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Strategic questions of a modal and thematic nature:

Rail transport

Towards unified railway law in the pan-European region and along Euro-Asian transport: Draft of relevant legal provisions*

Note by the secretariat

Summary

This note outlines the legal provisions prepared by the Group of Experts towards unified railway law.

The Group of Experts managed during its mandate to prepare legal provisions in the contract of carriage and, in particular, on rights and obligations of the parties to the contract of carriage, documentation, liability, assertion of claims and relationship among carriers of a Unified Railway Law. It did so by taking into consideration good practices already implemented by the COTIF/CIM Convention and SMGS Agreement as well as other International Transport Conventions.

* The present document is being issued without formal editing.

Chapter 1 General provisions

Article 1 Scope of Application

- § 1 This legal regime shall apply to a contract of carriage of goods by rail,
1. when the place of taking over of the goods and the place designated for delivery are situated in two different States which are Contracting Parties to this legal regime, and
 2. if the contract of carriage stipulates that the contract is subject to this legal regime, and
 3. if neither the provisions of CIM nor SMGS or bilateral or multilateral agreements between Contracting States apply to the contract covering the entire journey.
- § 2 The contract of carriage may also stipulate that this legal regime applies to transport operations carried out by other modes of transport in addition to international rail transport (multimodal transport).
1. if such agreement does not contradict with any international treaty governing such additional transport, and
 2. unless the Contracting State whose law applies to such multimodal transport contract has declared that it will not apply this legal regime to multimodal transport contracts.
- § 3 Two or more Contracting States may conclude agreements which declare this legal regime applicable to contracts of carriage by rail between their countries in other cases than regulated in § 1 and § 2.
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Article 2 Definitions

In this legal regime

1. **“Contract of carriage”** means a contract under which a carrier undertakes to carry goods against payment and to deliver them to a consignee under the conditions provided by this legal regime.
 2. **“Carrier”** means the contractual or a subsequent carrier.
 3. **“Contractual carrier”** means the carrier who has concluded the contract of carriage with the consignor.
 4. **“Subsequent carrier”** means a carrier who has not concluded the contract of carriage with the consignor but, by the very act of taking over of the goods with the consignment note, becomes a party to the contract of carriage.
 5. **“Consignor”** means the person who has concluded the contract of carriage with the contractual carrier.
 6. **“Parties to the contract”** means the carrier and the consignor.
 7. **“Consignee”** means the person to whom the carrier has to deliver the goods in accordance with the contract.
 8. **“Person entitled”** means the person who has the right to dispose of the goods.
 9. **“Goods”** means the wares, merchandise and articles of every kind whatsoever that a carrier undertakes to carry under a contract of carriage and
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includes the packing and any equipment and intermodal transport unit not supplied by or on behalf of the carrier. Empty wagons can also be considered as goods.

10. **“Consignment”** means the totality of goods that is to be carried under a single contract of carriage.
11. **“Consignment note”** means a document which confirms the conclusion and the content of the contract of carriage.
12. **“Electronic consignment note”** means a consignment note established in the form of electronic communication and which assures the authenticity and integrity of the electronic communication at all times.
13. **“Costs relating to carriage”** means the carriage charges and incidental costs, customs duties and other additional costs which are justified and necessary for the performance of the contract and incurred from the conclusion of the contract until delivery.
14. **“Carriage charges”** means the contractual remuneration payable to the carrier for the performance of the contract of carriage.
15. **“Tariffs”** means a carrier’s pricing systems, legally in force or determined by the carrier’s costs of services, on the basis of which the level of the freight charges under the contract of carriage is formed.
16. **“Dangerous goods”** means any materials and substances which, according to the provisions of RID or Annex 2 to SMGS, must not or only under conditions might be transported.
17. **“Intermodal transport unit”** means a container, transportable tank or flat, swap body, semi-trailer or other comparable loading unit used for the transport of goods in intermodal transport.

