



CONTENTS



Freight Claims Departments' Conference: 19 May 2016 in Bern

The conference will offer an overview of the latest developments in CIT freight documentation. This year we shall focus on two topics 'Settling Claims in various Contractual Models for Carriage' and 'Effects of Competition Law on the Work of Claims Departments'.

Topics will initially be dealt with in groups and then discussed during the plenary session. They relate to the handling of claims, formal damage report in connection with recording details of seals and electronic CIM consignment note – solutions for the electronic formal damage report.

➔ www.cit-rail.org

- 2 Comprehensive application of COTIF
- 3 Berner Tage
- 4 Data Protection in the Digital Age
- 5 Potential revision of the Rail PRR
- 6 MCOOP: New CIT Manual
- 6 The new Travel Package and Linked Travel Arrangement Directive
- 7 Berner Tage: Passenger section
- 9 CIM Committee
- 10 Multimodality Working Group
- 11 Mail by Rail: CIT-UPU workshop
- 12 Berner Tage: Freight section
- 13 Modification of the contract of carriage
- 14 Memorandum of Understanding (MoU) on postal services signed in Bern



EDITORIAL



Dear Readers,

The issue you have before you deals primarily with the 8th Berner Tage conference, which was held on 3 and 4 March in Bern with around 120 participants. The focus of this year's conference was on the development of contractual carriage models when providing international rail transport services.

For the first time, a training seminar was held ahead of the Berner Tage conference, which was designed primarily for new employees of member railways of the CIT. The seminar offered an introduction to international transport law and the various contracts and documents prepared by the CIT that are used for the international carriage of freight and passengers.

We have also included in this issue reports on various meetings held by the working and decision-making bodies of the CIT. Finally, I would like to make special mention of the reports on the new Data Protection Regulation and the Package Travel Directive in the EU.

Best wishes from Bern
Cesare Brand
Secretary General of the CIT



Comprehensive application of COTIF 1999

The last ratification was deposited with the OTIF Secretary-General (as the Depositary for COTIF 1999) on 14 April 2016. The accession of Ireland means that COTIF 1999 is applicable in all fifty Member States without exception.

Ireland has been a member of the Intergovernmental Organisation for International Carriage by Rail (OTIF) since 1970. Deposit of the instrument of ratification means that COTIF 1999 and its seven appendices now apply without reservation in Ireland.

The Irish railway network is about 1000 km long and has a track gauge of 1600 mm. Ireland's accession has made a reissue of the CIV and CIM list of maritime and inland waterway services necessary; this will have special importance for the CIT's work on multimodality. We intend to send out a special circular letter to CIT members in due course.

The CIT General Secretariat thanks all those involved with ratification and congratulates Irish Rail (part of the CIE Group) on implementing the Convention concerning International Carriage by Rail (COTIF 1999) and thus making the current international law of carriage by rail applicable in all the OTIF Member States.

Erik.Evtimov(at)cit-rail.org

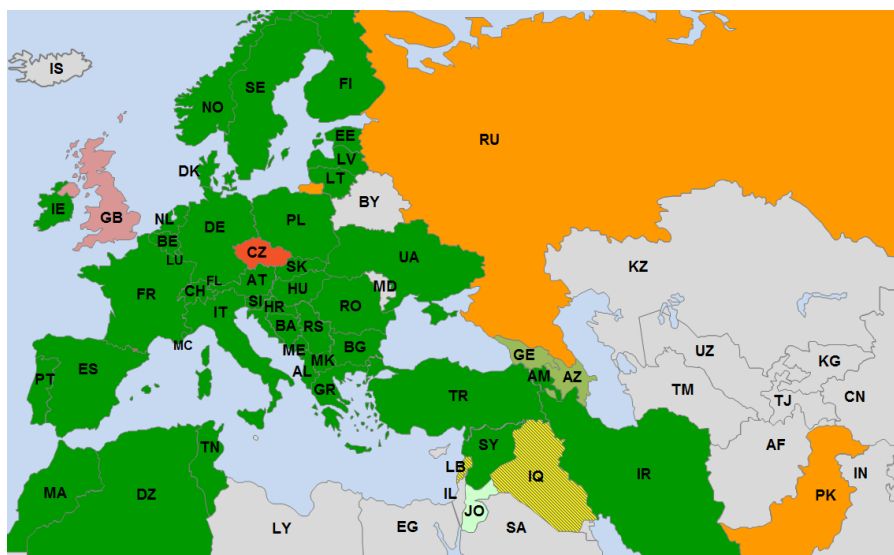
Original: DE



Champ d'application géographique de la COTIF et ses appendices Geografischer Anwendungsbereich des COTIF und dessen Anhänge Geographical scope of COTIF and its appendices

Etat au 14 avril 2016
Stand 14. April 2016
Situation on 14 April 2016

- Tous les appendices de la COTIF (41)
Alle Anhänge des COTIF (41)
All COTIF appendices (41)
- Sans CUI (1)
Ohne CUI (1)
Without CUI (1)
- Sans CUI/APTU/ATMF (1)
Ohne CUI/APTU/ATMF (1)
Without CUI/APTU/ATMF (1)
- Sans CUV/CUI/APTU/ATMF (2)
Ohne CUV/CUI/APTU/ATMF (2)
Without CUV/CUI/APTU/ATMF (2)
- Sans CIV/RID/UV/CUI/APTU/ATMF (2)
Ohne CIV/RID/UV/CUI/APTU/ATMF (2)
Without CIV/RID/UV/CUI/APTU/ATMF (2)
- Suspension de la qualité de membre (2)
Ruhen der Mitgliedschaft (2)
Membership suspended (2)
- Membres associés (1)
Assoziierte Mitglieder (1)
Associate Members (1)



Area in which COTIF 1999 applies after Ireland's ratification

Berner Tage on International Rail Transport Law

New business models, competition law and digitalisation for rail transport services are having an influence on transport law.

