



CONTENT

General Assembly of the CIT

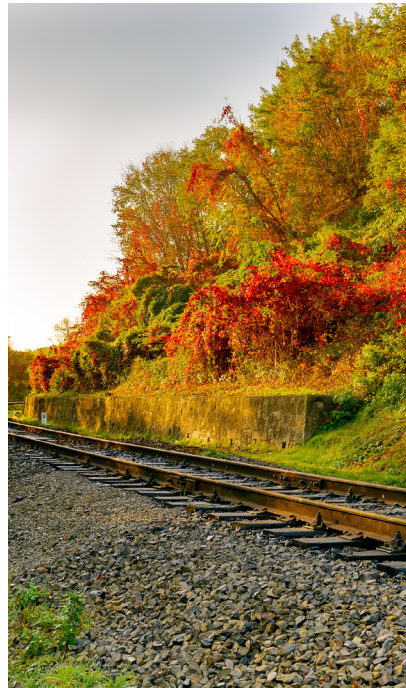
We take pleasure in inviting our members to the General Assembly of the CIT, which will take place on Thursday, 15 November 2018 in Bern at the UPU headquarters (Weltpoststrasse 4, Montgomery Conference Room, on the ground floor). The official part of the meeting will begin at 9 am and will end at 11:30 am at the latest.

During the second part of the meeting, Mr. Jean-Luc Dufournaud, CIT President, will present a review of his time at the CIT.

We look forward to seeing you again.

[laurence.nicolet\(at\)cit-rail.org](mailto:laurence.nicolet(at)cit-rail.org)

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EDITORIAL



Dear Readers,

Politicians want to promote rail as the environmentally friendly mode of transport of the future. That's the theory, but what happens in practice?

Rail freight operators have been complaining for years about the numerous difficulties and obstacles in international transport. These also include legal obstacles – too many non-standardised contracts of use of infrastructure, for example. As part of a revision of the Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI), OTIF would have been able to carry out a number of substantial simplifications, not just one contract of use of infrastructure for journeys from A to B. What have the politicians chosen to do with that? Instead of two contracts, we now have three!

Another example perhaps? International passenger transport services are having trouble acquiring market share. What is needed is an improvement in the general conditions. In a liberalised market, services are only provided when they are worthwhile. So what will happen? The current revision of the Passengers' Rights Regulation (PRR) will lead to a wish list of demands from the EU Parliament, which, on the basis of a cost analysis for the sector, could result in additional costs running into millions!

We see ourselves travelling by plane...

Best wishes from Bern
Cesare Brand
Secretary General of the CIT



Speeding up CIM/SMGS Eurasian freight shipments

The new rail freight services from China to Europe showed an unexpectedly sharp increase in the first half of 2018, and recently to Italy, with a new service organised and operated by the Rail Cargo Group (RCG) in partnership with the China Railway Container Transportation Corp. Ltd (CRCT). As a result of this rapidly increasing volume of traffic, the question of congestion at the Malaszewicze border crossing on the Belarusian-Polish border has been raised and the strain on the current modernisation and expansion of the border terminal.



More than 50 experts took part in the seminar in Warsaw

Sustainable development of CIM/SMGS Eurasian shipments

For years now, there has been an imbalance between shipments to and from China. This situation is widely known and has improved significantly in the course of the last few years due to the commitment and efforts of the European railway undertakings. In connection with this development, DB Cargo announced it had set up a new sales unit operating under the name of DB Cargo Eurasia on 1 July 2018, with offices in Beijing. It will be involved primarily with the expansion of the local customer network and generating freight business on the international rail transport corridors, including shipments from Europe to China. It should also be emphasised that China's National Railway Administration is actively involved in efforts to speed up Eurasian shipments using the common CIM/SMGS consignment note, which is extremely important for the strategic development of the joint CIT/OSJD "CIM/SMGS legal interoperability" project. The representative of the China's National Railway Administration informed those present at the Steering Group meeting in Warsaw at the beginning of September 2018 that the Government of the People's Republic of China attached the greatest importance to the implementation and widespread use of the CIM/SMGS consignment note.

Active involvement of the Chinese Railways in the project

In its letter dated 6 April 2017, the China's National Railway Administration informed the CIT GS and the OSJD Committee 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 both the import of goods from and export of goods to European countries. The People's Republic of China thus became an unconditional member of the SMGS participating states, which, as specified in Appendix 1 of the Consignment Note Manual (GLV-CIM/SMGS and Appendix 6 SMGS), use the CIM/SMGS consignment note. Any other relevant documents for implementing the CIM/SMGS consignment note are in the process of being studied in detail from the variety of different viewpoints. A training programme for Chinese Railways personnel is also being prepared. Transport colleges and universities in the People's Republic of China are also involved in this work. According to information provided by the Chinese Railways on 4 July 2018, the percentage of shipments using the CIM/SMGS consignment note is relatively small compared with the quantity of all freight shipments from China to Europe. At the moment only container trains travelling on the Chongqing – Alashankou – Europe route are being dispatched with this document. In 2017, a total of 3,673 trains were sent from China to Europe. From Chongqing, 406 trains were dispatched to destinations in Europe, including 140 trains (35%) with a copy of the CIM/SMGS consignment note. From Europe to China, the CIM/SMGS consignment note is used for container trains that cross the border at the Zabaikalsk – Manzhouli border crossing. For the period from January 2017 to the end of May 2018, a total of 37,870 consignment notes were issued for the container trains. Of the total number of consignment notes issued, 4,140 were CIM/SMGS consignment notes, which is equivalent to 10.9%. The potential, however, exceeds all expectations and means that new trade routes need to be created with the participation of CIT and OSJD member railways, which is crucial.

