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Strategic questions of a modal and thematic nature:

Rail transport

Synopsis of comparison remarks between Unified Railway Law and other rail regimes in order to facilitate monitoring of legal provisions' pilot tests

Note by the secretariat

Introduction

1. This note outlines a synopsis of comparison remarks between Unified Railway Law and other rail regimes for consideration by the Group of Experts on Unified Railway Law and Railway Undertakings while performing and monitoring pilot tests of draft legal provisions.
2. In accordance with the Inland Transport Committee (ITC) resolution (ECE/TRANS/2016/17) on Unified Railway Law, the railway undertakings and the International Organizations for railways were encouraged to test the legal provisions, whenever possible, in practice and the Group of Experts was invited to monitor results of those pilot tests and prepare recommendations accordingly.
3. During the sessions of the Group in 2016, a road map for performing the pilot tests was discussed and adopted by the Railway Undertakings and the inauguration of those pilot tests was agreed. The following synopsis was prepared by Professor Rainer Freise and the secretariat.

Item 1 Scope of Application

§ 1

This legal regime 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

...

(Article 1 § 1)

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.

(Article 1) § 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 inter-national rail transport (multi-modal 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 multi-modal transport contract has declared that it will not apply this legal regime to multimodal transport contracts.

(Article 1) § 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.

CIM (or rather SMGS) is applicable if the contract of carriage covers only a transport in the CIM-area (or rather SMGS-area). A transport from the CIM-area into the SMGS-area (or vice versa) therefore needs a CIM-contract in the CIM-area and a SMGS-contract in the SMGS-area and reconsignment at the border of the two areas. If there is only one through-going contract which covers both areas (without reconsignment), neither CIM nor SMGS are applicable.

URL is not applicable if CIM and/or SMGS are applicable. So URL needs a through-going contract covering both areas without reconsignment at the border between CIM and SMGS; and the parties to the contract have to agree that their contract is subject to URL.

CIM, SMGS and URL include multimodal transport in a different manner:

CIM includes carriage by road, inland waterway or sea under certain circumstances;

SMGS includes international through railway-ferry traffic;

URL includes each other mode of transport in addition to international rail transport under certain circumstances.

CIM, SMGS and URL have different provisions concerning their applicability in special cases.

Item 2 Definitions

1. “Contract of carriage” means a contract under which a carrier undertakes to carry goods against payment and to deliver them to a consignee under the conditions provided by this legal regime.
2. “Carrier” means the contractual or a subsequent carrier.
3. “Contractual carrier” means the carrier who has concluded the contract of carriage with the consignor.

SMGS and URL have numerous definitions at their disposal whereas CIM has only four definitions.

In spite of a different wording the definitions in the three legal regimes mostly mean the same when using the same term.

4. “Subsequent carrier” means a carrier who has not concluded the contract of carriage with the consignor but, by the very act of taking over of the goods with the consignment note, becomes a party to the contract of carriage.
5. “Consignor” means the person who has concluded the contract of carriage with the contractual carrier.
6. “Parties to the contract” means the carrier and the consignor.
7. “Consignee” means the person to whom the carrier has to deliver the goods in accordance with the contract.
8. “Person entitled” means the person who has the right to dispose of the goods.
9. “Goods” means the wares, merchandise and articles of every kind whatsoever that a carrier undertakes to carry under a contract of carriage and includes the packing and any equipment and intermodal transport unit not supplied by or on behalf of the carrier. Empty wagons can also be considered as goods.
10. “Consignment” means the totality of goods that is to be carried under a single contract of carriage.
11. “Consignment note” means a document which confirms the conclusion and the content of the contract of carriage.
12. “Electronic consignment note” means a consignment note established in the form of electronic communication and which assures the authenticity and integrity of the electronic communication at all time.
13. “Costs relating to carriage” means the carriage charges and incidental costs, customs duties and other additional costs which are justified and necessary for the performance of the contract and incurred from the conclusion of the contract until delivery.
14. “Carriage charges” means the contractual remuneration payable to the carrier for the performance of the contract of carriage.
15. “Tariffs” means a carrier’s pricing systems, legally in force or determined by the carrier’s costs of services, on the basis of which the level of the freight charges under the contract of carriage is formed.
16. “Dangerous goods” means any materials and substances which, according to the provisions of RID or Annex 2 to SMGS, must not or only under conditions might be transported.
17. “Intermodal transport unit” means a container, transportable tank or flat, swap body, semi-trailer or other comparable loading unit used for the transport of goods in intermodal transport.

Several definitions in SMGS do not come back in URL but are natural. URL is not dealing with the items “Penalty (fine)” and “Seal”.

SMGS and URL do not know the “substitute carrier” as it is to be found in CIM. With regard to SMGS and URL the substitute carrier is merely a “person for whom the carrier is liable” (cf. Art. 38 SMGS and Art. 26 URL).

Item 3**Mandatory Law, Application of Public Law or National Law***Article 3 Mandatory Law*

§ 1

Unless provided otherwise in this legal regime, any stipulation in the contract of carriage, which would derogate from this legal regime shall be null and void. The nullity of such stipulation shall not involve the nullity of other provisions of the contract of carriage agreed by the parties.

