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E-GTC-I: In force since 1 September 2014

Since 1 September 2014, the GTC for contracts of use of the railway infrastructure have been updated and are also available now as official versions in German and French.

The CIT General Secretariat actively supports its members in the introduction of the E-GTC-I and provides recommendations for the way the E-GTC-I are introduced and used. In addition, the CIT General Secretariat in 2015 will continue, together with its negotiating partners RailNetEurope, CER and EIM, to provide information on the existence and benefits of the E-GTC-I in order to promote their widespread use.

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EDITORIAL



Dear Readers,

When evaluating the CIT's performance, the most important aspect perhaps is to look at the concrete, practical results we have actually achieved in the course of the year. What projects have we completed that will be of benefit to our members? In terms of freight traffic, I would like to highlight the GTC EurAsia and the GTC Rail-Sea Traffic. Both documents will make a substantial contribution to simplifying international freight transport services. An updated version of the E-GTC-I was negotiated with RNE and made available to members in three languages. Guidelines on the COTIF/CIV – PRR - SMPS liability regimes and an interactive map to be used for the various legal systems governing international East-West passenger traffic have been available to members on the CIT website since 1 December 2014. We have also updated a variety of documents relating to passenger traffic to bring them in line with the current circumstances.

I would like to take this opportunity, if I may, to thank all representatives of the member railways most sincerely for their active participation in the work of the CIT throughout the year. Only with your support and your commitment is it ultimately possible for the CIT to deliver tangible results!

Season's greetings from Bern!
Cesare Brand
Secretary General of the CIT



FIATA World Congress 2014 in Istanbul

More than 1,000 representatives from more than 120 countries participated at this exceptional global event last October in Istanbul, "... a number we had not been able to register since before the 2009 recession, testifying how our industry – as well as FIATA – is lively, growing and attracting more and more interest ...", stated the FIATA President Mr Francesco Parisi in the FIATA Review.



The success of this FIATA main event is certainly also due to the interest in the location itself – Istanbul at the crossroads of three Regions – Europe, Asia and Middle East – and to the tremendous job done by the local organiser UTIKAD under the strong leadership of its President Mr. Turgut Erkeskin, Vice President of FIATA.

Over the recent years, global rail traffic especially between China and Europe has become more and more popular. Urumqi has been developed as the Chinese platform for this rail traffic. A maximum of 0.5 % of the Chinese exports to Europe is actually transported on this route by rail – capacity strengthened, transport prices, different customs policy etc. (see further on CIT-Info 5/2014, pp. 7 et seq.). Slow-steaming, easing of customs barriers in Eastern Europe, and the shift of Chinese production centres inland have all increased the attractiveness of rail solutions from China into Eastern Europe via Russia or the ancient Silk Road through Kazakhstan. Some global players have begun to offer container services from China to Europe on this land route (DHL, K&N, DB Schenker etc.), promising transits of less than 10 days in some cases. The transit time is about 3 weeks, versus maritime transport with a transit time of 5 weeks, but the container rates are higher (Chengdu-Lodz and Zhengzhou-Hamburg service set to be 50% faster than ocean and 70% cheaper than air).

On behalf of the Chairman of the Multimodal Transport Institute, Mr Robert Keen (United Kingdom), the CIT was invited to present the work on the international freight agenda especially in view of Eurasian rail freight carriage. Dr Erik Evtimov, Deputy Secretary General of CIT, referred in his presentation to the legal duality for East-West rail transport, where in Western countries the CIM (Uniform Rules concerning the Contract of International Carriage of Goods by Rail – Appendix B to COTIF) are applicable and in Eastern countries – SMGS (Agreement on International Goods Transport by Rail). Legal interoperability is the aim of the CIT. The CIT and the OSJD started a project on legal interoperability of both liability regimes (CIM/SMGS). They started with the common CIM/SMGS consignment note, followed by the standardisation of the claims handling mechanism and finally with the negotiation of a unified rail transport law.

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Original: EN

Useful link

➔ [FIATA Review](#)



PASSENGER TRAFFIC

More legal security for the CIT Members – top priority for the CIV Working Group

At its last meeting on 12-13 November 2014, the experts of the CIV Working Group discussed several current CIT projects in passenger traffic that will result in a number of new or substantially updated products in 2015, namely, the new CIT document(s) on the carriage of dangerous goods by passengers as hand-luggage, registered luggage or in or on board vehicles on trains, the new CIT Guide for Cooperation Agreements and the new “Manual for international ticketing – The CIV ticketing standard” which are to be submitted for approval to the CIV Committee in June 2015. These new products will bring about more legal security and predictability for CIT Members.

New CIT Document on Carriage of Dangerous Goods by Passengers

Among the COTIF Appendices, RID⁽¹⁾ Chapter 7.7 refers to the carriage of dangerous goods as hand luggage, registered luggage or in or on board vehicles (car on train) by passengers. This chapter was drawn up in 2010 with the objective of making the rules applicable to passenger traffic more transparent. At its meeting on 20 May 2014, OTIF's RID Committee of Experts decided to delete Chapter 7.7 RID, as the current formulation did not achieve that objective. A preferred solution was to return to the general principles adopted in the RID. In consequence of that revision (which will enter into force on 1 January 2015), the essential point for passengers will become point 1.1.3.8 RID. This point simply contains a set of references to other points, which makes the RID much less accessible to non-experts. Therefore, railway undertakings are free to supplement or specify the general rules by rules that passengers can understand. Currently, point 6.2 of the GCC-CIV/PRR contains a reference to Chapter 7.7 RID. Following the decision of the RID Committee of Experts the CIV Committee approved at its last meeting in June 2014 the replacement of this reference in point 6.2 of the GCC-CIV/PRR with a reference to point 1.1.3.8 RID. This amendment will come into force on 1 January 2015.

