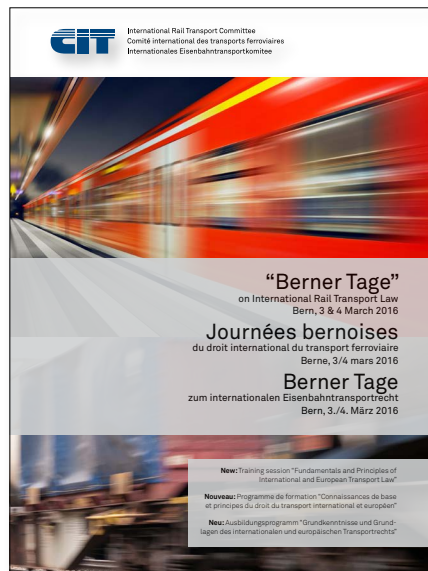




CONTENTS



"Berner Tage" 2016

In 2016 the eighth "Berner Tage" conference will continue the tradition of examining the most recent developments in international rail transport law. It will take place in the CIT headquarters building in Bern on 3 & 4 March 2016.

Before the "Berner Tage" (on 3 March in the morning), a training session for CIT members' new staff will be held for the first time. Three modules will cover the fundamentals and principles of international and European law affecting passenger and freight traffic as well as the use of infrastructure and rolling stock.

This training session is exclusively reserved for CIT members and will be provided free of charge by the CIT General Secretariat.

➔ www.cit-rail.org

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EDITORIAL



Dear Readers,

The year 2015 is drawing to a close – it is time to take stock. What did the CIT achieve for its members in the course of the past year in concrete terms?

Some examples: Firstly, the new Manual for International Rail Tickets (MIRT), which came into force on 13 December 2015 to coincide with the timetable change and then the new Manual for Cooperation Contracts in International Passenger Traffic by Rail (MCOOP), which will come into force on 1 March 2016. In addition, the legal and functional specifications of the CIM electronic consignment note are scheduled for completion by the end of 2015 and will come into force in the course of next year. This means that the legal and functional requirements as one of the key milestones for the use of the electronic consignment note have now been fulfilled. These Products are expected to make a substantial contribution to the efforts currently being made to support international rail operations.

I would like to take this opportunity to express my most sincere thanks to all representatives of the member railways for their active participation in the work carried out by the CIT. Only with their support has it been possible for the CIT to produce such tangible results!

Seasons greetings from Bern
Cesare Brand
Secretary General of the CIT



PASSENGER TRAFFIC

Schengen acquis: what are the obligations of rail carriers?

The Schengen acquis establishes some obligations for carriers with respect to passengers who entered the Schengen area without valid documents (e.g. a Schengen visa or a residence permit). The following contribution will shortly analyse the question as to what obligations exactly apply to rail carriers within Schengen.

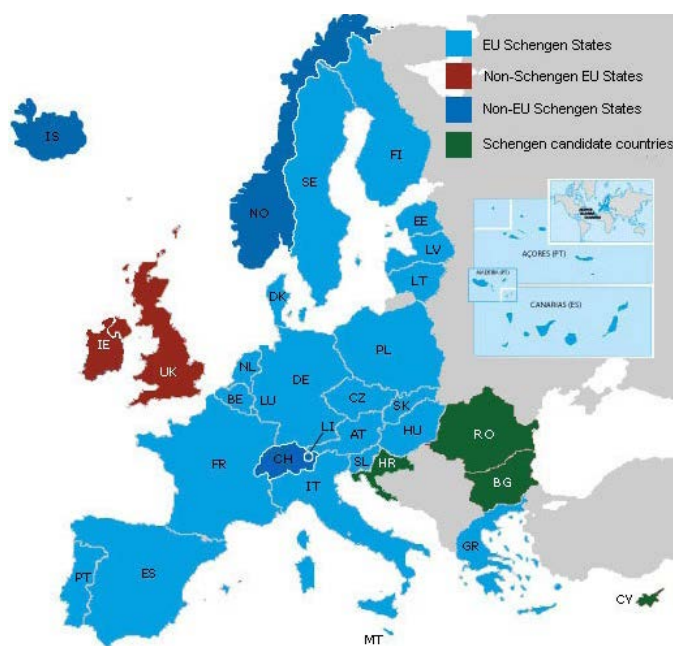
What is the Schengen acquis?

The introduction of Schengen dates back to 1985, when several European governments signed an Agreement on the gradual abolition of checks at common borders. In 1990 the Convention implementing the Schengen Agreement was signed, which allowed the implementation of Schengen to start in 1995 among the first seven participating countries. The key idea behind Schengen was to unite efforts in safeguarding internal security for all Schengen countries and manage migration flows coherently. In effect, it enabled the creation of a European area without internal borders and border controls. While spot controls on borders between participating countries are still possible, they primarily pursue regular internal security goals within the national police function.

In addition to Schengen a parallel fully-fledged system dealing with asylum matters has existed since 2003 and is known under the name of “Dublin System” (named after the Dublin Regulation⁽¹⁾). Whereas the Dublin Area encompasses all EU Member States, the Schengen Area does not cover UK and Ireland; moreover, the Schengen Area also encompasses Switzerland, Norway, Iceland and Liechtenstein. In addition, the Schengen acquis is not fully applied by four EU Member States – Bulgaria, Romania, Cyprus and Croatia.

