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**Economic Commission for Europe****Inland Transport Committee****Working Party on Rail Transport****Group of Experts towards Unified Railway Law****Fourteenth session**

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Item 3 of the provisional agenda

**Monitoring results of pilot tests**

**Introduction to the new UNECE legal regime for the  
international carriage of goods by rail  
(Draft legal provisions for Unified Railway Law (URL))**

**Note by the secretariat<sup>1</sup>**

**I. Preliminary remarks**

Unified Railway Law will offer railway undertakings and their customers the opportunity to conclude a single through contract of carriage for those international movements of goods by rail which they select (movements between Europe and Asia in particular) and to apply this contract within a single legal regime by means of a joint declaration (known as an opt-in).

At present, movements of goods by rail between Europe and Asia are routinely covered by two contracts of carriage; one contract to cover the CIM region, governed by the CIM, and a further contract for the SMGS region, governed by the SMGS. The goods are re-forwarded at the interface between the CIM and SMGS states even when a common CIM/SMGS consignment note is used for the whole journey. As the scope of these two conventions is restricted, neither the CIM nor the SMGS can apply right through as a single regime. In accordance with Article 1 § 1, the CIM only applies to contracts for which the forwarding point and the delivery point are situated in two different CIM states; in accordance with Article 3 § 2 of the SMGS, the SMGS only applies to international freight traffic between stations in SMGS states. Unified Railway Law makes it possible to agree to

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<sup>1</sup> The present document is being issued without formal editing.

apply a single legal regime to through contracts of carriage between CIM states and SMGS states (and vice versa).

Uniform application of Unified Railway Law to through contracts of carriage of freight from a CIM state to an SMGS state (and vice versa) does not come into conflict with the CIM or SMGS because the goods are not re-forwarded at the interface between the CIM and SMGS.

## II. Overview of the principles of Unified Railway Law

Unified Railway Law has been developed from the CIM 1999 and the SMGS 2015 but also draws on further international conventions for other modes. For the most part, the areas in which the CIM and SMGS correspond are respected. Compromises were necessary when drawing up Unified Railway Law, in particular for the carrier's liability because the liability regimes of the CIM and SMGS differ in one or two important areas. To make the law simpler, more comprehensible and easier to use than the CIM and SMGS, several less important rules from the CIM and SMGS (for example, declarations of value, interest in delivery, cash on delivery, rail-sea traffic and nuclear incidents) have not been included in Unified Railway Law.

### A. General provisions

(a) Scope of application: The parties to a through contract of carriage for freight may agree to Unified Railway Law being applied to the carriage of goods between Unified Railway Law "Contracting States". A precondition is that neither the CIM nor the SMGS nor any other agreement on the contract of carriage claims validity (Article 1 § 1 URL). The CIM does not lay any claim to validity for contracts of carriage which begin or end on the territory of non-member States; the same applies to the SMGS (see Article 1 § 2 CIM and Article 3 § 2 SMGS).

(b) Furthermore, the parties to a multimodal contract of carriage may agree that Unified Railway Law also applies to the carriage of goods using another mode if it is complementary to international carriage by rail in so far as this does not conflict with an international convention or the national law of a Unified Railway Law Contracting State (Article 1 § 2 URL; also see Article 1 §§ 3 and 4 CIM and – restricted – Article 3 § 2 SMGS). This makes it possible for Unified Railway Law to cover domestic collection and delivery using other means of transport in the forwarding or destination country provided that the states in question have not excluded it. In this way container traffic by lorry, to and from transshipment, in particular, may be made subject to Unified Railway Law.

(c) If the parties to the contract of carriage have agreed that Unified Railway Law will apply, then in principle Unified Railway Law is mandatory (Article 3 § 1 URL; compare Article 5 CIM and Article 6 SMGS). Individual derogations from Unified Railway Law (cherry-picking) are not therefore allowed. Alternative provisions are only valid if they represent an increase in the liability of the carrier or a reduction in the liability of the consignor (Article 3 § 2 URL, also see the third sentence of Article 5 CIM).

