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#### Working Party on Rail Transport

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

##### Eleventh session

Geneva, 10–12 June 2015

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

### Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Attendance.....	1–4	2
II. Adoption of the agenda (agenda item 1) .....	5	2
III. Unification of international railway law with the objective of allowing rail carriage under a single legal regime (agenda item 2).....	6–35	2
IV. Identification of an appropriate management system for unified railway law based on the experience of international organizations in the field of the railway transport (agenda item 3).....	36	7
V. Other Business (agenda item 4).....	37	7
VI. Date of next session (agenda item 5).....	38	7
VII. Summary of decisions (agenda item 6) .....	39	7

## **I. Attendance**

1. The Group of Experts towards Unified Railway Law held its eleventh session from 10 to 12 June 2015 in Geneva.
2. The session was attended by experts from the following countries: Belgium, Finland, Germany, Poland and the Russian Federation.
3. Experts from the following intergovernmental organizations participated: Intergovernmental Organisation for International Carriage by Rail (OTIF) and the Organization for Cooperation between Railways (OSJD). Experts from the following non-governmental organization participated: International Rail Transport Committee (CIT) and International Union of Railways (UIC).
4. At the invitation of the secretariat, experts from the following organizations and an industry group participated: CMS Cameron McKenna, Deutsche Bahn AG, the international association “Coordinating Council on Trans-Siberian Transport” (CCTT) and PLASKE JSC.

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

*Documentation:* ECE/TRANS/SC.2/GEURL/2015/5

5. The Group of Experts adopted the provisional agenda.

## **III. Unification of international railway law with the objective of allowing rail carriage under a single legal regime (agenda item 2)**

*Documentation:* ECE/TRANS/SC.2/GEURL/2015/7

6. The secretariat prepared a draft (ECE/TRANS/SC.2/GEURL/2015/7) of relevant legal provisions to be included into a new international legal railway regime for consideration by the Group of Experts in accordance with the decisions of the Group made at the tenth session (ECE/TRANS/SC.2/GEURL/2015/2, para. 51).
7. The experts reviewed ECE/TRANS/SC.2/GEURL/2015/7 to reconsider the wording substantively and linguistically in three languages (English, French and Russian) as well as to set all open issues. This revision of the document was done article by article focusing on open issues.
8. Five chapters were introduced in the text with the following titles:
  - (a) Chapter 1. General provisions (Articles 1–4);
  - (b) Chapter 2. Conclusion and performance of the contract of carriage (Articles 5–19);
  - (c) Chapter 3. Liability (Articles 20–28);
  - (d) Chapter 4. Settlement of claims (Articles 29–32);
  - (e) Chapter 5. Relations between carriers (Articles 33–35).
9. Article 1. Scope of Application  
The word “for reward” was deleted in paragraph one.

## 10. New Article 2. Definitions

Under the definition of the “Contract of carriage” the word “any” was replaced by the word “a” and the word “in” replaced by the word “under”. The word “reward” or “remuneration” were put in brackets in order to be further considered. Furthermore the phrase “under the conditions provided by this legal regime” was added in the end of the definition.

Under “Subsequent carrier” definition the word “person” was replaced by the word “carrier”. In addition the definition of “Substitute carrier” was deleted.

Under “Consignee” definition the phrase “in accordance with the contract” was added in the end of the definition.

Under the “Person entitled” definition the phrase “... to make a claim or to bring an action against the carrier” was replaced by the phrase “... dispose of the goods”, because Article 31 (new) about the “Right to bring an action against the carrier” was put in brackets and might be deleted at the next session.

Under the definition of “Goods” the secretariat proposed the addition of the following phrase “The parties to the contract may agree that a wagon, either empty or loaded, is not used as a means of transport by the carrier but is carried as goods under the contract of carriage”.

Under the “Consignment note” definition the phrase “... which evidences the contract of carriage and the instructions given to the carrier” was replaced by the phrase “... which confirms the conclusion and the content of the contract of carriage”.

Under the “Costs relating to carriage” definition the word “and” was inserted before the “incidental costs” and the phrase “which are justified and ...” was inserted before the word “necessary”. In addition, the phrase “caused by circumstances beyond the carrier’s control” was replaced by the phrase “incurred from the conclusion of the contract until delivery”.

Under the “Carriage charges” definition the word “reward and/or remuneration” were put in brackets for further consideration by the experts.

Under the “Tariffs” the words “... General Conditions of Carriage, including ...” were put in brackets for further consideration by the experts.

Under the “Intermodal transport unit” the words “... a / any type of ...” were put in brackets for further consideration by the experts and the words “... for the transport of goods ...” were inserted before the words “in intermodal transport”.

