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**ECONOMIC COMMISSION FOR EUROPE**

**INLAND TRANSPORT COMMITTEE**

**Working Party on Customs Questions Affecting Transport**

One-hundred-and-seventeenth session  
Geneva, 25-28 September 2007  
Item 8 (b) (i) of the provisional agenda

**CUSTOMS CONVENTION ON THE INTERNATIONAL TRANSPORT  
OF GOODS UNDER COVER OF TIR CARNETS (TIR CONVENTION, 1975)\***

Revision of the Convention

Preparation of Phase III of the TIR revision process

Note by the secretariat

**I. BACKGROUND**

1. At its one-hundred-and-sixteenth session, the Working Party considered document ECE/TRANS/WP.30/2007/8, prepared by the secretariat, containing a proposal to review the mandate for the establishment of an informal Ad hoc Expert Group on Legal Aspects of Computerization of the TIR Procedure. The Working Party agreed that, in view of the nature and importance of the issues at stake, it was appropriate, until further notice, that they be considered by the Working Party itself. The Working Party requested the secretariat to submit a document

\* The UNECE Transport Division has submitted the present document after the official document deadline due to resource constraints.

for discussion at its next session, highlighting the issues of a legal or strategic nature which had been identified so far in the course of the eTIR Project, providing, where possible, first considerations (ECE/TRANS/WP.30/232, para. 34).

## II. IDENTIFICATION OF ISSUES OF A STRATEGIC AND/OR LEGAL NATURE

2. At its tenth session (Geneva, 25-26 September 2006), the Informal ad Hoc Expert Group on Conceptual and Technical Aspects of Computerization of the TIR Procedure identified the following issues of a strategic and/or legal nature (see ECE/TRANS/WP.30/GE.1/2006/10, para. 10):

Issues of a strategic nature:

- the possibility to increase the maximum number of TIR operations and places of loading and unloading per TIR transport;
- the possibility to provide the international guarantee chain with detailed data contained in the Customs declaration;
- methods of submission of the Customs declaration to Customs.

Issues of a legal nature:

- the distinction between termination and discharge in an electronic environment;
- the legal status of eTIR data as compared to the legal status of data contained in the paper TIR Carnet during the transitional period where both systems will run in parallel;
- the legal status of an accompanying paper document as a fall-back in the eTIR system;
- the establishment of transitory legal provisions.

3. The IRU also raised three issues of a strategic and/or legal nature:

- the submission of the Customs declaration to each Customs office of departure/entry en route (ECE/TRANS/WP.30/2007/9-ECE/TRANS/WP.30/GE.1/2007/6, para. 5);
- the role of the TIR Carnet (ECE/TRANS/WP.30/2007/15-ECE/TRANS/WP.30/GE.1/2007/10);
- the validation of the guarantee (ECE/TRANS/WP.30/2007/15-ECE/TRANS/WP.30/GE.1/2007/10).

4. As requested by the Working Party, this document provides, where possible, the secretariat's preliminary considerations on the strategic and/or legal issues listed above.

### **III. PRELIMINARY CONSIDERATIONS BY THE SECRETARIAT**

#### **A. The possibility to increase the maximum number of TIR operations and places of loading and unloading per TIR transport**

5. Under this heading, two similar but not identical issues have been raised. On the one hand, the number of TIR operations, which is not limited by the TIR Convention. In practice, the twenty voucher TIR Carnet provides for maximally ten TIR operations. However, the simultaneous use of two TIR Carnets for one single TIR transport is permitted (see comment to Article 28 of the Convention), thus doubling the maximum number of TIR operations per TIR transport to twenty.

6. With regard to the maximum number of loading and unloading places, Article 18 of the Convention is clear: a TIR transport may involve several Customs offices of departure and destination, but their total number should not exceed four. Between 2001 and 2005, the Working Party extensively discussed the issue of increasing the maximum number of loading and unloading places (to six), but, in anticipation of the forthcoming computerization of the TIR procedure, did not take a final decision. As an interim solution, it was agreed that in exceptional cases the consecutive use of two TIR Carnets is allowed, increasing the maximum number of loading and unloading places to seven (see comment to Article 18 of the Convention).

7. From a technical point of view, the maximum number of TIR operations and the maximum number of loading and unloading places could easily be increased without setting a upper limit. However, there may be arguments against this. A recent study by the IRU found that the transport industry did not really seem interested to have the total number of Customs offices of departure and destination increased. The issue of a possible insufficient number of TIR carnets to cover a single transport has never been raised.

