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#### Working Party on Rail Transport

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

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###### Execution of the Mandate of the Group of Experts

###### Scope of URL and its conversion into a legally-binding instrument

## **Benchmarking of SMGS, CIM provisions and draft of provisions of legal status of carriage of cargo in international rail traffic (URL), developed within a group of experts of ITC UN ECE on unified railway law**

Transmitted by the Government of the Russian Federation\*

### **I. Introduction**

JSCo "RZD" have carried out a benchmarking of provisions of SMGS, CIM and URL, which results are provided below. This document was prepared further to the decision of Group of Experts towards Unified Railway Law of its twentieth session.

### **II. Status of application of the agreement**

**SMGS** - paragraph 1, art. 3: all carriage of goods in direct international rail traffic and direct international rail and ferry traffic between the territories of member states.

**CIM** - art. 1: place of taking over and place for delivery are situated in different member states. It is possible to make a caveat about application to only part of the infrastructure. Multimodal transportation is allowed.

**URL** - art. 1: place of taking over and place for delivery are situated in different member states + if the transportation agreement provides for application of customs-approved treatment (the parties to the agreement shall agree about that) + provided that CIM and SMGS do not apply to the agreement covering the whole carriage. It can be applied to transportations by other means of transport.

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\* The present document was submitted after the standard deadline.

### III. Transshipment

SMGS in contrary to CIM and URL provides that carriage of cargo is done without any transshipment at the frontier railroad stations that have the same track gauge or with transshipment of the cargo or with gauge changing at the frontier connection railroad stations with different track gauge or via usage of variable gauge system.

### IV. Transportation agreement

In accordance with SMGS transportation agreement is a real contract, by virtue of which it is acknowledged as concluded from the moment when the dispatch station accepts the cargo for transportation, i.e. from the moment the waybill is issued. According to CIM transportation agreement is a consensual contract, i.e. the parties first sign the transportation agreement and then the waybill is issued in confirmation thereof. At this even if the waybill is not issued, the agreement remains in effect.

**SMGS** - art. 14 contains a limited list of reasons for refusal of transportation (paragraph 2); contents of the waybill is set by Appendix No 1 to SMGS. Waybill forms are printed and they are filled in one or two working languages (Russian and Chinese)

**CIM** - art. 6 does not set directly neither the mandatory form of the waybill, nor the languages for filling it, providing the parties to the agreement with an opportunity to agree these matters. International associations establish unified samples of waybills subject to agreement with international associations of consumers and competent customs authorities of the member states, as well as with any regional economic integration organization, legally qualified to set one's own customs prescriptions.

**URL** - art. 5, art. 6: consensual contract Possibility for the parties to transportation agreement to agree on filling in the waybill. International associations of carriers can make a typical model of the waybill.

**Conclusion: URL provisions are close to those of CIM.**

### V. Liability for the data included into the waybill

**SMGS** - art 16: a penalty equal to fivefold freight charge (or charge for transportation of excess of the cargo, due to the carrier who detected such violation).

**CIM** - art. 8: the consignor shall bear liability for all expenses and losses of the carrier.

**URL** - art. 7: the consignor shall bear liability for all expenses and losses of the carrier.

**Conclusion: URL provisions are identical to those of CIM.**

### VI. Freight payment

**SMGS** - art. 31: pursuant to the general rule the consignor shall pay to everybody except the carrier handing over the cargo who is paid by the consignee.

**CIM** - art 10: pursuant to the general rule the consignor shall pay to all carriers.

**URL** - art. 8: pursuant to the general rule the consignor shall pay to all carriers.

**Conclusion: URL provisions are identical to those of CIM.**

### VII. Delivery period

**SMGS** - art. 24: for containers - one day for each commenced 150 km, for other dispatches - one day for each commenced 200 km. Cargo delivery period shall be extended for 1 day for operations related to shipping of the cargo. Cargo delivery period shall be extended for 2 days: - for each and every transshipment of the cargo into wagons of a different track gauge;

- for each movement of roll-on/roll-off wagons onto bogies of a different track gauge; - when the cargo is transported in direct international rail-ferry traffic. The period can be changed as agreed by the parties.

**CIM** - art. 16 a) for single wagon load:

- 12 hours for departure,

- cargo delivery period - 24 hours for each commenced 400 km

b) for small consignments:

24 hours for departure;

- cargo delivery period: 24 hours for each commenced 200 km.

The carrier may set additional delivery period in certain circumstances.

The period can be changed as agreed by the parties.

**URL** - should the period be not agreed in the agreement the delivery has to take place within the time that can be reasonably required from the carrier acting in good faith taking circumstances of the carriage into consideration.

**Conclusion: URL does not set exact delivery periods but assumes that there is an agreement between the parties. Otherwise period that might reasonably be required by the carrier acting in good faith is provided (this wording provides for broad interpretation)**

## VIII. Liability chargeable unit

For **SMGS** – CHF.

For **CIM** - art.9 of COTIF: special drawing rights (SDR).

For **URL** - art. 22 SDR.

Conclusion: URL provisions are identical to those of CIM.

## IX. AA

**SMGS** - art. 44 within the fair value of the cargo, and when declared value cargo is transported - within the declared value.

