



# Economic and Social Council

Distr.: General  
21 July 2023

Original: English

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## Economic Commission for Europe

### Inland Transport Committee

### Working Party on Rail Transport

#### Seventy-seventh session

Geneva, 15–17 November 2023

Item 2 of the provisional agenda

#### **Finalisation of the provisions of the Convention on Unified Railway Law**

### **Draft provisions of the Convention on the contract for international carriage of goods by rail as a first Convention of a system of Unified Railway Law Conventions**

**Submitted by the Chair of the Working Party**

### **Summary**

1. This document outlines the legal provisions of the Convention on the contract for international carriage of goods by rail as a first Convention of a system of Unified Railway Law (URL) Conventions.
2. It contains provisions reviewed at the special session of the Working Party on Rail Transport on 10-12 July 2023. [Chapter 4 b and definitions related to this chapter are pending review.] As a result, it is submitted by the Chair.

## Annex

Convention on the contract for international carriage of goods by rail
Preamble
<p>The States that are Parties to this Convention, hereinafter referred to as the “Contracting Parties”,</p> <p><i>Conscious</i> of the need to increase the competitiveness of rail transport vis-à-vis other transport modes by facilitating international transport of goods by rail between Europe and Asia,</p> <p><i>Noting</i> the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 in the version of the Modification Protocol of 3 June 1999, in particular the Uniform Rules concerning the Contract of International Carriage of Goods by Rail (CIM - Appendix B to the Convention),”</p> <p><i>Noting</i> the Agreement on International Railway Freight Communications (SMGS),</p> <p><i>Noting</i> the need to make provisions for circumstances where neither CIM nor SMGS rules apply over the entire journey, in particular for Euro-Asian rail freight connections,</p> <p><i>Considering</i> that in order to facilitate such transport, it is essential to standardize the conditions for governing the contract of international carriage of goods by rail, particularly with respect to the documents used for such a carriage and the carrier’s liability.</p> <p><i>Conscious</i> of the rapid increase in transport by rail between Europe and Asia and the need to increase the market share of rail transport to reduce the environmental impact of freight transport by easing the administrative and contractual barriers that exist in the sector,</p> <p>Noting that the present Convention will co-exist with the two existing rail legal regimes (CIM and SMGS) which remain applicable for the international carriage of goods within their respective geographical areas,</p> <p>Have agreed as follows:</p>

## Chapter 1 General provisions

### Article 1, Scope of Application

§ 1 This Convention shall apply to a contract of carriage of goods by rail,

1. when the place of taking over of the goods and the place designated for delivery are situated in two different States which are Contracting Parties to this Convention, and
2. if the contract of carriage stipulates that the contract is subject to this Convention, and
3. if none of the following provisions apply to the entire journey covered by the contract of carriage:
  - (a) CIM or SMGS,
  - (b) bilateral or multilateral agreements between Contracting Parties

§ 2 The contract of carriage may also stipulate that this Convention applies to transport operations carried out by other modes of transport in addition to international rail transport (multimodal transport).

1. if the application of this Convention does not contradict with any international treaty governing such additional transport, and
2. unless the Contracting Party whose law applies to such multimodal transport contract has declared that it will not apply this Convention to multimodal transport contracts.

§ 3 Two or more Contracting Parties may conclude agreements which declare this Convention applicable to contracts of carriage of goods by rail between their countries in cases other than those regulated in § 1 and § 2.

### Article 2 Definitions

In this Convention

1. **“Contract of carriage”** means a contract under which a carrier undertakes to carry goods against payment and to deliver them to a consignee under the conditions provided by this Convention.
2. **“Carrier”** means the contractual or a subsequent carrier.
3. **“Contractual carrier”** means the carrier who has concluded the contract of carriage with the consignor.
4. **“Subsequent carrier”** means a carrier who has not concluded the contract of carriage with the consignor but, by the very act of taking over of the goods with the consignment note, becomes a party to the contract of carriage.
5. **“Consignor”** means the person who has concluded the contract of carriage with the contractual carrier.
6. **“Parties to the contract”** means the carrier and the consignor.

7.	<b>“Consignee”</b> means the person to whom the carrier has to deliver the goods in accordance with the contract.
8.	<b>“Person entitled”</b> means the person who has the right to dispose of the goods.
9.	<b>“Goods”</b> means the wares, merchandise and articles of every kind whatsoever that a carrier undertakes to carry under a contract of carriage and includes the packing and any equipment and intermodal transport unit not supplied by or on behalf of the carrier. Empty wagons may also be considered as goods by the parties to the contract.
10.	<b>“Consignment”</b> means the totality of goods that is to be carried under a single contract of carriage.
11.	<b>“Consignment note”</b> means a document which confirms the conclusion and the content of the contract of carriage.
12.	<b>“Electronic consignment note”</b> means a consignment note established in the form of electronic data registration whose authenticity and integrity is assured at all times and which has the same functions as the consignment note.
[[pending: 12a <b>“Consignment bill”</b> means a negotiable transport document concerning the obligation of the carrier to deliver the goods to the bearer of the consignment bill.]]	
[[pending: 12b <b>“Bearer”</b> means the person or party who is in the possession of a consignment bill.]]	
13.	<b>“Costs relating to carriage”</b> means the carriage charges and incidental costs, customs duties and other additional costs which are justified and necessary for the performance of the contract and incurred from the conclusion of the contract until delivery.
14.	<b>“Carriage charges”</b> means the contractual remuneration payable to the carrier for the performance of the contract of carriage.
15.	<b>“Tariffs”</b> means a carrier’s pricing systems, legally in force or determined by the carrier’s costs of services, on the basis of which the carriage charges under the contract of carriage is formed.
16.	<b>“Dangerous goods”</b> means any materials and substances which, in accordance with the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID - Appendix C to the COTIF) or the provisions of Annex 2 to SMGS, must not or may only be transported under special conditions.
17.	<b>“Intermodal transport unit”</b> means a container, transportable tank or flat, swap body, semi-trailer or other comparable loading unit used for the transport of goods in intermodal transport.
<b>Article 3, Mandatory Law</b>	
§ 1 Unless provided otherwise in this Convention, any stipulation in the contract of carriage, which would derogate from this Convention shall be null and void. The nullity of such stipulation shall not involve the nullity of other provisions of the contract of carriage agreed by the parties.	
§ 2 A carrier may assume a liability greater and obligations more burdensome than those provided for in this Convention. Furthermore, the compensation payable by the consignor pursuant to Articles 7 and 11 may be limited, in amount, but not less than the amount which the carrier is liable for under this Convention for total loss of the goods.	

