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Report of the Group of Experts towards Unified Railway Law on its ninth session

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I. Attendance

1. The Group of Experts towards Unified Railway Law held its ninth session on 30 and 31 October 2014 in Geneva.
2. The session was attended by experts from the following countries: Azerbaijan, Belgium, Finland, Germany, Kazakhstan, Netherlands, Poland and the Russian Federation. Representatives of Iran (Islamic Republic of) also attended under Article 11 of the Terms of Reference of UNECE.
3. Experts from the following intergovernmental organizations participated: Organization for Cooperation between Railways (OSJD) and the Intergovernmental Organisation for International Carriage by Rail (OTIF). Experts from the following non-governmental organization participated: International Rail Transport Committee (CIT).
4. At the invitation of the secretariat, experts from the following organizations and an industry group participated: CMS Cameron McKenna, Deutsche Bahn (DB), International Association “Coordinating Council on Trans-Siberian Transport” (CCTT), JSC “PLASKE” (Ukraine), Lithuanian Railways.

II. Adoption of the agenda (agenda item 1)

Documentation: ECE/TRANS/SC.2/GEURL/2014/9

5. The Group of Experts adopted the provisional agenda prepared by the secretariat (ECE/TRANS/SC.2/GEURL/2014/9).

III. Unification of international railway law with the objective of allowing rail carriage under a single legal regime (agenda item 2)

Documentation: ECE/TRANS/SC.2/GEURL/2014/11, Informal document SC.2/GEURL No. 10 (2014), Informal document SC.2/GEURL No. 11, Informal document SC.2/GEURL No. 12

6. The Group of Experts recalled that in order to arrive at a common understanding on the concepts and explanatory legal provisions to be enshrined into a new international legal railway regime, the sixth, seventh and eighth sessions undertook a comprehensive review of secretariat documents ECE/TRANS/SC.2/GEURL/2013/9, ECE/TRANS/SC.2/GEURL/2014/5 and ECE/TRANS/SC.2/GEURL/2014/8 which evaluate relevant legal provisions of COTIF/CIM and SMGS as well as possible wording of specific legal provisions that could be included into a legal instrument for Euro-Asian rail freight transport. This exchange of views was performed article by article starting with proposed Article A (scope of application) and up to article KK (agreements concerning recourse) (ECE/TRANS/SC.2/GEURL/2013/8, paras. 17–39, ECE/TRANS/SC.2/GEURL/2014/2, paras. 9–53 and ECE/TRANS/SC.2/GEURL/2014/7, paras 6-46).
7. Document ECE/TRANS/SC.2/GEURL/2014/11 provided, for articles A to KK, a detailed evaluation of provisions in COTIF/CIM and in SMGS as well as of other international legal documents, such as CMR and the Montreal Convention (column 1). Furthermore, the document included possible wording – agreed from previous sessions or still under negotiation – of specific legal provisions (column 2) that could be included into a legal instrument for Euro-Asian rail freight transport. This document took into

consideration all comments received from experts in due time by the secretariat, including those discussed during the session of the Friends of the Chair meeting (29 September 2014).

8. The Group of Experts undertook a review of columns 1 and 2 of ECE/TRANS/SC.2/GEURL/2014/11 for all articles analysed, in order to achieve an agreement on the wording of the explanatory legal provisions to be enshrined in a new international legal railway regime. This exchange of views and proposals was performed article by article starting with proposed Article A and up to article KK.

9. Article A. Scope of Application

The experts decided to delete the word “single” in paragraph 1 and in sub-item 3 of paragraph 1. The representative of Germany suggested a revised version of paragraph 2 which reads as follows:

“§ 2 The parties to the contract of carriage may also agree on the application of this legal regime to transport operations carried out by other modes of transport as a supplement to transfrontier rail transport:

1. if such agreement does not contradict any international convention governing such supplementary transport, and
2. unless the Contracting State whose law applies to such multimodal transport contract has declared that it will not apply this legal regime to multimodal transport contracts.”

The experts agreed with the above-mentioned revision of paragraph 2.

The article was approved.

10. Article B. Mandatory Law

OSJD suggested an insertion to be included at the end of paragraph 1. The experts agreed that this insertion should not be included.

The article was approved.

11. Article C. Provisions of public law

The representatives of Finland and Germany provided a revised version of article C along the lines of article 4 of the United Nations Convention on Contracts for the International Sale of Goods, 1980. This version should read as follows:

“This legal regime governs only the rights and obligations of the parties to the contract of carriage arising from such contract. Carriage to which this legal regime applies shall remain subject to the provisions of public law, in particular public law provisions regulating

1. the safe transport of dangerous goods as well as other safety issues,
2. customs formalities, or
3. the protection of animals.”

The experts agreed with the above-mentioned revision of article C.

The article was approved.

12. Article D. Contract of Carriage

The experts agreed that the word “uniform” in paragraph 2 should be deleted. The experts also agreed that the second sentence in paragraph 2, subparagraph 1 should be replaced by the following sentence: “The relevant international associations in the railway

sector may establish a model of the consignment note, also taking into account customs matters". The Chair and the representative from OSJD mentioned that the word "absence" in paragraph 2, subparagraph 3 should be replaced with another word or a description should be added because the translation of this word in the Russian language implies that a consignment note was not issued. One suggestion was to use the words "failure of issue".

The experts agreed that in the first sentence of paragraph 3 the word "instead of" should be replaced by "as". The experts also agreed that the word "duplicate" should be deleted from the whole instrument. In the second sentence of paragraph 3 the term "duplicate of the consignment note" should be replaced by another term. This will have an influence on the Articles 16 and 29 as well.

Regarding paragraph 4 on the electronic consignment note the experts agreed that the text provided by the representative of Germany at the previous session should be used. The article was approved. What remains is the linguistic issue with the use of the word "absence".

