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### Inland Transport Committee

#### Working Party on Customs Questions affecting Transport

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

###### First session

Geneva, 16–17 November 2015

### Report of the Group of Experts on Legal Aspects of Computerization of the TIR Procedure (GE.2) on its first session

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## **I. Attendance**

1. The Group of Experts (GE.2) held its first session from 16 to 17 November 2015 in Geneva. The session was attended by representatives of the following countries: Albania, Belarus, Croatia, Czech Republic, Finland, Greece, Hungary, Iran (Islamic Republic of), Italy, Poland, Russian Federation, Switzerland and Turkey. Representatives of the European Union (EU) were also present. The following non-governmental organizations were represented: the International Road Transport Union (IRU), International Bureau of Containers (BIC).

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

*Documentation:* ECE/TRANS/WP.30/GE.2/1

2. GE.2 adopted the provisional agenda prepared by the secretariat (ECE/TRANS/WP.30/GE.2/1) after amending item 6 on the tentative dates of the next session to 4 and 5 April 2016.

## **III. Opening Statement**

3. In his opening statement, Mr. Miodrag Pesut, Chief of the Transport Facilitation and Economics Section of the United Nations Economic Commission for Europe (UNECE), welcomed all delegations to the first session of GE.2, and expressed his appreciation for the attendance in light of the tragic events in Paris the previous week. On the first day of the meeting, the participants of GE.2 held a minute of silence at 12:00 p.m., in solidarity with the victims of the attack.

## **IV. Election of officers (agenda item 2)**

4. The Group of Experts elected Mr. Marco Ciampi (Italy) as Chair for its sessions in 2015.

## **V. Administrative arrangements (agenda item 3)**

*Documentation:* ECE/TRANS/WP.30/2014/14 and Corr.1, ECE/TRANS/WP.30/GE.2/2015/1

5. GE.2 was informed that the Terms of Reference (ToR) of the Group of Experts, as contained in documents ECE/TRANS/WP.30/2014/14 and Corr.1, had been approved by the Inland Transport Committee at its seventy-seventh session on 24–26 February 2015 (see ECE/TRANS/248, para. 103) and by the Executive Committee of UNECE (EXCOM) on 31 March 2015. GE.2 adopted its ToR, as contained in these documents. GE.2 also decided to adopt the Rules of Procedure (RoP) of its parent body, the Working Party on Customs Questions affecting Transport (WP.30) as contained in Annex II of document ECE/TRANS/WP.30/2015/7.

6. In line with its ToR, GE.2 adopted its work plan, as contained in document ECE/TRANS/WP.30/GE.2/2015/1 and which clearly defines its objectives and activities, including a time schedule for their implementation. Under this agenda item, GE.2 noted that the tentatively scheduled second and third sessions coincide with national holidays that may preclude some delegations from attending. In this respect, the secretariat was requested

to look into the possibility of rescheduling these sessions, subject to the availability of rooms and interpretation services. The secretariat agreed to look into this issue, but recalled that the dates of the second session had already been changed once, from 3–4 May 2016 to 4–5 April 2016, due to the unavailability of meeting rooms.

## **VI. Legal aspects of the computerization of the TIR procedure: current status (agenda item 4)**

*Documentation:* ECE/TRANS/WP.30/2014/7, ECE/TRANS/WP.30/2014/13, ECE/TRANS/WP.30/2011/4/Rev.1, ECE/TRANS/WP.30/2015/4, ECE/TRANS/WP.30/GE.2/2015/2

7. GE.2 took note of the preparatory work of WP.30 (ECE/TRANS/WP.30/2014/7 and ECE/TRANS/WP.30/2014/13) on the legal aspects of computerization of the TIR procedure. These documents outline the main considerations of WP.30, as well as a first set of draft provisions for the future eTIR legal framework. GE.2 also 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 of the eTIR Reference Model (ECE/TRANS/WP.30/2011/4/Rev.1)<sup>1</sup> will form the basis of its work.

8. GE.2 considered document ECE/TRANS/WP.30/GE.2/2015/2 under the same agenda item, providing an overview of pending substantive issues to be considered in the development of the legal framework required for the computerization of the TIR procedure. GE.2 decided to consider each element contained in the document separately, as follows:

(a) Compatibility of the eTIR legal framework with national legal requirements: 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. However, the Russian Federation informed GE.2 that the current proposal of mutual recognition of authentications performed at the country of departure would not be compatible with the legislation of the Russian Federation (see point d). Bearing in mind that not all TIR Contracting Parties take part in the work of GE.2, the Group of Experts was of the view that it would possibly be relevant to conduct a survey to seek the information from all TIR Contracting Parties. As a first step, GE.2 requested the secretariat to provide, at its next session, a consolidated document containing the results of relevant surveys already undertaken by GE.1, in order to determine the appropriate next steps.

(b) Administration and financing of the eTIR international system: GE.2 was informed by the secretariat about the preference of WP.30 for the eTIR international system to be hosted and administered by UNECE, and that the secretariat would be able to accommodate this request, provided that the required financing is secured. In this respect, GE.2 recalled the recommendation of GE.1 to finance the eTIR international system through an amount per eTIR transport, similar to the one used to finance TIRExB. Various delegations pointed to the benefits of different financing options, including, but not limited to, the possibility of an equal contribution system by each Contracting Party. The

<sup>1</sup> See Chapters 1 and 2 of Version 4.1a of the eTIR Reference Model (ECE/TRANS/WP.30/2011/4/Rev.1), available at: [www.unece.org/fileadmin/DAM/trans/bcf/wp30/documents/ECE-TRANS-WP30-2011-4r1e.pdf](http://www.unece.org/fileadmin/DAM/trans/bcf/wp30/documents/ECE-TRANS-WP30-2011-4r1e.pdf)

delegation of EU informed GE.2 that, for the use of the New Computerised Transit System (NCTS) within the framework of the Convention on a common transit procedure, the access to the common communication network/common systems interface (CCN/CSI) developed and maintained by the European Commission is needed; in this respect special rules are applied for the contribution for the access and the use of CCN/CSI by all EU member States and other Contracting Parties to the Common Transit Convention. While other possibilities were not excluded, GE.2 was of the general view that the recommendation of GE.1 appeared to be the most suitable option for the time being. It was also pointed out during discussions that some form of pre-financing or initial investment would be required in order to set up the eTIR international system. Against this background, GE.2 recalled that an estimation of the amounts required to develop and maintain the eTIR international system, including infrastructure, technical support, maintenance and training are presented in the Cost-Benefit Analysis contained in the eTIR Reference Model. In addition, GE.2 was of the view that the administration of the system and the specific roles and responsibilities of UNECE, should be addressed separately from the financing the eTIR international system. Finally, GE.2 requested the secretariat to prepare a background document, on the basis of its discussions and providing further information that would assist GE.2 in advancing the discussions on this issue.

(c) Data confidentiality considerations: The secretariat informed GE.2 that the eTIR Reference Model has been devised in a way that all actors involved in the paper procedure will have access to the same information under the electronic procedure and that the eTIR international system will ensure the secure exchange of information between the actors. In this respect, 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 the 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. Considering the open-ended questions under this item, GE.2 decided to revert to this issue at its next session. The secretariat invited delegations to provide, before 25 January 2016, their views or experiences in this area as a basis for further discussions at the next session.

(d) Identification of the holder and verification of the integrity of electronic data interchange messages: The delegation of the Russian Federation informed the Group of Experts that, according to its national legislation, the legal validity of electronic documents as well as the transmittal of secure electronic documents to the Federal Customs Service of the Russian Federation (FCS) depends on certificates of authenticity and integrity through the use of cryptographic methods. FCS uses its own (national) standards for cryptographic algorithms, in order to create and verify electronic signatures (e-signatures). National cryptographic algorithms used by the public authorities of the member States of the Eurasian Economic Union are not, as yet, compatible with each other. The Russian Federation also noted that the creation and use of e-signatures can be performed by different technologies; as such the most effective mechanism for recognizing the legal validity of electronic documents is by means of a trusted third party. Currently, the competent authorities of the Russian Federation are working towards the development of the appropriate legislative basis for setting up an organization that will function as a trusted third party with the responsibility of verifying e-signatures in electronic documents. This will enable the cross-border exchange of electronic documents, including those created in accordance with the standards and requirements of foreign law. Against this background, the Russian Federation was invited, and accepted, to provide an in-depth presentation at the next session, in order to facilitate further discussions of GE.2 on this issue. Other delegations were 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, and therefore the draft Article 8 should be amended. In concluding the discussions under this sub-item, the secretariat was requested to prepare a document for the next session, building on the comments received, to serve as a basis for further discussions on this issue.