Borders of Schengen

The Convention Implementing the Schengen Agreement of 14 June 1985 (the Schengen Convention) and the Schengen Borders Code clearly differentiate between external and internal Schengen borders. Both legal acts also define the border crossing points, i.e. any crossing point authorized by the competent authorities for crossing external borders⁽²⁾. Furthermore, the internal borders can be crossed at any



Schengen Area as of 1 July 2013. Source: European Commission⁽³⁾

point without any checks on persons being carried out⁽⁴⁾. As mentioned, this means that within the Schengen area there are no border controls between the Schengen countries. In very special circumstances, for reasons of public policy or national security (e.g. if there is a threat of terrorist attacks) the Schengen countries can temporarily reintroduce border controls at internal borders according to a specific procedure provided for in EU law⁽⁵⁾.

Obligations of rail carriers under the Schengen acquis

Article 26 of the Schengen Convention specifies that if third country nationals are refused entry into the Schengen area, the carrier which brought them to the external border immediately has to assume responsibility for them again. This means that it is only at the request of the border surveillance authorities that the carrier can be obliged to return third country nationals to the country from which they were carried by that carrier, or to the country which issued the travel documents (country of residence) or to any third state to which they are certain to be admitted. Thus, this provision suggests that only carriers at the external borders may be subject to an obligation to bring back the passengers without a valid visa.

(1) Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29.6.2013, p. 31–59.

(2) Article 1 of the Schengen Convention, Article 2(8) of the Schengen Borders Code.

(3) Source: European Commission, Migration and Home Affairs, Schengen Area: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/index_en.htm

(4) Article 2(1) of the Schengen Convention; Article 20 of the Schengen Borders Code

(5) Article 2(2) of the Schengen Convention and Title III of the Schengen Borders Code.

The carriers' obligations in light of the Schengen rules are further specified in Directive 2001/51/EC. It emphasizes that EU Member States have to introduce provisions on specific obligations of carriers transporting foreign nationals into the territory of the Member States. Article 2 specifies that the provisions of Article 26 of the Schengen Convention also apply to the situation where entry is refused to a third-country national in transit. For instance, this can happen where the authorities of the country of destination refused him entry and have sent him back to the EU Member State through which he transited. So, in line with this provision – and in very specific situations – the obligation to return third country nationals can also apply to a carrier in the transit country. However, the wording of this provision suggests that its primary target is air transport rather than road or rail transport, since the feasibility of its implementation by the land-bound carriers raises a lot of practical questions. Additional clarification of this question can be found in the national laws implementing Directive 2001/51/EC.

None of the documents in the Schengen acquis obliges a carrier to conduct either border control or surveillance. It is generally the task of the border control authorities or border surveillance authorities to carry out such controls. This is related to several issues, including general human rights issues and the rights of potential asylum seekers, who are subject to the Dublin regime. The railway undertakings usually lack the law-enforcement competences which would allow them to assess the complex questions related to illegal migration and asylum.

Contract of carriage and compliance with visa requirements

From the transport law perspective, where a passenger has a valid ticket, there is a valid contract of carriage between the passenger and the carrier. Indeed, Article 10 CIV provides that the passenger must comply with the formalities required by customs or other administrative authorities (this would normally include visas etc.). This rule is also reflected in point 5.2.9 of the GCC-CIV/PRR. However, it is up

to these administrative authorities, and not to the carriers, to check whether a passenger complies with the respective formalities (e.g. customs requirements). Non-compliance with the administrative requirements may lead to the exclusion from carriage based on the decision of the administrative authorities and not of the carrier.

Border controls on board trains

Further, the Schengen Border Code specifies in Annex VI (1.2) how the checks at the border are to take place on rail traffic. Again, this refers only to external borders of the EU, or to spot-checks or to police control within the Schengen area, or where controls at Schengen internal borders have been officially reintroduced according to the prescribed procedure. Such controls can take place on board trains, but will still be conducted by border control authorities and not by carriers.

Finally, as per Article 26(2) and (3) of the Schengen Convention and Article 4 of the Directive, no penalties apply to rail carriers for transporting third country nationals who do not possess the necessary travel documents from a third state to the Schengen area (unlike for air, sea or coach carriers).

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Original: EN

Useful links

- ➔ [Convention implementing the Schengen Agreement of 14 June 1985](#)
- ➔ [Council Directive 2001/51/EC of 28 June 2001](#)
- ➔ [Regulation \(EC\) No 562/2006 of the European Parliament and of the Council of 15 March 2006](#)

Impact of new EU law discussed at the CIV Working Group

In 2016 the rail passenger sector expects a number of new EU legislative acts having a direct effect on rail passenger services. The new Data Protection Regulation, the Travel Package and Linked Travel Arrangements Directive and the Fourth Railway Package, to mention only a few. The CIV Working Group is closely following these developments and looks into their potential impact for timely implementation by rail passenger carriers.

Final steps for three major legislative proposals in the EU

At its last meeting on 20-21 October 2015 the CIV Working Group discussed possible implications for railway undertakings of the Travel Package and Linked Travel Arrangements Directive based on the preliminary analysis prepared by the CIT General Secretariat. The final draft of the Directive was approved by the European Parliament in the second reading on 27 October 2015 and was published in the Official Journal in early December.

A general approach to the governance and market pillar of the Fourth Railway Package, which is of key interest for rail passenger carriers, was agreed upon by the Council on 8 October 2015. The whole package is expected to be finalized by March 2016. The CIV Working Group took note of the current draft wording of Article 13a of the revised Directive 2012/34 dealing with integrated ticketing systems.



