

**International  
Rail Transport Committee**

## Editorial

### Adapting products to the opening of the passenger transport market will be one of CIT's key challenges in the next few months



The market for international rail passenger services in the EU was opened in 2010. Having acquired initial experience with liberalisation, railway undertakings are now involved in the process of adapting to the new conditions.

In its meeting on 28 June, the CIV Committee dealt with the impact of the market opening on the CIT products.

Most CIT products relating to the carriage of passengers are geared to transport services based on cooperation agreements between railway undertakings. Since the majority of international services at the moment continue to be provided on the basis of the previous cooperation model, these products retain their validity and must be regularly adapted to the new requirements.

With the regulations relating to the substitute carrier and the revision of the Agreement concerning the Relationships between Transport Undertakings in respect of International Passenger Traffic by Rail (AIV), which has been in force since the beginning of the year, an initial step has now been taken on the way to adapting CIT products used in passenger business to the process of liberalisation.

I have been following the way in which the EU regulation has developed in the field of passenger transport with some concern. The EU Commission on the one hand is resolutely pursuing the goal of liberalisation as part of the 4<sup>th</sup> Railway Package to be presented this year, but is also looking at opening up the market for purely national rail passenger services. As soon as the interface to customers is affected by the regulation, this will demand cooperation between the railway undertakings. Whether this will adequately take into account the commercial business logic of the railway undertakings or not remains to be seen. The keywords in this context are customer information, through-ticketing and rerouting, to mention but a few. The railway undertakings are regarded as the "former" state-run railways, which, as a result of thinking in terms of systems – with no regard for competition – must be forced by the regulatory authorities to work together.

A large part of CIT's work in the next few months will consist of carefully analysing the new EU regulations (recast, implementation of TAP-TSI, PRM-TSI) relating to the market opening, examining their impact on CIT products and, if necessary, presenting new proposals to CIT, with the aim of offering members practicable, effective and cost-saving solutions.

Best wishes from Bern!

Cesare Brand  
Secretary General of the CIT

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## Transport Law and Policy

### Reference of a case involving the Austrian Federal Railways to the ECJ for a preliminary ruling



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A case concerning the application of the rules for compensation provided in Article 17 of Regulation (EC) No 1371/2007 on rail passengers' rights and obligations (referred to below as the PRR) has been referred to the ECJ and a preliminary ruling is currently awaited. The case at issue concerns delays following an event which has the characteristics of force majeure.

**However, an unfavourable decision by the court could have serious consequences for all European railway undertakings.**

What is the issue?

In a ruling dated 6 December 2010, the Austrian national enforcement body declared that those provisions of the ÖBB general conditions of carriage which excluded paying compensation to passengers for delays caused by force majeure were null and void.

ÖBB appealed to the appropriate national administrative court against that ruling. The court then referred two questions to the ECJ for a preliminary ruling on 8 September 2011. These were:

*"Is Article 17 of Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations to be interpreted as meaning that a railway undertaking may exclude its obligation to pay compensation of the ticket price in cases of force majeure, either through application by analogy of the grounds for exclusion provided for in Regulations (EC) No 261/2004, (EU) No 1177/2010 and (EU) No 181/2011 or by taking into account the exclusions from liability provided for in Article 32(2) of the Uniform Rules concerning the contract for international carriage of passengers and luggage by rail (CIV, Annex I to the Regulation) also for cases of compensation for the ticket price?"*

Four sets of arguments give support to the application of the grounds for exclusion provided in Article 32 (2) of the CIV Uniform Rules.

**The first argument follows from the logical relationship between the PRR and the CIV Uniform Rules. The relationship between the PRR and CIV clearly provides for the European regulation to be expressly based on the international convention.**

It should be pointed out that:

- the sixth recital of the PRR says that strengthening the rights of rail passengers "should build on" the CIV Uniform Rules;
- the fourteenth recital expresses the legislators' desire that the system for compensating passengers in the event of delay should be "linked to the liability of the railway undertaking, on the same basis as the international system provided by the COTIF and in particular appendix CIV thereto relating to passengers' rights".
- Article 15 which starts Chapter IV of the PRR on "Delays, missed connections and cancellations" refers expressly to Chapter II "Liability in case of failure to keep to the timetable" of Title IV "Liability of the carrier" taken from the CIV in which Article 32 (2) provides that "The carrier shall be relieved of this liability, when the cancellation, late running or missed connection is attributable to one of the following causes:
  - a) circumstances not connected with the operation of the railway which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent;
  - b) fault on the part of the passenger or
  - c) the behaviour of a third party which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent; another undertaking using the same railway infrastructure shall not be considered as a third party; the right of recourse shall not be affected."

Applying the PRR and the CIV Uniform Rules together thus leads necessarily to allowing European railway undertakings the option of relieving themselves of the obligations set out in Article 17 of the PRR by invoking the grounds for relief listed in Article 32 (2) of the CIV Uniform Rules, including force majeure.

**The second argument follows from the principle of equal treatment for the rail mode and other modes of transport (air, maritime, road).**

European railway undertakings should not be deprived of the option to invoke force majeure when the European regulations which are applicable to carriers in other modes of transport (and these are regulations which the ECJ recognise as existing) expressly allow them that option.

In fact, the liability of carriers by modes other than rail is expressly set aside in the event of extraordinary circumstances or meteorological conditions endangering safe operation (Regulations (EU) No 181/2011, (EC) No 261/2004 and (EU) No 1177/2010 cited by ÖBB in the question submitted to the ECJ).

To refuse carriers by rail the right to assert force majeure when that right is allowed to carriers by other modes would be to treat the rail mode in a flagrantly discriminatory manner. That would be something of a paradox given that the European Union would like to encourage the rail mode.

