

Editorial

Favourable outlook for Eurasian freight traffic by rail



As you will read (on page 2 of this edition of CIT Info), a new industrial complex costing no less than USD 215 bn is being built in Western China, close to the frontier with Kazakhstan.

It is seven thousand kilometres from this new centre to the nearest seaport. That means that practically all the goods manufactured there for export to Russia and Europe will move by land.

The Chinese and Russian railways are well aware of the opportunities for rail and are making plans to exploit them. It remains to be hoped that the railways of Europe will not miss out on these developments.

The systems created to meet the interim objectives of the joint CIT/OSJD project to make transport law interoperable are coming on-stream at just the right time. The Chinese, Kazakh and Russian railways have all given notice that they intend to use the common CIM/SMGS consignment note for these new flows of traffic.

In this connection, it needs to be pointed out again that whilst the new document is helpful, it is not sufficient. It bridges over, but does not eliminate, the rift that exists between the CIM and SMGS. To resolve the problems of East-West traffic, both customers and railways require statutory law to provide legal consistency and legal certainty right through from the start to the end of the journey.

The long term objective is and remains an international convention; drafting of the convention now needs to be taken urgently in hand. The CIT considers that the task essentially consists of taking the best from the CIM and SMGS and fusing them together in a sensible way, adopting as few mandatory and as many flexible provisions as possible.

It will be some time before we get there, however. Initially, therefore, the railways must make do with contractual arrangements for what will later be governed by statute. As early as the end of this year, the legal groups of the CIT and of the OSJD (who are responsible for these issues) will submit the first draft of the "CIM/SMGS Special Conditions of Carriage (SCC-CIM/SMGS)". The railways have high expectations and await the new conditions eagerly.

Thomas Leimgruber
Secretary General to the CIT

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C O L L O Q U E

Transport de personnes

Nouveaux droits & nouvelles formes de mobilité

FACULTÉ DE DROIT - ROUEN
24 SEPTEMBRE 2010






Further details are available on page 10 and: www.idit.fr/sommaire.php

Transport Law and Policy

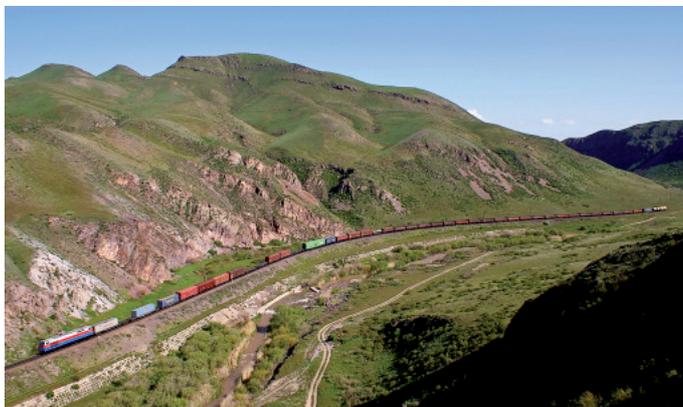
West-to-West: China backs rail for traffic to the West

In intercontinental rail freight traffic between Asia/China and Europe, new vistas are opening up, which shortly before no-one would have thought possible. According to information from the Russian Railways (RZD), a new economic zone is emerging in the West of China, in the Province Xinjiang on the Kazakstan border. To this end, the Chinese Government is investing an estimated 215 billion US dollars.

The manufacturing centre lies to the southeast of the Provincial Capital Ürümqi in the town of Yining, which was recently connected to the Chinese railway network by a new direct line. On the other side of the Chinese-Kazak border, the construction of the second railway frontier crossing at Korgan by the Kazak Railways (KZH) is currently running at full speed. The above all politically motivated decisions will have enormous economic effects, not least of which from the point of view of logistics, as the new production facilities lie over 7,000 km from the nearest Chinese port.

For this reason, the railway link between the landlocked regions of *Western China* and *Western Europe* is moving increasingly into the foreground. Well planned and organised rail links appear to be a logical consequence of the rapid economic development in the West of China. They are intended to realise the regular and secure distribution of the goods manufactured in the new economic zone of Yining (according to advance information up to 250,000 containers per month).

The railways of Russia (RZD) and China (KZD) are preparing themselves intensively for the new flows of merchandise. At the meeting of the CIM/SMGS Co-ordination and Steering Groups for the CIT/OSJD project "CIM/SMGS Legal Interoperability" on 22nd/23rd June 2010 in Vienna, the high ranking RZD representative stated that the new traffics would be operated using the CIM/SMGS single consignment note. The Kazak Railways (KZH) have reacted appropriately quickly and intend in the near future to release routes for transit movements and imports using the CIM/SMGS single consignment note (Kazakstan will be entered in Annex 1 of the CIM/SMGS handbook).



