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**Convention on the Contract for the International Carriage of Goods by Road (CMR):  
Additional Protocol to the CMR concerning the electronic consignment note**

### **Joint explanatory note regarding decision M (2017) 12 of the Benelux Committee of Ministers concerning an intra-Benelux pilot project on the electronic consignment note\***

#### **Submitted by the Government of the Netherlands**

This document contains in annex the reasons cited by the Committee of Minister of the Benelux Union to justify their decision to launch a Benelux pilot project that shall take place between 1 December 2017 and 1 December 2020.

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\* The present document contains the text submitted to the secretariat reproduced without any changes.



## Annex

### **Joint explanatory note regarding decision M (2017) 12 of the Benelux Committee of Ministers concerning an intra-Benelux pilot project on the electronic consignment note**

#### **1. Background**

With a view to promoting the use of electronic consignment notes, the present decision is intended to establish agreements between the Benelux countries on an intra-Benelux pilot project on the electronic consignment note, as contemplated in the e-CMR Protocol.<sup>1</sup>

(a) *The CMR Convention and the e-CMR Protocol*

The CMR Convention<sup>2</sup> provides that contracts of carriage used in international transport must be confirmed by a consignment note (article 4) made out (in principle) in three original copies signed by the sender and by the carrier. The first copy is handed to the sender, the second accompanies the goods and the third is retained by the carrier (article 5). Hence, in past decades, only paper copies of consignment notes could be carried in international transport. However, in 2008, the e-CMR Protocol was established. The e-CMR Protocol makes it possible (on an optional basis) to use an electronic copy of the consignment note instead of paper copies.

Although the three Benelux countries are parties to and have ratified the CMR Convention, at the time of the drafting of the present decision, only the Netherlands and Belgium have signed the e-CMR Protocol. Unlike the Netherlands, however, Belgium has not yet ratified the e-CMR Protocol. Luxembourg has not yet acceded to the e-CMR Protocol.

(b) *Rationale behind the pilot project*

The consignment note referred to in the CMR Convention concerns the private-law relations of the parties to a contract of carriage in the context of international transport and therefore has no repercussions for the authorities. The CMR Convention simply describes the law as it applies to these private-law relations. However, the consignment note is also used by the public authorities for monitoring purposes. When it comes to using an electronic consignment note instead of a paper consignment note, the question is to what extent the public authorities may agree to monitoring using a portable screen or a printout produced in the vehicle. In other words, the question is whether the public authorities place sufficient trust in the electronic consignment note.

In the Netherlands, the answer to that question is yes. In Belgium, however, the question has given rise to a deeper examination of the reliability and security of the electronic consignment note. To that end, a pilot project has been launched by the Belgian transport authorities<sup>3</sup> and a cross-border project is envisaged. In view of the interest shown by Luxembourg in the digitization of the consignment note, the present decision establishes the framework for a cross-border Benelux pilot project that serves as a logical extension of the Belgian pilot project.

(c) *Relation to other instruments*

Given that the e-CMR Protocol has not yet entered into force in each of the three Benelux countries, a pilot project involving the use of electronic consignment notes (without paper

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<sup>1</sup> Additional Protocol to the Contract for the International Carriage of Goods by Road (CMR) concerning the electronic consignment note, done at Geneva on 20 February 2008.

<sup>2</sup> Convention on the Contract for the International Carriage of Goods by Road (CMR), done at Geneva on 19 May 1956, with Protocol of Signature.

<sup>3</sup> In accordance with the Royal Decree of 10 April 2016 on electronic consignment letters (*Moniteur belge*, 21 April 2016).

versions) in international transport between the three countries would entail derogating from the provisions of the CMR Convention that require the possession of paper copies of the consignment note. For this reason, the Benelux countries wish to make use of the possibility provided for in article 1 (5) of the CMR Convention to conclude a derogative regulation making the CMR Convention inapplicable to their frontier traffic. The Benelux countries wish to limit this derogation to those provisions of the CMR Convention that require the presence of a paper copy of the consignment note (*ratione materiae*) and to the time needed to come to a serious conclusion on the reliability and security of the electronic consignment note in international transport (*ratione temporis*).

