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### Inland Transport Committee

#### Working Party on Rail Transport

##### Group of Experts towards Unified Railway Law

###### Seventeenth session

Geneva, 9-11 July 2018

## Report of the Group of Experts towards Unified Railway Law on its seventeenth session

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## **I. Attendance**

1. The Group of Experts towards Unified Railway Law (URL) held its seventeenth session from 9 to 11 July 2018 in Geneva. The session was chaired by Mr. A. Druzhinin (Russian Federation).
2. Representatives of the following countries participated: Azerbaijan, Croatia, Czech Republic, Germany, Greece, Poland, Russian Federation, Slovakia, Switzerland and Turkey. Delegates from the UNECE Trans-European Railway Project, the European Commission and the European Union Agency for Railways also attended the session.
3. Experts from the following intergovernmental organizations participated: Intergovernmental Organization for International Carriage by Rail (OTIF) and Organization for Cooperation between Railways (OSJD). Experts from the following non-governmental organizations attended the session: International Federation of Freight Forwarders Associations and International Rail Transport Committee (CIT).
4. Experts from the following organizations participated at the invitation of the secretariat: CMS Cameron McKenna LLP, Deutsche Bahn AG (DB AG), JSC “Russian Railways” (RZD), PKP CARGO S.A. and the University Frankfurt on Main.

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

*Documentation:* ECE/TRANS/SC.2/GEURL/2018/1

5. The Group of Experts adopted the provisional agenda as amended.
6. The Group of Experts was of the opinion that proposed agenda items five, six, seven and eight which referred to the different tasks that the Group should accomplish during its mandate should be merged in one agenda item with the title “execution of the mandate of the Group”. Therefore, it was decided that the agenda should be amended accordingly and that the agendas of the next sessions of the Group should include only this item.
7. In accordance with its new Terms of Reference ((ECE/TRANS/2018/13/Rev.1) the Group of Experts recalled that the main objective of the seventeenth session was the adoption of the work plan, with a clear description of its objectives and activities, including a time schedule for their implementation. To better reflect this goal, it was decided to change the heading of the draft agenda point 4 to read “Adoption of the work plan”.
8. The secretariat provided information concerning the inconsistency that exists between the Work plan prepared and the terms of reference of the Group in relation to the year that the Group should finalize its work. After discussion, the Group of Experts concluded that it was necessary to implement the terms of reference as adopted by the ITC and approved by the EXCOM, because the tasks were effectively calibrated and tied-in with an explicit time schedule. It was therefore decided that the meeting documents should be corrected accordingly. The said terms of reference (ECE/TRANS/2018/13/Rev.1.) state that the Group of Experts should meet twice in 2018, and at least three times in 2019, before concluding its activities with the transmission of a report to the Working Party on Rail Transport at its seventy-third session in November 2019.

### III. Election of Officers (agenda item 2)

9. The Group of Experts re-elected Mr. A. Druzhinin (Russian Federation) as Chair and elected Ms. M. Urbańska (PKP CARGO S.A) as Vice-Chair.

### IV. Mandate: The Group of Experts towards Unified Railway Law (agenda item 3)

*Documentation:* ECE/TRANS/2018/13/Rev.1, ECE/TRANS/274

10. The Group of Experts recalled that during the eightieth session of the ITC on 20-23 February 2018 the continuation of Group's work for two more years was approved and its new terms of reference were considered and adopted (ECE/TRANS/2018/13/Rev.1).

11. ITC welcomed the work undertaken and report prepared by the Group of Experts towards URL. The Group managed during the last years to prepare legal provisions towards URL that include the contract of carriage, the liability regime and the relationships between the carriers as well as to test these legal provisions in practice by monitoring pilot tests along specific transport corridors. The Group, while preparing these provisions, took into consideration good practices already implemented by the Uniform Rules concerning the Contract of Carriage of Goods by Rail (CIM-COTIF Convention) and SMGS Agreement as well as other International Transport Conventions (CMR, CMNI, Montreal Convention, Warsaw Convention, etc.).

