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## Economic Commission for Europe

### Inland Transport Committee

#### Working Party on Road Transport

##### Group of Experts on the Operationalization of eCMR

###### Fifth session

Geneva, 3–5 April 2023

Item 3 (a) of the provisional agenda

###### Programme of work:

**Proposed concepts and processes of the future eCMR system**

## **Proposed Concepts/Processes of the future eCMR system based on the discussions of the Group of Experts on the Operationalization of eCMR\***

**Submitted by the Secretariat and the Group of Experts**

### **I. Background**

1. At its fourth session, the Group of Experts discussed ECE/TRANS/SC.1/GE.22/2023/1, provided comments and requested the secretariat to either revise it or to prepare a new document based on it for this session by taking into account the discussions of the Group. Accordingly, the secretariat has prepared ECE/TRANS/SC.1/GE.22/2023/3 and ECE/TRANS/SC.1/GE.22/2023/4. The concepts and processes when agreed will form the basis of the high-level architecture of the future eCMR system.

2. The Group of Experts is invited to discuss the formal documents prepared for this session.

### **II. Introduction – Historical Review**

3. The CMR Convention on the Contract for the International Carriage of Goods by Road (CMR Convention) came into force in 1956 and has currently 58 contracting parties (as of February 2021). As stipulated in Article 1, the CMR Convention applies to every contract for the carriage of goods by road in vehicles for reward if the origin and the destination are situated in two different countries, and at least one of them is a contracting party. It is one of very few conventions at ECE that relates to private law rather than public law.

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\* This document was scheduled for publication after the standard publication date owing to circumstances beyond the submitter's control.

4. The CMR Convention concerns the contract conditions, the contract document (consignment note) as well as the carrier's liability limits in case of total or partial loss of the goods carried, or in case of delay of delivery of the goods. The CMR Convention also defines the content of the consignment note (also known as CMR consignment note), which confirms the contract of carriage.
5. The CMR Convention owes its success to its remarkable stability and to the quality of its text which has strongly influenced both national and international legislation.
6. The CMR Consignment note is like a passport for the goods to move from one country to another.
7. If carriers were hampered in their work by uncertainty in the sphere of liability for goods in transit, where a carriage transaction could be followed by a potentially ruinous lawsuit, then, there could be great reluctance on the part of businesspeople to engage in the transport sector at all, while those who would do it, would charge very much for the service in order to cover any eventual legal costs. This would arguably have the equivalent effect blocking the freedom of movement of goods. However, the CMR Convention with its precise conditions of carriage and distribution of liability, plus its upward limitation and prescription of the steps to be taken to claim compensation gives the element of certainty so critical to the smooth running of international road transport.
8. In order to legally facilitate the use of electronic consignment notes, the Additional Protocol to the CMR concerning the Electronic Consignment Note (eCMR) was introduced in 2008. As an additional protocol, eCMR does not aim at changing the substantive provisions of CMR, rather it provides a supplementary legal framework for the digitalization of consignment notes.
9. As at February 2023, there were 33 contracting parties to eCMR. It is important to note that only contracting parties to the CMR Convention may become a party to eCMR.
10. There are practical reasons behind the slow uptake of electronic consignment notes to date the most important being the lack of conceptual specifications on the actual implementation of the eCMR which would guide the main stakeholders. The absence of contracting parties that are geographically situated next to each other, thereby forming a transport corridor could also be added. Until recently, France and Spain were the only contracting parties to be situated next to each other. At present, there are a number of pilots trialling the use of electronic consignment notes, including France and Spain, and in the Benelux region.
11. The key point of difference between the CMR Convention and eCMR is that while the CMR Convention requires a paper form with mandatory particulars and additional particulars (if applicable), eCMR requires also an agreement on the procedures for its operation and on the implementation of these procedures (per Article 5 of eCMR) including authentication (Article 3).
12. The drafters of eCMR did not intend to modify CMR on any substantive legal point but to supplement CMR in order to facilitate the optional making out of the consignment note by means of procedures used for the electronic recording and handling of data.
13. Even though the eCMR Additional Protocol at its Article 5 paragraph 1 lists six procedures and the methods of their implementation which "parties interested in the performance of the contract of carriage shall agree on in order to comply with the requirements of eCMR and CMR", it fails to provide concrete and specific guidance on the actual implementation of those procedures leaving them open to interpretation and therefore leaving it up to each of the stakeholders who are directly (carrier, consignor and consignee) or indirectly (contracting parties, customs authorities, police, other authorities) interested in the implementation of the eCMR Additional Protocol, to protect their interests either by creating pilots tailor made to their needs or not deciding to become contracting party to the protocol.
14. The Working Party on Road Transport (SC.1) at its ninety-second session (TRANS/SC.1/363, paragraph 41, December 1998) agreed that a protocol to the CMR to incorporate Electronic Data Interchange (EDI) was a complex issue that would require further

analysis by experts on EDI, transport and private law, and asked the secretariat to contact UNIDROIT, based in Rome, for their views on the matter.

15. Professor J. Putzeys from UNIDROIT was the main drafter of the eCMR Additional Protocol in the framework of SC.1. This work started in 2000 and finished in 2008 when the protocol was submitted for signing and ratification by the governments.

16. Professor J. Putzeys introduced for first time Article 5, which refers to the main processes that would operationalize the electronic consignment note in the draft text of the protocol in 2006. The proposed text was Article 6 of the draft Rotterdam rules of 2005 with the title “Procedures for use of negotiable electronic transport records”. The final text of the CMR Convention that was proposed for signature and ratification by the governments included it as Article 9. Furthermore, the eCMR Additional Protocol specifically refers to the parties interested in the performance of the contract of carriage. Then under Article 1, definitions, provides the following description for the “Electronic consignment note”: “...means a consignment note issued by electronic communication by the carrier, the sender or any other party interested in the performance of a contract of carriage to which the CMR Convention applies...”. Meaning not only the carrier and the sender.

17. In road transport the operational challenges are completely different comparing maritime transport (Rotterdam rules). The carriers are thousands and the borders that the trucks are crossing are hundreds. Even if there is agreement that the word “parties” refers only to the consignor and the carrier – if we follow the Rotterdam rules then most probably it is the case – then we should acknowledge that it would be impossible for those thousands of large, medium, small and very small road carriers from different geographical regions to meet and agree on common procedures and standards.

