



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

Geneva, 13–15 January 2021

**Report of the Group of Experts towards Unified Railway
Law at its twenty-third session****Contents**

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I. Attendance

1. The Group of Experts towards Unified Railway Law (Group of Experts) held its twenty-third session from 13 to 15 January 2021 in Geneva. The session was chaired by Mr. A. Druzhinin (Russian Federation) and attended virtually through Kudo platform and in-person with the simultaneous English-French-Russian interpretation.
2. Representatives of the following Economic Commission for Europe (ECE) countries participated: Belgium, Germany, Latvia, Luxembourg, the Netherlands, Poland, Romania, the Russian Federation, Switzerland and Turkey. Representatives from the following non-ECE countries attended the session: the People's Republic of China. Representatives from the European Commission as well as the United Nations Commission on International Trade Law also participated.
3. Experts from the following intergovernmental organizations participated: Intergovernmental Organization for International Carriage by Rail (OTIF) and Organisation for Co-operation between Railways (OSJD). Experts from the following non-governmental organizations attended the session: International Rail Transport Committee (CIT) and International Federation of Freight Forwarders Associations (FIATA).
4. Experts from the following organizations participated at the invitation of the secretariat: Deutsche Bahn AG (DB), JSC Russian Railways, PKP CARGO S.A. and PKP Polish Railway Lines (PKP PLK).

II. Adoption of the agenda (agenda item 1)

5. The Group of Experts adopted the session's agenda as contained in ECE/TRANS/SC.2/GEURL/2021/1.

III. Execution of the Mandate of the Group of Experts (agenda item 2)

6. The Group of Experts - further to its mandate extension - continued its work on:
 - (a) Task (c) of the Terms of Reference: Draft a document (or systems of documents) on Unified Railway Law which could be adopted as a legally binding instrument:
 - (i) The Group of Experts took note of the preparation of ECE/TRANS/SC.2/GEURL/2021/3 (Convention on the contract for international carriage of goods by rail as a first Convention of a system of Unified Railway Law Convention) which consolidates the provisions developed to date relevant to Unified Railway Law (URL) contract for international carriage of goods by rail (CoC).
 - (ii) The Group of Experts continued its discussion from the previous twenty-second session on alterations proposed by the Russian Federation in ECE/TRANS/SC.2/GEURL/2020/5 to the provisions on the URLCoC as available in ECE/TRANS/2016/15 and reproduced in ECE/TRANS/SC.2/GEURL/2021/3 tabled at the twenty-third session.
 - (iii) The Group of Experts acknowledged the intersessional effort of experts who responded to questions which had been formulated at the previous session and had the aim to help clarify the views on the changes proposed by the Russian Federation. The Group further thanked the secretariat for (i) elaborating and distributing a questionnaire which facilitated the expert effort in responding to the questions, and (ii) compiling and summarizing these responses in Informal document SC.2/GEURL No.1 (2021).
 - (iv) The Group of Experts also thanked the OTIF secretariat for submitting its considerations on the ECE initiative on URL in Informal document SC.2/GEURL No.2 (2021).

(v) With regard to the changes proposed by the Russian Federation to Article 1 (Scope of Application), experts from Belgium, Germany, Latvia, Luxembourg, the Netherlands, Poland, Turkey, European Commission, CIT secretariat, DB AG, PKP CARGO informed that their intersessional work confirmed the views expressed already at the previous session – these changes, in their understanding, go against the agreed principles of optionality and the establishment of URLCoC as an interface law as a first step (for Euro-Asian rail freight corridors only) keeping the current legal regimes CIM and SMGS applicable in their respective territories. In their view ECE/TRANS/SC.2/GEURL/2021/3 fulfils task (c) of the Terms of Reference and is in line with the 2013 Joint Declaration on the promotion of Euro-Asian rail transport and activities towards unified railway law. They also referred ECE/TRANS/SC.2/GEURL/2019/5 which emphasised the importance of these principles for URL. Moreover, they recalled that in January 2019 the ECE Executive Secretary has largely circulated the Draft URL provisions based on the principles of interface law and optionality and accompanied by an explanatory paper (“Information note on URL”, as contained in ECE/TRANS/SC.2/2018-inf05) to all stakeholders in the Euro-Asian space, in order to encourage the performance of pilot transports.

(vi) The Russian Federation referring to the strategic priorities laid out in 2 (a) of the Joint Declaration maintained its position that URL should be the only legal system for the entire Euro-Asian space. URL should be a system of agreements and treaties which regulate all aspects of the organisation and implementation of international railway transport. The position of the Russian Federation is set forth in ECE/TRANS/SC.2/GEURL/2019/12.

