

Distr.: General
1 November 2022

Original: English

Economic Commission for Europe

Inland Transport Committee

Working Party on Road Transport

Group of Experts on the Operationalization of eCMR

Third session

Geneva, 9 to 11 November 2022

Item 3 of the provisional agenda

Proposed Concepts / Processes of the future eCMR system based on Group's discussions

**Proposed Concepts / Processes of the future eCMR system
based on Group's discussions**

Submitted by the Secretariat

This document contains the Proposed Concepts / Processes of the future eCMR system based on Group's discussions to be discussed and adopted by the Group of Experts at its third meeting on 9 to 11 November 2022.

<i>Explanation / Reference</i> <i>CMR</i>	<i>Explanation / Reference</i> <i>eCMR</i>	<i>Proposed Concepts / Processes of the future eCMR system</i> <i>based on Group's discussions</i>
<p>Article 4 CMR. The absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract of carriage which shall remain subject to the provisions of this convention</p>		<p>Fallback procedure.</p> <p>In an electronic environment it is difficult to speak about the loss or absence of the contract of carriage since there is always the possibility to access the document online, in the platform where it was generated. For the purposes though of a fallback procedure (interruption of internet, several other technological disruptions etc) the moment the contract is concluded online then an electronic not changeable document will be produced (PDF, jpeg etc) that will be send automatically to the emails of the parties to the contract of carriage (Consignor, Carrier, Consignee).</p>
<p>Article 5 CMR para 2</p>		<p>Creating Several consignment notes</p> <p>The sender or the carrier do have the right to require a separate consignment note when the goods have to be loaded in different vehicles or are of different kinds or are divided into different lots.</p> <p>The platform should provide the possibility to both the sender and the carrier while creating a consignment note online to create as many as they wish based on the above criteria foreseen in the CMR Convention.</p>
<p>The consignment note is issued in three original copies in accordance with Art. 5 CMR. The e-CMR protocol only uses the term “electronic consignment note” without specifying how it corresponds to the “three copies” approach.</p>		<p>The electronic consignment note must also fulfil the functions of all three copies and the procedures to be agreed upon by the parties need to address how this takes place. In the electronic environment no three “electronic” copies will be foreseen.</p>

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<p>Art. 5</p> <p>Making out of the consignment note</p>	<p>Article 2</p> <p>Subject to the provisions of this Protocol, the consignment note referred to in the Convention, as well as any demand, declaration, instruction, request, reservation or other communication relating to the performance of a contract of carriage to which the Convention applies, may be made out by electronic communication.</p>	<p>Users of the future eCMR system:</p> <p>Consignor – Sender:</p> <p>The Consignor can be one of the stakeholders responsible for initiating an eCMR contract. This gives the right to the consignor to have full access to eCMRs data that involve him/her independently of the IT provider (meaning independently of technology, geography, business culture etc) where this data has been generated / restored and will have full access to all services related to the eCMR contracts that he/she is involved such as – non exhaustive list - a. concluding online the contract, b. providing advanced eCMR data c. advanced amendment data to the eCMR d. comments / instructions either in the beginning or en route, e. right to dispose of the goods etc. The Consignor should make sure that authenticates himself/herself based on the rules/ procedures agreed for the implementation of the eCMR, acknowledging all the rights and obligations arise from such authentication. Also the consignor should make sure that uses an IT Provider that has been recognized and validated by its public authorities.</p> <p>Carrier (road transport company / freight forwarder):</p> <p>The Convention refers only to Carriers. It is understandable though that the user of the future eCMR system recognized as carrier could be anyone that coordinates and delivers road transport services. In that sense freight forwarders should be considered as Carriers etc. Furthermore, the role of subcontractor in modern Logistics / intermodal transport should be considered. In that sense, a subcontractor can be also the sender in some cases and he/she could have the role of the consignee / carrier in a future eCMR system.</p> <p>The Carrier can be one of the stakeholders responsible for initiating an eCMR contract. This gives the right to the carrier to have full access to eCMRs data that involve him/her independently of the IT provider (meaning independently of technology, geography, business culture etc) where this data has been generated / restored and will have full access to all services related to the eCMR contracts that he/she is involved such as – non exhaustive list - a. concluding online the contract, b. providing advanced eCMR data c. advanced amendment data to the eCMR d. comments / instructions either in the beginning or en route etc. The carrier should make sure that authenticates himself/herself based on the rules/ procedures agreed for the implementation of the eCMR, acknowledging all the rights and obligations arise from such authentication. Also the</p>