18. It should be noted that the electronic CMR consignment note is not about making the paper consignment note electronic by creating standards on its data and using state of the art technology. These are requirements but not essential requirements for having the electronic consignment note but rather requirements for having an electronic solution. The electronic CMR consignment note is about the evidentiary value that the consignment note brings. The manner in which the party entitled to the rights arising out of the electronic consignment note is able to demonstrate these rights and the acceptance of the electronic consignment note as the legal equivalent to an accepted paper CMR consignment note. We should ensure that the CMR Convention applies.

### **III. High-level description of the eCMR system**

19. As elaborated in the introduction to the eCMR, the final objective of the computerization of the CMR Convention encompasses the computerization of the whole CMR Consignment note life cycle from distribution, issuance reflecting all rights and obligations that the CMR Convention stipulates and it should, ultimately, be aimed at replacing the current paper CMR consignment note without changing the basic philosophy of the CMR Convention. In order to streamline the work towards this challenging objective, the Working Party SC.1 agreed to the establishment of an official group of experts on the operationalization of the eCMR in order to specifically describe and if possible, agree on the high level architecture of a future eCMR system including description and if possible agreed among the different stakeholders interpretation of Article 5 to the eCMR Additional Protocol. Other equally important for the digitalization of eCMR issues should be discussed and agreed such as the authentication and its mutual recognition, the storage of data, the validation of the electronic solutions and others.

20. The approach of the computerization process will be focused on the establishment of concepts, functional and technical specifications approved and adopted through the UNECE intergovernmental processes (Working party on road transport, Inland Transport Committee) in order for parties interested to develop such electronic solution that produce electronic CMR consignment notes to be able to do so in internationally sustainable and harmonized way, mutually recognised by all contracting parties to the CMR Convention and its protocol on eCMR.

21. The generators of the eCMR consignment notes – senders/consignors and carriers and when required consignees- will be able to use any validated platform / electronic solution to generate their electronic CMR consignment notes. With use of UN CEFACT data standards as revised through the group of experts, interoperability of all electronic solutions would be warranted. These electronic solutions following the specifications agreed on UNECE level will be able to accommodate all electronic services required for the electronic CMRs covering all needs, rights, obligations, and processes stipulated by the CMR convention. This is why the electronic consignment note could be recognised as the legal equivalent of the paper consignment note.

## A. Users and roles

22. This section describes the different tasks and obligations related to the actors and their roles.

### 1. Users of the electronic consignment note that have the right to create and amend the data including provision of comments, attaching of documents and storage of data

23. The users of the eCMR solutions are being divided in two categories:

- The first group of users have the right to create an electronic consignment note, change the data in the consignment note based on the provisions of the CMR Convention as well as provide comments at the different parts of the electronic consignment note again based on the provisions of the convention. These users are the consignors, the carriers, and the consignees.
- The second group of users have the right only to read the data upon request of a specific electronic consignment note while exercising their official duties and to provide comments in a designated text field created in the electronic consignment note for them. These users are the public authorities specifically the customs authorities, the police / frontiers guards, courts, insurance companies etc.

#### (a) Consignor – Sender

24. The Consignor – Sender of the goods - is one of the stakeholders that can initiate an CMR contract with an electronic consignment note. This gives the right to the consignors to have access to eCMRs data that involve them independently of the IT solution (meaning independently of technology, geography, business culture etc) where this data has been generated / restored and will have access to all services related to the consignment note that they are involved.

25. Access to data based on the CMR Convention is being categorised as follows:

- Access to **create** a consignment note when the consignor is the one initiating the electronic consignment note,
- The creator of the consignment note has the right/ obligation:
  - To generate several consignment notes if the goods have to be loaded in different vehicles, or are of different kinds or are divided into different lots (Article 5, para. 2 of the convention),
  - To perform intermodal transport and declare as such in the consignment note as long as the vehicle containing the goods is carried over part of the journey by sea, rail, inland waterways or air and the goods are not unloaded from the vehicle (Article 2, para. 1, CMR Convention),
  - To use the eighteen particulars listed in Article 6, paras. 1 and 2 of the CMR Convention and add in the electronic consignment note any other particular which the creator of the consignment note may deem useful (para. 3),

- To declare the special risks inherent in one more of the following circumstances where the carrier could be relieved of liability (subject to Article 18, paras. 2–5)):
  - Use of open unsheeted vehicles,
  - The lack of, or defective condition of packing,
  - Handling, loading, stowage or unloading of the goods by the sender, the consignee or persons acting on behalf,
  - The nature of certain kinds of goods,
  - Insufficiency or inadequacy of marks or numbers on the packages,
  - The carriage of livestock.
- To declare the expected time/date of delivery. Article 19 defines the delay of delivery. The system should automatically generate a notification to all parties involved “a delay of delivery” notification when the expected date of delivery has been reached and a. no delivery processes as described below have been activated in the system b. no actions have been taken including provision of comments for possible delay and change of date of delivery.
- To be notified for the loss of goods (Article 20, paras. 1–4).
  - If the goods have not been delivered with thirty days following the expiry of the agreed time-limit – date of delivery – or if there were no agreed time limit, within sixty days from the time when the carrier took over the goods, the system should automatically declare the loss of goods and notify all parties.
  - Based on this notification the person entitled could make a claim (implementation of Article 27, para. 1 / Article 32, para. 2).
  - In the course of the year following the payment of compensation if the goods are recovered the carrier should notify the person entitled through the system.
  - Within thirty days following the above-mentioned notification, the person entitled as aforesaid may require the goods to be delivered to him against payment of the charges. The person entitled should make this request in the system following the notification received.
  - The Carrier shall be entitled to deal with the goods if none of the above-mentioned conditions are met.
  - To declare the dangerous nature of the goods to the carrier (Article 22).
  - To declare against payment of a surcharge to be agreed upon (Article 24), in the electronic consignment note a value for the goods exceeding the limit laid down in Article 23 / additional protocol to the convention.
  - To declare in the electronic consignment note against a payment of a surcharge to be agreed upon, a fixed amount of a special interest in delivery in the case of loss or damage or of the agree time-limit being exceeded (Article 26, para. 1).
- Access to **amend** the data when:
  - the consignor is the one that initiated the electronic consignment note but further changes are required in the particulars (Article 6 CMR Convention) before finalising the consignment note online, thereby accepting the sender’s liability (Article 7 CMR Convention).
  - the consignor is not the one that initiated the electronic consignment note but changes are required in the particulars (Article 6 CMR Convention) provided by the carrier before finalising the consignment note online, thereby accepting like that sender’s liability (Article 7 CMR Convention).

