

International Rail Transport Committee

Editorial

Coordination rather than disconnection



Without doubt, the European Union's accession to the *Convention concerning International Carriage by Rail (COTIF)* represents a historic step for the railway community (see page 2). It will end many years of legal uncertainty, not least that identified and analysed by the CIT in its

2006 study "*COTIF law and EU law relating to international carriage by rail: areas of conflict and options for solutions*".

This relationship is now (made) clear: a disconnection clause in the accession agreement in principle allows EU law precedence for traffic internal to the EU. The rule in question is comprehensible, workable and can be complied with without any ifs and buts.

In any event, as the Chairman of the CIT, Jean-Luc Dufournaud, points out in his report on the OTIF General Assembly which approved the accession, "the two regimes will have to make a success of living together". This observation is in fact very significant. On the one hand, it is important for the forty-seven Member States of COTIF to keep and develop the tried and trusted COTIF legal system. On the other hand, the EU must be in a position to legislate quickly and purposefully for specific objectives within its competence.

By its nature, such a situation contains the seeds of significant potential for conflict. If the relationship is examined carefully, however, there is less potential for conflict than might at first seem. COTIF is a set of rules that in many areas (only) set minimum standards. In so far as there is no rule, national law applies. In addition, there is frequently scope for terms and conditions which are more advantageous for customers. This flexibility and readiness to accept supplementary or more advanced national statutory law and contractual law will also provide EU law with broad freedom of action.

In this situation, expert precision legal work rather than a heavy-handed approach is called for. Firstly, the EU's particular requirements must be defined and ring-fenced and secondly COTIF must be examined to see if and to what extent it already offers the flexibility required or can be extended to remain aligned with EU law.

The relationship between EU law and COTIF law is therefore more about coordination than disconnection. As before, the legal maxim quoted at the beginning of the CIT study on areas of conflict and options for solutions remains valid: *vis legibus inimica* – force is the enemy of law!

Thomas Leimgruber
Secretary General to the CIT

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Conférence des services des réclamations voyageurs
Bern, jeudi 29 septembre 2011
Konferenz der Reklamationsdienste Personenverkehr
Bern, Donnerstag 29. September 2011
Conference of Passenger Claims Departments
Bern, Thursday 29 September 2011
Réservé aux membres du CIT et de l'UIC
CIT und UIC-Mitgliedern vorbehalten
Limited to CIT and UIC members

Further information is available on page 12 and:
http://www.cit-rail.org/media/files/public/PassengerFlyer_Workshop_Passenger_Claims_Dept_2011-05-25.pdf

Transport Law and Policy

Accession of the European Union to the Convention concerning International Carriage by Rail (COTIF)



Jean-Luc Dufournaud
Chairman of the CIT

OTIF tenth General Assembly

At its tenth General Assembly (an Extraordinary General Meeting held in Bern on 22 & 23 June 2011), the Intergovernmental Organisation for International Carriage by Rail approved the accession of the European Union to the Convention concerning International Carriage by Rail (COTIF).

The European Union acceded to COTIF on the basis of Article 38 of COTIF which provides an option for "regional economic integration organisations" to accede to the convention. The European Union fits that definition.

In accordance with the text of the second recital to the agreement, "the purpose of the Union's accession to the Convention is to assist OTIF in pursuing its objective of promoting, improving and facilitating international rail transport in both technical and legal respects". Accession clearly also forms part of the European Commission's strategy to promote the development of transport links beyond the borders of the European Union, a strategy set out in the Commission's White Paper published on 28 March 2011.

The accession agreement, which was approved by OTIF on 23 June, is the culmination of more than two years of exchanges and negotiations between the European Union and OTIF.



The agreement for the European Union to accede to COTIF was signed in Bern on 23 June 2011 by Hungary's Deputy State Secretary for European Union and International Relations, Dr Tamás Iván Kovács, and Mr Stefan Schimming, the Secretary General of the Intergovernmental Organisation for International Carriage by Rail (OTIF).

Linkage between COTIF and European law

For the states party to the convention which are also Member States of the European Union, the fundamental issue that was at stake in the exchanges and negotiations is the relationship between law derived from COTIF and European Union law.

On this particular point, the disconnection clause which the European Union initially wanted to see in the accession agreement could be interpreted as creating a general presumption that European law would take precedence over COTIF law for Member States of the European Union.

At the end of their negotiations, the text on which the European Union and COTIF finally agreed includes a disconnection clause (Article 2 of the agreement) although its substance is somewhat constrained by a declaration made by the European Union (which is attached to the agreement).

The text of Article 2 reads as follows: "*Without prejudice to the object and the purpose of the Convention to promote, improve and facilitate international traffic by rail and without prejudice to its full application with respect to other Parties to the Convention, in their mutual relations, Parties to the Convention which are Member States of the Union shall apply Union rules and shall therefore not apply the rules arising from that Convention except in so far as there is no Union rule governing the particular subject concerned*".

This article clearly indicates that:

- states party to COTIF which are not Member States of the European Union are to apply COTIF without any restrictions (OTIF at present includes forty-seven Member States);
- Member States of the European Union are also to apply COTIF except where there are European Union rules "governing the particular subject concerned". In that case, states must apply the EU rules in place of COTIF; application of the EU rules must not however compromise the object and purpose of the convention such as they are summarised in Article 2.

