involved in the eTIR procedure.*

*(b) The term "advance cargo information" shall mean the information provided to the competent authorities in the prescribed form and manner of the intention*



*of the holder, or his or her representative, to place goods under the eTIR procedure or pursue a TIR transport.*

*(c) The term “declaration” shall mean the act whereby the holder, or his or her representative, indicates in the prescribed form and manner an intent to place goods under the eTIR procedure.*

*(d) The term “accompanying document” shall mean the paper document printed in line with the guidelines contained in the eTIR technical specifications and used for the fall-back procedure as set out in Article 9 of this Annex. The accompanying document shall also be used to record incidents en route pursuant to Article 25 of this Convention.*

### **Article 3**

#### **Implementation of the eTIR procedure**

*Contracting Parties to Annex II shall connect their customs systems to the eTIR international system in line with the conceptual, functional and technical specifications.*

### **Article 4**

#### **Composition, functions and rules of procedure of the Technical Implementation Body**

*1. The Contracting Parties to Annex II shall be members of the Technical Implementation Body. Its sessions shall be convened at regular intervals, as required for the maintenance of the conceptual, functional and technical specifications of the eTIR procedure. The Administrative Committee shall be regularly informed of the activities and considerations of the Technical Implementation Body.*

*2. Contracting Parties which have entered a reservation provided for in Article 58, paragraph 1 bis or representatives of international organizations may attend sessions of the Technical Implementation Body as observers.*

*3. The Technical Implementation Body shall monitor the functional and technical aspects of implementing the eTIR procedure, as well as coordinate and foster the exchange of information on matters falling within its competence.*

*4. The Technical Implementation Body shall propose, discuss and adopt amendments to the technical specifications of the eTIR procedure and decide on the appropriate transitional periods for their implementation.*

*5. The Technical Implementation Body shall propose, discuss, and adopt amendments to the functional specifications of the eTIR procedure, which shall be transmitted to the Administrative Committee and approved by a majority of Contracting Parties to Annex II and implemented at a date to be determined at the time of approval.*

*6. The Technical Implementation Body may consider amendments to the conceptual specifications of the eTIR procedure if so requested by the Administrative Committee. Amendments to the conceptual specifications of the eTIR procedure shall be approved by a majority of Contracting Parties to Annex II and implemented at a date to be determined at the time of approval.*

### **Article 5**

#### **Submission of Advance Cargo Information**

*1. Advance cargo information shall be submitted in electronic form.*

*2. Contracting Parties to Annex II shall accept the submission of advance cargo information via the eTIR international system.*

3. *The competent authorities shall publish the list of other electronic means by which advance cargo information can be submitted.*

#### *Article 6*

##### *Authentication of the holder*

1. *The holder, or his or her representative, submitting advance cargo information directly to the competent authorities shall be authenticated in accordance with applicable national legislation.*

2. *Contracting Parties to Annex 11 shall recognize authentications performed by the eTIR international system.*

3. *The competent authorities shall publish a list of authentication mechanisms other than that specified in paragraph 2 of the present Article that may be used for authentication.*

#### *Article 7*

##### *Mutual recognition of the authentication of the holder*

*The authentication of the holder performed by the competent authorities of the Contracting Party to Annex 11 which accepts the declaration shall be recognized by the competent authorities of all subsequent Contracting Parties to Annex 11 throughout the TIR transport.*

#### *Article 8*

##### *Additional data requirements*

*Competent authorities should limit data requirements to those contained in the functional and technical specifications. However, if additional data requirements are imposed, the competent authorities shall endeavour to facilitate the submission of such data so as not to impede TIR transports carried out in accordance with this Annex.*

#### *Article 9*

##### *Fall-back procedure*

*In the event that an eTIR procedure is impeded for technical reasons, the competent authorities:*

(a) *may use the electronic fall-back system as defined in the functional and technical specifications; or*

(b) *shall accept the accompanying document in line with the procedure described in the functional and technical specifications.*

#### *Article 10*

##### *Hosting of the eTIR international system*

1. *The United Nations Economic Commission for Europe (UNECE) shall be responsible for hosting and administering the eTIR international system.*

2. *UNECE shall assist countries in connecting their customs systems to the eTIR international system, including by means of conformance tests to ensure their proper functioning prior to the operational connection.*

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 Contracting Parties to the TIR Convention].*

#### **Article 11**

##### **Administration of the eTIR international system**

1. *UNECE shall make the appropriate arrangements for the storage and archiving of the data in the eTIR international system for a minimum period of 10 years.*
2. *All data stored in the eTIR international system may be used by UNECE on behalf of the competent bodies of this Convention for the purpose of extracting aggregated statistics.*
3. *The competent authorities of Contracting Parties involved in a TIR transport carried out under the eTIR procedure which becomes the subject of administrative or legal proceedings concerning the payment obligation of the person or persons directly liable or of the national guaranteeing association, may request UNECE to provide information stored in the eTIR international system pertaining to the claim in dispute for verification purposes. This information may be produced as evidence in national administrative or legal proceedings.*
4. *In cases other than those specified in this Article, the dissemination or disclosure of information stored in the eTIR international system to non-authorized persons or entities shall be prohibited.*

#### **Article 12**

##### **Publication of the customs offices capable of handling eTIR**

*The competent authorities shall ensure that the list of customs offices of departure, customs offices en route and customs offices of destination approved for accomplishing TIR operations under the eTIR procedure, is at all times accurate and updated in the electronic database for approved customs offices, developed and maintained by the TIR Executive Board.*

#### **Article 13**

##### **Legal requirements for data submission under Annex 10 of the TIR Convention**

*The legal requirements for data submission, as set out in Annex 10, paragraph 1, 3 and 4 of this Convention, are deemed to be fulfilled by implementing the eTIR procedure in accordance with Annex 11.*

## **B. Part II**

##### **Explanatory notes**

#### **1. Part I - Article 5, paragraph 3**

*Contracting Parties to Annex 11 are recommended to allow, in as far as possible, the submission of advance cargo information by the methods indicated in the functional and technical specifications.*

#### **2. Part I - Article 6, paragraph 2**

*Contracting Parties to Annex 11 are recommended to recognize, in as far as possible, the authentications performed by the methods indicated in the functional and technical documentation.*

#### **3. Part I - Article 10, paragraph 3**

*Contracting Parties shall decide on the appropriate time at which the operational costs of the eTIR international system shall be financed through an amount per TIR transport [carried out under the eTIR procedure]. The exact modalities of such financing shall be decided by the Administrative Committee [in accordance with Article 60 bis].*

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