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Multimodality Workshop

Prior to the second meeting of the "Multimodality" Committee in Bern, a workshop on the subject of "multimodality" will take place in the afternoon of 12 November 2015, beginning at 2:00pm. The workshop is being organised in cooperation with IRU (International Road Transport Union) and with the participation of the CCTT (Coordinating Council on Trans-Siberian Transportation). It will be run by Maria Kalimeri, Chair of the CIT's "Multimodality" Committee. The workshop will end with aperitifs at around 6 pm.

More detailed information is provided on the CIT's website and in the related article in CIT-Info 4.

➔ [Programme](#)

General Assembly of the CIT

The General Assembly of the CIT will be held on Thursday, 19 November 2015 in Bern in the CIT's head office building (Conference Room A, 1st Floor) at Weltpoststrasse 20. The official part of the meeting will begin at 9:00am and will end at 11:30am at the latest. It will be followed by Dr. Péter Rónai, Vice-President of Rail-NetEurope, who will give a keynote speech on "The role and tasks of RNE in the use of infrastructure", which will be followed by a discussion. The General Assembly will last until 12:30pm.

The invitation and work documents are available for CIT members on our website.

➔ www.cit-rail.org

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EDITORIAL



Dear Readers,

It gives one considerable pleasure when plans come to fruition and projects make their way from paper to reality. The CIM/SMGS consignment note is such a case. You will find a report on the increasingly successful use of this transport document from the CIT and the OSJD on the Eurasian corridor. As part of a new project with the Universal Postal Union, the CIT is assisting its members in dealing with the legal and postal aspects of processing rail shipments from China to Western Europe.

In this issue of our newsletter you will find a report on the Conference of Passenger Claims Departments. These conferences are the backbone of the CIT's activities. They focus on the application and continuing development of CIT documents. And on the links between the law and its application. The CIT documents for its members are of great benefit and are constantly being adapted to take account of new developments.

Finally, I would like to draw your attention to the interesting essay on the contract of carriage in the Rome I Regulation.

Best wishes from Bern
Cesare Brand
Secretary General of the CIT



The contract of carriage in the Rome I Regulation

Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17.6.2008 (also known as “Rome I”) governs private international law within the European Union in the field of contractual obligations. It entered into force on 17.12.2009 in all EU Member States (with the exception of Denmark).

1. General information relating to the “Rome I” Regulation

Introduction

Rome I is a Regulation that, in accordance with Article 288 (2) of the Treaty on the Functioning of the European Union (TFEU), does not need to be transposed into national law to become effective, as it is directly applicable. It applies solely to cross-national cases (Article 1 (1) of the Rome I Regulation) and contains only provisions on conflict of laws⁽¹⁾, which make a reference to the substantive laws of the respective country to be applied.

Scope of application

In substantive terms, the Regulation applies solely to civil and commercial matters (Article 1(1) of the Rome I Regulation). In temporal terms, the Regulation applies solely to all contracts concluded after 16.12.2009. A basic principle throughout the Regulation is the principle of the freedom to choose the applicable law. In this case, it means specifically that the contracting parties are free to choose the law that is applicable to the contract between them⁽²⁾. What, as a matter of principle, is the freedom to choose the applicable law is subject in the Regulation, however, to numerous restrictions.

The contract of carriage in the Rome I Regulation

The scope of application of the Regulation, as previously mentioned, applies for example to civil matters. These also include contracts of carriage. The contract of carriage is included in Rome I in Article 5, which contains several connecting criteria, on the basis of which the applicable legal system is to be chosen.

In the case of contracts of carriage, a distinction must first



be made as to whether this involves carriage of goods or passengers. For the carriage of goods, freedom of choice is given as a matter of principle (cf. the principle mentioned above). In the absence of such a choice, in accordance with Paragraph 1, the contract shall be governed by the law of the country in which the carrier has his habitual residence⁽³⁾, provided that the place of receipt or the place of delivery or the habitual residence of the consignor is also situated in that country. If these requirements are not met, the law of the country where the place of delivery is situated, as agreed by the parties, shall apply.