The concept of "the particular subject concerned" may give rise to some uncertainty about its scope. In a declaration annexed to the accession agreement, the European Union has provided the following clarification "*The term "governing the particular subject concerned" is to be understood as applying to the specific case which is governed by a provision of the Convention, including its appendices, and is not governed by European Union legislation*".

In the light of the interpretation provided by the European Union, we have to conclude that the Member States of the European Union are to apply COTIF and its appendices except where there is European legislation on a particular point covered by these texts.

Some personal remarks

It is thus appropriate for Member States of the European Union and by extension legal entities (amongst which are railway undertakings) to check that in a given case the COTIF provision which covers the situation has not been invalidated by the existence of a Community rule applicable to that very case.

Formulation of these rules is one thing, but their actual application may be something quite different, all the more so because the subjects coming within the competence of the European Union (listed in the accession agreement) are extremely varied, whether that be access to the market (Directive 91/440/EEC, First, Second and Third Railway Packages), passengers' rights (Regulation (EC) No 1371/2007), interoperability and safety (Directives 96/48/EC, 2001/16/EC, 2004/49/EC and 2004/50/EC) or public service obligations (Regulation (EC) No 1370/2007).

Although the European Union's accession to COTIF undoubtedly represents a movement forward in that it helps clarify the linkage between European law and international railway law for Member States of the European Union, that linkage must not have the effect of reducing the scope of international law more than it need, since the objective of international law is to create regimes which are as standardised as possible in the areas it covers. Furthermore, in this case, standardisation is the basis for legal certainty.

Let us remember that the main appendices to COTIF create "Uniform Rules" concerning the contract of international carriage of passengers and goods by rail, contracts of use of vehicles and the contract of use of infrastructure in international rail traffic.

The two regimes will have to make a success of living together

The European Union and COTIF are aware of the stakes and will certainly know how to reach a balance which achieves the most satisfactory relationship between European law and international railway law.

On international railway law itself, it is welcome news that, taking account of the accession of the European Union to COTIF, (which was without any reservation against the text of COTIF or its appendices), the European Commission has recommended Member States to lift the reservations that they have already deposited against the Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI - Appendix E to the Convention). Readers will remember that a revised version of these uniform rules entered into force on 1 December 2010. Finland and Denmark have already withdrawn their reservations, taking effect on 1 and 7 July 2011, Germany and Poland will withdraw their reservations against these uniform rules with effect from 1 January 2012 and the Netherlands with effect from 1 January 2013.

Furthermore, we should highlight that without waiting for the withdrawal of reservations against the CUI Uniform Rules, the CIT and RNE (RailNetEurope) have adopted general terms and conditions for use of infrastructure (EGTC) after several years of negotiation. These general terms and conditions govern the relationship between infrastructure managers and railway undertakings for the use of infrastructure. Although they only have legal effect if the infrastructure managers and railway undertakings in question agree explicitly to apply them, the adoption of these general terms and conditions nevertheless represents a very significant advance by ensuring a balanced relationship between the infrastructure manager and railway undertaking in this area.

Finally, these general conditions were presented to the European Commission on 18 May 2011. The European Commission said that it welcomed their adoption.

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Revision of the liability regime for cross-border cooperation agreements

The basic documentation underlying cross-border cooperation has to be revised, to up-date liability issues in particular. As announced in CIT Info 1/2011 (see page 3), a multi-disciplinary UIC-CIT group has been set up to consider the relationship between railway undertakings exchanging traffic across frontiers. A number of topics have to be reviewed: operation of trains, rolling stock, staff, language(s) to be used, accidents, liability, etc. The group, which met in April, noted that the majority of these topics in fact are subject to two sets of regulations and hence there are numerous conflicts and uncertainty. The objective of the work is to produce a new simple and transparent framework to provide a model for cooperation agreements between undertakings. The initial conclusions are expected in October 2011.

A small group of experts, chaired by the CIT, is analysing the liability issues arising in the relationships between railway undertakings. Railway undertakings are at the centre

of a network of bilateral contractual relationships (with customers, infrastructure managers, wagon keepers, lessors of locomotives, etc.) and these relationships must be organised as logically as possible. It is becoming clear that revision of the CIT general terms and conditions for cooperation (joint contract, sub-contract, traction, hire and provision of services) will be necessary in parallel with the revision of UIC leaflet 471-1. The CIM Working Group has accordingly already started to analyse the five model contracts. It will undertake the work to revise the liability regimes in conjunction with the group of experts (also see page 9). The CIV Working Group will also become involved in the work this autumn.

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The European Union and its neighbouring regions: a renewed approach to transport cooperation

On 7 July 2011, the European Commission published a revised action plan for cooperation with neighbouring countries in the transport field¹. This policy statement focuses on extending transport links with neighbouring regions to the East and South of the European Union (EU). In presenting the action plan in Brussels on 7 July 2011, Siim Kallas, the Vice-President of the Commission said *"freedom of movement is something we all tend to take for granted in Europe, but it shouldn't stop at the border. Today if we are serious about a relationship with our neighbours we need to provide the infrastructure which is essential for flows of goods and people across borders and cut away the bureaucracy and bottlenecks"*.

Closer cooperation with regions adjoining the EU

Up to now, cooperation on transport issues with regions adjoining the EU has been by means of bilateral and regional initiatives. The new action plan builds on results achieved so far and should both strengthen relationships with the East in particular and also bring regional cooperation on transport issues together into a single framework².

