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## Economic Commission for Europe

### Inland Transport Committee

#### Working Party on Rail Transport

##### Group of Experts towards Unified Railway Law

###### Sixth session

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Item 4 of the provisional agenda

##### **Unification of international railway law with the objective to allow rail carriage under a single legal regime**

## **Comparative analysis of the draft revised text of SMGS and CIM**

### **Transmitted by the Organization for Cooperation between Railways (OSJD)\***

1. In accordance with a decision of the twenty-third session of the OSJD Conference of Ministers, a proposal by the OSJD Commission on Transport Law was adopted in 2005 to revise SMGS. One of the main themes of the revision has been that it should take into account the provisions of COTIF and CIM as they appear in the 1999 version.
2. The new version of SMGS establishes regulations governing how transport contracts are concluded, amended and carried out, the rights and duties of the parties to the transport contract, their responsibilities and the joint and several liability of the carriers.
3. As at October 2013:
  - (a) The SMGS standards are divided into three types:
    - Legal standards that have been included in the basic SMGS text (corresponding with the principles included in CIM);
    - Rules regulating the application of the SMGS standards and special conditions of carriage included in the Rules for the transport of cargo and annexes to SMGS (in the CIM framework such questions are not dealt with under intergovernmental

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\* This document was submitted late owing to late receipt of the incoming information.



agreements, but are covered directly by the carriers, through their professional associations);

- Provisions that are included for information only, as reflected in the information directives annexed to SMGS (in the CIM framework, these too are regulated by the carriers' associations on a contractual basis);

(b) New legal entities have been included in the draft: carriers (successive or contractual carriers), infrastructure managers and wagon owners (unlike CIM, SMGS contains no concept of "substitute carrier");

(c) The proposed changes and additions will permit international transport within the borders of a single State by several or single carriers using the infrastructure of several States, i.e., to ensure the transfrontier nature of the carriage;

(d) The infrastructure and the person who manages it are defined in terms of an agent of the carrier. This assumes the existence (when necessary) of a contract for the use of the infrastructure by the carrier, with the consignor and the consignee not required to establish a legal relationship with the infrastructure manager.

4. When comparing the basic provisions of SMGS and CIM, the following should be noted:

(a) SMGS, unlike CIM, stipulates that the carriage of goods takes place either without transshipment at border stations having the same rail gauge, or with transshipment, or with the transfer of wagons onto bogies of the required gauge at border stations where the railways of different gauges meet, or with the use of adjustable-gauge bogies;

(b) Under SMGS, the contract of carriage is a real contract and as such is recognized as being concluded from the moment that the cargo is received for carriage by the carrier at the dispatching station. Under CIM, the contract of carriage is consensual;

(c) CIM provides for the freedom to conclude contracts within the limits established under article 5, which means that there is no "obligation" of carriage. Under SMGS, an obligation of carriage may be stipulated, depending on the national legislation;

(d) Under SMGS a common consignment note is used to execute contracts of carriage. Blank forms for the consignment note are printed and are filled in using one or two of the working languages (Chinese, Russian). CIM does not directly establish a mandatory format for consignment notes, nor does it establish the languages to be used for their completion; it gives the right to international carriers' associations to establish, with the consent of international clients' associations, models for the consignment notes;

(e) There are provisions setting periods for delivery. Under the CIM rules, the general period for the delivery of goods is 400 km for express shipments. Under the SMGS rules, the period for carriage of express wagon-load consignments is 320 tariff kilometres for each railway per day. CIM limits the liability for delays in delivery to four times the amount of freight charges, while SMGS limits it to 30 per cent of freight charges;

(f) In accordance with CIM and SMGS, the carrier is assumed to be liable for a failure to observe the conditions of carriage based on a presumption of fault;

(g) Under CIM, the liability of the carrier is determined in Special Drawing Rights, or SDR (the standard monetary unit used by the member States of the International Monetary Fund). The carrier's liability limit for failure to keep the cargo safe is currently 17 SDR per kilogramme of goods. Unlike CIM, SMGS establishes the liability of the carrier in terms of the actual value of the goods, and when the cargo has a declared value, within the limits of the declared value.

5. Annexed herewith is an article-by-article comparison of SMGS and CIM.

## Annex

### Article-by-article comparison of the draft SMGS and CIM

#### I. General provisions

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##### *Provisions of the draft SMGS*

#### **Article 3**

##### **Application of the Agreement**

§1 This Agreement establishes a single set of legal standards for contracts of carriage of goods and also for the transport of wagons as means of transport.

§2 The carriage of goods in direct international rail transport under the conditions of this Agreement shall take place between stations allowed to perform cargo operations in accordance with the national legislation of the parties to this Agreement, and in direct international rail ferry carriage, with the participation of the navigation segment of the route declared by the parties for such carriage.

§3 The transport of goods in direct international rail-ferry carriage shall take place in accordance with the conditions established by this Agreement.

§4 If the parties are at the same time participants in other international agreements establishing legal standards for contracts of carriage of goods by international transport, carriage between the railway stations of those parties may take place in the conditions set by such agreements.

#### **Article \_\_\_**

##### **Means of transport**

If the stations of dispatch and destination are located on railways of different rail gauges, then the carriage may take place as follows, depending on the technical possibilities: with transshipment of the cargo from the wagons of one rail gauge onto wagons of the other, or with the transfer onto bogies of the other rail gauge, or with the use of adjustable-gauge bogies.

#### **Article 4**

##### **Application of national legislation**

In the absence of corresponding provisions in this Agreement, the national law of the State in which the person entitled asserts his rights shall be applicable.

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##### *Provisions of CIM*

#### **Article 1**

##### **Scope**

§ 1 These Uniform Rules shall apply to every contract of carriage of goods by rail for reward when the place of taking over of the goods and the place designated for delivery are situated in two different Member States, irrespective of the place of business and the nationality of the parties to the contract of carriage.

§ 2 These Uniform Rules shall apply also to contracts of carriage of goods by rail for reward, when the place of taking over of the goods and the place designated for delivery are situated in two different States, of which at least one is a Member State and the parties to the contract agree that the contract is subject to these Uniform Rules.

§ 3 When international carriage being the subject of a single contract includes carriage by road or inland waterway in internal traffic of a Member State as a supplement to transfrontier carriage by rail, these Uniform Rules shall apply.

