

Rail and Multimodal Electronic Transport Documents, Further Development of Consignment Notes with Additional Function as Letter of Credit

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Agreement on International Railway Freight Communications (SMGS)

- The Agreement shall establish direct international railway traffic for freight transport between the railways of the 26 countries Europe and Asia.
- Lao Republic and Republic of Korea are the new parties to the SMGS.

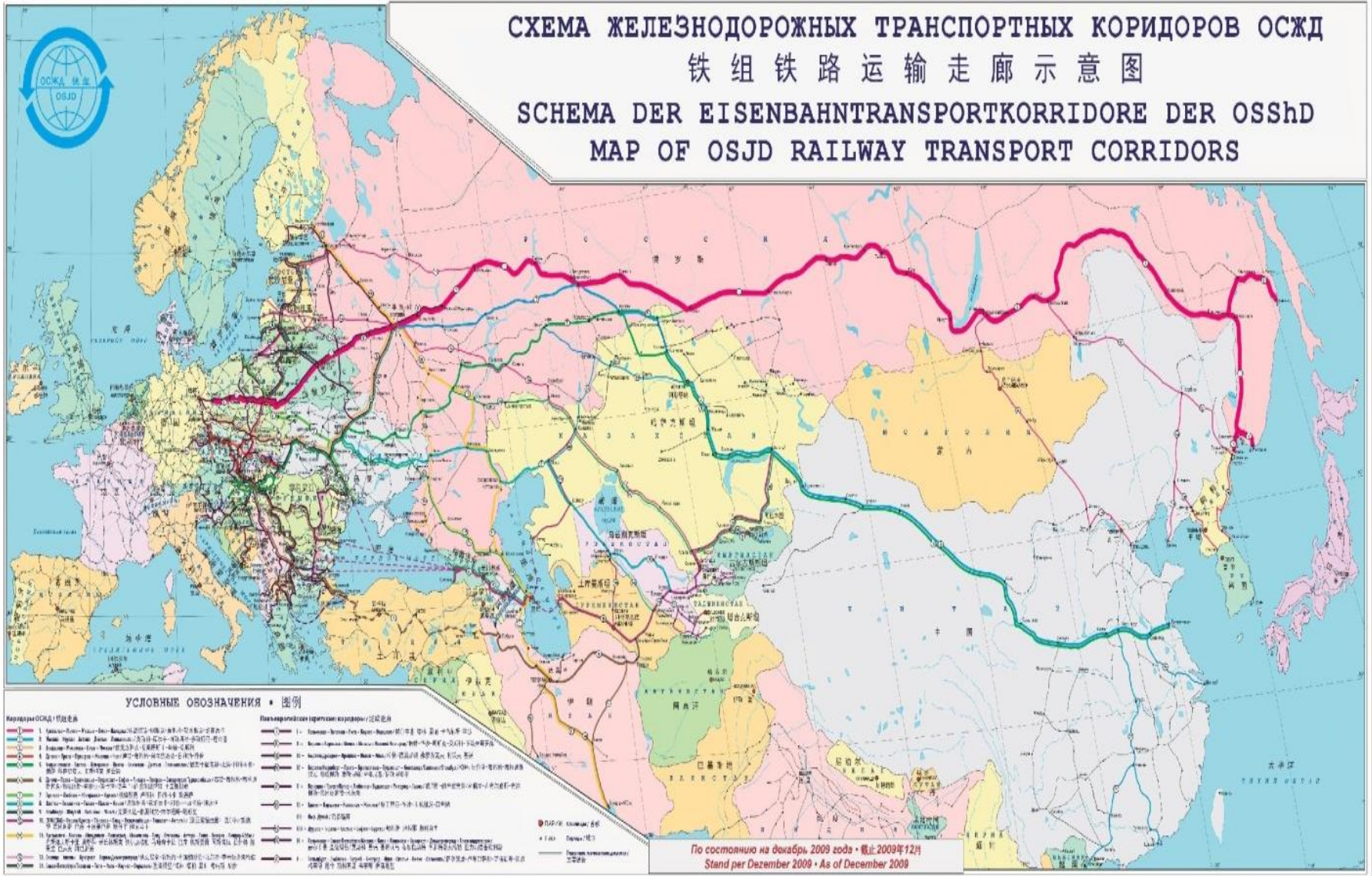


СХЕМА ЖЕЛЕЗНОДОРОЖНЫХ ТРАНСПОРТНЫХ КОРИДОРОВ ОСЖД

铁组铁路运输走廊示意图

SCHEMA DER EISENBAHNTRANSPORTKORRIDORE DER OSShD

MAP OF OSJD RAILWAY TRANSPORT CORRIDORS



УСЛОВНЫЕ ОЗНАЧЕНИЯ • 图例

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| <p>Коридоры ОСЖД / 铁路走廊</p> <ul style="list-style-type: none"> 1. Белая линия - Белая линия - Белая линия (白线 - 白线 - 白线) 2. Зеленая линия - Зеленая линия - Зеленая линия (绿线 - 绿线 - 绿线) 3. Синяя линия - Синяя линия - Синяя линия (蓝线 - 蓝线 - 蓝线) 4. Красная линия - Красная линия - Красная линия (红线 - 红线 - 红线) 5. Желтая линия - Желтая линия - Желтая линия (黄线 - 黄线 - 黄线) 6. Фиолетовая линия - Фиолетовая линия - Фиолетовая линия (紫线 - 紫线 - 紫线) 7. Розовая линия - Розовая линия - Розовая линия (粉线 - 粉线 - 粉线) 8. Серая линия - Серая линия - Серая линия (灰线 - 灰线 - 灰线) 9. Черная линия - Черная линия - Черная линия (黑线 - 黑线 - 黑线) 10. Коричневая линия - Коричневая линия - Коричневая линия (棕线 - 棕线 - 棕线) 11. Синяя линия - Синяя линия - Синяя линия (蓝线 - 蓝线 - 蓝线) 12. Зеленая линия - Зеленая линия - Зеленая линия (绿线 - 绿线 - 绿线) | <p>Пункты назначения / 目的地</p> <ul style="list-style-type: none"> 1. Белая линия - Белая линия - Белая линия (白线 - 白线 - 白线) 2. Зеленая линия - Зеленая линия - Зеленая линия (绿线 - 绿线 - 绿线) 3. Синяя линия - Синяя линия - Синяя линия (蓝线 - 蓝线 - 蓝线) 4. Красная линия - Красная линия - Красная линия (红线 - 红线 - 红线) 5. Желтая линия - Желтая линия - Желтая линия (黄线 - 黄线 - 黄线) 6. Фиолетовая линия - Фиолетовая линия - Фиолетовая линия (紫线 - 紫线 - 紫线) 7. Розовая линия - Розовая линия - Розовая линия (粉线 - 粉线 - 粉线) 8. Серая линия - Серая линия - Серая линия (灰线 - 灰线 - 灰线) 9. Черная линия - Черная линия - Черная линия (黑线 - 黑线 - 黑线) 10. Коричневая линия - Коричневая линия - Коричневая линия (棕线 - 棕线 - 棕线) 11. Синяя линия - Синяя линия - Синяя линия (蓝线 - 蓝线 - 蓝线) 12. Зеленая линия - Зеленая линия - Зеленая линия (绿线 - 绿线 - 绿线) |