The CIV Working Group discussed the impact of new EU law on rail passenger services

The new EU data protection regime will play a crucial role in ticketing and after-sales (see also CIT-Info 1/2015, p. 4). A general approach for the current draft was adopted by the Council on 15 June 2015, and a final agreement was reached on 15 December 2015. The CIV Working Group will address the need to amend CIT products for international passenger traffic to allocate the new data protection requirements, as soon as the final draft is published.

Ticketing and multimodal offers

Ticketing questions are also on the priority list for the CIT and its members. The CIT security background is widely

recognised as an important and effective tool to combat fraud and was adopted by CD, Eurail Group and DB in 2015. In addition, the CIT General Secretariat, with the support of the CIV Working Group, will continue to provide legal advice to UIC technical groups, the Full Service Model (FSM) Initiative, as well as ERA and TAP TSI.

The CIV Working Group also noted the rapid development of various multimodal solutions offered by CIT members in cooperation with carriers of other modes, foremost air and maritime. The CIT General Secretariat launched a benchmarking study to be further discussed in light of possible standard solutions for multimodal passenger traffic in 2016-2017.

Finally, the members of the CIV Working Group took stock of the main achievements in 2015 – the new Manual for International Rail Tickets (MIRT) and the new Manual for Cooperation Contracts (MCOOP) and encouraged CIT members to make use of these new products that enter into force on 13 December 2015 and 1 March 2016 respectively.

The CIV Working Group will hold its next meeting on 9-10 February 2016 in Bern.

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Original: EN

New CIT Manual for International Rail Tickets (MIRT)

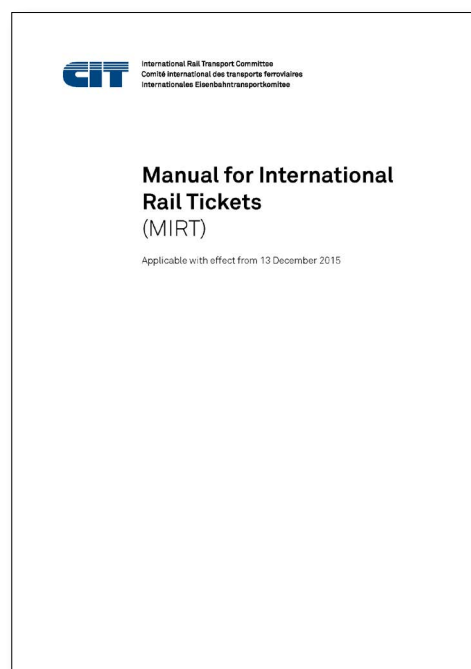
The new Manual for International Rail Tickets (MIRT), replacing the old ticketing manuals of the CIT GTV-CIT and GTT-CIV, came into force on 13 December 2015 (see also CIT-Info 4/2015, p. 2). The MIRT is now available in an electronic version in all three CIT languages (English, French and German) on the secured area of the CIT website.

The MIRT puts the main focus on the electronic issuing of tickets and different kinds of e-ticketing solutions, but also deals with the procedures for ordering the new CIT security background 2012 and describes the actors in international distribution including their functions and responsibilities. Furthermore the MIRT describes in detail which information is compulsory on tickets from an international legal point of view and which information is subject to commercial agreements and national legislation.

The [list of CIT members](#) has been updated with information about which members apply the MIRT.

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Original: EN



CIT seminar on “International East-West passenger rail transport services”

As part of the CIT's CIV/SMPS Legal Interoperability project, a seminar on international East-West passenger rail transport services was chaired by CIT President, Jean-Luc Dufournaud, on 29 October in Monte Carlo. In addition to participants from the CIV/SMPS Working Group, Isabelle Rosabrunetto, Director-General of the Ministry of Foreign Affairs and Cooperation of the Principality of Monaco, François Davenne, Secretary General of OTIF, Gilles Bergot, Deputy Director, DG MOVE of the EU Commission, and representatives of CER and the UIC, also took part. The main focus of the many different presentations was on the results of the first phase of the project and the future topics for the work to be dealt with by the CIV/SMPS Working Group.

Further development of CIT documents in the field of “CIV/SMPS legal interoperability”

The GS CIT presented the results of the first phase of the “CIV/SMPS Legal Interoperability project” in detail. The main focus of attention during the CIT seminar was on the guidelines for the various COTIF/CIV-PRR – SMPS liability regimes governing international passenger services. The guidelines have been published by the CIT and OTIF in three languages (German, English and French) and also made available to CIT members in electronic form. An introduction includes a synthesis of the most important information derived from the comparative table and a visual presentation of the individual passenger services within the scope of application of COTIF/CIV – PRR – SMPS.

The guidelines provide a systematic and coherent understanding of the different legal systems encountered on international passenger services. In collaboration with the OSJD Committee, they will also be published in Russian and Chinese. In the medium term, the COTIF/CIV-PRR – SMPS guidelines will be updated and brought in line with the latest revision of the SMPS – primarily with the OSJD Committee's revised version of the SMPS dated 1 May 2016 – but also with possible COTIF/CIV developments (at OTIF) and with the planned revision of the PRR Regulation (by DG Move).