(d) Unified Railway Law includes numerous definitions, for example, of contractual and subsequent (*sic*) carriers, of tariffs and of the term "dangerous goods" (understood to be substances and articles which may not be carried or may only be carried under particular conditions) (Article 2 No 2 to 4, Articles 14 and 16 URL; compare Article 2 SMGS and Article 3 CIM).

(e) The provisions of public law must be observed, in particular the law applying to dangerous goods, safety, customs and animal protection (Article 4 URL; compare Article 2 CIM).

## **B. Conclusion and performance of the contract of carriage**

(a) The contract of carriage comes into effect when the parties agree. It is not necessary to prepare a consignment note nor for the carrier to accept the goods for the contract to come into effect. Absence or error in the consignment note does not nullify the contract of carriage (Article 5 §§ 1 and 2 para. 3 URL; compare Article 6 CIM and Article 14 SMGS). Just as in CIM, but in contrast to the SMGS, Unified Railway Law does not oblige the carrier to provide carriage (see Article 14 § 2 SMGS).

(b) However, the contract of carriage is to be recorded in a consignment note; International railway trade associations may lay down a standard design for the consignment note (Article 5 § 2 URL; compare Article 6 § 8 CIM).

(c) The consignment note may also be made out and used as an electronic message (Article 5 § 4 URL; compare Article 6 § 9 CIM and Article 15 § 4 SMGS). An electronic dataset is equivalent to a consignment note provided that the authenticity and the integrity of the data can always be guaranteed.

(d) The consignor is responsible for the particulars he enters on the consignment note, for the accuracy of accompanying documents and for the provision of information on dangerous goods and on any particular requirements for handling the goods (Article 7 URL; compare Articles 8 and 9 CIM and Article 16, 22 §§ 3 and 5 together with Article 23 § 2 SMGS).

(e) Unless otherwise agreed, charges associated with carriage but not initiated by the carrier shall be paid by the consignor. That does not apply when the charges are transferred to the consignee and he accepts them as part of the contract of carriage, for example by accepting the consignment note and the goods (Article 8 URL; compare Article 10 CIM and Article 31 and 32 SMGS). If the charges are based on tariffs, then the charges may be calculated separately for each carrier taking part and for the carriage he provides in accordance with his pricing system (Article 8 § 3 URL; compare Article 30 SMGS).

(f) The carrier has the right to examine the consignment. A consignor who has loaded the goods and wishes to increase the evidential value of the consignment note may require the carrier to examine the goods and their packaging together with particular data on the consignment note. The consignor is obliged to undertake this work (at the expense of the consignor) provided he has adequate means available to make the examination (Article 9 URL; compare Article 11 CIM and Article 23 SMGS).

(g) The evidential value of the consignment note is set out more clearly in Article 10 URL than in Article 12 CIM.

(h) The consignor is liable for defective packaging and marking of the goods and for the consequences of defective loading (if he has undertaken it) except where the defect was apparent or known to the carrier when he took over the goods (Art. 11 URL; compare Articles 13 and 14 CIM and Articles 18 § 4 and 19 § 3 SMGS).

(i) The consignor is liable for missing, incomplete or inaccurate accompanying documents and information; the carrier is liable for loss or incorrect use of those accompanying documents which were made available to him up to the limit for loss of and damage to the goods (Article 12 URL; compare Article 15 CIM and Article 22 § 3 SMGS).

(j) The rules in Unified Railway Law for transit periods are much simpler than the corresponding rules in the CIM and SMGS. The goods are to be delivered within the

time period agreed or in the absence of an agreement within the time which could reasonably be required of a diligent carrier, taking into account the circumstances of carriage (Article 13 URL; compare Article 16 CIM and Article 24 SMGS).

(k) The consignor is entitled to take control over the goods subsequently; this right passes to the consignee at a time specified by the consignor or in the absence of such an agreement at the time the consignment reaches the destination (Article 15 URL; compare Article 18 CIM and Article 25 SMGS).