Business models for rail transport services continue to grow as a result of liberalisation. Until just a few years ago, collaboration between the railway undertakings operating international freight and passenger services with joint commercial responsibility with respect to the customer had been the prevailing business model. When drafting the Convention concerning International Carriage by Rail (COTIF 1999) in the 90s, this model was the determining factor. Since the beginning of the new millennium, free network access is increasingly becoming the norm and business models have changed.

Increasing numbers of contracts of carriage are now being concluded, in which a railway undertaking assumes the sole legal responsibility for performing the transport service. The key drivers of this development from a legal perspective are Competition Law and increasingly digitalisation.

Despite this development, over 90 per cent of all international transport services today, for reasons of cost and efficiency and also due to the operational and technical requirements, are being handled in cooperation with one or more railway undertaking(s).

On 3-4 March in Bern, around 120 representatives of various railway undertakings, customers and insurance companies involved in freight and passenger transport attended the 8th Berner Tage Conference on International Rail Transport Law in order to share their experience and discuss solutions with the aim of improving the general legal environment for drafting contracts of carriage taking into account the changes now being seen in business models for rail freight transport and passenger services. The conference was chaired by CIT Chairman, Jean-Luc Dufournaud (SNCF).

Various internationally recognised speakers addressed the key topic of the conference from different viewpoints. François Davenne, Secretary General of OTIF, described the developments taking place at COTIF level and emphasised in particular the decisions taken at the OTIF General Assembly at its meeting from 29-30 September 2015. Cesare Brand, Secretary General of the CIT, illustrated with the aid of real



Around 120 people attended the «Berner Tage».

life examples the numerous challenges encountered in the application of the currently applicable international transport law. Nina Simone, Head of Antitrust at DB AG, spoke on the growing importance of competition law in the further development of business models, primarily in freight transport. Prof. Dr. Rainer Freise ended the opening session of the conference with a presentation on transport insurance in the rail industry.

On the second day of the conference, Libor Lochman, Executive Director of the CER, presented an overview of current regulatory developments in the European Union. The conference ended with a panel discussion between Oliver Hirschfeld (DB AG), Isabelle Saintillan (SNCF), Maria Urbanska (PKP) and Dr. Gerald Wieser (Rail Cargo Austria AG) on the development of contractual models governed by transport law for freight and passenger transport services. Participants were actively involved in the topics presented during the conference, resulting in numerous thought-provoking discussions.

Separate workshops on freight and passenger transport services were held during the conference. More details can be found in the relevant articles published in this issue of CIT-Info.

Cesare.Brand(at)cit-rail.org

Original: DE

Data Protection in the Digital Age – the EU comes up with a new Regulation

The data protection reform in the EU was launched back in 2012. The main idea behind this reform was to make protection of personal data in the EU fit for the challenges of the digital age. The European Commission came up with a proposal for the new Regulation that should replace Directive 95/46/EC. A political agreement on the Regulation was reached at the end of 2015. The General Secretariat of the CIT, together with the experts of the CIV Working Group, is currently preparing a preliminary impact assessment of this reform for CIT members.

Data protection reform in the EU

The European Commission has been preparing a reform of the EU data protection framework since 2009. Following the public consultations on data protection with the stakeholders involved, the European Commission published on 4 November 2010 a Communication on a comprehensive approach on personal data protection in the European Union, which set out the main topics of the reform. In order to meet the challenges of the digital age and in light of the need to establish a single digital market, the European Commission proposed in 2012 to replace the existing Directive 95/46/EC with a new General Regulation on Data Protection (GDPR). The political agreement on the GDPR was achieved on 15 December 2015. The adoption of the GDPR was also recognized as a major step forward in the implementation of the Digital Single Market Strategy. The GDPR was formally endorsed by the European Parliament on 14 April and will be published soon in the Official Journal of the European Union. It will come into effect two years and twenty days after its publication, i.e. in spring-summer 2018.

What's new in the General Regulation on Data Protection?

The GDPR offers an updated and modern framework to ensure privacy rights. Although it focuses on strengthening the EU internal market, it also aims at streamlining transfers of personal data to third countries and sets international data protection standards. Most importantly, GDPR will replace current national frameworks with a single EU-wide data protection regime. The GDPR grants a number of rights to individuals, including rights of access to collected and stored personal data, right to be forgotten, right to receive information on all matters related to collection,

storage, deletion of or any irregularities with their personal data. It means that companies that process personal data have corresponding obligations under the GDPR. A lot of obligations in the GDPR are risk-based, meaning that more stringent obligations will apply only where the data controller or processor are dealing with large amounts of personal data or with sensitive personal data. Importantly, GDPR can apply extraterritorially, i.e. to companies based outside of the EU, but which offer goods or services in the EU. Also, a new EU authority for data protection will be established – the European Data Protection Board. Infringements of the GDPR can lead to a fine of 10-20 million Euro or 2-4% of the total worldwide annual turnover, depending on the provision violated.

Potential impact on CIT members

To assist its members in adjusting to the new legal framework the CIT General Secretariat prepared an overview of key principles and legal obligations according to the GDPR and a concordance table, comparing the GDPR and Directive 95/46/EC. Together with the experts of the CIV Working Group, the CIT General Secretariat is preparing a preliminary impact assessment of the GDPR and will map possible solutions for further development of the CIT documents for passenger traffic.