The objective is to prepare for the possible introduction of the electronic consignment note throughout the Benelux area, as referred to in the e-CMR Protocol, not to introduce Benelux regulations instead of the e-CMR Protocol. The e-CMR Protocol therefore serves as the pilot project's common thread. Nonetheless, the aim is not to transpose the provisions of the e-CMR Protocol into the domestic legal orders of the two Benelux countries in which it has not yet taken effect (Belgium, which has not ratified it, and Luxembourg, which has not acceded to it). Nor does the pilot project entail derogating from the e-CMR Protocol in the Netherlands (because the e-CMR Protocol simply provides the basis for the practical development of the electronic consignment note and therefore does not affect more detailed implementing provisions in that area). In view of the pilot project's similarity with the above-mentioned Belgian pilot project and to avoid any interference with the latter, the relevant national provisions already in force in Belgium have also been taken into account.<sup>4</sup>

Through the pilot project, the Benelux Union also wishes to act as a precursor at the European level by providing more precise information to other interested member States of the European Union and of ECE on the reliability and security of the electronic consignment note as a cross-border monitoring mechanism.

To determine the legal framework for the pilot project, the parties have agreed that the Benelux Committee of Ministers is competent to rule on common implementation and monitoring measures in the area of the transport of goods by road and the harmonious development of such transport (see below). A decision by the Benelux Committee of Ministers is the most appropriate instrument for the conclusion of legally binding cross-border agreements on frontier traffic between the three countries and precludes the need to conclude a convention governed by the law of treaties for that purpose.

## 2. Commentary by article

### Preamble

The legal foundation of this decision lies in the competence of the Benelux Committee of Ministers in matters relating to the transport of goods by road, as attributed to it in article 86 (1) of the Treaty Establishing the Benelux Economic Union of 3 February 1958 and maintained in the bridging clause set out in article 4 of the Treaty Establishing the Benelux Union.

The preamble highlights the above-mentioned link between the intra-Benelux pilot project, the CMR Convention and e-CMR Protocol. It also underlines the importance of taking due account of potential pertinent developments outside the Benelux area (see below: commentary on article 8 (3)).

### Article 1

Article 1 sets out the definitions applicable to the decision (subparagraph 1). The terminology used in the decision is identical to the terminology of the CMR Convention and the e-CMR Protocol and must therefore be understood in the same way (subparagraph 2).

<sup>4</sup> See footnote No. 3

## Article 2

Article 2 defines the scope of the intra-Benelux pilot project, which provides the temporary possibility for the parties to a contract of carriage to use an electronic consignment note within Benelux.

The decision does not require the suppliers of the technology used or all parties to the contract of carriage to be established in a Benelux country. However, for monitoring purposes (and pursuant to national rules on the numbering of consignment notes), the author of the electronic consignment note, in other words, the first party to create a file in the database of an authorized supplier (as defined in article 1 (1) (f)), is required to be established in a Benelux country.

The pilot project will run for a period of three years and will apply to international transport between the Benelux countries (to which the CMR Convention otherwise applies)<sup>5</sup> and to national transport within the Benelux countries (to which the CMR Convention does not apply), including transport by cabotage, regardless of whether the transport by cabotage is carried out under Benelux regulations or the applicable European Union regulations (as defined in article 1 (1) (c)).

The parties to a contract of carriage may also continue to use a paper consignment note.

## Articles 3 to 5

Article 3 defines the requirements that the electronic consignment notes used in the pilot project must meet. Subsequently, article 4 (1) establishes the conditions that must be met by suppliers that wish to participate in the pilot project. Together, these rules form a sort of joint Benelux checklist for the evaluation of an electronic consignment note during the pilot project. If necessary, the checklist may be supplemented, in accordance with article 8 (1), with more operational elements, particularly regarding the technical criteria/ specifications for the authorization of suppliers. Article 5 describes the circumstances in which the public authorities must consider an electronic consignment note that meets the criteria of the checklist to be valid.

With regard to the requirements defined in article 3 as applicable to the electronic consignment note, the following elements may be underlined:

- With regard to the numbering of electronic consignment notes, more specific practical agreements may be concluded, where appropriate, pursuant to article 8 (1), for example, that the country code and number required on the paper consignment note should be followed by a three-letter code identifying the authorized supplier.
- To be considered as valid in the intra-Benelux pilot project, the electronic consignment note must meet the conditions established in articles 1 to 6 of the e-CMR Protocol and must therefore also comply with the modalities relating to electronic signatures. Further to these conditions, the electronic signature must also comply with the relevant provisions (having a direct effect) of Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.<sup>6</sup>
- Several provisions concern keeping consignment notes and having them available. An additional element introduced for monitoring purposes consists in requiring each supplier having received authorization to participate in the pilot project to maintain a list of all data relating to the issuance and users of its electronic consignment notes (see article 4 (1) (f)).