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		<p>carrier should make sure that uses an IT Provider that has been recognized and validated by its public authorities.</p> <p>Subcontracted carriers:</p> <p>Under Carrier maybe the stakeholder subcontracted carrier should be created. Subcontracted carriers are not parties to the same contract of carriage. There are consequently several contracts: a contract of carriage between the principal and the contracted carrier and a contract of sub carriage between the contracted carrier and the sub-contracted carrier. Possibly, a new consignment note must be drawn up for each sub-contracted carrier, in which the subcontracting carrier is entered as the sender. The sub-contracted carrier is liable only to the initial carrier, whilst the latter is liable to the sender and the consignee for acts and omissions on the part of other parties he may use for the transport operation (including the sub-contracted carriers).</p> <p>Successive Carriers.</p> <p>Under Carrier maybe the stakeholder successive carrier should be created. It should be noted that Successive carriers are parties to the same and unique contract of carriage.</p> <p>Consignee – Receiver</p> <p>The consignee as receiver of the goods, based on the convention has certain rights and obligations.</p> <p>Somehow, the consignee while an eCMR contract is concluded having him/her as consignee should be notified (email address?) and have <u>reading access</u> to the data independently of the IT provider (meaning independently of technology, geography, business culture etc). This “<i>reading access to the data right</i>” will be become an “<i>amend the data</i>” right when the consignee becomes owner of the goods (article 12 , 13 14 of the convention). Then the consignee will have the right to provide data in the eCMR relevant to: a. the exercise of the right of disposal (new consignee has been identified etc) / b. loss of the goods or goods did not arrive after the expiry of the period provided (article 19) , c. consignee becoming the sender when delivery has to ta place to another consignee etc. The consignee should make sure that authenticates himself/herself based on the rules/ procedures agreed for the implementation of the eCMR, acknowledging all the rights and obligations arise from such authentication. Also, the consignee should make sure that uses an IT Provider that has been recognized and validated by its public authorities.</p>

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National Registration / Authentication body

A national body (bodies) should be officially nominated by the governments with the following obligations / tasks:

- Provide the technical standards as agreed on the level of UN relevant bodies to be used for the development of platforms that generate eCMRs;
- Validate the IT companies that have developed electronic solutions based on those standards (independently of the technology used) and provide the official list of IT companies recognized to be used for the generation of eCMRs in its territory.
- If no other solution found, could play the role of backup of all records generated by the different IT providers in its territory for future use by courts (of the same or different countries), in case of bankruptcy of IT providers or technological disruptions etc;
- Monitoring the use of eCMR services in its territory and report cases on disruptions / monopolistic or oligopolistic practices / etc
- Temporary withdraw licenses to generate eCMR from IT companies when such practices as mentioned above have been observed etc

Each Government should decide which body / organization should be nominated. In that sense could be the chambers, the national road transport association, a new body etc. The government though should have the obligation to officially announce this body including its tasks and obligations.

IT Provider:

The IT Provider could start advertising and selling eCMR services only when is validated by the relevant national body. The IT provider should decide if and how much will charge its users and what kind of technology will use based on free market principles. The IT provider solutions should ensure all requirements foreseen regarding cybersecurity, inalterability of messages, storage of data and access to data etc. Large transportation companies may wish to develop such applications internally, meaning in their own IT Systems. This option should also exist. In that case these systems should be validated by the national body.

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Customs Authorities.

