



ORGANISATION INTERGOUVERNEMENTALE POUR LES TRANSPORTS INTERNATIONAUX FERROVIAIRES
ZWISCHENSTAATLICHE ORGANISATION FÜR DEN INTERNATIONALEN EISENBahnVERKEHR
INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL CARRIAGE BY RAIL

Working group “CIM UR”

1st Session

Report

Berne, 9 December 2014

AGENDA

1. Opening of the session
2. Election of the Chairman
3. Partial revision of Appendix B (CIM UR)
4. Any other business
5. Preliminary considerations on adapting the maximum amounts of compensation
6. Date and venue of the next session

FOREWORD

The 25th session of the Revision Committee held in Berne on 25 and 26 June 2014 decided to set up a Revision Committee working group to prepare a revision of the CIM UR with particular attention to reasonable provisions to be put in place concerning the electronic consignment note.

The working group's proposals would be approved by the Revision Committee using the written procedure.

DISCUSSIONS OF THE 1ST SESSION OF THE CIM UR WORKING GROUP SET UP BY THE 25TH SESSION OF THE REVISION COMMITTEE

Chairman: OTIF, Mr Carlos del Olmo (head of the legal service)

1. Opening of the session

The **SG** opened the session and welcomed the delegations from States, the representatives of the European Commission and the representatives of the international associations.

In accordance with Article 20 of the Revision Committee's Rules of Procedure (RP), the head of the legal service noted that for this session of the working group, the quorum was not reached, so decisions would be taken on an indicative basis.

In fact, only four States were represented at the meeting, whereas at least 22 States had to be present if decisions were to be validly adopted.

DE objected that there was no quorum in the working group and that it could not therefore take any decisions.

2. Election of Chairman

The **SG** invited the delegates of those States that were participating in the meeting to elect a chairman for this session. The delegates made no proposals, so the **SG** proposed that **Mr del Olmo**, the head of the legal service, should chair this session.

The representatives of the Member States and **Mr del Olmo** agreed.

Mr del Olmo took the chair.

3. Partial revision of Appendix B (CIM UR)

Delegates had received the following documents:

- Doc. CIM 1/2 – Partial revision of Appendix B (CIM UR)
- Doc. CIM 1/2 Add.1 – Partial revision of Appendix B (CIM UR)
Explanatory document and suggestions for additions to the Explanatory Report
- Meeting room doc. CIM 1 – Document from Belgium on the "Proposal to amend Art. 6 of CIM and the part of the Explanatory Report concerning Article 13 CIM"
- Doc. CIM 1/4 – Position of the international organisations and associations concerned

- Doc. CR 25/5 Add.2 – Partial revision of Appendix B (CIM UR) – Suggestions from the International Association of Tariff Specialists (IVT)

On the basis of document CIM 1/2, the Chairman gave a presentation summarising the proposals to amend certain Articles of the CIM UR.

a. Article 6 (Contract of carriage)

The amendment consisted of replacing the term "European Community" with "European Union" in Article 6 § 7.

The Member States and professional associations approved this amendment.

b. Article 6a (Form of the consignment note)

Following the Secretariat's presentations and comments on the proposal to amend Article 6a, **RS** informed the meeting that its national bodies were currently drafting a new railway law which would incorporate the principles of Article 6a and that it therefore fully supported the proposed amendment.

The **European Commission** pointed out that at the time of the 25th Revision Committee in June 2014, the European Union had not yet been able to take a decision on this matter, which it considered to be premature and perhaps not in line with Community law, particularly customs law. Now that some working sessions had taken place between the European Commission, the stakeholders and OTIF, the wording of Article 6a and the additions to the Explanatory Report satisfied the requirements of customs bodies and the other European Commission bodies.

With regard to Article 6a, **DE** had some reservations, which **AT** supported. There was no need for the amendments, because Article 6 § 9 already provided the possibility of using the electronic consignment note. The principle of functional equivalence could not be abandoned. An electronic document that did not perform the functions of the consignment note, particularly as evidence, for retention and as a receipt, could not be described as a consignment note. It was premature to prescribe the electronic procedure as the rule until there was some progress on a precise definition of the technical procedures (electronic interoperability). The current relationship between the rule and the exception should not be reversed so long as electronic data registration did not perform the functions of a consignment note and Article 6a § 2 left it up to the parties to agree the procedure for such registration. In this respect, Article 6a § 2 contradicted Article 6a § 5. There was no fallback provision in the event that the parties have not agreed a procedure for electronic data registration. As Article 6a did not define a standard procedure, the paper form would have to remain the norm if the parties fail to reach agreement.

CIT noted that recently, technical solutions had advanced greatly among railway carriers and within ERA. Rail transport undertakings supported this amendment for operational and technical reasons and to take account of customs law. They were asking the Member States of OTIF to support it as well.