Article 3

Mandatory Law

§ 1 Unless provided otherwise in this legal regime, any stipulation in the contract of carriage, which would derogate from this legal regime shall be null and void. The nullity of such stipulation shall not involve the nullity of other provisions of the contract of carriage agreed by the parties.

§ 2 Nevertheless, a carrier may assume a liability greater and obligations more burdensome than those provided for in this legal regime. Furthermore, the compensation payable by the consignor pursuant to Articles 7 and 11 may, by derogation from § 1, be limited, in amount, but not less than the amount which the carrier is entitled to invoke under this legal regime for total loss of the goods.

Article 4

Provisions of public law

This legal regime governs only the rights and obligations of the parties to the contract of carriage arising from such contract. Carriage to which this legal regime applies shall remain subject to the provisions of public law, in particular public law provisions regulating

1. the safe transport of dangerous goods as well as other safety issues,
 2. customs formalities, or
 3. the protection of animals.
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Chapter 2

Conclusion and performance of the contract of carriage

Article 5

Contract of carriage

§ 1 Under the contract of carriage the carrier is obliged to carry the goods to the destination and to deliver them to the consignee. Subject to Article 8 the consignor is obliged to pay the costs relating to carriage

§ 2 The contract of carriage shall be confirmed by a consignment note. The relevant international associations in the railway sector may together establish a standard model of the consignment note, also taking into account customs matters.

For one consignment only one consignment note shall be made out, even if the totality of goods consists of several parts or is transported in several wagons.

The absence, irregularity or loss of the consignment note shall not affect the existence or validity of the contract of carriage which shall remain subject to this legal regime.

§ 3 The consignment note shall be signed by the consignor and the contractual carrier. As a signature there can be used an imprint, a stamp or an accounting machine entry.

The carrier must certify the taking over of the goods on the consignment note in an appropriate manner and return to the consignor the original of the consignment note which is intended for the consignor.

§ 4 The consignment note may be established or used in the form of electronic communication. The use of an electronic consignment note shall be agreed upon by all parties involved in the carriage of goods. An electronic record having the same functions as the consignment note shall be deemed equivalent to the consignment note, provided that the authenticity and integrity of the record are assured at all times.

Article 6

Content of the consignment note

§ 1 The consignment note must contain the following particulars:

- (a) the date and the place at which it is made out;
- (b) the name and address of the consignor;
- (c) the name and address of the contractual carrier;
- (d) the name and address of the person to whom the goods have effectively been handed over if he is not the contractual carrier;
- (e) the place and the date of taking over of the goods;
- (f) the place designated for delivery;
- (g) the name and address of the consignee;
- (h) the description of the nature of the goods and the method of packing, and, in case of dangerous goods, their generally recognized description;
- (i) the number of packages and their special marks and numbers;
- (j) the number of the wagon(s) in which the consignment is carried;
- (k) in case of using an intermodal transport unit, its category, number or other characteristics necessary for its identification;
- (l) the gross mass or the quantity of the goods expressed in other ways;
- (m) a detailed list of the documents which are required by customs or other administrative authorities and are attached to the consignment note or

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- (n) held at the disposal of the carrier at the offices of a duly designated authority or a body designated in the contract; the carriage charges and other costs relating to carriage insofar as they have to be paid by the consignee.

§ 2 Where applicable the consignment note must also contain the following particulars:

- (a) carriage charges and other costs relating to carriage which the consignor undertakes to pay;
- (b) the agreed time of delivery;
- (c) the agreed route to follow;
- (d) a list of the documents not mentioned in § 1, letter m, handed over to the carrier;
- (e) the information given by the consignor concerning the number and description of seals he has affixed to the wagon;
- (f) additional information on specific requirements relating to the handling of the goods including dangerous goods.

§ 3 The parties may enter on the consignment note other particulars relating to carriage they consider useful.