An important step at the multilateral level is the EU's recent accession to the Convention concerning International Carriage by Rail (COTIF), which took legal effect on 1 July 2011 (see page 2 for further details). EU membership of COTIF will contribute to implementing the activities outlined in the Commission's action plan and will help ensure greater certainty and interoperability for rail transport law in the area covered by the forty-seven Member States of COTIF in Europe, North Africa, and the Middle East.

Specific action points for international freight traffic by rail

To take its policies further, the Commission proposes over twenty short and medium term detailed action points to ensure smooth, safe and reliable rail services. Amongst these are:

- implementation of priority transport plans to link the infrastructure of countries neighbouring the EU with the Trans-European Transport Network (TEN-T);
- better use of the potential of freight traffic by rail by opening up the market;
- removal of technical barriers (and in that connection, studies into the problems arising from the existence of two track gauges - 1435 mm and 1520/1524 mm);
- strengthening and deepening cooperation with the European Railway Agency (ERA).

Partnership with the East on transport matters – a declared priority of the Polish EU Presidency

The current Polish EU Presidency intends to launch the new Eastern Partnership Transport Panel which will oversee the implementation of the action points which concern the East at a ministerial conference (to be held in Krakow end of October 2011)³.

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¹ Communication from the Commission to the Council and the European Parliament of 7 July 2011, COM(2011) 415 final.

² NRegions neighbouring the EU are countries covered by the European neighbourhood policy and the enlargement policy, which do not already have special relations with the EU. In the East, these include: Armenia, Azerbaijan, Belarus, Georgia, Moldova and the Ukraine.

³ Further information about the EU's cooperation with neighbouring countries to the East and South on transport issues may be found on: http://ec.europa.eu/transport/international/regional_cooperation/european-neighbourhood_en.htm.

Passenger Traffic

Airline passengers' rights: avalanche of legal cases before the ECJ

No less than eight cases concerning the rights of airline passengers are currently pending before the European Court of Justice (ECJ)¹ and in addition a judgment was handed down on 12 May last. This shows both that passengers no longer hesitate to take legal action to assert their rights and that Regulation (EC) No 261/2004² which defines those rights is not sufficiently clear. All these cases are about compensation for delay or cancellation. Behind all these cases, however, stands the issue of the linkage between the Montreal Convention and Regulation (EC) No 261/2004

Is compensation for delay contrary to the Montreal Convention?

Readers will recall that in the *Sturgeon* case of November 2009, the ECJ decided to extend the right to compensation for cancellation provided by Regulation (EC) No 261/2004 to all cases of delay in excess of three hours (joined cases C-402/07 and C-432/07). Compensation in these cases is fixed at a minimum of €250 whatever the amount paid for the ticket. The compensation is not therefore intended to compensate the losses actually sustained by passengers on

¹ Cases C-83/10, C-581/10, C-629/10, C-11/11, C-12/11, C-22/11, C-139/11, C-255/11.

² Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, OJEU L46 of 17 February 2004 page 1.

account of delays. According to the airlines, that makes the precedent set by the ECJ conflict with the Montreal Convention. The Montreal Convention specifically excludes compensation other than that intended to compensate for losses sustained.

This issue is currently the subject of three cases (C-581/10, C-629/10, and C-255/10), brought by heavyweights in European air transport such as British Airways and Lufthansa as well as by IATA. The issue will certainly have an impact on carriage by rail because rail also has problems of linkage between Regulation (EC) No 1371/2007 on rail passengers' rights and obligations (PRR) and the CIV Uniform Rules.

An extremely strict interpretation of "extraordinary circumstances"

In the second linkage problem, the Montreal Convention provides for grounds for exoneration for delays³ which are interpreted more strictly in Europe than in the rest of the world. In the *Wallentin-Hermann* case of December 2008 (C-549/07), the ECJ in effect decided that not all "extraordinary circumstances" are grounds for exoneration. To gain relief, an airline must prove that it would clearly not have been able to prevent the extraordinary circumstances even if it had deployed all its resources in terms of staff or equipment and the financial means at its disposal unless it had made intolerable sacrifices in the light of the capacities of its undertaking at the relevant time.

In the recent *Eglitis* judgment of May 2011 (C-294/10), the ECJ was even stricter. In future, carriers must organise their resources in good time to be able to ensure a certain margin of time to be able to operate the flight once the extraordinary circumstances have come to an end. In addition, in their planning they must take account of delays following the initial delay caused by the extraordinary circumstances. The ECJ considered these delays to be "secondary risks" which are foreseeable and calculable!

Reaction of political institutions

After the crisis caused by the Icelandic volcano Eyjafjöll in April 2010, the European Commission gave further thought to several contentious points in Regulation (EC) No 261/2004, such as the interpretation of "extraordinary circumstances", the proportionality of compensation, re-routing, etc. In its *Communication*⁴ published a year later, in April 2011, the Commission acknowledged that passengers and carriers both had an interest in greater legal certainty and a standard interpretation of the regulation. The Commission is therefore to publish a new communication this autumn which is intended to clarify the key concepts for all modes of transport, including rail.



Nevertheless, the reinforcement of passengers' rights remains the Commission's main concern. It therefore anticipates giving more power to the national bodies tasked with enforcing passengers' rights (national enforcement bodies) and expanding the information campaigns.