CIT/OSJD seminar in Warsaw

To speed up CIM/SMGS Eurasian shipments, a joint CIT/OSJD seminar on the "Legal aspects of the use of the CIM/SMGS consignment note for the carriage of goods in international traffic" was held on 3/4 September 2018 during a meeting of the OSJD Committee. The seminar with a total of 17 presentations and talks focusing on the use, implementation and the further development of the common CIM/SMGS consignment note was extremely well received. More than 50 experts took part in the seminar, with representatives of the Chinese, Iranian and also the Korean railways, which had recently joined the OSJD, also present. Seminar participants commented on ways to improve the volume of traffic as follows:



- a noticeable increase in the volume of international freight shipments using the CIM/SMGS consignment note throughout the Eurasian region in the coming years;
- expansion of the scope of application of the common CIM/SMGS consignment note to include the railways of the Islamic Republic of Afghanistan, the Republic of Uzbekistan, the Republic of Tajikistan, Turkmenistan, the Republic of Turkey, the Republic of Finland and the Republic of Serbia;
- elimination of national administrative and legal obstacles to the further development of international freight transport services using the CIM/SMGS consignment note;
- rapid implementation of the electronic CIM/SMGS consignment note;
- sharing experience in the use of the CIM/SMGS consignment note and support in solving problems that arise in the planning, organisation and performance of the international carriage of goods using the common CIM/SMGS consignment note by means of specialist seminars and professional training for staff.

The CIT will be actively involved in this project work in the future and will provide substantial support for the conclusions drawn from the CIT/OSJD seminar.

[erik.evtimov\(at\)cit-rail.org](mailto:erik.evtimov(at)cit-rail.org)

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Decisions of the OTIF General Assembly 2018

At the 13th General Assembly of OTIF in September of this year, besides agenda-related decisions, a key issue was the appointment decision on the election of a new Secretary General. In addition, a number of important amendments were made to COTIF itself and to its appendices. The most important decisions are presented below ⁽¹⁾.

Election of a new Secretary General of OTIF

The current Secretary General of OTIF, François Davenne, will no longer be exercising his functions as of 1 January 2019 and instead is to succeed Jean-Pierre Loubinoux as UIC Director General.

The OTIF General Assembly nominated Bas Leermakers (Head of the Technical Interoperability Department at OTIF) to succeed François Davenne as Secretary General of OTIF ad interim with effect from 1 January 2019 until the date on which the new, elected Secretary General takes up his/her post. A new Secretary General of OTIF will be elected in an extraordinary meeting of the General Assembly at the end of February 2019.

New Appendix H to COTIF concerning the safe operation of trains in international traffic adopted

The OTIF General Assembly approved the adoption of a new Appendix H to COTIF (hereinafter referred to as the "EST Uniform Rules"⁽²⁾). The purpose of the new Appendix H is to establish a legal basis to support interoperability beyond the EU, so that railway undertakings can operate a train from its point of departure in one state to its destination in another state without technical or operational reasons requiring it to stop at the border. The new EST UR are to be applicable only when the APTU and ATMF technical appendices have been ratified by the OTIF Member State. The new EST UR are also to be compatible with the provisions of EU law on the safety of the rail system. For this reason, EU Member States and states that

(1) A separate article on the CUI revision appears in this issue of the CIT-Info.

(2) In line with customary practice, the French acronym is used for all COTIF appendices, in this case: Règles uniformes concernant l'exploitation en sécurité des trains en trafic international (EST UR).

apply Union Law do not in principle need to take any additional implementation measures. The practical relevance for CIT member railways is therefore of subordinate importance.

The CIT pointed out ahead of the General Assembly meeting that the application of Article 7 § 3 of the EST UR (Safety management and the operation of trains) could be problematic, since this requires infrastructure managers and railway undertakings to cooperate to ensure that trains in international traffic under their responsibility are operated safely. The wording could lead to uncertainty in the sharing of tasks and responsibilities. The Secretary General of OTIF explained that the allocation of tasks between infrastructure managers and railway undertakings will be included in appendices to the EST UR that have yet to be developed. The OTIF Committee of Technical Experts will be the competent organ responsible for the adoption of such appendices.

