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#### Working Party on Customs Questions affecting Transport

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

###### Third session

Geneva, 12 and 13 December 2016

### Report of the Group of Experts on Legal Aspects of Computerization of the TIR Procedure on its third session

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## **I. Attendance**

1. The Group of Experts (GE.2) held its third session on 12 and 13 December 2016 in Geneva. The session was attended by representatives of the following countries: Finland, France, Hungary, Italy, Poland, Russian Federation, Switzerland, and Turkey. Representatives of Cameroon attended the session as observers under paragraph 11 of the Terms of Reference of ECE. Representatives of the European Commission (EC) were also present. The following non-governmental organization was represented: the International Road Transport Union (IRU).

## **II. Adoption of the agenda (agenda item 1)**

*Documentation:* ECE/TRANS/WP.30/GE.2/5

2. GE.2 adopted the provisional agenda, prepared by the secretariat (ECE/TRANS/WP.30/GE.2/5), with the addition of Informal document (2016) No. 2, issued instead of ECE/TRANS/WP.30/GE.2/2016/3/Rev.1 under item 6, Informal document (2016) No. 3, submitted by the Russian Federation under item 5 and issued instead of ECE/TRANS/WP.30/GE.2/2016/10 and Informal document (2016) No. 4 transmitted by the Informal Ad hoc Expert Group on Conceptual and Technical Aspects of Computerization of the TIR Procedure (GE.1) under item 10 and referring to amendment proposals to the eTIR Reference Model submitted by EC. Upon the adoption of the agenda, the Group agreed to address, as a priority, items 2, 3, 6, 7 and 8.

## **III. Opening statement**

3. In his opening statement, Mr. Miodrag Pesut, Chief, Transport Facilitation and Economics Section of the Sustainable Transport Division, welcomed all delegations to the third session of GE.2, highlighted the importance of the discussions taking place in GE.2 for the future of the TIR system and encouraged GE.2 to agree on a concrete proposal for the eTIR legal framework within the time remaining in the mandate. On this note, he wished GE.2 a fruitful and successful meeting.

## **IV. Compatibility of the eTIR legal framework with national legal requirements (agenda item 2)**

*Documentation:* Informal Document (2016) No. 1

4. GE.2 welcomed the preliminary results of the survey collecting information on (a) the requirements to authenticate the sender of electronic information as well as the methods used; (b) the use of electronic signatures in particular; and (c) the legal status/validity of electronic communications (including those authenticated by means of electronic signatures) in domestic jurisdictions, such as, but not limited to, their admissibility as evidence in national court proceedings. The Group noted that, in the thirty-three Contracting Parties that replied to the survey, all information submitted electronically has to be authenticated, but the means and methods used vary from country to country. One of the preliminary conclusions drawn from these results was that implementing a single internationally valid/recognized authentication mechanism such as Public Key Infrastructure (PKI) electronic signature in the eTIR system would be technically and

legally too complex; this seemed to confirm the GE.1 recommendation of leaving authentication to the competence of national authorities. The secretariat also pointed out that even within country groupings with similar legislation (such as the European Union (EU)), there were divergent replies. The representative of EC clarified that this may be linked to the current transitional period effected to facilitate the implementation of a new legislative framework.

5. On the other hand, GE.2 was of the view that there would be merit in reviewing the responses individually rather than grouped and that the results would be more representative if more Contracting Parties, particularly outside of the EU and the New Computerized Transit System (NCTS), would reply. In conclusion, GE.2 requested the secretariat to send reminders to Contracting Parties that have not yet replied to the survey, as well as to revise the document for the next session, indicating more details about individual replies.

## V. Financing of the eTIR international system (agenda item 3)

*Documentation: ECE/TRANS/WP.30/GE.2/2016/7*

6. Recalling its conclusions at the previous session, namely that 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), GE.2 welcomed document ECE/TRANS/WP.30/GE.2/2016/7, outlining financing possibilities.

7. In the first instance, a number of participants, including IRU, expressed the view that the figures in the CBA were either outdated or under-estimated and that the CBA does not take into account the decreasing issuance of TIR Carnets in recent years. Consequently, they raised the question as to whether these costs should be estimated again, on the basis of a new analysis. Other participants were of the view that, although the figures may need to be re-calculated, in principle, it is more important to identify the suitable financing mechanism rather than spending more time estimating exact figures.

8. In response to a question from the delegation of EC, the secretariat clarified that the United Nations Economic Commission for Europe (UNECE) is unlikely to absorb the cost of developing and hosting the eTIR international system because (a) this activity is not foreseen in the regular budget of UNECE as approved by the General Assembly and the fifth Committee on financial and budgetary arrangements, and (b) the trend/tendency in recent years is to consistently reduce the budget of UNECE.

