

## Editorial

### The moment of (legal) truth



Even before the investigations into the accident in Viareggio have been completed, another accident with serious consequences has occurred. A freight train caught fire in the Simplon Tunnel and caused severe damage to the infrastructure, rolling stock and goods being carried. The whole tunnel was closed for days and there will be restrictions on its use for several months. Under the circumstances however, we were quite lucky, unlike the accident in Viareggio where there were twenty-six deaths and numerous serious injuries, no-one was injured in the Simplon incident.

Once more we can see that even an inherently safe mode of transport like the railway is not spared accidents. In legal terms this means that clear and strict rules for liability must firstly have a preventive purpose in that they enforce the highest possible level of awareness of safety and liability issues and secondly a curative purpose in that they permit rapid and smooth settlement of third-party liability claims.

In the meantime however, the Simplon incident shows how complex the third party liability situation can be. In the centre there is a railway undertaking that is moving freight on behalf of another, it is using infrastructure belonging to a third party, it uses rolling stock it does not control and it has no direct contractual relationship with the consignor (who may have to accept the blame for poor loading).

For in-house railway lawyers, now is the moment of truth. What statutory principles apply? Are the terms of the contracts coordinated with the statutory regulations? Are the relevant provisions free of contradictions and do they allow fair and effective settlement of loss and damage? At this point, we mustn't fail to mention that three states have not yet ratified COTIF and therefore do not apply the CUI Uniform Rules (and that that could be relevant in this case).

It cannot be overemphasised that international traffic by rail requires regulations which are standardised at an international level, even and particularly, in a liberalised market. Hence, it is good news, firstly that with the accession of the European Union to COTIF nothing more stands in the way of the application of the CUI Uniform Rules right across Europe and secondly that the CIT and RNE have made a well-balanced set of contractual terms and conditions available to infrastructure managers and railway undertakings - the *European General Terms and Conditions of use of railway infrastructure (EGTC)*.

Thomas Leimgruber  
Secretary General to the CIT

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Further information is available on page 12 and:  
[http://www.cit-rail.org/fileadmin/public/Seminare/Flyer\\_Workshop\\_Passenger\\_Claims\\_Dept\\_2011-05-25.pdf](http://www.cit-rail.org/fileadmin/public/Seminare/Flyer_Workshop_Passenger_Claims_Dept_2011-05-25.pdf)

## Transport Law and Policy

### An update on the European Commission's White Paper, the CIT's work on CIM/SMGS traffic and multimodality

At the end of March 2011, the European Commission laid down the "Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system" in its white paper<sup>1</sup> It emphasised that, by definition, transport is fundamentally international. Because of this, most of the actions in the road map are closely linked to traffic crossing the frontiers of the Single Market.

A high priority has been given to opening up third country markets and to facilitating the provision of transport services. To achieve these goals the European Commission is striving for a close and focussed working relationship with international organisations such as the WTO, ICAO, IMO, OTIF, OSJD and the UNECE. Making the EU a full member of international organisations is part of this strategy (see also CIT Info 2/2011 pages 2 & 3).

#### Action planned

In addition to joining OTIF in the short-term, the European Commission is pursuing several other initiatives concerning international transport by rail. Amongst the ones that are relevant to the work of the CIT are:

- developing a cooperation framework to extend the transport and infrastructure policy to immediate neighbours, to deliver improved infrastructure connections and closer market integration. This includes the preparation of mobility continuity plans.
- cooperating with Mediterranean partners in the implementation of a Mediterranean Maritime Strategy to enhance maritime safety, security and surveillance.
- taking appropriate steps to remove the exemptions from competition law which liner shipping conferences outside the EU enjoy.
- creating interoperability in transport management systems, and strengthening of security and safety.

#### Core network and multimodality

With this as a background, in the white paper, the European Commission required the creation of "a 'core network' of corridors, carrying large and consolidated volumes of freight and passengers traffic with high efficiency and low emissions, thanks to the extensive use of more efficient modes in multimodal combinations and the wide application of advanced technologies and supply infrastructure for clean fuels"<sup>2</sup>.



*The CIT's new "Multimodality" Group of Experts at its first meeting. This core network must therefore ensure efficient multimodal links between the capitals of EU Member States and other important cities nearby, ports, airports and key land border crossings, and economic centres. "... the development of multimodal terminals at sea and river ports and ensuring that liability regimes promote rail, waterborne and intermodal transport"<sup>3</sup> will be necessary to achieve this objective.*

#### The CIT is on course

CIT work on the project to make the CIM and SMGS legally interoperable, work which has been in hand for some time, is therefore wholly in step with the planned action points in the white paper. The common CIM/SMGS consignment note allows intercontinental carriage of goods without reconsignment using a through transport document from the Chinese frontier right through to Europe. This will allow railways to position themselves for movement of freight between Europe and Asia over distances of over 10 000 km overland.

In addition, to provide for multimodal traffic, a CIT group of experts has been set up, DB Schenker Rail DE, RZD and Scandlines DE are participating. The group met for the first time on 30 March 2011 and began by examining legal issues associated with rail-sea movements. According to RZD, a new shipping line (BFI) will shortly start a rail-sea service between Ust-Luga/Baltiysk and Sassnitz. The common CIM/SMGS consignment note is suitable for this service.

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<sup>3</sup> *ibid* pages 14 and 19.