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По состоянию на октябрь 2009 года • 截止 2009 年 12 月
Stand per December 2009 • As of December 2009



Agreement on International Railway Freight Communications (SMGS)

- **Art 2: Carriage of goods in direct international rail ferry traffic** – *carriage of goods in international direct railway traffic assisted by waterway transport provided that the goods travels in a wagon or on its own axles from the departure station to the destination station*
- **Project: Carriage of goods in direct international rail water (sea) traffic**



Agreement on International Railway Freight Communications (SMGS)

- Article 14 **Contract of carriage:**
§ 7. The rights and commitments may be realised by participants in the carriage by means of paper or electronic documents. The electronic documents may be used, subject to approval by the carriers participating in the carriage.
- Article 15 **Consignment Note:**
§ 4. The consignment note may be completed as a paper or an electronic consignment note.



Agreement on International Railway Freight Communications (SMGS)

- Article 22 **Completion of administrative formalities:** § 1. If the consignor does not attach to the consignment note a document that is necessary for the completion of administrative formalities and send it to the relevant administrative inspection body, it shall include information about this in the consignment note.
- Article 46 **Claims:** § 2. Claims may be made in paper form or in electronic form if this is allowed by agreement to be concluded between the participants in the carriage.



Agreement on International Railway Freight Communications (SMGS)

- Working Group on document of title SMGS of the OSJD Commission on Transport Law led by the People's Republic of China:
- the SMGS Bill of Lading should be issued in addition to the SMGS consignment note
- the SMGS Bill of Lading is an order bill of lading and does not imply the use of bearer negotiable instrument
- proposal to use the concept of "SMGS negotiable waybill" in the draft Guidelines instead of the concept of "SMGS bill of lading"
- The Working group noted the possibility of carrying out carriage using the bill of lading not only in the scope of SMGS, but also in the CIM/SMGS one. OSJD Committee sent appeals to OTIF and CIT regarding the possibility of extending the functions of the CIM/SMGS consignment note.



