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Item 22 of the provisional agenda

Programme of work for 2022–2023

Report on the execution of the extension of 2018–2019 mandate by the Group of Experts towards Unified Railway Law

Note by the secretariat

I. Mandate

1. The Inland Transport Committee at its eighty second session (Geneva, 25–28 February 2020) approved the extension of the 2018–2019 mandate of the Group of Experts towards Unified Railway Law (Group of Experts) for one more year (two meetings) to complete the mandate (ECE/TRANS/294 para 100). This comprised the finalization of tasks (c) and (d) of the Group's terms of reference (ECE/TRANS/2018/13/Rev.1):

Task (c) Draft a document (or systems of documents) on Unified Railway Law which could be adopted as a legally binding instrument; the document (or systems of documents) shall:

- (i) take into account the draft legal provisions on the contract of carriage already prepared;
- (ii) include the necessary formal provisions such as depository, management, secretariat, administrative committee, amending procedures, voting rights, etc.;
- (iii) be structured in a way which allows to easily supplement it with provisions on other issues related to international rail freight transport where the Group considers it appropriate to do so;

Task (d) Discuss other relevant issues related to international rail freight transport with a view to adding, where appropriate, provisions to the document referred to at (c); these issues may include:

- (i) Common Provisions on dangerous goods;
- (ii) Common provisions on the use of freight wagons;
- (iii) Common provisions on rail infrastructure;
- (iv) Common provisions on rolling stock.



2. The Group of Experts, in order to finalize its mandate, met in Geneva on 28–29 September 2020 and on 13–15 January 2021. These meetings took place at later dates than initially scheduled – July and September 2020 – due to the outbreak of the COVID-19 pandemic and liquidity restrictions at the United Nations Office of Geneva. Delaying the meetings had meant that the Working Party on Rail Transport (SC.2) was not able to discuss the report of the Group of Experts at its seventy-fourth session.

3. This document contains the report on the work done by the Group of Experts to finalize tasks (c) and (d). The report provided in section II below was agreed by the Group of Experts at its twenty third session on 13–15 January 2021.

II. Execution of tasks (c) and (d) by the Group of Experts

A. Task (c)

4. Regarding Task (c), the Group of Experts during its mandate extension considered ECE/TRANS/SC.2/GEURL/2020/4 and ECE/TRANS/SC.2/GEURL/2020/5 submitted respectively by Germany and the Russian Federation. ECE/TRANS/SC.2/GEURL/2020/4 proposes a consensus towards executing the mandate extension. ECE/TRANS/SC.2/GEURL/2020/5 provides specific alterations to the draft Unified Railway Law (URL) legal provisions on the contract of carriage provided in ECE/TRANS/2016/15. These alterations aim to address the concerns raised by the Russian Federation in ECE/TRANS/SC.2/GEURL/2019/18.

5. The Group of Experts also agreed, to prepare ECE/TRANS/SC.2/GEURL/2021/3 (Convention on the contract for international carriage of goods by rail as a first Convention of a system of Unified Railway Law Convention) which consolidates text of various provisions relevant to URL contract for international carriage of goods by rail (CoC) Convention, as follows:

- ECE/TRANS/2016/15 with the draft relevant substantive legal provisions;
- ECE/TRANS/SC.2/GEURL/2019/15 with the modifications to Article 4 of ECE/TRANS/2016/15;
- ECE/TRANS/SC.2/GEURL/2019/10 with the draft preamble;
- ECE/TRANS/SC.2/GEURL/2019/11 with the draft final provisions; and
- ECE/TRANS/SC.2/GEURL/2020/3 with provisions on negotiable transport document (placed in square brackets).

6. The Russian Federation considered it was premature to prepare a consolidated version of the URLCoC before the Group of Experts would have agreed on the scope of URL.

7. While ECE/TRANS/SC.2/GEURL/2021/3 provides provisions from preamble through substantive CoC provisions to final provisions which together form a draft URLCoC Convention, unfortunately the Group of Experts was not able to fully agree on these provisions and thus finalise them.

8. This is due to the fact that, despite much effort invested by all participating experts, the Group of Experts was not able to overcome a difference in approaches to URL, as follows:

- Approach A – creation of unified rules for rail transport on Euro-Asian corridors in areas where they are urgently needed by the industry – i.e. the contract of carriage – while leaving unaffected the two existing rail organisations and the legal rules (in particular CIM and SMGS) applicable for transports of goods within their respective territories (interface law); ECE/TRANS/SC.2/GEURL/2021/3 contains legal regime for the contract for international carriage of goods by rail that is considered to serve its purpose of interface law. It could be formally adopted as a convention rapidly and would then facilitate carriage of goods on Euro-Asian corridors responding to the needs of both the rail carriers and the relevant industry; and