IVT was of the view that it was important to do what was necessary to ensure that the entries in the electronic document were the same as in the paper document.

The **Secretariat** thought Article 6a was clear: it was a case of supplementary law, which had to conform to the provisions of public law in all cases. The **Secretariat** also replied to **DE** on the question of the principle of functional equivalence and the desire to give the electronic consignment note precedence. It emphasised the fact that, like the paper consignment note, the international carrier associations could take on the definition of the technical procedures, as provided for in Article 6 § 8.

DE underlined that it was not against progress or electronic documents, and both had in any case been driven forward on the basis of Article 6 § 9. As far as **DE** was concerned, the principle of functional equivalence set out in that Article should not be changed.

Once again, **RS** supported the proposed amendment. **BE** also supported this amendment, as explained in meeting room document 1.

DE proposed to take over the rule on functional equivalence from Article 6 § 9 into Article 6a.

CIT proposed two variants with additions to Article 6a § 1 and 2 to take account of functional equivalence and to give priority to paragraph 5 of the same Article. The **Secretariat** supported this suggestion. **DE** and **AT** explained that the specific proposal had first to be examined in detail before a position could be given.

CIT proposed to translate the two suggestions and send them to all the OTIF Member States.

The **European Commission** did not think that including functional equivalence would cause a problem for the EU or for EU law.

The **Secretariat** proposed that the principle of functional equivalence be retained and that the working group should apply a tacit approval procedure: if Member States did not make their views known, the provision was deemed to be acceptable.

DE said that simply including functional equivalence was not sufficient. It proposed that the essential technical requirements be defined in the text.

The **Secretariat** and **CIT** replied that in their view, these matters should not be dealt with explicitly in the CIM and that the provisions of Article 6 § 8 were sufficient.

DE still had reservations in terms of the wording of Article 6a § 5, according to which it was left up to the parties to decide the procedure. If no such decision were taken, there would be a loophole in the regulations.

The **SG** of OTIF settled the matter by saying that the Secretariat would look at the issue of functional equivalence and note **DE**'s reservations. He asked the Member States if they wished the working group to hold another session on this issue or whether a written procedure would suffice.

DE maintained that the amendment still seemed premature and that it still reserved the right to propose further amendments. Another session of the working group would be necessary in order to have as broad a discussion as possible, which would not be possible in a written procedure.

Consequently, it was concluded that OTIF would propose new wording for Article 6a after consulting the stakeholders and those Member States that were most interested, so that the Member States and stakeholders could give their views at another session of the working group. The timetable for these future steps is set out in point 5.

c. Article 18 and 19:

The **head of the legal service** introduced and explained to participants the proposed amendment, which was to delete the right of disposal and replace it with the possibility of amending the contract of carriage.

DE had some reservations on the amendments being proposed. There was no need to amend the title, as the term "right to dispose of the goods" was common in practice. The amendment in § 1 would not create more legal clarity and would again move away from the terms used in road transport. In the amendment to § 3, it would have to be made clear how this would work in practice in view of Article 19 § 1 (produce the duplicate of the consignment note), and whether the consignor should also retain the right of disposal if the consignment enters the territory of a transit country.

Once again, the **Chairman** and the **Secretariat** emphasised the relevance of this amendment, which had been proposed in response to a request that transport undertakings had been making for a long time.

RS was in favour of the new proposed wording. **CIT** also supported this amendment.

IVT agreed that it was at the destination that the buyer could have the goods at his disposal. It was not possible to reach a consensus on this amendment, which will be discussed again at the next session.

d. Article 22

According to information from the Chairman, the amendment being proposed was to replace the word "consignor" in Article 22 § 6 with the term "person entitled", as this change, which had been requested by transport undertakings, covered much better their method of work when there were circumstances preventing carriage or delivery.

For **DE**, replacing "consignor" by "person entitled" on the basis of the proposed amendment to Article 18 gave rise to new problems. **DE** asked in particular what would happen if there were circumstances preventing carriage to the territory of the country of destination: with "the person entitled", the goods would have to be "returned" to the consignee, not to the consignor, despite the existence of circumstances preventing delivery.

CIT explained that this issue was already resolved by Article 20 and that it is the carrier who decides what to do.

DE had some reservations about this new wording, as it believed there could be some contradictions with Articles 20 and 21, which refer to the consignor and consignee and not to the person entitled.

CIT and the **Secretariat** again supported the amendment and agreed with expanding the scope so as not to return the goods exclusively to the consignor, as the concept of the person entitled was more general.

It was not possible to reach a consensus on this amendment, which will be discussed again at the next session.

e. Article 42

The **Chairman** introduced the proposed amendment to Article 42. A report must be supplied free of charge to the person entitled in the event of damage, etc., and it is logical and relevant that if Article 6a were to be adopted, the report should also be drawn up in the form of electronic data registration.

