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Item 3 (a) of the provisional agenda

Revision of the Convention –**Phase III of the TIR revision process –****Computerization of the TIR Convention****Draft Annex 11 of the TIR Convention*****Note by the secretariat**

In Annex, the secretariat reproduces a consolidated text of amendment proposals to the body of the Convention as well as to draft Annex 11, representing the outcome of the meetings of the Friends of the Chair that took place on 16–17 April 2019 and 15–16 May 2019, together with a rationale clarifying the aim of each newly formulated proposal.

* This document was submitted late due to delayed inputs from other sources.



Annex

Consolidated draft eTIR legal framework¹

A. Amendments to the TIR Convention

1. Article 1, new paragraph (s)

(s) *The term “eTIR procedure” shall mean the TIR procedure, implemented by means of electronic exchange of data, ~~which provides~~ the functional equivalent to the TIR Carnet. ~~The eTIR procedure is carried out in accordance with the provisions of Annex 11.~~ Whereas the provisions of the TIR apply, the specifics of the eTIR procedure are defined in Annex 11.*

Rationale:

The additional text of paragraph (s) aims at clarifying that, as a rule, the provisions of the TIR Convention apply to the eTIR procedure and that Annex 11 contains the provisions that are specific to the eTIR procedure

Ibis. Article 3 (b)

(b) *the transport operations must be guaranteed by associations authorized in accordance with the provisions of Article 6. They must be performed under cover of a TIR Carnet, which shall conform to the model reproduced in Annex I to this Convention or be carried out by the eTIR procedure.*

Rationale:

The additional wording of paragraph (b) aims at clarifying that a guarantee is required for both the TIR and the eTIR procedure. Furthermore, to align the text with the wording of Article 6 and Annex 9 Part I, the word “approved” has been replaced by the word “authorized”.

2. Article 43

The Explanatory Notes set out in Annex 6, ~~and~~ Annex 7, Part III, *and Annex 11, Part II* interpret certain provisions of this Convention and its Annexes. They also describe certain recommended practices.

3. New Article 58 quarter

A Technical Implementation Body shall be established. Its composition, functions and rules of procedure are set out in Annex 11.

4. Article 59

1. This Convention, including its Annexes, may be amended upon the proposal of a Contracting Party by the procedure specified in this Article.

2. *Except as provided for under Articles 60 bis*, any proposed amendment to this Convention shall be considered by the Administrative Committee composed of all the

¹ Amendments as compared to the existing text of the Convention as well as new Articles are in ***bold italics***. Changes as compared to document ECE/TRANS/WP.30/AC.2/2019/8 are in ***bold italics underlined*** and deletions are in ~~*strikethrough*~~.

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 and adopted by it by a two-thirds majority of the members present and voting shall be communicated by the Secretary-General of the United Nations to the Contracting Parties for their acceptance.

3. Except as provided for under Articles 60 *and 60 bis*, any proposed amendment communicated in accordance with the preceding paragraph shall come into force with respect to all Contracting Parties three months after the expiry of a period of twelve months following the date of communication of the proposed amendment during which period no objection to the proposed amendment has been communicated to the Secretary-General of the United Nations by a State which is a Contracting Party.

4. If an objection to the proposed amendment has been communicated in accordance with paragraph 3 of this Article, the amendment shall be deemed not to have been accepted and shall have no effect whatsoever.

5. New Article 60 bis

Special procedure for the entry into force of Annex 11 and amendments thereto

1. *Annex 11, considered in accordance with paragraphs 1 and 2 of Article 59 shall come into force with respect to all Contracting Parties three months after the expiry of a period of twelve months following the date of communication by the Secretary-General of the United Nations to the Contracting Parties, except for those Contracting Parties that have notified the Secretary-General in writing, within the aforementioned~~that~~ period of three months² of their non-acceptance of Annex 11. Annex 11 shall enter into force for Contracting Parties which withdraw their notification of non-acceptance six months after the date on which withdrawal of such notification has been received by the depositary.*