13. Article E. Content of the consignment note

The experts agreed that the title of the article should change from "Wording of the Consignment note" to "Content of the consignment note". OSJD had provided an alternative for sub-item (n) of paragraph 1. The experts agreed to revise sub-item (n) based on a proposal by OSJD. The new sub-item (n) should read as follows:

"(n) the carriage charges and other costs relating to carriage insofar as they have to be paid by the consignee."

With regard to paragraph 2 the experts agreed that lit. (a), (b) and (e) should read as follows:

"(a) the carriage charges and other costs relating to carriage which the consignor undertakes to pay;

(b) the agreed time of delivery;

...

(e) information made available by the consignor concerning the number and description of seals he has affixed to the wagon."

The experts agreed with the above-mentioned revision of article E.

The article was approved.

14. Article F. Responsibility for particulars entered on the consignment note

OSJD proposed inserting the article in paragraph 2. It was pointed out that the present draft text would provide for an exclusion of liability, whereas the addition of the words "of the value of the goods" might be understood to mean that the carrier was indeed liable. After discussion the experts agreed with a changed version shown in article 6 § 2 of the Annex. In addition, it was pointed out, the consignor's liability for all costs, loss or damage sustained by the carrier was regulated in paragraph 1.

The article was approved.

15. Article G. Payment of costs

The experts agreed that paragraph 3 of the article should be deleted. In addition they agreed that the last sentence of paragraph 1 should be replaced as follows:

"Unless otherwise agreed the carrier has the right to demand the carriage charges before the beginning of the carriage."

The article was approved.

16. NEW Article H. Payment of carriage charges

The insertion of a new article on payment of carriage charges was proposed by OSJD. The new article should read as follows:

“§ 1 The carriage charges are calculated based on tariffs, valid on the day of the conclusion of the contract of carriage, and in the currency defined according to the applied tariffs for the international carriage. Carriage charges are calculated separately by each participating carrier with regard to his section of the route and according to his pricing systems and tariffs.

§ 2 Unless otherwise agreed between the consignor and the carrier, the carriage charges shall be paid

- by the consignor to the participating carriers for the carriage performed by them, except the carrier who delivers the goods,
- by the consignee to the carrier who delivers the goods for the carriage performed by him.

§ 3 The carrier has to be compensated for all expenses related to the carriage which are not previewed in the applied tariffs and were caused by circumstances outside the sphere of risks to be borne by the carrier. These expenses are fixed on the date of their occurrence separately for each consignment and are confirmed by the relevant documents. Compensation for additional costs is carried out according to § 2 of this Article.

§ 4 In the case of re-loading of the goods at a station of different gauges from one wagon to two or more wagons of another gauge the carrier has the right to charge payments for the goods transhipped into another wagon separately as an independent consignment.”

The new article is not yet approved.

17. OLD Article H. Examination

The experts agreed that the word “at any time” at the first sentence of paragraph 1 should be deleted. Also they agreed that paragraph 3 of the article should be deleted. OSJD provided an insertion for paragraph 2 which was decided not to be included.

The article was approved.

18. Article I. Evidential value of the consignment note

The experts agreed that a description should be added for the Latin term “prima facie”. It was suggested to use a term along the lines of article 11, paragraph 3 of the CMNI (“3. The transport document shall be prima facie evidence, save proof to the contrary, ...”).

With regard to paragraph 2 it was decided to include a reference to Article D § 3 and to replace the words “good/appropriate condition” by “good and appropriate condition”.

The article was approved.

19. Article J. Packing, Loading

A small editorial change was introduced. The word “must” in paragraph 2, second sentence was deleted and the word “has to” was inserted.

The article was approved.

20. Article K. Completion of administrative formalities

The experts agreed to retain the word “any” in paragraph 2. In addition they agreed to replace paragraph 3, first sentence by the sentence shown in Article 12 § 3 of the Annex.

The article was approved.

21. Article L. Time of Delivery

The experts agreed that in the title of the article as well as in the remaining text the words “transit periods” should be replaced by “time of delivery”. Also the Chair commented that the word “diligent carrier” should be correctly translated in the Russian text.

The article was approved.

22. Article M. Delivery

The experts agreed that paragraph 2 should be deleted. They also agreed that in paragraph 3 at the third sentence, the words “or remedies” should be added after the word “rights”. It was agreed that in paragraph 4, second sentence, the word “prescriptions” should be replaced by the word “requirements”.

The article was approved.

23. Article N. Right to dispose of the goods

The experts agreed that in paragraph 2, second sentence, the word “consignor” should be replaced by the word “consignee” – at least in the English text. The representative of Germany objected to the concept that the consignee shall have the right of disposal when the goods have reached the country of destination. Nevertheless, the majority spoke in favour of obtaining the provision. OSJD proposed to delete the last sentence of paragraph 2 starting “If the consignee ...” and ending “... orders of the consignee”. The experts agreed with this proposal.

The article was approved.

24. Article O. Exercise of the right to dispose of the goods

The experts agreed to disconnect the right of disposal from the obligation to produce a consignment note if the consignee wishes to modify the contract. As a consequence they agreed to draft paragraph 1 as stated in Article 16 § 1 of the Annex.

In addition the experts agreed to rephrase the second sentence in paragraph 4 as it is said in Article 16 § 4 of the Annex.

Paragraph 5 was redrafted as follows:

“§ 5 The carrier has the right to demand payment for the additional costs of carriage and the expenses arising from the carrying out the given instructions, unless the carrier was at fault.”

The article was approved on principle.

25. Article P. Circumstances preventing carriage and delivery

An insertion was proposed by OSJD but this was not accepted by the experts because it is being discussed under article Q.

The article was approved.

26. Article Q. Consequences of circumstances preventing carriage and delivery

The Experts agreed that the word “occasioned” in the first sentence of paragraph 1 should be replaced by the word “caused” and the words “transit period” in the last sentence of the same paragraph should be replaced by the words “time of delivery”.

The article was approved.

27. Article R. Basis of Liability

No comments received or discussed. The article was approved.

28. Article S. Presumption of loss of the goods

The experts agreed that the words “exceeding the transit period” in the last sentence of paragraph 3 should be replaced by the words “delay in delivery”. In addition the experts agreed that in paragraph 5 the words “shall remain” should be replaced by “shall be”.

