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

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I. Attendance

1. The Group of Experts on the Legal Aspects of Computerization of the TIR Procedure (“GE.2” or Group of “Experts”) held its fifth session on 30 and 31 October 2017, in Geneva. The session was attended by representatives of the following countries: Croatia, Finland, Hungary, Iran (Islamic Republic of), Italy, Netherlands, Poland, Sweden, Switzerland, and Turkey. The following non-governmental organization was represented: International Road Transport Union (IRU).

II. Adoption of the agenda (agenda item 1)

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

2. GE.2 adopted the provisional agenda (ECE/TRANS/WP.30/GE.2/9) with the addition of Informal document WP.30/GE.2 (2017) No. 3 as reference material under agenda item 2.

III. Compatibility of the eTIR legal framework with national legal requirements: Survey on electronic authentication methods (agenda item 2)

Documentation: ECE/TRANS/WP.30/GE.2/2017/3, Informal document WP.30/GE.2 (2017) No. 1 and Informal document WP.30/GE.2 (2017) No. 3

3. GE.2 welcomed document ECE/TRANS/WP.30/GE.2/2017/3 that contained the detailed replies of the thirty-five countries that participated in the survey on electronic authentication mechanisms. The Group of Experts reiterated its findings from the survey that data submitted electronically required authentication in all countries, along with a variety of methods of authentication in use and differing specificities and legal status of electronic signatures (see ECE/TRANS/WP.30/GE.2/8, para. 4). It was noted that a limited number of respondents had indicated that the only applicable authentication method in their countries was the Public Key Infrastructure (PKI) electronic signature that was issued by a domestic certification authority exclusively to the residents of the country. That raised a concern about the methods of authentication in draft Annex 11.

4. The Group of Experts also noted with concern that it was not possible to consider the national requirements of the countries who wished to take part in eTIR pilot projects since they had not participated in the survey. The Group of Experts was of the view that it would be useful to discuss the authentication mechanisms to be used in the eTIR system at the Working Party on Customs Questions affecting Transport (WP.30).

5. In conclusion, the Group of Experts requested the secretariat to prepare a new document that summarized the results of the survey for the consideration of WP.30 at its next session.

IV. Identification of the holder and verification of the integrity of electronic data interchange messages (agenda item 3)

Documentation: ECE/TRANS/WP.30/GE.2/2017/2

6. GE.2 took note of the submission of document ECE/TRANS/WP.30/GE.2/2017/2 that referred to threats to information security from the delegation of the Russian Federation. GE.2 also noted that the submitting delegation was not present to express the concerns of the document. Therefore, GE.2 decided to disregard the document.

V. Financing of the eTIR international system (agenda item 4)

7. The Group of Experts took note that, further to the successful conduct of the eTIR pilot project between Iran (Islamic Republic of) and Turkey and taking into account the Joint Statement on the Computerization of the TIR procedure, adopted in June 2015 by AC.2, the UNECE Executive Committee (EXCOM) had accepted a five year eTIR project with a total budget of USD 1,511,275 on 26 September 2017. On 6 October 2017, UNECE and IRU signed a Memorandum of Understanding on cooperation in the field of the computerization of the TIR procedure and a Contribution Agreement (CA), which would ensure the provision of the necessary funds to finance, among others, an additional Information and Communication Technology (ICT) expert to work on the project and the hosting of the eTIR international system at the UNOG data centre. The Group of Experts took note of the fact that the CA was only accessible to its signatories.

8. The Group of Experts took note that IRU had expressed its readiness to finance the establishment and the maintenance of the eTIR international system at the 147th session of WP.30. The Group of Experts noted that Contracting Parties interested in joining eTIR would have to make the required adjustments to their customs ICT systems and, when required, to finance those adjustments.

9. In light of that positive development, the Group of Experts discussed Annex 11, Article 10, paragraph 3. It considered the possibility to include therein a specific reference to the financing of the operational costs of the eTIR international system by means of an amount per transport, along the same lines as in Annex 8, Article 13, which stipulates the financing method of the operation of the TIR Executive Board and the TIR secretariat. The Group of Experts took note of potential issues with this approach i.e. (a) how and when the funding would move from the development period, funded by means of the CA, to the operational phase, funded by an amount per transport, and (b) the fact that Contracting Parties which do not have the intention to apply Annex 11 might be opposed to such a financing mechanism per TIR transport, as it would also affect their transport operators and, thus, object to eTIR as a whole.

