



CONTENT

CIT Workshop on Data Protection in International Passenger Traffic

On 21 June 2017, the CIT organises a one-day workshop dedicated to data protection issues in international rail passenger traffic. The workshop aims to provide participants with an overview of the implications of the new EU Regulation on Data Protection (GDPR) for railway undertakings. Participants will also learn about a third-country perspective on the requirements of the GDPR, on the example of Switzerland, and some best practices of GDPR implementation by selected CIT members. Furthermore, the CIT General Secretariat will present the new CIT Guidelines on Data Protection and new provisions on data protection in CIT documents for passenger traffic.

The workshop will include a session on potential implications of the most recent business and policy developments in the rail sector from the perspective of data protection compliance and a case-study

session allowing participants to discuss their current data protection practices. The workshop will also offer excellent possibilities for networking.

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- 2 Does the rail sector need "coopetition"?
- 3 The European Commission inquires about Passenger Rights in Multimodal Transport
- 4 Rail way to uniform law
- 5 New support tools for CIT members
- 6 Revision of TAP TSI in 2019
European Commission organised a meeting with the NEBs on passenger rights
- 7 20th meeting of the CIT's CIM Committee focused on digitisation of freight documents
- 8 Report on the meeting of the Multimodality Working Group
- 10 Summary of selected court cases relating to the use of infrastructure
- 12 Law in practice
- 13 CIT itself



EDITORIAL



Dear Readers,

The main focus in the issue of the CIT-Info before you is a report on the meeting of the CIM Committee, with particular attention given to the status of the work being carried out on digitisation, and on the meeting of the Multimodality Working Group. In the section on passenger traffic, you will find information on the planned revision of the TAP TSI and on an initiative of the European Commission in the field of passenger rights in multimodal transport.

And finally, I would like to draw your attention to a summary of selected court cases we have included relating to the use of railway infrastructure.

The question of railway undertakings working together to increase customer benefit and profitability, with a subsequent improvement in the competitiveness of rail compared with other modes of transport this would bring, in addition to possible conflicts with competition law, is one that is of great personal interest to me. In this particular context, we have included a copy of an article that appeared in February in the Railway Pro magazine.

I sincerely hope you will enjoy reading this issue!

Best wishes from Bern
Cesare Brand
Secretary General of the CIT



Does the rail sector need "coopetition"?

The word "coopetition" is increasingly heard in connection with the organisation of the rail sector.

Coopetition is a neologism, coined to describe cooperation in a competitive environment. It stems from economic game theory. In relation to the rail sector, "coopetition" means that the railway undertakings must work together despite competition in some areas, in order to increase their own competitiveness against other modes of transport, and thus to raise profitability. Cooperation enables higher values to be achieved than when each railway undertaking is working for itself alone. International goods and passenger transport have always been characterised by a high degree of cooperation. Wagonload transport can simply not be operated efficiently and profitably across national frontiers without cooperation. This is also why, despite liberalisation, over 90 % of today's international passenger traffic is handled through cooperation agreements.

European rail transport policy aims to create a single European railway area. As part of the opening up of the sector to competition that began with Directive 91/440/EEC, four Railway Packages have been adopted over the last 25 years. The fourth package, which will complete the liberalisation of rail transport, was approved by the European Parliament last December.

Of course, "coopetition" must not be misused to legitimise the continuation of outdated and inefficient production structures. Conversely, regulatory and antitrust authorities should not automatically disapprove of railways cooperating, or even sanction them for doing so. Rail's urgently needed competitive advantages over road transport, which are generated by cooperation, can be destroyed in no time by a fine that leads to shift from proven business models. Self-evidently, the provisions of competition law must be observed in individual cases, and technical cooperation within the framework of Council Regulation (EC) No 169/2009 must apply the rules of competition to transport by rail.

In which situations is cooperation meaningful and desirable in a competitive environment? There are many possibilities. Some cooperations are brought about by the regulations or by policy. I will name here just the implementation of passengers' rights in international traffic, where customer-friendly solutions are possible only through a cooperative, multilateral approach. High front-office quality can be achieved only if there is cooperation between railways in the background. A further example is digitisation: unless functionalities and technical specifications – such as for transport documents for international goods and passenger transport – are established in a systemic, common approach, there will be no good solutions for the railways or their customers, and the competitiveness of the service overall will suffer.

If the Railways fail to find simple and cost-effective solutions, the foreseeable response will be to call for regulation. The risks here are obvious: complex solutions that are business unfriendly and driven by politics, in which the cost-(customer-)benefit relationship is not prioritised, and which places additional burdens on a sector already suffering from overregulation.



Example of Coopetition

Many good approaches to multilateral sector solutions are in place, and platforms such as the CIT function well. But an understanding of the need for cooperation is unevenly distributed among the railways, all the more so since cooperation represents an investment of human and financial resources in the future.

