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Convention on the Contract for the International Carriage of Goods by Road (CMR):**Additional Protocol to the CMR concerning the Electronic Consignment Note****Decision of the Benelux Committee of Ministers concerning
an intra-Benelux pilot project on the electronic consignment
note – M (2017) 12*****Submitted by the Government of the Netherlands**

This document contains in annex the text of the decision of the Committee of Ministers of the Benelux Economic Union, comprising the Ministers of Belgium, the Netherlands and Luxembourg. On 7 September 2017, the Benelux Union decided to launch a pilot project to determine whether, for the purposes of cross-border use, an e-CMR is at least as reliable and secure an instrument of control as the paper version.

* The present document reproduces as is the text submitted to the secretariat.



Annex

Decision of the Benelux Committee of Ministers concerning an intra-Benelux pilot project on the electronic consignment note – M (2017) 12

The Benelux Committee of Ministers,

Having regard to article 6 (2) (a) of the Treaty Establishing the Benelux Union, read in conjunction with article 4 of that Treaty and with the rights and obligations deriving from article 86 (1) of the Treaty Establishing the Benelux Economic Union signed on 3 February 1958,

Considering that the Prime Ministers of the three Benelux countries have, in their Joint Declaration on “Digital Benelux” adopted at the Benelux Summit held on 3 October 2016 at Schengen, expressed their desire to facilitate through pilot projects the use of paperless freight documents,

Considering that article 1 (5) of the Convention on the Contract for the International Carriage of Goods by Road (CMR), done at Geneva on 19 May 1956, allows the conclusion of special agreements between two or more Contracting Parties to make it inapplicable to their frontier traffic,

Considering that the Benelux countries wish to avail themselves of this possibility with a view to launching an intra-Benelux pilot project on the use of an electronic consignment note, which would entail, for pilot project participants only and for a specified period, dispensing with the paper versions of the consignment note required in international transport under the aforementioned Convention, without prejudice to the other obligations under that Convention,

Considering that for this purpose the Benelux countries agree to be guided by the Additional Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR) concerning the electronic consignment note (e-CMR), done at Geneva on 20 February 2008, albeit with no implication regarding the effective implementation of that Protocol in those Benelux countries that have not signed or have not yet ratified the Treaty,

Considering that it is necessary to issue provisions on the requirements applicable to electronic consignment notes in the context of such a pilot project, on the technical and organizational modalities of the pilot project and on the value of the electronic consignment notes in question,

Considering that in addition it is necessary to take into account, where appropriate, similar pilot projects, and the fact that the Protocol concerning the electronic consignment note is in force or is to enter into force in countries other than the Benelux countries,

Considering that the Benelux countries wish by this means to act as precursors in the European Union and the Economic Commission for Europe in matters regarding the reliability and security of the electronic consignment note,

Hereby decides:

Article 1. Definitions

1. For the purposes of this decision, the following definitions shall apply:

(a) “CMR Convention”: Convention on the Contract for the International Carriage of Goods by Road (CMR), done at Geneva on 19 May 1956, with Protocol of Signature;

(b) “e-CMR Protocol”: Additional Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR) concerning the electronic consignment note, done at Geneva on 20 February 2008;

(c) “Cabotage”: cabotage transport service in accordance with Decision M (91) 20 of the Committee of Ministers of the Benelux Economic Union establishing the conditions under which carriers based in one Benelux country are permitted to provide professional goods transport services by road in the other Benelux countries, or in accordance with Regulation (EC) No. 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (recast);

(d) “Supplier”: a natural or legal person which provides technology for the issuance of an electronic consignment note in a Benelux country;

(e) “Authorized supplier”: a supplier which has been authorized in accordance with article 4 (1) (a) to (c) to take part in the pilot project, and which is not excluded pursuant to article 4 (2);

(f) “Author”: the party to a contract of carriage which is the first to create a file in the database of an authorized supplier;

(g) “Competent authority”: any authority designated in accordance with article 7 that, by virtue of the national division of competences, is primarily responsible for the implementation of this decision;

(h) “Oversight officials”: public servants who, by virtue of the applicable provisions in a Benelux country, are responsible for oversight of the legal, regulatory and administrative provisions governing road transport.

2. All other terms used in this decision shall have the same meaning as in the CMR Convention and the e-CMR Protocol, except where otherwise stated in this decision.

Article 2. Intra-Benelux pilot project

1. The Benelux countries shall permit the parties involved in the performance of a contract of carriage to use an electronic consignment note, as provided by the e-CMR Protocol and whose author is established in one of the Benelux countries, for transport operations within Benelux for the duration of a pilot project.