In the case of contracts for the carriage of passengers in contrast, only a restricted choice of the applicable law is possible. The restriction is based on the consideration that the passenger, as the weaker party, is regularly in need of protection. For this reason, the parties may choose as the law applicable to a contract for the carriage of passengers the law of the country where the passenger has his habitual residence, the law of the country where the carrier has his habitual residence, the law of the country where the carrier has his place of central administration or the law of the country where the place of departure or destination is situated. In the absence of a choice of law, the law at the place of habitual residence of the passenger is applicable, if the place of departure or destination is situated in this country. Otherwise, the law of the country where the carrier has his habitual residence is applicable.

In Paragraph 3 of Article 5, there is an escape clause for the carriage of both goods and passengers, which, in the event that the contract is more closely connected with another country, is intended to ensure that the law of that country is applied.

(1) A conflict of laws describes a legal regulation that settles the question of the applicable law in the provision of cross-border legal services. In contrast, substantive law describes a legal regulation that settles material questions.

(2) The principle of freedom of choice is laid down in Article 3 of the Rome I Regulation: a contract shall be governed by the law chosen by the parties in accordance with Article 3(1).

(3) As a general principle, the following applies: In accordance with Article 19 of the Rome I Regulation, the place of habitual residence for companies, associations and legal entities is determined by the place of their central administration. If this involves a natural person in his professional capacity, the place of his habitual residence is deemed the place of his principal place of business.

2. Relationship of the COTIF CIM and CIV Uniform Rules to the ROME I Regulation

The regulations of COTIF/CIM UR and CIV UR apply to the international carriage of goods and passengers by rail. Article 5 of the Rome I Regulation generally speaking refers to contracts for the international carriage of goods and passengers and therefore also includes in its scope of application international rail transport services. The regulations of the CIM and CIV UR thus coincide with those of Article 5 of the Rome I Regulation, with the result that the question is raised as to which regulations take precedence in terms of their applicability.

The Uniform Rules for contracts for the international carriage of goods (CIM) and passengers (CIV) by rail – unlike the conflict of laws in Rome I – primarily govern substantive laws that, in terms of their content, can be directly applied. They entered into force ahead of the Rome I Regulation.

The regulations of COTIF (CIM and CIV UR) take precedence in terms of application. This is justified firstly by the char-

acter of these legal regulations, since it is international uniform substantive law, which takes direct precedence in terms of application, so that conflict of laws no longer needs to be observed. Secondly, the precedence given to the CIM and CIV UR results from the fact that the Rome I Regulation was designed to accommodate international law and international agreements with non-Member States of the EU that already existed when Rome I came into force (see Article 25 of the Rome I Regulation).

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Original: DE

Useful link

➔ [Regulation No. 593/2008](#)

General Assembly of OTIF

The 12th General Assembly of OTIF was held on 29 and 30 September in Bern. The mandate of the Secretary General, François Davenne, was extended for a further three years. In addition, a number of more formal amendments to the Basic Convention were approved. These primarily involved terminology issues (European Union instead of European



Representatives from 42 of the 49 Member States took part in the General Assembly

Community, the term wagon keeper) and procedural issues (inclusion of maritime services). Regarding the CIM, reports focused primarily on the current work associated with the electronic consignment note and the prospect of a possible revision of the CIM for the year 2018 was considered. The revision is to be based on the results of the work currently being carried out by the CIT at sector level. The most important resolutions related to the implementation of the so-called ECM ("Entity in Charge of Maintenance") in OTIF's regulations. What is important from a legal point of view is specifying the ECM as the wagon keeper's auxiliary. And finally, a consolidated explanatory report on COTIF and its appendices was discussed. This is expected to gain in significance in future in the interpretation of COTIF regulations.

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Original: DE



Passenger rights under the scrutiny of the annual Conference of Passenger Claims Departments

Delay compensation, assistance due in case of disruptions or missed connections and other passenger rights issues were at the focus of this year's Conference of Passenger Claims Departments, held on 24 September in Bern.

Starting from case studies

More than 40 participants from claims, sales and legal departments of UIC and CIT member companies were actively involved in the workshops dealing with case studies taken from practice. Participants shared their views on how to deal with assistance for continuation of the journey due to missed connections during daytime and the offering of accommodation when the passenger has missed his last connection of the day. The workshop also handled cases covering delay compensation, assistance etc., studying the whole process of claims handling, from the checking of the facts, via the calculation of compensation, payment to the customer, as well as the final after sales processes, including sharing of the costs afterwards between the railway undertakings.

