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

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Item 2 of the provisional agenda

**Execution of the Mandate of the Group of Experts****Proposal on provisions about a negotiable transport document in the Unified Railway Law****Note by the secretariat****I. Introduction**

1. Although railway consignment notes could in principle be accepted for documentary credits, the banks normally do not make use of them. This is due to the fact, that neither within the SMGS area nor in the CIM area there was a necessity to use railway consignment notes as a negotiable transport document, mainly because the duration of a transport by rail is relatively short. On the other hand, with the increase of the transport of goods by rail between Asia and Europe and longer duration of transport, the demand for negotiable transport documents emerges.

2. At the same time, neither SMGS nor CIM nor the existing provisions of URL (contract of international carriage of cargo by rail (CoC)) contain provisions about a negotiable transport document to serve as a document of title. However, CIM and URL CoC at least contain provisions about the evidential value of the consignment note and about the important part the consignment note plays regarding the right to dispose of the goods: The original or rather the duplicate of the consignment note, which does not accompany the goods, has to be handed over first to the consignor who can make use of it by disposing of the goods or by passing on the document to a bank or to a third party.

3. In any case, in view of the emerging demand for negotiable transport documents and while the URL CoC provisions are being decided upon by the Group of Experts towards URL, it is proposed to the Group of Experts to consider adding to the existing URL CoC provisions also more explicit provisions on a negotiable transport document.

4. This document, prepared by Prof. Dr Rainer Freise and the secretariat, makes a proposal for such provisions on a negotiable transport document. These provisions have been drafted bearing in mind the following considerations:

- Negotiable electronic transport document cannot be issued (at least at the beginning of the application of the URL CoC) to avoid complications.

- There is only one type of legitimate holder: the bearer of the document.
- Provisions are referring to the rulings of the consignment note as far as possible.
- Consignment bill necessitates real signature; no use of an imprint, a stamp or an accounting machine entry.
- The 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.
- The consignment bill makes the goods negotiable while they are in transport 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).

## II. Draft Provisions about a negotiable transport document in the Unified Railway Law

5. The following provisions are proposed to be added to URL CoC to introduce to it the notion of the negotiable transport document:

Add to **Article 2** the following definitions:

as **12a “Consignment bill”** means a negotiable transport document concerning the obligation of the carrier to deliver the goods to the bearer of the consignment bill.

as **12b “Bearer”** means the person or party who is in the possession of a consignment bill.

Add new **Chapter 4a with Articles 31a, 31b, 31c, 31d, 31e and 31f** as follows:

### **Chapter 4a Consignment bill**

#### **Article 31a Issuance of a consignment bill**

If the parties to the contract of carriage agree to use a negotiable transport document [instead of a consignment note] the carrier is obliged to issue a consignment bill concerning the obligation to deliver the goods to the bearer.

#### **Article 31b Effect of the consignment bill; legitimation.**

**§ 1** The Articles 5 § 2, 6, 7, 9 and 10 shall be applicable mutatis mutandis when a consignment bill has been issued and signed by the carrier. A copy of the consignment bill shall accompany the goods.

*Additional explanation to 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.*

**§ 2** The carrier may not rebut the presumptions pursuant to § 1 vis-a-vis a consignee designated in the consignment bill and to whom the consignment bill has been handed over, unless the consignee was aware, or was unaware through gross negligence, at the time the consignment bill was handed over, that the information therein is incorrect. The same shall apply vis-à-vis any third party to whom the consignment bill has been transferred.

***Additional explanation to 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).*

**§ 3** Any claim under a contract of carriage embodied in a consignment bill may be brought only by the person entitled to claim under the consignment bill. The bearer of the consignment bill is, for his benefit, presumed to be the person entitled to claim under the consignment bill.

***Additional explanation to 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 Delivery against surrender of the consignment bill**

**§ 1** After the goods' arrival at the place of delivery, the bearer of the consignment bill shall be entitled to require the carrier to deliver the goods against surrender of the consignment bill, in which the delivery is confirmed, and against payment of all amounts due according to the contract of carriage. However, 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 of the consignment bill is not the person entitled to claim under the consignment bill.

***Additional explanation to Article 31c § 1 (second sentence):** The carrier must not deliver the goods to the bearer of the consignment bill if the carrier is aware, or unaware through gross negligence, that the bearer is only the finder or thief of the consignment bill.*

**§ 2** If the carrier delivers the goods to a party other than the bearer of the consignment bill or, in the cases covered by the second sentence of § 1, to a party other than the person entitled to claim under the consignment bill, then the carrier shall be liable for the resulting damage suffered by the person entitled to claim under the consignment bill. The liability shall be limited to the amount which would have been payable if the goods have been lost.

**§ 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.

***Additional explanation for Article 31c § 3:** 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 (unless the consignor is still the bearer of the consignment bill).*

**Article 31d Carrying out instructions**

**§ 1** Where a consignment bill has been issued, only its bearer shall have the right of disposal pursuant to the Articles 15 and 16. 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. The carrier may carry out instructions only against presentation of the consignment bill. However, the carrier must not carry out any instructions issued by the bearer of the consignment bill if it is aware, or unaware through gross negligence, that the bearer of the consignment bill is not the person entitled to claim under the consignment bill.

*Additional explanation to 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.*

**§ 2** If the carrier carries out instructions without having had the consignment bill presented to it, it shall be liable to the person entitled to claim under the consignment bill for any resulting damage the latter may suffer. The liability shall be limited to the amount which would have been payable if the goods had been lost.

**Article 31e Objections**

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, or insofar as they arise from the contents of the consignment bill or insofar as the carrier is entitled to rely on objections directly against the person entitled to claim under the consignment bill. An agreement to which the consignment bill merely makes reference is not incorporated into the consignment bill.

*Additional explanation to 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!".*

**Article 31f Consignment bill as document of title**

The issue and handing over of the consignment bill to the consignee designated therein shall have the same effect, in terms of the acquisition of rights to the goods, as a physical handing over of the goods, provided the carrier is in possession of the goods. The same shall apply to a transfer of the consignment bill to third parties.

*Additional explanation to Article 31f: This Article is the consequence of the preceding articles. It qualifies the consignment bill as a document of title to be used as a negotiable transport document.*