

Editorial

Signposts to the future



Two events from recent weeks point to the way CIT activities will develop in the future: the publication of the EU white paper "Roadmap to a Single European Transport Area" and the "Astana Declaration".

The white paper sets down transport policy proposals for twenty-seven European states for the period to 2050. In doing so

it also makes some important points on transport law. It proposes that the various modes should be linked, both passenger and freight traffic, and multimodality promoted. For the CIT, this will mean increased commitment to the harmonisation of the various different legal bases, the facilitation of end to end contracts of carriage and drawing up common transport documents.

The seminar in Astana was supported by over 120 representatives of the railways involved, customers and international organisations. They met in the Kazakh capital at the beginning of April to provide more impetus to making transport law between East and West interoperable. Representatives of the Chinese railways also took part in the event. A declaration was made at the end of the seminar which explicitly held out the prospect of the use of the common CIM/SMGS consignment note for consignments to and from China. For the CIT and its partner organisation, OSJD, this means that the fundamentals to allow contractual bridges to be built between the legal systems of the East and West will be ready in good time.

The appearance of the white paper and the Astana Declaration at the same time makes it clear that the development of international transport law will not be just an intercontinental but rather a global task. Isolated initiatives by individual organisations are pointless and may indeed be counter-productive. Hence it is good to know that the EU's white paper provides specifically for working with the ICAO, IMO, OTIF, OSJD and the UNECE. It is to be hoped, of course, that the EU will take on a sponsoring role and ensure that no paper tigers are created or promising initiatives allowed to fizzle out.

The CIT is ready and willing to contribute all its practical know-how to the development of intercontinental and multimodal rail transport law.

Thomas Leimgruber
Secretary General to the CIT

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Further information is available on page 17 and:
www.cit-rail.org/fileadmin/public/Seminare/Flyer_Conference_Freight_Claims_Dept_2011.pdf

Transport Law and Policy

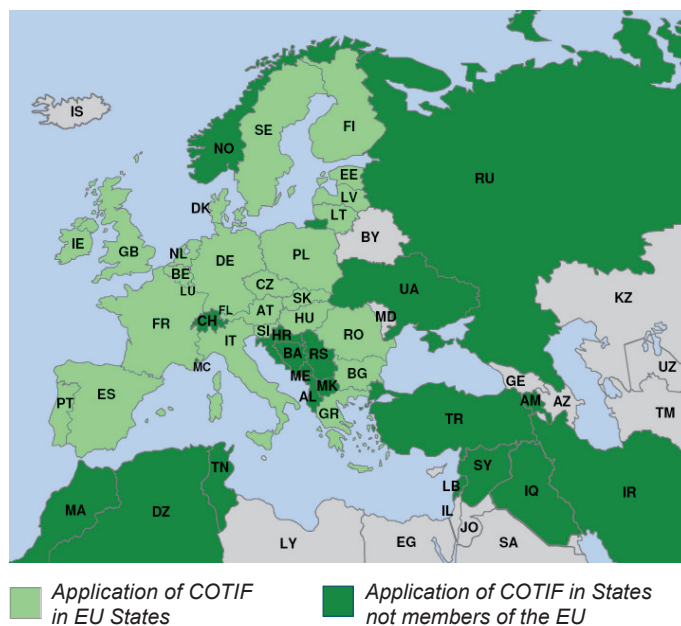
Will the European Union accede to COTIF soon?

Article 38 of the *Convention concerning International Carriage by Rail (COTIF)* provides the European Union (EU) with the option to accede to COTIF as a "regional economic integration organisation". An initial accession agreement between the EU and OTIF that had actually been initialled was submitted to the ninth General Assembly of OTIF on 9 & 10 September 2009 but the consideration of the issue had to be deferred because not all the institutional processes within the EU had been completed.

As a consequence, the EU asked for further changes to the accession agreement; these affected substantive issues such as the disconnection clause and reservations against some of the appendices to COTIF. The Secretary General of OTIF found himself unable to accept these changes for formal reasons and considerations of international law.

In the meantime, thanks to Switzerland acting as a go-between, a solution to all the contentious points has begun to emerge so that the accession of the EU will now be discussed at the tenth (extraordinary) General Assembly of OTIF on 22 & 23 June 2011. The international trade associations have also been invited to the meeting. The CIT will be represented by its chairman, J-L. Dufournaud (SNCF).

The CIT greatly welcomes this positive development and hopes that the EU will accede to COTIF quickly. The CIT would also like to express the hope that accession will be linked to a rapid withdrawal of the reservations against the CUI so that a certain



and consistent statutory framework will be available to resolve liability issues between railway undertakings and infrastructure managers in the foreseeable future.

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Armenia becomes the forty-seventh OTIF Member State

As announced in the last CIT Info, with effect from 1 July 2011, Armenia will become the forty-seventh Member State of OTIF. Armenia's accession is an important step in the binding of the Caucasus region into Europe. Its railway network provides the only link to the neighbouring states of Turkey, Azerbaijan and Georgia and in particular allows through consignment of freight traffic between the ports of Batumi and Poti on the Black Sea and Baku on the Caspian.

Armenia accedes without making any reservations and will therefore apply all seven appendices (CIV, CIM, RID, CUV, CUI, APTU and ATMF). The Armenian network is broad gauge (1520 mm) and almost completely electrified. It is some 780 km in length. The railway has been operated as a concession by a wholly owned subsidiary of RZD "South Caucasus Railways" since 2008.

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European Commission White Paper – Relevance for the CIT

The European Commission published its White Paper "Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system" at the end of March. The white paper lays out the strategy for transport policy for the next few decades and sets down ambitious objectives for the railways:

- to shift 30% of road freight over 300 km to other modes such as rail or waterborne transport by 2030, and more than 50% by 2050;
- to complete a European high-speed rail network by 2050. To triple the length of the existing high-speed rail network by 2030. By 2050 the majority of medium-distance passenger transport should go by rail;

- to connect airports to the high-speed rail network and sea-ports to the rail freight network by 2050.

The Single European Railway Area

The central challenge will be to complete the internal market for rail services and create a "Single European Railway Area" free from technical, administrative and legal obstacles.

The white paper therefore makes numerous statements which concern the law of carriage directly or indirectly.

¹ COM (2011) 144 final,
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0144:FIN:EN:PDF>

Passenger traffic

Airports, ports, railway, metro and bus stations should be better linked and transformed into multimodal centres for passengers to make connections. Online information and electronic booking and payment systems integrating all modes of transport should simplify multimodal travel. An appropriate set of passengers' rights must parallel the wider use of collective modes and must consolidate existing passengers' rights.

The white paper lists the following EU initiatives for passenger traffic which affect the CIT:

- developing uniform interpretation of EU Law on passengers' rights and harmonised and effective enforcement;
- assembling common principles applicable to passengers' rights in all transport modes (Charter of Basic Rights), in particular the 'right to be informed'. At a later stage, considering the adoption of a single EU framework regulation covering passengers' rights for all modes of transport (EU Codex);
- supplementing the established legislative framework on passengers' rights with measures to cover passengers on multimodal journeys holding integrated tickets under a single contract of carriage;
- integrating different passenger transport modes further in order to provide seamless multimodal door-to-door travel;
- creating the framework conditions to promote the development and use of intelligent systems for multimodal scheduling and multimodal ticketing including providing for access by private service providers.

Freight traffic

Freight traffic takes up less room in the white paper and hence the statements seem more specific. In the freight area, the Commission plans the following initiatives which affect the CIT:

- putting the concepts of 'single window' and 'one-stop administrative shop' into effect; by creating and deploying a single transport document in an electronic form (electronic consignment note) for all modes;
- ensuring that liability regimes promote rail, waterborne and intermodal transport;
- streamlining the rules for the intermodal transport of dangerous goods to ensure interoperability between the various modes.

