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Programme of work

Use of CMR consignment notes by the Customs Authorities

Submitted by the Secretariat and experts of the Group

This document provides a short historical review concerning the development of the CMR Convention and analysis on how and why the CMR Consignment notes are used today in different geographical regions by customs for consideration by the experts at their second session on 4-6 October 2022.

I. Mandate

1. At its 116th session in October 2021, the Working Party on Road Transport (SC.1) decided to establish a formal group of experts on the operationalization of the eCMR procedure for 2 years (2022 and 2023) to discuss and if possible agree on the requirements of article 5 of the Additional Protocol to CMR including the objective/scope, the high level architecture, and the conceptual specifications for a future environment that would support the conclusion and exchange of electronic consignment notes in accordance with the provisions of CMR and its Additional Protocol. Such work should also include an impact assessment of possible implementation scenarios of a future eCMR environment (ECE/TRANS/SC.1/416 paragraph 20). At its eight-fourth session in February 2022, the Inland Transport Committee endorsed the Group of Experts' terms of reference (ECE/TRANS/316 paragraphs 28 and 33). This was approved by the Executive Committee of UNECE (EXCOM) in May 2022 (ECE/EX/2022/L.11 paragraph 3).

2. During the first session of the group some experts expressed the wish to further analyze the use of CMR Consignment notes by Customs Authorities in several geographical regions and identify, if possible, the reasons behind this use. The document tries to serve this purpose by providing a short historical review on CMR Convention development and analyzing how and why the CMR Consignment notes are used in different geographical regions by customs authorities today.

II. Historical review

3. A few years after its establishment, the United Nations Economic Commission for Europe (ECE) began, through a Working Party on Legal Questions which was a subsidiary body of the Inland Transport Committee, to consider problems of private law arising from contracts for the international carriage of goods by road. At its fifth session (4 to 7 February 1952), the ECE Working Party on Legal Questions established a small committee of legal experts which, on 21 December 1953, submitted a report to which a preliminary draft (TRANS/WP9/22) was annexed. This preliminary draft, together with the many comments on it received from Governments, constituted the basis for negotiations during the two sessions of an ECE Ad Hoc Working Party in which the final text of the Convention on the Contract for the International Carriage of Goods by Road (CMR) was established. The first of the two sessions of the Ad Hoc Working Party was held from 12 to 28 April 1955, and it was attended by representatives of 11 States, as well as observers from UNIDROIT, ICC and IRU. The second session of the Ad Hoc Working Party was held from 12 to 19 May 1956, and it was attended by representatives of 15 States, as well as observers from UNIDROIT, ICC, IRU, the Central Office for International Railway Transport (OCTIC) and the International Union of Railways (UIC). The Convention was opened for signature on 19 May 1956 at a special session of the ECE Inland Transport Committee and was signed on that day by representatives of Austria, the Federal Republic of Germany, France, Luxembourg, the Netherlands, Poland, Sweden, Switzerland and Yugoslavia (E/ECE/TRANS/490). The CMR entered into force on 2 July 1961, following the deposit of the first five instruments of ratification (Austria, France, Italy, Netherlands and Yugoslavia).

4. The primary objective of the drafters of the CMR Convention was – as expressed in the Convention preamble – to “standardize the conditions governing the contract for the international carriage of goods by road, particularly with respect to the documents used for such carriage and to the carrier's liability.”

5. The period after the second world war, the codes of some countries contained a fairly complete regulation of the contract of carriage and of agency / forwarding agent / while other countries had no explicit provisions concerning such contracts.

6. For instance, in Austria carriage in general was regulated by the German Commercial Code of 1861, in Belgium by the law of August 25th 1891 on contacts of carriage, in England by common law but also some provisions were found in the Carriers Act of 1830, in France by the civil code arts 1782 to 1786, in Germany by the commercial code of 1897, in Hungary by the commercial law of 1875, in Italy by the civil law of 1942 etc.

7. On the other hand, the Scandinavian countries, Denmark, Norway and Sweden, had no special provisions concerning carriage by road. Contracts of carriage by road in these countries were regulated by common law governing contracts of hire of services

8. In all countries, contracts of carriage were based on agreement and were not subject to any condition of form. Although the contract, to be binding, needed not to be in writing, nevertheless, it was, for the purpose of proof, usually entered into or confirmed in writing. It generally had the form of a waybill, (Frachtbrief), or of a receipt or of a “Ladeschein”¹.