Article 7

Responsibility of the consignor

§ 1 The consignor shall be liable for all costs, loss or damage sustained by the carrier by reason of:

- (a) the entries made by or on behalf of the consignor in the consignment note or other documents referred to in Article 12 being incorrect, or
- (b) the consignor omitting to provide the necessary information on the generally recognized description of the dangerous goods.

§ 2 The consignor shall, to the extent he is at fault, also be liable for all costs, loss or damage sustained by the carrier by reason of the consignor omitting to provide necessary information on specific requirements relating to the handling of the goods.

§ 3 If the consignor has failed to disclose the dangerous nature of the goods or specific requirements relating to the handling of the goods, the carrier may at any time unload or destroy the goods or render them innocuous, as the circumstances and the potential risk may require. In this case the carrier may claim the costs or expenses necessitated by the measures taken and shall not be obliged to pay compensation for loss of or damage to the goods.

§ 4 The carrier may not claim costs or expenses and shall be obliged to pay compensation for loss of or damage to the goods according to Article 19 if it was aware of the dangerous nature or the specific requirements of the goods on taking them over.

Article 8

Payment of the costs relating to carriage

§ 1 Unless otherwise agreed between the consignor and the carrier, the carriage charges shall be paid by the consignor; other costs relating to carriage shall be paid by the consignor when they are caused by circumstances beyond the carrier's control. Unless otherwise agreed the carrier has the right to demand the carriage charges before the beginning of the carriage.

§ 2 When by virtue of an agreement between the consignor and the carrier, the costs relating to carriage are payable by the consignee, the consignor shall remain liable for payment of the costs, if the consignee has not taken possession of the consignment note nor has taken delivery nor asserted his rights in accordance with Article 14 §§ 2 and 3 nor modified the contract of carriage in accordance with Article 15.

§ 3 If the carriage charges are calculated based on tariffs, the calculation shall be based on the tariffs which are valid on the day of the conclusion of the contract of carriage, and in the currency defined according to the applied tariffs for the international carriage. Carriage charges are calculated separately by each participating carrier with regard to his section of the route and according to his pricing systems and tariffs.

§ 4 The carrier has to be reimbursed of all costs relating to carriage which are not foreseen in the applied tariffs and were caused by circumstances

beyond the carrier's control. These costs are registered on the date of their occurrence separately for each consignment and are justified by the relevant documents.

Article 9
Examination

§ 1 The carrier shall have the right to examine whether the conditions of carriage have been complied with and whether the consignment corresponds with the entries in the consignment note made by the consignor. If the examination concerns the contents of the consignment, this shall be carried out as far as possible in the presence of the person entitled; where this is not possible, the carrier shall require the presence of two independent witnesses, unless the laws and prescriptions of the State where the examination takes place provide otherwise.

§ 2 If the consignment does not correspond with the entries in the consignment note or if the provisions of public law have not been complied with, the result of the examination must be entered in the consignment note. In this case the costs of the examination shall be charged against the goods, if they have not been paid immediately.

§ 3 When the consignor loads the goods, he shall be entitled to require the carrier to examine the condition of the goods and their packaging as well as the accuracy of statements on the consignment note as to the number of packages, their marks and numbers as well as the gross mass of the goods or their quantity otherwise expressed. The carrier shall be obliged to proceed with the examination only if he has appropriate means of carrying it out. The carrier may demand the payment of the costs of the examination. The result of the examination shall be entered on the consignment note.

Article 10
Evidential value of the consignment note

§ 1 The consignment note, signed according to Article 5 § 3 shall be prima facie evidence, save proof to the contrary, of the conclusion and the conditions of the contract of carriage and the taking over of the goods by the carrier.

§ 2 If the consignment note, signed according to Article 5 § 3, contains no specific reservations by the carrier, it is assumed, failing proof to the contrary, that the goods and their packaging have apparently been in a good and appropriate condition to be transported at the moment they were taken over by the carrier.