As the wording of point 1.1.3.8 RID is too technical for passengers, OTIF proposed that the CIT considers drawing up a document to cover the relevant rules in the RID, but in simpler language, possibly drawing on the example of the airline industry. The CIV Committee mandated the CIV Work-



CIV Working Group : towards more legal security for CIT members.

ing Group to choose the required type and form of such a document. At its last meeting the CIV Working Group wished to have both an explanatory document, e.g. a new annex to the GCC-CIV/PRR (possibly based on the old appendix to the GCC-CIV/PRR on the carriage of dangerous goods by passengers on trains valid until 1 January 2012) and visual information for passengers (e.g. a leaflet with visual information similar to the air sector). The first draft of these tools will be discussed with the OTIF experts on dangerous goods and presented at the next meeting of the CIV Working Group in February 2015.

Revision of the standards for cooperation between railway undertakings

In 2010, the CIT launched an expert analysis of the question of which documents would be required for the cooperation agreement between railway undertakings and handover at border crossings. With the support of a small group of experts, the General Secretariat of the CIT came to the conclusion that a simplified structure and general terms and conditions focusing primarily on liability issues would be necessary for the cooperation agreement. A coherent approach is necessary to overcome complex legal challenges due to different applicable regulations and a variety of contractual relationships. Together with the CIV Working Group, the CIT is preparing a new manual for international cooperation, which will explain the legal challenges faced in the course of such cooperation. It will include a specimen contract, in addition to general terms and conditions for two cooperation models (carriage performed by successive carriers and carriage performed by a performing carrier). Thus, the new manual will simplify negotiations between CIT members who wish to conclude such cooperation agreements.

At its last meeting the CIV Working Group addressed the remaining open issues in the model of substitute carriage, including the sharing of liability between principal and substitute carriers for delays towards passengers and the relationship with a wagon keeper. The Manual deals with technical cooperation in the meaning of Article 2 of Council Regulation (EC) No. 169/2009 and therefore does not raise concerns from the perspective of competition law. The new Manual for cooperation agreements will be submitted for approval to the CIV Committee in June 2015.

(1) Regulation concerning the International Carriage of Dangerous Goods by Rail - Appendix C to COTIF and its annex. The annex to the RID also applies to domestic traffic within the EU under Directive 2008/68/EC

The new “Manual for international ticketing - The CIV ticketing standard”

The CIT GS in cooperation with the CIV Working Group is heavily engaged in drafting the new “Manual for international ticketing - The CIV ticketing standard”: the two existing CIT manuals covering international tickets, the GTV-CIV and the GTT-CIV, will be combined into one single manual. The main goal is to simplify and better explain all relevant processes in international ticketing, both for paper tickets and the different kinds of e-ticket solutions that are emerging. One of the most important issues is to find pertinent definitions for the different actors in the ticketing and sales processes that will cover legal, commercial and technical aspects. At its last meeting, the CIV Working Group analysed

and commented on the latest draft circulated by the CIT GS. The final draft of the new “Manual for international ticketing - The CIV ticketing standard” will be approved by the CIV Committee in June 2015 and will enter into force on 1 January 2016.

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Original: EN

Useful link

➔ [Council Regulation \(EC\) No. 169/2009](#)

CIV/SMPS Working Group: introduction of second phase of the project

At the ninth meeting of the CIV/SMPS Working Group on 21 October 2014 in Bern, the second phase of the project to “make the CIV and SMPS legally interoperable” for international passenger services was introduced, based on the guidelines on the COTIF/CIV-PRR – SMPS liability regimes.

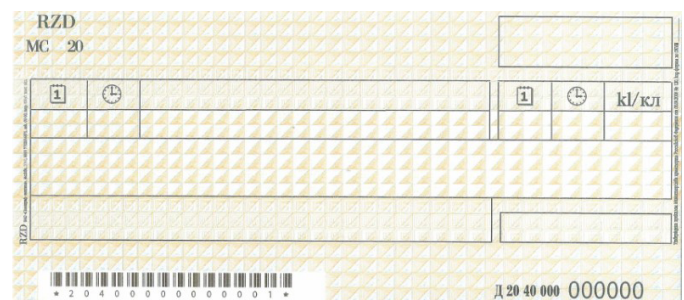
Guidelines on the COTIF/CIV-PRR – SMPS liability regimes and the interactive map for the applicable legal regimes

The printed version of the guidelines on the COTIF/CIV-PRR – SMPS liability regimes was published by the CIT, OTIF and DG MOVE in German, English and French and has also been available to CIT members in electronic form on the CIT website since 1 December 2014. In collaboration with the OSJD Committee, the guidelines will also be published in Russian and Chinese.

The first version of the interactive map showing the applicable legal regimes and the current transport routes was also presented at the meeting. The GS CIT has developed the content of the pop-up windows for the individual countries and routes, including relevant information. This interactive map has also been available online on the CIT website since 1 December 2014. CIT members, in addition to OTIF, OSJD and DG MOVE, have the possibility of providing a link to this map from their own websites with more interactive design



The CIV/SMPS Working Group turns on the speed to finalise the guidelines on COTIF/CIM-PRR – SMPS liability regimes



The design of the new RZD ticket

features. The GS CIT will update the interactive map twice a year. Further development of the map is also possible by entering additional information. The CIT Executive Committee has also approved an interactive map for CIM/SMGS international rail freight services.