Amendment of the COTIF revision procedure

Amendments by the OTIF General Assembly are time-consuming and, according to information provided by the General Secretariat of OTIF, currently take between 5 and 7 years. Short-term adjustments to legislation can therefore be ruled out. To speed up the procedure, the OTIF General Assembly deliberated on proposals to modify the Basic Convention. The aim of the amendments is to significantly reduce the period of time between a decision of the OTIF General Assembly being taken and the amendments to COTIF appendices coming into force. The General Assembly has decided to modify Article 34 §§ 3 to 6 of the Basic Convention so as to ensure that any amendments to appendices to COTIF adopted by the General Assembly come into force automatically for all Member States after a set period (36 months) following the announcement of the amendments by the OTIF Secretary General, with the exception of those Member States that did not vote in favour of the amendments at the General Assembly or appealed against the decision at a later date.

In future, therefore – following the coming into force of these adjustments - active approval of half of the Member States to implement decisions taken by the General Assembly on amendments to COTIF appendices will no longer be required.

It goes without saying that the procedures for the entry into force of amendments to the COTIF appendices approved at this 13th General Assembly will take place in accordance with the current, not yet revised process as specified in Article 34 § 3 COTIF and therefore will again require a total of 5 to 7 years to complete.

Setting up of an OTIF working group of legal experts

In addition to the above, the OTIF General Assembly endorsed the initiative on setting up a working group of legal experts. From 2018 to 2021, this working group will deal primarily with the assessment of interfaces between customs and transport regulations in order to ensure efficient international railway traffic, the assessment of the digitalisation of international transport, in particular transport documents, and issues concerning the principle of liability in the case of damage caused by a wagon (Article 7 CUV UR). Furthermore, general discussions on the need for harmonised international railway network access conditions are also to be carried out at OTIF level with the aim of drafting a non-binding legal framework. These discussions are also expected to include deliberations on the draft of a standard contract for international train paths.

Useful links

➔ [Information on the OTIF General Assembly can be downloaded at \[http://otif.org/de/?page_id=106\]\(http://otif.org/de/?page_id=106\)](http://otif.org/de/?page_id=106)

[nina.scherf\(at\)cit-rail.org](mailto:nina.scherf(at)cit-rail.org)

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PASSENGER TRAFFIC

CIT/UIC Conference of Passenger Claims Departments

The revision of the Rail PRR, the handling of claims in connection with strikes and how to cope with unexpected time table changes were some of the highlights of this year's Conference of Passenger Claims Departments. More than 70 participants from CIT and UIC members participated in the conference this year. The conference was opened by Marc Guigon (Director UIC Passenger Department) and chaired by Enrico Trapazzo (Legal and Corporate Affairs Business Partner, FS).

Latest developments on the PRR

Isabelle Saintilan (SNCF) started the conference by providing a state of the art on the revision of the Rail PRR and on the most important themes for the railways in this revision followed by a recap on some of the cases related to the PRR, pending before national courts and national enforcement bodies (NEB).

News in the CIT products

Jan Svensson and Sandra Dobler (CIT) gave an overview over this year's changes in the AIV, several of them being the result of the discussions in last year's conference in Frankfurt, as well as presented the new CIT boilerplate contracts for transfer of personal data in the framework of the Data Protection Regulation (GDPR) which is applicable since 25 May this year.

Customer service in the after sales department at SNCF

Patricia Padey (SNCF) gave a very interesting presentation of the general objectives and internal processes for the complaints handling at SNCF, whereby also highlighting the challenges SNCF was facing earlier this year with regular strikes hitting the French railway network during several months. The presentation was also a good introduction to the main theme of the morning workshop – how to cope with strikes from both a practical and more theoretical point of view.

Morning workshop – strikes

The morning workshop was entirely dedicated to the handling of strikes and as practical examples several cases from different railways concerning the strikes in France were presented and discussed. The workshop started with a summary of



the legal aspects on strikes which are to be found in present international rail transport law followed by information on how SNCF communicated the strikes to other railways (e.g. tables with the strike days; online communication). The cases generated very lively discussions on how best to take care of passengers being stranded somewhere due to cancelled trains, how to rebook such passengers as well as how to refund unused or partially used tickets. One key issue in the handling of strikes is information: how to inform other railways and how to spread this information further to the whole sales organisation and the final customers. A clear wish from the workshop to the General Secretariat of the CIT was that the AIV should include more specific information on how to handle strikes from different points of view.

Mediation, delay compensation for reservations for rail passes, unexpected time table changes.

The afternoon session treated three different themes: mediation, the introduction of a delay compensation scheme for reservations bought in connection with rail passes and how to cope with unexpected time table changes.

