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PART 2/2

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying the document

Proposal for a Regulation of the European Parliament and of the Council

on electronic freight transport information

{COM(2018) 279 final} - {SEC(2018) 231 final} - {SWD(2018) 184 final}

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Annex 8: Problem Description

This Annex aims to provide additional detail on the problem as identified defined in this IA report. This includes a justification of the limitation of the scope of the initiative to documents/information concerning the goods, as opposed to all documents/information required for the performance of a transport operation, and several tables summarising findings regarding the differences in acceptance by Member States authorities of electronic freight transport documents/information.

1 SCOPE LIMITATION

A large number of documents are currently being used during the course of a freight transport operation in order to ensure its smooth unfolding including, and not in the least, to provide proof of compliance with the various regulatory requirements in place. A basic taxonomy distinguishes between documents concerning the goods, documents concerning the means of transport, and documents concerning the personnel manning the means of transport[1].

This impact assessment and the related policy initiative concern goods related documentation and information necessary for the **international transport of goods on the territory of the EU Member States**. While the focus is primarily on intra-EU cross-border transport, and pursuant to the EU treaty base justifying this policy initiative stems - Articles 90 and 91 TFEU[2] – the scope of the transport operations covered includes also the transport passing across the territory of one or more Member States

The range of information and the documents in which they are incorporated is limited to those necessary for presentation to the authorities as proof of regulatory compliance. In order to ensure a balanced approach, as well as to contribute to the overall EU transport policy goal of promoting multimodality, all transport modes have been covered.

The rationale for limiting the scope to **goods related documentation and information** stems primarily from the significant priority given to it by the stakeholders. Notably, the experts gathered in the framework of the DTLF chose "the acceptance of electronic transport documents by all stakeholders, in particular national authorities" as one of the two main objectives on which to focus their activity. In order to do that, they established three teams, two of which were mandated to focus on goods related documents, and the "waybills" in particular. The third team was mandated to "prepare an inventory of [all] other documents used during transport / other information requirements by authorities (e.g. on vehicles, drivers, etc.) and look into their possible digitalisation." [3]
A further justification for focusing on cargo documents lies in the nature of the cargo information and documentation required for inspection by authorities, the majority of which belongs to the private domain. To give just a few examples, the name of the

[1] This taxonomy has been used also in the context of the DTLF, where an extensive overview of all the documents used in freight transport and the extent of their digitalisation is currently undertaken as part of a report being drawn up by the DTLF Subgroup 1 "Electronic transport documents".
[2] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2008:115:TOC
[3] Mandate of the subgroup on electronic transport documents of the Digital Transport and Logistics Forum, available at: http://www.dtlf.eu/sites/default/files/public/uploads/fields/page/field_file/mandate_for_sub-group_-_e-transport_docs_-_final.pdf

consignor and consignee, date and place where the consignment was taken over, description of the goods, constitute information issued and exchanged between the private parties in the context of their contractual agreement for the transport of the goods. This information/documentation is also dynamic by nature, in that some of the information may change even during the course of a single transport operation, and always (some or all of it) from one transport operation to another.

An entire set of such documents is currently accompanying every determined set of goods that exchanges ownership and needs to be transported from seller shipping point to a final buyer's/consignee reception point. Many of these documents contain the same core information, to which different aspects are added depending on the needs and purpose of the document. All the various operations involved, from printing (or sometimes handwriting) the documents, signing those that require signature, handing them over between the various parties to a transport operation (shipper and/or freight forwarder, transport company 1, transport company 2, transport company n, depending on the number of transhipments necessary between transport modes and means, consignee), sorting them, archiving them, require a variable number of man/hours, depending on the complexity of the transport operation in terms of the number of different transport modes involved, and are often prone to human error. Digitising and automatizing this information/documentation exchange processes holds therefore a large potential for cost and efficiency gains to all the commercial parties involved.