(vii) The OTIF secretariat reiterated its position presented in Informal document SC.2/GEURL No.2 – URLCoC should be elaborated and serve as an interface law to prevent rail law fragmentation, provided this elaboration is supported unanimously. It underscored that this position did not represent an official position of OTIF, which can only be established by OTIF’s General Assembly or by other competent organs in accordance with the mandate given by the former.

(viii) OTIF secretariat further reminded the Group of Experts that OTIF’s General Assembly, at its thirteenth session in September 2018, considered the developments of the ECE initiative on URL and decided to instruct:

- the Administrative Committee to follow up the ECE initiative on URL and issue its advisory opinion on general policy issues, where feasible;
- the Working Group of Legal Experts to follow up the ECE initiative on URL and issue its advisory opinion on legal matters, where feasible;
- the Secretary General and the Working Group of Legal Experts, in consultation with the Administrative Committee, to consider and propose solutions for appropriate OTIF involvement in the management of binding legal instruments which could take over the Draft Legal Regime on the contract of carriage of goods as developed within the framework of the ECE initiative on URL.

(ix) The OTIF’s General Assembly acknowledged also that its prior decision is necessary before participating in the development of any new international railway law whose scope and aims may conflict or overlap with the scope of COTIF and aims of OTIF.

(x) Finally, the Secretary General of OTIF would submit to the fifteenth session of the OTIF’s General Assembly in September 2021 a report on the progress of work on the ECE initiative on URL.

(xi) The experts from Germany and the European Commission proposed the Group of Experts to present ECE/TRANS/SC.2/GEURL/2021/3 (Convention on the contract for international carriage of goods by rail as a first Convention of a system of Unified Railway Law Convention) as its output of work on the Task (c) to the Working Party on Rail Transport (SC.2).

(xii) The Russian Federation suggested that the text of the legal regime as contained in ECE/TRANS/SC.2/GEURL/2021/3 does not reflect its position to establish a single set of provisions and legal rules for Euro-Asian rail transport operations in all countries concerned and so cannot replace CIM or SMGS. This would, in their view, require changes to Article 1 as well as several other Articles as indicated in ECE/TRANS/SC.2/GEURL/2020/5 and Informal document SC.2/GEURL No.1 (2021).

(xiii) The Russian Federation suggested that most of all SC.2 should be informed about differences of approaches to URL, as follows:

- Approach A – creation of unified rules for rail transport on Euro-Asian corridors in areas where they are urgently needed by the industry – i.e. the contract of carriage – while leaving unaffected the two existing rail organisations and the legal rules (in particular CIM and SMGS) applicable for transports of goods within their respective territories (interface law). ECE/TRANS/SC.2/GEURL/2021/3 contains legal regime for the contract for international carriage of goods by rail that is considered to serve its purpose of interface law. It could be formally adopted as a convention rapidly and would then facilitate carriage of goods on Euro-Asian corridors responding to the needs of both the rail carriers and the relevant industry;
- Approach B – creation of a single set of unified legal rules for any cross-border rail transport in the Euro-Asian area replacing the existing systems of CIM and SMGS and only being put in force after all annexes (e.g. infrastructure, rolling stock, wagon law, transport of dangerous goods, etc.) have been negotiated and adopted. The industry does not have an urgent demand in the third legal regime, as CIM/SMGS consignment note provides seamless railway deliveries. ECE/TRANS/SC.2/GEURL/2021/3 does not correspond to this approach. Also, the text of the legal regime as contained in ECE/TRANS/SC.2/GEURL/2021/3 would require changes to Article 1 as well as several other Articles as indicated in ECE/TRANS/SC.2/GEURL/2020/5.

(xiv) The Russian Federation also requested that SC.2 would be informed about and given all documents that had been developed in the process of work on Task (c). This would mean that in addition to the documents shared already with SC.2 after the twenty-first session, the following documents be contained in the Group's report: ECE/TRANS/SC.2/GEURL/2019/18 and ECE/TRANS/SC.2/GEURL/2020/05.

