



Economic and Social Council

Distr.: General
6 November 2019

Original: English

Economic Commission for Europe

Inland Transport Committee

Working Party on Rail Transport

Group of Experts towards Unified Railway Law

Twenty-first session

Geneva, 16-18 October 2019

Report of the Group of Experts towards unified Railway Law at its the twenty-first session

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I. Attendance

1. The Group of Experts towards Unified Railway Law (Group of Experts) held its twenty first session from 16 to 18 October 2019 in Geneva. The session was chaired by Mr. A. Druzhinin (Russian Federation) on 16-17 October and Ms. M. Urbanska (PKP CARGO) on 18 October.
2. Representatives of the following countries participated: Germany, Luxembourg, the Russian Federation, Switzerland and Turkey. Representative from the European Commission also participated.
3. Experts from the following intergovernmental organizations participated: Intergovernmental Organization for International Carriage by Rail (OTIF). Experts from the following non-governmental organization attended the session: International Rail Transport Committee (CIT).
4. Experts from the following organizations participated at the invitation of the secretariat: Deutsche Bahn AG (DB), PKP CARGO S.A., and the University Frankfurt on Main.

II. Adoption of the agenda (agenda item 1)

5. The Group of Experts towards Unified Railway Law (Group of Experts) adopted the agenda of its twenty first session (ECE/TRANS/SC.2/GEURL/2019/13).

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

6. The Group of Experts considered and discussed its tasks stemming from its detailed workplan:
 - (a) Monitoring of the finalization of necessary documents:
 - (i) The Group of Experts considered ECE/TRANS/SC.2/GEURL/2019/9 and Informal document No.7 supplementing ECE/TRANS/SC.2/GEURL/2019/9, both prepared by PKP CARGO. They list documents related to contract of carriage in use under CIM/SMGS systems, provide for each document its relevance to specific URL provisions and; inform about necessary modification to adapt existing CIM/SMGS documents to the URL.
 - (ii) The Group of Experts welcomed the work by PKP CARGO. It agreed on the relevance of the 10 documents identified by PKP CARGO to the URL existing provisions, among them: (1) notice of damage, (2) wagon label, (3) wagon list, (4) container list, (5) subsequent orders, (6) notification of circumstances preventing carriage, (7) notification of circumstances preventing delivery, (8) missing goods report, (9) notification of corrections, and (10) accompanying document. The Group of Experts welcomed the fact that from these 10 documents, only one (notice of damage) would need to be fully developed, while for others the existing CIM or CIM/SMGS documents, could be adapted through introducing minor modifications.
 - (iii) The Group of Experts agreed that these documents should be developed (or modified from existing documents) upon adoption of legal instrument on the contract for international carriage of goods by rail. Such work should preferably be undertaken by CIT and OSJD.
 - (iv) The Group of Experts agreed then on the text to be included in its report on the execution of the current mandate for the task 1 (a) as included in the annex.

(b) Monitoring of performance of a substantial number of real pilot tests:

(i) The secretariat informed the Group of Experts about its further communication with the railway undertakings to collect their views as to possible changes to the ad hoc consignment note regarding issues raised during the nineteenth session and provided in ECE/TRANS/SC.2/GEURL/2019/2, point III.6 (b) (vii). The secretariat had addressed the railway undertakings with its messages on 18 and 24 September 2019 requesting their views. The secretariat further informed that CFL (Luxembourg) and PKP CARGO provided their views. CFL agreed with content of the ad hoc consignment note, while PKP CARGO suggested additional minor changes, as follows:

- Expand the boxes 24 and 48 to include in them information from weighting of wagons for the wide gauge and from weighting the wagons for standard gauge; and
- Remove from the box 65 reference to subcontracted carrier as URL does not refer to such a category of carriers.

(ii) The Russian Federation commented on the issues raised as follows:

- Inclusion of a specific box for indicating transshipment/transfer station – change considered as not necessary;
- Redesign of box 18 to match information provided in the box 20 of the CIM consignment note – change could be useful;
- Inclusion of new section for registering new wagon numbers (wagon numbers before and after transfers) – change considered as not necessary.

