DECISIONS

COUNCIL DECISION (EU) 2020/143

of 28 January 2020

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 amendment of the Convention

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4), 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 ([1]) and entered into force in the Union on 20 June 1983 ([2]).

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

(3) During a session in February 2020, the Administrative Committee 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 have legal effect in the Union.

(5) The Union supports the new Annex 11 to the TIR Convention and the necessary amendments to the body of the TIR Convention as they follow the policy set out by Regulation (EU) No 952/2013 of the European Parliament and of the Council ([3]) according to which in principle all communications with customs authorities are 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 customs authorities.

(7) A new Article 58 *quater* of the TIR Convention is to establish a technical implementation body which is to adopt the technical specification of the eTIR international system, without prejudice to the existing substantive and institutional framework of the TIR Convention.

(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 any future amendments to that Annex.

(9) Amendments to Articles 43, 59 and 61 of the TIR Convention are to 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 that Annex to use eTIR operations. It is to enable the Union and its Member States to choose at what point in time to connect their systems to the eTIR international system.

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

([1]) 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).

([2]) OJ L 31, 2.2.1983, p. 13.

([3]) 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).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the Administrative Committee during its seventy-second or a subsequent session 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

Minor technical changes to the draft amendments referred to in Article 1 may be agreed by the representatives of the Union in the Administrative Committee.

Article 4

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

Done at Brussels, 28 January 2020.

For the Council
The President
A.METELKO-ZGOMBIĆ

Draft amendments to the Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention 1975)

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, providing the functional equivalent to the TIR Carnet. Whereas the provisions of the TIR Convention apply, the specifics of the eTIR procedure are defined in Annex 11.

1bis. Article 3 (b)

(b) the transport operations must be guaranteed by associations authorised 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 1 to this Convention or be carried out by the eTIR procedure.

2. Article 43

The Explanatory Notes set out in Annex 6, 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 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 period of three months 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, 60 and 60 bis above and of the date on which any amendment enters into force.

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

(xi) confirm, in case of a fallback procedure described in Article 10, paragraph 2 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 information relevant to the TIR transport.

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 not bound by Annex 11 and that is a member State of a customs or economic union with a single customs territory.

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 '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.

(c) The term 'advance TIR data' shall mean the data submitted to the competent authorities of the country of departure, in accordance with the eTIR specifications, of the intention of the holder to place goods under the eTIR procedure.

(d) The term 'advance amendment data' shall mean the data submitted to the competent authorities of the country in which an amendment to the declaration data is requested, in accordance with the eTIR specifications, of the intention of the holder to amend the declaration data.

(e) The term 'declaration data' shall mean the advance TIR data and the advance amendment data which have been accepted by the competent authorities.

(f) The term 'declaration' shall mean the act whereby the holder, or his or her representative, indicates, in accordance with the eTIR specifications, the intent to place goods under the eTIR procedure. From the moment of acceptance of the declaration by the competent authorities, based on the advance TIR data or the advance amendment data, and the transfer of the declaration data to the eTIR international system it shall constitute the legal equivalent of an accepted TIR Carnet.

(g) The term 'accompanying document' shall mean the printed document electronically generated by the customs system, after the acceptance of the declaration, in line with the guidelines contained in the eTIR technical specifications. The accompanying document can be used to record incidents en route and replaces the certified report pursuant to Article 25 of this Convention and for the fallback procedure.

(h) 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.

Explanatory Notes to Article 2 (h)

11.2 (h)-1 Until a harmonised approach has been established and described in the eTIR specifications, Contracting Parties bound by Annex 11 may authenticate the holder with any process provided for in their national law, including, but not limited to, user name/password or electronic signatures.

11.2. (h)-2 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.

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 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.

Explanatory Note to Article 3, paragraph 2

11.3.2 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.

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 organisations 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.

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) 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 and advance amendment data

1. Advance TIR data and advance amendment data shall be submitted by the holder, or his or her representative, to the competent authorities of the country of departure and of the country in which an amendment to the declaration data is requested. Once the declaration, or the amendment, has been accepted in line with national law, the competent authorities shall forward the declaration data, or the amendment thereto, to the eTIR international system.

2. Advance TIR data and advance amendment 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 and advance amendment data via the eTIR international system.

Explanatory Note to Article 6, paragraph 3

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

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

Article 7

Authentication of the holder

1. While accepting the declaration in the country of departure or an amendment to the declaration data in any country along the itinerary, competent authorities shall authenticate the advance TIR data, or the advance amendment data, and the holder, in accordance with national law.

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

Explanatory Note to Article 7, paragraph 2

11.7.2 The eTIR international system ensures, by means described in the eTIR specifications, the integrity of the advance TIR data, or the advance amendment data, and that the data were sent by the holder.

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 and of the country in which an amendment to the declaration data is requested via the eTIR international system as the legal equivalent to an accepted TIR Carnet.

Explanatory Note to Article 7, paragraph 4

11.7.4 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.

Article 8

Mutual recognition of the authentication of the holder

The authentication of the holder performed by the competent authorities of the Contracting Parties bound by Annex 11 which accept the declaration, or changes to the declaration data, shall be recognised by the competent authorities of all subsequent Contracting Parties bound by Annex 11 throughout the TIR transport.

Explanatory Note to Article 8

11.8 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.

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 endeavour to facilitate the submission of additional data so as not to impede TIR transports carried out in accordance with this Annex.

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 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 information relevant to the TIR transport.

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

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 (ECE).

2. ECE 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 ECE 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 ECE shall be decided on and approved by the Administrative Committee.

Explanatory Note to Article 11, paragraph 3

11.11.3 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 ECE, reviewed by the Technical Implementation Body and approved by the Administrative Committee.

Article 12

Administration of the eTIR international system

1. ECE 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 ECE 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 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 ECE and 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.

4. In cases other than those specified in this Article, the dissemination or disclosure of information stored in the eTIR international system to non-authorised 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.