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

Second session

Geneva, 4–5 April 2016

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

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I. Attendance

1. The Group of Experts (GE.2) held its second session from 4 to 5 April 2016 in Geneva. The session was attended by representatives of the following countries: Belgium, Finland, Greece, Hungary, Iran (Islamic Republic of), Italy, Poland, Russian Federation, Switzerland, the former Yugoslav Republic of Macedonia and Turkey. Representatives of the European Union (EU) 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.2/3

2. GE.2 adopted the provisional agenda prepared by the secretariat (ECE/TRANS/WP.30/GE.2/3), with the addition of document ECE/TRANS/WP.30/2016/10 by the secretariat and containing comments of various delegations to the report of the first session of GE.2.

III. Opening statement

3. In her opening statement, Ms. Eva Molnar, Director of the Sustainable Transport Division of the United Nations Economic Commission for Europe (UNECE), welcomed all delegations to the second session of GE.2, and highlighted the importance of the discussions taking place in GE.2 for the future of the TIR system. On this note, she wished GE.2 a fruitful and successful meeting.

IV. Election of officers (agenda item 2)

4. The Group of Experts elected Mr. Marco Ciampi (Italy) as Chair for its sessions in 2016.

V. The eTIR Reference Model (agenda item 3)

Documentation: ECE/TRANS/WP.30/2011/4/Rev.1

5. At its previous session, GE.2 underlined the importance of the eTIR Reference Model (ECE/TRANS/WP.30/2011/4/Rev.1) as the main background and basis of its work and requested that an in-depth presentation on the particulars of the eTIR Reference Model be provided by the secretariat at the current session. In line with this request, GE.2 welcomed the detailed presentation of the secretariat. The presentation triggered a number of issues for further discussion, such as, but not limited to, questions on financing and the use of authentication mechanisms or electronic signatures. GE.2 agreed that the issues raised under this item had set the basis for further discussions under the relevant agenda items.

VI. Compatibility of the eTIR legal framework with national legal requirements (agenda item 4)

Documentation: ECE/TRANS/WP.30/GE.2/2016/1

6. At its first session, GE.2 started considerations on the possibility that national legal requirements in some countries may not be compatible with the legal requirements of eTIR. In this context, GE.2 took note of document ECE/TRANS/WP.30/GE.2/2016/1, containing the results of relevant surveys already undertaken by GE.1 in 2005 and 2012 in the framework of the eTIR project. Several delegations were of the view that there would be merit in reviewing the situation again, with a new survey, taking stock of recent developments (such as, but not limited to Regulation (EU) No 910/2014¹). Further to substantive discussions, GE.2 decided to conduct a new survey. For the sake of comparison, the survey should repeat the questions from the 2012 survey. In addition:

(a) The survey should collect information on the various methods of authentication used at customs offices of departure;

(b) The survey should collect information on the various specificities (implementation and processing) of the use of electronic signatures in particular;

(c) The survey should collect information on the legal status/validity of electronic communications (including electronic signatures) in domestic jurisdictions, such as, but not limited to, their admissibility as evidence in national court proceedings.

7. GE.2 requested the secretariat to prepare a draft survey and to circulate it to all participants of GE.2 electronically for comments and inputs. GE.2 decided that the survey should be finalized via electronic communications and launched prior to the next session of GE.2 on 12 and 13 December 2016. GE.2 further requested the secretariat to make an effort, by means of establishing an appropriate timeline and deadlines, to compile preliminary results of the survey for discussion at the next session.

VII. Administration and financing of the eTIR international system (agenda item 5)

Documentation ECE/TRANS/WP.30/GE.2/2016/2

8. GE.2 considered document ECE/TRANS/WP.30/GE.2/2016/2, prepared by the secretariat on the basis of the discussions at the previous session on the administration and financing of the eTIR international system. The delegation of EU provided information on the financing mechanism and structure of the New Computerized Transit System (NCTS), which could be used as a point of reference in future discussions. Although some parallels between the NCTS financing mechanisms and the envisaged eTIR financing mechanism could be drawn, GE.2 agreed that there were significant differences between the two systems that would preclude direct mirroring of the eTIR financing mechanism on NCTS.