- Approach B – creation of a single set of unified legal rules for any cross-border rail transport in the Euro-Asian area replacing the existing systems of CIM and SMGS and only being put in force after all annexes (e.g. infrastructure, rolling stock, wagon law, transport of dangerous goods, etc.) have been negotiated and adopted. The industry does not have an urgent demand in the third legal regime, as CIM/SMGS consignment note provides seamless railway deliveries. ECE/TRANS/SC.2/GEURL/2021/3 does not correspond to this approach. Also, the text of the legal regime as contained in ECE/TRANS/SC.2/GEURL/2021/3 would require changes to Article 1 as well as several other Articles as indicated in ECE/TRANS/SC.2/GEURL/2020/5.

9. If approach A was followed, URLCoC Convention would have been produced based on ECE/TRANS/SC.2/GEURL/2021/3 to serve as an interface international law for immediate application on an opt-in basis for carriage of goods by rail on the Euro-Asian transport corridors by its Contracting Parties, leaving the COTIF/CIM Convention and the SMGS Agreement unaffected.

10. If approach B was followed, URL as a single set of legal rules for Euro-Asian rail transport operations could be developed which would replace CIM and SMGS upon their adoption. However, that would have been outside the Terms of Reference of the Group of Experts which, apart from finalizing a Contract of Carriage convention, requests the Group only to identify other issues relevant to international rail freight traffic.

11. In view of the above, the Group of Experts invites SC.2 to take stock of the two approaches.

12. When doing so, the Group of Experts notes that SC.2 may consider requesting its secretariat to hold further consultations on the URL initiative with other relevant rail organisations (Intergovernmental Organization for International Carriage by Rail (OTIF) and Organisation for Co-operation between Railways (OSJD)) and other relevant intergovernmental bodies (e.g. the Working Party on Transport Trends and Economics (WP.5) or the Working Party on Intermodal Transport and Logistics (WP.24)).

13. SC.2 is further invited to consider ECE/TRANS/SC.2/GEURL/2021/3 as provided in annex 1, Informal document SC.2/GEURL No.1 (2021) provided in annex 2, ECE/TRANS/SC.2/GEURL/2020/4 provided in annex 3, ECE/TRANS/SC.2/GEURL/2020/5 provided in annex 4 as well as ECE/TRANS/SC.2/GEURL/2019/18 provided in annex 5.

B. Task (d)

14. In discussion on Task (d), during the mandate extension, the Group of Experts considered: (i) ECE/TRANS/SC.2/GEURL/2020/6 which contemplates on the needs for the unified railway provisions and defines a number of questions to reflect upon, and (ii) section G of Informal document SC.2/GEURL No.1 (2021) which summarizes and consolidates experts inputs on questions relevant to identification of other relevant issues related to international rail freight transport to be added to provisions developed under Task (c).

15. The Group of Experts was not able to identify in a unanimous way any specific issue on which additional provisions would need to be added to the provisions developed under Task (c). This is also due to the fact that the question depends on the approach followed: The interface law approach as reflected in ECE/TRANS/SC.2/GEURL/2021/3 provides for a legal regime that remains subject to the existing provisions of public law (such as e.g. infrastructure law). As a consequence, there would be no need to harmonise those additional issues (Article 4 of URLCoC). Following the approach of the Russian Federation, that suggests a complete replacement of CIM and SMGS, the question of harmonisation of additional provisions could become relevant.

16. At the same time, the Group of Experts considered that inputs prepared in support of its deliberations – ECE/TRANS/SC.2/GEURL/2020/6, section G of Informal document SC.2/GEURL No.1 (2021), but also earlier inputs such as ECE/TRANS/SC.2/GEURL/2019/5 and ECE/TRANS/SC.2/GEURL/2019/12 can be helpful

in identifying, if deemed appropriate, issues or areas for which uniform legal provisions could be possibly developed, however separately from CoC provisions, for facilitating Euro-Asian transport operations.

17. In this regard, the Group of Experts invites SC.2 to analyse those inputs and examine if any specific work aimed at preparation of specific legal provisions, or any specific research should be undertaken. If such work or research appears desirable, SC.2 should consider establishing a new expert group.

18. ECE/TRANS/SC.2/GEURL/2020/6 is provided in annex 6, section G of Informal document SC.2/GEURL No.1 (2021) is provided in annex 2.

C. Final considerations

19. The Group of Experts, after having held its two additional meetings in September 2020 and January 2021, deems its mandate concluded.

20. SC.2 may find further information on the work of the Group of Experts in the reports of the sessions as follows: ECE/TRANS/SC.2/GEURL/2020/2, and ECE/TRANS/SC.2/GEURL/2021/2.

