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## **Working Party on Rail Transport**

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

#### **Twenty-first session**

Geneva, 16-18 October 2019

Item 2 (c) of the provisional agenda

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

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

### **Comments on the Benchmarking of SMGS, CIM and draft URL provisions, presented by the Russian Federation**

#### **Submitted by Prof. Freise**

This document offers comments on the benchmarking document prepared by the Russian Federation. It also reminds about the approach taken by the Group of Expert towards the Unified Railway Law in drafting the provision of the Unified Railway Law.

#### **A. The Benchmarking leads to several Conclusions:**

##### **I. URL provisions are identical or close to those of CIM:**

Conclusions No. 3, 4, 5, 7, 8, 14.

##### **II. URL provisions are not clear:**

Conclusions No. 6, 15, 16.

##### **III. URL provisions do not settle several matters:**

Conclusions No. 10, 11, 12.

##### **IV. URL provisions are different from those in SMGS:**

Conclusions No. 9, 13.

#### **B. Other items**

The points 1 – 3 of the Russian document analyse the different regulations in SMGS, CIM and URL regarding the scope of application, transshipment and the character of the contract of carriage.

The scope of application of the three instruments is different of course, but each instrument with its scope of application does not violate the scope of application of one of the other instruments: The URL is only applicable, if there is no reconsignment of the goods at the border of SMGS and CIM, because the parties to the contract agreed on a *single* contract from Asia to Europe (or vice versa) under the URL. The SMGS remains applicable to contracts of carriage just within the SMGS area, the CIM remains applicable to contracts of carriage just within the CIM area. In this way SMGS and CIM remain applicable also to transports from Asia to Europe (and vice versa), if there is a reconsignment at the border of SMGS and CIM.

The character of the contract deserves a remark: Nowadays nearly all international Conventions treat the contract of carriage as a consensual contract (cf. CMR Art. 4, Montreal Convention [MC] Art. 1 para 1 [„agreement between the parties“] and Art. 4; Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway [CMNI] Art. 1 No. 1, Rotterdam Rules [RR] Art. 1 No. 1. The CIM changed to a consensual contract only in 1999.

For the purposes of URL a *consensual* contract is needed: A rail transport from Asia to Europe (and vice versa) needs agreements between the consignor and the participating carriers before the goods are handed over to the first carrier and before the consignment note is made out.

## C. Comments on the Conclusions

### I. URL provisions are identical or close to those of CIM

The Joint Declaration adopted at the Ministerial meeting on 26 February 2013 (ECE/TRANS/2013/2) formulates the strategy to establish legal conditions for railways equivalent with those that exist for competing modes such as road, air, inland water and maritime transport.

Consequently, in line with the ministerial declaration, the key source for the elaboration of the URL provisions was the CMR Convention and other modes' conventions. At the same time, it should be noted that the CIM was revised in 1999 with the objective to harmonise it as far as possible with the CMR Convention. As a result, there are many similarities between URL and CIM provisions, since they are both based on the same source being the CMR Convention.

The list below presents the links between relevant provisions of URL and CIM/CMR. Where relevant, also similar provisions from other modes agreements are referred to.

Conclusion No. 3. Transportation agreement

URL Art. 5 > CIM Art. 6 > CMR Art. 4, 5.

Conclusion No. 4. Liability for the data included into the consignment bill

URL Art. 7 > CIM Art. 8 > CMR Art. 7, MC Art. 10, CMNI Art. 8, RR Art. 30.

Conclusion No. 5. Freight payment

URL Art. 8 > CIM Art. 10 > contractual freedom in other Conventions, cf. CMR Art. 6 para 1 lit. i, para 2 lit b.

Conclusion No. 7. Liability chargeable unit

URL Art. 22 > COTIF Art. 9 > CMR Art. 23 para 7, 8; MC Art. 23, CMNI Art. 28, RR Art. 59 para 3 (and several other Conventions).

Conclusion No. 8. Compensation for loss and damage

URL Art. 21, 24 > CIM Art. 30, 32 > CMR Art. 23 para 3, Art. 25 para 2, MC Art. 22 para 3, CMNI Art. 20 para 1, RR Art. 59 para 1 (each Convention with another maximum amount).

Conclusion No. 14. Consignor's liability

URL Art. 7 > CIM Art. 8 > CMR Art. 7, MC Art. 10, CMNI Art. 8, RR Art. 30.

## II. URL provisions are not clear

The provisions suggested as “unclear”/“not clear enough”, are again based on CIM/CMR. The links are provided below:

Conclusion No. 6. Delivery period

URL Art. 13 > CIM Art. 16 § 1 sentence 1: contractual freedom > CMR Art 19.

Conclusion No. 15. Right of control

URL Art. 15 > CIM Art. 18 > CMR Art. 12.

Under the URL the carrier can avoid the assumed negative outcomes for its activity by making use of Article 16 § 2 and § 5 URL.

Conclusion No. 16. Indemnification in case of loss of/ damage to the cargo

URL Art. 21, 22 § 1, Art. 24 > CIM Art. 30, 32 § 1, Art. 37 > CMR Art. 23, 25.

The conclusion of the Russian Federation needs further explanation.

## III. URL does not settle several matters

Conclusions No. 10, 11 and 12.

The latest version of the URL does not contain provisions about the period of limitation for an action, the competence of court (forum) and the procedure for recourse between carriers, because the Group of Experts decided not to regulate these items until the outstanding decision about the legal character of the URL would be made (contractual or legal instrument, Convention between States?). So, up to now, the limitation of actions, the forum and the procedure for recourse is left to the national law which is applicable. As soon as the decision is made to pass the URL as a Convention, provisions about these items can be added:

Period of limitation: Cf. SMGS Art. 48, CIM Art. 48, CMR Art. 32, CMNI Art. 24, RR Art. 62.

Competence of court (Forum): Cf. SMGS Art. 47, CIM Art. 46, CMR Art. 31, MC Art. 33 para 1.

Procedure for recourse: Cf. SMGS Art. 36 § 3 and § 4, CIM Art. 51, CMR Art. 39.

## IV. URL provisions are different from those in SMGS

Conclusion No. 9. Indemnification due to late delivery

The maximum amount of compensation for delay in delivery is very different in the various Conventions: cf. SMGS Art. 45, CIM Art. 33, CMR Art. 23 para 5.

The regulation in URL Art. 25 (compensation of half of the carriage charges, but no compensation for delay insofar as the goods are lost or have lost value as a result of partial loss or damage) seems to be much closer to SMGS than to CIM.

Conclusion No. 13. Loss and Damage Report

URL Art. 28 (Notice of damage necessary by the consignee or the consignor) is in the interest of the carrier. By the way, no carrier is hindered to draw up a formal report as used to do nowadays.

Cf. CMR Art. 30, CMNI Art. 23.

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