Second phase of the project to “make the CIV and SMPS legally interoperable”

The CIV/SMPS Working Group has also decided to launch Phase 2 of the project to “make the CIV and SMPS legally interoperable”. The following matters, among others, will be key topics for the first meeting in 2015:

- ➔ Implementation of findings obtained from the guideline on the COTIF/CIV-PRR – SMPS liability regimes in the further development of CIT passenger traffic documentation;
- ➔ Information leaflet for travellers on international East-West passenger services – the GS CIT will prepare an example for the next meeting that includes the most important information for East-West passenger services;
- ➔ Charter on international East-West passenger services; this could be further developed from a commercial point of view together with the UIC's East-West tariff.

The key focus of the second phase of the project will be on issues relating to ticketing. The GS CIT gave a presentation at the meeting on the progress made in the development of CIT ticketing documents. The final version of the “Manual for international ticketing - The CIV ticketing standard” will

be made available to the FPC Working Group to enable them to familiarise themselves with its contents and address any questions that may arise to the GS CIT before the manual comes into force. In response to an enquiry made at the last meeting regarding specimen FPC tickets, the FPC provided the GS CIT with specimens of tickets and supplied additional relevant information prior to the meeting.

For the next meeting, the GS CIT will prepare a comparative analysis of the two specimens / security backgrounds for the CIT tickets and also for the FPC tickets.

2015 Work Programme

The next meeting of the CIV/SMPS WG will be held on 15 April 2015 at the CIT premises in Bern.

As part of the second phase of the project, a seminar on international East-West passenger services has also been planned for 29 October 2015 and is expected to be held at the SNCF railway station in Monte Carlo.

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Original: DE

Useful links

→ [Interactive map](#)

→ [Leaflet on COTIF/CIV-PRR – SMPS liability regimes part 1](#)

FREIGHT TRAFFIC

Article 36 § 3 a) CIV does not include the “Open wagon risk” judgment of the Federal Court of Justice of 12 December 2013

On cross-border motorail services, the railway undertaking is liable for loss or damage to the car. The burden of proof does not rest with the vehicle owner, as the Federal Court of Justice (FCJ) in Karlsruhe determined in its judgment of 12 December 2014 (Case No.: I ZR 65/13). Moreover, the exclusion of liability as stated in Article 36 § 3 a) CIV (absence or inadequacy of packing) does not include the special risks associated with carriage in open wagons. Accordingly, the railway undertaking performing the carriage cannot argue in this case that the vehicle being transported was not packed.

I. Introduction

According to Article 36 § 1 CIV⁽¹⁾, the carrier, regardless of whether he is to blame or not, is liable for any loss or damage to registered luggage between the time of taking over by the carrier and the time of delivery. In the event that compensation is claimed for damage to a vehicle being transported, in accordance with Article 47 CIV, the provisions on the liability for luggage shall apply (Article 36 to Article 43 CIV). In accordance with Article 36 § 3 a) CIV⁽²⁾, the carrier can be relieved of this strict liability to the extent that the damage was caused by the absence or inadequacy of packing. The FCJ also had to deal with the interpretation of these grounds for exemption from liability in an appeal proceeding in its judgment of 12 December 2013.

(1) Article 36 § 1 CIV states: “The carrier shall be liable for loss or damage resulting from the total or partial loss of, or damage to, registered luggage between the time of taking over by the carrier and the time of delivery as well as from delay in delivery.”

(2) Article 36 § 3 a) CIV states: “The carrier shall be relieved of this liability to the extent that the loss or damage arises from the special risks inherent in one or more of the following circumstances:
a) the absence or inadequacy of packing; (...).”



A motorail train with open wagons

II. The facts of the case

In the case at hand, the applicant booked the services of the defendant, a railway undertaking, for the shipment of his car by motorail from Narbonne in the South of France to Kornwestheim near Stuttgart. The car was loaded onto an open wagon (transporter) for the shipment. When the owner collected his vehicle at the destination, there was a hole in the windscreen; it had a damaged rear light and numerous scratches. It was not possible to determine how the damage

had occurred. The applicant subsequently claimed payment of compensation from the defendant.

The defendant railway undertaking referred to the exemption from liability in Article 36 § 3 a) CIV, on the grounds that the alleged damage had resulted from the special risks associated with carriage on open wagons, which involve inherent risks and that it could not be held responsible for the consequences.

III. Legal question

The question as to whether Article 36 § 3 a) CIV relieves the defendant of his liability in this specific case made its way through three courts. After the claim had been largely successful at the first instance court, the defendant was successful before the court of appeal (Regional Court Dortmund). The district court assumed that the wording of Article 36 § 3 a) CIV also included the case of an “open wagon risk”. It argued in its judgment that vehicles transported on a motorail train, provided they are not new vehicles, would normally not have any packing and in the normal case would not necessarily require any, because the risk potential during shipment on a motorail train was not greater than when using the vehicle in normal road traffic. The FCJ did not follow this line of reasoning in its subsequent appeal decision and rejected an exemption of liability for the benefit of the defendant railway undertaking. The court of appeal argued that the previous instance court had assessed Article 36 § 3 a) CIV incorrectly. To interpret the article, it would have been necessary to take other international transport conventions into consideration, such as the CIM Uniform Rules or the Convention on the Contract for the International Carriage of Goods by Road (CMR). In contrast to the CIV Uniform Rules, the grounds for exemption from liability arising from Article 23 § 3 CIM⁽³⁾, which benefit the carrier, make a clear

distinction between the special risks associated with the carriage of goods in open wagons and the absence of packing. The CMR also distinguishes between the two grounds for exemption from liability. Conversely, such a distinction is precisely what is not intended with the grounds for exemption from liability in the CIV, the court said. The provisions of Article 36 § 3 a) CIV, therefore, only apply in the event that packing that was to be used for the goods was either completely absent or was in place, but damaged. The fact that the goods are usually not packed and that for this reason the absence of any packing does not pose a special risk (“open wagon risk”) in contrast does not fall within the scope of Article 36 § 3 a) CIV.