8. All things considered, there seems to be no interest, at this point in time, to increase the maximum number of loading/unloading places and TIR operations per TIR transport beyond the number currently allowed on an exceptional basis. Thus, the Working Party may wish to instruct the Expert Group that the eTIR Project, for the time being, limits the maximum number of loading/unloading places to seven and the number of TIR operations per TIR transport to twenty. However, at the same time, it seems appropriate to request the Expert Group to make provisions that a further extension in the future could easily be achieved, if the need arises.

#### **B. The possibility to provide the international guarantee chain with detailed data contained in the Customs declaration**

9. Currently, the international guarantee chain only has access to data contained in the Customs declaration after the TIR Carnet holder has returned a TIR Carnet via the national association to the international organization (as far as these data appear on the yellow voucher, which is not for Customs use). Thus, the potential value of the data for the guarantee chain is limited.

10. In the current draft of Chapter 2 of the eTIR Reference Model, it is envisaged that the eTIR international system forwards to the guarantee chain any information (including Customs declaration data) on TIR transports and TIR operations related to the guarantees it has issued, other than information which is restricted to Customs (ECE/TRANS/WP.30/2007/16-ECE/TRANS/WP.30/AC.2/2007/15, Chapter 2.1.2.2.5). This would not only provide such data in an electronic format, but it would also provide the data at an early stage of the TIR transport, thus enabling the guarantee chain to monitor it.

11. When discussing this issue, the Working Party may wish to address the aspect of confidentiality of information in case Customs share data with third parties. In this context various aspects require attention. First of all, there is the question if Customs authorities are authorized by law to share data with third parties and, if so, which conditions need to be met. Then there is the issue that such data should only be accessible to these third parties for purposes within their field of competence. Finally, there is the issue of the consequences in case data get into the hands of other parties with the potential risk of misuse. At the same time, however, the Working Party should keep in mind that the potential contentious aspect of this issue is not linked to the introduction of the eTIR system as such, but it already exists today.

### **C. Methods of submission of the Customs declaration to Customs**

12. According to the current draft of Chapter 2 of the eTIR Reference Model, the TIR Carnet holder will submit the Customs declaration by electronic means to the Customs office of departure for acceptance. Once accepted, the Customs office of departure will forward the information to the subsequent Customs authorities involved in the TIR transport via the eTIR international system (ECE/TRANS/WP.30/2007/16-ECE/TRANS/WP.30/AC.2/2007/15, Chapter 2.1.2.4.2). The IRU, on the other hand, proposes that the holder submits the Customs declaration including the required guarantee data to each and every Customs office of departure/entry en route involved in a given TIR transport. According to the IRU, its approach honours the current provisions of the TIR Convention (in particular Articles 1 (o) and 21) and meets the requirement of international Customs law that the holder, as declarant, transmits the Customs declaration to the Customs authorities in each Contracting Party involved in the TIR transport. In addition, the IRU refers to possible legal complications in case divergences are found between the Customs declaration, as submitted by the holder, and after its retransmission to Customs authorities en route (ECE/TRANS/WP.30/2007/16-ECE/TRANS/WP.30/AC.2/2007/15, footnote to Chapter 2.1.2.4.2). This view, expressed by the IRU at the special working session of the drafting group which met in Belgrade on 6-7 March 2007 ("Belgrade session"), is not shared by Customs authorities. They are of the opinion that the current provisions of the TIR Convention do not preclude the eTIR international system from transmitting, on behalf of TIR Carnet holder, the Customs declaration to the following Customs offices of entry en route, which would accept the Customs declaration when the goods are presented at the border (See: ECE/TRANS/WP.30/2007/9-ECE/TRANS/WP.30/GE.1/2007/6, para. 5).

13. The issue was also considered by the Working Party at its one-hundred-and-sixteenth session, but did, so far, not result in new or amended guidelines by the Working Party in relation to draft Chapter 2 of the Reference Model (ECE/TRANS/WP.30/232, para. 32).