(xv) The Group of Experts noted the proposals for reporting on the output for Task (c). It agreed to report on the differences in approaches to URL and to provide SC.2 with:

- ECE/TRANS/SC.2/GEURL/2021/3 (Convention on the contract for international carriage of goods by rail as a first Convention of a system of Unified Railway Law Convention), and in addition
- ECE/TRANS/SC.2/GEURL/2020/4 (The work of the Group of Experts Towards Uniform Railway Law during its extended mandate),
- ECE/TRANS/SC.2/GEURL/2019/18 (Benchmarking of SMGS, CIM provisions and draft of provisions of legal status of carriage of cargo in international rail traffic (URL), developed within a group of experts of ITC ECE on unified railway law),
- ECE/TRANS/SC.2/GEURL/2020/05 (Proposals by Russian Railways to amend the draft legal provisions for the carriage of goods in international rail traffic developed by the Group of Experts towards Unified Railway Law of the Economic Commission for Europe Inland Transport Committee), and
- Informal document SC.2/GEURL No.1 (2021).

(xvi) At the suggestion of the Chair, the Group of Experts discussed the opportunity to initiate an external stakeholder consultation process to collect additional views on the current results of the Group of Experts. In this discussion, some experts believed

that the Group of Experts should first report to its parent body SC.2, which is the competent intergovernmental body to decide on any follow-up activity to the URL initiative. Other experts were of the opinion that external stakeholders should be consulted prior to SC.2 meeting in November 2021 on the approaches to the URL initiative.

(xvii) In view of lack of agreement, the Group of Experts noted that SC.2 may consider the opportunity, as it would deem appropriate, to hold further consultations on the URL initiative with relevant other rail organisations (OTIF and OSJD) and other relevant intergovernmental bodies (e.g.: WP.5, WP.24).

(xviii) The secretariat informed that it was not necessary for SC.2 to undertake adoption of the outcomes of the final meeting of the current mandate, through a silence procedure, before the February 2021 session of the Inland Transport Committee as identified in paragraph 31 of document ECE/TRANS/SC.2/234. The Chair and Vice-Chair of the Working Party on Rail Transport, present at the final meeting of the Group of Experts, confirmed that they would not see a need to initiate the silence procedure and noted that sufficient time would need to be allocated in the agenda of SC.2 in November 2021 to discuss URL.

(xix) The Group of Experts agreed then on the text to be included in its report to SC.2 on the execution of the current mandate for Task (c) as provided in annex.

Documentation

ECE/TRANS/SC.2/GEURL/2020/5, ECE/TRANS/SC.2/GEURL/2021/3, Informal document SC.2/GEURL No.1 (2021), Informal document SC.2/GEURL No.2 (2021)

(b) Task (d) of the Terms of Reference: Discuss other relevant issues related to international rail freight transport with a view to adding, where appropriate, provisions to the document referred to in task (c):

(i) At its twenty-second session, the Group of Experts had considered ECE/TRANS/SC.2/GEURL/2020/6. It had agreed that all experts should submit to the secretariat in advance of the current session responses in writing to the questions formulated in ECE/TRANS/SC.2/GEURL/2020/6 as well as to the additional questions of the Chair included in ECE/TRANS/SC.2/GEURL/2020/2, item III.7(b)(iii).

(ii) The Group of Experts appreciated the intersessional effort from experts who provided their responses to those questions, and the secretariat for compiling and summarizing them in section G of the informal document SC.2/GEURL No.1 (2021).

(iii) While identifying issues that may be of relevance to facilitating the Euro-Asian rail operations – e.g. digitalization of transport documents, legal aspects related to container trains, use of infrastructure – at the same time, the Group of Experts was not in position to agree unanimously on any specific issue for which it would consider necessary to add provisions to URLCoC already available in ECE/TRANS/SC.2/GEURL/2021/3. Several experts stated that this question depends on the approach followed: the interface law approach as reflected in ECE/TRANS/SC.2/GEURL/2021/3 provides for a legal regime that remains subject to the existing provisions of public law (such as e.g. infrastructure law). As a consequence, there would be no need to harmonise those additional issues (Article 4 of URLCoC).

(iv) In terms of digitalization, e.g. some of the experts stated that the provisions contained in ECE/TRANS/SC.2/GEURL/2021/3 (Article 5, para 4 of URLCoC) already provide for the use of electronic documents and thus cover to a necessary degree the digitalization aspect. Others considered that additional digitalization provisions could be developed as part of a separate agreement in order to facilitate Euro-Asian rail operations.

(v) The Group of Experts agreed therefore that other issues, if deemed appropriate, should be rather handled through separate agreements that once elaborated could constitute a set of URL conventions.