Silk Road: Dream and Reality.

Important tasks are thus waiting for the project sponsors OSJD and CIT in terms of the planning, organisation and carrying out of trial movements, and also with regard to training and support for railway staff in the use of the CIM/SMGS single consignment note. A major information event is planned for the end of 2010 or the beginning of 2011.

Half the traffic volumes already use the new single consignment note

The report of the co-ordinators to the last meeting in Vienna led to the conclusion that half the present CIM/SMGS traffic volume was already operating using the new single consignment note. On the assumption that using the CIM/SMGS consignment note generates savings of €30 per shipment (as a result of the elimination of reconsignments) and 40 minutes gain in time per wagon (as a result of the elimination of standing time), then thanks to this the result is a remarkable increase in efficiency in handling block trains (generally consisting of 40 wagons) in CIM/SMGS traffic.

The representative of DB Schenker Rail DE correctly pointed out that a condition of the further spread in the use of the CIM/SMGS single consignment note is the passing on of gains in productivity to the customer. Major customers in Germany are only prepared to abandon previous procedures if they can see a direct financial advantage.

The Group of Co-ordinators took notice of the fact that, since March this year, block trains have been operating for the automotive industry from Vesoul (to the West of Mulhouse) to Vorotinsk (near Kaluga, to the South of Moscow) (see the extensive report in CIT-Info 2/2010, p.7). The Project Manager at SNCF Geodis was able to confirm that the despatch of these trains using the CIM/SMGS single consignment note takes place with no problems and contributes significantly to efficient and secure handling.

In order to obtain even more reliable and even more comparable figures, the project sponsors are collecting data during the first half of the year on the basis of a new standardised form. Starting point for this is the raster produced by ZSSK Cargo and RZD.

Lower damage quotas by rail than by sea

The Group of Co-ordinators also noted with interest that more and more new rail forwarders are appearing in business with China. According to reports in the press, a young company – Tets AG, with its registered office in Berlin and branches in Beijing and Moscow and a planned turnover of 10 to 15 m EUR – is organising container shipments from China to Kazakstan and Russia, as well as from Southeast Asia to Central Asia. Its Managing Director is backing a rethink in the logistics industry, with the conviction that it cannot make sense to transport containers by sea from Shanghai to St. Petersburg, in order to then transport them again 3,000 and more kilometres by rail or by HGV back to Central Asia.

In this context it was also mentioned that transport by rail had become more secure, and that the damage quota is actually lower than in the shipping industry. The co-ordinators explained this development as being due to the increasing piracy at sea, which also results in a substantial increase in insurance premiums. The increasing insecurity of transport by sea and the direct linking of landlocked regions illustrate the new strategic importance of the railways as a global transport service provider.

Multimodal transport on the Baltic Sea and the Black Sea

The accession of the Russian Federation to COTIF/CIM, the accession of RZD to the CIT and the inclusion of the maritime routes Sassnitz-Baltiysk und Sassnitz-Ust-Luga into the COTIF/CIM list all play important roles in the train ferry links across the Baltic Sea.

Subjecting the above mentioned traffics to the CIM Uniform Rules is significant insofar as increasingly large and high value flows of merchandise are being handled on the Baltic Sea. The change of track gauge from 1435mm to 1520mm already takes place on German soil (at Sassnitz-Mukran station), something which simplifies transport organisation and offers interesting prospects for uniform rules of liability right through to the landlocked countries of Central Asia. In the view of the co-ordinators, the use of the CIM/SMGS single consignment note will simplify and speed up these traffics.

Besides the Sassnitz-Baltiysk train ferry link, which is well suited to the use of the CIM/SMGS single consignment note, the Lithuanian Railways (LG) are negotiating with DB Schenker Rail DE and the Belarussian Railways (BC) regarding the use of the CIM/SMGS single consignment note on the Sassnitz/Mukran-Klaipeda train ferry link. The co-ordinator responsible on LG's part provided information on the possibilities and the potential for these maritime rail transport movements. The project sponsors will continue to monitor this plan from close range and will actively support it.

The use of the CIM/SMGS single consignment note on the Black Sea on the other hand requires the inclusion of the maritime lines in the COTIF/CIM list by an OTIF Member State. The co-

ordinators emphatically support corresponding applications from Bulgaria or Turkey. This development can result in the inclusion of further routes to and from the Port of Odessa in the Ukraine.

CIM/SMGS Special Conditions of Carriage

After the successful conclusion of work related to the procedural provisions for the handling of CIM/SMGS claims – including the payment of recognised amounts of compensation, from the point of view of the project sponsors it is also necessary to examine which liability provisions need to be harmonised for the legal relationships between the customer and the carrier and amongst the carriers themselves.