The article was approved

29. Article T. Compensation for loss

The representative of CIT pointed out that the limits of liability ensure the legal and the economic certainty of railways undertakings. The consequence of unlimited liability would be a loss of competitiveness for rail freight transport. In all international transport law Conventions for road and maritime transportation, a limitation of liability in case of loss of or damage to the goods or delay in delivery were provided. A lack of any limitation of liability would result directly in an increase of the insurance premium.

CIT suggested a compensation that should not exceed 17 Special Drawing Rights per kilogram of gross weight. OSJD argued in favour of an unlimited, but non-mandatory liability. The Chair informed the experts that in the Russian Federation a tool exists that actually evaluates and regulates the unlimited liability based on the types of cargoes transported. The experts agreed that a minimum liability should exist including the possibility of having higher limits agreed among the parties. The experts agreed that if a limit of liability was stipulated in the uniform law the following text should be added to paragraph 2a: “unless the parties to the contract of carriage have agreed on a higher amount or that compensation should be calculated by reference to the value of the goods.”

As an alternative it was suggested to provide for unlimited liability, but to allow the parties to the contract to agree on a specific limit. Such a provision would read as follows: “The carrier’s liability for loss of, or damage to, the goods shall not be limited, unless the parties to the contract of carriage have agreed on a limit above [19] Special Drawing Rights per kilogram of the gross weight of the lost or damaged goods.”

With respect to paragraph 5a the experts agreed that this provision should form a separate article.

The experts agreed on the possibility of a limitation of liability by an amount. This amount has still to be defined. The rest of the article was approved on principle.

30. NEW Article U. Unit of Account

The experts agreed that since a limitation of liability was agreed based on Special Drawing Rights an article that provide definition of these units should be introduced. The new article should be read as follows:

The unit of account referred to in Article 21 is the Special Drawing Right as defined by the International Monetary Fund. The amount referred to in Article 20 is to be converted into the national currency of a State according to the value of such currency at the date of judgement or award or the date agreed upon by the parties.

The value of a national currency, in terms of the Special Drawing Right, of a Contracting State that is a member of the International Monetary Fund is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State that is not a member of the International Monetary Fund is to be calculated in a manner to be determined by that State.

31. Article TA. Liability for wastage during carriage

No comments received or discussed. The article was approved.

32. OLD Article U. Compensation for damage

The experts and the Chair agreed that the following alternative to paragraphs 1 and 2 should be added:

“§ 1 In case of damage to goods, the carrier shall compensate the loss in value of the goods. The amount shall be calculated on the basis of expertise or by applying to the value of the goods defined in accordance with Article 21 § 2 whereas the percentage of loss in value shall be noted at the place of destination. It is presumed that the costs of lowering and repairing the damage correspond to the loss in value.

§ 2 The carrier shall, in addition, refund the costs provided for in Article 21 § 3, in the proportion set out in § 1 of this Article.”

33. Article V. Compensation for delay in delivery

The experts agreed that the title of the article should change from “Compensation for exceeding the transit period” to “Compensation for delay in delivery”. As proposed by the Chair, the experts agreed to delete the words “including damage to the goods” in paragraph 1 as well as paragraph 3. The experts also agreed to add the words “or damage” in sentence 2 of paragraph 2 after the word “partial loss”.

The article was approved.

34. Article W. Conversion and Interest

The experts decided to delete this article but to integrate the former paragraph 1 into Article T § 3 and the former paragraph 2 into Article ZA.

This article was deleted.

35. Article X. Persons for whom the carrier is liable

OSJD pointed out that the term “managers of the railway infrastructure” gives the impression that the “managers” are physical persons. Therefore it was considered to use the term “infrastructure manager” which is common within the EU. But this term might be misunderstood outside the EU as well. So Article 26 in the Annex uses the term “undertakings or bodies operating the railway infrastructure” which is close to the detailed definition of the infrastructure manager in EU law.

The article was approved.

36. Article Y. Other actions

The article was approved.

37. Article Z. Notice of Damage

The article was approved.

38. Article ZA. Claims

The words “and descriptions” in the second sentence of paragraph 2 were deleted. In paragraphs 3, 5 and 6 the word “duplicate” is to be replaced by another term.

The article was approved.

39. Article AA. Right to bring an action against the carrier

No comments received or discussed. The article was approved.

40. Article BB. Carriers against whom an action might be brought

No comments received or discussed. The article was approved.

41. Article DD. Execution of judgements. Attachment

The experts decided to delete this article.

This article was deleted.

42. Article EE. Limitation of actions

The experts approved the deletion of this article.

43. Article FF. Arbitration

The experts decided to delete this article.

This article was deleted.

44. Article GG. Settlement of Accounts

The article was approved.

45. Article HH. Right of Recourse

The article was approved.

46. Article II. Procedure of recourse

The article was approved.

47. Article JJ. Liability in case of loss of or damage to a vehicle or an intermodal transport unit (belonging to another carrier)

The experts decided to delete this article.

This article was deleted.

48. Article KK. Agreements concerning recourse

The article was approved.

49. Following this final review of the conceptual and legal basis of articles A to KK of a new international railway regime, the Group of Experts agreed that considerable work has been done by all experts on the analysis of existing international modal transport conventions (rail, road, air, inland water and maritime transport) and related agreements as well as on negotiating, discussing, finding and agreeing concerted approaches for each provision of the new legal instrument. These approaches satisfy and cover the needs of each stakeholder and of future Contracting Parties, but also accommodate in the most efficient way the characteristics and demands of the different working environments and cultures involved in International railways.

50. The experts agreed that considerable work has been done so far. What remains is fine-tuning of the wording both substantively – settlement of all open issues – and

linguistically in three languages (English, French and Russian) as well as reaching a decision on an appropriate management system for the unified railway law.