(vi) To this end, the Group of Experts decided to inform SC.2 that it had not been able to identify in a unanimous way any specific issue on which additional provisions would need to be added to the provisions developed under Task (c). At the same time, the Group of Experts agreed to draw the attention of SC.2 to issues raised in ECE/TRANS/SC.2/GEURL/2020/6 and section G of Informal document SC.2/GEURL No.1 (2021), so as to allow SC.2 to consider issues or areas for which legal provisions under URL could be developed, however separately from URLCoC legal regime, for facilitating Euro-Asian rail operations.

(vii) Finally, the Group of Experts agreed to also remind SC.2 that documents shared in its 2019 report such as ECE/TRANS/SC.2/GEURL/2019/5 and ECE/TRANS/SC.2/GEURL/2019/12 are also relevant for the consideration of issues or areas for which the development of uniform legal railway provisions may be deemed necessary separately from URLCoC legal regime.

(viii) The Group of Experts agreed then on the text to be included in its report to SC.2 on the execution of the current mandate for Task (d) as provided in annex.

Documentation

ECE/TRANS/SC.2/GEURL/2020/6, Informal document SC.2/GEURL No.1 (2021)

IV. Other business (agenda item 3)

7. The delegation of the People's Republic of China informed the Group of Experts that it follows the Group's activities with interests given the growing volumes of transport by rail on the Euro-Asian corridors.

V. Date of next session (agenda item 4)

8. The current session was the last session of the Group of Experts under its extended mandate.

VI. Summary of decisions (agenda item 5)

9. The Group of Experts adopted provisionally its report of the twenty third session. Requested clarification and editorial changes would be incorporated by the Chair and Vice-Chair with the support of the secretariat within one week after the session.

Annex

Agreed text for the report from the Group of Experts to SC.2 in accordance with its Terms of Reference (ECE/TRANS/2018/13/Rev.1) on Tasks (c) and (d).

Task (c) of the mandate:

1. Regarding the Task (c), the Group of Experts during its mandate extension considered ECE/TRANS/SC.2/GEURL/2020/4 and ECE/TRANS/SC.2/GEURL/2020/5 submitted respectively by Germany and the Russian Federation. ECE/TRANS/SC.2/GEURL/2020/4 proposes a consensus towards executing the mandate extension. ECE/TRANS/SC.2/GEURL/2020/5 provides specific alterations to the draft URL legal provisions on the contract of carriage provided in ECE/TRANS/2016/15. These alterations aim to address the concerns raised by the Russian Federation in ECE/TRANS/SC.2/GEURL/2019/18.

2. The Group of Experts also agreed, to prepare ECE/TRANS/SC.2/GEURL/2021/3 (Convention on the contract for international carriage of goods by rail as a first Convention of a system of Unified Railway Law Convention) which consolidates text of various provisions relevant to URL contract for international carriage of goods by rail (CoC) Convention, as follows:

- ECE/TRANS/2016/15 with the draft relevant substantive legal provisions;
- ECE/TRANS/SC.2/GEURL/2019/15 with the modifications to Article 4 of ECE/TRANS/2016/15;
- ECE/TRANS/SC.2/GEURL/2019/10 with the draft preamble;
- ECE/TRANS/SC.2/GEURL/2019/11 with the draft final provisions; and
- ECE/TRANS/SC.2/GEURL/2020/3 with provisions on negotiable transport document (placed in square brackets).

3. The Russian Federation considered it was premature to prepare a consolidated version of the URLCoC before the Group of Experts would have agreed on the scope of URL.

4. While ECE/TRANS/SC.2/GEURL/2021/3 provides provisions from preamble through substantive CoC provisions to final provisions which together form a draft URLCoC Convention, unfortunately the Group of Experts was not able to fully agree on these provisions and thus finalise them.

5. This is due to the fact that, despite much effort invested by all participating experts, the Group of Experts was not able to overcome a difference in approaches to URL, as follows:

- Approach A - creation of unified rules for rail transport on Euro-Asian corridors in areas where they are urgently needed by the industry – i.e. the contract of carriage – while leaving unaffected the two existing rail organisations and the legal rules (in particular CIM and SMGS) applicable for transports of goods within their respective territories (interface law); ECE/TRANS/SC.2/GEURL/2021/3 contains legal regime for the contract for international carriage of goods by rail that is considered to serve its purpose of interface law. It could be formally adopted as a convention rapidly and would then facilitate carriage of goods on Euro-Asian corridors responding to the needs of both the rail carriers and the relevant industry; and
- Approach B – creation of a single set of unified legal rules for any cross-border rail transport in the Euro-Asian area replacing the existing systems of CIM and SMGS and only being put in force after all annexes (e.g. infrastructure, rolling stock, wagon law, transport of dangerous goods, etc.) have been negotiated and adopted. The industry does not have an urgent demand in the third legal regime, as CIM/SMGS consignment note provides seamless railway deliveries.

