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

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Item 2 (a) of the provisional agenda

Execution of the Mandate of the Group of Experts

Proposals by Russian Railways to amend the draft legal provisions for the carriage of goods in international rail traffic developed by the Group of Experts towards Unified Railway Law of the Economic Commission for Europe Inland Transport Committee

Transmitted by the Russian Federation

I. Introduction

1. Russian Railways proposes the following amendments to the draft unified railway law, prepared based on the previously submitted comparative analysis of the provisions of the Agreement on International Goods Transport by Rail (SMGS), the Uniform Rules concerning the Contract of International Carriage of Goods by Rail (CIM) and the unified railway law (ECE/TRANS/SC.2/GEURL/2019/18).

II. Object of the Agreement

2. We propose to add to the draft unified railway law an article entitled “Object of the Agreement”, to read as follows:

“Article _
Object of the Agreement

By this Agreement, the Contracting Parties (Governments of the States) shall establish direct international rail communications for freight transport between the railways of the following countries: ...”



III. Scope of application of the Agreement

3. We propose to amend article 1, “Scope of application”, of the draft unified railway law, to read as follows:

“Article 1

Scope of application

§ 1 This legal regime shall establish a single set of legal standards for contracts of carriage of goods in direct international rail traffic and in direct international multimodal traffic.

~~shall apply to a contract of carriage of goods by rail,~~

~~1. when the place of taking over of the goods and the place designated for delivery are situated in two different States which are Contracting Parties to this legal regime, and~~

~~2. if the contract of carriage stipulates that the contract is subject to this legal regime, and~~

~~3. if neither the provisions of CIM nor SMGS or bilateral or multilateral agreements between Contracting States apply to the contract covering the entire journey.~~

~~§ 2 The contract of carriage may also stipulate that this legal regime applies to transport operations carried out by other modes of transport in addition to international rail transport (multimodal transport).~~

~~1. if such agreement does not contradict with any international treaty governing such additional transport, and~~

~~2. unless the Contracting State whose law applies to such multimodal transport contract has declared that it will not apply this legal regime to multimodal transport contracts.~~

~~§ 3 Two or more Contracting States may conclude agreements which declare this legal regime applicable to contracts of carriage by rail between their countries in other cases than regulated in § 1 and § 2.~~

§ 2 The carriage of goods in direct international rail traffic shall take place between stations open for cargo operations in accordance with the national legislation of the Contracting Parties to this Agreement and, in direct international multimodal traffic, with the involvement of the section of the route declared for such carriage.

§ 3 If the Contracting Parties are at the same time parties to other international agreements that establish legal provisions for contracts of carriage of goods by rail, carriage between the railway stations of these Contracting Parties may be carried out under the terms of those agreements.”

4. Comment by Russian Railways: the language of the article has been brought into conformity with the position of the Russian Federation, namely that unified railway law is the only system of law that should replace the existing legal regime (CIM and SMGS).

IV. Definitions

5. We propose to delete article 2 (8), “Definitions”, of the draft unified railway law (containing the definition “Person entitled”, meaning the person who has the right to dispose of the goods). Currently, SMGS and CIM consignment notes do not serve the function as documents of title.

V. Pre-contractual agreement for carriage

6. We propose to add an article to the draft, to read as follows:

“Article _____

Pre-contractual agreement for carriage

Prior to the conclusion of a contract of carriage, a pre-contractual agreement of carriage may be concluded as follows:

- Between the consignor and the contractual carrier, in accordance with national legislation; or
- Between the contractual and successive carriers, in accordance with a procedure agreed by them.

VI. Trans-shipment

7. We propose to add an article to the draft unified railway law, to read as follows:

“Article _____

Mode of carriage

If the dispatching station and destination station are located on railways of different rail gauges, carriage may, depending on what is technically feasible, be carried out as follows: with trans-shipment of the goods from the wagons of one rail gauge onto wagons of another or with the transfer of wagons onto bogies of another rail gauge, or with the use of adjustable-gauge bogies.”

8. Comment by Russian Railways: SMGS, unlike CIM and the draft unified railway law, provides that carriage of goods is carried out without any trans-shipment at border stations of railways with the same track gauge, with trans-shipment of the goods or with gauge changing at border stations of railways with different track gauges, or using a variable gauge system.

VII. Special conditions of carriage of certain goods

9. We propose to add an article to the draft, to read as follows:

“Article _____

Rules on the Carriage of Goods

§ 1. The procedure for applying the conditions of these legal provisions and also the special conditions of carriage of specific types of goods shall be established by the Rules on the Carriage of Goods (annex _____).

The contract between the consignor, the consignee and all the carriers taking part in the carriage may establish special conditions for the carriage of goods.

§ 2. The Rules on the Carriage of Goods contain detailed standard solutions and procedures to ensure that the articles of these legal provisions are interpreted and applied uniformly.