My wish for 2017 is for well-designed solutions and equally well-implemented solutions in the rail sector. Only by this means can we make optimal use of the rail system advantages, improving rail's competitiveness over other modes of transport – and thus improving the customer benefits and profitability of railways, particularly in international transport, at the same time.

As Henry Ford said: Coming together is the beginning. Keeping together is progress. Working together is success!

Cesare Brand, published in Railway Pro Magazine, February 2017.

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The European Commission inquires about Passenger Rights in Multimodal Transport

All four transport modes (rail, air, sea and coaches) in the EU are subject to the respective regulations on passenger rights and obligations that introduced an EU-wide minimum standard of consumer protection. Most recently the European Commission initiated an inquiry into the current situation with respect to passenger rights in the multimodal context.

Roadmap on Multimodal Passenger Rights and Public Consultation

On 22 December 2016, the European Commission published a roadmap on rights of passengers in multimodal transport. The potential initiative will encompass various possible combinations of all transport modes, including rail transport, under condition that these combinations are covered by a single contract of carriage. The main concern of the European Commission seems to be that the current legislative framework does not address passengers' rights in the multimodal context and the existing regulations on passenger rights in the EU apply to each transport mode separately.

The roadmap identifies several potential questions that the European Commission may want to tackle in its initiative. Among others, the European Commission noted that despite the fact that in case of disruptions during multimodal journeys the continuation is generally provided and contractual customer care solutions are in place, passengers are not legally entitled to care and assistance at connecting points. Moreover, passengers cannot seek redress from the NEBs, due to the missing legal guarantees, and are not always well informed about contractual terms and conditions of their multimodal journeys. Equally, the European Commission emphasizes the need to facilitate multimodal journeys for PRMs and to grant them adequate assistance at connecting points.

The European Commission outlined in the roadmap five options for action, ranging from the status quo to new legislation with a comprehensive set of rules specific to multimodal journeys. The less extreme solutions include self-regulatory instruments ("codes of good conduct" or "codes of good practice") to be prepared jointly by the European-level representatives of the transport sectors concerned, soft laws and recommendations to be prepared by the European Commis-

sion or the new secondary legislation defining which monomodal regulation on passenger rights will be applicable to a specific multimodal combination.

The public consultation on the European Commission's possible initiative in the field passenger rights in multimodal transport was launched on 23 February 2017. The questionnaire is available on the European Commission's web-page until 25 May 2017. The CER coordinates the position of the railway sector for this public consultation and interested members of the CIT bodies are encouraged to liaise with their CER representatives internally.

Next steps

Following the public consultation, the European Commission will also launch a target consultation with the stakeholders concerned. Based on the results of both consultations, the European Commission is expected to draft an impact assessment by the end of 2017 or at the beginning of 2018, to assess whether intervention is necessary and which option for action is the most appropriate.

The CIT is closely following this initiative from the potential implementation perspective and liaises with the CER on all open questions.

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Original: EN

Useful links

- ➔ [European Commission's Roadmap on Rights of Passengers in Multimodal Transport](#)
- ➔ [Public Consultation on multimodal passenger rights](#)

Rail way to uniform law

East-West and West-East rail freight shipments have to cross an invisible border between two legal regimes. The CIT has been working closely with the OSJD (Organisation for Co-operation between Railways) to ensure that this barrier to harmonisation is eliminated. The collaboration between the two organisations has demonstrated once again what it can achieve, having set yet another milestone on the rail way to uniform law.

Introduction

In Europe, the CIM Uniform Rules apply, whereas in Eastern Europe, Russia and Asia/China, it is the SMGS Convention. The parallel existence of two different legal regimes, represented by the CIM and the SMGS, may well have been justified during the Cold War. Today, however, it represents an enormous obstacle to the provision of global rail transport services on the transcontinental corridors between Europe/Russia and Asia/China. For both the customer and the railway undertakings, this situation results in additional costs for services that offer no additional benefit.

Furthermore, completing new consignment notes at freight border crossing points inevitably involves the risk of errors being made, which results in the risk of delays in the delivery of shipments and incalculable legal uncertainty.

Milestone I: Accession of RZD to CIT and use of the common CIM/SMGS consignment note in the Russian Federation

On 21 August 2009, the Russian Federation applied for accession to COTIF and thus to the Intergovernmental Organisation for International Carriage by Rail (OTIF). Accession came into force on 1 February 2010 and was initially restricted to the application of the CIM Uniform Rules (Appendix B to COTIF) and geographically to the routes between the ferry terminals in Sassnitz on the island of Rügen and Baltiysk in the Kaliningrad region and Ust-Luga, located west of St. Petersburg, on the one hand, and the Baltiysk and Luzhskaya port railway stations, on the other. The intention was to extend the scope of application of the CIM Uniform Rules in stages to include additional routes operated by the Russian Railways. Making the above-mentioned rail services subject to the CIM UR is significant in that increasingly high-volume and high-quality flows of goods are shipped across the Baltic. Gauge changeover from 1435 mm to 1520 mm, which takes place on German territory (at the Sassnitz-Mukran railway station), simplifies the organisation of shipments and opens up interesting prospects for unified liability regulations extending into the landlocked countries in Central Asia. The use of the common CIM/SMGS consignment note for such shipments offers additional savings in terms of time and costs.