Railway undertakings involved in the carriage of passengers by rail deal with passengers and their personal data on an every day basis. For individual CIT members the reform means that the respective national legislation on data protection will change. Eventually, they might have to update their privacy and marketing policies as well as take necessary organisational and technical measures to ensure compliance with the GDPR.

Tetyana.Payosova(at)cit-rail.org

Original: EN

Useful links

- ➔ [Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data](#)
- ➔ [General Data Protection Regulation \(text politically agreed upon\)](#)



PASSENGER TRAFFIC

Preparing for a potential revision of the Rail PRR

On 9 February 2016, the European Commission initiated a stakeholder consultation on the revision of the Rail PRR. The General Secretariat of the CIT, together with the experts of the CIV Working Group, is thoroughly analysing questions raised by the European Commission from the legal perspective to support the CER in preparing a coordinated position of the railway sector.

Based on the mandate in the 2013 Report on the application of the Rail PRR, the European Commission published Interpretative Guidelines to the PRR on 3 July 2015. These principally served to clarify some provisions of the PRR as a short-term solution. As a next step the European Commission published a Roadmap on the Revision of the Rail PRR with an inception impact assessment on 27 November 2015. In the Roadmap the European Commission outlined four possible options ranging between no amendments of the Rail PRR to substantial changes of some provisions. Finally, as communicated in the Roadmap, the European Commission initiated a stakeholder consultation on the revision of the Rail PRR as a preliminary stage before publishing a proposal for the revised Regulation (expected by the end of 2016).

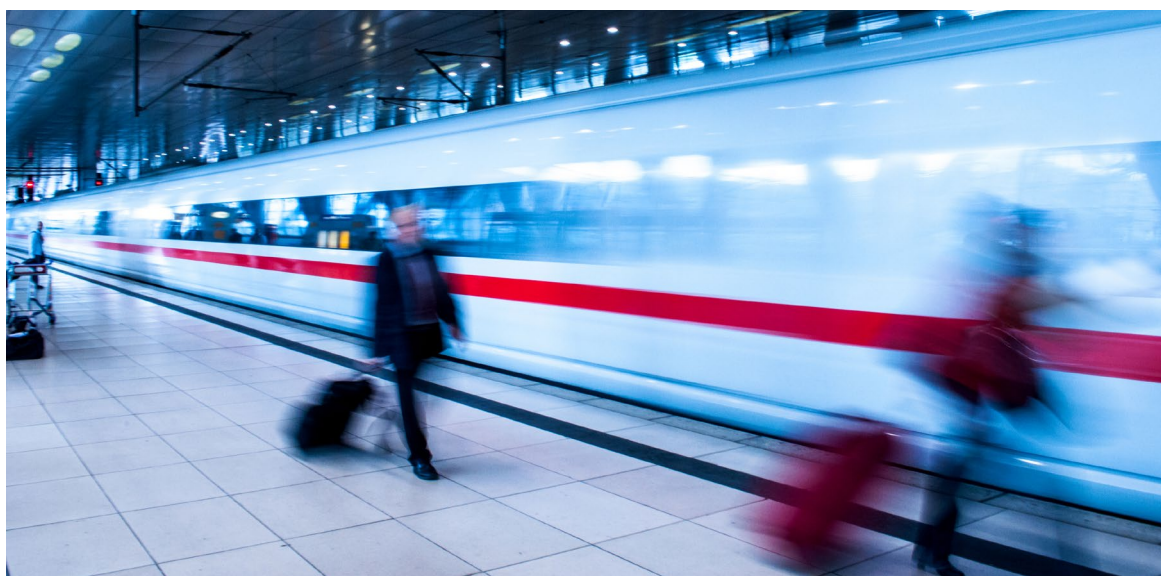
Issues highlighted by the European Commission in the Interpretative Guidelines, the Roadmap, and the consultation include the relationship between the Rail PRR and the CIV in its Annex I, clarification of the roles and responsibilities of the NEBs, contingency planning, exemptions, possibility of introducing a force-majeure clause for delay compensation, general non-discrimination clause and several others. The European Commission also mentions the possibility of including a reference to the Regulation on on-line dispute resolution and other similar legislation to take into account new technological developments.

At the last meeting of the CIV Working Group (9-10 February 2016, Bern) members analysed the most important legal issues raised by the European Commission to support the CER in preparing a position of the railway sector.

Tetyana.Payosova(at)cit-rail.org
Original: EN

Useful links

- ➔ [2013 Report on the Application of the Rail PRR](#)
- ➔ [Interpretative Guidelines of the European Commission to the Rail PRR](#)
- ➔ [Roadmap of the European Commission on the Revision of the Rail PRR](#)
- ➔ [Stakeholder consultation on the Rail PRR](#)



New CIT Manual for Cooperation Contracts in international Passenger Traffic by Rail

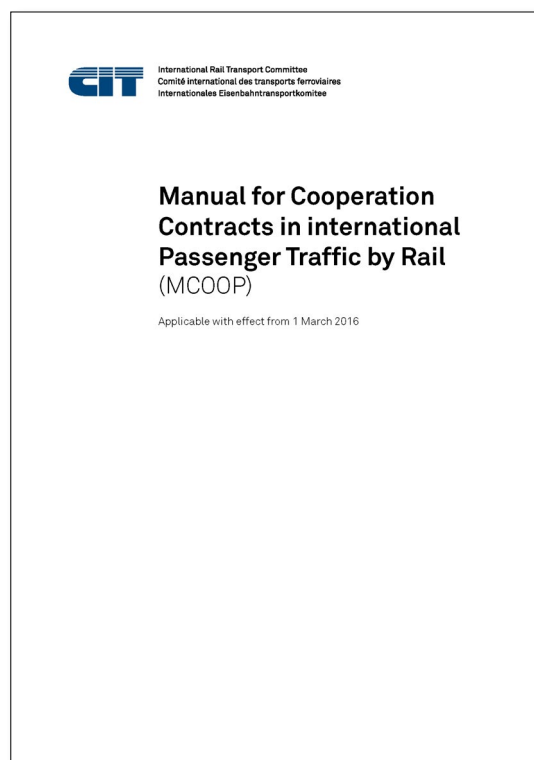
The new Manual for Cooperation Contracts in international Passenger Traffic by Rail (MCOOP) came into force on 1 March 2016 (see also CIT Circular letter 3/2016) and is now available in the three CIT official languages English, French and German in the member-restricted area on the CIT website.

