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**HARMONIZATION OF REQUIREMENTS CONCERNING INTERNATIONAL
ROAD TRANSPORT AND FACILITATION OF ITS OPERATION**

Protocol additional to the CMR: EDI-CMR Protocol

Transmitted by Germany

In principle, the Federal Government takes a positive attitude towards adoption of the Protocol Additional to the CMR, according to which electronic consignment notes may be admissible. The Protocol drafted in TRANS/SC.1/2001/7 still gives rise, however, to unresolved difficulties in relation to a large number of points. These difficulties result from the fact that the CMR contains numerous provisions the application of which would cause problems if electronic consignment notes were to be made admissible. The following are the provisions in question:

(a) Pursuant to Article 5, para. 1, third sentence, CMR, the second original copy shall accompany the goods. It is questionable how an electronic document can accompany the goods. The proposed formulations in a new Article 5, para. 3, CMR, particularly the mere reference to «equivalen[ce] from the functional point of view» do not give an answer to this question.

(b) Pursuant to Article 9, CMR, a consignment note properly made out and signed shall be prima facie evidence of the making of the contract, the conditions of the contract and the receipt of the goods. The requirement for probative effect is that there is a copy signed by both parties (Article 5, para. 1, first sentence, CMR). The admissibility of electronic consignment notes raises the question as to the legal requirements for a signature in respect of data in electronic form. This question is not answered by Article 5, para. 3 of the CMR draft. In particular, there is no determination of the technical requirements that are to apply to an electronic signature. Determination of these requirements cannot be left to each Contracting State since there would otherwise be no guarantee of a uniform security standard for electronic documents.

(c) Pursuant to Article 11, para. 1, CMR, the sender shall attach the necessary documents to the consignment note for the purposes of formalities which have to be completed before delivery of the goods. Here the question arises as to how accompanying documents can be attached to a consignment note in electronic form. The proposed framework provision in Article 5, para. 3, CMR, gives no answer to this question.

(d) Article 12, CMR, deals with the right of disposal, under the law relating to consignment notes, which right is enjoyed by the sender or, under specific conditions, by the carrier. In order for the sender to be able to exercise the right of disposal it will be necessary, pursuant to Article 12, para. 5 (a), CMR, for the sender to produce the first copy of the consignment note for the carrier. The question is how such production is to be effected in respect of an electronic consignment note and how it can be ensured that the carrier can determine the identity of the sender beyond all doubt. The proposed framework provision in Article 5, para. 3, CMR, gives no answer to this question.

(e) Article 34, CMR, deals with the liability of successive carriers. The precondition for this is acceptance of the goods and the consignment note by the second carrier and each succeeding carrier. The introduction of an electronic consignment note raises the question at this juncture as to how a consignment note in electronic form is to be handed over. Handing over a consignment note to the succeeding carrier presupposes that the first road carrier no longer has possession of the consignment note and that the second road carrier acquires possession thereof. How this surrender of possession is to take place in respect of an electronic document is not clear. It therefore seems imperative for this to be clarified in the CMR Protocol.

(f) Pursuant to Article 35, CMR, a carrier accepting the goods from a previous carrier shall give the latter a dated and signed receipt. The question is what form this receipt has to take. In our view, it should be possible for the receipt also to be drawn up and dispatched electronically. However, no provision has been made in the present draft regulating this.

For the reasons stated above, the Federal Government does not see itself in a position of agreement with the Additional Protocol in its present version. Before an electronic consignment note is introduced the questions raised above under letters a) to f) should initially be examined and the answers to these questions then included in the Additional Protocol. The Federal Government would therefore like to dispense with a detailed reply to the Questionnaire.

Attention must, however, still be drawn to the fact that the text under Question 2 (a) of the Questionnaire gives rise to misgivings. The text creates the impression that the parties to the contract of carriage can contract out of requirements as to form in the proposed Article 5, para 3, CMR. Not least due to the mandatory nature of the CMR and due to the probative value attached to the CMR consignment note this would seem questionable. Over and above this, there is the question whether the sender has to acquiesce in the making out of an electronic consignment note. The more obvious course of action would be to make use of an electronic consignment note contingent on a corresponding agreement. The question of what is meant by «parties» remains, however, in need of clarification. Disregarding the first carrier or also a subsequent carrier also seems questionable.