Latest developments on the PRR

Isabelle Saintilan (SNCF) presented details of the current implementation of the passengers' rights regulation, highlighting in particular the Interpretative Guidelines to the Rail PRR, having been presented by the EU Commission in the summer. The Interpretative Guidelines have no binding legal value, as only the Court of Justice of the European Union (CJEU) can make binding interpretations of the PRR. However, the Interpretative Guidelines represent the opinion of the EU Commission on certain points in the PRR and can thus be used as a guidance when interpreting the PRR. Isabelle Saintilan finalized her presentation by giving interesting information about some cases pending before national courts.

Pre-sales information: what obligations for the railways?

Oliver Hirschfeld (DB) showed in his presentation how important it is to give the customer the right information, before, during and after his journey. The obligation to provide information is one of the main requirements in the Rail PRR. Oliver Hirschfeld started showing the legal framework, then presented the complex situation in Germany, where DB is the only carrier indicated on the ticket (being the issuing undertaking), but several other German private railway undertakings take part in the contract of carriage. The key issue according to the German National Enforcement Body



The discussions gave the GS CIT valuable feedback for further development and refining of the CIT products in passenger traffic

(NEB) is how to inform the customer of this situation and when to inform him. The position of the German NEB is that the customer needs to be informed about this situation not only after he has bought his ticket (i.e. with information on the ticket itself), but also before the purchase. One solution for the manual sales points can be to show this information on big posters. The lively discussion after the presentation showed that this issue is an extremely important one for all railway undertakings: how, when and where to give the customer the right information, and how to handle complaints afterwards when the railway undertakings have not given the customer enough or the right information.

Commercial gesture and best practices

Philipp Kaeser (SBB) showed how SBB is handling the commercial gesture ("Kulanz"). The SBB decided that all SBB staff who are in contact with customers have the possibility and the responsibility to try to resolve complaints from customers in an easy way that satisfactory to everybody. There is a wide range of means to use, for example different kinds of vouchers, refunds of extra costs, sending flowers etc. And perhaps the most important is to apologize and show understanding for the customer. On top of this, SBB has elaborated internal support for its staff in the form of a handbook for the commercial gesture ("Kulanzhandbuch") as well as Intranet pages which function as an internal Wikipedia ("Kundendienst Wikipedia"). Philipp Kaeser ended his presentation by showing SBB's external shop for commercial gesture (an online "Kulanzshop"), where the customer can choose his own style of compensation up to a certain amount. The Kulanzshop offers the customer the choice between different kinds of SBB tickets, food, wine and other articles. The animated discussion following the presentation showed that the participants in the conference consider the commercial gesture as an important tool to resolve complaints from customers. Several railway undertakings also indicated that they are testing or already using similar approaches in their customer service, for example NS and DB.

CIT documents for claims departments

Jan Svensson (CIT) showed the latest developments on the CIT documents that are useful tools for the departments handling customer claims. Isabelle Oberson (CIT) then focussed on the AIV agreement, which serves as basis for the cooperation between claims departments. She explained where to find the appropriate instructions and tools in the AIV for handling the complaint, who is the right railway undertaking to handle the complaint, etc. The workshop participants actually raised some questions as regards the need to plan and arrange assistance in a good way especially for customers needing hotel accommodation, how to calculate delay compensation for tickets with reduced prices and when „lack of comfort“ occurs. The workshops participants discussed possible solutions, both from a legal and practical point of view. The discussions also gave the GS CIT valuable feedback for further development and refining of the CIT products in passenger traffic.

Feedback and further actions

The survey among the participants after the conference showed their appreciation of the issues treated in the presentations as well as in the workshops and gave the GS CIT valuable input for the conferences to come.

The date for next year's Conference of Passenger Claims Departments has already been set to 29 September 2016.

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Original: EN

The U.S. Supreme Court is hearing the case **ÖBB-Personenverkehr AG vs. Carol Sachs**

European railways annually transport millions of travellers from all over the world, including American citizens. But what if a railway related accident happens? Can a foreign citizen bring a claim to its domestic court? The U.S. Supreme Court is currently hearing such a case brought in the United States by an American citizen, who was injured while travelling in 2007 with ÖBB Personenverkehr in Austria.