51. The experts requested the secretariat to elaborate on the basis of the discussions held by the Group of Experts, a revised draft text of the unified railway law for the next session of Working Party on Rail Transport (24–26 November 2014) for its consideration. The revised draft has been annexed to this report. A renumbering from letters to numbers has been provided.

IV. Identification of an appropriate management system for unified railway law based on the experience of international organizations in the field of the railway transport (agenda item 3)

Documentation: ECE/TRANS/SC.2/GEURL/2013/12, Informal documents SC.2/GEURL Nos. 2, 3 and 9 (2014)

52. No time left for discussions on this agenda item.

V. Other Business (agenda item 4)

53. The experts did not take any decision regarding the request from OSJD for revising paragraph 14 of the report of the seventh session of the Group. Therefore the secretariat will not proceed with the issuance of any corrigendum regarding this issue.

VI. Date of next session (agenda item 5)

54. Sessions of the Group of Expert are not foreseen so as to allow SC.2, at its forthcoming session on 24–26 November 2014, to consider progress made and provide guidance on possible future activities of the Group of Experts, as appropriate, for approval by the Inland Transport Committee in February 2015.

VII. Summary of decisions (agenda item 6)

55. The Group of Experts agreed that the secretariat would prepare a short report on the outcome of the session.

Annex

Unified Railway Law

Article 1 Scope of Application

- § 1 This legal regime shall apply to a contract of carriage of goods by rail for reward,
1. when the place of taking over of the goods and the place designated for delivery are situated in two different States which are Contracting Parties to this legal regime, and
 2. if the parties to the contract of carriage agree that the contract is subject to this legal regime, and
 3. if the provisions of CIM and/or SMGS or bilateral or multilateral agreements between Contracting States do not apply to the contract covering the entire journey.
- § 2 The parties to the contract of carriage may also agree on the application of this legal regime to transport operations carried out by other modes of transport as a supplement to trans frontier rail transport,
1. if such agreement does not contradict any international convention governing such supplementary transport, and
 2. unless the Contracting State whose law applies to such multimodal transport contract has declared that he will not apply this legal regime to multimodal transport contracts.
- § 3 Two or more Contracting States may conclude agreements which declare this legal regime applicable to contracts of carriage by rail between their countries in other cases than regulated in § 1 and § 2.
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Article 2 Mandatory Law

- § 1 Unless provided otherwise in this legal regime, any stipulation, agreed upon by the parties to the contract of carriage, which would derogate from this legal regime shall be null and void. The nullity of such stipulation shall not involve the nullity of other provisions of the contract of carriage.
- § 2 Nevertheless, a carrier may assume a liability greater and obligations more burdensome than those provided for in this legal railway regime.
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Article 3 Provisions of public law

This legal regime only governs the rights and obligations of the parties to the contract of carriage arising from such contract. Carriage to which this legal regime applies shall remain subject to the provisions of public law, in particular public law provisions regulating

1. the safe transport of dangerous goods as well as other safety issues,
 2. customs formalities, or
 3. the protection of animals.
-

Article 4 Contract of carriage

- § 1 Under the contract of carriage the carrier is obliged to carry the goods to the destination and there to deliver them to the consignee. Subject to Article 7 the consignor is obliged to pay the costs relating to carriage.
- § 2 The contract of carriage shall be confirmed by a consignment note. The international associations relevant in the railway sector may establish a model of the consignment note, also taking into account customs matters.
-

For the totality of goods (consignment) that is to be carried under a contract of carriage, only one consignment note shall be made out, even if the totality of goods consists of several parts or is transported in several wagons.

The loss or absence for other reasons or the irregularity of the consignment note shall not affect the existence or validity of the contract of carriage which shall remain subject to this legal regime.

§ 3 The consignment note shall be signed by the consignor and the carrier. As a signature there can be used an imprint, a stamp, an accounting machine entry or any other appropriate manner.

The carrier must certify the taking over of the goods on the consignment note in an appropriate manner and return an issue of the consignment note to the consignor.

§ 4 The consignment note may be established or used in the form of electronic communication. An electronic record having the same functions as the consignment note shall be deemed equivalent to the consignment note, provided that the authenticity and integrity of the record are assured at all times (electronic consignment note).

Article 5

Content of the consignment note

§ 1 The consignment note must contain the following particulars:

- (a) the date and the place at which it is made out;
- (b) the name and address of the consignor;
- (c) the name and address of the contractual carrier;
- (d) the name and address of the person to whom the goods have effectively been handed over if he is not the contractual carrier;
- (e) the place and the date of taking over of the goods;
- (f) the place designated for delivery;
- (g) the name and address of the consignee;
- (h) the description of the nature of the goods and the method of packing, and, in case of dangerous goods, their generally recognized description;
- (i) the number of packages and their special marks and numbers;
- (j) the number of the wagon(s) in which the consignment is carried
- (k) in case of using an intermodal transport unit, its category, number or other characteristics necessary for its identification;
- (l) the gross mass or the quantity of the goods expressed in other ways;
- (m) a detailed list of the documents which are required by customs or other administrative authorities and are attached to the consignment note or held at the disposal of the carrier at the offices of a duly designated authority or a body designated in the contract;
- (n) the carriage charges and other costs for transportation insofar as they have to be paid by the consignee.

§ 2 Where applicable the consignment note must also contain the following particulars:

- (a) carriage charges and other costs for transportation which the consignor undertakes to pay;
- (b) the agreed time of delivery;
- (c) the agreed route to follow;
- (d) a list of the documents not mentioned in § 1, letter m, handed over to the carrier;
- (e) the information given by the consignor concerning the number and description of seals he has affixed to the wagon.

§ 3 The parties may enter on the consignment note any other particulars they consider useful.

Article 6**Responsibility for particulars entered on the consignment note**

- § 1 The consignor shall be liable for all costs, loss or damage sustained by the carrier by reason of:
- (a) the entries made by or on behalf of the consignor in the consignment note being incorrect, or
 - (b) the consignor omitting to disclose the dangerous nature of the goods.

