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Working Party on Customs Questions affecting Transport

Informal Ad hoc Expert Group on Conceptual and Technical Aspects of Computerization of the TIR Procedure

Twenty-fifth session

Geneva, 19–20 September 2016

Item 5 of the provisional agenda

Findings of the Group of Experts on Legal Aspects of the Computerization of the TIR Procedure

Note by the secretariat

I. Introduction

1. The present document provides an overview of the activities and findings of the Group of Experts on Legal Aspects of the Computerization of the TIR Procedure (GE.2), in line with the decision of the Working Party on Customs Questions affecting Transport (WP.30) at its 140th session (June 2015) namely that it would be important to maintain synergies and cooperation between the technical and the legal work (see ECE/TRANS/WP.30/280 para. 14).

II. Work Plan of GE.2

2. At its first session, GE.2 reviewed the preparatory work of WP.30 regarding legal aspects of computerization of the TIR procedure, as well as took stock of the summary of the activities and the recommendations of the Informal Ad Hoc Expert Group on Technical and Conceptual Aspects of Computerization of the TIR Procedure (GE.1) as endorsed by WP.30 (ECE/TRANS/WP.30/2015/4). GE.2 also noted that the latest version (version 4.1a) of the eTIR Reference Model (ECE/TRANS/WP.30/2011/4/Rev.1) will form the basis of its work.

3. On the basis of the above, GE.2 decided to look at the below listed issues, which are being addressed as individual agenda items:

- (i) Compatibility of the eTIR legal framework with national legal requirements;

- (ii) Administration and financing of the eTIR international system;
- (iii) Data confidentiality considerations;
- (iv) Identification of the holder and verification of the integrity of electronic data interchange messages;
- (v) Legal status of the eTIR Reference Model and amendment procedure
- (vi) Format and administrative structure of the Protocol;
- (vii) Provisions of the TIR Convention that may be affected by the introduction of eTIR;
- (viii) Cooperation with other organizations.

III. Main findings

4. GE.2 has held two sessions, in November 2015 and April 2016. The main findings of each session are summarized below.

A. First session (16-17 November 2015)

5. At its first session, GE.2 considered a series of pending legal and administrative issues, in order to determine how to proceed (the full report of the session (ECE/TRANS/WP.30/GE.2/2) can be found in three languages on the TIR website).

6. In the first instance, GE.2 was of the general view that it would be unlikely that national legal requirements would not be compatible with the legal requirements of introducing eTIR, mostly on account of the fact that, in most countries, customs administrations have already moved to an electronic environment. Nonetheless, in view of the particular complexities related to the authentication of the identity of the sender (e-signatures or other methods), GE.2 decided to review the relevant surveys of GE.1 in order to determine if there would be merit in conducting a further survey.

7. Concerning the administration and financing aspect, GE.2 – without excluding other possibilities – was of the initial view that the recommendation of GE.1 to finance the eTIR international system through an amount per eTIR transport appeared to be the most suitable option for the time being. However, questions were raised with regard to the initial investment needed for setting up the eTIR international system. In addition, GE.2 was of the view that the administration of the system and the specific roles and responsibilities of the United Nations Economic Commission for Europe (UNECE) should be addressed separately from financing the eTIR international system.

8. With reference to data confidentiality considerations, GE.2 discussed issues such as storage security, duration of storage, role of the administrators of the system in case information is needed to be provided for the purpose of court proceedings and other uses of information, e.g. the compilation of aggregated statistics. GE.2 was of the view that one of the main questions under this topic was how much should be regulated under the eTIR legal framework and what can be left up to national legislation.

9. Regarding electronic authentication of the declarant, GE.2 was of the general 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 and should suffice. 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.

10. Concerning the legal status of the eTIR Reference model, GE.2 came to the general conclusion that it would warrant a separate amendment procedure as well as a technical body that would develop these amendments, but the exact modalities of this remain to be clarified.

11. Finally, due to the requirement for a separate administrative structure, GE.2 was of the view that a Protocol would potentially entail a lot more complexity than originally assessed by WP.30. In this context, the GE.2 was of the view that looking into alternative formats for the legal framework of eTIR should not yet be excluded. Against this background, the delegation of Switzerland offered to table a number of considerations regarding the merits of an optional Annex to the TIR Convention, 1975 as a proposal for the next session. Another point raised by delegations was the timeline envisaged for a full transition from the paper-based system to the electronic one. Various delegations also pointed out that implementing eTIR would require a significant investment by Contracting Parties, and without assurances of a well-defined implementation timeline, several countries may not see the benefits of making this investment.

