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Working Party on Rail Transport

Group of Experts towards Unified Railway Law

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Item 2 of the provisional agenda

**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 the International Rail Transport Committee (CIT)



Argumentation for the necessity of limitation of liability under Article T

Limitation of liability ensures i) legal certainty to the railway undertakings. In addition, the limitation also ensures ii) economic competitiveness of the railway carrier.

CIT proposal to Article T § 2:

§ 2 Compensation shall be limited to ... per kilogramme of gross mass short.

Kommentar [EE1]: Position CIT: A limitation of liability ensures i) legal certainty to the railway undertakings. In addition, the limitation also ensures ii) economic certainty. See additional argumentation in the CIT notice.

i) Legal certainty:

The consequence of an annulment of the limitation of liability would be a loss of competitiveness for rail freight transport (see Freise in: Münchener Kommentar zum HGB, Internationaler Eisenbahnverkehr, p. 1353 and see Central Office Report on the Revision of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 and Explanatory Reports on the texts adopted by the Fifth General Assembly, together with additional explanations on texts which have since been amended, p. 141-142 and also Wick, Das international Eisenbahnfrachtrecht, p. 272).

In all international transport law Conventions (e.g. Art 23 (3) CMR and Art. 6 Hamburg Rules) and in national transport law (e.g. § 431 German Commercial Code), limitations of liability in case of the loss of goods are provided and is inherent element of the transport law – vor example 8,33 SDR/kg for road and 2,5-3 SDR/kg for maritime transportation (Hanburg and Rotterdam rules).

Liability of the value of the goods is always possible in case of declaration of the value (Art. 34 CIM) or in case of interest in delivery (Art. 35 CIM) and consignor and carrier may agree further compensation exceeding the limit provided for in Article 30 § 2 CIM. This is the expres of the contractual freedom as fundamental principal of the drafting convention!

ii) Competitiveness of the railway undertakings/ economic aspects:

The railway undertakings are competing directly with other transport carriers (primarily with the road and maritime transportation). In all international transport law Conventions for road and maritime transportation limitations of liability in case of the loss, damage to goods or exceeding the transit period are provided. In addition to that the limitation of the liability is in direct correlation with the margin of the transport charges and the value of the goods. For coal or steel the limitation of the value of the goods may be a solution but for the high value goods like computer on the long distance carriage between Asia and Europe and *vice versa* this can be a worst case for the carrier and bring him easier to total bankruptcy.

An increase or failure of the maximum limitation of liability would result directly in an increase of the insurance premium (see Central Office Report on the Revision of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 and Explanatory Reports on the texts adopted by the Fifth General Assembly, together with additional explanations on texts which have since been amended, p. 142).

This additional economic burden for the railway carriers in time of strong economic crisis can the CIT clear not support!