Transcontinental rail freight services to and from the People's Republic of China

Milestone II : Transcontinental rail freight services to and from the People's Republic of China – opening of border crossings for the use of the common CIM/SMGS con-signment note

It has been possible to use Chinese when completing the common CIM/SMGS consignment note since 1 January 2010. Appropriate routes for the organisation and completion of test shipments have also been specified by the Chinese Railways (KZD). Inclusion of the traffic axes in the PRC in Appendix 1 of the CIM/SMGS Consignment Note Manual has accordingly been assigned the highest priority by the project lead partners CIT and OSJD in order to facilitate and optimise East-West shipments in terms of both costs and time.

In a letter dated 6 April 2017, the Administration of the Chinese Railways informed the CIT and the OSJD that all border crossings with the Russian Federation, Mongolia and Kazakhstan would be opened as of 1 May 2017 for the use of the common CIM/SMGS consignment note for the import and export of goods with European countries⁽¹⁾. The People's Republic of China is thus an unconditional member of the SMGS participating states, which, as specified in Appendix 1 of the manual, use the CIM/SMGS con-signment note. This is yet another achievement of the project with significant benefits for all CIT members.

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(1) Specifically, this concerns the following border crossing points : Alashankou (with Kazakhstan), Manzhouli (with the Russian Federation), Erlian (with Mongolia), Suifenhe and Khorgos (with Kazakhstan).



PASSENGER TRAFFIC

New support tools for CIT members

The uncharted waters of data protection and a comparison of international legal regimes applicable to passenger carriage by air and by rail.

International passenger traffic is facing a fast-developing legal and business environment. The CIT General Secretariat, together with the experts of the CIV Working Group, is currently preparing two new support tools for CIT members to deal with new legal challenges and business opportunities in the most efficient way. The CIT Guidelines on Data Protection and the comparative table of legal regimes applicable to rail and air passenger transport will be submitted for approval to the CIV Committee in June 2017 and will be available to CIT members by the end of the year.

CIT Guidelines on Data Protection

In light of the new EU Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR), the CIT General Secretariat, together with the CIV Working Group and the CIT Group of Data Protection Experts, is currently preparing Guidelines on protection of privacy and processing of personal data used in international passenger rail carriage.



Interested debate among the members in the Working Group CIV in Brussels

The guidelines are meant to be of recommendatory nature and provide an overview of the GDPR requirements that are most relevant for CIT members in rail passenger traffic. CIT Members will be recommended to use this document as guidance when preparing internal and external privacy policies, as well as various customer forms, both on paper and electronically.



CIV Working Group in Brussels

The CIV Working Group that most recently met in Brussels on 5-6 April at the invitation of SNCB discussed the latest version of the CIT Guidelines on Data Protection. The final version of the document will be sent for consultation to the CIT Group of Data Protection Experts before it is submitted to the CIV Committee for approval on 22 June 2017.

Comparative matrix of international legal regimes applicable to carriage of passengers by air and by rail

One of the key tasks of the CIT is to ensure and promote legal interoperability of various legal frameworks. To fulfil this task successfully, the CIT General Secretariat has traditionally resorted to a comparative analysis of the respective applicable legal regimes, including liability regimes in international rail freight and passenger traffic, as well as legal regimes applicable to international carriage of freight by rail and road (see additional information on page 8).

In the past year the CIT General Secretariat, together with the experts of the CIV Working Group, has been working on a comparative matrix of legal regimes applicable to international carriage of passengers by air and by rail that takes into account the provisions of the COTIF/CIV, the Montreal Convention and the relevant EU Regulations. The matrix will highlight the main differences between the cornerstone notions of contract of carriage and liability regimes applicable. The final version of the matrix will be submitted for approval to the CIV Committee in June and will be available to CIT members on the CIT web-page by the end of the year.

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Revision of TAP TSI in 2019

The European Union Agency for Railway has announced its intention to propose to the European Commission a revision of Regulation (EU) 454/2011 on the technical specification for interoperability relating to 'telematics applications for passenger services' (TAP TSI) between now and 2019.

Objective of the revision

The Agency would like to close the six open points identified in Annex II of TAP TSI using the standards available from the European Committee for Standardization (CEN). It also plans to align TAP TSI with TAF TSI in terms of data exchange between carrier and infrastructure manager. Lastly, the Agency is considering amending certain fundamental parameters and the glossary.

Open points: domestic sales and e-ticketing

Annex II of TAF TSI lists the six open points, the areas that the European Commission wanted to standardise but for which no standard was available at the time the TSI was adopted, such as e-ticketing or domestic sales. Since 2011, the CEN has been working on both of these aspects and has published two standards (CEN/TS 16406; CEN/TS 16614-3).

