



Economic and Social Council

Distr.: General
20 July 2017

Original: English

Economic Commission for Europe

Inland Transport Committee

Working Party on Rail Transport

Group of Experts towards Unified Railway Law

Fifteenth session

Geneva, 22-24 May 2017

Report of the Group of Experts towards Unified Railway Law on its fifteenth session

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I. Attendance

1. The Group of Experts towards Unified Railway Law held its fifteenth session from 22 to 24 May 2017 in Geneva. The session was chaired by Mr. A. Druzhinin (Russian Federation).
2. The session was attended by experts from the following countries: Germany, Russian Federation and Turkey.
3. Experts from the following intergovernmental organization participated: Intergovernmental Organization for International Carriage by Rail (OTIF). Experts from the following non-governmental organization participated: International Rail Transport Committee (CIT) and PKP CARGO S.A.
4. Experts from the following organizations participated at the invitation of the secretariat: CMS Cameron McKenna LLP, Deutsche Bahn AG (DB AG) and JSC "Russian Railways" (RZD).

II. Adoption of the agenda (agenda item 1)

Documentation: ECE/TRANS/SC.2/GEURL/2017/1

5. The Group of Experts adopted the provisional agenda.

III. Mandate: Inland Transport Committee Resolution No. 263 on Unified Railway Law (agenda item 2)

Documentation: ECE/TRANS/2016/17

6. The Group of Experts recalled that, at its last session (October 2016), it requested the secretariat and the Chair of the Group to report on the developments of its work and ask for the extension of Group's mandate for one more year, at the next session of the Working Party on Rail Transport (SC.2) on 22-24 November 2016.
7. During the seventieth session of SC.2, Governments took note that the organization and implementation of the pilot tests is a time-consuming process that has to be developed in a manner that is structured, and commonly agreed upon by the main stakeholders. Therefore, SC.2, the Inland Transport Committee at its seventy-ninth session (21-24 February 2017) and the Executive Committee at the session in April 2017 agreed to extend the mandate of the Group of Experts for one more year on the same terms of reference (ITC Resolution No.263).
8. Based on ITC resolution:
 - (a) Governments are invited to disseminate these legal provisions to all key stakeholders in their countries;
 - (b) Railways undertakings and international organizations for railways are encouraged to test these legal provisions, whenever possible, in practice;
 - (c) The Group of Experts towards Unified Railway Law is invited to prepare the necessary documents for rail transport following the legal provisions prepared, and to monitor results of pilot tests and prepare recommendations accordingly;
 - (d) The Group of Experts towards Unified Railway Law is requested to report on the development and progress in applying the above-mentioned activities at the seventieth session (2016) of SC.2;

(e) SC.2 is requested to report on the results of the Group of Experts towards Unified Railway Law and to suggest possible next steps of the work on unified railway law at its seventy-ninth session (2017) for its consideration and approval.

IV. Preparation of the necessary documents following the draft legal provisions (agenda item 3)

9. The Group, while adopting the agenda, decided to discuss agenda item 3 on the preparation of the necessary documents after having discussed agenda item 4 monitoring results of pilot tests. During its last session the Group had decided that, they should await the results of the pilot tests in order to decide the list of documents that should accompany the new legal regime.

10. Based on the results of the first pilot test on the corridor Germany-Poland-Belarus-Russian Federation the experts understood and agreed that:

(a) The current common CIM/SMGS consignment note can be adapted to the requirements of United Railway Law (URL) legal provisions without any difficulty. Additional agreements between the parties can also be entered on this consignment note (e.g. field 7 of the CIM/SMGS consignment note);

(b) The draft legal provisions of the URL do not impose any new requirements for the accompanying documents. The documents currently required can therefore continue to be used (ex. wagons list, containers list, etc.);

(c) Furthermore, since the draft legal provisions of the unified railway law does not regulate the procedures to be concluded between the participating carriers when implementing the actual transportation, the need for the railway undertakings to conclude such agreements still exists;

Those agreements between the participating Carriers will determine other documents needed such as the formal report, etc.;

11. The Group agreed that the adaptation of the common CIM/SMGS consignment note to unified railway law needs and requirements is not a very demanding task and could be accomplished rather quickly. However, since the preparation of relevant documents is a task of the international organizations the Group kindly requested the Expert Group on the common CIM/SMGS consignment note that takes place on 12 and 13 July 2017 is organized by CIT and the Organization for Cooperation of Railways (OSJD) to undertake and accomplish this task. The Group expressed its wish to have the adaptation of the common CIM/SMGS consignment note to URL needs and requirements ready by the end of September 2017.