9. With reference to the various financing mechanisms outlined in document ECE/TRANS/WP.30/GE.2/2016/7, concerns were expressed from the side of associations and IRU in the event that the funds would be raised via an amount per TIR transport, as this would, in their view, place a burden on the transport industry. More specifically, IRU expressed the view that it should be taken into account that the transport industry has already invested largely in the computerization of the TIR procedure in recent years, by developing systems that communicate with National Customs systems. Therefore, in the view of IRU, financial investments made by the private sector should be used by taking advantage of the existing IT tools. Furthermore IRU stated that it is important to bear in mind that eTIR is about the computerization of Customs procedures, thus transport operators should not be the only ones to pay - a second time - for a system which is primarily for Customs use.

10. Others indicated that these costs would, ultimately, be paid by final consumers of goods transported and the amounts at stake would have an insignificant impact on the price

of those goods. Furthermore, those same consumers would be the ones that, by means of their taxes, would pay for the system if the financing would be secured by governments, except that the cost would be shared among all TIR Contracting Parties, including those that do not (yet) use the system, rather than by those that benefit mainly from the TIR system. In light of these considerations, GE.2 was of the view that such a mechanism should not be excluded *a priori* and that further considerations are warranted.

11. GE.2 recalled the Joint Statement on the Computerization of the TIR procedure, adopted by AC.2 in June 2015 and underlined that computerization is a joint objective and that decisions should be taken as soon as possible to materialize the project and to ensure that all TIR Contracting Parties would, within a reasonable timeframe, make the necessary investments and adjustments to move to a fully computerized TIR procedure. Against this background, GE.2 requested the secretariat to transmit document ECE/TRANS/WP.30/GE.2/2016/7 to WP.30 and AC.2, requested the Chair to include reference to this issue in his oral report to WP.30 at its next session and was of the view that it should also be brought to the attention of the Inland Transport Committee (ITC). The secretariat informed GE.2 that provision has been made in the ITC agenda for this issue and it has been included, also, in the briefing document on border crossing issues for the next session of ITC.

## **VI. Administration of the eTIR international system (agenda item 4)**

12. This item was not discussed due to a lack of time.

## **VII. Data confidentiality considerations (agenda item 5)**

*Documentation:* Informal document WP.30/GE.2 (2016) No. 3

13. This item was not discussed due to a lack of time.

## **VIII. Identification of the holder and verification of the integrity of electronic data interchange messages (agenda item 6)**

*Documentation:* Informal document WP.30/GE.2 (2016) No. 2

14. GE.2 welcomed Informal document WP.30/GE.2 (2016) No. 2 on the various mechanisms for submitting advance cargo information and relevant draft provisions. The secretariat, in its presentation, also drew attention to an additional element, namely the fact that the standardized messages envisaged in the Reference Model do not currently include safety and security data which, at the moment, differ from country to country. The secretariat also referred to the last session of GE.1, which had reconfirmed its previous recommendation of the principle of the mutual recognition of authentications of the sender of electronic information performed in the country of departure, bearing in mind that the eTIR international system provides for secure exchange of data between customs administrations.

15. Referring to authentication mechanisms, the delegation of the Russian Federation commented on the recent regional framework agreement for paperless trade adopted in the framework of the United Nations Economic and Social Commission for Asia and the Pacific (UN-ESCAP), envisaging reliance on trusted third parties. The secretariat clarified that the option of trusted third parties has been considered, in principle, by GE.1 but in the

absence of a successful example of practical implementation, it was considered not to be sufficiently tried and tested for use in the eTIR system. At the same time, the delegation of the Russian Federation was invited to submit further information on this issue specifically by providing a document and a detailed presentation at the next sessions of GE.2 and GE.1 (16-17 and 18-19 May 2017).

16. On the issue of the mechanisms for submitting advance cargo information, various delegations questioned the feasibility of using the customs office of the country of residence. The secretariat clarified that such mechanism would remain optional for countries to implement and would be utilized only in cases where the customs system of the country of residence would allow it. The delegation of Turkey was of the view that including the possibility to submit information to the country of residence which would have to be recognized by the country of departure would imply introduction of a “new pillar” not currently envisaged in the TIR Convention. Furthermore, the delegation of Turkey recognized that in all proposed methods, the authentication would realistically only be recognized if the legal provisions specified that the information in either case arrives to the office of departure via the secure eTIR international system. The delegation of EC made a similar observation and proposed, firstly, that points (a) and (c) in paragraph 2 of the draft article on authentication mechanisms could be deleted and, secondly, that the recognition of authentications performed via the eTIR international system could be made obligatory (by replacing “may” with “shall”). It was recalled that the submission via third-party services (point c), such as TIR-EPD, is a reality in many TIR Contracting Parties and removing such option would in most cases render the submission of Advance Cargo Information (ACI) more difficult for holders.

