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Group of Experts towards Unified Railway Law

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Item 3 of the provisional agenda

Monitoring results of pilot tests

Questionnaire for pilot tests

Note by the secretariat¹

I. Preliminary remarks

A. Motive for pilot tests

Following the ministerial declaration on a Unified Railway Law (Geneva, 23 February 2013), the UNECE Inland Transport Committee, in its resolution of 26 February 2016, called on railway undertakings and their international organisations to test the new statutory provisions in practice whenever possible.

B. Objectives of URL

The URL is intended to achieve the following objectives:

- (a) Interested railway undertakings and their customers will be given an opportunity to apply a single international statutory regime to international (particularly European-Asian) rail freight movements which they have selected by making a joint declaration (opt-in).
- (b) Using the URL makes it possible for a single, continuous contract of carriage, subject to only one statutory regime, to be concluded, without CIM and SMGS reconsignment at the border.

¹ The present document is being issued without formal editing.

(c) The URL harmonises the provisions currently laid down differently in CIM and SMGS (or in applicable national law). This is particularly applicable to:

- The conclusion and implementation of the contract for carriage
- The use of waybills
- The liability of the carrier and consignor
- The assertion of claims
- Relationships between carriers.

(d) Harmonisation of the applicable regulations is intended to produce the following advantages:

- Simplification of regulations, dispensing with subsidiary regulations (e.g. in respect of declarations of value or disclosure of interests in delivery)
- Simplification of despatch and documentation of the contract for carriage
- Reduction and acceleration of administrative processes in the international carriage of goods by rail
- Reinforcement of the contractual freedom of the parties to guarantee uniform minimum standards, and particularly to guarantee uniform minimum liability of the carrier throughout the entirety of carriage
- Improving the competitiveness of international carriage of goods by rail with other modes of transport which have long enjoyed internationally harmonised law worldwide.

C. Implementation of pilot tests to trial URL

(a) Current legal position

Existing traffic or new movements can be selected for pilot tests. In particular, recurrent existing, high-volume transport comes into consideration. Movements must be selected by the participating railway undertakings, with the involvement of their customers if possible.

As the URL is not in force, CIM and SMGS will continue to apply to the pilot tests as well, if traffic involving reconsignment under Article 28 CIM/Article 40 SMGS is involved. Respective national law will continue to apply in the case of the few movements which are already being operated with a single continuous contract of carriage (without CIM/SMGS reconsignment at the border).

(b) Implementation of the pilot tests

Alternative 1: as the URL is not in force, the pilot movements selected by the railway undertakings and the contracts of carriage concluded for them must be hypothetically examined to establish what would apply if the URL were in effect and had been selected by opt-in by the parties to the contract of carriage as the applicable statutory regime.

Alternative 2: the URL may actually be applied in individual pilot tests, if the following requirements are fulfilled:

- In individual states whose railway undertakings are participating in the pilot tests, said railway undertakings will be authorised by their respective government to apply the URL to certain pilot shipments, displacing SMGS, CIM or national law, and
- In other states, in which such authorisation cannot be granted, the railway undertakings will agree to apply the URL to certain pilot movements in the form of

General Terms and Conditions of Carriage and to resolve all the questions and problems arising from implementation of the pilot tests by using the URL, but not by invoking CIM, SMGS or national law.

If alternative 2 is selected, transport will actually take place from start to finish on the basis of the URL.

Alternative 1 is given further consideration below, because it can be implemented immediately, without formal government approval, and, if considered expedient, initially without customer involvement either. In this case, a hypothetical audit of the selected movement and the contract concluded for it will be carried out, asking what would apply in relation to individual aspects if the URL was effectively agreed and the extent to which the results of implementation using the URL differ from those of the application of CIM, SMGS or national law.

The questionnaire below has been developed to support the pilot tests by making it possible for the parties involved to analyse the specific contract for carriage by means of certain questions in Part 2, and to establish whether legal amendments – and if so, which – would emerge in respect of the contractual relationship and implementation of transport, were the URL to apply instead of CIM, SMGS or national law.

As current experience shows that it has been possible to complete most of the movements qualifying for analysis without any problems, and particularly without claims for losses, it must also be asked, within the scope of the test phase, what would emerge under the URL, in harmony with or contrary to CIM, SMGS or national law, if a certain event were to occur. Certain questions to this effect are asked in Part 3 of the questionnaire.

Part 4 of the questionnaire asks for a summary of the results of hypothetical application of the URL to transport and Part 5 requests an answer to the question of whether the URL fulfils the positive expectations of this new statutory instrument (see I.2 above).