<sup>1</sup> COM(2011) 144 final.

<sup>2</sup> *ibid* page 13.

## A new start on the path to the International Registry of Security Interests in Railway Rolling Stock



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The purpose of the Luxembourg Protocol<sup>1</sup>, and therefore the principal argument for accession to it, is the promotion of rail transport by facilitating access to finance for acquiring railway rolling stock. This is because (as experience in the aviation world shows) creditors, banks in particular, whose rights over railway rolling stock are secured by means of international registration are more ready to give debtors easier conditions.

After the first attempt to create the registry provided for in the Luxembourg Rail Protocol collapsed because the negotiations with the winner of the first invitation to tender could not be concluded successfully, there is once again hope that we are making rapid progress on the way towards implementation. As UNIDROIT and OTIF announced in April 2011, the Preparatory Commission (PrepCom) set up by the Luxembourg Diplomatic Conference selected SITA NV from the four bidders in the second invitation to tender as the bidder that should be chosen to enter into contractual negotiations for planning, setting up and operating the future international registry. That company seemed particularly suited for the task because it is a leading specialist and worldwide provider of IT solutions for the aviation industry. It can also draw on experience from the registry of security interests in aircraft equipment operated by its subsidiary, Aviareto Ltd.

<sup>1</sup> *Luxembourg Protocol (2007) to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock (2001).*

In the first meeting between the two negotiating teams held in Rome in May 2011, the fundamentals of the contract to be concluded between the supervisory authority and registrar were thoroughly discussed and an action programme for the next steps agreed.

Since it now seems that it is conceivable that the contract can be concluded before the end of the year and the registry can be ready for service during the course of the following year, getting the Luxembourg Protocol to enter into force in good time clearly becomes a more pressing question. For entry into force, the deposit of instruments of ratification by at least four states is required. Since the protocol has so far only been signed by Gabon, Italy, Luxembourg, Switzerland and the European Union and not ratified by any state, appropriate diplomatic, publicity and other means should be put in hand in parallel with the progress of the negotiations with the company to push for the accession of as many states as possible.

In addition, before the Luxembourg Protocol can enter into force, OTIF is required to certify that the international registry is fully functional. For this certification, both the issue of faultless technical performance and also the financial situation (the fee income from registration (dependent on the number of registrations) and as appropriate further income from additional services offered) play an important role. When the Luxembourg Protocol enters into force, the Supervisory Authority will be created. It will replace the Preparatory Commission and OTIF will act as its secretariat.

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## Morocco ratifies COTIF

Morocco deposited its instrument of ratification of the 1999 Protocol to COTIF at the end of April. Morocco's ratification fills a significant gap between COTIF states: between Morocco and Algeria for rail traffic on one side and for rail-sea traffic to Spain on the other.



*Phosphate transport by rail.*

Moroccan Railways, ONCF, are members of the CIT; they operate a rail network of 2109 km. The north-south main line runs from Tangier via Rabat and Casablanca to Marrakesh and therefore links all the major cities on the Atlantic coast. ONCF carry some thirty million passengers annually and that number is increasing. The first part of a high speed network will open in 2015. However, freight traffic is stagnating somewhat, phosphate is the most important traffic.

Ferry services between Tangier and Algeciras are operated by two Spanish companies (Transmediterranea S.A. and Isleña de Navegación) and are subject to the CIV.

Morocco's ratification means that only three states now stand in the way of the unrestricted application of COTIF 1999: Ireland, Italy and Sweden. It is to be hoped that these states will ratify soon so that legal consistency and legal certainty may prevail.

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## The European Union accedes to OTIF

Representatives of the EU and OTIF signed the agreement for the accession of the European Union to the *Convention concerning International Carriage by Rail (COTIF)* in Bern on 23 June 2011. The signing ceremony brought the long negotiations to a successful conclusion. Accession took legal effect on 1 July 2011.

Amongst the more important consequences of the accession of the European Union are that in future where issues impinge on the European Union's transport policy, the EU will speak with a single voice within OTIF (forty-seven Member States) and

furthermore that the Member States of the EU can now withdraw their reservations against the CUI, APTU and ATMF Uniform Rules. This last step would represent a significant advance towards greater legal consistency and legal certainty for traffic by rail.

We will report on this important event in more detail in the next edition of CIT Info (*CIT Info 4/2011 which will appear at the end of August*).

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## Passenger Traffic

### Now making the law of carriage of passengers interoperable as well

In the same way as they worked successfully together on *freight* traffic by rail, the CIT and OSJD now intend to align the differing international legal regimes for the carriage of *passengers*. This work, which will be implemented in stages, also has the support of OTIF.

#### New train services

Two new train services which run right across the areas in which the SMPS and COTIF/CIV apply are providing a practical stimulus for this new CIT/OSJD project to make the CIV and SMPS legally interoperable.

The first of these services links Moscow and Nice. It has been running since September 2010; during the summer it runs once a week and runs via Minsk – Warsaw – Prague – Vienna – Innsbruck – Milan – Genoa - San Remo - Monte Carlo to the Côte d'Azur. According to the operator, RZD (FPK), the load factor is an average of 53%, but over 80% in the luxury class. From Milan westwards where COTIF/CIV and/or Regulation (EC) No 1371/2007 PRR (*Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations*) apply exclusively, the train is 100% full.

