

30 July 2010

English

Original: English

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## **UNECE Working Party on Rail Transport**

Informal Group of Experts on Unified Railway Law

### **Second session**

St. Petersburg, 8 July 2010

## **Report**

### **I. Attendance**

1. The Group of Experts held its second session in St. Petersburg on 8 July 2010 under the chairmanship of Mr. Erik Evtimov. The session was hosted by the Russian Federation and the Russian Railways (RZD).
2. The session was attended by representatives of the following countries: Azerbaijan, Czech Republic, France, Germany (EBA), Russian Federation.
3. The following intergovernmental organizations were represented: Economic Cooperation Organization (ECO); Organization for Co-operation between Railways (OSJD); Intergovernmental Organization for International Carriage by Rail (OTIF). The following non-governmental organizations were represented: International Rail Transport Committee (CIT); International Union of Railways (UIC).
4. Representatives of the following railways and research institution participated: Azerbaijan Railways (AZ); Deutsche Bahn (DB), French Railways (SNCF), Russian Railways (RZD), Japanese Economic Research Institute for Northeast Asia (ERINA).

### **II. Adoption of the agenda**

5. The Group of Experts adopted the agenda of its second session prepared by the UNECE secretariat: <[http://unece.org/trans/doc/2010/sc2/Agel\\_260310.pdf](http://unece.org/trans/doc/2010/sc2/Agel_260310.pdf)>.

### **III. Main themes and tasks of the informal Group of Experts**

6. As agreed at its first session, the Group of Experts focused its deliberations on two issues applicable for pan-European and Euro-Asian rail transport corridors:
  - (a) Organizational and operational interoperability in international rail transport;
  - (b) Harmonized rules for the contract for the international carriage of goods by rail.

## **1. Organizational and operational interoperability in international rail transport**

7. On the basis of two presentations made by (a) the German Federal Railway Office (EBA) on **cross acceptance and safety in rail transport** under the legal framework of the European Union, and (b) the International Union of Railways (UIC) on the **General Contract of Use of Wagons (GCU)**, the Group of Experts reviewed railway policies and regulations applicable on the territory of the 27 member States of the European Union (EU) and in line with the provisions of the Convention Concerning International Carriage by Rail (COTIF) of 1999 (Informal Document No. 4 (2010)).

8. The Group of Experts noted that EU railway policy and legal framework aimed to equal conditions for intermodal competition as well as for liberalization and harmonization of the rail sector in its member States. In the field of rail freight transport, this included regulatory and contractual issues related to non-discriminatory access to infrastructure, entity in charge of maintenance of rolling stock, safety and security, operational and structural interoperability, including cross acceptance of vehicles as well as technical harmonization. In addition to the establishment of numerous bodies to supervise and monitor these provisions within the European Union, the railway industry has prepared a multilateral contractual framework for the use of wagons (GCU) that applies the same rules for all privately and railway owned freight wagons.

9. The Group of Experts welcomed the detailed information provided by Germany and UIC on these very complex administrative, technical, operational and legal issues governing rail freight in a liberalized and, within the EU, unique and mandatory legal framework. It acknowledged the complexity of the European Union law regarding the issues of cross acceptance, safety, maintenance of rolling stock and exchange of freight wagons.

10. In view of the above, the **Group of Experts agreed not to further consider these issues** as they were applicable only at EU and UNECE sub-regional level and could be pursued by other competent bodies, such as OTIF, OSJD and the European Railway Agency (ERA).

11. All documents and presentations made under this item are available at: [http://www.unece.org/trans/main/sc2/sc2\\_igeurl2.html](http://www.unece.org/trans/main/sc2/sc2_igeurl2.html).

## **2. Harmonized rules for contracts on the international carriage of goods by rail**

### **(a) Lessons learned and best practice**

12. The Group of Experts was informed by the Russian Federation about the globally standardized procedures and mechanisms established by means of the Chicago Convention and other treaties (Warsaw, Montreal) for air transport. These global conventions prepared and administered under the auspices of the United Nations, provide a transparent and consistent legal and administrative framework guiding the development of air transport and establish procedural rules for their implementation at national level by Governments and the industry.