- the consignor has the right to dispose of the goods (Article 12, para. 1 CMR Convention), while in transit the consignor has the right to stop the goods in transit, to change the place of delivery or the consignee where the goods will be delivered, a notification should be sent to the Carrier for these new instructions.
- The consignor should have the ability to transfer (amend) the right to dispose of the goods to the consignee (Article 12, para. 2 CMR Convention) since there is no second copy of the consignment note as the CMR Convention stipulates, a notification should be sent to the Carrier and the Consignee when the consignor “transfers” consignor’s right to dispose of the goods.
- Access to **provide comments** when:
  - The carrier provided reservations while taking over the goods either on the accuracy of the statements in the consignment note or the apparent condition of the goods and the sender should accept or deny those reservations (Article 8, para. 2 CMR Convention).
  - The sender shall require the carrier to check the gross weight of the goods / their quantity / contents of the packages.
  - The sender attaches accompanying documents and requires providing comments on them (Article 11 CMR Convention).
  - the consignor has the right to dispose of the goods (Article 12, para. 1 CMR Convention), while amending the relevant data in the electronic consignment note the consignor might be able to provide further comments / instructions to the carrier. A notification should be sent to the Carrier for these new instructions.
  - The consignor, if they wish, could make an entry while generating the electronic consignment note where the consignor transfers the right of disposal of the goods to the consignee from the moment the electronic consignment note is generated (Article 12, para. 3 CMR Convention), it should be noted that for the right of disposal the conditions of Article 12, para. 5 of the CMR Convention should apply.
  - The carrier cannot carry out the contract and asks for instructions (Article 14, para. 1 CMR Convention), Consignor should receive a notification.
  - The carrier cannot carry out the contract and did not receive new instructions in reasonable time, then carrier shall take such steps as seem to him to be in the best interests of the person entitled to dispose of the goods (Article 14, para. 2 CMR Convention). The consignor should receive however a notification from the carrier concerning those steps.
  - The carrier arrived at the place of delivery, but certain circumstances prevent delivery. The carrier should ask the sender for instructions (Article 15, para. 1 CMR Convention). The consignor should receive a notification and should be able to provide new instructions.
  - If the consignee refuses the goods – notification should be sent to the consignor and the Carrier, the consignor shall be entitled to dispose of them (Article 15, para. 1 CMR Convention).
- Access to **attach** accompanying documents when:
  - For customs or other formalities, the sender shall attach the necessary documents to the electronic consignment note (Article 11 CMR Convention).
  - It should be foreseen that the future eCMR applications should provide the possibility to at least attach the accompanying documents to the electronic consignment note documents as pdf, Jpeg or any other format convenient at the time. If the possibility to interconnect with other systems that generate accompanying documents exists, then such interconnection should be allowed,

and the data of those documents could be also sent through electronic messages.

- Access to **store** the data of the electronic consignments generated where the sender is specifically mentioned as “consignor” (Article 5 CMR Convention).

<i>Id</i>	<i>Events of the electronic procedure of CMR for consignors</i>	<i>Create an eCN</i>	<i>Amend data of the eCN</i>	<i>Provide Comments</i>	<i>Attach documents</i>	<i>Store / print data</i>	<i>Notifications to carrier</i>
1	Creating an electronic consignment note by using all eighteen particulars and any additional particular they wish	✓				✓	✓
1a	Creating multiple electronic consignment notes for one cargo if required (Article 5, para. 2)	✓				✓	
1b	Declare an intermodal transport – including means of transport / itinerary if wish – (Article 2, para. 1)	✓				✓	
1c	Declare special risk including the six cases mentioned in the CMR Convention (Article 18)	✓				✓	
1d	Delay of delivery event – 1 <sup>st</sup> particular is the date. The system will include automatically the time (Article 19).			✓	✓	✓	✓
1e	Loss of the goods event (Article 20)			✓	✓	✓	✓
1f	Declare dangerous goods event (Article 22)	✓				✓	
1g	Declare a surcharge event (Article 24)	✓				✓	
1h	Declare a fixed amount of a special interest in delivery event (Article 26)	✓				✓	
1i	Finalising the eCN online event	✓			✓	✓	✓
2	Amend eCN data event when consignor has initiated the CN		✓			✓	✓
3	Amend eCN data event when consignor has not initiated the CN		✓			✓	✓
4	Dispose of the Goods event while generating the eCN (Article 12)	✓	✓	✓	✓	✓	✓
4a	Dispose of the Goods event in transit (Article 12)		✓	✓	✓		✓

<i>Id</i>	<i>Events of the electronic procedure of CMR for consignors</i>	<i>Create an eCN</i>	<i>Amend data of the eCN</i>	<i>Provide Comments</i>	<i>Attach documents</i>	<i>Store / print data</i>	<i>Notifications to carrier</i>
4b	Dispose of the Goods even when proof of delivery is taking place / or at the request of the consignee		✓	✓	✓		✓
4c	Provide instructions to the carrier for the dispose of the goods event			✓	✓		✓
5	Accept or deny reservations made by the Carrier event			✓	✓		✓
6	Require carrier check gross weight / quantity / contents of packages event	✓		✓	✓		✓
7	Attach accompanying documents / provide comments event			✓	✓		✓
8	Provide instructions to the carrier when carrier cannot carry out the contract (Article 14)			✓	✓		✓
8a	Provide instructions to the carrier when carrier cannot deliver the goods event (Article 15)			✓	✓		✓
8b	Provide instructions to the carrier when consignee refuses the goods event (Article 15)			✓	✓		✓
9	Store the data / electronic consignment notes event					✓	

**(b) Carrier – Successive Carriers - Freight Forwarders – Sub Contractors**

26. The CMR Convention refers only to Carriers and to successive carriers. It is understandable though that the user of the future eCMR system recognized as carrier could be anyone that coordinates and delivers road transport services therefore uses the CMR Convention today.