Multimodality and information technology

Accordingly it seems that for both freight and passenger traffic, interconnecting the various modes is the most important issue. For transport law this means the harmonisation of differing statutory regimes, end to end contracts of carriage and standardised documentation. It is apparent that only information technology can accomplish the latter; the future therefore belongs to the electronic ticket and consignment note.

In this connection, the insight that multimodality and information technology have an inter-continental, indeed world-wide, dimension is important. Hence it is good to know that the white paper also provides specifically for working with international organisations such as ICAO, IMO, OTIF, OSJD and the UNECE. It is to be hoped, of course, that the EU will take on a sponsoring role.

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Passenger Traffic

Follow-up of the comparative study of the rights of passengers across four modes of transport



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In CIT Info 1/2011, we presented the first part of a comparative study into passengers' rights when travelling by various modes of transport. In that first part we concentrated on liability issues in the event of accidents and delay. Since then, the European Union has published *Regulation (EU) No 181/2011 concerning the rights of passengers in bus and coach transport*; the regulation will enter into force on 1 March 2013. We shall examine the way it treats liability issues later.

In this edition of CIT Info we will examine passengers' other rights, in particular the right to information, to make complaints and to service quality and we shall skim over the rights of persons with reduced mobility (PRM). The references to the texts applicable, to international conventions and European Regulations were all given in CIT Info 1/2011.

The right to information

The international conventions only cover the information to be provided to passengers before and during their journeys to a very limited extent. The four European Regulations now cover that omission, deliberately, by regulations which are sometimes very precise and sometimes rather vague.

For carriage by rail, annex II of *Regulation (EC) No 1371/2007* contains a detailed list of information which has to be provided to the passenger:

- before the journey: general conditions applicable to the contract, timetables and conditions for the fastest journey time and the lowest fares, access conditions for PRM, access conditions for bicycles, availability of seats in smoking and non-smoking and first and second class, any traffic restrictions, services on board and the procedure for making complaints;
- during the journey: on-board services, next station, delays, main connections, security and safety issues.

In addition, rail carriers as well as station managers and tour operators must provide passengers with details of their rights under *Regulation (EC) No 1371/2007*. They may use the “summary” (no less than eight pages) prepared by the Commission for this purpose but it is only available in English. In reality, every undertaking has prepared its own notice about passengers’ rights which takes account of the exemptions allowed by its state to the various urban, suburban and regional or domestic long distance services.

The other modes of transport do not have such detailed regulation of the information to be provided to passengers, far from it. As a general rule, all the carriers must inform passengers of the rights provided by the various regulations applicable. In certain cases, it is obligatory to use the summaries prepared by the EU. The information these summaries cover includes liability in the event of an accident and the notices to be displayed in airports (as shown in the scheme opposite). For the remaining modes, carriers may make do with providing “adequate” information to passengers. Nevertheless, in the event of delay or cancellation, the obligations are a little more specific: in particular, carriers have to inform passengers of any alternative transport services.

This right to information may be strengthened by the future *Consumer Rights Directive* which is being discussed within the European Parliament and Council at the moment (see CIT Info, 1/2011, page 10). It may be that the identity of the “professional” providing the transport service will have to be clearly indicated on conclusion of the contract, a provision which may create some practical difficulties for railway undertakings. It should be noted that *Regulation (EC) No 2111/2005* already imposes this requirement on airlines. That regulation creates a blacklist of airlines which do not fulfil all the EU’s safety criteria. As an indirect result, passengers have been given the right to know which airline will be carrying them in order to check that it is not on the list.

Claims and complaint handling mechanisms

Passengers who suffer losses as a result of an accident or a delay have the right to make a claim against the undertaking in question and to demand compensation. European legislation requires all carriers together with port terminal operators and airport managers to set up a claims handling system. However, only carriers by rail have an obligation to publish a report on the number and categories of complaints received and processed, response times and any action taken to improve the situation. This report must be published once a year with their annual report. Other modes are not required to be that transparent; that is something which is difficult to understand, particularly for the sea and road modes, given that their legislation came a long time after the approval of *Regulation (EC) No 1371/2007*.

Passengers also have the right to complain to the national bodies responsible for the enforcement of the four European regulations. Nevertheless, if it is provided for by national law, these bodies may require that the passenger has already complained to the maritime or road carrier in question and not received a satisfactory answer before they will take up the case.

Monitoring the quality of service

Regulation (EC) No 1371/2007 requires railway undertakings to publish a report on their service quality performance at the same time as publishing their annual report. The report must cover the following issues at least:

- information and tickets;
- punctuality of services, and general principles to cope with disruption to services;
- cancellation of services;
- cleanliness of rolling stock and station facilities (air quality in carriages, hygiene of sanitary facilities, etc.);
- customer satisfaction survey;
- complaint handling, refunds and compensation for non-compliance with service quality standards;
- assistance provided to disabled persons and persons with reduced mobility.

Other modes of transport have no such obligation. What justifies this difference in treatment? It is regrettable that European legislators haven’t taken the opportunity to provide passengers with the option of comparing quality of service between the various modes.

Rights of disabled persons and persons with reduced mobility

Disabled passengers and those with reduced mobility must be provided with assistance free of charge when they use transport services covered by the four European regulations (i.e. services that are not exempted). Nevertheless, those passengers must warn carriers and/or managers of the infrastructure they use, thirty-six hours in advance of their arrival for road, forty-eight hours in advance in the case of other modes. The right to assistance is limited to staffed stations in the case of rail, bus terminals listed by Member States in the case of road.

In the rail and road modes, conditions for accessing transport services have to be drawn up with the involvement of organisations representing PRM. Furthermore, the rail mode has found itself subject to a series of technical specifications for interoperability through the TSI-PRM (*Commission Decision 2008/164/EC*) which entered into force on 1 July 2008. The rules for other modes follow from national or international legislation on the safety of transport operations.

Carriers may not refuse to carry a disabled person or a person with reduced mobility or require them to be accompanied during the journey unless it is to comply with these access or safety conditions. If carriage is denied, maritime and road carriers must suggest alternative services.

Despite the fact that the European legislation on the rights of PRM was drawn up between 2006 and 2011, it varies in a number of ways between the various modes (conditions in which carriage may be refused, offers of alternative services, refund, damages in the event of loss of or damage to mobility equipment, etc.). Once again, one cannot but regret these subtle differences which unnecessarily complicate passengers’ rights. Something which seems normal in one mode should be in another.