What direction will the ECJ take in the eight cases pending?

It is probable that the ECJ will maintain its pro-consumer interpretation of Regulation (EC) No 261/2004 in its forthcoming judgments. In any event, that approach can already be detected in the opinion of Advocate General Eleanor Sharpston in the *Sousa Rodriguez* case (C-83/10), published at the end of June 2011. According to the Advocate General, in addition to compensation of €250 for cancellation or delay in excess of three hours, passengers should receive "further compensation" covering material and non-material damage (psychological?) which they have sustained. This reasoning is based on Article 12 § 1 of Regulation (EC) No 261/2004 which states "This Regulation shall apply without prejudice to a passenger's rights to further compensation". The problem of linkage of this compensation with the Montreal Convention, referred to above, was unfortunately not examined by the Advocate General.

Article 12 § 1 of Regulation (EC) No 261/2004 has no direct counterpart in the PRR. Nevertheless, passengers by rail may also assert their rights to "further compensation". In fact, Article 32 § 3 CIV, in the annex to the PRR, explicitly refers to national law for damages for harm other than the damages paid for accommodation in the event of missing the last connection of the day. Recourse to national law may give carriers some surprises if they find themselves obliged to compensate rail passengers for flights or holidays missed or even for frustrated professional activities. Nevertheless,

3 "[...]the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures" (Article 19).

4 Communication from the Commission of 11 April 2011 to the European Parliament and the Council on the application of Regulation 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights (COM(2011) 174 final).

the French Cour de cassation has recently stated that loss suffered following a delay does not have to be compensated if the consequences were not or could not have been foreseen at the time the contract was concluded⁵.

The next few months will not only be decisive for airline passengers' rights but also for the rights of passengers by the three other modes of transport. Railway undertakings therefore have every interest in following developments closely.

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5 Judgment No 385 of 28 April 2011 (10-15.056), Cour de cassation – Première chambre civile [French Supreme Court – First Civil Division].

An AIV for East-West traffic

Journeys by rail between the European Union and the neighbouring states to the East (Russia, Belarus, Ukraine and Moldavia) are surrounded by legal complexity. Two international conventions, the SMPS and the CIV Uniform Rules together with Regulation (EC) No 1371/2007 on rail passengers' rights and obligations (PRR) and various national laws may apply to contracts of carriage of passengers, sometimes superimposed on each other.

The *Special Conditions of International Carriage for journeys using East-West traffic Tickets* (SCIC-EWT) largely resolve the problems that can arise within the relationship between carriers and passengers. The SCIC-EWT Steering Group, meeting in Wroclaw in July last, considered the problem of delays. It took note of experience with the PRR within the EU and the revision of the regulations in the AIV for handling claims and paying compensation for delay (see CIT Info 2/2011 page 7). (The revision to the AIV will take effect on 1 January 2012.) The group considered that an

AIV would likewise be useful for undertakings applying the SCIC-EWT. The text would cover the following issues

- which undertaking should handle claims for delay?
- what compensation for delay should be paid to passengers?
- how should the compensation paid for delay be allocated between the various carriers?

A small group (including a CIT representative) has been remitted to produce a draft AIV and to submit it to the steering group in 2012 for approval. The option to extend liability for delay to undertakings which are only subject to the SMPS will be discussed again in 2012. Any extension will likewise be based on the results of the work of the new CIV/SMPS Legal Group (see CIT Info 3/2011 page 4).

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Information about delays: a new tool for customer services

With effect from 1 September 2011, the customer services departments of several railway undertakings will benefit from access to the data on international passenger trains contained in the *Train Information System* (TIS) (formerly known as *EUROPTIRAILS*). This IT system, run by RailNetEurope, will allow claims from passengers who have suffered delays on international trains to be handled more quickly.

Currently TIS covers nine countries (Austria, Belgium, France, Germany, Italy, Luxembourg, the Netherlands, Slovenia and Switzerland). It is expected that it will shortly be extended in central Europe and to Scandinavia¹. The system provides information on the geographical position of international trains, both freight and passenger, in real time and on the causes of any delays. It then archives this data for several months, principally to analyse quality and for the purposes of the performance regime.

In principle, each railway undertaking only has access to data for its own trains. To obtain information on the trains of other undertakings (in general, trains operated jointly), the undertakings in question must sign agreements to exchange information.

Acting on a decision of the CIV Committee on 15 April last, the CIT has negotiated opening TIS to the customer services departments of the nine railway undertakings covered by the system. The CIT drew up a multilateral agreement to provide for access to the information on delays which is archived within the system. Access is subject to strict confidentiality rules. ÖBB, SNCB, SNCF, Trenitalia, NS Hispeed and SBB have signed the agreement and it will now come into effect on 1 September 2011. Its extension to other railway undertakings will be discussed at the next meeting of the CIV Working Group on 7 & 8 September 2011.

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¹ More details are provided on: <http://www.rne.eu/index.php/tis.html>.

Freight Traffic



e-RailFreight – European railways take an important step into the future



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The majority of European railways now have IT systems to support electronic processing of consignment note data. Frequently, however, these applications are not compatible internationally or do not cover all the functions of the consignment note. Currently, a paper consignment note must therefore always accompany the consignment. In most cases, the data is captured separately in various parallel systems (for operations, accountancy, statistics, etc.) and processed electronically. This parallel processing (paper and computer) not only leads to errors but is also expensive.

