



Operationalization of eCMR

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Working Party on Road Transport (SC.1)

Konstantinos Alexopoulos

Chief

Transport Facilitation Section / TIR Secretary

Sustainable Transport Division



UNECE

Convention on the Contract for the international Carriage of Goods by Road (CMR)

Is the CMR Consignment note the Contract of Carriage between Consignor and Carrier?

CHAPTER III

CONCLUSION AND PERFORMANCE OF THE CONTRACT OF CARRIAGE

Article 4

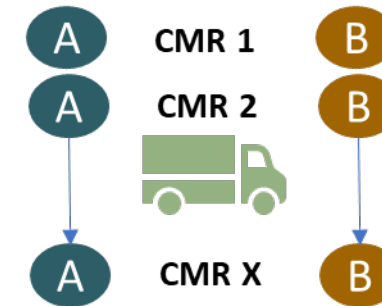
The contract of carriage shall be confirmed by the making out of a consignment note. The absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract of carriage which shall remain subject to the provisions of this Convention.



Contract of Carriage

The year I am planning to move 1000 trucks from A to B. The following scale applies:

1-250 trucks	500 \$ per truck
251- 600 trucks	450\$ per truck
601 – 1000 trucks	400\$ per truck



The Contract of Carriage between Consignor and Carrier is agreed outside the convention and could be concluded without any requirement as to form, and it could in particular be concluded orally, by telephone, email etc.



Case Study – CMR and Contract of Carriage



Carriage of goods by road: Court of Appeal clarifies jurisdiction provisions of the CMR convention

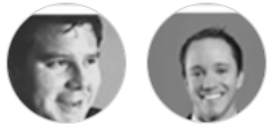
Ince

The Claimants/Appellants were **British American Tobacco Switzerland A/S** and **British American Tobacco Denmark A/S** (together “BAT”). BAT contracted with **Exel Europe Limited** (“Exel”) to carry cargoes of tobacco around Europe by road. In the present case, BAT Switzerland A/S contracted with Exel to move tobacco from Switzerland to Rotterdam, and BAT Denmark A/S contracted with Exel to move tobacco from Hungary to Denmark. The agreement contemplated that the CMR would apply to the movements. The agreement further provided that Exel – although primary carriers – could subcontract some or all of the movements to approved sub-contractors (or “successive carriers” using the wording of the CMR). Finally, the agreement expressly provided that all disputes arising out of the agreement would be subject to English law and to the jurisdiction of the English High Court.

In the event, **Exel did sub-contract both movements**. The Switzerland-Rotterdam movement was sub-contracted to H Essers Security Logistics B.V. and subsidiaries (together “Essers”), and the Hungary-Denmark movement was subcontracted to Kazemier Transport B.V. (“Kazemier”). The Switzerland-Rotterdam tobacco was loaded in Switzerland on 2 September 2011, and ***was allegedly stolen in an armed robbery on a motorway in Belgium the next day***. The Hungary-Denmark tobacco was loaded in Hungary on 15 September 2011, and ***18 pallets were stolen while the vehicle was parked overnight*** (it is alleged that instructions had been given that drivers were not to use overnight parking areas).



Case Study – CMR and Contract of Carriage



Carriage of goods by road: Court of Appeal clarifies jurisdiction provisions of the CMR convention

Ince

BAT duly commenced proceedings in the English High Court against Exel and Essers for losses suffered as a result of the Switzerland-Rotterdam movement robbery, and against Exel and Kazemier for losses suffered as a result of the Hungary-Denmark theft. Exel duly accepted proceedings, not least because of the English High Court jurisdiction provision contained in the BAT/Exel agreement. However, *both Essers and Kazemier – although accepting that the CMR gave BAT the right to sue them directly – challenged the jurisdiction of the English High Court, on the basis of the jurisdiction provisions of the CMR.*

Comment

Cargo owners have always been entitled to sue the party they contracted with to carry their cargo by road in the jurisdiction agreed between the parties (i.e. the primary carrier), even where that party did not actually cause the loss or damage to the cargo. This case provides the welcome clarification for cargo owners that if, for whatever reason, they consider it to be ***advantageous to also sue one or more of the successive carriers at the same time as the primary carrier, then they can sue those successive carriers in the same jurisdiction as the primary carrier.***



Is the digitalization of the Consignment note (eCMR) enough ?