(l) To take advantage of the right to take control of the goods the person entitled is to present the original of the consignment note insofar as that is provided for in the consignment note. The carrier only needs to comply with instructions (given payment of charges) which are possible, lawful and reasonable and do not disrupt operations nor prejudice the consignors and consignees of other consignments. The carrier is liable to the limit for loss of and damage to the goods for not carrying out permissible instructions properly (Article 16 URL; compare Article 19 CIM and Articles 25 §§ 8 and 9 SMGS).

(m) In the event of circumstances preventing carriage or delivery, the carrier is to ask for instructions from the person entitled, from the consignor or from the consignee depending on the case (Article 17 URL; compare Articles 20 and 21 CIM and Article 28 SMGS). The carrier shall be entitled to recover additional costs which he has not occasioned. If no instructions are given to the carrier, he must take such steps as seem to him to be in the best interests of the person entitled to take control of the goods: return, unloading, storage or sale of the goods (Article 18 URL; compare Article 22 CIM and Article 28 §§ 3 to 5 SMGS).

(n) The carrier is only required to deliver the goods in return for a receipt and payment of all the amounts still allowing under the contract of carriage. If it is established that the goods have been lost or damaged or are being delivered late, the consignee may also assert his rights against the carrier under the contract of carriage in his own name (Article 14 URL; compare Article 17 CIM and Article 26 SMGS).

## **C. Liability**

(a) Preliminary remarks: The liability rules for Unified Railway Law are less detailed and therefore simpler and more comprehensible than the liability rules in the CIM and SMGS.

(b) The contractual and any successive carriers are joint and severally liable for loss, damage and exceeding the transit period – even without fault on their part. In the internal relationship between the carriers in the end only the carrier responsible for the loss or damage is liable (Articles 19 and 33 URL; compare Article 23 § 1, Articles 26 and 50 CIM and Articles 37 and 36 SMGS). This also applies to railway rolling stock which has been consigned as goods (unlike Article 24 CIM), and to intermodal transport units.

(c) Carriers are relieved of this liability if a fault or an instruction by the person entitled, or a defect inherent in the goods or an unavoidable event caused the loss or damage (Article 19 § 3 URL; compare Article 23 § 2 CIM and Article 39 § Nos 2 and 3 SMGS).

(d) There are no preferential grounds for relief from liability (unlike Articles 23 § 3 and Article 25 § 2 CIM and Article 41 § 2 SMGS).

(e) There is no provision for the legal concept of substitute carrier, a carrier who is liable to the consignor for the loss and damage which occurs on his section of the journey as if he were the contractual carrier (compare Article 27 CIM). Subcontracting carriers are

simply auxiliaries to their principals and have to accept liability in accordance with the contract of carriage (Article 26 URL).

(f) Assumption of loss: If the goods are not delivered within three months after the expiry of the transit time or are available for delivery they may be treated irrefutably as if lost; the person entitled however can elect to take delivery if the goods are subsequently found (Article 20 URL; compare Article 29 CIM and Article 27 SMGS). However, the national law in question may provide that the consignee at the destination must accept goods which are subsequently recovered (Article 20 § 5 URL following the principles in Article 27 § 3 SMGS).

(g) If the goods are lost or damaged compensation for the value lost must be paid i.e. to a maximum of [17] IMF special drawing rights for each kilogram of the gross weight of the goods which are lost or have lost their value (Articles 21, 22 and 24 URL; compare Articles 30 and 32 CIM and – without limitation of the amount – Articles 42 and 44 SMGS). The final maximum amount has still to be fixed. For railway rolling stock as goods and for intermodal transport units the fair market value in the case of loss and the costs of repair in the case of damage are to be compensated, in both cases without limitation of the amount (Articles 21 § 5 and 24 § 4 URL; compare Articles 30 § 3, and 32 § 3 CIM). Following the principles of COTIF/CUV, the SMGS contains a special section (Section III, Articles 49 to 53) on the use of foreign wagons as means of transport. This section covers liability for damage to wagons and damage caused by wagons in particular.

