

Presenting the Unified Railway Law (URL) as a new UNECE statutory instrument for the international transport of goods by rail

I. Goal of the Unified Railway Law

Rail companies are not covered by one uniform legislative system suitable for their growing freight volumes between Europe and Asia. This differs from the other modes of transport: road transport subject to the Convention on the Contract for the International Carriage of Goods by Road (CMR), maritime transport covered by the Hague Visby Rules and air traffic covered by the Montreal Convention. A large number of freight forwarders and the relevant rail companies believe they are at a serious disadvantage, and they regret this state of affairs.

The reason is simple and twofold. The longer the distances for the cargo transportation, the more important it is to the customers of the freight forwarders that their cargo be processed in a quick and straightforward manner at borders. In addition, these customers want recourse to claim resolutions processes in the event of losses.

The lack of a single legal framework puts rail operators at a considerable competitive disadvantage vis-à-vis the other modes of transport, especially road and maritime freight. A re-consignment of the goods is necessary at the handover point between the CIM and SMGS freight law systems. This also frequently requires consignment notes to be transferred from CIM to SMGS, which results in additional costs and delays in transporting goods. Moreover, the fact that there are two freight law conventions means that customers face serious hurdles identifying and enforcing claims in the event of cargo losses.

Unified Railway Law (URL) aims at and is capable of resolving these problems. It offers railway undertakings and their customers the opportunity to conclude a **single contract of carriage** for specific international transport of goods by rail (in particular between Europe and Asia) and to agree in this contract to apply a **single international legal regime** (known as an opt-in).

The contract of carriage then is accompanied by a **single URL consignment note** that is subject to just one legal regime.

URL establishes a **uniform international legal framework** for rail freight transport between the participating **states falling otherwise under the CIM or SMGS regimes**. The URL provisions take priority over their national laws and apply to each single international contract of carriage between those states if the **parties to the contract of carriage** opt to apply URL to their contract. Such a decision – use of the URL consignment note – eliminates the need to **re-consign the goods** at the border between the CIM and SMGS systems.

URL is a voluntary choice for the contracting parties. It will continue to be possible to apply CIM and SMGS systems for carrying goods between Europe and Asia if the parties choose not to apply URL for a specific consignment. In this case, it will once again be necessary to conclude two contracts of carriage, one under CIM and another under SMGS systems, and the consignment needs either two consignment notes or a single CIM/SMGS consignment note.

If the contracting parties **agree** to use URL, then it will **apply in full** (Article 3 § 1 URL). Specific exemptions from URL are possible only if they are explicitly provided in the URL's provisions.

II. Basic outline of URL

Unified Railway Law has been developed from the **CIM 1999** and the **SMGS 2015 systems** and other international conventions for other modes of transport. For the most part, the corresponding provisions of CIM and SMGS have been included. Where those systems differ, e.g. for the **carrier's liability, compromises** were found to draw up the URL relevant provisions. To make the law simpler, clearer and easier to use than the CIMS and the SMGS systems, certain provisions of lesser importance have not been included in the URL (for example, declarations of value, interest in delivery, cash on delivery, rail-sea traffic and nuclear incidents).

III. URL's advantages

The choice of URL by the parties to the contract entails a number of **advantages**:

1. Application of a single, simple and clear legal regime that focuses only on the main aspects of the rail freight transport. This regime covers the entire transport route from the premises of the consignor to those of the consignee. It is thus not necessary to take into account multiple freight transportation regulations and their different contents.
2. Use of a single consignment note that no longer has to comply with two regulatory systems as the CIM/SMGS consignment note.
3. Consideration of the preferences of the parties to the contract by strengthening their freedom of contract. The parties to the contract of carriage can decide on many of the details of the contract to suit their individual needs.
4. Inclusion of certain complementary transport with other modes of transport (multi-modal transport) to the application of URL. For example, container transport by road in vehicles or barge that is becoming increasingly important as a means of moving freight between senders and transshipment terminals, and from arrival terminals to recipients can be assumed as contract of carriage in the framework of URL.
5. A single system for liability covering loss, damage or delay in delivery applying to all railway undertakings participating in end-to-end transports and to their customers, and no need to comply with the different liability regulations of varying legal systems.

6. A minimum liability level for the carrier with specific upper compensation thresholds. However, the parties to the contract can agree to specify a higher liability threshold for the carrier. In certain situations, the consignor's liability can be limited to the same level as the carrier's liability.

All in all, the Unified Railway Law gives rail operators and their customers the ability to move freight in a quick, cost-effective manner on routes between Europe and Asia, based on a uniform legal regime that entails little administrative work.

IV. Pilot phase

Following the ministerial declaration on Unified Railway Law (Geneva, 23 February 2013), the UNECE Inland Transport Committee, in its resolution of 26 February 2016, called upon railway undertakings and their international organisations to test the new statutory provisions in practice whenever possible.

URL has not yet been formally adopted and consequently, has not entered into force. However, it is possible to apply its provisions now on the basis of a mutual agreement between the parties to the contract of carriage, for example as part of general terms and conditions. The precise nature of URL in legal terms (i.e. will it be an international convention) remains to be finalised.

After a final version of the URL consignment note for pilot transport using URL provisions has now been prepared, a key point was reached from which the real pilot test can be undertaken. All interested railway undertakings involved in rail freight carriage between Europe and Asia are invited, once again, to participate in pilot tests on the application of URL. To this end, they are recommended:

- To obtain the backing of the relevant government authorities for conducting the URL tests, if required, and
- To work with the relevant railway undertakings to identify suitable corridors and connections, and to clarify any practical questions that are still outstanding.

V. Outlook

Large sums of money are currently being invested in important infrastructure projects along a number of Eurasian rail corridors: the objective is to facilitate and accelerate rail freight transportation on routes of over 10,000 km. These projects also need a set of straightforward, clear legal provisions for contract of carriage in order to see an increasing traffic. The Unified Railway Law would be an ideal solution. It does not require large investments, merely the collective decision to apply it.

To recap: the Unified Railway Law would, for the first time, offer rail undertakings and their customers, as it is the case for transport by road or maritime transport, the possibility to perform rail freight carriage on the routes of over 10 000 km under one legal system with one contract of carriage and one consignment note.