Article 2

Scope and effect of the electronic consignment note

1. Subject to the provisions of this Protocol, the consignment note referred to in the Convention, as well as any demand, declaration, instruction, request, reservation or other communication relating to the performance of a contract of carriage to which the Convention applies, may be made out by electronic communication.
2. An electronic consignment note that complies with the provisions of this Protocol shall be considered to be equivalent to the consignment note referred to in the Convention and shall therefore have the same evidentiary value and produce the same effects as that consignment note.

25 processes defined so far for the Consignor

36 processes defined so far for the Carrier

29 processes defined so far for the Consignee

4 processes defined so far for the Customs



Convention on the Contract for the International Carriage of Goods by Road (CMR)

Why are we dealing with Customs Documents and Courts?

Article 6

1. The consignment note shall contain the following particulars:

- (a) The date of the contract and the place at which it is made;
- (b) The name and address of the sender and the recipient;
- (c) The name and address of the carrier;
- (d) The place and the date of receipt of the goods and the place of delivery;
- (e) The name and address of the consignee;
- (f) The description in consignment note of the nature of the goods and the number and, in the case of dangerous goods, their generally recognized description;
- (g) The number of packages and their special marks and numbers;
- (h) The gross weight of the goods or their quantity otherwise expressed;
- (i) Charges relating to the carriage (carriage charges, supplementary charges, customs duties and other charges incurred from the making of the contract to the time of delivery);

Customs Documents!

1. Phyto-sanitary and veterinary certificates
2. Certificates of conformity
3. Invoices
4. Import customs declaration
5. Consignment Note

Article 7

1. The sender shall be responsible for the expenses, loss and damage suffered by the carrier by reason of the inadequacy of:

- (a) The particulars specified in paragraph 1, (b), (d), (e), (f) and (j);
- (b) The particulars specified in paragraph 2;
- (c) Any other particulars given by him to enable the consignment note to be made out or for the purpose entered therein.

Article 11

1. For the purposes of the Customs or other formalities which have to be completed before the carriage of the goods, the sender shall attach to the consignment note the necessary documents to the consignment note and place them at the disposal of the carrier. The sender shall furnish him with all the information which he requires.

2. The carrier shall not be under any duty to enquire into either the accuracy or the adequacy of such documents and information. The sender shall be liable to the carrier for any damage caused by the absence, inadequacy or irregularity of such documents and information, except in the case of some wrongful act or neglect on the part of the carrier.

3. The liability of the carrier for the consequences arising from the loss or incorrectness of the documents specified in and accompanying the consignment note or deposited with the carrier shall be that of an agent, provided that the compensation payable by the carrier shall not exceed that payable in the event of loss of the goods.

Case Study – CMR and Customs Authorities



JESPER
WINDAHL

October 26 2022

Court clarifies whether CMR carrier can transfer responsibility for omitted customs clearance to customer

[WSCO Advokatpartnerselskab](#) | Denmark

A Danish freight forwarder agreed to transport a shipment of pipe elements from Schaffhausen, Switzerland, to Sweden. The forwarder subcontracted the carrying out of the transport to a Bulgarian carrier.

In connection with the booking, the forwarder stated that ***the customs documents to be used for the transit-procedure in the European Union would be delivered by the sender in Switzerland***, and that the carrier would "just have to go to custom direct to go out".

Upon the driver's arrival at the border, there was uncertainty as to whether customs clearance had been carried out correctly.

As a result of the shipment entering the European Union without having been presented for ***customs clearance, the Swedish customs authorities ordered the carrier to pay customs duties and import VAT of 360,463 Swedish krona.***

On this basis, the carrier filed legal proceedings against the forwarder demanding that the forwarder pay the amount. In support of this demand, the carrier asserted that:

The forwarder had not instructed the carrier that the consignment should be presented to customs upon entry into the European Union; **The forwarder should have instructed the carrier on what to do since the carrier stated that the police had only acknowledged the payment of road tax, but had not stamped or signed the customs documents;** and the forwarder instructed the carrier that, regardless of the failure to stamp the documents, the driver should simply continue the transport to Sweden.



Case Study – CMR and Customs Authorities



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Decision

The court found that the driver had only presented the documents to a person at the border who took care of road tax only and that the carrier was responsible for the failure to produce the documents.