The CEN standards could therefore become technical documents of TAP TSI, in addition to the list in Annex III of the TSI. To date, only certain UIC documents have been used as reference for TAP TSI.

Definition of the station manager's role

The Agency wants to redefine the role of the station manager regarding static timetable data, namely minimum connection times at a station and links between stations. It also wishes to clarify the process for data exchange between carriers and station managers.

Schedule for the revision

At present, the Agency plans to deliver an interim report to the European Commission in the summer of 2018 and the final recommendation on the revision of the TSI in the autumn of 2019.

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Useful link

→ [TAP TSI \(updated on the ERA website\)](#)

European Commission organised a meeting with the NEBs on passenger rights

The European Commission has recently met NEBs responsible for the enforcement of rail passenger rights and discussed current legislative initiatives on accessibility and the revision of PRR. The CIT participated jointly with the CER in the open part of the meeting.

On 6 March the European Commission organised a meeting with the NEBs on the implementation of the PRR. The morning session was open to stakeholders, including representatives of the rail sector, third parties and passenger associations. The first part of the meeting focused primarily on issues of accessibility. The European Commission presented an overview of the European Accessibility Act, whereas representatives from DB and SNCF presented their most recent solutions for PRMs as best practices.

In addition, the representatives of Trainline and the German consumer associations shared their views on through-ticketing and cross-border journeys in light of the ongoing revision of the PRR. Finally, the European Commission pre-

sented a brief overview of the Impact Assessment on the revision of the PRR and confirmed that publication of the proposal is expected in summer 2017.

The second part of the meeting was closed to the public and focused on selected issues related to implementation of the PRR.

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20th meeting of the CIT's CIM Committee focused on digitisation of freight documents

In view of the publication of updated versions of the CIT manuals (GLV-CIM, GTM-CIT, GLW-CUV, GTW-CIT) on 1 January 2017 and the preparation of the report on the digitisation of transport documents by the General Secretariat of the CIT (GS CIT), the CIM Committee, as the executive body responsible for the CIT's work to support freight traffic business, took important, forward-looking decisions regarding the implementation of the CIM electronic consignment note and the CUV electronic wagon note.

CIM electronic consignment note and CUV electronic wagon note

The CIT's main project, which deals with the CIM electronic consignment note and the CUV electronic wagon note, has been the focus of the work carried out by the GS CIT and the CIM Working Group (CIM WG) since the last meeting of the CIM Committee. With the participation of members of the CIM WG, the GS CIT has now successfully completed the legal and functional specifications of the CIM electronic consignment note and the CUV electronic wagon note at sector level based on the principle of functional equivalence in accordance with Article 6 § 9 CIM and Article 14 para. 2 GCU. The GS CIT is also assisting RailData in finalising the technical specifications and is supporting the UIC's e-RailFreight project to implement the electronic consignment note in practice.

Judicial recognition of digital transport documents

In connection with the implementation of the CIM electronic consignment note in practice and the ongoing digitisation in the rail sector, the GS CIT has been working on clarification of the legal issues relating to the recognition of the electronic consignment note as evidence of a contract of carriage by national courts and other national authorities in accordance with Article 6 § 2 CIM. The CIT report contains three main topics – the electronic consignment note, judicial recognition of digital transport documents and the formal damage report (CIT 20) in electronic form – and concludes with a number of suggestions as to the next steps to be taken from the CIT's viewpoint.



Jean-Marie Sié (Director of the legal Department, SNCF Mobilités), Deputy Chair of the CIT's CIM Committee, chaired the meeting, which was held at the end of March 2017 in Bern.

In view of the interim status of the CIT report, the free assessment of evidence in the case of commercial transport documents (B2B relationship) by national courts is certainly possible (principle of freedom of contract), which a contrario does not make an electronic signature (eSignature) mandatory. The solution prepared by the GS CIT with the unique consignment identifier as a security guarantee for the consignment note is thus confirmed as being appropriate and is deemed a practical option for CIT members. The results of the clarification work were presented during a workshop on 23 March 2016 with the participation of CER, UIC/RailData and OTIF, which focused on the "digitisation of transport documents in freight traffic". The status report is to be forwarded to the Secretary General of OTIF and the DG MOVE of the EU Commission following approval by the CIT Executive Committee.

Electronic formal damage report (CIT 20)

The CIM Working Group was instructed to take up the proposals made by the GS CIT on the digitisation of the formal report (CIT 20) at the next meeting in June 2017 and to prepare the required datasets and message flows for the electronic formal damage report in the relevant CIT manual (GTM-CIT). In collaboration with RailData, the formal damage report is also to be included as an accompanying document in the technical specifications of ORFEUS version 1.4.2.

The results of this important follow-up work will be presented to the CIM Committee at the 21st meeting, which is to be held on 22nd March 2018.