INFORMATION		RAIL	AIR	SEA	ROAD
	pre-contractual	<ul style="list-style-type: none"> list of information in Rail PRR annex II, part I (e.g. GTC, time schedules for fastest trip and lowest fares, PRM, bicycles, on-board services, etc.) rights under Rail PRR (possibly distribute summary prepared by EU) 	<ul style="list-style-type: none"> rights under Reg. 889/2002 on liability for accidents (obligation to use summary annexed to Regulation) obligations of transparency relating to the fares under Reg. 1008/2008 obligation to clearly identify the operating carrier under Reg. 2111/2005 	<ul style="list-style-type: none"> rights under Sea PRR (possibly distribute summary prepared by EU) and under Sea Accidents Reg. in most appropriate formats (obligation to use summary prepared by EU) 	<ul style="list-style-type: none"> rights under Bus&Coach PRR (possibly distribute summary prepared by EU) at the latest on departure, at terminals and on internet
	during performance of contract	<ul style="list-style-type: none"> list of information in Rail PRR annex II, part II (e.g. on-board services, next station, delays, connections, etc.) 	<ul style="list-style-type: none"> obligation to display at check-in a clearly legible and visible notice: <i>"If you are denied boarding or if your flight is cancelled or delayed for at least two hours, ask at the check-in counter or boarding gate for the text stating your rights, particularly with regard to compensation and assistance"</i> obligation to distribute leaflet on compensation and assistance in case of denied boarding, cancellation or delay over 120 minutes 	<ul style="list-style-type: none"> "adequate" information throughout the travel 	<ul style="list-style-type: none"> "adequate" information throughout the travel
	in the event of delay or cancellation	<ul style="list-style-type: none"> information on delays, asap 	<ul style="list-style-type: none"> information on cancellations, and on alternative transport services 	<ul style="list-style-type: none"> information on delays, asap but no later than 30 minutes after scheduled time of departure, in accessible formats for PRM information on alternative connections if passenger expected to miss his connection 	<ul style="list-style-type: none"> information on delays, asap but no later than 30 minutes after scheduled time of departure, in accessible formats for PRM reasonable efforts to inform on alternative connections if passenger expected to miss his connection
	format	<ul style="list-style-type: none"> particular attention to needs of people with auditory and/or visual impairment 	<ul style="list-style-type: none"> appropriate alternative means for blind and visually impaired persons 	<ul style="list-style-type: none"> accessible formats, with particular attention to the needs of PRM same languages as those in which information is generally made available to all passengers 	<ul style="list-style-type: none"> accessible formats where feasible, with particular attention to the needs of PRM same languages as those in which information is generally made available to all passengers
COMPLAINTS	handling	<ul style="list-style-type: none"> any RU involved reply within 1 month (max. 3) 	<ul style="list-style-type: none"> for PRM only: right to complain to carrier or airport manager (no general provision for all passengers) 	<ul style="list-style-type: none"> carriers and terminal operators submission within 2 months from the date on which the service was performed or when a service should have been performed reply within 1 month (max. 2) 	<ul style="list-style-type: none"> carriers only submission within 3 months from the date on which the regular service was performed or when a service should have been performed reply within 1 month (max. 3)
	reporting	<ul style="list-style-type: none"> annually number + categories of received / processed complaints, response time, actions for improvement 	--	--	--
	NEBs	<ul style="list-style-type: none"> right to complain to any NEB information on contact details of NEBs in station and trains 	<ul style="list-style-type: none"> for PRM: right to complain if does not obtain satisfaction by complaining to carrier or airport information on contact details of NEBs in leaflet on compensation and assistance 	<ul style="list-style-type: none"> Member States can oblige passengers to submit their complaint first to carriers and appeal to the NEB if not satisfied information on contact details of NEBs on board ships, in ports and in port terminals 	<ul style="list-style-type: none"> Member States can oblige passengers to submit their complaint first to carriers and appeal to the NEB if not satisfied information on contact details of NEBs included in general information to be provided at the latest on departure at terminals and where applicable on internet
	quality management system	<ul style="list-style-type: none"> list of minimum items to be covered in PRR annex III 	--	--	--
QUALITY	reporting	<ul style="list-style-type: none"> annually together with the annual report on RU website + ERA website 	--	--	--

PERSONS WITH REDUCED MOBILITY (PRM)	RAIL		AIR		SEA		ROAD	
	right to transport	<ul style="list-style-type: none">no extra fareno refusal / no obligation to be accompanied, unless strictly necessary to comply with access rules	<ul style="list-style-type: none">no refusal / no obligation to be accompanied, unless to comply with statutory safety requirements, or unless size of aircraft or size of doors make it physically impossible	<ul style="list-style-type: none">no extra fareno refusal / no obligation to be accompanied, unless to comply with statutory safety requirements, or unless design of ship or port infrastructure and equipment make it impossible to embark in a safe or operationally feasible manneralternative transport on ship or cruise must be proposed if refusal	<ul style="list-style-type: none">no extra fareno refusal, unless to comply with statutory safety requirements, or unless design of the vehicle or infrastructure (bus stops or terminals) makes it physically impossible to take on board, alight or carry in a safe or operationally feasible mannerinfo on alternative transport must be given if refusalif refusal after purchasing of ticket, right to refund + return / re-routing where feasible			
	accessibility	<ul style="list-style-type: none">access rules established with organisations of PRMinformation to be provided on access conditions to rail services, rolling stock, on-board services	---	<ul style="list-style-type: none">information on access conditions to be provided on internet, in accessible formats on request	<ul style="list-style-type: none">access rules established with organisations of PRMinformation on access conditions to be provided on internet, in accessible formats on requestlist set up by Commission and Member States of accessible terminals on internettraining of staff detailed in annex II			
	assistance	<ul style="list-style-type: none">if notified 48hours in advancefree of chargeat staffed stations	<ul style="list-style-type: none">if notified 48hours in advancefree of chargeresponsibility of airport detailed in Reg.1107/2006, annex Iresponsibility of carrier detailed in Reg.1107/2006, annex II	<ul style="list-style-type: none">if notified 48hours in advancefree of charge	<ul style="list-style-type: none">if notified 36hours in advancefree of chargeat terminals listed by Member States: responsibility of terminal managing bodies and carriers detailed in annex I aon board: responsibility of carriers detailed in annex I b			
	compensation for damaged mobility equipment	<ul style="list-style-type: none">if RU liable, no financial limit applicable (→ overrules the CIV limit applicable)	<ul style="list-style-type: none">compensation in accordance with international, EU and national law	<ul style="list-style-type: none">liability for fault (presumed in case of a shipping incident) for carriers and terminal operatorscompensation corresponds to replacement value of equipment or to costs relating to repairsbest efforts to provide temporary replacement equipment	<ul style="list-style-type: none">liability in accordance with national lawcompensation equal to the cost of replacement or repair			

Conclusion

Passengers' rights are difficult to compare and contrast between modes. Furthermore, even within one mode, passengers must ceaselessly check if the transport services they are using are indeed covered by European legislation. If not, their rights may simply be those arising from national or international law. Some examples will demonstrate the complexity of the situation:

- a flight provided by American Airlines between New York and Paris will only be covered by the *Montreal Convention* although the return flight or an Air France flight on the same route will also be subject to *Regulation (EC) No 261/2004* and to *Regulation (EC) No 1107/2006*;

- a journey by train between Strasbourg and Mulhouse is exempted from the main articles of *Regulation (EC) No 1371/2007*, except if the journey is made in a TGV Lyria going on to Zurich;
- a cruise on the Adriatic starting from Rijeka in Croatia falls outside the European legislation, whereas the same cruise if joined in Trieste (only seventy kilometres further north in Italy) would be subject to *Regulation (EU) No 1177/2010*, except for certain articles relating to liability for delay;
- a journey by coach from Trieste to Milan will be subject to *Regulation (EU) No 181/2011* but if the same journey is made with a change of coach at Vicenza it will not be subject to the regulation.

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New AIV with effect from 1 January 2012

The *Agreement concerning the Relationships between Carriers in respect of International Passenger Traffic by Rail* (AIV) has been completely revised during the past few months in order to respond to the rapid growth in the number of passenger claims based on *Regulation (EC) No 1371/2007* (PRR). The new rules were approved by the CIV Committee, chaired by Enrico Trapazzo, at its meeting in Bern on 15 April 2011. The AIV is applied by the great majority of CIT members and, now that the revised text is in place, it is clear that its importance will grow.

System for sharing out the costs of compensation paid out for delays

The AIV defines which organisations are to handle claims from passengers, pay the claims and bear the costs. This last aspect has been fundamentally revised in Chapter 4 of the AIV on delays. Carriers have agreed to allocation principles that depend on the type of ticket the passenger held for sharing the costs between themselves. The rules for making the debit will be those of UIC leaflet 301, rules which have been recognised and used by railway undertakings for a long time. Implementation of this new system of sharing out compensation will not therefore give rise to great difficulties for undertakings' customer services and accountancy departments.



More flexibility in the handling of claims

Chapter 4 of the AIV now gives the undertaking which received the claim the option of handling it itself if it has the authority of the undertaking issuing the ticket to do so. The undertaking handling the claim must make the same checks on the authenticity of the tickets and other documents provided by the passenger. It must also respect the rules laid down in the AIV for paying the claim, the allocation and the debit.

Chapter 3 on missing the last connection of the day has likewise been amended. It now gives the issuing undertaking the option of handling the claim for the costs of the hotel, in particular where that claim is linked to a claim for compensation for delay.