2. *Any proposed amendment to Annex 11 shall be considered by the Administrative Committee. Such amendments shall be adopted by a majority of the Contracting Parties bound by Annex 11 present and voting.*

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 all Contracting Parties for information or, for those Contracting Parties bound by Annex 11, acceptance.*

4. *The date of entry into force of such amendments shall be determined at the time of their adoption, by a majority of the Contracting Parties bound by Annex 11 present and voting.*

5. *Amendments shall enter into force in accordance with paragraph 4 of this Article unless by a prior date determined at the time of adoption, one-fifth or five of the States which are Contracting Parties bound by Annex 11, whichever number is less, notify the Secretary-General of their objection to the amendments.*

6. *On entry into force, any amendment adopted in accordance with the procedures set out in paragraphs 2 to 5 of this Article shall for all Contracting Parties bound by Annex 11 replace and supersede any previous provisions to which the amendment refers.*

6. Article 61

The Secretary-General of the United Nations shall inform all Contracting Parties and all States referred to in Article 52, paragraph 1 of this Convention of any request, communication, or objection under Articles 59 ~~and~~, 60 *and 60 bis* above and of the date on which any amendment enters into force.

² Pending confirmation by the United Nations Office of Legal Affairs–Treaty Section.

7. Annex 9, Part I, Article 3, new paragraph (xi)

(xi) confirm, the case of a fallback procedure described in Article 10 of Annex 11 (for Contracting Parties bound by Annex 11), upon request of the competent authorities, that the guarantee is valid, that a TIR transport is carried out under the eTIR procedure and provide other relevant information.

Rationale:

The additional sub-paragraph (xi) clarifies that, in case of fallback, guaranteeing associations have an obligation to confirm that the guarantee is valid, that a TIR transport is carried out under the eTIR procedure and provide other relevant information.

B. Annex 11 – The eTIR procedure

1. Part I

Article 1

Scope of application

1. *The provisions in this Annex 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 bound by this Annex, as provided for in Article 60 bis, paragraph 1.*

2. *The eTIR procedure cannot be used for transports taking place in part in the territory of a Contracting Party, that is a member States of a customs or economic union with a single customs territory and that is not bound by Annex 11.*

Rationale:

New paragraph 2 of Article 1 clarifies that, in a customs or economic union with a single customs territory, a transport carried out by the eTIR procedure cannot begin, end or go through the territory of a country not bound by Annex 11.

Article 2

Definitions

For the purposes of this Annex:

(a) 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.

(b) The term "advance TIR data" shall mean the data provided to the competent authorities [of the country of departure] in the prescribed form and manner of the intention of the holder, ~~or his or her representative,~~ to place goods under the eTIR procedure ~~or pursue a TIR transport.~~

Rationale:

Revised paragraph (b) does not refer anymore to the representative of the holder, as the intention to place the goods under the eTIR procedure is never originating from him/her. Furthermore, it also clarifies that the advance TIR data must be submitted in electronic form.

Comment by the secretariat:

The experts taking part in the Friends of the Chair meeting could not agree on whether to propose to limit the submission of the TIR advance data to the competent authorities of the country of departure. Indeed, the new revised text of Annex 11 distinguishes between the TIR advance data sent by the holder and the declaration data (based on the TIR advance data) forwarded by customs authorities once the declaration is accepted. However, in case of amendments to the declaration (e.g. rerouting), the holder will send TIR advance data to a

country *en route* or destination. Therefore, the addition of the words “of the country of departure” does not seem appropriate.

(c) The term “declaration” shall mean the act whereby the holder, or his or her representative, indicates in the prescribed form and manner an intent to place goods under the eTIR procedure. From the moment of acceptance of the declaration by the competent authorities and the transfer of the declaration to the eTIR international system it shall constitute the legal equivalent of an accepted TIR Carnet.

Rationale:

Revised paragraph (c) clarifies that the accepted declaration forwarded by the authorities to the eTIR international system has the same legal value as an accepted TIR Carnet. Furthermore, it refers to the data forwarded by customs to the eTIR international system as “declaration data”.