In the final analysis, the defendant railway undertaking was not able to claim exemption from liability in accordance with Article 36 § 3 a) CIV for damage to the car during shipment by motorail.

IV. What is the consequence of this decision?

In its judgment, the FCJ referred to an earlier decision of the Hildesheim Regional Court of 13.02.2003 (Case No.: 1 S 105/02). It was also emphasised in this decision that the CIV Uniform Rules, which comprehensively govern the basis of liability and exemption from liability, and the CIV, as opposed to the CIM, include no provisions regarding the exemption from liability for the carriage of goods in open wagons and such provisions had deliberately not been included in the catalogue of Article 36 § 3 CIV. Another argument presented by the FCJ also supports this view: CIV provisions in accordance with Article 5 CIV are final and mandatory. It would be inconsistent with the character of the CIV Uniform Rules to extend the exemption from liability as defined in Article 36 § 3 CIV to include the carriage of goods on open wagons.

(3) Additional information on the exemption of liability for carriage in open wagons in accordance with Article 23 § 3 a) CIM is included on page 10.

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Original: DE

News from the CER Working Group “Seals”

The new president of the CER Working Group “Seals”, Ms Fabienne Vaisson (SNCF Fret), welcomed the participating RUs on 20th October 2014 in the Romanian capital of Bucharest, at the invitation of Mr. Gheorghe Plavitu of CFR Marfa.

The newly revised UIC Leaflet 426 “Guidelines for attaching seals to wagons and intermodal transport units” has been made available by UIC to the participating railway undertakings since 1st July 2014 in German, French and English. In this context, the “Checklist for attaching seals to wagons” has also been revised and published on the CIT website. During the revision of the checklist, the “Seals” Working Group had also intended to standardise and simplify the attaching of seals to wagons and UTIs.

Even though the new version of the checklist represents an initial step towards standardisation and simplification, the participating RUs still see a requirement for action in other areas: Appendix 2 of the GTM-CIT Manual of 1st July



Fabienne Vaisson (SNCF Fret), the new Chair of the “Seals” Sub-Group of the CER “Customs” Working Group

2014, regulating the subject of “Sealing irregularities”, is to be implemented in practice to an increasing extent by the participating RUs, to ensure that uniform action is taken by all CIT members. The Working Group is also concentrating on updating the addresses of all contact partners responsible for questions relating to seals (Appendix 3 of the GTM-CIT Manual). An initial address list is already available

on the CIT website; further undertakings can still register using the form enclosed in the CIT Circular letter 15/2014.

During the further course of the meeting, plans were made for the next meeting in 2015. A proposal for improvement from DBSR DE relating to operations will then be dealt with. This proposal will be taken by the Working Group to examine users' suggestions with respect to the "Europlombe" (in accordance with UIC Leaflet 426) and develop them further.

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Original: DE

Useful link

➔ [Checklist for sealing wagons](#)

First meeting of the CIT Multimodality Committee in the OTIF headquarters in Bern

The first meeting of the newly formed Multimodality Committee was held on 12 November 2014 and was well attended by CIT members. It designated Ms Maria Kalimeri of the Attica Group as its first Chair. The election took place at the meeting of the General Assembly in November.

Appointment of the new "Multimodality" Committee of the CIT

The GS CIT announced to CIT members in Circular letter 8/2014 on 6 May 2014 that, in accordance with the resolutions passed by the 2013 General Assembly, the appointment of the new "Multimodality" Committee of the CIT would take place this year. The following CIT members have expressed their willingness to join the "Multimodality" Committee – Attica Group, DB Schenker Rail (DE), LDZ/LDZ Cargo, LG, PKP Cargo, RZD/BFI, SNCF, Stena Lines, SŽ, TCDD and UZ. The following will also act as observers: CCTT, CER, FELB, FIATA, HUPAC, OTIF and UIRR.

The GTC Rail-Sea Traffic – a new CIT freight document – will be used primarily to regulate business models in which the maritime carrier acts as the contractual or successive carrier. This means that the carrier accepts the goods and the consignment note on the basis of a single contract of carriage. The GTC Rail-Sea Traffic has also been supplemented by the special features of maritime transport services based on proposals made by representatives of the shipping companies and the addition of two new appendices – Appendix 1: CIM list of maritime services and Appendix 2: Provisions for the carriage of dangerous goods.

New CIT multimodal document – GTC Rail-Sea Traffic

The GTC Rail-Sea Traffic now include a section for shipping companies as CIT members on multimodal transport services provided on registered maritime routes or inland waterways on the basis of a single contract of carriage. The GTC Rail-Sea Traffic will be published on 1 January 2015 and made available to CIT members. The continuing development and updating of CIT documents for rail-sea traffic will be dealt with by the "Multimodality" Committee, in which the shipping companies as CIT members will also have a significant role to play.