13. The Russian Federation agreed to make at the next meeting a presentation on the international rules governing transport contracts in the framework of the Hague-Visby, Hamburg and the recent Rotterdam Rules (maritime transport) and the Warsaw and Montreal conventions (air transport).

14. Similarly, the Convention on the Contract for the International Carriage of Goods by Road (CMR) of 1956 as well as the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways (CMNI) of 2001 provide for efficient and seamless international road and inland water transport by standardizing the conditions governing the contract for the international carriage of goods as well as the minimum level of carrier's liability.

15. The Group of Experts agreed that these international treaties contained well established principles and procedures allowing for efficient air, maritime, road and inland water transport in the pan-European region and for Euro-Asian transport. In order to establish a **level playing field** in freight transport along pan-European and Euro-Asian transport corridors, similar provisions would need to be established also for rail freight transport.

16. The Group of Experts was informed (a) by OSJD of the provisions of the Agreement on International Goods Transport by Rail (SMGS) and (b) by OTIF of the United Nations Model Regulations on the transport of dangerous goods that are implemented through international treaties, such as ADR for international road and RID (Annex C to COTIF) for international rail transport (Informal Document No. 5 (2010)). For OSJD member States these implementing provisions are transposed almost identically into Annex 2 to the SMGS Agreement. The substantive provisions of the SMGS Agreement and the procedures established for the global transport of dangerous goods based on the United Nations Model Regulations (soft law) show that **there exist concrete possibilities and well functioning mechanisms** that could be used by Governments and the railway industry in harmonizing international railway law based on and within the framework of the two existing international railway regimes, COTIF/CIM and SMGS.

17. Finally, the CIT informed the Group of Experts of the latest developments with the common CIM/SMGS consignment note that is utilized today on more than 50 pan-European and Euro-Asian traffic axes (Informal Document No. 6 (2010)). The common consignment note is the "sum" of the CIM and SMGS consignment notes and provides for a contractual link between shippers and railway companies while not modifying the underlying legal provisions of COTIF and SMGS. The common consignment note, that is now also available in electronic form, is accepted as a Customs document in EU and EFTA countries as well as in Belarus, Russian Federation and in the Ukraine. OSJD and CIT have also developed a standard CIM/SMGS Formal Report and uniform procedures for handling claims for loss and damages during rail transit operations.

**(b) The way forward**

18. The Group of Experts acknowledged that, without modification of the institutional and legal framework provided by COTIF and SMGS, the common CIM/SMGS consignment note was a first step towards unification of railway law in the pan-European region and along Euro-Asian rail transport corridors. However, it was recognized that, while such contractual arrangements facilitated international rail freight transport in the region, major rail freight customers, railway undertakings and Governments along Euro-Asian transport corridors required further steps to ensure efficient negotiation and conclusion of rail **transport contracts** along these corridors.

19. A possible short-term solution could consist in the preparation of **general conditions for rail transport contracts** that covered all **non-commercial elements** of rail transport contracts between shippers and railway undertakings and were based on and in line with relevant provisions of COTIF and SMGS. The principles of consistency and most possible contractual freedom should be respected.

20. Such general conditions for transport contracts would enhance transparency in Euro-Asian rail freight operations, increase certainty of applicable legal rules for long distances rail services, particularly predictability of liability of parties to transport contracts, and would establish **internationally accepted recommendations** for rail transport contracts for Euro-Asian rail transport, while allowing for commercial freedom of the industry<sup>1</sup>. It was also recognized that the requirements of **electronic data processing** and use of **electronic transport documentation**, such as an electronic consignment note, should be taken into account from the very beginning.

