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ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

Working Party on Road Transport

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

Protocol additional to the CMR: EDI-CMR Protocol

Following its ninety-fifth session, 16-19 October 2001, the Working Party on Road Transport (SC.1) of the Inland Transport Committee requested the secretariat to seek the opinions of the Contracting Parties to the CMR by means of a questionnaire on the specific follow-up to the draft protocol prepared by UNIDROIT, and particularly on the best solution to implement in the context of the CMR (TRANS/SC.1/369, paras. 44 and 45).

A. Summary of the context by UNIDROIT

- 1. The CMR - the Convention on the Contract for the International Carriage of Goods by Road - was signed at Geneva on 19 May 1956 and entered into force on 2 July 1961**

When this Convention was drafted under the auspices of the Economic Commission for Europe on the basis of a draft prepared by UNIDROIT, the “consignment note”, the document generally used for the carriage of goods by road and intended to record the relations between contracting parties, could only be conceived of as paper-based.

Since then, other mediums are used in all transport modes – telex, fax, electronic messages (EDI) (cf. documents TRANS/SC.1/2000/9 and TRANS/SC.1/2001/7).

2. A Protocol of 5 July 1978, which entered into force on 28 December 1980, was added to the CMR. The intention was to replace the monetary unit (gold franc) (art. 23, CMR) by a unit of account (SDR), while permitting references to either unit (art. 23, §7 to §9, new).

3. In preparing the new draft protocol to the CMR entrusted to it by the SC.1 Working Party, the Governing Council of UNIDROIT considered the solutions already adopted in other transport modes to legalize electronic data interchange, and in particular the text of the Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI), recently adopted in Budapest on 3 October 2000.

The Governing Council did not, however, wish to restrict discussion to a single text and deemed it preferable to present the Working Party with several texts which could be listed one after another (from the simplest to the fullest).

4. While the SC.1 Working Party is aware of the need of the economic milieu to be provided with a prescriptive instrument to ensure legal protection, it considered that it was necessary to consult the Contracting Parties to the CMR before proposing the adoption by the Inland Transport Committee of a final draft EDI protocol.

B. Explanation of the proposals submitted by UNIDROIT

A new paragraph (§3) is proposed in article 5 of the CMR.

1. *“Unless the parties concerned provide otherwise, the consignment note may be established ...”*

This part of the new paragraph leaves commercial operators free to choose the means of transmitting information that best suits them.

2. *“by any other means of transmitting information, by electronic or other similar means of communication, including, but not limited to, telegram, facsimile, telex, electronic mail or electronic data interchange (EDI)”.*

The draft does not limit the alternative means and leaves the door open for any other means that may be invented.

The draft does not cover general legal issues relating to the use of such means, for example, the place and time of the exchange of consent or the validity of the electronic signature, which are settled by other agreements. Its aim is to permit the means without pronouncing on their use.

3. [*“provided the information is accessible so as to be usable for subsequent reference”.*]

This condition, taken from the CMNI of 3 October 2000, covers the archiving of information so that it remains accessible to the persons concerned who do not possess the necessary electronic equipment, or even other persons (including public authorities and courts).

4. [“*The procedure used for the registration and treatment of data must be equivalent from the functional point of view, particularly so far as concerns the evidential value of the consignment note represented by those data.*”]

The COTIF (Convention concerning International Carriage by Rail, of 9 May 1980), and in particular its Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM - Appendix B to the Convention), was amended in Vilnius, on 3 June 1999.

While maintaining the principle of the confirmation of the contract of carriage by “a consignment note which accords with a uniform model” (art. 6 §2), the COTIF provides that (§9):

“The consignment note and its duplicate may be established in the form of electronic data registration which can be transformed into legible written symbols. The procedure used for the registration and treatment of data must be equivalent from the functional point of view, particularly so far as concerns the evidential value of the consignment note represented by those data.”

The principle of the functional equivalent, although not always expressed, underlies all the amendments to prescriptive texts with a view to the use of electronic data interchange. Equivalence must be achieved in all respects: evidential value, electronic signature, accessibility, conservation of data, etc.

5. [“*If other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.*”]

This paragraph is taken from article 4.2 of the Montreal Convention for the Unification of Certain Rules for International Carriage by Air, of 28 May 1999. Article 4 provides that:

“Any other means which preserves a record of the carriage to be performed may be substituted for the delivery of an air waybill,”

but, in order to avoid electronic “imperialism”, it requires the carrier to issue a paper receipt when the cargo is handed over.

C. Questions

In order to facilitate and, if possible, expedite the adoption of an EDI protocol to the CMR, the secretariat of the Working Party on Road Transport, in collaboration with Professor Jacques Putzeys (UNIDROIT), seeks the opinion of the Contracting Parties on the following questions. The secretariat will prepare a consolidated document on the basis of the replies and will convene a drafting group as soon as possible to prepare a draft protocol.

Questionnaire on the addition of a new protocol to the CMR

1. Do you consider that **an addition should be made** to article 5 of the CRM in order to permit the use of procedures for transmitting information other than the paper-based consignment note?

€ Yes € No

2. Should the new article 5, §3:

(a) € Yes € No, include the following text:

“Unless the parties concerned provide otherwise, the consignment note may be established ...”?

€ Yes € No, express this idea otherwise? And read:

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(b) € Yes € No, include the following text:

“by any other means of transmitting information, by electronic or other similar means of communication, including, but not limited to, telegram, facsimile, telex, electronic mail or electronic data interchange (EDI)”?

€ Yes € No, express this idea otherwise? And read:

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(c) € Yes € No, include the following text:

[“provided the information is accessible so as to be usable for subsequent reference”.]?

€ Yes € No, express this idea otherwise? And read:

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(d) € Yes € No, include the following text:

[“The procedure used for the registration and treatment of data must be equivalent from the functional point of view, particularly so far as concerns the evidential value of the consignment note represented by those data”.]?

€ Yes € No, express this idea otherwise? And read:

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(e) € Yes € No, include the following text:

[“If other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.”]?

€ Yes € No, express this idea otherwise? And read:

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