Images from the transport documents distribution office of Samskip, a multimodal transport and logistics operator, at one of its multimodal terminals

Source: Presentation by Samskip, Stakeholder consultation workshop, 17/10/2017

By contrast, the regulatory information/documentation concerning the means of transport or the personnel manning it – such as certificates concerning the registration of a vehicle, its conformity with requirements for the transport of specific good or, in the case of personnel, if they have the qualifications to drive/conduct a certain type of vehicle – is issued either by a public authority or a private entity authorised by a public authority to do so. They are also static documents in the sense that, once issued, do not need to be renewed but only at very long and regular intervals. They are also used mainly in relation to the authorities, and do not need to be exchanged with their commercial partners. In other words, even though the majority of these "other" documents are still being issued, kept and presented to the authorities on paper (and to some extent on plastic), the costs related to the issuing and management of these documents is far less significant to the businesses than goods related documents.[4]

[4] We do not have specific data related to the costs of issuing and managing these "other" documents, respectively cost-savings estimates. However, it is reasonable to argue that, beyond having to pay a small fee for the (re-)issuing of such certificates/licences every few years and eventual fines if they are not available when requested for control, get damaged or lost, there are no significant costs related to these documents for businesses; and, by implication, limited

Finally, it should be noted that, following on DTLF's initial identification of the "waybills" as a main focus for ensuring widespread acceptance, the scope of the impact assessment was initially limited to the transport documents that constitute (the evidence of) the contract of carriage, respectively the consignment notes, waybills, bills of lading[5]. However, it became clear rather early on in the process of stakeholder consultation that such a more limited focus may not be sufficient to lead to the expected, and desired, wide scale transport documents digitalisation roll-out.

Similarly, early indications coming from DTLF experts pointed to possible barriers stemming from the limited acceptance by banks and insurance companies, as major private stakeholders with significant impact on the sector. However, the impact assessment investigations revealed a high correlation between the (root causes affecting non-)acceptance by Member States authorities, and courts in particular, and acceptance by bank and insurance companies, of electronic transport documents. For that reason, the acceptance by these latter stakeholders was dropped as part of the main focus of the impact assessment, being subsumed to the analysis of the root causes, and proposed measures to address them, in relation to the acceptance by authorities.

margin for cost-efficiency gains. By contrast, there is a large scope for administrative burden reduction for this type of documents, insofar as they contain information issued by public authorities (or entities certified by public authorities) for the use of public authorities. That is the reason why the DTLG group of experts chose to mandate a third team of its "Electronic documents" subgroup to advice on the possibility of digitalisation of these documents.

[5] See Inception Impact Assessment, https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-2546864_en.

Annex 9: Policy measures and options

2 THE INITIAL LIST OF POLICY MEASURES CONSIDERED

Measures
Driver 1 – Low level of acceptance of documents by authorities and businesses
Awareness raising, training and exchange of experience
Adherence to relevant international conventions
Amendment of international conventions to remove the limitation of applicability of the conventions' provisions
Establishment of general obligation for MS authorities to accept electronic means for B2A information/documentation communication, including as evidence in administrative legal proceedings
Inclusion in relevant EU-third countries bilateral agreements of provisions on mutual acceptance of electronic information/documentation
Recommendation to MS to adhere to relevant mode-specific international conventions where MS membership is still low, such as the eCMR
Individual amendment of the relevant current EU legal acts removing references to format (establishing the obligation of authorities to accept as valid documents or other evidence made available in electronic format for inspection pursuant to the respective legal act)
Individual amendment of relevant current EU legal acts to include specific requirements for the validity of an electronic transport document/information source, as necessary and sufficient conditions to be accepted as evidence pursuant to the respective legal act and in legal proceedings
The principle that the documents/information sources complying with these requirements cannot be rejected as evidence in legal proceedings is also included in these amended acts
Establishment of general obligation for businesses to use electronic documents/sources of information for purposes of regulatory inspection by authorities
EU promotes a horizontal international convention establishing the obligation of acceptance by all MS authorities, including courts, of the electronic documents/information sources as valid evidence for purposes of regulatory control and in legal proceedings
Driver 2 – Multiple and non-interoperable systems
Amendment of international conventions to align provisions on electronic contracts of carriage
Establishment of single set of requirements for acceptance by authorities of electronic means used for B2A information communication, including as evidence in legal proceedings
Inclusion of provisions on common requirements in relevant EU-third countries bilateral agreements
Establishment of technical specifications for the implementation of the requirements for validity/admissibility of B2A electronic information/documentation communication
Mode-specific technical specifications
Technical specifications common to all transport modes
Establishment of an EU transport data dictionary/ data model
Establishment of technical specifications for implementation of B2A electronic documentation validity requirements
Certification of IT solutions for B2A information communication
Inclusion of provisions on common technical specifications in relevant EU-third countries bilateral agreements
Review of administrative practices for regulatory controls and information requirements
Establishment of an EU transport data dictionary/ data model
Development of harmonised/aligned procedures for controls and information requirements
Individual amendment of the relevant EU legal acts to include harmonised technical specifications for the implementation of the requirements for validity of an electronic transport document/information source to be accepted as evidence pursuant to the respective legal act, and in legal proceedings