§ 2

Nevertheless, a carrier may assume a liability greater and obligations more burdensome than those provided for in this legal regime. Furthermore, the compensation payable by the consignor pursuant to Articles 7 and 11 may, by derogation from § 1, be limited in amount, but not less than the amount which the carrier is entitled to invoke under this legal regime for total loss of the goods.

Article 4 Provisions of public law

This legal regime governs only the rights and obligations of the parties to the contract of carriage arising from such contract. Carriage to which this legal regime applies shall remain subject to the provisions of public law, in particular public law provisions regulating

1. the safe transport of dangerous goods as well as other safety issues,
2. customs formalities, or
3. the protection of animals.

In principle both Conventions (CIM and SMGS) and URL are mandatory. So, after the parties to the contract of carriage have agreed on using URL as legal basis for their through-going contract, they are bound to this legal regime.

Exceptionally CIM and URL allow the carrier to expand its liability and obligations deviating from the applicable legal regime.

Furthermore URL allows a limitation of the liability of the consignor. SMGS allows the carrier to fix a general exemption of its liability for loss of or damage to goods under special contractual terms. The relevance of this exemption in practice should be cleared (see also the following Article 8 of SMGS).

URL does not say expressly anything about supplementary provisions or special conditions for the carriage of various types of goods. But in several Articles this legal regime refers to conditions on which the parties have agreed (cf. Articles 6 § 3, 8 §§ 1 and 2, 13 or 14 § 4 URL). And, of course, the contractual freedom, being a basis of the URL, allows the parties to the contract to define the conditions and performance of the contract in detail under the condition that they do not derogate from the legal regime. And it shall be repeated that the parties will only choose the URL if it fits to their through-going contract of carriage to which CIM and SMGS are not applicable.

Even if Article 9 SMGS only refers to the carriage of dangerous goods it is to be assumed that carriage to which the SMGS applies also remains subject to the provisions of public law.

URL does not refer to national law in general as CIM and SMGS do. But there are several provisions in this new legal regime which refer to national law in special cases (cf. Articles 9 § 1, 14 § 4, 18 § 3, 20 §§ 4 and 5, 29 §§ 2 and 7). CIM and SMGS, too, refer to national law in several cases.

Item 4
Contract of Carriage

Article 5 Contract of carriage

§ 1

Under the contract of carriage the carrier is obliged to carry the goods to the destination and to deliver them to the consignee. Subject to Article 8 the consignor is obliged to pay the costs relating to carriage.

(Article 5) § 2

The contract of carriage shall be confirmed by a consignment note.

(Article 5 § 2) Sentence 2:

The relevant international associations in the railway sector may together establish a standard model of the consignment note, also taking into account customs matters.

For one consignment only one consignment note shall be made out, even if the totality of goods consists of several parts or is transported in several wagons.

(Article 5 § 2) Subparagraph 3:

The absence, irregularity or loss of the consignment note shall not affect the existence or validity of the contract of carriage which shall remain subject to this legal regime.

§ 3

The consignment note shall be signed by the consignor and the contractual carrier. As a signature there can be used an imprint, a stamp or an accounting machine entry.

The carrier must certify the taking over of the goods on the consignment note in an appropriate manner and return to the consignor the original of the consignment note which is intended for the consignor.

§ 4

The consignment note may be established or used in the form of electronic communication. The use of an electronic consignment note shall be agreed upon by all parties involved in the carriage of goods. An electronic record having the same functions as the consignment note shall be.

(Article 5 § 4, Sentence 3)

Article 7 of SMGS appears as a description of the performance of the pre-contractual phase of the carriage of goods. Nothing else should go under CIM and URL though these legal regimes don't say anything about the pre-contractual phase of the transport.

According to both Conventions and the new legal regime the contract of carriage is based on an agreement between the parties to the contract. The taking over of the goods and/or of the consignment note is not a condition of the contract of carriage.

Only SMGS still contains a legal obligation to carry goods, whereas according to CIM and URL there exists only a contractual obligation. Furthermore, URL is not applicable unless the parties to the contract of carriage agreed its applicability.

The consignment note is not a condition of the contract of carriage but confirms the contract which exists even if no consignment note can be presented to the court or tribunal.

Even if there is not yet a standard model of the consignment note being established with regard to URL, the carriage of goods may be performed governed by URL. The parties may use one of the existing models of the consignment note (e.g. the CIM/SMGS Consignment Note; cf. Article 13 of SMGS) with the addition "URL".

SMGS does not mention the "absence" of the consignment note, but, according to the three legal regimes, the "loss" of the consignment note shall not affect the existence or validity of the contract of carriage which only shall be "confirmed" by the consignment note.

deemed equivalent to the consignment note, provided that the authenticity and integrity of the record are assured at all times.

Article 14 § 6 of SMGS mentions necessary preparations for the transport. The same should be valid under CIM and URL.