The GS CIT will prepare a boilerplate contract based on the GTC Rail-Sea Traffic for the next meeting of the Multimodal-



The next next meeting of the Multimodality Committee is scheduled for 12/13 November 2015

ity Committee. This is to be a check-list, for example, containing the most important elements of the contract that need to be taken into account for the internal relationship between the rail carriers and the shipping companies.

Such a boilerplate contract can be very useful for those persons involved in maritime transport.

Future work of the "Multimodality" Committee

The same approach will be taken in preparing a boilerplate contract for Rail-Road traffic in cooperation with the IRU. The issues dealt will relate primarily to liability when transferring containers from truck to rail in the container terminal and to liability when loading onto piggy-back trains. To provide the legal basis for this work, a comparative table of CMR - COTIF/CIM – IRU/CIT documents was prepared by the GS CIT and the IRU. Following discussions by the Multimodality Committee, this comparative table is to be extended to include the revised SMGS rules and the associated staff instructions.

The next meeting is scheduled for 12/13 November 2015 in the CIT building in Bern. After clarifying the details with the IRU beforehand, and in view of the very positive feedback from the first CIT/IRU "Multimodality" Conference on 5 September 2013, and with the active support of CCTT, the three organisations intend to hold another joint conference following the second meeting on issues relating to global contract logistics and multimodal shipments on 13 November 2016 in Bern.

The preparatory work required for the conference will be dealt with at the coming meeting of the Multimodality Working Group on 25 March 2015 in the CIT building in Bern.

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Original: DE

Rail transport as the backbone for the economic integration of the Maghreb and the Europe-Mediterranean area

A seminar, organised by the Euro-Mediterranean Think Tank [Institut de prospective économique du monde méditerranéen] (IPEMED) and held in Tunis on 12 November 2014, took this as its topic. The conference was sponsored by the Tunisian Ministry of Transport together with SNCF, SNCFT and EuroMed Transport.

There were more than fifty participants (senior managers and high ranking experts) from both public and private undertakings: railway operators, ministries of transport, regional and international organisations concerned with rail traffic, commercial organisations and lenders. The CIT had been invited to organise a workshop.

The purpose of the seminar was to analyse the role of rail transport as part of the economic integration of the Maghreb and Euro-Mediterranean area. Participants were able to identify opportunities to work together on Trans-Maghreb railway issues. These opportunities are centred around three major work-streams:

- harmonisation of the institutional and cooperative framework;
- definition of future joint projects;
- development of interoperability between the railways.

The basis for the discussion was a paper produced by Monsieur Kamel Ben Amor (former Assistant Director-General of SNCFT) and commissioned by IPEMED.



The opening ceremony: participants in the seminar were prepared to commit themselves to develop trans-Maghreb and Euro-Mediterranean rail transport

One tangible initiative that could be considered would consist of applying the CIM Uniform Rules to traffic between the Maghreb countries Member States of COTIF (Tunisia, Algeria and Morocco) themselves as well as between those countries and Europe. Such an approach would rationalise transport law and present numerous advantages, both qualitative and quantitative: an increase in legal certainty, application of a standard and balanced regime for liability, reduction in administrative work, saving time and reducing costs. In order to demonstrate the feasibility of this approach and to quantify the advantages, pilot projects will be organised. The CIT will propose a programme of work for the implementation of these pilot projects shortly.

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Original: FR



The CUI Committee has outlined the new focus of its work regarding the use of the railway infrastructure

Following the lively interest shown in the “Quo vadis CUI?” workshop in April 2014 by CIT members and partner organisations in the CIT’s Use of Infrastructure division, the CUI Committee in the two meetings held this year presented the areas it will be focusing on in the preparation of new documents for the use of rail infrastructure by the railway undertakings and a new working structure.

New documents for the use of infrastructure by railway undertakings

E-GTC-I, in force since 1 September 2014

Since 1 September 2014, the GTC for contracts of use of the railway infrastructure have been updated and are also available now as official versions in German and French⁽¹⁾.

The CIT General Secretariat actively supports its members in the introduction of the E-GTC-I and provides recommendations for the way the E-GTC-I are introduced and used. In addition, the CIT General Secretariat in 2015 will continue, together with its negotiating partners RailNetEurope, CER and EIM, to provide information on the existence and benefits of the E-GTC-I in order to promote their widespread use.

New: development of the E-SCU-I (available in English only) in collaboration with RailNetEurope, CER and EIM

The CUI Committee this year decided to begin negotiations with RailNetEurope for the development of a single contract of use of the railway infrastructure, which can be concluded as a multilateral or bilateral contract with infrastructure managers and used in conjunction with the E-GTC-I.

The aim of the single contract is to develop a balanced, non-discriminatory solution for the rail sector in order to harmonise and simplify the legal relationships of the railway undertakings when using more than one railway infra-



The members of the CUI Committee have outlined the new focus of their work for 2015

structure for the international carriage of goods. The CIT proposes that the work commence on the basis of a draft developed by RNE in 2004.

In the course of these negotiations, RailNetEurope and the CIT will again be supported by CER and EIM. The CIT will meet with RailNetEurope in the first quarter of 2015 to agree on when the negotiations are to begin and the time schedule for the work involved.

New: development of the E-FA-I (available in English only) in collaboration with RailNetEurope, CER and EIM

The CUI Committee has also decided to propose to RailNetEurope that mutual negotiations with the support of CER and EIM begin on the development of a single framework contract for the multiannual capacity allocation within the meaning of Article 42 of Directive 34/2012/EU⁽²⁾.

