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Working Party on Road Transport

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Item 5 of the provisional agenda

**HARMONIZATION OF REQUIREMENTS CONCERNING INTERNATIONAL
ROAD TRANSPORT AND FACILITATION OF ITS OPERATION**

Protocol additional to the CMR¹

Note by the secretariat

At its ninety-ninth session, the Working Party on Road Transport (SC.1) entrusted an editorial committee with finalizing the drafting of the additional Protocol to the CMR introducing the electronic consignment note, on the basis of the comments made orally or in writing during the session on the proposal submitted by UNIDROIT, but requested that the substance not be modified (item 26 of the report TRANS/SC.1/377 dated 28 November 2005). This committee, composed of Professor Jacques Putzeys (UNIDROIT) and Mr. Estrella Faria (UNCITRAL), drew up the annexed draft.

Given the number of explanatory documents issued since 1999 in support of the drafting of this Protocol, the editorial committee deemed that it was not necessary to develop this aspect other than by means of footnotes in the new draft.

¹ The previous version of this document was issued with the symbol TRANS/SC.1/2005/1.

It is expected that SC.1 will adopt the final text of the Protocol during its one-hundredth session. The modifications made to the document TRANS/SC.1/2005/1 appear in bold, except for the articles where the word “new” is mentioned and footnotes.

**PROTOCOL ADDITIONAL TO THE CONVENTION ON THE CONTRACT
FOR THE INTERNATIONAL CARRIAGE OF GOODS BY ROAD (CMR)
CONCERNING THE ELECTRONIC CONSIGNMENT NOTE**

THE PARTIES TO THIS PROTOCOL

BEING PARTIES to the Convention on the Contract for the International Carriage of Goods by Road (CMR), done at Geneva on 19 May 1956,

DESIROUS OF supplementing the Convention in order to facilitate the making out of the consignment note by means of procedures used for the electronic registration and treatment of data,

HAVE AGREED as follows:

Article 1

Definitions

For the purposes of the present Protocol,

“Convention” means the Convention on the Contract for the International Carriage of Goods by Road (CMR).

“**Electronic communication**” means information generated, sent, received or stored by electronic, optical, digital or similar means with the result that the information communicated is accessible so as to be usable for subsequent reference;¹

“**Electronic consignment note**” means information in one or more messages issued by electronic communication by a carrier or any other party entitled thereto in the performance of a contract of carriage to which the Convention applies, including

¹ New definition proposed to expand the field of application of the Protocol so as to allow the use of electronic means of communication beyond the consignment note itself (see CMR Convention, articles 8.3, 9.2, 12.1, 12.4, 12.5, 14.1, 15, 30.2) and to express the wide range of technical means available for that purpose. The reference to accessibility of the information so as to be “usable for subsequent reference” represents the condition for the functional equivalence between information in electronic form and traditional documents, as set forth in article 6 of the UNCITRAL Model Law on Electronic Commerce and various domestic laws inspired thereby (see, for instance, article 16, §2° of the Belgian law of 11 March 2003 (*Loi sur certains aspects juridiques des services de la société de l’information*)).

information [logically²] associated with the electronic communication by attachments or otherwise linked to the electronic communication contemporaneously with or subsequent to its issue by the carrier, so as to become part of the electronic consignment note;³

“Electronic signature” means data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication.⁴

Article 2

Scope of the electronic consignment note

1. Subject to the provisions of this Protocol, the consignment note referred to **in articles 4 and 5** of the Convention, **as well as any demand, declaration, instruction, request, reservation or other communication relating to the performance of a contract to which the Convention applies, may be made out by electronic communication.⁵**

2. Such a consignment note [...] shall be considered to be equivalent to the consignment note referred to **in articles 4 and 5** of the Convention and shall therefore have the same evidential value and exercise the same effects as that consignment note [...] *[as long as the goal of a requirement or a duty required by the Convention is achieved, even if the procedures used differ from those mentioned in the Convention⁶]*.

Article 3 (new)

Authentication of the electronic consignment note

1. The electronic consignment note shall be authenticated by the parties to the performance of a contract of carriage by means of a reliable electronic signature method 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

² The IRU suggests deleting this word.

³ New definition proposed to make it clear that information normally stated in a consignment note may be contained in several electronic records and that it may not necessarily be recorded in a single electronic folder.

⁴ New definition based on article 2, paragraph 2, of Directive 1999/93/EC of the European Parliament and the Council, of 13 December 1999 on a community framework for electronic signatures (“Directive on electronic signatures”).

⁵ Article expanded so as cover other relevant communications.

⁶ Addition proposed by the IRU.