(h) Liability for shrinkage is similarly restricted as in the CIM and SMGS (Article 23 URL; compare Article 31 CIM and Article 43 SMGS).

(i) The compensation for exceeding the transit period is a maximum of half the freight charges (Article 25 § 1 URL; compared with Article 33 CIM: Compensation up to four times the freight charges, the provisions for compensation under the SMGS are much lower (see Article 45 SMGS).

(j) Following the model of the Montreal Convention for international carriage by air, the limit for liability does not apply in the case of gross misconduct by the carrier (= intentional recklessness, wilful acts by the carrier or his auxiliaries, in other words Article 36 CIM; by contrast, right from the outset, in the SMGS there is no upper limit for loss or damage to the goods).

(k) The carrier may however extend his liability and obligations under Unified Railway Law for the benefit of customers (Article 3 § 2 URL; compare Article 5 CIM).

(l) Special provisions for the assumption of loss and damage in the case of reconsignment are not required because Unified Railway Law avoids reconsignment (compare with Article 28 CIM and Articles 40, 22 § 2, 23 § 1 paras 3 and § 10, Article 29 § 10 SMGS).

(m) There are no provisions on liability where a declaration of value has been made, where an interest in delivery has been declared, for rail-sea traffic and for nuclear incidents (compare with Articles 34, 35, 38 and 39 CIM together with Articles 17, 42 § 1, and 44 § 2 SMGS (only in the event of a declaration of value)).

(n) The carrier is liable for his (dependent) staff members and his (independent) auxiliaries including substitute carriers, within the meaning of the CIM, and infrastructure managers (Article 26 URL; compare Article 40 CIM and Article 38 SMGS).

(o) In accordance with the principles of Unified Railway Law, claims arising from unlawful acts are restricted to those cases which it covers (Article 27 URL; compare Article 41 CIM and Article 37 § 1 SMGS).

## D. Settlement of claims

(a) In the event of loss or damage, the consignee or consignor is to give notice of loss or damage as is generally normal in international transport law (Article 28 URL; compare Article 30 CMR, Article 31 Montreal Convention, Article 23 Rotterdam Rules). The previous carrier's formal report made out *ex officio* disappears (compare Articles 42, 47, 13 § 4 CIM and Article 29 SMGS).

(b) As previously (= CIM model) an authorised claimant may submit a written complaint to the carrier before raising a claim. The state in the courts of which, as appropriate, action should be taken may provide that a complaint must be submitted before making a formal claim (= SMGS model) (Article 29 URL; compare Article 43 CIM and Articles 46 and 47 § 1 SMGS).

(c) The claimant may demand interest from the date of submitting the complaint (Article 29 § 7 URL; compare Article 37 CIM together with Article 28 §§ 3 and 4 SMGS).

(d) Whether the complaint also suspends the period of limitation depends on national law, because Unified Railway Law has no rules on the extinction or limitation of the right of action (by contrast with Articles 47 and 48 CIM and Art. 48 SMGS).

(e) Either the consignor or the consignee has the right to take legal action to pursue a claim (capacity to sue) (Article 30 URL; compare Article 44 CIM and Articles 46 § 1, and 47 § 1 SMGS).

(f) Claims arising from the contract of carriage may be raised against various carriers (capacity to be sued). If the claimant has a choice between several carriers, his right to choose is extinguished once he raises a claim against a carrier with the capacity to be sued (Article 31 URL; compare Article 45 CIM and Article 47 § 1 SMGS).

(g) Unified Railway Law does not define any courts as competent for claims against a carrier but rather leaves that to the national law applicable (by contrast with Article 46 CIM and Article 47 § 4 SMGS).

## E. Relations between carriers

Accountancy between carriers taking part in carriage and recourse between them is covered in a similar way to the CIM and SMGS (Articles 32 and 33 URL; compare Articles 49 and 50 CIM and Article 36 SMGS). Carriers may conclude agreements to derogate from these provisions (Article 34 URL; compare Article 52 CIM).

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