



Organisation intergouvernementale pour les transports internationaux ferroviaires
Zwischenstaatliche Organisation für den internationalen Eisenbahnverkehr
Intergovernmental Organisation for International Carriage by Rail

Groupe de travail d'experts juridiques
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EXTRACT

Inception paper on interfaces between customs and transport regulations

I. INTRODUCTION

1. The 2019-2021 Work Programme of the Working Group of Legal Experts includes the following item:

‘4. Interfaces between customs and transport regulations

Objective and scope of work. Article 6 § 7 of the CIM UR stipulates that in the case of carriage which takes place on the customs territory of the EU or the territory on which the common transit procedure is applied, each consignment must be accompanied by a consignment note satisfying the requirements of Article 7 of the CIM UR.

The Union Customs Code (UCC)¹, which entered into force on 30 October 2013, has been applicable since 1 May 2016. It is part of the modernisation of customs. Its essential objective in particular is to make all customs formalities paperless by 31 December 2020. The link between the CIM contract of carriage and the simplified transit procedure will disappear.

Activities:

- identify relevant stakeholders
- assess interfaces between customs and transport regulations and, if necessary, propose follow-up actions with regard to customs matters relating to the carriage of goods by rail.

Priority: 1 (to be included on the agenda of the 4th session).’

2. OTIF’s general aim to ‘*promote, improve and facilitate, in all respects, international traffic by rail*’ (Article 2 § 1 of COTIF) is formulated broadly, so in principle, it can be interpreted as encompassing customs issues to a certain extent, such as customs transit in particular. Nevertheless, in order to identify whether and to what extent customs issues, such as customs transit procedures, are included in the aim of the Organisation, it is necessary to have recourse to the preparatory work (‘*travaux préparatoires*’) of the Vilnius Protocol.
3. In 1996, the Central Office (the predecessor of the OTIF Secretariat) prepared a proposal for an appendix entitled ‘*Régime de transit douanier international pour les marchandises transportées par chemin de fer*’² (International customs transit regime for goods carried by rail), but this was not included in the Vilnius Protocol or even discussed in substance. Moreover, at the 4th session of the General Assembly (Athens, 8 – 11 September 1997) a clear majority of Member States were against the idea that OTIF should have competence, in substance, in the area of customs. However, customs issues were not excluded *in corpore*, but OTIF could deal with them to the extent necessary to implement its core competence.
4. In 2012, the Rail Facilitation Committee (RFC) discussed *inter alia* the impact of customs and other questions concerning border crossing procedures on international rail transport.

¹ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.

² For more details (French and German only), see Michel Burgmann, Directeur général de l’Office central, ‘Procédure simplifiée de transit douanier en trafic international ferroviaire - Appendice F à la COTIF : une chance pour toutes les entreprises de transport ferroviaire des Etats membres de l’OTIF’ / Michel Burgmann, Generaldirektor des Zentralamtes ‘Vereinfachtes Zolltransitverfahren im internationalen Eisenbahngüterverkehr - Anhang F zum COTIF: eine Chance für alle Eisenbahnunternehmen der OTIF Mitgliedstaaten’ in Bull. transp. int. 6/1998.

5. Document LAW-19052-GTEJ 2 entitled ‘Draft Decision on the monitoring and assessment of legal instruments (text as endorsed)’, Article 2 § 2 ‘Scope’, provides that *‘[t]he OTIF organs referred to in COTIF Article 13 §§ 1 and 2 or organs established by them shall be entitled to initiate monitoring and assessment of the application of a particular legal instrument within the sphere of their competence or specific provisions thereof. The Secretary General may initiate monitoring and assessment of any legal instrument.’*
6. Item 4 of the Work Programme largely concerns assessment of the application of specific provisions of the CIM UR.
7. Article 3 § 1 ‘Planning and prioritisation’ of document LAW-19052-GTEJ 2 provides that *‘[t]he Secretary General shall prepare an inception paper for each initiative to launch monitoring and assessment of a legal instrument.’*