The second of these services will run from Moscow to Paris. It will start in September 2011 and will run via Minsk, Warsaw and Berlin to the French capital.

#### Legal work

The project leaders, the CIT and OSJD assume that for passenger traffic, by contrast with freight traffic, a solution associated with the routes from Moscow to Nice and Paris that are actually being used will be needed rather than a comprehensive approach.

As the first step, those provisions of the COTIF/CIV, PRR, SMPS and the revised SMPS which relate to liability will be extracted and compared. The CIV/SMPS Working Group will make relevant comments and envisage various scenarios for the scope of new provisions. Subsequently, mandatory national statutory provisions and liability for delay in accordance with Regulation (EC) No 1371/2007 will be included in the study.

The legal work will take account of the existing East-West Tariff (commercial agreement for passenger traffic) and the on-going work to revise the SMPS. As appropriate, the initial results of the work can also flow back into the revision of the SMPS.

#### CIT/OSJD CIV/SMPS Working Group

To implement the project, a CIT/OSJD CIV/SMPS Working Group has been set up. The first meeting took place in Warsaw on 7 & 8 June 2011 as guests of the Committee of the OSJD. In addition to the project leaders, the CIT and OSJD, representatives of RZD (FPK), SNCF, BC and PKP Intercity together with OTIF took part. DB AG has written to say it will also take part in the project.

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### First phase in the implementation of the TAP-TSI Regulation

The European Commission adopted a regulation on the standards to be used for telematic applications for passenger services on 5 May 2011. This regulation sets standards, known in the railway industry as Technical Specifications for Interoperability (TSI), and covers Telematics Applications for Passenger services (TAP) for the trans-European railway system. The TAP-TSI define how the actors have to deal with journey-related data for passenger traffic by rail. As a regulation, the TAP-TSI are now legally binding. The data exchange requirements cover timetables, tariffs, information and conditions of carriage before and during the journey.

The Directorate General MOVE would like TAP-TSI to be a significant step towards implementing its European transport policy for a Single European Transport Area with competitive and resource-efficient transport systems. Within this framework, the TAP-TSI is closely related to the European Passengers' Rights Regulation (PRR) which strengthens the rights of passengers making journeys by rail and improves the quality of rail services.

In the initial phase (twelve months), the actors must draw up an IT specification which allows harmonised electronic exchange of all relevant data. During the following three years, a service-

able electronic information and reservation system must be developed jointly between the railway undertakings and ticket vendors on the basis of this specification. This TAP system will only support the issue of combined tickets for one journey by

several modes to a limited extent. Every actor must decide on the basis of his own commercial interests and strategies the extent to which he wants to take part in such products.

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## Creation of a group of PRR experts

*Regulation (EC) No 1371/2007 on rail passengers' rights and obligations* (PRR) contains numerous provisions which are subject to interpretation. Since the publication of the PRR in 2007, the CIT, UIC and CER have been working to implement the various elements of the regulation (contract, liability, information, PRM, etc.) within railway undertakings. Having worked on these issues for the last three years, railway undertakings have developed a relatively common view of the requirements of the PRR.

However, the national bodies with the task of enforcing the PRR are starting to express very varied positions, positions which sometimes conflict with the fundamental principles of the regulation. For railway undertakings, it is essential to ensure that the PRR is interpreted and applied over the whole European Union in as standard a way as possible. If that does not happen, railway undertakings risk having to deal with different interpretations, each state having its own. That could create non-physical barriers between the states even in a liberalised market for international transport by rail.

In its meeting on 15 April 2011, the CIT's CIV Committee therefore decided to defend the standardised application of the PRR. The committee created a small group composed of legal, commercial and political experts from the CIT, UIC and CER to promote that objective.

In their first meeting on 19 May, the group of PRR experts prepared a preliminary analysis of the way the national enforcement bodies for the PRR work, their positions on certain articles of the PRR, the work the European Commission does on the PRR and the current national legal precedents on passengers' rights. The group has identified a series of topics of fundamental importance for all undertakings. This series of topics was also to be discussed in the *CER Passenger Working Group* on 7 June.

The CIT and CER will share their views with the national enforcement bodies and the European Commission as soon as possible.

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## The first PRR case comes before the European Court of Justice



On 18 March 2011, the Austrian Rail Control Commission [Schiene-Control Kommission], the body responsible for the enforcement of *Regulation (EC) No 1371/2007 on rail passengers' rights and obligations* (PRR) in Austria asked the European Court of Justice (ECJ)<sup>1</sup>

for a preliminary ruling on two questions. These questions refer to the information within the meaning of Article 8 § 2 PRR to be provided to passengers during their journeys.

The Austrian enforcement body asked the court if, in addition to the "main connecting services" (in accordance with Article 8 § 2 PRR), passengers had to be kept informed of delays to and cancellations of those connecting services. If that is the case, the railway undertaking providing the transport service will have to receive all the relevant information on connecting trains, including information about the trains of competing undertakings. However, only the infrastructure manager has information about all the trains in real time. The ECJ has thus been invited to interpret the PRR in conjunction with Directive 2001/14/EC<sup>2</sup> to answer the following question: is the

infrastructure manager under an obligation to make real-time data on railway undertakings' trains available to all other railway undertakings in a non-discriminatory manner, in so far as those trains constitute main connecting services for passengers on board a train?