New multimodal horizontal international convention including, alongside the principle of acceptance and common requirements for validity as evidence of an electronic transport document/information source, also harmonised technical specifications for the implementation of requirements for validity
Establishment of a single EU legal regime establishing the legal equivalence of the electronic transport contracts to paper-based documents, uniformly applicable in all EU Member States
EU promotes in the framework of a new horizontal international convention provisions establishing harmonised requirements for the validity of an electronic transport document/information source for purposes of regulatory control and in legal proceedings
The EU includes in the framework of new EU legal act provisions concerning the establishment of an EU centralised system: • transport mode specific (centralised EU modal transport single window) • multimodal (centralised EU multimodal transport single window)

3 DISCARDED POLICY MEASURES – JUSTIFICATION

➢ *Recommendation to MS to adhere to relevant mode-specific international conventions where MS membership is still low, such as the eCMR*

This measure is discarded as the effectiveness and efficiency of the measure is poor. It is uncertain whether all Member States will follow such a recommendation. Even when Member States ratify all relevant conventions and protocols, they still need to adopt national legalisation to implement these international rules. This can be done in many different ways. Therefore, the fragmented legal framework will not be solved and acceptance of electronic transport documents will not be guaranteed. In addition, this measure requires considerable time.

➢ *Individual amendment of current relevant EU legal acts removing references to format (establishing the obligation of authorities to accept as valid any document or other evidence made available in electronic format for inspection pursuant to the respective legal act)*

The separate revision of the current EU legislation should be discarded due to the uncertainty of its impacts. The current legislation does not always refer to the format of the information needed for the authorities' controls and it is not exhaustive concerning the necessary information and the purposes of the controls. Most of the legal basis for the authorities' inspections is found in the national legislation.

➢ *Individual amendment of current relevant EU legal acts to include specific requirements for the validity of an electronic transport document/information source and, respectively, technical specifications for the implementation of the requirements for acceptance*

This measure requires undertaking a REFIT evaluation of all current EU legislation requiring documents or evidence to be presented in order to prove compliance with their respective provisions. It would be a long process, as each piece of legislation would need to be reviewed individually, and introducing measures to allow acceptance of electronic documents/evidence would be just one among other issues to be considered. Furthermore, there is a high risk that measures that would be adopted on requirements for acceptance will remain limited in specification and/or divergent. The technical requirements will remain scattered among different pieces of legislation, and might lead to technical complications.

➢ *The principle that the documents/information sources complying with these requirements cannot be rejected as evidence in legal proceedings is also included in these amended acts*

This measure might not be politically feasible as Member States might oppose to strong interference in their judiciary systems. Also, it is doubtful whether the measure is effective, as it might not solve the overall problem.

➢ *EU promotes a horizontal international convention establishing the obligation of acceptance by all MS authorities, including courts, of the electronic documents/information sources as valid evidence for purposes of regulatory control and in legal proceedings*

Promoting a new international convention is time-consuming, as the negotiation period often takes years and once a convention is concluded, it still requires signatures, ratifications and implementation in the different Member States. Additionally, the proposed measure might be politically feasible, as Member States might oppose to the idea that the EU will start the negotiations on their behalf and third countries might not welcome the idea to negotiate with the EU. To sum up, this measure is disproportionate.