Advantages of paperless freight traffic by rail

On the basis of the estimate that some ten to fifteen per cent of the final costs of transport can be attributed to the costs of paper documents and delays in transit to make them out and check them, a saving in costs of some twenty per cent can be anticipated from the electronic exchange of data.

In qualitative terms, processing consignments exclusively by electronic means permits an improved quality of service since the information is not only more reliable and transferred faster but at the same time the problems which arise with paper documents (such as delays in the movement of the traffic, loss of papers, etc.) can no longer arise.

The preparatory legal work for the introduction of the electronic consignment note was finished several years ago.

For railway undertakings, the question is no longer IF they are to provide paperless transport, but rather WHEN.

The e-RailFreight project

The e-RailFreight project was therefore conceived in 2008. Its longer term objective is to replace today's paper documentation (consignment notes and accompanying documents) for international freight traffic throughout the COTIF area by electronic data. Documents will then only be printed when and where absolutely necessary.

e-RailFreight is a joint project of the railway trade associations (UIC, CIT, RAILDATA) together with more than twenty railway undertakings. It is managed by a steering group composed of representatives from the various organisations.

The preparatory work was undertaken by the CIT in that the existing specifications for the CIM consignment note and CUV wagon note were reworked. Completely new specifications were drawn up for the inclusion of the CIM/SMGS consignment note. Whilst that was being done, RAILDATA got the technical specification for the messages, interfaces and the data flows ready.

DB Schenker Rail and SNCF Fret will shortly operate without paper

In the meantime, there have been several pilot projects to implement paperless transport in practice. Following intensive work by a project group composed of staff from SNCF Fret and DB Schenker Rail Deutschland undertaken since September last year, data exchange for paperless transport has just been successfully cut-over between the two railways.

Although the legal and technical requirements were a given, there were nevertheless numerous crucial issues to clarify. A common understanding had to be reached on many issues starting from agreement on what codes should be used for individual data items through to common rules for the format of any printed documents that became necessary.

This bilateral pilot project is a superb example of open and positive cooperation between European railway undertakings, especially when taking competitive pressures into account. Only by cooperating in this way was it possible to bring the whole complex project to fruition in a relatively short time. Most important of all was the inclusion of all the appropriate departments right from the beginning so that all the issues and uncertainties that arose could be clarified together.

Customs aspects

The specifications drawn up by the e-RailFreight project will also form the basis for the exchange of information with customs authorities once the new Customs Code is implemented. The new EU Customs Code requires exchange of data with customs authorities to be exclusively by electronic means. The new specification will thus provide a way of replacing the current simplified transit procedure for rail based on the consignment note.

Further pilot projects are being planned; they can now be implemented successfully on the basis of standards drawn up by the bilateral working group.

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European corridors for freight by rail: the vision and the regulations

Regulation (EU) No 913/2010 on the creation of a European rail network for competitive freight requires Member States and in particular their infrastructure managers to create a European rail network for *competitive freight* from the existing international freight corridors.¹

Objectives and principles

These corridors should provide for making premium quality paths for freight trains available so that quality of service (in respect of punctuality and transit time in particular) can be lifted above its current level. In addition, the corridors are to help extract extra capacity for freight traffic by rail.

The Commission defines four principles on which the creation of these corridors should be based:

- greater cooperation and harmonisation between infrastructure managers in respect of both operational management of the networks and making investments. In particular, this requires the creation of a dedicated management board for each corridor;
- an increase in reliability and in the capacity allocated to freight traffic on these corridors;
- better coordination between the rail network and freight terminals (in particular, deep-sea and inland waterway ports and marshalling yards, etc.);
- use of the corridors as a role model for discrimination-free access for the various service providers and for transparency in presenting the conditions of access. This is to be achieved, inter alia, by publishing the regulations which apply and other appropriate information.

Specific action

A major event was held in Antwerp on 27 June 2011 hosted by Etienne Schouppe (Secretary of State for Mobility in the Belgian Ministry of Mobility and Transport) and in conjunc-

tion with Infrabel (the Belgian infrastructure manager), the Port of Antwerp together with the European Commission. There were over 150 participants. The event examined the way Regulation (EU) No 913/2010 might be implemented and practical problems that might arise, focussing on three of the eight European freight corridors:



Contentious points

The creation of one-stop-shops for each corridor and allowing organisations that are not railway undertakings to reserve train paths (authorised applicants) gave rise to spirited debate. At the end of the event however, Mr Schouppe said that the implementation plan for Corridors 1 & 2 (the furthest advanced) which had been proposed by the Council had been agreed by all the Member States involved.

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¹ Regulation (EU) No 913/2010 of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight OJEU L 276 of 20 October 2010 page 22 et seq.

Progress in the project to make the CIM and SMGS legally interoperable



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The progressive globalisation of the market for transport creates a new challenge for the railways. The challenge is to provide for movements of freight between Europe and Asia by land over distances of over 10 000 km. On the key route from Asia to Europe an increase in traffic of around 23% is forecast for 2011 whilst within Asia growth of (only) 7% is anticipated¹.

Operation of regular freight services by rail over the land-bridge between China and Europe therefore moves closer and closer so the question is therefore no longer whether but when (see CIT Info 6/2010, page 5).