The principles of liability in the CIM/SMGS were presented within the framework of the Steering Group meeting. The conclusions of this discussion will be integrated into the further work on the draft produced by the Legal Group.

Based on this, it is planned to deal with an initial variant of the CIM/SMGS Special Conditions of Carriage as the basis for discussion at the next Steering Group meeting in Berlin at the end of November 2010.

The CIM/SMGS meetings, which took place in Vienna at the invitation of Express Interfracht, thus mark a new stage in the CIT/OSJD project "CIM/SMGS Legal Interoperability". The roughly 40 participants welcomed for the first time the representatives of the Kazak Railways (KZH) and acknowledged with satisfaction the information regarding the Mongolian Railways' official confirmation of their participation in the project. In the year 2010, the Group of Co-ordinators will drive forward further integrated solutions for transcontinental transport movements between Europe/Russia and Asia/China; the Steering Group on the other hand will have the elaboration of the CIM/SMGS Special Conditions of Carriage at the centre of their work.

In conclusion, the project sponsors, the CIT and the OSJD, would like to direct their thanks to the management of Express Interfracht for the excellent organisation of the meetings, which made a decisive contribution to the satisfactory results obtained.

Erik.Evtimov(at)cit-rail.org
Original: DE

Montenegro: The Closing of the Balkan Gap

Montenegro's accession to OTIF has today become final. Thus closing the gap of the COTIF legal system on the Balkan Peninsula, particularly as its neighbouring states Bosnia and Herzegovina, the Republic of Serbia, the former Yugoslav Republic of Macedonia and the Republic of Albania are already OTIF Member States. Montenegro applies all COTIF appendices as from 1st July 2010.

Montenegro has become the 45th Member State of OTIF (www.otif.org).



Passenger Traffic

The passengers' rights regulation: the current situation on exemptions

According to the CIT General Secretariat's information, decisions on the exemptions to be allowed to the Passengers' Rights Regulation ((EC) No 1371/2007) are still outstanding in the following five EU Member States: Italy, Lithuania, the Netherlands, Portugal and Sweden.

Seven states (Bulgaria, France, Ireland, Latvia, Luxembourg, Romania and the United Kingdom) have allowed their domestic traffic all the exemptions permitted.

Austria, the Czech Republic, Finland, Hungary, Poland, Slovakia and Spain have only allowed very limited exemptions. Belgium and Germany are the most restrictive.

Denmark and Slovenia do not allow any exemptions from the application of the PRR at all.

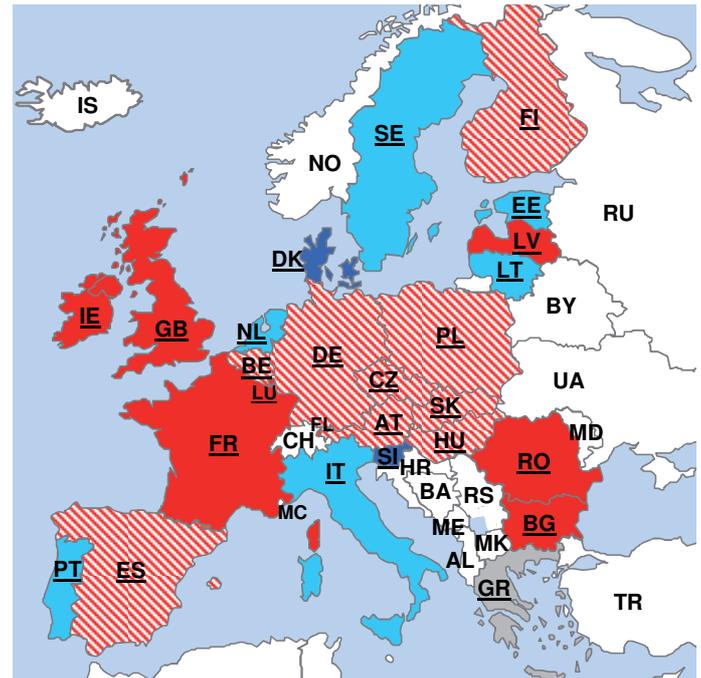
-  No exemption
-  No exemption (legislation on exemptions still awaited)
-  Exemption for all non mandatory articles
-  Exemption for specific articles
-  National legislation not known

Note: This map is based on information received from CIT/CER members; we do not guarantee that it is complete.

The CIT has created a list of exemptions for the benefit of members. The list is kept up-to-date and is to be found in the password protected part of the CIT website. The European Commission's list has been updated to the end of May 2010 but nevertheless still contains some inconsistencies.

