



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

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Item 2 (c) of the provisional agenda

Execution of the Mandate of the Group of Experts**Scope of URL and its conversion into a legally-binding instrument****Proposal on provisions about a negotiable transport document in the URL****Note by the secretariat****I. Introduction**

1. This document was prepared by Professor Rainer Freise (University of Frankfurt on Main) in cooperation with the secretariat to offer a possibility to introduce to URL provisions about a negotiable transport document to serve as a document of title.
2. Neither SMGS nor CIM nor the existing provisions of URL contain provisions about a negotiable transport document to serve as a document of title. At the same time, CIM and URL contain provisions about the evidential value of the consignment note. The original or rather the duplicate of the containment note, which does not accompany the goods, but has to be handed over to/is retained with the consignor/consignee who can make use of it by disposing of the goods.
3. Although railway consignment notes can be accepted for documentary credits in principle, the banks normally do not make use of them. This is due to the fact, that neither within the SMGS area nor in the CIM area there is a necessity to use railway consignment notes as a negotiable transport document, because the duration of a transport by rail within these regions is comparatively short. This changes however when we talk about intercontinental transport of goods between Asia and Europe, where the duration of transport may be long enough so as to confirm the need for negotiable transport document.
4. In view of the above, it is proposed to add to the existing URL provisions also provisions on a negotiable transport document. Such are based on the following principles:
 - Negotiable electronic transport document cannot be issued (at least at the beginning of the application of the URL).
 - There is only one type of legitimate holder: the bearer of the document.



- Provisions are referring to the rulings of the consignment note as far as possible.
 - Consignment bill necessitates real signature; no use of an imprint, a stamp or an accounting machine entry.
5. The Draft Provisions about a negotiable transport document in the URL is submitted in the annex of the current document.

Annex

Draft Provisions about a negotiable transport document in the URL*

1. Article 2 No. 12a “Consignment bill” means a negotiable transport document concerning the obligation of the carrier to deliver the goods to the bearer of the consignment bill.

2. Article 2 No. 12b “Bearer” means the person or party who is in the possession of a consignment bill.

3. Chapter Iva Consignment bill

Article 31a Issuance of a consignment bill

If the parties to the contract of carriage agree to use a negotiable transport document [instead of a consignment note] the carrier is obliged to issue a consignment bill concerning the obligation to deliver the goods to the bearer.

4. Article 31b Effect of the consignment bill; legitimation.

§ 1

The Articles 5 § 2, 6, 7, 9 and 10 shall be applicable mutatis mutandis when a consignment bill has been issued and signed by the carrier. One issue/duplicate of the consignment bill shall accompany the goods.

§ 2

The carrier may not rebut the presumptions pursuant to § 1 vis-a-vis a consignee designated in the consignment bill and to whom the consignment bill has been issued and first handed over, unless the consignee was aware, or was unaware through gross negligence, at the time the consignment bill was issued and first handed over, that the information therein is incorrect. The same shall apply vis-à-vis any third party to whom the consignment bill has been transferred.

§ 3

Any claim under a contract of carriage embodied in a consignment bill may be brought only by the person entitled to claim under the consignment bill. The bearer of the consignment bill is, for his benefit, presumed to be the person entitled to claim under the consignment bill.

4. Article 31c Delivery against surrender of the consignment bill

§ 1

After the goods' arrival at the place of delivery, the bearer of the consignment bill shall be entitled to require the carrier to deliver the goods against surrender of the consignment bill, in which the delivery is confirmed, and against a receipt and payment of all amounts due according to the contract of carriage. However, the carrier must not deliver the goods to the bearer of the consignment bill if it is aware, or unaware through gross negligence, that the bearer of the consignment bill is not the person entitled to claim under the consignment bill.

§ 2

If the carrier delivers the goods to a party other than the bearer of the consignment bill or, in the cases covered by the second sentence of § 1, to a party other than the person entitled to claim under the consignment bill, then the carrier shall be liable for the resulting damage suffered by the person entitled to claim under the consignment bill. The liability shall be limited to the amount which would have been payable if the goods have been lost.

* Reproduced as received.

5. Article 31d Carrying out instructions

§ 1

Where a consignment bill has been issued, only its bearer shall have the right of disposal pursuant to the Articles 15 and 16. The carrier may carry out instructions only against presentation of the consignment bill. However, the carrier must not carry out any instructions issued by the bearer of the consignment bill if it is aware, or unaware through gross negligence, that the bearer of the consignment bill is not the person entitled to claim under the consignment bill.

§ 2

If the carrier carries out instructions without having had the consignment bill presented to him, it shall be liable to the person entitled to claim under the consignment bill for any resulting damage the latter may suffer. The liability shall be limited to the amount which would have been payable if the goods had been lost.

6. Article 31e Objections

The carrier may only raise objections against a claim by a person entitled to claim under the consignment bill insofar as they concern the validity of the statements made in the consignment bill, or insofar as they arise from the contents of the consignment bill or insofar as the carrier is entitled to rely on objections directly against the person entitled to claim under the consignment bill. An agreement to which the consignment bill merely makes reference is not incorporated into the consignment bill.

[7. Article 31f Consignment bill as document of title

The issue and first handling over of the consignment bill to the consignee designated therein shall have the same effect, in terms of the acquisition of rights to the goods, as a physical handing over of the goods, provided the carrier is in possession of the goods.

The same shall apply to a transfer of the consignment bill to third parties.]