§ 3 If the carrier has loaded the goods or has examined them, the consignment note shall be prima facie evidence, save proof to the contrary, of the condition of the goods and their packaging indicated on the consignment note or, in the absence of such indications, of their apparently good and appropriate condition at the moment they were taken over by the carrier and of the accuracy of the statements in the consignment note concerning the number of packages, their marks and numbers as well as the gross mass of the goods or their quantity otherwise expressed.

However, the consignment note will not be prima facie evidence, if not proven to the contrary, in a case where it bears a reasoned reservation.

Article 11
Packing, Loading

§ 1 The consignor shall be liable to the carrier for any loss or damage and costs due to defective packing or labelling of the goods or defective marking, unless the defect was apparent or known to the carrier at the time when he took over the goods and he made no reservations concerning it.

§ 2 The consignor shall be liable for all the consequences of defective loading carried out by him and in particular has to compensate the carrier for the loss or damage sustained in consequence by him, unless the defect was apparent or known to the carrier at the time when he took over the goods and he made no reservations concerning it. Should the consignment note contain no information on the person who has loaded the goods, it shall be

considered as loaded by the consignor.

§ 3 In the case of apparent or known defective packing, labelling or loading of the goods the carrier may accept the goods for carriage under specific contractual conditions.

Article 12

Completion of administrative formalities

§ 1 For the purposes of the customs or other formalities which have to be completed before delivery of the goods, the consignor shall attach the necessary documents to the consignment note or make them available to the carrier and shall furnish him in advance by electronic communication or otherwise with all the information which he requires.

§ 2 The carrier shall not be obliged to check whether these documents and this information are correct and sufficient. The consignor shall be liable to the carrier for any damage caused by the absence or insufficiency of, or any irregularity in, such documents and information except in the case the damage was caused by fault of the carrier.

§ 3 The carrier shall be liable for any damage caused by the loss or incorrect use of the documents which were made available to him unless the loss or incorrect use of the documents has been caused by circumstances which a diligent carrier could not avoid and the consequences of which he was unable to prevent. The compensation payable by the carrier shall not exceed the compensation provided for in the event of loss of the goods.

Article 13

Time of delivery

The carrier shall deliver the goods within the time agreed in the contract of carriage. If no time of delivery has been agreed, delivery shall be made within the time which could reasonably be required of a diligent carrier, taking into account the circumstances of the carriage.

Article 14

Delivery

§ 1 At the place of delivery the carrier shall hand over the consignment note and deliver the goods to the consignee against a receipt and payment of all amounts due according to the contract of carriage.

§ 2 If a loss of the goods is established or if the goods are damaged or delivered late, the consignee shall be entitled to enforce in his own name against the carrier any rights or remedies arising from the contract of carriage.

§ 3 In other respects, delivery of the goods shall be carried out in accordance with the requirements in force at the place of destination.

§ 4 This legal regime does not affect a right of the carrier that may exist pursuant to the contract of carriage or the applicable law to retain the goods to secure the payment of sums due.

Article 15

Right to dispose of the goods

§ 1 The consignor has the right to dispose of the goods and to modify the contract of carriage by giving subsequent orders, in particular by asking the carrier to stop the goods in transit or not to deliver them or to give them back at the place of taking over of the goods or to change the place of delivery or to deliver them to a consignee other than the consignee indicated in the consignment note.

§ 2 The consignor's right of disposal shall pass over to the consignee at the time specified by the consignor in the consignment note. Unless the

consignor has specified otherwise, the right of disposal shall pass over to the consignee when the goods have reached the place of destination.

§ 3 If in exercising his right of disposal the consignee has ordered the delivery of the goods to another person, this other person shall not be entitled to name other consignees.

§ 4 Any right of disposal shall be extinguished when the consignee or another person named by the consignee has taken possession of the consignment note from the carrier and has accepted the goods or has asked for delivery of the goods.