§ 2 If the consignor has failed to disclose the dangerous nature of the goods, the carrier may at any time unload or destroy the goods or render them innocuous, as the circumstances may require. In this case the carrier may claim the costs or expenses necessitated by the measures taken and shall not be obliged to pay compensation for the value of the dangerous goods, save when he was aware of their dangerous nature on taking them over.

Article 7**Payment of costs**

§ 1 Unless otherwise agreed between the consignor and the carrier, the costs relating to carriage (the carriage charge, incidental costs, customs duties and other costs incurred from the conclusion of the contract until delivery) shall be paid by the consignor. Unless otherwise agreed the carrier has the right to demand the carriage charges before the beginning of the carriage.

§ 2 When by virtue of an agreement between the consignor and the carrier, the costs are payable by the consignee, the consignor shall remain liable to pay the costs, if the consignee has not taken possession of the consignment note nor has shown up for the delivery nor asserted his rights in accordance with Article 14 §§ 2 and 3 nor modified the contract of carriage in accordance with Article 15.

Article 8**Payment of carriage charges**

§ 1 The carriage charges are calculated based on tariffs, valid on the day of the conclusion of the contract of carriage, and in the currency defined according to the applied tariffs for the international carriage. Carriage charges are calculated separately by each participating carrier with regard to his section of the route and according to his pricing systems and tariffs.

- § 2 Unless otherwise agreed between the consignor and the carrier, the carriage charges shall be paid
- by the consignor to the participating carriers for the carriage performed by them, except the carrier who delivers the goods,
 - by the consignee to the carrier who delivers the goods for the carriage performed by him.

§ 3 The carrier has to be compensated for all expenses related to the carriage which are not previewed in the applied tariffs and were caused by circumstances outside the sphere of risks to be borne by the carrier. These expenses are fixed on the date of their occurrence separately for each consignment and are confirmed by the relevant documents. Compensation for additional costs is carried out according to § 2 of this Article.

§ 4 In the case of re-loading of the goods at a station of different gauges from one wagon to two or more wagons of another gauge the carrier has the right to charge payments for the goods transhipped into another wagon separately as an independent consignment.

Article 9**Examination**

§ 1 The carrier shall have the right to examine whether the conditions of carriage have been complied with and whether the consignment corresponds with the entries in the consignment note made by the consignor. If the examination concerns the contents of the consignment, this shall be carried out as far as possible in the presence of the person entitled; where this is not possible, the carrier shall require the presence of two independent witnesses, unless the laws and prescriptions of the State where the examination takes place provide otherwise.

§ 2 If the consignment does not correspond with the entries in the consignment note or if the provisions of public law have not been complied with, the result of the examination must be entered in the consignment note. In this case the costs of the examination shall be charged against the goods, if they have not been paid immediately.

§ 3 When the consignor loads the goods, he shall be entitled to require the carrier to examine the condition of the goods and their packaging as well as the accuracy of statements on the consignment note as to the number of packages, their marks and numbers as well as the gross mass of the goods or their quantity otherwise expressed. The carrier shall be obliged to proceed with the examination only if he has appropriate means of carrying it out. The carrier may demand the payment of the costs of the examination. The result of the examination shall be entered on the consignment note.

Article 10 **Evidential value of the consignment note**

§ 1 The consignment note, signed by the consignor and the carrier according to Article 4 shall be prima facie evidence, save proof to the contrary, of the conclusion and the conditions of the contract of carriage and the taking over of the goods by the carrier.

§ 2 If the consignment note, signed by the consignor and the carrier according to Article 4 contains no specific reservations by the carrier, it is assumed, failing proof to the contrary, that the goods and their packaging have apparently been in a good and appropriate condition to be transported at the moment they were taken over by the carrier.

§ 3 If the carrier has loaded the goods or has examined them according to Article 9, the consignment note shall be prima facie evidence, save proof to the contrary, of the condition of the goods and their packaging indicated on the consignment note or, in the absence of such indications, of their apparently good and appropriate condition at the moment they were taken over by the carrier and of the accuracy of the statements in the consignment note concerning the number of packages, their marks and numbers as well as the gross mass of the goods or their quantity otherwise expressed.

However, the consignment note will not be prima facie evidence, if not proven to the contrary, in a case where it bears a reasoned reservation.

Article 11 **Packing, Loading**

§ 1 The consignor shall be liable to the carrier for any loss or damage and costs due to defective packing or labelling of the goods or defective marking, unless the defect was apparent or known to the carrier at the time when he took over the goods and he made no reservations concerning it.

§ 2 The consignor shall be liable for all the consequences of defective loading carried out by him and in particular has to compensate the carrier for the loss or damage sustained in consequence by him. Should the consignment note contain no information on the person who has loaded the goods, it shall be considered as loaded by the consignor.

§ 3 In the case of apparent or known defective packing, labelling or loading of the goods the carrier may accept the goods for carriage under specific contract conditions.

Article 12 **Completion of administrative formalities**

§ 1 For the purposes of the customs or other formalities which have to be completed before delivery of the goods, the consignor shall attach the necessary documents to the consignment note or make them available to the carrier and shall furnish him with all the information which he requires.

§ 2 The carrier shall not be obliged to check whether these documents and this information are correct and sufficient. The consignor shall be liable to the carrier for any damage caused by the absence or insufficiency of, or any irregularity in, such documents and information except in the case the damage was caused by fault of the carrier.

§ 3 The carrier shall be liable for any damage caused by the loss or incorrect use of the documents which were made available to him unless the loss or incorrect use of the documents has been caused by circumstances which a diligent carrier could not avoid and the consequences of which he was unable to prevent. The compensation payable by the carrier shall not exceed the compensation provided for in the event of loss of the goods.

Article 13
Time of delivery

The carrier shall deliver the goods within the time agreed in the contract of carriage. If no time of delivery has been agreed, delivery shall be made within the time which could reasonably be required of a diligent carrier, taking into account the circumstances of the voyage.