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Report on the meeting of the Multimodality Working Group

Multimodal collaboration enables the benefits of the various carriers involved to be combined and their drawbacks eliminated. This can lead to an increase in both the efficiency and cost effectiveness of transport chains.

For this reason, the CIT last year placed greater emphasis on this topic and the Multimodality Working Group has now received specific instructions in this regard from the associated Multimodality Committee of the CIT.

Interaction between international railway law and maritime law

GTC Rail-Sea Traffic and the boilerplate contract

Freight shipments transported over long distances (along sea and land routes) are steadily increasing. This can involve long sea routes, and may include crossing the Black Sea or the Baltic Sea, for example, and be further increased with the addition of an initial overland leg by road or by rail. To take this development into account, the CIT began in 2013 to prepare a set of general terms and conditions (GTC Rail-Sea Traffic), which entered into effect on 1 January 2015.

To implement the GTC Rail-Sea Traffic, the CIT also prepared a boilerplate contract for the organisation of the successive rail carriers and the registered shipping companies in accordance with Article 1 § 4 CIM. The boilerplate contract entered into force on 1 July 2016.

Boilerplate Rail-Sea Traffic Contract

The GS CIT is currently working on the implementation of the Boilerplate Rail-Sea Traffic Contract. As a new CIT document, it is essential that the contract become more well-known in order for it to achieve widespread use. One way of doing this is to use the boilerplate contract – including a reference to the GTC Rail-Sea Traffic on specific pilot routes on the Baltic or Black Sea. The Multimodality Working Group (Multimodality WG) previously identified the Ust Luga–Sassnitz route for its pilot scheme. Unfortunately, this route is no longer in operation, so that the Multimodality WG spent a long time at its meeting this year discussing other possible routes. The GS CIT has now been instructed, initially on the basis of bilateral talks with several members of the working group, to prepare a choice of alternative pilot routes.

Interaction between international road and rail transport law

Many issues relating to the interaction between road and rail carriers have still not been clarified, such as the question of liability in the case of truck to rail transshipment operations and when loading transport units onto a rolling road. The CIT is currently working closely with the IRU⁽¹⁾ on the development of working tools designed to improve the interaction of the legal provisions relating to international combined rail-road transport services.

(1) International Road Union

Finalisation of the comparative table

A basis for this collaborative effort is a comparative table on the carriage of goods by road, with the CMR Convention⁽²⁾, on the one hand, and the carriage of goods by rail, with the CIM Uniform Rules (which apply in Western and Central Europe, in the Near East and North Africa) and the SMGS Convention (which applies in Eastern Europe and Asia), on the other. This table examines the most important issues from a legal viewpoint and compares the three conventions. The Multimodality WG, which had played a significant role in the preparation of the comparative table, was informed during the meeting that the comparative table had been approved by the CIM Committee the day before.



Multimodality Working Group met on 23 March in Bern

Publication of guidelines in collaboration with the IRU

The set of guidelines on the CMR-CIM-SMGS legal regimes was recently published. In addition to the comparative table, it also includes a synthesis that includes the most important findings obtained from the comparison of the legal regimes and a map showing the geographical scope of application of all three conventions.

The additional benefit of this work is that, for the first time – in addition to the CIM and SMGS regulations – the CMR is also included, which means that a holistic comparison of the regulations applying to combined rail-road transport services has been achieved.

(2) Convention on the Contract for the International Carriage of Goods by Road

Checklist for the rail-road boilerplate contract

With regard to the comparative work on combined rail-road transport services, the CIT bodies involved consider it very important that this work be applied in practice and that it ultimately results in a specific document. In future, therefore, the Multimodality WG will focus its attention on the preparation of a checklist for a rail-road boiler contract. To this end, a glossary of the many different definitions used in combined transport has already been submitted. The checklist is to include the following main components in the form of boilerplate clauses: standard provisions for truck to rail transshipment operations and standard provisions for loading transport units onto a rolling road. In addition, the checklist will also include a draft of a boilerplate contract for the road-rail network liability for truck to rail transshipment operations and for loading transport units onto a rolling road. As a follow-up, it was decided at the meeting of the Multimodality WG that amendments would be introduced in the checklist during the summer of 2017 to ensure that a new draft can be submitted to the Multimodality Committee at the end of 2017.

New projects by members on the inclusion of services in the CIM list of maritime and inland waterway services from a practical viewpoint

During the meetings of the Multimodality WG, participants regularly exchange information on new projects that are relevant for their work on multimodal transport issues. One project worth mentioning is the extension of the Port of Gdansk with the addition of an improved intermodal con-

tainer terminal designed to increase the terminal's annual throughput capacity to 3 million TEU (see additional information at <http://dctgdansk.pl/en/>).