B. Second session (4-5 April 2016)

12. On the basis of the above preliminary findings, GE.2, at its second session, came to the following conclusions/decisions (the full report of the session (ECE/TRANS/WP.30/GE.2/4) can be found in three languages on the TIR website):

13. A new survey on electronic authentication mechanisms should be conducted, to take stock of recent developments that may be of relevance for the development of the eTIR legal framework. It was decided that the survey would be drafted, finalized and launched prior to the third session of GE.2 on 12 and 13 December 2016.

14. The way to finance the eTIR international system (the initial and development costs, as well as the maintenance costs) should be identified as a matter of priority, taking into account the information available in the eTIR Cost-Benefit-Analysis (CBA). As such, GE.2 at its third session will consider a document outlining financing possibilities. Further to this, the document, once finalized by GE.2, should be transmitted to WP.30 and the TIR Administrative Committee (AC.2), as well as, possibly, to the budgetary organs of UNECE for further consideration and assessment. GE.2 agreed that it would be important to have a final decision on this important issue as soon as possible and, in any case, before the expiration of the mandate of the Group.

15. Data confidentiality should, as far as possible, be governed by provisions of national law (where applicable). Concerning the obligations of confidentiality of UNECE as administrator of the eTIR international system, GE.2 is considering the elaboration of a provision similar to Annex 9, Part III, paragraph 4 of the TIR Convention.

16. GE.2 was of the general view that, since the authentication of the identity of the holder or their representative only takes place at the customs office of departure, it would fall under the overall scope of the checks and controls performed at the customs office of departure that ought to be accepted by the customs offices en route and at destination, in keeping with the principle of the TIR Convention on mutual recognition. As such, several delegations proposed that, perhaps, it would not be necessary to specify this element in the legal framework at all. In addition, it was pointed out that, even if such a provision were to be included in the eTIR legal framework, it should be reformulated in such a way as to be in line with the various methods, outlined in the eTIR Reference Model, for submitting the advance cargo information to the customs office of departure.

17. GE.2 reiterated its view that the eTIR Reference Model should remain a separate technical document, with legal validity by including an appropriate reference in the eTIR

legal framework. GE.2 also agreed that the length and complexity of the eTIR Reference Model would warrant the establishment of an appropriate technical body and a simplified amendment procedure.

18. The delegation of Switzerland tabled a proposal, outlining the merits of an optional Annex to the TIR Convention. GE.2 noted that some of the benefits of this proposal included dispensing with the need for designing a new administrative structure, as well as potential simplification of the financing mechanism, among others. Various delegations remained in favour of an additional Protocol to the TIR Convention, quoting, primarily, the advantages of (i) it being relatively faster to prepare and (ii) allowing gradual participation of interested Contracting Parties. However, all delegations recognized that an additional Protocol would require a lengthy national ratification process, which could outweigh its benefits. The main possible disadvantage of an optional Annex that was identified was that it would require an amendment to the main body of the Convention; therefore, the entry into force of such a new Annex could be blocked by a single objection at the depositary notification stage. GE.2 consolidated its findings in a preliminary table:

Comparative table of advantages and disadvantages of an additional Protocol and an optional Annex to the TIR Convention

	<i>Optional Annex</i>	<i>Additional Protocol</i>
Advantages		
Builds on the existing TIR system	X	X
TIR Carnet can be used as a fallback	X	X
Interested countries can join anytime	X	X
Maintains the same administrative structure (AC.2/TIRExB)	X	
Drawbacks/Risks		
One country can block the process	X	
Requires ratification		X
Separate financing mechanism has to be identified and established with its own procedures		X
Requires renegotiation/amendment of guarantee agreements	X	X

C. Next steps

19. The questionnaire for the survey on electronic authentication methods has been finalized and will be launched in the course of September 2016. Preliminary results will be assessed at the next session of GE.2 on 12 and 13 December 2016.

20. At its next session, GE.2 will consider a draft legal text in the format of an additional Protocol, on the one hand, and in the format of an optional Annex, on the other hand; this will enable the Group to identify material differences and will facilitate the selection of the most appropriate format on the basis of tangible advantages and

disadvantages. It is expected that several substantive provisions will be the same in both formats.

21. At its next session, GE.2 will assess the feasibility and practicality of various financing mechanisms and will commence the process of developing, on the basis of a draft prepared by the secretariat, a concrete financing proposal to be considered by the TIR governing bodies, as well as – eventually - by the budgetary organs of UNECE.

22. At the next session of GE.2, discussions will continue on the basis of comments received from various delegations to the report of the first session of GE.2, particularly with regard to procedural aspects of resorting to the fallback procedure. The eTIR Reference Model specifies technical and functional fallbacks, thus – as the delegation of Hungary observed – perhaps it would be necessary to elaborate the procedure to be observed by customs and operators in such cases.

IV. Considerations by GE.1

23. GE.1 Group is invited to take note of the activities and findings of the Group of Experts on Legal Aspects of the Computerization of the TIR Procedure (GE.2) and discuss their possible implications on its work.