Short factual background

Ms. Carol Sachs from California (USA) was injured while visiting Austria in 2007, as she fell into the gap between the rail platform and the train while boarding a train that was already moving. Ms. Sachs bought her Eurail pass for Austria and the Czech Republic on the Internet from the Rail Pass Experts (RPE), a Massachusetts-based travel agency. There was no direct relationship between ÖBB and RPE, and only indirect between Eurail and RPE.

The initial proceedings in the case

Ms. Sachs brought a personal injury lawsuit before the U.S. District Court for the Northern District of California against ÖBB Personenverkehr. The ÖBB argued in defence that it was entitled to sovereign immunity under the Foreign Sovereign Immunity Act (FSIA), as it is owned via ÖBB Holding AG by the Republic of Austria. The district court dismissed the case due to lack of subject-matter jurisdiction. The court held that the commercial activity exception under the FSIA did not apply because ÖBB itself had not engaged in commercial activity in the U.S., and that RPE's distribution of the Eurail passes could not be attributed to ÖBB.

Ms. Sachs appealed to the U.S. Court of Appeals of the Ninth Circuit, where the case was first heard before a panel of the court and then reheard en banc (i.e. before all the judges of the court). Also the three judges penal rejected the appeal. The court en banc had to answer the question whether the FSIA exception based on commercial activity of a foreign state in the U.S. also applies in cases when a person simply purchases a ticket in the U.S. from a travel agency for travelling with the carrier that is owned by that foreign state. The Court en banc reversed the decision of three judges penal, giving jurisdiction of the U.S. courts to hear the case. Three judges dissented, among them the Chief-Judge.

US Supreme Court dealing with the case

ÖBB appealed the decision of the Court of Appeals to the U.S. Supreme Court. First, the Supreme Court was to decide whether the case should be heard. Notably, on average lower than one percent of all petitions submitted to the Supreme Court are admitted to hearing on substance. The CIT, and the Netherlands supported the position of the ÖBB at this stage with amici curiae briefs. The CIT emphasized foremost the applicability of COTIF/CIV to the present matter and of the respective jurisdictional rules according to Articles 56 and 57 CIV. On 23 January 2015 the U.S. Supreme Court granted the writ of certiorari, i.e. agreed to hear the case.

Before the actual hearing on the case, when the Supreme Court deals with the substantial questions, also the CIT again had an opportunity to submit the second amicus curiae brief to support ÖBB reinforcing the arguments mentioned above. A joint amicus curiae brief for ÖBB was also submitted by the Netherlands and the Swiss Confederation. The oral hearing in the case took place on 5 October 2015. Based on the transcript of the oral hearing it seems that the Court is inclined to decide in favour of ÖBB. The final decision of the Supreme Court can be expected in spring 2016. The most important documents and procedural stages are presented on a Blog, reporting from the U.S. Supreme Court.

Both of the CIT amici curiae briefs can be found there. The CIT GS will provide an analysis of the legal questions raised in the case in due course in future issues of CIT-Info.

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Original: EN

Useful links

- ➔ [Blog of the U.S. Supreme Court](#)
- ➔ [Transcripts of the hearing in ÖBB-Personenverkehr AG vs. Carol Sachs before the Supreme Court](#)

FREIGHT TRAFFIC

The successful, practical implementation of the CIT/OSJD's "CIM/SMGS legal interoperability" project continues

At their last joint meeting on 9/10 September 2015 at the headquarters of the OSJD Committee, both the CIM/SMGS Coordinators' and Steering Groups announced the successful, practical implementation of the CIT/OSJD's "CIM/SMGS legal interoperability" project. This work has been supported by the active involvement of over 30 participants. The very active involvement of the representatives from the Kazakhstan and Chinese Railways (KZH and KZD) is a strategically important development and a very pleasing one for the CIT and OSJD project coordinators.

Widespread use of the common CIM/SMGS consignment note

The recent examples of rail freight shipments from China to Spain using the common CIM/SMGS consignment note demonstrate that technological interoperability is not an obstacle to Eurasian shipments of this kind. For the successful handling of Eurasian rail freight shipments, however, it is very important to take a systematic approach – this means that not only is technical interoperability a key factor for the optimisation of Eurasian rail freight transport services between China and Europe, but also legal interoperability. Since the common CIM/SMGS consignment note was introduced in 2006, it has been possible to reduce as much as 10% of the administration costs included in the freight charges, which makes shipments of this kind very attractive. In this way, the CIT is supporting the develop-

ment of the Eurasian rail freight corridors on which the CIM/SMGS consignment note can be used.