(d) is linked to the data to which it relates in such a manner that any subsequent change of the data is detectable.⁷

2. The electronic consignment note may also be signed by any other electronic signature method permitted by the law of the country in which the electronic consignment note has been made out.⁸

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

Article 4 (new)

Conditions for the establishment of the electronic consignment note

1. The electronic consignment note shall contain the same particulars as the consignment note mentioned in articles 4 and 5 of the Convention.⁹

2. The procedure used to issue the electronic consignment note shall ensure the integrity of the particulars contained therein from the time when it was first generated in its final form.¹⁰ The criteria for assessing integrity shall be whether the particulars have remained complete and unaltered, apart from any addition or change which arises in the normal course of communication, storage and display.¹¹

3. In the cases authorized by the Convention, the particulars contained in the electronic consignment note may be supplemented or amended:

⁷ New provision proposed to address concerns expressed by some members of SC.1 (such as Austria and Germany) concerning the authentication of electronic consignment notes. The text is based on article 2, paragraph 2, of the Directive on electronic signatures, in the manner it was incorporated into French law by article 1 of Décret n° 2001-272 of 30 March 2001 on electronic signatures, which implemented the new article 1316-4 of the French Civil Code (“When it is in electronic form, [*the signature*] consists of using a reliable identification procedure that ensures its link to the act to which it relates. The reliability of the procedure is presumed, except as otherwise proved, if the electronic signature is generated, the identity of the signatory is assured and the integrity of the act is guaranteed in accordance with the conditions established by a decree of the Council of State.”). The same reliability criteria are also contained in article 2, paragraph 2 of the Belgian law of 9 July 2001 (*Loi fixant certaines règles relatives au cadre juridique pour les signatures électroniques et les services de certification*).

⁸ Provision added to ensure consistency with article 5.1 of the CMR Convention, which permits some signature methods other than the hand-written signature (“printed” signatures or “stamps”).

⁹ New provision.

¹⁰ New provision proposed to address concerns expressed by some countries (such as Austria and Germany) with respect to the integrity of electronic consignment notes. The text is based on article 8 of the UNCITRAL Model Law on Electronic Commerce. The notion of integrity appears in several domestic laws on electronic commerce, such as the new article 1316 of the French Civil Code (“A writing in electronic form is admitted as evidence in the same way as a paper-based document, provided that the person from whom it originates can be duly identified and that it has been made out and retained in a manner capable of assuring its integrity.”).

¹¹ New provision proposed to establish conditions for the accessibility of electronic communications over time. The text is based on article 10 of the UNCITRAL Model Law on Electronic Commerce.

- (a) in transit;
- (b) by the parties entitled thereto for the purposes of the performance of a contract of carriage, locally or remotely, or
- (c) by a third party, locally or remotely, that is responsible for the electronic registration and treatment of the electronic consignment note or other information to which this Protocol refers.

4. The procedure used for supplementing or amending the electronic consignment note shall make it possible to detect as such any supplement or amendment to the electronic consignment note and shall preserve the particulars originally contained therein.¹²

Article 5 (new)

Implementation of the electronic consignment note

1. The parties making use of the consignment note referred to in this Protocol shall agree on the procedures and their implementation in order to comply with the requirements of this Protocol and the Convention, in particular as regards:

- (a) The method for the issuance and the delivery of the consignment note to the entitled party;
- (b) An assurance that the electronic consignment note retains its integrity;
- (c) The manner in which the party entitled to the rights arising out of the electronic consignment note is able to demonstrate that entitlement; and
- (d) The way in which confirmation is given that delivery to the consignee has been effected.

2. The procedures in paragraph 1 must be referred to in the contract particulars to which the consignment note relates and be readily ascertainable.¹³

Article 6 (new)

Documents supplementing the electronic consignment note

1. The carrier shall in any case hand over to the sender, at the latter's request, a receipt for the goods and all information necessary for identifying the shipment and for access to the consignment note to which this Protocol refers.

2. The documents referred to in article 6, paragraph 2 (g) and article 11 of the Convention

¹² New provision proposed in view of observations made by the Netherlands and Norway to the effect that modifications must be clearly apparent.

¹³ New provision proposed to offer a minimum framework for agreements between the parties. The text is based on article 6 of the UNCITRAL "Draft convention on the carriage of goods [wholly or partly] [by sea]".

may be furnished by the sender to the carrier in the form of an electronic data recording, if the documents exist in this form, if the parties have agreed to procedures enabling a link to be established between these documents and the consignment note to which this Protocol refers in a manner that assures their integrity¹⁴ and if the documents comply with the conditions set out in paragraph 1 (b) and in paragraph 2 (b) of this article.

FINAL PROVISIONS

Article 7

Signature, ratification, accession

1. This Protocol shall be open for signature by States which are signatories to, or have acceded to the Convention and are either members of the Economic Commission for Europe or have been admitted to the Commission in a consultative capacity under paragraph 8 of that Commission's terms of reference.
2. This Protocol shall remain open for accession by any of the States referred to in paragraph 1 of this article which are Parties to the Convention.
3. Such States as may participate in certain activities of the Economic Commission for Europe in accordance with paragraph 11 of that Commission's terms of reference which have acceded to the Convention may become Contracting Parties to this Protocol by acceding thereto after its entry into force.
4. This Protocol shall be open for signature at Geneva from ... to ... inclusive. Thereafter, it shall be open for accession.
5. This Protocol shall be subject to ratification after the State concerned has ratified or acceded to the Convention.
6. Ratification or accession shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.
7. Any instrument of ratification or accession deposited after the entry into force of an amendment to the present Protocol with respect to all Contracting Parties or after the completion of all measures required for the entry into force of the amendment with respect to all Contracting Parties shall be deemed to apply to the Protocol as modified by the amendment.