(iii) The Russian Federation also noted, that the consignment note contains boxes which are unnecessary, which has been discussed at the previous sessions of the Group of Experts.

(iv) The Group of Experts considered the information provided and agreed that the ad hoc consignment note agreed upon at the eighteenth session should serve as a basis for the preparation of the final version of the consignment note for URL. This work should be undertaken upon adoption of legal instrument on the contract for international carriage of goods by rail. Such work should preferably be undertaken by CIT and OSJD. In preparing the final version of the URL consignment note, the issues raised and reflected in the reports from the nineteenth, and twenty first sessions should be considered.

(v) The Group of Experts was informed that no new pilot tests have taken place since July 2019. It took note of this information.

(vi) The Group of Experts agreed then on the text to be included in its report on the execution of the current mandate for the task 1 (b) as included in the annex.

(c) Scope of URL and its conversion into a legally-binding instrument:

(i) The Group of Experts continued its discussion on the approach to developing URL as a legally-binding instrument and on the content of the instrument. In view of the absence of ECE/TRANS/SC.2/GEURL/2019/17, which was to be prepared by the Chair and expected to refer to the specificities that are important to facilitating execution of the contract of carriage on the basis of the URL contract of carriage provisions for SMGS countries, the Group considered ECE/TRANS/SC.2/GEURL/2019/15. The latter proposed changes to Article 4 further stipulating the public laws which the contract of carriage provisions shall remain subject to.

(ii) A number of experts welcomed this further clarification. The Russian Federation expected ECE/TRANS/SC.2/GEURL/2019/15 to rather clarify the relation of the contract of carriage provisions to other issues related to international rail freight transport. Other experts informed that such clarification was not the purpose of the document but to accommodate the concerns expressed by the Russian

Federation at the previous session with regard to the execution of the contract of carriage under URL in SMGS regime, as agreed during the last session (cf. section III.6.(c)(xvii) of the report of the twentieth session of the Group, document ECE/TRANS/SC.2/GEURL/2019/8). The document further shows that there is no conflict between the existing contract of carriage provisions and the public laws.

(iii) The Group of Experts continued with the discussion of ECE/TRANS/SC.2/GEURL/2019/18 (referred in the provisional agenda as ECE/TRANS/SC.2/GEURL/2019/16) prepared by the Russian Federation and which contains benchmarking of the agreed draft URL provisions against relevant CIM and SMGS Conventions provisions, as well as informal document No. 9 prepared by professor Freise which provides comments on the benchmarking.

(iv) A number of experts noted that ECE/TRANS/SC.2/GEURL/2019/18 provided a factual benchmarking of provisions rather than an explanation of aspects that may be inadequately covered in the existing draft provisions from the perspective of the SMGS countries and which would have been discussed within the structure of the draft URL provisions.

(v) The Russian Federation argued that the benchmarking shows that the existing URL provisions are imbalanced between CIM and SMGS and that they do not settle on issues on which SMGS Convention provides clear instructions. The Russian Federation believed that such law would not attract the interests of all Parties, which provides an argument for further adjustment to the provisions.

(vi) The expert from the European Commission recalled that the draft URL provisions on the contract of carriage were deemed finalized before the beginning of this mandate as indicated in section I paragraph 1 of the Group's terms of reference. In addition, he recalled that the text of the draft provisions, as it stands, has been communicated with a formal letter from the ECE Executive Secretary to transport ministers from countries along the four corridors invited to carry out the pilot tests. The expert from the Russian Federation reminded that the draft URL provisions have never been adopted by the Inland Transport Committee.

(vii) The Group of Experts agreed that making changes at the last meeting of the mandate, where there has been no concrete proposal on specific changes, was not desirable. At the same time, experts from the European Commission and Germany argued that an extension of the mandate should be only requested for such work, if it could be targeted towards specific objectives such as a finalisation of a URL convention on the contract for international carriage of goods by rail at the end of the extended mandate. Such convention was to be considered as first of the conventions to form URL seen as a system of conventions.