Representatives of DG MOVE & CER discussed EU activities in international passenger traffic

Topics to be dealt with further by the CIV/SMPS WG in the second phase of the project

In light of the legal and commercial developments in CIV/SMPS international rail passenger services, topics for the future work of the CIV/SMPS Working Group in the second phase of the project were discussed in detail:

- Implementation of legal aspects gleaned from the guidelines on the COTIF/CIV-PRR – SMPS liability regimes for the continuing development of CIT passenger traffic documents (boilerplate contracts, checklists, etc.);
- Impact of the SMPS revision 2016 and the Basic Convention on East-West traffic - the Basic Convention including the appendix on international passenger traffic is expected to come into force by the end of 2016;
- Impact of the potential revision of PRR. As reported by the DG MOVE representative, this is expected to have an impact on international East-West passenger services in 2017;
- Use of CIT passenger freight documents by RZD/FPC, in particular the CIT Manual for International Rail Tickets (MIRT) and the Manual for Cooperation Contracts in International Passenger Traffic by Rail (MCOOP);
- Comparison of rail tickets, taking into consideration the new CIT Manual for International Rail Tickets (MIRT) and use of the CIT security background by FPC/RZD, in addition to the legal safeguards in Russia and the CIS countries;
- Extension of Eurail passes to include FPC trains from Moscow to Paris/Nice following the accession of RZD/FPC to the Eurail Agreement;
- Legal support for the work carried out by the East-West-Tariff Steering Group of the UIC;
- Multimodal solutions for CIV/SMPS passenger services in collaboration with the Russian (RZD) and Finnish (VR) railways.

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Original: DE

Decision of the U.S. Supreme Court in favour of ÖBB-Personenverkehr AG

In its decision of 1st December 2015 the U.S. Supreme Court unanimously supported the ÖBB's position concluding that an American passenger cannot take legal action against the ÖBB in the United States for a rail accident that occurred in Austria.

The case started in 2007 when Ms. Sachs fell from the platform onto the tracks while boarding a night train at Innsbruck station (see also CIT-Info 5/2015, p. 5). She filed suit in California against the ÖBB and asked for compensation for the injuries suffered. The ÖBB always claimed that – as an agency of a foreign state – they were protected from lawsuit in the United States on the basis of the Foreign Sovereign Immunities Act (FSIA)⁽¹⁾. The Supreme Court had then to decide how to interpret the exception that the FSIA makes for claims “based upon a commercial activity carried on in the United States” by the foreign state. Was the sale of a Eurail pass by an American agency to Ms. Sachs sufficient to allow the lawsuit against the ÖBB in the U.S.?

CIT's briefs as amicus curiae

The CIT supported the ÖBB's position with two briefs. The first brief actually helped to obtain that the case would be heard by the Supreme Court – as only a low percentage of cases presented are handled by the Court. The second brief then reiterated ÖBB's position: the case should not be heard in the U.S. courts.

From the CIT perspective it was clear that Ms. Sachs should have filed suit in Austria, and doing so would have protected her rights well. Indeed Ms. Sachs' journey (Innsbruck – Prague) falls under the COTIF/CIV that regulates it in mandatory ways, including setting the rules on the railway's liability and establishing procedural aspects of claims and legal actions. She could have obtained many forms of redress and damages, possibly even remedies beyond what American law provides.

Furthermore, with regard to American law, immunity is supposed to protect foreign states unless that state engages in commercial activity in the U.S. and the lawsuit is “based upon” that commercial activity. For the CIT neither element was satisfied in this case. The ÖBB did not engage directly in commercial activity in the U.S.: the connection between the ÖBB and the American travel agency – which actually involved subagencies across three continents over which the ÖBB had no control – was far too attenuated to support the conclusion of commercial activity in the U.S. by the ÖBB. The necessary control by a principal was entirely lacking in this scenario involving ticket vendors through multiple sub-agents.

Finally, the CIT stated that Ms. Sachs' injuries did not derive from the asserted “commercial activity” of purchasing a ticket on the Internet. To say that her claims involving a platform accident in an Austrian railway station were “based on” the commercial activity of purchasing her Eurail Pass stretched the concept of connecting the accident to American commerce beyond recognition.

Analysis of the FSIA by the Supreme Court

For the Supreme Court, the conduct constituting the gravamen of Sachs's suit plainly occurred in Austria. The personal injuries suffered by Ms. Sachs, and not the arguably commercial activity that preceded their commission, formed the basis of her suit. There was nothing wrongful about the sale of the Eurail pass standing alone. The Supreme Court recalled that any other approach would allow plaintiffs to evade the FSIA's restrictions through artful pleading. Regardless of whether Ms. Sachs sought relief under claims for negligence, strict liability for failure to warn, or breach of implied warranty, the “essentials” of her suit were found in Austria.

Consequences for European railway undertakings

The decision of the U.S. Supreme Court is very positive for all state-owned railway undertakings, as it confirmed that they enjoy sovereign immunity under the FSIA. Accordingly the U.S. courts lack jurisdiction over claims for injuries from American passengers travelling on European railways.

The COTIF/CIV regulation grants a high level of protection to the passengers. Ms Sachs could have obtained many forms of redress and damages, possibly even remedies beyond what American law provides.

However, some questions remain however to be answered, especially as regards private railway undertakings and other types of claims (e.g. for breach of contract, delays, consequential damages). The CIV Working Group, meeting in February 2015, will discuss these issues and analyse whether, and to what extent recommendations should be made to CIT members, as a follow-up to that case.

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Original: EN

Useful links

- ➔ [Foreign Sovereign Immunities Act \(FSIA\)](#)
- ➔ [Blog of the US Supreme Court](#)
- ➔ [Press report in the New York Times](#)
- ➔ [Press report in the Huffington Post](#)

(1) The FSIA provides the sole basis for obtaining jurisdiction over a foreign state in the courts of the U.S.A.