10. While the Group of Experts was of the view that the current text of Annex 11, Article 10, paragraph 3 provided flexibility in the financing mechanisms, it felt also that transparency and sustainability of the eTIR international system should be ensured and that, hence, draft Annex 11 required a reference to the financing of the eTIR international system. The Group of Experts agreed that the details of such financing would be decided by TIR Contracting Parties or those applying Annex 11 and then, possibly, be included in future agreement(s) between the international organization and UNECE, pursuant to Explanatory Note 0.6.2 *bis*-2. The Group of Experts requested the secretariat to include, in the next revision of Annex 11 an Explanatory Note to Article 10, paragraph 3 that would, if required, allow the financing of the operational costs of eTIR international system by means of an amount per TIR or eTIR transport. To the extent possible, the Explanatory Note should also address the potential transition between different funding mechanisms.

11. IRU expressed concerns that, in the current economic context and considering that the number of TIR transports is reducing, additional costs could be detrimental to the TIR system. IRU further explained that it had decided to finance the establishment and the maintenance of the eTIR international system from its own funds to avoid that those costs would have to be covered by transport operators. In addition, IRU agreed that the current text of Article 10, paragraph 3 sufficed.

VI. Format, administrative structure and substantive content of the eTIR legal framework (agenda item 5)

Documentation: ECE/TRANS/WP.30/2017/24

12. The secretariat informed GE.2 about the deliberations of WP.30 at its 147th session (October 2017) on draft Annex 11 and associated amendments to the TIR Convention (ECE/TRANS/WP.30/2017/24). Based on the deliberations, GE.2 commenced its consideration of the draft eTIR legal framework.

A. Consideration of selected provisions and issues

Article 10, paragraph 2

13. The question was raised whether Article 10, paragraph 2 should not only refer to UNECE assisting countries in connecting their Information Technology (IT) systems to the eTIR international system, but also to conformance testing, which would ensure that national IT systems comply with the eTIR functional and technical specifications. Thus, it was suggested to address the issue under Article 3, which contained the obligation of Contracting Parties to connect their IT systems to the eTIR international system. However, GE.2 recalled the proposal by the delegation of Poland at its fourth session (ECE/TRANS/WP.30/GE.2/8, Annex II, footnote 32) and agreed that conformance testing should be mentioned as a mandatory step prior to the operational connection to the eTIR international system and be part of the assistance provided by UNECE (Article 10, paragraph 2) rather than as an obligation for countries connecting to the eTIR international system (Article 3).

Article 3

14. A proposal was made to include the words “For the purpose of electronic data exchange” at the beginning of Article 3 to better clarify the meaning of the provision. In response, it was said that such clarification was not necessary, since (a) the definition of “eTIR international system” in Article 2, paragraph (a) already referred to the exchange of electronic information, and (b) Article 3 specified the requirement for the connection of the customs systems to be in line with the conceptual, functional and technical specifications. After discussion, GE.2 agreed to retain the provision unchanged and to leave the matter to WP.30 for further discussion.

Article 2, paragraph (a)

15. In response to a question whether the definition of the “eTIR international system” in Article 2, paragraph (a) should list all actors, including the international organization (see ECE/TRANS/WP.30/294, para. 29), the secretariat recalled that GE.2 had discussed the issue at its fourth session. At the session, it had been clarified that the phrase had been derived from defining the scope of the eTIR project and was contained as such in the conceptual, functional and technical documentation (see ECE/TRANS/WP.30/GE.2/8, para. 13). Consequently, GE.2 decided to leave Article 2, paragraph (a) unchanged.

Article 11, paragraph 3

16. In response to a question whether Article 11, paragraph 3 could be modified to include the possibility that the private sector could obtain information directly from the eTIR international system in case of administrative or legal proceedings (see ECE/TRANS/WP.30/294, para. 29), the secretariat recalled that a previous version of the provision had permitted UNECE to disclose information to the parties to a claim (see ECE/TRANS/WP.30/GE.2/2016/9, draft Article 8, paragraph 2).

17. Against that background, GE.2 reconsidered the question while noting that there might be one case in which some information could only be found in the eTIR system, i.e., when the transport operator would send its advance cargo information directly to the eTIR international system. In such case, only the eTIR international system would have trace of the authentication of the sent message, and consequently, only customs administrations would have access to that information in case of administrative or legal proceedings. GE.2 was of the view that that was not a concern. The information that the transport operator and the guaranteeing association had and could obtain from the international organization would be sufficient.

18. In addition, it was clarified that the transport operator under the current specifications did not receive any notifications from the eTIR international system. GE.2 considered two possibilities to address the aforementioned concern: (a) to modify the specifications to include notifications to transport operators, or (b) to permit the international organization to provide transport operators with the information on their TIR transports.