Customs Authorities are recognized as one of the stakeholders of the future eCMR system. Customs authorities for reasons that are different in several geographical regions are using / checking the CMR contract of carriages. Therefore, customs authorities should have “on demand reading access” to eCMRs meaning that when a truck arrives at their borders or inland stations should be able to “read the data” if required so or the right to “provide comments” to a specific electronic place in the electronic CMR accessible only by customs independently of the IT provider (meaning independently of technology, geography, business culture etc). This electronic space (field) will be created and only the customs will have the right to use it and provide comments. The comments cannot not be deleted. The comments should be readable by everyone (listed on time basis). The customs authorities will not have the “right of reading access or amend to any other eCMR data” connected or not to a specific truck arrived at their territory. If there is an investigation, then the “access to the data right” falls under the Courts access rights. It has to be noted that among others the comments of customs are also connected with issues relevant to liability of the carriers (article 17 para 4) such as lack of or defective condition of packing in the case of goods which by their nature are liable to wastage or to be damaged when not packed, the nature of certain kinds of goods which particularly exposes them to total or partial loss or to damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage or the action of moth or vermin etc. In that sense, it is of the parties to the contract interest (consignor, carrier, consignee) the customs to provide comments whenever they observe anything about the truck or the cargo or any other operational issue.

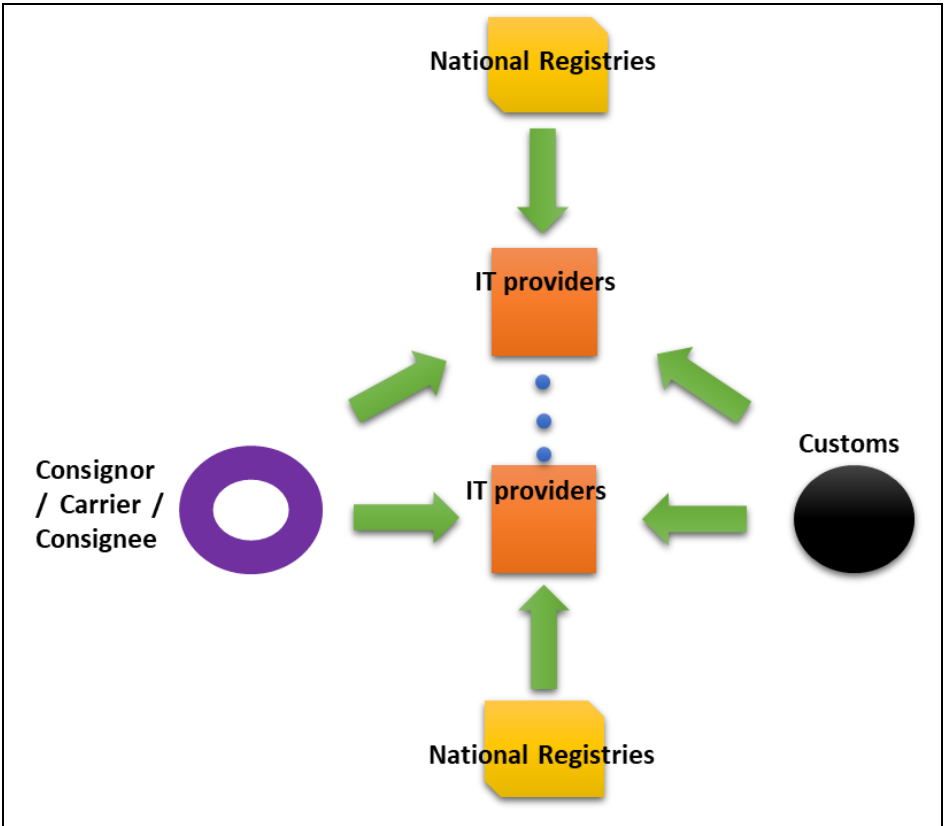
Police / Courts.

Courts and police should also have “reading access data” rights upon request / on demand based on a case that they are investigating independently of the IT provider (meaning independently of technology, geography, business culture etc).