***The third argument follows from applying the principle of proportionality correctly, since that principle requires that the PRR should not go beyond that which is necessary to safeguard the rights of passengers.***

The principle that the carrier's liability cannot be relieved except by invoking a limited number of listed clauses is the essence of the liability system created by Article 32 of the CIV. This principle is the guarantor that passengers' rights are taken into account as a priority and achieves the objective of proportionality in an effective manner.

If a complete guarantee of compensation for the benefit of passengers whatever the circumstances and reasons for the delay is provided, that objective of proportionality can no longer be achieved; but that is precisely the guarantee the Austrian enforcement body wanted to institute.

Let us add that if European railway undertakings were required to provide such a guarantee, they would certainly be induced to reflect it in ticket prices. That would penalise the attractiveness of the rail mode and again would act against the development of the mode, so much desired.

***The fourth argument follows from the need for European Union bodies to adopt a consistent position for all the modes on compensation of passengers for delay or interruption of their journeys.***

Point 7.2 of the European Commission's Communication on Passenger Rights in all transport modes published on 19 December 2011 says that:

*"Air and waterborne operators may not have to compensate when the disruption is due to extraordinary circumstances. This also applies to bus operators when they have effectively offered the choice between reimbursement or re-routing. In rail transport, this is the case when the disruption was caused by the fault of a third party, of the passenger, or by circumstances not connected to railway operation and which the carrier could not avoid and whose consequences could not be prevented."*



According to this European Commission communication, the obligation to compensate passengers which normally weighs on carriers in the event of delay or interruption of the journey disappears when the delay or disruption is due to circumstances not connected with the transport operation which the carrier could not avoid, and that whatever the mode of transport.

To adopt a different position for one of the modes of transport would be particularly contradictory given the clear willingness to adopt a common European policy on passengers' rights when travelling.

Let us also add that this position has been confirmed by the Commission in the written observations which it sent to the ECJ. In those observations the Commission accepted the principle of railway undertakings being exonerated for those cases listed in Article 32 (2) CIV Uniform Rules.

The four sets of arguments above leave no doubt that force majeure within the meaning of Article 32 (2) of the CIV Uniform Rules must be recognised as a ground for relief from the obligation to compensate provided in Article 17 of the PRR in the event of disruption (delay, cancellation and missed connections).

It only remains to hope that the ECJ will be listening to them.

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## Passenger Traffic

### Decisions made by the CIV Committee

The CIV Committee met in Bern on 28 June 2012 to discuss topics concerning international passenger traffic. Twenty-five undertakings were represented. The most significant items on the agenda were the adoption of the new CIT security background 2012 (see the article on page 4 below) and the strategy to be adopted to respond to changes brought about by *Regulation (EC) No 1371/2007 on rail passengers' rights and obligations (PRR)* and *Regulation (EU) No 454/2011 of 5 May 2011 on the technical specification for interoperability relating to the subsystem 'telematics applications for passenger services' of the trans-European rail system (TAP-TSI)*.

#### Update on the two PRR cases before the ECJ

The CIT and its members regularly review developments in the two cases which are pending before the ECJ and which concern passengers' rights. In the first case, the *Westbahn* case, the Advocate General recently concluded that the PRR requires passengers on trains to be given comprehen-

sive information about the main connecting services, including the scheduled times of departure, any delays and cancellations<sup>1</sup>. In consequence, he confirmed that the infrastructure manager is required to provide railway undertakings with real-time data on other undertakings' trains in a non-discriminatory manner if those other undertakings' trains are "main connecting services" within the meaning of Article 8 § 2 PRR. The court's judgment is expected this autumn.

In the second *ÖBB* case (see the article on page 2 above), the European Court of Justice has received comments from Austria, Germany, Sweden and the European Commission. Oral hearings will take place this autumn. We can expect therefore that the judgment is six to eight months away.

<sup>1</sup> Opinion of Advocate General Jääskinen delivered on 7 June 2012 in case C-136/11, *Westbahn Management GmbH v ÖBB-Infrastruktur AG*.

## Emphasis on dialogue and extra-judicial resolution of disputes

The CIV Committee confirmed several initiatives intended to ensure that information about issues linked to the PRR is supplied promptly and effectively to undertakings and trade associations. It likewise approved maintaining a dialogue with all the stakeholders. This dialogue was started in May with the national bodies charged with the task of implementing the PRR (as described in the article on page 6 below). It will be followed up in the coming months and likewise meetings will be held with passenger representatives twice a year in order to try to have the PRR interpreted and applied throughout the European Union in as standard a way as is possible.

In addition, the CIV Committee has decided to support alternative dispute resolution (ADR) procedures actively. The CIV Working Group was instructed to study the different systems already in place in the various states and to make recommendations on the most promising options. In parallel, the CER, working with various consumer associations, will support ADR actively at a political level and will make an input to the first readings of the two EU legislative proposals<sup>2</sup> being made in this area.

## Keeping the AIV rules until 2013

The CIV Committee decided not to alter the rules in the AIV on the allocation of compensation paid out in the case of delay (see page 7 of CIT Info 2/2011). The CIT General Secretariat was instructed to collect details of the progress being made by members in implementing these rules every three months up until the next meeting of the committee in June 2013. The General Secretariat was likewise instructed to contribute to the work being done by the UIC TAP-MD group in conjunction with UIC group RCF1. The TAP-MD group's objective is to implement a technical solution to manage the allocation of compensation more easily.

<sup>2</sup> Communication on *Alternative dispute resolution for consumer disputes in the Single Market* (COM/2011/791). The communication makes a proposal for a directive on ADR and a regulation on ODR (*online dispute resolution*).

## Ticketing and TAP-TSI

The CIV Committee instructed the CIT General Secretariat to make a detailed analysis of the impact of TAP-TSI on the CIT's passenger documentation. In future, TSI specifications will form a significant proportion of the standards for issuing international tickets. It will only be possible to amend these standards by a structured change control management process (CCM) with which the CIT for the moment is not directly involved. In addition, the development of the TSIs will require efforts to be redoubled to ensure that the legal, functional and technical standards in the various documents of the CIT and UIC are all consistent.