Item 5 Content of the Consignment Note

Article 6 Content of the consignment note

§ 1

The consignment note must contain the following particulars

- (a) the date and the place at which it is made out;
- (b) the name and address of the consignor;
- (c) the name and address of the contractual carrier;
- (d) the name and address of the person to whom the goods have effectively been handed over if he is not the contractual carrier;
- (e) the place and the date of taking over of the goods;
- (f) the place designated for delivery;
(cf. § 2 letter c)
- (g) the name and address of the consignee;
- (h) the description of the nature of the goods and the method of packing, and, in case of dangerous goods, their generally recognized description;
- (i) the number of packages and their special marks and numbers;
- (j) the number of the wagon(s) in which the consignment is carried;
- (k) in case of using an intermodal transport unit, its category, number or other characteristics necessary for its identification;
- (l) the gross mass or the quantity of the goods expressed in other ways;
- (m) a detailed list of the documents which are required by customs or other administrative authorities and are attached to the consignment note or held at the disposal of the carrier at the offices of a duly designated authority or a body designated in the contract;
- (n) the carriage charges and other costs relating to carriage insofar as they have to be paid by the consignee.

(Article 6) § 2

Where applicable the consignment note must also contain the following particulars:

- (a) carriage charges and other costs relating to carriage which the consignor undertakes to pay;
- (b) the agreed time of delivery;
- (c) the agreed route to follow;
- (d) a list of the documents not mentioned in § 1, letter m, handed over to the carrier;

Both Conventions and the URL do not differ much with regard to the particulars to be entered on the consignment note. They all distinguish between particulars which have to be entered in any case (§ 1) and those which have to be entered where applicable or appropriate (§ 2). In addition, pursuant to CIM and URL, the parties may also enter on the consignment note other particulars relating to carriage they consider useful (§ 3).

- (e) the information given by the consignor concerning the number and description of seals he has affixed to the wagon;
 - (f) additional information on specific requirements relating to the handling of the goods including dangerous goods.
- (cf. § 2 letter e)
(Article 6) § 3
The parties may enter on the consignment note other particulars relating to carriage they consider useful.

The CIM/SMGS Consignment note may be useful for the carriage of goods under URL as well.

Item 6
Responsibility of the Consignor

Article 7 Responsibility of the consignor
§ 1

No substantial differences between the three legal regimes.

- The consignor shall be liable for all costs, loss or damage sustained by the carrier by reason of:
- (a) the entries made by or on behalf of the consignor in the consignment note or other documents referred to in Article 12 being incorrect, or
 - (b) the consignor omitting to provide the necessary information on the generally recognized description of the dangerous goods.

(Article 7) § 2

The consignor shall, to the extent he is at fault, also be liable for all costs, loss or damage sustained by the carrier by reason of the consignor omitting to provide necessary information on specific requirements relating to the handling of the goods.

The message of Article 16 § 2 SMGS should be valid under CIM and URL as well.

(Article 7) § 3

If the consignor has failed to disclose the dangerous nature of the goods or specific requirements relating to the handling of the goods, the carrier may at any time unload or destroy the goods or render them innocuous, as the circumstances and the potential risk may require. In this case the carrier may claim the costs or expenses necessitated by the measures taken and shall not be obliged to pay compensation for loss of or damage to the goods.

Different to CIM and URL the SMGS contains penalties in several cases.

Item 7**Payment of the Costs related to Carriage***Article 8 Payment of the costs relating to carriage*

§ 1

Unless otherwise agreed between the consignor and the carrier, the carriage charges shall be paid by the consignor; other costs relating to carriage shall be paid by the consignor when they are caused by circumstances beyond the carrier's control.

(Article 8 § 1) Sentence 2:

Unless otherwise agreed the carrier has the right to demand the carriage charges before the beginning of the carriage.

§ 2

When by virtue of an agreement between the consignor and the carrier, the costs relating to carriage are payable by the consignee, the consignor shall remain liable for payment of the costs, if the consignee has not taken possession of the consignment note nor has taken delivery nor asserted his rights in accordance with Article 14 §§ 2 and 3 nor modified the contract of carriage in accordance with Article 15.

(Article 8) § 3

If the carriage charges are calculated based on tariffs, ...

... the calculation shall be based on the tariffs which are valid on the day of the conclusion of the contract of carriage, and in the currency defined according to the applied tariffs for the international carriage.

(Article 8 § 3) Sentence 2:

Carriage charges are calculated separately by each participating carrier with regard to his section of the route and according to his pricing systems and tariffs.

§ 4

The carrier has to be reimbursed of all costs relating to carriage which are not foreseen in the applied tariffs and were caused by circumstances beyond the carrier's control. These costs are registered on the day of their occurrence separately for each consignment and are justified by the relevant documents.

Article 18 § 1 Sentence 2:

The carrier may in particular recover the carriage charge applicable to the route followed ...

With regard to the payment of costs the three legal regimes contain contractual freedom.

CIM mentions "tariffs" only in the definition of "General Conditions of Carriage" in Article 3 letter c), whereas in SMGS the calculation of carriage charges is based on tariffs. URL respects the solution of SMGS.

Only CIM allows cash on delivery (cf. also Articles 44 § 4, 45 § 4, 48 § 1 CIM)

As, according to SMGS, carriage charges shall be calculated in accordance with tariffs, the respective provisions in SMGS are more detailed than in CIM and URL.

Item 8
Examination

Article 9 Examination

§ 1

The carrier shall have the right to examine whether the conditions of carriage have been complied with and whether the consignment corresponds with the entries in the consignment note made by the consignor. If the examination concerns the contents of the consignment, this shall be carried out as far as possible in the presence of the person entitled; where this is not possible, the carrier shall require the presence of two independent witnesses, unless the laws and prescriptions of the State where the examination takes place provides otherwise.