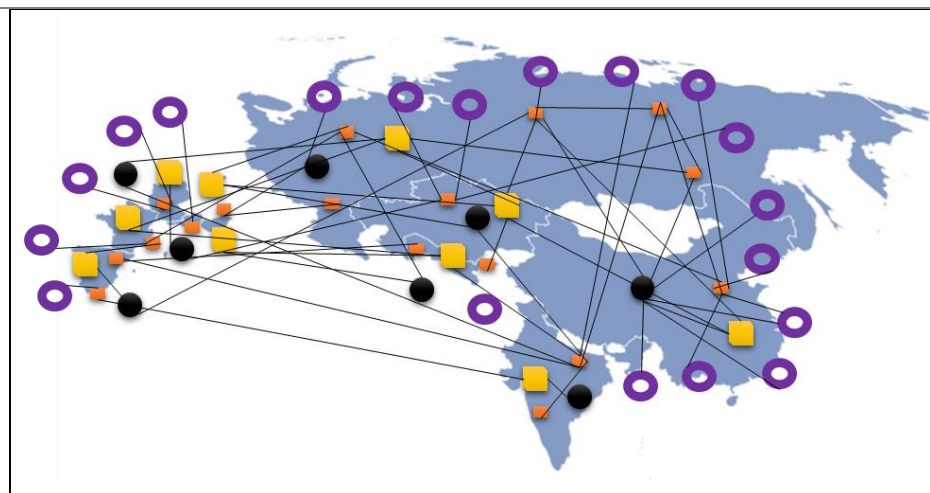
High Level Architecture:

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		<p>Based on the above-mentioned analysis / description of stakeholders and roles so far, the following high-level architecture of the future eCMR system is being formed. Hundreds of thousands of Consignors and Consignees should be somehow connected with hundreds of private IT Companies, that they should be interconnected independently of the technology that they are using with each other ensuring that the system will operate independently the IT provider used, which IT providers have to be validated and evaluated on a regular basis by the National Registration organizations of the Contracting Parties (1,2 or how many per country?). On the other hand, the Customs Authorities of the Contracting Parties in order to have on demand access to the information of the eCMR, they have to have access (to be interconnected) to the hundreds of IT providers.</p>

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Art. 5 CMR Making out of the consignment note in an electronic environment.

1. Initiation of the contract: One of the users (either the consignor or the carrier) initiates the electronic contract of carriage by using a third-party provider solution (IT Provider) or its own software (for the Carriers?). In order to do so and to involve the other partner, he/she should know and use a unique code (provided by the national body? IT Providers?) of the other partner of the contract (carrier / consignor and consignee). The other partner will receive a notification (email, mobile phone) that a new contract of carriage has been initiated requesting his confirmation while providing all information that the CMR consignment note stipulates.

2. Submission of data: The submission of the new electronic contract of carriage would be possible to be performed by using several IT providers including company's own software. Main data could be kept by the systems in order to ease the completing of the forms.

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Conclusion of contract	x	✓	x	✓	✓	x	x	x	x	x	x	x	x	x
Taking over the goods by the carrier	x	✓	x	✓	✓	x	x	x	x	x	x	x	x	x
Rights and duties of the recipient	✓	x	x	✓	x	✓	x	x	x	x	x	x	x	x
Disposal of the goods by the consignor	x	✓	x	✓	✓	x	x	x	x	x	x	x	x	x
New consignee declared by the consignee	✓	x	x	✓	x	✓	x	x	x	x	x	x	x	x
Arrival at borders	x	x	x	x	x	x	✓	x	x	x	x	x	x	x
Arrival at inland customs station	x	x	x	x	x	x	✓	x	x	x	x	x	x	x
Declaring subcontracting carriers	✓	x	x	✓	✓	x	x	x	x	x	x	x	x	x
Legal reservations upon receipt of the goods	✓	x	x	✓	x	✓	x	x	x	x	x	x	x	x
Obstacles to delivery	✓	x	x	✓	x	✓	x	x	x	x	x	x	x	x
Request of data by Authorities	x	x	x	x	x	x	✓	x	✓	x	x	x	✓	x

Article 3
Authentication of the
Electronic consignment note

1. The stakeholders that are concluding an electronic contract of carriage shall be authenticated based on their National Law (*country where they are leaving or country where the platform is being operating?*).
2. Contracting Parties bound by eCMR protocol shall accept the authentication of the contractual to the consignment note parties.
3. The competent authorities shall publish a list of authentication mechanisms