ECE/TRANS/SC.2/GEURL/2021/3 does not correspond to this approach. Also, the text of the legal regime as contained in ECE/TRANS/SC.2/GEURL/2021/3 would require changes to Article 1 as well as several other Articles as indicated in ECE/TRANS/SC.2/GEURL/2020/5.

6. If approach A was followed, URLCoC Convention would have been produced based on ECE/TRANS/SC.2/GEURL/2021/3 to serve as an interface international law for immediate application on an opt-in basis for carriage of goods by rail on the Euro-Asian transport corridors by its Contracting Parties, leaving the COTIF/CIM Convention and the SMGS Agreement unaffected.

7. If approach B was followed, URL as a single set of legal rules for Euro-Asian rail transport operations could be developed which would replace CIM and SMGS upon their adoption. However, that would have been outside the Terms of Reference of the Group of Experts which, apart from finalizing a Contract of Carriage convention, requests the Group only to identify other issues relevant to international rail freight traffic.

8. In view of the above, the Group of Experts invites the Working Party on Rail Transport (SC.2) to take stock of the two approaches.

9. When doing so, the Group of Experts notes that SC.2 may consider requesting its secretariat to hold further consultations on the URL initiative with relevant other rail organisations (OTIF and OSJD) and other relevant intergovernmental bodies (e.g. WP.5 or WP.24).

10. SC.2 is further invited to consider ECE/TRANS/SC.2/GEURL/2021/3 as provided in annex 1, Informal document SC.2/GEURL No.1 (2021) provided in annex 2, ECE/TRANS/SC.2/GEURL/2020/4 provided in annex 3, ECE/TRANS/SC.2/GEURL/2020/5 provided in annex 4 as well as ECE/TRANS/SC.2/GEURL/2019/18 provided in annex 5.

Task (d) of the mandate:

11. In discussion on Task (d), during the mandate extension, the Group of Experts considered: (i) ECE/TRANS/SC.2/GEURL/2020/6 which contemplates on the needs for the unified railway provisions and defines a number of questions to reflect upon, and (ii) section G of Informal document SC.2/GEURL No.1 (2021) which summarizes and consolidates experts inputs on questions relevant to identification of other relevant issues related to international rail freight transport to be added to provisions developed under Task (c).

12. The Group of Experts was not able to identify in a unanimous way any specific issue on which additional provisions would need to be added to the provisions developed under Task (c). This is also due to the fact that the question depends on the approach followed: The interface law approach as reflected in ECE/TRANS/SC.2/GEURL/2021/3 provides for a legal regime that remains subject to the existing provisions of public law (such as e.g. infrastructure law). As a consequence, there would be no need to harmonise those additional issues (Article 4 of URLCoC). Following the approach of the Russian Federation, that suggests a complete replacement of CIM and SMGS, the question of harmonisation of additional provisions could become relevant.

13. At the same time, the Group of Experts considered that inputs prepared in support of its deliberations – ECE/TRANS/SC.2/GEURL/2020/6, section G of Informal document SC.2/GEURL No.1 (2021), but also earlier inputs such as ECE/TRANS/SC.2/GEURL/2019/5 and ECE/TRANS/SC.2/GEURL/2019/12 can be helpful in identifying, if deemed appropriate, issues or areas for which uniform legal provisions could be possibly developed, however separately from CoC provisions, for facilitating Euro-Asian transport operations.

14. In this regard, the Group of Experts invites SC.2 to analyse those inputs and examine if any specific work aimed at preparation of specific legal provisions, or any specific research should be undertaken. If such work or research appears desirable, SC.2 should consider establishing a new expert group.

ECE/TRANS/SC.2/GEURL/2020/6 is provided in annex 6, section G of Informal document SC.2/GEURL No.1 (2021) is provided in annex 2.

15. The Group of Experts, after having held its two additional meetings in September 2020 and January 2021, deems its mandate concluded.

16. SC.2 may find further information on the work of the Group of Experts in the reports of the sessions as follows: ECE/TRANS/SC.2/GEURL/2020/2, and ECE/TRANS/SC.2/GEURL/2021/2.