Article 16

Exercise of the right to dispose of the goods

§ 1 If the person entitled wishes to modify the contract of carriage it has to give the necessary instructions to the carrier. If the consignment note so prescribes the person entitled has to produce to the carrier its original of the consignment note on which the new instructions have to be entered.

§ 2 The carrier is not obliged to carry out instructions, unless they are possible, lawful and reasonable to require. Instructions must in particular neither interfere with the normal working of the carrier's undertaking nor prejudice the consignors or consignees of other consignments. Any instruction shall not have the effect of splitting the consignment.

§ 3 When, by reason of the provisions of §§ 1 and 2 of this Article, the carrier will not carry out instructions which he receives, he shall immediately notify the person who gave him such instructions.

§ 4 A carrier who has not carried out properly the instructions given under the provisions of this article shall be liable to the person who has the right to bring an action against the carrier for any loss or damage caused thereby, if the carrier is at fault. If in the case mentioned in § 1 sentence 2 the carrier carries out instructions without requiring the original of the consignment note to be produced, he shall be liable to the person who has the right to bring an action against the carrier for any loss or damage caused thereby. Any compensation payable shall not exceed the amount payable in the event of loss of the goods.

§ 5 The carrier has the right to demand payment for the additional costs of carriage and the expenses arising from the carrying out of the given instructions, unless the carrier is at fault.

Article 17

Circumstances preventing carriage and delivery

§ 1 If it becomes evident, after the goods have been taken over by the carrier, that carriage or delivery cannot be performed according to the contract, the carrier shall ask for instructions from the person entitled or, where circumstances prevent delivery, from the consignor. In derogation from the first sentence, the carrier shall ask for instructions from the consignee if it becomes evident, after the goods have reached the country of destination, that the carriage cannot be performed according to the contract of carriage.

§ 2 If the consignee has given the instruction to deliver the goods to another person, § 1 of this Article shall apply as if the consignee were the consignor and the other person were the consignee.

§ 3 If circumstances preventing carriage can be avoided by modifying the route, the carrier shall decide whether a modification shall be made or whether it is in the interest of the person entitled to ask him for instructions.

§ 4 If circumstances preventing delivery cease to exist before arrival of instructions from the consignor to the carrier, the goods shall be delivered to the consignee. The consignor shall be notified without delay.

Article 18

Consequences of circumstances preventing carriage and delivery

§ 1 The carrier is entitled to reimbursement for the costs caused by his request for instructions or the carrying out of instructions or the fact that he has taken a decision in accordance with Article 17 § 3, unless such costs were caused by his fault. The carrier may in particular recover the carriage charge applicable to the route followed and shall be allowed the time of delivery applicable to such route.

§ 2 If the carrier cannot, within a reasonable time taking into account the different conditions of the goods, obtain lawful and reasonable instructions, he shall take such measures as seem to be in the best interest of the person entitled. He may, for example, return the goods to the consignor or unload them for account of the person entitled. Thereupon the carriage shall be deemed to be at an end. The carrier shall then hold the goods on behalf of the person entitled. He may, however, entrust them to a third party, and in that case he shall not be under any liability except for the exercise of reasonable care in the choice of such third party. The charges due under the contract of carriage and all other costs of the carriage shall remain chargeable against the goods.

§ 3 The carrier may sell the goods, without awaiting instructions from the person entitled, if this is justified by the perishable nature or the condition of the goods or if the costs of storage would be out of proportion to the value of the goods. He may also proceed to the sale of the goods in other cases if within a set time he has not received from the person entitled instructions to the contrary which he may reasonably be required to carry out; in such a case the carrier may destroy unusable goods. All measures have to be taken in compliance with the legislation in force.

§ 4 If the goods have been sold, the proceeds of sale, after deduction of the costs chargeable against the goods, shall be placed at the disposal of the person entitled. If the proceeds of sale are less than those costs, the carrier shall be entitled to the difference.

