

Informal document 2

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ROAD TRANSPORT

**Additional Protocol to the Convention on the Contract for the
International Carriage of Goods by Road (CMR) concerning the Electronic
Consignment Note**

*Comments of Contracting Parties to the CMR (Austria, Belarus, France,
Germany, Moldova, Netherlands, Norway, Poland)*

I. FRANCE and POLAND indicated that they agree with the draft Protocol to the CMR as proposed.

II. AUSTRIA

- **Art. 2 para. 2:**

Para. 2, besides a different wording, has the same content as para 1. One of these paragraphs for the sake of clarity has to be deleted. Having the choice, Austria would like to see para. 2 deleted. It is less clear though it seems to be more elaborate. If para. 2 is kept it should be made clear whether the different requirements under subparagraphs (a) to (c) have to be met alternately or concurrently.

Lit. a

There is no need to refer to procedures differing from those of the Convention. It is unclear to which “requirements” and “duties” the provision refers exactly.

Lit. b

The phrase “referred to in paragraph 1 (b)” should be deleted, because it is not necessary for clarification and raises the expectation that “data” is defined more clearly in para.1 (b), which is not the case.

There is no need to have a rule for the amendment of the consignment note as there is no equivalent rule in the Convention.

By providing details in subparas. i to iii it becomes less certain whether a certain consignment note is valid or not.

Lit. c

This regulation obviously aims to clarify the authentication mentioned in par. 1 (c) and should therefore be placed there. But there cannot be any real need for mentioning the different kinds of electronic signatures.

- **Para. 3**

In practice, an electronic consignment note will be issued and the other party will accept this tacitly. This practice could be questioned under this provision. How much does the agreement have to go into details in order to comply with the requirements? What is the consequence of lacking sufficient agreement?

Austria does not see an urgent need for this provision and rather recommends to delete it.

- **Para. 4**

The words “in any case” are not necessary and should be deleted.

III. BELARUS

Belarus has no proposals, additions or modifications to the text of the additional Protocol to CMR Convention but believes that, in the course of further elaboration of mechanisms for

implementation of the Protocol, a procedure should be established for submission by Customs authorities of an electronic bill with a view to carrying out customs control and use of the data reflected in the above electronic bill.

IV. GERMANY

The Federal Foreign Office of Germany herewith submits the following general comments on the draft regarding the CMR:

In principle, the Federal Government is in favour of adopting a protocol additional to the CMR under which electronic consignment notes could be admitted. However, many points contained in the protocol drafted in document TRANS/SC.1/2005/1 still give rise to problems.

re Article 1

For greater clarity, “of 19 May 1956” should be added after the term “CMR”.

re Article 2

Article 2 gives some cause for concern in that it leaves open how to ensure that the electronic consignment note is sufficiently forgery-proof. It is not enough to address issues of storage and accessibility only. Also needed are, in particular, specific regulations stipulating that the electronic consignment note has to be forgery-proof and cannot be altered or manipulated unnoticeably by one party, and that specific contents of the consignment note attributable exclusively to one contract party can only be controlled by that party. Only documents which are sufficiently protected against manipulation can enjoy the evidential effects provided for under article 9 of the CMR.

Article 2 paragraph 3 also seems doubtful in that it leaves it to the carrier and the sender to agree on the procedure regarding the electronic consignment note. Since the protocol does not clarify the conditions under which such a procedure satisfies the requirements and purposes of the CMR under Article 2 paragraph 1, second sentence, (a), and paragraph 2 (a), the parties to such an agreement run the risk that the agreement will not withstand judicial review and that no legal effect will therefore be conferred upon the electronic document. Furthermore, third parties not involved in the agreement (consignee, subsequent carriers) will be at liberty to declare that they are not bound by such an agreement. Ultimately, this legal uncertainty is likely to motivate the parties to fall back on conventional consignment notes. In the interest of legal certainty, it would be preferable to have regulations stipulating exactly how the requirements of the following CMR provisions will be met when an electronic document is issued:

- Article 5 paragraph 1 CMR, stipulating that the consignment note shall be made out in three original copies with the second copy accompanying the goods;
- Article 12 paragraph 2 CMR, pursuant to which the sender’s right to dispose of the goods will cease to exist when the consignment note is handed to the consignee.
- Article 12 paragraph 5 (a) CMR, pursuant to which the exercise of the right of disposal is subject to the production of the first copy of the consignment note;

- Article 13 CMR, pursuant to which the consignee of the goods becomes liable to pay upon delivery of the second copy of the consignment note; and
- Article 34 CMR, pursuant to which, if the carriage is performed by successive carriers, the second carrier may, by accepting the consignment note, become liable to pay.