Chris Querée (ATOC) introduced the TAP TSI during the CIV Committee.

Since, in principle, the first phase of implementation comes to an end in mid-July, the CIT will be able to reach its initial conclusions at the end of the summer. The General Secretariat will likewise analyse the impact of the recast of the First Railway Package on CIT passenger documentation. It will brief the Executive Committee on its conclusions on 20 September and the CIV Working Group on 28 September, its next meeting.

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## The CIT security background 2012 is being implemented

### The CIV Committee approves new Working Manual M of the GTT-CIV manual

At its meeting on 28 June 2012, the CIV Committee decided that the new **Working Manual M** of the GTT-CIV (entitled "**CIT security background 2012 and its formats suitable for paper tickets**") would come into force on 1 July 2012. Hence the committee approved the concept and detail of the new security background 2012. The new working manual specifies the functional and technical requirements for the use of the 2012 security background in a way that new users will find easy to apply in practice. **UIC leaflet 918-2** contains the technical specification for **overprinting** on the new background.

### A security background for all tickets

The CIT currently provides members with a security background to be used to produce paper for tickets. The current security background (which dates from 1996) is standardised internationally and recognised all over Europe and even beyond. Some CIT members already use this security

background for their domestic and local tickets as well. Up to now, there has been no single standard which is suitable for issuing these numerous (but mostly rather smaller-sized) types of tickets by means of ticket machines. It is becoming less and less relevant to make a distinction between "international" and "domestic" traffic in Europe as frontiers become more and more permeable and states coalesce with each other. The ticket checking staff in our trains find it difficult to understand how genuine tickets, theoretically with one and the same CIT security background, can differ from the standard more than a good forgery does. It is unclear if the current security background will still continue to allow us to detect forgeries (which are getting better and better) and thus to protect our revenue.

### Uniform high security standards support cooperation

The 2012 security background will allow the range of differing domestic and local tickets to be reduced, something which previously could not be achieved in a practical way because of the lack of a cost-effective international standard.

The CIT, working closely with the UIC Ticketing Action Group, has carefully considered how the security background should be developed to meet these criteria. The reference inks for the new security paper are the same as those of the security paper of 1996: blue and a bright orange which is fluorescent in daylight.

### Smaller sized paper reduces costs

Pressure on costs also means that distribution channels through ticket offices, ticket machines and on-train sales must use similar technical processes; at the same time distribution channels must be made more flexible so that the offer can be diversified. It should be possible to sell international, domestic and local tickets from the same ticket issuing machine and it should be possible to print them from one single paper roll per machine.

The solution lies in standardising on a smaller **basic paper size** and creating a **CIT 2012 security background** designed to match it. The standard defined in **Working Manual M** of the GTT-CIV allows the various tickets and in particular electronically issued paper tickets to be issued in a flexible way. Taking the various options to reduce production and sales costs into account, the new security background is attractive from a cost viewpoint whilst at the same time providing greater protection against forgeries.

Procurement costs also come down. The reduction in techniques for printing and issuing tickets to just one or two allows the number of different papers to be reduced; that also simplifies stock control and reduces costs further.

### Aligned with the overprinting specified in UIC leaflet 918-2

The 2012 security paper may be used for all standard overprints specified in UIC leaflet 918-2 as well as for pre-printed tickets and tickets to be written out by hand. The forthcoming publication of the revised UIC leaflet 918-2 will permit the two UIC overprints (*RCT2 classic* and *RCT2 compressed*) to be used flexibly and in particular will allow three and four-fold multiples of the basic size to be used.

Accordingly, when printing from rolls, international, domestic and local tickets can be issued in any order. In other words, this approach allows the option to issue tickets of various sizes and overprints from a single roll of paper, something which was previously not possible with this level of technical flexibility.

In addition, the security background 2012 is already aligned with and prepared for use with the *Rail Credit Card Sized Ticket* standard (RCCST) planned by the UIC, although not yet approved. The security background, however, is entirely independent of whether this future UIC standard is introduced or not.

The RCCST layout was finalised by the UIC Ticketing Action Group in mid-June 2012. The UIC currently plans for it to be approved by the UIC Technical Group at its meeting on 12 September 2012. The sixth edition of UIC leaflet 918-2 should then be published in October/November 2012. The new layout can then be introduced and used by CIT members at the same time as the new CIT security background 2012, i.e. with effect from the timetable change of 9 December 2012. According to the Ticketing Action Group's current information, two members currently propose to use the RCCST (SBB and ZSSK) and the earliest they will start to use the new format will be in the second half of 2013. Two members have opted-out of the new security background or made reservations against individual ticket sizes; they will not recognise them until further details are clarified. The list of member undertakings that will make use of the new ticketing (which is mandatory for CIT members although with the option for making reservations and withdrawing) may be downloaded from the CIT website.

### Allowing undertakings to decide their migration policies allows life-cycle costs to be minimised

For the moment, introduction of the new security paper is optional for CIT members. It will co-exist with the well-established security background for RCT2 tickets (IATA tickets) which dates from 1996. The CIV Committee will decide, but probably not before 2013, whether the old 1996 security background should be completely replaced by the new 2012 security background. As appropriate, the committee will also then be able to make a better assessment of what the transitional arrangements should be on the basis of feedback from early implementers.

This step by step approach will allow current users of the CIT security paper to plan their own migration strategies to ensure continuity. It will allow members to plan how they can optimise life-cycle costs for their ticket issuing infrastructures. In this way, members can be confident that discontinuance of the existing security paper will not give rise to additional costs.

