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INLAND TRANSPORT COMMITTEE

Working Party on Road Transport
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**HARMONIZATION OF REQUIREMENTS
CONCERNING INTERNATIONAL ROAD TRANSPORT AND
FACILITATION OF ITS OPERATION**

Consideration of the development of a Protocol to the CMR

Draft Protocol prepared by UNIDROIT – Rome, 18 May 2001

1. At its 94th session, held from 14 to 16 November 2000, the Working Party on Road Transport of the Inland Transport Committee was seized of document TRANS/SC.1/2000/9 of 31 August 2000, which contained the observations of UNIDROIT on a proposed additional Protocol to the CMR.

This proposed Protocol would be intended to permit the utilisation of electronic data (EDI) en lieu of paper-based consignment notes.

The Working Party asked UNIDROIT to prepare a draft of such a Protocol.

This draft must for the time being be considered to be informal, as the Governing Council of UNIDROIT will not be in a position to examine it until its next session, which is due to be held in Rome from 17 to 19 September 2001.

1. It is recalled that Article 4 of the CMR provides that “[t]he contract of carriage shall be confirmed by the making out of a consignment note”, which, according to Article 9 of the CMR, “shall be prima facie evidence of the making of the contract of carriage, the conditions of the contract and the receipt of the goods by the carrier”.

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Even if the consignment note, as implicitly described in Articles 5 and 6, is not the only instrument of evidence of the making of the contract and of its performance, it is nonetheless true that the whole logic of the CMR revolves around the notion of a paper-based document.

Information and communication technology having evolved, the need to replace paper-based documents transmitted in original cum manu has made itself felt. Telegram, telex, fax, e-mail and electronic data interchange (EDI) have progressively replaced traditional means of communication.

In carriage by sea, air, rail and inland waterway, as well as in maritime insurance, appropriate provisions have already been introduced into the new conventions adopted with a view to the regulation of these forms of transport. Only carriage by road, and in particular the international carriage of goods by road, has so far not seen a specific legislative instrument adopted.

The draft EDI-CMR Protocol is intended to provide for this necessity.

2. Even if the draft Protocol cannot have as its purpose the regulation of the actual functioning of the new means of communication and information, it nevertheless must declare which means are authorised and determine their function.

It should be recalled that the “consignment note” is a contractual document the essential, and in the carriage of goods by road sole, function of which is to be an instrument of evidence of:

- ?? the making of the contract and therefore of its essential elements: the parties, the goods to be carried, the route and the freight;
- ?? the modalities for its performance, both at take over of the goods and at their delivery (description of the goods and of the packaging, reservations);
- ?? accessory contracts (special value or interest, compensation);
- ?? the right of disposal in certain cases.

The function of the consignment note is to ensure legal certainty in the relationship between the parties to a carriage operation, which is broader than the contract itself.

The replacement for the consignment note must therefore meet the criterion of functional equivalence: identification of the parties, consent of the parties, legibility, durability and permanence.

All these means must be subjected to regulation or agreements that ensure their feasibility, their reliability and their security (e.g. electronic signatures).¹

It is therefore possible to say that it is no longer necessary to submit to the constraints of paper for the preparation of a consignment note.

It is by taking inspiration from the texts of the international conventions that have been drafted in recent years,² but which have not yet entered into force, that it is possible to propose the annexed

¹ See the Draft UNCITRAL Uniform Rules on Electronic Signatures in A/CN.9/WG.IV/WP.86 of 18 August 2000.

text. This text contains variations which have also been inspired by the conventions cited in its footnotes.

The adoption of a text similar to those already discussed and accepted by previous diplomatic conferences in the field of transport must have the effect of facilitating the work of those who will examine the present Protocol and of the conference convened for its adoption.

Draft EDI Protocol to the CMR

[...]

being parties to the Convention on the Contract for the International Carriage of Goods by Road (CMR), done at Geneva on 19 May 1956,

[...]

Article 1. For the purposes of the present Protocol ‘Convention’ means the Convention on the Contract for the International Carriage of Goods by Road (CMR).

Article 2. At the end of Article 5 of the Convention, the following paragraph is added :

‘3. Unless otherwise agreed between the parties concerned, the consignment note may be made out by all other means of transmission of information, by electronic or similar means of communication, including, but not limited to, telegram, facsimile, telex, electronic mail or electronic data interchange (EDI),

- [provided the information is accessible so as to be usable for subsequent reference.]³

- [The procedure used for the registration and treatment of data must be equivalent from the functional point of view, particularly so far as concerns the evidential value of the consignment note represented by those data.]⁴

- [If such other means are used, the carrier shall, if so requested by the consignor, deliver to

² The Convention on the Contract for the Carriage of Goods by Inland Waterways (CMNI), Budapest, 3 October 2000; the Protocol for the Modification of the Convention concerning International Carriage by Rail (COTIF), Vilnius, 3 June 1999; the Convention for the Unification of Certain Rules for International Carriage by Air, Montreal, 28 May 1999.

³ Convention on the Contract for the Carriage of Goods by Inland Waterways (CMNI), Budapest, 3 October 2000 : “Article 1 – Definitions. In this Convention, [...] - 8. ‘In writing’ includes, unless otherwise agreed between the parties concerned, the transmission of information by electronic, optical or similar means of communication, including, but not limited to, telegram, facsimile, telex, electronic mail or electronic data interchange (EDI), provided the information is accessible so as to be usable for subsequent reference”. Optical means, particular to navigation, are omitted.

⁴ Protocol for the Modification of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 (COTIF/CIM), 3 June 1999 : “Article 6 § 9: The consignment note and its duplicate may be established in the form of electronic data registration which can be transformed into legible written symbols. The procedure used for the registration and treatment of data must be equivalent from the functional point of view, particularly so far as concerns the evidential value of the consignment note represented by those data”.

the consignor a cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.]⁵

Final provisions

See the SDR Protocol to the CMR of 5 July 1978.

⁵ Convention for the Unification of Certain Rules for International Carriage by Air, Montreal, 28 May 1999 : “Article 4(2): 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”.