(viii) This proposal led experts to come back to the discussion on the approach to be undertaken to developing URL as a legally-binding instrument. The discussion revealed that while experts saw a system of conventions forming unified railway law as a possible solution, there has been difference of opinions as to how the process of development should be managed. Experts from the European Commission, Germany, Luxembourg, Switzerland and Turkey advocated for a step by step approach meaning negotiations, adoption and opening for accession separately convention by convention. Experts from the Russian Federation believed that all the conventions of the system should be adopted and open for accession simultaneously, that is the first convention would wait for the last convention of the URL system for adoption. Such approach, in view of the Russian Federation, would prevent the situation in which any of the new conventions becomes a "third-law", that is a convention existing in parallel to the existing regional legal systems. More specifically, the Russian Federation put into question the very principle of the opting-in and interface law as stipulated in Article 1 of the URL contract of carriage provisions. Other experts recalled that these two principles precisely aim at avoiding overlaps and/or conflict with the existing regional legal systems. They further considered that this position of the Russian Federation puts in jeopardy the entire work achieved by the Group of Experts for the past eight years. At the same time, the Russian Federation considers that the aim of

the Group of Experts is to help establish a clear non-contradictory system of railway law, attractive to all the states, through which the carriage would take place.

(ix) Experts from the European Commission and Germany argued that the approach suggested by the Russian Federation would offset all benefits of the system of conventions, would not allow quick gains and would discourage investment into the process of the development of the system (reference to the arguments provided in ECE/TRANS/SC.2/GEURL/2019/5).

(x) Instead, they suggested that while each convention should be open to accession after its finalization and adoption, countries may choose to accede to each and all conventions at the same time, that is when the last convention of the whole system is developed, adopted and open to accession. This approach provides a degree of flexibility to also accommodate the position expressed by the Russian Federation.

(xi) Experts from the Russian Federation further requested that the conventions to form the URL system are all identified while other experts believed that this should be a careful process during which issues for which unified provisions in the form of conventions should be developed are subject to adequate justification and consultations with relevant international organisations and industry associations.

(xii) In response to the discussion, the secretariat proposed that the Group of Experts would request an extension for one year (two more meetings) during which the Group would:

- Develop a plan of a system of conventions to form the URL which are appropriate for facilitating Euro-Asian transport by rail,
- Prioritize the conventions on their development, and
- Finalize the text of the legal instrument on the contract for international carriage of goods by rail for consideration by SC.2 in 2020.

(xiii) To implement these tasks in the given time, the secretariat suggested to:

- Expand the Group of Experts to invite to it country representatives with expertise on issues to be covered in the full set of conventions,
- Expand the geographical representation to invite to it interested countries along the entire Euro-Asian transport corridors, and
- Collect, in advance of the next meeting, comments and specific suggestions for changes to the existing contract of carriage provisions.

(xiv) Germany, Luxembourg, Switzerland and Turkey supported in principle the compromise proposal from the secretariat. The Russian Federation argued this approach did not meet their concerns as expressed in previous interventions (“third law” concern).

(xv) The secretariat recommended that with the extension of the mandate the experts would gain the additional time to negotiate a common position whether or not the contract of carriage provisions should be applied on the opt-in basis.

(xvi) The Group of Experts reached an agreement to recommend an extension of the mandate for one more year (two more sessions) to finalise the work on its tasks 1 (c) and (d) of the terms of reference (ECE/TRANS/SC.2/GEURL/2018/3/Rev.1) before the 2020 session of SC.2.

(xvii) Germany, Luxembourg, supported by the European Commission, and Turkey considered that the short extension, if granted, needs to ensure that the Group’s work will focus on the following objectives: (i) finalize the text of the legal instrument on the contract for international carriage of goods by rail for consideration by SC.2 in 2020 (i.e. agree on all substantive provisions, the management system, the preamble and final provisions), and (ii) identify and agree, where appropriate, as per task 1 (d), the next issue relevant to international rail freight, for which substantive URL provisions (another URL legal instrument) should be developed.

