



Economic Commission for Europe**Inland Transport Committee****Eighty-fifth session**

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**Strategic Questions of a Horizontal and
Cross-Sectoral Policy or Regulatory Nature:
Road Transport****Operationalization of the electronic CMR consignment note
(eCMR)****Note by the secretariat***Summary*

The document reports on the challenges faced and principles set during experts' discussions in the framework of the Group of Experts on the operationalization of eCMR. Special focus is given on the reasons behind the non-operationalization of eCMR since 2008 until today.

The Committee may wish to take note of the information provided in this document, invite all relevant parties that are participating in the Group of Experts on the operationalization of the eCMR to finalize this demanding task as soon as possible, and ensure that the future eCMR environment/system will include the needs of all stakeholders involved in today's daily CMR practice, from all regions, thus creating a sustainable electronic solution, continuing the great success over time of the CMR Convention by leading intermodal transport to a fully digital environment.

I. Background and Mandate

1. This document has been prepared in accordance with the 2022 Programme of Work of the Inland Transport Committee (ITC) (ECE/TRANS/316, paragraph 33 and ECE/TRANS/2022/8, programme activity 4 (g): Working Party on Road Transport and subsidiary groups of experts). It reports on the challenges faced and principles set during experts' discussion in the framework of the Group of Experts on the operationalization of eCMR. Special focus is given on the reasons behind the non-operationalization of eCMR since 2008 until today.



II. The Road towards the Electronic Consignment Note

2. A few years after its establishment, the United Nations Economic Commission for Europe (ECE) began, through a Working Party on Legal Questions which was a subsidiary body of ITC, to consider problems of private law arising from contracts for the international carriage of goods by road. At its fifth session (4 to 7 February 1952), the ECE Working Party on Legal Questions established a small committee of legal experts which, on 21 December 1953, submitted a report to which a preliminary draft (TRANS/WP9/22) was annexed. This preliminary draft, together with the many comments on it received from Governments, constituted the basis for negotiations during the two sessions of an ECE Ad Hoc Working Party in which the final text of the Convention on the Contract for the International Carriage of Goods by Road (CMR) was established.

3. The first of the two sessions of the Ad Hoc Working Party was held from 12 to 28 April 1955, and it was attended by representatives of 11 States, as well as observers from the International Institute for the Unification of private Law (UNIDROIT), the International Chambers of Commerce (ICC) and the International Road Transport Union (IRU). The second session of the Ad Hoc Working Party was held from 12 to 19 May 1956, and it was attended by representatives of 15 States, as well as observers from UNIDROIT, ICC, IRU, the Central Office for International Railway Transport (OCTIC) and the International Union of Railways (UIC).

4. The Convention was opened for signature on 19 May 1956 at a special session of ITC and was signed on that day by representatives of Austria, Belgium, the Federal Republic of Germany, France, Luxembourg, the Netherlands, Poland, Sweden, Switzerland and Yugoslavia (E/ECE/TRANS/490). The CMR entered into force on 2 July 1961, following the deposit of the first five instruments of ratification (Austria, France, Italy, Netherlands and Yugoslavia).

5. The primary objective of the drafters of the CMR Convention was – as expressed in the Convention preamble – to “standardize the conditions governing the contract for the international carriage of goods by road, particularly with respect to the documents used for such carriage and to the carrier’s liability.”

6. The period after the Second World War, the codes of some countries contained a fairly complete regulation of the contract of carriage and of agency / forwarding agent, while other countries had no explicit provisions concerning such contracts.

7. For instance, in Austria carriage in general was regulated by the German Commercial Code of 1861, in Belgium by the law of 25 August 1891, on contracts of carriage, in England by common law but also some provisions were found in the Carriers Act of 1830, in France by the civil code arts 1782 to 1786, in Germany by the commercial code of 1897, in Hungary by the commercial law of 1875 and in Italy by the civil law of 1942. On the other hand, the Scandinavian countries, Denmark, Norway and Sweden, had no special provisions concerning carriage by road. Contracts of carriage by road in these countries were regulated by common law governing contracts of hire of services.

8. The CMR Convention owes its success to its remarkable stability and to the quality of its text which has strongly influenced both national and international legislation.

