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## Economic Commission for Europe

### Inland Transport Committee

#### Working Party on Rail Transport

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

###### Second session

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Item 4 of the provisional agenda

##### **Review of work on General Terms and Conditions for Euro-Asian transport contracts (GTC EurAsia)**

## **Draft of the General Terms and Conditions for Euro-Asian rail transport contracts (GTC EurAsia)**

**Transmitted by the International Rail Transport Committee (CIT)**

### **I. Mandate**

1. In accordance with the ECE Position Paper entitled “Towards unified railway law in the pan-European region and on Euro-Asian transport corridors” (ECE/TRANS/2011/3) and the workplan adopted by the ECE Group of Experts towards Unified Railway Law at its first session (ECE/TRANS/SC.2/GEURL/2011/4, para. 9), the Group of Experts is invited to take note of the draft of the General Terms and Conditions for Euro-Asian rail transport contracts.
2. This preliminary draft was prepared by the International Rail Transport Committee (CIT) with the aim of preparing for its future collaboration with the Organization for Cooperation between Railways (OSJD) as part of their Joint Legal Group, in cooperation with the Intergovernmental Organisation for International Carriage by Rail (OTIF).
3. The Group of Experts may wish to take note of this document in the context of the draft Inter-Governmental Document on General Terms and Conditions for Euro-Asian rail transport corridors and on related areas of joint work (ECE/TRANS/SC.2/GEURL/2011/6), which contains principles concerning the general terms and conditions for Euro-Asian rail transport contracts.

## II. Draft of the General Terms and Conditions for Euro-Asian rail transport contracts (GTC EurAsia)

	<i>Comments</i>
<p><b>1. Validity</b></p> <p>The General Terms and Conditions for Euro-Asian rail transport contracts (GTC EurAsia) govern contracts for the direct international transport of freight between Europe and Asia by rail. They shall be applicable to the extent that the parties to the contract expressly agree to them.</p> <p>Unless otherwise provided by GTC EurAsia, national law shall apply. “National law” means the law of the State in which the person entitled asserts his rights, including the rules relating to conflict of laws.</p> <p>The peremptory rules of the applicable law shall not be affected and shall have priority over GTC EurAsia.</p> <p>The total or partial nullity or inapplicability of one or more of the provisions of GTC EurAsia shall not affect the validity of the other provisions. The parties shall stipulate new provisions having the same effect to replace null or inapplicable provisions.</p>	<p>As per the ECE policy resolution.</p> <p>GTC EurAsia does not apply to the transport of dangerous goods (to be addressed by the consignment note and the manual).</p> <p>Regulation (EC) No. 593/2008 of 17 June 2008 (“Rome I”) allows for freedom of choice in the applicable law for international cross-border carriage of goods, which is not the case for the carriage of passengers (art. 3 in conjunction with art. 5). Requires elaboration.</p>
<p><b>2. Contract of carriage</b></p> <p>The contract of carriage shall be confirmed by the making out of a consignment note in accordance with annex ... The carrier shall certify proper receipt of the goods on the duplicate of the consignment note and shall return the duplicate to the consignor. The consignment note, including its duplicate copy, may be recorded electronically.</p>	<p>Corresponds with the generally accepted provision of article 4 of the Convention on the Contract for the International Carriage of Goods by Road (CMR).</p>
<p><b>3. Consignment note</b></p> <p>The content of the consignment note is detailed in annex ...</p> <p>The consignor shall be responsible for all costs, loss or damage sustained by the carrier by reason of the entries made by the consignor in the consignment note being irregular, incorrect, incomplete or made elsewhere than in the allotted space.</p> <p>If, at the request of the consignor, the carrier makes entries on the consignment note, he shall be deemed, unless the contrary is proved, to have done so on behalf of the consignor.</p>	<p>Harmonized within the framework of the CIM/SMGS Consignment Note Manual.</p> <p>The model for the consignment note and the annex format will be developed later.</p>
<p><b>4. Annexes to the consignment note</b></p> <p>With a view to the completion of the formalities required by customs and other administrative authorities, to be completed before delivery of the goods, the consignor must attach the necessary documents to the consignment note.</p> <p>The carrier shall not be obliged to check whether these documents and this information are correct and sufficient. The consignor shall be liable to the carrier for any loss or damage resulting from the absence</p>	

or insufficiency of, or any irregularity in, such documents, save in the case of fault by the carrier.

The carrier shall be liable for any consequences arising from the loss or misuse of the documents referred to in the consignment note and accompanying it, unless the loss of the documents or the loss or damage caused by the misuse of the documents has been caused by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent. Nevertheless any compensation payable shall not exceed that provided for in the event of loss of the goods.