As SMGS does not contain a prescription regulating the evidential value of the consignment note, there is no necessity of a provision in SMGS which entitles the consignor to require the carrier to examine the goods.

§ 2

If the consignment does not correspond with the entries in the consignment note or if the provisions of public law have not been complied with, the result of the examination must be entered in the consignment note. In this case the costs of the examination shall be charged against the goods, if they have not been paid immediately.

(Article 9) § 3

When the consignor loads the goods, he shall be entitled to require the carrier to examine the condition of the goods and their packaging as well as the accuracy of statements on the consignment note as to the number of packages, their marks and numbers as well as the gross mass of the goods or their quantity otherwise expressed. The carrier shall be obliged to proceed with the examination only if he has appropriate means of carrying it out. The carrier may demand the payment of the costs of the examination. The result of the examination shall be entered on the consignment note.

Item 9
Evidential value of the consignment note

Article 10 Evidential value of the consignment note

§ 1

The consignment note, signed according to Article 5 § 3, shall be prima facie evidence, save proof to the contrary, of the conclusion and the conditions of the contract of carriage and the taking over of the goods by the carrier.

SMGS does not contain a prescription dealing with the evidential value of the consignment note.

§ 2

If the consignment note, signed according to Article 5 § 3, contains no specific reservations by the carrier, it is assumed, failing proof to the

contrary, that the goods and their packaging have apparently been in a good and appropriate condition to be transported at the moment they were taken over by the carrier.

(Article 10) § 3

If the carrier has loaded the goods or has examined them, the consignment note shall be prima facie evidence, save proof to the contrary, of the condition of the goods and their packaging indicated on the consignment note or, in the absence of such indications, of their apparently good and appropriate condition at the moment they were taken over by the carrier and of the accuracy of the statements in the consignment note concerning the number of packages, their marks and numbers as well as the gross mass of the goods or their quantity otherwise expressed.

However, the consignment note will not be prima facie evidence, if not proven to the contrary, in a case where it bears a reasoned reservation.

Item 10

Packing, Loading, Completion of administrative formalities

Article 11 Packing, Loading

§ 1

The consignor shall be liable to the carrier for any loss or damage and costs due to defective packing or labelling of the goods or defective marking, unless the defect was apparent or known to the carrier at the time when he took over the goods and he made no reservations concerning it.

(Article 11) § 2

The consignor shall be liable for all the consequences of defective loading carried out by him and in particular has to compensate the carrier for the loss or damage sustained in consequence by him, unless the defect was apparent or known to the carrier at the time when he took over the goods and he made no reservations concerning it.

Should the consignment note contain no information on the person who has loaded the goods, it shall be considered as loaded by the consignor.

§ 3

In the case of apparent or known defective packing, labelling or loading of the goods, the carrier may accept the goods for carriage under specific contractual conditions.

Article 12 Completion of administrative formalities

§ 1

For the purposes of the customs or other formalities which have to be completed before delivery of the goods, the consignor shall attach the necessary documents to the consignment note or make them available to

CIM and URL do not specify the requirements of packing, labelling and loading of the goods but regulate the consignor's liability for defective packing, labelling and loading (see Article 11 below, Page 45, 46).

the carrier and shall furnish him in advance by electronic communication or otherwise with all the information which he requires.

§ 2

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 damage caused by the absence or insufficiency of, or any irregularity in, such documents and information except in the case the damage was caused by fault of the carrier.

§ 3

The carrier shall be liable for any damage caused by the loss or incorrect use of the documents which were made available to him unless the loss or incorrect use of the documents has been caused by circumstances which a diligent carrier could not avoid and the consequences of which he was unable to prevent. The compensation payable by the carrier shall not exceed the compensation provided for in the event of loss of the goods.

CIM contains very detailed provisions about the completion of administrative formalities.

Item 11

Time of delivery

Article 13 Time of delivery

The carrier shall deliver the goods within the time agreed in the contract of carriage. If no time of delivery has been agreed, delivery shall be made within the time which could reasonably be required of a diligent carrier, taking into account the circumstances of the carriage.

With regard to the goods delivery period, the three legal regimes give priority to the contractual freedom. If no time of delivery has been agreed, CIM and SMGS regulate the time of delivery very detailed, whereas URL follows CMR with a rule more general.

Item 12

Delivery

Article 14 Delivery

§ 1

At the place of delivery the carrier shall hand over the consignment note and deliver the goods to the consignee against a receipt and payment of all amounts due according to the contract of carriage.

(Article 14) § 2

If a loss of the goods is established or if the goods are damaged or delivered late, the consignee shall be entitled to enforce in his own name against the carrier any rights or remedies arising from the contract of carriage.

(Article 14) § 3

In other respects, delivery of the goods shall be carried out in accordance with the prescriptions in force at the place of destination.

SMGS expressly stipulates that the consignee has to pay the whole carriage charges even if part of the goods is missing. CIM and URL contain the same regulation (“payment of all amounts”, cf. § 1 above). The refund of costs is regulated in Articles 21 § 4 and 24 § 2 of URL and the respective provisions of CIM and SMGS.

Article 17 § 4 of CIM has to be considered in connection with Article 47 of CIM.

SMGS contains detailed prescriptions about the participation of the carrier during the unloading of the goods whereas CIM and URL refer to the

(Article 14) § 4

This legal regime does not affect a right of the carrier that may exist pursuant to the contract of carriage or the applicable law to retain the goods to secure the payment of sums due.

prescriptions in force at the place of destination; that may lead to the same solutions.

