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HARMONIZATION OF CONDITIONS OF DIFFERENT RAIL TRANSPORT SYSTEMS

Transmitted by the Organization for Cooperation between Railways (OSZhD)

Note: At its fifty-first session, the Principal Working Party discussed inter alia the question of the harmonization of conditions of two different legal systems on rail transport, namely the COTIF/CIM and the SMGS for freight transport as well as the COTIF/CIV and the SMPS for passenger transport (TRANS/SC.2/188, paras. 28-31). Taking into account the work of the Intergovernmental Organization for International Carriage by Rail (OTIF) and the Organization for Cooperation between Railways (OSZhD) in this area, the Principal Working Party requested both organizations to submit further information on progress made in the elimination of difficulties arising from the two different legal systems in international carriage by rail.

The Working Party may wish to consider the information received from OSZhD, which is reproduced below.

Please note that the distribution of documentation for the Working Party on Rail Transport (SC.2) is no longer "restricted". Accordingly, the secretariat has adopted a new numbering system whereby all working documents other than Reports and Agendas will be numbered as follows: TRANS/SC.2/year/serial number. Reports, Agendas, resolutions and major publications will retain their previous numbering system (i.e. TRANS/SC.2/189).

Work being carried out by OSZhD to harmonize the conditions of the two different legal systems for rail transport

In 1997-1998 OSZhD has continued its scheduled work on harmonizing the Agreement on International Goods Transport by Rail (SMGS) and the Uniform Rules concerning the Contract for International Carriage of Goods by Rail (CIM) in conjunction with the Intergovernmental Organization for International Carriage by Rail (OTIF). Together with CIT, it has initiated a joint study of the possibility of using the CIM consignment note in traffic with countries using SMGS, and using the SMGS consignment note on the return journey.

1. Harmonization of SMGS and CIM

1.1 A meeting of the Interim Working Group of OSZhD's Second Standing Committee was held in Ilawa, Poland, in February 1997 on the question of harmonizing SMGS and CIM. A discussion took place of the following proposals, based on topics which had been coordinated earlier with the Central Office for International Carriage by Rail (OCTI):

- Creation of conditions for the application of contracts of carriage under SMGS and CIM (the duty of the railways to perform carriage);
- Claims. Liability of railways;
- Exchange rates. Unit of account;
- Articles whose carriage is prohibited;
- Declaration of value of goods.

Appropriate decisions were taken on the issues under consideration.

1.2 A joint meeting of OSZhD and OTIF representatives was held in Bern, Switzerland, from 30 June to 1 July 1997. This meeting was attended, on the OSZhD side, by representatives of the Committee and experts from the following OSZhD member countries: Belarus, Latvia, Poland, the Russian Federation and Ukraine. OTIF was represented by staff from OCTI. CIT was represented by an observer.

The meeting failed to yield positive results on any of the five topics. Listed above one topic was discounted on the grounds that it did not constitute a priority. According to an OCTI representative, two of the topics were no longer provided for in the new version of the CIM Uniform Rules. No consensus could be reached on the remaining two topics (claims, liability of railways; declaration of value of goods).

1.3 At the same joint meeting of OSZhD/OTIF representatives, both sides stated their points of view during an assessment of previous efforts to harmonize the international law governing railway freight transport.

The representative of the OSZhD Committee noted that many years of efforts to harmonize the law governing railway freight transport, and in particular the cooperation between OSZhD and OTIF in the 1980s, had at least brought partial success. Definite changes had been brought about in SMGS and CIM. In assessing the results, it should be borne in mind that the harmonization of the two legal systems was an extremely complex undertaking. In addition to the legal aspects, political and economic considerations also

came into play. He went on to reaffirm the conclusion of the previous OSZhD/OTIF joint meeting, namely that both legal systems would continue to coexist for a long time to come. The two organizations' efforts should acknowledge that fact and concentrate on problems arising during the transition from one legal system to the other. The object was to simplify transport between Europe and Asia. In any event, OSZhD was prepared to see the planned work of the Interim Working Group through to its conclusion. The following topics have been proposed for the continuation of the Working Group's deliberations:

1. Tariffs, calculation of freight charges and supplementary duties.
2. Settling of accounts among SMGS and CIM railway companies.
3. Freight delivery deadlines.
4. Consignment notes.