II. GENERAL OVERVIEW ON THE INTERFACES BETWEEN THE CIM UR AND CUSTOMS RULES

8. This part describes the interfaces with customs formalities within the CIM UR.

A. Scope of the CIM UR

9. As is clear from the full title - ‘Uniform Rules Concerning the Contract of International Carriage of Goods by Rail’ - the CIM UR (Appendix B to the Convention) apply to contracts of carriage of goods by rail. Article 1 § 1 ‘Scope’ specifies which contracts of carriage of goods by rail are subject to the CIM UR.
10. Article 2 ‘Prescriptions of public law’ of the CIM UR makes clear that *‘[c]arriage to which these Uniform Rules apply shall remain subject to the prescriptions of public law, in particular the prescriptions relating to the carriage of dangerous goods as well as the prescriptions of customs law and those relating to the protection of animals.’* This provision is of a declaratory nature, as it is already unambiguously and clearly apparent from the wording of Article 1 ‘Scope’ of the CIM UR that the latter are limited to transport law, specifically contract law.
11. Based on the above, it should be concluded that customs procedures are not in the scope of the CIM UR. Even though the CIM UR is limited to the contract of carriage, the fact that international freight transport is subject to customs, immigration, veterinary and phytosanitary controls, etc. is taken into account.

B. Contract of carriage

12. The contract of international carriage of goods by rail is a consensual contract, so it arises from the mere consensus of the parties. Consequently, the contract is concluded even before the handing over of goods or completion of a consignment note. *‘The contract of carriage must be confirmed by a consignment note which accords with a uniform model. However, the absence, irregularity or loss of the consignment note shall not affect the existence or validity of the contract which shall remain subject to these Uniform Rules.’* (Article 6 § 2 of the CIM UR). This means that the consignment note is only documentary proof for the purpose of a contract of carriage.

C. Consignment note

Article 6 § 8 ‘Contract of carriage’ of the CIM UR stipulates that *‘[t]he international associations of carriers shall establish uniform model consignment notes in agreement with the customers’ international associations and the bodies having competence for customs*

matters in the Member States as well as any intergovernmental regional economic integration organisation having competence to adopt its own customs legislation.’ With regard to this provision, useful explanations are given in the Explanatory Report, in particular, that ‘[f]or practical reasons, however, and also in the interest of increased flexibility, [...] the responsibility for drawing up “uniform model consignment notes” [was left] to the international carrier’s associations [...]. These associations must come to agreement with the customers [...] associations and the authorities which are competent in customs matters, including the EU departments with responsibility for customs questions. In this context, “agreement” does not mean a formal procedure of approval or acceptance. The customs authorities, however, are free at any time to reject model consignment notes as customs documents. The taking into account of clients’ wishes is in the direct interest of the rail transport companies.’

13. It is worth mentioning that in preparation of the ‘Vilnius Protocol’, the Revision Committee considered in-depth whether the model consignment note should be developed by OTIF or alternatively by international associations of carriers. The latter regulatory approach was chosen because it was a natural consequence of defining an obligation for the associations to coordinate model consignment notes with the customs authorities.
14. In application of the above provisions, the International Rail Transport Committee (CIT) (an association of railway undertakings and shipping companies) developed and adopted a CIM consignment note.
15. Article 7 ‘Wording of the consignment note’ of the CIM UR provides a non-exhaustive list of particulars in the consignment note. In §§ 1 (in all cases) and 2 (where applicable) mandatory particulars are listed, in particular, ‘*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.*’ ‘*However, non-compliance with these provisions does not automatically and in every case result in nullity, but possibly the legal consequences as provided in Article 8 [‘Responsibility for particulars entered on the consignment note’]*’ (Explanatory Report, Article 7). Lastly, Article 7 § 3 allows the parties to the contract a large degree of freedom, stating that ‘*[t]he parties to the contract may enter on the consignment note any other particulars they consider useful.*’
16. CIT has made extensive use of the possibility of including in the consignment note all the other particulars considered useful either by its members or by the bodies having competence for customs matters.