This case more concerns the relationship between railway undertakings and infrastructure managers than their relationship with passengers. The results of the proceedings will therefore need to be taken into account in the *European GTC of Use of Railway Infrastructure* (EGTC), which the CIT and RNE can amend in line with any new requirements.

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<sup>1</sup> Case C-136/11, *Westbahn Management GmbH v ÖBB-Infrastruktur AG*.

<sup>2</sup> Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ 2001 L 75, p. 29). This directive is the subject of the recast (COM/2010/475) which is having its first reading in the Parliament.

## Accountancy regulations for the AIV

With effect from 1 January 2012, transport undertakings members of the CIT will be able to allocate compensation paid out to customers for delays amongst themselves. This allocation will be made on the basis of the AIV as revised (for more details see CIT Info 2/2011 page 7) and will follow existing procedures for refunds defined in UIC leaflet 301.

The UIC's RCF1 Group, which met on 24 May last, discussed the arrangements for the accountancy involved in implementing the revised AIV. It approved the introduction of two new codes in leaflet 301; railway undertakings will be required to use these codes in their transactions with each other. The first code will be used to indicate to the undertaking debited that it must bear the whole amount being debited; whilst the second code will be

used to indicate that the undertaking is being debited for the whole amount paid to the passenger but that it must then allocate that amount amongst the participants in the offer in question.

In addition, the RCF1 Group will ask the UIC Passenger Messages Management Group (TAP-MD), which meets at the end of June, to propose technical means for simplifying the inter-railway undertaking accountancy used to allocate compensation for delay to passengers holding tickets with integrated reservations. In the meantime, the accountancy will be done manually.

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## International exchange of tariff data on the agenda

Expanding UIC leaflet 918-1 to cover the exchange of tariff data was on the agenda of the UIC SCIC-NRT Group (formerly the TCV group) which met in Graz in mid-May 2011.

These days carriers can offer through services in several states. That means that tariff break points are no longer necessarily at state frontiers. In addition, each state can apply different rates of value added tax to rail services.

The existing tariff data system takes insufficient account of this situation. It is still organised on a state by state basis (each carrier is allocated to just one state) and cannot handle the differing tariff conditions of several carriers.

The UIC Group also considered the layout of the tickets. Currently carrier codes are printed on the tickets so that passengers know which carrier is responsible for providing carriage. Now passengers must be informed at what point tariff conditions change. Hence the UIC SCIC-NRT Group has given the CIT the task of clarifying if and how this must be shown on tickets.

To save costs, the revision and implementation work for the two UIC leaflets 108-1 and 108-3 (the latter being Technical Document B.3 annexed to the TAP-TSI Regulation) will be coordinated.

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## Freight Traffic

### The 2011 Freight Claims Departments' Conference meets its objectives

*Participants at the recent Freight Claims Departments' Conference (held in Bern on 26 May 2011) had the opportunity to familiarise themselves with the changes which had taken place since the previous year and the CIT had the opportunity to collect ideas for ways of improving the various provisions in CIT freight documentation.*

*The next conference will be held on Thursday, 24 May 2012.*

#### Changes in 2011

Participants at the conference welcomed the action taken as a result of the 2010 conference. The action taken to amend CIT freight documentation with effect from 1 July 2011 will provide significant benefits for the great majority:

- the new claims handling agreement checklist which will allow CIT members to handle loss and damage in transit simply, quickly and economically;
- the development of the AIM, standardising the procedure to be applied between carriers to take recourse in the event of loss or damage attributable to third parties (infrastructure managers, wagon keepers, etc.) as well as new provisions to clarify the concept of "non-participating carrier".

Participants also took note of the new Special Conditions of CIM/SMGS Liability which will be integrated into the CIM/SMGS Consignment Note Manual on 1 July 2012. These provisions will allow the parties to the contract of carriage to agree to a standardised regime to apply in the event of the loss of, or damage to, the goods.



The changes in infrastructure-use law which have already taken place or which are to come (probable application of the revised CUI Uniform Rules in the Member States of the European Union with effect from the end of 2011 and application of the European General Terms and Conditions of Use of Railway Infrastructure (EGTC) (negotiated between the RNE and CIT)) should facilitate the settlement of loss and damage between the carrier and infrastructure manager. There is still a need to examine to what extent a standard procedure for recording loss and damage caused to or by infrastructure could be put into place.

#### New horizon

A representative from IATA presented the conditions and limits of liability under aviation law and the provisions governing the relationships between airlines for allocating the costs of loss and damage in transit. The presentation provided useful comparisons with rail. What's more, the CIT will continue to work with IATA.

#### Improvement of some CIT documentation

The syndicate work in the second module of the conference provided some ideas for improvements in the CIT's freight documentation:

- further enhancement of the provisions concerning the concept of "non-participating carrier" in the AIM;
- enhancement of the provisions concerning seals in the CIT Freight Traffic Manual;
- enhancement of the provisions on recording loss and damage.

These ideas will be put to the CIM Working Group for further examination.

The debate also brought out the importance of including a module dedicated to recording loss and damage in transit and to the handling of claims in the next cycle of CIT training courses. This next cycle is planned to start next year.