Within the project to make the CIM and SMGS legally interoperable, the CIT and OSJD are accordingly working as fast as they can on the implementation of a comprehensive contractual framework to allow these new traffics to be moved simply in administrative terms but with complete legal certainty. The CIT and OSJD are coordinating their work closely with the UNECE in Geneva.

¹ Wettbewerbsbericht (Competition Report) 2011, Deutsche Bahn AG, p. 20.

Implementation of the common CIM/SMGS consignment note in practice

At the most recent meeting of the coordinators (in Baku on 21 June 2011), Russian Railways said that in 2010 twice as many CIM/SMGS consignment notes were used as in 2009. In total 36 226 CIM/SMGS consignment notes were used to destinations in the Russian Federation (for example 12 550 from the Czech Republic, 10 000 from Slovakia, some 6 000 from France and 3 000 from each of Germany and Hungary).

In the opposite direction, from the Russian Federation, some 35 000 CIM/SMGS consignment notes were used. This indicates balanced traffic flows. The greater part of this traffic likewise went to the Czech Republic and Slovakia. A not insignificant number of CIM/SMGS consignment notes (some 10 000) were made out to Slovenia, emphasising the importance of the port of Koper.

According to information given in the meeting in Baku, Ukrainian Railways (UZ) likewise expect a doubling of the traffic using the CIM/SMGS consignment note in 2011.

In summary, the current position is:

- the common CIM/SMGS consignment note is used for more than fifty traffic flows over four TEN corridors and so covers more than half the CIM/SMGS traffic;
- three quarters of this traffic consists of containers, at less than 5% single wagonload traffic plays a minor role;
- use of the common CIM/SMGS consignment note leads to a saving of some forty minutes per wagon or eight to ten hours in the total transit time of a train;
- discontinuing the transcription of CIM and SMGS consignment notes provides a saving of some €40 per consignment;
- further simplifications are expected from the establishment and consolidation of the customs union between the Russian Federation, Belarus and Kazakhstan (because the common CIM/SMGS consignment note can serve as a customs transit document).

Harmonising liability: Special Conditions of CIM/SMGS Liability

Special Conditions of CIM/SMGS Liability were drawn up by the CIM/SMGS Legal Group to form the new Appendix 10 to the GLV CIM/SMGS. They are the first step towards using contractual means to harmonise liability within the areas in which the CIM and SMGS statutory regimes apply.

The Special Conditions of CIM/SMGS Liability cover the liability relationship between the carrier and the customer. Initially, they are restricted to harmonising liability for the loss of and damage to goods and in that respect improve customers' rights significantly.

The Special Conditions of CIM/SMGS Liability were unanimously approved at the last meeting of the CIM/SMGS Steering Group. They will now be sent forward to the appropriate OSJD and CIT committees (II Commission for Transport Law and the CIM Committee) for approval. They will then be able to come into effect on 1 July 2012.

Of course, these harmonised liability conditions are only applied if the parties to the contract of carriage agree to that and record their agreement on the common CIM/SMGS consignment note.

Next steps: GTC EurAsia

The next task consists of drawing up General Terms and Conditions of Eurasian carriage of goods by rail (GTC EurAsia). These terms and conditions will not only cover liability (for loss of and damage to goods) but also all the other important elements of the contract of carriage including the issue of liability for delay (also see CIT Info 3/2011 pages 7-8).

A UNECE resolution on the GTC EurAsia is planned within the context of a strategy paper on the harmonisation of international transport law. This resolution will underline the political commitment of the ministers of transport and railway chiefs of the relevant UNECE Member States to the harmonisation of the basic legal principles for the carriage of traffic between East and West.

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

Update on the work being done by the CIM Working Group

In parallel with the work being done on UIC leaflet 471-1 by UIC groups (see the article on this topic on page 3 of this CIT Info), the CIM Working Group intends to re-examine the five model sets of general terms and conditions which were produced under the auspices of the CIT in preparation for the CIM Uniform Rules entering into force on 1 July 2006 (GTC joint contract, sub-contract, traction, hire and provision of services). The principal task is to check that the provisions for liability are consistent and to simplify them as far as possible. The other clauses in these general terms and conditions will also be re-examined with the objective of eliminating differences of form and substance which are not justified.

This issue was one of the main points on the agenda of the last meeting of the CIM Working Group on 15 & 16 June 2011. New operational models for providing transport are constantly appearing and to address these



the CIM Working Group has also decided to check some of the CIT freight documentation with the objective of ensuring it still continues to meet the needs of the market.

As is normal, the CIM Working Group reviewed the work in hand (the e-RailFreight project, the project to make the CIM and SMGS legally interoperable and the multimodality project) and made its input to the work. It also made an initial examination of new issues. It will return to these new issues at its next meeting on 19 & 20 October 2011 in order to finalise proposals for amending CIT freight documentation.

Recommendations will then go forward to the CIM Committee for approval in March 2012. The principal proposals concern recording loss and damage in transit, the format of the CIM consignment note for combined transport and the archiving of information relating to dangerous goods.

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Original: FR

The Russia-Belarus-Kazakhstan customs union will help to extend the use of the common CIM/SMGS consignment note

The Republic of Belarus, the Republic of Kazakhstan and the Russian Federation founded a customs union by means of a state treaty dated 6 October 2007. The treaty provides for the creation of a single customs territory on 1 July 2011, from that date the raising of duties and taxes of a similar nature at the internal frontiers will be swept away.