Second meeting of the CIT Multimodality Committee

The work of the Multimodality Committee during its second meeting focused on the interactions between rail transport law and road transport law, and between rail transport law and maritime law. As a new line of action, the interface between inland waterway traffic and carriage by rail is also to be examined. These three lines of action will be the focus of the work in the Multimodality Committee and the Multimodality Working Group in the coming year.

Interaction of Railway Law and the Road Traffic Act

In collaboration with IRU (International Road Union), the CIT is currently working on the development of working tools designed to remove legal and administrative obstacles to combined rail-road transport services. A basis for this collaborative effort is a comparative table on the road transport law and rail transport law, which will provide a way of examining and comparing the most important issues. The current status of the work involved was presented to the Multimodality Committee at its 2nd meeting. The comparative work between the CIM and the CMR (Convention on the Contract for the International Carriage of Goods by Road) conventions has been largely completed. The work will be supplemented in due course by the SMGS regulations, so that a set of guidelines on this issue is expected to be available for publication in the course of next year. The aim of the guidelines is to offer a comparison between the international carriage of goods by rail (COTIF/CIM and SMGS) and the international carriage of goods by road (CMR). This comparison of the conventions provides an added benefit in that for the first time both the CIM regulations and the SMGS regulations have been examined and the comparison, in geographical terms, extends beyond the COTIF/CIM scope of application to include that of the SMGS. The guidelines are currently being prepared in collaboration with IRU and consist of an introduction, a synthesis that includes the most important principles, a map showing the geographical scope of application of the legal regimes and a table in which the most important issues (e.g. liability, obligations of the parties involved, required documents such as the consignment note, etc.) are examined in detail.

The Multimodality Committee considered it very important that this comparative work should ultimately result in a specific document – such as a checklist for a rail-road framework agreement. This particular work will be assigned to the Multimodality Working Group.

Interaction of Railway Law and Maritime Law

The work being carried out by the CIT on rail-sea multimodal traffic is well advanced. Special mention should be made in this respect to a new CIT document known as the GTC Rail-Sea Traffic. With the introduction of the GTC Rail-Sea Traffic in January 2015, a basis was established for the preparation of a boilerplate contract for the organisation of the successive rail carriers and the registered shipping companies. The draft of this boilerplate contract was presented to the members of the Multimodality Committee at the meeting. They identified the added value it offered to CIT members who are required to organise traffic to and from ports, together with the shipping companies.

In addition, the Multimodality Committee dealt in depth with the question as to how the inclusion of new CIM and CIV lists of maritime and inland waterway services on the Baltic Sea, the Black Sea and in the Mediterranean can be speeded up proactively. The Committee's Chair gave a presentation on the subject that dealt with the current maritime and inland waterway services that could and should be included in OTIF's CIM and CIV lists of maritime and inland waterway services.

Interaction of Inland Waterway Traffic and Carriage by Rail

The Committee concluded its meeting by dealing with the interaction of inland waterway traffic and carriage by rail, taking the Port of Switzerland as a specific example. This topic will be considered as a new line of action for the Multimodality Committee and will be examined initially from a legal point of view for the next meeting on 19 November 2016, so that work can also be speeded up in this specific area.

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Original: DE

Autumn Meeting of the CIM Working Group of the CIT

Based on the principle of functional equivalence in Article 6(9) CIM, the CIT has now finalised the functionalities for the electronic consignment note. The updating of CIT freight traffic documents and their continuing development were also items on the agenda of the Autumn Meeting of the CIM Working Group, which was held from 25 to 26 November 2015 in the CIT head office building in Bern.

Basic work undertaken by the CIT to implement the electronic consignment note and wagon note

The work on updating the relevant CIT documents – primarily the GLV-CIM and GLW-CUV – as part of the preparation for the planned revision of COTIF was taken up in 2012 by the CIT's "Revision COTIF" Group of Experts. As a result of the proposed new Article 6a CIM being rejected by the OTIF Revision Committee in June 2014, the work was temporarily suspended and, following a decision taken at the 18th meeting of the CIM Committee of the CIT on 26 March 2015, was subsequently resumed and given priority. In addition to the GLV-CIM and GLW-CUV (Appendix 1 for the functional specifications in each case), this decision also affected the GTM-CIT and GTW-CIT (Appendix 7a and 1a for the legal specifications), in which the processes described in the working sheets in particular are to be updated.

Finalisation of the legal and functional specifications for the CIM electronic consignment note

At the last meeting of the CIM Working Group, together with experts from the member railways, the GS CIT finalised the legal and functional specifications of the CIM electronic consignment note at sector level. These specifications are to be published before the end of 2016, following the resolutions to be passed by the CIM Committee on 17 March 2016, and circulated as part of a new report with recommendations to OTIF. In parallel, the CIT will support RailData in the work involved in finalising the technical specifications as part of the e-RailFreight project.

Legal basis for the CUV electronic wagon note

The UIC's Wagon Users Study Group has unanimously approved the proposal made by the GS CIT to establish a legal basis for the electronic wagon note in the General Contract for Use of Wagons (GCU). In September of this year, the proposal was also unanimously approved by the Joint Committee of the UIC, UIP and ERFA. The supplement to Article 14.2 GCU will thus come into force on 1 January 2016. The new version of Article 14.2 GCU is available for download from the [website of the GCU Bureau](#).



