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Item 6 of the provisional agenda

**Format, administrative structure and substantive content
of the eTIR legal framework**

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Note by the secretariat

I. Mandate

1. At its previous session, the Group of Experts on Legal Aspects of Computerization of the TIR Procedure (GE.2) decided to focus its work on developing an optional Annex to the TIR Convention. In line with this decision, GE.2 proceeded to consider 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 and provided detailed instructions to the secretariat for amending, re-drafting or supplementing the provisions proposed therein. Against this background and 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 optional Annex to the TIR Convention, taking into account all the discussions and comments of the third session (see ECE/TRANS/WP.30/GE.2/6).

2. In line with the above, the secretariat has prepared the present document which includes, in Annex I, the amendments required to the body of the TIR Convention and in Annex II, a draft Annex 11. Comments, references and considerations by the secretariat on the drafting of the provisions are provided in the text as footnotes.

II. Considerations by the Group of Experts

5. GE.2 is invited to consider the possible amendments to the body of the TIR Convention and the draft optional Annex as contained in the Annexes to the present document and provide further guidance and instruction.

Annex I

Amendments to the main body of the Convention

Article 1 new paragraph (s): Definition of the eTIR procedure¹

(s) The term “eTIR procedure” shall mean the TIR procedure² which is carried out under cover of an electronic TIR guarantee and implemented by means of electronic data exchanged in accordance with the provisions of Annex 11.³

Article 58: Reservations⁴

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.

***Ibis.** Any Contracting Party may, at any time after the entry into force of Annex 11, 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 Ibis* 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 Ibis* of this Article, no reservation to this Convention shall be permitted.

¹ In line with the decision of GE.2 at its third session, see ECE/TRANS/WP.30/GE.2/6, para. 27 “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.”

² By referring here to the TIR procedure, the provision makes clear that eTIR is to be implemented exactly like the TIR procedure, but by electronic means as specified in Annex 11, effectively affirming mutatis mutandis application of the Convention.

³ It is assumed that an authorized TIR Carnet holder is automatically also authorized, under the same conditions (Annex 9, Part II), to use the eTIR procedure as long as the requirements for carrying out an eTIR procedure (as specified in the eTIR Reference Model) are met (e.g. ability to provide the required declaration data electronically).

⁴ In line with the decision of GE.2 at its third session, see ECE/TRANS/WP.30/GE.2/6, para. 26 “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.

New Article 60bis: Special procedure for amending Annex 11

1. Annex 11 shall apply in the relations between the Contracting Parties to this Convention that have not entered a reservation as provided for under Article 58 paragraph 1bis.⁵ Amendments to Annex 11 shall be governed by the special procedure as laid down in the present Article.
2. 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 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 shall be adopted by a majority of those Contracting Parties present and voting that have not entered a reservation as provided for in Article 58, paragraph 1bis.⁶
3. Amendments to Annex 11 considered and adopted in accordance with paragraph 2 of this Article shall be communicated by the Secretary-General of the United Nations to the Contracting Parties that have not entered a reservation as provided for in Article 58, paragraph 1bis, for their acceptance. The date of entry into force of such amendments shall 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 have not entered a reservation as provided for in Article 58, paragraph 1bis, whichever number is less, notify the Secretary-General of the United Nations of their objection to the amendment.⁷
4. Contracting Parties that have entered a reservation as provided for in Article 58 paragraph 1bis of this Convention shall not have the right to raise an objection as provided for in paragraph 3 of this Article.⁸
5. Explanatory Notes referring to provisions contained in Annex 11 shall also be subject to the amendment procedures specified in the present Article.⁹

⁵ In line with the decision of GE.2 at its third session, see ECE/TRANS/WP.30/GE.2/6, para. 26. The secretariat would like to note that, technically, the existence of Article 58 paragraph 1bis would imply optional implementation and therefore it would not technically be necessary to repeat the scope of application of Annex 11 in Article 60bis. However, it could be kept for the purpose of ensuring that no objections would be raised to its entry into force, namely in order to make sure all Contracting Parties understand its optional nature.