9. Some delegations expressed concerns that identification of financing options may be premature, given the number of elements that remained to be clarified. On the other hand, GE.2 was of the general view that the way to finance the eTIR international system (the initial and development costs, as well as the maintenance costs) should be identified as

¹ Regulation (EU) No. 910/2014 of the European Parliament and of the Council, of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, Official Journal L 257 of 28 August 2014).

a matter of priority, taking into account the information available in the eTIR Cost-Benefit-Analysis (CBA). On this point, the delegation of EU reminded GE.2 of the Joint Statement on the Computerization of the TIR Procedure, adopted by the TIR Administrative Committee at its sixty-first session (see ECE/TRANS/WP.30/AC.2/125, para. 29 and Annex II) whereby, all TIR Contracting Parties undertake efforts towards operationalizing eTIR. Further to extensive discussions, GE.2 requested the secretariat to prepare, for consideration at the third session, a document outlining financing possibilities, taking into account the comments and proposals put forward during the second session by various delegations and IRU. Further to this, upon the proposal of EU, GE.2 agreed that this document, once finalized by GE.2, should be transmitted to WP.30 and AC.2, as well as, possibly, to the budgetary organs of UNECE for further consideration and assessment. The delegation of Switzerland added that it would be important to have a final decision on this important issue as soon as possible and, in any case, before the expiration of the mandate of GE.2.

10. On the matter of administration of the eTIR international system, the delegation of Poland requested a clarification on the manner of storage of data namely, whether the data will be stored exclusively in the eTIR international system, whether the Contracting Parties will store the data in their national systems or both. The secretariat clarified that both national systems and the eTIR international system will store data. Furthermore, GE.2, taking the example from the EU practice, was of the view that it would be reasonable and useful if the secretariat would be authorized to use the data of the eTIR international system to extract statistics. However, GE.2 was not ready to discuss the draft provisions on this issue and decided to revert to the pending questions on the administration of the eTIR international system at the next session.

VIII. Data confidentiality considerations (agenda item 6)

11. GE.2 briefly discussed aspects of data confidentiality. Further to what had already been mentioned under the previous agenda item, several delegations were of the view that data confidentiality should, as far as possible, be governed by provisions of national law (where applicable). Concerning the obligations of confidentiality of UNECE as administrator of the eTIR international system, the delegation of IRU proposed the elaboration of a provision similar to Annex 9, Part III, paragraph 4 of the TIR Convention. The delegation of the Russian Federation raised concerns on the security of information more broadly, and was invited to submit, for the next session, a document outlining the elements, which, in the view of the delegation of the Russian Federation, should be further considered under this item.

IX. Identification of the holder and verification of the integrity of electronic data interchange messages (agenda item 7)

Documentation ECE/TRANS/WP.30/GE.2/2016/3

12. GE.2 welcomed the presentation of the delegation of the Russian Federation, outlining the current plans towards the creation of a so-called Transboundary Trust Space (TTS). This would entail the development of an appropriate legislative basis for trusted cross-border exchange of electronic documents.

13. GE.2 considered document ECE/TRANS/WP.30/GE.2/2016/3 prepared by the secretariat on the basis of the discussions of the previous session. In the first instance, GE.2 was of the general view that, since the authentication of the identity of the holder or their representative only takes place at the customs office of departure, it would fall under the

overall scope of the checks and controls performed at the customs office of departure that ought to be accepted by the customs offices en route and at destination, in keeping with the principle of the TIR Convention on mutual recognition. As such, several delegations proposed that, perhaps, it would not be necessary to specify this element in the legal framework at all. In addition, it was pointed out that, even if such a provision were to be included in the eTIR legal framework, it should be reformulated in such a way as to be in line with the various methods, outlined in the eTIR Reference Model, for submitting the advance cargo information to the customs office of departure.

14. Concerning the various ways for submitting advance cargo information to the customs office of departure, as well as the possibility to include them, as proposed by the delegation of Turkey at the first session, in the eTIR legal framework, various delegations expressed the view that, perhaps, these mechanisms could remain solely a part of the eTIR Reference Model. However, the Group was not ready to take a decision on this issue, particularly in view of the potential legal complexities involved in one of the possible mechanisms for the submission of advance cargo information, namely the possibility for an operator to submit their advance cargo information to the customs system of the home country, for a transport that is to begin in another country. In light of these discussions, GE.2 requested the secretariat to revise document ECE/TRANS/WP.30/GE.2/2016/3 for further consideration at the next session.

X. Legal status of the eTIR Reference Model and amendment procedure (agenda item 8)

Documentation ECE/TRANS/WP.30/GE.2/2016/4

15. GE.2 welcomed the presentation by the delegation of EU, on the legal background of the NCTS technical administration, which provided several examples of best practice that could be taken into account in the consideration of the legal status of the eTIR Reference Model and its amendment procedure. GE.2 noted, in particular, that the specialized technical bodies had functional autonomy outside the relevant legal framework, in order to ensure that various technical issues are dealt with expediently. The Group also took note of document ECE/TRANS/WP.30/GE.2/2016/4, prepared by the secretariat and containing options on how to give a legally binding status to the eTIR Reference Model, as well as possible amendment procedures.

16. GE.2 reiterated its view that the eTIR Reference Model should remain a separate technical document, with legal validity by including an appropriate reference in the eTIR legal framework. GE.2 also agreed that the length and complexity of the eTIR Reference Model would warrant the establishment of an appropriate technical body and a simplified amendment procedure. The delegation of Iran (Islamic Republic of) highlighted the importance of establishing a clear link between the legal framework and the technical basis for implementation as, in its view, technical problems could, in some cases, lead to complications of a legal nature.