#### **Article 4, Provisions of public law**

This Convention governs only the rights and obligations of the parties to the contract of carriage arising from such contract. Carriage to which this Convention applies shall remain subject to the provisions of public law, in particular public law provisions regulating:

1. rights and obligations of employees of parties to the contract,
2. the safe transport of dangerous goods as well as other safety issues,
3. customs formalities,
4. the protection of animals,
5. restrictions and special conditions for the transport of various types of goods,
6. restrictions to use various border crossings, railway infrastructure or railway stations in various countries,
7. licensing of railway undertakings to perform rail transport of goods,
8. the right of access of a railway undertaking to use the railway infrastructure in various countries, and/or
9. the technical admission of railway vehicles/wagons for circulation in international rail traffic.

#### **Chapter 2, Conclusion and performance of the contract of carriage**

##### **Article 5, Contract of carriage**

**§ 1** Under the contract of carriage the carrier is obliged to carry the goods to the destination and to deliver them to the consignee. Subject to Article 8 the consignor is obliged to pay the costs relating to carriage.

**§ 2** The contract of carriage shall be confirmed by a consignment note. The relevant international associations in the railway sector may together establish a standard model of the consignment note, also taking into account customs matters.

For one consignment only one consignment note shall be made out, even if the totality of goods consists of several parts or is transported in several wagons.

The absence, irregularity or loss of the consignment note shall not affect the existence or validity of the contract of carriage which shall remain subject to this Convention.

**§ 3** The consignment note shall be signed by the consignor and the contractual carrier. An imprint, a stamp or an accounting machine entry can be used as a signature.

The carrier must certify the taking over of the goods on the consignment note in an appropriate manner and return to the consignor the original of the consignment note which is intended for the consignor.

**§ 4** An electronic consignment note may be used provided it is agreed by the parties involved in the contract of carriage.

#### **Article 6, Content of the consignment note**

**§ 1** The consignment note must contain the following particulars:

- (a) the date and the place at which it is made out;
- (b) the name and address of the consignor;
- (c) the name and address of the contractual carrier;
- (d) the name and address of the person to whom the goods have effectively been handed over if he is not the contractual carrier;
- (e) the place and the date of taking over of the goods;
- (f) the place designated for delivery;
- (g) the name and address of the consignee;
- (h) the description of the nature of the goods and the method of packing, and, in case of dangerous goods, their generally recognized description;
- (i) the number of packages and their special marks and numbers;
- (j) the wagon numbers in which the consignment is carried;
- (k) in case of using an intermodal transport unit, its category, number or other characteristics necessary for its identification;
- (l) the gross mass or the quantity of the goods expressed in other ways;
- (m) a detailed list of the documents which are required by customs or other administrative authorities and are attached to the consignment note or held at the disposal of the carrier at the offices of a duly designated authority or a body designated in the contract;
- (n) the carriage charges and other costs relating to carriage insofar as they have to be paid by the consignee.

**§ 2** Where applicable the consignment note must also contain the following particulars:

- (a) carriage charges and other costs relating to carriage which the consignor undertakes to pay;
- (b) the agreed time of delivery;

<p>(c) the agreed route to follow;</p> <p>(d) a list of the documents not mentioned in § 1, letter m, handed over to the carrier;</p> <p>(e) the information given by the consignor concerning the number and description of seals he has affixed to the wagon;</p> <p>(f) additional information on specific requirements relating to the handling of the goods including dangerous goods.</p>
<p>§ 3 The parties to the contract may enter on the consignment note other particulars relating to carriage they consider useful.</p>
<p><b>Article 7, Responsibility of the consignor</b></p>
<p>§ 1 The consignor shall be liable for all costs, loss or damage sustained by the carrier by reason of:</p> <p>(a) the entries made by or on behalf of the consignor in the consignment note or other documents referred to in Article 12 being incorrect, insufficient, inaccurate or inconsistent with the facts, or</p> <p>(b) the consignor omitting to provide the necessary information on the generally recognized description of the dangerous goods.</p>
<p>§ 2 The consignor shall, to the extent he is at fault, also be liable for all costs, loss or damage sustained by the carrier by reason of the consignor omitting to provide necessary information on specific requirements relating to the handling of the goods.</p>
<p>§ 3 If the consignor has failed to disclose the dangerous nature of the goods or specific requirements relating to the handling of the goods, the carrier may at any time unload or destroy the goods or render them innocuous, as the circumstances and the potential risk may require. In this case the carrier may claim the costs or expenses necessitated by the measures taken and shall not be obliged to pay compensation for loss of or damage to the goods.</p>
<p>§ 4 The carrier may not claim costs or expenses and shall be obliged to pay compensation for loss of or damage to the goods if he was aware of the incorrectness or incompleteness of the consignment note or the documents referred in Article 12 or of the dangerous nature of the goods or the specific requirements related to the handling of the goods on taking them over.</p>
<p><b>Article 8, Payment of the costs relating to carriage</b></p>
<p>§ 1 Unless otherwise agreed between the consignor and the carrier, the carriage charges shall be paid by the consignor; other costs relating to carriage shall be paid by the consignor when they are caused by circumstances beyond the carrier's control. Unless otherwise agreed the carrier has the right to demand the carriage charges before the beginning of the carriage.</p>

§ 2 When by virtue of an agreement between the consignor and the carrier, the costs relating to carriage are payable by the consignee, the consignor shall remain liable for payment of the costs, if the consignee has not taken possession of the consignment note nor has taken delivery nor asserted his rights in accordance with Article 14 §§ 2 and 3 nor exercised rights in accordance with Article 15.