17. With reference to divergent requirements for safety and security data, several delegations were of the view that these data could be submitted separately and that this issue would not necessarily impede the computerization of the TIR procedure. On this subject, the secretariat recalled that additional non-harmonized requests for safety and security data to be securely submitted electronically along the itinerary would jeopardize all the efforts made to ensure that holders would only have to submit their data once to the country of departure and that various mechanisms would be at their disposal to do so.

18. Another major point of discussion was the extent to which national competent authorities would have discretion, under the eTIR legal framework, to determine the mechanisms with which ACI can be submitted, as the current drafting of the provision seems to imply that the benefit of choice is left entirely to operators, thus obliging customs authorities to accept all four mechanisms. This element was raised particularly in connection with the possibility to use third party service providers such as TIR-EPD which is provided by IRU. The delegation of Poland provided an example in this regard, namely that TIR-EPD data is currently accepted on the basis of a contractual agreement whereby customs authorities accept the electronic signature of IRU, which is responsible for authenticating the sender of the information. At the same time, the paper TIR Carnet is manually signed by the declarant. In the view of the delegation of Poland, in the eTIR environment electronic declarations (electronic TIR Carnets) may be required to be electronically signed by the declarants themselves, which would most likely impact the use of the TIR-EPD mechanism.

19. Against this background, the delegation of EC proposed that the provisions be restricted to stipulating that (a) ACI should be submitted electronically and (b) that the ACI should be authenticated, thus, leaving the actual methods of authentication to the competence of national competent authorities. At the same time, an Explanatory Note or comment could provide further guidance by specifying that each Contracting Party will decide on and specify which mechanisms for submission of information can be accepted. The delegation of Turkey, on the other hand, was of the view that it is necessary to specify

the manner of authentication in the legal framework in order to ensure consistency and, through that, enable eTIR transports to and from all Contracting Parties.

20. Further to substantive discussions, GE.2 decided to request the secretariat to re-draft the provisions taking into account the discussions and comments under this agenda item.

## **IX. Legal status of the eTIR Reference Model and amendment procedure (agenda item 7)**

*Documentation:* ECE/ TRANS/WP.30/GE.2/2016/8

21. GE.2 considered the multi-layered amendment procedures and the classification of amendments as presented in document ECE/TRANS/WP.30/GE.2/2016/8. A number of comments were provided, notably that sometimes conceptual, functional and technical specifications may be materially impacted by amendments to the core legal framework and require adjustments, equally as it may happen that a technical amendment could have an impact on the core legal framework. The secretariat confirmed that the interconnectivity of the amendment layers applies in both directions.

22. With reference to the Annex format scenario and the possibilities to use the example of either the Istanbul Convention or the revised Kyoto Convention, several delegations were of the view that, in general, the procedure should be inclusive and enable all TIR Contracting Parties to participate in the discussions and transition to the use of the electronic procedure within a reasonable time-frame. On this point, the delegation of EC underscored that, eventually, the TIR procedure should only be electronic and there should be clear view on this objective.

23. As a general conclusion, GE.2 initially agreed with the principles of the amendment procedure as contained in document ECE/TRANS/WP.30/GE.2/2016/8, but decided to review it in more detail during discussions under item 8, i.e. within the broader context of the draft legal framework (additional considerations on the amendment procedure can be found in para. 27).

## **X. Format and administrative structure of the eTIR legal framework (agenda item 8)**

*Documentation:* ECE/ TRANS/WP.30/GE.2/2016/9

24. GE.2 commenced its considerations with a general discussion on the possible format of the eTIR legal framework. As a starting point, the Group recalled its previous discussions on the merits of either an optional Annex to the TIR Convention, 1975 or an additional Protocol to the TIR Convention, 1975. GE.2 also noted that continuing discussions on two parallel possible formats would render the timely completion of the mandate exceptionally difficult, as it would mean exhaustively addressing too many open questions considering the number of remaining sessions. In this context, the secretariat observed that, while a number of issues under discussion are not format specific, any substantial progress would depend on the ability of GE.2 to focus its efforts on the development of a single coherent set of provisions that takes into account format specific questions. The delegation of Turkey stated that the priority for Turkey is the implementation of eTIR as soon as possible. As such, while the delegation of Turkey was of the view that this would be better served in the format of an Additional Protocol, the optional Annex could also be accepted.