Item 13**Right to dispose of the goods***Article 15 Right to dispose of the goods*

§ 1

The consignor has the right to dispose of the goods and to modify the contract of carriage by giving subsequent orders, in particular by asking the carrier to stop the goods in transit or not to deliver them or to give them back at the place of taking over of the goods or to change the place of delivery or to deliver them to a consignee other than the consignee indicated in the consignment note.

A right to dispose of the goods is regulated in the three legal regimes with different details, especially with regard to the extinction of this right and its passing over from the consignor to the consignee.

(Article 15) § 2

The consignor's right of disposal shall pass over to the consignee at the time specified by the consignor in the consignment note. Unless the consignor has specified otherwise, the right of disposal shall pass over to the consignee when the goods have reached the place of destination.

(Article 15) § 3

If in exercising his right of disposal the consignee has ordered the delivery of the goods to another person, this other person shall not be entitled to name other consignees.

§ 4

Any right of disposal shall be extinguished when the consignee or another person named by the consignee has taken possession of the consignment note from the carrier and has accepted the goods or has asked for delivery of the goods.

Article 16 Exercise of the right to dispose of the goods

§ 1

If the person entitled wishes to modify the contract of carriage it has to give the necessary instructions to the carrier. If the consignment note so prescribes the person entitled has to produce to the carrier its original of the consignment note on which the new instructions have to be entered.

§ 2

The carrier is not obliged to carry out instructions, unless they are possible, lawful and reasonable to require. Instructions must in particular neither interfere with the normal working of the carrier's undertaking nor prejudice the consignors or consignees of other consignments. ...

(Article 16 § 2) Sentence 2:

Any instruction shall not have the effect of splitting the consignment.

§ 3

When, by reason of the provisions of §§ 1 and 2 of this Article, the carrier will not carry out instructions which it receives, it shall immediately notify the person who gave him such instruction.

§ 4

A carrier who has not carried out properly the instructions given under the provisions of this Article shall be liable to the person who has the right to bring an action against the carrier for any loss or damage caused thereby, if the carrier is at fault.

If in the case mentioned in § 1 sentence 2 the carrier carries out instructions without requiring the original of the consignment note to be produced, it shall be liable to the person who has the right to bring an action against the carrier for any loss or damage caused thereby. Any compensation payable shall not exceed the amount payable in the event of loss of the goods.

§ 5

The carrier has the right to demand payment for the additional costs of carriage and the expenses arising from the carrying out of the given instructions, unless the carrier is at fault.

Item 14

Circumstances preventing carriage and delivery

Article 17 *Circumstances preventing carriage and delivery*

§ 1

If it becomes evident, after the goods have been taken over by the carrier, that carriage or delivery cannot be performed according to the contract, the carrier shall ask for instructions from the person entitled or, where circumstances prevent delivery, from the consignor. In derogation from the first sentence, the carrier shall ask for instructions from the consignee if it becomes evident, after the goods have reached the country of destination, that the carriage cannot be performed according to the contract of carriage.

(Article 17) § 2

If the consignee has given the instruction to deliver the goods to another person, § 1 of this Article shall apply as if the consignee were the consignor and the other person were the consignee.

§ 3

If circumstances preventing carriage can be avoided by modifying the route, the carrier shall decide whether a modification shall be made or whether it is in the interest of the person entitled to ask him for instructions.

In SMGS and URL circumstances preventing carriage and delivery are regulated in a single Article whereas CIM contains two Articles about these items.

§ 4

If 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 shall be notified without delay.

Article 18 Consequences of circumstances preventing carriage and delivery

§ 1

The carrier is entitled to reimbursement for the costs caused by his request for instructions or the carrying out of instructions or the fact that he has taken a decision in accordance with Article 17 § 3, unless such costs were caused by his fault. The carrier may in particular recover the carriage charge applicable to the route followed and shall be allowed the time of delivery applicable to such route.

(Article 18) § 2

If the carrier cannot, within a reasonable time taking into account the different conditions of the goods, obtain lawful and reasonable instructions, he shall take such measures as seem to be in the best interest of the person entitled. He may, for example, return the goods to the consignor or unload them for account of the person entitled. Thereupon the carriage shall be deemed to be at an end. The carrier shall then hold the goods on behalf of the person entitled. He may, however, entrust them to a third party, and in that case he shall not be under any liability except for the exercise of reasonable care in the choice of such third party. The charges due under the contract of carriage and all other costs of the carriage shall remain chargeable against the goods.

(Article 18) § 3

The carrier may sell the goods, without awaiting instructions from the person entitled, if this is justified by the perishable nature or the condition of the goods or if the costs of storage would be out of proportion to the value of the goods. He may also proceed to the sale of the goods in other cases if within a set time he has not received from the person entitled instructions to the contrary which he may reasonably be required to carry out; in such a case the carrier may destroy unusable goods. All measures have to be taken in compliance with the legislation in force.

(Article 18) § 4

If the goods have been sold, the proceeds of sale, after deduction of the costs chargeable against the goods, shall be placed at the disposal of the person entitled. If the proceeds of sale are less than those costs, the carrier shall be entitled to the difference.