17. Against this background, the delegation of IRU recalled its comments, contained in document ECE/TRANS/WP.30/2016/10, proposing the creation of a new technical document of a simplified nature and with a broader scope, to be used as the technical basis for eTIR in the legal framework in lieu of the eTIR Reference Model (see ECE/TRANS/WP.30/2016/10, para.16).

18. In conclusion, and further to substantive discussions, GE.2 requested the secretariat to prepare a document, outlining specifically the procedural and legal modalities of:

- (a) Assigning legal status to the eTIR Reference Model by reference;

- (b) Creating a technical body and its relationship to the various TIR intergovernmental bodies;
 - (c) Creating a simplified amendment procedure.
19. GE.2 agreed that the secretariat could decide to combine this document with a document to be submitted under agenda item 9.

XI. Format and administrative structure of the eTIR legal framework (agenda item 9)

Documentation ECE/TRANS/WP.30/GE.2/2016/5, ECE/TRANS/WP.30/GE.2/2016/6

20. GE.2 recalled that, at its previous session, it had come to the preliminary conclusion that a Protocol would potentially entail more complexity than originally assessed by WP.30. GE.2 was of the view that other formats for the legal framework of eTIR should not yet be excluded at this point (see ECE/TRANS/WP.30/GE.2/2, para. 8(f)). Against this background, GE.2 welcomed the proposal of the delegation of Switzerland in document ECE/TRANS/WP.30/GE.2/2016/5. The proposal offered a number of considerations regarding the merits of an optional Annex to the TIR Convention. GE.2 noted that some of the benefits of this proposal included dispensing with the need for designing a new administrative structure, as well as potential simplification of the financing mechanism, among others.

21. GE.2 also took note of document ECE/TRANS/WP.30/GE.2/2016/6, prepared by the secretariat with information 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 electronic consignment note (eCMR) and the ways in which the legal and technical elements were addressed in those conventions.

22. Various delegations remained in favour of an Additional Protocol to the TIR Convention, quoting, primarily, the advantages of (i) it being relatively faster to prepare and (ii) allowing gradual participation of interested Contracting Parties. However, all delegations recognized that an Additional Protocol would require a lengthy national ratification process, which could outweigh its benefits. The delegation of Iran (Islamic Republic of), stated that it would be in favour of an Optional Annex rather than an Optional Protocol. Several delegations expressed interest in the proposal tabled by the delegation of Switzerland, and found merit in further examining the possibility of an optional Annex to the TIR Convention in more detail. The main possible disadvantage of an optional Annex that was identified was that it would require an amendment to the main body of the Convention; therefore, the entry into force of such a new Annex could be blocked by a single objection at the depositary notification stage. On this point, the secretariat highlighted the importance of the computerization of the TIR procedure and underscored that it would require coordinated efforts to ensure that all Contracting Parties are fully aware that the Annex would be optional and would not impede on any Contracting Party's wish not to implement eTIR.

23. Further to constructive discussions on the advantages and disadvantages of each of the proposed legal formats, and upon the proposal of the delegation of EU, GE.2 consolidated its findings in a preliminary table, attached to the present report in the Annex. GE.2 invited all delegations to provide their views on additional advantages and disadvantages, to be included in the consolidated table. Finally, GE.2 came to the conclusion that discussions thus far have shed some light on the various elements to be taken into account in the formulation of the substantive legal provisions and that, thus, GE.2 should start reviewing draft legal text already at the next session. To this end, the

Group requested the secretariat to draft legal text for the eTIR framework in both formats (as a Protocol and as an Annex) for consideration at the next session.

XII. Provisions of the TIR Convention that may be affected by the introduction of eTIR (agenda item 10)

24. GE.2 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.

XIII. Other business (agenda item 11)

25. No issues were raised for discussion under this item.

XIV. Dates of the next session (agenda item 12)

26. The Group of Experts decided to hold its third session from 12 to 13 December 2016.

Annex

Comparative table of advantages and disadvantages of an Additional Protocol and an Optional Annex to the TIR Convention

	<i>Optional Annex</i>	<i>Optional Protocol</i>
Advantages		
Builds on the existing TIR system	X	X
TIR Carnet can be used as a fall-back	X	X
Interested countries can join anytime	X	X
Maintains the same administrative structure (AC.2/TIRExB)	X	
Drawbacks/Risks		
One country can block the process	X ¹	
Requires ratification		X
Separate financing mechanism has to be identified and established with its own procedures		X
Requires renegotiation/amendment of guarantee agreements	X	X

¹ Even though it does not seem to be in the interest of any contracting party as the annex would be optional