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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**

Geneva, 28–29 September 2020

**Report of the Group of Experts towards Unified Railway  
Law at its the twenty-second session****Contents**

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## **I. Attendance**

1. The Group of Experts towards Unified Railway Law (Group of Experts) held its twenty second session from 28 to 29 September 2020 in Geneva. The session was chaired by Mr. A. Druzhinin (Russian Federation) and attended virtually through Interprefy platform and in-person with the simultaneous English-French-Russian interpretation.
2. Representatives of the following countries participated: Germany, Luxembourg, Poland, the Russian Federation, Switzerland and Turkey. Representative from the European Commission also participated.
3. Experts from the following intergovernmental organizations participated: Intergovernmental Organization for International Carriage by Rail. Experts from the following non-governmental organization attended the session: International Rail Transport Committee and International Federation of Freight Forwarders Associations.
4. Experts from the following organizations participated at the invitation of the secretariat: Deutsche Bahn AG, JSC Russian Railways, PKP CARGO S.A. and PKP Polish Railway Lines.

## **II. Adoption of the agenda (agenda item 1)**

5. The Group of Experts adopted the session's agenda as contained in ECE/TRANS/SC.2/GEURL/2020/01/Rev.1.
6. The Group of Experts regretted that its current session suffered from a considerable reduction in allocation of the conference service by the United Nations Office in Geneva versus the previously accepted service level. The Group of Experts stressed the importance the official intergovernmental deliberations have to the success of an intergovernmental process such as the elaboration of the Unified Railway Law (URL). To this end, the Group of Experts expressed dissatisfaction that the cuts impacted its deliberations.

## **III. Execution of the Mandate of the Group of Experts (agenda item 2)**

7. The Group of Experts - further to its mandate extension - continued its work on:
  - (a) Task (c) of the Terms of Reference: Draft a document (or systems of documents) on Unified Railway Law which could be adopted as a legally binding instrument:
    - (i) The Group of Experts considered ECE/TRANS/SC.2/GEURL/2020/4 and ECE/TRANS/SC.2/GEURL/2020/5 submitted respectively by Germany and the Russian Federation. ECE/TRANS/SC.2/GEURL/2020/4 proposes a consensus towards executing the mandate extension. ECE/TRANS/SC.2/GEURL/2020/5 provides specific alterations to the draft URL legal provisions on the contract of carriage provided in ECE/TRANS/2016/15. These alterations aim to address the concerns raised by the Russian Federation in ECE/TRANS/SC.2/GEURL/2019/18.
    - (ii) The Group of Experts considered the following proposals for alteration/addition:
      - Article 1, Scope of application:
        - The Group of Experts argued that the proposed alteration changes the principles for the URL contract of carriage (CoC) for it to be an interface law and be applicable on an opt-in basis (ECE/TRANS/2016/15).
        - The European Commission underlined that the draft URL provisions on the contract of carriage were deemed a stable input for the work under this mandate as indicated in section I paragraph 1 of the Group of Experts' Terms of reference (ECE/TRANS/2018/13/Rev.1) and were used for monitoring the

performance of the pilot tests (Task (b)) to ensure the operational validity and effectiveness of the legal provisions prepared.

- The Russian Federation informed that the change reflects its position for URL to become the only system of railway law that should replace the existing legal regime (CIM and SMGS). The Group of Experts discussed whether the provisions proposed in the new paragraph 3 of Article 1 could allow for an opt-out solution from the application of URLCoC. The Russian Federation explained that the exceptions identified in this paragraph referred to specific bilateral or multilateral agreements (using the example of the bilateral agreement between the Russian Federation and Finland), not international agreements such as CIM and SMGS.
- The Group of Experts requested that the meaning and possible application of the provisions of Article 1 as provided in ECE/TRANS/SC.2/GEURL/2020/5 are clarified by the Russian Federation, particularly on the following points: (i) would CIM and SMGS be applicable in their jurisdictions without infringing the suggested URLCoC provisions on the scope of applicability as proposed by the Russian Federation; (ii) would CIM and SMGS be applicable to carriage on corridors from Europe to Asia, if the carriage would be conducted in indirect international traffic i.e. through re-consignment; and (iii) would the choice of the legal basis be made by the individual parties to the contract of carriage of goods or by the member states.
- The Group of Experts requested the Russian Federation for clarification whether URL would be put into a separate, stand-alone Convention as first step, given the agreed step-by-step-approach and whether it would be concluded as an ECE Convention.
- The Chair requested written positions from all experts to be sent to the secretariat on the points (i), (ii) and (iii) above.
- Article \_ Rules on the Carriage of Goods:
  - Some members of the Group of Experts argued that detailing of such rules would be against the approach of giving flexibility to the railway undertakings and would go against the principle of market liberalization. Moreover, if all the carriers would need to be involved in establishing the conditions for carriage, such approach may conflict with antitrust laws. This would hence require a careful evaluation of such addition. Also, technical differences resulting from the different gauges would suggest that elaboration of harmonized rules on the carriage may be a difficult and a lengthy process, for which reason it appears more reasonable to just follow the same principles on the carriage of goods.
  - Some members of the Group of Experts suggested that providing such rules in the annex to the URLCoC at this stage could be counterproductive as it would delay the finalisation of the URLCoC for many years. The primarily objective of the URLCoC is to be a succinct document that could be adopted rapidly for the benefit of the sector.
  - The Russian Federation informed such rules should be a part of URL provisions, because there should be clear regulations for carriers, consignors and consignees establishing the conditions of carriage of different types of goods, format of the consignment note, procedure for registration of formal report etc. The Russian Federation informed that such rules in member countries of the Organisation for Co-Operation between Railways (OSJD) are set by the governments (for example, Rules on the Carriage of Goods is Annex 1 to SMGS).
  - The expert from the European Commission and the secretariat further suggested that any procedures for restrictions and special conditions for transport of various types of goods (further to Article 8 of SMGS) have been

addressed, at a general level, through a proposal to alter the Article 4 of URLCoC as contained in ECE/TRANS/SC.2/GEURL/2019/15.

