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

Third session

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Item 6 of the provisional agenda

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

Identification of the holder and verification of the integrity of electronic data interchange messages¹

Note by the secretariat

I. Introduction

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

2. At its second session, GE.2 discussed, inter alia, the potential legal complexities involved in one of the possible mechanisms for the submission of advance cargo

¹ This document has been issued in place of the originally forecasted
ECE/TRANS/WP.30/GE.22016/3/Rev.1

information, namely the possibility for an operator to submit advance cargo information via the customs system of his home country, for a transport that is to begin in another country. In light of these discussions, GE.2 requested the secretariat to prepare a document, taking into account prior discussions on this issue, for further consideration at the next session (ECE/TRANS/WP.30/GE.2/4, para. 14).

II. Authentication of the identity of the holder

3. The eTIR Reference Model introduces, as a new requirement, that customs should receive advance cargo information prior to the physical presentation of the vehicle and goods at the customs office of departure or entry en route. In line with the objectives of the eTIR Project, the purpose of this is to allow customs to perform certain checks (including the validity of the guarantee) and to determine the risk profile of the TIR transport prior to its arrival at the customs office concerned.

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

5. In the context of its work, GE.2, also, decided to conduct a survey on electronic authentication mechanisms, in order to re-assess the state of affairs in electronic authentication mechanisms used in the context of customs procedures (ECE/TRANS/WP.30/GE.2/4, paras 6 and 7). The preliminary results of this survey are discussed under item 2 of the agenda (ECE/TRANS/WP.30/GE.2/5). At the same time, it is worth noting that GE.1, at its twenty-fifth session decided to maintain its recommendation on this issue, i.e. that, on the basis of the principle of the TIR Convention on the mutual recognition of customs controls, the authentication of the transport operator shall be performed in the country of departure and, since the information will then be transmitted in a secure customs environment (including the eTIR international system), other countries shall recognize that this authentication was performed correctly and that the holder whose name is contained in the electronic messages is the person liable for the TIR transport (see ECE/TRANS/WP.30/2017/3, para. 16).

6. The eTIR system is designed in such a way that the holder only needs to submit his advance cargo information once, thus avoiding the multiple, unsolicited and, possibly even erroneous, submission to various national customs systems. The customs office of departure, by registering all relevant TIR transport information in the eTIR international system (which will then transmit this information to all customs offices along the route),

ensures that the data required for lodging the declaration, as well as other TIR transport information (e.g. seals), are provided to all consecutive countries involved in the TIR transport prior to the arrival of the vehicle so that customs can perform advance risk assessment. As it is the case today, the holder remains responsible for the presentation of the vehicle, load and guarantee reference in accordance with the principles set out in Article 21 of the TIR Convention at each customs office.

III. Mechanisms for submitting advance cargo information

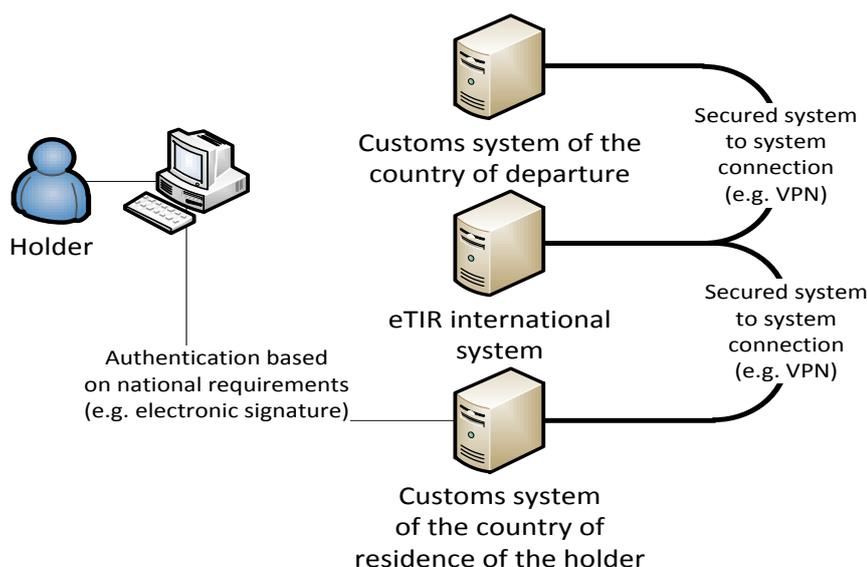
7. However, taking stock of the possible difficulties that holders would encounter to submit electronic information in countries other than their country of residence (e.g. language, national authentication requirements), international mechanisms to submit advance cargo information have been introduced in the eTIR Reference Model. Therefore, the authentication of the holder, for the purpose of submitting advance cargo information, would not necessarily only take place in the country of departure. The eTIR Reference Model specifies that the holder can make use of the following mechanisms to submit advance cargo information to the country of departure: (a) directly to the customs system of the country of departure; (b) via the customs system of his country of residence; (c) via the eTIR international system (web services only); or (d) via third party solutions provided by the private sector (including by guarantee chains).

8. The eTIR Reference Model also specifies that:

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

9. The prescribed form and manner, as per this definition, would be one of the above-mentioned options. Figure 1, clarifies how option (b) will allow holders to make use of their national customs system, which they are familiar with, to submit advance cargo information to a third country in which they want to begin a TIR transport.

Figure 1



10. When the declaration system of the country of residence of the holder is used to send information to other customs systems, holders are able to use the systems and the authentication mechanisms which they are used to and already have access to. The country of departure would then receive this information via a secured connection (via the eTIR international system declaration web service), relying on the fact that the customs of the country of residence of the holder have adequately authenticated the holder.

11. At its previous sessions, GE.2 was of the view that these options should be expressly outlined in the legal framework, possibly under the same provision that governs the authentication of the identity of the holder.

12. Having in mind the different ways in which the submission of advance cargo information can be made, it would arguably be necessary to, also, find a way to combine the concept of mutually recognizing authentications performed in the different scenarios.

13. On the basis of the above considerations, and taking the original draft provision as a basis (see ECE/TRANS/WP.30/GE.2/2015/2, para 19), the articles on this issue could be formulated as follows:

Article (Number to be determined)

Submission of advance cargo information

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

- (a) directly to the customs system of the country of departure of the TIR transport; or*
- (b) via the customs system of the country of residence of the holder; or*
- (c) via the eTIR international system (web services only); or*
- (d) via third party service providers recognized by the Contracting Parties.*

Article (Number to be determined)

Authentication mechanisms

1. The parties to this [Protocol] or [Annex] shall recognize the authentication of the holder performed by the competent authorities of the country of departure.

2. For the purpose of authenticating the sender of advance cargo information, Contracting Parties may rely on the authentication performed by:

- (a) the competent authorities of the country of residence;*
- (b) the eTIR international system (web services only); or*
- (c) third-party service providers recognized by the Contracting Parties.*

IV. Considerations by the Group of Experts

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

15. As an endnote, GE.2 is invited to determine whether or not this proposal represents a viable solution to the problem of authenticating the holder; or to identify alternative solutions.