2. The pilot project referred to in paragraph 1 shall run for a period of three years from the date mentioned in article 9 (2) of this decision and shall apply to international transport between the Benelux countries and national transport within the Benelux countries, including cabotage.

3. The present decision shall not apply to any use of consignment notes that falls outside the scope of the pilot project referred to in paragraph 1, and shall not affect, in this regard, the requirements applicable to national and international transport in the various Benelux countries.

Article 3. Requirements concerning the electronic consignment note

The Benelux countries shall apply the following provisions with regard to the electronic consignment note to be used in the pilot project referred to in article 2:

(a) The electronic consignment note shall bear a unique number in accordance with the requirements for the numbering of consignment notes in the Benelux country in which the note is issued, it being understood that the numbering of electronic consignment notes must be consecutive and must enable identification of the authorized supplier concerned as well as the Benelux country where the author is based;

(b) The electronic consignment note shall be authenticated by the parties to the contract of carriage by means of a reliable electronic signature that ensures its link with the electronic consignment note, as provided in the e-CMR Protocol, article 3 (1);

(c) The shipper or agent, the carrier and the consignee shall have access to and may download the electronic consignment note;

(d) The electronic consignment note shall be accessible in the vehicle and shall be produced whenever so required by oversight officials, who may also, on request, download or instantly obtain an authenticated electronic copy of the note;

(e) The electronic consignment note shall be retained by the carrier using it for at least five years from the date of carriage, filed in chronological order in such a way as to permit easy monitoring by oversight officials and, at the latter's request, the easy printing, downloading or electronic transmission to the requesting oversight official of any electronic consignment note duly authenticated in accordance with the provisions under (b) above;

(f) All the data required to be entered on paper consignment notes under the provisions applicable in the Benelux country where the electronic consignment note has been issued shall appear on the electronic consignment note;

(g) At the request of the consignee, the consignor shall immediately send a printout of the electronic consignment note by post to the consignee.

Article 4. Technical and organizational arrangements

1. In the course of the pilot project referred to in article 2, the electronic consignment note may be used only provided that the following conditions are met:

(a) The supplier submits a request for participation in the pilot project not later than nine months from the date referred to in article 9 (2) of the present decision;

(b) The supplier attaches to the request referred to in subparagraph (a) a description of the operation of the system, and provides documentary evidence that the technology used meets the provisions of articles 1 to 6 of the e-CMR Protocol;

(c) The supplier has written confirmation from the competent authority referred to in paragraph 3 that it is authorized to take part in the pilot project;

(d) At least once every three months, the authorized supplier reports any changes that have been made to the system;

(e) The authorized supplier immediately reports each carrier, consignor or agent to which the technology has been made available;

(f) The authorized suppliers maintain a list of electronic consignment notes issued using their technology; this list, which shall include the number, the date of issue and the name and address of the author and of the users, shall be communicated at least every three months to the competent authority referred to in paragraph 3, and to the authority responsible for oversight of the value-added tax payable by the author of the electronic consignment note who is subject to that tax;

(g) The authorized supplier, at the request of the competent authority referred to in paragraph 3, follows the latter's instructions and provides either the authority or the oversight officials, as appropriate, with all relevant information in the context of the implementation of the pilot project.

2. The conditions set out in paragraph 1 shall be observed on penalty of exclusion from the pilot project. The same shall apply if it is found that the technology used by an authorized supplier no longer complies with the provisions of articles 1 to 6 of the e-CMR Protocol. Exclusion shall be notified to the excluded supplier by the competent authority referred to in paragraph 3.

3. The requests and notifications referred to in paragraph 1 shall be sent by the supplier or by the authorized supplier to the competent authority of the Benelux country where it is

established or, if it is not established in a Benelux country, to the competent authority of the Benelux country where it does business connected with the provision of the technology.

If the supplier or authorized supplier has more than one place of business, or if it does business connected with the provision of the technology in more than one Benelux country, it shall submit its claim in the Benelux country of its choice. Other notifications shall then also be sent to the competent authority of that Benelux country.

4. For the purposes of paragraph 1 (c), the competent authority referred to in paragraph 3 shall inform the supplier of the acceptance or rejection of its participation in the pilot project within three months of the day after the date of the request made in accordance with paragraph 1 (a) and (b).

5. The competent authorities shall inform one another of:

(a) Decisions taken in accordance with paragraph 4;

(b) Users of the electronic consignment note who have been notified in accordance with subparagraph 1 (e);

(c) The exclusion of a supplier or authorized supplier in accordance with paragraph 2.

6. The competent authorities shall accept each other's decisions under paragraph 4, without prejudice to the provisions of article 5 (2).