D. Other customs-related provisions

17. Even though the CIM UR do not regulate customs procedures, it does take them into account in regulating the relationship between the parties to the contract of carriage.
18. Article 10 § 1 ‘Payment of costs’ of the CIM UR stipulates that ‘*[u]nless otherwise agreed between the consignor and the carrier, the costs (the carriage charge, incidental costs, **customs duties** and other costs incurred from the time of the conclusion of the contract to the time of delivery) shall be paid by the consignor*’ (emphasis added).
19. Article 15 ‘Completion of administrative formalities’ of the CIM UR reads as follows:
 - § 1 *With a view to the completion of the formalities required by customs and other administrative authorities, to be completed before delivery of the goods, the consignor must attach the necessary documents to the consignment note or make them available to the carrier and furnish him with all the requisite information.*

- § 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 loss or damage resulting from the absence or insufficiency of, or any irregularity in, such documents and information, save in the case of fault of the carrier.*
- § 3 *The carrier shall be liable for any consequences arising from the loss or misuse of the documents referred to in the consignment note and accompanying it or deposited with the carrier, unless the loss of the documents or the loss or damage caused by the misuse of the documents has been caused by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent. Nevertheless any compensation payable shall not exceed that provided for in the event of loss of the goods.*
- § 4 *The consignor, by so indicating in the consignment note, or the consignee by giving orders as provided for in Article 18 § 3 may ask*
- a) *to be present himself or to be represented by an agent when the customs or other administrative formalities are carried out, for the purpose of furnishing any information or explanation required;*
 - b) *to complete the customs or other administrative formalities himself or to have them completed by an agent, in so far as the laws and prescriptions of the State in which they are to be carried out so permit;*
 - c) *to pay customs duties and other charges, when he or his agent is present at or completes the customs or other administrative formalities, in so far as the laws and prescriptions of the State in which they are carried out permit such payment.*

In such circumstances neither the consignor, nor the consignee who has the right of disposal, nor the agent of either may take possession of the goods.

- § 5 *If, for the completion of the customs or other administrative formalities, the consignor has designated a place where the prescriptions in force do not permit their completion, or if he has stipulated for the purpose any other procedure which cannot be followed, the carrier shall act in the manner which appears to him to be the most favourable to the interests of the person entitled and shall inform the consignor of the measures taken.*
- § 6 *If the consignor has undertaken to pay customs duties, the carrier shall have the choice of completing customs formalities either in transit or at the destination place.*
- § 7 *However, the carrier may proceed in accordance with § 5 if the consignee has not taken possession of the consignment note within the period fixed by the prescriptions in force at the destination place.*
- § 8 *The consignor must comply with the prescriptions of customs or other administrative authorities with respect to the packing and sheeting of the goods. If the consignor has not packed or sheeted the goods in accordance with those prescriptions the carrier shall be entitled to do so; the resulting cost shall be charged against the goods.'*
20. Article 36 'Loss of right to invoke the limits of liability' of the CIM UR states the following:

'The limits of liability provided for in Article 15 § 3, Article 19 §§ 6 and 7, Article 30 and Articles 32 to 35 shall not apply if it is proved that the loss or damage results from an act

or omission, which the carrier has committed either with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.'

21. Article 17 § 1 and § 2, letter a), 'Delivery' of the CIM UR states the following:

'§ 1 The carrier must hand over the consignment note and deliver the goods to the consignee at the place designated for delivery against receipt and payment of the amounts due according to the contract of carriage.'

§ 2 It shall be equivalent to delivery to the consignee if, in accordance with the prescriptions in force at the place of destination,

- a) the goods have been handed over to customs or octroi authorities at their premises or warehouses, when these are not subject to the carrier's supervision;'*

22. Article 30 § 4 'Compensation for loss' of the CIM UR reads as follows:

'The carrier must, in addition [to compensation for total or partial loss of the goods], refund the carriage charge, customs duties already paid and other sums paid in relation to the carriage of the goods lost except excise duties for goods carried under a procedure suspending those duties.'

E. Customs transit procedures

23. Article 6 § 7 'Contract of carriage' of the CIM UR provides that *'[i]n the case of carriage which takes place on the customs territory of the European Union or the territory on which the common transit procedure is applied, each consignment must be accompanied by a consignment note satisfying the requirements of Article 7.'*

24. The Explanatory Report explains that *'§ 7 includes a provision desired by the European Commission, which does not directly concern transport law but constitutes a provision of customs law [...]. The objective of this provision is to guarantee, also interest of the railways, that the simplified Community/Common customs transit procedure of the EC/EFTA can continue to be applied.'*