CIM and URL contain each a separate Article about the consequences of circumstances preventing carriage and delivery whereas SMGS regulates these items, less detailed than CIM and URL, in only one Article together with the obstructions to carriage and delivery themselves.

Item 15 Liability

Article 19 Basis of liability

§ 1

The contractual carrier shall be liable for loss or damage resulting from the total or partial loss of or damage to the goods between the time of taking over of the goods and the time of delivery, as well as for delay in delivery.

§ 2

If carriage governed by a single contract is performed by subsequent carriers, the liability of the contractual carrier and all subsequent carriers shall be joint and several.

(Article 19) § 3

The carrier shall be relieved of this liability to the extent that the loss or damage or the delay in delivery was caused by the fault of the person entitled or by an instruction given by the person entitled other than a result of the fault of the carrier or by an inherent defect of the goods or by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.

Article 20 Presumption of loss of the goods

§ 1

The person who has the right to bring an action against the carrier may, without being required to furnish further proof, consider the goods as lost when they have not been delivered or arrived for delivery to the consignee within three month after the expiry of the time of delivery.

§ 2

That person may, on receipt of compensation for the missing goods, request in writing that he shall be notified immediately should the goods be recovered within one year after the payment of compensation. The carrier shall acknowledge such request in writing.

§ 3

Within thirty days after receipt of such notification, the person who has the right to bring an action against the carrier may require the goods to be

CIM and SMGS have a common basis with regard to the liability of the carrier for loss or damage or delay in delivery. But the details of liability and compensation are regulated different:

SMGS does not know limits of compensation by amount, whereas CIM contains such a limit with regard to loss of or damage to goods as a rule. Compensation for delay in delivery is regulated different (see Page 26 below).

URL offers a unified solution with elements of both legal regimes as a compromise. The details are explained in connection with the respective provisions below.

SMGS does not expressly mention the liability of a subsequent carrier, but this liability exists. The recourse between the carriers who have taken part in the carriage is regulated with uniformity in the three legal regimes in the chapter about “Relations between carriers”.

Exclusion of liability is regulated in CIM and SMGS much more detailed than in URL. URL contains a principle which covers most of the relevant cases.

URL does not lighten the liability of the carrier in case of carriage of railway vehicles consigned as goods (as it is done in CIM) but contains provisions about compensation in case of loss of, or damage to, an empty wagon which is to be carried as goods (see Articles 21 § 5 and 24 § 4 URL.) SMGS only provides “Rules for the transport of wagons as transport means ...”.

As URL does not regulate the exclusion of liability as detailed as CIM and SMGS do, URL does not need special provisions about burden of proof.

delivered to him against payment of the costs resulting from the contract of carriage and against refund of the compensation received, less, where appropriate, costs which may have been included therein. He shall retain his rights to claim compensation for delay in delivery provided for in Article 25.

§ 4

In the absence of the request referred to in § 2 or of instructions given within the period specified in § 3, or if the goods are recovered more than one year after the payment of compensation, the carrier shall be entitled to deal with them in accordance with the laws and prescriptions in force at the place where the goods are situated.

§ 5

Any obligation of the consignee to accept the recovered goods shall be subject to the laws applicable in the State where the place designated for delivery is situated.

3. Compensation

Article 21 Compensation for loss

§ 1

In case of total or partial loss of the goods, the carrier shall compensate the value of the goods on the day and at the place where they were taken over for carriage. If part of the goods has been delivered, its value which remains to the person entitled shall be deducted from the amount of compensation.

§ 2

The value of the goods shall be fixed according to the market price at the place where they were taken over for carriage or, if there is no market price, according to the usual value of goods of the same kind and quality. If the goods have been sold just before being taken over for carriage the purchase price noted in the seller's invoice, minus carriage charges included therein, shall be presumed to be the market price.

(Article 21) § 3

Unless otherwise agreed by the parties pursuant to Article 3 § 2 compensation shall not exceed [17] units of account per kilogram of gross weight short.

§ 4

The carrier shall, in addition, refund the carriage charge, customs duties already paid and other costs relating to carriage. If part of the goods has been delivered, § 1, second sentence, shall apply by analogy.

SMGS does not contain a limit of compensation by amount.
URL contains a proposal in square brackets which is not yet confirmed.

§ 5

In case of loss of an intermodal transport unit or its removable parts, the compensation shall be limited to the usual value of the unit or its removable parts on the day and at the place of loss. If it is impossible to ascertain the day or the place of loss, the compensation shall be limited to the usual value on the day and at the place where the unit has been taken over by the carrier. The same shall apply in case of loss of an empty wagon which is to be carried as goods under the contract of carriage.

None of the legal regimes grants compensation for damages to other objects or to the fortune of the victim caused through loss of, or damage to, the goods (exemption in Article 36 of CIM).

No further damage shall be payable.

Article 22 Unit of account

§ 1

The unit of account referred to in Article 21 is the Special Drawing Right as defined in accordance with the instructions of the International Monetary Fund. The amount referred to in Article 21 is to be converted into the national currency of a State according to the value of such currency at the date of judgement or award or the date agreed upon by the parties. Where the calculation of an amount requires the conversion of sums expressed in foreign currency, conversions shall be at the exchange rate applicable on the day and at the place of payment.