## 11. Article 5. Contract of carriage

With regard to the insertion of the new Article 2, “Definitions”, the following articles got new numbers: Article 4 became Article 5 and so on.

The word “together” before the word “establish” and the word “standard” before the word “model” were inserted in the second sentence of paragraph 2 of the article. In addition the word “shall” was decided to be inserted before the word “be made out” in the third sentence of paragraph 2. The words “or other means of identification” were inserted in the end of the first sentence of paragraph four. Furthermore, in the second sentence of paragraph four the word “approved” was replaced by the words “agreed upon”.

## 12. Article 6. Content of the consignment note

A new small (f) was inserted in paragraph two of the article mentioning the following: “additional information on specific requirements relating to the handling of the

goods”. In addition in paragraph three the word “any” before “other particulars” was deleted. In addition, the words “relating to carriage” were inserted after “other particulars”.

13. Article 7. Responsibility for particulars entered on the consignment note

The phrase “or specific requirements relating to the handling of the goods” was inserted in the end of small (b) of paragraph one. Furthermore, the phrase “or specific requirements relating to the handling of the goods” was inserted after the “nature of the goods” in the first sentence of paragraph two. In the same sentence the words “at any time” were put in brackets for further consideration and the words “and the potential risk” were inserted after the “circumstances”. In the second sentence of the same paragraph the word “dangerous” was deleted before the word “goods” and the words “or the specific requirements of the goods” were inserted before the “on taking them over”.

14. Article 8. Payment of the costs relating to carriage

The words “the costs relating to carriage” in the first sentence of paragraph one were replaced by the words “carriage charges”. In addition in the same sentence the phrase “the carriage charges, incidental costs, customs duties and other costs incurred from the conclusion of the contract until delivery” was moved to Article 2, Definitions. The phrase “other costs relating to carriage shall be paid by the consignor when they are caused by circumstances beyond the carrier’s control” was inserted in the end of the first sentence of the first paragraph. In the second paragraph the numbers “14” and “15” were replaced by the numbers “15” and “16”.

15. Article 9. Payment of costs relating to carriage, which are based on tariffs

Paragraph two and four were put in brackets for further consideration by the experts. In paragraph three, in the first sentence, the words “compensated for” were replaced by “reimbursed of” and the words “all expenses related to” replaced by the words “all costs relating”. In the second sentence the word “expenses” was replaced by the word “costs”. The phrase “Compensation for additional costs is carried out according to § 2 of this Article” in the end of paragraph three was put in brackets for further consideration by the experts.

16. Article 10. Examination

In the second sentence of paragraph one the phrase “who has the right to dispose of the goods” was replaced by the word “entitled” with regard to the new definition of the “person entitled” in Article 2 No. 8 (new).

17. Article 11. Evidential value of the consignment note

The words “by the consignor and the carrier according to Article 4 § 3” in the first sentence of paragraph one and the first sentence of paragraph two were replaced by the words “parties to the contract according to Article 5 § 3”.

18. Article 12. Packing, Loading

The phrase “unless the defect was apparent or known to the carrier at the time when he took over the goods and he made no reservations concerning it” which is being mentioned in the end of paragraph one was inserted in the end of the first sentence of paragraph two.

19. Article 16. Right to dispose of the goods

The experts decided to insert the word “place” (and not the word “country”) in the second sentence of paragraph two before the word “of destination”. Furthermore the phrase “against a receipt and payment of all amounts due according to the contract of carriage” was deleted in paragraph four.

20. Article 17. Exercise of the right to dispose of the goods

This article was changed with regard to the new definition of the “person entitled” in Article 2 No. 8:

In the first sentence of paragraph one the word “entitled” was inserted after the word “person”. The following phrase was inserted in the end of paragraph one: “If the consignment note so prescribes the person entitled has to produce to the carrier its original of the consignment note on which the new instructions have to be entered”.

In the first sentence of paragraph four the words “... entitled to make a claim” were replaced by the words “who has the right to bring an action against the carrier”. In the beginning of the second sentence of paragraph four the following phrase was inserted “If in the case mentioned in § 1 sentence 2”. In addition, in the end of the same sentence the following phrase was inserted: “to the person who has the right to bring an action against the carrier”.

21. Article 18. Circumstances preventing carriage and delivery

In paragraph one the words “to dispose of the goods” were deleted after the word “entitled” with regard to the new definition of the “person entitled” in Article 2 No. 8. The second sentence of paragraph one remained in brackets for further consideration by the experts.