A lively discussion took place on the inclusion of services in the CIM and CIV lists of maritime and inland waterway services and the benefits such an inclusion brings: following inclusion, multimodal rail-sea transport services can be carried out on the basis of a single transport document, for example, and means that any associated ambiguities (e.g. in the case of liability) and costs (due to different contracts) can be eliminated in this way. For this reason, inclusion in the CIM and CIV lists of maritime and inland waterway services proactively promotes the business of railway undertakings and shipping companies. Premature deletion of services by the ministries responsible in the relevant states, on the other hand, can jeopardise business, since re-inclusion of the service can only take place with the consent of all the states involved. For this reason, members of the Multimodality WG are in favour of including shipping lines in the CIM and CIV lists of maritime and inland waterway services⁽³⁾.

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(3) An overview of the current CIM and CIV lists of maritime and inland waterway services, in addition to practical information on the inclusion of new services in the CIM and CIV lists of maritime and inland waterway services, can be downloaded from the OTIF website at http://otif.org/de/?page_id=204 and http://otif.org/de/?page_id=202.





Summary of selected court cases relating to the use of infrastructure

At the meetings of the CUI Committee and the CUI Working Group, the members regularly discuss court cases or decisions taken by national regulatory authorities that are of interest to the Use of Infrastructure section.

In the article below, two (currently pending) cases are summarised, whereby the first is interesting with regard to the question of the competences of the EU and its Member States and the second case deals with a review of station price systems.

Action brought by the Federal Republic of Germany against the Council of the European Union on 22 December 2014⁽¹⁾ and an action brought by the European Commission against the Federal Republic of Germany on 16 June 2016⁽²⁾

The background to both cases was the 25th session of the OTIF Revision Committee, at which representatives of both the EU and the Ministries of the Member States participated.

At the OTIF Revision Committee meeting, the Council of the European Union had, among other things, taken a common decision for the Member States of the EU regarding an amendment to the Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic – CUI.

In the opinion of the Federal Republic of Germany, however, the Council did not have the competence to develop such a common position with regard to decision-taking on the CUI Uniform Rules. With respect to the CUI regulations, [Articles 91 and 218 para. 9 TFEU](#) would not permit such a competence for laying down a common position. By adopting the position, the Council had thus violated the principle of conferral in accordance with [Article 5 para. 2 first sentence TEU](#).

Germany claimed that the Court, for these reasons, should annul the Council Decision of 24 June 2014.

The European Commission countered in June 2016 by referring Germany to the Court of Justice of the EU owing to the conduct adopted by the German authorities at the 25th session of the OTIF Revision Committee. At the OTIF Revision Committee meeting, Germany had voted against two of the proposed amendments to the Convention concerning International Carriage by Rail (COTIF) and had thus represented a position that deviated from that of the Commission and had openly contested the European Union's right to exercise its voting right. By adopting such



Fountain of Justice, Bern

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conduct, Germany, in the Commission's opinion, had failed to fulfil its obligation under the EU Council Decision to exercise a uniform voting right and against the principle of sincere cooperation in accordance with [Article 4 para. 3 TEU](#).

(1) C-600/14

(2) http://europa.eu/rapid/press-release_IP-16-2104_en.htm

What will be the consequence of such a decision ?

The two claims are of particular interest to CUI Committee members, since a decision could clarify the EU's competences with respect to its Member States regarding the CUI regulations.

Judgment of the Federal Court of Justice on 7 June 2016 ; referral to the ECJ

The Federal Court of Justice (BGH) has requested a preliminary ruling on the interpretation of Directive 2001/14/EC⁽³⁾ (predecessor of Directive 2012/34/EU) and has submitted questions to the European Court of Justice (ECJ)⁽⁴⁾.

In the disputed case, the complaining party was a railway undertaking (Die Länderbahn GmbH), the defendant DB Station & Service AG (DB S&S AG), a subsidiary of DB AG, which maintains the railway stations operated by DB and is qualified to act as an infrastructure manager. Framework contracts, which refer to the currently applicable "station price list", are concluded for the use of the infrastructure. In 2005, DB S&S AG changed its pricing system. The lower courts of the BGH were of the opinion that the station pricing system was to be measured against a standard in the German Civil Code (BGB) (§ 315 BGB), which states that where performance is to be specified by one of the parties to the contract, then it is to be assumed that the specification is to be made at the reasonably exercised discretion of the party making it and – if the specification is not equitable, then it is to be made by judicial decision.

(3) Directive on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification

(4) Reference : [KZR 12/15](#) in German

In the opinion of the court of appeal (preceding the BGH), the pricing system of DB S&S AG fell short of reasonably exercised discretion, as it demanded higher charges for stations with better amenities than it did for those with poorer amenities. However, there were no objective criteria on which to base the decision and, additionally, long-distance transport services were not adequately separated from local transport services.

When making its judgement as to whether the pricing system was ineffective, the BGH asked whether the courts were allowed to apply § 315 of the German Civil Code or whether this violated EU Directive 2001/14/EC (predecessor of Directive 2012/34/EU), which meant that a fairness test of the pricing system on the basis of § 315 of the German Civil Code would have to be ruled out.