§ 3 If the carriage charges are calculated based on tariffs, the calculation shall be based on the tariffs which are valid on the day of the conclusion of the contract of carriage, and in the currency defined according to the applied tariffs for the international carriage. Carriage charges are calculated separately by each participating carrier with regard to his section of the route and according to his pricing systems and tariffs.

§ 4 The carrier has to be reimbursed of all costs relating to carriage which are not foreseen in the applied tariffs and were caused by circumstances beyond the carrier's control. These costs are registered on the date of their occurrence separately for each consignment and are justified by the relevant documents.

#### **Article 9, Examination**

§ 1 The carrier shall have the right to examine whether the conditions of carriage have been complied with and whether the consignment corresponds with the entries in the consignment note made by the consignor. If the examination concerns the contents of the consignment, this shall be carried out as far as possible in the presence of the person entitled; where this is not possible, the carrier shall require the presence of two independent witnesses, unless the laws and prescriptions of the State where the examination takes place provide otherwise.

§ 2 If the consignment does not correspond with the entries in the consignment note or if the provisions of public law have not been complied with, the result of the examination must be entered in the consignment note. In this case the costs of the examination shall be charged against the goods, if they have not been paid immediately.

§ 3 When the consignor loads the goods, he shall be entitled to require the carrier to examine the condition of the goods and their packaging as well as the accuracy of statements on the consignment note as to the number of packages, their marks and numbers as well as the gross mass of the goods or their quantity otherwise expressed. The carrier shall be obliged to proceed with the examination only if he has appropriate means of carrying it out. The carrier may demand the payment of the costs of the examination. The result of the examination shall be entered on the consignment note.

#### **Article 10, Evidential value of the consignment note**

§ 1 The consignment note, signed according to Article 5 § 3 shall be prima facie evidence, save proof to the contrary, of the conclusion and the conditions of the contract of carriage and the taking over of the goods by the carrier.

§ 2 If the consignment note, signed according to Article 5 § 3, contains no specific reservations by the carrier, it is assumed, save proof to the contrary, that the goods and their packaging have apparently been in a good and appropriate condition to be transported at the moment they were taken over by the carrier.



§ 3 If the carrier has loaded the goods or has examined them, the consignment note shall be prima facie evidence, save proof to the contrary, of the condition of the goods and their packaging indicated on the consignment note or, in the absence of such indications, of their apparently good and appropriate condition at the moment they were taken over by the carrier and of the accuracy of the statements in the consignment note concerning the number of packages, their marks and numbers as well as the gross mass of the goods or their quantity otherwise expressed.

However, the consignment note will not be prima facie evidence in a case where it bears a reasoned reservation.

#### **Article 11, Packing, Loading**

§ 1 The consignor shall be liable to the carrier for any loss or damage and costs due to defective packing or labelling of the goods or defective marking, unless the defect was apparent or known to the carrier at the time when he took over the goods and he made no reservations concerning it.

§ 2 The consignor shall be liable for all the consequences of defective loading carried out by him and in particular has to compensate the carrier for the loss or damage sustained in consequence by him, unless the defect was apparent or known to the carrier at the time when he took over the goods and he made no reservations concerning it. Should the consignment note contain no information on the person who has loaded the goods, it is presumed that the goods have been loaded by the consignor.

§ 3 In the case of apparent or known defective packing, labelling or loading of the goods the carrier may accept the goods for carriage under specific contractual conditions.

#### **Article 12, Completion of administrative formalities**

§ 1 For the purposes of the customs or other formalities which have to be completed before delivery of the goods, the consignor shall attach the necessary documents to the consignment note or make them available to the carrier and shall furnish him in advance by electronic communication or otherwise with all the information which he requires.

§ 2 The carrier shall not be obliged to check whether these documents and this information are correct and sufficient. The consignor shall be liable to the carrier for any damage caused by the absence or insufficiency of, or any irregularity in, such documents and information except in the case the damage was caused by fault of the carrier.

§ 3 The carrier shall be liable for any damage caused by the loss or incorrect use of the documents which were made available to him unless the loss or incorrect use of the documents has been caused by circumstances which a diligent carrier could not avoid and the consequences of which he was unable to prevent. The compensation payable by the carrier shall not exceed the compensation provided for in the event of loss of the goods.

**Article 13, Time of delivery**

§ 1 The carrier shall deliver the goods within the time agreed in the contract of carriage. If no time of delivery has been agreed, delivery shall be made within the time which could reasonably be required of a diligent carrier, taking into account the circumstances of the carriage.

§ 2 The time of delivery shall be extended for the duration of any delay along the route for reasons beyond the control of the carrier.

**Article 14, Delivery**

§ 1 At the place designated for delivery the carrier shall hand over the consignment note and deliver the goods to the consignee against a receipt and payment of all amounts due according to the contract of carriage.

§ 2 If a loss of the goods is established or if the goods are damaged or delivered late, the consignee shall be entitled to enforce in his own name against the carrier any rights or remedies arising from the contract of carriage.

§ 3 In other respects, delivery of the goods shall be carried out in accordance with the requirements in force at the place of destination.

§ 4 This Convention does not affect a right of the carrier that may exist pursuant to the contract of carriage or the applicable law to retain the goods to secure the payment of sums due.

**Article 15, Right to dispose of the goods**

§ 1 The consignor has the right to dispose of the goods and to modify the contract of carriage by giving subsequent orders, in particular by asking the carrier to stop the goods in transit or not to deliver them or to give them back at the place of taking over of the goods or to change the place of delivery or to deliver them to a consignee other than the consignee indicated in the consignment note.