⁶ It is necessary to maintain the principle that rights and obligations are provided to those who have given consent to be bound. Contracting Parties not applying Annex 11 may participate in discussions and provide their views, for the purpose of being inclusive, however, a qualified majority of those who are bound to implement it would be necessary to ensure that implementation is not obstructed by the views of Contracting Parties that do not apply it.

⁷ In line with the decision of GE.2 at its third session, see ECE/TRANS/WP.30/GE.2/6, para. 22 “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.”

⁸ This is, in legal terms, self-evident based on the principles of international law. However, it is necessary to explicitly mention it so that there is no confusion or misunderstanding on the functioning of Annex 11.

⁹ Or other formulation as decided by GE.2. This is necessary since Explanatory Notes are Annex 6 of the Convention and, thus, subject to the amendment procedure of Article 60.

New Article 58 quater: establishment of subsidiary bodies related to Annex 11

A technical implementation body (TIB) composed of all Contracting Parties that have not entered a reservation as provided for in Article 58 paragraph 1bis shall be established. Its composition, functions and rules of procedure are set out in Annex 11.¹⁰

¹⁰ The purpose of this provision is to ensure that the technical body is incorporated into the TIR Convention structure and, therefore, not a UNECE/ITC subsidiary body. It is also a means of ensuring that there is appropriate mandate within the body of the TIR Convention to allow that this body will be serviced by the UNECE secretariat.

Annex II

Text of Annex 11

Annex 11 Implementation of the eTIR procedure

Article 1 Scope of application

The provisions herein 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 the TIR Convention, 1975, that have not entered a reservation as provided for in Article 58, paragraph 1bis of the Convention.

Article 2 Definitions

1. 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. It allows the management by customs of data on guarantees and the secure exchange of data between national customs systems related to the international transit of goods, vehicles and/or containers according to the provisions of the TIR Convention, 1975.

2. 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 eTIR procedure or pursue a TIR transport.¹

3. The term “declaration” shall mean the act whereby the holder, or his representative, indicates in the prescribed form and manner a wish to place goods under the eTIR procedure.²

Article 3 Implementation of the eTIR procedure

The Contracting Parties shall connect their national IT systems³ to the eTIR international system in line with the conceptual, functional and technical documentation managed and maintained by the technical implementation body as established under article 58quater.

Article 4 Composition, functions and rules of procedure of the technical implementation body

1. The technical implementation body shall be composed of experts representing the national administrations of the Contracting Parties that have not entered a reservation as provided for in Article 58, paragraph 1bis. Its sessions shall be convened at regular

¹ As defined in the eTIR Reference Model

² As defined in the eTIR Reference Model

³ GE.2 may wish to consider if a time-frame should be specified.

intervals, as required for the maintenance of the eTIR conceptual, functional and technical documentation. The Committee shall be regularly informed of the activities and considerations of the technical implementation body.

2. 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 between competent authorities of Contracting Parties on matters falling within its competence.

3. The technical implementation body shall ensure that all the conceptual, functional and technical documentation required for the implementation of the eTIR procedure is kept up-to date and accessible to all Contracting Parties.

4. The technical implementation body shall adopt amendments to the technical specifications of the eTIR procedure and decide on the appropriate transitional periods for their implementation by Contracting Parties.

5. The technical implementation body shall discuss and propose amendments to the functional specifications of the eTIR procedure, which shall be transmitted to the Committee and approved by a majority of Contracting Parties that have not entered a reservation as provided for in Article 58, paragraph 1**bis**.

6. The technical implementation body may consider amendments to the conceptual specifications of the eTIR procedure if so requested by the Contracting Parties that have not entered a reservation as provided for in Article 58, paragraph 1**bis**. Amendments to the conceptual specifications of the eTIR procedure shall be approved by a majority of Contracting Parties that have not entered a reservation as provided for in Article 58, paragraph 1**bis** and implemented at a date to be determined at the time of approval.

Article 5

Submission of advance cargo information⁴

1. The advance cargo information shall be submitted electronically to the competent customs authorities.

2. Contracting Parties shall accept the submission of Advance Cargo Information via the eTIR international system. Contracting Parties shall also publish the list of other electronic means by which advance cargo information can be submitted.