➢ *EU promotes in the framework of a new horizontal international convention provisions establishing harmonised requirements for the validity of an electronic transport document/information source for purposes of regulatory control and in legal proceedings*

Similar reasons for discarding as for measure 6. Also, the measure should focus specifically on the equivalence of signatures and stamps as they are crucial for establishing the validity. Focusing only on validity does not solve the issue of the non-acceptance by the authorities.

➢ *EU promotes a new horizontal international convention including, alongside the principle of acceptance and common requirements for validity as evidence of an electronic transport document/information source, also harmonised technical specifications for the implementation of requirements for validity*

Similar reasons for discarding as for measure 6 and 7.

➢ *Obligation for businesses to use electronic documents/sources of information for purposes of regulatory inspection by authorities*

During the consultation process, the majority of stakeholders requested not to impose obligations on businesses. It was pointed out that if authorities are obliged to accept electronic transport documents, businesses will follow. The industry is already ready to go digital.

➢ *Establishment of a single EU legal regime establishing the legal equivalence of the electronic transport contracts to paper-based documents, uniformly applicable in all EU Member States*

It is uncertain whether this measure will provide the required basis to ensure that authorities will accept electronic transport documents. It should focus specifically on the

equivalence of signatures and stamps as they are crucial for establishing the validity. In this form, the measure still allows the authorities to accept paper documents.

➢ *The EU includes in the framework of new EU legal act provisions concerning the establishment of an EU centralised system:*

- *transport mode specific (centralised EU modal transport single window)*
- *multimodal (centralised EU multimodal transport single window)*

The costs of establishment and maintenance of a centralised system are too high. Additionally, this measure instead of providing solutions might cause more issues concerning the interoperability. It is challenging to find one standard that will apply to all transport modes. In case there is no standard between the modes, the system will not be interoperable.

4 RETAINED POLICY OPTIONS

Policy option 1 - Full adherence to the current legal framework with voluntary harmonisation of implementation (PO1)

Justification – specific objective and scope

The main specific objective is to ensure the full applicability of the international conventions provisions concerning the legal equivalence of the electronic contracts of carriage in all EU Member States. The international conventions concerned are those to which not all Member States are party: e-CMR protocol (road), CMNI convention (inland waterways), and the Hamburg Rules (maritime). This objective would be achieved first by ensuring that all concerned Member States become party to the respective conventions and, subsequently, by taking measures to ensure that specific national provisions do not prevent the applicability of all the different mode-specific conventions provisions concerning the legal equivalence of the electronic contracts – either by modifying the respective national provisions or by modifying the provisions in the respective international conventions that give precedence to the applicability of specific national provisions. As highlighted earlier (see section 2.2 of the Report and Annex 8), all these conventions with the exception of the e-CMR protocol foresee the primacy of specific national provisions.

The rationale for proposing this option is twofold: to heed the most stringent calls for intervention on the part of various stakeholders, on the one hand, while keeping EU regulatory intervention at a minimum level, on the other hand.

Calls to ensure ratification of the e-CMR protocol by all Member States have been strongest and most often made by most categories of stakeholders. The main explanation lies in the relatively lowest level of digitalisation of the transport information exchange in the road sector compared to the other transport modes, correlated to the relatively lowest level of adherence by the Member States to the e-CMR protocol compared to the other mode-specific international conventions including provisions on the use of the electronically evidenced or concluded contract of carriage[6]. The road stakeholders have

[6] Exception makes the maritime Hamburg Rules, to which only five Member States are party. However, this convention is not yet into force, due to not having reached the necessary number of signatories. At the same time, digitalisation in the maritime sector has been facilitated by the maritime reporting formalities directive.

emerged, as a consequence, the most motivated and most active in promoting the road digitalisation agenda in various multimodal fora. Getting the road sector up to the other modes' speed eventually emerged as the most stringent need, with the ratification of the e-CMR by all Member States as the "low-hanging fruit" ripe for immediate action.