In parallel with the work of the Interim Working Group of OSZhD's Second Standing Committee, the OSZhD/CIT joint working group will continue to address the use of the CIM consignment note as a through consignment note in traffic with countries using SMGS, and the SMGS consignment note on the return journey.

OSZhD will continue to improve SMGS, guided by the fact that the decision to use CIM or SMGS is the prerogative of States themselves.

The representative of OTIF summed up the rather unsatisfactory outcome of the efforts over many years to harmonize the law on railway freight transport. No substantial improvements had been made. The two different systems would continue to operate and, as in the past, problems would arise when transferring from one system to the other. He too was of the opinion that in the immediate future the two systems would continue to coexist for political and economic reasons. It was nevertheless surprising that a common transport law could operate for other forms of transport (in particular the Convention on the Contract for the International Carriage of Passengers and Luggage by Road (CVR)), whereas similar arrangements had proved impossible to apply to the railways. It would be regrettable if the railways were to forfeit their position in the East-West transport market on account of a problem of this nature. A legal connection between the two systems needed to be found that would enable them to operate as a single unit.

Of the four topics outlined for the next stage of work, only two were pertinent to the railways alone, namely tariffs, calculation of freight charges and supplementary duties, and the settling of accounts among SMGS and CIM railway companies.

In discussions with CIT on matters relating to the consignment note, the participation of a representative of OTIF would be advisable because a model consignment note would have to be ratified by OTIF at some stage in the future.

2. Use of SMGS and CIM consignment notes as through transport documents in East-West-East traffic

2.1 In a letter dated 14 January 1997, the International Rail Transport Committee (CIT) proposed to the OSZhd Committee that they should jointly conduct study on simplifying railway transport between countries using the CIM and SMGS systems, bearing in mind the option of using the CIM consignment note as a through consignment note in traffic with countries using SMGS, and the SMGS consignment note on the return journey. To that end it was proposed to establish a Joint OSZhd/CIT Working Group.

2.2 The CIT proposal was discussed at the meeting of the Interim Working Group of OSZhd's Second Standing Committee in February 1997. The initiative was welcomed and it was acknowledged that it would be advisable to establish a joint group to study the issue further and draw up the relevant documents.

At its meeting in January 1997, the OSZhd Committee decided to establish a Joint OSZhd/CIT Working Group on the use of the CIM consignment note as a through consignment note in traffic with countries using SMGS, and the SMGS consignment note on the return journey. That decision was subsequently approved by the OSZhd Conference of Ministers.

2.3 A meeting of representatives of OSZhd and CIT took place in Warsaw in May 1997 (OSZhd Committee). Following consideration of the CIT proposal and an exchange of views, an agreement was reached to establish a Joint OSZhd/CIT Working Group, to be attended on the OSZhd side by representatives of the railways of Belarus, Poland, the Russian Federation and Ukraine and of the OSZhd Committee (with the subsequent participation of Latvia), and on the CIT side by representatives of German and Hungarian railways, the secretariats of CIT and OCTI, and, at a later date, Yugoslav and Slovak railways.

The Joint OSZhd/CIT Working Group's programme of work for the period 1997-1998 on the use of SMGS and CIM consignment notes as through consignment notes in East-West-East traffic was drawn up and coordinated.

2.4 The first and second meetings of the Joint OSZhd/CIT Working Group took place in January and April 1998 in Berlin and Malaszewicze, Poland, respectively. A comparison was made of model SMGS and CIM consignment notes, consideration was given to technical and organizational problems which might arise when using SMGS and CIM consignment notes in East-West-East traffic, and possible solutions were examined.

A comparison of SNGS and CIM consignment notes showed that their format was for the most part identical but it would be impossible to use them as through transport documents in East-West-East traffic without changing transport law.

A number of issues require closer study (compliance with customs and other administrative rules, liability, designation of dangerous goods, use of languages, etc.).

The parties attending the meeting were of the view that, at the present stage, the Joint Working Group's programme of work for 1998 should continue to be implemented with the inclusion of the following elements:

- Notification of the competent bodies of the respective organizations of work carried out during stage I;
- An exchange of specific proposals between CIT and the OSZhD Committee (prior to 31 August 1998);
- Coordination of arrangements for future joint work (November 1998).

Harmonization of SMPS and CIV

No specific work has been done in this area. At the joint meeting of representatives of OSZhD and OTIF (Bern, June-July 1997) the view was expressed that harmonization of passenger transport is not a priority compared with that of freight transport.