Article 14
Delivery

§ 1 At the place of delivery the carrier shall hand over the consignment note and deliver the goods to the consignee against a receipt and payment of all amounts due according to the contract of carriage.

§ 2 If the loss of the goods is established or if the goods are damaged or delivered late, the consignee shall be entitled to enforce in his own name against the carrier any rights or remedies arising from the contract of carriage.

§ 3 In other respects, delivery of the goods shall be carried out in accordance with the requirements in force at the place of destination.

§ 4 This legal regime does not affect a right of the carrier that may exist pursuant to the contract of carriage or the applicable law to retain the goods to secure the payment of sums due.

Article 15
Right to dispose of the goods

§ 1 The consignor has the right to dispose of the goods and to modify the contract of carriage by giving subsequent orders, in particular by asking the carrier to stop the goods in transit or not to deliver them or to give them back at the place of taking over of the goods or to change the place of delivery or to deliver them to a consignee other than the consignee indicated in the consignment note.

§ 2 The consignor's right of disposal is transferred to the consignee at the time specified by the consignor in the consignment note. Unless the consignor has specified otherwise, the right of disposal shall be transferred to the consignee when the goods have reached the country of destination.

§ 3 If in exercising his right of disposal the consignee has ordered the delivery of the goods to another person, this other person shall not be entitled to name other consignees.

§ 4 Any right of disposal shall be extinguished when the consignee or another person entitled has taken possession of the consignment note from the carrier and has accepted the goods or asserted his rights in accordance with Article 14 § 2.

Article 16
Exercise of the right to dispose of the goods

§ 1 If the person who is entitled to dispose of the goods wishes to modify the contract of carriage he has to give the necessary instructions to the carrier. The consignor in this case has to produce to the carrier his issue of the consignment note on which the new instructions have to be entered.

§ 2 The carrier is not obliged to carry out instructions, unless they are possible, lawful and reasonable to require. Instructions must in particular neither interfere with the normal working of the carrier's undertaking nor prejudice the consignors or consignees of other consignments. Any instruction shall not have the effect of splitting the consignment.

§ 3 When, by reason of the provisions of §§ 1 and 2 of this Article, the carrier will not carry out instructions which he receives, he shall immediately notify the person who gave him such instructions.

§ 4 A carrier who has not carried out properly the instructions given under the provisions of this article shall be liable to the person entitled to make a claim for any loss or damage caused thereby, if the carrier is at fault. If the carrier carries out the consignor's instructions without requiring the consignor's issue of the consignment note to be produced, he shall be liable to the consignee for any loss or damage caused thereby, if the consignor's issue of the consignment note has been passed on to the consignee. Any compensation payable shall not exceed the amount payable in the event of loss of the goods.

§ 5 The carrier has the right to demand payment for the additional costs of carriage and the expenses arising from the carrying out of the given instructions, unless the carrier is at fault.

Article 17

Circumstances preventing carriage and delivery

§ 1 If it becomes evident, after the goods have been taken over by the carrier, that carriage or delivery cannot be performed according to the contract, the carrier shall ask for instructions from the person entitled to dispose of the goods or, where circumstances prevent delivery, he shall ask the consignor for instructions.

§ 2 If the consignee, in accordance with Article 16 § 3, has given instruction to deliver the goods to another person, § 1 of this Article shall apply as if the consignee were the consignor and the other person were the consignee.

§ 3 If circumstances preventing carriage can be avoided by modifying the route, the carrier shall decide whether a modification shall be made or whether it is in the interest of the person entitled to ask him for instructions.

§ 4 If circumstances preventing delivery cease to exist before arrival of instructions from the consignor to the carrier, the goods shall be delivered to the consignee. The consignor shall be notified without delay.

Article 18

Consequences of circumstances preventing carriage and delivery

§ 1 The carrier is entitled to reimbursement for the costs caused by his request for instructions or the carrying out of instructions or the fact that he has taken a decision in accordance with Article 17 § 3, unless such costs were caused by his fault. The carrier may in particular recover the carriage charge applicable to the route followed and shall be allowed the time of delivery applicable to such route.

§ 2 If the carrier cannot, within a reasonable time, obtain lawful and reasonable instructions, he shall take such measures as seem to be in the best interest of the person entitled to dispose of the goods. He may, for example, return the goods to the consignor or unload them for account of the person entitled. Thereupon the carriage shall be deemed to be at an end. The carrier shall then hold the goods on behalf of the person entitled. He may, however, entrust them to a third party, and in that case he shall not be under any liability except for the exercise of reasonable care in the choice of such third party. The charges due under the contract of carriage and all other costs of the carriage shall remain chargeable against the goods.

§ 3 The carrier may sell the goods, without awaiting instructions from the person entitled, if this is justified by the perishable nature or the condition of the goods or if the costs of storage would be out of proportion to the value of the goods. He may also proceed to the sale of the goods in other cases if within a set time he has not received from the person entitled instructions to the contrary which he may reasonably be required to carry out; in such a case the carrier may destroy unusable goods.

§ 4 If the goods have been sold, the proceeds of sale, after deduction of the costs chargeable against the goods, shall be placed at the disposal of the person entitled. If the proceeds of sale are less than those costs, the carrier shall be entitled to the difference.

§ 5 The procedure in the case of sale shall be determined by the law or custom of the place where the goods are situated.

§ 6 Article 3 remains unaffected.

Article 19

Basis of liability

§ 1 The carrier who has concluded the contract of carriage (contractual carrier) shall be liable for loss or damage resulting from the total or partial loss of or damage to the goods between the time of taking over of the goods and the time of delivery, as well as for exceeding the transit period.

§ 2 If carriage governed by a single contract is performed by successive carriers, each carrier who is not a contractual carrier, by the very act of taking over of the goods with the consignment note, shall become a party to the contract of carriage and shall assume the obligations arising from the consignment note. In such case the liability of all carriers shall be joint and several.

§ 3 Where the carrier has entrusted the performance of the carriage, in whole or in part, to a substitute carrier who does not take over the consignment note, Articles 26 and 27 § 2 shall be applicable.

