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eTIR Package

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the Administrative Committee for the Customs Convention on the International Transport of goods under cover of TIR carnets as regards the proposal to amend the Convention

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the Decision establishing the position to be taken on the Union's behalf in the Administrative Committee established by the Customs Convention on the International Transport of goods under cover of TIR[1] carnets ("the TIR Convention") in connection with the envisaged adoption of amendments concerning the introduction of the legal basis for the electronic TIR (eTIR) procedure.

2. CONTEXT OF THE PROPOSAL

2.1. The Customs Convention on the International Transport of goods under cover of TIR carnets

The Customs Convention on the International Transport of goods under cover of TIR carnets of 14 November 1975 ("the TIR Convention") aims to facilitate the international carriage of goods from customs offices of departure to customs offices of destination and through as many countries as necessary.

The TIR Convention entered into force in 1978. As of January 2019, there are 76 parties to the Convention, including 75 states and the European Union. The European Union is a party to the TIR Convention[2] since 20 June 1983. All Member States are also parties to the TIR Convention.

2.2. The Administrative Committee

The Administrative Committee acts within the framework of the TIR Convention. Its role is to consider and adopt amendments to the TIR Convention. Proposals are put to the vote and each State, which is a party and is represented at a session of the Administrative Committee, has one vote. The Union has exclusive competence in the area of customs governed by the TIR Convention. However, the Union, as an international organisation, does not have voting rights; the EU Member States are contracting parties with voting rights.

Amendments to the TIR Convention are adopted by a two-thirds majority of parties present and voting. A quorum consisting of not less than one third of the States which are parties is required to take a decision.

2.3. The envisaged act of the administrative committee

At the February session 2020, the Administrative Committee is likely to take a decision on the adoption of the proposed amendments to the TIR Convention ('the envisaged act').

The purpose of the envisaged act is to provide the necessary legal basis for the eTIR procedure. This legal basis will be constituted by a new Annex 11 to the TIR Convention and several related amendments to the body and Annex 9 of the Convention.

The envisaged act will become binding on the parties in accordance with article 59 of the TIR Convention which provides: *"Except as provided for under Article 60, 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*

[1] TIR stands for "Transports Internationaux Routiers" or "International Road Transports".

[2] Council Regulation (EEC) No 2112/78 of 25 July 1978 concerning the conclusion of the Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention) of 14 November 1975 at Geneva OJ L 252/1.

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. 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."

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

3.1 Description of the proposed amendments to the TIR Convention

As the TIR Convention falls under the Union's exclusive competence, the Union must adopt a common position for all its Members States which are Contracting Parties to the TIR Convention on its proposed amendments. The decision to be taken is whether or not to be bound by the new proposed Annex 11 which is aimed at providing the legal basis for the possibility to use an electronic TIR procedure instead of the paper TIR Carnet. It must, however be noted that, even if the Union decided to be bound by the new proposed Annex 11, the Union and its Members States would still have the flexibility to decide when to connect their IT systems to the eTIR system hosted by the United Nations.

Below is a detailed explanation of the content of the new proposed Annex 11 as well as of the proposed changes to the body of the TIR Convention which are a consequence of the introduction of the new proposed Annex 11.

Articles of the Convention related to Annex 11

The new Annex 11 cannot be implemented without amending the body and Annex 9 of the TIR Convention.

The proposal for a new paragraph (s) to Article 1 to the TIR Convention was elaborated to give a definition of the "eTIR procedure" which is a TIR procedure, implemented by means of electronic exchange of data, which provides the functional equivalent to the TIR Carnet. This Article also stipulates that the "eTIR procedure" is legally defined in the new Annex 11 of the TIR Convention.

The proposal for an amendment of paragraph b) to Article 3 to the TIR Convention is needed to specify that the TIR transport carried out by the eTIR procedure must be guaranteed by authorized association.

The proposal for an amendment to Article 43 to the TIR Convention aims to take into account the new Explanatory note in Annex 11, Part II, which interprets certain provision of the Convention and its Annexes. This amendment can be considered as of an editorial nature.

The proposal for a new Article 58 *quarter* to the TIR Convention was elaborated to establish the Technical Implementation Body. This body will be in charge of the adoption and amendment of the technical eTIR specifications in line with the conceptual and functional specifications adopted by the Administrative Committee.

The proposal for an amendment to Article 59, a new Article 60 *bis* and an amendment of Article 61 to the TIR Convention contains the procedure for the entry into force of Annex 11 and future amendments. Annex 11 will enter into force with respect to all Contracting Parties except for those that will notify their non-acceptance to the Secretary-General of the United Nations. Therefore, this will lead to a situation where some Contracting Parties to the TIR Convention will be bound by this new Annex and others will not.

The proposal for a new subparagraph (xi) to paragraph 3 of Part I of Annex 9 creates a new duty for authorized associations in case of a fallback situation during an eTIR procedure. Upon request of the competent authorities, associations will have to confirm that the transport

is carried out under the eTIR procedure, that the guaranty is valid and provide any other relevant information related to the TIR transport.