§ 4 When international carriage being the subject of a single contract of carriage includes carriage by sea or transfrontier carriage by inland waterway as a supplement to carriage by rail, these Uniform Rules shall apply if the carriage by sea or inland waterway is performed on services included in the list of services provided for in Article 24 § 1 of the Convention.

§ 5 These Uniform Rules shall not apply to carriage performed between stations situated on the territory of neighbouring States, when the infrastructure of these stations is managed by one or more infrastructure managers subject to only one of those States.

§ 6 Any State which is a party to a convention concerning international through carriage of goods by rail comparable with these Uniform Rules may, when it makes an application for accession to the Convention, declare that it will apply these Uniform Rules only to carriage performed on part of the railway infrastructure situated on its territory. This part of the railway

**Article 5****Mandatory law**

Any conditions of a contract of carriage directly or indirectly deviating from the conditions of this Agreement shall be null and void and shall have no legal force, with the exception of the cases stipulated herein. The nullity of such a stipulation shall not involve the nullity of the other provisions of the contract.

**Article 6****Pre-contractual agreement for carriage**

Prior to the conclusion of a contract of carriage, a pre-contractual agreement of carriage may be concluded as follows:

- Between the consignor and the contractual carrier, in accordance with national legislation; or
- Between the contractual and successive carriers, in accordance with a procedure agreed by them.

**Article 7****Rules for the transport of cargo**

§1 The procedure for applying the conditions of this Agreement and also the special conditions of carriage of specific types of goods shall be established by the Rules for the transport of cargo (annex 1 to this Agreement). The contract between the consignor, the consignee and all the carriers taking part in the carriage may establish special conditions for the carriage of goods. Such special conditions shall take precedence over the conditions set out in the Rules for the transport of cargo.

§2 The Rules for the transport of cargo contain detailed standard decisions and procedures to ensure the uniform interpretation and application of the articles of this Agreement.

**Article 8****Transport of dangerous goods**

§1 Dangerous goods shall be transported in accordance with the Rules for the transport of dangerous goods (annex 2 to this Agreement). The corresponding articles of this Agreement and the Rules for the transport of cargo referred to in Article 7 of this Agreement shall be applicable to the extent that the Rules for the transport of dangerous goods do not stipulate otherwise.

infrastructure must be precisely defined and connected to the railway infrastructure of a Member State. When a State has made the above-mentioned declaration, these Uniform Rules shall apply only on the condition

- a) that the place of taking over of the goods or the place designated for delivery, as well as the route designated in the contract of carriage, is situated on the specified infrastructure or
- b) that the specified infrastructure connects the infrastructure of two Member States and that it has been designated in the contract of carriage as a route for transit carriage.

§ 7 A State which has made a reservation in accordance with § 6 may withdraw it at any time by notification to the Depositary. This withdrawal shall take effect one month after the day on which the Depositary notifies it to the Member States. The declaration shall cease to have effect when the convention referred to in § 6, first sentence, ceases to be in force for that State.

**Article 2****Prescriptions of public law**

§ 1 Carriage to which these Uniform Rules apply shall remain subject to the prescriptions of public law, in particular the prescriptions relating to the carriage of dangerous goods as well as the prescriptions of customs law and those relating to the protection of animals.

**Article 5****Mandatory law**

Unless provided otherwise in these Uniform Rules, any stipulation which, directly or indirectly, would derogate from these Uniform Rules shall be null and void. The nullity of such a stipulation shall not involve the nullity of the other provisions of the contract of carriage. Nevertheless, a carrier may assume a liability greater and obligations more burdensome than those provided for in these Uniform Rules.

**Article 9****Dangerous goods**

If the consignor has failed to make the entries prescribed by RID, the carrier may at any time unload or destroy the goods or render them innocuous, as the circumstances may require, without payment of compensation, save when he was aware of their dangerous nature on taking them over.

*Provisions of the draft SMGS**Provisions of CIM*

§2 In cases of direct international rail ferry transport of dangerous goods, the requirements of the IMDG Code too shall be observed.

**Article 9**  
**Cargo stowing and securing**

§1 On wagons with a rail gauge of 1,520 mm, cargo shall be stowed and secured in accordance with the Technical Specifications for stowing and securing cargo (annex 3 to this Agreement), unless the carriers have agreed otherwise.

§2 On closed wagons with rail gauges of 1,435 mm or 1,000 mm, cargo shall be stowed and secured in accordance with the national legislation applicable at the point of loading, unless the carriers have agreed otherwise, and on open rolling stock, in accordance with the conditions agreed between the carriers carrying the cargo on wagons with such gauges.

**Article 10**  
**Rules for the carriage of wagons as a means of transport**

§1 The procedure for applying the conditions of this Agreement to the use of wagons as means of transport shall be established by the Rules for the carriage of wagons as a means of transport (annex 4 to this Agreement), and for parts not covered by such Rules, by the Rules for the transport of cargo referred to in article 7 of this Agreement.

§2 The Rules for the carriage of wagons as a means of transport contain detailed standard decisions and procedures to ensure the uniform interpretation and application of the articles of this Agreement.

**Article 11**  
**Information manual**

§1 The information manual contains information on the rail infrastructure and navigation segments used for the carriage of the cargo in the conditions defined by this Agreement, and also information on the carriers involved in such carriage (annex 5 to this Agreement).

The information included in the information manual shall be publicly accessible and shall be considered to be officially authoritative.

§2 Changes and additions to the information manual shall be made in accordance with the procedure for introducing changes and additions to this Agreement.

§3 Changes and additions to the information in the information manual shall be made by a statement of the

**Article 4**  
**Derogations**

§ 1 Member States may conclude agreements which provide for derogations from these Uniform Rules for carriage performed exclusively between two stations on either side of the frontier, when there is no other station between them.

§ 2 For carriage performed between two Member States, passing through a State which is not a Member State, the States concerned may conclude agreements which derogate from these Uniform Rules.

§ 3 Agreements referred to in §§ 1 and 2 as well as their coming into force shall be notified to the Intergovernmental Organisation for International Carriage by Rail. The Secretary General of the Organisation shall inform the Member States and interested undertakings of these notifications.

parties. Each party shall send the OSJD Committee a statement regarding changes and additions to the information on rail infrastructure in its State, on navigation segments and on carriers registered in its State that take part in international carriage.

Information on the changes and additions to the information manual to be introduced by the OSJD Committee shall be submitted no later than 30 days before their entry into force.

The OSJD Committee shall post the information on changes and additions to the information manual on the OSJD website within three days of its reception, indicating when the changes and additions will enter into force.

#### Article \_\_

#### **Carriage of cargo with the use of the CIM/SMGS consignment note**

Cargo may be carried with the use of the CIM/SMGS consignment note. The model of the consignment note and the rules for its completion and use are contained in the Guidelines for the CIM/SMGS consignment note (annex 6 to this Agreement). The Rules for the transport of cargo referred to in article 7 of this Agreement shall be applicable for questions not covered by the Guidelines for the CIM/SMGS consignment note.

## **II. Contract of carriage**

#### **Article 11**

#### **Contract of carriage**

§1 By the contract of carriage, the carrier shall undertake to carry, for reward, the goods entrusted to it by the consignor to the station of destination along the route agreed by the consignor and the contractual carrier and to deliver them to the consignee.

§2 The carrier shall carry the goods in accordance with the conditions of this Agreement if:

- (1) The carrier or the consignor has available the means of transport required for the carriage;
- (2) The consignor meets the conditions of this Agreement;

#### **Article 6**

#### **Contract of carriage**

§ 1 By the contract of carriage, the carrier shall undertake to carry the goods for reward to the place of destination and to deliver them there to the consignee.

§ 2 The contract of carriage must be confirmed by a consignment note which accords with a uniform model. However, the absence, irregularity or loss of the consignment note shall not affect the existence or validity of the contract which shall remain subject to these Uniform Rules.

§ 3 The consignment note shall be signed by the consignor and the carrier. The signature can be replaced by a stamp, by an accounting machine entry or in any other appropriate manner.

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- (3) Transport is not hindered by any circumstances beyond the carrier's control or ability to prevent them;
- (4) The carriage has been agreed by the carriers along the route the goods will take.
- §3 The consignment note shall serve as confirmation of the conclusion of the contract of carriage.
- §4 Incorrect or inaccurate information entered on the consignment note or the loss of the consignment note by the carrier shall have no effect on either the existence or the validity of the contract of carriage.
- §5 Each successive carrier who takes over the goods with the consignment note shall become a party to the contract of carriage and shall assume the obligations arising therefrom.

**Article 12****Consignment note**

- §1 The consignment note must contain the following particulars:
- (1) The name and postal address of the consignor;
  - (2) The name and postal address of the consignee;
  - (3) The name of the contractual carrier;
  - (4) The name of the railway and station of dispatch;
  - (5) The name of the railway and station of destination;
  - (6) The names of border stations of transshipment;
  - (7) The designation of the goods and their code;
  - (8) The number of the consignment;
  - (9) The type of packaging;
  - (10) The number of cargo units;
  - (11) The mass of the cargo;
  - (12) The number of the wagon or container, specifying who supplies the wagon for carriage of the goods (the consignor or the carrier);
  - (13) The list of accompanying documentation attached by the consignor to the consignment note;
  - (14) Information on the payment of freight charges;
  - (15) The number of seals and types of marks on them;
  - (16) The means of determining the mass of the cargo;

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- § 4 The carrier must certify the taking over of the goods on the duplicate of the consignment note in an appropriate manner and return the duplicate to the consignor.
- § 5 The consignment note shall not have effect as a bill of lading.
- § 6 A consignment note must be made out for each consignment. In the absence of a contrary agreement between the consignor and the carrier, a consignment note may not relate to more than one wagon load.
- § 7 In the case of carriage which takes place on the customs territory of the European Community or the territory on which the common transit procedure is applied, each consignment must be accompanied by a consignment note satisfying the requirements of Article 7.
- § 8 The international associations of carriers shall establish uniform model consignment notes in agreement with the customers' international associations and the bodies having competence for customs matters in the Member States as well as any intergovernmental regional economic integration organisation having competence to adopt its own customs legislation.
- § 9 The consignment note and its duplicate may be established in the form of electronic data registration which can be transformed into legible written symbols. The procedure used for the registration and treatment of data must be equivalent from the functional point of view, particularly so far as concerns the evidential value of the consignment note represented by those data.

**Article 7****Wording of the consignment note**

- § 1 The consignment note must contain the following particulars:
- a) the place at which and the day on which it is made out;
  - b) the name and address of the consignor;
  - c) the name and address of the carrier who has concluded the contract of carriage;
  - d) the name and address of the person to whom the goods have effectively been handed over if he is not the carrier referred to in letter c);
  - e) the place and the day of taking over of the goods;

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(17) The date when the contract of carriage was concluded.

§2 In addition to the information listed in §1 of this article, the consignment note shall also contain the following information, if necessary:

- (1) The names of the successive carriers;
- (2) Declarations by the consignor concerning the cargo;
- (3) Port rail terminals and ports of transshipment to navigation transport;
- (4) Other information as required by the Rules for the transport of cargo.

§3 The blank form of the consignment note shall be printed and completed in one of the OSJD working languages.

The consignment note form and all or any information entered in the form may be translated into another language.

By consent of those taking part in the carriage, the consignment note form may be filled in using any other language.

§4 An electronic consignment note may be used for the consignment note. Electronic consignment notes shall perform the same functions as paper consignment notes and shall include data in electronic form identical to the data of paper consignment notes.

### **Article 13 Responsibility for the information entered in the consignment note**

§1 The consignor shall ensure the correctness of all information and declarations that it makes in the consignment note. The consignor shall be liable for any consequences arising from the incorrect, inaccurate or incomplete entry of such information and declarations or from any entries made in the wrong sections of the consignment note. If, in accordance with the provisions of this Agreement, the carrier enters information from the consignor in the consignment note, it shall be considered that the carrier is acting on the consignor's behalf, unless there is proof to the contrary.

§2 If prior to the conclusion of the contract of carriage the carrier discovers incorrect, inaccurate or incomplete information in the consignment note, the consignor shall be obliged to draw up a new consignment note, if according to the Rules for the

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- f) the place of delivery;
  - g) the name and address of the consignee;
  - h) the description of the nature of the goods and the method of packing, and, in case of dangerous goods, the description provided for in the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID);
  - i) the number of packages and the special marks and numbers necessary for the identification of consignments in less than full wagon loads;
  - j) the number of the wagon in the case of carriage of full wagon loads;
  - k) the number of the railway vehicle running on its own wheels, if it is handed over for carriage as goods;
  - l) in addition, in the case of intermodal transport units, the category, the number or other characteristics necessary for their identification;
  - m) the gross mass or the quantity of the goods expressed in other ways;
  - n) a detailed list of the documents which are required by customs or other administrative authorities and are attached to the consignment note or held at the disposal of the carrier at the offices of a duly designated authority or a body designated in the contract;
  - o) the costs relating to carriage (the carriage charge, incidental costs, customs duties and other costs incurred from the conclusion of the contract until delivery) in so far as they must be paid by the consignee or any other statement that the costs are payable by the consignee;
  - p) a statement that the carriage is subject, notwithstanding any clause to the contrary, to these Uniform Rules.
- § 2 Where applicable the consignment note must also contain the following particulars:
- a) in the case of carriage by successive carriers, the carrier who must deliver the goods when he has consented to this entry in the consignment note;
  - b) the costs which the consignor undertakes to pay;
  - c) the amount of the cash on delivery charge;
  - d) the declaration of the value of the goods and the amount representing the special interest in delivery;
  - e) the agreed transit period;

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transport of cargo it is not permitted to correct the information and declarations therein.

§3 The consignor shall pay the carrier a contractual penalty if after the conclusion of the contract of carriage the carrier discovers that the information and declarations included in the consignment note by the consignor are incorrect, inaccurate or incomplete and if it is determined that:

- (1) The cargo shipment includes items unauthorized for transport over a State border by at least one of the States whose territory is to be crossed during carriage;
- (2) Dangerous goods have been accepted for carriage without the conditions required for their transport being met;
- (3) The consignor has allowed the wagon to be overloaded beyond its maximum load limit;
- (4) The freight charges have been reduced;
- (5) Circumstances have arisen threatening the safety of traffic.

The contractual penalty covered by parts 1, 2, 4 and 5 of this paragraph shall be levied in accordance with the requirements of article 28, entitled "Payment of freight charges and contractual penalties", in the amount of five times the freight charge, and shall be payable to the carrier that has discovered such a violation.

A contractual penalty covered by part 3 of this paragraph shall be levied in accordance with the requirements of article 28, entitled "Payment of freight charges and contractual penalties", in the amount of five times the freight charge for the carriage of the excess mass of cargo, and shall be payable to the carrier that has discovered such overloading.

The carrier shall be entitled to claim the contractual penalties provided under this paragraph regardless of compensation for a possible loss or other penalties paid by the consignor or the consignee in accordance with the conditions of this Agreement.

#### **Article 14** **Declaration of value of goods**

§1 By agreement of the carrier and the consignor, carriage may take place with a declaration of the value of the goods.

§2 The carrier shall be entitled to require additional payment for the declaration of the value of the goods.

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- f) the agreed route;
- g) a list of the documents not mentioned in § 1, letter n) handed over to the carrier;
- h) the entries made by the consignor concerning the number and description of seals he has affixed to the wagon.

§ 3 The parties to the contract may enter on the consignment note any other particulars they consider useful.

#### **Article 8** **Responsibility for particulars entered on the consignment note**

§ 1 The consignor shall be responsible for all costs, loss or damage sustained by the carrier by reason of

- a) the entries made by the consignor in the consignment note being irregular, incorrect, incomplete or made elsewhere than in the allotted space, or
- b) the consignor omitting to make the entries prescribed by RID.

§ 2 If, at the request of the consignor, the carrier makes entries on the consignment note, he shall be deemed, unless the contrary is proved, to have done so on behalf of the consignor.

§ 3 If the consignment note does not contain the statement provided for in Article 7 § 1, letter p), the carrier shall be liable for all costs, loss or damage sustained through such omission by the person entitled.

#### **Article 12** **Evidential value of the consignment note**

§ 1 The consignment note shall be prima facie evidence of the conclusion and the conditions of the contract of carriage and the taking over of the goods by the carrier.

§ 2 If the carrier has loaded the goods, the consignment note shall be prima facie evidence of the condition of the goods and their packaging indicated on the consignment note or, in the absence of such indications, of their apparently good condition at the moment they were taken over by the carrier and of the accuracy of the statements in the consignment note concerning the number of packages, their marks and numbers as well as the gross mass of the goods or their quantity otherwise expressed.

§ 3 If the consignor has loaded the goods, the consignment note shall be prima facie evidence of the

**Article 15****Containers, packaging and labelling**

§1 Goods requiring a container or packaging to protect them from loss, damage, spoilage or deterioration in the course of transport, to prevent damage to or contamination of the vehicles or other loads or to prevent any harm to people, animals or the environment or the railway infrastructure, shall be presented for consignment in a suitable container or packaging that fully meets such requirements.

§2 The consignor shall ensure the correctness of the labelling, labels or tags on or affixed to the cargo units and of the labels that they place on wagons, ITUs or motor vehicles.

§3 If a visual check of the container or packaging presented for carriage finds defects that cast doubt on the possibility of carriage or raise the possibility of loss, shortfall, damage or spoilage of the goods or the means of transport, the carrier shall refuse to take the cargo for carriage or shall accept it for carriage with special contractual conditions.

If the condition of the container or packaging of the goods precludes their further carriage, the prescriptions of article 25, entitled "Circumstances preventing carriage and delivery", shall apply.

§4 The consignor shall be liable for the consequences of the absence or unsatisfactory condition of the container or packaging and also for the consequences of the absence or incorrectness of labelling, labels or tags. Specifically, the consignor shall compensate the carrier for losses incurred as a result.

**Article 16****Loading and determination of the mass of the cargo**

§1 The cargo shall be loaded onto wagons that are technically sound, appropriate for the carriage of the cargo in question and clean.

§2 The national legislation of the country of dispatch shall apply to determine whether the cargo is to be loaded by the railway or the consignor.

The loading of cargos on ITUs or motor vehicles shall be done by the consignor.

§3 Persons performing the loading shall be responsible for determining that the wagons are suitable for the carriage of the cargo in question and for observing the technical requirements for the stowing and securing of cargos in wagons, ITUs and motor

condition of the goods and of their packaging indicated in the consignment note or, in the absence of such indication, of their apparently good condition and of the accuracy of the statements referred to in § 2 solely in the case where the carrier has examined them and recorded on the consignment note a result of his examination which tallies.

§ 4 However, the consignment note will not be prima facie evidence in a case where it bears a reasoned reservation. A reason for a reservation could be that the carrier does not have the appropriate means to examine whether the consignment corresponds to the entries in the consignment note.