The RZD coordinator presented detailed statistics on the use of the common CIM/SMGS consignment note for the year 2014 and the first half of 2015 – in 2014, 9,401 CIM/SMGS consignment notes were used for export shipments, 11,649 CIM/SMGS consignment notes for import shipments and 3,496 CIM/SMGS consignment notes for transit shipments from Kazakhstan and China to Europe, which represents an increase of approximately 50% in terms of transit shipments compared with 2013. In the first six months of 2015, a total of 2,702 CIM/SMGS consignment notes were issued for shipments from China to Germany, whereas only 1 CIM/SMGS consignment note was issued for shipments in the opposite direction. For this reason, all coordinators were urged to investigate this disparity in shipments from Europe to China and, taking into account the total figures for 2015, provide the project coordinators, CIT and OSJD, with possible reasons for this. The findings will be discussed further at the respective next meeting.

An important factor in the further development of the "CIM/SMGS legal interoperability" project will be the accession of Azerbaijan to COTIF and Afghanistan to SMGS. In the years ahead, multimodal shipments will also be very much in demand and will be developed primarily in collaboration with Azerbaijan, Kazakhstan and the Russian Federation in the Black Sea and Caspian region, which represents a further opportunity for the long-term implementation of the CIM/SMGS consignment note.



In the first 5 months of 2015, a total of 49 container trains operating between Chongqing (CN) and Duisburg (DE) have been processed using CIM/SMGS consignment notes

Extension of the scope of the CIM/SMGS consignment note to include the People's Republic of China

The coordinators noted with satisfaction that current CIM/SMGS shipments confirm the widespread use of the common CIM/SMGS consignment note in practice. The representative of the Chinese Railways (KZD), commenting on the further evaluation of the project, explained that in the first 5 months of 2015, a total of 49 container trains operating between Chongqing (CN) and Duisburg (DE) had been processed using CIM/SMGS consignment notes, which is 5 to 6 times more than was the case in 2013. Between Chengdu (CN) and Lodz (PL), 16 container trains were processed using CIM/SMGS consignment notes.

The representative of DB Schenker Rail DE (DBSR DE) confirmed that rail transport between China and Germany is developing very successfully. There are now regular services operating from China to Germany, and the demand for shipments from Western Europe to China is increasing steadily. DB Schenker Rail DE is currently taking the appropriate steps to provide more services to meet this demand. It would also be of advantage if the common CIM/SMGS consignment note were used for these West to East shipments. What is needed is a stable East-West and West-East link based on a level playing field.

Referring to the ease of use announced for the CIM/SMGS consignment note, the Chinese Railways (KZD) suggest that simplifying the agreement procedure for the CIM/SMGS consignment note would improve the efficiency of rail operations. In order to coordinate shipments using the CIM/SMGS consignment note at the moment, it is necessary for the consignor to provide the transit railways and railways of destination with information on the consignments at least one month before the CIM carriage of goods is to take place, including details of the type and code of the goods

to be shipped, the consignor and consignee, the destination stations and foreign operators, etc. Carriage of goods is only possible when confirmation has been received from all transit railways and railways of destination. Since the carriage of goods as a container load was ordered in many cases by more than one consignor and many orders could not be scheduled, i.e. many of the goods had probably been organised at short notice prior to the journey, the consignors were unable to guarantee the provision of information to the relevant forwarding railways within the stipulated period. For this reason, issuing the consignment note in Chinese and providing the commercial invoice in good time is also to be optimised.

The coordinators have accordingly prepared a suggestion to the effect that at least the most frequently used transport links between the People's Republic of China and Europe can be entered in Appendix 1 to the GLV-CIM/SMGS and/or Appendix 6 to the SMGS. For rail freight shipments from and to the People's Republic of China, entry of the following three border crossing stations to Russia, Mongolia and Kazakhstan are of paramount importance:

- Alashankou – Dostyk, between the People's Republic of China and Kazakhstan;
- Erljan – Zaminuud, between the People's Republic of China and Mongolia;
- Manzuli – Zabaikalsk, between the People's Republic of China and the Russian Federation.

The re-consignment to the CIM/SMGS consignment note can take place at these stations.