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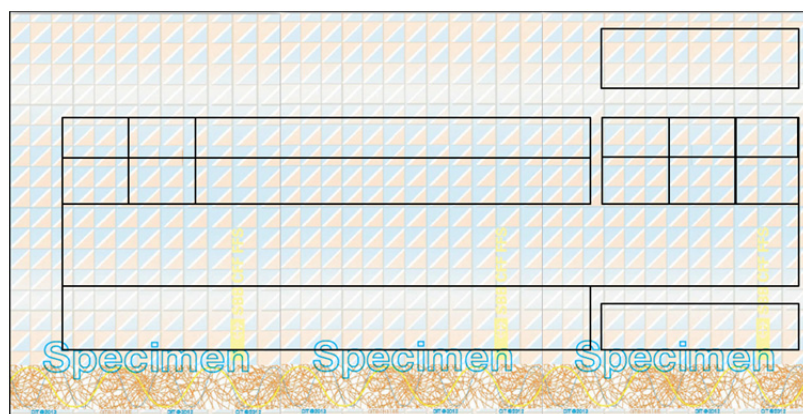


Illustration: ticket using the RCT2 compressed layout on a three-fold multiple of the basic size with the CIT security background 2012 (length = 3 x 54 mm = 162 mm)

## Exchange of views with the national bodies enforcing the PRR

The CIT and CER organised a workshop on the implementation of *Regulation (EC) No 1371/2007 on rail passengers' rights and obligations* (PRR). The workshop was held in Brussels on 10 May 2012. More than eighty specialists from railway undertakings, the national bodies enforcing the PRR (the national enforcement bodies – NEB), EU bodies, organisations representing passengers and other stakeholders took part in this constructive exchange of views.

The discussions confirmed that all the participants valued the regulation being implemented in a way that was transparent and as far as possible the same right across Europe and that all the participants thought there was a need to strengthen the dialogue between the various stakeholders.

### The various points discussed

At the end of the event it became clear which were the topics on which the passenger representatives, the national enforcement bodies and the railway undertakings still could not agree a common approach. These topics included, for example:

- the criteria to identify the undertaking competent to handle customer claims, and by extension, the authority competent to handle passenger complaints;
- the extent of the right to continue the journey in the case of disruption;
- the criteria triggering the right to assistance (refreshments, meals, accommodation); etc

Strikes likewise pose a particular problem. Strikes are sometimes considered as force majeure, sometimes not. Everything depends on the circumstances. Case law in the various EU Member States in this area isn't always the same and depends on national sensitivities to rights which



From left to right : Isabelle Oberson, CIT; Jan Svensson, Chairman of the CIT's CIV Working Group; Anne-Laure Le Merre, CER ; Lucio Lanucara, Trenitalia.

are often entrenched in the various states' constitutions. It would therefore be useful to analyse these differences further and to find standard criteria allowing us to say in what circumstances strikes are to be considered as force majeure.

### A common approach is to be desired

Taking account of the success of this first workshop, the CIT and CER have decided to hold a second workshop in April 2013. Before that workshop the CIT and CER will organise mixed working groups to exchange views on these various topics in order to find common positions on open questions. The CER and CIT will also study the options for adopting existing arrangements as best practice.

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## Current developments relating to air passengers' rights:

From 19 December 2011 to 11 March 2012, the European Commission held a public consultation on the possible revision of the regulation on air passengers' rights, which has been in effect since 2005 (Reg. EC No 261/2004). During the public consultation, the CIT and CER commented on points in which legal certainty was at stake (e.g. on the definition of extraordinary circumstances, on the necessity of establishing effective linkage between international agreements and EU legislation and on the absence of any legal basis for compensation in the event of delays).

At the *Stakeholder Conference on Air Passengers Rights* that was held on 30 May 2012, the Commission and Steer Davis Gleave presented the results of the survey: all stakeholders welcome the clarification of the concept of extraordinary circumstances. The airlines highlighted that the regulation led to very high costs, particularly as a result of the unlimited liability for incidents for which they were not responsible. The NEBs shared the airlines' view that, in the event of delays, the possibilities of claiming redress from the third party responsible should be improved. The airlines also emphasised the EC regulation's lack of compatibility with the Montreal Convention. For consumer representatives, protection of passengers in major crises should remain the focus of the discussion. The CIT and CER took part in the

Stakeholder Conference and argued in favour of supporting alternative dispute resolutions (ADR) to resolve disputes between passengers and operators, comparable passengers' rights when travelling by air, rail, water and road and for intensifying the dialogue between all those involved. The proposal for amending the Air PRR is expected at the end of the year.

Unfortunately, a number of fundamental issues were not addressed, in particular issues relating to the liability regime of the air carriers, to the necessity of defining maximum amounts, to the meshing of EU legislation and international law and to the comparability of the Air PRR with the PRR of the three other transport modes.

In practice today, the decision taken in the *Sturgeon* case in particular is still causing<sup>1</sup> enormous problems. With its decision, the ECJ – going beyond the terms of the regulation –

<sup>1</sup> ECJ judgement of 19 November 2009 in the joined cases C-402/07 and C-432/07 (*Sturgeon et al.*). This judgement obligates the air carriers to pay compensation (at least €250) for delays of three hours, even if this had not been expressly provided for in Regulation EC 261/2004.

introduced a no-fault minimum level of compensation in the event of a delay, which is punitive in nature. IATA intends to have the Sturgeon decision revised with the aid of the TUI case, which is currently being heard by the High Court of Justice. This decision is giving UK courts problems and is not being applied, because it contradicts the Montreal Convention<sup>2</sup>. The High Court of Justice has submitted the issue – as the district court in Cologne had done before it – to the

ECJ. In his opinion delivered on 15 May, the Advocate General<sup>3</sup> advised the ECJ to confirm its Sturgeon decision in both cases, reconfirmed its compatibility with the Montreal Convention and advocated that the existing claims for compensation in the event of cancellations and delays are to be enforced.