VIII. Contract of carriage

10. We propose further discussion of the language of article 5 (2) of the draft unified railway law, which provides that international associations may establish a standard model of consignment note, owing to the fundamentally different approaches to this matter in the “Eastern” and “Western” legal systems (in SGMS, the content of the consignment note is determined in annex 1 to the Agreement).

IX. Responsibility of the consignor

11. We propose to add provisions to article 7, “Responsibility of the consignor”, to read as follows:

“§ The consignor shall pay the carrier a penalty if, after the conclusion of the contract of carriage, the carrier discovers that the information and declarations included in the consignment note by the consignor are incorrect, inaccurate or incomplete and if it is determined that:

- (1) The cargo includes items not accepted for transfer across a State border by at least one of the States whose territory is to be crossed during carriage;
- (2) Dangerous goods have been accepted for carriage without the conditions required for their transport being met;
- (3) When loading goods, the consignor allowed the wagon to be overloaded beyond its maximum load limit;
- (4) The carriage charges were understated;
- (5) There were circumstances that threatened traffic safety.

Penalties covered by paragraphs 1, 2, 4 and 5 above shall be charged..... *(we propose to discuss the amount of the penalty during the session of the Group of Experts).*”

X. Time of delivery

12. We propose to discuss the possibility of defining specific delivery periods in article 13, “Time of delivery”, of the draft unified railway law. Moreover, we propose to add the following provisions to the article:

“The goods delivery period shall be increased by 48 hours for operations connected with the shipment and delivery of goods.

The goods delivery period shall increase by 48 hours:

- Whenever cargo is trans-shipped to wagons having a different gauge;
- Whenever wagons or cargo on its own wheels are transferred onto bogies having a different gauge;
- When goods are carried in direct international rail ferry traffic.

The delivery period shall be extended for the duration of any delay along the route for reasons beyond the control of the carrier.”

XI. Statute of limitations

13. We consider it necessary to define in the draft unified railway law specific periods of limitation for potential lawsuits regarding fulfilment of the contract of carriage.

XII. Recourse

14. We propose to add provisions to article 33, “Right of recourse”, of the draft unified railway law, to read as follows:

“§ A carrier against which a claim for compensation is made may not contest the payment of compensation to the carrier making the claim if such compensation was determined by a court decision and the carrier against which the claim was made was notified in a timely manner of the consideration of the case by the courts.

§ A claim against the recovery of compensation paid for a claim must be made within 75 days of the actual date of payment of the claim.

A claim against compensation determined by a court decision must be made within 75 days of the date of entry into force of the decision.”

XIII. Formal report

15. We propose to add a new article to the draft unified railway law, to read as follows:

“Article _____

Formal report

§ 1. The carrier shall draw up a formal report if, when checking the goods during carriage or delivery, it finds:

- (1) Discrepancies between the names, mass or quantities of the cargo items and the particulars entered in the consignment note;
- (2) Discrepancies between the markings on the cargo items and the particulars entered in the consignment note relating to marks or inscriptions on cargo items, the station and railway of destination, the consignee or the quantity of items;
- (3) Damage to or spoilage of the goods;
- (4) The consignment note or individual notes for the goods in question, or of goods listed in the consignment note, to be missing or lost.

§ 2. If, under the national legislation of the country of destination, a formal report may be drawn up after the goods have been delivered to the consignee, the consignee shall have the right to request the carrier that delivered the goods to draw up such a report after the goods have been delivered for any reason that would have escaped detection by means of a visual inspection when the delivery of the goods was made. Such a request to the carrier delivering the goods shall be made by the consignee immediately upon discovering the loss, shortfall, deterioration or spoilage of the goods and not later than 72 hours after the goods were delivered.”

XIV. Right of disposal of the goods

16. We propose to delete article 15 (1), “Right of disposal of the goods”, of the draft unified railway law and replace it with the following provisions and renumber paragraphs 2, 3 and 4 accordingly:

“§ 1. The consignor and the consignee shall have the right to give the carrier instructions in respect of the goods and thus amend the contract of carriage. The consignor shall address the contractual carrier and the consignee the carrier who is delivering the goods.

§ 2. The consignor may amend the contract of carriage as follows:

- (1) Change the destination station;
- (2) Change the consignee of the goods.

§ 3. The consignee may amend the contract of carriage within the borders of the country of destination as follows:

- (1) Change the destination station of the goods;
- (2) Change the consignee of the goods.

§ 4. The carrier shall be entitled to refuse to amend a contract of carriage or delay its execution only if:

- (1) This is not feasible for the carrier at the time of receipt of the statement of amendments to the contract of carriage;
- (2) It might disrupt the railway’s operations;
- (3) Upon changing the destination station, the value of the goods does not cover all foreseeable charges for carriage to the new destination station, except in cases in which the amount of these charges is paid immediately or guaranteed;
- (4) When the destination station indicated in the consignment note is changed and new carriers have not negotiated the carriage.”