The court further stated the following;

[The] court [is] not in agreement with [the carrier's] claim that information on the exact building or buildings the driver should go to when he arrived at the border crossing at Thayngen is information that must be submitted to the carrier pursuant to Art. 11 of the CMR . . . The court finds that the e-mail communication . . . immediately after the truck crossed the border into the EU on 30 March 2021 cannot lead to [the carrier] . . . not being responsible for the failure to present the customs documents. If [the carrier] were to escape responsibility for the lack of presentation of the customs documents, it would firstly require a clear and unequivocal statement from [the carrier's] side that the customs documents had not been presented to the customs authorities and then an acceptance of this relationship from [the forwarder's] side. [The carrier's] statement in the email of 30 March 2021 at 17:04:49 by that "the customs officer they saw the papers and do not do anything tell him to go only close ticket" is not a clear and unequivocal indication that the customs documents were not presented to the customs authorities. On the contrary, the email shows that the driver was under the delusion that the documents had been presented to the customs authorities.



Case Study – CMR and Customs Authorities

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Court clarifies whether CMR carrier can transfer responsibility for omitted customs clearance to customer

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Comment

It appears from the judgment that, according to article 11 of the CMR, it is the responsibility of the carrier to ensure that the delivered customs documents are correctly presented for customs clearance, and that the client is not obliged to give specific instructions on how this should be done at the border point.

If uncertainty arises as to whether the documents have been presented correctly for customs clearance, it is the responsibility of the carrier performing the transport to provide clarification. It must be assumed that the performing carrier, if there is uncertainty as to whether a customs clearance has been carried out correctly, can seek instructions from their customer, but the responsibility for an omitted customs clearance cannot be transferred to the customer unless there is a clear contractual basis for this.

For further information on this topic please contact Jesper Windahl at WSCO Advokatpartnerselskab by telephone (+45 3525 3800) or email (jw@wsko.dk). The WSCO Advokatpartnerselskab website can be accessed at www.wsko.dk.



Case Study – CMR and Customs Authorities



JOS VAN DER
MECHÉ

December 12 2012

Proof of delivery - the CMR consignment note and VAT

[AKD](#) | Netherlands

Proof of delivery

A Dutch seller of goods which are imported into the Netherlands for delivery to a buyer in another EU country does not have to charge value added tax (VAT). It suffices for the seller to invoice the buyer the sales price excluding VAT. In such **intra-EU transactions, the VAT is reverse-charged and the seller does not have to pay VAT in the Netherlands; rather, the buyer pays the VAT in its own country.**

Under such international sale of goods contracts, it is imperative that the seller can prove that the goods were indeed delivered to its foreign buyer. **If it is unable to do so, the customs authorities will levy the unpaid VAT.** For this reason, many sellers include a clause in CMR contracts with carriers stating that the carrier must present proof of delivery of the goods to the foreign buyer. **This is usually the signed CMR consignment note.**



Case Study – CMR and Customs Authorities



JOS VAN DER
MECHÉ

December 12 2012

Proof of delivery - the CMR consignment note and VAT

[AKD](#) | Netherlands

The same clause also usually provides that the carrier must keep the original CMR consignment notes for many years and, on request, must be able to present the seller or shipper with such original notes so as to enable the seller to present proof to the customs authorities.

Dispute

The dispute in question centred on a contract between Fujitsu TSI BV (the seller) and Exel (the carrier) containing a clause which provided:

"Proof of delivery. Vendor commits to have proof of delivery by means of a signed-for receipt CMR. This document will be available in its Dutch agent's office within two weeks after date of shipment. These documents should be kept on file for at least six years. They are to be filed in such a way that any particular CMR can be retrieved within 24 hours after a request from Fujitsu."



Article 31

1. In legal proceedings arising out of carriage under this Convention, the plaintiff may bring an action in any court or tribunal of a contracting country designated by agreement between the parties and, in addition, in the courts or tribunals of a country within whose territory:

(a) The defendant is ordinarily resident, or has his principal place of business, or the branch or agency through which the contract of carriage was made, or

(b) The place where the goods were taken over by the carrier or the place designated for delivery is situated,
and in no other courts or tribunals.