25. *'The Union transit procedure is used for customs transit operations between the EU Member States (and Andorra and San Marino) and is in general applicable to the movement of non-Union goods for which customs duties and other charges at import are at stake, and of Union goods, which, between their point of departure and point of destination in the EU, have to pass through the territory of a third country. [...] The common transit procedure is used for the movement of goods between the EU Member States, the EFTA countries (Iceland, Norway, Liechtenstein and Switzerland), Turkey (since 1 December 2012), the Republic of North Macedonia (since 1 July 2015) and Serbia (since 1 February 2016). The operation of the common transit procedure with the UK is ensured as the UK has deposited its instrument of accession on 30 January 2019 with the Secretariat of the Council of the EU. The procedure is based on the Convention of 20 May 1987 on a common transit procedure. The rules are effectively identical to those of the Union transit.'*³

26. In accordance with the Community Customs Code and its implementing provisions⁴, railway undertakings benefited from a simplified transit regime for goods carried by rail or

³ See Union and Common Transit ([the French version](#), [the German version](#) and [the English version](#))

⁴ See Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

in large containers. Formalities under the common/Community transit procedure were therefore simplified for the carriage of goods by railway companies with a CIM consignment note. The CIM consignment note was therefore a valid Community transit declaration.

27. The Union Customs Code (UCC)⁵, which entered into force on 30 October 2013, has been applicable since 1 May 2016. It is part of the modernisation of customs. Its essential objective in particular is to make all customs formalities paperless.
28. It was on this basis that on 17 December 2015, the European Commission adopted a regulation concerning the transitional measures for certain provisions of the UCC where the IT systems are not yet operational⁶. In accordance with this regulation, and until the new Computerised Transit System (NCTS) is upgraded, the EU's paper-based transit regime applies, particularly to goods carried by rail, and the paper consignment note continues to be used as a transit declaration.
29. The NCTS is an electronic transit system (customs) based on the exchange of electronic messages. In particular, these messages replace the various paper documents. Electronic messages are exchanged at three levels:
 - between economic operators and the customs authorities (“external area”),
 - between the customs offices of a country (“national area”),
 - between the national customs administrations and between these administrations and the European Commission (“common area”).
30. Commission Implementing Decision (EU) 2019/2151 establishing the work programme relating to the development and deployment of the electronic systems provided for in the Union Customs Code reads as follows:

‘UCC New Computerised Transit System (NCTS) upgrade. The aim of this project is to align the existing trans-European NCTS system with the new UCC. Component 1—‘NCTS Phase 5’: the aim of this phase is to align the NCTS system with the new UCC requirements except in safety and security data elements in transit customs declarations of goods brought into the customs territory of the Union. [...] Start date of the deployment window of the electronic system [i.e. the earliest date for Member States to start operations] [is] 1.3.2021. End date of the deployment window of the electronic system = End date of the transitional period [i.e. the last date by which the system should be fully deployed and the last date by which all economic operators should be migrated] [is] 1.12.2023’.

31. Before 1 May 2016, the NCTS already applied to all common/Community transit operations, whichever mode of transport was concerned, with the exception of the simplified transit procedures, for which the transit declaration was provided by a commercial document (the waybill or a consignment note, for example, in the simplified “air”, “sea” or “railway” procedures).
32. It should be pointed out that Article 233, paragraph 4, letter e) of the UCC stipulates that:

‘upon application, the customs authorities may authorise any of the following simplifications regarding the placing of goods under the Union transit procedure or the end of that procedure: [...]’

⁵ See footnote 1

⁶ Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards transitional rules for certain provisions of the Union Customs Code where the electronic systems concerned are not yet operational and amending Delegated Regulation (EU) 2015/2446.

(e) *the use of an electronic transport document as customs declaration to place goods under the Union transit procedure, provided it contains the particulars of such declaration and those particulars are available to the customs authorities at departure and at destination to allow the customs supervision of the goods and the discharge of the procedure*'.

33. This provision of the UCC therefore prescribes the application of simplified (customs) transit procedures which nevertheless involve using electronic transport documents.
34. The current EU customs legislation limits the use of electronic transport documents as a transit customs declaration to transport by sea and air. Transport by rail is unequivocally excluded.
35. Against this background, the link between the CIM contract of carriage and the simplified transit procedure disappears. It is planned to deploy the NCTS5, along with the attendant end to paper-based transit, between 2021 and 2023. The rail transit system will have to be adapted to the NTCS procedure and will in particular have to find relevant interfaces with its own digital information system.

