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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 the Computerization of the TIR Procedure****Third session**

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Item 7 of the provisional agenda

Legal status of the eTIR Reference Model and amendment procedure**Legal status of the eTIR Reference Model and amendment procedure for the eTIR legal framework**

Note by the secretariat

I. Background and mandate

1. At its previous session, the Group of Experts on Legal Aspects of Computerization of the TIR procedure (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. As such, GE.2 requested the secretariat to prepare a document, outlining the procedural and legal modalities of (a) assigning legal status to the eTIR Reference Model by reference, (b) creating a technical body and its relationship to the various TIR intergovernmental bodies, and (c) creating a simplified amendment procedure. In line with this request, GE.2 may wish to consider the present document.

2. For the purpose of this agenda item, the present document describes the amendment structure of the envisaged eTIR legal framework and provides a concept and example provisions for amending the eTIR legal framework and the eTIR Reference Model as a separate document in two scenarios; that of a Protocol and that of an Annex.

II. Assigning legal status to the eTIR Reference Model

3. As discussed in previous sessions, the eTIR Reference Model can be made a binding technical document by reference, i.e. by including a provision in the eTIR legal framework that expressly states that the conceptual, functional and technical specifications of eTIR as contained in the eTIR Reference Model are binding. It will not make a difference, legally, whether the Reference Model becomes an Appendix to an Annex, or an Annex to a Protocol, or is called a separate technical document that is an integral part of the eTIR legal framework (whatever format that may have). The element of crucial importance would be to make it clear, in the instrument outlining the substantive legal obligations of Contracting Parties, that implementing this technical document is a legal obligation for implementing the eTIR procedure.

4. As such, it would be sufficient to include the appropriate reference in the core legal framework. An example of such a provision would be:

“The conceptual, functional and technical specifications of the eTIR procedure are laid down in the eTIR Reference Model attached to [this Protocol as Annex] or [Annex 11 as appendix]. The Parties to this [Annex] or [Protocol] shall apply the eTIR procedure in conformity with the specifications contained therein”.

5. Such a provision could be included either in an optional Annex to the TIR Convention or in a Protocol. At the same time, the procedure and special conditions for amending the conceptual, functional and technical specifications would be the subject of a separate provision. That is to say that there will be an article titled “Amendment procedure for the conceptual, functional and technical specifications of the eTIR procedure” or “Amendment procedure for the eTIR Reference Model”. This article will be included either in the Annex or in the Protocol (depending on the format selected).

III. Possible simplified amendment procedure

6. At the outset, the following elements should be taken into account for the amendment procedure:

(a) It has been proposed to separate the purely technical elements from the conceptual and functional elements, changes to which may have legal or other implications;

(b) It has been proposed that purely technical amendments be adopted and implemented automatically (per EU model as presented at GE.2 at its second session¹) under the responsibility of a technical body;

(c) It has been proposed that amendments to conceptual and functional specifications be adopted and implemented with a simplified procedure;

(d) It is understood that amendments to the main body of the eTIR legal framework would most likely follow the traditional amendment and depositary notification procedure.

7. Therefore, a fairly complex amendment structure is currently under discussion. At the same time, it should be noted that the specific details of the amendment procedure and structure may be affected also by the format of the legal instrument (current options under

¹ See http://www.unece.org/fileadmin/DAM/trans/bcf/wp30/documents/2016/WP30_GE2_2nd_4-5Apr_2016_DG_TAXUD.pdf

discussion: Optional Annex to the TIR Convention, 1975 or Additional Protocol to the TIR Convention, 1975).

A. Classification of amendments

8. In line with the proposals and guidelines provided by GE.2, the eTIR legal framework will tentatively consist of:

(a) Core legal provisions (Annex or Protocol); this text will provide for the necessary definitions and supplementary provisions that will govern eTIR procedural aspects currently not covered by the TIR Convention, 1975. That is to say that the main principles of the TIR Convention – also referred to as the main pillars – will still apply, together with the provisions pertaining to the functioning of the guarantee chain, provisions on exclusion and suspension, conditions for authorizing holders and associations, deadlines for notifying, processing and settling claims, conditions under which examinations are carried out en route, provisions on technical specifications for vehicles and containers/load compartments, among others. Deviations that are to be understood either as *mutatis mutandis* application or, alternatively, governed by expressly laid down new provisions, relate to requirements of physically presenting and stamping the paper TIR Carnet and removing counterfoils, presenting the paper document at customs offices and so on. Further elements of the core legal framework could include, for example, the procedure to be followed by customs officials and operators if the electronic system is not functioning due to technical problems (fall-back procedure) and any other element that Contracting Parties deem necessary for inclusion in the main body of the legal text. This text would be subject to one of the traditionally utilized methods of amending intergovernmental agreements.