Explanatory Note to Article 5, paragraph 2

11.5.2 Contracting Parties are recommended to allow, in as far as possible, the submission of advance cargo information by the means indicated in the relevant functional and technical documentation.⁵

⁴ In line with the decision of GE.2 at its third session see ECE/TRANS/WP.30/GE.2/6, paras. 16, 18 and 19

⁵ This refers to the possibility to submit ACI via third-parties (e.g. TIR-EPD), or directly to the national system of the customs office of departure or via the country of residence. This remains a recommendation subject to the decision of competent authorities. However, ACI submitted via the eTIR international system shall be considered fully compliant and be accepted by Contracting Parties (obligatory).

Article 6

Authentication of the holder at departure⁶

1. The holder sending the advance cargo information in line with Article 5 shall be authenticated.
2. The competent authorities of each Contracting Party shall recognize authentications performed by the eTIR international system.
3. The competent authorities of each Contracting Party shall publish a list of authentication mechanisms other than that specified in paragraph 2 of the present Article, that may be used.

Explanatory Note to Article 6, paragraph 3

11.6.3 Contracting Parties are recommended to recognize, in as far as possible, the authentications performed by the means indicated in the functional and technical documentation.⁷

Article 7

Authentication of the holder en route and at destination⁸

The competent authorities of customs offices en route and of destination shall recognize the authentication of the holder performed by the competent authorities of the country to which the advance cargo information is submitted.

Article 8

Additional data requirements

Contracting Parties should limit data requirements to those contained in the functional and technical documentation. 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 the present Annex.

Article 8

Fall-back procedure

1. 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 documentation;
 - (b) shall accept the accompanying document, as specified in the functional and technical documentation.

⁶ As above

⁷ This refers to the possibility to rely on authentications performed by third-parties (e.g. TIR-EPD) or by the country of residence. This remains a recommendation subject to the decision of competent authorities. However, authentications performed via the eTIR international system shall be considered fully compliant and be accepted by Contracting Parties (obligatory).

⁸ Authentication of the holder and authentication of the sender of ACI are different processes and thus specified in separate provisions.

Article 9**Hosting of the eTIR international system**

1. The United Nations Economic Commission for Europe (UNECE) shall be responsible for managing the eTIR international system.
2. UNECE shall assist countries in connecting their IT systems to the eTIR international system.
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.⁹

Article 10**Data management by UNECE¹⁰**

1. UNECE shall make the appropriate arrangements for the storage and archiving of the data in the eTIR international system.
- [2. Contracting Parties should notify¹¹ the TIR secretary of TIR transports carried out under the eTIR procedure for which the certificate of termination has been obtained in an improper or fraudulent manner or for which no termination has taken place, resulting in a claim for payment of import or export duties and taxes.]
3. Data pertaining to TIR transports carried out under the eTIR procedure, for which an irregularity has been notified in line with paragraph 1 of the present Article, shall be stored in the eTIR international system for a period of 5 years after the settlement of the claim has been notified.¹²
4. 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.
5. 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 guarantee chain, 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.
3. 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.

⁹ Tentative, still under discussion

¹⁰ There is no need to include here the operational use of the data by customs for risk management purposes because this objective is stipulated in the definition of the eTIR international system in Article 2, paragraph 1 of the draft Annex.

¹¹ This tentative provision is flagged for further discussion as potential complications have been identified.

¹² While paragraph 1 of this article allows discretion to UNECE to decide on how to store and archive information, this provision provides an exception to paragraph 1. These special cases shall be handled in a specific way.

Article 11

Publication of list of customs offices capable of handling eTIR

1. Each Contracting Party shall publish the list of approved customs offices where TIR operations under the eTIR procedure can start, terminate or pass through.
 2. Each Contracting Party shall ensure that its list of customs offices, pursuant to paragraph 1 of this Article, is at all times accurate and updated in the electronic database for approved customs offices, developed and maintained by the TIR Executive Board.
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