(e) Legal status of the eTIR Reference Model and amendment procedure: The secretariat informed GE.2 that the eTIR Reference Model, in view of its technical nature, should be subject to a separate amendment procedure. The secretariat also clarified that the eTIR Reference Model could be held as a separate technical document to which legal status can be attached by including a reference to it in the Protocol (such as the one proposed in the draft Article 4) and with the establishment of the appropriate body of technical experts that would amend its technical parts when required. GE.2 discussed the possibility to involve existing bodies, such as WP.30 and GE.1 in the approval process of technical amendments but it was recalled that, despite their leading role in the preparation of the eTIR Reference Model, the technical amendments would have to be decided by those countries that will implement eTIR. Further to this, various delegations questioned whether it would be necessary to include provisions on the main principles of the eTIR procedure in the Protocol or whether the reference to “mutatis mutandis” application of the TIR Convention, 1975, would provide sufficient legal clarity. Under this item, GE.2 also discussed the possibility of “inactive” Contracting Parties to the Protocol, similarly to the situation with the TIR Convention, 1975, and whether this could potentially create difficulties in the amendment of the eTIR legal framework, including its technical parts. The delegation of EU provided some information on the way that EU legislation treats technical documents that serve to implement legal provisions and offered to provide further information at the next session. As a general conclusion, GE.2 was of the view that the eTIR Reference Model 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. As such, the secretariat was requested to prepare a document for the next session, presenting substantiated options with regard to which parts of the eTIR Reference Model might have to be replicated in the protocol as well as possible amendment procedures.

(f) Administrative structure of the Protocol: The Group of Experts was informed that, within the context of a Protocol, the establishment of governing bodies would most likely be required. The secretariat explained that a Protocol, although linked to the parent Convention, would only bind Contracting Parties that choose to accede to it and, as such, decision making powers of AC.2 as concerns the Protocol would either have to be limited, or the Contracting Parties to the Protocol would have to create a separate decision making forum. In light of this information, 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 Group of Experts 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. In this context, the delegation of Iran (Islamic Republic of) informed GE.2 that in Iran (Islamic Republic of), all customs procedures have been fully computerized, and that, in future, customs offices will not be able to accept or process paper documents. The secretariat explained that it would be very difficult to enforce a mandatory transition to eTIR and that, in part, this was the reason that WP.30 had preferred the option of a Protocol that would allow only those that are ready and willing to proceed

with eTIR, to do so. Various delegations recalled, in this respect, the joint statement on the computerization of the TIR procedure, adopted by AC.2 at its sixty-first session (see ECE/TRANS/WP.30/AC.2/125 para. 29 and Annex II), which invites all Contracting Parties to constructively contribute to the development of a legal framework that would enable progressive implementation of a computerized TIR procedure. 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. In conclusion, GE.2 was of the view that several questions remained to be clarified and decided to revert to this question at its next session. GE.2 requested further information to be provided by the secretariat in the form of a document at the next session on (i) the exact nature and legal status of a Protocol vis-à-vis its parent Convention and (ii) background information on similar computerization processes, e.g. eATA and eCMR and any proposals that could be considered in light of the issues raised during the discussion.

(g) Provisions of the TIR Convention that may be affected: The Group of Experts agreed that, the question of provisions of the TIR Convention, 1975, that may be affected by the introduction of the eTIR legal framework, should be closely monitored and assessed as the work progresses, particularly in view of the discussions on the suitability of a Protocol vis-à-vis another format, on which further discussions are to take place.

(h) Cooperation with other organizations: GE.2 mandated the secretariat to invite various organizations relevant to its work to attend and contribute to its meetings.

9. In conclusion to this agenda item, GE.2 requested the secretariat to include all the above listed issues as separate items of the agenda for the next session.

## **VII. Other business (agenda item 5)**

10. Under this agenda item, the delegation of Greece underlined the importance of the eTIR Reference Model as the main background and basis of the work of GE.2 and requested that an in-depth presentation on the particulars of the eTIR Reference Model be provided by the secretariat at the next session. GE.2 agreed to this request.

11. The secretariat informed the Group of Experts that, based on the dates of the next session, if any delegations would be interested in submitting documents or proposals for discussions, they should transmit them to the secretariat before 25 January 2016, to enable timely translation in all working languages.

12. As a concluding note, the delegation of EU reminded the Group of Experts of the forty-year anniversary of the TIR Convention. Despite the problems faced, over the years, the Convention has survived its growing pains and has continued to serve its purpose; the establishment of GE.2 and its work that has just commenced will serve to demonstrate that Contracting Parties continue to value its relevance for international transport.

## **VIII. Dates of the next session (agenda item 6)**

13. The Group of Experts decided to hold its second session from 4 to 5 April 2016.

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