The MCOOP contains five chapters covering different issues, such as an overview of CIT and UIC documents relevant for cooperation, statutory framework and legal issues, commentaries on the boilerplate contract for cooperation, as well as GTC for Successive Carriage and GTC for Substitute Carriage. It repeals and replaces the GTC joint contract of 1 July 2006, GTC sub-contract of 3 December 2009, GTC traction of 1 July 2006 and GTC hire of 1 July 2006 and is a recommendation in accordance with point 2.5 a) of the CIT Statutes, only binding CIT members to the extent that members adopt it (opting-in principle).

There are good reasons to consider UIC and CIT documents as technical rules within the meaning of Council Regulation (EC) 169/2009 applying rules of competition to transport by rail, road and inland waterway which comply with the requirements of European competition law in so far as members are free to adopt or disregard them. In deciding whether their arrangements to work together are legal and in defining these arrangements practically, the contractual parties must, of course, ensure that their legal relationship complies in every case with all the regulations of the relevant competition law. Thus, any cooperation agreement must be assessed individually in this respect.

Jan.Svensson(at)cit-rail.org

Original: EN



The new Travel Package and Linked Travel Arrangements Directive: some highlights for railway undertakings

In the modern age of digitalisation more and more services are purchased online. Travellers become more informed and selective: pre-arranged travel packages do not always take into consideration special needs and interests of the customers, who often prefer having more freedom and flexibility in planning and purchasing their journeys, often on the Internet. In light of this changing environment, the EU has adopted a new Directive 2015/2302 replacing the current Travel Package Directive. Companies, including railway undertakings, which offer travel packages or linked travel arrangements, have to be aware of some additional obligations according to the new Directive.

Background of the reform

The old EU Package Travel Directive (90/314/EEC) primarily dealt with traditional pre-selected package holidays (combination of transportation (flights, rail or bus journeys), hotels, car rentals etc.) and did not reflect the new fast developing digital environment. Thus, customers who arrange their packages on their own, primarily on the Internet on one or several interlinked web-pages, would not benefit from the rights granted by the Directive. The legal framework became outdated and failed to offer legal security both for customers and for businesses.

The reform of the travel package legal regime was initiated in 2009 and completed with the adoption of the new Travel Package and Linked Travel Arrangements Directive (EU) 2015/2302 on 25 November 2015. The EU Member States have to transpose it into their national legislation by 1 January 2018. Importantly, the new Directive aims at full harmonisation, suggesting that EU Member States shall not maintain or introduce in their national legislation diverging provisions (neither more nor less stringent) (see Article 4).

Scope of the new Travel Package and Linked Travel Arrangements Directive

The new Travel Package and Linked Travel Arrangements Directive is relevant for CIT members offering travel packages and or linked travel arrangements. The main objective of the new Directive is to adapt the legislative framework to market developments and to remove ambiguities and close legislative gaps. It applies not only to traditional packages, but also to customised packages and linked travel arrangements. The key difference between the travel package and the linked travel arrangements is that package contracts are sold for a total or inclusive price, services within the package are mainly selected before the contract is concluded and the package is purchased at the same point of sale. A new feature is that the package contracts also cover situations where, after purchasing the first service (e.g. a rail ticket), the customer is transferred to a partner web-page to select additional services (e.g. a hotel booking). Such 'click-through' services constitute a package only if the traveller's name, e-mail address and payment details are transmitted between the traders within 24 hours after the purchase of the first service. Where two travel services for the same holiday are purchased separately (but within 24 hours) with the targeted facilitation of the trader, this constitutes a linked travel arrangement.

Key rights and obligations under the new Directive

The key rights of consumers under the package contract are related to pre-contractual information, the right to transfer travel packages, assistance in the form of hotel accommodation in the event of unavoidable and

extraordinary circumstances, compensation for non-material damage. The obligations are more stringent where package contracts are concluded; however, customers choosing linked travel arrangements also have the right to pre-contractual information and to insolvency protection and repatriation. To ensure smoother implementation of the information obligations the new Directive offers standard information forms for package travel contracts and linked travel arrangements in their main modalities.

The new Directive further clarifies that the right to compensation under the travel package does not affect the rights of travellers under the EU regulations on passenger rights and respective international conventions. Claims related to irregularities of transport services as a part of the package can be presented both under the Travel Package and Linked Travel Arrangements Directive, as well as the passenger rights regulations. However, compensation due will be deducted to avoid double compensation.

Tetyana.Payosova(at)cit-rail.org

Original: EN

Useful link

➔ [Directive \(EU\) 2015/2302 on package travel and linked travel arrangements](#)

“Berner Tage” – summary of the passenger section

The passenger section of the “Berner Tage”, chaired by Carmen Filipescu (chair of the CIV Committee, International Affairs Director of Regiotrans) showed how important the legal environment is, with the Rail PRR and new EU legislation, as well as fast technical development, for today's and tomorrow's passenger rail services and what challenges the railway sector will be facing in the future. The CIT is supporting the railway undertakings with new tools for international cooperation and ticketing as well as legal and practical advice.