The CIM WG took place at the CIT headquarters in Bern.

At the Autumn Meeting of the CIM Working Group, the newly adopted provision of Article 14.2 GCU was implemented accordingly in point 1 of the GLW-CUV, taking into consideration the decisions taken by the CIT's CIM Committee on 26 March 2013.

Checklist for a rail-road traffic framework agreement

After the GTC Rail-Road Traffic had been completed, a question was raised – during the joint conference in September 2013 – regarding the preparation of a rail-road traffic framework agreement. To this end, the two associations (CIT and IRU) have jointly prepared legal documents designed to establish passerelle clauses at contract level between the various legal regimes and thus help to remove legal and administrative barriers in the transport chain.

Legal solutions at intergovernmental level take some time to establish, while contractual solutions enable a suitable and flexible basis for the implementation of multimodal transport projects to be established in a timely manner. However, for the preparation of a rail-road traffic framework agreement, further investigations and harmonisation efforts relating to the existing interfaces between the two legal systems are now required. In order for this to be achieved, the issue relating primarily to liability when transferring containers from truck to rail in the container terminal and to liability when loading onto piggy-back trains needs to be clarified.

The CMR – COTIF/CIM comparative table that has now been completed serves as a legal basis for the proposals in the form of boilerplate clauses to be included in the framework agreement covering the internal relationship between road haulage companies and rail carriers.

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Original: DE



USE OF THE INFRASTRUCTURE

The CUI Committee is discussing the proposed rewording of Article 1 of the CUI UR

The key focus of the 21st meeting held by the CUI Committee of the CIT involved a discussion on the CIT's position with respect to the representation of the railway undertakings' interests in the CUI WG of the OTIF SG. The CIT's aim within a revision of Article 1 of the CUI UR is to ensure that the CUI UR are applied correctly by having a more clearly defined wording for the scope of application. For the RUs, however, this may not be tied to any limitation of the current rights of recourse included in the CUI UR. This means that, in the event of a revision, care will have to be taken to ensure that the CUI UR provide the carriers with a unified legal basis for recourse against an infrastructure manager in the event of any indirect loss or damage arising during the performance of an international contract of carriage caused by circumstances having their origin in the infrastructure.

Work carried out to date on the partial revision of the CUI Uniform Rules (CUI UR)

In June last year, on the occasion of the 25th session of the OTIF Revision Committee, the OTIF SG decided to set up a working group reporting directly to him that would assist him in the examination and preparation of any proposed amendments to the CUI UR. The GS CIT participates in the meetings of the CUI WG of the OTIF SG as an observer in order to represent the interests of the RUs in the Committee's work.

In its three previous meetings, the CUI WG of the OTIF SG has deliberated on a number of proposals made by the OTIF SG for rewording Article 1 of the CUI UR (scope of application). The work at the moment is restricted primarily to a possible rewording of Article 1. Any other suggestions regarding the revision of the CUI UR are to be discussed when this has been completed. The OTIF General Assembly will decide on possible proposals for amendments submitted by the OTIF SG at the earliest in 2018.

Objectives of the partial revision of the CUI UR

In the course of the last five years, the vast majority of the OTIF Member States have withdrawn their reservations against the application of the CUI UR. The CUI UR today, with the exception of the UK, the Czech Republic and the Republic of Ireland, which has still not ratified COTIF 1999 to date, are applicable throughout the European Union. Even so, the CUI UR are hardly applied in the Member States.

It can be assumed that one of the reasons why the CUI UR are of minor importance in terms of their practical use results from the different interpretations of Article 1 CUI UR by the RUs and the infrastructure managers. A clear and precise wording of the scope of application, in the CIT's view therefore, is extremely important and is also in need of both legal clarity and legal certainty.



The CUI Committee discussed the CUI UR

Possible rewording of the scope of application

In the course of the Committee's work, it soon became evident how difficult it was to come up with a clearly defined wording that was no longer linked to the contract of carriage – as was previously the case. Various alternatives (e.g. "international traffic" or "international train") turned out to be a challenge and will be discussed further in the CUI WG of the OTIF SG, while the CUI Committee of the CIT with its expertise will also be actively involved in these discussions in future, with suggestions and statements on the CIT's position.

The next session of OTIF's CUI WG will take place on 30 May 2016.

More detailed information on the work carried out by the CUI WG of the OTIF SG is available on the OTIF website.

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Original: DE



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.

Declaration of the value of goods in the CIM consignment note

Who is responsible for providing details of the value of the goods? How is the value of the goods declared in the consignment note? How is the declaration of value to be handled for different goods?

Declaration of the value of goods in international rail transport law

The basic principle of COTIF/CIM 1999 is the freedom of contract. Article 34 CIM enables the consignor to agree on a maximum value with the carrier when the amount exceeds the limit of liability provided for in Article 32(2), namely 17 SDR per kg, and to enter this value in Box 26 of the CIM consignment note. The person authorised to make this declaration, in addition to the consignor, is the carrier who, until evidence is provided to the contrary, has acted on behalf of the consignor (Article 8(2) CIM). On the instructions of the consignor, this declaration can be changed at a later date by the contractual carrier or by one of the successive carriers (Article 18(1) CIM in conjunction with the comments in Appendix 2 GLV-CIM on Box 26 of the consignment note).

This objective legal view of the basic principle of freedom of contract underlines the standards laid down in Article 5 third sentence, in accordance with which a carrier may assume greater liability and more burdensome obligations for the benefit of the railway's customers.