#### **5. Payment of costs**

Unless otherwise agreed between the consignor and the carrier, the costs shall be paid by the consignor.

Same language as CIM and SMGS as well as in the CIM/SMGS guide on responsibility.

#### **6. Loading and unloading of the goods**

Unless otherwise agreed between the consignor and the carrier, loading shall be the responsibility of the consignor and unloading, after delivery, the responsibility of the consignee.

A consignor who has loaded the goods shall be liable for all the consequences of defective loading and must, in particular, compensate any loss or damage sustained by the carrier.

The consignor shall be liable for all loss or damage resulting from an absence of or defects in the packing.

#### **7. Delivery**

The carrier must hand over the consignment note and deliver the goods to the consignee at the place designated for delivery against receipt and payment of the amounts due according to the contract of carriage.

#### **8. Right to dispose of the goods**

Upon presentation of the duplicate consignment note, the consignor shall be entitled to dispose of the goods and to modify the contract of carriage.

#### **9. Circumstances preventing carriage**

When circumstances prevent the carriage of goods, the carrier shall decide whether it is preferable to continue carriage of the goods as a matter of course by modifying the route or whether it is advisable in the consignor's interest to ask him for instructions while giving him any relevant information available to the carrier.

If it is impossible to continue carrying the goods, the carrier shall ask the consignor for instructions.

#### **10. Circumstances preventing delivery**

When circumstances prevent delivery, the carrier must without delay inform the consignor and ask him for instructions, save where the consignor has requested, by an entry in the consignment note, that the

goods be returned to him as a matter of course in the event of circumstances preventing delivery.

When the circumstances preventing delivery cease to exist before arrival of instructions from the consignor to the carrier, the goods shall be delivered to the consignee. The consignor must be notified without delay.

#### **11. Execution of orders**

In the case of fault of the carrier he shall be liable for the consequences of failure to carry out an order or of a failure to carry out an order modified under number 8, or instructions under numbers 9 and 10.

Nevertheless, any compensation payable shall not exceed that provided for in case of loss of the goods.

#### **12. Collective responsibility of carriers**

A carrier who has accepted goods for carriage with the consignment note shall be responsible for fulfilling the transport contract over the entire route up to delivery.

Each successive carrier who takes over the goods with the consignment note shall become a party to the contract of carriage in accordance with the terms of that document and shall assume the obligations arising therefrom. In such a case, each carrier shall be responsible in respect of carriage over the entire route up to delivery.

#### **13. Extent of liability**

The carrier shall be liable for loss or damage resulting from loss of, or damage to, the goods between the time of acceptance for carriage and the time of delivery.

The carrier shall be relieved of this liability to the extent that the loss or damage is caused by the fault of the person entitled, by an order given by the person entitled other than as a result of a fault of the carrier, by an inherent defect in the goods or by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent. The burden of proof shall lie on the carrier.

The carrier shall be relieved of this liability to the extent that the loss or damage arises from the special risks inherent in one or more of the following circumstances: carriage in open wagons, absence or inadequacy of packaging, loading of the goods by the consignor or unloading by the consignee, or the nature of certain goods. When the carrier establishes that, having regard to the circumstances of a particular case, the loss or damage could have arisen from one or more of the special risks, it shall be presumed that it did so arise. The person entitled shall, however, have the right to prove that the loss or damage was not attributable either wholly or in part to one of those risks.

#### **14. Compensation in the event of total or partial loss of goods**

In case of total or partial loss of the goods, the carrier must pay, to the exclusion of all other damages, compensation equal to the value of the goods lost, as established by supporting documents provided by the claimant.

Harmonized with the Special Conditions of CIM/SMGS Liability (SC CIM/SMGS).

Harmonized with SC CIM/SMGS.

In the event that the claimant cannot provide proof of the value, the compensation shall be calculated according to the market valuation or the monetary value of the goods, or if neither is available, according to the normal value of goods of the same kind and quality at the time and place at which the goods were accepted for carriage.

Compensation shall not exceed 35 SwF per kilogramme of gross mass short.

The carrier must, in addition, refund the carriage charge, customs duties already paid and other sums paid in relation to the carriage of the goods lost except excise duties for goods carried under a procedure suspending those duties.

#### **15. Compensation for damage**

In case of damage to goods, the carrier must pay compensation equivalent to the loss in value of the goods, to the exclusion of all other damages.

Harmonized with SC CIM/SMGS.

Depreciation of the value of the goods shall be calculated as per number 14, paragraph 2.