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## Making the CIM and SMGS legally interoperable



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The CIM/SMGS Legal Group met in Paris on 26 & 27 April 2011 to continue with the on-going work to implement the Special Conditions of CIM/SMGS Liability (SC CIM/SMGS). A representative from the UNECE took part in the legal group's discussions; this reflects the impetus the UNECE has given to the harmonisation work and the consequent change in its emphasis.

### The Special Conditions of CIM/SMGS Liability

As readers will be aware, the Special Conditions of CIM/SMGS Liability are designed to be incorporated into contracts as the carriers' standard conditions of liability for the loss of, or damage to, goods consigned from a state subject to the CIM to a state subject to the SMGS or vice versa. These special conditions form Appendix 10 to the CIM/SMGS Consignment Note Manual and Appendix 22 to the SMGS.

The work done to date has already allowed extremely useful documents and processes to be implemented (the CIM/SMGS consignment note and the standardised CIM/SMGS claims handling procedure). These welcome initiatives have contributed to a substantial reduction in costs, a reduction in transit times, the simplification in transport processes and an increase in legal certainty. All of these are undoubtedly in the interests of the various stakeholders in international transport.

The objective of these new liability conditions is to provide greater transparency and more clarity for the customer. Provided the parties agree to the Special Conditions of CIM/SMGS Liability being applied, the customer will not be subject to different compensation regimes depending on whether he makes his claim under the CIM or SMGS. The CIM and SMGS conditions will continue to remain applicable to traffic moving within their respective areas. This concern for transparency and effectiveness has been expressed several times by the UNECE Working Party on Rail Transport and must continue to guide the future work of the CIM/SMGS Legal Group.

The text of the Special Conditions of CIM/SMGS Liability has been drawn up in German and Russian. English and French versions will be made available in due course.

The legal group is also committed to draw up a proposal for an (optional) procedure for the parties to the CIM and SMGS contracts to agree to the application of the Special Conditions of CIM/SMGS Liability. This procedure is modelled on that described in point 3.4 of Appendix 1 to the GLV CIM/SMGS. The agreement of the parties will be confirmed by a cross to be inserted in box 37 of the CIM/SMGS consignment note; the text in box 37 has been revised accordingly.

The meeting reviewed the various amendments to be made to the GLV CIM/SMGS and its appendices in the light of the changes that had taken place. All these issues were submitted to the CIM/SMGS Steering Group which met in Baku on 22 June 2011. It is hoped subsequently to bring the special conditions into use on 1 July 2012.

The task of the group is to fulfil the request made on 7 April 2011 in Astana and formalised in an official declaration made by the international organisations and the parties expecting to move these new traffics between Europe and Asia (see the text of the declaration in CIT Info 2/11); a request not only to extend the use of the CIM/SMGS consignment note to further traffics (including intermodal ones) and routes, but also to bring "the work to create the CIM/SMGS Special Conditions of liability (new Appendix 10 to the "CIM/SMGS Consignment Note Manual") to [...] a speedy conclusion".

### The future

Although this work is essential and innovative, it only represents one more stage in the task of standardising the legal framework for international carriage by rail, standardisation which stakeholders in transport by rail and international organisations have called for. In fact, the Astana declaration contains the aspiration that "the CIT and the OSJD evaluate all proposals for further improvements to the legal framework for the use of the CIM/SMGS consignment note".

It was in this context that the first meeting of the "Group of Experts towards Unified Railway Law" was held on 6 May 2011 under the aegis of the UNECE. The group was set up as one of the short-term harmonisation tasks identified in the position paper which was adopted by the Inland Transport Committee in March. Thus, a significant new step is being taken under the auspices of an intergovernmental organisation.

As a reminder, this first phase consists of drawing up standardised general conditions of carriage, thus going well beyond the liability rules contained in the Special Conditions of CIM/SMGS Liability. These general conditions will be designed to provide for a single contract of carriage (the Special Conditions of CIM/SMGS Liability leave the two contracts of carriage in place). Practical implementation of these general conditions will be supported by an intergovernmental declaration, the text of which will be finalised before the autumn.

As the UNECE Secretariat commented, in addition to international organisations, representatives of the EU and of governments, this group of experts is entirely open to any stakeholder in rail transport who feels he must participate in order to ensure that the documents drawn up satisfy his actual requirements. The meeting reached a consensus on the future General Terms and Conditions EurAsia (GTC EurAsia) being applied on a voluntary basis; the participants considered the conditions should not be mandatory, freedom of contract must be preserved at all costs.

Participants were likewise agreed that it was not a question of creating a third legal regime which would be superimposed on the CIM and SMGS conventions, but rather of creating general conditions of carriage based on and conforming to existing statutory provisions (including European law) and then applying those conditions by contract.

The GTC EurAsia will be drawn up over the next few months under the aegis of the CIT and OSJD in the same way as were the Special Conditions of CIM/SMGS Liability. In drafting up this compromise text, the main problem for the draftsmen will be to circumvent the limitations imposed by public policy rules, both for the CIM and the SMGS and European regulations.

This difficult task is nevertheless essential for the future of transport by rail: the increasing demand for international transport between Europe and Asia represents a very significant potential source of business for everyone and so the new impetus given by the UNECE is to be welcomed. In due course this work, with which the various stakeholders providing international carriage by rail are closely involved, will provide a

single legal regime running from the Atlantic to the Pacific. This single regime in turn will contribute to providing reliable and efficient transport in a spirit of transparency and mutual confidence.