9. The CMR Consignment note is like a passport for the goods to move from one country to another.

10. If carriers were hampered in their work by uncertainty in the sphere of liability for goods in transit, where a carriage transaction could be followed by a potentially ruinous lawsuit, then, there could be great reluctance on the part of businesspeople to engage in the transport sector at all, while those who would do it, would charge very much for the service in order to cover any eventual legal costs. This would arguably have the equivalent effect blocking the freedom of movement of goods. However, the CMR Convention with its precise conditions of carriage and distribution of liability, plus its upward limitation and prescription of the steps to be taken to claim compensation gives the element of certainty so critical to the smooth running of international road transport.

11. The Working Party on Road Transport (SC.1) at its ninety-second session (TRANS/SC.1/363, paragraph 41, December 1998) agreed that a protocol to the CMR to incorporate Electronic Data Interchange (EDI) was a complex issue that would require further analysis by experts on EDI, transport and private law, and asked the secretariat to contact UNIDROIT, based in Rome, for their views on the matter.

12. Professor Jacques Putzeys from UNIDROIT was the main drafter of the eCMR protocol in the framework of SC.1. This work started in 2000 and finished in 2008 when the protocol was submitted for signing and ratification by the governments.

III. Why the Additional Protocol on the Electronic Consignment Note is not yet operational?

13. Professor Jacques Putzeys introduced for first time article 5, which refers to the main processes that would operationalize the electronic consignment note in the draft text of the protocol in 2006.

14. He provided the following explanation for the introduction of the new article 5: new provision proposed to offer a minimum framework for agreements between the parties. The text is based on article 6 of the United Nations Commission on International Trade Law (UNCITRAL): the draft convention on the carriage of goods [wholly or partly] [by sea]. The draft convention on the carriage of goods wholly or partly by sea on which the professor was working on that period was called afterwards “the Rotterdam rules” which was submitted for signature and ratification by the governments in 2008. However, it has not come into force yet.

15. Only one small change took place from that initial text that was suggested by the Professor and the final text of the protocol. This change was at the first sentence of the article. The article was initially starting with the sentence “...the parties making use of the consignment note referred to in this Protocol shall agree...”. The final text based on which the eCMR protocol came into force mentions: “The parties interested in the performance of the contract of carriage shall agree...”.

16. The proposed text was article 6 of the draft Rotterdam rules of 2005 with the title “Procedures for use of negotiable electronic transport records”. The final text of the convention that was proposed for signature and ratification by the governments included it as article 9.

17. There is though, a substantive difference between the two articles. The Rotterdam rules text starts by saying “The use of a negotiable electronic transport record shall be subject to procedures that provide for”. The eCMR protocol refers to “parties” with a small “p” that are interested in the performance of the contract of carriage. Neither the Rotterdam rules nor the eCMR protocol provide a description regarding the word “parties” under article 1 definitions.

18. Furthermore, the eCMR protocol specifically refers to the parties interested in the performance of the contract of carriage. Then under article 1, definitions, provides the following description for the “Electronic consignment note”: “...means a consignment note issued by electronic communication by the carrier, the sender or any other party interested in the performance of a contract of carriage to which the Convention applies...”. Meaning not only the carrier and the sender.

19. It should be noted that in maritime transport there are eight main global maritime container carriers that move almost 80 per cent of the containerized cargo. Furthermore, maritime transport has to do with ports and along the itinerary of one container ship, on average, three or four ports are visited. Therefore, including such an article in the draft Rotterdam rules made sense because if we consider as parties only the carriers and the shippers then we could understand that the carriers could easily meet, discuss and agree on these provisions. This was actually the case in 2019 where those carriers established the Digital Container Shipping Association (DCSA) with the main objective to establish Information Technology (IT) standards that would enable interoperability of technology solutions across the industry.

20. In road transport the operational challenges are completely different. The carriers are thousands and the borders that the trucks are crossing are hundreds. Even if there is agreement that the word “parties” refers only to the consignor and the carrier – if we follow the Rotterdam rules then most probably it is the case – then we should acknowledge that it would be impossible for those thousands of large, medium, small and very small road carriers from different geographical regions to meet and agree on common procedures and standards.

21. Furthermore, a big debate exists on who are the users of the CMR consignment note and eventually of eCMR. The convention speaks about three stakeholders meaning the sender / consignor, the carrier and the receiver / consignee. The convention though makes also reference about responsibilities to present the right documents to customs authorities and includes specific provisions for the courts.