12. In line with the Joint Declaration on Euro-Asian Rail transport and activities towards URL, signed at the ECE ministerial meeting "Making the Euro-Asian Transport Network Operational" on 26 February 2013, as well as with the draft legal provisions towards URL prepared by the Group of Experts; the Group, during this phase, will focus its work on the following issues:

(a) Monitor the finalization of necessary documents in order to perform international rail transport under URL including a standard model for the consignment note for the new provisions and its manual;

(b) Monitor the performance of a substantial number of real pilot tests to be carried out by the railway companies involved in the Group along the corridors agreed and along other corridors if proposed by governments in order to ensure the operational validity and effectiveness of the legal provisions prepared;

(c) Draft a document (or systems of documents) on URL which could be adopted as a legally binding instrument; the document (or systems of documents) shall:

(i) Take into account the draft legal provisions on the contract of carriage already prepared;

(ii) Include the necessary formal provisions such as depository, management, secretariat, administrative committee, amending procedures, voting rights, etc.;

(iii) Be structured in a way which allows to easily supplement it with provisions on other issues related to international rail freight transport where the Group considers it appropriate to do so.

(d) Discuss other relevant issues related to international rail freight transport with a view to adding, where appropriate, provisions to the document referred to in point (c); these issues may include:

(i) Common provisions on dangerous goods;

- (ii) Common provisions on the use of freight wagons;
- (iii) Common provisions on rail infrastructure;
- (iv) Common provisions on rolling stock.

## **V. The Group of Experts: Adoption of the Work Plan (agenda item 4)**

*Documentation:* ECE/TRANS/SC.2/GEURL/2018/3,  
ECE/TRANS/SC.2/GEURL/2018/3/Rev.1

13. The Group recalled that in line with its new Terms of Reference, it will have to adopt a work plan, clearly defining its objectives and activities, including a time schedule for their implementation. In line with this mandate, the Group of Experts considered secretariat document ECE/TRANS/SC.2/GEURL/2018/3 containing a draft work plan, milestones and administrative arrangements that should allow accomplishment of the objectives of the group during its mandate.

14. The Group decided that a step by step approach should be followed concerning the schedule of its activities and the implementation of the work plan since there is a clear dependency among some of those activities. This dependency requires the finalization of one task in order for the next one to start and the Group to be able to monitor its progress. In parallel, the Group agreed that a degree of flexibility should be kept otherwise the potential delay of the accomplishment of one task could risk delaying the implementation of the whole work plan. Therefore:

(a) The draft work plan prepared by the secretariat was amended with certain insertions and deletions in order to better reflect the flow of the activities and their dependencies (milestones);

(b) The draft work plan was also amended to take into account specific comments from the Group of Experts;

(c) Furthermore, the draft work plan was supplemented by a concise and clear action plan which the Group discussed and prepared during the session. This action plan among other activities includes the urgent milestones of the work that could be summarized as follows:

(i) An ad hoc Consignment Note should be prepared in order for the Railway Undertakings to perform real pilot tests. It was agreed that the common CIM/SMGS consignment note should be used as the basis for this ad hoc consignment note and especially the version adapted to URL needs and requirements as presented in the previous meeting of the Group by CIT. However, there remain some comments received by RZD (Informal document SC.2/GEURL No.1, 2 (2018)) that should be taken into account in order to finalize this Consignment Note. It was decided that DB, PKP, Belorussian Railways and RZD should work together and finalize this Consignment note well before the next session of the Group in October, preferably in September 2018;

(ii) An urgent decision should be taken by the Governments using the SMGS agreement that would allow the temporary use of URL in their territory for the purpose of the real pilot tests. The absence of such a decision would make the realization of those real pilot tests impossible. It is therefore, crucial and urgent that the experts from those Governments request such a decision as soon as possible. The secretariat whenever needed and requested, will help these experts with relevant letters to the Ministries;

(iii) As many as possible real pilot tests should be organized. In the action plan of the Group four corridors have been mentioned as possible case studies. The secretariat should ensure that the Governments and Railway Undertakings along those corridors that either do not participate at the Group's work or are not aware of its activities and the request for real pilot tests (i.e. Belarus, Turkmenistan etc.), will receive a relevant invitation-letter which kindly encourages them to participate;

(iv) The active participation of OSJD especially in the preparation of the relevant documents as well as in the implementation of the Group's Work Plan should be encouraged. The secretariat should prepare an invitation letter to OSJD Committee inviting the Committee to actively participate in the Group's work.