Annex I

Convention on the contract for international carriage of goods by rail as a first Convention of a system of Unified Railway Law Conventions (ECE/TRANS/SC.2/GEURL/2021/3)

This document was prepared by the secretariat at the request of the Group of Experts further to its decision at the twenty-second session (ECE/TRANS/SC.2/GEURL/2020/2, 7 (a) (vii)-(viii)) and was tabled at the twenty-third session (Geneva, 13–15 January 2021).

This document merges the following earlier documents:

- ECE/TRANS/2016/15 with the draft relevant substantive legal provisions;
- ECE/TRANS/SC.2/GEURL/2019/15 with the modifications to Article 4 of ECE/TRANS/2016/15;
- ECE/TRANS/SC.2/GEURL/2019/10 with the draft preamble;
- ECE/TRANS/SC.2/GEURL/2019/11 with the draft final provisions;
- ECE/TRANS/SC.2/GEURL/2020/3 with provisions on negotiable transport document (inclusion in square brackets).

It can be consulted at <https://unece.org/sites/default/files/2020-12/ECE-TRANS-SC.2-GEURL-2021-3e.pdf>.

Annex II

Compilation of written inputs from experts (Informal document SC.2/GEURL No.1 (2021))

This document was tabled by the secretariat at the twenty-third session further to the fact that the Group of Experts, when deliberating during its twenty-second session on the changes proposed by the Russian Federation in ECE/TRANS/SC.2/GEURL/2020/5 to the draft Unified Railway Law (URL) provisions, had formulated a number of questions and agreed that experts should provide written inputs on these questions before the twenty-third session. These written inputs had been requested to aid discussion at the twenty-third session to agree changes for inclusion in the URL provisions.

It compiles answers to questions from experts from Germany, Russian Federation, Switzerland, European Commission, Deutsche Bahn AG, PKP CARGO S.A., CIT and International Federation of Freight Forwarders Associations (FIATA)

It can be consulted in English only at <https://unece.org/sites/default/files/2020-12/ECE-TRANS-SC2-GEURL-2021-id1e.pdf>.

Annex III

The work of the Group of Experts Towards Uniform Railway Law during its extended mandate (ECE/TRANS/SC.2/GEURL/2020/4)

This document was submitted to the twenty-second session by Germany. It proposes a consensus towards executing the mandate extension. It can be consulted at https://unece.org/fileadmin/DAM/trans/doc/2020/sc2/ECE-TRANS-SC.2-GEURL-2020-4e_clean_version.pdf.

Annex IV

Proposals by Russian Railways to amend the draft legal provisions for the carriage of goods in international rail traffic developed by the Group of Experts towards Unified Railway Law of the Economic Commission for Europe Inland Transport Committee (ECE/TRANS/SC.2/GEURL/2020/5)

This document was submitted to the twenty-second session by the Russian Federation. It provides specific alterations to the draft Unified Railway Law legal provisions on the contract of carriage provided in ECE/TRANS/2016/15. These alterations aim to address the concerns raised by the Russian Federation in ECE/TRANS/SC.2/GEURL/2019/18. It can be consulted at <https://unece.org/fileadmin/DAM/trans/doc/2020/sc2/ECE-TRANS-SC.2-GEURL-2020-5e.pdf>.

Annex V

Benchmarking of SMGS, CIM provisions and draft of provisions of legal status of carriage of cargo in international rail traffic (URL), developed within a group of experts of ITC UN ECE on unified railway law (ECE/TRANS/SC.2/GEURL/2019/18)

This document was submitted to the twenty-first session by the Russian Federation. It provides a benchmarking analysis carried by the Russian Railways of provisions of SMGS, CIM and URL. It can be consulted at <https://unece.org/DAM/trans/doc/2019/sc2/ECE-TRANS-SC.2-GEURL-2019-18e.pdf>.

Annex VI

Needs for unified railway provisions (ECE/TRANS/SC.2/GEURL/2020/6)

This document was prepared by the secretariat for the twenty-second session. It provides a brief analysis of the purposes of legal frameworks such as COTIF and SMGS on the use of wagons/rolling stock, and use of infrastructure, as well as pronounce the practices in rail carriage between Europe and Asia in view of technical differences in rail infrastructure. It finally raises points for a discussion on the needs for legislative unification in addition to the provisions on the contract of carriage for cargo by rail between COTIF and SMGS systems.

It was prepared to support the deliberations of the Group of Experts on issues relevant for international carriage of goods by railways whose legislative unification is crucial and justified to facilitate international carriage by railways between Europe and Asia, or between COTIF and SMGS areas.

It can be consulted at https://unece.org/fileadmin/DAM/trans/doc/2020/sc2/ECE-TRANS-SC.2-GEURL-2020-6_clean_version.pdf.