12. Following the above-mentioned request, experts discussed the need to adapt also the manual of the common CIM/SMGS consignment note to URL needs and requirements. The experts agreed that a decision about the manual should be postponed for the next meeting in November after a discussed and finalized the actual consignment note of the unified railway law provisions.

13. In general, the experts agreed that it should be mentioned that the discussed list of documents is not an exhaustive one. Furthermore, the railway undertakings should be aware that an agreement should exist among them for the documents that the Group have not discussed or are not foreseen in URL provisions. If needed, these documents should also be adapted to Unified Railway Law needs and requirements.

V. Monitoring results of pilot tests (agenda item 4)

Documentation: ECE/TRANS/2017/18, Informal document SC.2/GEURL No.1, Informal document SC.2/GEURL No.2, Informal document SC.2/GEURL No.3

14. The Group of Experts recalled that the Inland Transport Committee (ITC) resolution (ECE/TRANS/2016/17) on Unified Railway Law encouraged railway undertakings and international organizations for railways to test these legal provisions, whenever possible, in practice and invited the Group of Experts to monitor results of those pilot tests and prepare recommendations accordingly. The Group at its last session decided that both virtual and real tests should be used and implemented. Furthermore, it agreed that the corridor Russian Federation-Belarus-Poland-Germany should be the first pilot test. The corridor Turkmenistan-Islamic Republic of Iran-Turkey was suggested as the second pilot test for analysis.

15. The meeting for the virtual pilot test on the corridor Russian Federation-Belarus-Poland-Germany took place on the 15-17 May 2017 in Berlin, Germany organized by DB. At this meeting the following railway undertakings attended: RZD (Russian Railways), PKP Cargo (Poland) and DB AG (Germany). In addition, the shipping companies Transcontainer Europe, TransEurasia Logistics, DB Cargo Logistics and Dr. R.Freise attended the meeting. Representatives from Belorussian railways could not attend the meeting and therefore they have not approved or commented on the results of these pilot tests.

16. The experts that participated in the meeting agreed on the following recommendations:

(a) The representatives of the rail companies should be aware that formal entry into force of the URL has not yet taken place. Further clarifications are required on how URL legal provisions can apply in a preliminary phase, to actual rail transport before this draft URL legal provisions can become a legal instrument;

(b) The URL allows the contracting parties scope for discretion when drafting contracts. The parties (shipper and participating rail companies) must therefore agree how they are going to use this (e.g. when setting delivery times) when they conclude the contract;

(c) Since the URL does not regulate the procedures that the carriers should follow while performing the transportation, there is a need for the carriers to conclude agreements on this (e.g. agreement between the carriers, formal reports, etc.);

(d) The current CIM/SMGS consignment note can be adapted to the requirements of the URL legal provisions without very demanding efforts. Additional agreements between the parties can also be included on this consignment note (see e.g. Field 7 of the CIM/SGMS consignment note);

(e) The URL does not impose any new requirements regarding the accompanying documents. The documents currently required for international rail transport can be used (e.g. wagon lists, container lists or the “Common Formal CIM/SMGS Report”);

(f) Overall, the representatives of the rail companies concluded that based on its content, the URL can be applied to the envisaged virtual pilot transports. Individual procedures and documents must be adapted accordingly;

(g) Finally, the experts held discussions on who should adopt the consignment note, the States, as it is the case in the SMGS region or the Carriers and their respective Associations as it is the case in the CIM region. No decision was taken under this topic.