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## Closer working relationship with the Coordinating Council on Transsiberian Transportation

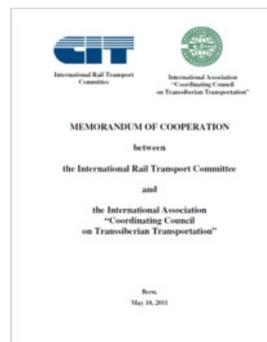
When developing the project to make the CIM and SMGS legally interoperable, the CIT and OSJD have made every effort to have closer working relationships with other specialist organisations. Amongst these is the Coordinating Council on Transsiberian Transportation – CCTT. The CCTT can look back over a history of more than twenty years; it was founded in St Gallen in Switzerland in 1987. Amongst the founder members were Russian Railways (RZD) and Deutsche Bahn (DB AG). Currently the CCTT has 113 members from twenty-three countries including Japan, China and South Korea.

The Trans-Siberian main line which is 9 288 km long and has some eighty stations is the longest through rail route in the world. It runs from Moscow to Vladivostok on the Pacific and was brought into service in 1916. Electrification of the Trans-Siberian was completed in 2002.

According to CCTT figures, 105 737 containers were consigned in the first five months of 2011, an increase of 59% on the first half of 2010. Since the use of the common CIM/SMGS



The Secretaries General of CIT and CCTT sign the "Memorandum of Cooperation".



consignment note was permitted over the whole rail network of the Russian Federation, the CIT has cultivated a close and focussed relationship with the Secretariat of the CCTT in Moscow to facilitate the practical implementation of the common consignment note on the Trans-Siberian main line.

On the initiative of the secretariats of both organisations, the CCTT and CIT discussed and decided on a joint action plan for 2011 and 2012 at a meeting held in the CIT building in Bern on 10 May 2011. Three particular action points may be mentioned in particular:

- the Secretary General to the CIT will deliver the opening speech to the CCTT annual meeting in Odessa on 29 & 30 September 2011. He will present the work the CIT does on international freight traffic by rail with a particular emphasis on traffics between Europe and Asia;
- after this meeting, a CCTT/CIT/OSJD seminar on the use of the common CIM/SMGS consignment note as a multimodal document for rail-sea consignments will be held. It will be chaired by Vladimir Yakunin, CEO of RZD;
- practical work on the implementation of the electronic CIM/SMGS consignment note will begin in August 2011 as part of the CCTT "Electronic Train" project.

The action plan forms part of the "Memorandum of Cooperation" which the Secretaries General of the CCTT and CIT signed.

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

## Work starts on the GTC EurAsia

The work of harmonising the international laws of carriage by rail within the bodies responsible for international law started at the end of 2010. In March 2011, the UNECE Inland Transport Committee approved the position paper on the issue together with the time frame it proposed.

Now a UNECE expert group is drawing up a "political resolution" which will call on the railways to create a unified legal framework for a through contract of carriage for freight by

rail to be applied on a contractual basis. This means, the creation of general terms and conditions for Eurasian freight traffic by rail (GTC EurAsia) is being recommended.

The GTC EurAsia are being drawn up by the CIT and OSJD; OTIF is involved with the work. The first discussions took place at the beginning of June 2011.

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Original: DE

## Use of the Infrastructure

### The European Commission consider the EGTC



The CIT and RNE, together with the CER and EIM, presented the *European General Terms and Conditions of Use of Railway Infrastructure (EGTC)* to the European Commission on 18 May 2011.

Yvonne Dessoy, Chairman of the RNE Legal Matters Working Group, outlined the developments that had led to the EGTC. She went right back to 2005 when discussions with the European Commission led to the conclusion

that, as far as sensible and possible, the use of infrastructure should be standardised on a contractual basis. On that note and for that reason, the infrastructure managers' association (RNE) and carriers' association (CIT) drew up general terms and conditions of use.

After long and difficult negotiations, they were thus able to present the results of their work. Chapters IV and VI are the core of the agreement; these chapters cover liability for delay and disruption to operations and liability for accidents. Isabelle

Oberson, Senior Legal Advisor at the CIT, explained the solutions which had been found in detail. As readers will be aware, right through to the end the issue of liability was the most difficult issue; it required both parties to be prepared to compromise on important points.

The European Commission took note of the presentation on the EGTC and will make written comments. At the meeting itself, the application of the EGTC and whether they are mandatory was a key issue. Thomas Leimgruber, Secretary General to the CIT made it clear that the EGTC form the terms and conditions of a contract. They apply in so far as they are incorporated in individual and specific contracts for use. The carrier, as the weaker party, is therefore reliant on the individual infrastructure managers recognising and applying the EGTC as best practice and a minimum standard. The CIT will set up an appropriate monitoring mechanism.

Outside the meeting itself, there were indications that withdrawal of the EU Member States' reservations against the CUI could be expected in the short term. For the CIT, of course, this was very welcome news!