Information about delays

Currently, it is difficult for a railway undertaking to know if trains running in other countries have been delayed and if so, why. However, rapid access to that type of information is essential to be able to deal with claims within the timescales imposed by the PRR. For that reason, the CIT has considered several tools to facilitate the work of customer services departments and introduced new provisions in the AIV to help them. The CIT now invites members to use the EUROPTIRAILS system as far as possible. EUROPTIRAILS is an IT system which archives data from all the international passenger trains in ten states (Austria, Belgium, France, Germany, Hungary, Italy, Luxembourg, the Netherlands, Slovenia, Switzerland).

Revision of the GCC-CIV/PRR

The revision of the AIV has highlighted several points in the GCC-CIV/PRR which need to be re-examined in detail because of their impact on the handling of claims. The CIV Committee has therefore instructed the CIV Working Group to analyse these points at its next meeting on 7 & 8 September. A new workshop on the rights of passengers which will take place in Bern on 29 September will provide the opportunity to review the application of the GCC-CIV/PRR and to present the new provisions of the AIV. The CIT invites members to write the date in their diaries straightaway.

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Ticketing – the frontiers fall

International tickets are currently generally issued electronically using the RCT2-Standard (*Rail Combined Ticket 2*) on white paper pre-printed with the CIT security background. This standard, derived from IATA definitions, was adopted for international rail ticketing. The standard is defined in the *CIV Ticket Manual of the CIT* and *UIC leaflet 918-2*.

On the other hand, for regional and domestic journeys, there are numerous, mainly smaller, ticket formats which are designed to be sold by ticket machines. The CIT security background (or at least part of it) is already being used for these formats.

The trend is apparent, as European states grow together and Schengen initiatives to remove controls continue to make national frontiers more and more porous, a differentiation between "international" and "domestic" is becoming less and less relevant.

These developments mean that the standard for tickets for international passenger traffic by rail will need to be simplified but likewise that that simplified standard will have to be recognised by all railway undertakings. Pressure on costs also means that the techniques for ticket issue at the ticket desk, via ticket machines and by on-train sales will have to be standardised but at the same time they will have to be made more flexible

to allow for selling a more diverse range of tickets. It should be possible to sell international, domestic and regional tickets from the same ticket machines and it should be possible to print them from a single roll of paper in the machine. This means the costs of procurement will fall at the same time. Restriction to one or two printing processes for producing tickets allows the number of different types of paper to be reduced; this in turn simplifies stock control and again reduces costs.

Credit card sized ticket

Railway undertakings require a new, standardised basic format which can be adopted on a modular basis to provide formats for international tickets of the existing size as well as formats for regional tickets. The UIC "Ticketing Action Group" is examining how the *Credit Card Size Ticket* (CCST) can be defined so that it can be implemented by as many railway undertakings as possible and so that it can be issued by their existing issuing equipment. Representatives from SNCF, DB, Trenitalia, ATOC, SBB, PKP, Eurail GIE, UIC and the CIT are working on a new Part

B for UIC leaflet 918-2; the leaflet will then be republished with the title "Layout for electronically issued transport documents on secured paper – Rail Combined Ticket 2 (RCT2) and Credit Card Size Ticket (CCST)".

The CCST will become a new CIT/UIC standard and will be available for use with effect from 1 January 2012 for all electronically issued tickets. The CCST standard will not have to be implemented by all railway undertakings but they will all have to recognise it.

A particular challenge for the CCST format will be how to ensure validity can be checked, particularly on longer journeys or for rail passes with flexible dates, because of the restricted size of the format. The limited space will no longer suffice for the current practice of date stamping and hole-punching. An alternative solution will have to be found (for example, using the back of the ticket) or tickets will become illegible.

Aligning the security background to the basic CCST format

An extract from the RCT2 security background must be defined as part of the standard and this must allow the CCST to be printed either lengthways or breadthways in a consistent way. SNCF already uses the credit card format lengthways for regional traffic whilst DB Regio uses it breadthways.

The "orange bar" optical security feature on the RCT2 coupon is not appropriate for the credit card format. A new security element which will be instantly recognisable to ticket examination staff is needed. SBB is about to carry out field trials using domestic paper stock. If these tests are successful, SBB's approach could help the CIT to develop a cost-effective security standard.



Prototype of a ticket using the credit card format

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Freight Traffic

Changes to be made to CIT freight documentation on 1 July 2011

The CIT's CIM Committee held its fourteenth meeting on 29 March 2011 under the chairmanship of Christian Heidersdorf. Russian Railways (RZD) took part for the first time. The following changes to CIT freight documentation which were agreed at the meeting will come into effect on 1 July 2011:

Claims handling agreement checklist

Handling individual cases of loss and damage in transit and the claims that follow is very time-consuming; rationalisation is needed. The CIT has made a contribution to the resolution of this issue in the form of a new checklist for drawing up agreements for handling claims for international freight traffic by rail. The most important objective of such agreements is to allow simple, rapid and cost-effective handling of loss and damage in transit and to prevent losses and damage.

The work will be continued to investigate if the scope of the checklist can be expanded to parties other than the carrier and his customers (for example, to substitute carriers, wagon keepers, and infrastructure managers).

Incoterms

Incoterms, managed by the International Chamber of Commerce (ICC), have helped economic operators to avoid misunderstandings since 1936 in that they clarify charges and risks in sales contracts and allocate the various obligations between buyer and seller. A new version of the Incoterms came into effect on 1 January 2011. It reflects developments and changes which have taken place in international trade. The payment instructions to be shown on the consignment note were amended in consequence.

Use of codes on the consignment and wagon note

It was noted that increased use of standardised coding would greatly facilitate the use of the electronic consignment note but that codes were currently only used to an unsatisfactory extent. The explanatory notes to the consignment and wagon note in the CIT freight manuals were aligned to a code list prepared by RAILDATA.

Details of dangerous goods on the consignment note

To meet the requirements of the RID of 1 January 2011, carriers must ensure that infrastructure managers are able to obtain access to information on dangerous goods packed in limited quantities in so far as their gross mass exceeds eight tonnes per wagon or large container. So that carriers can comply with

this new RID requirement to supply information to infrastructure managers, a specific code will be provided for the consignor to supply this information in box 7 of the consignment note (Consignor's declarations).

Clarifying the concept of "the first carrier" in CIT freight documentation

The concept of "the first carrier" is used in numerous places in CIT documentation. Sometimes the term is used to indicate the first carrier, the one which takes over the goods, other times to indicate the first carrier, the one which enters into a contractual relationship with the consignor in the contract of carriage. The first of these concepts will now be more precisely specified in CIT documents.

New rules to notify traffic restrictions for freight traffic

In the middle of this year, the CIT will cut-over its new website (members will be kept well informed in good time). The preparatory work provided the opportunity to check the content of the whole site and to analyse the number of visits made to the various parts of it. This analysis confirmed that the use of the database (BD-CIT) was unsatisfactory. It will therefore be withdrawn and the CIT Freight Traffic Manual (GTM-CIT) supplemented with a new working sheet 14 (Traffic restrictions) and a new Appendix 25 (Notification of traffic restrictions).

Other decisions

In addition, the committee decided on changes to reflect the binding nature of CIT documentation (including copyright), new customs requirements and procedures for taking recourse against third parties for loss and damage.

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DB AG supports the UNECE initiative for legal harmonisation

The 64th meeting of the United Nations Economic Commission for Europe, UNECE, took place on 29 March 2011 in Geneva. The Economic Commission has the task of determining the strategic alignment of the UNECE work programme. Within the scope of the meeting, UNECE offered not only government representatives, but also business representatives the opportunity to present and debate pressing matters from their own points of view, so that these could be included, where appropriate, in the current UNECE work programme.

