



Economic Commission for Europe**Inland Transport Committee****Working Party on Rail Transport****Group of Experts towards Unified Railway Law****Twentieth session**

Geneva, 9–11 July 2019

**Report of the Group of Experts towards Unified Railway
Law at its twentieth session****Contents**

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I. Attendance

1. The Group of Experts towards Unified Railway Law (Group of Experts) held its twentieth session from 9 to 11 July 2019 in Geneva. The session was chaired by Mr. A. Druzhinin (Russian Federation).
2. Representatives of the following countries participated: Croatia, Germany, Greece, Latvia, Luxembourg, Poland, Russian Federation, Switzerland and Turkey. Representative from the European Union also participated. Representative of the Trans-European Railway (TER) projects also attended.
3. Experts from the following intergovernmental organizations participated: Intergovernmental Organization for International Carriage by Rail (OTIF) and Organization for Cooperation between Railways (OSJD). Experts from the following non-governmental organization attended the session: International Rail Transport Committee (CIT).
4. Experts from the following organizations participated at the invitation of the secretariat: Deutsche Bahn AG (DB), PKP CARGO S.A. (PKP), JSC “Russian Railways” (RZD), Plaske and the University Frankfurt on Main.

II. Adoption of the agenda (agenda item 1)

5. The Group of Experts towards Unified Railway Law adopted the agenda of its twentieth session (ECE/TRANS/SC.2/GEURL/2019/7).

III. Execution of the Mandate of the Group of Experts (agenda item 2)

Documentation: ECE/TRANS/SC.2/GEURL/2019/9, ECE/TRANS/SC.2/GEURL/2019/10, ECE/TRANS/SC.2/GEURL/2019/11, ECE/TRANS/SC.2/GEURL/2019/12

6. The Group of Experts considered and discussed its tasks stemming from its detailed workplan:
 - (a) Monitoring of the finalization of necessary documents:
 - (i) The Group of Experts had agreed at its nineteenth session that ECE/TRANS/SC.2/GEURL/2019/3, which contains a list of documents on the contract of carriage which may require adjustments to the provisions of the Unified Railway Law (URL), should be updated by adding information on: (i) the relevance of a specific document in use under CIM/SMGS systems to the draft URL provisions and; (ii) necessary modification, if any, to each document of URL relevance. To this end, PKP Cargo S.A. supported by the secretariat prepared ECE/TRANS/SC.2/GEURL/2019/9 which provides the requested information.
 - (ii) In view of its discussion under item 6 (c) below and a lack of agreement on the approach to the development of URL as a legally binding instrument, the Group of Experts postponed the discussion on ECE/TRANS/SC.2/GEURL/2019/9.
 - (iii) The secretariat informed about the review of the translation in English and French of the ad hoc consignment note done by CIT and thanked CIT for its effort. The secretariat further informed that the consignment note can in principle be prepared on the relevant template in English and French. This should possibly be done after the Group of Experts concludes on the final version of the URL consignment note at the next session.
 - (b) Monitoring of performance of a substantial number of real pilot tests:
 - (i) The secretariat informed the Group of Experts about its communication with the railway undertakings to collect their views as to possible changes to the ad hoc consignment note regarding issues raised during the nineteenth session and provided in ECE/TRANS/SC.2/GEURL/2019/2, point III. 6 (b) (vii). The secretariat had

addressed the railway undertakings with its messages on 23 May 2019 and 17 June 2019 requesting their views. The secretariat further informed that ZSSK Cargo from Slovakia had responded to the request and provided its view, as follows:

- Inclusion of a specific box for indicating transshipment/transfer station – change considered as not necessary;
- Redesign of box 18 to match information provided in the box 20 of the CIM consignment note – change considered as to be useful;
- Inclusion of new section for registering new wagon numbers (wagon numbers before and after transfers) – change considered as not necessary;
- Merging of boxes 49 to 58 and 72 to 94 – change considered as not necessary; and
- Boxes 63/102, 64/101 and 71/106 –harmonisation of content of these boxes or keeping only one set was proposed.

(ii) The Group of Experts did not conclude on possible further changes to the ad hoc consignment note.

(iii) There have been no tests performed since the nineteenth session. The expert from Turkey informed that efforts continued to carry out tests between Turkey, Iran and Turkmenistan. The secretariat informed about the receipt of a letter from the Russian Federation (letter of 5 March 2019 transmitted through the Permanent Mission of the Russian Federation on 23 April 2019) providing the Russian position to the performance of tests. The Russian Federation informed that in its view pilot tests should be carried out only after consensus has been reached on the scope of URL.