In addition, BGH explained that Directive 2001/14/EC does not permit the inference that only the competent regulatory authority, and not a civil court, has jurisdiction in disputes relating to the setting of charges. A two-pronged approach to redress in this case is permitted, i.e. there is the possibility on the one hand of lodging a complaint with the respective regulatory authority and on the other hand of applying to the competent civil court.

What will be the consequence of a decision ?

What is interesting is the follow-up to the decision with regard to the question as to whether - provided a national regulation governs such a thing, as is the case in Germany - the price systems, as a matter of principle, can be subjected to a fairness test and whether a two-pronged approach to redress through the civil courts in individual cases in favour of the applicant (RU) is possible.

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Central Railway Station, Berlin



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.

Right to modify the contract of carriage

Is it possible for a freight payer also to be entitled to modify the contract of carriage, or only the consignor or consignee?

Although Article 18 § 1 CIM speaks solely of the consignor and Article 18 § 3 CIM speaks solely of the consignee, it is a basic principle of contract law, also including the national law of obligations, that the rights can also be transferred (assigned) to other persons entitled to dispose of the goods. This is the case with the freight payer, since he pays the transport fees and subsequently becomes the creditor of the obligated party, who can transfer his rights arising from the contract of carriage to him.

In order to be able to amend the contract of carriage, the fact that such an assignment has been made by the consignor or consignee to the freight payer must, as appropri-

ate, be shown in the form of an amendment to the duplicate of the consignment note as evidence of the contract, on which the modifications must have been entered (cf. Art. 19 § 1 CIM and instruction sheet 04-01 GTM-CIT). The carrier thereafter executes the subsequent orders, makes the modifications and amendments to the consignment note and also enters the modifications to the contract of carriage in box 21 of the consignment note (for further particulars, see instruction sheet 04-02 GTM-CIT).

Erik.Evtimov(at)cit-rail.org

Original: DE

Apportionment of the carriage charge

A CIT member pointed out that Article 61 CIV provides that the carrier who has collected a carriage charge must pay to the carriers concerned their respective shares of such a charge. Their question is: does this article also apply to substitute carriers? Are other remuneration models possible for substitute carriers?

Article 61 CIV provides that “Any carrier who has collected or ought to have collected a carriage charge must pay to the carriers concerned their respective shares of such a charge. The methods of payment shall be fixed by agreement between the carriers.”

This article only uses the generic term “carrier”, which is defined in Article 3 a) CIV as the contractual or successive carrier. The articles of the CIV that also concern the “substitute carrier”, defined in Article 3 b) CIV, explicitly refer to the substitute carrier. This is the case for Articles 26 § 5 and 39 CIV, for example.

In conclusion, Article 61 CIV does not apply to the substitute carrier. The principal carrier and the substitute carrier are therefore free to agree on any type of remuneration for the carriage performed.

Isabelle.Oberson(at)cit-rail.org

Original: FR

TICKET + RESERVATION				01 Seat		
Date	Dep	From	To	Date	Arr	Class
Datum	Avg kl	Från	Till	Datum	Ank kl	Klass
22/10	15.39	SMOLENSK	->NICE VILLE	24/10	08.35	*
	*	*****	->*****	*	*	*
Train 17	Coach 356	Sleeper 21				
Tåg nr	Vagn					
Gentlemen T4		01 Lower				
BUSINESS ADULT		Carrier:				
		1120 0021				PRICE SEK**2091.00
BRC1337X02	200936233652					
00000000	DRÖMRESEBYRÅ LINKÖP AB	091015 07:42 542400				Travel Agency Inv PAGE 1/1

The principal carrier and the substitute carrier are therefore free to agree on any type of remuneration for the carriage performed

Useful link

→ [Uniform Rules CIV](#)



Latest news from the CIT Executive Committee

At its first meeting in 2017, which was chaired by its Deputy Chair, Ms. Maria Sack (DB AG), the Executive Committee on 27 April 2017 laid down the guidelines for its work in the current year. The Executive Committee took note, among other things, of a positive result for 2016.

Two amendments to the statutes relating to the requirements for CIT membership and the association's financial planning were discussed and are to be submitted to the

next General Assembly on 16 November 2017. And finally, the Executive Committee was informed of the progress made in implementing the work programme for 2017.

The next meeting will take place on 21 September 2017.

Cesare.Brand(at)cit-rail.org

Original :DE

Tailormade training for the SNCB

On 4 April 2017, the CIT held a seminar for the SNCB on the legal and practical issues regarding international carriage of passengers. It was an opportunity for the CIT General Secretariat to present the various CIT products for passenger carriage (general conditions, agreements, manuals etc.) and to look at the most recent developments in passenger rights in the European Union – a key issue in Brussels.