9. For instance, concerning customs and their need to check the transport documents, the German commercial code of 1897 article 427 mentions: “the sender bound to deliver to the carrier the papers which for the purposes of the customs excise, and police regulations, must be presented to the proper authorities before the delivery of the goods to the consignee. He is liable to the carrier for any consequences resulting from the absence, insufficiency, or incorrectness of such papers for which the carrier himself is not responsible”. It is clear for this article that the road transport papers were checked by the customs authorities well before the CMR Convention came into force.

10. The German commercial law of today mentions that the shipper shall provide to the carrier such documents and such information that may be necessary for official processing prior to delivery of the goods, in particular for customs clearance (Section 487, Accompanying documents²).

11. The CMR Convention owes its success to its remarkable stability and to the quality of its text which has strongly influenced both national and international legislation³.

12. The CMR Consignment note is like a passport for the goods to move from one country to another.

13. If carriers were hampered in their work by uncertainty in the sphere of Liability for Goods in Transit; where a carriage transaction could be followed by a potentially ruinous lawsuit; there could be great reluctance on the part of business people to engage in the transport sector at all, while those who would do it, would charge very much for the service in order to cover any eventual legal costs. This would arguably have the equivalent effect blocking the freedom of movement of goods. However, the CMR Convention with its precise conditions of carriage and distribution of liability, plus its upward limitation and prescription of the steps to be taken to claim compensation gives the element of certainty so critical to the smooth running of international road transport⁴.

III. Use of CMR by Customs Authorities in the European Union Territory

14. The purpose of European Commission Transit Manual which last version was published in 2021 is to provide a detailed description of and explain how the Common and the Union transit procedures work and the roles of the various participants. The goal is to ensure the transit regulations are applied consistently, with equal treatment for all operators⁵.

15. The manual provides a standard interpretation of how the transit regulations should be implemented by all the customs authorities applying common/Union transit via an administrative arrangement.

16. The manual in page 82 provides an overview of movements of union goods temporarily out of the territory. It specially mentions for road transport:

¹ UNIDROIT, U.D.P. 1948 – Papers – Carriage by road – Doc. 1, Carriage by road. Preliminary study

² https://www.gesetze-im-internet.de/englisch_hgb/englisch_hgb.html#p0788

³ Isabelle Bon-Garcin, Associate Professor at the Law & Political Science School, Lyon 2 University, Conclusions of the Symposium held at Deauville (France) – 18-19 May 2006 on the 50th Anniversary of the CMR Convention

⁴ Dr. Ian Quigley, Freight Carrier’s Liability under the CMR, convention 1956, The University of Economics, Prague

⁵ https://taxation-customs.ec.europa.eu/system/files/2021-06/transit_manual_june_2020_en.pdf

Specifications	Proof	Customs declaration	Other requirements	Legal provision
From one point to another in the EU without being transhipped outside the EU	Required	None*	CMR issued in a Member State	Art 119(3)(b) DA
From one point to another in the EU and transhipped outside the EU	Required	None*	New CMR + copy of original CMR issued in a Member State	Art 119(3)(c) DA

** The indication that no customs declaration is required only relates to the EU's customs territory. A third country may require the Union goods to be placed under a customs transit procedure when passing through its territory. For example, the T2- Corridor is a transit procedure on Swiss territory.*

17. Under Chapter 4 of the mentioned transit guide with the title “formalities at the customs office of destination” the following are being mentioned. At the end of the transit operation, the goods together with the Transit accompanying document (TAD) and information required by the customs office of destination (e.g. receipt issued by the police in the event of an accident, receipt from the vehicle breakdown service, CMR etc.) must be presented to that customs office. This marks the end of the transit operation. The message ‘Arrival advice’ (IE006) is sent by the customs office of destination to the customs office of departure without delay. The customs office of destination will check the goods based on information retrieved from the NCTS, together with the TAD where relevant, record the results of the inspection and send the message ‘Control results’ (IE018) to the customs office of departure. If no discrepancies are found, the customs office of departure will discharge the transit operation. In the event of discrepancies, further measures will be necessary.