Carmen Filipescu chaired the passenger section of the Berner Tage 2016.

Rail passengers' rights – the most recent developments

Since 2009 the Rail PRR has been one of the main issues for railway undertakings, as well as for the CIT, and is also high on the agenda of the European Commission. Isabelle Saintilan (SNCF, chair of the CIV Working Group) started her presentation with the main highlights in 2015 related to the Rail PRR. Namely, she addressed the Commission's Interpretative Guidelines clarifying some points in the Rail PRR. The Interpretative Guidelines are not binding law, but represent the European Commission's opinion on different issues in the Rail PRR and therefore could be referred to by both national courts and national enforcement bod-

ies (NEBs). Furthermore, Isabelle Saintilan presented some interesting cases related to the application of the Rail PRR ruled upon by or pending in front of the CJEU and national courts. She concluded by giving some hints on the planned revision of the Rail PRR.

Liability issues in multimodal passenger traffic

Closely related to the Rail PRR is also the European Commission's increasing demand for multimodal passenger rights in all transport modes. Oliver Hirschfeld (DB) presented an overview of the existing four passenger rights regimes for rail, bus, maritime and air transport services. He outlined key similarities and differences, for instance, with respect to obligations and liability towards passengers in case of cancellation or delay. As a first step, the European Commission envisages establishing a multimodal travel information system in EU Directive 2010/40 on the framework for the deployment of Intelligent Transport Systems, the "ITS Directive", where the Commission is mandated to issue the relevant legislation. Currently, the ITS Directive only deals with common travel information systems and does not cover ticketing issues. Oliver Hirschfeld concluded his presentation by mentioning the main challenges for multimodal passenger rights: should a new fifth legal regime be created, alongside the four existing regimes? Or should the existing legal regimes be harmonised, paying particular attention to the liability issues in multimodal passenger traffic?

The new CIT products: MCOOP and MIRT

In the past few years, the CIT has been working on two new documents for passenger traffic, which are now available for the CIT members: the Manual for Cooperation Contracts in international Passenger Traffic by Rail (MCOOP) and the Manual for International Rail Tickets (MIRT). Mrs. Cotte-Seynaeve (SNCF) presented the structure of the MCOOP and how it can be used in practice by giving concrete examples of cooperation between railway undertakings when concluding agreements for the running of international train services. Jan Svensson (CIT) continued by presenting the MIRT, outlining both the legal background for international ticketing as well as showing how to use the MIRT and what to expect in future ticketing.



The various interesting themes encouraged active discussions between the participants.

New developments and challenges for e-ticketing

Rütger Fenkes (DB) concluded the passenger section of the "Berner Tage" by presenting some interesting brand new e-ticketing solutions, currently being implemented by DB in Germany. One of the "key tools" of tomorrow's distribution of rail tickets is the mobile phone, being used both as a check-in/check-out tool as well as in a "Be-in/Be-out" surrounding, where the passenger no longer needs to act (that is, to check-in or check-out), as the ticketing happens automatically in a Be-in/Be-out system. These new e-ticketing solutions, however, also raise new legal challenges, such as issues related to data protection, multimodal passenger rights (as these new systems also often include other modes of transport), the definition of the contract of carriage and liability in case of cancellation or delay.

Jan.Svensson(at)cit-rail.org

Original: EN



News from the meeting of the CIM Committee of the CIT

Chaired by Marianne Motherby (General Counsel at DB AG), the CIM Committee of the CIT at the end of March 2016 in Bern took a number of important and forward looking decisions relating to the implementation of the legal and functional specifications for the electronic CIM consignment note and CUV wagon note based on the principle of functional equivalence as stated in Article 6 § 9 CIM. The General Secretariat of the CIT also received unanimous support for the projects being planned and the groundwork relating to the updating of CIT rail freight documents.

Electronic CIM consignment note and CUV wagon note

Before the 19th meeting of the CIM Committee was held, as part of the digitalisation project at sector level, the GS CIT had already finalised the legal and functional specifications of the electronic CIM consignment note and the electronic CUV wagon note. The unanimous approval of this work, in addition to the relevant GLV-CIM and GLW-CUV manuals (in each case Appendix 1 for the functional specifications), also affects the CIT Freight Traffic Manual (GTM-CIT) and the CIT Wagon Traffic Manual (GTW-CIT), with which Appendices 7a and 1a for the legal specifications, in which the processes described in the working sheets in particular are to be updated. Following approval by the CIM Committee and by the 1/2017 CIT meeting of the Executive Committee, a report will be submitted to OTIF at the appropriate time.

Making the CIM and SMGS legally interoperable

The revision work on the basic convention for the international law of carriage of the OSJD, which has now been completed at expert level, will be introduced at intergovernmental level in the course of 2016. The provisions of the current version of the SMGS are to be extensively revised and adopted. The GS CIT reported on the revision of the SMGS and on the subsequent adjustments made to the "CIM/SMGS Consignment Note Manual" (GLV CIM/SMGS) and to the CIM/SMGS Re-consignment Manual (GR-CIM/SMGS) at the CIT level.

In conjunction with the pilot project to transport postal consignments from China to Europe, a CIT workshop entitled "Mail by Rail", which had been organised in collaboration with the UPU, was held at the end of the meeting (see related article in this issue of CIT-Info).

Boilerplate contract for rail-sea traffic

To implement the GTC Rail-Sea Traffic, which has been in force since 1 January 2015, the CIM Committee unanimously agreed to adopt the boilerplate contract for rail-sea traffic based on the successive carrier model prepared by the CIM Working Group.