Henriette Chaubon (SNCF Médiatrice) started by presenting how the system with Mediation functions in France. The Médiatrice, being a completely independent function from SNCF, has as main task to mediate between the customer and the French rail carriers in the case the customer is not satisfied with the answer he received from the rail carrier in the first place. The second theme was an item discussed already in last year's conference - a possible introduction of a system for delay compensation for reservations bought in connection with rail passes. As a follow-up Martin Kojinkof (Eurail Management) presented how the Eurail Group is working on the practical implementation of such a system. Finally Jan Vávra (CD) presented the challenges the railways are facing when time tables are changed unexpectedly, for example due to engineering work on the tracks and how the Czech railways are handling these cases.

The last two themes were also treated in the final workshop giving both the General Secretariat of the CIT and the Eurail Management valuable feedback in their further work.

The conference was closed by Enrico Trapazzo and Marc Guigon thanking the participants for their active participation and inviting all to next year's conference of passenger claims departments, which will take place on 25 September 2019 in Vienna.

[jan.svensson\(at\)cit-rail.org](mailto:jan.svensson(at)cit-rail.org)
Original: EN



The CIM Working Group of the CIT met for the first time with its new Chair

The CIT working group on freight traffic held a meeting in June 2018 in Bern, which was presided over by its new Chair Cristian Cuenca (DB Cargo AG). The following article is intended to provide you with an overview of some of the key points discussed at the meeting.

The meeting began with a moment of silence in memory of Jean-Marie Sié, the former, long-standing Chair of the CIM Working Group (CIM WG), who passed away recently. Many important topics dealt with by the CIM WG had been initiated and brought to a successful conclusion under his guidance.

Digitalisation

In view of the digitalisation megatrend, the CIM WG was informed on the status of the European Commission's "Digital Transport and Logistics Forum" project. The proposal was analysed in collaboration with CER and this proposal can currently be deemed positive, since the regulation only lays down the conditions under which industry stakeholders (such as railway undertakings) inform public bodies and authorities.

In addition, the CIT GS provided information on the status of the digital publication of freight traffic documents that can come into force on 1 January 2019.

The topic of digitalisation is certain to occupy the CIM WG to an even greater extent in future.

New transport models and their presentation in CIT documents

The international carriage of freight is increasingly being performed on the basis of sub-contracts or a so-called "buy/sell" model. In a variety of different projects, questions are also being discussed at international level on a number of other "models", such as a model in some cases known as "sectional invoicing". Those present at the working group meeting had the opportunity to draft some fundamental statements to be taken into account during any subsequent discussions on transport models and included in the Uniform Rules concerning the Contract of International Carriage of Goods by Rail (CIM).

Since the discussions on different transport models are currently being carried out using a variety of terms without it frequently being clear which term precisely, based on the legal definition, is being referred to, the discussions are to be carried out in future with the aid of sketches and visual presentations of the various transport models. The work on this subject will certainly be a major focus at the next meeting of the CIM WG at the end of November 2018.

In addition to the legal questions relating to the transport models, the CIM WG will also deal with the question as to whether adjustments will need to be made to any new data elements in the CIM consignment note and/or their electronic messages. It was specified at the meeting, however, that a gradual implementation is to be made by the carriers in order to reduce IT expenditure and to keep costs as low as possible for the companies.



Completion of the work: identification of the carriage of waste in the consignment note

The CIM Working Group was informed on the discussions that had taken place on this subject at the CIT conference on the carriage of goods under public law restrictions in May 2018. The question as to how waste can be identified in the consignment note was subsequently clarified at the CIM meeting: those present at the CIM WG meeting favoured a "simple" entry in the consignment note, with the result that it was agreed that the existing Code 16 (in Box 7 of the consignment note: "Other declarations") be used to identify waste.

Other important work

The status of the project "Impact of the new EU customs code on CIT freight documents and the use of codes for the (electronic) CIM consignment note" was also presented at the meeting. With regard to this project, the CIM WG, via its rapporteurs, is also in close contact with the CER Customs Working Group.

In addition to that, the details of the current work carried out by the "Seals" Group of Experts was presented. An important question the group of experts is currently dealing with is how the improper use of seals can be prevented.

At the end of the meeting, those present expressed their thanks to the new Chair, Cristian Cuenca, for his extremely competent running of the meeting and now look forward to further exciting challenges.

[nina.scherf\(at\)cit-rail.org](mailto:nina.scherf(at)cit-rail.org)

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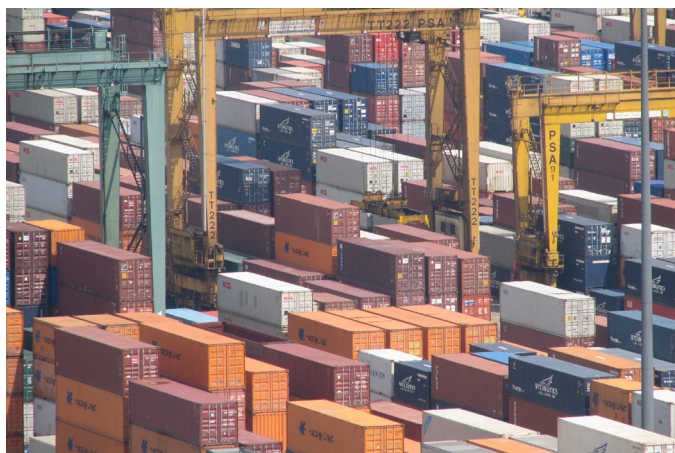
Multimodality at the core of the CIT's work

Multimodality is growing increasingly importance for the work of the CIT, since the benefits of the different modes of transport can definitely 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 has placed greater emphasis on this topic this year and it is being given particular attention ahead of the next meeting of the CIT Multimodality Committee on 16 November 2018 in Bern.