Max.Krieg(at)cit-rail.org
Original: DE

PRR 2009 with overview on exemptions



Does the AIV need changing?

The explosion in the number of claims and amounts paid out in compensation since the end of 2009 has demonstrated that some of the regulations in the AIV have had results which place some undertakings at a disadvantage. It has therefore become necessary for the CIT to consider whether these regulations should be revised in order to achieve a more satisfactory balance between undertakings.

The current system

The AIV facilitates cooperation between the customer service departments of those CIT member undertakings that provide international carriage by rail. It sets down how to decide which undertaking should handle the claim, pay compensation to the passenger and support the costs, depending on the type of claim.

For delays, the AIV currently requires the undertaking issuing the ticket in question to manage any claims. That undertaking is to bear all the costs itself except in a few well defined cases. It needs to be remembered, however, that the AIV defines a

standard approach from which undertakings are quite free to derogate. Undertakings may thus share some costs between themselves on the basis of bi- or multilateral agreements.

Questionnaire on the AIV

The workshop held on 4 & 5 May last provided the opportunity to make an initial assessment of the effects of the PRR on the number of claims received and on the difficulties associated with handling them internationally. The CIV Working Group asked for a more detailed examination of some aspects before making changes to the current AIV rules. The CIT will therefore circulate a questionnaire to its members this summer in order to analyse which provisions of the AIV create difficulties in practice. The CIT General Secretariat will then consider alternative approaches to the current rules based on the information which is collected.

The CIV Working Group will meet on 21 & 22 September next to discuss the results of the questionnaire circulated during the summer and will decide if, and to what extent, it is necessary to revise the AIV.

Isabelle.Oberson(at)cit-rail.org
Original: FR

The Commission launches a publicity campaign to promote passengers' rights

On 29 June 2010, the European Commission unveiled the posters and leaflets that it has designed to inform passengers of their rights within the European Union. The publicity campaign has thus been launched; it includes a new internet site (<http://ec.europa.eu/transport/passenger-rights>), just in English for the moment. The site contains a great deal of information for passengers and comes on line at just the right time for the summer.

Isabelle.Oberson(at)cit-rail.org
Original: FR



Rail passengers' rights publicity campaign.

Freight Traffic

Development of a simplified consignment note

The economic crisis is having an effect on the progress being made on the e-RailFreight project. In addition to the economic crisis, the complexity of the system, which may previously have been underestimated, is acting as a deterrent. In the short term therefore, implementation in stages is being planned.

Furthermore, in the interests of making advances in the medium term, the CIT's CIM Working Group decided to examine the desirability of a simplified format for the consignment note at its meeting on 15 & 16 June 2010. The proposed format would be limited to the functions and data required by the CIM Uniform Rules. In this way it would be possible to reduce the administrative work and the costs of implementing the electronic consignment note.

A small group was charged with detailed examination of the functions and data elements; it held its first meeting at the beginning of July 2010. The chairman of the group is Lothar Schneemann (DB Schenker Rail DE). Its objective is to be able to present an initial draft for the simplified consignment note and the consequent changes to the CIT manuals in October.

Who is the first carrier?

The concept of the first carrier is used in numerous places in CIT freight documentation, sometimes to describe the carrier who first accepts the goods (first case) and at other times to describe the carrier who concludes the contract of carriage with the consignor (second case).

The CIM Working Group decided that only those provisions which use the first meaning (above) need to be phrased more precisely in CIT freight documentation.

The provisions which use the second meaning may be left. This means that in so far as identifying the right person to take action against is concerned, actions may be taken both against the carrier who accepted the goods and the carrier who (only) concluded the contract of carriage.



The CIM Working Group at its June meeting. From left to right: E. Evtimov (CIT), A. Nisi (Trenitalia), P. Clerc (SBB Cargo), F. Vaissou (SNCF Fret), L. Schneemann and P. Schuld (DB Schenker Rail DE), I. Gries (OTIF).

Other work undertaken by the CIM Working Group

In addition, topics such as the checklist for drawing up compensation agreements, the procedures for recourse against third parties in the AIM, the effects of new customs demands on CIT freight documentation and the survey of user satisfaction with CIT documentation were discussed.

Some of these issues are being studied in more detail by individual members of the working group so that any appropriate changes to the CIT freight documentation can be decided at the next meeting of the group.

Before they can come into effect, any changes approved by the group must be submitted to the CIM Committee for approval. It is expected that the changes will come into effect in 2011.

Nathalie.Greinus(at)cit-rail.org
Original: DE

The OSCE is also promoting intercontinental traffic by rail

It is no accident that the *Organization for Security and Co-operation in Europe (OSCE)* is also involved in transport issues. Efficient transport by land and sea makes a significant contribution to international stability and security.