In the context of the DTLF, the stakeholders and experts identified "the acceptance of electronic transport documents by all stakeholders, in particular national authorities", and of "waybills" (i.e. the contract of carriage transport documents) in particular, as one of the two main objectives on which to focus activity[7]. Eventually, the focus came to be placed on the road electronic consignment note, the e-CMR, with a representative of the International Road Union (IRU) taking from the start the lead of the team focusing on waybills.

Following on discussions and urges from within the DTLF, the initial road-map draft for a Commission initiative put forward in July 2016 focused, therefore, on the acceptance and use of the electronic road consignment note. The proposals for amendment of two road-related legislation adopted by the Commission in May and November 2017 also contained references to the acceptance of the e-CMR[8].

The European Parliament resolution on road transport of May 2017, while generally urging the Commission "to increase harmonisation in passenger transport and transport of goods", specifically called "to speed up the mandatory use of digital devices on board such as smart tacographs and the use of electronic consignment notes (e-CMR)".[9] Similarly, the Council Conclusions of December 2017 on the digitalisation of transport, while calling "for the continuation of the Digital Transport and Logistics Forum (DTLF) developing, with all relevant stakeholders measures to support more systematic use and acceptance of e-documents and the harmonised exchange of information and data in the logistic chain", it "emphasise[d] in particular the need for the rapid accession by the EU Member States to the e-CMR protocol"[10].

Consequently, the primary aim of PO1 is to ensure fast accession by all the EU Member States to the e-CMR protocol. Currently, only 12 Member States have acceded, while two have signed but not yet ratified, since the protocol was open for signature in 2009. However, a focus on road sector only, even if justified by stakeholders' prioritisation, risks nonetheless facilitating singularly the sector, thus working counter to the EU White Paper on Transport objective of encouraging a shift of freight transport from road to ensure more efficient use of all modes' infrastructure, as well as lower environmental impact. Consequently, considerations linked to ensure, as much as possible, an equal playing field for all sectors, lead to enlarging the modal scope of the option, by ensuring accession by all concerned EU Member States to the other three international conventions including provisions on the use of the electronic contract of carriage where full EU membership is not yet achieved.

[7] Mandate of DTLF subgroup on "electronic transport documents", adopted in December 2015, available at: http://www.dtlf.eu/sites/default/files/public/uploads/fields/page/field_file/mandate_for_sub-group_-_e-transport_docs_-_final.pdf

[8] Proposal No 2017/0123 (COD) on cabotage and proposal No 2017/0290 (COD) on combined transport.

[9] European Parliament resolution of 18 May 2017 on road transport in the European Union (2017/2545(RSP))

[10] Council Conclusions on the digitalisation of transport, 15050/17, 5 December 2017, paragraph 21.

Measures

Regulatory

The main specific objective of this policy option could be achieved by means of a directive, requiring the Member States to take the necessary measures to adhere to the respective conventions by a certain date, such as no later than two years from the entry into force of the directive, to allow them to complete necessary internal procedures.

Subsequently, the EU could also become party to the respective conventions, by means of Council decision. The EU is already party to the COTIF convention on the rail consignment note, and the Montreal convention on the air waybill. The EU could thus have all the voting rights of all the Member States party, which would facilitate negotiations in the respective international fora to modify the provisions which establish the prevalence of national legislation as regards the legal equivalence of the electronic to the paper form of the contract of carriage.

Support and voluntary

Considering that amendment of international conventions' provisions, as highlighted earlier in the Report, may take many years to conclude and come into force, the Member States would be called upon to modify their national legislation provisions which currently prevent, in most of the States, and for most of the transport modes, the full acceptance of the electronic contracts of carriage, by all the various concerned authorities. The Commission could support and promote this objective by organising dedicated awareness raising, training, and exchange of experience events aimed at the Member States different public authorities. Furthermore, the Commission would support, in the same context, a review of the administrative practices for controls of electronic transport documents, and of the transport contracts in particular, with the objective to optimise and align, to the largest extent possible, regulatory information verification processes, both between national administrations and across the Member States. Eventually, common approaches, including as regards technical requirements identification, could emerge.