Article 5. Validity of the electronic consignment note

1. Without prejudice to the provisions of articles 2 and 3, the Benelux countries shall accept the electronic consignment note in lieu of the paper consignment note as having the same value, provided it:

(a) Complies with the provisions of articles 1 to 6 of the e-CMR Protocol;

(b) Has been issued by an author established in one of the Benelux countries, using the technology of an authorized supplier;

(c) Is used by a user who has been notified in accordance with article 4 (1) (e).

2. In the event of doubt as to the authenticity of an electronic consignment note, whether a specific note or in the course of a spot check, the oversight officials may, in order to dispel any uncertainty, request further information from the authorized supplier.

This right to seek further information shall not entitle the oversight officials to intervene in the territory of any Benelux country other than the one in which they have authority to operate. This is without prejudice to the application, where appropriate, of article 4 (2) read in conjunction with article 4 (1) (g), or to any other obligations on the part of authorized suppliers in one of the Benelux countries towards oversight officials operating in accordance with the provisions applicable there.

3. The use of an invalid electronic consignment note shall be deemed equivalent to the use of an invalid paper consignment note.

Article 6. Data protection

1. The competent authorities and oversight officials shall use any data pertaining to an identified or identifiable natural or legal person that they may have received in implementation of the present decision exclusively for the purposes directly related to the pilot project referred to in article 2, including the monitoring of compliance with the relevant requirements concerning road transport.

2. The competent authorities and oversight officials may not use the data referred to in paragraph 1 for other purposes, or communicate the data they have received to other authorities, except as otherwise provided in the domestic legal order of the Benelux country concerned.

3. The processing of personal data by a competent authority or by an oversight official in application of the present decision shall be done in strict conformity with the provisions of the following legal acts adopted within the framework of the European Union and with the arrangements specified in implementation thereof in the domestic legal order of the Benelux country concerned:

(a) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, until 24 May 2018;

(b) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), as from 25 May 2018.

4. As regards the confidentiality and integrity of data received in implementation of the present decision, this decision shall not in any way affect the obligations that, under any legal, regulatory or administrative provision whatsoever, are binding on a competent authority, oversight official or natural or legal person taking part in the pilot project referred to in article 2.

Article 7. Competent authorities

1. Each Benelux country shall inform each other Benelux country and the Benelux General Secretariat in writing of the authority which, by virtue of the national division of competences, is primarily responsible for the implementation of the present decision. Any relevant change to that arrangement shall be notified in the same manner.

2. The competent authority designated in accordance with paragraph 1 shall be responsible for contact with the competent authorities of the other Benelux countries and, as appropriate, for liaison with those authorities or officials of its own Benelux country that, in accordance with internal regulations and administrative arrangements, are involved in the implementation of the present decision.

Article 8. Consultation

1. In the framework of an administrative working group established under article 12 (b) of the Treaty Establishing the Benelux Union, the Benelux countries, and in particular the competent authorities, shall, as appropriate, consult on the operational arrangements for the pilot project referred to in article 2.

If, for the operational implementation of the pilot project referred to in article 2, formal agreements might be required between the Benelux countries, the Benelux Council shall make such proposals as it deems necessary to that end to the Benelux Committee of Ministers.

2. In the framework of an administrative working group established under article 12 (b) of the Treaty Establishing the Benelux Union, the Benelux countries, and in particular the competent authorities, shall consult at least once a year regarding the operation and outcomes of the pilot project referred to in article 2.

The working group shall report to the Benelux Council, which shall, if required, make such proposals as it deems necessary to the Benelux Committee of Ministers.

3. Following the consultations referred to in paragraphs 1 and 2, the Benelux countries may share their experiences with other States that permit the use of an electronic consignment note in national and international transport, in particular with regard to the use of the electronic consignment note for monitoring of compliance with the relevant requirements in road transport. In support of this exchange, the Benelux General Secretariat shall maintain appropriate external relations in accordance with article 27 of the Treaty Establishing the Benelux Union.

If necessary, the Benelux Council shall subsequently make appropriate proposals to the Benelux Committee of Ministers with a view to the possible application of articles 24 and 25 of the Treaty Establishing the Benelux Union.

Article 9. Entry into force and implementation

1. The present decision shall enter into force on the date of its signature.
2. The pilot project referred to in article 2 shall be launched on 1 December 2017.
3. The Benelux countries shall take the necessary legislative, regulatory and administrative measures to comply with the provisions of the present decision.
4. When the Benelux countries adopt the measures referred to in paragraph 3, these shall contain a reference to the present decision or shall be accompanied by such reference at the time of their official publication.

Done at the Hague, 7 September 2017.

The President of the Benelux Committee of Ministers,

B. Koenders
