



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

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**Groupe de travail « RU CIM »  
Arbeitsgruppe „ER CIM“  
Working group “CIM UR”**

**CIM 2/1  
10.02.2015**

Original : FR

## **2<sup>nd</sup> Session**

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Views of the Member States and the international organisations and associations concerned, and a new proposal by the OTIF Secretariat on the wording of Article 6a of the CIM UR and the amendment of Article 6 § 9 of the CIM UR.

## 1. Electronic consignment note (Article 6a):

1. At its 25<sup>th</sup> session (Berne, 25 and 26 June 2014), the Revision Committee decided in accordance with Article 22 of its Rules of Procedure to set up a working group to prepare a revision of the CIM UR, with particular attention to provisions to be put in place concerning the electronic consignment note.

At the 1<sup>st</sup> session of the CIM UR working group held in Berne on 9 December 2014, in order to analyse the revision of the Uniform Rules concerning the Contract of International Carriage of Goods by Rail (CIM - Appendix B to the Convention) in line with the wishes of the 25<sup>th</sup> session of the Revision Committee, several suggestions were made to amend the proposed wording of Article 6a.

Within the deadlines prescribed by the Revision Committee's Rules of Procedure, the Secretariat agreed to send the OTIF Member States, the regional organisations that have acceded to COTIF and the international associations concerned new wording for Article 6a to enable the Member States and stakeholders to give their opinions at another meeting of the working group, which will be held in Berne on 18 March 2015.

2. The Secretariat received formal comments from France, the European Commission (DG TAXUD and DG SANCO) and from the International Association of Tariff Specialists. These comments are attached in the annex. In general, they are in line with the Secretariat's proposal, but with some questions on some of the wording.

In particular, with regard to the first paragraph, the Commission has asked whether the expression "operable for all parties interested in the performance of the contract of carriage" is relevant. Certainly some actors in the contract of carriage might not be able to use all or part of the electronic procedure and might have particular requirements (particularly in terms of the implementation deadline), without this calling into question the general agreement.

The Secretariat is of the view that the text in square brackets should be retained for discussion at the working group, particularly in light of the sector's view.

In addition to a few editorial amendments, the Commission also wondered about the principle of functional equivalence. As there had been a consensus on this in the working group, the Secretariat proposes that it be maintained.

3. Following these exchanges, the Secretariat considers that the following principles for amending Article 6a are valid:

- a) The principle of functional equivalence of electronic data registration with the paper form should be established by adapting the sentence in the current Article 6 § 9 CIM, which would be added to § 3 of Article 6a of the draft CIM. Those who took part in the 1<sup>st</sup> session of the working group adopted this principle by consensus.
- b) The sentence in Article 6a § 5 of the draft CIM stipulating that the parties may agree to establish the consignment note and the accompanying documents in paper form should be integrated into a specific paragraph 2. Indeed, if the parties do not agree to establish a consignment note in an electronic format, or if there are any provisions of public law preventing them from doing so (customs or phytosanitary provisions), it should be possible to establish the consignment note in a paper format. This point must be made clear in the

Explanatory Report by adding the following paragraph: "*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.*"

- c) The Secretariat is of the view that a model procedure for establishing the electronic consignment note could be defined in accordance with Article 6 § 8 of the CIM. As this paragraph says, "the 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". The parties to the contract of carriage could therefore agree to use such a model.
- d) In light of the above, it might however be timely to determine whether it is necessary to specify the essential elements that are necessary for the electronic data registration procedure. In this case, the Secretariat considers that Article 5 of the e-CMR could be taken as a basis. In order to give the international associations a common framework, consideration could be given to examining whether it is necessary to add the following paragraph 1b to Article 6a:

**§ 1b** *The procedure used for recording and processing data shall include, in particular:*

- a. the method for establishing and handing over the electronic consignment note to the party entitled;*
- b. the manner in which the party entitled to the rights arising out of the electronic consignment note is able to demonstrate that entitlement;*
- c. the manner in which confirmation is given that delivery to the consignor has taken place;*
- d. the procedures enabling the electronic consignment note to be supplemented or amended; and*
- e. the procedures for the potential replacement of the electronic consignment note by a consignment note established by other means.*

4. The Secretariat therefore proposes the following text for discussion. The text takes account in square brackets of the various options and contains provisions based on e-CMR:

***Article 6a CIM – Form of the consignment note***

§ 1 The consignment note and accompanying documents shall be established in the form of electronic data registration [, provided that a technical procedure for the registration and treatment of data, which is operable for all parties interested in the performance of the contract of carriage, is agreed between the parties].

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

§ 3 The procedure used for the registration and treatment of data must be equivalent from the functional point of view to the paper form, particularly so far as concerns the evidential value of the consignment note represented by those data.

§ 4 The procedure 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 [*alternative*: the information contained therein from the time it was first generated in its final form].

§ 5 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.

§ 6 The electronic consignment note shall be authenticated [by the parties to the contract of carriage].

Authentication may [*alternative*: shall] be carried out by means of an electronic signature or another appropriate method [that ensures its link with the electronic consignment note].