27. In that sense the freight forwarders and the sub-contractors should have the role of the Carrier in the future system defining though always their identity which implies different liability processes. The role of subcontractor for instance in modern Logistics / intermodal transport should be considered. In that sense, subcontractors can be also the sender in some cases and therefore they could also have the role of the consignee / carrier in a future eCMR system.

*(i) Carrier*

28. The Carrier is one of the stakeholders responsible for initiating an eCMR consignment note. This gives the right to the carrier to have access to eCMRs data that involve them independently of the IT solution (meaning independently of technology, geography, business culture etc) where this data has been generated / restored and will have access to all services related to the eCMR consignment notes that they are involved.

29. Access to data based on the CMR Convention is being categorised as follows:



- Access to **create** a consignment note when the carrier is the one initiating the electronic consignment note,
  - The creator of the consignment note has the right / obligation:
    - To generate several consignment notes if the goods have to be loaded in different vehicles, or are of different kinds or are divided into different lots (Article 5, para. 2 of the convention),
    - To perform intermodal transport and declare as such in the consignment note as long as the vehicle containing the goods is carried over part of the journey by sea, rail, inland waterways or air and the goods are not unloaded from the vehicle (Article 2, para. 1, CMR Convention),
    - To use all eighteen particulars listed in Article 6, paras. 1 and 2 of the CMR Convention and add in the electronic consignment note any other particular which the creator of the consignment note may deem useful (para. 3),
    - To declare the special risks inherent in one more of the following circumstances where the carrier could be relieved of liability (subject to Article 18, paras. 2–5)):
      - Use of open unsheeted vehicles,
      - The lack of, or defective condition of packing,
      - Handling, loading, stowage or unloading of the goods by the sender, the consignee or persons acting on behalf,
      - The nature of certain kinds of goods,
      - Insufficiency or inadequacy of marks or numbers on the packages,
      - The carriage of livestock,
      - To declare the expected time/date of delivery. Article 19 defines the delay of delivery. The system should automatically generate a notification to all parties involved “a delay of delivery” notification when the expected date of delivery has been reached and a. no delivery processes as described below have been activated in the system b. no actions have been taken including provision of comments for possible delay and change of date of delivery,
    - To be notified for the loss of goods (Article 20, paras. 1–4).
    - If the goods have not been delivered with thirty days following the expiry of the agreed time-limit – date of delivery – or if there were no agreed time limit, within sixty days from the time when the carrier took over the goods, the system should automatically declare the loss of goods and notify all parties.
    - Based on this notification the person entitled could make a claim.
    - In the course of the year following the payment of compensation if the goods are recovered the carrier should notify the person entitled through the system.
    - Within thirty days following the above-mentioned notification, the person entitled as aforesaid may require the goods to be delivered to him against payment of the charges. The person entitled should make this request in the system following the notification received.
    - The Carrier shall be entitled to deal with the goods if none of the above-mentioned conditions are met.
- Access to **amend** the data when:
  - the carrier is the one that initiated the electronic consignment note but further changes are required in the particulars (Article 6 CMR Convention) before finalising the consignment note online, accepting like that carrier’s liability (Article 17 CMR Convention).

- the carrier is not the one that initiated the electronic consignment note but changes are required in the particulars (Article 6, CMR Convention) provided by the consignor before finalising the consignment note online, accepting like that carrier's liability (Article 17 CMR Convention).
- the consignor has the right to dispose of the goods (Article 12, para. 1 CMR Convention), while in transit the consignor has the right to stop the goods in transit, to change the place of delivery or the consignee where the goods will be delivered, a notification should be sent to the Carrier for these new instructions.
- The consignor should have the ability to transfer (amend) the right to dispose of the goods to the consignee (Article 12, para. 2 CMR Convention) since there is no second copy of the consignment note as the CMR Convention stipulates, a notification should be sent to the Carrier and the Consignee when the consignor "transfers" consignor's right to dispose of the goods.
- Access to **provide comments** when:
  - The carrier has the right to provide reservations while taking over the goods either on the accuracy of the statements in the consignment note or the apparent condition of the goods and the sender should accept or deny those reservations (Article 8, para. 2 CMR Convention). The carrier should be able to upload pictures or video related to those reservations which specify the ground for those reservations.
  - The sender shall require the carrier to check the gross weight of the goods / their quantity / contents of the packages (Article 8, para. 3). The carrier has the right though to charge for those checks and insert the results in the electronic consignment note.
  - The sender attaches accompanying documents and requires providing comments on them (Article 11 CMR Convention). The Carrier should have the right to provide comments, remarks concerning those accompanying documents. A notification should be sent to the sender when Carrier is providing comments (Article 11, para. 2, CMR Convention).
  - the consignor has the right to dispose of the goods (Article 12, para. 1 CMR Convention), by amending the relevant data in the electronic consignment note, the consignor might be able to provide further comments / instructions to the carrier. A notification should be sent to the Carrier for these new instructions. The Carrier should be able to ask clarifications on these instructions.
  - The consignor, if wishes, could make an entry while generating the electronic consignment note where the consignor transfers the right of disposal of the goods to the consignee from the moment the electronic consignment note is generated (Article 12, para. 3 CMR Convention), it should be noted that for the right of disposal the conditions of Article 12, para. 5 of the CMR Convention should apply.
- The right of disposal of the goods is critical for the well-functioning of the convention. It should be always very clear to the Carrier who at certain point while in transit has the right of disposal of the goods and from whom therefore should receive instructions. A specific function should exist in the system "right of disposal of the goods" that clearly indicates which user has this right. When any of the cases above applies, then automatically by the system the right will be transferred to the other user (Article 12, para. 5 CMR Convention).
  - The carrier cannot carry out the contract and asks for instructions (Article 14, para. 1 CMR Convention), Consignor should receive a notification, Both the Carrier and the Consignor should be able to interact on this issue electronically,
  - The carrier cannot carry out the contract and did not receive new instructions in reasonable time, then carrier shall take such steps as seem to him to be in

the best interests of the person entitled to dispose of the goods (Article 14, para. 2 CMR Convention). The consignor should receive however a notification from the carrier concerning those steps,