New Annex 11

The first part of Annex 11 is composed of fourteen Articles which describe the functioning of the future eTIR procedure in detail.

Article 1 underlines that provisions of this Annex should only apply to Contracting Parties bound by Annex 11 as provided in the new Article 60 *bis* paragraph 1 of the TIR Convention and that the eTIR procedure cannot be used for transports taking place in part in the territory of a Contracting Party that is not bound by Annex 11 and is a member State of a customs or economic union with a single customs territory.

Article 2 provides for the necessary definitions in order to correctly describe the new eTIR system. In this article, the definition of the following terms are provided: "eTIR international system", "eTIR specifications", "advance TIR data", "advance amendment data", "declaration data", "declaration", "accompanying document" and "authentication".

The Explanatory Notes to Article 2, paragraph (h) underlines that until a harmonized approach has been established and described in the eTIR specifications, Contracting Parties will have a certain flexibility to authenticate the holder of the eTIR procedure in line with their national law. They also state that the security of data exchanged between the eTIR international system and the competent authorities will be ensured as defined in the eTIR technical specifications.

Article 3 deals with the concrete implementation of the eTIR system which requires that Contracting Parties connect their IT systems to the eTIR International system. However, this article, in line with the formulation proposed by the Union, gives to the Contracting Parties bound by Annex 11 the flexibility to establish by which date their customs systems would be connected to the eTIR international system. This point is crucial for the Union because it will have an impact on the Customs IT systems of all Members States and on the central components hosted by the European Commission (and the EU's common system specifications). As a consequence, even if the Union and its Members States were bound by Annex 11 and had a say in its futures amendments, they would be free to choose when to connect their systems to the new eTIR international system.

The Explanatory Note to Article 3, paragraph 2 recommends to the Contracting Parties bound by Annex 11 to have their national customs systems updated and their connections with the eTIR international system ensured as soon as Annex 11 enters into force. However, in line with the request made by the Union, it leaves to customs or economic unions the flexibility to decide on a later date, allowing them time to connect the national customs systems of all their member States to the eTIR international system.

Article 4 establishes the composition, functions and provisions for the rules of procedure of the new Technical Implementation Body established by the new Article 58 *quater* of the TIR Convention. It is important to underline that only the Contracting Parties bound by the Annex 11 will be members of this body. Contracting Parties which have not accepted Annex 11 may only attend sessions of the Technical Implementation Body as observers.

Article 5 explains how the new Technical Implementation Body will prepare for the adoption and amendment of the conceptual and functional specification of the eTIR international system by the Administrative Committee. This article also specifies how the Technical Implementation Body prepares and adopts or amends the technical specification of the eTIR procedure in line with the conceptual and functional specifications.

Article 6 describes the submission of advance TIR data. These data will be submitted by operators in advance by electronic means. The competent authorities will have to publish the list of all electronic means by which advance TIR data and amendment data can be submitted. This article should be read in connection with the draft Article 9 of Annex 11 which describes how additional data requirements, imposed by legislation, could be added to the advance TIR data. This article furthermore stipulates that Contracting Parties should facilitate the submission of such additional data together with advance TIR data.

The Explanatory Note to Article 6, paragraph 3 recommends to the Contracting Party bound by Annex 11 to recognize the methods indicated in the eTIR specifications to submit advance TIR data.

Article 7 defines the necessary mechanisms to authenticate the holder, or its representative, who submits advance TIR data to the competent authorities. It is important to underlines that Contracting Parties bound by Annex 11 will have to accept the declaration data received from the competent authorities of the country of departure and of the country in which an amendment to the declaration data is requested via the eTIR international system.

The Explanatory Note to Article 7, paragraph 2 ensures that the eTIR international system is able to confirm the integrity of the advance TIR data or advance amendment sent by the holder.

The Explanatory Note to Article 7, paragraph 4 ensures that the eTIR international system is able to confirm the integrity of the declaration data sent by the competent authorities.

Article 8 recalls a fundamental principal to the TIR Convention which is the mutual recognition of the authentication of the holder performed by the competent authorities of the Contracting Parties bound by Annex 11.

The Explanatory Note to Article 8 ensures that the eTIR international system is able to confirm the integrity of the reference to the holder received from the competent authorities that accepted the declaration.

Article 10 introduces a fallback procedure in the event that an eTIR procedure is impeded for technical reasons and recalls the duties of national guaranteeing associations in that situation.

Article 11 and Article 12 describe how the eTIR international system will be hosted, financed and administrated. Since the beginning of the discussion on this issue, the Union has been in favour of the proposed solution of having an eTIR system hosted and administrated directly under the auspices of the United Nations Economic Commission for Europe so as to ensure the independence of the eTIR International system from the international organisation (currently the IRU).

The Explanatory Note to Article 11, paragraph 3 clarifies the rules to finance the operational costs of the eTIR international system in case the cost are to be covered through an amount per TIR transport. In this case, the Contracting Parties have the responsibility to decide on the appropriate financing mechanisms and on their modalities. The budget will be approved by the Administrative Committee.