DE expressed reservations for the same reasons as for Article 6a; here too, there were no rules on the requirements for electronic data registration and the time and type of transmission. Above all, if it were not ensured that subsequent modifications are impossible, the significance of the report would be reduced when assessing the evidence in court cases. The question of amending Article 6a would have to be resolved before starting the discussion on the proposed amendment. **IVT** and **AT** agreed with **DE**.

CIT was in favour of modernisation and was concerned about the future of transport undertakings, and therefore supported this proposal. The question of proof should not be confused with whether or not this proposal was necessary.

The **Secretary General** settled the matter by proposing to include functional equivalence in Article 6a (Form of the consignment note) in order to reach a consensus.

For the Explanatory Report

f. Article 6 § 2, Article 6a § 5 and Articles 21, 43 and 44 of CIM

As there was no consensus on the proposals to amend the Articles referring to the electronic consignment note, the **Secretary General** did not think these additions to the Explanatory Report should be dealt with.

The **Chairman** read out the comments from BE (meeting room doc. 1), so that they could be interpreted into the other working languages. BE agreed with all the amendments proposed by the Secretariat. In Article 6a § 5 of the Explanatory Report, BE wished to refer to RID and to point out that this Appendix imposed the obligation to be in possession of the data during carriage.

DE and **AT** explained that the specific proposal had first to be examined in detail before a position could be given.

The **Chairman** informed the participants of the additions to Articles 21, 43 and 44 of the Explanatory Report.

DE and **AT** expressed the same reservations as for Article 6a.

g. Proposed addition to the Explanatory Report concerning Article 13 of the CIM UR.

The **Secretary General** introduced this proposal and pointed out that it was a consequence of the issues dealt with at the meetings of the CUV working group in 2014. The question that **CER** had raised was what the consignor's responsibility is in terms of loading and what the transport undertaking's responsibility is in terms of checking the load, in order to determine responsibility for ensuring that the wagon is properly loaded.

DE and **AT** expressed reservations against this amendment, as it was not necessary to include such an addition: transport undertakings were in charge of operational safety, not consignors. Like **CIT**, **BE** (meeting room document 1) did not agree with the proposed addition.

It was not possible to reach a consensus on this amendment, which will be discussed again at the next session.

Before concluding this agenda item, the **Chairman** introduced the document with IVT's suggestions for the 25th session of the Revision Committee. None of the Member States supported these suggestions.

4. Any other business

There were no proposals for this item.

5. Preliminary considerations on adapting the maximum amounts of compensation

The **Secretary General** introduced document CIM 1/3 dated 30.9.2014. The **Secretary General** also presented tables showing how the SDR had developed since the adoption of the Vilnius Protocol and the cumulative rates of inflation in the Eurozone from 1999 to 2014. According to these calculations, the amount of compensation would have increased by 20% between 1999 and 2014 if an index-linking clause had been included. The Secretary General was not in favour of an amendment, given that other conventions for other modes of transport do not contain an index-linking requirement either.

DE and **AT** were of the view that the Montreal Convention could be taken as a basis and that there should be regular, but moderate increases, increasing from 17 SDR to 19 SDR, for example, and avoiding drastic variations.

GB (meeting room document 2) thought the limits of liability in the CIM UR should be aligned more closely with those of CMR.

The **Secretary General** emphasised the fact that he did not intend to amend the maximum amounts of compensation straight away. The aim of the presentation was merely to demonstrate the effect that an index-linking clause would have had since 1999, i.e. an increase of 20%. In his view, this was a general subject which should be dealt with in all the COTIF Appendices that prescribed limits of liability (CIM, CIV, CUI) and which should be the subject of serious economic studies.

IVT supported an increase to 19 SDR.

RS and **CIT** opposed any increase. **CIT** informed the meeting that rail transport undertakings were loss-making, that there was enormous competition with road transport and that it was not possible to accept increases, as there were lower maximum amounts for road transport.

The **Secretary General** concluded that there was no consensus on this issue and that if the Member States wished to continue examining it, OTIF would have to be given the necessary resources to carry out a proper economic impact assessment on this matter.

It was therefore necessary to obtain a broader view on this from the Member States. The question of whether a study could be launched could be discussed at the Administrative Committee.

6. Next steps

Following explanations from the **European Commission** concerning its deadline constraints, the participants reached a consensus on another session of the working group and agreed on the following timescale with the **Secretariat**:

18 December 2014 – Calling notice for the 2nd session of the CIM UR working group to be held on 18 March 2015.

7 January 2015 – Send out the amendments to Article 6a of the CIM UR.

9 February 2015 (at the latest) – Send participants at the 1st session the provisional minutes.

17 February 2015 (1 week later) – Send the amended document again, taking into account the comments received.

18 March 2015 – 2nd session of the CIM UR working group.

30 March 2015 – Start the written procedure for the Revision Committee.

20 April 2015 – End of the written procedure.

ANNEX:

– List of participants