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Working Party on Rail Transport

Group of Experts towards Unified Railway Law

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Unification of international railway law with the objective of allowing rail carriage under a single legal regime

Comments to the document ECE/TRANS/SC2/GEURL/2014/11

Submitted by Finland

I. Article A, Third parties

The scope does not clearly indicate that this agreement shall apply to transit countries.

Also, problems might arise if the transit state is not a party to this legal regime. It's problematic if an international treaty causes obligations to third parties. According to the Vienna Convention on the Law of Treaties (Article 34) a treaty cannot create obligations or rights for a third State without its consent.

Therefore we would like to ask clarification: is it clear that URL will not create any obligations to a third state (transit state)? Would the transit state (not party to URL) be able to apply its own legislation and apply its own national laws, for example, on consignment note? Or, what if an accident were to occur while the delivery is at the jurisdiction of the third state? Would the liability articles of URL apply or could the third state apply its national legislation on liability?

One possibility to avoid these problems would be to include a provision in the Treaty stating that URL applies to only such transit states that are parties to URL, as follows:

Article A

Scope of Application

1§

This legal regime shall apply to a (single) contract of carriage of goods by rail for reward,

- 1.¹ if the provisions of CIM and/or SMGS or bilateral or multilateral agreements between Contracting States do not apply to the (single) contract covering the entire journey, and
2. ~~if~~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
3. if the parties to the contract of carriage agree that the contract is subject to this legal regime.

In case of transit, this legal regime applies to the transit state only if that state is a Contracting party to this Treaty.

§ 2 The parties to the contract of carriage may also agree on the application of this legal regime to intermodal transport operations as a supplement to transfrontier rail transport if the parties do not contradict the international obligations ~~aets~~ governing other modes of transport.

(cf. also proposal of OSJD 6-7 Oct. 2014 to Article A)

§ 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. (cf. Article 4 § 2 CIM)

II. Article C

It is unclear to us what is meant by "provisions of *public law*". Therefore, we would like to write the Article C in a more clear way, as follows:

~~Provisions of public law~~

~~Carriage to which this legal railway regime applies shall remain subject to the provisions of public law, in particular the provisions relating to the carriage of dangerous goods as well as the provisions of customs law and those relating to the protection of animals.~~

"All matters which are not expressly provided for in the present Treaty shall remain subject to national legislation and other international obligations of the Contracting States."

III. Definitions

Definitions are needed in the beginning of the Treaty ("*Contracting States*", "*Party to contract of carriage*"). Also Final Provisions are needed.

¹ Logical order would be to put this condition as first. Finland's proposal was:

....

"1. if neither CIM nor SMGS nor any other bilateral nor multilateral agreement can be applied for the entire transport journey, and"