- The Chair requested written positions from experts as to whether the addition in Article 4 addresses the issue raised by the Russian Federation.
  - Article \_ Mode of carriage:
    - Some members of the Group of Experts wondered what legal implications a provision which lists the available modes of carriage may have. Some members of the Group of Experts further wondered if the inclusion of the provision on the modes of carriage was to be understood as a prerequisite for negotiations of contract conditions, in which case it could possibly be addressed by adding modes of carriage in para 2 of Art. 6. In case, such inclusion was meant to address the relation between the URLCoC and relevant public laws applicable to modes of carriage, experts believed Article 4 as altered in ECE/TRANS/SC.2/GEURL/2019/15 addresses such a relation.
    - The Russian Federation informed that such provisions should be included in the text of provisions, because international carriage of goods in Eurasian region is carried out on railways of different gauges. That is why it should be reflected that such carriages may be carried out with trans-shipment of the goods from the wagons of one onto wagons of other rail gauge or with the transfer of wagons onto bogies of another rail gauge, or with the use of adjustable-gauge bogies. In case of such carriage, this information should be included in the consignment note. In addition, the goods delivery period shall be increased by the time needed for these operations.
  - Article 2 (8) Definition “person entitled”:
    - The Group of Experts stressed that “person entitled” means “consignor” or “consignee”, as appropriate, in the existing provisions and that this term cannot be associated with negotiability.
  - Article \_ Pre-contractual agreements for carriage:
    - It was requested that the necessity of this addition would be clarified by the Russian Federation as this addition, in the opinion of some members of the Group of experts, would go against the principle of market liberalisation.
  - (iii) The Group of Experts was not able to discuss other specific proposals for alteration. The Group of Experts requested to use the time available until the next session to assess these proposals and their implications to share the views at the next session.
  - (iv) The Group of Experts briefly discussed ECE/TRANS/SC.2/GEURL/2020/3 containing a proposal on provisions about a negotiable transport document in URLCoC.
  - (v) The expert from Germany was in favour of pursuing inclusion of provisions on negotiable transport document in the URLCoC. It is believed that such provisions, if included, would offer clear advantage of URLCoC vis-à-vis other agreements.
  - (vi) The Group of Experts took into account the demand from the market for regulating the negotiable transport document for carriage of goods by railway. It also took into account that other fora under OSJD or the United Nations Commission on International Trade Law were considering the aspect of negotiability and complexities linked with it. Some participants proposed that before pursuing the discussion in detail on the aspect of negotiability, the Group of Experts should consider outcomes from the other fora.
  - (vii) The Group of Experts agreed to request the secretariat to prepare a consolidated version of the URLCoC for the next session based on the text of the following documents:
- ECE/TRANS/2016/15 with the draft relevant substantive legal provisions;

- ECE/TRANS/SC.2/GEURL/2019/15 with the modifications to Article 4 of ECE/TRANS/2016/15;
- ECE/TRANS/SC.2/GEURL/2019/10 with the draft preamble; and
- ECE/TRANS/SC.2/GEURL/2019/11 with the draft final provisions.

(viii) The Group of Experts also requested that ECE/TRANS/SC.2/GEURL/2020/3 with provisions on negotiable transport document is included in the consolidation with the proposed provisions placed in square brackets.

(ix) The Russian Federation believed it would be premature to prepare a consolidated version of the URLCoC until the Group of Experts would be in position to agree on the scope of URL.

(b) Task (d) of the Terms of Reference: Discuss other relevant issues related to international rail freight transport with a view to adding, where appropriate, provisions to the document referred to in task (c):

(i) The Group of Experts considered ECE/TRANS/SC.2/GEURL/2020/6 prepared by the secretariat which contemplates on the needs for the unified railway provisions and defines a number of questions to reflect upon.

(ii) Some experts stressed that in several areas there is no need for harmonising the rules. Due to the complexity of the other issues a step-by-step-approach is necessary.

(iii) The Group of Experts discussed briefly on the questions and agreed that experts submit comments in writing to the secretariat on the questions formulated in ECE/TRANS/SC.2/GEURL/2020/6. Moreover, the Chair proposed to reflect on additional questions, as follows:

- How is the term ‘infrastructure’ understood?
- Which technical information system are recognized as part of the infrastructure?
- What are the requirements for carriers to fulfil to be permitted to use the infrastructure?
- How is the system of infrastructure set up to be interrelated? and
- Is the use of infrastructure regulated by state or on contractual basis?

(iv) The Group of Experts agreed to consider at its next session, upon availability of the written comments, the other issues relevant to international carriage of goods by railways for which specific agreements constituting the set of URL agreements may need to be developed.

#### **IV. Other business (agenda item 3)**

8. There were no issues raised under this item.

#### **V. Date of next session (agenda item 4)**

9. The Group of Experts took note of the fact that the secretariat is working towards hosting the next session in January or first half of February 2021. The secretariat would communicate the date upon its confirmation by the Conference Service of the United Nations Office in Geneva.

#### **VI. Summary of decisions (agenda item 5)**

10. The secretariat summarized the decisions taken by the Group of Experts. The full report of the session would be shared electronically after the session for adoption.