



**Groupe de travail "RU CIM"
Arbeitsgruppe „ER CIM“
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**Proposal to amend Article 6 of CIM and the Explanatory Report concerning Article 13
CIM**

Document submitted by Belgium

Summary: Belgium agrees with the proposal to amend Article 6a of CIM. However, it proposes a minor amendment to the Explanatory Report concerning Article 6a in order to refer to RID. With regard to the amendment to the Explanatory Report concerning Article 13 CIM, Belgium confirms its position that it rejects this amendment.

ARTICLE 6a

Introduction

At the COTIF CIM UR working group on 9 December 2014, the attached document entitled "Partial revision of Appendix B (CIM UR)" will be discussed, and in particular the amendment to Art. 6 CIM concerning the format of the consignment note.

The proposal is to replace the current 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."



with a new Article 6a:

"Form of the consignment note

§ 1 *The consignment note and accompanying documents shall be established in the form of electronic data registration.*

§ 2 *The procedure agreed between the parties to the contract of carriage for establishing the electronic consignment note and the accompanying electronic documents shall ensure the integrity and reliability of the information they contain from the time they are established.*

§ 3 *The procedure agreed between the parties to the contract of carriage for filling out or amending the electronic consignment note shall enable identification of the amendments made.*

It shall also enable the original information contained in the electronic consignment note to be kept.

§ 4 *The electronic consignment note shall be authenticated.*

Authentication may be carried out by means of an electronic signature or another appropriate method.

§ 5 *The parties to the contract of carriage may agree to establish the consignment note and the accompanying documents in paper form."*

Belgium's position

Following consultation with the Belgian rail sector, **Belgium signals its agreement with the wording proposed for Article 6a.**

However, Belgium reaffirms the need to maintain § 5 of Article 6a concerning the possibility available to the parties to the contract of carriage of using a paper consignment note.

However, with regard to document CIM 1/2 Add.1, Belgium would like to make a proposal to amend the Explanatory Report concerning Article 6a § 5 in order to include a reference to RID.

RID 5.4.0.2 stipulates that:

*"The use of electronic data processing (EDP) or electronic data interchange (EDI) techniques as an aid to or instead of paper documentation is permitted, provided that **the procedures used** for the capture, storage and processing of electronic[s] data **meet the legal requirements as regards the evidential value and availability of data during transport in a manner at least equivalent to that of paper documentation.**"*

It would seem important to ensure compatibility between the requirement of RID concerning the availability of data during transport and the new provision of Article 6a of the CIM UR, which prescribes the use of the electronic consignment note.

Belgium therefore proposes the following addition to the Explanatory Report on Article 6a § 5:

"In no case does Article 6a take precedence over the provisions of public law which impose paper procedures. This is particularly the case for the accompanying documents, such as customs documents and sanitary and phytosanitary certificates (SPS). In addition, not all the documents accompanying an electronic consignment note are necessarily paperless. In addition, this Article is without prejudice to RID 5.4.0.2, which prescribes the availability of data during transport."

ARTICLE 13

Introduction

Document CIM 1/2 includes a proposal to amend the Explanatory Report on Article 13 CIM.

The proposal is to insert a new paragraph 6 in the Explanatory Report, as follows:

"6. In § 2, the consignor's responsibility in terms of loading is to ensure that his activities do not compromise rail safety in normal conditions of transport. When complying with its safety obligations in accordance with Articles 6 § 2 and 15 § 3 of the current version of ATMF or the safety management system in EU law, the railway undertaking must ensure that it is able to detect any obvious loading anomalies."

The justification for this amendment is based on the desire to clarify the scope of the consignor's responsibility for the consequences of its own defective loading and to explain the interface between this responsibility and the railway undertaking's obligation to ensure the safe operation of the train.

Belgium's position

Belgium rejects the proposed amendment of the Explanatory Report on Article 13 § 2 CIM, because the impact of this proposal would be to place more responsibility on carriers by making them ensure that they are "able to detect any obvious loading anomalies".

The principle is that for a wagon, the entity responsible for loading is the consignor, who assumes all the consequences of defective loading, not the carrier.

In Belgium's view, the effect of this addition to the Explanatory Report would therefore be to impose an interpretation which does not reflect the wording of Article 13 CIM itself, and also to create legal uncertainty owing to the risk that if an accident occurs, the entity responsible for bad loading will try to escape responsibility by demonstrating that the railway undertaking should have detected an obvious loading anomaly. As the latter concept is not even defined, the legal uncertainty remains.