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Item 4 of the provisional agenda

**Review of work on general terms and conditions for
Euro-Asian transport contracts (GTC EurAsia)****Model Framework for Euro-Asian rail transport contracts in
line with the COTIF-CIM and SMGS Agreements****Note by the secretariat****I. Mandate**

1. In line with the UNECE Position Paper “Towards unified railway law in the pan-European region and on Euro-Asian transport corridors” (ECE/TRANS/2011/3) and the objectives of work as contained in the work plan of the UNECE Group of Experts towards Unified Railway Law (ECE/TRANS/SC.2/GEURL/2011/4, paras. 9–12), the Group of Experts may wish to consider the draft of a “Model Framework for Euro-Asian rail transport contracts” as outlined below that could be referred or annexed to the Joint Declaration.

**II. Draft outline of a Model Framework for Euro-Asian rail
transport contracts**

2. The proposed Model Framework contains the basic structure of modern Euro-Asian rail transport contracts and provides guidance to railway undertakings and their customers in the conclusion of rail transport contracts covering the territory of States that are Contracting Parties to the COTIF-CIM and SMGS Agreements.

3. The Model Framework is of a voluntary character. It reflects the structure of existing rail transport contracts and takes account of work carried out in 1998 by railway

undertakings in Belarus (BC), Germany (DB), Poland (PKP) and the Russian Federation (RZD) (Terms and Conditions of Carriage of International Freight by Rail – GBRT).

4. In the absence of General Terms and Conditions for Euro-Asian rail transport contracts (GTC EurAsia), yet to be developed, the proposed Model Framework

(a) assists railway undertakings, freight forwarders and shippers in negotiating and implementing Euro-Asian rail transport contracts; and

(b) provides a value-added to the Joint Declaration as a concrete and short-term measure that is politically supported by Governments wishing to promote Euro-Asian rail transport on the basis of existing rail transport law.

5. The objective of the proposed model framework is to establish, on a voluntary basis, a uniform structure for Euro-Asian rail transport contracts between railway undertakings and their customers.

6. The short-term advantages of the voluntary Model Framework would be:

(a) to establish a standard structure for Euro-Asian transport contracts that railway undertakings conclude with their customers, including freight forwarders and shippers. This would provide for enhanced transparency and could facilitate negotiation and conclusion of the numerous rail transport contracts that, in the absence of GTC EurAsia, are required today for rail transport in the COTIF-CIM and SMGS regions;

(b) to highlight modern practices in the conclusion of Euro-Asian rail transport contracts and describe key elements that should be contained in such contracts taking account of relevant provisions in the COTIF-CIM and SMGS Agreements, whenever applicable;

(c) to promote the use of the common CIM-SMGS Consignment Note as a single transport document for Euro-Asian rail transport;

(d) to be available in all relevant languages applicable for Euro-Asian rail transport, including, possibly, the six official languages of the United Nations (English, French, Russian, Arabic, Spanish and Chinese).

7. The Model Framework is conceived as a first visible step to assist the rail transport industry to become more competitive in Euro-Asian trade and should fill the gap until GTC EurAsia has been agreed upon (medium-term) and a unified railway law has been developed (long-term) in line with the UNECE strategy.

8. It is proposed to annex or refer to the Model Framework in the Joint Declaration yet to be finalized (ECE/TRANS/SC.2/GEURL/2012/5). A possible procedure to finalize the Model Framework within the next few months, is described below (paragraphs 10 and 11).

9. The voluntary Model Framework for Euro-Asian rail transport contracts could have the following basic structure that would need to be further refined:

1. Contracting Parties

Contracting Parties of Euro-Asian rail transport contracts should be described in detail, with full address and including the names of their representatives.

Example:

Railway undertaking ..., freight forwarder ..., sub-contractor ..., shipper ...

[References to the COTIF-CIM and SMGS Agreements – possibly to be included here]

2. Subject and scope of contract

The rail transport and related services to be provided by railway undertakings should be described in detail.

Examples:

- (a) Transport of containers by block train services from A to B, via C;
- (b) Transport of steel coils by factory X to loading/unloading place Y.

[References to the COTIF-CIM and SMGS Agreements – possibly to be included here]

3. Validity of the contract

The validity of the contract as well as its possible revocation (for exceptional reasons) should be inserted.

Example:

The present contract is valid from ... until ...

[References to the COTIF-CIM and SMGS Agreements – possibly to be included here]

4. Consignment Note

For Euro-Asian rail transport operations the common CIM/SMGS Consignment Note should be used. It should be filled-in in accordance with the relevant Handbook prepared by CIT and OSJD.

Example:

The consignor has to present to the railway undertaking the duly filled-in CIM/SMGS Consignment Note in the following language(s): ...