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		<p>that may be used for authentication.</p> <p>4. Contracting Parties bound by eCMR protocol shall accept the electronic consignment note generated by a validated IT platform and contractual parties authenticated by the competent authorities of the country of departure and of the country in which an amendment to the contract of carriage data is requested via a validated IT platform as the legal equivalent to an accepted paper CMR consignment note.</p>
<p>Article 6 CMR Particulars of the consignment note.</p>		<p>Particulars of the consignment note:</p> <p>The Convention foresees eleven mandatory particulars for the consignment note and seven additional ones to be filled in where applicable or requested. However, the convention foresees that the parties may enter in the consignment note ny other particulars which they may deem useful. Therefore, the electronic consignment note should give the opportunity to the parties to include all these eighteen particulars and to include anything else they wish. It should be included the online statement that the carriage is subject to the provisions of the CMR Convention. The platform should indicate to the sender that the sender shall be responsible for all expenses, loss and damage sustained by the carrier by reason of the inaccuracy or inadequacy of specific particulars (1 (b), (d), (e), (f), (g), (h) and (j) and all additional particulars) s specified by the convention.</p>
<p>Art. 22 Dangerous goods</p>		
<p>Art. 24 Value declaration</p>		
<p>Art. 26 Special interests</p>		
		<p>The future eCMR system should also include the appropriate data fields in order to include information / data about the value of the goods exceeding the maximum amount specified in Article 23 par 3 of the convention, the amount of a special interest in the delivery or to draw the attention of the carrier about the danger nature of the goods and the special precautions or precautionary measures should undertake.</p>
	<p>Article 4</p> <p>The procedure used to issue the electronic consignment note shall ensure the integrity of the particulars contained therein from the time</p>	<p>5.</p> <p>Comment from the group during its second session: Integrity of particulars – data should be backed up and not changed inadvertently or deliberately without authorization</p> <p>New proposal: this issue is strictly connected with the trust of the system. The future eCMR system should first of all keep a strict – not changeable – sequence of events based on the days and time that these events took place. In parallel, when an event</p>

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	<p>when it was first generated in its final form</p>	<p>takes place a backup of this data should be sent from the private IT provider to the national organization. This will serve several purposes:</p> <ul style="list-style-type: none"> • If requested, comparison of data; • Back up in case of technological failure of the IT provider • Back up in case of bankruptcy of the IT provider • Fallback procedure
<p>Article 8 CMR para3.</p>		<p>The sender can request the carrier to check the gross weight of the goods, or their quantity or the contents of the packages. The Carrier should be able to enter in the electronic consignment note the results of that checks meaning Carrier observations on gross weight / content of packages / quantity upon request of the sender. Also, the carrier should be able to claim costs of such checking by making specific reference in the consignment note. The sender should make a remark if those charges will be covered by the sender or the consignee (<i>this request does not exist in the Convention</i>).</p>
<p>Art. 9 Evidentiary value of the consignment note</p>	<p>Article 5</p> <p>The manner in which the party entitled to the rights arising out of the electronic consignment note is able to demonstrate that entitlement;</p>	<p>Comments from the group during its second session: Demonstrating evidentiary value / entitlement – the question relates to the evidential value of IT solutions vis a vis paper documents. Leave the question open and revert later/next session.</p> <p>Proposal: It is strictly connected with the mutual recognition of authentication among all Contracting parties, the trust that the system generates as well as the acceptance of the electronic consignment note as the legal equivalent to an accepted paper CMR consignment note. This is the main reason why the provision under “authentication” should be included in the eCMR protocol.</p>
<p>Article 11 of CMR</p>	<p>Article 6</p> <p>Documents supplementing the electronic consignment note include a receipt for the goods and all information necessary for</p>	<p>Accompanying documents</p> <p>It was observed by the Group that the purpose is not to introduce electronic administrative procedures and it does not entitle the persons involved in an administrative procedure to use electronic documents. It is not clear what the requirements and procedures relating to the link involve.</p>

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	<p>identifying the shipment and for access to the electronic consignment note</p>	<p>New Proposal: the CMR Convention foresees the attachment of the necessary documents to the consignment note for the purposes of the Customs or other formalities. It should be foreseen that the future eCMR applications should provide the possibility to at least attach the accompanying to the electronic consignment note documents as pdf. Jpeg or any other format convenient at the time. If possibility to interconnect with other systems that generate those accompanying documents exists, then such interconnection should be allowed and the data of those documents could be also sent through electronic messages.</p>

Art. 12

Disposal of the goods

According to Art. 12 CMR, the sender must produce the first copy of the consignment note in order to dispose of the goods before arrival. In particular, the carrier must be able to recognize that it is the original of the sender's copy. The electronic consignment note must also enable the sender to make subsequent dispositions by presenting the electronic "original". On the other hand, no disposal may take place once the second copy of the consignment note has been handed over to the consignee. This also requires an electronic mechanism and the procedures need to address this important aspect.