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<sup>5</sup> Article 1 (5) of the CMR Convention explicitly authorizes the conclusion of a derogative agreement on frontier traffic between more than two parties. Under the CMR Convention, there are no restrictions on local traffic between two neighbouring countries. Furthermore, the distance between the border and the point of departure or arrival of the goods is insignificant in the framework of the CMR Convention. In view of the geography of Benelux, the pilot project therefore applies to intra-Benelux transport and is not limited to local transport in border areas between two of the three countries.

<sup>6</sup> O.J. L. 257, 28 August 2014, p. 73.

If necessary, following a check, it is always possible to verify whether the data on an electronic consignment note correspond to the data presented on the list.

With regard to the conditions established in article 4 and imposed by the Benelux countries on suppliers wishing to participate in the pilot project, due account should be taken of the following:

- Participation in the pilot project is limited to suppliers that have submitted a substantiated request to participate within an established time frame and have, on that basis, been granted authorization to participate in the pilot project by the public authorities. In that regard, it is important to underline that requests may be submitted in only one Benelux country and processed by that same Benelux country. If authorization is granted, the country concerned informs the other Benelux countries, who agree to the decision.

The request must be submitted to the Benelux country in which the supplier conducts its relevant business. It should be noted that there is no discrimination against suppliers that are not established in a Benelux country but that supply their technology to a Benelux country. Suppliers with business in more than one Benelux country are free to choose in which Benelux country they wish to submit their request and undergo the authorization procedure. This option does not allow suppliers to circumvent the agreed assessment criteria.

- Suppliers must remain in close contact with the public authorities, such that the latter are informed at all times of the parties that are using electronic consignment notes issued using their authorized technology. In this way, in the event of a check, the public authorities will be able to determine whether a particular user is authorized to use an electronic consignment note as part of the pilot project.

In that regard, one Benelux country, namely the one in which the request was submitted, will always play a central role. The supplier must submit all the necessary information to that country, particularly regarding the users of consignment notes issued using its technology. More specifically, the supplier must immediately report each user to the country concerned, periodically provide it with a more detailed checklist and follow any instructions that it might issue.

- So that each Benelux country is able to verify the validity of the use of an electronic consignment note in practice, the Benelux country that holds the necessary information must pass that information on to the other Benelux countries. Accordingly, the Benelux country in which a supplier has submitted a request must inform the other countries of the supplier's authorization status and of the users of the authorized supplier's technology.

On the basis of the above-mentioned information, each Benelux country may determine, in accordance with article 5, whether an electronic consignment note may be used by a party to a contract of carriage as part of the pilot project. The use of an electronic consignment note is authorized only if the consignment note is in conformity with the e-CMR Protocol, if it was issued within Benelux using authorized technology, and if the party using it has been duly registered. In that regard, the following should be highlighted:

- Conformity with the e-CMR Protocol (signature, content, integrity, implementation procedures, etc.) may be checked by each country separately. Whether an electronic consignment note was issued in Benelux may be determined by its country code. The information shared between the Benelux countries can be used to determine whether the electronic consignment note was issued using authorized technology and whether it is being used by a registered user.
- Additional checks may be conducted by requesting more precise information from the supplier. This does not mean that the officials of one Benelux country may take action against a supplier in another Benelux country. However, suppliers that refuse to provide the information requested may be excluded from the pilot project. For the sake of completeness, the supplier is requested to keep a detailed checklist.

## Article 6

The pilot project involves the public authorities processing data linked to persons and enterprises. A limited amount of data will also be shared between the Benelux countries (the suppliers that have been authorized or rejected and users that are registered). The detailed checklists, however, are retained by the public authorities of the country in which the related requests were submitted. In any event, the processing and sharing of data can be a delicate issue. Article 6 therefore provides the following guarantees:

- The data received may only be used by the public authorities for the specific purpose of implementing the pilot project and thus to collect further information on the reliability and security of the electronic consignment note. This also means that the data may be used by the public authorities for the purposes of implementing the applicable regulations. The pilot project does not in any way allow the requirements applicable to road transport to be circumvented.
- As a supplementary safeguard, only certain designated authorities and officials, namely those participating in the implementation of the pilot project, may use the data (see below: commentary on article 7). They may not use the data for other purposes or communicate them to other authorities. However, if necessary, an exception may be made if a check detects irregularities that the inspecting authorities or officials are required under the existing regulations to report. Such reporting must be conducted pursuant to and in strict conformity with those regulations.
- Furthermore, article 6 (3) deals with respect for personal data. This provision establishes that the guarantees that a Benelux country is required to uphold domestically are applicable to the processing and exchange of personal data as part of the pilot project (duty to provide notification, right of access, opportunity to correct or contest, etc.). When the present decision was drafted, these guarantees were contained in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>7</sup> and in the various rules adopted by each country to transpose that directive. However, within the European Union it was decided to continue to standardize the protection of personal data and therefore to replace the above-mentioned directive with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), with effect from 25 May 2018.<sup>8</sup> Due account is taken of the fact that this amendment to European law will become applicable only after the entry into force of the present decision.
- Lastly, one provision concerns the guarantee of confidentiality and integrity of data received. It is underlined that the present decision does not affect the obligations that are binding on public authorities, the supplier or the user under other provisions (concerning electronic signatures, for example). For the sake of completeness, it should be noted that the mandatory conformity of the electronic consignment letter with the e-CMR Protocol means that the parties to a contract of carriage must have concluded agreements guaranteeing the integrity of the electronic consignment note.