- The carrier arrived at the place of delivery, but certain circumstances prevent delivery. The carrier should the sender for instructions (Article 15, para. 1 CMR Convention). The consignor should receive a notification and should be able to provide new instructions.
- If the consignee refuses the goods – notification should be sent to the consignor and the Carrier, the consignor shall be entitled to dispose of them (Article 15, para. 1 CMR Convention),
- Following the above mentioned, the carrier (Article 16, para. 2, CMR Convention) has the right to unload the goods, hold the goods or entrust them to a third party. In all cases the carrier should through the system send a notification to the sender notifying about carrier's decision.
- The carrier may sell the goods (perishable goods, storage expenses, expiry of a reasonable period, Article 16, para. 3 CMR Convention), In all cases the carrier should through the system send a notification to the sender notifying about carrier's decision.
- The carrier shall be liable for the total or partial loss of the goods and for damage (Article 17, para. 1 CMR Convention), in these cases a notification should be sent by the carrier to the consigner explaining what happen,
- Access to **attach** accompanying documents when:
  - For customs or other formalities, the sender shall attach the necessary documents to the electronic consignment note (Article 11 CMR Convention)
- Access to **store** the data of the electronic consignments generated where the carrier is specifically mentioned as “consignor” (Article 5 CMR Convention).

(ii) *Successive Carriers*

30. The Carrier should be able to add in the electronic consignment note its successive carriers. The carrier should be able to add as many successive carriers as requires. Also, the carrier should be able to define which part of the journey will be covered by which successive carrier. For reasons of liability the successive carriers should through the system be able to confirm that they are responsible for the specific parts of the journey and provide comments, reservations and amendments to the data of the electronic consignment note accordingly.

31. Based on the CMR Convention (Article 34), the second carrier and each succeeding carrier may become a party to the contract of carriage, under the terms of the consignment note, by reason of carrier's acceptance of the goods and the original consignment note. Therefore, the successive carriers should follow the same rules and conditions as the carriers concerning authentication and electronic recognition (for instance electronic signatures). The successive carriers should be able through the system:

- To have the same amending rights as the Carrier to the electronic consignment note for the period they are taking over of the transportation of the goods; and
- To have the same rights to provide comments as the Carrier to the electronic consignment note for the period they are taking over transportation of the goods.

(iii) *Freight forwarders*

32. If a freight forwarder negotiates and later signs a contract of carriage at his costs and name, including an "all in" service charge, it should be taken as a contractual service provider (a "carrier") with all implications resulting from CMR or any other conventions related to the respective mode of transport.

33. That forwarder (and any other transport provider as well) shall be allowed to subcontract the scope of his contract to (an)other party(ies), without any consent needed from the opposite

party to the original contract of carriage. If such a scheme happens the Freight Forwarder (or any other transport provider) remains liable as if it does perform the contract by itself. The "performing transport provider" then be also liable for any damage or delay but to its principal Freight Forwarder (or any other transport provider). The performing provider is entitled to same rights but also obligations mentioned in the CMR Convention.

34. The contractual Freight Forwarder may convey any extraordinary conditions mentioned in the original contract of carriage to its subcontractor only subject to subcontractors' explicit acceptance. In case of dispute the Freight Forwarder and its subcontractors are liable for a loss or damage jointly and equally.

35. In the position of a service provider the Freight Forwarder issues or signs a CMR Waybill to the client in his title. Towards the subcontractor a transport order or any other written proof of a subcontract should be sufficient (here we are quite short in providing the legal and complete proof of dispatch = the performing transport provider can and may not sign the "original" CMR Waybill "on behalf of" his principal Freight Forwarder, and a dispatch note - of whatever kind - is not accepted as a legal document in case of a damage or loss claim). In any case an option of a "CMR sub-waybill" has been declined in this respect. The reason results again from the imperfect construction of the domestic law.

(iv) *Sub-Contractors*

36. Subcontracted carriers are not parties to the same consignment note. There are consequently several contracts: a consignment note between the principal and the contracted carrier and a contract of sub carriage between the contracted carrier and the sub-contracted carrier. Possibly, a new consignment note must be drawn up for each sub-contracted carrier, in which the subcontracting carrier is entered as the sender. The sub-contracted carrier is liable only to the initial carrier, whilst the latter is liable to the sender and the consignee for acts and omissions on the part of other parties he may use for the transport operation (including the sub-contracted carriers).

37. What is the difference between a successive carrier and a sub-contracted carrier?

38. At first glance, the role of a successive carrier and a sub-contracted carrier is similar: each executes a part of the road transport. It should be noted that the Dutch Supreme Court recently ruled that the necessary conditions for being considered a successive carrier under Article 34 of the CMR Convention are also met in the case where the main carrier (and other carriers) are uniquely contracted carriers and have not in fact completed a portion of transport themselves

39. The difference thus lies in the responsibility of each towards its partners: · Successive carriers are parties to the same and unique contract of carriage. Each carrier is totally liable to the sender and to the consignee for the execution of the transport operation. The carriage is undertaken with only one CMR consignment note, which covers the entirety of the transport, in which the successive carriers enter their names and addresses (cf. also question 11). Sub-contracted carriers are not parties to the same contract of carriage. There are consequently several contracts: a contract of carriage between the principal and the contracted carrier and a contract of subcarriage between the contracted carrier and the sub-contracted carrier. A new consignment note must be drawn up for each sub-contracted carrier, where the subcontracting carrier is entered as the sender. The sub-contracted carrier is liable only to the initial carrier, whilst the latter is liable to the sender and the consignee for acts and omissions on the part of other parties he may use for the transport operation (including the sub-contracted carriers).”

40. From discussions, in practice, the freight forwarder receives the booking from a client and then gives an order to a haulier, This haulier could also pass the booking to another and another is not unusual. All would be deemed to be carrier or successive carrier and therefore all liable. In practice no one fills in the successive carrier box and only the actual transport company stamps & signs the CMR.

41. An example of Sub contractor that we would probably use on a regular basis. Company receives an order from a company to transport goods from Spain to Kazakhstan.

Then the company should prepare two separate CMR's usually 1 from collection point in Spain up to a transit depot in probably Baltics 2 from collection point in Baltics to final destination in Kazakhstan. For each separate CMR we would have a different contract with a completely different haulier, each only responsible for their own CMR transaction. Neither would be a party to the contract for the complete journey, so I think in this case subcontractors should be considered. (see attached 2 x CMR's for the same shipment).