**Chapter 3
Liability**

**Article 19
Basis of liability**

§ 1 The contractual carrier shall be liable for loss or damage resulting from the total or partial loss of or damage to the goods between the time of taking over of the goods and the time of delivery, as well as for delay in delivery.

§ 2 If carriage governed by a single contract is performed by subsequent carriers, the liability of the contractual carrier and all subsequent carriers shall be joint and several.

§ 3 The carrier shall be relieved of this liability to the extent that the loss or damage or the delay in delivery was caused by the fault of the person entitled or by an instruction given by the person entitled other than a result of the fault of the carrier or by an inherent defect of the goods or by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.

**Article 20
Presumption of loss of the goods**

§ 1 The person who has the right to bring an action against the carrier may, without being required to furnish further proof, consider the goods as lost when they have not been delivered or arrived for delivery to the consignee within three months after the expiry of the time of delivery.

§ 2 That person may, on receipt of compensation for the missing goods, request in writing that he shall be notified immediately should the goods be recovered within one year after the payment of compensation. The carrier shall acknowledge such request in writing.

§ 3 Within thirty days after receipt of such notification, the person who has the right to bring an action against the carrier may require the goods to be delivered to him against payment of the costs resulting from the contract of carriage and against refund of the compensation received less, where

appropriate, costs which may have been included therein. He shall retain his rights to claim compensation for delay in delivery provided for in Article 25.

§ 4 In the absence of the request referred to in § 2 or of instructions given within the period specified in § 3, or if the goods are recovered more than one year after the payment of compensation, the carrier shall be entitled to deal with them in accordance with the laws and prescriptions in force at the place where the goods are situated.

§ 5 Any obligation of the consignee to accept the recovered goods shall be subject to the laws applicable in the State where the place designated for delivery is situated.

Article 21

Compensation for loss

§ 1 In case of total or partial loss of the goods, the carrier shall compensate the value of the goods on the day and at the place where they were taken over for carriage. If part of the goods has been delivered, its value which remains to the person entitled shall be deducted from the amount of compensation.

§ 2 The value of the goods shall be fixed according to the market price at the place where they were taken over for carriage or, if there is no market price, according to the usual value of goods of the same kind and quality. If the goods have been sold just before being taken over for carriage the purchase price noted in the seller's invoice, minus carriage charges included therein, shall be presumed to be the market price.

§ 3 Unless otherwise agreed by the parties pursuant to Article 3 § 2 compensation shall not exceed [17] units of account per kilogram of gross weight short.

§ 4 The carrier shall, in addition, refund the carriage charge, customs duties already paid and other costs relating to carriage. If part of the goods has been delivered, § 1, second sentence, shall apply by analogy.

§ 5 In case of loss of an intermodal transport unit or its removable parts, the compensation shall be limited to the usual value of the unit or its removable parts on the day and at the place of loss. If it is impossible to ascertain the day or the place of loss, the compensation shall be limited to the usual value on the day and at the place where the unit has been taken over by the carrier. The same shall apply in case of loss of an empty wagon which is to be carried as goods under the contract of carriage.

§ 6 No further damages shall be payable.

Article 22

Unit of account

§ 1 The unit of account referred to in Article 21 is the Special Drawing Right as defined in accordance with the instructions of the International Monetary Fund. The amount referred to in Article 21 is to be converted into the national currency of a State according to the value of such currency at the date of judgement or award or the date agreed upon by the parties. Where the calculation of an amount requires the conversion of sums expressed in foreign currency, conversion shall be at the exchange rate applicable on the day and at the place of payment.

§ 2 The value of a national currency, in terms of the Special Drawing Right, of a Contracting State to this legal regime that is a member of the International Monetary Fund is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State to this legal regime that is not a member of the International Monetary Fund is to be calculated in a manner to be determined by that State.