For some considerable time, therefore, the OSCE has directed its attention to international road and rail traffic between Europe, Russia and Asia. The eighteenth OSCE Economic and Environmental Forum took place in Prague from 24 to 26 May 2010 and was entitled “*Promoting good governance at border crossings, improving the security of land transportation and facilitating international transport by road and rail in the OSCE region*”. More than a hundred representatives of states in Europe and Asia took part in addition to representatives from the EU and OTIF. The railways (in the form of the UIC and CIT) were also represented.



Thomas Leimgruber, the CIT's Secretary General, presents the association's projects.

A successful project managed by the CIT and OSJD

The CIT took the opportunity to present the progress made in the joint CIT/OSJD project to make the CIM and SMGS legally interoperable to this appropriate and influential audience. As readers will be aware, the common CIM/SMGS consignment note gained wide and successful acceptance in 2009 and it is now used on over fifty regular flows. Within this total, interplant flows for the motor industry between factories in Western/Central Europe and Russia are very significant.

Uniform statutory basis

The CIT believes strongly that the common CIM/SMGS consignment note is an important development but nevertheless is only one step towards overcoming the legal barriers to East-West traffic. Both transport undertakings and customers require uniform law, something which the intergovernmental organisations (OTIF, OSJD and UNECE) must take in hand.

However, this law of carriage can only be a prospect for the medium term because it will take at least five and probably more like ten years to draft. Neither customers nor the railways can wait that long. As a temporary expedient, but intended to provide a basis for legislation based on practice, the CIT and OSJD are now developing standardised legal provisions to be

applied on a contractual basis. They are intended to cover both the external relationship between customer and carrier and the internal relationship between carriers themselves. In both cases statutory material that is already in the CIM and SMGS will be reused. The first tangible results are expected at the end of 2010.

Social implications

One issue that was raised in the OSCE forum is a problem which must not be underestimated. The elimination of administrative barriers can also mean the elimination of jobs; this can have the consequence that such projects are not always supported without reservation everywhere. In that connection, the CIT reported on experience with the introduction of the common CIM/SMGS consignment note. The introduction of the common note had made the production of a new note unnecessary and hence likewise many jobs in the forwarding industry.

Successful management of projects to simplify frontier procedures must therefore always include consideration of communal and social aspects – for some participants in the conference this realisation was completely new and therefore commanded particular interest.

What contribution should the OSCE make?

The essence of the CIT's message was that the OSCE can contribute significantly to promoting intercontinental freight traffic by rail; firstly in that it can press for the creation of uniform transport law in political circles, and, secondly in that it can provide the railways with an appropriate legal framework for carrying out test movements on a contractual basis. Less valuable are mountains of paper, on the contrary, what is wanted is action and real progress.

Kazakhstan Railways as an example

As an ancillary event, Kazakhstan Railways presented their programme to reduce CO₂ emissions. Kazakhstan Railways are taking tangible steps to protect the climate by adopting mandatory limits and timescales and that in a country which is twice as large as Germany, France and Spain put together and on a network which is only one-third electrified but which nevertheless moves 70% of the country's total freight traffic. The presentation amazed and impressed several representatives from the West and quite rightly so.

Thomas.Leimgruber(at)cit-rail.org
Original: DE



Management of the maintenance of wagons

When the European Commission made proposals to amend the safety and interoperability directives, it chose to align the definition of “keeper” to COTIF law in order to ensure coherency and consistency for international freight traffic by rail. Article 3 (s) of Directive 2004/49/EC now defines keeper in line with Article 2 (c) CUV as:

“*keeper*’ means the person or entity that, being the owner of a vehicle or having the right to use it, exploits the vehicle as a means of transport and is registered as such in the National Vehicle Register (NVR) provided for in Article 33 of Directive 2008/57/EC ...”

The railway trade organisations support this positive development. It will underpin the future coordination of international and European wagon law in that:

- secondary European law takes on the COTIF definition of wagon keeper as it is and the Railway Safety Directive (2004/49/EC¹) makes it compulsory for the keeper to maintain his wagons.
- the European Commission is creating a European certification system for authorised wagon workshops in accordance with the Interoperability Directive (2008/57/EC²). This is being done in conjunction with the European Railway Agency (ERA) in stages over the next two years.