19. Recalling that the eTIR international system was designed for customs-to-customs information exchange, GE.2 decided (a) to leave it to the international organization to share information with national associations and transport operators, and (b) to retain Article 11, paragraph 3 unchanged.

Need for a provision on the procedure for claims in the eTIR environment

20. In response to a question on whether the procedure for handling claims in the eTIR system should be addressed in draft Annex 11 (see ECE/TRANS/WP.30/294, para. 29), the Group of Experts recalled its previous discussion on the matter (see ECE/TRANS/WP.30/GE.2/8, para. 21). The Group of Experts noted that claims were in the national sphere and would not need to be dealt with any differently in the eTIR system than in the current system.

Article 13

21. GE.2 took note that Article 13 had been introduced in draft Annex 11 pursuant to the decision of the Informal Ad hoc Expert Group on Conceptual and Technical Aspects of Computerization of the TIR Procedure (GE.1) to include a “termination type” field in the termination message. With that information included in the termination messages, the provisions of Annex 10 on data submission were rendered superfluous (see ECE/TRANS/WP.30/2017/22, para. 29). However, GE.2 agreed that the obligation related to the reconciliation procedure in Annex 10, paragraph 2 remained outside of the scope of eTIR.

22. However, GE.2 underlined that the reconciliation procedure in Annex 10, paragraph 2 should be amended to apply to eTIR transports. GE.2 had first considerations on the kind of errors, which would lead to a need for reconciliation (e.g. missing messages or incorrect number of boxes unloaded in termination messages). In conclusion, GE.2 agreed that (a) the paper-based reconciliation procedure in Annex 10, paragraph 2 would continue to be used for paper-based TIR transports, (b) Article 13 would make specific reference to paragraphs 1, 3 and 4, and (c) ways to adapt the reconciliation procedure for eTIR transports could be considered at a later stage.

Article 58

23. The secretariat informed the Group of Experts that it had requested the Treaty Section of the United Nations Office of Legal Affairs (OLA) to assess the reservation clause foreseen for draft Annex 11.

24. GE.2 took note that current wording of draft Article 58, paragraph 1 *bis* would have a different impact on existing Contracting Parties and future Contracting Parties. It allowed existing Contracting Parties to enter a reservation to Annex 11 at any time. However, future Contracting Parties would only be able to enter a reservation to Annex 11 after having acceded to the TIR Convention, i.e. not at the time of ratification of or accession to the Convention.

25. The Group of Experts agreed that, subject to the assessment of OLA, draft Article 58, paragraph 1 *bis* should be retained with the deletion of the words “at any time”.

B. Conclusion

26. The Group of Experts agreed that, subject to the above modifications, draft Annex 11 and the related revisions to the main body of the TIR Convention should be submitted to WP.30 for further consideration.

VII. Provisions of the TIR Convention that may be affected by the introduction of eTIR (agenda item 6)

27. GE.2 noted that only Annex 10 of the TIR Convention, 1975 seemed to be affected by the introduction of the eTIR legal framework (see paras. 21 and 22 above).

VIII. Other business (agenda item 7)

28. GE.2 took note that the Working Party had considered and adopted proposals for a usage note and disclaimer clause for both the eTIR conceptual, functional and technical specifications (formerly the eTIR Reference Model) and the XML schemas (ECE/TRANS/WP.30/2017/23). The proposals followed the recommendation of GE.1 that the eTIR functional and technical specifications and the XML schemas should be in the public domain. The Working Party requested the secretariat to apply the usage and disclaimer clause where appropriate (see ECE/TRANS/WP.30/294, para. 20).

IX. Conclusion of the mandate of GE.2 and the final report (agenda item 8)

Documentation: ECE/TRANS/WP.30/GE.2/2017/4

29. In line with standing practice, GE.2 took note of the main conclusions of the session and that the secretariat would prepare the full report in consultation with the Chair, after the session.

30. In addition, the secretariat informed GE.2 that WP.30 had agreed that there was no need to extend the mandate of the Group of Experts. Further, the Group of Experts noted and endorsed its self-evaluation (ECE/TRANS/WP.30/GE.2/2017/4), containing a consolidated summary of the outputs of GE.2 that demonstrated that GE.2 had met all the requirements of its Terms of Reference and Programme of Work, in its two-year mandate. GE.2 requested the secretariat to update the self-evaluation to reflect the results of its last session and the latest developments in the financing before submitting it to WP.30 for endorsement.