The new Customs Code is the basis for the customs regulations. The three founding states have largely passed their powers for customs matters to the customs union. They may therefore only exercise customs powers if and in so far as the issue is not already covered by the customs union (lacuna-filling competence).

This means a significant reduction in customs formalities and delays at internal frontiers for carriers by rail. In the past these formalities and delays have led to enormous problems

for movements by rail, particularly since for movements from western China to western Europe there could have been up to six national frontiers to cross (depending on the route) before the creation of the customs union. Now there is just the external customs frontier between China and Russia or China and Kazakhstan to cross.

The foundation of the customs union will help to extend the use of the common CIM/SMGS consignment note significantly. In accordance with Article 159 paragraphs 1-4 of the Customs Code, transport documents (amongst others) are to be presented at the external frontier. These documents are listed in Article 4 of the Customs Code. The common CIM/SMGS consignment note is specifically mentioned in this list.

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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.

Compensation to be paid in the event of loss of the goods

Does the compensation to be paid to the customer in the event of the loss of the goods also have to include the value added tax (VAT) on the goods? Is the situation different for excise duties?

A clear distinction must be made between excise duties and VAT. Excise duty is a duty which in general is imposed on alcohol and tobacco; it is based on quantity and is only levied on final sale of the goods (or notification that the goods are missing). VAT, by contrast, is an indirect tax on consumption of all types.

In accordance with Article 30 § 4 CIM, VAT must be considered as "another sum paid in relation to the carriage of the goods lost" and the person entitled must be compensated if he has already paid the VAT.

By contrast, excise duties for goods carried under a procedure suspending those duties do not have to be paid to the person entitled

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Original: FR

Who is responsible for handling claims for CIM/SMGS traffic?

In principle, submitting and handling claims for damages for total or partial loss of or damage to goods consigned with a CIM/SMGS consignment note are governed by the provisions of Articles 43-45 CIM and Article 29 SMGS.

These basic principles are nevertheless supplemented by specific provisions in point 12.3 of the GLV CIM/SMGS and in Appendix 22 SMGS.

Claims submitted in the area in which the CIM applies are to be sent to the competent carrier in accordance with the CIM Uniform Rules. If the competent carrier establishes that the cause of the loss or damage did not lie or did not only lie within the area in which the CIM contract of carriage applies, he is to assess the claim in terms of liability within the CIM area and notify the customer of his decision. For subsequent handling in the area in which the SMGS applies, he is to forward the claim, including all the documentation submitted, to the competent SMGS forwarding or destination railway and notify the customer that he has done so. As

soon as the competent carrier has received the result of the handling of the claim from the SMGS railway he is to inform the customer of the final outcome of the handling of his claim.

An analogous process is adopted for claims submitted in the area in which the SMGS applies.

The inclusion of the addresses of claims departments for CIM/SMGS traffic in Appendix 9 to the GLV CIM/SMGS and Appendix 22 to the SMGS ensures that claims handling is transparent for customers.

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Original: DE

CIT Itself

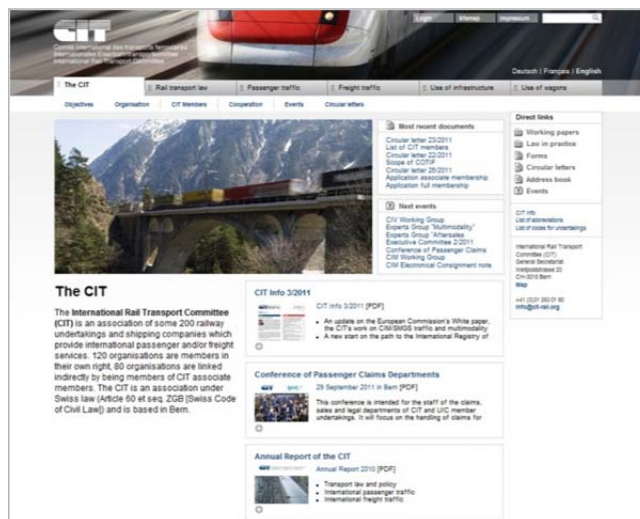
New CIT website cut-over

It was on Thursday 21 July 2011 that the new CIT website could first be opened and used. The new www.cit-rail.org has a clear functional design with intuitive navigation. Those characteristics allow it to give a user-friendly overview of the topics and activities with which the CIT is involved.

The complete website is divided into the following six main areas: the CIT (the homepage), rail transport law, passenger traffic, freight traffic, use of infrastructure and use of wagons. In addition there are direct links to the working papers of the various CIT working bodies, the new "law and practice" heading, freight documents which can be filled out on-line, together with the circular letters, the address books and details of forthcoming events. Copies of CIT Info from the last three years, the list of abbreviations and the list of codes for undertakings may also be consulted directly.

Address book

The address book is split into four main sections, general, passenger, freight and use of infrastructure. In each section, the contact staff for the various departments of CIT member undertakings are given at the top of the list and, at the bottom, members of CIT working bodies are listed. Input of the details is now made and followed up by the CIT General Secretariat. Any changes, extra information and errors should therefore be reported to the CIT General Secretariat.