Article 23

Liability for wastage during carriage

§ 1 In respect of goods which, by reason of their nature, are generally subject to wastage by the sole fact of carriage, the carrier shall only be liable to the extent that the wastage exceeds the following allowances, whatever the length of the route:

- (a) two per cent of the mass for liquid goods or goods consigned in a moist condition;
- (b) one per cent of the mass or dry goods.

§ 2 The limitation of liability provided for in § 1 may not be invoked if, having regard to the circumstances of a particular case, it is proved that the loss was not due to causes which would justify the allowance.

§ 3 Where several packages are carried under a single consignment note, the wastage during carriage shall be calculated separately for each package if its mass on consignment is shown separately on the consignment note or can be ascertained otherwise.

§ 4 In case of total loss of goods or in case of loss of a package no deduction for wastage during carriage shall be made in calculating the compensation.

§ 5 This Article shall not derogate from Article 19 § 3.

Article 24
Compensation for damage

§ 1 In case of damage to goods, the carrier shall compensate the loss in value of the goods. The amount shall be calculated on the basis of expertise or by applying to the value of the goods defined in accordance with Article 22 § 2 whereas the percentage of loss in value shall be noted at the place of destination. It is presumed that the costs of lowering and repairing the damage correspond to the loss in value.

§ 2 The carrier shall, in addition, refund the costs provided for in Article 22 § 3, in the proportion set out in § 1 of this Article.

§ 3 The compensation shall not exceed:

- (a) the amount payable in the case of total loss, if the whole consignment has lost value through damage;
- (b) the amount payable in the case of loss of the part affected, if only part of the consignment has lost value through damage.

§ 4 In case of damage to an empty wagon which is to be carried as goods under the contract of carriage or to an intermodal transport unit or their removable parts, the compensation shall be limited to the cost of repair. § 3 shall apply by analogy.

§ 5 No further damages shall be payable.

Article 25
Compensation for delay in delivery

§ 1 In the case of delay in delivery, if the claimant proves that damage has resulted therefrom, the carrier shall pay compensation not exceeding half of the carriage charges.

§ 2 Insofar as the goods are lost or have lost value as a result of partial loss or damage, compensation for delay shall not be paid.

§ 3 In no case the compensation for delay together with that for partial loss of or damage to goods shall exceed the compensation which would be

payable in case of total loss of the goods.

§ 4 If the time of delivery has been established by agreement, other forms of compensation than those provided for in § 1 may be so agreed. If, in this case, the time of delivery provided for in Article 13 is exceeded, too, the person who has the right to bring an action against the carrier may claim either the compensation provided for in the agreement or that provided for in this Article.

Article 26

Persons for whom the carrier is liable

The carrier shall be liable for his servants and other persons whose services he makes use of for the performance of the carriage, when these servants and other persons are acting within the scope of their functions. The undertakings or bodies operating the railway infrastructure on which the carriage is performed shall be considered as persons whose services the carrier makes use of for the performance of the carriage.

Article 27

Other actions

§ 1 In all cases where this legal regime shall apply, any action in respect of liability, on whatever grounds, may be brought against the carrier only subject to the conditions and limitations laid down in this legal regime.

§ 2 If an action is brought against the servants or other persons for whom the carrier is liable pursuant to Article 26, such action may also be brought only subject to the conditions and limitations laid down in this legal regime.

Chapter 4 Settlement of claims

Article 28

Notice of damage

§ 1 Where partial loss of or damage to the goods is apparent and the consignee or the consignor fails to notify this on delivery of the goods at the latest, it is presumed that the goods have been delivered in a condition conforming with the contract. The notice must specify the damage sufficiently clearly.

§ 2 Where partial loss or damage was not apparent, the presumption referred to in § 1 shall also apply if the damage is not notified within seven days after delivery.

§ 3 Claims for delay in delivery shall expire if the consignee does not notify the carrier of the delay in delivery within 60 days after delivery of the goods.