(d) Based on those amendments a revision of the draft work plan was prepared (ECE/TRANS/SC.2/GEURL/2018/3/Rev.1) as a post session document which was adopted by the Group and it would be considered its work plan. This document will be translated in the three UNECE official languages and it is considered an integral part of the current report.

## **VI. Execution of the mandate of the Group (agenda item 5)**

15. The Group had the opportunity to exchange some initial thoughts on the different tasks of its mandate. The main concerns regarding the preparation of documents and the realization of the real pilot tests were mainly discussed and addressed under agenda item four. In addition to those, the areas identified below were also discussed.

16. The Group identified and summarized the obstacles towards the realization of the real pilot tests:

- (a) The readiness of the consignment note;
- (b) The decision by Governments using the SMGS agreement to permit the temporary use of URL by their Railway Undertakings while performing the real pilot tests;
- (c) Participation of countries involved in the corridors for instance Belarus;
- (d) The Customs agencies/inspection authorities position on those pilot tests;
- (e) The scope and parameters of the pilot tests (freight, itinerary, clients, time etc.);
- (f) The inclusion of OSJD Committee and CIT secretariat.

17. Concerning the Consignment Note, its manual and the relevant/additional documents required for the URL, the Group agreed that the common CIM/SMGS consignment note will be used with its manual and its additional documents as the basis to be adapted to the needs and requirements of URL. This will be the ad hoc consignment note for the pilot tests but also the final URL consignment note. They would be prepared by the railways involved as stated in the adopted action plan however, if it is possible, the final approval by the relevant international rail organizations (CIT, OSJD, OTIF) would be welcomed, even though it is not required based on the draft legal provisions prepared.

18. The secretariat suggested, and the Group agreed, to submit all appropriate information on real pilot tests to the Working Party on Customs Questions affecting Transport (WP.30) and to have it included as an agenda item in activities of WP.30 in order to receive the views of customs experts.

19. Concerning the parameters and scope of the real pilot tests the Group recalled that similar work was undertaken for the virtual pilot tests (Informal document SC.2/GEURL No.1 (2017), Informal document SC.2/GEURL No.3 (2017), Introduction to URL's fundamentals and objectives) and the Railway Undertakings should take into account this analysis while preparing the real pilot tests. These parameters include:

- (a) Itinerary – description of the Corridor / Railway Undertakings involved;
- (b) Client – description of the goods;
- (c) Time schedule of the pilot test;
- (d) Parameters to be evaluated based on draft legal provisions already prepared:
  - (i) Conclusion of contract (parties involved; amount of the agreed freight and who has to pay it; connection; goods to be conveyed; delivery dates to be agreed; whether derogations to the rules on liability are possible (extensions/restrictions/exemptions); customs procedures);
  - (ii) Documents to be used (consignment note; whether validity of the freight contract is necessary; whether all the necessary entries can be made; whether an electronic consignment note can be issued; who has to enclose an export accompanying document);
  - (iii) Labelling, packaging, loading, unloading (labelling obligations; who is responsible for loading and unloading);
  - (iv) Right of use (who is entitled; whether the right of use passes to someone else as of a specific date; whether documents have to be submitted to exercise the right of use);
  - (v) Obstacles to carriage and delivery (who must obtain instructions from whom; rights where no instructions can be obtained; who must bear any costs);
  - (vi) Delivery (legal status of the recipient).

20. All other obstacles listed have already been addressed with concrete actions in the adopted action plan of the Group.

21. PKP Cargo once more expressed its readiness to support not only the organization of real pilot tests but also the preparation of the necessary documents.

22. DB AG also reiterated its readiness and willingness to actively participate in Group's work and contribute to the accomplishment of Group's objectives. DB AG is willing to prepare and implement pilot tests with other rail companies. Such pilot tests could take place in Germany if the rail companies and customers involved agree that such transports should be on a contractual basis and that any issues arising are resolved by common consent between the parties. DB AG anticipates that it will be able to work with other rail companies and their partners on this contractual basis.