What is your opinion of the new format of the CIT website? Do you have any suggestions? Please send any comments you may have to thomas.gyger@cit-rail.org. We shall be delighted to receive them.

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Original: DE

New member: RTS Rail Transport Service GmbH

RTS Rail Transport Service GmbH was founded as a private railway undertaking in 2004 by the Swietelsky Baugesellschaft m.b.H. (a very large Austrian construction company with significant interests in trackwork). RTS can therefore count on strong support from its parent. RTS principally moves track maintenance equipment and infrastructure work trains. However, in 2006 with the formation of its own subsidiary, RTS Rail Transport Service Germany GmbH (based in Munich), RTS has also been present in the German market. Since 2009 it has also had unrestricted access to the Hungarian rail network through its subsidiary, Mávécsep. In this way, international traffic can be handled quickly and without complication and both trackwork projects and general cargo can be efficiently dealt with right across Europe.

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Original: DE



Tetyana Payosova leaves us



Tetyana Payosova

Tetyana Payosova started to work for us in August 2010 on a temporary part-time placement to support a crucial phase in the project to make the CIM and SMGS legally interoperable.

She mastered this subject very quickly thanks to her superb multilingual skills and her legal knowledge. Her efficient

work coupled with her experience in the field of European and international law helped the project leader immensely.

We would like thank Tetyana Payosova for her commitment and wish her all the best for the future and particularly all success with her doctoral thesis.

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



Conference of Passenger Claims Departments

Bern, 29 September 2011

This conference is intended for the staff of the claims, sales and legal departments of CIT and UIC member undertakings. It will focus on the handling of claims for delay or for accidents from passengers who have made international journeys. Participants will be divided into small groups to consider problems of general interest which arise regularly in practice; they will then have the opportunity to discuss the solutions which might be implemented. In addition, at the end of the day, they will have the opportunity to meet colleagues from other undertakings to resolve cases which are outstanding.

Click here for further details:

http://www.cit-rail.org/media/files/public/Passenger/Flyer_Workshop_Passenger_Claims_Dept_2011-05-25.pdf

CIT Diary of Events

Date	Event	Location
7/8 September	CIV Working Group	Bern
20 September	Experts Group "Multimodality"	Bern
22 September	Experts Group "Aftersales Agreement"	Bern
27 September	Executive Committee 2/2011	Bern
29 September	Conference of Passenger Claims Departments	Bern
19/20 October	CIM Working Group	Sierre
21 October	"CIM-Electronical Consignment Note" Working Group	Sierre
27 October	CUI Committee	Bern
17 November	CIT General Assembly	Bern
30 November	CIT/OSJD Seminar: "Transportliche Interoperabilität im Eurasischen Eisenbahnverkehr"	Basel
1/2 December	CIM/SMGS Legal Working Group	Basel

Events with CIT participation

Date	Event	Location	CIT contact
1 September	CER Common Support Group TAP-TSI	Brussels	Thomas Gyger
8/9 September	XXXIX Meeting OSJD Ministerial Conference	Peking	Thomas Leimgruber
12 September	CER General Assembly	Bonn	Thomas Leimgruber
13 September	UIC Freight Steering Committee	Paris	Henri Trolliet
13/14 September	UIC Commercial Group	Paris	Isabelle Oberson
14 September	Haftungsfragen und internationale Frachtbriefregelungen bei ostgerichteten KV-Verkehren (Europa-Asien)	Munich	Erik Evtimov
14/15 September	OTIF Committee of Technical Experts	Bern	Erik Evtimov
16 September	CER Passenger Working Group	Brussels	Isabelle oberson
21 September	UNECE Specification of the electronic rail consignment note	Geneva	Erik Evtimov
28/29 September	20 th Plenary Meeting of the CCTT 2011	Odessa	Thomas Leimgruber
29 September	CCTT/CIT/OSJD Seminar on practical implementation of the Common CIM/SMGS Consignment Note	Odessa	Thomas Leimgruber
3/4 October	UIC Legal Group	Paris	Isabelle Oberson
5 October	UIC Wagon Users Study Group	Paris	Henri Trolliet
7 October	UNECE Expert Group towards Unified Railway Law	Geneva	Erik Evtimov
10 October	UIC Ticketing Action Group	Paris	Thomas Gyger
12 October	UIC Freight Steering Committee	Paris	Henri Trolliet
12 October	CER Working Group on Customs Questions	Brussels	Nathalie Greinus
12 October	UIC Seminar "Loading directives"	Paris	Henri Trolliet
12/13 October	UIC TAP Maintenance and Development	Paris	Thomas Gyger
13 October	UIC Freight Forum	Paris	Henri Trolliet
13 October	Core Working Group Cross-border operation of trains	Paris	Isabelle Oberson
13/14 October	OTIF Rail Facilitation Committee (RFC)	Bern	Erik Evtimov
13/14 October	Annual Conference on European Consumer Law 2011	Trier	Isabelle Oberson
18 October	UIC Passenger Forum	Paris	Thomas Leimgruber
18 October	EPR Legal Working Group	Rome	Isabelle Oberson
26/27 October	UIC's Experts Group on the Transport of dangerous goods	Bologna	Nathalie Greinus
2/3 November	UNECE Working Party on Intermodal Transport and Logistics	Geneva	Erik Evtimov
3/4 November	UNECE Working Party on Rail Transport (SC.2)	Geneva	Erik Evtimov

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