Proposed mechanism:

The consignee's rights to data are transformed from "reading access to the data right" to "amend the data" right when the consignee becomes owner of the goods. That moment, the consignor's rights to data are transformed from "amend the data" right to "reading access to the data" right. Based on the convention and the paper world this happens when the consignee receives the second copy of the consignment note. In the electronic world it is suggested to take place:

- When there are concrete instructions provided in the electronic consignment note by the consignor when the consignee can exercise his right of disposal of the goods;
- When the consignor decides to do so (article 12, para 3) when entry exists in the consignment note; the future eCMR system should accommodate such a function;
- When the consignee is requesting for this, and the consignor approves it; the future eCMR system should accommodate such a function;

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		<ul style="list-style-type: none"> When the carrier delivers the good to the consignee; the future eCMR system should accommodate such a function;
<p>Art. 13</p> <p>Rights and duties of the recipient</p>	<p>Article 5</p> <p>The way in which confirmation is given that delivery to the consignee has been effected;</p>	<p>Comments of the group during the second session: Electronic proof of delivery – there are several different scenarios related to the receipt of goods. The question is whether all of these scenarios are covered by CMR/eCMR or go beyond these legal instruments to the sales contract between the sender and consignee.</p>
<p>Art. 15</p> <p>Obstacles to delivery</p>		<p>New proposal:</p> <ul style="list-style-type: none"> The consignee should be authenticated and included in the electronic contract of carriage from the time the contract is concluded online. The email address and the mobile phone of the consignee should be included in the contract for receiving notifications when certain events regarding the specific contract are taking place. Proof of delivery: technology could assist and provide a two folded verification of the already authenticated consignee. For instance, the time the contract is concluded online the consignee receives in his/her mobile phone / email address a unique code. This code will be asked by the carrier when delivers the goods for the consignee to insert in the system in order to deliver the goods to him / her. This will be also the time where the consignee gets the right of disposal of the goods, replacing like that the receipt of the second copy of the consignment note. This action would trigger notifications to all stakeholders that good arrived at their destination. Proof of acceptance of delivery: the next step should be the proof of acceptance of delivery. The consignee based on the convention has the right to check the goods and accept them or not – with relevant consequences – or even to declare a new consignee. Therefore, the consignee should enter in the system and either accept the delivery online finalizing the contract or making reservations / remarks / comments (uploading also photos / videos that justify those reservations). The carrier in that moment will have the opportunity to read those comments without being able to delete them but to be able to

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		<p>provide replies if needed.</p> <ul style="list-style-type: none"> • Even if he has refused the goods, the consignee may nevertheless require delivery as long as the carrier has not received instructions to the contrary from the sender (article 15, para 2). The future system should accommodate such event. • Article 30 and the case of loss or damage which is not apparent the reservations referred to shall be made in writing. The future system should accommodate such an event. • Obstacles to delivery which the system should accommodate by creating the relevant sequence of events / communication: <ul style="list-style-type: none"> • In case the consignee refuses to accept the goods, the sender must be able to give instructions to the carrier where to deliver the goods. The future eCMR system should give the possibility to not accept the goods. Then the sender should be able to access the data and provide comments to the carrier on where to deliver the goods. • The sender or the consignee who wishes to exercise the right of disposal which the new instructions to the carrier have been entered and indemnifies the carrier against all expenses, loss and damage involved in carrying out such instructions; • That the carrying out of such instructions is possible at the time when the instructions reach the person who is to carry them out and does not either interfere with the normal working of the carriers' undertaking or prejudice the senders or consignees of other consignments. • That the instructions do not result in a division of the consignment; • Events such as delay in delivery (article 19) or loss of the goods (article 20) should be created in the system;