- CIM UR (OTIF) and the SMGS (OSJD) are legal bases for the CIM/SMGS consignment note and must provide for or, at least, do not preclude the use of negotiable transport documents
- Article 6 § 5 of the CIM UR provides that the consignment note shall not have effect as a bill of lading
- The majority of OTIF Member States: it is not necessary to regulate the use of a negotiable transport document for the carriage of goods under the CIM UR
- OTIF ad hoc Committee adjourned its decision on the need to regulate the use of a negotiable transport document for the carriage of goods under the CIM UR and on the feasibility of cooperation with OSJD on the subject
- Article 6 § 8 of the CIM UR: the international associations of carriers shall establish uniform model consignment notes in agreement with the customers
- The question is whether CIT and OSJD may implement some relevant changes to the CIM/SMGS consignment note under the existing CIM UR provisions



- The potential use of the CIM/SMGS consignment note as a letter of credit was first raised at the 32nd meeting of the CIM/SMGS Legal and Expert Group in July 2019
- The consignment notes currently used in Europe-Asia rail freight (CIM, SMGS, CIM/SMGS consignment note) are not accepted by banks as a sufficiently secure basis for documentary credits.
- The task is: further develop railway consignment notes and supply them with additional functions as letters of credit
- While the CIM contained a provision forbidding a transport document to function as a negotiable document, that provision did not prohibit the issuance of a separate negotiable document



- The revised version of the functional, legal and technical specifications for the CIM/SMGS consignment note have been available to CIT and OSJD members in English, French, German, Russian and Chinese since 1 July 2019.
- CIT and RailData continued to develop the common dataset for the CIM, SMGS and CIM/SMGS consignment notes, also drawing on the work of UN/CEFACT.



Negotiable Multimodal Transport Documents

- The proposal of the People's Republic of China to develop a legal framework for negotiable railway consignment note as a Bill of Lading (B/L).
- This work is independent of the expert-level discussions at UNCITRAL
- The aim: to create a transferable, tradable digital transport document (bill of lading) for multimodal freight movements using multiple modes of transport including rail



Negotiable Multimodal Transport Documents

- Unlike the ocean bill of lading, the railway consignment note (“RCN”) did not serve as a document of title
- The limited function of the RCNs also constrained the ability of banks to use it for the financing of letters of credit



Negotiable Multimodal Transport Documents

- At its forty-first session (Vienna, 28 November–2 December 2022), the Working Group took up new work towards the development of a new instrument on negotiable cargo documents
- Future instrument on negotiable cargo documents: a limited scope of application, since the issuance in parallel of a negotiable cargo document (by the contractual carrier) and of a transport document (by the actual carrier) would better reflect the dual-track approach adopted by the draft new instrument



Negotiable Multimodal Transport Documents

- Extending the practice in the maritime sector to the issuance of negotiable cargo documents in order to avoid interference with existing practice
- The draft new instrument did not affect the application of any international convention or national law relating to the regulation and control of transport operations
- The draft new instrument did not modify the rights and obligations of the transport operator, consignor and consignee and their liability under applicable international conventions or national law
- The negotiable cargo document did not replace transport documents required to be issued under mandatory law, but also that it preserved the possibility of using also other types of documents used in practice without being required by law, such as freight forwarders' standard trading terms and conditions.



Negotiable Multimodal Transport Documents

- There was general support for retaining detailed provisions on negotiable electronic cargo records, noting that such an approach would be forward-looking and responsive to the practical needs for the electronic version of a negotiable cargo document in the field (particularly when goods travelled faster than paper documents).



ESCAP

Economic and Social Commission
for Asia and the Pacific

- The UNESCAP project on "Enhancing integration and sustainability of transport networks in Asia and the Pacific through development of legal frameworks for multimodal transport operations"
- The term "multimodal transport operation": any type of transport operation carried out by two or more modes of transport
- The aim: to develop a more harmonized legal environment for multimodal transport in the region
- The Expert Group considered in detail the proposed options for harmonization of multimodal legal frameworks in the region



ESCAP

Economic and Social Commission
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- The current legal regime covering international multimodal transport is fragmented, lacks uniformity, and is difficult to apply
- Various liability limits create a recourse gap between damages from subcontractors and liability to the consignor
- Development of regional guideline for harmonization of national laws on multimodal transport
- The Guidelines may be used as a checklist of the main thematic matters and issues which should be considered for inclusion in national laws on multimodal transport.

Thank you for your attention!

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