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Original: DE

Carriage of parcels on CIM/SMGS rail shipments between China and Europe

After more than two thousand years, the Silk Road between China and Europe is back on the economic and political radar screen again – ultimately due to the rapid development of global Internet trade. The need to strengthen the role of rail transport to meet the demand for shipments of goods between Asia and Europe during these times of globalisation and digitisation is a constant topic of discussion.

Carriage of parcels by rail

Some 90% of all freight shipments today between China and Europe are sent via the sea route, with each shipment requiring approximately 40 days for the journey. Around 10% of the shipments are sent by air freight, which can be processed in a day. Freight shipments by rail currently account

for just 1% of the total and take approximately 15 days for the journey between Hamburg and Zhengzhou in China. The People's Republic of China is the EU's largest source of imports and is now becoming one of the fastest growing export markets for the EU. The volume of trade between China and Europe on a daily basis today is significantly in excess of 1 billion euros.

The Universal Postal Union (UPU) with headquarters in Bern, Switzerland, as a specialised agency of the United Nations, today coordinates the collaboration of the national postal authorities and determines the general framework conditions for cross-border postal services. Together with the CIT (and OTIF, also headquartered in Bern), this collaboration makes it possible to establish legal and actual framework conditions to simplify the carriage of parcels between China and Europe in order to generate an economic benefit for the railways.

All the actual and legal framework conditions are currently being examined and assessed by the CIT and the UPU.

Solutions for dealing with customs formalities in particular need to be found, since the carriage of parcels involves grouped consignments. A pilot project is currently going through the first preparatory phase for the creation of framework conditions and, in view of its current status – subject to the approval of the consignor and consignee countries interested in the project and the cooperation of postal authorities and railways that might possibly be involved – could presumably begin at the end of 2015/beginning of 2016.

Concrete proposals for the next steps to be taken

The representative of the Chinese Railways (KZD), at the last meeting of the CIT-OSJD Coordinators in Warsaw in mid-September 2015, made a concrete proposal for the

carriage of parcels by rail to the effect that those involved at specific sections of the route be assigned the task of coordinating the customs offices, the post offices and other relevant offices in their own country, in order to simplify customs procedures and to increase the volume of parcels carried across borders by rail. The list of coordinators from the railways involved is to be prepared by mid-October and made available to the GS CIT and the OSJD.

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Original: DE



LAW IN PRACTICE

In this section, we publish details of legal decisions concerning rail transport and related areas of law, statements from public authorities and legal advice from the CIT General Secretariat on the practical legal issues that arise in daily life.

Information on dangerous goods in the CIM/SMGS consignment note

How is information on dangerous goods entered in the CIM/SMGS consignment note?

Who is responsible for making the entry?

Where can information on dangerous goods in accordance with RID (Appendix C to CO-TIF) and Appendix 2 SMGS be obtained?

For the CIM consignment note, the description of the type and packaging of dangerous goods is to be entered in accordance with Article 7 h) CIM and in line with description given in the Regulations concerning the International Carriage of Dangerous Goods by Rail (RID). The complete version of RID 2015 published by OTIF can be accessed from the CIT website. The consignor enters the descriptions and is liable for the information prescribed in RID in accordance with Article 8 §1 CIM. Based on Working sheet 02-02 of the GTM-CIT, the carrier examines the consignment note, paying attention to the specific requirements for dangerous goods (1.4.2.2 RID and UIC Leaflet 471-3).

For the CIM/SMGS consignment note, the provisions of the CIM UR and the RID, in addition to those of Appendix 2 to the SMGS in accordance with Item 12.1 of the GLV-CIM/SMGS and the new Appendix 6 to the SMGS, are decisive. For the details to be entered in the consignment note, the consignor

remains correspondingly liable (Article 8 §1 CIM and Article 16 § 1 SMGS). Item 16 of the “CIM/SMGS Consignment Note Manual” states that dangerous goods are only accepted for carriage if they satisfy the provisions of the RID and SMGS Appendix 2. The respective footnote points out that the forwarding carrier is to supply the information required on the applicable RID provisions and on SMGS Appendix 2.

The consignor (customer/exporter) can request that entry of the details on the dangerous goods in the CIM/SMGS consignment note in accordance with SMGS Appendix 2 be made by the SMGS railways at the reconsignment point. The addresses of the relevant organisations are included in Appendix 4 to the GLV-CIM/SMGS and Appendix 6 to the SMGS and on the CIT’s website.