Declaration of value for different goods

By concluding a contract of international carriage of goods by rail, the carrier, in accordance with Article 6(1) CIM, undertakes to carry goods for reward between places situated in different COTIF Member States. The declaration of

the value of the goods is the key entry when completing the consignment note as confirmation of the contract of carriage (Article 6 § 2 CIM). An interesting question relates to the value of the goods when different goods are carried by rail – in containers, for example. What value is to be entered in this case in Box 26 of the CIM consignment note?

What is primarily of significance for rail transport law is the fact that the container is to be understood as packaging and may not be considered *prima facie* as part of the contract of carriage. If different types of goods, in accordance with the WCO Harmonised System (WCO HS⁽¹⁾), are carried by rail in a container, the consignor enters the value of the grouped goods (NHM⁽²⁾ Code 9902) in Box 26 of the consignment note.

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(1) World Customs Organisation Harmonised System Code for commercial items (goods)

(2) Harmonised Commodity Code of the UIC, see www.uic.org. In such a case, the consignor in turn is required to provide the necessary customs declarations for the contents of the goods for which he is responsible.



CIT General Assembly 2015

This year's meeting of the General Assembly was held on 19 November 2015 in the CIT head office building in Bern. The meeting was chaired by the CIT Deputy Chair, Maria Sack (DB AG), who extended special greetings to the representatives of the new CIT member railways: CER Hungary Zrt., IDS Cargo a.s., WestfalenBahn GmbH, LTE Hungária Kft., Prvá Slovenská železnica, a.s., Koleje Dolnoslaskie S.A. and TBNE as an associate member, and wished them a warm welcome to the CIT. The CIT currently has 137 full members and 6 associate members.

Passenger traffic and making the CIV and SMPS legally interoperable

Under the item "Passenger traffic", GS CIT reported on the preparation and publication of two new passenger traffic documents: the new Manual for International Rail Tickets (MIRT), which combines the current GTV-CIT and GTT-CIV manuals and will come into force on 13 December 2015 to coincide with the timetable change and the new Manual for Cooperation Contracts in International Passenger Traffic by Rail (MCOOP), which is a completely revised version of the general terms and conditions for cooperation in passenger traffic. This manual will come into force on 1 March 2016.

Additionally a number of important court cases were reported, which are currently pending and in which the GS CIT had supported its members. For instance, the *Sachs v. ÖBB* case, which was brought before the US Supreme Court. This particular case involves a female American traveller, who was injured in a platform incident in Innsbruck railway station in 2007 and is now suing the ÖBB for 10 million US dollars in damages. The far-reaching legal consequences for CIT members in the event of a possible recognition by the US courts are all too obvious (further information on this case and on the ruling of the U.S. Supreme Court is available in CIT-Info 5, p. 5-6 and in CIT-Info 6, p. 6).

At the meeting of the General Assembly, special mention was also made of the outcome of the CIT seminar on international East-West traffic, which was chaired by CIT Chairman, Jean-Luc Dufournaud (SNCF) (see article in this issue of CIT-Info on p.5).

Freight traffic and making the CIM and SMGS legally interoperable

Under the item "Freight traffic", the GS CIT reported on the work dealing with the digitisation of transport documents. The CIM Working Group is currently preparing the legal and functional specifications for the CIM electronic consignment note at sector level, which will be finalised by the end of 2015. These specifications are expected to come into force on 1 July 2016, following the resolutions passed by the CIM Committee in March 2016. In parallel, the CIT will support RailData in the work involved in finalising the technical specifications as part of the e-RailFreight project. With this the legal and technical requirements for using the electronic consignment note by the railway undertakings will be in place.



Péter Ronai, Vice-President RailNetEurope, delivered a speech on the "Role and tasks of RNE in the framework of use of infrastructure"

The GTC EurAsia prepared by the CIT is to be used for the pilot project set up to transport postal consignments between China and Germany in collaboration with the UPU (Universal Postal Union). The preparation of these pilot shipments in terms of transport law is the focus of work on making the CIM and SMGS legally interoperable. The CIM/SMGS Consignment Note Manual (GLV-CIM/SMG) was brought into line with the revised SMGS on 1 July 2015, which means that the CIM/SMGS consignment note can also be used to transport postal consignments within the geographical scope of the SMGS.

Finally, a report was given on the work being carried out by the Working Party of the Economic Commission for Europe (UNECE) towards Unified Railway Law.

Multimodality

The subject of multimodality and the corresponding work being carried out by the newly created Multimodality Committee and the related working group are gaining in significance. The aim and purpose of the work is to combine the benefits of the various freight carriers and to eliminate the drawbacks that result from the different legal systems. This can ultimately lead to an increase in the efficiency and cost-effectiveness of the transport chains - in particular for members of the CIT (cf. article on p. 7).

Wagon law

The UIC's Wagon Users Study Group has unanimously approved the proposal made by the GS CIT to establish a legal basis for the electronic wagon note. In September

of this year, the proposal was also approved by the Joint Committee of the UIC, UIP and ERFA. The supplement will come into force on 1 January 2016. The implementation of the functional specifications of the electronic wagon note is included in Appendix 1 of the GLW-CUV; details of how to handle the electronic wagon note will be redefined by amendments to the working sheets and in particular to Appendix 1a for the legal specifications of the GTW-CIT.