In Bern, The CIM Committee took some forward-looking decisions on the electronic consignment note and wagon note.

In collaboration with IRU and with the support of RZD, the CIT is now preparing a set of guidelines on the CMR-CIM-SMGS liability regimes for publication in the current year 2016. The aim of the guidelines is to provide a comparison between the international carriage of goods by rail (COTIF/ CIM and SMGS) and the international carriage of goods by road. Based on the comparative analysis and preparation of the CIM-CMR-SMGS guidelines, the GS CIT will then prepare a checklist for boilerplate contracts to be used on international combined rail-road transport services.

Additional information on this checklist is included in the article on the Multimodality Working Group in this issue of CIT-Info on page 10.

Erik.Evtimov(at)cit-rail.org

Original: DE

CIT Multimodality Working Group: new projects

The new objectives of the Multimodality Working Group will focus on the interface between railway law and maritime law and between railway law and road traffic law. In both areas, key standard clauses will be dealt with at the contractual level.

Interaction of Railway Law and Maritime Law

Work being carried out by the CIT on multimodal rail-sea traffic is now at an advanced stage of completion. This is due in part to the participation of shipping companies in multimodality meetings as members of the CIT. Special mention should also be made of a new CIT document, the GTC Rail-Sea Traffic. The introduction of the GTC Rail-Sea Traffic in January 2015 established a basis on which it was possible to prepare a boilerplate contract for the organisation of successive rail shipments with the participation of registered shipping companies. The rail-sea boilerplate contract has now also been approved by the CIM Committee and can thus come into force as of 1 July 2016. CIT members, in particular those who organise direct transport services to and from the ports in collaboration with shipping companies, will be able to benefit from the added value offered by the boilerplate contract. Participants at the Multimodality Working Group meeting have also discussed the possibility of testing and implementing the boilerplate contract on pilot services to be offered by a small ad-hoc working group.

Participants at the meeting were able to use the opportunity it provided to engage in lively exchange on their most recent experience and developments regarding the inclusion of services in the CIM list of maritime services on the Mediterranean, the Black Sea, the Baltic and the Caspian Sea. This resulted in some interesting information and facts regarding the maritime services provided.



The Multimodality working group discussed new projects.

Interaction of Railway Law and the Road Transport Law

In collaboration with IRU (International Road Union), the GS CIT is currently working on the development of working tools designed to remove legal and administrative obstacles to combined rail-road transport services. A basis for this collaborative effort is a comparative table on the road transport law and rail transport law, which will provide a way of examining and comparing the most important issues. The current status of the work involved was presented to the Multimodality Committee at its second meeting. The comparative work between the COTIF/CIM and CMR (Convention on the Contract for the International Carriage of Goods by Road) conventions has been largely completed. At the meeting, the GS CIT presented the most important aspects of the work to the participants. The comparative work will also be supplemented in due course by the SMGS regulations that were revised on 1 July 2015, so that a set of guidelines on the CMR-CIM-SMGS legal regimes is expected to be published by the CIT and IRU in the course of the current year.

At its last meeting in November 2015, the Multimodality Committee considered it very important that this comparative work ultimately result in a specific document – such as a checklist for a rail-road boilerplate contract. Such a checklist for a rail-road boilerplate contract that included the key components was subsequently presented during the meeting in the form of standard provisions for truck to rail transshipment operations and loading transport units onto a rolling road, in addition to standard clauses for road-rail network liability in the case of transshipment and loading operations.

The provisions included in this checklist are to be discussed further with IRU as soon as possible and presented to the CIM Working Group in June 2016.

The next meeting of the Multimodality Working Group will be held on 24 March 2017 in Bern in the CIT's head office building and will certainly contribute once again to the removal of legal and administrative obstacles to multimodal transport services.

Nina.Scherf(at)cit-rail.org
Original: DE

Mail by Rail: CIT workshop in cooperation with the UPU

Postal items transported by rail from the People's Republic of China to Western Europe are seen as a tremendous opportunity for the member railways of the CIT, but also for the general development of global Internet trade (e-Commerce). Goods can now be transported reliably within 10 to 15 days at a competitive price from the People's Republic of China to Europe (EU and Switzerland) in transit on trans-Siberian corridors (Russian Federation) or on the Silk Road (Kazakhstan), and also in the opposite direction.

Postal consignments by rail from China to Europe

To ensure that this business model is successful for rail, the states and railway undertakings involved will have to work together very closely. The Universal Postal Union (UPU) and the CIT - both of which are based in Bern - have prepared the necessary framework conditions with regard to transport law at expert level. The UPU is also working closely with the World Customs Organisation (WCO) to clarify the interfaces to the customs authorities. In conjunction with the Coordinating Council on Trans-Siberian Transportation (CCTT), the two organisations are planning to provide legal support in the course of 2016 for pilot projects designed to promote the shipment of postal consignments from the People's Republic of China to Europe. The parcel consignments will consist primarily of consignments that have been processed between the People's Republic of China and Europe as a result of the upswing in e-commerce transactions (electronic trade) via the Internet. On 18 March 2016 at the UPU's headquarters in Bern, the three international organisations (UPU, CIT and CCTT) signed a Memorandum of Understanding (MoU), which regulates the collaboration between the organisations to provide support for the planned pilot services (see the relevant article in this issue of CIT-Info).



The «Mail by Rail» workshop was a great success, with many participants.