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Original: DE

Useful links

- ➔ [Address books for Freight Transport](#)
- ➔ [RID 2015](#)

Complement to the article in CIT-Info 3/2015

At the same time as the publication of the related article in CIT-Info 3/2015, p. 8 on 17 July 2015, an article appeared in the June issue of the German magazine on Transport Law (“Transportrecht”) by Prof. Dr. Rainer Freise on “The assertion of claims for damages in international rail freight traffic,” which also included a review of the decision taken by the Austrian Supreme Court of Justice on 26 November 2014.⁽¹⁾

In the present case, which was brought before the Supreme Court, the consignee stipulated in the consignment note as the person entitled to take action did not assert any claims against the carrier after taking over the goods in accordance with Article 44 § 1 CIM. Until the consignment note and/or the goods have been accepted by the consignee, the right of disposal of the goods and thus the right to bring an action against the carrier belongs to the consignor [Article 18 § 2 in conjunction with Article 44 § 1 lit. a) CIM]. The right of action to make a claim belongs to either the consignor or the consignee and protects the carrier against forum shopping and the accumulation of legal actions in various COTIF countries.

(1) Rainer Freise, The assertion of claims for damages in international rail freight traffic, “Transportrecht”. Issue 6, June 2015, p. 217 et seq.

Although the consignor in the present case, after the goods had been accepted by the consignee, had lost his right of action to make a claim in accordance with Article 44 § 1 CIM, the court – based on the principle of claims for damage suffered by a third party in national law – deemed the right of action as valid, since the legitimate recipient had no interest in making a claim on his own behalf for damages suffered by a third party⁽²⁾. The national court subsequently distanced itself from the double right of action, which is prohibited in accordance with Article 44 CIM. The idea of a fair settlement of claims was a key factor determining the court’s decision, in accordance with which both the procedural right of action to make a claim by a consignor who was no longer entitled to make a claim was granted as was the material damage borne by the unwilling consignee.

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Original: DE

(2) The principle of claiming for damage suffered by a third party settles specific cases of transferred damage or loss, in which the party entitled to compensation has suffered no damage and the third party who suffered damage is not entitled to claim against the party liable for the damage. Care must be taken, however, to ensure that the party liable for the damage does not benefit from such a case of transferred damage. For this reason, in the event of a claim for damage suffered by a third party, the damage incurred will be taken as the basis for the claim.



CIT ITSELF

Autumn meeting of the CIT Executive Committee in Basel at the headquarters of the Port of Switzerland

The second meeting of the CIT Executive Committee in 2015 was held at the headquarters of the Port of Switzerland in Basel.

Hans-Peter Hadorn, Director of Port of Switzerland, welcomed the members of the Executive Committee and stressed the importance of multimodality for the port, located as it is at the interface between inland waterway transport and rail freight transport services.

The Executive Committee said farewell to Ms. Anna Tynska-Zabecka (PKP IC) and Ms. Andrea Scholz (ÖBB PV). The Chairman thanked the ladies for their excellent cooperation and the support they had given to the CIT.

Ms. Maria Urbanska (PKP Cargo) and Mr. Gerald Wieser (RCA) designated by their companies- members of the CIT Executive Board attended the meeting as guests.



The Port of Switzerland

CIT Budget 2016

The Executive Committee approved the budget for the year 2016 for submission to the General Assembly on 19 November 2015. As a result of the unfavourable Swiss franc /Euro exchange rate for members, the CIT next year will have to reduce both staff and administration costs.

The Executive Committee discussed the concept for the 8th Berner Tage in 2016

The next 8th Berner Tage conference will take place on 3/4 March 2016 at the CIT's head office building in Bern. A key topic will focus on the various types of legal relationships that exist during cross-border carriage of passengers and freight and the use of infrastructure.

Before the Berner Tage 2016 starts, as part of the CIT's new training programme, a CIT training course will be held during the morning of the first day of the conference in the form of a joint introductory workshop on the principles of international rail transport law and on the use of wagons and infrastructure.

CIT guidelines on competition law

At the Executive Committee's meeting on 18 September 2014, the GS CIT was instructed to prepare compliance guidelines on competition law. A draft of the guidelines was presented to the Executive Committee at its meeting on 23 April 2015 and reviewed. The definitive version of the guidelines has now been approved.