The aim of the single framework contract is to develop a balanced, non-discriminatory solution for the railway sector with which multiannual capacity allocation for the use of the track facilities of more than one infrastructure manager can be agreed. The CIT proposes that the work commence on the basis of a draft developed by RNE in 2005.

New: development of the GTC-SF (available in English only)

Based on the analysis of Directive 34/2012/EU, the CUI Committee has decided to prepare GTCs for the use of service facilities. In the initial phase, GTCs are to be prepared for contracts of use between railway undertakings, i.e. for the use of facilities operated by railway undertakings.

In later phases, the GTC-SF are to be developed further in order to cover the use of service facilities operated by infrastructure managers or third parties.

The new working structures of the CUI Committee for 2015

CUI Committee

The committee this year reviewed its composition. It will continue to be chaired by Marie-Ghislaine Hénuset (SNCB/NMBS) for the meeting to be held in 2015 and take decisions

(1) The E-AGB-I are GTCs for contracts of use of railway infrastructure. They were developed from 2004 to 2010 by RailNetEurope, ERFA and the CIT with the support of CER and EIM. The official updated versions have also been available in German and French since 1 September 2014. The E-AGB-I are contractual provisions that have been negotiated within the railway sector and are designed to implement the CUI Uniform Rules and, with the appropriate implementation, will make the harmonisation of the most important sections of the contracts of use of railway infrastructure possible in order to simplify the international carriage of goods. They are a balanced, non-discriminatory and customer-friendly set of provisions to govern the most important sections of the contract. The CIT advocates their use, in particular on the European rail freight corridors.

(2) Directive 2012/34/EU of the European Parliament and of the Council establishing a single European railway area (recast)

by correspondence as necessary. It will now be composed of nine representatives from the new members Thalys and NS, in addition to representatives from CFR Calatori, DB, LG, SNCB/NMBS, SNCF, Trenitalia and TRAINOSE.

CUI Working Group

As in the passenger and freight traffic divisions, the committee will be supported as of 2015 by a CUI working group, which will prepare the CUI Committee's decision on all topics. This will allow the CUI Committee to focus more closely on strategic decisions, while more freedom will be available in the working group for discussions and the preparation of documents and positions on legal issues. To save costs, the working group – with the exception of documents that will be prepared in more than one language – will work in English only.

The CUI Working Group will meet for the first time on 10 March 2015 (Brussels) and is currently composed of the representatives from Thalys, NS, DB, LG, SNCB/NMBS, SNCF and Trenitalia. A second meeting will take place during the summer break. Other interested CIT members are very welcome to join the work of the CUI Working Group.

Ad hoc GTC-SF (General Terms and Conditions for the use of service facilities) Working Group

For the development of the AGBs for the use of service facilities, the CUI Committee has set up an ad hoc working group that will not meet physically. The ad hoc working group will

be chaired by the CIT General Secretariat and will be composed of representatives from DB, SNCB/NMBS, SNCF and Trenitalia.

Delegations of negotiators

For future negotiations with RailNetEurope on the E-SCU-I, and – to the extent RailNetEurope agrees – on the E-FA-I – CIT members are cordially invited to support the CIT General Secretariat in the negotiations as members of the CIT delegation.

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Useful links

- ➔ [E-GTC-I : European General Terms and Conditions for the use of the railway infrastructure](#)
- ➔ [E-SCU-I : European standard contract of use of the railway infrastructure](#)
- ➔ [E-FA-I : European standard framework contract for the use of the railway infrastructure](#)
- ➔ [Directive 2012/34/EU of the European Parliament and of the Council establishing a single European railway area \(recast\)](#)



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.

Importance of the entry included in the consignment note for the international carriage of goods in open wagons

With regard to the international carriage of goods in open wagons, the carrier is relieved of liability if the type of carriage is specified in the carrier's General Terms and Conditions (GTC), or this has been expressly agreed and entered in the consignment note.

Where is the entry to be made? What is the importance of this entry in the consignment note for the carrier?

There are two issues associated with this situation:

1. Exemption from liability in accordance with Article 23 § 3 (a) CIM Uniform Rules:

According to Article 23 CIM, the carrier is liable to the customer between the time of taking over of the goods and the time of delivery. In addition to the so-called non-preferential reasons for exemption in accordance with § 2⁽¹⁾ of Article 23 CIM, § 3 provides for a catalogue of preferential or

pre-emptive reasons of exemption for the carrier. This catalogue included in sub-items (a) to (g) is of a casuistic nature and, with regard to the carrier's exemption, results from the assumption of special risks (in casu carriage in open wagons). It is a well-known fact that this has been taken from Article 17 CMR (with the exception of the railway-specific sub-item (g))⁽²⁾. The conclusion regarding carriage in open wagons on cross-border rail freight services on the other hand has been taken from the wagon number in Box 18 of the CIM consignment note, which also provides information on the wagon type. According to Professor Freise, wagons covered with tarpaulin or enveloped in sheeting are also considered to be open wagons – this is different from the

(1) Article 23 § 2 CIM: "The carrier shall be relieved of this liability to the extent that the loss or damage or the exceeding of the transit period was caused by the fault of the person entitled, by an order given by the person entitled other than as a result of the fault of the carrier, by an inherent defect in the goods (decay, wastage, etc.) or by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent."