42. At the end of the day the Freight Forwarder has responsibility either as carrier or appointing the correct haulier.

<i>id</i>	<i>Events of the electronic procedure of CMR for carriers</i>	<i>Create an eCN</i>	<i>Amend data of the eCN</i>	<i>Provide Comments</i>	<i>Attach documents</i>	<i>Store / print data</i>	<i>Notifications to consignor</i>
1	Creating an electronic consignment note by using all eighteen particulars and any additional particular they wish	✓				✓	✓
1a	Choose the type of carrier: a. carrier b. successive carrier, c. freight forwarder, d. subcontractor	✓		✓			✓
1a i	Add successive carriers in the same eCN event	✓	✓				✓
1a ii	Create an additional eCN for the same transport/cargo for subcontractors / freight forwarders	✓		✓		✓	✓
1b	Creating multiple electronic consignment notes for one cargo if required (Article 5, para. 2)	✓				✓	
1c	Declare an intermodal transport – including means of transport / itinerary if wish – (Article 2, para. 1)	✓				✓	
1d	Declare special risk including the six cases mentioned in the CMR Convention (Article 18)	✓				✓	
1e	Delay of delivery event – 1 <sup>st</sup> particular is the date. The system will include automatically the time (Article 19).			✓	✓	✓	✓
1f	Loss of the goods event (Article 20)			✓	✓	✓	✓
1g	Declare dangerous goods event (Article 22)	✓				✓	
1h	Declare a surcharge event (Article 24)	✓				✓	
1i	Declare a fixed amount of a special interest in delivery event (Article 26)	✓				✓	

<i>id</i>	<i>Events of the electronic procedure of CMR for carriers</i>	<i>Create an eCN</i>	<i>Amend data of the eCN</i>	<i>Provide Comments</i>	<i>Attach documents</i>	<i>Store / print data</i>	<i>Notifications to consignor</i>
1k	Finalising the eCN online event	✓			✓	✓	✓
2	Amend eCN data event when carrier has initiated the CN		✓			✓	✓
3	Amend eCN data event when carrier has not initiated the CN		✓			✓	✓
4	Dispose of the Goods event while generating the eCN (Article 12)			✓	✓	✓	✓
4a	Dispose of the Goods event in transit (Article 12)			✓	✓		✓
4b	Dispose of the Goods even when proof of delivery is taking place / or at the request of the consignee			✓	✓		✓
4c	Provide instructions to the carrier for the dispose of the goods event			✓	✓		✓
5	Make reservations while receiving the goods			✓	✓		✓
6	Receive consignor's request to check gross weight / quantity / contents of packages event			✓	✓		✓
7	Attach accompanying documents / provide comments event			✓	✓		✓
8	Require instructions by the consignor when carrier cannot carry out the contract (Article 14)			✓	✓		✓
8a	Require instructions by the consignor when carrier cannot deliver the goods event (Article 15)			✓	✓		✓
8b	Require instructions by the consignor when consignee refuses the goods event (Article 15)			✓	✓		✓
9	Carrier right to unload the goods / entrust them to third party when instructions not received event (Article 16)			✓	✓	✓	✓
9a	Carrier right to sell the goods event (Article 16)			✓	✓	✓	✓
9b	Total loss of the goods event (Article 17) in combination with event 1e						
9	Store the data / electronic consignment notes event					✓	

<i>id</i>	<i>Events of the electronic procedure of CMR for carriers</i>	<i>Create an eCN</i>	<i>Amend data of the eCN</i>	<i>Provide Comments</i>	<i>Attach documents</i>	<i>Store / print data</i>	<i>Notifications to consignor</i>
10	Fallback procedure			✓	✓	✓	✓

(c) **Consignee – Receiver**

43. The consignee as receiver of the goods, based on the CMR Convention has certain rights and obligations. eCMR consignment note. The consignee should be notified (email address / mobile phone) that they have been designated as the consignee/receiver at the time an eCMR consignment note is being concluded.

44. Consignees should have access to the data independently of the IT solution (meaning independently of technology, geography, business culture, etc.).

45. Access to data based on the CMR Convention is being categorised as follows:

- Access to **read** an electronic consignment note when the carrier/consignor have initiated one declaring the specific consignee and only if the carrier / consignor agrees the consignee to have read access to the electronic consignment note,
- Access to **amend** the data when:
  - The consignee has the right of disposal of the goods (Article 12, para. 3) and wants to provide an order for the goods to be delivered to another person. Then the consignee becomes the sender, and the other person becomes the consignee. The consignee should be able to declare a new consignee in the system. The right of disposal will apply as the cases being described for the consignor / consignee.
- Access to **provide comments** when:
  - The consignor, if they wish, could make an entry while generating the electronic consignment note where the consignor transfers the right of disposal of the goods to the consignee from the moment the electronic consignment note is generated (Article 12, para. 3 CMR Convention), it should be noted that for the right of disposal the conditions of Article 12, para. 5 of the CMR Convention should apply, the consignee should receive a notification and be able to provide comments if needed or amend the data (new consignee) as provided above,
  - the consignee has the right to refuse the goods and provide therefore comments accordingly if access to read the data of the electronic consignment note has been provided – notification should be sent to the consignor and the Carrier, the consignor shall be entitled to dispose of them (Article 15, para. 1 CMR Convention),
  - Even if the consignee has refused the goods, the consignee may nevertheless require delivery as long as the carrier has not received instructions to the contrary from the sender (Article 15, para. 2 CMR). The future system should accommodate such an event,
  - the consignee takes delivery of the goods (Article 30, paras. 1–5). If written reservations are not made by the consignee in the case of apparent loss or damage and within seven days of delivery, with the exception of Sundays and public holidays in the case of loss or damage which is not apparent, the fact that delivery has taken place shall be prima facie evidence that consignee received the goods in the condition described in the consignment note. The platform should provide the 7 days ability of notification from the consignee to the carrier in the form of reservations,
  - The consignee, in order to receive a compensation for delay in delivery has to make a written reservation to the carrier through the system within 21 days

from the time the goods were placed at the disposal of the consignee. The platform should provide this 21 days service to declare a compensation for delay in delivery to the consignee with relevant notification to the carrier,