[References to the COTIF-CIM and SMGS Agreements – possibly to be included here (Example: CIM: Article 6, para. 8; SMGS: Article 6, para. 11 and Article 7, para. 15)]

5. Technical specifications and schedule of rail operations

All relevant technical specifications and operational schedules should be described in detail, as appropriate

Examples:

- (a) Time table of block train:

| Railway station | Arrival | Departure |
|-----------------|-----------|-----------|
| Place A | ... hours | ... hours |
| Place B | ... hours | ... hours |

- (b) Technical specifications of block train:

| | |
|-------------------------------------|------------|
| Maximum gross weight of block-train | ... tonnes |
| Maximum length of block-train | ... meter |
| Rail loading gauge | PCXX/XXX |

[References to the COTIF-CIM and SMGS Agreements – possibly to be included here]

6. Prices

A detailed description of prices and charges as well as applicable terms and conditions should be included.

Examples:

(a) For the container block-train, operating from location A to location B or vice versa, transport charges applicable for section distance from ... border station to location B or vice versa, per train running in one direction, are as follows:

| Number of trains | ... section (... km) | Price per train-kilometre |
|------------------|-------------------------|---------------------------|
| 1–100 | ... currency per train | ... currency |
| Above 101 | ... currency per train | ... currency |

(b) The price stated in article ... is a composite price and includes the following:

- (i) Transport charges for the ... section distance;
- (ii) Fee for attaching/detaching of wagons of the train set at location ...;
- (iii) Fee for carrying out Customs formalities at terminal in location ... station.

[References to the COTIF-CIM and SMGS Agreements – possibly to be included here]

7. Payment modalities

Payment modalities should be described, such as payment guarantee, bank details of the railway undertaking, penalties in case of delayed payments, and provisions for issuance of invoices.

Example:

The customer is obliged to disburse the amount stated in article ...

[References to the COTIF-CIM and SMGS Agreements – to be included here]

8. Obligations of the railway undertaking

The obligations of the railway undertaking in providing the agreed transportation and related services should be described in detail.

Example:

In addition to the provisions of the agreed transport services, these obligations could also include information of the customer on trains operations or the information to be provided to Customs authorities regarding the train (number of wagons and containers, type of freight, gross weight, etc.).

[References to the COTIF-CIM and SMGS Agreements – possibly to be included here]

9. Obligations of the customer

The obligations of the customer regarding the filling-in of the consignment note and the administration of other documents should be described in detail.

Examples:

(a) To ensure the identification of the consignment, by completing the code ... column 26 of the CIM consignment note and by putting the company's administrative stamp;

(b) The customer shall write down the train number in column 14 of the CIM consignment note "... No. ...";

(c) The customer shall receive personally or by an authorized person the invoices and the abstract of account, at ... (address), accompanied by the original copies of the consignment note, respectively copy of the consignment note attached to the relevant invoices and to disburse the amount of ...

[References to the COTIF-CIM and SMGS Agreements – possibly to be included here]

10. Liability, claims and compensation

The liability status should be described. In general, claims and complaints for missing goods, etc. are to be made in accordance with the terms and conditions of the COTIF-CIM and/or the SMGS Agreements.

Examples:

(a) Claims for damages resulting from total or partial loss of the goods, damage to the goods or excess of transit time shall be made in writing to the responsible carrier. The responsible carrier is the first carrier, the last carrier or the carrier having performed the part of the carriage on which the event giving rise to the proceedings occurred.

(b) Claims may be filed by:

- The consignor, until such time as the consignee has taken possession of the consignment note or accepted the goods;
- The consignee, from the time when he has taken possession of the consignment note or has accepted the goods.

(c) The claimant's right to choose among the carriers shall be extinguished as soon as he brings an action against any one of the carriers.

[References to the COTIF-CIM and SMGS Agreements – possibly to be included here]

11. General terms

Contracting parties could add any other terms and conditions.

Examples:

(a) Amendments and revisions of the present contract shall be made following agreement among both parties;

(b) Addresses and contact points for solving operational problems;

(c) The customer is not entitled to franchise the rights to other companies, nor to transfer cession to other companies.

[References to the COTIF-CIM and SMGS Agreements – possibly to be included here]

12. Final provisions

Issues such as confidentiality, governance law number of copies and a declaration of understanding should be inserted.

Examples:

(a) The present contract is confidential. The parties are obliged not to disclose any information in this regard and to use it only purposes related to the performance of this Agreement;

(b) The present contract Agreement is drawn-up in English, in two identical copies, one for each of the parties and contains 4 pages.

[References to the COTIF-CIM and SMGS Agreements – possibly to be included here]

III. Guidance by the Group of Experts

10. The Group of Experts may wish to consider whether the preparation of the Model Framework for Euro-Asian rail transport contracts, to be referred or annexed to the Joint Declaration, could provide a value-added for the industry and could be supported by Governments wishing to promote Euro-Asian rail transport.

11. Based on first considerations at the present session of the Group of Experts, a revised draft of the Model Framework would need to be prepared by the UNECE secretariat, in consultation with concerned stakeholders. The draft Model Framework would need to be available, together with the draft Joint Declaration, for consideration and approval by the Working Party on Rail Transport (8–9 November 2012).