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Original: DE

## Law in practice

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

### Delays in the delivery of registered luggage

*Returning from their skiing holiday in Austria, two passengers entrusted their skis to ÖBB to send to Switzerland. To begin with the skis were lost in Austria; after forty days they were found and sent on to their destination. During this period, the passengers hired new skis at a cost of around €1 000. To what compensation are the passengers entitled?*

In accordance with Article 40 CIV, if registered luggage is not delivered within the fourteen days which follow the expected date of delivery, it may be considered to be lost. In that case the passenger will receive compensation equal to the value of the loss proven up to a maximum of 1 200 special drawing rights (SDR), equivalent to €1 344<sup>1</sup>, or if the value of the loss is not proven, compensation of SDR 300 (€336) per missing item.

If the luggage is recovered within a year, the carrier must notify the passenger and offer to deliver his luggage. In accordance with Article 43 CIV, the passenger has thirty days in which to

accept delivery and return the compensation received for the loss. Nevertheless, the passenger is entitled to compensation for delayed delivery. This amounts to SDR 14 per day for up to a maximum of fourteen days, this thus is a maximum of SDR 196 (€220) per item.

In the case in point, the passengers are entitled to €440 for the two pairs of skis delivered late. On the other hand however, they are not entitled to compensation for the hire charges for new skis during the forty days of delay. The CIV Uniform Rules in fact cover liability for registered luggage exhaustively.

They do not leave any scope for the application of national law in contrast to the provisions for liability for personal injury or liability for delay. For the latter two, Articles 29 and 32 § 3 CIV refer specifically to national law for loss and damage not covered by the CIV Uniform Rules.

Isabelle.Oberson(at)cit-rail.org  
Original :FR

<sup>1</sup> DTS 1 = € 1.12 (rate on 30 May 2011 according to [www.imf.org](http://www.imf.org)).

## Damage through wettage

*To what extent is the carrier liable for wettage damage to goods transported in a closed wagon?*

Two cases need to be distinguished when goods being carried in a closed wagon are damaged by wettage:

- a) The person entitled under the contract of carriage (consignee or consignor) is not the keeper of the wagon in question

In accordance with Article 23 § 1 CIM, the carrier is liable to the person entitled for the damage. Only where there is an obvious fault in the wagon can there be any question of sharing the liability between the carrier and the person entitled on the basis of Article 23 § 2 CIM<sup>1</sup>.

It is possible the carrier may have recourse against the wagon keeper on the basis of the contract of use, but that doesn't concern the person entitled under the contract of carriage

- b) The person entitled under the contract of carriage (consignee or consignor) is also the wagon keeper

In accordance with Article 23 § 1 CIM, the carrier is relieved of liability (fault of the person entitled – inadequate maintenance of his wagon).

Henri.Trolliet(at)cit-rail.org  
Original: DE

<sup>1</sup> Also see the commentary by Allégret, excerpt from *Juris-Classeur Commercial*, volume 685, Note 57

## Showing details of the carrier on the consignment note

*Again and again, the CIT General Secretariat is asked which carrier is to be shown on the consignment note and where. There is particular interest in when and how carriers who act on behalf of other carriers are to be shown.*

The answer is relatively simple if we keep the various categories of carrier in mind:

- Firstly, there is the contractual carrier (Article 3 a) CIM) with whom the customer concludes the contract of carriage. The contractual carrier doesn't necessarily have to be the first carrier in the chain of carriers however. Indeed, it is even possible that the contractual carrier takes no part in the carriage at all but assigns his responsibilities to other carriers.
- Secondly, there is the successive carrier (Article 3 a) CIM) who actually performs part of the carriage as a member of the chain of carriers. Together with the contractual carrier he is party to the contract of carriage with the customer and is liable to the customer for the performance of the whole contract of carriage. In legal terms, the first carrier in a chain of carriers is also a successive carrier.
- Thirdly, there is the substitute carrier (Article 3 b) CIM) to whom the contractual and/or successive carrier have entrusted the carriage in whole or in part. The substitute carrier is not a party to the contract of carriage with the customer and hence is not liable for the whole carriage

but only for his own performance. Unfortunately, the term in German "ausführender Beförderer" [implementing carrier] is unfortunate, indeed misleading, the French and the English terms "transporteur substitué" and "substitute carrier" provide a better description.

- Lastly, there is the auxiliary (Article 40 CIM) to whom the contractual and/or successive carrier or substitute carrier entrust performance of the carriage without that being obvious. In these cases, there is no (contractual) liability to the customer, only the carrier who commissioned the auxiliary is liable in contract and in fact exclusively liable.

Logical differentiation between the boxes on the consignment note follows from this summary of the types of carrier:

The contractual carrier is always shown in box 58 of the CIM consignment note no matter whether he is also a (successive) carrier and what role he plays in the chain of carriers.

All the successive carriers are shown in box 57 of the CIM consignment note (with the exception of the carrier who is the contractual carrier) together with all the substitute carriers.

Carriers who are auxiliaries are not shown in any of the boxes of the CIM consignment note.

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Original: DE

## CIT Itself

### Redesign of the CIT website

The CIT website, [www.cit-rail.org](http://www.cit-rail.org), is the source of information for a number of quite different purposes. Many users are not at all familiar with the structure of the CIT and visit the site rarely or just once. The main reason for restructuring the CIT website was therefore to provide a clear structure and intuitive user-friendly navigation through those rail themes and activities with which the CIT is involved. A visually attractive functional website will allow its users ready access to the information or CIT documentation they are looking for, no matter what their access rights.