- The CMR Convention and the eCMR Additional Protocol do not foresee the existence of a proof of delivery for the consignees. However, with the assistance of the technology a function could be developed that includes two steps: a. the proof of delivery and b. the proof of acceptance:
- **Proof of delivery:** technology could assist and provide a two fold verification of the already authenticated consignee. For instance, at the time the consignment note is concluded online, the consignee receives in their mobile phone / email address a unique code. This code will be asked by the carrier during the delivery of goods to the consignee to be inserted in the system in order to receive delivery of the goods. This will be also the time where the consignee gets the right of disposal of the goods, thereby replacing the receipt of the second copy of the consignment note. This action would trigger notifications to all stakeholders that the goods have arrived at their destination.
- Proof of acceptance of the goods: the next step should be the proof of acceptance of delivery. The consignee based on the CMR Convention has the right to check the goods and accept them or not – with relevant consequences – or even to declare a new consignee. Therefore, the consignee should enter in the system and either accept the delivery online finalizing [updating?] the consignment note or making reservations / remarks / comments (uploading also photos / videos that justify those reservations. The carrier in that moment will have the opportunity to read those comments without being able to delete them but be able to provide replies if needed.
- Access to **attach** accompanying documents when:
  - Reservations are made during delivery and consignee needs to upload photos, videos and extra documentation to prove those reservations
- Access to **store** the data.

<i>id</i>	<i>Events of the electronic procedure of CMR for consignees</i>	<i>Create an eCN</i>	<i>Amend data of the eCN</i>	<i>Provide Comments</i>	<i>Attach documents</i>	<i>Store / print data</i>	<i>Notifications to consignor / carrier</i>	<i>Notifications to consignee</i>
1	Creating an electronic consignment note by using all eighteen particulars and any additional particular they wish					✓		(✓)
1a	Choose the type of carrier: a. carrier b. successive carrier, c. freight forwarder, d. subcontractor							(✓)
1a i	Add successive carriers in the same eCN event							(✓)
1a ii	Create an additional eCN for the same transport/cargo for							(✓)



<i>id</i>	<i>Events of the electronic procedure of CMR for consignees</i>	<i>Create an eCN</i>	<i>Amend data of the eCN</i>	<i>Provide Comments</i>	<i>Attach documents</i>	<i>Store / print data</i>	<i>Notifications to consignor / carrier</i>	<i>Notifications to consignee</i>
	subcontractors / freight forwarders							
1b	Creating multiple electronic consignment notes for one cargo if required (Article 5, para. 2)							(✓)
1c	Declare an intermodal transport – including means of transport / itinerary if wish – (Article 2, para. 1)							(✓)
1d	Declare special risk including the six cases mentioned in the CMR Convention (Article 18)							(✓)
1e	Delay of delivery event – 1 <sup>st</sup> particular is the date. The system will include automatically the time (Article 19).			(✓)				(✓)
1f	Loss of the goods event (Article 20)			(✓)		(✓)		(✓)
1g	Declare dangerous goods event (Article 22)							(✓)
1h	Declare a surcharge event (Article 24)							(✓)
1i	Declare a fixed amount of a special interest in delivery event (Article 26)							
1k	Finalising the eCN online event					(✓)		(✓)
2	Amend eCN data event when carrier/consignor has initiated the CN					(✓)		(✓)

<i>id</i>	<i>Events of the electronic procedure of CMR for consignees</i>	<i>Create an eCN</i>	<i>Amend data of the eCN</i>	<i>Provide Comments</i>	<i>Attach documents</i>	<i>Store / print data</i>	<i>Notifications to consignor / carrier</i>	<i>Notifications to consignee</i>
3	Amend eCN data event when consignee wants to assign a new consignee		✓	✓		✓	✓	✓
4	Dispose of the Goods event while generating the eCN (Article 12)			✓				✓
4a	Dispose of the Goods event in transit (Article 12)			✓				✓
4b	Dispose of the Goods even when proof of delivery is taking place / or at the request of the consignee			✓				✓
4c	Provide instructions to the carrier for the dispose of the goods event (if consignor wishes to)							(✓)
5	Make reservations while receiving the goods							(✓)
6	Receive consignor's request to check gross weight / quantity / contents of packages event							(✓)
7	Attach accompanying documents / provide comments event							
8	Require instructions by the consignor when carrier cannot carry out the contract (Article 14)							(✓)
8a	Require instructions by the consignor when carrier cannot							(✓)

<i>id</i>	<i>Events of the electronic procedure of CMR for consignees</i>	<i>Create an eCN</i>	<i>Amend data of the eCN</i>	<i>Provide Comments</i>	<i>Attach documents</i>	<i>Store / print data</i>	<i>Notifications to consignor / carrier</i>	<i>Notifications to consignee</i>
	deliver the goods event (Article 15)							
8b	Consignee has the right to refuse the goods and carrier requires instructions by the consignor when consignee refuses the goods event (Article 15)		✓	✓	✓	✓	✓	
9	Carrier right to unload the goods / entrust them to third party when instructions not received event (Article 16)							(✓)
9a	Carrier right to sell the goods event (Article 16)							
9b	Total loss of the goods event (Article 17) in combination with event 1e							✓
9	Store the data / electronic consignment notes event					(✓)		
10	Compensation for delay in delivery event			✓	✓	✓	✓	✓
11	Proof of delivery event			✓	✓	✓	✓	✓
12	Proof of acceptance of the goods (including reservations event)			✓	✓	✓	✓	✓

**2. Users of the electronic consignment note that have the right to read the data of electronic consignment note upon request, provide comments and store the data if required by the law**

46. The second group of users have the right only to read the data upon request of a specific electronic consignment note while exercising their official duties and to provide comments in a designated text field created in the electronic consignment note for them. These users are the public authorities specifically the customs authorities, the police / frontiers guards, courts, insurance/ banking companies, etc.

**(a) Customs Authorities**

47. Customs Authorities are recognized as one of the stakeholders of the future eCMR system. Customs authorities for reasons that are different in several geographical regions are using / checking the CMR consignment notes.

48. It has to be noted that among others the comments of customs are also connected with issues relevant to liability of the carriers (Article 17, para. 4) such as lack of or defective condition of packing in the case of goods which by their nature are liable to wastage or to be damaged when not packed, the nature of certain kinds of goods which particularly exposes them to total or partial loss or to damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage or the action of moth or vermin etc. In that sense, it is up to the contractual parties (ie consignor, carrier, consignee) and the Customs Authorities to provide comments whenever they observe anything about the truck or the cargo or any other operational issue.