21. The Group of Experts felt that the development of such general conditions for rail transport contracts could be undertaken with the support and under the auspices of an inter-governmental organization, as in many COTIF and SMGS member States railways operate as State supervised undertakings and contractual provisions are part of **public (administrative) law** in these countries requiring the approval of Governments. The inter-governmental organization should also have the mandate and authority to encompass all or most countries along Euro-Asian rail transport corridors.

22. Given the legal complexity of such contracts, the legal expertise of OTIF, OSJD and CIT was considered indispensable. The already existing and well-functioning working mechanisms of CIT and OSJD in the project “Transport interoperability CIM/SMGS” should be fully utilized for this endeavour and participation in expert meetings should be open to all interested Governments and Railway undertakings.

23. The Group of Experts also considered possible procedures and mechanisms to prepare and ensure uniform utilization of such general conditions for rail transport contracts along Euro-Asian transport corridors.

24. To ensure general acceptance and uniform use of the general conditions, preparation of a **Memorandum of Understanding (MoU)** or similar instrument could constitute an internationally agreed policy framework for utilization of such general conditions for rail transport contracts along Euro-Asian transport corridors. Such a MoU or similar instrument could also determine specific Euro-Asian land transport corridors on which such general conditions for rail transport contracts would apply (for example, those specified in the Joint UNECE/UNESCAP Study on Developing Euro-Asian Transport Linkages<sup>2</sup>). It could also restrict the use of such contracts to certain cargoes and/or transport operations (i.e. container transport).

25. The MoU or similar instrument could be prepared by a Group of Experts under the auspices of the UNECE Working Party on Rail Transport (SC.2). Once accepted by the UNECE Working Party, the MoU could be acknowledged and/or signed at a special occasion by concerned **Governments** and **railway undertakings**.

26. All documents and presentations made under this item are available at: [http://www.unece.org/trans/main/sc2/sc2\\_igeurl2.html](http://www.unece.org/trans/main/sc2/sc2_igeurl2.html).

#### **IV. Follow-up activities of the informal Group of Experts**

27. The Group of Experts agreed to continue its work on harmonized rules for the contract for international carriage of goods by rail in the pan-European region and along Euro-Asian transport corridors.

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<sup>1</sup> For details proposed at the meeting by CIT, see: <http://www.unece.org/trans/doc/2010/sc2/ige-sc2-pres06e.pdf>.

<sup>2</sup> See: [http://www.unece.org/trans/main/eatl/in\\_house\\_study.pdf](http://www.unece.org/trans/main/eatl/in_house_study.pdf).

28. In the short-term, **general conditions for single rail transport contracts** could be prepared **together with adequate framework provisions** (MoU).

29. In the longer run, the preparation of **model regulations**, similar to those established for the international transport of dangerous goods, as well as the establishment of appropriate mechanisms to ensure the harmonized development of pan-European and Euro-Asian rail transport law, should be considered.

30. At its next session, the Group of Experts would continue its consideration on lessons learned from other transport modes, particularly sea, air and road. It would also, as mandated, prepare a **policy paper** on possibilities to harmonize or unify, in the short and long term, railway law in the pan-European region and along Euro-Asian transport corridors.

31. The conclusions of the Group of Experts would be transmitted to the forthcoming 64. session of the UNECE Working Party on Rail Transport (SC.2) (Vienna, 18-19 November 2010). SC.2 might wish to recommend to the UNECE Inland Transport Committee (Geneva, 1-3 March 2011) to continue work on these issues in 2011, possibly in the framework of an official UNECE Group of Experts.

32. This UNECE Group of Experts could be mandated to prepare in 2011, in close cooperation with OTIF, OSJD and CIT, **specific provisions and rules for the harmonization of contracts on the international carriage of goods by rail along Euro-Asian transport corridors** as considered during the present session.

## V. Workshop on Euro-Asian rail transport issues

33. Due to lack of time, the Group of Experts did not discuss this item, but would revert to it at its next session.

## VI. Other business

34. There was no issue raised under this item.

## VII. Date and place of next meeting

35. The next meeting of the informal UNECE Group of Experts will be held at the Palais des Nations in Geneva on **16 September 2010**.