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<sup>2</sup> A convention for the unification of certain rules for international carriage by air that was signed on 9 December 1999 in Montreal and subsequently approved on behalf of the European Community by Council Decision 2001/539/EC of 5 April 2001 (OJ L 194, p. 38).

<sup>3</sup> Press release issued by the ECJ No 63/12 of 15 May 2012: Opinion of the Advocate General on the joined cases C-581/10 (*Nelson vs Deutsche Lufthansa*) and C-629/10 (*TUI Travel, British Airways, easyJet and IATA vs CAA*).

## Freight Traffic

### CIT/OTIF Seminar on “Multimodal shipments and their significance for railway undertakings” in Odessa

#### Multimodality: not just for the future

The increasing globalisation of transport services – for the purpose of linking up production centres with consumers in Europe and Asia – represents enormous economic potential for all the transport service providers involved. With the publication of the white paper in March 2011, the European Commission made it quite clear that the appropriate general conditions would lead to a significant easing of the transport conditions. Frameworks for cooperation, transport corridors and standardised liability conditions are planned – in addition to securing and simplifying *multimodality* between the various transport modes, while focusing in particular on rail-sea shipments. This is designed to ensure that efficient transport services are also provided in the Black Sea region – primarily for the shipments of freight by rail with pre or post-carriage for shipments by sea on the maritime routes entered into OTIF's CIM list of maritime and inland waterway services.

Accordingly, rail-sea shipments are now to receive heightened political and legal attention, since end-to-end rail freight shipments represent a decisive hinterland potential for linking the ports to the key production centres and consumer markets in Europe, Russia and Asia. The knowledge gained as a result will continue to be discussed in terms of the further development of the international transport conventions (CMR road; CMNI inland waterways and the Rotterdam Rules for maritime shipments).

#### Multimodal shipments and their significance for railway undertakings

The CIT/OTIF seminar “Multimodal shipments and their significance for railway undertakings” actively supported by the Ukrainian Railways (UZ) and freight forwarding company Plaske, which was held on 1 June in Odessa, enjoyed lively attendance. Over 50 participants of CIT members from thirteen countries in Europe and Asia and representatives of a further twenty freight forwarding and logistics organisations attended the seminar. This represented an excellent opportunity to discuss the current progress of work on a wide variety of multimodality issues, with the main focus on



From left to right: Eva Hammerschmiedová, OTIF; Oleg Platonov, PLASKE JSC; Erik Evtimov, CIT; Gustav Kafka, OTIF; Alexander von Ziegler, Schellenberg Wittmer / Attorneys at Law.

rail-sea shipments on the Black Sea. The representatives of the international transport organisations (CIT, OTIF, UNECE, TRASECA), railway companies, maritime carriers and representatives from the private sector were extremely pleased with the topics dealt with and the constructive discussion during the final assessment.

Under COTIF/CIM 1999, 70% of rail shipments are still being carried out in accordance with the traditional model of successive carriers. The remaining 30% are based on the substitute carrier model. In addition to the parties involved in these models (wagon keepers, infrastructure managers and agents), there is also the shipping company (shipping line) in the case of rail-sea shipments. The requirement for this, however, is that both the maritime routes and the shipping companies are entered into the OTIF-CIM list of maritime routes (Art. 24 COTIF). The expansion of the CIM maritime routes that is subsequently achieved is becoming increasingly attractive and recently the linkup to regions around the Black Sea as well. This means that end-to-end shipments using a single contract of carriage in accordance with COTIF/CIM for various transport modes is very beneficial both in economic and legal terms.



## Electronic consignment note

The working group also approved the work being done by the group of experts studying how the electronic consignment note can be prioritised by comparison with the paper one. The creation of a new Article 7a in the CIM Uniform Rules (to the detriment of paragraph 9 of Article 6) is the immediate result of this substitution process. The objective is to replace appropriate substantive provisions for the principle of functional equivalence – this will have inevitable consequences on a number of CIT documents for freight. The new article is the first step in the process of giving priority to electronic documents and in considering paper documents to be the exception.

## Legal definition of the carrier

The issue of whether “the carrier” has to be a railway undertaking was raised in the context of new contractual models for organising carriage; however, there was no consensus on the provisional proposition developed by the working group so the issue remains undecided. The various states impose differing preconditions on the right to con-

clude and perform a contract of carriage. Since opinions varied, it may be necessary to consider a new liability regime for subsequent carriers.

## Movement of empty wagons under the GCU

The CIM Working Group took note of the work done by the group of experts. Amendments to the GLW-CUV will follow from that as will a new Wagon Manual – the GTW-CIT. This document is in course of being finalised and will support the changes which also have to be made to the GCU. This work is being closely coordinated with the UIC Wagon Users' Study Group.

To conclude, the CIM Working Group also considered the form that the questionnaire on CIT freight documentation will take. The objective of the questionnaire is to encourage members to say what use they make of the documentation. The results of this survey will be one of the issues to which the working group will return at its next meeting on 17 & 18 October 2012.

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## Wascosa ECM fleet management seminar in Lucerne

Railway undertakings organise their fleet management operations and use of freight wagons on an international (CUV/AVV) and European legal basis (Directive 49/2004). The top priority following the accident in Viareggio is to ensure that the freight wagons used are properly and safely maintained.

To this end, contractual agreements are concluded that apply to all wagons operated by the entities in charge of maintenance (ECMs). This could involve a contract between the railway undertaking and the ECM or a series of contracts entered into with other partners, e.g. the wagon keeper. On this basis, the wagon keeper and/or the ECM are responsible for the safe operating condition of the freight wagons and are required to implement procedures that comply with the safety management systems laid down in Directive 2004/49/EC, including the exchange of information.