## Article 7

For the purposes of the implementation of the present decision, a competent authority is designated in each Benelux country as the focal point for the pilot project. The competent authority is responsible for contact with the other Benelux countries and the authorities and officials of its own country that are involved in the pilot project (the oversight officials, for example). It keeps a detailed checklist of the suppliers that it has authorized and may, if necessary, issue instructions to suppliers that must be observed on penalty of exclusion from the pilot project.

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<sup>7</sup> O.J. L. 281, 23 November 1995, p. 31.

<sup>8</sup> O.J. L. 119, 4 May 2016, p. 1.

## Article 8

The first two subparagraphs of article 8 provide for consultation between the Benelux countries concerning the implementation of the pilot project. The consultation will take place within an administrative working group under the authority of the Benelux Council that may, where appropriate, make proposals to the Benelux Committee of Ministers via the Benelux Council regarding additional measures to be taken (using the instruments provided for under article 6 (2) of the Treaty Establishing the Benelux Union). The Benelux Council may meet for that purpose in a composition that mirrors that of the Benelux Steering Committee on Communication and Transport (consisting of general secretaries, director generals and managing officials of a similar level).

The consultation concerns any other operational agreements (for example, on standardizing the appearance and numbering of electronic consignment notes in the three countries, the technical criteria for the technology used to issue electronic consignment notes, or the possible transmission between the countries of all or part of the quarterly checklist); it is also intended to evaluate the intermediate and final results of the pilot project with a view to taking follow-up action.

Furthermore, in accordance with article 8 (3), the Benelux General Secretariat may work in cooperation with non-Benelux countries where an electronic consignment note has been introduced or is being trialed. This also makes it possible for a Benelux country where the e-CMR Protocol has not yet entered into force to verify whether the guarantees offered by a third country are sufficient for it to be able to accept, for monitoring purposes, an electronic consignment note issued in that country.

## Article 9

This article regulates the entry into force of the present decision. The pilot project will be launched on 1 December 2017. From that date, suppliers may submit (during a period of nine months) requests for inclusion in the pilot project. This time frame will make it possible, if warranted, to take the intermediate results of the Belgian pilot project into consideration in the processing of requests.

The Benelux countries agree to amend their legislation and regulations, if necessary, so as to be able to fully implement the present decision. If the decision is or has already been implemented through existing legislation or regulations, this should be stated in the official gazette of the Benelux country concerned (the *Moniteur belge*, the *Mémorial* of Luxembourg and the Dutch *Staatsblad* or *Staatscourant*).

Initially, only purely administrative measures are necessary for the implementation of the present decision for the duration of the pilot project: the designation of the competent authorities, the processing of requests and the acceptance of electronic consignment notes for monitoring purposes. The present decision is not, however, intended to impose on individuals or companies obligations that would force them to participate in the pilot project. The parties to a contract of carriage may continue to use paper consignment notes at all times, even if they are registered as users under the pilot project.

Registered users who do not comply with the arrangements agreed between the Benelux countries must be aware that their electronic consignment notes will not be accepted for monitoring purposes by the authorities instead of a paper consignment note (without undermining the contract of carriage agreed between the parties). Suppliers who do not comply with the conditions may not (continue to) participate in the pilot project. It is therefore important that users and suppliers should be able to familiarize themselves with the conditions set by the Benelux countries for participation in the pilot project. To that end, the publication of the present decision in the *Bulletin Benelux*, the official gazette of the Benelux countries, in accordance with article 23 of the Treaty Establishing the Benelux Union will suffice. This is also essential because individuals and companies may demand rights resulting from the present decision if the authorities do not accept, for monitoring purposes, an electronic consignment note that is valid according to the present decision.

If, in the course of the pilot project, the consultation provided for in article 8 gives rise to the need to impose, on the basis of the present decision, legal obligations on users or suppliers, these must nevertheless be established through the domestic legislation of each Benelux country.

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