23. The Group also discussed the possibility to organize an event either a workshop or a conference with the main objective to raise awareness on the work on the creation of URL. OTIF secretariat mentioned that a workshop is planned for next year in cooperation with OSJD Committee where the work on the creation of URL could be one of the topics under discussion. The secretariat mentioned that two relevant conferences are organized this year by the secretariat. The first one is being organized in the framework of Working Party on Transport Trends and Economics on 3 September 2018 on "Making Euro Asian Transport Corridors Operational". The second one is organized on 20 November 2018 during the session of Working Party on Intermodal Transport on "Operational challenges of regional intermodal transport and innovative solutions". The secretariat would ensure that the topic of

the work on the creation of URL will be addressed during both workshops. The secretariat also suggested that if the Group wishes, it could organize a side event during the ITC session in February 2019 dedicated to the work on the creation of URL. There was no decision on this topic. The Group might readdress this issue at its next session.

24. The Group also discussed the possibility to prepare a kind of informative document (for instance brochure, leaflet etc.) that would illustrate the benefits from the application of URL. However, even though the experts agreed that this would be a good idea, they decided to postpone decision on this matter since not all Governments share the same vision or approach for the development of URL therefore some time-consuming challenges would appear while preparing the text of such an informative document. The secretariat recalled that a similar text had already been prepared by Mr. Freiser (Introduction to URL's fundamentals and objectives at [www.unece.org/trans/main/sc2/sc2\\_geurl\\_15.html](http://www.unece.org/trans/main/sc2/sc2_geurl_15.html)) that could be the basis of such informative document.

25. Some experts expressed the point of view that somehow communication among the experts should be warranted between the sessions. Since a lot of work will be done by the different stakeholders between the Group's sessions, the experts should be informed about the new developments and be prepared for the coming session accordingly. The secretariat suggested to examine the possibility to create an online space accessible only by the experts using a username and password. This will give the possibility to communicate uninterruptedly given the fact that the leading stakeholders will upload on this online space all updated and relevant information. The Group welcomed this proposal and requested the secretariat to examine its implementation.

26. Experts also had an initial exchange of views regarding the document (or systems of documents) on URL which could be adopted as a legally binding instrument.

27. Some of the experts were of the opinion that since we are discussing about transportation along Europe and Asia, URL could take the form of a convention or at least an international agreement as is the case today with the SMGS agreement. There would be no benefit to create a third legal instrument in addition to the two existing ones, managed respectively by OTIF and OSJD. URL should replace the two existing ones in the future.

28. Some other experts however were of the opinion that a pragmatic and step-by-step approach should be warranted: URL should be developed and applied where there is a proven need and expected benefit, as an opting-in solution for the operators. The current draft URL provisions covering the contracts of carriage constitute a solid basis for the application of a legally binding instrument. They apply where CIM – SMGS do not apply meaning that it is an interface law that does not overlap with existing legal regime but complement the existing instruments adequately. Railway undertakings require a legally sound instrument that would create legal challenge and that it could be introduced to the market quickly.

29. The experts agreed that in order to discuss and decide on the type of legal document needed a good basis is required. Therefore, a document should be prepared that summarizes all existing options including good practices already implemented by other modes of transport and taking into account the specificities of the rail sector. The time needed in order to materialize each option would be a crucial parameter in order to make a decision. The Group requested the secretariat to prepare such a document for the next session of the Group.

30. The documents submitted by the Russian Federation (Informal document SC.2/GEURL No.1 (2018) / Informal document SC.2/GEURL No.2 (2018)) were available only in the Russian language and could not therefore be considered at this session; they will be submitted as formal documents and translated for the next session of the Group for discussion.

**VII. Other business (agenda item 6)**

31. There were no proposals under this agenda item.

**VIII. Date of next session (agenda item 7)**

32. The next session of the Group of Experts is scheduled to be held at the Palais des Nations in Geneva from 29 to 31 October 2018.

**IX. Summary of decisions (agenda item 8)**

33. The Group of Experts agreed that the secretariat should prepare a short report on the outcome of the session.

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