DB AG had received an invitation to make a presentation at this year's UNECE meeting on the subject "Strengthening the legal framework for transport for better connectivity in the UNECE region – harmonised conditions to facilitate long distance rail traffic". Thus a unique opportunity was presented to convey to a wide audience of high-level government representatives that the topic "Harmonisation of transport law in the railway sector", on which the railway undertakings have been working with great commitment and success under the auspices of the CIT and OSJD since 2004, is no side issue for specialists. It is rather a case of a matter in which a relatively modest amount of effort can achieve major improvements in the operational railway

business. Firstly, it was made clear to the participants what an important role is played by clear, transparent and uniform transport documents and legal regulations for transport in the customer-friendly exploitation of market potential for rail freight transport between Europe and Asia. Against this background, it was explained what competitive disadvantages exist in Eurasian freight transport for the international railways in comparison with the other carriers: While rail for the most part has to put up with two legal systems, competing carriers already operate under uniform global Conventions!

In conclusion, activities of the trade associations and international organisations were presented, which had been initiated to overcome these hindrances: in particular, the CIT/OSJD "Making the CIM and SMGS legally interoperable" project and the project of the UNECE working party, which will officially commence activities in May 2011. Both projects are quite deliberately closely interwoven, in order to ensure the optimal orientation of political activities towards practical requirements. The activities at trade association level alone are no longer sufficient. In view of the often close relationship between railway and government in many countries, in particular in Eastern Europe and Asia, above and

beyond these, far-reaching political support is indispensable in order to comprehensively enforce contractual agreements. The activities of the UNECE working party which are about to commence distinguish themselves by an ambitious, pragmatic and concrete approach: it is intended to sign a Memorandum of Understanding (MoU) already in March 2012 that should recommend the application of the contractual provisions which have been generated by the railways themselves and thus enforce them comprehensively. Subsequent to this, where necessary, framework conditions will be produced at UNECE level with the involvement of the railway undertakings and in a third stage, if required, work will also commence on a global international Convention on rail transport. The ambitious UNECE programme offers the railways a major opportunity to help to shape this transnational legislation decisively from the beginning. This will serve to ensure that no regulations which have no bearing on

practice are forced upon the sector. At the moment, major sums are being invested in ambitious infrastructure projects along the Eurasian railway corridors, in particular in China, Kazakhstan, Mongolia and Turkey. Benefits from these investments can only unfold if clear, reliable and harmonised international legal foundations are available for rail transport movements. In contrast to expensive infrastructure projects, successes can easily be achieved here with no substantial investment. All that has to be done is to get together the right experts and to raise awareness of the matter amongst the political decision makers, in order that the activities of UNECE receive comprehensive support and are actively pursued. The DB presentation to the United Nations Economic Commission for Europe was a first important step in this direction.

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Multimodality: main focus of future CIT activities

The topic of "Multimodality" is becoming increasingly important to CIT members. After the accession of the Russian Federation to COTIF/CIM on 1 February 2010 and RZD to the CIT on 1 May 2010 and the entry of various maritime routes into OTIF's CIM list of maritime and inland waterway services, there exists a need for harmonised legal foundations and documents for maritime rail traffic on the Baltic and on the Black Sea. In this context, the procedures for trans-shipment in maritime rail traffic in the CIT documents need to be re-examined.

For multimodal transport movements, the CIT produced the document "Intermodality" in 2001. This notably contains General Provisions for a railway undertaking that acts as a multimodal transport undertaking. The CIM working group decided at its last meeting to re-appraise developments to date (Rotterdam Rules, EU activities within the scope of the White Paper, UNECE and UNCITRAL) and if necessary to submit resolutions to update the "Intermodality" document.

At the moment, maritime rail movements on the Baltic between Ust-Luga/Baltijsk and Sassnitz are carried out by RZD / Anship LLC and DB Schenker Rail DE (DBSR DE) / DFDS and between Klaipeda and Sassnitz/Mukran on the basis of bilateral contracts. According to information from RZD, in a new development, their subsidiary "Black Sea Ferries Ltd. (BFI)" will also act as a maritime carrier. The successful cooperation between DBSR DE and RZD opens up a range of possibilities for the use of the CIM/SMGS single consignment note for these maritime rail movements. The use of the CIM/SMGS single consignment note on the Black Sea would also be highly desirable.

Formation of a CIT "Multimodality" Group of Experts

At the last meeting at the end of March 2011, the CIM Committee approved the formation of a "Multimodality" Group of Experts, with the participation of DB Schenker Rail Deutschland, RZD, Scandlines Deutschland and OTIF. The "Multimodality" Group of Experts held its constituent meeting on 30 March 2011 in Bern. For the second meeting in September 2011, representatives of Lithuanian Railways (LG), Ukrainian Railways (UZ) and the newly founded Baltic Port Rail Mukran (BPRM) port railway are also invited.

Legal status of the maritime carrier

Discussions to date produced a need for clarification in respect of the role and legal status of the shipping company. One legal opinion views the shipping company as an Infrastructure Manager, not as a carrier and thus a party to the CIM contract of carriage. From this viewpoint, the maritime carrier appears as a sort of "floating infrastructure". In the process, the shipping company avails of the possibility to offer and sell infrastructure capacity on an independent basis.

The question of the status of the shipping company needs primarily to be clarified in terms of a continuous contract of carriage and a continuous liability regime for the entire maritime rail transport movement. In a second stage, where necessary, adjustments should be made to existing CIT documentation. In the first instance, OTIF will be asked for an authoritative opinion on the legal status of the maritime carrier.

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The Ferry Port in Sassnitz

CIT/OSJD Seminar in Astana with the participation of the Chinese Railways

In accordance with the decision taken at the 15th meeting of the CIM/SMGS Steering and Coordination Group, a seminar took place on 6 and 7 April in the Kazakh capital Astana, on the topic “Making the CIM and SMGS legally interoperable: the CIM/SMGS Single Consignment Note in Eurasian Rail Freight Traffic”, for the station managers along the import and transit routes in Kazakhstan and of the frontier stations Dostyk and Alshankou (Kazakhstan/China). Participating were representatives of the Kazakh Railways (KZH), the Mongolian Railways (MTZ) and the Chinese Railways (KZD), and furthermore of the Russian Railways (RZD), the Belorussian Railways (BC), the Ukrainian Railways (UZ), DB Schenker Rail Deutschland and SNCF Fret. Numerous customers were also present, as also were OTIF and UNECE. In total, more than 120 participants attended the seminar.

The aims of the seminar were to pave the way for the practical application of the CIM/SMGS single consignment note and an exchange of experiences with customers and the forwarders from Kazakhstan and China regarding the planning, organisation and realisation of rail freight movements from Western China to Western Europe. A particular focus of the seminar was on transit traffic through Kazakhstan to and from China.

From clear statements made by the KZD representatives, it may be assumed that the realisation of the CIM/SMGS single consignment note is also imminent in the Peoples Republic of

China; the agreement of the national customs authorities is still outstanding. After conclusion of the evaluation which is currently in course within Chinese Railways (KZD) and the Ministry for Railways, the following three main traffic axes to and from the Peoples Republic of China are foreseen for the use of the CIM/SMGS single consignment note, via the undermentioned frontier crossings:

- Alshankou-Dostyk, between the Peoples Republic of China and Kazakhstan;
- Erlan-Dzamin Uud, between the Peoples Republic of China and Mongolia;
- Manzhouli-Zabaikalsk, between the Peoples Republic of China and the Russian Federation.

The most important conclusions drawn from the Seminars were documented in a final declaration (see page 12). The project managers CIT and OSJD now expect a rapid implementation of the CIM/SMGS single consignment note in the remaining Central Asian republics, in particular in Uzbekistan, Tajikistan and Turkmenistan.

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Sealing Never a “closed” issue

For almost 51 years, the CER Customs Working Group has been kept busy with a wide range of customs items. In spite of a bigger Europe, increasing cooperation between the member states and other countries, and disappearing internal borders, customs matters are a never ending story. Within the framework of the Modernised Customs Code and the related safety and security items, there is a growing focus on the external borders; not only the continental borders, but also the seaports, where lots of rail cargo transport departs or arrives. The Customs Working Group is working more than ever a way to find solutions to align the (new) obligations with the regulations governing rail transport.