The work of the CIT GS in the area of “multimodality“ is moving forward successfully and, following the completion and publication of two new CIT documents – the **GTC Rail-Sea Traffic** and an accompanying **Rail-Sea Traffic Boilerplate Contract** – work is now concentrating on the finalisation of the CIT/IRU checklist for a combined rail-road transport framework contract and the preparation of CIT guidelines on rail and inland water transport law.

CIT/IRU checklist for a combined rail-road transport boilerplate contract

Since legal solutions at international intergovernmental level are only achievable in the long-term, contractual solutions offer an appropriate basis for the handling of multimodal shipments that can be achieved reasonably quickly. The CMR –



CIM comparative matrix prepared jointly by the CIT and the IRU was used as a working basis relating to rail and road transport law, in addition to IRU/CIT and SMGS documents, which serve as a conceptual basis for proposals regarding the framework contract for the internal road-rail relationship. The checklist that is currently being prepared is very different from the terminal use agreements that are concluded with the terminal operators and refers solely to the internal relationship with transhipments between the road carrier and the rail carrier. Beyond that, efforts will be made to ensure that the checklist is in keeping with EU law within the framework of Directive

2012/34/EU and the Implementing Regulation on access to service facilities in accordance with Article 13(9) of the directive⁽¹⁾.

To ensure that the checklist is applied by all those involved in rail and road transport, the regulations will be examined in detail by CIT and IRU members and recommended by both organisations for the internal relationship between the rail and road carriers (opting-in).

CIT guidelines on rail and inland water transport law now being prepared

On the basis of the current state of knowledge and expertise acquired by the CIT GS through meetings of the Multimodality WG, the CIT GS has prepared a first draft of the guidelines for the next meeting of the Multimodality Committee mid-November based on the CMR-COTIF/CIM-SMGS model of the guidelines with mirror-image comparisons of the relevant law covering the carriage of goods by rail (COTIF/CIM) on the one hand and inland waterway law (CMNI, CLNI II⁽²⁾) and the Athens Convention relating to damage to luggage⁽³⁾ on the other hand. The Athens Convention in this context is interesting, because it considers the carriage of registered luggage as being a carriage of goods and includes appropriate principles relating to liability and the limitation of liability. At the same time, the main focus is the examination and comparison of the regulations of liability for damage in the various legal regimes.

The work on the guidelines may be finalised in 2019 following the decisions taken by the Multimodality Committee in collaboration with the IVR (International Association for the representation of the mutual interests of the inland shipping and the insurance and for keeping the register of inland vessels in Europe)⁽⁴⁾ and presented at a joint CIT/IVR seminar in 2020 expected to take place in Strasbourg at the IVR headquarters.

[erik.evtimov\(at\)cit-rail.org](mailto:erik.evtimov(at)cit-rail.org)
Original: DE

(1) Commission Implementing Regulation (EU) 2017/2177 of 22 on access to service facilities and rail-related services, OJ L 307, p. 1 et seq., <https://publications.europa.eu/en/publication-detail/-/publication/4eacbfd1-d01a-11e7-a7df-01aa75ed71a1/language-en>

(2) Strasbourg Convention on the Limitation of liability in Inland Navigation I of 1988 and II of 2012.

(3) Athens Convention of 1974 relating to the Carriage of Passengers and their Luggage by Sea, together with the London Protocol of 2012.

(4) <https://www.ivr-eu.com/?lang=en>



Revision of the CUI Uniform Rules

The revision of the CUI Uniform Rules, which got underway in 2014, was concluded at the General Assembly of the Intergovernmental Organisation for International Carriage by Rail (OTIF) in September 2018.

Introduction to the background of the revision

The Secretary General of OTIF had set up a working group from 2014 to 2016 to prepare the revision of the CUI Uniform Rules. The background to the work was that the scope of application of the CUI UR had been interpreted differently – on the one hand, indicated by the title of the CUI UR (uniform rules for the Contract of Use of Infrastructure in International Rail Traffic), somewhat narrowly, and related to contracts covering the international use of infrastructure only, and on the other hand somewhat broadly, related in accordance with the current wording of Article 1 § 1 (Scope) to any contract of use of railway infrastructure for the purpose of international carriage within the meaning of the CIV UR⁽¹⁾ and the CIM UR⁽²⁾ and thus including any CIV or CIM shipments carried out using national trains and based on a purely national contract of use of a train path.