25. The delegation of IRU raised concerns with regard to the risks associated with the possibility to block the entry into force of the relevant amendment on introducing Annex 11 and, therefore, advocated that a Protocol would be preferable. At the same time, IRU submitted the proposal, in order to expedite the implementation of computerization, to introduce a single and generic provision in the body of the TIR Convention, per the example of e-ATA, which would serve as a temporary/transitional legal framework while the Annex or Protocol is being elaborated. The delegation of Turkey, in response to this proposal, clarified its position that the eTIR long-term vision should be supported by the appropriate legal framework. The secretariat clarified that the risk of a single objection applies, equally, to the proposal of a single article as proposed by IRU. In conclusion, GE.2 indicated preference for the optional Annex format, referring also to the identified advantages as outlined in the report of the previous session and decided to focus its work on the format of an optional Annex.

26. In line with this decision, GE.2 proceeded to consider, in detail, the draft Annex and associated amendments to the main body to the TIR Convention elaborated in Annex II of document ECE/TRANS/WP.30/GE.2/2016/9. Among other considerations, the Group considered the advantages and disadvantages of providing either the possibility to “opt-out” of the optional Annex, or to “opt-in”. In the former scenario, the optional Annex would apply automatically unless Contracting Parties take action to enter a reservation to exclude application on their territory; in the latter case the optional Annex would not apply unless Contracting Parties take action to declare their acceptance. Each case would imply different types of amendments to the TIR Convention. Further to substantive discussions, GE.2 decided in favour of the possibility to “opt-out” by means of reservation, and instructed the secretariat to draft the provisions appropriately for consideration at the next session.

27. Another element was the necessity to include a reference to Annex 11 in the definitions of the TIR Convention. GE.2 was of the view that it would not be necessary to intervene in existing definitions but, conversely, to merely introduce the definition of the eTIR procedure in Article 1 of the TIR Convention. At the same time, the Group agreed with the proposal to ask the secretariat to review, nonetheless, the entirety of the Convention, in order to determine whether, despite the *mutatis mutandis* understanding of the provisions, there would still be articles that would need to be amended.

28. Concerning the amendment procedure, GE.2 recalled its previous discussions under agenda item 7 and revisited its considerations. Among others, questions were raised regarding (a) the practical implications of the legal status of the eTIR Reference Model i.e. whether it would be attached to the legal framework, how it would be translated and managed, considering its length and complexity; (b) whether it would have to be transmitted to the depositary as part of the entry into force of the legal framework as a whole; (c) whether, in light of the above questions, it would be preferable to merely assign the entire management of the Reference Model to a dedicated expert body outside of the legal framework. On this point, the delegation of Turkey expressed the view that it is necessary to assign legal force to the Reference Model in the interest of ensuring harmonized implementation. An additional point pertained to adopting a more realistic approach to the concept of automatic implementation of technical changes; based, inter alia, on the NCTS experience, it was proposed that transitional periods should be envisaged to allow for the necessary technical adaptations. In line with the above comments, GE.2 requested the secretariat to re-draft the provisions on these issues accordingly, for the next session.

29. The Group also discussed prospective provisions dealing with a functional fall-back procedure. The secretariat referred to the procedures described in the Reference Model and proposed that the corresponding legal provision could include the two tools currently envisaged, notably (a) the use of a fall-back system accessible via web interface, or (b) the

use of an accompanying document that GE.1 is currently working on. In light of this information, GE.2 requested the secretariat to draft the relevant legal provision for consideration at the next session.

30. GE.2 also considered draft articles 5 to 11 and provided detailed guidance on elements that needed to be clarified, fine-tuned, further elaborated or simplified and requested the secretariat to incorporate these comments into revised draft articles for further consideration at the next session. For reasons of efficiency and ease, GE.2 agreed with the proposal by the secretariat to prepare, for the next session, a consolidated new draft Annex, taking into account all the discussions and comments of the third session.

## **XI. Provisions of the TIR Convention that may be affected by the introduction of eTIR (agenda item 9)**

31. This item was not discussed due to a lack of time

## **XII. Other business (agenda item 10)**

32. This item was not discussed due to a lack of time

## **XIII. Dates of the next session (agenda item 11)**

33. The Group of Experts decided to hold its fourth session on 16 and 17 May 2017 and noted that GE.1 would hold its twenty-sixth session on 18 and 19 May 2017.

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