One of the structural topics on the agenda of the Customs Working Group is sealing. Although sealing has more legal background than customs, there is a strong focus to ensure a perfect procedure for sealing wagons and containers within the framework of the customs legislation.

In order to ensure improved technical, procedural and legal uniformity of sealing all over Europe, the CER decided to create a sub-group a couple of years ago. To date, the output of this sub-group has been impressive as well as highly useful.

Firstly, in close cooperation with the CIT and UIC, the Group produced a “sealing manual” which explains in a very clear and simple way the legal and procedural aspects of sealing, as

well as practical information in this regard with useful illustrations (how and where to seal all types of closed wagons and UTI, etc.). Another important item was the development of the “Euroseal”; a uniform model seal for all the European railway undertakings. It is unique because it is not a standard model, but a model adapted to the particularities of rail wagons. This model remains cheap to produce, and is well protected against fraudulent manipulation. Development took place in close cooperation with the customs authorities. Today, the majority of European railway undertakings apply this Euroseal model.

Last but not least, the experts are investigating the possibilities of applying “high security seals”, Standard ISO/PAS 17712, as recommended by the World Customs Organization and the European Commission.

However, sealing is not only a technical issue having only customs implications. It entails consequences for many other related sectors and legislation such as transport legislation and legislation within the framework of dangerous goods, agricultural goods, etc. Making the link between all these different pieces of legislation is a challenge.

For further information please contact Wessel Sijl, Chairman of the CER Customs Group and Gaston Zens, Chairman of the Sealing Group.

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DECLARATION

The representatives of the railways of the states of the Eurasian area - the Republic of Belarus, the Federal Republic of Germany, the Republic of Kazakhstan, the People's Republic of China, Mongolia, the Republic of Poland, the Russian Federation, the Ukraine, the French Republic – and the representatives of the international organisations UNECE, OTIF, OSJD, CIT, UIC, of the Ministry for Transport and Communications of the Republic of Kazakhstan, of the railway undertakings and forwarding agents and of customers who took part in the international seminar on the topic of: "Practical implementation of the CIM/SMGS single consignment note", are

conscious of the important role of rail transport for the lasting economic and social development of Asia and Europe against the backdrop of the geostrategic importance of the Eurasian Continent in the twenty-first century,

noting the growing demand for reliable, effective, safe and environmentally friendly transport by rail between Europe and Asia to facilitate international trade,

in the knowledge that administrative and legal barriers represent a significant hindrance to the development of Eurasian freight traffic by rail,

taking into account that rail transport is the sole carrier that, in contrast to road, maritime and air transport, does not avail of a uniform legal framework,

believing this to be a considerable hindrance under conditions of globalisation and global competition between different carriers,

considering that the efforts made to facilitate the organisation of Eurasian rail freight transport (using the CIM/SMGS single consignment note, the CIM/SMGS formal report, the uniform rules for dealing with claims, the legal and functional specifications of the CIM/SMGS electronic consignment note) should continue to make a contribution,

in view of the progress achieved with the realisation of the CIM/SMGS single consignment note since 1 September 2006 and the introduction of the CIM/SMGS wagon and container lists since 1 July 2008, which permit the operation of international freight movements between the SMGS participants and COTIF member states with no new consignment note submission and reduce both the time involved and the costs incurred at border crossings and in recognition of the benefits and effectiveness of the use of the CIM/SMGS single consignment note, which is simultaneously a valid customs transit document,

propose to the participants in the SMGS and COTIF member states and the railways and organisations involved that the geographical scope of the CIM/SMGS single consignment note should be extended and that its extension and use in the Eurasian railway space should be supported.

In this sense, the seminar participants would like

- > *the CIM/SMGS single consignment note to be implemented in traffic with the Republic of Kazakhstan and the People's Republic of China;*
- > *the scope of the CIM/SMGS single consignment note to be extended to traffic with the People's Republic of China, Uzbekistan, Tajikistan and Turkmenistan;*
- > *the scope of the CIM/SMGS single consignment note also to be extended to the direct international train ferry links, including shipping over the Black Sea in traffic with Turkey;*
- > *the work to create the CIM/SMGS Special Conditions of liability (new Annex 10 to the "CIM/SMGS Consignment Note Manual") to be speedily brought to a conclusion;*
- > *work on the CIM/SMGS electronic consignment note to be continued;*
- > *further training and communication measures to be taken;*
- > *the CIT and the OSJD to evaluate proposals for further improvements to the legal framework for the use of the CIM/SMGS single consignment note.*

Astana (Republic of Kazakhstan), 7 April 2011

New publications



Kurt Spera: „Handel und Transport“ (“Trade and Transport”) (Handbook for the movement of freight in external trade). Published by Logotrans, Logistik und Transport Consult, Gesellschaft m.b.H., Vienna, 2011 edition, ca. 700 pages, bound, €59.80 plus shipment costs.

The (German language) book by the well-known logistics expert Professor Kurt Spera deals, in detail and with an eye

on what happens in practice and in the form of a commentary, with all the fundamental issues in the supply of goods within the scope of contracts for the international sale of goods and similarly with issues concerning contracts of carriage and logistics.

A central chapter is dedicated to the “Terms of delivery for external trade”, in which the 2010 INCOTERMS are given particular prominence. A well-structured checklist illustrates the practical realisation of the obligations of buyer and seller. Above and beyond this, the individual INCOTERMS clauses are explained in detail and their relevance to cross-border freight transport is examined in depth.

A considerable portion of the book concerns itself with the multitude of legal relationships between different carriers. A main focus is placed here on all the facets of international railway transport law and on international, regional, and nationally applicable legal foundations.

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Use of the Infrastructure

European Union study on the liability relationship between infrastructure managers and railway undertakings

At the end of November 2010, the European Commission published a study entitled “*EU Member States’ national civil liability regimes in relation to rail accidents between Railway Undertakings and Infrastructure Managers in so far as they may present a barrier to the international market*”¹. The study was made by DLA Piper and is of a high quality from a legal point of view. It covers twelve EU Member States² and contains the following key remarks:

Key remarks made by the study

The national legal systems for liability in the EU Member States vary significantly from each other and are difficult to compare. Only three of the states studied (Denmark, Germany and Romania) have specific legislation for the liability between railway undertakings and infrastructure managers. In the other EU Member States, general liability law (contractual or non-contractual) applies, but that is not (yet) suitable for application to the systems for separate management of infrastructure and operations.

The majority of liability systems (both contractual and non-contractual) are based on fault in which the burden of proof is borne by the claimant. The causal link is assessed using the equivalence, adequacy or preventive purpose theories, depending on the legal system in question.

In some cases, contracts for the use of infrastructure contain liability provisions which are not negotiable but which are unilaterally laid down by the infrastructure manager. Because the railway undertaking is the weaker party to the contract, this tends to disadvantage it.

The existing legal uncertainty together with a lack of information and transparency give rise to additional costs, for insurance in particular. Actual figures are not available, perhaps because the information is sensitive.

The CUI has omissions and weaknesses such as (1) lack of liability for fault, (2) liability for delays and disruption to operations is not imposed but is subject to contractual freedom, (3) lack of

a right of recourse for liability other than that arising from the CIV and CIM (for example, from the CUV, Regulation (EC) No 1371/2007, protection of the environment, contracts, etc.), (4) application only to international traffic and not also to domestic traffic, (5) too few statutory definitions, (6) no liability provisions for accidents whose origin and consequences are in different EU Member States. The *European General Terms and Conditions of use of railway infrastructure* (EGTC) provide a standardised framework for the contractual relationship but have more or less the same shortcomings as the CUI.

Options

The study analysed six options (which can be combined) and recommended options 4 or 5 i.e. the enactment of a comprehensive or supplementary EU Regulation.