§ 4 The carrier shall be relieved of this liability to the extent that the loss or damage or the exceeding the transit period was caused by the fault of the person entitled or by an instruction given by the person entitled other than a

result of the fault of the carrier or by an inherent defect of the goods or by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.

Article 20

Presumption of loss of the goods

§ 1 The person entitled may, without being required to furnish further proof, consider the goods as lost when they have not been delivered to the consignee or placed at his disposal within three months after the expiry of the transit period.

§ 2 The person entitled may, on receipt of compensation for the missing goods, request in writing that he shall be notified immediately should the goods be recovered within one year after the payment of compensation. The carrier shall acknowledge such request in writing.

§ 3 Within thirty days after receipt of such notification, the person entitled may require the goods to be delivered to him against payment of the costs resulting from the contract of carriage and against refund of the compensation received less, where appropriate, costs which may have been included therein. He shall retain his rights to claim compensation for delay in delivery provided for in Article 25.

§ 4 In the absence of the request referred to in § 2 or of instructions given within the period specified in § 3, or if the goods are recovered more than one year after the payment of compensation, the carrier shall be entitled to deal with them in accordance with the laws and prescriptions in force at the place where the goods are situated.

§ 5 Any obligation of the consignee to accept the recovered goods shall be subject to the laws applicable in the State where the place designated for delivery is situated.

Article 21

Compensation for loss

§ 1 In case of total or partial loss of the goods, the carrier shall compensate the value of the goods on the day and at the place where they were taken over for carriage. If part of the goods has been delivered, its value which remains to the person entitled shall be deducted from the amount of compensation.

§ 2 The value of the goods shall be fixed according to the market price at the place where they were taken over for carriage or, if there is no market price, according to the usual value of goods of the same kind and quality. If the goods have been sold just before being taken over for carriage the purchase price noted in the seller's invoice, minus carriage charges included therein, shall be presumed to be the market price.

§ 3 Compensation shall not, however, exceed ... units of account per kilogram of gross weight short, unless the parties to the contract of carriage agree on a higher amount according to the value of the goods.

Where the calculation of the compensation requires the conversion of sums expressed in foreign currency, conversion shall be at the exchange rate applicable on the day and at the place of payment of compensation.

§ 4 The carrier shall, in addition, refund the carriage charge, customs duties already paid and other charges paid in respect of the carriage of the goods. If part of the goods has been delivered, § 1, second sentence, shall apply by analogy.

§ 5 In case of loss of an intermodal transport unit or its removable parts, the compensation shall be limited to the usual value of the unit or its removable parts on the day and at the place of loss. If it is impossible to ascertain the day or the place of loss, the compensation shall be limited to the usual value on the day and at the place where the unit has been taken over by the carrier.

§ 6 No further damages shall be payable.

Article 22

Unit of account

The unit of account referred to in Article 21 is the Special Drawing Right as defined by the International Monetary Fund. The amount referred to in Article 20 is to be converted into the national currency of a State according to the value of such currency at the date of judgement or award or the date agreed upon by the parties.

The value of a national currency, in terms of the Special Drawing Right, of a Contracting State that is a member of the International Monetary Fund is to be calculated in accordance with the method of valuation applied by

the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State that is not a member of the International Monetary Fund is to be calculated in a manner to be determined by that State.

Article 23

Liability for wastage during carriage

§ 1 In respect of goods which, by reason of their nature, are generally subject to wastage by the sole fact of carriage, the carrier shall only be liable to the extent that the wastage exceeds the following allowances, whatever the length of the route:

- (a) two per cent of the mass for liquid goods or goods consigned in a moist condition;
- (b) one per cent of the mass or dry goods.

§ 2 The limitation of liability provided for in § 1 may not be invoked if, having regard to the circumstances of a particular case, it is proved that the loss was not due to causes which would justify the allowance.

§ 3 Where several packages are carried under a single consignment note, the wastage during carriage shall be calculated separately for each package if its mass on consignment is shown separately on the consignment note or can be ascertained otherwise.

§ 4 In case of total loss of goods or in case of loss of a package no deduction for wastage during carriage shall be made in calculating the compensation.

§ 5 This Article shall not derogate from Article 19 § 4.

Article 24

Compensation for damage

§ 1 In case of damage to goods, the carrier shall compensate the loss in value of the goods. The amount shall be calculated on the basis of expertise or by applying to the value of the goods defined in accordance with Article 21 § 2 whereas the percentage of loss in value shall be noted at the place of destination. It is presumed that the costs of lowering and repairing the damage correspond to the loss in value.

§ 2 The carrier shall, in addition, refund the costs provided for in Article 21 § 3, in the proportion set out in § 1 of this Article.

§ 3 The compensation shall not exceed:

- (a) the amount payable in the case of total loss, if the whole consignment has lost value through damage;
- (b) the amount payable in the case of loss of the part affected, if only part of the consignment has lost value through damage.

§ 4 In case of damage to an intermodal transport unit or its removable parts, the compensation shall be limited to the cost of repair. § 3 shall apply by analogy.

§ 5 No further damages shall be payable.

Article 25

Compensation for delay in delivery

§ 1 In the case of delay in delivery, if the claimant proves that damage has resulted therefrom, the carrier shall pay compensation not exceeding half of the carriage charges.

§ 2 Insofar as the goods are lost or have lost value as a result of partial loss or damage, compensation for delay shall not be paid.

§ 3 In no case the compensation for delay together with that for partial loss of or damage to goods shall exceed the compensation which would be payable in case of total loss of the goods.

§ 4 If the time of delivery has been established by agreement, other forms of compensation than those provided for in § 1 may be so agreed. If, in this case, the time of delivery provided for in Article 13 are exceeded, too, the person entitled may claim either the compensation provided for in the agreement or that provided for in this Article.

Article 26**Persons for whom the carrier is liable**

The carrier shall be liable for his servants and other persons whose services he makes use of for the performance of the carriage, when these servants and other persons are acting within the scope of their functions. The undertakings or bodies operating the railway infrastructure on which the carriage is performed shall be considered as persons whose services the carrier makes use of for the performance of the carriage.