The compensation may not exceed the amount which would have been payable in the event of total or partial loss of goods.

The carrier must, in addition, refund, in the proportions determined in paragraph 1, the charges set out in number 14, paragraph 4.

#### **16. Compensation for exceeding the transit period**

If loss or damage results from the transit period being exceeded, and unless agreed otherwise by the consignor and the carrier, the carrier shall pay compensation not exceeding the cost of carriage.

As per article 21 of the Rotterdam Rules.

The transit period is considered as being exceeded when the goods are not delivered at the place of destination provided for in the contract of carriage within the time agreed.

#### **17. Compensation in the case of declaration of value of the goods**

The consignor and the carrier may agree that the consignor shall declare in the consignment note a value for the goods exceeding the limit provided for in number 14, paragraph 3.

Harmonized with SC CIM/SMGS.

In such a case the amount declared shall replace the limit in number 14, paragraph 3, as well as the one in number 15, paragraph 3.

Further regulations in the event of wilful misconduct to be discussed with the client (cf. CIM art. 36).

#### **18. Liability of the carrier for transport intermediaries**

The carrier shall be liable for his servants and other persons whose services he makes use of for the performance of the carriage when they are acting within the scope of their functions.

As per article 40 of the CIM.

**19. Other actions**

In all cases where the present GTC EurAsia apply, any action in respect of liability, on whatever grounds, may be brought against the carrier only subject to the conditions and limitations laid down herein.

The same shall apply to any action brought against the servants or other persons for whom the carrier is liable pursuant to number 18.

**20. Ascertainment of partial loss or damage of goods**

When partial loss or damage is discovered or presumed by the carrier or alleged by the person entitled, the carrier must without delay, and if possible in the presence of the person entitled, draw up a report in accordance with annex ... stating, according to the nature of the loss or damage, the condition of the goods, their mass and, as far as possible, the extent of the loss or damage, its cause and the time of its occurrence.

The report shall be drawn up in at least two copies and one copy shall be attached to the consignment note.

A copy of the report must be supplied free of charge to the person entitled.

Harmonized with the CIM/SMGS Consignment Note Manual.

**21. Claims**

Claims for damages resulting from a total or partial loss of goods, damage to the goods or exceeding the transit period shall be made in writing to the responsible carrier. The responsible carrier is the first carrier, the last carrier or the carrier having performed the part of the carriage on which the event giving rise to the proceedings occurred.

Claims may be filed by:

- The consignor, until such time as the consignee has taken possession of the consignment note or accepted the goods
- The consignee, from the time when he has taken possession of the consignment note or accepted the goods

The claimant's right to choose among the carriers shall be extinguished as soon as he brings an action against any one of the carriers.

Harmonized with the CIM/SMGS Consignment Note Manual.

As per articles 43 to 45 of CIM and parts of article 29 of SMGS.

**22. Relations between carriers**

Any carrier who has collected either charges or other costs arising out of the contract of carriage must pay to the carriers concerned their respective shares. The methods of payment shall be fixed by agreement between the carriers.

A carrier who has paid compensation for loss or damage to the goods or for exceeding the transit period shall have a right of recourse against the carriers who have taken part in the carriage in accordance with the following provisions:

- The carrier who has caused the loss or damage shall be solely liable for it
- When the loss or damage has been caused by several carriers, each shall be liable for the loss or damage he has caused; if such distinction is impossible, the compensation shall be apportioned between them in accordance with the indent below
- If it cannot be proved which of the carriers has caused the loss or damage, the compensation shall be apportioned between all the carriers who have taken part in the carriage, except those who prove that the loss or damage was not caused by them; such apportionment shall be in proportion to their respective shares of the carriage charge

In the case of insolvency of any one of these carriers, the unpaid share due from him shall be apportioned among all the other carriers who have taken part in the carriage, in proportion to their respective shares of the carriage charge.

The carriers may conclude agreements which derogate from these provisions.

**23. Assertion of rights**

The legal capacity to assert and defend rights is governed by number 21.

All disputes arising in connection with the present contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The parties shall ensure that the arbitration clause fulfils the particular conditions of form and content as may be required.

*Comments*

Similar provision in CIM and SMGS, as well as in the CIM/SMGS guide on responsibility.

International Chamber of Commerce (ICC) arbitration clause.

[www.iccwbo.org/court/arbitration/id4401/index.html](http://www.iccwbo.org/court/arbitration/id4401/index.html).

Regulation (EC) No. 44/2001 of 22 December 2000 (“Brussels I”) also sets out provisions for arbitration within the EU area (art. 1, para. 2 (d)). Requires elaboration.