Certification of workshops

In addition to amending the definition of keeper in Article 3 (s), the amendments to the Railway Safety Directive (2004/49/EC) include bringing over the definition of *the entity in charge of maintenance* (ECM) from Article 2 (z) of the Interoperability Directive (2008/57/EC). This definition requires the ECM together with the keeper to be registered in the *National Vehicle Register* (NVR) in accordance with Article 33 of the Interoperability Directive. Only registered workshops are entitled and authorised to undertake maintenance of wagons. Subsequently the national vehicle registers are to be coordinated by the ERA into a European register of authorised wagon types (Article 34 Directive 2008/57/EC). The question of who is the ECM and who can be registered in the NVR therefore arises.

This crucial legal issue is firstly to be examined in the context of the Railway Safety Directive (2004/49/EC). The relevant provision (Article 14a para. 2) posits that the ECM may be a railway undertaking (RU), an infrastructure manager (IM) or a wagon keeper.³ Is this list complete?

A systematic interpretation of the statute indicates that Article 14a para. 2 of Directive 2004/49/EC just lists examples of the entities which may be an ECM⁴. This conclusion does not at all exclude the possibility that the well-known triangular RU-IM-keeper relationship could become a quadrilateral (to include the ECM as a legal entity (i.e. if the keeper does not want to maintain the wagons himself (and be liable for that)).



Photo© SBB

VAP Wagon Forum

The spring conference of the VAP Wagon Forum (Verlader Anschlussgeleise Privatgüterwagen) [Shippers, Private Siding and Wagon Owners Association] focussed on these issues of strategic importance for the future (they are also of particular interest to the CIT because of the liability aspects). The conference, which took place in Zurich at the end of May, had more than 150 participants, a fact which shows the importance of the topic. The VAP Secretary General, Dr Frank Furrer, pointed out in his opening address how the restructuring of the certification system for wagon workshops (ECM) in secondary European law would bring far-reaching consequences, both for keepers and carriers.

The fact that the certification system for the ECM is to be set up by DG MOVE before 24 December 2010 (in accordance with Article 14a para 5 Railway Safety Directive (2004/49/EC) and based on a proposal from the ERA) made the discussion even more topical.

Erik.Evtimov(at)cit-rail.org
Original: DE

- 1 Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community’s railways and amending Council Directives 95/18/EC and 2001/14/EC, OJ EU L 220 21 June 2004, pages 16 - 39.
- 2 Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (Recast), OJ EU L 191 18 June 2008, pages 1-45.
- 3 The English version of Article 14a para. 2 of Directive 2004/49/EC reads “*may be an* entity in charge of maintenance”.
- 4 The Commission circulated a proposal for a regulation to set up a certification system for ECM based on this Article on 8 May 2010.

The European Parliament supports the Rotterdam Rules

In a resolution on the EU's maritime transport policy up to 2018¹, the European Parliament calls on EU Member States to sign and ratify the Rotterdam Rules (RR) as quickly as possible.

At the OSCE Economic and Environmental Forum (held in Prague on 24 – 26 May 2010 (see page 6 for a full report)), Denmark, the Netherlands and Norway spoke emphatically in favour of ratifying the Rotterdam Rules.

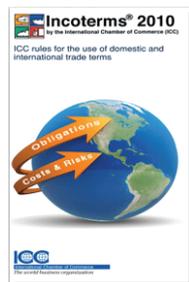
The Rotterdam Rules are relevant to the railways in so far as where the place that loss or damage occurs on a door-to-door contract of carriage is unknown, circumstances can arise in which the liability rules are set by sea law even on land sections of the journey (Article 17 RR).

If it can be established that the loss or damage occurred on a rail section, the network liability provisions in Article 26 RR ensure that the appropriate liability rules in accordance with the CIM Uniform Rules are applied in preference. In this way, the formal report (and hence form CIT 20) takes on increased importance.

The "United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea" has been open for signature since September 2009. To date, there have been twenty-one signatures; they are to be distinguished from ratifications; the convention only comes into effect when it has been ratified by at least twenty states (Article 94 para. 1 RR).

Thomas.Leimgruber(at)cit-rail.org
Original: DE

¹ European Parliament resolution of 5 May 2010 on strategic goals and recommendations for the EU's maritime transport policy until 2018 (2009/2095(NI)).



Incoterms® 2010

Incoterms® 2010 reflect changes and evolution in international business and commercial practice. In addition to the eleven Incoterms® rules, the 2010 version contains graphics and extensive guidance notes to facilitate their use. Since 1936, ICC's Incot-

<http://www.iccbooks.com/Home/Home.aspx>

terms have helped traders avoid misunderstandings by clarifying costs, risks, and the allocation of certain responsibilities of buyers and sellers in sales contracts.

The new version will come into effect on 1 January 2011. Once it is available (expected to be in September 2010), the CIT General Secretariat will examine what changes to the GLV-CIM are needed to cover the instructions on the consignment note for the payment of charges.