(d) The term “accompanying document” shall mean the paper document printed in line with the guidelines contained in the eTIR technical specifications and issued for the fallback procedure as set out in Article 10 of this Annex. The accompanying document shall also be used to record incidents en route pursuant to Article 25 of this Convention.

(e) The term “eTIR specifications” shall mean the conceptual, functional and technical specifications of the eTIR procedure adopted and amended in accordance with the provisions of Article 5 of this Annex.

(f) The term “authentication” shall mean an electronic process that enables the electronic identification of a natural or legal person, or the origin and integrity of data in electronic form to be confirmed.

Rationale:

New paragraph (f) aims at providing a clear definition for the term “authentication” (definition comes from EU Regulation 910/2014).

Article 3

Implementation of the eTIR procedure

- 1. Contracting Parties bound by Annex 11 shall connect their customs systems to the eTIR international system in line with the eTIR ~~conceptual, functional and technical specifications.~~***
- 2. Each Contracting Party is free to establish by which date it connects its customs systems to the eTIR international system. The date of connection shall be communicated to all other Contracting Parties bound by Annex 11 at least six months prior to the effective date of connection.***

Article 4

Composition, functions and rules of procedure of the Technical Implementation Body

- 1. The Contracting Parties bound by Annex 11 shall be members of the Technical Implementation Body. Its sessions shall be convened at regular intervals or at the request of the Administrative Committee, as required for the maintenance of the eTIR specifications. The Administrative Committee shall be regularly informed of the activities and considerations of the Technical Implementation Body.***
- 2. Contracting Parties which have not accepted Annex 11 as provided for in Article 60 bis, paragraph 1 and representatives of international organizations may attend sessions of the Technical Implementation Body as observers.***
- 3. The Technical Implementation Body shall monitor the technical and functional aspects of implementing the eTIR procedure, as well as coordinate and foster the exchange of information on matters falling within its competence.***

4. *The Technical Implementation Body shall, at its first session, adopt its rules of procedure and submit them to the Administrative Committee for endorsement by the Contracting Parties bound by Annex 11.*

Rationale:

Revised paragraph 4 adds the requirement to have the rules and procedures of the Technical Implementation Body endorsed by AC.2

New Article 5

Adoption and amendment procedures for the eTIR specifications

The Technical Implementation Body shall:

(a) adopt the technical specifications of the eTIR procedure, and amendments thereto, to ensure their alignment with the functional specifications of the eTIR procedure. At the time of adoption, it shall decide on the appropriate transitional period for their implementation.

(b) prepare the functional specifications of the eTIR procedure, and amendments thereto, to ensure their alignment with the conceptual specifications of the eTIR procedure. They shall be transmitted to the Administrative Committee for adoption by a majority of Contracting Parties bound by Annex 11 present and voting as well as implemented and, when required, developed into technical specifications at a date to be determined at the time of adoption.

(c) shall consider amendments to the conceptual specifications of the eTIR procedure if so requested by the Administrative Committee. The conceptual specifications of the eTIR procedure, and amendments thereto, shall be adopted by a majority of Contracting Parties bound by Annex 11 present and voting as well as implemented and, when required, developed into functional specification at a date to be determined at the time of adoption.

Article 6

Submission of advance TIR data

1. Advance TIR data shall be submitted by the holder, or his or her representative, to the competent authorities of the country of departure, which shall forward them to the eTIR international system after the declaration has been accepted in line with national law.

2. Advance TIR data mentioned in paragraph 1 may be submitted either directly to the competent authorities or via the eTIR international system.

3. Contracting Parties bound by Annex 11 shall accept the submission of advance TIR data via the eTIR international system.

4. The competent authorities shall publish the list of ~~all other~~ electronic means by which advance TIR data can be submitted.

Rationale:

Revised Article 6 makes a clear distinction between the submission of advance TIR data via the eTIR international system and the submission directly to the competent authorities. With this wording third party solutions (e.g. TIR-EPD) which are used to submit advance TIR data will have to be considered as the representative of the holder.

