Options available for converting URL into a legally binding instrument – URL as contract of carriage’s convention

Submitted by the European Commission (Staff Working Document)
Summary of the problem definition

• Lack of a single legal regime for rail transport operation between Europe and Asia; two different regime: COTIF (CIM) & SMGS

• Impediment to the growing traffic of Euro-Asia rail freight transport services
  1) Unnecessary burden and constraints on business operation
  2) Requires re-consignment of the goods at the handover point
  3) Complicates cases for identifying and enforcing claims in the event of cargo loss or damage

• Other modes benefit from harmonised contractual rules
  • Relevant example and case-study is the Convention on the Contract for the International Carriage of Good by Road (CMR)
Group of Experts towards URL – state-of-play

- **2010-2011**: Creation of the Group of Experts; first prospective Position Paper (ECE/TRANS/2011/3) – process of unification:
  1) Short-term: MoU / General Terms and Conditions
  2) Medium-term: Model Regulation (non-mandatory)
  3) Long-term: Legally binding instrument

- **2013 (February)**: Joint Declaration on the promotion of Euro-Asian rail transport and activities towards unified railway law

- **2017**: Consistent set of draft legal provisions for URL based on COTIF/CIM 1999 and SMGS 2015 (carriage of goods)
Group of Experts towards URL – state-of-play

• **2018-2019: new extension of the mandate under new ToR**

  a) Finalisation of necessary documents in order to perform international rail transport under URL (i.a. standard model of CN)

  b) Performance of real pilot tests to verify the operational validity and effectiveness of the legal provisions on URL

  c) Drafting of a document / system of document that could be adopted as a legally-binding instrument

  d) Discuss other relevant issues related to international freight transport, for possible inclusion in the scope of URL instrument

• **17th and 18th sessions: significant progress on tasks a), b) and d) [ECE/TRANS/SC.2/GEURL/2018/5]**
Group of Experts towards URL – state-of-play

- **Task c) Converting URL into a legally-binding instrument**

  - **18th session**: reviewed possible options based on existing relevant instruments [ECE/TRANS/SC.2/GEURL/2018/6] + agreed on the stated objective to select an approach at the 19th session around two alternative options: **URL as a framework convention** or **URL as a contract of carriage convention**

  - **19th session**: Pros/cons/impact analysis of both alternative options to be presented by the Russian Federation and the European Commission respectively, with the view to **selecting one approach** [Annotated provisional agenda – ECE/TRANS/SC.2/GEURL/2019/1]

  - **20th session (July)**: the group should (inter alia) draft an **advanced structured proposal** for the legally binding instrument

  - **21st session**: **finalisation** and drafting of a report to the (SC2) Working Party on rail transport meeting in November 2019
URL as contract of carriage’s convention

• **Objective and selected approach**
  - Overall objective is to **improve efficiency** of rail freight transport operation between EU and Asia, in particular with China
  - **Pragmatic approach**: solving existing issues for the sector = simplification of contractual / administrative arrangements
  - **Step-by-step approach**: (1) focus on contracts of carriage of goods, by creating a single legal & liability regime as an optional alternative to CIM/SMGS; (2) interface law applicable only if neither CIM nor SMGS apply for the contract covering the entire journey

• **Facilitating business operation, while avoiding to create an additional regime, which could conflict or overlap with CIM and SMGS; having such a “first step” would support and catalyse the long-term objective of global harmonisation**
URL as contract of carriage’s convention

- **Basic structure of a draft “contract of carriage’s convention” following the model of the CMR convention**
  - Title
  - Preamble
  - Chapter 1 – General provisions
  - Chapter 2 – Conclusion and performance of the contract of carriage
  - Chapter 3 – Liability regime
  - Chapter 4 – Settlement of claims
  - Chapter 5 – Relations between carriers
  - Chapter 6 – Final provisions
URL as contract of carriage’s convention

• **Management and administrative system**
  - Subject-matter is **legal and contractual**; based on experience with the CMR convention, requires **minimal resources to administer**
  - **Existing UN ECE and sector organisation is sufficient** to ensure effective management in the framework of the Inland Transport Committee (Working Party on rail transport + ad hoc expert group)
  - **Involvement of relevant international organisations** and industry associations (OTIF, OSJD, UNESCAP, CIT, UIC, ITF...) is also possible through existing administrative arrangements
URL as contract of carriage’s convention

- **Expected impact (overall positive)**

  - On **freight forwarders and railway undertakings** (simplification of business and transport operation, improved legal certainty, reduced delays and costs = increased competitiveness)

  - On **participating States** (initial administrative cost to negotiate, sign and ratify the convention, then virtually no administrative impact and no extra costs to fund an international body – UNECE structure adequate and sufficient to manage and maintain the instrument)

  - On **relevant international organisations and industry associations** (as interface law applicable, there would be no direct effect on the existing agreements in place at regional level (COTIF-CIM/SMGS))

  - On the **process of harmonization of rail transport** law at global level (positive signal, catalyze, opens new opportunities)
URL as contract of carriage’s convention

- **Other relevant issues related to international rail freight transport**
  
  - **Dangerous goods**: a multimodal regulatory framework already exist at global level (road, rail, inland navigation) and dedicated structures and processes are in place to harmonize regulation on the Eurasian continent; no immediate need to include in the scope of URL
  
  - **Railway infrastructure, freight wagons and rolling stocks**: (1) various technical, industrial and political challenges = long term objective, requiring considerable amount of expertise and financial resources – bottom-up approach and thorough cost/benefit analysis needed; (2) subject-matters regulated by EU law and subject to an on-going harmonization process at EU level
Conclusions – time to decide

- **URL as a contract of carriage's convention (interface law, voluntary)** is **necessary and sufficient** to create a positive impact on the competitiveness of Euro-Asia rail freight transport services.

- It would **fulfill the current mandate of the Group of Experts and meet the expectations of the industry** – without undermining the long term objective of harmonisation at global level.

- **All substantive provisions exist** (draft legal provisions); the model of the CMR convention could be followed to prepare a draft structure, which **could be recommended at the next session of the Working Party on rail transport in November 2019**.

- **First step, properly justified, is essential**; the scope of URL could be adapted-extended at a later stage if necessary / appropriate.
THANK YOU for YOUR ATTENTION