At the same time the Commission would promote the amendment of the conventions in order to also further specify and align their provisions concerning the requirements for the legal equivalence of the electronic form of the contract of carriage across the different transport modes.

Effectiveness

Expected improvement in acceptance level by public authorities (including courts) and commercial parties

Highest effectiveness would be achieved in the road sector, insofar as the e-CMR protocol does not provide for the primacy of national provisions on the legal equivalence of electronic (transport) contracts. Even though, as highlighted earlier (see section 2.2 of the Report), the international conventions, including the e-CMR protocol, do not impose on the enforcement authorities the obligation to accept the electronic transport contract as valid form of evidence of regulatory compliance, in practice, all Members States which have either become party or have so far only signed the protocol, without ratifying, tend to interpret it as an obligation.

With all Member States party to the e-CMR protocol, the barrier of non-acceptance should be removed. However, practice so far has also shown that the fact that a State has become party to the e-CMR protocol does not necessarily translate into effective acceptance by its enforcement authorities. Thus Bulgaria, Latvia and Slovenia are party since September 2010, February 2010 and, respectively, August 2017, but none has adopted implementing measures allowing their authorities to accept the e-CMR. Belgium, Finland and Sweden, as well as EU neighbours Switzerland and EEA, both effectively part of the EU single market, were the first to sign the protocol in May 2008, but have not yet completed the process of ratification. The main reason as identified through the consultation process appears to be the uncertainty, on the part of the enforcement authorities concerned, concerning how to verify and certify compliance with the requirements related to the authenticity and integrity of the electronic CMR, as established by the protocol.

Motivated by this uncertainty – "How do we know an E-CMR shown on the road was generated in an E-CMR system according to the protocol and continues to exist there in unaltered form [?]" – Belgium ran a national pilot project over 2016-2017[11]. For the same reasons, Greece has launched a pilot in December 2017[12]. Drawing on the Belgian experience, a cross-border pilot project ran jointly by Belgium, the Netherlands and Luxembourg was launched in December 2017[13]. The pilot also aims to help identify further specific requirements and procedures that would need to be put in place in order to allow the authorities in one Member States to verify electronic documents issued outside their national jurisdiction.

Finland and Estonia, too, have launched a joint pilot aimed at ensuring interoperability. The project aims to speed up the process of goods transportation cross-border via an automated and paperless management system of transit documents. Furthermore, it enables real-time tracking of the movement of goods.[14]

France became party in October 2016, but subsequently had to adopt implementing measures to make e-CMR acceptance by authorities effective. Respectively, it undertook the amendment of a national law dating from1999 that had already allowed for the acceptance by authorities of an electronic road consignment note, but which had in practice not been applied by the enforcement authorities. The road side police in particular had interpreted the law as not waving the obligation of the carrier to have a paper copy of the CMR on board. Consequently, the amendment, which entered into force in December 2017, specifically mentions that the consignment note may be "uniquely available on electronic media, for example smartphone or electronic tablet, on board the vehicle"[15]. Beyond that, however, the law remains silent on what measures, including further verification, enforcement authorities could take in case they do not trust the authenticity of the information presented on electronic media. In that case, police

[11] Presentation by Belgium Federal Administration representative, Stakeholder consultation workshop, Brussels, 10/01/2018.
[12] For more information see https://www.iru.org/ru/node/2792
[13] http://www.benelux.int/nl/nieuws/benelux-start-pilot-met-digitale-vrachtbrief
[14] https://www.skal.fi/en/finnish-transport-and-logistics-skal/skal/mobicarnet; https://mobicarnet.eu/
[15] "…chaque document étant constitué uniquement par un support électronique se trouvant à bord du véhicule, notamment téléphone intelligent, tablette ou ordinateur."Article 4.I.2, Arrêté du 9 novembre 1999 relatif aux documents de transport ou de location devant se trouver à bord des véhicules de transport routier de marchandises. NOR: EQUT9901586A. Version consolidée au 11 février 2018, available at https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000005628727

officers might still be tempted to require the paper version of the document, or additional paper documents, which do not fall under the scope of the law.