Article 13 establishes the rules concerning the publication of the customs offices capable of handling eTIR operations. The competent authorities shall ensure that the list of customs offices for accomplishing TIR operations under the eTIR procedure is accurate and updated in the electronic database for approved customs offices developed and maintained by the TIR Executive Board.

Article 14 specifies that data submission to end TIR operation is deemed to be fulfilled by the application of the eTIR procedure.

3.2 Proposed position

The Union shares the objective of the new proposed Annex 11 of the TIR Convention: after more than fifteen years of preparatory works, time has come to make a step towards an electronic TIR environment. This is fully in line with the EU policy and legislation on electronic customs which is based on the shift by customs to a paperless and fully electronic and interoperable environment with core values of simplicity, service and speed.

Consultations on the proposed amendments were carried out with the Members States within the Customs Expert Groups for TIR (Geneva coordination). Further consultations took place during sessions of the Working Party on Customs Questions Affecting Transport of the United Nations Economic Commission for Europe (UNECE). The European Commission on behalf of the Union and number of its Member States have also participated in expert groups under the auspices of UNECE which were set up to draft both legal and technical provisions for eTIR.

Internal coordination as well as the joint discussions with Member States clearly showed that there is wide support for to the proposed new Annex 11.

It is therefore proposed that the Union supports the adoption of the amendments concerning the introduction of the legal basis for the electronic TIR (eTIR) procedure.

4. 4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.'*

Article 218(9) TFEU applies regardless of whether the Union is a member of the body or a party to the agreement[3].

The concept of *'acts having legal effects'* includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are *'capable of decisively influencing the content of the legislation adopted by the EU legislature'*[4].

4.1.2. Application to the present case

The Administrative Committee is a body set up by an agreement, namely the Customs Convention on the International Transport of goods under cover of TIR carnets.

The act which the Administrative Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 59 and 60 of the Customs Convention on the International Transport of goods under cover of TIR carnets.

The procedural legal basis for the proposed decision is Article 218(9) TFEU.

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[3] Judgment of the Court of Justice of 7 October 2014, Germany v Council, Case C-399/12, ECLI:EU:C:2014:2258, paragraph 64.

[4] Judgment of the Court of Justice of 7 October 2014, Germany v Council, Case C-399/12, ECLI:EU:C:2014:2258, paragraphs 61to 64.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to customs.

The substantive legal basis of the proposed decision, therefore, is Article 207 TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 207 in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the Administrative Committee will amend the Customs Convention on the International Transport of goods under cover of TIR carnets and its annexes, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Customs Convention on the International Transport of goods under cover of TIR carnets of 14 November 1975 ('the TIR Convention') was concluded by the Union by Council Regulation (EEC) No 2112/78[5] and entered into force in the Community on 20 June 1983[6].

(2) Pursuant to Article 59 of the TIR Convention, the Administrative Committee may adopt amendments by a two-thirds majority of Contracting Parties present and voting.

(3) The Administrative Committee, during a session in February 2020, is to adopt a new Annex 11 and related amendments to the TIR Convention.

(4) It is appropriate to establish the position to be taken on the Union's behalf in the Administrative Committee, as the amendments to the TIR Convention will be binding on the Union.

(5) The Union support the new Annex 11 to the TIR Convention and the necessary amendments to the body of the TIR Convention as it follows the policy set out by Regulation (EU) No 952/2013 of the European Parliament and of the Council[7] according to which in principle all communications with customs authorities is to be electronic.

(6) A new paragraph (s) of Article 1 of the TIR Convention is to define the "eTIR procedure" applicable to electronic exchange of data between the customs authorities.

(7) A new Article 58 of the TIR Convention is to establish a technical implementation body which is to adopt the technical specification of the eTIR International system.

(8) A new Article 60 *bis* is to lay down the special procedure for the entry into force of the new Annex 11 to the TIR Convention and its future amendments.

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5 Council Regulation (EEC) No 2112/78 of 25 July 1978 concerning the conclusion of the Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention) of 14 November 1975 at Geneva (OJ L 252, 14.9.1978, p. 1).

6 OJ L 31, 2.2.1983, p. 13.

7 Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

(9) Amendments to Articles 43, 59 and 61 make adaptations necessary for the introduction of the new Annex 11.

(10) The new Annex 11 to the TIR Convention is to enable the Contracting Parties bound by it to use eTIR operations. It is to enable the Union and its Member States to choose in a flexible way at what point in time to connect their systems to eTIR International system.

(11) The position to be adopted on behalf of the Union within the Administrative Committee should therefore be based on the draft amendments attached to this Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the seventy-second or subsequent session of the Administrative Committee shall be based on the draft amendments attached to this Decision.

Article 2

The position referred to in Article 1 shall be expressed by the Member States of the Union that are members of the Administrative Committee, acting jointly.

Article 3

Further changes to the draft amendment of Article 1 of this decision may be agreed by the representative of the Union in the Administrative Committee, if the negociations so require.

Article 4

This decision shall enter into force on the date of its adoption.

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President