The working group of the Secretary General of OTIF finally decided in favour of a more narrow interpretation of the CUI UR. According to the draft texts, the scope of application of the CUI UR (Article 1 § 1) is still linked to the CIV and CIM Uniform Rules, with the inclusion of the term “international railway traffic”, which requires the use of an international train path or several national train paths situated in at least two States and coordinated by the infrastructure managers concerned.

Current status of the revision of the CUI UR – meeting of the OTIF General Assembly at the end of September 2018

During the meeting, the General Assembly approved the draft texts submitted by the OTIF Revision Committee. The CIT had made it clear to the General Assembly beforehand that it regretted the restrictions to the scope of application, as this could lead to a fragmentation of the law. While this view was supported by an abstention from one Member State during the vote on the revision of the uniform rules, ultimately, however, the OTIF General Assembly approved the draft texts submitted by the Revision Committee for the revision of the CUI Uniform Rules in the proposed form.

Outlook

Based on the current status of the entry into force of amendments to appendices to COTIF (Article 34 § 3 of the Basic Convention), the time horizon, according to information provided by the General Secretariat of OTI, stands at between 5 and 7 years. This means it will take some time before the revised CUI Uniform Rules actually come into force.

Nevertheless, members of the CIT ought to begin thinking at an early stage about the impact of the results of the OTIF General Assembly as they affect the revision of the CUI UR in practice and what specific legal consequences will result for the RUs. The CUI Committee of the CIT will begin to hold initial discussions on this topic in the near future.

Useful links

- ➔ [Information on the Working Group CUI UR set up by the Secretary General of OTIF is available for download at http://otif.org/de/?page_id=284](http://otif.org/de/?page_id=284)
- ➔ [Information on the OTIF Revision Committee is available for download at https://otif.org/de/?page_id=108](https://otif.org/de/?page_id=108)
- ➔ [Information on the OTIF General Assembly is available for download at http://otif.org/de/?page_id=106](http://otif.org/de/?page_id=106)

[nina.scherf\(at\)cit-rail.org](mailto:nina.scherf(at)cit-rail.org)
Original: DE

(1) Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV - Appendix A to COTIF)

(2) Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM - Appendix B to COTIF)

The E-GTC-I

The European General Terms and Conditions of use of railway infrastructure (E-GTC-I) were drafted as standardised terms and conditions for the use of infrastructure in 2010 by RailNetEurope (RNE) and the CIT. In 2015, they became the focus of a project at CEO level entitled "Harmonisation of conditions of use in the contracts between IMs and RUs" as part of the "CEO work plan Rail Freight in the 21st Century", which stands under the auspices of the CER and UIC.

As project manager, SBB Cargo was able to convince the Swiss infrastructure managers that they should incorporate the E-GTC-I into their General Terms and Conditions. Key individuals involved in this project were Daniel Lützelschwab (Head of Legal and Compliance SBB Cargo) and Roland Saurer (Technical specialist for track access, SBB Infrastructure). The process that led up to the implementation of the E-GTC-I is described below by Daniel Lützelschwab and Roland Saurer.

Best Practice – The process leading to the implementation of the E-GTC-I on the Swiss rail network (by Daniel Lützelschwab, SBB Cargo and Roland Saurer, SBB Infrastructure).

You are certainly used to using your mobile devices in a flexible manner regardless of where you happen to be. A company is available to you as a partner through which you have access to



Daniel Lützelschwab

all the services you require, regardless of whether you use them across national borders or only locally. In this way you can communicate with partners in foreign countries easily or move around on foreign platforms. It also goes without saying that you can exchange data with third parties without having to consider what contractual basis is currently applicable for the respective infrastructure. The level of comfort associated with all this is something we no longer want to do without or, looked at in another way – without this achievement,

communications today would be far more complex and the exchange of data considerably more expensive.

What is the situation like in this respect in terms of rail logistics? «The living desert», one is inclined to say. In terms of what has been achieved in the digital world in the use of infrastructures, the rail sector still has a long way to go, although similar things are possible even today. From the one-stop shop to the dismantling of interoperability barriers, a lot has been written and discussed, but precious little has been achieved so far. An international train that completes a journey through four different countries, for example, will travel on four to five different infrastructures. For each of them, the RU responsible must arrange for track access individually. In this process, the infrastructure managers (IMs) base their decisions on their own national law and the vast majority of them to date have shown little willingness to adopt international standards. The E-GTC-I is a widely supported standard that was negotiated by RNE and the CIT has been available for some time now. Quite apart from

the fact that, in the case of international transport services, it has not been possible to include the different liability and compensation models in customer contracts, most RUs are overwhelmed by the flood of rules and regulations. Contracts for such services that include general terms and conditions (GTC) are frequently signed blindly, because there is nothing to negotiate anyway due to the principle of non-discrimination. In doing so, the understanding for the contents of these contractual agreements is lost, because these are always to be interpreted in the context of the respective national legislation and jurisdiction. How easy it would be, in contrast, if an RU only had to conclude a contract for the entire route and also only had one contact person to deal with for queries and impaired performance. The commercial boundaries would be agreed between the IMs, without the RUs having to deal with such things themselves. An initial and comparatively simple step into this new world could be made by simplifying the contractual terms of use.