**Article 13****Loading and unloading of the goods**

§ 1 The consignor and the carrier shall agree who is responsible for the loading and unloading of the goods. In the absence of such an agreement, for packages the loading and unloading shall be the responsibility of the carrier whereas for full wagon loads loading shall be the responsibility of the consignor and unloading, after delivery, the responsibility of the consignee.

§ 2 The consignor shall be liable for all the consequences of defective loading carried out by him and must in particular compensate the carrier for the loss or damage sustained in consequence by him. The burden of proof of defective loading shall lie on the carrier.

**Article 14****Packing**

The consignor shall be liable to the carrier for any loss or damage and costs due to the absence of, or defects in, the packing of goods, unless the defectiveness was apparent or known to the carrier at the time when he took over the goods and he made no reservations concerning it.

**Article 15****Completion of administrative formalities**

§ 1 With a view to the completion of the formalities required by customs and other administrative authorities, to be completed before delivery of the goods, the consignor must attach the necessary documents to the consignment note or make them available to the carrier and furnish him with all the requisite information.

§ 2 The carrier shall not be obliged to check whether these documents and this information are correct and

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vehicles, and also for any consequences of inadequate loading.

§4 If there is no information in the consignment note about who loaded the cargo, it shall be considered that it was loaded by the consignor.

§5 The mass of the cargo shall be determined in accordance with the Rules for the transport of cargo.

**Article 17****Sealing**

§1 Sealing shall be done using seals that cannot be removed without sustaining damage. The seals shall be placed in such a way as to make it impossible to gain access to the cargo without damaging them.

§2 The requirements for the seals and the marks thereon shall be established by the Rules for the transport of cargo.

§3 Intact seals placed on wagons, ITUs and motor vehicles in countries where this Agreement is not applicable shall be considered equivalent to seals placed in accordance with this Agreement.

**Article 18****Acceptance of cargo for carriage**

The contractual carrier shall accept the cargo for carriage from the consignor.

Cargo accepted for carriage at one dispatching station under a single consignment note from a single consignor, for delivery to a single consignee at a single destination station, shall be considered as a consignment.

**Article 19****Completion of administrative formalities**

§1 The consignor shall attach to the consignment note the accompanying documents required in order to comply with customs or other administrative formalities along the entire route followed by the cargo. Such documents must pertain only to the goods declared in the consignment note in question.

If the consignor does not attach to the consignment note a document required for the completion of administrative formalities but instead sends it to the corresponding administrative body, it shall enter information to that effect in the consignment note.

§2 The carrier shall not be obliged to check that the accompanying documents attached by the consignor to

sufficient. The consignor shall be liable to the carrier for any loss or damage resulting from the absence or insufficiency of, or any irregularity in, such documents and information, save in the case of fault of the carrier.

§ 3 The carrier shall be liable for any consequences arising from the loss or misuse of the documents referred to in the consignment note and accompanying it or deposited with the carrier, unless the loss of the documents or the loss or damage caused by the misuse of the documents has been caused by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent. Nevertheless any compensation payable shall not exceed that provided for in the event of loss of the goods.

§ 4 The consignor, by so indicating in the consignment note, or the consignee by giving orders as provided for in Article 18 § 3 may ask

- a) to be present himself or to be represented by an agent when the customs or other administrative formalities are carried out, for the purpose of furnishing any information or explanation required;
- b) to complete the customs or other administrative formalities himself or to have them completed by an agent, in so far as the laws and prescriptions of the State in which they are to be carried out so permit;
- c) to pay customs duties and other charges, when he or his agent is present at or completes the customs or other administrative formalities, in so far as the laws and prescriptions of the State in which they are carried out permit such payment.

In such circumstances neither the consignor, nor the consignee who has the right of disposal, nor the agent of either may take possession of the goods.

§ 5 If, for the completion of the customs or other administrative formalities, the consignor has designated a place where the prescriptions in force do not permit their completion, or if he has stipulated for the purpose any other procedure which cannot be followed, the carrier shall act in the manner which appears to him to be the most favourable to the interests of the person entitled and shall inform the consignor of the measures taken.

§ 6 If the consignor has undertaken to pay customs duties, the carrier shall have the choice of completing customs formalities either in transit or at the destination place.

the consignment note are correct and sufficient.

§3 The consignor shall be liable to the carrier for consequences arising from the fact that accompanying documents are missing, incomplete or inaccurate.

§4 The consignor shall list in the consignment note the accompanying documents that it attaches thereto.

If the consignor has not met the requirements of this paragraph, the contractual carrier shall refuse to carry the cargo.

§5 If the cargo shipment or delivery is delayed as a result of the consignor's failure to provide the necessary accompanying documents or due to the fact that the documents provided and mentioned in the consignment note are incomplete or inaccurate, the carrier shall be paid additional freight charges and expenses as well as the contractual penalties established by national legislation, in accordance with the procedures set out in article 28 of this Agreement, entitled "Payment of freight charges and contractual penalties".

§6 The opening of wagons, ITUs and motor vehicles for border, customs, health, veterinary, phytosanitary or other types of inspections shall be noted by the carrier in a record of opening.

§7 The intact seals of the customs bodies or of the carrier affixed after a border, customs, health, veterinary, phytosanitary or other type of inspection shall be considered equivalent to the original intact seals.

#### **Article 20**

##### **Examination of the cargo**

§1 The carrier shall have the right to examine whether the conditions of carriage have been observed by the consignor and whether the consignment corresponds with the information entered by the consignor in the consignment note. The examination shall take place as stipulated by national legislation.

§2 If the consignor has failed to observe the conditions of carriage or the consignment does not correspond with the information entered by the consignor in the consignment note, then under articles 28 and 29 of this Agreement, respectively entitled "Payment of freight charges and contractual penalties" and "Additional costs related to carriage of the cargo", the carrier shall be compensated for all documented costs resulting from the examination.

§ 7 However, the carrier may proceed in accordance with § 5 if the consignee has not taken possession of the consignment note within the period fixed by the prescriptions in force at the destination place.

§ 8 The consignor must comply with the prescriptions of customs or other administrative authorities with respect to the packing and sheeting of the goods. If the consignor has not packed or sheeted the goods in accordance with those prescriptions the carrier shall be entitled to do so; the resulting cost shall be charged against the goods.

