

Distr.: Restricted
1 October 2019

English only

Working Party on Rail Transport

Group of Experts towards Unified Railway Law

Twenty-first session

Geneva, 16-18 October 2019

Item 2 (c) of the provisional agenda

Execution of the Mandate of the Group of Experts:

Scope of URL and its conversion into a legally-binding instrument

Further information to the Proposal on provisions about a negotiable transport document in the URL

Submitted by Mr. Rainer Freise

This document was prepared by Prof. Dr. Rainer Freise to provide further information on inclusion of provision for a negotiable transport document (to serve as a document of title) into the URL draft provisions. This document should be considered in conjunction with ECE/TRANS/SC.2/GEURL/2019/16.

Further information:

The URL consignment bill is to serve as a **document of title** which represents the goods and incorporates the obligation of the carrier to deliver the goods to the bearer of the consignment bill.

The consignment bill, as such, is **separated from the contract of carriage**. Therefore the consignment bill is valid even if the contract of carriage is faulty.

[Article 31f of the draft provisions has to be changed: “The issue and handing over of the consignment bill to the consignee designated therein shall have the same effect, ...”]

The consignment bill makes the goods negotiable while they are on their way to the consignee. A change of the person to whom the goods have to be delivered does not need to be entered on the consignment bill. The deliberate handing over of the consignment bill will be sufficient with regard to the transfer of the goods.

The consignment bill also can be used for documentary credits (cf. the “Uniform Customs and Practice for Documentary Credits” of the International Chamber of Commerce, ICC).

Article 31b § 1:

As the consignment bill will be used instead of a consignment note it is useful to refer to several articles of the URL which deal with the consignment note and are necessary for the consignment bill as well:

- standard model of the consignment bill (Article 5 § 2),
- content of the consignment bill (Article 6),
- responsibility of the consignor with regard to entries made on behalf of the consignor or with regard to missing necessary information from the consignor (Article 7),
- examination (Article 9),
- evidential value of the consignment bill (Article 10).

The reference made to Article 10 shows that the consignment bill is not fully abstract. Therefore it is in the interest of the consignor that the carrier fulfils especially the conditions of Article 10 § 3. In principle the carrier is only obliged to deliver the goods in the condition it has taken them over from the consignor. And if there is any loss of or damage to the goods between the time of taking over the goods and the time of delivery, the carrier shall be liable according to the Articles 19 to 27 of the URL.

Article 31b § 2:

As the consignment bill is a document of title, proof to the contrary by the carrier in respect of contract particulars included in the consignment bill (as indicated in Article 10) shall not be admissible against a bearer of the consignment bill (consignee or third party), if the bearer is acting in good faith (cf. Article 41 (b) (i) of the Rotterdam Rules).

[In Article 31b § 2 the words “issued and first” should be deleted twice]

Article 31b § 3:

Normally the bearer of the consignment bill is also the person entitled to claim under the consignment bill. But if the consignment bill is lost or stolen, the finder or thief is not the person entitled to claim under the consignment bill, though he is the bearer.

Article 31c § 1, second sentence:

The carrier must not deliver the goods to the bearer of the consignment bill if it is aware, or unaware through gross negligence, that the bearer is only the finder or thief of the consignment bill.

If the carrier is not able to deliver the goods because at the place of delivery no bearer of the consignment bill can be found or is willing to accept the goods, the carrier should be entitled to take the measures prescribed in Article 18 – but without the right to return the goods to the consignor. This should be regulated in a **new § 3 of Article 31c**:

[“Article 31c § 3: If delivery cannot be performed according to the contract because the consignment bill is not presented to the carrier, the carrier shall ask for instructions from the person entitled to claim under the consignment bill. If the carrier cannot obtain lawful and reasonable instructions within a reasonable time, it shall take measures according to Article 18 § 2, but without the right to return the goods to the consignor.”]

Article 31d § 1:

The person entitled has the right to dispose of the goods. He might wish in particular to change the place of delivery of the goods or to deliver them to another consignee. Or there might be circumstances preventing carriage or delivery which need instructions. The case of circumstances preventing delivery is regulated in Article 31c § 3. The other cases named before should be regulated pursuant to the Articles 15 to 18:

*[After the first sentence of Article 31d § 1 a second sentence should be added:
“If circumstances prevent carriage, the carrier shall ask for instructions from the person entitled to claim under the consignment bill: Article 18 shall be applicable without the right to return the goods to the consignor.”]*

Article 31e:

The carrier may only raise objections against a claim by a person entitled to claim under the consignment bill

- insofar as they concern the **validity** of the statements made in the consignment bill:
e.g. “I did not have legal capacity when issuing the consignment bill”.
- or insofar as they arise from the **contents** of the consignment bill:
e.g. “There is a contradiction between two numbers or details in the consignment bill as you can see by yourself”.
- or insofar as the carrier is entitled to rely on objections **directly against the person entitled to claim** under the consignment bill:
e.g. “You are only the finder or thief of this consignment bill!”.