Roland Saurer

In view of this situation, SBB Infrastructure had already announced its willingness to examine an implementation of the E-GTC-I. Together with SBB Cargo AG as the representative of the CEO Task Force from the freight transport sector and with the support of the General Secretariat of the CIT, therefore, a comparison was made between numerous provisions of the E-GTC-I, our own general terms and conditions ("AGB-ISB") and national legislation. It was recognised at an early stage that a direct replacement of our own AGB-ISB with the E-GTC-I, as a result of the references to EU law, was not an option for the IMs in Switzerland. In the initial phase, therefore, an attempt was made primarily to achieve a material implementation of the E-GTC-I. But this approach did not prove successful in the long term either, because it offered neither the required legal security, nor would it have resulted in a genuine standardisation. In the case of a purely material implementation, each revision of the E-GTC-I could be incorporated in the contractual

agreement, so that it would remain valid. In addition to the lack of discipline in terms of subsequent implementation, the motivation to do without individual special rules would probably also have been too much of a challenge. As a result, the solution gradually was developed to formally accept the E-GTC-I and incorporate them in the existing contract.

With this first positive partial result, the initial scepticism that a positive attitude could be achieved yielded to a planned harmonisation. It didn't take long for BLS Netz AG and SOB Infrastruktur to become involved – the realisation that in this scenario, for all intents and purposes, a standard for most of the Swiss standard gauge network had been established was an additional boost. Whereas it had been necessary at the start of the work to defend the wording in the E-GTC-I when compared with the time-honoured wording of our own general terms and conditions, the new awareness led to a change in the approach with the result that it now had to be demonstrated with sound arguments why a deviation from the E-GTC-I was absolutely essential. It is due to this change in attitude towards the E-GTC-I that ultimately only a very small number of provisions had to be adjusted or supplemented. It was thus possible to reduce deviations from and supplements to the E-GTC-I that were necessary to an absolute minimum.

Many of the adjustments had to be made solely due to the references to EU law that are not possible for Switzerland, even though the contextual differences would not have been serious. In any case, there were no genuine material conflicts with any mandatory provisions of Swiss law.

In the course of 2018, all three infrastructure managers involved have incorporated E-GTC-I as an integrated element into their network statements. Experience has shown that the harmonisation that was undertaken has so far not resulted in any impairment to the day-to-day operations or to additional administrative work. This encourages us to continue to pursue the goal of a simpler, leaner and thus more cost-effective administration of international rail services, in order that we, as the «railway» sector do not lose touch with the needs of our customers and compromise our future.

[nina.scherf\(at\)cit-rail.org](mailto:nina.scherf(at)cit-rail.org)

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LAW AND PRACTICE

In this section, we publish 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.

Is the substitute carrier bounded by the transit period agreed between the contractual carrier and the consignor?

The transit period for every contract of carriage of goods by rail for reward between the place of taking over of the goods and the place designated for delivery, provided they are situated in two different COTIF Member States (Article 1 § 1 CIM), will be agreed in accordance with Article 16 § 1 CIM between the consignor and the carrier or, in the absence of an agreement, applied ex lege in accordance with Article 16 §§ 2-4 CIM (see CIT-Info 1/2015, p. 9). Article 3 lit. a) CIM postulates that the term “carrier” is understood to mean both the contractual carrier with whom the consignor has concluded the contract of carriage in accordance with CIM UR and the successive carrier who has become a party to this contract post factum.

The logical question that follows from the scheme of the CIM UR arises in relation to the obligation of the substitute carrier who has not concluded the contract of carriage with the consignor to comply with the maximum transit periods [Article 3 lit. b) in conjunction with Article 27 CIM]. If loss or damage results from the transit time being exceeded, then, in accordance with Article 23 § 1 and in conjunction with Article 33 § 1 CIM, the contractual carrier is required to pay compensation not exceeding four times the carriage charge. In our opinion, it is obvious that, if the substitute carrier complies with the

maximum transit period for that part of the carriage he himself performs, this is contractually outside the scope of the CIM UR and therefore a settlement of the issue is legally necessary. Although this bilateral contract is not organised with the CIM consignment note itself, the contractual carrier would be well advised to acquaint the substitute carrier with the information in Box 7 of the CIM consignment note on the agreed maximum transit time, since otherwise, in his ignorance, it can easily result in him exceeding the transit time for the entire carriage. Ultimately, a timely agreement on the carriage delivery time between the contractual carrier and the substitute carrier as part of the total maximum transit period is in the contractual carrier's own interest, since he is responsible for the entire carriage and for complying with the total maximum transit period – see Article 27 § 1 in fine CIM. This obligation may be included as a legal provision in a bilateral contract between the contractual carrier and the substitute carrier in accordance with the CIM UR or the national law applicable in the place where the contract of carriage is concluded.