22. The Convention refers only to carriers. It is understandable though that the user of the future eCMR system recognized as carrier could be anyone that coordinates and delivers road transport services therefore uses the CMR Convention today. In that sense the freight forwarders and the subcontractors should have the role of the carrier in the future system defining though always their identity which implies different liability processes. The role of subcontractor for instance in modern logistics / intermodal transport should be considered. In that sense, subcontractors can be also the sender in some cases and therefore they could also have the role of the consignee / carrier in a future eCMR system.

23. Furthermore, the customs authorities are recognized as one of the stakeholders of the CMR system today and of the future eCMR system. Customs authorities for reasons that are different in several geographical regions are using / checking the CMR consignment notes. It has to be noted that among others the written comments that the customs are providing on the consignment notes, they are also connected with issues relevant to liability of the carriers (article 17, paragraph 4 of the CMR convention) such as lack of or defective condition of packing in the case of goods which by their nature are liable to wastage or to be damaged when not packed, the nature of certain kinds of goods which particularly exposes them to total or partial loss or to damage, especially through breakage, rust, decay, desiccation, leakage and normal wastage or the action of moth or vermin. In that sense, it is of the parties to the contract interest (consignor, carrier, consignee) that the customs provide comments whenever they observe anything about the truck or the cargo or any other operational issue also in the electronic world.

24. The different pilots performed especially from 2017 to 2020 actually prove the existence of the above-mentioned debate and discussion on who are the users in the end of the CMR consignment note. There were pilot projects initiated by the Governments covering mainly the needs and requirements of the authorities, there were pilot projects initiated by private sector companies referring only to private sector and then some other pilots were referring to the creation of platforms where all stakeholders might have access.

25. All these maybe are the reasons why since 2008 the eCMR protocol is not yet operational. However, it must be acknowledged that these are also the reasons why ITC approved the establishment of the Group of Experts on the operationalization of the eCMR.

IV. The Future eCMR System

26. The CMR Convention is a flagship Convention of the United Nations. The benefits that bring to road transport are being acknowledged by everyone operating in the road transport market. The text of the convention exists the same without any amendments since 1956 when it was first drafted. The electronic version of the Consignment Note should ensure that the Convention applies also in the electronic environment paving the road for more accessions by United Nations Member States from other geographical regions such as Africa and Latin America.

27. However, in order to achieve these objectives, the following principles have to be respected while designing the future CMR system:

(a) The future eCMR system(s) should create trust and it should be based on trust by all stakeholders from all regions.

(b) The future eCMR system(s) should ensure that the interests and requirements of all stakeholders from all geographical regions are covered with the most efficient and successful way.

(c) The future eCMR system(s) should be a sustainable solution that further facilitates road transport and border crossings operations leading ultimately to the non-stopping of the trucks at the borders.

(d) The future eCMR system(s) should be based on the free market principles, encouraging competition and being developed on the functional and technical specifications adopted by SC.1 and endorsed by ITC creating a global solution recognised by all contracting parties.

(e) The future eCMR system(s) should efficiently address all challenges that the digital world requires such as authentication of the users and mutual recognition of those authentication mechanisms by all contracting parties, secured archiving of data for a period required by the authorities (courts, customs, others), inalterability of messages and no access to data which is considered as commercially sensitive data by no authorised users or oligopolistic / monopolistic practices leading like that to a trustful and mutually recognised system.

28. The electronic CMR consignment note is not about making the paper consignment note electronic by creating standards on its data and using state of the art technology. There are requirements but not essential requirements for having the electronic consignment note but rather requirements for having an electronic solution. The electronic CMR consignment note is about the evidentiary value that the consignment note brings. The manner in which the party entitled to the rights arising out of the electronic consignment note is able to demonstrate these rights and the acceptance of the electronic consignment note as the legal equivalent to an accepted paper CMR consignment note. We should ensure that the Convention applies.

V. Considerations by the Committee

29. The Committee may wish to take note of the information provided in this document, to invite all relevant parties that are participating at the Group of Experts on the operationalization of the eCMR to finalize this demanding task as soon as possible, and ensure that the future eCMR environment/system will include the interests/requirements of all stakeholders involved in today's daily CMR practice and of all regions, thus creating a sustainable electronic solution, continuing the great success over time of the CMR Convention by leading intermodal transport to a fully digital environment.