Private sector initiatives are also being put forward in an effort to support the authorities. The "first ever" formal cross-border use of an e-CMR took place between Spain and France, on 19 January 2017, at the initiative of the Spanish and, respectively, French road transport carriers national associations, and under the umbrella of the sector's main international association, the IRU[16]. It remained, however, a one-off test run. Most recently, IRU proposed the development, in the context of a EU funded project, of a living lab aimed at studying practical issues encounter by both transport operators and authorities when the e-CMR instead of the paper document is used[17], involving a set of countries which have not yet ratified the protocol.

A further flurry of such piloting activities is to be expected, first at national or regional level among neighbours, and then eventually scaling up, resulting in increasing levels of acceptance. However, current trends also indicate two main risks, which would bear on penetration/use rates, on the one hand, and compliance and administrative costs for businesses and, respectively, for authorities, on the other hand. First, it is likely that uptake of the e-CMR use will continue to remain very low until the authorities define the exact requirements the CMR made available electronically should comply with, and the procedures for verification.

Second, an unknown number of such specific requirements and procedures will eventually be developed, requiring specific adaptation of technical solutions, or multiple technical solutions to be acquired by the businesses in order to comply with the specific requirements of the different authorities in the different Member States.

In the absence of clear specifications of the technical requirements the IT solutions should comply with in order to ensure compliance with the protocol's authenticity and integrity requirements, courts would also continue to exercise their discretion in accepting the e-CMR as evidence of a valid contract.

In the inland waterways and maritime sector, the positive effect on the obligation of acceptance by authorities would be even lower, as long as national provisions, which in many Member States, and particularly as regards the maritime bill of lading, link the legal value of a contract to its paper form, would continue to retain primacy over the conventions' provisions. In addition, the maritime bill of lading is a particular case, due to its dual nature as both contract of carriage and ownership title over the goods forming the object of the contract, engendering the applicability of additional national legislation provisions related to the conditions of validity of contracts by which property titles are transferred. Furthermore, in inland waterways, as long as the Regulation No. 11/1960 will continue to require the availability of a paper-evidenced contract, any potential cost savings related to the use of an electronic consignment would be practically null to the parties.

[16] For more information see https://www.iru.org/resources/newsroom/first-ever-border-crossing-use-e-cmr-electronic-consignment-note

[17] The proposal is, at the time of writing, under approval by the Commission, hence full references could not be provided at this stage.

Policy Option 2 – Full obligation of acceptance for the Member States authorities of the electronic transport contracts, with minimum harmonisation of implementation (PO2)

Justification – specific objective and scope

PO2 shares with PO1 the same specific objective: ensure the full applicability of the international conventions provisions concerning the legal equivalence of the electronic contracts of carriage in all EU Member States. However, it envisages doing so by different measures and instruments, which would also allow coverage of a larger range of transport contracts.

Specifically, in addition to the contracts of carriage as described and governed by the different mode-specific international conventions, any other international transport contracts which do not refer to the international conventions' regime as applicable for that particular contract, would also be included in the scope of the measures adopted. This would concern in particular contracts covering multimodal transport operations, for which no specific international convention is currently in force. [18]

Furthermore, the primacy of the application of the national legislation provisions, as currently provided by all international conventions except for the e-CMR protocol, would also be circumvented. At the same time, it would not concern the legal equivalence of the electronically concluded/evidenced contract in civil proceedings, i.e. in case of litigation between the parties to the contract as regards responsibilities and liabilities. As explained earlier, implementing such a measure by means of EU legislation risks being politically complicated, as it would raise opposition from the Members that it would interfere with their judiciary system.

Measures

Regulatory

In this option, an EU legal act would be adopted, establishing the obligation of the Member States authorities to accept electronically concluded/evidenced contracts of carriage, when presented with by a private actor to prove compliance with regulatory requirements, provided two main conditions are met: first, that the information necessary to prove compliance, as requested by applicable regulations, is available; and second, that the electronic means by which the contract has been made available ensure compliance with a set of specific requirements aimed at guaranteeing the authenticity and integrity of the information presented. This set of requirements would draw on specifications contained in the relevant provisions of the international contracts of carriage conventions, but would aim to align them across the different transport modes by establishing a common set of such requirements. For example, that the authenticity of the information could be guaranteed either by electronic signature or through means of unique identification of the party for which a signature is required.