22. Article 19. Consequences of circumstances preventing carriage and delivery

In the first paragraph, first sentence, “Article 17” was replaced by “Article 18”. In the second paragraph, first sentence the words “within a reasonable time” were inserted. The words “and taking into account the different conditions of the goods” were also inserted after the words “reasonable time” but was decided to be put in brackets for further consideration. The words “to dispose of the goods” were deleted in the end of sentence one of paragraph two with regard to the new definition of the “person entitled” in Article 2 No. 8. The sentence “All measures have to be taken in compliance with the legislation in force” was inserted in the end of paragraph three.

23. Article 20. Basis of liability

The phrase “the carrier who has concluded the contract of carriage” in the beginning of the first sentence of paragraph one was replaced by the words “contractual carrier”. The word “subsequent” was inserted before the word “carriers” in paragraph two. Paragraph three of this article was deleted.

24. Article 21. Presumption of loss of the goods

This article was changed with regard to the new definition of the “person entitled” in Article 2 No. 8:

The words “the person entitled” in the beginning of the first sentence of paragraph one were replaced by the words “The person who has the right to bring an action against the carrier”. In the beginning of the first sentence of paragraph two the word “entitled” was deleted and the word “that” was inserted before the word “person”. In the first sentence of paragraph three the word “entitled” after the word “person” was replaced by the phrase “who has the right to bring an action against the carrier”. In addition in the same paragraph, in the last sentence “Article 25” was replaced by “Article 26”.

25. Article 22. Compensation for loss

In the beginning of paragraph three the following phrase was inserted: “Unless otherwise agreed by the parties pursuant to Article 3 § 2”. Furthermore the “17” units of account per kilogram of gross weight was inserted as value. In paragraph four, first

sentence the words "... charges paid in respect of the ..." were replaced by the words "... costs relating to".

26. Article 23. Unit of account

"Article 21" in the first and second sentences of paragraph one was replaced by "Article 22". The last sentence of paragraph one was kept in brackets for further consideration by the experts.

27. Article 24. Liability for wastage during carriage

"Article 19 § 4" in paragraph five was replaced by "Article 20 § 3".

28. Article 25. Compensation for damage

"Article 21 § 2" in paragraph one and "Article 21 § 3" in paragraph two was replaced by "Article 22 § 2" and "Article 22 § 3" respectively.

29. Article 26. Compensation for delay in delivery

In paragraph 4 the "person entitled" was replaced by the "person who has the right to bring an action against the carrier" (cf. the new definition of the "person entitled" in Article 2 No. 8). In addition, in the same paragraph "Article 13" was replaced by "Article 14".

30. Article 28. Other actions

In paragraph two, "Article 26" was replaced by "Article 27".

31. Article 30. Claims

The word "claimant" replaced the words "the person entitled" in paragraphs five and seven with regard to the new definition of the "person entitled".

32. Article 31. Right to bring an action against the carrier

The article was put in brackets for further consideration by the experts.

33. Article 32. Carriers against whom an action might be brought

The word "based on" replaced the word "relating to" in paragraph one.

34. Article 35. Agreements concerning recourse

"Articles 32 and 33" were replaced by "Articles 33 and 34".

35. The experts requested the secretariat to develop, on the basis of the discussions held by the Group of Experts during the tenth session, a revised draft text of the new legal regime for the next session (14–16 October 2015) of the Group for its consideration and review. The experts agreed that considerable work has been done so far and expressed their hope that the text of the new legal regime will be finalized and agreed upon during their last session in the autumn of 2015.

#### **IV. Identification of an appropriate management system for unified railway law based on the experience of international organizations in the field of the railway transport (agenda item 3)**

*Documentation:* ECE/TRANS/SC.2/GEURL/2015/4, ECE/TRANS/SC.2/GEURL/2013/12, Informal documents SC.2/GEURL Nos. 2, 3 and 9 (2014)

36. The Group of Experts recalled the discussions at its previous sessions on identifying an appropriate management system for the new legal railway regime. The Group of Experts also recalled that a decision on an appropriate management system for the unified railway law is one of the three main tasks remaining. However they decided not to discuss this agenda item during the eleventh session of the Group and to continue discussions and possibly come to a conclusion on this issue, on the basis of ECE/TRANS/SC.2/GEURL/2015/4 prepared by the secretariat, at its next session.

#### **V. Other Business (agenda item 4)**

37. The OSJD secretariat informed the Group of Experts on the adoption of the new, updated SMGS agreement and requested the secretariat to identify ways under which this new SMGS agreement could be registered at the United Nations.

#### **VI. Date of next session (agenda item 5)**

38. The next session of the Group of Experts is scheduled to be held at the Palais des Nations in Geneva from 14 to 16 October 2015.

#### **VII. Summary of decisions (agenda item 6)**

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

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