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Ref: Electronic consignment note (Article 6a CIM)

Dear Mr Davenne,

In order to facilitate the discussions at the meeting of the CIM working group in March, please find attached a position on your new proposals in document CIM 2/1. I should be grateful if you would translate and distribute the position.

With kind regards

Dr. Czerwenka

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Position of the German delegation
on the OTIF Secretary General's amended proposal of 10 February 2015
(document CIM 2/1)

1. The German delegation maintains that there is no need for the proposed amendment to the rule concerning the consignment note. The possibility of using an electronic consignment note already exists. If a rule is nevertheless made, the German delegation is of the view that it is in any case necessary to maintain the existing principle that unless agreed otherwise, the consignment note must be drawn up in paper form.

The proposed Article 6a § 1 of CIM communicates the existing relationship between the rule and the exception. This is because it prescribes the use of an electronic consignment note; in § 2, the parties to the contract of carriage are only allowed to agree that the consignment note and accompanying documents will be drawn up in paper form. It is true that § 1 does still contain the addition in square brackets "[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]". But even if this addition in square brackets is retained, there is no fall-back provision to say that if such a procedure is not agreed, a paper-based consignment note has to be issued. If the parties have not agreed a certain procedure and do not agree to draw up the agreement in paper form, it is no longer possible to comply with the first sentence of Article 6 § 2 of CIM, according to which the contract of carriage must be confirmed with a consignment note. The proposed Article 6a § 1 and 2 of CIM would therefore complicate the processing of cross-border rail transport operations. Consequently, changing the relationship between the rule and the exception, as proposed by the Secretary General of OTIF, is a cause for concern.

2. It does not seem necessary to clarify in the Explanatory Report that Article 6a of CIM in no case takes precedence over the provisions of public law that prescribe the paper form. This is already dealt with explicitly in Article 2 of CIM.
3. There are some concerns about the proposal on Article 18 § 3 of CIM. As the discussions at the UNECE Group of Experts mentioned by the Secretary General have shown – and these discussions have certainly not been concluded – a rule saying that the right of disposal is transferred to the consignee when the consignment enters the territory of the country of destination causes problems: neither the consignor nor the consignee are in a position to determine the precise time at which the consignment enters the territory of the country of destination. This is because these persons do not accompany the consignment and they have to rely on the carrier's information. In consequence, without this information, they do not know who has the right of disposal either. There is concern about making the exercise of the right of

disposal dependent upon information from the person to whom the order is addressed and who might be liable for the consequences of failure to carry out an order or failure to carry it out properly (Article 19 § 6). Added to this is the fact that the consignee will often not be in a position to provide the duplicate of the consignment note. However, according to Article 19 § 1 of CIM, this is necessary in order to exercise the right of disposal. Therefore, the consequence of the rule being proposed is that at the time the consignment enters the territory of the country of destination, neither the consignor nor the consignee can exercise a right of disposal. This does not seem justifiable.

The Secretary General's remark that "the provision remains suppletory and ... the parties may make other arrangements" does not resolve the concerns expressed above. It should first be pointed out that this remark is probably not covered by the CIM, because according to Article 5 of CIM, any stipulation which, directly or indirectly, would derogate from CIM, is null and void; other arrangements would only apply if the CIM explicitly allow them. However, Article 18 of CIM does not permit any contractual derogations. If Article 18 of CIM is to be formulated as a dispositive rule, Article 18 § 3 of CIM could be amended as follows:

- § 3 The consignee shall have the right to modify the contract of carriage at an earlier time than that specified in § 2 a) to c), provided this is indicated on the consignment note.