Use of infrastructure

The new CUI Working Group took up its work last year and in the course of two meetings prepared details of the business to be carried out by the CUI Committee. The European General Terms and Conditions for the Use of Infrastructure (E-GTC-I) have been available to railway undertakings and infrastructure managers since 1 September 2014 in an updated, trilingual (DE/FR/EN) version.

With the assistance of the CER and UIC, the CIT was able to give considerable attention at management level in summer 2015 to the implementation of the E-GTC-I. The introduction of the E-GTC-I on the RFC (Project No. 3) was subsequently included in the CER's CEO work plan Rail Freight in the 21st Century. Nicolas Perrin, CEO of SBB Cargo, has assumed responsibility for Project No. 3. The CIT is actively supporting those responsible for the project from SBB Cargo and RCA.

Elections

This year's General Assembly passed important resolutions on the appointment of new members to the CIT Executive Committee, the CIM Committee and the CIV Working group.

Maria Urbanska (PKP Cargo) and Gerald Wieser (RCA) were each unanimously elected as new members of the CIT Executive Committee for a term of office of four years beginning on 1 January 2016.

The General Assembly unanimously re-elected Marianne Motherby (DB AG) as Chair of the CIM Committee for a further term of office of three years. It also took note of the re-election of Isabelle Saintilan (SNCF) as Chair of the CIV Working Group.

Next meetings

The next meeting of the CIT General Assembly will be held on 17 November 2016 in the CIT head office building in Bern.

The CIT Executive Committee on the other hand will hold its meetings on 28 April 2016 in Bern and on 22 September 2016 in Geneva.

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The CIT warmly welcomes its new members

Koleje Dolnoslaskie S.A.

To date, the Lower Silesian Railways (Koleje Dolnoslaskie S.A.) have operated domestic passenger rail services primarily in Poland. In view of the planned development of international passenger rail services, however, it now intends to expand its business as of December with the addition of international services to Germany and the Czech Republic. The annual transport performance is expected to be around 5.0 million passenger-kilometres.

Prvá Slovenská železnica, a.s.

The Slovakian railway undertaking Prvá Slovenská železnica, a.s. (PSŽ, a.s.) was incorporated by SPED TRANS s.r.o., in 2003.

PSŽ's business model is to concentrate on the extension and improvement of services and systems for freight traffic by rail and to operate private siding connections. The company operates all over Europe from its Slovak base; it is particularly active in those countries bordering Slovakia such as the Czech Republic, Poland and Hungary.



Koleje Dolnoslaskie S.A. joined the CIT on 1 December 2015.
Photo: Marcin Szala (CC BY-SA 4.0)



PSŽ, a.s. joined the CIT on 1 November 2015

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CIT DIARY OF EVENTS

Date	Event	Location	CIT contact
9-10 February	CIV Working group	Bern	Tetyana Payosova
18 February	Group of experts «Seals»	Bern	Joël Forthoffer
3-4 March	Berner Tage	Bern	Cesare Brand
17 March	CIM Committee	Bern	Erik Evtimov
17 March	Workshop «Carriage of Postal Items by Rail»	Bern	Erik Evtimov
18 March	Working group Multimodality	Bern	Nina Sziladi-Scherf
7 April	Ad-hoc group of experts ECN CIM/SMGS	Warsaw	Lothar Schneemann
12-13 April	CIV Working group	tbc	Tetyana Payosova
28 April	Executive Committee 1/2016	Bern	Cesare Brand
11-12 May	CIV/SMPS Working group	Bern	Erik Evtimov
19 May	Conference of Freight Claims Departments	Bern	Joël Forthoffer
14-15 June	CIM Working group	Bern	Erik Evtimov
23 June	CIV Committee	Bern	Tetyana Payosova
6-7 July	Group of experts CIM/SMGS	Bern	Tetyana Payosova

Events with CIT participation

Date	Event	Org	Location	CIT contact
26 January	Coordination meeting CIT-RailData	CIT	Bern	Erik Evtimov
3 February	High Level Passenger Meeting	UIC	Paris	Cesare Brand
16-17 February	CER European Railway Award & General Assembly	CER	Brussels	Cesare Brand
17 February	Passenger Working Group	CER	Brussels	Tetyana Payosova
18 February	CDF Steering Committee	UIC	Paris	Cesare Brand
17 February	UIC Steering Group	UIC	Paris	Erik Evtimov
24-25 February	Inland Transport Committee (ITC)	UNECE	Geneva	Erik Evtimov
15-18 February	UIC Technical Groups Meetings	UIC	Paris	Jan Svensson
15-16 March	UIC Commercial and Technical Groups	UIC	Paris	Jan Svensson
16 March	DTLF Meeting	EC Europe	Brussels	Erik Evtimov
6 April	CER Assistants Meeting	CER	Brussels	Erik Evtimov
12 April	UIC Plenary Meeting	UIC	Paris	Erik Evtimov
14 April	Customer Liaison Group	CER	Brussels	Tetyana Payosova
20 April	Commercial & Distribution Forum	UIC	Paris	Tetyana Payosova
20-21 April	High Level Freight Meeting	UIC	tbc	Cesare Brand
3-4 May	Accession Seminar COTIF	OTIF	Baku	Erik Evtimov
30 May	SG working group on the revision of the CUI UR	OTIF	Bern	Nina Sziladi-Scherf
11 June	Passenger Working Group	CER	Brussels	Tetyana Payosova



Season's Greetings
and best wishes for
a happy new year!

Joyeuses fêtes et
meilleurs vœux pour
la nouvelle année!

Frohe Festtage
und alles Gute zum
neuen Jahr!



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