Comprehensive EU Regulation: If the CUI does not come into effect, the EU itself will have to create standardised liability law similar to Regulation (EC) No 889/2002 on air carrier liability. That regulation absorbs the Montreal Convention, supplements it with additional provisions and also extends its scope to domestic flights. In a similar way, an EU Regulation could take on the CUI, supplement it with further provisions and close the gaps in its scope. The subsidiarity principle would continue to be respected because there is a need for action at both national and international level.

Supplementary EU Regulation: If the EU accedes to COTIF and the CUI is applied, the EU could enact a regulation which would stand beside the CUI and fill its gaps by means of supplementary provisions. This variant would avoid the mixing of two legal systems and would ensure that each could be developed independently in the future. At the same time this variant would respect and reconcile EU and COTIF law.

¹ http://ec.europa.eu/transport/rail/studies/rail_en.htm, dated September 2010

² Belgium, Denmark, France, Germany, Greece, Hungary, Ireland, Lithuania, Poland, Spain, Romania and the United Kingdom.

Evaluation

The study confirms the position which the CIT has asserted: that national legal systems diverge significantly and that hence there is considerable legal uncertainty. It points out however that the problem is difficult to quantify because there are no reliable figures. The CIT would counter however that the increasing burden being placed on railway undertakings by the Passengers' Rights Regulation is already apparent and that a catastrophic railway accident with huge financial implications can happen at any time and anywhere (remember Eschede and Viareggio).

Because of the expected accession of the EU to COTIF (see page 2 above), it may be assumed that the CUI will shortly be applied in EU Member States. Hence standard and mandatory rules for liability will take effect for international traffic and, according to the study, that will solve numerous problems and will strengthen the internal market for rail services. It remains unsatisfactory that (1) there is no right of recourse for losses other than under the CIV and CIM, (2) that domestic traffic is not covered and (3) that there are no standardised legal precedents available to many of the competent courts.

The shortcomings which the study identifies in the CUI are not gaps at all but rather formulae inserted consciously by legislators or consequences of the system. Liability within the CUI is based on a set of rules structured to be closed, comprehensive and causal. It can only be combined with liability for fault with difficulty. Furthermore, legislators have consciously left the settlement of their own losses for delays and disruption to operations to the parties to the contract (as incidentally have the CIT and RNE in the EGTC general conditions of contract). Lastly, in respect of the liability rules for accidents the causes and consequences of which are in different EU Member States, it should be pointed out that the crucial criteria is always and only the location of the cause.

It remains to be examined if the CUI should also provide recourse to reclaim compensation paid out on the basis of national or EU law or even contractual agreements. In any event, loss and damage that is not to be compensated by law or that falls into extra contractual liability should be excluded; otherwise liability risks would arise both for the railway undertaking and infrastructure manager, risks that could no longer be calculated and also no longer insured against. In this respect, it should be mentioned that the EGTC represent a balanced set of rules that were carefully considered over a long period of time.

It cannot be contested that the application of the CUI to domestic traffic as well is desirable. Nor is there any reason why it should not be extended, at least for the case of domestic carriage being



Liability between infrastructure managers and railway undertakings urgently requires standardised international rules (Accident near Zoufftgen of 11 October 2006).

provided by foreign undertakings (cabotage). Here again it needs to be pointed out that the EGTC resolves this problem by including all domestic movements.

Summary

The CUI entering into force at the same time as widespread application of the EGTC would resolve a whole host of problems and hence make the need for further action much less urgent.

In the medium term there is a need for statutory provisions to provide recourse for compensation paid out under the Passengers' Rights Regulation (Regulation EC No 1371/2007). It is clear that such provision should be made in the regulation itself, also conceivable and worth considering is a (general/abstract) provision in the CUI.

Standardised rules for the (direct) liability between railway undertakings and infrastructure managers for domestic traffic and statutory regulation of recourse for compensation on the basis of national law are also of general interest. This should be investigated when the CUI is revised.

Only if, and in so far as, the CUI option does not lead to a solution, is there a need for legislative action on the part of the EU.

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General Terms and Conditions of Use of Railway Infrastructure (EGTC)

As reported in the last edition of CIT Info, after more than five years of negotiation, the CIT and RailNetEurope (RNE) have succeeded in agreeing general terms and conditions for the use of infrastructure. In particular, the European *General Terms and Conditions of Use of Railway Infrastructure (EGTC)* cover the liability of the carrier and infrastructure manager to each other, and what's more (going beyond the *CUI Uniform Rules*) they also include domestic traffic. The text of the EGTC may be downloaded from the CIT website¹.

The great merit of the EGTC lies in the fact that they standardise the rules which apply to contracts for the use of infrastructure right across Europe. In order to use the EGTC correctly and effectively, the following points should be noted:

- In legal terms, the EGTC are simply general terms and conditions (GTC), they only have legal effect when they are actually agreed by infrastructure managers and carriers.

¹ <http://www.cit-rail.org/index.php?id=6&L=2>

- The RNE takes the view that the EGTC represent best practice and have the status of recommendations. In its view, every infrastructure manager is therefore free to decide whether and to what extent to apply them. The CIT's position is that the carrier is the weaker party to the contract and is therefore entitled to demand that the EGTC are applied in order to establish a fairer balance between the interests of the parties.
- The CIT assumes that the national regulatory bodies will defend the CIT's viewpoint and therefore take action as appropriate and necessary.

The European Commission has followed the development of the EGTC with interest. The EGTC are also considered in the study entitled *"EU Member States' national civil liability regimes in relation to rail accidents between Railway Undertakings and Infrastructure Managers in so far as they may present a barrier to the international market"* (see page 13 above). The CIT and RNE will therefore present the EGTC to the European Commission in mid-May.

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European Performance Regime: the impact of Regulation (EU) No 913/2010

Does the EPR satisfy the requirements of Regulation (EU) No 913/2010 concerning a European rail network for freight corridors? That is one of the questions being studied at the moment by the EPR Legal Group. Tests of the *EPR Pilot Application* have been made on several international corridors since October 2010. The results of these tests, which will be available at the end of April 2011, will provide the input for the work to be done by various working groups to improve the EPR and align it to new statutory requirements.

A tool for freight corridors?

Under the leadership of the new head of the EPR project, Mr Svatek (ÖBB Netz), the various EPR working groups have received a list of tasks to finish before November 2012. The UIC and RNE (who together manage the EPR pilot project) would like to install the freight corridor management system which this new regulation creates. Article 19 of the regulation actually specifies that "the management board of the freight corridor

shall promote compatibility between the performance schemes along the freight corridor, as referred to in Article 11 of Directive 2001/14/EC". The EPR may be a useful tool to respond to legislators' expectations on this issue but that remains to be analysed by the various EPR groups.

Work of the EPR legal group

The legal group, composed of representatives of the railway undertakings and infrastructure managers from the "early implementers" of the EPR pilot application together with representatives from the RNE, CIT and UIC restarted its work in March. Its tasks are essentially to put a system to settle disputes into place and to revise the "legal" chapter of the "EPR Handbook" to accommodate both the provisions of this new Regulation (EU) No 913/2010 and the proposal to recast the First Railway Package. These tasks, in which the CIT participates actively, must be finished by spring 2012.

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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.

May an unsealed wagon be refused when being handed over to another carrier?

A carrier may refuse to accept a consignment on handover in the event of a "sealing irregularity" (see GTM-CIT working sheet 03-02). "Sealing irregularity" should be understood as including missing and broken seals (see GTM-CIT working sheet 05-01).

How should the distances to be used for calculating carriage charges be determined, in particular for the points at which the consignment is taken over and delivered?