The redesign means that the numerous documents which apply to international cooperation between railway undertakings will be better presented and therefore more easily found. All the documents will be identified by their complete title, brief details of their content and the date of publication. To allow regular users of the website to navigate by head topic there will be a second option to navigate using a service menu; this will allow direct access to the normal headings and CIT documents.

## Withdrawal of the database

When the present website is taken down in the middle of the year, the existing member database (BD-CIT) will be withdrawn. The CIV and CIM Committees decided in spring 2011 to disperse with the database in the short term. Accordingly, CIT members will no longer be responsible for direct maintenance of the addresses of their various departments nor for notifying traffic restrictions or the disappearance of pre-printed ticket stock on the CIT website. Instead, this data will be maintained

by the CIT General Secretariat. **CIT members are therefore asked to notify changes of address for their various departments in good time.**

Appropriate regulations have been included in the CIT Passenger Traffic Manual (GTV-CIT) and CIT Freight Traffic Manual (GTM-CIT) for notifying restrictions.

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Original: DE

## New joint service provides benefits all-round

ATTICA GROUP (an active member of the CIT) and ANEK LINES have announced that they have signed a joint service agreement. The agreement provides for the use of ships from both companies to provide a joint service on the international route from **Patras** and **Igoumenitsa** to **Ancona** and on the domestic route between **Piraeus** and **Heraklion**.

This three year agreement took effect on 1 June 2011. Its objective is to improve the service offered on the Piraeus-Heraklion route even further by the use of the new and modern "OLYMPIC CHAMPION" ferry; on the Patras, Igoumenitsa and Ancona route capacity will be optimised to reflect the current demand on the route whilst maintaining the high quality of service offered today.



ANEK LINES is a Greek shipping company and one of the three biggest shipping companies operating routes in the Adriatic and Aegean.

ATTICA GROUP and ANEK LINES will also provide for passengers making rail-sea journeys on the international route from Patras and Igoumenitsa to Ancona (and vice versa) and the domestic route from Piraeus to Heraklion (and vice versa) using the European railways international legal and tariff regime (subject of course to appropriate limitations under maritime law).

Rail-sea passengers arriving in (or departing from) Patras port by ANEK or SUPERFAST (Attica) ships will make their journeys in Greece by TRAINOSE buses or trains between Patras and Kiato, and between Kiato and Athens or Piraeus Port by PROASTIAKOS train.

The deployment of new ships by ANEK as well as the addition of ANEK's European sales network will contribute to the development of the rail-sea passenger traffic in the Adriatic and Aegean. The new joint service will also help to increase revenue for all the parties.

Original: EN

## New member: DB Schenker Rail Bulgaria EOOD

**DB Schenker Rail Bulgaria EOOD** was founded in 2002 as a subsidiary of DB Schenker Rail Romania (formerly Logistic Services Danubius SRL), has its headquarters in Pirdop (90 km East of Sofia). It currently employs 150 staff and has its own electric and diesel shunting and mainline locomotives. After having received a safety certificate for the Bulgarian network, the railway undertaking is now in a position to build up its offer for through traffic in south-eastern Europe and to provide customers with comprehensive transport services tailored to their requirements.

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





## Conference of Passenger Claims Departments

Bern, 29 September 2011

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

Click here for further details:

[http://www.cit-rail.org/fileadmin/public/Seminare/Flyer\\_Workshop\\_Passenger\\_Claims\\_Dept\\_2011-05-25.pdf](http://www.cit-rail.org/fileadmin/public/Seminare/Flyer_Workshop_Passenger_Claims_Dept_2011-05-25.pdf)

### CIT Diary of Events

Date	Event	Location
7/8 September	CIV Working Group	Bern
20 September	Experts Group "Multimodality"	Bern
22 September	Experts Group "Aftersales Agreement"	Bern
27 September	Executive Committee 2/2011	Bern
29 September	Conference of Passenger Claims Departments	Bern

### Events with CIT participation

Date	Event	Location	CIT contact
5/7 July	UIC Steering Group East-West-Tariff (EWT)	Wroclaw	Isabelle Oberson
19 July	EPR Legal Group	Paris	Isabelle Oberson
23/24 August	COLPOFER "Fraud – Ticket Forgery" Working Group	Prague	Thomas Gyger
24 August	CCTT Meeting on the project "Electronic Train"	Moscow	Erik Evtimov
25/26 August	RZD Meeting on Common CIM/SMGS Consignment Note	Moscow	Erik Evtimov
6-9 September	XXXIX Meeting OSJD Ministerial Conference	Beijing	Thomas Leimgruber
6 September	UIC Steering Committee and Project Managers Meetings of e-RailFreight	Paris	Henri Trolliet
12 September	CER General Assembly	Bonn	Thomas Leimgruber
13 September	UIC Freight Steering Committee	Paris	Henri Trolliet
14 September	Studiengesellschaft für den kombinierten Verkehr	Berlin	Erik Evtimov
14/15 September	OTIF Committee of Technical Experts	Bern	Erik Evtimov
16 September	UNECE Expert Group towards Unified Railway Law	Geneva	Erik Evtimov
28/29 September	20 <sup>th</sup> Plenary Meeting of the CCTT 2011	Odessa	Thomas Leimgruber
29 September	CCTT/CIT/OSJD Seminar on practical implementation of the Common CIM/SMGS Consignment Note	Odessa	Thomas Leimgruber

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