The URL must be compared with CIM and SMGS in order to implement the pilot tests. To facilitate this work, a brief explanation of the provisions of the URL is enclosed with the questionnaire, also pointing out parallel provisions in CIM and SMGS.

II. Questionnaire

The questionnaire is intended to help the contracting parties to analyse the selected pilot movements for the effects which would occur, were the URL to be applied to them.

The parties are free to ask other questions as well.

A. Details of the pilot movement

The pilot movement must be described prior to legal analysis:

- Departure and destination of the movement?
- What type of goods are being carried?
- Which railway undertakings are involved?
(Optional: Which consignors and consignees are involved?)
- Is rail transport using road feed or onward carriage by road involved (e.g. carriage of a container to or from a transshipment terminal)?
- Is rail transport including shipment by inland waterway or sea (e.g. train ferry) involved?

- Is re-forwarding taking place? Where?
- Is transshipment or a change of gauge taking place? Where?
- What sort of waybill is being used? CIM/SMGS waybill?
- Which accompanying documents, and particularly customs documents, are being used?
- Are any additional features of the movement legally significant?
- Which special agreements (e.g. with regard to freight payment, delivery deadline, subsequent orders and liability of the parties) have the parties concluded in respect of their contract of carriage?

B. Analysis of the contract of carriage and implementation of transport on the basis of the URL

Analysis may take place step by step for individual aspects by comparing the provisions of the individual statutory regimes (the URL on one hand, CIM and SMGS on the other).

(a) The following must then be asked at the outset:

Does the URL demand amendments to the contract or implementation of transport in relation to:

- The form and content of the waybill used?
- The accompanying documents used, in particular the customs documents?
- Payment of the freight charges and other transport costs?
- Packaging, identification and loading of the goods?
- Reinspection of the goods by the carrier?
- Determination of the transit period?
- Delivery of the goods to the consignee?
- Subsequent rights of disposal of the consignor and consignee?
- Obstacles to carriage and delivery?
- Liability agreements made by the parties in the contract for carriage?
- Assertion of claims?
- Agreements which the participating carriers have concluded on the settlement of receivables and on mutual recourse?

(b) It must then be asked which advantages, procedural simplifications and acceleration of transport management does the URL permit for the pilot traffic under consideration compared to CIM and SMGS, if the following URL solutions are considered:

- Creation of a harmonised international statutory regime for the entire movement, from departure point to destination
- Reduction in and streamlining of the statutory provisions
- Dispensing with reconsignment of the goods *en route*

- Integration of road feed, onward carriage by road and of carriage on inland waterways and by sea
- Harmonised minimum liability of all the carriers involved in the movement.

C. Simulation of occurrences *en route*

It is probable that the pilot movements under consideration have been managed without problems in the past and that there has not been any necessity to overcome irregularities in the transport procedure using the respective applicable statutory regime. In order to be able to evaluate the effects of the URL, it is therefore also expedient to simulate particular occurrences and irregularities within the framework of the pilot phase. This may be accomplished by examining what would apply for the URL on one hand and CIM and SMGS on the other hand, if, for example:

- The goods were carried without a waybill
- The consignor's entries on the waybill were incomplete, entailing costs for the carrier
- The goods were delayed at the border because the consignor had not included all the necessary accompanying documents with the consignment or the carrier had lost them *en route*
- The consignor subsequently ordered that the goods be returned to it, although they had already arrived at the destination
- Circumstances preventing carriage arose during transport and the carrier has not received any instructions from the consignor on how the goods were to be handled
- The goods were delivered to the consignee with two days' delay
- Valuable goods (e.g. laptops with a unit price of USD 200) were delivered incomplete or damaged
- Goods lost reappeared after two years
- The consignee accepted externally damaged goods (boxes crushed and torn) without objection.

The parties involved are free to ask further questions and simulate conflict situations.

D. Summary of pilot test results

The results of the analysis must be summarised for every pilot test and submitted to the UNECE Group of Experts on Unified Railway Law. The Group of Experts is tasked with analysing the results of the pilot phase and reporting and making recommendations to the UNECE Working Party on Rail Transport (SC.2).

E. Does the URL meet the positive expectations, on the basis of the pilot movement considered?

Within the scope of the report to the UNECE Group of Experts, particular importance is attached to the question of whether the URL fulfils the positive expectations with regard to harmonisation of regulations, simplification and acceleration of processes, guaranteeing continuous minimum liability of the carrier and reinforcing competitiveness overall (see I.B above).