Furthermore, the relationship between paragraph 1 and paragraph 2 seems unclear. Under the current version of Article 2 paragraph 1, first sentence, and paragraph 2 (a), the consignment note may be made out by any procedure used for the electronic registration and treatment of data, even one which itself differs from those in the CMR. What remains unsettled is the interplay between this provision and the regulations contained in Article 2 paragraph 1, second sentence, in connection with paragraph 2, pursuant to which the electronic consignment note always has to fulfill the same purposes as the conventional consignment note, the data recorded in it must be ready for use at all times and, if needed, be made accessible in paper format, and the consignment note must be authenticated by the parties to the contract of carriage.

It should be clarified that these minimum requirements always have to be fulfilled. Otherwise, the provision could be made more comprehensible by combining paragraphs 1 and 2 into one paragraph.

Paragraph 1, second sentence, (b) (ii) also gives rise for concern. On the one hand, the wording "otherwise" is ambiguous. The data record always has to be transformable into generally legible written symbols. On the other hand, it seems doubtful to demand that, if needed, the data record has to be made accessible in paper format to any person entitled to access it. It should be sufficient that a portable device from which the electronic consignment note can be read is carried in the vehicle in which the goods are loaded (cf. Article 3 paragraph 3 of the proposal forwarded by Germany for an Additional Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR) for the Unification of Certain Rules Relating to the Electronic Consignment Note; ECE Document TRANS/SC.1/2003/1 of 15 April 2003).

Finally, paragraph 2 (c) (ii) also meets with some reservations. To start with, it is unclear what the term "electronic stamp" means. Furthermore, no need for an electronic stamp replacing the electronic signature is evident.

re Articles 3 to 12

The proposed Articles correspond to articles 3 to 12 of the Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR) of 5 July 1978. Articles 10 to 18 of the proposal made by Germany for an Additional Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR) for the Unification of Certain Rules relating to the Electronic Consignment Note (cf. ECE Document TRANS/SC.1/2003/1 of 15 April 2003) correspond to the designated provisions; however, they are more precise and should therefore be preferred. Article 11 (c) should in any case be deleted, since Article 2 paragraph 2 does not contain any provision on notifications.

V. MOLDOVA

The Ministry of Transport and the Road Industry of the Republic of Moldova has examined the draft additional Protocol to the CMR and expresses its support and willingness to make

use of it in the future. It seems to simplify the existing procedures and be capable of securing information transmission processes.

At the same time, being aware of the difficulties that could occur in the implementation of the transport contract and after careful consideration with local transport authorities, Moldova has arrived at the conclusion that the electronic consignment note should be introduced step by step. In this regard, it would be desirable during some years of its implementation to use simultaneously the registration of data on paper too. If not, local transport operators might reject it and would not want to conclude transport contracts without having such electronic systems.

VI. NETHERLANDS

The Netherlands can agree with the main lines of this additional protocol but we still do have some questions/remarks/amendments to individual articles.

a. Article 2 para. 1 sub b (i)

In article 2 para. 1 sub b (i) it is demanded that data “are stored, archived and ready for use at any time and as long as may be necessary to comply with the Convention and the national legislation applicable as a result of its institution”.

In this article, reference is made to national public law legislation in which rules are set about the availability of the consignment note in the truck. The national public laws vary from country to country; practically this means that when a lot of CMR countries have ratified the CMR protocol but have not yet adapted their public law with regard to (paper) consignment notes, the application of the electronic consignment note will be laborious. Is there a way of harmonization on this matter?

b. Article 2 para. 1 sub b (ii)

In article 2 para. 1 sub b (ii) it is demanded that the data “may be transformed into legible written symbols or made otherwise accessible to any person entitled to access them, even if he does not have adequate technical equipment”.