(b) Conceptual and functional specifications; these are to be understood as specifications held separately from the main legal text but which, if altered, could have a material impact on the core legal framework or result in legal or other substantive implications for the ability of Contracting Parties to implement eTIR. This text would be subject to a simplified amendment process which would, nonetheless, require broad based agreement by Contracting Parties. Tentatively, this is understood to refer to Chapters 1 and 2 of the eTIR Reference Model.

(c) Purely technical specifications/elements; these are understood as specifications that, if modified or adjusted within the limitations of the functional specifications, would result in an improvement of the technical performance of the system without any impact on substantive legal or other obligations of Contracting Parties. Such amendments could, conceivably, be adopted and implemented immediately without a formal intergovernmental notification procedure. Tentatively, this is understood to refer to Chapters 3 and 4 of the eTIR Reference Model.

B. Amendment procedure for the core legal provisions

9. For the sake of consistency and familiarity, the amendment procedure for the main legal text could be based on Article 59 or 60 of the TIR Convention.

10. If the core legal provisions are contained in a Protocol to the TIR Convention, then the provision could read similarly to the below example:

“Procedure for amending this Protocol

1. Once this Protocol is in force, it may be amended according to the procedure defined in this Article.

2. Any Party to this Protocol may propose one or more amendments to this Protocol. The text of any proposed amendment shall be transmitted to the Secretary-General of the United Nations who shall circulate it to all Contracting Parties.

3. Any proposed amendment circulated in accordance with the preceding paragraph shall be deemed to be accepted if no Party expresses an objection within a period of six months following the date of circulation of the proposed amendment by the Secretary-General.

4. The Secretary-General shall notify as soon as possible all Parties whether an objection to the proposed amendment has been expressed, and if no such objection has been expressed, the amendment shall enter into force for all Parties three months after the expiration of the period of six months referred to in the preceding paragraph”.

11. If the core legal provisions are contained in a new optional Annex to the TIR Convention, then there would have to be a new article in the TIR Convention, 1975, bringing the new Annex into existence. It is considered that it would not be appropriate to add Annex 11 to article 60, as the new Annex would be optional and require a different amendment procedure than the other annexes. This issue will be further discussed under agenda item 8. Concerning the provision on amending Annex 11, however, which could either become article 60bis of the TIR Convention 1975 or be contained within the Annex itself, it could follow one of two examples. The first example is the Istanbul Convention on Temporary admission of 1990, where each optional annex is treated as a separate Convention (Article 28, paragraph 2). In this case, amendments to each optional Annex are proposed, discussed and adopted only by the Contracting Parties that have accepted it. In that case, the Article would read as follows:

“Procedure for amending Annex 11

1. Any Contracting Party that has accepted Annex 11 may propose one or more amendments to this Annex. Any proposed amendment to Annex 11 shall be communicated by the Secretary-General of the United Nations to the Contracting Parties that apply Annex 11 for their acceptance.²

2. Any proposed amendment circulated in accordance with the preceding paragraph shall be deemed to be accepted if [no Party] or [other number to be determined] expresses an objection within a period of six months following the date of circulation of the proposed amendment by the Secretary-General.”

12. A second possibility is to provide that the TIR Administrative Committee will formulate, consider and adopt proposals for Annex 11 (in view of the eventual transition of all TIR Contracting Parties to eTIR). These proposals would then be notified by the depositary to the Contracting Parties that have accepted/are applying the Annex, for acceptance or objection. This is based on the procedure implemented for specific Annexes under the Revised Kyoto Convention of 2006 (Article 15).

13. Therefore, such an article could be formulated as follows:

“Procedure for amending Annex 11

1. Any Contracting Party to the TIR Convention may propose one or more amendments to Annex 11. Any proposed amendment to Annex 11 shall be considered by the Administrative Committee composed of all the Contracting

² These proposals could conceivably be discussed within an existing forum such as WP.30, where those Contracting Parties that are not applying Annex 11 would not have voting rights.

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 that apply Annex 11 for their acceptance.

2. Any proposed amendment to Annex 11 considered in accordance with paragraph 1 of this article shall come into force on a date to be determined by the Administrative Committee at the time of its adoption, unless by a prior date determined by the Administrative Committee at the same time, one-fifth or five of the States which accepted Annex 11, whichever number is less, notify the Secretary-General of the United Nations of their objection to the amendment.”