In this context, Wascosa organised an ECM fleet management seminar in Lucerne dedicated to the new EU regulation on a system of certification of entities in charge of maintenance for freight wagons (ECM certificate)<sup>1</sup>. The presentations and the discussions that followed focused on the key questions of safe and proper maintenance of freight wagons, i.e.:

- proper certification of the entities in charge of maintenance (ECM),

- provision of a technical management system based on clearly defined maintenance systems and processes,
  - completion of internal and external audits,
- designed to provide an independent and superior quality management system for freight wagons.



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Following the excellent experience obtained with this first ECM fleet management seminar, the Wascosa organisers subsequently announced they would be organising more seminars in the course of 2012-13 in Switzerland, Germany and Austria.

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Original: DE

<sup>1</sup>) Commission Regulation (EU) No 445/2011 of 10 May 2011 on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007, OJ L 122, 11.5.2011, p. 22 et seq.

## Use of the Infrastructure

### Current developments

#### Reservations against the CUI Uniform Rules

Norway and eleven EU Member States have not yet withdrawn their reservations (Bulgaria, Spain, Estonia, France, Latvia, Portugal, Romania, the UK, Slovakia, Slovenia and the Czech Republic). Ireland, Italy, Sweden have not yet ratified COTIF.

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

By way of its circular letter 8/2012, the CIT informed its members of the developments in the use of infrastructure and conducted a survey of the infrastructure managers and railway undertakings that already include the EGTC in their network statement. The results of the survey show that two infrastructure managers definitely plan to include the EGTC in their network statement and to apply them – subject to approval by the national regulatory body (RB) – as from the 2012/2013 timetable changeover as an integral part of their General Terms and Conditions. Three infrastructure managers already use individual provisions and/or have included individual provisions of the EGTC without reference in their own General Terms and Conditions. The EGTC are not yet mentioned in many network statements. Three RUs report of unsuccessful negotiations with the infrastructure managers in their attempts to apply the EGTC.

#### Recast of the First Railway Package<sup>1</sup>

The Council and European Parliament reached a compromise agreement on 15.6.12:

- Strengthening the independence, powers to impose sanctions and cooperation between the regulatory authorities;
- Financial incentives to encourage the introduction of ETCS on railway corridors;
- Specification of access conditions;
- Long-term financing of the infrastructure and financial incentives to encourage its modernisation;
- The deadline for transposing the directive into national law is 30 months after its entry into force. The transition period granted to IMs for calculating the train path charges is limited to 4 years;

<sup>1</sup> "Proposal for a Directive of the European Parliament and of the Council establishing a single European railway area (Recast)" dated 15 June 2012. The requirements to be met by a performance regime are laid down in Art. 35 and Annex VI, Index 2. The status has not changed since the agreement on the European Commission's proposal.

- As regards the separation between infrastructure managers and railway undertakings, proposals for legislative measures to ensure the further development of the regulation, if appropriate, are to be included in the implementation report to be presented at the end of 2012.

The parliament approved the compromise text in its final meeting on 3 July. The compromise must now be formally approved by the Member States.

The CIT GS is following the development of the recast and its implementation closely regarding the points that directly affect the contract on the use of infrastructure, specifically:

#### EGTC

As soon as the second reading of the recast has been completed, the CIT will analyse the final text in consultation with CER, in order to identify which points have an impact on the EGTC and will require further development of the EGTC.

#### European Performance Regime (EPR)

The recast introduces compulsory, performance-related components for calculating train path charges. For the UIC/RNE project relating to the development of the EPR, the new general conditions represent a considerable restriction of the flexibility required for any further development in the future. The European Commission's powers are to be extended to include the adaptation of the basic principles to the performance components. The agreement was reached in favour of the Council's proposal, which states that the experience of the regulatory authorities, RUs and IMs, plus the best practices in the further development of the regulation on the performance regime, are to be taken into account.

After completion of the second reading, the EPR Legal Group – in which the CIT, the UIC and the RUs are represented – will complete their analysis of the impact of the recast on the development of a cross-border performance regime.

The EPR project run jointly by the UIC/RNE is expected to be completed by the end of 2012 and the responsibility for the operation of the system is then to be handed over to an operating organisation that is yet to be defined. At the moment, it is still unclear as to the form in which representatives of the RUs and the railway organisations will be involved in drawing up the network statement for the EPR. The CIT is advocating appropriate consideration being given to the concerns of the RUs in this work.

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Original: DE

## Law in practice

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

### Consignment of freight traffic

*Can freight traffic still be consigned as express parcels?*

Under Article 8 § 3 CIM 1980, the railways could agree on special provisions for the carriage of express parcels by means of tariff clauses. These provisions had to conform to Annex IV to the CIM Uniform Rules (the Regulations concerning the international carriage of express parcels by rail - RIEx). In accordance with § 1 of these regulations, only such goods as are carried in a specially rapid manner subject to the conditions of an international tariff were considered to be express parcels. Back at that time the CIT created the Uniform Rules concerning the Contract of International Carriage of Parcels by Rail (TIEx) by applying the provisions of Article 8 § 3 CIM 1980 and the RIEx.

When the 1999 CIM Uniform Rules entered into force on 1 July 2006, the special provisions of the RIEx and the TIEx (and in particular those on transit periods and derogations from various provisions of the CIM Uniform Rules) became redundant; they were not carried forward to the new texts. Since then, these issues in effect have been left to contractual freedom.

In other words, goods that have to be transported particularly quickly today may be carried under the aegis of the CIM Uniform Rules but adding special conditions agreed between the parties to the contract of carriage.