Article 7

Authentication of the holder

1. While accepting the declaration [in the country of departure], competent authorities shall authenticate the advance TIR data and the holder, in accordance with national law. ~~The holder, or his or her representative, submitting advance TIR data directly to the competent authorities shall be authenticated in accordance with applicable national legislation.~~

2. *Contracting Parties bound by Annex 11 shall accept the authentication of the holder performed by the eTIR international system~~recognize authentications performed by the eTIR international system.~~*

3. *The competent authorities shall publish a list of authentication mechanisms other than that specified in paragraph 2 of the present Article that may be used for authentication.*

4. *Contracting Parties bound by Annex 11 shall accept the declaration data received from the competent authorities [of the country of departure] via the eTIR international system as the legal equivalent to an accepted TIR Carnet.*

Rationale:

Revised Article 7 clarifies that the advance TIR data and the holder should be authenticated in line with national law in the process of accepting the declaration. The new paragraph 4, similarly to revised Article 2, paragraph (c) further stresses that the declaration data forwarded by the authorities to the eTIR international system have the same legal value as an accepted TIR Carnet and put an obligation on accepting such data (i.e. not require the submission of advance TIR data by the holder).

Article 8

~~Mutual recognition of T~~the authentication of the holder

The authentication of the holder performed by the competent authorities of the Contracting Party bound by Annex 11 which accepts the declaration shall be recognized by the competent authorities of all subsequent Contracting Parties bound by Annex 11 throughout the TIR transport.

Article 9

Additional data requirements

1. *In addition to the data specified in the functional and technical specifications, competent authorities may request additional data stipulated by national legislation.*

2. *Competent authorities should, to the extent possible, limit data requirements to those contained in the functional and technical specifications* ~~and. However, if additional data requirements are imposed by legislation, the competent authorities shall endeavour to facilitate the submission of additional such data so as not to impede TIR transports carried out in accordance with this Annex.~~

Rationale:

Revised Article 9 clarifies that additional data requirements might be required (due to national legislation) but that contracting parties should facilitate their transmission by the holder.

Article 10

Fallback procedure

1. *Where the eTIR procedure cannot be started for technical reasons at the customs office of departure, the TIR Carnet holder may revert to the TIR procedure.*

2. *Where an eTIR procedure has started but its continuation is impeded for technical reasons, the competent authorities shall accept the accompanying document and process it in line with the procedure described in the ~~eTIR functional and technical~~ specifications, subject to the availability of additional information from alternative electronic systems as described in the functional and technical specifications.*

3. *The competent authorities of Contracting Parties are also entitled to request national guaranteeing associations to confirm that the guarantee is valid, that a TIR transport is carried out under the eTIR procedure and provide other relevant information.*

4. The procedure described in paragraph 3 shall be established in the agreement between the competent customs authorities and the national guaranteeing association, as stipulated by Annex 9, Part I, paragraph 1 (d).

Rationale:

New paragraphs 3 and 4 introduce a new option for the competent authorities to obtain data in case of backup from the guaranteeing association, and the fact that this procedure shall be described in the guarantee agreement between the competent authorities and the guaranteeing association.

Article 11

Hosting of the eTIR international system

1. **The eTIR international system shall be hosted and administered under the auspices of the United Nations Economic Commission for Europe (UNECE).**
2. **UNECE shall assist countries in connecting their customs systems to the eTIR international system, including by means of conformance tests to ensure their proper functioning prior to the operational connection.**
3. **The necessary resources shall be made available to UNECE to fulfil the obligations set forth in paragraphs 1 and 2 of this Article. Unless the eTIR international system is financed by resources from the United Nations regular budget, the required resources shall be subject to the financial rules and regulations for extrabudgetary funds and projects of the United Nations. The financing mechanism for the operation of the eTIR international system at UNECE shall be decided on and approved by the Administrative Committee.**

Article 12

Administration of the eTIR international system

1. **UNECE shall make the appropriate arrangements for the storage and archiving of the data in the eTIR international system for a minimum period of 10 years.**
2. **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.**
3. **The competent authorities of Contracting Parties in whose territory a TIR transport is carried out ~~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 national guaranteeing association, may request UNECE to ~~provide~~ obtain 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.**

Rationale:

Revised paragraph 3 puts the emphasis on the fact that competent authorities can obtain the data stored in the eTIR international system for legal proceedings if the transport goes through their territory.