The CIT guidelines specify the rules and regulations required to ensure that competition law can be complied with in the course of the work carried out by the association. The next step will entail presenting the guidelines to all CIT executive bodies and working groups.

Ongoing activities at the CIT

At the end of the meeting, the Executive Committee took note of the ongoing activities in the Passenger Traffic, Freight Traffic and Infrastructure sections and concluded that the activities were on course in accordance with the work programme approved by the General Assembly in 2014.

Next meeting

The next meeting of the CIT Executive Committee will take place on 28 April 2016 in Bern at the CIT.

Erik.Evtimov(at)cit-rail.org

Original: DE

Farewell

As a result of the demand for cost reductions from members and the EUR/CHF exchange rate crisis, the GS CIT has been forced to make a number of staff cuts. As a cost saving measure, the GS CIT has decided to eliminate the Senior Legal Adviser position managing the Use of Infrastructure section.

After working as a replacement for Isabelle Oberson in the Passenger Traffic section during her maternity leave, Myriam Enzfelder, attorney, successfully built up the CIT's Use of Infrastructure section and placed it on a long-term firm footing. In doing so, she has made a major contribution to the success and reputation of our association.

Following the 21st meeting of the CUI Committee, Myriam Enzfelder will retreat from her day-to-day tasks to concentrate on training her successor. The tasks to be performed



and the services provided by the CIT's Use of Infrastructure section are to be reorganised and taken over as of 2016 by Nina Scherf (Legal Adviser in the CIT's Freight Transport section) in addition to her current duties.

We would like to take this opportunity to thank Ms. Enzfelder most sincerely for the valuable services she has provided and to wish her every success in her professional career and all the best to her personally.

Cesare.Brand(at)cit-rail.org

Original: DE

The CIT warmly welcomes its new member

LTE Hungária Kft

LTE Hungária Kft belongs to the LTE group which has transported freight by rail and provided logistic services since 2000. LTE's particular strengths lie in planning innovative and highly specific solutions for customers' individual transport requirements together with exceptional flexibility and high quality services. In addition to providing services in their native Hungary, they also provide services in Austria, the Czech Republic, Germany, the Netherlands, Poland, Romania, Slovakia and Slovenia in conjunction with Adria Transport, an associated undertaking.

Katja.Siegenthaler(at)cit-rail.org

Original: DE





CIT DIARY OF EVENTS

Date	Event	Location	CIT contact
29 October	Seminar «International East – West Transport of Passengers by Rail»	Monte Carlo	Erik Evtimov
12 November	Workshop Multimodality	Berne	Nina Sziladi-Scherf
13 November	Multimodality Committee	Berne	Erik Evtimov
19 November	General Assembly	Berne	Cesare Brand
25-26 November	CIM Working group	Berne	Erik Evtimov
9-10 February	CIV Working Group	Berne	Tetyana Payosova
18 February	Experts group «seals»	Berne	Joël Forthoffer
3-4 March	Berner Tage	Berne	Cesare Brand
16 March	Multimodality Working Group	Berne	Nina Sziladi-Scherf
17 March	CIM Committee	Berne	Erik Evtimov

Events with CIT participation

Date	Event	Org	Location	CIT contact
3 November	Commercial and Distribution Forum	UIC	Paris	Isabelle Oberson
10/11 November	XXIV Plenary Meeting	CCTT	Vienna	J.-L. Dufournaud, E. Evtimov
24 November	3rd meeting of the OTIF's CUI WG	OTIF	Berne	Cesare Brand, Nina Sziladi-Scherf
24-25 November	ERA TAP/TAF TSI CCM Meeting	CER	Brussels	Jan Svensson
30 Nov.-1 Dec.	UIC General Assembly & Regional Assembly Europe	UIC	Paris	Cesare Brand
1 December	3rd EUSTO Workshop	EU	Nicosia	Erik Evtimov
2 December	FSM high level requirements WS part 2	FSM	Paris	Jan Svensson
26 January	Coordination meeting CIT-RailData	CIT	Berne	Erik Evtimov
3 February	High Level Passenger Meeting	UIC	Paris	Cesare Brand
20-21 April	High Level Freight Meeting	UIC	tbc	Cesare Brand

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