#### **Article 11**

##### **Examination**

§ 1 The carrier shall have the right to examine at any time whether the conditions of carriage have been complied with and whether the consignment corresponds with the entries in the consignment note made by the consignor. If the examination concerns the contents of the consignment, this shall be carried out as far as possible in the presence of the person entitled; where this is not possible, the carrier shall require the presence of two independent witnesses, unless the laws and prescriptions of the State where the examination takes place provide otherwise.

§ 2 If the consignment does not correspond with the entries in the consignment note or if the provisions relating to the carriage of goods accepted subject to conditions have not been complied with, the result of the examination must be entered in the copy of the consignment note which accompanies the goods, and also in the duplicate of the consignment note, if it is still held by the carrier. In this case the costs of the examination shall be charged against the goods, if they have not been paid immediately.

§ 3 When the consignor loads the goods, he shall be entitled to require the carrier to examine the condition of the goods and their packaging as well as the accuracy of statements on the consignment note as to the number of packages, their marks and numbers as well as the gross mass of the goods or their quantity otherwise expressed.

The carrier shall be obliged to proceed with the examination only if he has appropriate means of carrying it out. The carrier may demand the payment of the costs of the examination. The result of the examination shall be entered on the consignment note.

### III. Official report

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#### **Article 26** **Official report**

§1 The carrier shall draw up an official report if it notes upon examination of the cargo or during its carriage or delivery:

- (1) That the designation, mass or quantities of items mentioned do not correspond with those in the consignment note;
- (2) That the markings on the items of cargo indicated in the consignment note relating to marks or inscriptions on cargo items, the station and railway of destination, the consignee or the quantity of items do not correspond;
- (3) That the cargo has spoiled or deteriorated;
- (4) That the consignment note, its individual sheets for the cargo in question or the cargo referred to in the consignment note is missing or has been lost.

§2 If the national legislation of the country of destination allows for the drawing up of an official report following delivery of the cargo to the consignee, the consignee shall be entitled to request that the carrier draw up an official report after the cargo has been delivered, for any reason that would be invisible during a visual inspection upon delivery. Such a request to the carrier delivering the cargo shall be submitted by the consignee immediately once the loss, shortfall, deterioration or spoilage of the cargo has been noticed, and no later than three days after delivery of the cargo.

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#### **Article 42** **Ascertainment of partial loss or damage**

§ 1 When partial loss or damage is discovered or presumed by the carrier or alleged by the person entitled, the carrier must without delay, and if possible in the presence of the person entitled, draw up a report stating, according to the nature of the loss or damage, the condition of the goods, their mass and, as far as possible, the extent of the loss or damage, its cause and the time of its occurrence.

§ 2 A copy of the report must be supplied free of charge to the person entitled.

§ 3 Should the person entitled not accept the findings in the report, he may request that the condition and mass of the goods and the cause and amount of the loss or damage be ascertained by an expert appointed either by the parties to the contract of carriage or by a court or tribunal. The procedure to be followed shall be governed by the laws and prescriptions of the State in which such ascertainment takes place.

### IV. Payment for transport

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#### **Article 27** **Calculation of freight charges**

§1 The freight charges shall be calculated according to the rate schedules applied by the carriers performing the carriage.

§2 The freight charges shall be calculated separately by each carrier participating in the carriage for the distance carried and in the currency established in accordance with the applicable rate schedules for the international carriage in question.

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#### **Article 10** **Payment of costs**

§ 1 Unless otherwise agreed between the consignor and the carrier, the costs (the carriage charge, incidental costs, customs duties and other costs incurred from the time of the conclusion of the contract to the time of delivery) shall be paid by the consignor.

§ 2 When by virtue of an agreement between the consignor and the carrier, the costs are payable by the consignee and the consignee has not taken possession of the consignment note nor asserted his rights in

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The freight charges for navigation segments shall be calculated in accordance with the applicable rate schedules for the carriage in question.

§3 The freight charges shall be calculated according to the rate schedules in effect on the day the contract of carriage is concluded.

§4 If it is discovered that a wagon has been filled beyond its carrying capacity or in excess of the permissible static load for its bogies, the freight charges for the carriage of the excess mass of cargo carried in a separate wagon shall be calculated as for an independent consignment, according to the rate schedule in effect at that time.

§5 If it is ascertained that incorrect, inaccurate or incomplete information has been entered in the consignment note, the carrier that discovers such a discrepancy and the successive carriers shall calculate the freight charges for the cargo that is actually carried.

§6 When, for reasons beyond the control of the carrier, circumstances preventing carriage arise and the route must be altered, the freight charges shall be calculated for carriage along the new route.

§7 When, for reasons beyond the control of the carrier, a consignment must be transhipped en route from a single wagon into two or more wagons of the same rail gauge, the freight charges for the cargo loaded onto each of the wagons shall be calculated separately, as for independent consignments.

§8 When a consignment is transhipped at a station where railways of different gauge widths meet from a single wagon of one rail gauge, and two or more wagons of the other rail gauge are required, the carrier shall be entitled to calculate the freight charges for the cargo loaded onto each car separately, as independent consignments.

§9 If there is a change in the contract of carriage, the freight charges shall be calculated separately for the distance of carriage to the station where the contract of carriage is altered, and from that station to the new destination station.

**Article 28****Payment of freight charges and contractual penalties**

§1 Unless otherwise agreed by those taking part in the carriage, the payment of freight charges shall be the duty of:

(1) The consignor, to the carriers taking part in the carriage, with the exclusion of the carrier delivering the cargo, for the carriage performed by them;

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accordance with Article 17 § 3, nor modified the contract of carriage in accordance with Article 18, the consignor shall remain liable to pay the costs.

**Article 37**  
**Conversion and interest**

§ 1 Where the calculation of the compensation requires the conversion of sums expressed in foreign currency, conversion shall be at the exchange rate applicable on the day and at the place of payment of compensation.

§ 2 The person entitled may claim interest on compensation, calculated at five per cent per annum, from the day of the claim provided for in Article 43 or, if no such claim has been made, from the day on which legal proceedings were instituted.

§ 3 If the person entitled does not submit to the carrier, within a reasonable time allotted to him, the supporting documents required for the amount of the claim to be finally settled, no interest shall accrue between the expiry of the time allotted and the actual submission of such documents.

(2) The consignee, to the carrier delivering the cargo, for the carriage performed by that carrier.

The same shall apply in respect of contractual penalties.

§2 If the consignor or the consignee assigns its obligations under §1 of this article to a third party, the third party shall be mentioned by the consignor in the consignment note as the payment agent and shall have a contract with the corresponding carrier.