Henri.Trolliet(at)cit-rail.org
Original: FR

The "Freise-Commentary" has been published



Prof. Dr Rainer Freise is not only Chairman of the CIT but also author of the Münchner Kommentar zum internationalen Eisenbahnbeförderungsrecht [Munich Commentary on the Law of International Carriage by Rail].

Every railway lawyer is familiar with the commentaries by Nanassy, Allégret, Favre/Wick and Mutz. They are indispensable aids to an area of law which hitherto has led a shadowy existence in doctrine and jurisprudence and hence where pertinent literature is all the more important.

Another standard work is now available. A commentary on the CIM and CUV Uniform Rules by Prof. Dr iur. Rainer Freise has recently been published as part of the *Münchener Kommentar zum Handelsgesetzbuch (Band 7, Viertes Buch, Handelsgeschäft, §§ 407-475 Transportrecht)* [transport law section of the Munich Commentary on the commercial code].

The "Freise Commentary" appeals because of its thoroughness, completeness and clarity. Hardly an issue remains untouched, hardly a question unanswered. Divergent opinions are also taken

into account and discussed comprehensively. The rich variety of illustrative material in the shape of general terms and conditions will particularly please practitioners.

Before the commentaries on the CIM and CUV are fundamental remarks on the history of COTIF, the organisation of OTIF, on the legal character and interpretation of COTIF law as well as on the relationship of COTIF with EU law. In analysing the relationship between COTIF and EU law, the author reflects the view represented in the CIT study of 2006 "COTIF law and EU law relating to international carriage by rail: areas of conflict and options for solutions" that Article 3 § 2 COTIF is an organisational rather than a substantive provision.

The commentary on the individual provisions follows a systematic pattern based on their purpose, the reason for them, their history, scope, and practical significance. Explanations of the characteristic elements and legal consequences of the provisions then follow together with, as appropriate, treatment of conflict and the burden of proof.

International rail transport law is the richer for this classic. We can count ourselves lucky that the author of the commentary is also the Chairman of the CIT and thus that his technical skills are available to members of the association.

Thomas.Leimgruber(at)cit-rail.org
Original: DE

Use of the Infrastructure

EPR pilot application: agreement on the confidentiality of data

Large scale tests of the system developed for the *European Performance Regime* (EPR) project must start in October 2010. As a reminder, this project, led jointly by the UIC and RNE, is intended to improve the quality of infrastructure performance by setting up a penalty system for undertakings that cause delays.

Undertakings taking part in the pilot project

Several infrastructure managers and railway undertakings have said that they are prepared to test the EPR pilot application along various international corridors. Amongst the infrastructure managers are Prorail, Infrabel, RFF, DB Netz, ÖBB Netz, SBB Infra, BLS and RFI. The railway undertakings include SNCB Logistics, SNCF, DB Schenker Rail Germany, RCA, SBB Cargo, SBB Passenger, BLS Cargo and Trenitalia.

Data to be kept confidential

The EPR works on the basis of delay minutes recorded along the whole of the route of a train along a given axis. To every delay, the infrastructure manager attributes a code identifying the cause of the delay. The infrastructure manager inputs this information into a national IT system which then passes it to *Europtirail*, a system for managing international traffic which uses codes taken from UIC leaflet 450-2. In general, the railway

undertakings in question have access to these systems so that they can take note of what has been input and challenge it if necessary.

This electronic data on delays and their causes is commercially sensitive. For that reason, the EPR project leader has asked infrastructure managers and railway undertakings to sign an agreement to ensure that the data exchanged during the test phase of the pilot application will be processed and kept confidential. The agreement prohibits all the parties from divulging any confidential information collected during the tests to be held in 2010 and 2011. It also implies that the parties will take steps to ensure the security, integrity and authenticity of the data being exchanged.

This agreement is positive in that it provides a basic legal framework for the EPR pilot application. It does not resolve the fundamental legal issues associated with the large scale application of the EPR. These will be considered in greater detail in the legal group once the pilot application has shown that the EPR is an appropriate and effective way of improving infrastructure performance.

Isabelle.Oberson(at)cit-rail.org
Original: FR

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.

What should we do about locomotives?

Locomotives with power disconnected (dead locomotives) are increasingly being moved in freight trains to allow them to be used for shunting operations elsewhere. This raises the question of whether the *Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic* (CUV-Appendix D to COTIF) apply to these locomotives hauled dead.