§ 2 The consignor's right of disposal shall pass over to the consignee at the time specified by the consignor in the consignment note. Unless the consignor has specified otherwise, the right of disposal shall pass over to the consignee when the goods have reached the place designated for delivery.

§ 3 If in exercising his right of disposal the consignee has ordered the delivery of the goods to another person, this other person shall not be entitled to name other consignees.

§ 4 Any right of disposal shall be extinguished when the consignee or another person named by the consignee has taken possession of the consignment note from the carrier and has accepted the goods or has asked for delivery of the goods.

## Article 16, Exercise of the right to dispose of the goods

§ 1 If the person entitled wishes to dispose of the goods, he has to give the necessary instructions to the carrier. If the consignment note so prescribes, the person entitled has to produce to the carrier his original of the consignment note on which the new instructions have to be entered.

§ 2 The carrier may refuse to carry out instructions, if this would be impossible, unlawful or unreasonable to require. Instructions must in particular neither interfere with the normal working of the carrier's undertaking nor prejudice the consignors or consignees of other consignments. No instruction shall have the effect of splitting the consignment.

§ 3 When, by reason of the provisions of §§ 1 and 2 of this Article, the carrier will not carry out instructions which he receives, he shall immediately notify the person who gave him such instructions.

§ 4 A carrier who has not carried out properly the instructions given under the provisions of this article shall be liable to the person who has the right to bring an action against the carrier for any loss or damage caused thereby, if the carrier is at fault. If in the case mentioned **[pending:in § 1 sentence 2/as regards the consignment note,]** the carrier carries out instructions without requiring the original of the consignment note to be produced, he shall be liable to the person who has the right to bring an action against the carrier for any loss or damage caused thereby. Any compensation payable shall not exceed the amount payable in the event of loss of the goods.

§ 5 The carrier has the right to demand payment for the additional costs of carriage and the expenses arising from the diligent carrying out of the given instructions.

## Article 17, Circumstances preventing carriage and delivery

§ 1 If it becomes evident, after the goods have been taken over by the carrier, that carriage or delivery cannot be performed according to the contract, the carrier shall ask for instructions from the person entitled or, where circumstances prevent delivery, from the consignor. In derogation from **[pending: the first sentence/this provision]**, the carrier shall ask for instructions from the consignee if it becomes evident, after the goods have reached the country of destination, that the carriage cannot be performed according to the contract of carriage.

§ 2 If the consignee has given the instruction to deliver the goods to another person, § 1 of this Article shall apply as if the consignee were the consignor and the other person were the consignee.

§ 3 If circumstances preventing carriage can be avoided by modifying the route, the carrier shall decide whether a modification shall be made or whether it is in the interest of the person entitled to ask him for instructions.

§ 4 If circumstances preventing delivery cease to exist before arrival of instructions from the consignor to the carrier, the goods shall be delivered to the consignee. The consignor shall be notified without delay.

### **Article 18, Consequences of circumstances preventing carriage and delivery**

§ 1 The carrier is entitled to the reimbursement of the costs caused by his request for instructions or the carrying out of instructions or as a result of a decision in accordance with Article 17 § 3, unless such costs were caused by his fault. The carrier may in particular recover the carriage charge applicable to the route followed and shall be allowed the time of delivery applicable to such route.

§ 2 If the carrier cannot, within a reasonable time taking into account the different conditions of the goods, obtain lawful and reasonable instructions, he shall take such measures as seem to be in the best interest of the person entitled. He may, for example, return the goods to the consignor at the consignor's expense or unload them for account of the person entitled. Thereupon the carriage shall be deemed to be at an end. The carrier shall then hold the goods on behalf of the person entitled. He may, however, entrust them to a third party, and in that case he shall not be under any liability except for the exercise of reasonable care in the choice of such third party. In these cases, the charges due under the contract of carriage and all other costs relating to carriage shall remain chargeable against the goods.

§ 3 The carrier may sell the goods, without awaiting instructions from the person entitled, if this is justified by the perishable nature or the condition of the goods or if the costs of storage would be out of proportion to the value of the goods. He may also proceed to the sale of the goods in other cases if within a set time he has not received from the person entitled instructions to the contrary which he may reasonably be required to carry out; in such a case the carrier may destroy unusable goods at the consignor's expense. All measures have to be taken in compliance with the legislation in force.

§ 4 If the goods have been sold, the proceeds of sale, after deduction of the costs chargeable against the goods, shall be placed at the disposal of the person entitled. If the proceeds of sale are less than those costs, the carrier shall be entitled to the difference.

### **Chapter 3, Liability**

#### **Article 19, Basis of liability**

§ 1 The contractual carrier shall be liable for loss or damage resulting from the total or partial loss of or damage to the goods between the time of taking over of the goods and the time of delivery, as well as for delay in delivery.

§ 2 If carriage governed by a single contract is performed by subsequent carriers, the liability of the contractual carrier and all subsequent carriers shall be joint and several.

§ 3 The carrier shall be relieved of this liability to the extent that the loss or damage or the delay in delivery was caused by the fault of the person entitled if the instruction is not the result of the fault of the carrier or by an inherent defect of the goods or by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.

§ 4 The carrier shall be relieved of this liability to the extent that the loss or damage or the delay in delivery arises from the special risks inherent from one of the following circumstances:

- (a) carriage in open wagons pursuant to the General Conditions of Carriage or the established practice; subject to damage sustained by the goods because of atmospheric influences, goods carried in intermodal transport units, or in closed road vehicles carried on wagons shall not be considered as being carried in open wagons;
- (b) loading of the goods by the consignor or unloading by the consignee;
- (c) the nature of certain goods which particularly exposes them to total or partial loss or damage, especially through breakage, rust, interior and spontaneous decay, desiccation or wastage.

§ 5 When the carrier establishes that, having regard to the circumstances of the particular case, the loss or damage or delay in delivery could have arisen from one of the special risks referred to in §4, it shall be presumed that it did so arise. The person who has the right to bring an action against the carrier shall have the right to prove that the loss or damage or delay in delivery was not attributed either wholly or in part to one of those risks.