Support/voluntary

[18] The United Nations Convention on International Multimodal Transport of Goods (Geneva, 24 May 1980) in article 5 foresees the issuance of multimodal transport documents and states that the signature on it can be made by any mechanical or electronic means. This Convention has not entered into force until today.

A set of accompanying support measures would be promoted by the Commission to facilitate acceptance, such as awareness raising, training and exchange of experience between the different Member States' authorities, as well as the review of the administrative practices for controls with the objective to optimise and align, to the largest extent possible, regulatory information verification processes.

At the same time, the Commission would promote the amendment of the international conventions in order to also further specify and align their provisions concerning the requirements for the legal equivalence of the electronic form of the contract of carriage across the different transport modes.

Effectiveness

Expected improvement in acceptance level by public authorities (including courts) and commercial parties

A positive impact would be achieved in all transport modes, as a result of the clear establishment of the obligation of acceptance by authorities of the transport contracts made available by electronic means, in all transport modes, and regardless national provisions on the validity of electronically concluded/evidenced contracts. Yet this latter provision, as highlighted earlier, also means that the scope of obligation does not cover civil legal proceedings, in case of litigation between the parties. Rather, it is limited to admissibility by the enforcement authorities – i.e. when presented as evidence of compliance with regulatory requirements – and by courts only in administrative proceedings – i.e. as admissible evidence if the private party decided to contest in court a decision by an enforcement authority concerning regulatory compliance for which an electronically evidenced contract was used as proof.

Nonetheless, as the feed-back received from the stakeholders has highlighted, this aspect of the problem driver is not viewed as critical by a majority of stakeholders. Furthermore, when the question was specifically asked in one of the stakeholder consultation workshops – i.e. whether not including the legal equivalence of the contract as such would significantly dent the effectiveness of other measures targeting the acceptance by authorities – the general agreement had been that such measure could and actually should be left aside if that would impact on the possibility of having, or strength of, the measures concerning acceptance by enforcement authorities[19].

However, the obligation of acceptance would remain limited to a specific type of transport documents – the transport contracts – which, even though the most important and most often used document to prove regulatory compliance, still remains one of the documents containing the regulatory information required by authorities. A majority of the stakeholders involved on a regular basis in activities related to these documents have confirmed that including those documents in the scope of acceptance would be necessary, in order to create a sufficient business case to move to fully digital electronic transport information exchanges.

Furthermore, under this option, the specification of requirements, even if more detailed and aligned across the transport modes, would still remain limited, leaving a sufficiently large room for interpretation in implementation for the different authorities concerned. Arguably, that would lead, in all transport modes, to the same scenario as that described

[19] Exchange during stakeholder consultation workshop Brussels, 10/01/2018.

for PO1 concerning the identification of the technical specifications for the implementation of the e-CMR requirements, with significant impacts for the compliance and administrative costs for both businesses and authorities.

Policy option 3 - Full obligation of acceptance for the Member States authorities of regulatory cargo transport information or documentation, with partially harmonised implementation (PO3)

Preferred policy option. See description in Annex 3.

Policy Option 4 – Full obligation of acceptance for the Member States authorities of regulatory cargo transport information or documentation, with fully harmonised implementation (PO4)

The aim of this policy option, compared to PO3, would be to ensure full interoperability of the IT systems and solutions that would be used for electronic transport information and documentation exchanges, both for B2B, B2A and A2A communication. A single set of technical specifications would be adopted and required, by means of EU legislation, for all regulatory transport information communication, regardless of the transport mode concerned.

While highly effective in achieving interoperability, it would engender higher costs for business to adapt their current IT environment, particularly in those sectors where digitalisation is relatively more advanced. Indeed, a number of stakeholders, including representatives of the main industry associations in air (IATA), rail (CER) and maritime (ECSA and WSC) have warned against a one-size fits all approaches and the development of new standards.