17. The experts during the pilot test identified the following issues that need to be either adapted or improved:

(a) Text in three languages needs improvements. Especially the Russian version of the text needs careful consideration in order to make sure that the three versions are identical. The Group agreed on the following steps/ actions:

(i) Mr. J. Beckitt will review the English version of the draft legal provisions and will provide proposed changes when appropriate, then, in cooperation with Professor Freise will finalize those changes;

(ii) The final and “clean” English text will be submitted to Mr. P. Guryanov (RZD) and Ms. I. Gries (OTIF) to review it and provide changes to the Russian and French texts accordingly;

(iii) The finalization of the three versions of the URL draft legal provisions should be finalized before the next session of the Group in November.

(b) The common CIM/SMGS consignment note should be adapted to URL needs and requirements. As mentioned in para 11 of the current report the Group kindly requested the Group on the common CIM/SMGS consignment note organized by CIT and OSJD and meets on 12-13 July to undertake and accomplish this task.

(c) There are some articles in the draft legal provisions where there still exist pending issues. More specifically:

(i) Article 21, Compensation for loss, §3. The amount of units of account per kilogram of gross weight is not yet agreed and finalized. The Group agreed that the square brackets should be removed and the agreed amount of units of account per kilogram of gross weight will be 17;

(ii) Article 5, Contract of carriage, §2. The word “absence” creates confusion and it is not clear for all the experts. The experts discussed the possibility to agree on a contract of carriage without a consignment note. However this might require changes in other articles and therefore it should be reviewed and decided at the next session of the Group. The alternative texts discussed were as follows (changes in italics):

- The *loss absence*, or 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 legal regime. *The parties to the Contract of Carriage might agree that the carriage can be implemented without filling out a consignment note.*
- In Article 29, Claims, §3: when the claimant is the consignor *and the contract of carriage has been confirmed by a consignment note.....[...] the consignor must prove the absence or loss....When the claimant is the consignor and the contract of carriage has not been confirmed by a consignment note then the consignor must (prove the absence of a consignment note and) provide evidence of the terms of the contract of carriage.*

18. The Group suggested that other pilot tests should also take place and encouraged Islamic Republic of Iran and Turkey to initiate the pilot test along that corridor based on the results and documents prepared during the Berlin meeting. The Group expressed its wish that at the next meeting the results of the corridor Turkmenistan- Islamic Republic of Iran - Turkey will be presented.

VI. Possible next steps of the work on Unified Railway Law (agenda item 5)

19. The Director of the Division Ms. E. Molnar, pointed out that the market and the railway undertakings need the unified railway law today in order to increase their competitiveness and facilitate international rail traffic. She stated that the experts should do everything possible to finalize this legal instrument as soon as possible and then organize an international conference where Governments will sign the new legal instrument.

20. According to the Chair, the URL when finalized should replace the two existing regimes. However, other experts were of the opinion that the full replacement of the two existing regimes by the URL could be only a long-term, possible, solution and the application of URL as an interface law that facilitates international rail traffic should be direct and urgent. The Chair mentioned that the Russian Federation shows great interest in the project and that there is a need for the project to be finalized. In order to do so, he mentioned that the Group should identify all issues that are obstacles to URL finalization and implementation.

21. The Chair mentioned that he can see three main options for the administration of the legal regime among others:

(a) Set up a United Nations specialized agency such as ICAO, IMO, etc. Such a structure should answer the question of how the different region's needs and requirements should be addressed. Possibly, an annual conference would bring together all regions in order to discuss and finalize amendments, etc.:

(b) Set up an administrator, ICAO-structure style, under the aegis of the United Nations;

(c) Set up an autonomous structure with branches or affiliates for the different regions.

22. The Group requested that the secretariat and the Chair if possible prepare a document for the next session where these and/or other options are analysed, for consideration by the Group;

VII. Other business (agenda item 6)

23. There were no proposals under this agenda item.

VIII. Date of next session (agenda item 7)

24. The next session of the Group of Experts is scheduled to be held at the Palais des Nations in Geneva from 1 to 3 November 2017.

IX. Summary of decisions (agenda item 8)

25. The Group of Experts agreed that the secretariat should prepare a short report on the outcome of the session.