(xviii) Following a proposal by the European Commission, the Group discussed the possibility of the establishment of a legal instrument on the contract for carriage of goods by rail on a corridor basis based on agreements between the governments concerned.

(xix) The Group of Experts agreed that such a possibility be explored.

(xx) The Group of Experts did not discuss ECE/TRANS/SC.2/GEURL/2019/10 and ECE/TRANS/SC.2/GEURL/2019/11 which contain a draft preamble and draft final provisions for URL.

(xxi) The Group of Experts did not discuss ECE/TRANS/SC.2/GEURL/2019/16 and Informal document No 8 containing suggestion for the elaboration of provisions on negotiable transport document as part of URL.

(xxii) 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 the tasks 1 (c) and 1 (d) as provided in the annex.

IV. Other business (agenda item 3)

7. There were no issues raised under this item.

V. Date of next session (agenda item 4)

8. The Group of Experts took note of the fact that a date of the next session would be communicated to experts in due time subject to the extension of the mandate.

VI. Summary of decisions (agenda item 5)

9. The Group of Experts adopted provisionally its report of the twenty first session. Requested editorial changes would be incorporated by the Chair and Vice-Chair with the support of the secretariat within one week to allow compilation and submission of the Group's report to SC.2 in the week of 28 October 2019.

Annex

Agreed text for the report from the Group of Expert to SC.2 in accordance with paragraph no. 3 of its Terms of Reference (ECE/TRANS/2018/13/Rev.1)

On task 1 (a) of the mandate:

“The Group of Experts monitored the finalization of the necessary documents to perform international carriage of goods by rail under URL (documents other than the consignment note). The Expert Group assessed existing documents related to contract of carriage in use under CIM or SMGS systems and agreed that there are 10 documents of relevance to the provisions of URL: (1) notice of damage, (2) wagon label, (3) wagon list, (4) container list, (5) subsequent orders, (6) notification of circumstances preventing carriage, (7) notification of circumstances preventing delivery, (8) missing goods report, (9) notification of corrections, and (10) accompanying document. These documents should be developed for use under URL – for majority of them based on existing documents through modification of CIM or CIM/SMGS documents – once the legal provisions for the contract of international carriage of goods by rail are adopted as a legally binding instrument. CIT and OSJD should be invited to undertake the modification work. Details of the documents’ relevance to URL provisions is provided in annex I together with preliminary suggestions for modifications.”

Annex I to the SC.2 report

List of documents assessed as relevant to perform international carriage of goods by rail under URL:

<i>Title of the document</i>	<i>Relevance to URL provisions</i>	<i>Modifications required</i>
1. Notice of damage	Article 28	There are no existing documents that could be modified, a new document should be developed.
2. Wagon label	Its use can be helpful to the railway undertakings	CIT 14 document could be used. No substantive content modifications necessary.
3. Wagon list	Article 5 para 2 in connection with Article 2 para 10	CIM/SMGS Wagon list document could be used after modifications: substantive content changes to box 16.
4. Container list	Article 5 para 2 in connection with Article 2 para 10	CIM/SMGS Container list document could be used after modifications: substantive content changes to box 16.
5. Subsequent orders	Articles 15 and 16	CIT 7 document could be used after modifications: substantive content changes to box on consignment number and on instructions.
6. Notification of circumstance preventing carriage	Article 17	CIT 8 document could be used after modifications: substantive content changes to box on consignment number and on circumstance preventing carriage.
7. Notification of circumstance preventing delivery	Article 17	CIT 9 document could be used after modifications: substantive content changes to box on consignment number and on circumstance preventing delivery.
8. Missing goods report	Article 20	CIT 21 document could be used. No substantive content modifications necessary.;

<i>Title of the document</i>	<i>Relevance to URL provisions</i>	<i>Modifications required</i>
9. Notification of corrections	Articles 15,16, 17 and 18	CIT 22 document could be used. No substantive content modifications necessary. To be used for corrections, which are to be made or have been made to the consignment note when goods have already been sent.
10 Accompanying document	Its use can be helpful to the railway undertakings for subsequent processing of goods en route in case when the consignment of which the goods are part cannot be identified (goods without documents)	The accompanying document is to take the same form as a consignment note with the following changes: - Box 37: The description of the document is to read “Accompanying document” and the reference clause is not required. - The box situated next to box 37 of the consignment note and intended to identify the individual sheets of the consignment note is to be blank.