(iv) The Russian Federation further asked Turkey whether the test carried out before the nineteenth session was evaluated on a basis of any key performance indicators (KPIs). The Russian Federation believed that evaluation of tests based on commonly agreed KPIs would be useful and would allow drawing a conclusion as to whether URL provisions on the contract of carriage is an effective law. As an example, the Russian Federation referred to KPIs for evaluating the use of CIM/SMGS consignment note, and showing results such as:

- Significant reduction of delays at border crossing points (up to 10-12 hours),
- Reduction of freight costs linked with documents re-issuing process,
- Possibility for use of CIM/SMGS consignment note as the customs document and as document for multimodal transportations,
- Simplification of procedure and reduction of time for consideration of claims, and
- Possibility for use of one consignment note on groups of containers.

(v) Turkey supported by other experts reiterated the goal of the tests, which – as per the Terms of Reference of the Group (ECE/TRANS/SC.2/GEURL/2018/3/Rev.1) – was the verification if any further adjustments to the provisions of the draft URL were necessary.

(vi) The secretariat reminded the Group of Experts that all the issues raised by Turkey from the test were discussed at the nineteenth session with the positive conclusion that no further changes to the draft URL provisions were necessary, while the railway undertakings were requested to consider changes to the ad hoc consignment note, as provided above.

(vii) The secretariat further reminded the Group of Experts that the benefits to be achieved with the URL on the contract of carriage of goods in international traffic by railways were described in the document on “ECE statutory instrument for the international transport of goods by rail”, requested by the Group of Experts at its eighteenth session. This document was discussed and commented by the Working

Party on Rail Transport at its seventy-second session (November 2018) and circulated to countries targeted for the tests, as part of the test dossier.

(viii) The Russian Federation suggested that participating countries submit their proposals for criteria for evaluating the effectiveness of the URL draft provisions during pilot tests. Germany and the European Union reminded that the Terms of Reference do not mention the elaboration of criteria as a condition to perform real pilot tests. Such criteria are used in ex-post evaluations, i.e. to analyse the impact of law which is already in force.

(ix) The Group of Experts did not come to an agreement on developing such criteria for discussion at the next session. The Group may come back to discussing the need for effectiveness criteria at the next session, and to this end provide its recommendation to the Working Party on Rail Transport.

(x) The Group of Experts encouraged railway undertakings to perform additional tests. They were also asked to provide, without any further delay, their views on changes to the consignment note as per issues raised in ECE/TRANS/SC.2/GEURL/2019/2, point III.6 (b) (vii), so that the work on consignment note can be concluded at the next session.

(c) Scope of URL and its conversion into a legally-binding instrument:

(i) The Group of Experts continued its discussion on the approach to developing URL as a legally-binding instrument and on the content of the instrument. After having discussed at the nineteenth session ECE/TRANS/SC.2/GEURL/2019/5 which provides impact analysis and the benefits from adopting the convention on contract of carriage of goods by railway in international traffic as URL legally-binding instrument, the Group considered ECE/TRANS/SC.2/GEURL/2019/12 prepared by the Russian Federation and suggesting that URL is developed as a framework convention which would regulate the economic, operational, technical, technological and financial aspects of the railway operations, such as the carriage of goods, the use of wagons, the use of infrastructure, etc. At the same time, URL should become the single law replacing both COTIF and OSJD rules.

(ii) In the presentation of its document, the Russian Federation suggested that developing a system of documents that make up URL is a possible solution supported by the mandate.

(iii) The Russian Federation proposed that the draft OSJD Convention and COTIF should be the foundation for the elaboration of the single regime addressing the above-mentioned issues.

(iv) With regard to the developed draft URL provisions on the contract of carriage, the Russian Federation informed the Group of Experts about its further examination of these provisions and its conclusion that the liability provisions should be further revised to reflect the interests of all countries that have signed the 2013 Joint Declaration on the promotion of Euro-Asian rail transport and activities towards unified railway law (2013 Joint URL Declaration). The Russian Federation expressed its readiness to prepare for the next session of the Group of Experts a document with comparative analysis of articles of the URL draft provisions, CIM and SMGS and indicate aspects therein, which are inadequately covered in the draft provisions to address the needs of countries of the SMGS regime.

(v) The Group of Experts thanked the Russian Federation for preparing the document and for clarifying its position with the presentation.

(vi) Germany noted that the UNECE Inland Transport Committee Strategy until 2030 for sustainable inland transport adopted in February 2019 does not include the priority to develop a global rail framework convention replacing the two existing international regimes. Also, the European Union commented that the 2013 Joint URL Declaration mentions the principle of optionality in paragraph 3 in addition to the strategic priorities contained in paragraph 2.

(vii) The Group of Experts appreciated the Russian Federation openness to setting up a system of documents to make up URL. However, a number of experts reiterated the need to assess issues or relations other than on the contract of carriage on their impact and benefits before effort is invested in developing legal provisions.