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### Recording of loss and damage

- *may the formal report be made out by a third party?*
- *must loss or damage recorded en-route be confirmed by the carrier at the destination?*
- *may recording of loss or damage to combined traffic be postponed to arrival at the final destination of the goods?*

In the event of the partial loss of or damage to the goods, the carrier must without delay, and if possible in the presence of the person entitled, draw up a report stating, according to the nature of the loss or damage, the condition of the goods, their mass and, as far as possible, the extent of the loss or damage, its cause and the time of its occurrence (cf. Article 42 § 1 CIM). The carrier may entrust that procedure to a third party, and in that event the third party acts in the name of and on account of the carrier. That option is provided for, for example, in the "GTC provision of services" (see points 1, 5 and 10 of those GTC) and in the "Claims Handling Agreement Checklist" (see the explanatory notes to point 3.2).

Loss or damage may be noticed en route or at the destination. When it is noticed en route, the formal report need only be supplemented at the destination if additional enquiries need to be made (see letter F (Complementary report made by the destination carrier) in the record of the facts box on the specimen formal report forming Appendix 20 to the GTM-CIT).

The special arrangements for recording loss and damage for combined traffic are covered by point 9.3 of Appendix 20 to the GTM-CIT. These provisions provide that when combined traffic

- is made by means of a UTI, sealed immediately after loading the goods in the UTI in such a way that the seal cannot be broken without it being apparent, and
- carriage by rail is followed by carriage by another mode of transport, and
- forced entry is presumed or discovered either during carriage by rail or when carriage by rail ends,

the UTI will be resealed by the carrier who presumed or discovered the forced entry. Joint examination is to be postponed until the time the container is unloaded by the final consignee (as defined by the contract of carriage).

The circumstances noted at that time, in the presence of a representative of the carrier, will be accepted by the carriers as being exactly the condition in which the goods were at the time carriage by rail finished, provided that the new seals are only broken in the presence of the representative of the carrier taking part in recording the condition of the consignment.

These rules are not applicable if the ultimate destination of the UTI is in a country other than that in which carriage by rail finished.

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Original: FR

## CIT Itself

### CIT Executive Committee 1/2012: the tracks for CIT's future work are being laid

Chaired by CIT's Chairman Jean-Luc Dufournaud, the first meeting of the Executive Committee this year was held on 20 April 2012 in Bern.

#### Status of work relating to freight and passenger business and use of infrastructure

A summary prepared by the Secretariat General of the progress made in implementing the 2012 work programme that had been approved by the General Assembly in 2011 was noted with satisfaction by the Executive Committee members. The presenters of the reports on freight and passenger business and use of infrastructure provided the Executive Committee with details of the progress made to date and of the next activities planned.

#### Annual Report 2011

The Executive Committee noted the status of the work completed on the Annual Report 2011 and approved its circulation to the members.

#### Berner Tage 2012 conference

The Executive Committee noted the report by the Secretariat General on the "Berner Tage 2012" conference. It indicated that it was very pleased with the success of CIT's major event with over 150 participants. The next Berner Tage conference will be held on 6/7 March 2014.

#### Pleasing Annual Accounts

The 2011 income statement resulted in a net income for the year of CHF 37,756. Following individual adjustments, total reserves as a result increased from CHF 361,542 to CHF 384,298. PricewaterhouseCoopers AG audited the financial statements, comprising the balance sheet and income statement, and authorised their approval.



From left to right: Cesare Brand, Secretary General; Jean-Luc Dufournaud, Chairman; Erik Evtimov, Deputy Secretary General.

#### Upcoming elections in the Executive Committee: the selection procedure has been specified

In accordance with Section 4.2 of the CIT Statutes, the Executive Committee shall comprise nine members at most and shall be composed in a representative way. In accordance with Section 4.3, the duration of the mandate of members of the Executive Committee shall be limited to four years, but may be extended by four years on one occasion. With regard to the 2012 General Assembly, therefore, no more than five new Executive Committee members are to be proposed by the Executive Committee, including a new male or female Deputy Chairperson, to the 2012 General Assembly. In consultation with the Secretariat General, CIT's Chairman will contact individual CIT members based on the selection criteria, so that suitable candidates can be submitted to the 2012 General Assembly.

#### 2012 General Assembly

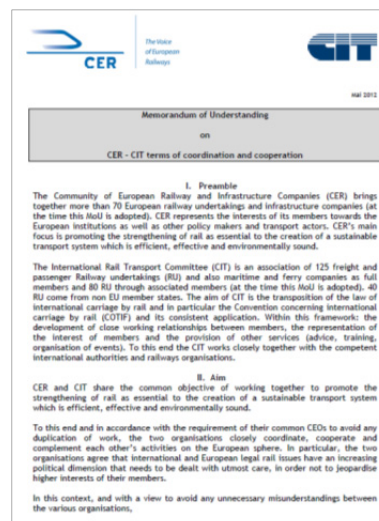
CIT's General Assembly will take place as planned on 22 November 2012 in Bern.

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Original: DE

### CIT and CER have formalised their excellent working relationship

On 3 May 2012, on the margins of the General Assembly of CER in Paris, Libor Lochman, Executive Director of CER, and Cesare Brand, Secretary General of CIT, signed a Memorandum of Understanding, which formally acknowledged the excellent working relationship they enjoy on the interface between regulation and international transport law, in addition to specifying the division of roles and exchange of information between the two railway organisations. The purpose of the memorandum is to lay down the terms of the cooperation between the two organisations in the long term and, in the interests of their common members, to avoid any duplication of work.

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Original: DE



## New CIT members

### Federal Passenger Company (OJSC FPC)

The **Federal Passenger Company (OJSC FPC)**, a subsidiary of Russian Railways (RZD), has been responsible for all long-distance passenger traffic in the Russian Federation since 1 April 2010. Since OJSC FPC started its activities, the volume of its passenger traffic has exceeded 170.6 billion passenger-km.