CIT «Mail by Rail» workshop

In order to support the advanced planning, organisation and carriage of these postal consignments, the GS CIT organised a workshop with recognised experts in the field at the end of the 19th meeting of the CIM Committee. With the aid of appropriate case studies on postal consignments in the UK (DHL and DBSR UK) and in Switzerland (Swiss Post and SBB Cargo), the workshop also demonstrated very clearly the benefits of using CIT freight documents for the seamless legal processing of these shipments and in particular the uniform CIM/SMGS consignment note.

The still largely unused potential of sending postal consignments by rail was demonstrated in various presentations from the viewpoint of postal companies, rail carriers and infrastructure managers. In the presentation given by the CCTT, RZD Logistics (a subsidiary of Russian Railways) estimated the amount of postal consignments between the People's Republic of China and the Russian Federation in 2013 at 64,000 tonnes, which is equivalent to around 8,000 container loads. Furthermore, based on these figures, an annual increase of 10-15% is predicted, which means that approximately 400,000 container loads in transit from China to Europe can be expected each year.

Erik.Evtimov(at)cit-rail.org

Original: DE

‘Berner Tage’ 2016 – Summary of the freight traffic module

The characteristics of the Contract of International Carriage of Goods by Rail (CIM) and its relationship with sales and logistics law were the focus of discussions during the ‘Berner Tage’ 2016 dedicated to freight traffic. As usual, Marianne Motherby, President of the CIT’s CIM Committee and General Counsel of Deutsche Bahn AG, led this module brilliantly.

The module was opened by Professor Thomas Koller of the University of Bern. He sought to highlight the many links between international sales law under the United Nations Convention on Contracts for the International Sale of Goods (CISG; the Vienna Convention) and the law of carriage of goods by rail according to the CIM Uniform Rules (arrangements for carriage, packaging of goods, right to dispose of goods/modify the contract of carriage, refusal of goods by the buyer/consignee, obligation to bear the risks and right to bring action before the courts, etc.). In terms of classifying different kinds of contracts, sales contracts are the main contracts, while contracts of carriage are accessory contracts. It is therefore important that the content of these contracts is as much as possible consistent and properly aligned, which is not always possible due to their complexity. Some differences exist between the UN Convention and the CIM Uniform Rules, which may require some reflection in anticipation of a future revision of the CIM Uniform Rules. This applies, for example, to the right to modify the contract of carriage.

Christian Cuenca, a lawyer at Deutsche Bahn AG, explored the external and internal validity of the Contract of International Carriage of Goods by Rail (CIM). External validity should be understood as the relationship between the customer and the carrier; internal validity concerns relations between carriers in the different models for the performance of carriage. Regarding external validity, Mr Cuenca developed the situation specifically with regard to the legal definition of contracts of carriage, the nature of contracts of carriage, the parties to contracts of carriage as well as their rights and obligations. In terms of internal validity, the speaker focused on the contractual structure, rights and obligations of parties to the contract and liability regimes applicable in the context of the different models for the performance of carriage.

Erik Evtimov, Deputy Secretary General of CIT, presented a current topic “The consignment note as a link between the commercial and legal aspects of the international contract of carriage of goods by rail and the ongoing initiatives on digitalisation”. In particular, he reviewed all contractual



The Chair led the discussion with the speakers.

relationships concerning carriers (with consignors, infrastructure managers, wagon keepers, etc.) relating to the performance of international carriage of goods by rail. Many of these participants use the CIM consignment note, giving it a number of (operational, commercial, accounting, customs and banking) functions. For the contract of carriage, until proven to the contrary, the consignment note constitutes evidential value of the conclusion and conditions of the contract of carriage and the taking over of the goods by the carrier. In the electronic age, it is important that consignment notes can be used in electronic form. Article 6 para 9 CIM permits this, provided that the procedures used for registration and processing of data are equivalent from the functional point of view, particularly so far as concerns the evidential value of the consignment note represented by those data.

With “The reflection of global logistic chains in contracts of carriage by different modes of transport,” Wouter Verheyen of Erasmus University Rotterdam invited participants to think about a new approach to legislation. To illustrate this point, he drew a parallel between the work of a plumber with his toolbox and the services provided by a carrier/logistician. In the case of the plumber, regardless of the tools used for his work, the final repair is the only thing that matters to the customer. The same goes for the carriage of goods: irrespective of which different legal regimes apply in the logistics chain, the carriage of the goods is the only matter of interest to the shipper. In his conclusion, Mr Verheyen noted that contract law should facilitate logistical innovation instead of creating obstacles and uncertainties. As this is not currently the case, contracting parties have little freedom of action to contractually ensure the legal certainty of their operations. Evolution is therefore needed at legislative level. The new reality of logistics requires a new approach in the field of legislation on logistics instead of a “cure” for the existing systems. Mr Verheyen sketched out some ideas for solutions.

Joel.Forthoffer(at)cit-rail.org

Original: FR



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.

Modification of the contract of carriage

Under what conditions is it permitted to amend the contract of carriage en route? Can just a part of the consignment be re-routed on this basis? Is transportation of the consignment by road allowed in this case? How should the consignment note be processed in casu?

Legal restrictions to amending the contract of carriage

According to Article 18 § 1 of the CIM, the right to subsequently modify the contract of carriage is intrinsically linked with the consignor's right of disposal of the goods; however, the exercising of this right is not absolute and is only possible under certain conditions. First of all, the subsequent modification of the contract of carriage must be possible, lawful and reasonable and not impact on the normal operation of the carrier at that time nor prejudice the consignor or consignees of other consignments (Article 19 § 3 of the CIM). These actions are specifically operational in nature and relate in particular to the specific train and allocated train paths⁽¹⁾. In addition, the mandatory restrictions specified in Article 19 § 4 of the CIM must also be observed, wherein it states that a subsequent change to the contract of carriage must not result in the division of the consignment.