In accordance with Article 1, the CUV Uniform Rules apply to "bi- or multilateral contracts concerning the use of railway vehicles as means of transport for carriage in accordance with the CIV Uniform Rules and in accordance with the CIM Uniform Rules". In the German version of Article 2 (b) CUV, vehicle (Wagen) is defined in terms of a "Fahrzeug", a somewhat wider term. Whilst "vehicle" in English would not exclude a dead locomotive, the French definition (which prevails in COTIF in the event of divergence, in accordance with Article 45 § 1 second sentence COTIF) is somewhat narrower and would seem to exclude a locomotive not provided with a means of traction. Nevertheless, the objective and purpose of this provision is primarily to define a vehicle as a *means of transport* for the purposes of carriage.

So the question of which other rules can be applied to locomotives moved dead-in-tow still remains.

Firstly, it must be noted that "not provided with a means of traction" therefore excludes "traction". This latter consists of making traction available for hauling loaded or empty vehicles within a specific time band and for a specific price (see point 1 of the GTC traction).

In consequence, it would seem apparent that such cases must be subsumed within Article 24 CIM Uniform Rules. In accordance with this article, dead locomotives are to be consigned as goods and for international freight traffic by rail, a CIM consignment note is to be used. In accordance with Article 24 § 1 CIM, the carrier is liable for the loss of or damage to the vehicle (in this case, the dead locomotive) or its removable parts during the period between taking the vehicle over and delivering it as well as for exceeding the transit period. On the other hand, the carrier is not liable for the loss of accessories (Article 24 § 2 CIM).

This interpretation is also supported by an earlier and teleologic interpretation, that applied to Article 5 § 1 (b) first sentence CIM 1980. The standard supplementary provision for this article (DCU 2 point 2 of 1 January 1993) included locomotives in the definition of railway vehicles running on their own wheels.

Erik.Evtimov(at)cit-rail.org
Original: DE



IDIT Seminar on Passengers' Rights and Mobility

The *Institut du Droit International des Transports* (IDIT) [Institute for International Transport Law] together with the legal faculty of the University of Rouen is organising a seminar to be held on Friday 24 September 2010. The theme of the seminar is "Passenger Transport – New Rights and New Forms of Mobility".

- the role and obligations of travel agencies,
- the challenges brought by new technology,
- car sharing,
- accompanying persons with reduced mobility, and
- insurance issues.

Jean-Luc Dufournaud, Assistant Director of SNCF's Legal Department and Vice Chairman of the CIT will speak on the passenger railway undertakings' view of rail passengers' rights (PRR).

The following topics will be covered

- existing passenger rights and those shortly to be adopted for the four modes (air, rail, road, sea),
- new forms of mobility,

Further details are available from: www.idit.fr/sommaire.php

CIT Diary

Date	Event	Location
1 September	Aftersales Agreements Group of Experts	Bern
6 September	Ad hoc-Group of the CIM/SMGS Legal Group	Warsaw
7 September	Group of Experts "Simplified format for the consignment note"	Bern
7/8 September	CIM/SMGS Legal Group	Warsaw
9 September	CIM/SMGS Group of Experts	Warsaw
21/22 September	CIV Working Group	Bern
23 September	Executive Committee 2/2010	Bern
19/20 October	CIM Working Group	Bern

Events with CIT participation

Date	Event	Location	CIT contact
20 July	Negotiations between CIT and RNE concerning the EurGTC	Vienna	Thomas Leimgruber
7 September	UIC Freight Steering Group	Paris	Henri Trolliet
14/15 September	UIC Commercial Group and Technical Group	Paris	Max Krieg
15 September	CER Sub-working group on Seals	Paris	Nathalie Greinus
16 September	3 rd Meeting of the Informal Group of Experts on Unified Railway Law	Geneva	Erik Evtimov
21 September	CER General Assembly	Berlin	Thomas Leimgruber
30 September	UIC Wagon Users Study Group	Paris	Henri Trolliet
4 October	UIC Freight Steering Group	Paris	Henri Trolliet
5 October	UIC Freight Forum	Paris	Henri Trolliet
6 October	CER Freight Focus Group	Paris	Henri Trolliet
13 October	CER Passenger Working Group	Paris	Isabelle Oberson
14 October	CER Customs Meeting	Brussels	Nathalie Greinus
14 October	UIC Passenger Forum	Paris	Thomas Leimgruber
15 October	Liaison Meeting with Customers Organisations	Brussels	Isabelle Oberson
20/21 October	UIC Working Group TAP Maintenance and Development	Paris	Max Krieg
21/22 October	UNECE Working Party on Intermodal Transport and Logistics	Geneva	Erik Evtimov

Produced by:
International Rail Transport Committee (CIT)
Secretariat General
Weltpoststrasse 20
CH-3015 Berne

Phone +41 31 350 01 90
Fax +41 31 350 01 99
E-Mail [info\(at\)cit-rail.org](mailto:info(at)cit-rail.org)
Internet www.cit-rail.org