(Article 22) § 2

The value of a national currency, in terms of the Special Drawing Right, of a Contracting State to this legal regime that is a member of the International Monetary Fund is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State to this legal regime that is not a member of the International Monetary Fund is to be calculated in a manner to be determined by that State.

Article 23 Liability for wastage during carriage

§ 1

In respect of goods which, by reason of their nature, are generally subject to wastage by the sole fact of carriage, the carrier shall only be liable to the extent that the wastage exceeds the following allowances, whatever the length of the route:

- (a) two per cent of the mass for liquid goods or goods consigned in a moist condition;
- (b) one per cent of the mass of dry goods.

§ 2

The limitation of liability provided for in § 1 may not be invoked if, having regard to the circumstances of a particular case, it is proved that the loss was not due to causes which would justify the allowance.

(Article 23) § 3

Where several packages are carried under a single consignment note, the wastage during carriage shall be calculated separately for each package if its mass on consignment is shown separately on the consignment note or can be ascertained otherwise.

§ 4

In case of total loss of goods or in case of loss of a package, no deduction for wastage during carriage shall be made in calculating the compensation.

§ 5

This Article shall not derogate from Article 19 § 3.

Article 24 Compensation for damage

§ 1

In case of damage to goods, the carrier shall compensate the loss in value of the goods. The amount shall be calculated on the basis of expertise or by applying to the value of the goods defined in accordance with Article 21 § 2 whereas the percentage of loss in value shall be noted at the place of destination. It is presumed that the costs of lowering and repairing the damage correspond to the loss in value.

§ 2

The carrier shall, in addition, refund the costs provided for in Article 21 § 4, in the proportion set out in § 1 of this Article.

§ 3

The compensation shall not exceed:

- (a) the amount payable in the case of total loss, if the whole consignment has lost value through damage;
- (b) the amount payable in the case of loss of the part affected, if only part of the consignment has lost value through damage.

§ 4

In case of damage to an empty wagon which is to be carried as goods under the contract of carriage or to an intermodal transport unit or their removable parts, the compensation shall be limited to the costs of repair.

§ 3 shall apply by analogy.

The carrier may also refer to other Articles of URL or rather CIM to be relieved of its liability for wastage during carriage more extensively in cases where the conditions of those Articles are fulfilled.

The legal regimes do not grant compensation for damages to other objects or to the fortune of the victim ...

(Article 24) § 5 No further damages shall be payable.

Article 25 Compensation for delay in delivery

§ 1

In the case of delay in delivery, if the claimant proves that damage has resulted therefrom, the carrier shall pay compensation not exceeding half of the carriage charges.

SMGS grants a very low compensation for delay in delivery, but in the form of a penalty. CIM grants higher amounts, but the damage must be proven. URL follows CIM, but with a lower percentage.

The ascertainment of the amount of the penalty according to SMGS is rather complicated.

(Article 25) § 2

Insofar as the goods are lost or have lost value as a result of partial loss or damage, compensation for delay shall not be paid.

(Article 25) § 3

In no case the compensation for delay together with that for partial loss of or damage to goods shall exceed the compensation which would be payable in case of total loss of the goods.

URL does not contain a provision about the declaration of value.

§ 4

If the time of delivery has been established by agreement, other forms of compensation than those provided for in § 1 may be so agreed. If, in this case, the time of delivery provided for in Article 13 is exceeded, too, the person who has the right to bring an action against the carrier may claim either the compensation provided for in the agreement or that provided for in this Article.

Neither SMGS nor URL contain a provision about the declaration of interest in delivery.

URL follows the Montreal Convention and goes without a provision about the loss of right to invoke the limits of liability in the case of severe fault. SMGS does not need such a provision in case of loss of or damage to goods because there is no limitation in amount in those cases. The penalty for delay in delivery remains limited even in case of a carrier's severe fault.

4. Special cases of liability

URL only regulates loss of or damage to empty wagons which are to be carried as goods under the contract of carriage (see Article 21 § 5 and Article 24 § 4 URL and cf. Articles 24, 30 § 3 and 32 § 3 CIM).

5. Persons for whom the carrier is liable

Article 26 Persons for whom the carrier is liable

The carrier shall be liable for his servants and other persons whose services he makes use of for the performance of the carriage, when these servants and other persons are acting within the scope of their functions. The undertakings or bodies operating the railway infrastructure on which the carriage is performed shall be considered as persons whose services the

In SMGS and URL there is no special provision about the substitute carrier. A substitute carrier belongs to the persons for whom the carrier is liable (see above) and who may refer to Article 46 § 9 Sentence 2 of SMGS or Article 27 § 2 of URL.

carrier makes use of for the performance of the carriage.

6. Other actions

Article 27 Other actions

§ 1

In all cases where this legal regime shall 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 in this legal regime.

§ 2

If an action is brought against the servants or other persons for whom the carrier is liable pursuant to Article 26, such action may also be brought only subject to the conditions and limitations laid down in this legal regime.

Item 16

Settlement of claims

Article 28 Notice of damage

§ 1

Where partial loss of or damage to the goods is apparent and the consignee or the consignor fails to notify this on delivery of the goods at the latest, it is presumed that the goods have been delivered in a condition conforming with the contract. The notice must specify the damage sufficiently clearly.

§ 2

Where partial loss or damage was not apparent, the presumption referred to in § 1 shall also apply if the damage is not notified within seven days after delivery.