(1) Refer to R. Freise, Münchener Kommentar zum Handelsgesetzbuch, 3rd Edition 2014, S. 1978, Rd. 3.

Based on the reasons mentioned above, the division and/or rerouting of the consignment in part can be practically excluded even if a road carrier is used as a vicarious agent in accordance with Article 40 of CIM under the UR CIM, even with the consent of the rail carrier, as the requirement of Article 19 § 4 of the CIM is mandatory.

In the event of a modification to the continuous contract of carriage, the actions of the rail carrier are furthermore corroborated on the principle of legal certainty, but also protected in those cases as the consignor or consignee in the case of Article 18 § 3 of CIM has to reimburse the carrier all costs and damages caused by the subsequent amendment.

Processing the consignment note

The parties to the contract of carriage are provided with legal certainty by presenting the duplicate of the modified consignment note on the part of the consignor and in the case of Article 18 § 3 of the CIM of the consignee, which documents the subsequent modification of the contract of carriage. The acceptance and implementation of the subsequent disposal of the goods are managed in line with the instruction sheets 04-01 and 04-02 and Appendix 17 of the GTM-CIT. The latter summarises the individual steps on how to handle the consignment note and the accompanying documents in the event of a change in the contract of carriage. It also assumes that the subsequent disposal does not lead to any division of the consignment, which is also correspondingly checked by the carrier in accordance with the GTM-CIT.

Erik.Evtimov(at)cit-rail.org

Original: DE



Memorandum of Understanding (MoU) on postal services signed in Bern

The Director General of the Universal Postal Union UPU (Bishar A. Hussein), the Secretary General of the Coordinating Council on Trans-Siberian Transportation CCTT (Gennady Bessonov) and the Secretary General of the CIT signed a Memorandum of Understanding (MoU) in the presence of the Deputy Director General of the UPU (Pascal Clivaz) on 18 March 2016 at the headquarters of the UPU in Bern. The three organisations intend to jointly promote the creation of an environment that will support postal services between China and Western Europe. The next step will be to launch pilot services. The CIT will provide the railway undertakings involved with whatever support is needed in the preparation of the required transport documents.



Pascal Clivaz (Deputy Director of UPU), Gennady Bessonov (Secretary General of CCTT) and Cesare Brand (Secretary General of the CIT) at the signing of the MoU.

Cesare.Brand(at)cit-rail.org

Original: DE

The CIT warmly welcomes its new members

Country	Undertaking	Membership
Romania	MMV Rail Romania http://www.mmvrail.ro/	Full member as of 1 January 2016
Netherlands	Eurail Group G.I.E. http://www.eurailgroup.org/	Associate member as of 1 March 2016
Serbia	Srbija Kargo ad w3.srbtrail.rs/zskargo/tl.aspx	Full member as of 1 March 2016
Belgium	B Logistics NV www.blogistics.be	Full member as of 1 April 2016

Katja.Siegenthaler(at)cit-rail.org

Original: DE



CIT DIARY OF EVENTS

Date	Event	Location	CIT contact
12 May	Working Group CIV/SMPS	Bern	Erik Evtimov
19 May	Conference of Freight Claims Departments	Bern	Joël Forthoffer
24 May	CUI Committee	Bern	Nina Scherf
14-15 June	CIM Working Group	Bern	Erik Evtimov
23 June	CIV Committee	Bern	Tetyana Payosova
6/7 July	CIM/SMGS Group of experts	Bern	Tetyana Payosova
7/8 September	CIM/SMGS Steering Group	Warsaw	Erik Evtimov
22 September	Executive Committee 2/2016	Geneva	Cesare Brand
29 September	Conference of Passenger Claims Departments	Bern	Jan Svensson

Events with CIT participation

Date	Event	Org	Location	CIT contact
3-4 May	Accession Seminar COTIF	OTIF	Baku	Erik Evtimov
11 May	FSM Steering Group	FSM	Brussels	Jan Svensson
17 May	TAP-TSI / FSM Workshop	FSM	Paris	Jan Svensson
18-19 May	TAF-TAP TSI – CCM Meeting	ERA	Lille	Jan Svensson
24 May	Study group «Wagon user»	UIC	Paris	Erik Evtimov
24-25 May	Meeting CIT with CCTT and UPU	CCTT	Moscow	Erik Evtimov
23-26 May	UIC Technical Meetings	UIC	Paris	Jan Svensson
30 May	SG working group on the revision of the CUI UR	OTIF	Bern	Nina Scherf
30-31 May	UIC Regional Assembly	UIC	Milan	Cesare Brand
31 May	CUI Working Group	OTIF	Bern	Nina Scherf Cesare Brand
7 June	Passenger Working Group	CER	Brussels	Tetyana Payosova
7-9 June	NRT Meeting	UIC	Luxembourg	Jan Svensson
8-10 June	Group of Experts towards Unified Railway Law	UNECE	Geneva	Cesare Brand Erik Evtimov
17 June	Assistants Meeting	CER	Helsinki	Erik Evtimov
21 June	CIT-RailData Coordination meeting	CIT	Bern	Erik Evtimov
22-24 June	Global Rail Freight Conference	GRFC	Rotterdam	Jean-Luc Dufournaud Cesare Brand
28-30 June	EWT Steering Group	UIC	Svetlogorsk	Tetyana Payosova
8-9 September	General Assembly VöV	VöV	Lugano	Cesare Brand

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

Phone +41 31 350 01 90
Fax +41 31 350 01 99
E-Mail info(at)cit-rail.org
Internet www.cit-rail.org