On task 1 (b) of the mandate:

“The Group of Experts monitored the performance of one real pilot test carried out by the railway companies from Turkey, Georgia and Azerbaijan, with the focus on verifying the operational validity and effectiveness of the existing URL legal provisions as available (Informal document SC.2/GEURL No.6 (2017)). Based on the test, the Group of Experts was able to conclude that no further changes to the draft URL provisions were necessary, while a number of issues were listed for consideration of further modifications to the version of the ad hoc consignment note agreed upon by the Group of Experts for use in the tests.

The report of the test is provided in annex II.

The Group of Experts concluded that organization of a substantial number of pilot tests turned out to be difficult for the railway undertakings for two main reasons:

- Some railway undertakings from countries along the corridors suggested for tests had not participated actively in the work of the Group of Experts and had not responded to the secretariat correspondence inviting them to perform the tests, including correspondence at the highest level (letter from the ECE Executive Secretary to the Ministers of Transport with copy to managing directors of the railway undertakings), and
- Railway undertakings due to regulations in force (for SMGS countries Article 3 of the SMGS was mentioned as imposing restrictions) stated that they are not in position to test URL existing provisions on contractual basis using the provisions as general rules and conditions. Even the test conducted by Turkey, Azerbaijan and Georgia had been carried out utilizing the consignment notes of CIM and SMGS systems and in parallel the URL ad-hoc consignment note.

Against this background, and considering that the test carried out by Turkey, Georgia and Azerbaijan was successful in verifying the validity and effectiveness of the draft URL provisions, the Group of Experts agreed not to request any further tests to the railway undertakings.

The Group of Experts further agreed that the ad hoc consignment note agreed for use in the tests should serve as a basis for the preparation of the final version of the consignment note for URL. This work should however only be undertaken upon adoption of the legal instrument for the contract of international carriage of goods by rail. Such work should preferably be undertaken by CIT and OSJD. In this work, the issues raised in terms of possible modifications should be considered. These issues are listed in annex III. Upon finalization of the consignment note, also an appropriate manual providing guidance for filling out the consignment note should be prepared.

The ad-hoc consignment note as agreed by the Group of Experts is included in annex IV.

Annex II to the SC.2 report

Report of the pilot test conducted by Turkey, Georgia and Azerbaijan (as contained in Informal document SC.2/GEURL No. 4 (2019))

Annex III to the SC.2 report

Issues to be considered in finalizing the consignment note under URL:

- Inclusion of a specific box for indicating transshipment/transfer station,
- Redesign of box 18 to match information provided in the box 20 of the CIM consignment note,
- Inclusion of new section for registering new wagon numbers (wagon numbers before and after transfers),
- Merging of boxes 49 to 58 and 72 to 94,
- Expansion of the boxes 24 and 48 to include in them information from weighting of wagons for the wide gauge and from weighting the wagons for standard gauge, and
- Removal from the box 65 reference to subcontracted carrier as URL does not refer to such a category of carriers.”

Annex IV

Ad hoc consignment note

On task 1 (c) and (d) of the mandate:

“The Group of Experts in executing tasks 1 (c) and 1 (d) assessed and discussed on which should be the scope of URL and how to convert it into a legally-binding instrument.