#### **Article 20, Presumption of loss of the goods**

§ 1 The person who has the right to bring an action against the carrier may, without being required to furnish further proof, consider the goods as lost when they have not been delivered or arrived for delivery to the consignee within three months after the time of delivery.

§ 2 That person may, on receipt of compensation for the missing goods, request in writing that he shall be notified immediately should the goods be recovered within one year after the payment of compensation. The carrier shall acknowledge such request in writing.

§ 3 Within thirty days after receipt of such notification, the person who has the right to bring an action against the carrier may require the goods to be delivered to him against payment of the charges due under the contract of carriage, all other costs relating to carriage and against a refund of the compensation received less, where appropriate, costs which may have been included therein. He shall retain his rights to claim compensation for delay in delivery provided for in Article 25.

§ 4 In the absence of the request referred to in § 2 or of instructions given within the period specified in § 3, or if the goods are recovered more than one year after the payment of compensation, the carrier shall be entitled to deal with them in accordance with the laws and prescriptions in force at the place where the goods are situated.

§ 5 Any obligation of the consignee to accept the recovered goods shall be subject to the laws applicable at the place designated for delivery.

## Article 21, Compensation for loss

§ 1 In case of total or partial loss of the goods, the carrier shall compensate the value of the goods on the day and at the place where they were taken over for carriage. If part of the goods has been delivered, its value which remains to the person entitled shall be deducted from the amount of compensation.

§ 2 The value of the goods shall be fixed according to the market price at the place where they were taken over for carriage or, if there is no market price, according to the usual value of goods of the same kind and quality. If the goods have been sold just before being taken over for carriage the purchase price noted in the seller's invoice, minus carriage charges included therein, shall be presumed to be the market price.

§ 3 Unless otherwise agreed by the parties to the contract pursuant to Article 3 § 2, compensation shall not exceed 17 units of account per kilogram of gross weight short.

§ 4 The carrier shall, in addition, refund the carriage charge, customs duties already paid and other costs relating to carriage. If part of the goods has been delivered, [pending: § 1, second sentence/as regards the partial delivery of goods,] shall apply by analogy.

§ 5 In case of loss of an intermodal transport unit or its removable parts, the compensation shall be limited to the usual value of the unit or its removable parts on the day and at the place of loss. If it is impossible to ascertain the day or the place of loss, the compensation shall be limited to the usual value on the day and at the place where the unit has been taken over by the carrier. The same shall apply in case of loss of an empty wagon which is to be carried as goods under the contract of carriage.

§ 6 No further damages shall be payable.

## Article 22, Unit of account

§ 1 The unit of account referred to in Article 21 is the Special Drawing Right as defined in accordance with the instructions of the International Monetary Fund. The amount referred to in Article 21 is to be converted into the national currency of a State according to the value of such currency at the date of judgement or award or the date agreed upon by the parties to the contract. Where the calculation of an amount requires the conversion of sums expressed in foreign currency, conversion shall be at the exchange rate applicable on the day and at the place of payment.

§ 2 The value of a national currency, in terms of the Special Drawing Right, of a Contracting Party to this Convention that is a member of the International Monetary Fund is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a Contracting Party to this Convention that is not a member of the International Monetary Fund is to be calculated in a manner to be determined by that Contracting Party.

**Article 23, Liability for wastage during carriage**

§ 1 Subject to Article 19, in respect of goods which, by reason of their nature, are generally subject to wastage by the sole fact of carriage, the carrier shall only be liable to the extent that the wastage exceeds the following allowances, whatever the length of the route:

- (a) two per cent of the mass for liquid goods or goods consigned in a moist condition;
- (b) one per cent of the mass for dry goods.

§ 2 The limitation of liability provided for in § 1 may not be invoked if, having regard to the circumstances of a particular case, it is proved that the loss was not due to causes which would justify the allowance.

§ 3 Where several packages are carried under a single consignment note, the wastage during carriage shall be calculated separately for each package if its mass on consignment is shown separately on the consignment note or can be ascertained otherwise.

§ 4 In case of total loss of goods or in case of loss of a package no deduction for wastage during carriage shall be made in calculating the compensation.

§ 5 *was deleted*

**Article 24, Compensation for damage**

§ 1 In case of damage to goods, the carrier shall compensate the loss in value of the goods. The amount shall be calculated on the basis of expertise or by applying to the value of the goods defined in accordance with Article 21 § 2 whereas the percentage of loss in value shall be noted at the place of destination. It is presumed that the costs of lowering and repairing the damage correspond to the loss in value.

§ 2 The carrier shall, in addition, refund the costs provided for in Article 21 § 4, in the proportion set out in § 1 of this Article.

§ 3 The compensation shall not exceed:

- (a) the amount payable in the case of total loss, if the whole consignment has lost value through damage;
- (b) the amount payable in the case of loss of the part affected, if only part of the consignment has lost value through damage.

§ 4 In case of damage to an empty wagon which is to be carried as goods under the contract of carriage or to an intermodal transport unit or their removable parts, the compensation shall be limited to the cost of repair. § 3 shall apply by analogy.

§ 5 No further damages shall be payable.

<b>Article 25, Compensation for delay in delivery</b>
§ 1 If it is proved that any damage has resulted from delay in delivery, the carrier shall pay compensation not exceeding half of the carriage charges.
§ 2 Insofar as the goods are lost or have lost value as a result of partial loss or damage, compensation for delay shall not be paid.
§ 3 In no case the compensation for delay together with that for partial loss of or damage to goods shall exceed the compensation which would be payable in case of total loss of the goods.
§ 4 If the time of delivery has been established by agreement, other forms of compensation than those provided for in § 1 may be so agreed. If, in this case, not only the agreed time of the delivery is exceeded but also the time which could reasonably be required from the diligent carrier as provided for in Article 13 is exceeded too, the person who has the right to bring an action against the carrier may claim either the compensation provided for in the agreement or that provided for in this Article.
<b>Article 26, Persons for whom the carrier is liable</b>
The carrier shall be liable for his servants and other persons whose services he makes use of for the performance of the carriage, when these servants and other persons are acting within the scope of their functions. The undertakings or bodies operating the railway infrastructure on which the carriage is performed shall be considered as persons whose services the carrier makes use of for the performance of the carriage.
<b>Article 27, Other actions</b>
§ 1 In all cases where this Convention shall apply, any action in respect of liability, on whatever grounds, may be brought against the carrier only subject to the conditions and limitations laid down in this Convention.
§ 2 If an action is brought against the servants or other persons for whom the carrier is liable pursuant to Article 26, such action may also be brought only subject to the conditions and limitations laid down in this Convention.
<b>Chapter 4, Settlement of claims</b>
<b>Article 28, Notice of damage</b>
§ 1 Where partial loss of or damage to the goods is apparent and the consignee or the consignor fails to notify this on delivery of the goods at the latest, it is presumed that the goods have been delivered in a condition conforming with the contract. The notice must specify the damage sufficiently clearly.



§ 2 Where partial loss or damage was not apparent, the presumption referred to in § 1 shall also apply if the damage is not notified within seven days after delivery.

§ 3 Claims for delay in delivery shall be extinguished if the consignee does not notify the carrier of the delay in delivery within 60 days after delivery of the goods.

§ 4 If loss, damage or delay is notified on delivery, it is sufficient to give notice to the person delivering the goods. After delivery any notice of damage shall be given to the carrier in text form (e.g. email). Dispatch within the applicable notification period is sufficient.

## **Article 29, Claims**

§ 1 Claims relating to the contract of carriage must be addressed in text form (e.g. email) to the carrier against whom an action may be brought.

§ 2 A claim may be made by a person who has the right to bring an action against the carrier. The necessity to make a claim before bringing an action against the carrier shall remain subject to the applicable domestic laws where the action shall be brought.

§ 3 When the person who has the right to bring an action against the carrier is the consignor, he must produce the original of the consignment note. Failing this he must produce an authorisation from the consignee or furnish proof that the consignee has refused to accept the goods. If necessary, the consignor must prove the absence or loss of the original of the consignment note.

§ 4 When the person who has the right to bring an action against the carrier is the consignee, he must produce the original of the consignment note intended for the accompaniment of the goods if it has been handed over to him.

§ 5 The consignment note and any other documents which the person who has the right to bring an action against the carrier thinks fit to submit with the claim must be produced either in the original or as copies, the copies, where appropriate, duly certified if the carrier so requests.

§ 6 On settlement of the claim the carrier may require the production, in the original form, of the consignment note, so that the settlement of the claim can be recorded therein.

§ 7 The person who has the right to bring an action against the carrier may claim interest on compensation, calculated according to the applicable national law, from the day on which the claim was sent in writing to the carrier or, if no such claim has been made, from the day on which legal proceedings were instituted.

<b>Article 30, Right to bring an action against the carrier</b>
§ 1 The consignor may bring an action pertaining to the contract of carriage as long as the consignee or a third party does not have such right pursuant to § 2 or if there are circumstances preventing delivery.
§ 2 The consignee may bring an action pertaining to the contract of carriage from the time he has the right to dispose of the goods in accordance with Article 15. The same shall apply to a person other than the consignee provided that such person has obtained the right to dispose of the goods.
§ 3 An action for the recovery of a sum paid pursuant to the contract of carriage may only be brought by the person who made the payment.
<b>Article 31, Carriers against whom an action may be brought</b>
§ 1 Actions based on the contract of carriage may be brought against the contractual carrier or against the carrier who has delivered the goods or against the carrier having performed the part of the carriage on which the event giving rise to the proceedings occurred.
§ 2 An action for the recovery of a sum paid pursuant to the contract of carriage may be brought against the carrier who has collected that sum or against the carrier on whose behalf it was collected.
§ 3 An action may be brought against a carrier other than those specified in §§ 1 and 2 when triggered in the form of counter-claim or by way of objection to proceedings relating to a principal claim based on the same contract of carriage.
§ 4 If the plaintiff has a choice between several carriers, his right to choose shall be extinguished as soon as he brings an action against any one of them.
<b>[Chapter 4a Consignment bill]</b>
<b>[Article 31a Issuance of a consignment bill]</b>
[If the parties to the contract of carriage agree to use a negotiable transport document [instead of a consignment note] the carrier is obliged to issue a consignment bill concerning the obligation to deliver the goods to the bearer.]

**[Article 31b**

**Effect of the consignment bill; legitimation]**

§ 1 The Articles 5 § 2, 6, 7, 9 and 10 shall be applicable mutatis mutandis when a consignment bill has been issued and signed by the carrier. A copy of the consignment bill shall accompany the goods.

§ 2 The carrier may not rebut the presumptions pursuant to § 1 vis-a-vis a consignee designated in the consignment bill and to whom the consignment bill has been handed over, unless the consignee was aware, or was unaware through gross negligence, at the time the consignment bill was handed over, that the information therein is incorrect. The same shall apply vis-à-vis any third party to whom the consignment bill has been transferred.

§ 3 Any claim under a contract of carriage embodied in a consignment bill may be brought only by the person entitled to claim under the consignment bill. The bearer of the consignment bill is, for his benefit, presumed to be the person entitled to claim under the consignment bill.]

**[Article 31c**

**Delivery against surrender of the consignment bill]**

§ 1 After the goods' arrival at the place of delivery, the bearer of the consignment bill shall be entitled to require the carrier to deliver the goods against surrender of the consignment bill, in which the delivery is confirmed, and against payment of all amounts due according to the contract of carriage. However, the carrier must not deliver the goods to the bearer of the consignment bill if he is aware, or unaware through gross negligence, that the bearer of the consignment bill is not the person entitled to claim under the consignment bill.

§ 2 If the carrier delivers the goods to a party other than the bearer of the consignment bill or, in the cases covered **[pending: by the second sentence of § 1/in § 1 as regards the person entitled]**, to a party other than the person entitled to claim under the consignment bill, then the carrier shall be liable for the resulting damage suffered by the person entitled to claim under the consignment bill. The liability shall be limited to the amount which would have been payable if the goods have been lost

§ 3 If delivery cannot be performed according to the contract because the consignment bill is not presented to the carrier, the carrier shall ask for instructions from the person entitled to claim under the consignment bill. If the carrier cannot obtain lawful and reasonable instructions within a reasonable time, he shall take measures according to Article 18 § 2, but without the right to return the goods to the consignor.]

**[Article 31d**

**Carrying out instructions]**

§ 1 Where a consignment bill has been issued, only its bearer shall have the right of disposal pursuant to the Articles 15 and 16. If circumstances prevent carriage, the carrier shall ask for instructions from the person entitled to claim under the consignment bill; Article 18 shall be applicable without the right to return the goods to the consignor. The carrier may carry out instructions only against presentation of the consignment bill. However, the carrier must

not carry out any instructions issued by the bearer of the consignment bill if he is aware, or unaware through gross negligence, that the bearer of the consignment bill is not the person entitled to claim under the consignment bill.
§ 2 If the carrier carries out instructions without having had the consignment bill presented to him, he shall be liable to the person entitled to claim under the consignment bill for any resulting damage the latter may suffer. The liability shall be limited to the amount which would have been payable if the goods had been lost. ]
<b>[Article 31e Objections]</b>
[The carrier may only raise objections against a claim by a person entitled to claim under the consignment bill insofar as they concern the validity of the statements made in the consignment bill, or insofar as they arise from the contents of the consignment bill or insofar as the carrier is entitled to rely on objections directly against the person entitled to claim under the consignment bill. An agreement to which the consignment bill merely makes reference is not incorporated into the consignment bill.]
<b>[Article 31f Consignment bill as document of title]</b>
[The issue and handing over of the consignment bill to the consignee designated therein shall have the same effect, in terms of the acquisition of rights to the goods, as a physical handing over of the goods, provided the carrier is in possession of the goods. The same shall apply to a transfer of the consignment bill to third parties.]
<b>Chapter 5 Relations between carriers</b>
<b>Article 32, Settlement of accounts</b>
Any carrier who has collected or ought to have collected, either at departure or on arrival, charges or other costs arising from the contract of carriage must pay to the carriers concerned their respective shares. The methods of payment shall be fixed by agreement between the carriers.
<b>Article 33, Right of recourse</b>
§ 1 A carrier who has paid compensation pursuant to this Convention shall have a right of recourse against the carriers who have taken part in the carriage in accordance with the following provisions:  (a) the carrier who has caused the loss or damage shall be solely liable for it;

(b) when the loss or damage has been caused by several carriers, each shall be liable for the loss or damage he has caused; if such distinction is impossible, the compensation shall be apportioned between them in accordance with letter c);
(c) if it cannot be proved which of the carriers has caused the loss or damage, the compensation shall be apportioned between all the carriers who have taken part in the carriage, except those who prove that the loss or damage was not caused by them; such apportionment shall be in proportion to their respective shares of the carriage charge.
§ 2 In the case of insolvency of any one of these carriers, the unpaid share due from him shall be apportioned among all the other carriers who have taken part in the carriage, in proportion to their respective shares of the carriage charge.
<b>Article 34, Agreements concerning recourse</b>
The carriers may conclude agreements between themselves which derogate from Articles 32 and 33.
<b>Chapter 6 Final Provisions</b>
<b>Article 35, Secretariat</b>
The Executive Secretary of the United Nations Economic Commission for Europe shall provide secretariat functions to this Convention.
<b>Article 36, Procedures for signature of and for becoming Contracting Party to the Convention</b>
§ 1 This Convention shall be open for signature at the United Nations Headquarters in New York until [date] by all States members of the United Nations.
§ 2 This Convention shall be subject to ratification, acceptance or approval by the signatory States. It shall be open for accession by any State which has not signed the Convention.
§ 3 The instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.
<b>Article 37, Entry into force</b>
§ 1 This Convention shall enter into force six months after the date on which five States have deposited their instruments of ratification, acceptance, approval or accession.

§ 2 For each State that ratifies, accepts, approves or accedes to this Convention after deposit of the fifth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force six months after the date of deposit by such State of its instrument of ratification, acceptance, approval or accession.

### **Article 38, Denunciations**

§ 1 Any Contracting Party may denounce this Convention by a formal notification in writing addressed to the Depositary.

§ 2 Denunciation shall become effective six months after the date of receipt by the Depositary of the notification of denunciation.

*Note: Article 39 (on termination) was deleted*

### **Article 40, Settlement of disputes**

§ 1 Any dispute between two or more Contracting Parties concerning the interpretation or application of this Convention shall, so far as possible, be settled by negotiation between them.

§ 2 Any dispute between two or more Contracting Parties concerning the interpretation or application of this Convention which cannot be settled by the means indicated in § 1 of this Article shall, at the request of one of the Contracting Parties, be referred to an arbitration tribunal composed as follows: each Contracting Party to the dispute shall appoint an arbitrator, and these arbitrators shall appoint another arbitrator, who shall be the chair. If, three months after receipt of a request, one of the Contracting Parties has failed to appoint an arbitrator or if the arbitrators have failed to elect the chair, any of the Contracting Parties may request the Secretary-General of the United Nations to appoint an arbitrator or the chair of the arbitration tribunal.

§ 3 The decision of the arbitration tribunal established under the provisions of § 2 of this Article shall be final and binding on the Contracting Parties to the dispute.

§ 4 The arbitration tribunal shall determine its own rules of procedure.

§ 5 The arbitration tribunal shall take its decisions by majority vote.

§ 6 Any controversy which may arise between the Contracting Parties to the dispute as regards the interpretation and execution of the award may be submitted by any of such Contracting Parties for judgment to the arbitration tribunal which made the award.

§ 7 Each Contracting Party to the dispute shall individually bear the costs of its own appointed arbitrator and of its representatives in the arbitral proceedings; the costs of the chair and the remaining costs shall be borne in equal parts by the Contracting Parties to the dispute.

**Article 41, Reservations**

§ 1 Any Contracting Party may, at the time of signing, ratifying, accepting, approving or acceding to this Convention, declare that it does not consider itself bound by Article 40, §§ 2 to 7 of this Convention. Other Contracting Parties shall not be bound by these §§ in respect of any Contracting Party, which has entered such a reservation.

§ 2 Any Contracting Party, having entered a reservation as provided for in § 1 of this Article, may at any time withdraw such a reservation by notifying the Depositary.

§ 3 Apart from the reservations set out § 2, point 2 of Article 1 and in § 1 of this Article, no reservation to this Convention shall be permitted.

**Article 42, Procedures for amending the provisions of the Convention**

§ 1 After this Convention has been in force for one year, it may be amended according to the procedure defined in this Article.

§ 2 Any proposed amendment to this Convention presented by a Contracting Party to this Convention shall be submitted to the Working Party on Rail Transport of the United Nations Economic Commission for Europe for consideration and decision.

§ 3 The Contracting Parties to this Convention shall make all possible efforts at the sessions of the Working Party to achieve consensus for adoption of the proposed amendment. If, despite these efforts, consensus is not reached on the proposed amendment, it shall require, as a last resort, an adoption by a two-thirds majority of Contracting Parties present and voting. A proposed amendment adopted either by consensus or by a two-thirds majority of Contracting Parties shall be submitted by the secretariat of the Convention to the Depositary to be circulated for acceptance to all Contracting Parties to this Convention, as well as to signatory States.

§ 4 Within a period of nine months from the date on which the proposed amendment is communicated by the Depositary, any Contracting Party may inform the Depositary that it has objection to the amendment proposed.

§ 5 The proposed amendment shall be deemed to have been accepted if, by the end of the period of nine months foreseen in the preceding §, no objection has been notified by a Contracting Party to this Convention. If an objection is stated, the proposed amendment shall be of no effect.

§ 6 In the case of a state which becomes a Contracting Party to this Convention between the moment of notification of a proposal for amendment and the end of the nine-month period foreseen in § 4 of this Article, the secretariat of the Convention shall notify the new Contracting Party about the proposed amendment as soon as possible. The latter may inform the Depositary before the end of this period of nine months that it has an objection to the proposed amendment.

**§ 7** The Depository shall notify, as soon as possible, all the Contracting Parties of objections raised in accordance with §§ 4 and 6 of this Article as well as of any amendment accepted according to § 5 above.

**§ 8** Any amendment deemed to have been accepted shall enter into force six months after the date of notification of such acceptance by Depository to Contracting Parties.

**§ 9** Any instrument of ratification, acceptance, approval or accession deposited after an amendment has been accepted in accordance with the procedure in this article, but before it has entered into force, shall be deemed to apply to the Convention as amended on the date when the amendment enters into force.

**§ 10** Any such instrument deposited after the entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

#### **Article 43, Convening of a conference**

**§ 1** Once this Convention is in force, any Contracting Party may, by notification to the secretariat of the Convention, request that a conference be convened for the purpose of reviewing this Convention. The secretariat of the Convention shall notify all Contracting Parties of the request and a review conference shall be convened by the secretariat of the Convention if, within a period of four months following the date of notification by the secretariat of the Convention, not less than one fourth of the Contracting Parties to this Convention notify the secretariat of their concurrence with the request.

**§ 2** If a conference is convened in accordance with the preceding §, the secretariat of the Convention shall notify all the Contracting Parties and invite them to submit within a period of three months proposals which they may wish the Conference to consider. The secretariat of the Convention shall circulate to all Contracting Parties the provisional agenda for the Conference together with the texts of such proposals at least three months before the date on which the Conference is to meet.

**§ 3** The secretariat of the Convention shall invite to any conference convened in accordance with this article all States referred to in Article 36 [Article on procedures for signature], § 2, of this Convention.

#### **Article 44, Declaration for territories**

**§ 1** Any state may, at the time of depositing its instrument of ratification or accession or at any time thereafter, declare by notification addressed to the Depository that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. The Convention shall extend to the territory or territories named in the notification as from the ninetieth day after its receipt by Depository or, if on that day the Convention has not yet entered into force, at the time of its entry into force.



§ 2 Any state which has made a declaration under the preceding § extending this Convention to any territory for whose international relations it is responsible may denounce the Convention separately in respect of that territory in accordance with the provisions of Article 38 [Article on Denunciations].

#### **Article 45, Notification by the Depositary**

In addition to the notifications provided for in Article 42 and 43 [Article re amendment and convening a conference] the Depositary shall notify the countries referred to in Article 36 [Article on procedures for signature], § 1, and the countries which have become Contracting Parties under Article 36 [Article on procedures for signature], § 2, of:

- (a) Ratification and accessions under Article 36 [Article on procedures for signature];
- (b) The dates of entry into force of this Convention in accordance with Article 37 [Article on entry into force];
- (c) Denunciations under Article 38 [Article on Denunciations];
- (d) *was deleted;*
- (e) Notifications received in accordance with Article 44 [Article on declaration for territories];
- (f) Declarations and notifications received in accordance with Article 1, § 2, point 2 and Article 41 [Article on reservations], §§ 1 and 2.

#### **Article 46, Deposit of this Convention with the Secretary General**

The Secretary-General of the United Nations is hereby designated as the Depositary of this Convention who shall transmit a certified true copy of the Convention to all signatory and acceding States.

*In Witness Whereof*, the undersigned plenipotentiaries, being duly authorized thereto, have signed this Convention.

*Done at* [place], on [date], in a single copy in the English, French and Russian languages, the three texts being equally authentic.