(2) See R. Freise, Munich Commentary to the (German) Commercial Code, Vol. 7, Law of Transport, Munich 2014, Article 23 CIM, marginal note 27, p. 1996. My thanks to Prof. Freise for kindly forwarding the new 3rd edition of the Munich Commentary on International Rail Transport, 1891 et seqq.

German Commercial Code (HGB) or the original standard article 17, para. 4 (a) CMR for the international carriage of goods by road⁽³⁾.

2. Purpose of the entry in CIM consignment note

In addition to carriage in open wagons in accordance with the GTC of the carrier, Article 23 § 3 (a) CIM also provides for the agreement to carry out such shipments and the corresponding entry in the consignment note as evidence of the contract of carriage. The latter is only meant as an alternative *lex specialis* to the GTC of the carrier, which - to all intents and purposes - are currently the norm and regulate all aspects of such shipments.

Since the 1999 COTIF revision, the consignment note has been regarded as evidence of a contract of carriage (consensual contract) and is not a constitutive element of the contract, as was the case with COTIF 1980 (formal contract). The absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract of carriage (Article 6 § 2 CIM). The principle of the evidence of the contract has demonstrated its value in practice, in

particular with regard to safeguarding international agreements between the consignor and contractual carrier as parties to the contract of carriage. This also applies to the latter, since international agreements are less clear-cut than national law and, for this reason, the entry in the CIM consignment note will certainly be referred to.

With regard to the actual entry of the agreement in the consignment note, Box 7 "Consignor's declarations", in particular is relevant (Appendix 2 of the CIT's "CIM Consignment Note Manual" (GLV-CIM). If the carrier raises no objection to this, then the consignor's unilateral declaration in the consignment note is considered to be a binding agreement with the carrier.

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Original: DE

(3) *ibid.*, marginal note 31, p. 1997



CIT ITSELF

CIT General Assembly 2014

The CIT Chairman Jean-Luc Dufournaud chaired this year's General Assembly, which was held on 20 November 2014 in the CIT building in Bern. He greeted the representatives of the two new member railways TIM RAIL CARGO and UNICOM TRANZIT and welcomed them to the CIT. The CIT currently has 132 full members and 5 associate members.

COTIF 1999

The members were informed that the national ratification process in Italy has now ended and publication in the Official Journal of the European Union is expected. Once this is done, deposit of the ratification document with the Secretary General of OTIF is then expected a short time later. The accession of Italy should then take place in the first half of 2015. Positive news on the progress made in the ratification process was also reported from Sweden.

The presentation by François Davenne, Secretary General of OTIF, on the current revision of COTIF 1999 rounded off this year's General Assembly very successfully - with first-hand information on the most important international railway conventions.



The CIT Chairman Jean-Luc Dufournaud chaired this year's General assembly

Passenger traffic and making the CIV and SMPS legally interoperable

Since the entry into force of Regulation (EC) No. 1371/2007 on rail passengers' rights and obligations (PRR) on 3 December 2009, the CIT has supported its members on a practical level in numerous issues relating to the interpretation and application of the Regulation.

The two existing CIT manuals with provisions covering international tickets, the GTV-CIV and the GTT-CIV, are currently being combined into one single manual. The main goal is to simplify and better explain all relevant processes in international ticketing, both for paper tickets and the different kinds of e-ticket solutions now emerging. The new manual is to be approved by the CIV Committee at its next meeting.

The new security background for international tickets, which was introduced in 2012, is very much appreciated and is now being used by a number of CIT members and by the Eurail Group (for InterRail and Eurail passes).

The General Assembly also noted with satisfaction the result of the first phase of the “CIV/SMPS legal interoperability” project in the form of a set of guidelines on the various liability regimes governing COTIF/CIV – PRR – SMPS international passenger services, complete with an interactive map on international East-West passenger services. The guidelines were circulated to those present at the General Assembly meeting and can be obtained from the General Secretariat.

Freight traffic and making the CIM and SMGS legally interoperable

Now that the CIM Committee has decided that the carrier does not necessarily have to be an RU, recognised transport experts have now been called to assist in determining who can qualify as the performing carrier for international freight services.

Another key topic following the approval of the new article 6a CIM at OTIF level was also the inclusion of the legal and functional specifications of the CIM electronic consignment note in CIT's freight documents and whatever work is necessary to prepare the technical specifications in conjunction with UIC/Raildata.

The General Assembly took note of the publication of the general conditions of carriage (ABB EurAsia) on 1 July 2014 – as a new CIT document. The Deputy Chair of the CIT strongly supports the rapid implementation of the GTC EurAsia in view of the strategically important work being carried out by the expert group of the United Nations Economic Commission for Europe (UNECE) towards the unification of railway law.

Multimodality

On 1 January 2015, the GTC Rail-Sea Traffic will come into force as a new CIT document. It will primarily regulate business models in which the maritime carrier acts as the contractual or successive carrier.

The continuing development and updating of the CIT Rail-Sea Traffic document will be dealt with by a new “Multimodality” Committee, in which the shipping companies will also have a significant role to play. The first meeting was held on 12 November 2014 at the OTIF headquarters in Bern.



The Secretary General of OTIF, François Davenne, gave a first-hand report on the current revision of COTIF 1999 to the General Assembly of the CIT

Infrastructure

Together with RailNetEurope (RNE), and with support provided by the EIM and CER, the CIT in the course of the last two years has completed an updated version of the “European General Terms and Conditions of the use of railway infrastructure”, which was previously available in English only. Following approval by the CUI Committee and the General Assembly of RailNetEurope, the E-GTC-I entered into force on 1 September 2014 in the three working languages of the CIT, i.e. English, French and German.

