

Working Party on Road Transport

(One hundredth session, 17-19 October 2006
agenda item 5)

Additional Protocol to the CMR

Comments by Austria, France, Netherlands and United Kingdom

Austria

In general:

Austria has taken the opportunity to consult its Chamber of Commerce about the need for an electronic consignment note. Such a need – for several reasons – has been largely denied (except in courier and parcel service).

In Austria, including especially its exportation economy, there are at the moment no electronic solutions in use on the transport market. Authorities require paper documents, especially in Eastern Europe, a very important trading partner for the Austrian economy. Therefore, the electronic consignment note could lead to costly double effort and not be effective.

Furthermore, neither senders nor carriers or consignees have the necessary technical equipment for electronic consignment notes at hand. The implementation of an electronic consignment note would be very expensive, as every lorry would have to be equipped with a board computer, and that would, from the point of view of business management, not be advantageous. It is true that it is not intended to provide for a duty to use an electronic consignment note, but even if sender and carrier agree on the use of an electronic consignment note, this would be at the expense of the consignee, that has no direct influence on this decision and is not technically well equipped either. It is very important that the consignee can exercise its rights under the Convention even if he doesn't have the necessary technical equipment, e.g. to give an electronic signature.

For Austrian transport economy it is absolutely indispensable to keep the evidentiary and legitimacy function of the consignment note unaltered.

In short, Austria does not have an urgent need to support the implementation of the electronic consignment note as soon as possible. However, it is open for technical development and does not want to hinder it in the long run. With regard to this, it is important to consider the intended regulations carefully, that they can be of real support to practice and do not leave open essential questions. Therefore, Austria would prefer a rather detailed, but flexible legal solution. The following statement on the two new drafts is to be seen in the light of these general remarks:

Remarks regarding ECE/TRANS/SC.1/2005/1/Rev.1:

- 1 Article 1 is supported, including the word [logical], because this phrase already exists in EU-legislation, and an alteration of the terms could lead to questions of interpretation.
- 2 Article 2 para 1 is necessary for the consistence of the Convention and useful in practice. Para 2 regulates the evidentiary function of the electronic consignment note and is therefore very

important. The sentence in brackets should be deleted, because it adds legal uncertainty to the first part of the sentence – does the electronic consignment note have the same effect or not? – and it operates with open terms such as the “goal of a requirement or a duty required by the Convention”. As regards terminology, Austria would prefer to drop the references to “articles 4 and 5” of the Convention, because it is incomplete. That is also true for Article 4 para 1. The consignment note is also regulated in other provisions of the Convention.

- 3 Article 3 is – in general – supported, as it emphasizes the authentication of the consignment note, that is important for its legitimacy and evidentiary function. Also, the reliable electronic signature already exists in EU – legislation and adds to the uniformity of law, even if the “reliable electronic signature” is not equivalent to the “advanced electronic signature” under the EU-regulation on electronic signatures. It could, however, be unclear who is meant by “parties to the performance of a contract of carriage”. For example, in Article 5 of the convention, regulating the issuance of a paper based consignment note, it is the sender and the carrier that have to sign the electronic consignment note. This terms should be used here as well. “Parties to the performance” could be interpreted restrictively, meaning only parties that perform the carriage. Para 3 should clarify that the information should be accessible “even if the party entitled thereto does not have the adequate technical equipment”, a provision that is very important for the consignee.
- 4 Article 4 is also essential. Para 2 compensates for the facilitated signatory requirements under Article 3 para 2. Para 3 is again important for the integrity of the electronic consignment note.
- 5 Article 5 enables the parties to chose an electronic consignment note, if they agree on certain particulars. Here it is again questionable if “the parties making use of” is clear enough. Does this also include third parties, such as the holder or consignee? In lit c, the party entitled to the rights arising out of the electronic consignment note could be the consignee. Is the word “party” here used in the same meaning? In any event it should be made clear that and how third parties can exercise their rights without the adequate technical equipment, be it by requiring that they also have to agree on the use of the electronic consignment note, or by adding it to the contract particulars. Furthermore, the contract particulars regulating the implementation of the electronic consignment note should be contained in the electronic consignment note itself for legal certainty to addressees of the consignment note.
- 6 Article 6 is supported.
- 7 Furthermore, in order to ensure the evidentiary function of the consignment note, the case of parallel electronic and paper consignment notes should also be regulated. Just one form should, in this case, be valid. Furthermore, during transportation it could turn out to be necessary to replace the electronic consignment note by a paper-based consignment note. That should be possible unanimously and require the deletion or remark of deletion of the electronic consignment note in order to avoid misleading.

Remarks regarding ECE/TRANS/SC.1/2006/1:

Despite of being party to the Montreal Convention, Austria is not in favour of a provision based on Article 4 of the Montreal Convention. The air waybill under the Montreal Convention has a very limited function, which is already shown by the lack of detailed provisions in this instrument. The road transport, however, is not comparable to the air transport. It needs to be much more flexible, the consignment note is very important as document accompanying the goods. That is also shown by the various provisions in the CMR, regulating reservations, remarks as well as instructions on the consignment note. Furthermore, this draft does not contain any provisions on authentication or evidentiary function. Para 3 cannot solve that issue because it is much too general.

To conclude, Austria prefers ECE/TRANS/SC.1/2005/1/Rev.1 as a basis for further discussions.

France

France supports the proposed additional Protocol presented by the Editorial Committee in document ECE/TRANS/SC.1/2005/1/Rev.1.

Netherlands

We are not in favour of deleting the word "logically" in article 1 as suggested by IRU. The requirement that there has to be a logical relation in the e-consignment note with other attachments is important for proof.

If someone files a claim based on the attachments there has to be prove that these attachments are logical parts of the e-consignment note. Compared to the mentioning of accompanying documents on the paper consignment note, this is not an unreasonable requirement.

In the definition of the e-consignment note is stated that it contains information "in one or more messages". Compared to the paper consignment note this is, in our opinion, not advisable as a shipment cannot include more than one consignment note because the instructions on the various consignment notes may contradict. The e-consignment note can however consist of several succeeding messages that jointly form the e-consignment note.

In the definition of the e-consignment note we would furthermore like to change the wording as follows:

".. communication by a carrier, *a sender* or any other party ..."

The sender is co-responsible for drawing up of a consignment note. That is why also the sender should be mentioned.

In article 2 a reference to article 6 of the Convention is missing (see IRU model). Possibly a reference to chapter III would be appropriate.

United Kingdom

We have discussed these texts with our industry stakeholders, the Road Haulage Association and the Freight Transport Association.

The United Kingdom supports initiatives to reduce the administrative burden for hauliers and has no strong preference between the drafts presented. We welcome efforts by the Working Party to introduce the option of electronic consignment notes and support this work on the understanding that it will be an alternative to, rather than a replacement for the paper notes that are presently used so that consignors and carriers have an option to retain the paper ones if they prefer to.

However, it is essential that any electronic consignment note introduced is interoperable across all countries and borders because the CMR forms are checked by enforcement officials and are often regarded as a "Journey Form" giving details of the goods carried. It is essential that enforcement officials are able to recognise that some hauliers will chose to use electronic consignment notes, rather than the paper ones and will not be subject to penalties for doing so.