## **2. Article 42 Ascertainment of partial loss or damage**

5. If the question of amending Article 6a is resolved, it would also be appropriate for the report on partial loss or damage to be established primarily in the form of electronic data registration.

For this reason, the Secretariat of OTIF again submits the following proposal to amend Article 42:

[...]

§ 2 ~~A copy of the report must be supplied free of charge to the person entitled.~~

§ 2 **The report must be drawn up in the form of electronic data registration and must be transmitted free of charge to the person entitled.**

**The carrier and the person entitled may agree to draw up the report in paper form. A copy of the report must be supplied free of charge to the person entitled.**

6. It would therefore be wise to add a new paragraph 3 to the Explanatory Report on Article 42, as follows:

"....., ..... decided to follow the same approach as that adopted for the electronic consignment note, i.e. to give priority to drawing up a report in the form of electronic data registration (§ 2, paragraph 1). However, as for the electronic consignment note, the carrier and the person entitled may agree to draw up the report in paper format in those cases where they are obliged to do so (§ 2, paragraph 2).".

### **3. Withdrawal of the proposals to amend Articles 18, 19 and 22 of the CIM UR.**

7. At the 1<sup>st</sup> session of the working group, there was no unanimity or consensus among the participants in terms of amending Articles 18, 19 and 22 of the CIM UR.

It is therefore proposed not to follow up these proposals.

However, it would also be appropriate to take into account the latest discussions of the UNECE Group of Experts working on the unification of international railway law, with the objective of allowing rail carriage under a single legal regime. The Group of Experts is working on ideas similar to the amendment to Article 18 § 3 proposed by OTIF concerning the consignee's right to modify the contract of carriage.

The Secretariat of OTIF believes it is necessary to reword this proposal to amend Article 18, paragraph 3 of the CIM UR.

#### **Article 18: Right to dispose of the goods**

[...]

§ 3      The consignee shall have the right to modify the contract of carriage from the time when ~~the consignment note is drawn up~~ **the consignment enters the territory of the country of destination**, unless the consignor indicates to the contrary on the consignment note.

[...]

8. The Secretariat supports this proposed amendment. According to the current Article 18 § 3, the right to modify the contract of carriage is transferred from the consignor to the consignee from the time when the consignment note is drawn up, unless the consignor indicates to the contrary on the consignment note. This solution, which was adopted during the last revision to the CIM UR, is based on CMR, even though CMR only foresees this solution if the consignor explicitly allows it to be used in the consignment note.

However, according to transport operators, this transfer of the right to modify the contract of carriage takes place much too early. Unless the consignment note contains an explicit entry on the place or time at which the consignee is authorised to modify the contract (see Art. 12 § 3 CMR), or unless there is an entry saying that the consignee is not authorised to give subsequent orders, the right time for this transfer is when the goods arrive in the country of destination.

Moreover, the provision remains suppletory and when the contract is established, the parties may make other arrangements.

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

9. As it proved impossible to reach a consensus on this amendment, the Secretariat proposes that it be discussed again at the 2<sup>nd</sup> session of the group.

In fact, the proposed amendment was to add a new paragraph 6 to the Explanatory Report and Article 13, 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 Secretariat had introduced this proposal at the Revision Committee and the first session of the CIM working group, pointing 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.

10. During the discussions on the revised version of the UTP WAG at the 6<sup>th</sup> session of the Committee of Technical Experts (Geneva, 12 June 2013), a question was raised on Appendix I, 6<sup>th</sup> bullet point, which says that "the rail transport undertaking operating the train must make sure that freight vehicles are safely and securely loaded and remain so throughout the journey."

The need to ensure conformity with Article 13 of CIM was acknowledged. This Article reads as follows:

*"§ 1 The consignor and the carrier shall agree who is responsible for the loading and unloading of the goods. In the absence of such an agreement, for packages the loading and unloading shall be the responsibility of the carrier whereas for full wagon loads loading shall be the responsibility of the consignor and unloading, after delivery, the responsibility of the consignee.*

*§ 2 The consignor shall be liable for all the consequences of defective loading carried out by him and must in particular compensate the carrier for the loss or damage sustained in consequence by him. The burden of proof of defective loading shall lie on the carrier."*

These provisions provide a clear framework of responsibility between the consignor and the loader, which enables the consignor to be made responsible for the consequences of defective loading on his part. Nevertheless, the extent of this responsibility and how it is reconcilable with the railway undertaking's obligation to ensure the safe operation of the train is not made explicit.

To make it clear, at the third and final meeting of the working group on the CUV UR held in Bern on 9 April 2014, in paragraph 8 of document CUV 3/3 dated 10 March 2014, the Secretariat of OTIF proposed this addition and proposed to include this obligation in the part of the Explanatory Report which refers to Article 13 of the CIM UR.

After a presentation of this issue by OTIF and after a discussion, the delegates at that meeting agreed that it was appropriate to include this paragraph 6 in the comments in the Explanatory Report on Article 13 of the CIM UR.

At the CUV working group, there was a consensus on this proposal and it is therefore proposed that it be discussed at OTIF's next General Assembly.

ANNEXES:

Comments:

France

The European Commission (DG TAXUD and DG SANCO)

The International Association of Tariff Specialists