III. INTERNATIONAL LEGAL FRAMEWORK

36. Customs procedures are regulated at national, regional and global international levels. A number of international organisations have adopted legal instruments applicable to customs procedures. These instruments take different forms and vary in terms of their legal force. At global international level, of particular importance are the World Customs Organization (WCO), the World Trade Organization (WTO) and the United Nations Economic Commission for Europe (UNECE)⁷ and their instruments, for instance:
 - WTO agreements ([the French version](#) and [the English version](#));
 - WCO International Convention on the simplification and harmonization of Customs procedures (as amended), known as the Revised Kyoto Convention ([the French version](#) and [the English version](#));
 - UNECE Customs Convention on the International Transport of Goods under Cover of TIR Carnets (1975) ([the English – French – Russian version](#));
 - UNECE International Convention on the Harmonization of Frontier Controls of Goods (1982) ([the French version](#) and [the English version](#)), particularly annex 9, which concerns the facilitation of border crossing in the international carriage of goods by rail. Article 9 thereof stipulates that: 'The Contracting Parties may use, instead of the other shipping documents currently stipulated by international treaties, the CIM/SMGS railway consignment note, which at the same time could be a customs document'.
37. There is no global international transit procedure applicable to railway transport. Recently, stakeholders have on various occasions outlined the need for an international convention on railway transit procedures. However, the World Customs Organization (WCO) has developed and adopted a number of legal instruments to support international transit:
 - the International Convention on the simplification and harmonization of Customs procedures (as amended), known as the Revised Kyoto Convention, in particular,

⁷ It is also worth mentioning that the UNECE adopted the 'International Convention on International Customs Transit Procedures for the Carriage of Goods by Rail under Cover of SMGS Consignment Notes' in 2006. However, only one state signed it and there have been no ratifications or definitive signatures.

Chapter 1 ‘Customs transit’ of Specific Annex E ([the French version](#) and [the English version](#));

- Transit Handbook ([the French version](#) and [the English version](#));
 - Transit Guidelines ([the French version](#) and [the English version](#));
 - Transit Compendium with [WCO] Members’ case studies.
38. WCO launched a railway project in 2019 and plan to issue guidelines on railway transportation with harmonised datasets in 2021, followed by capacity building activities in 2021 -2022. The main objectives of the railway project are to:
- Collect practical experience in railway transit clearance;
 - Conduct an exercise on the standardisation of necessary data elements for Customs transit declarations and advance cargo declarations based on the WCO data model;
 - Provide best practices to support Customs administrations to carry out the necessary checks effectively for international rail transport, including the utilisation of advanced technologies;
 - Develop relevant WCO instruments/tools to standardise and harmonise members’ railway procedures in order to facilitate railway transport.
39. It should be noted that on 10 July 2017, OTIF and WCO signed a Memorandum of Understanding (...).

IV. CONCLUSIONS AND FOLLOW-UP

40. In accordance with the aim of the Organisation, OTIF does not have competence, in substance, in the regulation of customs procedures. However, OTIF should cooperate with competent international organisations, e.g. WCO and UNECE (WP.30), which have competence in the area to harmonise and improve railway transit procedures.
41. Taking into account developments in the EU’s customs legislation, Article 6 § 7 ‘Contract of carriage’ related to the union/common transit procedure should be deleted or at least modified.
42. In the CIM UR there are a number of provisions that take customs procedures into account, in particular Article 2 ‘Prescriptions of public law’, Article 6 § 8 ‘Contract of carriage’, Article 7 ‘Wording of the consignment note’, Article 10 § 1 ‘Payment of costs’, Article 15 ‘Completion of administrative formalities’, Article 36 ‘Loss of right to invoke the limits of liability’, Article 17 § 1 and § 2, letter a), ‘Delivery’, Article 30 § 4 ‘Compensation for loss’. The Secretariat is not aware of any need to review the above provisions. As the railway undertakings are directly concerned, in accordance with Article 5 § 1 ‘Data Collection’, document LAW-19052-GTEJ 2 ‘Different quantitative and qualitative data sources, **including stakeholders’ opinions**’, should be used.