- In this process, the Group considered numerous documents, most importantly:
- ECE/TRANS/SC.2/GEURL/2018/6 and ECE/TRANS/SC.2/GEURL/2018/6/Rev.1 which outlines a number of case studies from several United Nations transport legal instruments on the modalities for updating the instruments and the accompanying management systems established for these legal instruments.
- ECE/TRANS/SC.2/GEURL/2019/5, prepared by the European Commission and which contains impact analysis and the benefits from adopting the convention on contract for carriage of goods by railway in international traffic, as an opting in solution applicable solely for Euro-Asian rail freight traffic, (interface law), provided in annex V,
- ECE/TRANS/SC.2/GEURL/2019/12, prepared by the Russian Federation and which suggests that URL is developed as a framework convention which would regulate the economic, operational, technical, technological and financial aspects of the railway operations, such as the carriage of goods, the use of wagons, the use of infrastructure, passenger transport, etc. and which proposes URL to become single regime for railways, provided in annex VI (official document).

In addition, the Russian Federation submitted ECE/TRANS/SC.2/GEURL/2019/18 which contains benchmarking of the agreed draft URL provisions against relevant CIM and SMGS provisions.

The long-lasting discussion, which spanned over three sessions on the two approaches, led in the first place to a conclusion that URL should be developed as a system of conventions. Further discussions revealed that while experts saw a system of conventions forming unified railway law as a possible solution, there had been a difference of opinions as to how the process of development should be managed. All experts except for the Russian Federation advocated for a step by step approach meaning negotiations, adoption and opening for accession separately convention by convention. Experts from the Russian Federation believed that all the conventions of the system should be adopted and open for accession simultaneously, that is the first convention would wait for the last convention of the URL

system for adoption. Such approach, in view of the Russian Federation, would prevent the situation in which any of the new conventions becomes a “third-law”, that is a convention existing in parallel to the existing regional legal systems.

The other experts argued that the approach suggested by the Russian Federation would offset all the benefits of the system of conventions, would not allow quick gains and would discourage investment into the process of the development of the system (reference to the arguments provided in ECE/TRANS/SC.2/GEURL/2019/5). They also considered that the approach suggested by the Russian Federation might require decisions in other fora.

Suggestions were made to open to accession each convention of the system after its finalization and adoption, while leave it to countries to choose when to accede to it – separately or to all conventions at the same time.

In the discussion, experts from the Russian Federation requested that the conventions to form the URL system were all identified while other experts believed that this should be a careful process during which issues for which unified provisions in form of conventions should be developed subject to adequate justification and consultations with international organizations and industry associations.

The Group of Experts was not able to agree on the scope of URL and on the approach to convert it into a legally-binding instrument by the twenty first and last session of its mandate, thus it has not fulfilled its mandate with regard to tasks 1 (c) and 1 (d). At the same time, experts agreed to recommend for an extension of mandate for one more year (two more sessions) to finalise the work on its tasks 1 (c) and (d) of the terms of reference (ECE/TRANS/SC.2/GEURL/2018/3/Rev.1) before the 2020 session of SC.2.

Germany, Luxembourg, supported by the European Commission, and Turkey considered that the short extension, if granted, needs to ensure that the Group’s work will focus on the following objectives: (i) finalize the text of the legal instrument on the contract for international carriage of goods by rail for consideration by SC.2 in 2020 (i.e. agree on all substantive provisions, the management system, the preamble and final provisions), and (ii) identify and agree, where appropriate, as per task 1 (d), the next issue relevant to international rail freight, for which substantive URL provisions (another URL legal instrument) should be developed.

In its decision to extend the mandate under the existing terms of reference, and in the interest of successful conclusion of the extended mandate, SC.2 may wish to:

- Expand the Group of Experts to invite to it country representatives with expertise on issues to be envisaged in the full set of conventions to form the system of URL conventions, and
- Expand the geographical representation in the Group to invite to it interested countries along the entire Euro-Asian transport corridors.

SC.2 may also request the Group of Experts to explore the possibility to establish the legally binding instrument on contract of carriage on a corridor basis based on agreements between the governments concerned.

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/2019/14, ECE/TRANS/SC.2/GEURL/2019/8, ECE/TRANS/SC.2/GEURL/2019/2, ECE/TRANS/SC.2/GEURL/2018/5, ECE/TRANS/SC.2/GEURL/2018/2.

Annex V

ECE/TRANS/SC.2/GEURL/2019/5

Annex VI

ECE/TRANS/SC.2/GEURL/2019/12.