18. Furthermore, and concerning the TIR procedure in EU territory in page 572 of the transit manual the following information can be found:

**II. To be completed by the customs office of destination or exit from the Union:
Request for additional information**

In order to carry out enquiries the office of departure or entry into the Union is requested to send:

- 1. a precise description of the goods
- 2. a copy of the invoice
- 3. a copy of the CMR
- 4. the following documents or information:

Place and date: Signature: Stamp:

19. Another procedure where CMR consignment notes are being checked by the Customs Authorities in the EU territory is for the implementation of the customs procedure 42. When goods are imported and released for free circulation in a Member State, VAT is payable in that Member State. However, when at the time of importation, it is already certain that the imported goods are intended to go to another Member State, the VAT is due in the Member State of destination. This is an exemption on VAT at importation based on the fact that the import is followed by an exempt intra- Community supply or transfer of goods to another Member State.

20. Responsibilities of the parties involved in customs procedure 42:

Importer

- (a) valid EORI number and VAT ID;
- (b) authorization for customs and tax representation to the freight forwarder;
- (c) the submission of additional documentation on the freight forwarder's request;
- (d) must demand customs clearance under procedure 42 upon import;
- (e) the import invoice needs to make it clear where the package is heading and the final recipient;
- (f) the CMR document needs to make it clear where the package is heading and the final recipient – completed boxes 2 and 3;
- (h) self-taxation in own country.

Carrier

- (a) correctly completed CMR showing where the package is heading and the final beneficiary.
- (b) the package must not be shipped or unloaded during the transit phase, but must be delivered to another member state;
- (c) must return the CMR to the freight forwarder with the confirmation of receipt of the final beneficiary.
- (d) Freight forwarder
- (e) checks whether the accompanying documents include information that the package is heading to another member state - document control;
- (f) checks the validity of the tax and EORI numbers;
- (g) prepares the import documentation, demands procedure 42 and the exemption of VAT payment;
- (h) once a month submits the recapitulative statement to tax authorities.

21. The checking of cabotage is another example where the customs authorities inside the EU territory are checking the CMR consignment note. Based on the rules on cabotage as applicable from 21 February 2022 published by the Commission and Article 8.4 of those rules hauliers are required to keep documentation of every carriage carried out in connection with their cabotage operations. This must comprise all the details listed in Article 8(3), second subparagraph. These details are contained in the consignment note or bill of lading, normally in the CMR format. No additional document is required in order to prove that the cabotage rules have been respected. This provision, however, does not mean that control authorities cannot use other evidence required by road transport legislation, e.g. the tachograph data, to establish whether a cabotage operation is carried out according to the rules.

22. Finally, DG Trade under access to markets web page has prepared specific analysis on additional customs clearance documents required in the EU territory⁶. Specific reference is made to the CMR consignment note and its use in the EU territory.

IV. Use of CMR by Customs Authorities in other regions

23. Commonwealth of Independent States countries (Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan and Uzbekistan). In accordance with the Decision of the Council of Heads of Customs Services of member states of the Commonwealth of Independent States №5/32 of 13.09.2001 in Armenia, Belarus, Georgia,

⁶ <https://trade.ec.europa.eu/access-to-markets/en/content/additional-customs-clearance-documents>

Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan and Uzbekistan there is an agreement to put stamps on transport documents. Paragraph 4a of the above-mentioned document stipulates that the CMR consignment note (due to Convention on the contract for the international carriage of goods by road (CMR) (Geneva, 19.05.1956)) will be used as the transport document for road transport.

24. Eurasian Economic Union (Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russia) In accordance with the article 89 (1) of the Eurasian Economic Union Customs Code when notifying the customs authority about the arrival of goods in the customs territory of the Union, the carrier must submit the transport (shipment) documents. Article 1 (48) of the above-mentioned document stipulates that the transport (shipment) document is a document (consignment note) that confirming the existence of a contract of carriage of good sand accompanying them during such transport.

25. Uzbekistan. In accordance with the article 18 of the Customs Code of Republic of Uzbekistan one of the required documents on the border is CMR consignment note due to Convention on the contract for the international carriage of goods by road (CMR).

26. Tajikistan. In accordance with the article 81 (1) of the Customs Code of the Republic of Tajikistan as a transit declaration, the customs authority shall accept commercial, transport (shipment) documents and other documents. Article 10 (34) of the above-mentioned document stipulates that the transport (shipment) document is a document (consignment note) that confirming the existence of a contract of carriage of good sand accompanying them during such transport.

27. Turkmenistan. In accordance with the article 46 (1) of the Customs Code of Turkmenistan as a transit declaration, the customs authority shall accept commercial, transport (shipment) documents and other documents. Article 5 (27) of the above-mentioned document stipulates that the transport (shipment) document is a document (consignment note) that confirming the existence of a contract of carriage of good sand accompanying them during such transport.