Article 27**Other actions**

§ 1 In all cases where this legal regime shall apply, any action in respect of liability, on whatever grounds, may be brought against the carrier only subject to the conditions and limitations laid down in this legal regime.

§ 2 The same shall apply to any action brought against the servants or other persons for whom the carrier is liable pursuant to Article 26.

Article 28**Notice of damage**

§ 1 Where partial loss of or damage to the goods is apparent and the consignee or the consignor fails to notify this on delivery of the goods at the latest, it is presumed that the goods have been delivered in a condition conforming with the contract. The notice must specify the damage sufficiently clearly.

§ 2 Where partial loss or damage was not apparent, the presumption referred to in § 1 shall also apply if the damage is not notified within seven days after delivery.

§ 3 Claims for delay shall expire if the consignee does not notify the carrier of the delay in delivery within 60 days after delivery of the goods.

§ 4 If loss, damage or delay is notified on delivery, it is sufficient to give notice to the person delivering the goods. After delivery any notice of damage shall be given to the carrier in text form (e.g. E-Mail). Dispatch within the applicable notification period is sufficient.

Article 29**Claims**

§ 1 Claims relating to the contract of carriage must be addressed in writing to the carrier against whom an action may be brought.

§ 2 A claim may be made by persons who have the right to bring an action against the carrier. The necessity to make a claim before bringing an action against the carrier shall remain subject to the laws applicable in the State where the action shall be brought.

§ 3 To make the claim the consignor must produce his issue of the consignment note. Failing this he must produce an authorisation from the consignee or furnish proof that the consignee has refused to accept the goods. If necessary, the consignor must prove the absence or loss of his issue of the consignment note.

§ 4 To make the claim the consignee must produce the consignment note if it has been handed over to him.

§ 5 The consignment note, the consignor's issue of the consignment note and any other documents which the person entitled thinks fit to submit with the claim must be produced either in the original or as copies, the copies, where appropriate, duly certified if the carrier so requests.

§ 6 On settlement of the claim the carrier may require the production, in the original form, of the consignment note or the consignor's issue of the consignment note so that they may be endorsed to the effect that settlement has been made.

§ 7 The person entitled may claim interest on compensation, calculated according to the applicable national law, from the day on which the claim was sent in writing to the carrier or, if no such claim has been made, from the day on which legal proceedings were instituted.

Article 30

Right to bring an action against the carrier

§ 1 The consignor may bring an action as long as he has the right to dispose of the goods in accordance with Article 15 or if there are circumstances preventing delivery.

§ 2 The consignee may bring an action during the time he has the right to dispose of the goods in accordance with Article 15.

§ 3 An action for the recovery of a sum paid pursuant to the contract of carriage may only be brought by the person who made the payment.

Article 31

Carriers against whom an action might be brought

§ 1 Actions based on the contract of carriage may be brought against the contractual carrier or against the carrier who has delivered the goods or against the carrier having performed the part of the carriage on which the event giving rise to the proceedings occurred.

§ 2 An action for the recovery of a sum paid pursuant to the contract of carriage may be brought against the carrier who has collected that sum or against the carrier on whose behalf it was collected.

§ 3 An action may be brought against another carrier when instituted by way of counter-claim or by way of exception in proceedings relating to a principal claim based on the same contract of carriage.

§ 4 If the plaintiff has a choice between several carriers, his right to choose shall be extinguished as soon as he brings an action against any one of them.

Article 32

Settlement of accounts

Any carrier who has collected or ought to have collected, either at departure or on arrival, charges or other costs arising from the contract of carriage must pay to the carriers concerned their respective shares. The methods of payment shall be fixed by agreement between the carriers.

Article 33

Right of recourse

§ 1 A carrier who has paid compensation pursuant to this legal regime shall have a right of recourse against the carriers who have taken part in the carriage in accordance with the following provisions:

(a) the carrier who has caused the loss or damage shall be solely liable for it;

(b) when the loss or damage has been caused by several carriers, each shall be liable for the loss or damage he has caused; if such distinction is impossible, the compensation shall be apportioned between them in accordance with letter c);

(c) if it cannot be proved which of the carriers has caused the loss or damage, the compensation shall be apportioned between all the carriers who have taken part in the carriage, except those who prove that the loss or damage was not caused by them; such apportionment shall be in proportion to their respective shares of the carriage charge.

§ 2 In the case of insolvency of any one of these carriers, the unpaid share due from him shall be apportioned among all the other carriers who have taken part in the carriage, in proportion to their respective shares of the carriage charge.

Article 34

Procedure of recourse

§ 1 The validity of the payment made by the carrier exercising a right of recourse pursuant to Article 33 may not be disputed by the carrier against whom the right of recourse is exercised when compensation has been determined by a court or tribunal and when the latter carrier, duly served with notice of the proceedings, has been afforded an opportunity to intervene in the proceedings. The court or tribunal seized of the principal action shall determine what

time shall be allowed for such notification of the proceedings and for intervention in the proceedings.

§ 2 A carrier exercising his right of recourse must make his claim in one and the same proceedings against all the carriers with whom he has not reached a settlement, failing this he shall lose his right of recourse in the case of those against whom he has not taken proceedings.

§ 3 The court or tribunal must give its decision in one and the same judgement on all recourse claims brought before it.

§ 4 The carrier wishing to enforce his right of recourse may bring his action in the courts or tribunals of the State on the territory of which one of the carriers participating in the carriage has his principal place of business or the branch or agency which concluded the contract of carriage.

§ 5 When the action must be brought against several carriers, the plaintiff carrier shall be entitled to choose the court or tribunal in which he will bring the proceedings among those having competence pursuant to § 4.

§ 6 Recourse proceedings may not be joined with proceedings for compensation taken by the person entitled under the contract of carriage.

Article 35

Agreements concerning recourse

The carriers may conclude agreements which derogate from Articles 32 and 33.