§ 4 If loss, damage or delay is notified on delivery, it is sufficient to give notice to the person delivering the goods. After delivery any notice of damage shall be given to the carrier in text form (e.g. E-Mail). Dispatch within the applicable notification period is sufficient.

Article 29

Claims

§ 1 Claims relating to the contract of carriage must be addressed in writing to the carrier against whom an action may be brought.

§ 2 A claim may be made by a person who has the right to bring an action against the carrier (claimant). The necessity to make a claim before bringing an action against the carrier shall remain subject to the laws applicable in the State where the action shall be brought.

§ 3 When the claimant is the consignor it must produce its original of the consignment note. Failing this he must produce an authorisation from the consignee or furnish proof that the consignee has refused to accept the goods. If necessary, the consignor must prove the absence or loss of its original

of the consignment note.

§ 4 When the claimant is the consignee it must produce the original of the consignment note intended for the accompaniment of the goods if it has been handed over to him.

§ 5 The consignment note and any other documents which the claimant thinks fit to submit with the claim must be produced either in the original or as copies, the copies, where appropriate, duly certified if the carrier so requests.

§ 6 On settlement of the claim the carrier may require the production, in the original form, of the consignment note, so that they may be endorsed to the effect that settlement has been made.

§ 7 The claimant may claim interest on compensation, calculated according to the applicable national law, from the day on which the claim was sent in writing to the carrier or, if no such claim has been made, from the day on which legal proceedings were instituted.

Article 30

Right to bring an action against the carrier

§ 1 The consignor may bring an action as long as the consignee or a third party does not have such right pursuant to § 2 or if there are circumstances preventing delivery.

§ 2 The consignee may bring an action from the time he has the right to dispose of the goods in accordance with Article 15. Sentence 1 shall apply to a person other than the consignee provided that such person has obtained the right to dispose of the goods.

§ 3 An action for the recovery of a sum paid pursuant to the contract of carriage may only be brought by the person who made the payment.

Article 31

Carriers against whom an action might be brought

§ 1 Actions based on the contract of carriage may be brought against the contractual carrier or against the carrier who has delivered the goods or against the carrier having performed the part of the carriage on which the event giving rise to the proceedings occurred.

§ 2 An action for the recovery of a sum paid pursuant to the contract of carriage may be brought against the carrier who has collected that sum or against the carrier on whose behalf it was collected.

§ 3 An action may be brought against another carrier when instituted by way of counter-claim or by way of exception in proceedings relating to a principal claim based on the same contract of carriage.

§ 4 If the plaintiff has a choice between several carriers, his right to choose shall be extinguished as soon as he brings an action against any one of them.

Chapter 5

Relations between carriers

Article 32

Settlement of accounts

Any carrier who has collected or ought to have collected, either at departure or on arrival, charges or other costs arising from the contract of carriage must pay to the carriers concerned their respective shares. The methods of payment shall be fixed by agreement between the carriers.

Article 33

Right of recourse

§ 1 A carrier who has paid compensation pursuant to this legal regime shall have a right of recourse against the carriers who have taken part in the carriage in accordance with the following provisions:

- (a) the carrier who has caused the loss or damage shall be solely liable for it;
- (b) when the loss or damage has been caused by several carriers, each shall be liable for the loss or damage he has caused; if such distinction is impossible, the compensation shall be apportioned between them in accordance with letter c);
- (c) if it cannot be proved which of the carriers has caused the loss or damage, the compensation shall be apportioned between all the carriers who have taken part in the carriage, except those who prove that the loss or damage was not caused by them; such apportionment shall be in proportion to their respective shares of the carriage charge.

§ 2 In the case of insolvency of any one of these carriers, the unpaid share due from him shall be apportioned among all the other carriers who have taken part in the carriage, in proportion to their respective shares of the carriage charge.

Article 34**Agreements concerning recourse**

The carriers may conclude agreements which derogate from Articles 32 and 33.