**D. The distinction between termination and discharge in an electronic environment**

14. As is the case today, the eTIR Project envisages that Customs authorities send separate messages to the eTIR international system to notify the termination and the discharge of a TIR operation. In the course of the discussions by the Expert Group, the question arose as to whether it would not make sense to merge the two messages, because already at the time of termination all relevant data regarding a certain TIR operation could be available to Customs authorities, which would enable them to establish discharge at the same time as certifying the termination. Although from a technical point of view it might make sense to merge both messages, the Working Party may wish to approach the issue with caution, considering that there is a clear legal distinction in the TIR Convention between the termination and the discharge of a TIR operation.

**E. The legal status of eTIR data as compared to the legal status of data contained in the paper TIR Carnet**

15. This and similar issues, such as the legal status of an accompanying document and the establishment of transitory legal provisions (see Sections F and G), need to be reviewed against the background of the discussion on the pros and cons of amending the current TIR Convention versus working towards a review conference, resulting in the conclusion of a new Convention, the so-called eTIR-Convention (see TRANS/WP.30/222, paras. 36-37 and TRANS/WP.30/2005/20).

16. A possible way forward may be to request the TIR secretariat, through the TIR Administrative Committee, to commission an independent legal study on the various aspects of amending the current TIR Convention versus the conclusion of a new Convention. Alternatively, the Working Party could mandate a small group of Customs lawyers to undertake this task.

**F. The legal status of an accompanying paper document as a fall-back in the eTIR system**

17. See under Section E.

**G. The establishment of transitory legal provisions**

18. See under Section E.

**H. The submission of the Customs declaration to each customs office of departure/entry en route**

19. Document ECE/TRANS/WP.30/2007/15-ECE/TRANS/WP.30/GE.1/2007/10, submitted by the IRU, also covers this strategic issue (see under Section C).

#### **J. The role of the TIR Carnet**

20. The current draft of Chapter 2 of the eTIR Reference Model envisages the request by the holder to obtain a guarantee from the guarantee chain and the submission by the holder of the Customs declaration to the Customs office of departure as two separate acts (ECE/TRANS/WP.30/2007/16-ECE/TRANS/WP.30/AC.2/2007/15, Chapters 2.1.2.4.1 and 2.1.2.4.2). However, the IRU considers the inseparability (“intrinsic combination”) of both acts in the paper TIR Carnet as the cornerstone of the TIR system. This view, first expressed by the IRU at the Belgrade session and later elaborated in document ECE TRANS/WP.30/2007/15-ECE/TRANS/WP.30/GE.1/2007/10, is not shared by Customs representatives, who are of the opinion that the combined function of the TIR Carnet as the Customs declaration and proof of the international guarantee is a consequence of the paper-based system and does not necessarily require continuation in the future (ECE/TRANS/WP.30/2007/9-ECE/TRANS/WP.30/GE.1/2007/6, para. 4).

21. The issue was also considered by the Working Party at its one-hundred-and-sixteenth session, but did, so far, not result in new or amended guidelines by the Working Party in relation to draft Chapter 2 of the Reference Model (ECE/TRANS/WP.30/232, para. 32).

#### **K. Validation of the guarantee**

22. According to the current draft of Chapter 2 of the eTIR Reference Model, the authorities of the Customs office of departure verify the status of a guarantee against the eTIR international system before accepting the declaration (ECE/TRANS/WP.30/2007/16-ECE/TRANS/WP.30/AC.2/2007/15, Chapter 2.1.2.2.3). The IRU, however, is of the opinion that the verification of the guarantee by the Customs office of departure needs to be made to the guarantee chain, either directly or indirectly via the eTIR international system. In the view of the IRU there are a number of practical, operational and legal reasons why this is necessary, (see ECE/TRANS/WP.30/2007/15-ECE/TRANS/WP.30/GE.1/2007/10). At the Belgrade session, the Customs representatives realized that the IRU’s proposal would provide the eTIR Project with the same functionalities as in Chapter 2, but that it might have conceptual and, possibly, legal repercussions and would be a departure from earlier guidelines on the management by Customs of the data on guarantees (see ECE/TRANS/WP.30/2007/9-ECE/TRANS/WP.30/GE.1/2007/6, para. 6).

23. The issue was also considered by the Working Party at its one-hundred-and-sixteenth session, but did, so far, not result in new or amended guidelines by the Working Party in relation to draft Chapter 2 of the Reference Model (ECE/TRANS/WP.30/232, para. 32).

### **III. FINAL CONSIDERATIONS**

24. The Working Party is invited to provide guidance to the secretariat and to the Expert Group on the above issues of a strategic and/or legal nature.

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