4. **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.**

Article 13

Publication of the customs offices capable of handling eTIR

The competent authorities shall ensure that the list of customs offices of departure, customs offices en route and customs offices of destination approved for accomplishing TIR operations under the eTIR procedure, is at all times accurate and updated in the electronic database for approved customs offices, developed and maintained by the TIR Executive Board.

*Article 14**Legal requirements for data submission under Annex 10 of the TIR Convention*

The legal requirements for data submission, as set out in Annex 10, paragraph 1, 3 and 4 of this Convention, are deemed to be fulfilled by implementing the eTIR procedure.

2. Part II*Explanatory notes**Part I – Article 2, paragraph f*

Contracting Parties bound by Annex 11 may authenticate the holder with any process provided for in their national law, including, but not limited to, electronic signatures.

The integrity of the data exchanged between the eTIR international system and the competent authorities as well as the authentication of the Information and Communication Technology (ICT) systems will be ensured by means of secure connections, as defined in the eTIR technical specifications.

Rationale

The two Explanatory Notes to Article 2 (f) clarify that the authentication performed nationally will be performed in line with national law, and that all connections between the eTIR international system and the competent authorities will be secured, inter alia, by the authentication of the communication servers.

Part I – Article 3, paragraph 2

Contracting Parties bound by Annex 11 are recommended to have their national customs system updated and its connection with the eTIR international system ensured as soon as Annex 11 enters into force for them. Customs or economic unions may decide on a later date, allowing them time to connect the national customs systems of all their member States to the eTIR international system.

Part I – Article 65, paragraph 3

Contracting Parties bound by Annex 11 are recommended to recognize, in as far as possible, the submission of advance TIR data by the methods indicated in the functional and technical specifications.

Part I – Article 76, paragraph 2

The eTIR international system ensures, by means described in the eTIR specifications, the integrity of the advance TIR data and that the data were sent by the holder
~~*Contracting Parties bound by Annex 11 are recommended to recognize, in as far as possible, the authentications performed by the methods indicated in the functional and technical documentation.*~~

Rationale:

Explanatory Notes 11.7.2.1 aims at clarifying that the eTIR specification will contain the description of the methods used to ensure the integrity of the advance TIR data sent via the eTIR international system as well as how the holder will be authenticated.

Part I – Article 7, paragraph 4

The eTIR international system ensures, by means described in the eTIR specifications, the integrity of the declaration data and that the data were sent by the competent authorities of the countries involved in the transport.

Rationale:

Explanatory Notes 11.7.4.1 aims at clarifying that the eTIR specification will contain the description of the methods used to ensure the integrity of the declaration data exchange via the eTIR international system as well as how the competent authorities ICT systems will be authenticated.

Part I – Article 8

The eTIR international system ensures, by means described in the eTIR specifications, the integrity of the declaration data, including the reference to the holder, authenticated by the competent authorities that accept the declaration, received from and transmitted to competent authorities.

Rationale:

Similarly to Explanatory Note 11.7.4.1, Explanatory Note 11.8.1 aims at clarifying that the eTIR specification will contain a description of the methods used to ensure the integrity of the declaration data, including the data elements indicating the holder, sent to and received from the eTIR international system.

Part I – Article 11, paragraph 3

If necessary, Contracting Parties may decide to finance the operational costs of the eTIR international system through an amount per TIR transport. In such cases, Contracting Parties shall decide on the appropriate time to introduce alternative financing mechanisms and on their modalities. The required budget shall be prepared by UNECE, reviewed by the Technical Implementation Body and approved by the Administrative Committee.