14. The amendment procedure for the functional and technical specifications would be outlined in a separate article either in the Protocol or the Annex (depending on the format selected).

C. Amendment procedure for conceptual and functional specifications

15. The conceptual and functional specifications of eTIR would still require a certain level of technical expertise or technological understanding in order to be able to assess the necessity and feasibility of any proposed amendment. At the same time, the conceptual and functional specifications can only be altered in as far as they do not impact the core legal text. In such a case, Contracting Parties would have to decide whether or not to amend the core legal text to accommodate such changes. Against this background, it is proposed that a specialized body is established and convened whenever required to formulate or review amendment proposals; these, in turn, would require the approval of Contracting Parties for their entry into force. Depending on the format selected for the legal framework, quorums and majorities for decision making processes are yet to be specified. Tentatively, this formula would require the specialized body to transmit the proposals to a session of Contracting Parties, where, if adopted, they could enter into force with simplified/shorter notification deadlines.

D. Amendment procedure for technical specifications

16. Any amendments to technical specifications ought to be in line with the functional specifications and not impact the legal framework. These are the parameters within which technical amendments with automatic effect ought to operate. On this condition, technical amendments can be notified to all Contracting Parties with immediate effect upon adoption. For the sake of efficiency and expediency, the body responsible for these amendments could be the same one established for the conceptual and functional specifications.

E. Example provisions for amending the eTIR Reference Model

17. The provisions providing for the amendment procedure of the eTIR Reference Model can be the same in both formats (Protocol or Annex), with only minor modifications. An example, based on the above described structure, could be as follows:

“Procedure for amending the conceptual, functional and technical specifications of the eTIR procedure

[or]

Procedure for amending the eTIR Reference Model

1. Proposals for amendments to the eTIR Reference Model shall be considered by the appropriate expert body [name to be determined] in accordance with the present article.
 2. Amendments to the eTIR Reference Model shall be consistent with the legal provisions of [the TIR Convention and its Annexes] or [the Protocol].
 3. Proposals for amendments to the conceptual and functional specifications as contained in Chapters 1 and 2 of the eTIR Reference Model shall be considered by the appropriate expert body [name to be determined] and transmitted to [the TIR Administrative Committee] or [the parties to this Protocol] for adoption³. Such amendments, upon adoption, shall be communicated by the Secretary-General of the United Nations to [the Contracting Parties that apply Annex 11] or [the Parties to this Protocol] for their acceptance.
 4. Amendments to the conceptual and functional specifications adopted in accordance with paragraph 3 shall enter into force at a date to be determined by [the Administrative Committee] or [the Parties to this Protocol] at the time of adoption unless by a prior date determined by [the Administrative Committee] or [the Parties to this Protocol] at the same time, one-fifth or five of the States [which have accepted Annex 11] or [which are Parties to this Protocol] notify the Secretary-General of the United Nations of their objection to the amendment.
 5. Proposals for amendments to the technical specifications as contained in Chapters 3 and 4 of the eTIR Reference Model shall be considered by the appropriate expert body [name to be determined] and adopted by consensus.
 6. Amendments to the technical specifications adopted in accordance with paragraph 5 of the present article shall enter into force upon their adoption and be [promptly] or [immediately] notified to [all Contracting Parties to the TIR Convention that have accepted Annex 11] or [all the Parties to this Protocol].”
18. It follows that the composition and functions of the appropriate expert body, as referred to above, also need to be outlined in the legal framework. Such an example would be:

“Composition and functions of [name of technical body]

The Contracting Parties [that have accepted Annex 11] or [of this Protocol] shall be members of [name of technical body]. The [name of technical body] will be comprised of competent experts representing their national administration and will consider amendment proposals in accordance with the procedure for amending the eTIR Reference Model. The [name of technical body] shall elect a chair from among its members [each year] or [at each session] and convene its sessions upon the request of [number of Contracting Parties] and no less frequently than once annually. The Secretary-General of the United Nations shall provide secretariat services to [name of technical body].”

IV. Considerations by the Group of Experts

19. The Group of Experts is invited to consider the above proposals, bearing in mind that further details will be elaborated depending on the selection of the format of the legal

³ In this case the adoption would either be governed by Annex 8 (quorum and majority) or the decision making majority as will be specified in the Protocol.

framework. It will be of utmost importance to settle the issue of format, to enable detailed and methodical elaboration of draft provisions.