2. Where in respect of a claim referred to in paragraph 1 of this article an action is pending before a court or tribunal competent under that paragraph, or where in respect of such a claim a judgement has been entered by such a court or tribunal no new action shall be started between the same parties on the same grounds unless the judgement of the court or tribunal before which the first action was brought is not enforceable in the country in which the fresh proceedings are brought.

3. When a judgement entered by a court or tribunal of a contracting country in any such action as is referred to in paragraph 1 of this article has become enforceable in that country, it shall also become enforceable in each of the other contracting States, as soon as the formalities required in the country concerned have been complied with. These formalities shall not permit the merits of the case to be re-opened.

4. The provisions of paragraph 3 of this article shall apply to judgements after trial, judgements by default and settlements confirmed by an order of the court, but shall not apply to interim judgements or to awards of damages, in addition to costs against a plaintiff who wholly or partly fails in his action.

5. Security for costs shall not be required in proceedings arising out of carriage under this Convention from nationals of contracting countries resident or having their place of business in one of those countries.



Supreme Court overturns decision on CMR Article 31

Hill Dickinson



Is it possible to read Articles 31 and 36 together 'so that, once a claimant has established jurisdiction against one defendant under Article 31.1(a), **it can then bring into that jurisdiction any other successive carrier potentially liable under Article 36**'?

Article 31(1) CMR allows a claimant to bring proceedings in the court of a contracting country 'designated by agreement between the parties', and:

where the defendant carrier 'is ordinarily resident, or has his principal place of business, or the branch or agency through which the contract of carriage was made', or 'where the goods were taken over by the carrier or the place designated for delivery is situated, and in no other courts or tribunals.'

Article 31 clearly applies to disputes between cargo interests and successive carriers, and not simply to issues between cargo interests and the original CMR carrier. In other words, Article 31 provides a complete code regarding jurisdiction for claims by cargo interests, whether those claims lie against a first/contracting carrier and/or a successive carrier. That was a view echoed by the four other judges: in the judgment given by Lord Sumption (with whom Lord Neuberger, Lord Clarke and Lord Reed all agreed), he held that Article 36 is not concerned with jurisdiction: 'It certainly does not confer jurisdiction if it does not otherwise exist'.

In other words, it provided no jurisdictional extension to Article 31(1).



Why do we need authentication / electronic signatures for the consignment note and the users?

Article 3

Authentication of the electronic consignment note

Article 5

Implementation of the electronic consignment note

1. The electronic consignment note shall be authenticated by the parties to the contract of carriage by means of a reliable electronic signature that ensures its link with the electronic consignment note. The reliability of an electronic signature method is presumed, unless otherwise proved, if the electronic signature:

- (a) is uniquely linked to the signatory;
- (b) is capable of identifying the signatory;
- (c) is created using means that the signatory can maintain under his sole control; and
- (d) is linked to the data to which it relates in such a manner that any subsequent change of the data is detectable.