Together with sub b (i) it is understood that the user of the electronic consignment note shall be able to present it at any time. In practice this means for the time being (except for the usage of the digital CMR consignment note) that every truck driver should have a portable computer on which he can show the electronic consignment note, a valuable business.

c. Article 2 para. 1 sub c

In article 2 para. 1 sub c it is stated that the consignment note ““is authenticated by the parties of the contract of carriage”.

‘Authentication’ is then drawn up in article 2 para. 2 sub c. The protocol limits itself here to “the sender and the carrier” Since this whole protocol aims at the sender and the carrier, the Netherlands pleads for replacement of the words “parties to the contract of carriage” by “sender and carrier”.

d. Article 2 para. 2 sub b

Article 2 para. 2 sub b demands that the data “be supplemented or amended. (in transit... etc”).

The Netherlands pleads strongly for additional rules on this item. All modifications or additions made into the document shall be visible as such. In other words, it should be clear who makes which changes and when they are made.

The 3rd remark in the introductory note about “functional equivalence implies that (...) the actual data are secure” supports the Dutch plea to make the modifications visible.

e. Article 2 para. 2 sub b (ii)

This article 2 para. 2 sub b (ii) speaks about “Contracting Parties”. Since this whole protocol aims at the sender and the carrier, the Netherlands pleads for replacement of the words “Contracting Parties” by “the sender and the carrier”.

f. Article 2 para. 2 sub c

This article speaks about “consignment notes”. This should be “consignment note”.

g. Article 2 para. 4

Article 2 para. 4 states that “the carrier shall in any case hand over to the sender, at the latter’s request, a receipt for the goods and all information necessary for identifying the shipment and for access to the consignment notes to which this Protocol refers”.

The Netherlands pleads strongly to make this provision reciprocal, so that the carrier as well can ask for a receipt. On the contrary to some other countries, in the Netherlands the sender (usually) draws up the consignment note.

h. Article 2 para. 5

This article is related to the enclosed documents (in electronic form), especially customs documents. With regard to these documents the same requirements are demanded as for the electronic consignment note, namely the requirements of article 2 para. 1 sub b and para. 2 sub b. Paragraph 2 sub b deals with the possibility of modification or addition of the consignment note (“the data be supplemented or amended...”). It is supposed that this (be supplemented or amended) does not count for the enclosed documents? This is concluded from the wording of paragraph 2 sub b because the modifications and additions of the data have to be “in accordance with the Convention”. A modification “in accordance with the Convention” can for example be a change in the unloading address, given by the sender along the way (the Convention provides for this possibility), which is ‘noted’ by the truck driver. The Convention does not know any regulations with regard to modifications and additions in relation to the enclosed documents. The Netherlands would like to see this assumption confirmed.

i. Finally

Remark 4 of the introductory note on page 9 states that “receipts will continue to be necessary for following up the cargo (tracing)”. According to the Netherlands this remark is to be cancelled.

VII. NORWAY

Norway supports the basic aim of the draft Protocol – to allow electronic consignment notes. However, Norway has some remarks concerning Article 2 in the draft text as it appears in the English version of the revised Protocol.

Paragraph 1 (a) makes a general reference to “ the requirements and [...] the functions prescribed by the Convention”. Paragraph 2 (a) has the same kind of reference to the CMR (“goal of a requirement or a duty demanded by the Convention”). In Norway’s view, these general references to the CMR might lead to misunderstandings and different interpretations. Such problems could be avoided by choosing a more precise wording, e.g. by referring to the relevant Articles in the CMR.

Paragraph 1 (b) (i) refers to “national legislation applicable as a result of its institution”. It is not obvious which legislation this would actually refer to. Norway would prefer this reference to be written out in a more precise manner, e.g. by stating the criteria according to which the choice of law is to be determined.

Finally, Norway has a small observation concerning paragraph 4. In this context, it might be useful to state expressly that the “receipt” shall be in writing – if that is what is intended.