49. The customs authorities should have “on demand reading access” to the data of electronic consignment note meaning that when a truck arrives at their borders or customs offices, the customs officer should be able to “read the data” if required or the right to “provide comments” in a designated place within the electronic consignment note accessible only by customs independently of the IT solution (meaning independently of technology, geography, business culture etc.). This electronic space (field) will be created and only the customs will have the right to use it and provide comments. The comments cannot be deleted. The comments should be readable by all parties involved including officers from other Customs Authorities (listed on time sequence ).

50. However, in case of violation the customs authorities should have the right to request storage of the data and therefore they should have the ability to retain the data of a specific electronic consignment note.

51. In addition, Customs authorities should have the possibility to add an electronic stamp or seal. Specifications should correspond to the needs of public authorities and their rights to demand data.

52. Finally, some customs authorities would consider it great value to receive “advance eCMR data” meaning to receive this information well before the trucks arrives at their borders for example at the moment an electronic consignment note is generated and finalised online. Such a proposal has several benefits and advantages but also several disadvantages.

53. Potential advantages could include:

- Customs authorities receiving this data being able to perform a risk analysis of the truck and the goods it is carrying well before the truck arrives at their borders. This would result in better operations of green lanes, less queues at the borders, higher efficiency of borders operations,
- For the trucking industry this would mean reduced waiting times at the borders, better management of the trip and therefore higher customer service and better delivery times.

54. Disadvantages could include:

- The IT solutions that generate the electronic consignment notes should provide the ability to the users to define the exact itinerary that will be followed by the Carrier knowing that for several reasons this itinerary might change en route and the driver may have to amend the data,
- In order for the customs authorities to receive this data in advance they must be interconnected with the IT solutions – there might be hundreds of those – therefore considerable implementation costs is involved,
- Receiving advance cargo / CMR data is a practice that may not be permitted by all of the contracting parties to the CMR Convention / eCMR Additional Protocol. Therefore, if applicable and agreed, it will be only for those contracting parties that are permitted to receive advance cargo data considering that the rest of the contracting

parties where such practices is not permitted, agree with the implementation of such practice.

<i>id</i>	<i>Events of the electronic procedure of CMR for customs authorities</i>	<i>Read an eCN data upon ad hoc request</i>	<i>Provide Comments</i>	<i>Attach documents</i>	<i>Store / print data</i>	<i>Notifications to consignor / carrier</i>	<i>Notifications to consignee</i>
1	Checking of trucks at the borders / inland stations and comments has to be provided event	✓	✓	✓		✓	✓
2	Add electronic stamp / seal event	✓		✓		✓	✓
3	Identification of a violation event	✓	✓		✓	✓	✓
4	(Advance CMR data)	(✓)	(✓)	(✓)	(✓)	(✓)	(✓)

#### (b) Police

55. The traffic police in all regions stops and checks the trucks mainly looking at their consignment notes. These daily checks are taking place also for different reasons. In European territory such checks are taking place in order to ensure the implementation of the cabotage regulations where in other regions for security purposes. However, it means that the police officers should be equipped with a mobile device / application that can read the electronic data presented by the carrier – possibly in the format of a QR code – and check the originality of the data with the platform – generating the data.

56. The case of police – including frontier guards – is quite special and might require a more detailed and specialised analysis in order to ensure that the requirements and needs of the traffic police officers are met. In general, the challenges that are identified are as follows:

- Procurement of mobile devices and development of specialised applications to the police officers to be able to receive and read this data. It is a decision to be taken at national level,
- Development of technical specifications for mobile devices in order to ensure harmonization and an international solution,
- Interconnection of those devices/ headquarters with the several IT solutions (it should be hundreds) which includes a lot of effort, costs and uncertainty on how to perform such interconnections at the international level,

<i>id</i>	<i>Events of the electronic procedure of CMR for traffic police</i>	<i>Read an eCN data upon ad hoc request</i>	<i>Provide Comments</i>	<i>Attach documents</i>	<i>Store / print data</i>	<i>Notifications to consignor / carrier</i>	<i>Notifications to consignee</i>
1	Checking of trucks on the roads and comments has to be provided	✓	✓	✓		✓	✓

<i>id</i>	<i>Events of the electronic procedure of CMR for traffic police</i>	<i>Read an eCN data upon ad hoc request</i>	<i>Provide Comments</i>	<i>Attach documents</i>	<i>Store / print data</i>	<i>Notifications to consignor / carrier</i>	<i>Notifications to consignee</i>
	event (mobile devices)						
2	Add electronic stamp / seal event	✓		✓		✓	✓
3	Identification of a violation event (mobile devices)	✓	✓		✓	✓	✓
4	(receive Advance CMR data?)	(✓)	(✓)	(✓)	(✓)	(✓)	(✓)

**(c) Courts and other authorities**

57. Another example are the law courts and other relevant authorities. A request could be made directly to the company that generated the data or – if agreed – only to the national body that safely stores the data for a harmonized period of time prior to an investigation.

58. The challenges connected with the courts are as follows:

- The courts need to have immediate access to data, and they need to be assured that the data is the original data (inalterability of messages).
- Today, different time frames exist concerning the period for which the paper CMR consignment notes should be kept. In the electronic environment a harmonised time frame should be identified most probably around ten years.
- How will the courts have immediate access to the original data? With a request to the public authorities where the IT solution is located? With a direct request to the private IT solution? It should be noticed that courts might take in completely different geographical locations from where the IT solutions are located. Here is where trust and mutual recognition of the system is of paramount importance.

<i>mn</i>	<i>Events of the electronic procedure of CMR for courts and other authorities</i>	<i>Read an eCN data upon ad hoc request</i>	<i>Provide Comments</i>	<i>Attach documents</i>	<i>Store / print data</i>	<i>Notifications to consignor / carrier</i>	<i>Notifications to consignee</i>
1	In case of a trial / investigation request of original data event	✓	✓		✓	✓	✓
2	In case of a trial / investigation request of historical	✓	✓		✓	✓	✓

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<i>mn</i>	<i>Events of the electronic procedure of CMR for courts and other authorities</i>	<i>Read an eCN data upon ad hoc request</i>	<i>Provide Comments</i>	<i>Attach documents</i>	<i>Store / print data</i>	<i>Notifications to consignor / carrier</i>	<i>Notifications to consignee</i>
	<i>data (trucking company, etc)</i>						

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