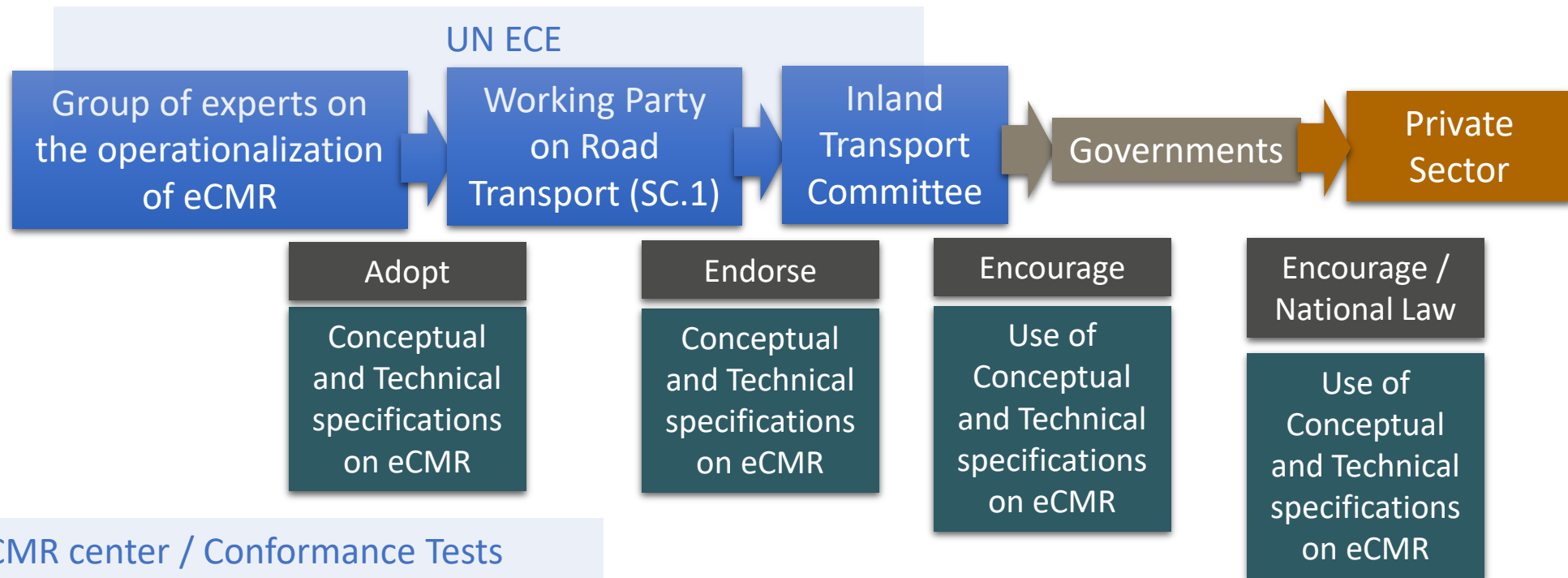
2. The electronic consignment note may also be authenticated by any other electronic authentication method permitted by the law of the country in which the electronic consignment note has been made out.

3. The particulars contained in the electronic consignment note shall be accessible to any party entitled thereto.

(c) The manner in which the party entitled to the rights arising out of the electronic consignment note is able to demonstrate that entitlement;



eCMR and technical specifications / UN CEFAC standards



UN ECE / eCMR center / Conformance Tests

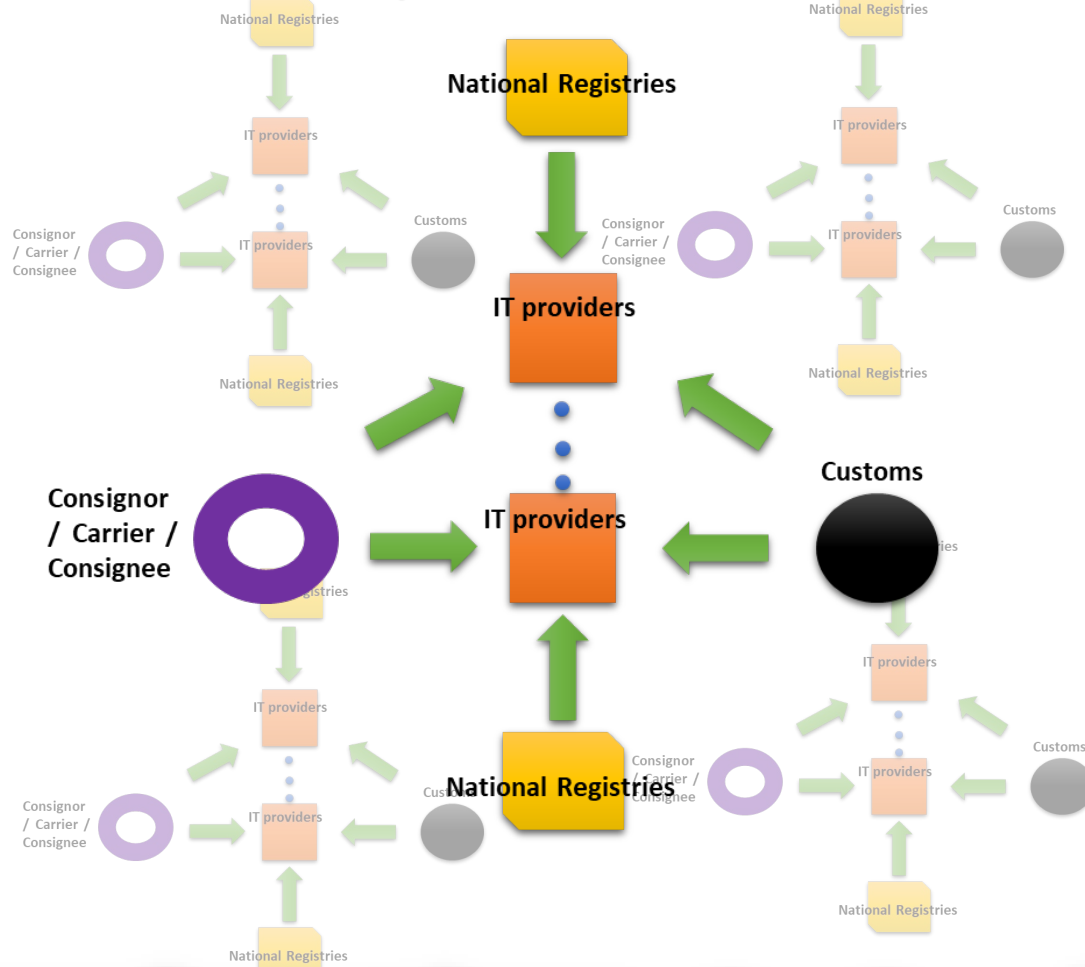
- Online tool listing those companies using the specs to generate eCMRs
- Online tool performing conformance tests