The CIT General Secretariat would like to thank the entire SNCB team, and Frédéric Godefroid in particular, for the lively and interesting discussions that followed the presentations !

New offer for CIT members

Since 2016, the CIT has been offering its members internal training for staff in their legal and sales departments (sales and after-sales) in its areas of expertise: international passenger carriage, international freight carriage and use of infrastructure. These training seminars are flexible and can be tailored to the needs of the undertaking. Any CIT members interested in offering training to their employees should contact the CIT General Secretariat.

Isabelle.Oberson(at)cit-rail.org

Original :FR



Training Event, Brussels

The CIT warmly welcomes its new members!

Country	Undertaking	Membership	
Hungary	Hungarian Railway Kft. http://www.hungarianrailway.hu/	Full member as of 1 February 2017	
Slovakia	Carbo Rail, s.r.o.	Full member as of 1 March 2017	
Italy	AW Rail srl	Full member as of 1 April 2017	

Katja.Siegenthaler(at)cit-rail.org

Original : DE

Goodbye and our sincerest thanks

At the end of March, the General Secretariat of the CIT said farewell to Katrin Zumbrunnen, Joël Forthoffer and Julien Dornbierer. The CIT is reluctant to part from the above mentioned staff members, but unfortunately, as a result of the cutbacks by members (e.g. due to increased membership contributions brought on by the foreign exchange crisis), sees itself compelled to reorganise the staff structure within the CIT.

We would like to take this opportunity to thank Ms. Zumbrunnen, Mr. Forthoffer and Mr. Dornbierer most sincerely for what they have accomplished and wish them every success in the future.



Katja.Siegenthaler(at)cit-rail.org

Original : DE



CIT DIARY OF EVENTS

Date	Event	Location	CIT contact
21 June	CIT Workshop on Data Protection	Bern	Tetyana Payosova
22 June	CIV Committee	Bern	Isabelle Oberson
27/28 June	CIM Working Group	Bern	Erik Evtimov
12/13 June	CIM/SMGS Group of Experts	Bern	Erik Evtimov
7/8 September	CIM/SMGS Steering Committee	Warsaw	Erik Evtimov
21/22 September	Executive Committee 2/2017	Locarno	Cesare Brand
28 September	Conference of Passenger Claims Departments	Frankfurt	Jan Svensson
28 September	Ad hoc Group of Experts on CIM/SMGS e-consignment note	Warsaw	Lothar Schneemann
4 October	CUI Committee	Bern	Nina Scherf
10/11 October	CIT Regional Training Event	Bucharest	Cesare Brand
11 October	“Seals“ Group of Experts	Budapest	Fabienne Vaisson
12 October	CIV/SMPS Working Group	Bucharest	Erik Evtimov
14/15 November	CIV Working Group	Bern	Isabelle Oberson
16 November	General Assembly	Bern	Cesare Brand
17 November	Multimodality Committee	Bern	Erik Evtimov
29/30 November	CIM Working Group	Bern	Erik Evtimov

Agenda with CIT participation

Date	Event	Org.	Location	CIT contact
18 May	UIC Freight Forum	UIC	Paris	Erik Evtimov
22/23 May	Postal Rail Task Force	UPU	Bern	Cesare Brand
22-24 May	Group of Experts towards Unified Railway Law	UNECE	Geneva	Erik Evtimov
31 May	PATRIC	UIC	Rome	Jan Svensson
31 May–2 June	International Transport Forum	OECD	Leipzig	Cesare Brand
6 June	EMC & 24th Regional Assembly Europe	UIC	Bern	Isabelle Oberson
6–9 June	Ministerial Conference	OSJD	Sochi	Cesare Brand
7 June	Passenger Working Group	CER	Brussels	Tetyana Payosova
13 June	RailData Meeting	RailData	Basel	Erik Evtimov, Nina Scherf, Jan Svensson
26–29 June	UIC Technical Meetings	UIC	Paris	Jan Svensson
4-6 July	East-West Tariff Steering Group	UIC	Vilnius	Tetyana Payosova
10 July	UIC General Assembly	UIC	Istanbul	Jean-Luc Dufournaud
10/11 July	WCO Global Transit Conference	WCO	Brussels	Erik Evtimov
10/11 July	UIC Technical Meeting	UIC	Bern	Jan Svensson
20/21 September	UIC IRT Working Group Meeting	UIC	Madrid	Jan Svensson
25 September	CER General Assembly	CER	Gdansk	Cesare Brand
28 September	Commercial and Distribution Steering Committee	UIC	Paris	Cesare Brand
4/5 October	UIC Commercial/Technical Group	UIC	Paris	Jan Svensson
10 October	Passenger Working Group	CER	Brussels	Isabelle Oberson
1-3 November	Group of Experts towards Unified Railway Law	UNECE	Geneva	Cesare Brand, Erik Evtimov
23 November	CER Assistants Meeting	CER	Brussels	Erik Evtimov

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