Carriage of passengers by long-distance trains on domestic and international routes is OJSC FPC's core business. On average, some 820 OJSC FPC long-distance trains start their journey each day. OJSC FPC has over twenty-three thousand carriages, one of the world's biggest fleets. These are formed into passenger trains that run from the Black Sea to the White Sea, from the Mediterranean to the Sea of Japan.

OJSC FPC runs the world's longest route for passenger trains: Moscow – Vladivostok (9 288.2 km). OJSC FPC's longest international route is no less than 3 315 km (Moscow – Nice).

### Railtrans International

**Railtrans International** is a Slovakian rail freight operator with registered office in Leopoldov north of Bratislava that specialises in the shipment of bio fuels, chemicals and raw materials for the chemical industry. It was founded in November 2011, has 6 members of staff and is run by the General Manager, Roman Rapant. Railtrans International's revenue planned for the next few years is more than 1,500,000 euros per annum.



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Original: DE

## Conference of Passenger Claims Departments

Bern, 27 September 2012



Regulation (EC) No 1371/2007 on Rail Passengers' Rights and Obligations (PRR) has now been in force since 3 December 2009. The conference on **27 September 2012** will address the challenges involved with implementing the Regulation in practice in a standardised manner and is primarily intended for the staff of claims, sales and legal departments.

Participants will be given an overview of the exemptions to the Passenger Rights Regulation granted by EU Member States, of the body of case law on passengers' rights being built up by the European Court of Justice and the effects of the new AIV (which has been valid since the beginning of 2012) on claims departments' practices.

Using Denmark and Austria as examples, the varying structures, tasks and areas of responsibility of the national enforcement bodies will be presented as will be their activities to date. Participants will also be informed about CIT and CER initiatives to strengthen the dialogue between the individual stakeholders so as to contribute to standardising implementation of passengers' rights across the whole of Europe.

The programme includes workshops to allow participants to go into more detail on the problems met in practice and then to exchange ideas on how to circumvent them. In this way, claims assessment, out-payments and working with other railway undertakings on rights to compensation, clarification of the causes of delay and rights when strikes cause delays will be considered.

The last part of the conference will be dedicated to networking. This will give participants the opportunity to deal with unresolved issues and to discuss disputed cases.

Further information may be obtained from the General Secretariat of the International Rail Transport Committee (CIT),  
Weltpoststrasse 20, CH-3015 Bern, Tel. +41 (0)31 350 01 90.

An information leaflet and a registration form may be downloaded from our website:

[http://www.cit-rail.org/media/files/public/Publications/Flyer\\_Conference\\_Passenger\\_Claims\\_Dpts\\_2012-09-27.pdf](http://www.cit-rail.org/media/files/public/Publications/Flyer_Conference_Passenger_Claims_Dpts_2012-09-27.pdf)

## UIC/CIT workshop on e-ticketing in Frankfurt am Main on 24 & 25 October 2012

The UIC and CIT have specified several standards for electronic ticketing to help railway undertakings make their ticketing systems interoperable. Nevertheless, the systems and technologies used by railway undertakings are very varied and at best are only harmonised within countries.

However, making ticketing systems for international traffic interoperable isn't impossible. The UIC and CIT would like to pass that message on and thus encourage railway undertakings to make their systems interoperable.

The workshop thus has two objectives: to take stock of the various technologies used, to show why interoperability is necessary and to show how it can be achieved. The UIC is preparing the flyer; it will be available shortly.

## CIT Diary of Events

Date	Event	Location
30 August	Group of Experts "CIM Electronic Consignment Note"	Bern
4-6 September	CIM/SMGS Legal Group and Experts Group	Bern
13 September	Group of Experts "Multimodality"	Bern
20 September	Executive Committee 2/2012	Bern
27 September	Conference of Passenger Claims Departments	Bern
28 September	CIV Working Group	Bern
10/11 October	Group of Experts "CIV Ticketing Manual"	Bern
17/18 October	CIM Working Group	Bern
24/25 October	CIT/UIC Workshop on e-ticketing	Frankfurt am Main
30/31 October	CIV/SMPS Group of Experts	Bern
7 November	CUI Committee	Bern
22 November	CIT General Assembly	Bern

## Events with CIT participation

Date	Event		Location	CIT contact
23 August	Meeting with Green Cargo Claims Department	Green Cargo	Stockholm	Erik Evtimov
6 September	European Economic and Social Committee Conference	EESC	Brussels	Myriam Enzfelder
6/7 September	Assemblée générale Union des transports publics	UTP	Lucerne	Cesare Brand
11 September	Commercial Group	UIC	Paris	Thomas Gyger
12 September	Technical Group and Joint Meeting	UIC	Paris	Thomas Gyger
13 September	Commercial & Distribution Forum Steering Committee	UIC	Paris	Cesare Brand
17 September	General Assembly	CER	Berlin	Cesare Brand
18/19 September	InnoTrans		Berlin	Cesare Brand
27/28 September	Coordination Council on Transsiberian Transportation Meeting	CCTT	Helsinki	J.-L. Dufournaud Erik Evtimov
2 October	Wagon Users Study Group	UIC	Paris	Henri Trolliet
15/16 October	Ticketing Action Group (TAG)	UIC	Paris	Thomas Gyger
16/17 October	Team Message TM	UIC	Paris	Thomas Gyger
17 October	Commercial & Distribution Forum	UIC	Paris	Myriam Enzfelder
17 October	Freight Forum Steering Group	UIC	Tangiers	Cesare Brand
17/18 October	TAP Maintenance and Development (TAP-MD)	UIC	Paris	Thomas Gyger
18/19 October	3rd Global Rail Freight Conference	UIC	Tangiers	J.-L. Dufournaud Cesare Brand
19 October	EurAsia Experts Group	UNECE	Geneva	Erik Evtimov
25/26 October	7. Internationaler VDV-Eisenbahnkongress	VDV	Berlin	Erik Evtimov

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