**CIM** - art. 30, 32: limit 17 SDR for 1 kg of the cargo.

**URL** - art. 21, 24: limit 17 SDR for 1 kg of the cargo, unless the parties to the transportation agreement agreed otherwise.

**Conclusion: URL provisions are almost identical to those of CIM.**

## X. Indemnification due to late delivery

**SMGS** - art. 45: indemnification standards are set (6 to 30 percent of the freight charge of the delayed carrier).

**CIM** - art. 33: the carrier shall pay indemnification the amount of which cannot exceed fourfold freight cost.

**URL** - art. 25: inflicted damage is to be indemnified but the amount of such indemnification cannot exceed 1/2 of freight charges. The agreement may provide for other terms, however the consignee has the right of choice as to whether to recover damages according to the agreement or URL terms

**Conclusion: URL provisions set indemnification standards the indemnification amount under which when applied can be higher than the one calculated in accordance with SMGS.**

## **XI. Period of prescription**

SMGS - art. 48: on exceeding the period of prescription - 2 months, other claims - 9 months.

CIM - art. 48: 1 year, for some claims - 2 years.

URL - not Defined

**Conclusion: under URL this matter is actually governed by the local legislation At the same time, with regards to claims on exceeding the period of prescription, paragraph 3 of art. 28 of URL stipulates a period of 60 days upon handing the cargo over (similar to SMGS).**

## **XII. Competence of court**

SMGS - art. 47: only at the respondent's domicile.

CIM - art. 46: court as agreed by the parties, either at the respondent's domicile or at the location of acceptance of the cargo for transportation or its handing over.

URL - not defined

**Conclusion: this matter is not settled by URL provisions and, consequently, the parties can agree any wording when entering into a transportation agreement.**

## **XIII. Recourse**

SMGS - art. 36: limitation of the period to 75 days. A procedure for filing and hearing is set.

CIM - art. 50-52: No limitation of the period. A procedure for filing and hearing is set.

URL - art. 33, 34. The right is provided for, but the filing and hearing procedure is not set.

**Conclusion: in contrast to provisions of SMGS and CIM, URL provisions do not set a procedure for filing and hearing recourse.**

## **XIV. Loss and Damage Report**

SMGS - yes. Art. 29, section VII of the Rules for cargo transportation

CIM - yes. Art. 42

URL - not provided for.

**Conclusion: URL provisions do not provide for drawing up a loss and damage report in case of damage. Notification on the damage shall be done by the affected (art. 28 of URL) At the same time it is supposed that railway companies will draw up loss and damage report based on their motivation in determining the location where the damage occurred, in order to find out the company liable for it. Such conclusion was made further to "virtual" test carriage during the meeting between DB AG, PKP Cargo and JSCo "RZD" in Berlin on May 15-17, 2017.**

## **XV. Consignor's liability**

SMGS - the following will be recovered from the consignor during the carriage: actual damage, as well as the penalty equal to fivefold of the freight charge due to the carrier

detecting the violation (or fivefold of the freight charge for transportation of the excess of the cargo weight, should data on weight be understated in the waybill).

**CIM** - art. 8. The consignor shall be held liable for all expenses and losses of the carrier.

**URL** – art. 7 all expenses and losses of the carrier will be recovered.

**Conclusion: URL wording is identical to that of CIM and allows for conclusion that loss of profit is also stipulated for.**

## **XVI. Right of control**

**SMGS** - the carrier shall comply with the consignor's instructions, unless it received an instruction from the consignee on changes to the transportation agreement or it issued a waybill to the consignee.

**CIM** - art. 18

**URL** - art 15: the carrier shall comply with the consignor's instruction unless the cargo has reached its destination.

**Conclusion:** it is not clear what is meant by reaching the destination. Besides, the draft of URL provides for the possibility of the consignor to indicate a different moment of transfer of the right of control from it. It can be assumed that such instruction can be included into the waybill. However, as the URL waybill is not approved for the time being, it is not possible to determine the procedure of transfer of this instruction. **Provisions of the paragraph 1 of article 15 of URL can have negative outcomes for the carrier's activity, connected to violation to its business processes, traffic schedule, directions of the freight flow, affect delivery period, quality of the cargo, payment of sums due to the carrier.**

## **XVII. Indemnification in case of loss of/damage to the cargo**

**SMGS** - art. 42: indemnification amount is determined on the basis of the cargo cost. Besides all freight payments and other expenses of the consignor (consignee) received by the carrier for transportation of the lost cargo or its lost part, should they not be included into the cost are subject to return. Lowering of the cost of the cargo that is to be indemnified shall be done in accordance with the national legislation. Settlement under SMGS is made in CHF.

**URL** - art. 21, 24: should transported cargo have a value not exceeding 17 SDR for 1 kg, the damage is indemnified to the affected in full. Should the cargo cost based on 1 kg exceed 17 SDR, the extent of the damage exceeding this limit is not indemnified. At this URL does not determine which exchange rate the carrier shall use. Besides the carrier shall indemnify the freight charges, paid customs fees and other expenses related to the transportation.

**Conclusion: it is not clear which exchange rate the carrier shall use when calculating the extent of the damage.**