§ 3

Claims for delay in delivery shall expire if the consignee does not notify the carrier of the delay in delivery within 60 days after delivery of the goods.

(Article 28) § 4

If loss, damage or delay is notified on delivery, it is sufficient to give notice to the person delivering the goods. After delivery any notice of damage shall be given to the carrier in text form (e.g. E-Mail). Dispatch within the applicable notification period is sufficient.

Article 29 Claims

§ 1

Claims relating to the contract of carriage must be addressed in writing to the carrier against whom an action may be brought.

A claim may be made by a person who has the right to bring an action

CIM and SMGS oblige the carrier to draw up a formal report whereas URL obliges the consignee or the consignor to notify damage to the carrier if they want to avoid the presumption that the goods have been delivered in a condition conforming with the contract of carriage. With this solution URL follows other international Conventions (cf. CMR).

The solution of CIM is very complicated and rather dangerous for the consignee or the consignor (cf. Articles 47, 42, 17 § 4 of CIM).

According to CIM and URL a claim may be made; according to SMGS a claim shall be made, because “an action may be brought only after a claim has been made, and only against the carrier against which the claim was

against the carrier (claimant). ...

made” (Article 47 § 1 SMGS).

Sentence 2:

... The necessity to make a claim before bringing an action against the carrier shall remain subject to the laws applicable in the State where the action shall be brought.

(Article 29) § 3

When the claimant is the consignor it must produce its original of the consignment note. Failing this he must produce an authorization from the consignee or furnish proof that the consignee has refused to accept the goods. If necessary, the consignor must prove the absence or loss of its original of the consignment note.

§ 4

When the claimant is the consignee it must produce the original of the consignment note intended for the accompaniment of the goods if it has been handed over to him.

§ 5

The consignment note and any other documents which the claimant thinks fit to submit with the claim must be produced either in the original or as copies, the copies, where appropriate, duly certified if the carrier so requests.

(Article 29) § 6

On settlement of the claim the carrier may require the production, in the original form, of the consignment note, so that they may be endorsed to the effect that settlement has been made.

§ 7

The claimant may claim interest on compensation, calculated according to the applicable national law, from the day on which the claim was sent in writing to the carrier or, if no such claim has been made, from the day on which legal proceedings were instituted.

(Article 30) § 1

The consignor may bring an action as long as the consignee or a third party does not have such right pursuant to § 2 or if there are circumstances preventing delivery.

§ 2

The consignee may bring an action from the time he has the right to dispose of the goods in accordance with Article 15. ...

(Article 30 § 2)

Sentence 1 shall apply to a person other than the consignee provided that such person has obtained the right to dispose of the goods.

§ 3

An action for the recovery of a sum paid pursuant to the contract of

The right to bring an action is shared between the consignor and the consignee in different ways in the three legal regimes. The formalities which have to be observed are different, too.

carriage may only be brought by the person who made the payment.

Article 31 Carriers against whom an action might be brought

§ 1

Actions based on the contract of carriage may be brought against the contractual carrier or against the carrier who has delivered the goods or against the carrier having performed the part of the carriage on which the event giving rise to the proceedings occurred.

§ 2

An action for the recovery of a sum paid pursuant to the contract of carriage may be brought against the carrier who has collected that sum or against the carrier on whose behalf it was collected.

§ 3

An action may be brought against another carrier when instituted by way of counter-claim or by way of exception in proceedings relating to a principal claim based on the same contract of carriage.

§ 4

If the plaintiff has a choice between several carriers, his right to choose shall be extinguished as soon as he brings an action against any one of them.

An action shall be brought against a specific carrier. "If the plaintiff has a choice between several carriers, his right to choose shall be extinguished as soon as he brings an action against any one of them".

URL does not foresee a provision about jurisdiction, whereas SMGS provides one short sentence and CIM provides a whole Article (cf. Article 31 CMR).

Only CIM contains a separate provision about the extinction of right of action, whereas SMGS regulates the extinction of rights in Article 48 about the limitations period.

URL does not foresee a provision about the limitation of actions but leaves this item to the national law which is applicable.

Item 17

Relations between carriers

Article 32 Settlement of accounts

Any carrier who has collected or ought to have collected, either at departure or on arrival, charges or other costs arising from the contract of carriage must pay to the carriers concerned their respective shares. ...

(Article 32) Sentence 2 :

The methods of payment shall be fixed by agreement between the carriers.

Article 33 Right of recourse

§ 1

A carrier who has paid compensation pursuant to this legal regime shall have a right of recourse against the carriers who have taken part in the carriage in accordance with the following provisions:

(Article 33 § 1)

- (a) the carrier who has caused the loss or damage shall be solely liable for it;

The relations between carriers are regulated in all legal regimes.

The right of recourse is important because of the joint liability of the contractual carrier and the subsequent carriers.

- (b) when the loss or damage has been caused by several carriers, each shall be liable for the loss or damage it has caused; if such distinction is impossible, the compensation shall be apportioned between them in accordance with letter c);
- (c) 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.

(Article 33) § 2

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.

Article 34 Agreements concerning recourse

The carriers may conclude agreements which derogate from Articles 32 and 33.

URL does not regulate the procedure for recourse whereas CIM provides a detailed Article and SMGS is satisfied with two paragraphs.