The CUI Committee has authorised an ad hoc working group to develop GTCs for the use of service facilities. The work is to be completed in stages. During the first stage, a draft version of GTC 2015 is to be prepared initially for contracts for the use of service facilities operated by railway undertakings, i.e. for contracts concluded between railway undertakings.

A CIT workshop entitled “Quo vadis CUI?” on the further development of the CUI UR was held on 8 April 2014 in the CIT building in Bern. The work carried out in the workshop produced important suggestions for discussion on the continuing development of the CUI.

Elections

This year's General Assembly passed important resolutions for appointing new members to the Executive Committee, the CIV Committee and the “Multimodality” Committee of the CIT.

Jean-Luc Dufournaud (SNCF) was elected by means of a voice vote for a further term of office as Chairman of the CIT. The Deputy Chair, Maria Sack (DB AG), was re-elected for a second period of office.

In addition, the following new members were elected to the Executive Committee by a unanimous vote: Ms Andrea Scholz (ÖBB-Personenverkehr), Ms France Delobbe (SNCF/NMBS) and Ms Aikaterini Vitou (Trainose), each for a period of office of four years.

The General Assembly also elected by a unanimous vote Ms Carmen Filipescu (Regiotrans) as Chair of the CIV Committee for a second period of office, Mr Enrico Trapazzo (Trenitalia) as the new Vice Chair of the CIV Committee and Ms Maria Kalimeri (Attica Group) as Chair of the “Multimodality” Committee, each for a period of office of three years.

Next meetings

The next meeting of the CIT General Assembly will be held on 19 November 2015 in the CIT building in Bern.

The CIT Executive Committee will hold its meetings on 23 April and 17 September 2015.

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Staff changes in the Secretariat



Michèle Kühni left us at the end of June 2014 to start her well-earned retirement. Her successor is Ms Katrin Zumbrunnen, who will take up her new post at the CIT in mid-January 2015. Ms Zumbrunnen is a qualified commercial clerk with extensive professional experience and excellent language skills. We would like to

extend a warm welcome to our new colleague and look forward to working with her.

The secretary's office of the CIT General Secretariat is the operations control centre of our organisation and is responsible in particular for ensuring that all our dealings with our members run smoothly and providing optimum conditions inside and outside the organisation in order to guarantee the success of the association's activities.

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Original: DE

Season's Greetings
and best wishes for
a happy new year!

Joyeuses fêtes et
meilleurs vœux pour
la nouvelle année!

Frohe Festtage
und alles Gute zum
neuen Jahr!





CIT DIARY OF EVENTS

Date	Event	Location	CIT contact
4-5 February	CIV Working group	Berne	Tetyana Payosova
10 March	CUI Working group	Berne	Myriam Enzfelder
25 March	Multimodality Working group	Berne	Erik Evtimov
26 March	CIM Committee	Berne	Erik Evtimov
15 April	CIV/SMPS Working group	Berne	Erik Evtimov
23 April	Executive Committee 1/2015	Berne	Cesare Brand
28-29 April	CIV Working group	Zürich	Tetyana Payosova
21 May	Conference of Freight Claims Departments	Berne	Joël Forthoffer
21-22 May	E-ticketing Workshop	Utrecht	Tetyana Payosova
10-11 June	CIM Working group	Berne	Erik Evtimov
24 June	CIV Committee	Berne	Isabelle Oberson
7-8 July	CIM/SMGS legal and experts group	Berne	Erik Evtimov

Events with CIT participation

Date	Event	Org	Location	CIT contact
20 January	RID Meeting	CIT-OTIF	Berne	Erik Evtimov / Tetyana Payosova
21 January	European Railway Awards	CER	Brussels	Cesare Brand
22 January	CER General Assembly	CER	Brussels	Cesare Brand
22 January	Meeting CIT-IRU	CIT-IRU	Lyon	Erik Evtimov / Nina Sziladi-Scherf
28-29 January	FSM Project meeting	FSM	Brussels	Jan Svensson
29 January	DB Regulation Symposium	DB	Berlin	Cesare Brand
17-18 February	FSM Project meeting	FSM	Paris	Jan Svensson
19 February	UIC Steering Committee	UIC	Paris	Erik Evtimov
25 February	FSM Steering Group meeting	FSM	Brussels	Jan Svensson
25 February	Annual meeting RNE-CIT	RNE	Wien	Cesare Brand / Myriam Enzfelder
9 March	IRT Group	UIC	Paris	Jan Svensson / Tetyana Payosova
10-11 March	Commercial and Technical Group meetings	UIC	Paris	Jan Svensson / Tetyana Payosova
11 March	Working group «Seals»	CER	Paris	Joël Forthoffer
17 March	CER Assistants Meeting	CER	Brussels	Erik Evtimov
18 March	OTIF AG CIM	OTIF	Berne	Erik Evtimov / Nina Sziladi-Scherf
17-18 March	FSM Project team-meeting	FSM	Brussels	Jan Svensson
18-20 March	Int Rail Freight Conference	OLTIS	Prag	Cesare Brand
8 April	UIC Steering Committee	UIC	Paris	Erik Evtimov
9 April	UIC Freight Forum	UIC	Paris	Erik Evtimov
15-16 April	Rectification of Euro Rail Transit Summit	UIC	Paris	Cesare Brand
16 April	Commercial & Distribution Forum	UIC	Paris	Cesare Brand
21-22 April	FSM Project team-meeting	FSM	Bruxelles	Jan Svensson

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