**Possible solution*

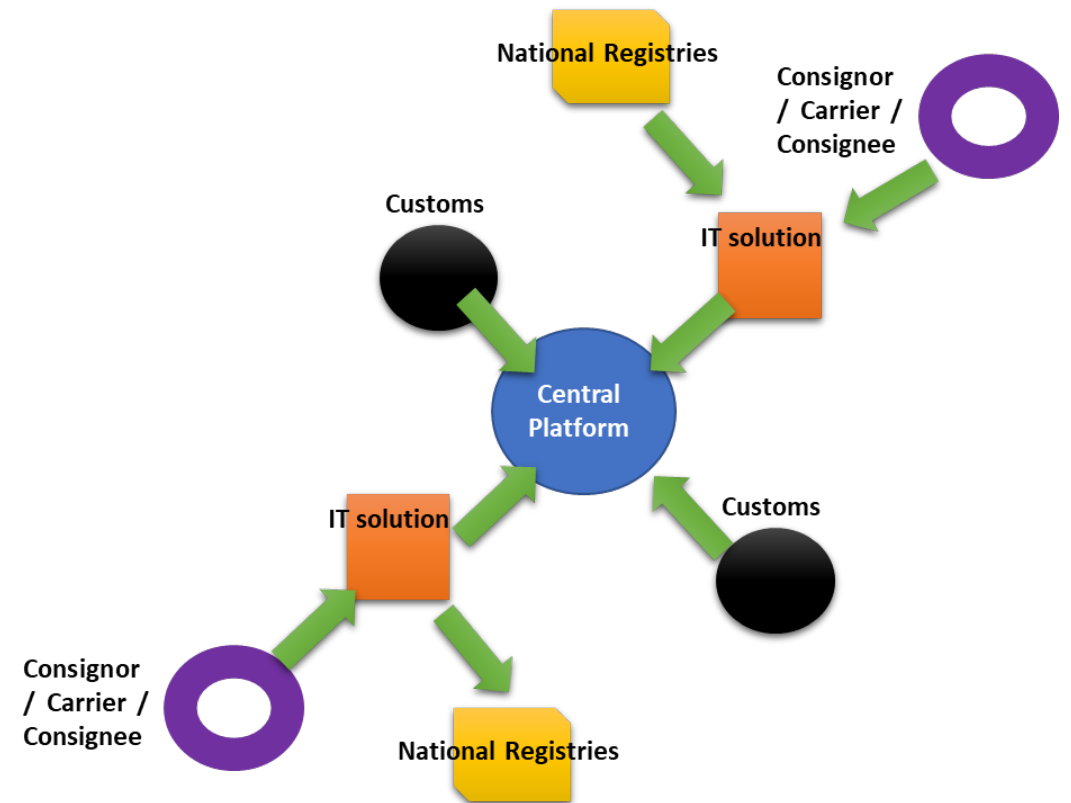


eCMR High level architecture

The concept of individual connections



The concept of the Central platform





THANK YOU

Contact the Sustainable Transport Division



SUSTAINABLE TRANSPORT DIVISION



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