¹⁴ Phrase added following the observations by the Netherlands and Norway concerning the integrity of documents.

Article 8

Entry into force

1. This Protocol shall enter into force on the ninetieth day after five of the States referred to in article 7, paragraphs 1 and 2 of this Protocol, have deposited their instruments of ratification or accession.
2. For any State ratifying or acceding to it after five States have deposited their instruments of ratification or accession, this Protocol shall enter into force on the ninetieth day after the said State has deposited its instrument of ratification or accession.

Article 9

Denunciation

1. Any Contracting Party may denounce this Protocol by so notifying the Secretary-General of the United Nations.
2. Denunciation shall take effect 12 months after the date of receipt by the Secretary-General of the notification of denunciation.
3. Any Contracting Party which ceases to be Party to the Convention shall on the same date cease to be Party to this Protocol.

Article 10

Termination

If, after the entry into force of this Protocol, the number of Contracting Parties is reduced, as a result of denunciations, to less than five, this Protocol shall cease to be in force from the date on which the last of such denunciations takes effect. It shall also cease to be in force from the date on which the Convention ceases to be in force.

Article 11

Declaration concerning the application to territories

1. Any State may, at the time of depositing its instrument of ratification or accession or at any time thereafter, declare by a ratification addressed to the Secretary-General of the United Nations that this Protocol shall extend to all or any of the territories for whose international relations it is responsible and in respect of which it has made a declaration in accordance with article 46 of the Convention. This Protocol shall extend to the territory or territories named in the notification as from the ninetieth day after its receipt by the Secretary-General or, if on that day the Protocol has not yet entered into force, as from the time of its entry into force.
2. Any State which has made a declaration under the preceding paragraph extending this Protocol to any territory for whose international relations it is responsible may denounce the Protocol separately in respect of the territory in accordance with the provisions of article 9 above.

Article 12

Dispute

Any dispute between two or more Contracting Parties relating to the interpretation or application of this Protocol which the Parties are unable to settle by negotiation or other means may, at the request of any one of the Contracting Parties concerned, be referred for settlement to the International Court of Justice.

Article 13

Reservations

1. Each Contracting Party may, at the time of signing, ratifying, or acceding to this Protocol, declare by a notification addressed to the Secretary-General of the United Nations that it does not consider itself bound by article 12 of this Protocol. Other Contracting Parties shall not be bound by article 12 of this Protocol in respect of any Contracting Party which has entered such a reservation.
2. The declaration referred to in paragraph 1 of this article may be withdrawn at any time by a notification addressed to the Secretary-General of the United Nations.
3. No other reservation to this Protocol shall be permitted.

Article 14

Convening of a diplomatic conference

1. After this Protocol has been in force for three years, any Contracting Party may, by notification to the Secretary-General of the United Nations, request that a conference be convened for the purpose of reviewing this Protocol. The Secretary-General shall notify all Contracting Parties of the request and a review conference shall be convened by the Secretary-General if, within a period of four months following the date of notification by the Secretary-General not less than one-fourth of the Contracting Parties notify him of their concurrence with the request.
2. If a conference is convened in accordance with the preceding paragraph, the Secretary-General shall notify all the Contracting Parties and invite them to submit within a period of three months such proposals as they may wish the Conference to consider. The Secretary-General shall circulate to all Contracting Parties the provisional agenda for the Conference together with the texts of such proposals at least three months before the date on which the Conference is to meet.
3. The Secretary-General shall invite to any conference convened in accordance with this article all States referred to in article 7, paragraphs 1 and 2 and States which have become Contracting Parties under article 7, paragraph 3 of this Protocol.

Article 15
Notifications to States

In addition to the notifications provided for in article 13, the Secretary-General of the United Nations shall notify the States referred to in article 7, paragraphs 1 and 2, of this Protocol and the States which have become Contracting Parties under article 7 paragraph 3, of this Protocol, of:

- (a) Ratifications and accessions under article 7;
- (b) The date of entry into force of this Protocol in accordance with article 8;
- ~~(c) Communications received under article 2, paragraph 2;~~
- (c) Denunciations under article 9;
- (d) The termination of this Protocol in accordance with article 10;
- (e) **Declarations and** notifications received in accordance with article 11;
- (f) Declarations and notifications received in accordance with article 13, paragraphs 1 and 2.

Article 15

Depositary

After, the original of this Protocol shall be deposited with the Secretary-General of the United Nations, who shall transmit certified true copies to each of the States mentioned in article 7, paragraphs 1, 2 and 3 of this Protocol.

DONE at Geneva, this, in a single copy in the English, French **and Russian** languages, each text being equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Protocol in the name of: