

Distr.: Restricted
7 July 2023

Original: English

Economic Commission for Europe

Inland Transport Committee

Working Party on Rail Transport

Special session

Geneva, 10-12 July 2023

Item 2 of the provisional agenda

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

Proposals of the JSC Russian Railways to amend the draft text of the Convention on the contract for international carriage of goods by rail

Submitted by the JSC Russian Railways

Background

1. This document contains comments, additions and changes to the draft provisions as proposed by the Russian Federation.
2. NB: The abovementioned amendments have already been sent to the Secretariat of the UNECE in the document ECE/TRANS/SC.2/GEURL/2020/5 in July 2020. However, the JSC Russian Railways believes that these amendments could also be applicable to the proposed draft text of the Convention in the context of the agreed Approach A.

Proposal for additional provisions

The JSC Russian Railways proposes to add the following articles to the draft text of the Convention on the contract for international carriage of goods by rail (Convention):

“Article _____

Pre-contractual agreement for carriage

Prior to the conclusion of a contract of carriage, a pre-contractual agreement of carriage may be concluded as follows:

- Between the consignor and the contractual carrier, in accordance with national legislation; or
- Between the contractual and successive carriers, in accordance with a procedure agreed by them”.

“Article _____

Mode of carriage

If the dispatching station and destination station are located on railways of different rail gauges, carriage may, depending on what is technically feasible, be carried out as follows: with trans-shipment of the goods from the wagons of one rail gauge onto wagons of another or with the transfer of wagons onto bogies of another rail gauge, or with the use of adjustable-gauge bogies”.

Comment by Russian Railways: SMGS, unlike CIM and the draft unified railway law, provides that carriage of goods is carried out without any trans-shipment at border stations of railways with the same track gauge, with trans-shipment of the goods or with gauge changing at border stations of railways with different track gauges, or using a variable gauge system.

“Article _____

Formal report

§ 1. The carrier shall draw up a formal report if, when checking the goods during carriage or delivery, it finds:

- (a) Discrepancies between the names, mass or quantities of the cargo items and the particulars entered in the consignment note;
- (b) Discrepancies between the markings on the cargo items and the particulars entered in the consignment note relating to marks or inscriptions on cargo items, the station and railway of destination, the consignee or the quantity of items;
- (c) Damage to or spoilage of the goods;
- (d) The consignment note or individual notes for the goods in question, or of goods listed in the consignment note, to be missing or lost.

§ 2. If, under the national legislation of the country of destination, a formal report may be drawn up after the goods have been delivered to the consignee, the consignee shall have the right to request the carrier that delivered the goods to draw up such a report after the goods have been delivered for any reason that would have escaped detection by means of a visual inspection when the delivery of the goods was made. Such a request to the carrier delivering the goods shall be made by the consignee immediately upon discovering the loss, shortfall, deterioration or spoilage of the goods and not later than 72 hours after the goods were delivered”.

Proposal for amendments to draft provisions

The JSC Russian Railways proposes to amend the following articles of the Convention:

§ No.	A. Draft text	B. Adjust- ment	C. Reason, why adjustment is required	D. Draft provision with adjustment proposed
Article 7, Responsibility of the consignor				
§ 1	<p>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, or</p> <p>(b) the consignor omitting to provide the necessary information on the generally recognized description of the dangerous goods.</p>	YES		<p><i>We propose to add provisions to article 7, “Responsibility of the consignor”, to read as follows:</i></p> <p>“§5 The consignor shall pay the carrier a penalty if, after the conclusion of the contract of carriage, the carrier discovers that the information and declarations included in the consignment note by the consignor are incorrect, inaccurate or incomplete and if it is determined that:</p> <p>(a) The cargo includes items not accepted for transfer across a State border by at least one of the States whose territory is to be crossed during carriage;</p> <p>(b) Dangerous goods have been accepted for carriage without the conditions required for their transport being met;</p> <p>(c) When loading goods, the consignor allowed the wagon to be overloaded beyond its maximum load limit;</p> <p>(d) The carriage charges were understated;</p> <p>(e) There were circumstances that threatened traffic safety.</p> <p>Penalties covered by paragraphs 1, 2, 4 and 5 above shall be charged..... <i>(we propose to discuss the amount of the penalty during the session of the Group of Experts).</i>”</p>
§ 2	<p>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>			
§ 3	<p>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</p>			

	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.			
§ 4	The carrier may not claim costs or expenses and shall be obliged to pay compensation for loss of or damage to the goods according to Article 19 if it was aware of the dangerous nature or the specific requirements of the goods on taking them over.			
Article 13, Time of delivery				
	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.	YES		<p><i>We propose to add the following provisions to the article:</i></p> <p>“The goods delivery period shall be increased by 48 hours for operations connected with the shipment and delivery of goods. The goods delivery period shall increase by 48 hours:</p> <ul style="list-style-type: none"> • Whenever cargo is trans-shipped to wagons having a different gauge; • Whenever wagons or cargo on its own wheels are transferred onto bogies having a different gauge; • When goods are carried in direct international rail ferry traffic. <p>The delivery period shall be extended for the duration of any delay along the route for reasons beyond the control of the carrier.”</p>
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.	YES		<p>We propose to delete article 15 (1), “Right of disposal of the goods”, of the draft unified railway law and replace it with the following provisions and renumber paragraphs 2, 3 and 4 accordingly:</p> <p>“§ 1. The consignor and the consignee shall have the right to give the carrier instructions in respect of the goods and thus amend the contract of carriage. The consignor shall address the contractual carrier and the consignee the carrier who is delivering the goods.</p>

				<p>§ 2. The consignor may amend the contract of carriage as follows: (a) Change the destination station; (b) Change the consignee of the goods.</p> <p>§ 3. The consignee may amend the contract of carriage within the borders of the country of destination as follows: (a) Change the destination station of the goods; (b) Change the consignee of the goods.</p> <p>§ 4. The carrier shall be entitled to refuse to amend a contract of carriage or delay its execution only if: (a) This is not feasible for the carrier at the time of receipt of the statement of amendments to the contract of carriage; (b) It might disrupt the railway's operations; (c) Upon changing the destination station, the value of the goods does not cover all foreseeable charges for carriage to the new destination station, except in cases in which the amount of these charges is paid immediately or guaranteed; (d) When the destination station indicated in the consignment note is changed and new carriers have not negotiated the carriage.”</p>
§ 2-5	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 of destination.			
§ 3-6	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.			
§ 4-7	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 33, Right of recourse				
§ 1	A carrier who has paid compensation pursuant to this legal regime 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.	YES		<i>We propose to add provisions to article 33, “Right of recourse”, of the draft unified railway law, to read as follows:</i> “§3 A carrier against which a claim for compensation is made may not contest the payment of compensation to the carrier making the claim if such compensation was determined by a court decision and the carrier against which the claim was made was notified in a timely manner of the consideration of the case by the courts. §4 A claim against the recovery of compensation paid for a claim must be made within 75 days of the actual date of payment of the claim. A claim against compensation determined by a court decision must be made within 75 days of the date of entry into force of the decision”.
§ 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.			

Additional proposals

1. The JSC Russian Railways proposes further discussion of the language of article 5 (§2) (“Contract of carriage”) of the Convention, which provides that international associations may establish a standard model of consignment note, owing to the fundamentally different approaches to this matter in the “Eastern” and “Western” legal systems (in SGMS, the content of the consignment note is determined in annex 1 to the Agreement).
2. We propose to discuss the possibility of defining specific delivery periods in article 13 “Time of delivery”.
3. We consider it necessary to define in the draft unified railway law specific periods of limitation for potential lawsuits regarding fulfilment of the contract of carriage.