§3 If the consignee does not receive the cargo and does not invoke the rights set out in article 22, §3, entitled “Change of contract of carriage”, and in article 23, §2, entitled “Freight delivery”, or does not appear for the reception of the cargo, then the obligation to pay the freight charges under the contract in question shall be transferred to the consignor.

§4 In the event of miscalculation of freight charges, any shortfall shall be paid up and overpayments shall be reimbursed.

§5 Freight charges and contractual penalties shall be paid to the carrier in accordance with the national legislation of the State where the payment is made.

§6 The carrier shall be entitled to require payment of freight charges before the beginning of carriage.

#### **Article 29**

##### **Additional costs related to carriage of the cargo**

§1 The carrier shall receive compensation for all losses related to the carriage of the cargo that are not covered by the applicable rate schedules and arise owing to circumstances beyond the carrier’s control. Such expenses shall be determined on the date that they arise, separately for each consignment, and shall be confirmed by the corresponding documentation.

§2 Compensation for additional costs shall be paid in accordance with the procedure established under article 28, entitled “Payment of freight charges and contractual penalties”.

#### **Article 30**

##### **Payment on delivery or by loan**

Payment on delivery or by loan shall not be permitted.

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## V. Claims and legal action

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#### **Article 43** **Claims**

§1 Claims may be filed against the carrier by the consignor or the consignee.

The right to file a claim for the return of an overpayment of freight charges on the basis of §4 of article 28 of this Agreement, entitled "Payment of freight charges and contractual penalties", may also be filed by a person who has paid such freight charges in accordance with §2 of that article.

The right to file claims shall not be transferrable.

§2 The claim shall be filed in writing, with appropriate supporting documentation and indicating the amount of the compensation in question.

The claim shall be presented:

- By the consignor, to the contractual carrier;
- By the consignee, to the carrier delivering the cargo.

§3 Claims shall be submitted individually for each consignment, with the following exceptions:

- (1) Claims for the reimbursement of overcharges for freight. Such claims may be submitted for several consignments;
- (2) Cases in which a single official report is drawn up for several consignments. In such cases the claim shall be submitted for all consignments mentioned in the official report.

§4 Claims for a single consignment amounting to the equivalent of 23 Swiss francs or less shall not be allowed. If a claim is made for a larger amount and is recognized as being subject to a payment of the equivalent of 23 Swiss francs or less, the claimant shall not be paid the compensation.

§5 The claimant shall include with the claim documentation substantiating it, as listed in the Rules for the transport of cargo.

The original copies of the consignment note and the official report shall be attached.

§6 Claims filed without observing the requirements of §3 and §5 of this article shall be sent back to the claimant without being examined, no later than 15 days after they are received by the carrier, indicating the

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#### **Article 43** **Claims**

§ 1 Claims relating to the contract of carriage must be addressed in writing to the carrier against whom an action may be brought.

§ 2 A claim may be made by persons who have the right to bring an action against the carrier.

§ 3 To make the claim the consignor must produce the duplicate of the consignment note. Failing this he must produce an authorisation from the consignee or furnish proof that the consignee has refused to accept the goods.

§ 4 To make the claim the consignee must produce the consignment note if it has been handed over to him.

§ 5 The consignment note, the duplicate and any other documents which the person entitled thinks fit to submit with the claim must be produced either in the original or as copies, the copies, where appropriate, duly certified if the carrier so requests.

§ 6 On settlement of the claim the carrier may require the production, in the original form, of the consignment note, the duplicate or the cash on delivery voucher so that they may be endorsed to the effect that settlement has been made.

reason for their return. In such cases, there shall be no suspension of the limitation period established under §3 of article 45, entitled “Statutes of limitation”. If the carrier sends the claim back to the claimant after the 15-day period, the lapsing of the limitation period shall be suspended with effect from the day after the 15-day period, until the claim in question is sent by the carrier to the claimant. The carrier’s return of such a claim to a claimant shall not constitute a rejection of the claim and shall not entitle the claimant to bring the case before the courts.

§7 The carrier shall, within 180 days of reception of the claim, consider the claim, and if it accepts it either fully or partially, pay the claimant the amount due.

§8 In the event of a partial or full rejection of the claim, the carrier shall inform the claimant of the basis for the rejection and at the same time shall return the documentation enclosed with the claim.

§9 In all cases where this Agreement shall apply, any claim may be brought against the carrier, only in accordance with the conditions and limitations laid down in this Agreement. The same shall apply to any claim brought against the servants and other persons for whom the carrier is liable as established under article 35, entitled “Persons whose actions are covered by the liability of the parties to the contract of carriage”.

#### **Article 44 Claims for legal action under the contract of carriage; jurisdiction**

§1 Legal action may be brought only after a corresponding claim has been filed, and only against the carrier that is the subject of such a claim. A person who has the right to file the claim against the carrier shall have the right to take legal action on the basis of this Agreement.

§2 The right to file a claim and take legal action shall commence:

- (1) For compensation for shortfalls, damage or spoilage of the goods, and also for exceeding the deadline for delivery, from the day of delivery to the consignee;
- (2) For compensation for loss of the cargo, 30 days after the deadline for delivery;
- (3) For compensation for the reimbursement of overcharges for freight, from the day of payment of the freight;

#### **Article 44 Persons who may bring an action against the carrier**

§ 1 Subject to §§ 3 and 4 actions based on the contract of carriage may be brought:

- a) by the consignor, until such time as the consignee has
  1. taken possession of the consignment note,
  2. accepted the goods, or
  3. asserted his rights pursuant to Article 17 § 3 or Article 18 § 3;
- b) by the consignee, from the time when he has
  1. taken possession of the consignment note,
  2. accepted the goods, or
  3. asserted his rights pursuant to Article 17 § 3 or Article 18 § 3.

§ 2 The right of the consignee to bring an action shall be extinguished from the time when the person designated by the consignee in accordance with Article

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(4) For other claims for legal action, from the day the circumstances arise serving as a basis for their submission.

§3 Legal action may be brought:

(1) If the carrier has not replied to a claim in the time frame established for its consideration;

(2) If within the time frame for consideration of a claim the carrier has informed the claimant that the claim has been fully or partially rejected.

§4 The legal action shall be brought before the appropriate judicial body at the location of the respondent.