[erik.evtimov\(at\)cit-rail.org](mailto:erik.evtimov(at)cit-rail.org)

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Latest news from the CIT Executive Committee



During its second meeting in 2018, which was held on 27 September 2018 in Paris and was chaired by CIT Chairman (Jean-Luc Dufournaud, SNCF), the Executive Committee evaluated the progress of the work currently being carried

out by the CIT to implement the work programme for 2018. The Executive Committee also prepared the business for the General Assembly 2018, in particular the budget and the work programme for 2019, in addition to the upcoming elections for the CIT Executive Committee. The Executive Committee dealt with a clarification of the statutes relating to memberships, which will make it possible to respond more effectively to market developments in the rail sector, primarily in distribution. These discussions are to be continued at the next General Assembly meeting on 15 November 2018. Finally, a number of adjustments were made to staff regulations in order to achieve equivalence with SBB regulations, as specified in an agreement with the social partners. The next meeting will be held on 11 April 2019 in Bern.

[cesare.brand\(at\)cit-rail.org](mailto:cesare.brand(at)cit-rail.org)
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Tailor-made training for SNCF

On 20 September 2018, the CIT organised a seminar for the various legal services of SNCF and its subsidiaries on legal and practical issues associated with international passenger rail traffic. This enabled the CIT General Secretariat to present the various documents produced by the CIT for passenger traffic (general terms and conditions, agreements, manuals, etc.) and to provide an update on the most recent developments concerning passenger rights in the European Union. The CIT General Secretariat thanks the entire SNCF Mobilités team, and, in particular, Anne Guéniot, General Counsel, for the lively and interesting exchanges that followed the presentations !

A new CIT offer for its members

Since 2016, CIT has offered a new service to its members for internal staff training in its fields of expertise: international passenger traffic, international freight traffic and use of infrastructure. These training seminars are flexible and can be adapted to the internal needs of the undertaking concerned. Any CIT member interested in offering training to its staff is invited to contact the CIT General Secretariat.

[isabelle.oberson\(at\)cit-rail.org](mailto:isabelle.oberson(at)cit-rail.org)
Original: FR



A warm welcome from the General Counsel and her colleagues from SNCF Mobilités in Paris

The CIT extends a hearty welcome to the following new members!

Country	Undertaking	Membership
Serbia	Eurorail Logistics Doo	Full member as of 1 January 2019
Slovakia	I.G. Rail s.r.o.	Full member as of 1 September 2018
Serbia	Pannon Rail Doo	Full member as of 1 October 2018

[chantal.schweizer\(at\)cit-rail.org](mailto:chantal.schweizer(at)cit-rail.org)

Original: DE



CALENDAR-CIT

Date	Event	Location	CIT Contact
7 November	„Seals“ Group of Experts	Vienna	Fabienne Vaisson
13/14 November	CIV Working Group	Bern	Sandra Dobler
15 November	General Assembly	Bern	Cesare Brand
16 November	Multimodality Committee	Bern	Erik Evtimov
28/29 November	CIM Working Group	Bern	Erik Evtimov

Agenda with CIT participation

Date	Event	Org.	Location	CIT Contact
22-25 October	Technical Meetings	UIC	Frankfurt	Jan Svensson
23 October	RU Dialogue		Brussels	Isabelle Oberson
26/27 October	Beijing Conference of International Railway Transport law	Beijing Jiaoton University	Beijing	Erik Evtimov
29-31 October	URL Expert Group	UNECE	Geneva	Erik Evtimov / Nina Scherf
1/2 November	Intelligent Transport Conference	Russell Publishing Ltd	London	Jan Svensson
5 November	Legal Group	UIC	Rome	Sandra Dobler
6 November	Passenger Services Group (PSG)	UIC	Rome	Sandra Dobler
8 November	Freight Forum	UIC	Vienna	Erik Evtimov
21 November	Digital Rail Revolution	UIC	Paris	Erik Evtimov
21-23 November	Working Party Rail Transport	UNECE	Genf	Cesare Brand
27 November	Study Group „Wagon Users“	UIC	Paris	Erik Evtimov / Nina Scherf
6 December	European Regional Assembly	UIC	Paris	Cesare Brand
6 December	European Rail Freight Day	RNE	Vienna	Erik Evtimov / Nina Scherf
7 December	General Assembly	UIC	Paris	Cesare Brand
11 December	Digital Workshop	UIC	Vienna	Erik Evtimov
18 December	High Level Meeting	UZ	Kiev	Cesare Brand / Erik Evtimov

Editorial office :
International Rail Transport Committee (CIT)
General Secretariat
Weltpoststrasse 20, CH-3015 Berne

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