The explanatory notes for the use of the CIM consignment note under the CIM Uniform Rules 1980 provided for the tariff distance between the stations and frontier points corresponding to the beginning and end of the charging section to be entered on the consignment note. An amended version of this text was adopted for the explanatory notes to box 76 in Appendix 2 to the GLV-CIM. The reference was amended just to refer to "points" rather than "frontier points" to take account of two new factors:

- the points at which consignments are handed over between carriers may be within a country (and therefore no longer just at a frontier) and these hand-over points may be the points that determine the beginning and end of a charging section;
- likewise, the points at which consignments are taken over and delivered rather than stations may be the points that determine the beginning or the end of a charging section.

These provisions do not, however, fix the way in which the tariff distances between the stations or points corresponding to the beginning and end of a charging section are calculated. That issue is left to railway undertakings to decide. Railway undertakings members of the UIC have agreed to link every point at which goods are taken over or delivered with a station. They have also agreed that the distances defined for that station are also to be used for the points of taking over or delivery linked to it – see UIC leaflet 219 O, point 1.1 paragraph 4.

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CIT Itself

The Executive Committee under the chairmanship of Jean-Luc Dufournaud

The CIT Executive Committee held its first meeting of the year on 13 April 2011; for the first time under the chairmanship of Jean-Luc Dufournaud who was elected as the new Chairman of the CIT at the General Assembly of November 2010.

Break-even in 2010 and preparation of the succession

The annual accounts for 2010 came out with a modest surplus of CHF 2 700. They were approved for submission to the General Assembly.

Thomas Leimgruber, Secretary General, and his deputy, Henri Trolliet, will retire at the end of this year. The Executive Committee agreed the procedure to prepare for the election of their successors at the General Assembly on 17 November 2011.

Development of CIT documentation

The Executive Committee noted with great satisfaction the number of significant up-dates which had been made to CIT documentation and adopted at recent meetings of the CIV and CIM Committees (see the relevant pieces in this edition of CIT Info). This continuous revision process ensures CIT documentation can always respond to the needs of the market.

Accession of the European Union to COTIF

Switzerland helped to find a compromise to resolve the last issues remaining open before the European Union could accede to COTIF. We may thus hope that an accession agreement can be submitted to the OTIF General Assembly on 22 and 23 June 2011. European Union Member States will then be in a position to withdraw their reservations against the CUI Uniform Rules.



From left to right: Th. Leimgruber, Secretary General; J.-L. Dufournaud, Chairman; Henri Trolliet, Deputy Secretary General.

The application of the CUI Uniform Rules will bring legal certainty to relationships between infrastructure managers and railway undertakings, a quality which is currently lacking. In particular, this legal uncertainty arises from the absence of a standardised and certain legal basis to allow carriers to assert their rights against infrastructure managers when losses and damage are caused by infrastructure managers. Coupling the application of the CUI Uniform Rules with the application of the general terms and conditions of use of railway infrastructure adopted by the RNE and CIT (see the article on this topic in this issue of CIT Info) makes for a very encouraging prospect.

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New Member: Baltic Port Rail Mukran GmbH

Baltic Port Rail Mukran GmbH is the newest member of the CIT. The company was founded by the Fährhafen Sassnitz GmbH and the Torsten Meinecke Eisenbahn GmbH (TME)

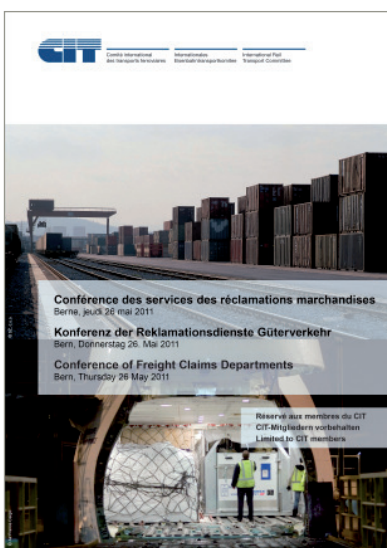


on 15 February 2011. Its headquarters are in the ferry port in Sassnitz in Germany. The ferry port in Sassnitz has operated a broad gauge system since 1986 and uses it to load broad gauge train ferries running to Russia and the Baltics.

Baltic Port Rail Mukran has three broad gauge shunting locomotives. Since it took up operations on 1 April 2011 its objective has been to make the broad gauge operations in the port at Sassnitz–Mukran more modern and more flexible and to coordinate rail transshipment and port activities better.

CIT membership of Baltic Port Rail Mukran GmbH is important in the context of the second main task of the project to make the CIM and SMGS legally interoperable, viz. the rapid extension of the common CIM/SMGS consignment note to rail-sea movements.

Katja.Siegenthaler(at)cit-rail.org
Original: DE



Conference of Freight Claims Departments

Bern, 26 May 2011

This conference is designed for the staff of the claims, sales and legal departments of CIT member undertakings. It will concentrate on current issues, the new checklist for claims handling agreements, rights to use the infrastructure and the handling of claims in the airline industry. Participants will work in small groups to consider problems of general interest which arise in practice and will be able to have private meetings with colleagues from other CIT members in order to build working relationships or to settle particular outstanding issues.

Click here for further details:

www.cit-rail.org/fileadmin/public/Seminare/Flyer_Conference_Freight_Claims_Dept_2011.pdf

CIT Diary of Events

Date	Event	Location
10/11 May	CIT/Coordination Council on Transsiberian Transportation (CCTT) Working Meeting	Bern
19 May	Legal Experts Group on PRR	Bern
26 May	Conference of Freight Claims Departments	Bern
7/8 June	CIV/SMPS Legal Group CIT/OSJD	Warsaw
15/16 June	CIM Working Group	Bern
21 June	Co-ordination Group for Implementation of the CIM/SMGS Consignment Note	Baku (AZ)
22 June	CIM/SMGS Steering Group	Baku (AZ)
5 September	Expert Group "Multimodality"	Bern
7/8 September	CIV Working Group	Bern
27 September	Executive Committee 2/2011	Bern
29 September	Conference of Passenger Claims Departments	Bern

Events with CIT participation

Date	Event	Location	CIT contact
11/12 May	CER Railways/Customs Liaison Meeting	Vienna	Nathalie Greinus
17/18 May	UIC Working Group "Non (integrated) Reservation Ticket"	Graz	Thomas Gyger
18 May	UIC Freight Forum	Paris	Henri Trollet
18 May	CIT/RNE/CER: EGTC Presentation at European Commission	Brussels	Thomas Leimgruber
24 May	UIC Working Group RCF1	Paris	Isabelle Oberson
24/25 May	CER Support Group TAP-TSI	Helsinki	Thomas Gyger
24/25 May	OTIF Working Group of Technical Experts (WG TECH)	Bern	Erik Evtimov
26/27 May	Conference "Tension between universal and regional unification of private law"	Rotterdam	Erik Evtimov
30 May	UIC Ticketing Action Group	Frankfurt	Thomas Gyger
30/31 May	OSJD/PLASKE International Freight Conference	Odessa	Erik Evtimov
1 June	UNECE International Seminar on Trade Facilitation	Odessa	Erik Evtimov
10 June	EPR Legal Group	Paris	Isabelle Oberson
21 June	UIC Wagon Users Study Group	Paris	Henri Trollet
22 June	e-RailFreight	-	Henri Trollet
22/23 June	OTIF General Assembly	Bern	Jean-Luc Dufournaud
27 June	UIC Ticketing Action Group	Paris	Thomas Gyger
29/30 June	UIC TAP Maintenance and Development	Paris	Thomas Gyger
5/7 July	UIC Steering Group East-West-Tariff (EWT)	Wroclaw	Isabelle Oberson
23/24 August	COLPOFER "Fraud-Ticket Forgery" Working Group	Prague	Thomas Gyger
12 September	CER General Assembly	Bonn	-
13 September	UIC Freight Steering Committee	Paris	Henri Trollet
14 September	Studiengesellschaft für den kombinierten Verkehr	Berlin	Erik Evtimov
16 September	UNECE Expert Group towards Unified Railway Law	Geneva	Erik Evtimov
29 September	Coordination Council on Transsiberian Transportation (CCTT)	Odessa	Thomas Leimgruber

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