**Article 45****Statutes of limitation**

§1 Legal action shall be brought against a carrier on the basis of this Agreement:

(1) For exceeding the deadline for delivery of the cargo, within two months;

(2) For other reasons, within nine months.

§2 The time frames established in §1 of this article shall be counted from the moment that the right to bring legal action arises under §2 of article 44, entitled "Claims for legal action under the contract of carriage; Jurisdiction", of this Agreement. The day when the statute of limitations begins shall not be included in the time frame.

§3 The submission of a claim filed in accordance with article 43, entitled "Claims", of this Agreement, shall suspend the lapsing of the period of limitation provided for under §1 of this article.

The lapsing of the period of limitation shall resume from the day when the carrier informs the claimant that its claim has been fully or partially rejected, or from the moment when the period established under §7 of article 43, entitled "Claims", of this Agreement, has lapsed, if the claim has been left without a reply by the carrier.

Repetition of the submission of a claim on the same grounds as previously used shall not suspend the lapsing

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18 § 5 has taken possession of the consignment note, accepted the goods or asserted his rights pursuant to Article 17 § 3.

§ 3 An action for the recovery of a sum paid pursuant to the contract of carriage may only be brought by the person who made the payment.

§ 4 An action in respect of cash on delivery payments may only be brought by the consignor.

§ 5 In order to bring an action the consignor must produce the duplicate of the consignment note. Failing this he must produce an authorisation from the consignee or furnish proof that the consignee has refused to accept the goods. If necessary, the consignor must prove the absence or the loss of the consignment note.

§ 6 In order to bring an action the consignee must produce the consignment note if it has been handed over to him.

**Article 45****Carriers against whom an action may be brought**

§ 1 Subject to §§ 3 and 4 actions based on the contract of carriage may be brought only against the first carrier, the last carrier or the carrier having performed the part of the carriage on which the event giving rise to the proceedings occurred.

§ 2 When, in the case of carriage performed by successive carriers, the carrier who must deliver the goods is entered with his consent on the consignment note, an action may be brought against him in accordance with § 1 even if he has received neither the goods nor the consignment note.

§ 3 An action for the recovery of a sum paid pursuant to the contract of carriage may be brought against the carrier who has collected that sum or against the carrier on whose behalf it was collected.

§ 4 An action in respect of cash on delivery payments may be brought only against the carrier who has taken over the goods at the place of consignment.

§ 5 An action may be brought against a carrier other than those specified in §§ 1 to 4 when instituted by way of counter-claim or by way of exception in proceedings relating to a principal claim based on the same contract of carriage.

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of the statute of limitation established under §1 of this article.

§4 Failure to comply with the statute of limitation shall serve as justification for the rejection of claims for legal action.

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§ 6 To the extent that these Uniform Rules apply to the substitute carrier, an action may also be brought against him.

§ 7 If the plaintiff has a choice between several carriers, his right to choose shall be extinguished as soon as he brings an action against any one of them; this shall also apply if the plaintiff has a choice between one or more carriers and a substitute carrier.

**Article 46****Forum**

§ 1 Actions based on these Uniform Rules may be brought before the courts or tribunals of Member States designated by agreement between the parties or before the courts or tribunals of a State on whose territory

- a) the defendant has his domicile or habitual residence, his principal place of business or the branch or agency which concluded the contract of carriage, or
- b) the place where the goods were taken over by the carrier or the place designated for delivery is situated.

Other courts or tribunals may not be seized.

§ 2 Where an action based on these Uniform Rules is pending before a court or tribunal competent pursuant to § 1, or where in such litigation a judgment has been delivered by such a court or tribunal, no new action may be brought between the same parties on the same grounds unless the judgment of the court or tribunal before which the first action was brought is not enforceable in the State in which the new action is brought.

**Article 47****Extinction of right of action**

§ 1 Acceptance of the goods by the person entitled shall extinguish all rights of action against the carrier arising from the contract of carriage in case of partial loss, damage or exceeding of the transit period.

§ 2 Nevertheless, the right of action shall not be extinguished:

- a) in case of partial loss or damage, if
  1. the loss or damage was ascertained in accordance with Article 42 before the acceptance of the goods by the person entitled;
  2. the ascertainment which should have been carried out in accordance with Article 42 was

omitted solely through the fault of the carrier;

- b) in case of loss or damage which is not apparent whose existence is ascertained after acceptance of the goods by the person entitled, if he
1. asks for ascertainment in accordance with Article 42 immediately after discovery of the loss or damage and not later than seven days after the acceptance of the goods, and
  2. in addition, proves that the loss or damage occurred between the time of taking over and the time of delivery;
- c) in cases where the transit period has been exceeded, if the person entitled has, within sixty days, asserted his rights against one of the carriers referred to in Article 45 § 1;
- d) if the person entitled proves that the loss or damage results from an act or omission, done with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

§ 3 If the goods have been reconsigned in accordance with Article 28 rights of action in case of partial loss or in case of damage, arising from one of the previous contracts of carriage, shall be extinguished as if there had been only a single contract of carriage.

#### **Article 48** **Limitation of actions**

§ 1 The period of limitation for an action arising from the contract of carriage shall be one year. Nevertheless, the period of limitation shall be two years in the case of an action

- a) to recover a cash on delivery payment collected by the carrier from the consignee;
- b) to recover the proceeds of a sale effected by the carrier;
- c) for loss or damage resulting from an act or omission done with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result;
- d) based on one of the contracts of carriage prior to the reconsignment in the case provided for in Article 28.

§ 2 The period of limitation shall run for actions

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- a) for compensation for total loss, from the thirtieth day after expiry of the transit period;
- b) for compensation for partial loss, damage or exceeding of the transit period, from the day when delivery took place;
- c) in all other cases, from the day when the right of action may be exercised.

The day indicated for the commencement of the period of limitation shall not be included in the period.

§ 3 The period of limitation shall be suspended by a claim in writing in accordance with Article 43 until the day that the carrier rejects the claim by notification in writing and returns the documents submitted with it. If part of the claim is admitted, the period of limitation shall start to run again in respect of the part of the claim still in dispute. The burden of proof of receipt of the claim or of the reply and of the return of the documents shall lie on the party who relies on those facts. The period of limitation shall not be suspended by further claims having the same object.

§ 4 A right of action which has become time-barred may not be exercised further, even by way of counter-claim or relied upon by way of exception.

§ 5 Otherwise, the suspension and interruption of periods of limitation shall be governed by national law.

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