(viii) In relation to the single rail regime, while some experts appreciated the vision from the Russian Federation, they reiterated their positions that unified provisions should be developed taking into the account the existing circumstances – two existing and working rail regimes. In this context, the development of unified rail provisions should be prioritized in the areas where they can make most impact in rail (freight) transport between the two existing regimes. Some experts further underlined that the URL contract of carriage provisions were developed to be used on the “opt-in” basis, which would allow railways undertakings to use them when such a use would be most beneficial for the parties to the contract of carriage, while in other situations, other laws could be used. They considered it being an important advantage.

(ix) Turkey expressed its preference for the pragmatic step-by-step approach advocated by the European Union, which was discussed in detail during the nineteenth session and gathered support from many experts present at the meeting.

(x) Switzerland suggested that while the elaboration of single rail regime may be a long-time endeavour, its accomplishment may be achieved through milestones, a first such milestone being the preparation of a URL contract of carriage as a convention. Other experts supported the methodology outlined by Switzerland, which also corresponds to the step-by-step approach rooted in the workplan ECE/TRANS/SC.2/GEURL/2018/3/Rev.1 adopted by the Group during the seventeenth session. The Russian Federation however did not support such a solution.

(xi) In view of the availability of the two approaches, as reflected in ECE/TRANS/SC.2/GEURL/2019/5 and ECE/TRANS/SC.2/GEURL/2019/12, as well as limited participation of countries, signatories of the 2013 Joint URL Declaration at the twentieth session, the Russian Federation proposed that views of all these countries are sought on which approach should be followed through a written consultation. In particular, the Russian Federation suggested that all countries, signatories of the 2013 Joint URL Declaration inform whether they favour (i) the establishment of a convention on the unified provisions for the contract of carriage of goods by rail as an opt-in law for transport of goods between CIM and SMGS systems (“third law”) or (ii) the establishment of a single rail legal regime through a framework convention or system of documents (“sole right”).

(xii) This proposal did not receive support from other experts. The European Union recalled that, in accordance with the Group’s Terms of Reference, the Group should conclude its activities with the transmission of a report to the Working Party on Rail Transport at its seventy-third session in November 2019.

(xiii) Further discussion focused on items 1 (c) and (d) of the Group’s Terms of Reference revealed that there may well be a lack of clarity on what the specific issues are which concern: (i) use of wagons; (ii) use of infrastructure; (ii) transport of dangerous goods; and (iv) use of rolling stock, and for which URL contract of carriage legal instrument should contain clauses that will facilitate for countries from the SMGS regime the execution of the contract of carriage. An oral presentation on such issues from the Chair was helpful in bringing more clarity.

(xiv) To bring even more clarity, the secretariat suggested that a document is prepared in which the specificities on use of wagons, use of infrastructure, transport of dangerous goods and use of rolling stock and their potential conflict with the execution of the contract of carriage under URL in SMGS regime are listed and briefly explained. The document should refer to the specificities that are important to facilitating execution of the contract of carriage on the basis of the URL contract of carriage provisions for SMGS countries.

(xv) Availability of such a document should allow the Group of Experts to understand if these specificities should or need to be addressed by adding, as appropriate, new provisions to the existing URL provisions on the contract of carriage. The new provisions, if any, would most likely be meant to clarify the relation between the contract of carriage and other public law regulating the execution of carriage by railway. In this way, the Group should be able to conclude on its first milestone. The Group of Experts, as part of its report to the Working Party on Rail Transport, may also identify and agree on specific issues which it may wish to continue working on for unifying railway law.

(xvi) The Chair agreed to prepare such a document for the next session.

(xvii) The Group of Experts further requested the secretariat, based on the document mentioned above, to prepare draft provisions on the relation between the contract of carriage and the public law regulating the execution of carriage by railway.

(xviii) The Group of Experts also agreed to discuss specific aspects of concern from the SMGS countries in the draft provisions, given that (i) a document elaborating on such specific aspects (e.g. linked to liability) is submitted by the Russian Federation before the next session; and (ii) those aspects are discussed within the structure of the draft provisions.

(xix) Finally, the Group of Experts did not discuss ECE/TRANS/SC.2/GEURL/2019/10 and ECE/TRANS/SC.2/GEURL/2019/11 containing a draft preamble and draft final provisions. They should be tabled at the next session. The European Union proposed that ECE/TRANS/SC.2/GEURL/2019/10, ECE/TRANS/SC.2/GEURL/2019/11 and draft provisions are compiled into one document for the next session. The Russian Federation did not find it necessary.

IV. Other business (agenda item 3)

7. There were no issues raised under this item.

V. Date of next session (agenda item 4)

8. The Group of Experts was informed that the next session was scheduled to be held at the Palais des Nations in Geneva from 16 to 18 October 2019.

VI. Summary of decisions (agenda item 5)

9. The Chair with the support of the secretariat summarized the decisions taken at the twentieth session.