Art. 35

1. A carrier accepting the goods from a previous carrier shall give the latter a dated and signed receipt. He **shall enter his name and address on the second copy of the consignment note**. Where applicable, he shall enter on **the second copy of the**

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<p>Cargo control, evidential value of the consignment note</p> <p>For a subsequent disposal, the carrier must always produce the first copy of the consignment note (Art. 12 Para. 5 a CMR).</p> <p>- In the event that the carrier carries out an instruction without having requested the production of the first copy of the consignment note, he is liable to the person entitled for the damage resulting therefrom (Art. 12 para. 7 sentence 1 CMR).</p> <p>- However, the production shall not be necessary if the consignee refuses the goods (Art. 15 para. 1 CMR).</p> <p>- Subsequent instructions may no longer be given by the sender as soon as the second copy of the consignment note has been handed over to the consignee, or the latter has asserted his right to have the consignment</p>		<p>consignment note and on the receipt reservations of the kind provided for in article 8, paragraph 2.</p> <p>2. The provisions of article 9 shall apply to the relations between successive carriers.</p> <p>Successive Carrier is a role foreseen for the future eCMR system. This is a new event that has to be created where the principal carrier declares a successive carrier having all other parties to the contract of carriage informed (receiving notifications). A process should be defined for declaring the successive carrier for the specific contract of carriage. If carriage governed by a single contract is performed by successive road carriers, each of them shall be responsible for the performance of the whole operation, the second carrier and each succeeding carrier becoming a party to the contract of carriage, under the terms of the consignment note, by reason of hi acceptance of the goods and the consignment note.</p> <ul style="list-style-type: none"> A carrier accepting the goods from the previous carrier shall give the latter a dated and signed receipt. He shall enter his name and address on the second copy of the consignment note. Where applicable, he shall enter on the second copy of the consignment note and on the receipt reservations of the kind provided for in article 8 para 2. The future eCMR system should accommodate such events and communication giving the opportunity to the carrier to introduce a successive carrier(s) under the same consignment note and then the successive carrier(s) will have the same rights and obligations as well as online services as the carrier.

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<p>note handed over in accordance with Art. 13 para. 1 CMR (Art. 12 para. 2 CMR).</p> <p>- The person taking over the goods from the previous carrier shall enter his name and address and any reservations on the second copy of the consignment note (Art. 35 para. 1).</p>	<p>Art. 6(1) Additional obligations of the carrier when using electronic consignment notes.</p> <p>The Carrier shall hand over to the sender, at the latter's request, a receipt for the goods and all information necessary for identifying the shipment and for access to the electronic consignment note to which the protocol refers.</p>	<p>This specific provision was literally copy pasted from Montreal Convention of 1999 which establishes airline liability in the case of death or injury to passengers, as well as in cases of delay, damage or loss of baggage and cargo. It unifies all of the different international treaty regimes covering airline liability that had developed haphazardly since 1929.</p> <p>Article 4 para 2 of Montreal Convention mentions:</p> <p>Any other means which preserves a record of the carriage to be performed may be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.</p> <p>In the carriage of air cargo involving countries that have not ratified the Montreal Convention but continue to be subject to the Warsaw Convention 1929 (WC29) and Hague Protocol 1955 (HP55) regimes, physical paper records are required in order for the carrier to rely on the liability limits set out in the Convention. This means that paper documents of carriage such as the air waybill must accompany the shipment throughout its journey. On the other hand, Montreal Convention permits the use of electronic air waybills (e-AWBs) and other documents of carriage, without impacting the carrier's ability to rely on the liability limits set out in the Convention. So, secretariat's opinion is that Montreal Convention includes this clause in cases where an</p>

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		<p>electronic airway bill is used while involving countries that have not ratified the Convention and are still subject to Warsaw convention or Hague protocol.</p> <p>The secretariat is of the opinion that this provision is one of the reasons that the eCMR protocol needs a revision and certain amendments in order to become straight forward and to provide certain descriptions whenever needed or required concerning the future eCMR system. It seems that this provision does not have practical implementation in the road transport world or in a future eCMR system.</p>