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EDITORIAL



Dear Readers,

The year 2016 is drawing to a close, but there's still a lot to be done...

At the beginning of next year, four new freight and use of wagons manuals that will establish the prerequisites for the use of electronic transport documents in international rail traffic will enter into force. In the passenger traffic sector, the “Full Service Model Initiative (FSM)” will provide the technical specifications required to improve the networking of the ticket sales systems in international traffic.

This does not mean that the work is over. The new specifications now have to be entered into the existing electronic systems. This requires the willingness on the part of the railways to work together and the provision of the financial resources needed.

On the other hand, why should railways that are encountering fierce competition work together for the implementation of digitisation?

The answer to that is obvious: this is the only way to ensure that we can optimally use the system benefits provided by the railways and to enhance the competitiveness of rail compared with other modes of transport and subsequently improve customer benefits and the profitability of the railways, precisely in international traffic.

As Henry Ford once said: “Coming together is a beginning. Keeping together is progress. Working together is success!”

Season's Greetings!
Cesare Brand
Secretary General of the CIT



Journey through four countries – 1,000 pages of contracts

Introduction

For some time now, railway undertakings (RUs) have been trying to bring about harmonisation of the contractual documents which they conclude with infrastructure managers when they order a train path or which are necessary before a train can travel “on the railway” at all. A first step towards harmonisation was taken in 2010 with the “EGTC” – the European General Terms and Conditions of Use of Railway Infrastructure, which was negotiated directly between RailNetEurope and the CIT. In accordance with international and European requirements, work began in 2013 on a revised version, which subsequently came into effect as of mid- 2014 under the name E-GTC-I. These terms and conditions set out the general legal, administrative, technical and financial contractual conditions for an RU that uses the railway infrastructure operated by an infrastructure manager. They are applicable to contracts granting the use of the infrastructure for both international and national carriage of goods. Harmonised application of the E-GTC-I is of particular relevance, however, for international traffic.

The following article by Werner Balsen, which appeared on 6 October of this year in the German transport journal *Deutsche Verkehrszeitung* (DVZ), looks at the background and the obstacles to the international carriage of goods by rail⁽¹⁾.

Quo vadis E-GTC-I?

For railway undertakings, having the most widespread possible application of the E-GTC-I with infrastructure managers is important, since it means that, when they provide rail services on different train paths, they will only have to check these general terms and conditions once. This would certainly ease the situation, particularly for RUs providing services on very different rail freight corridors. In its efforts to remove these administrative obstacles, the CIT is now urging the railway undertakings, as the real customers of the infrastructure managers, to contact them directly and claim their right to simplified and customer-friendly processes and documents.

Nina.Scherf(at)cit-rail.org

Original: DE

Infrastructure companies are upsetting the railways / Harmonised business terms and conditions are expected to improve the situation

After years of debate on the single European railway area, there are still numerous administrative obstacles that make a shipment by rail through several EU countries a complicated and inconvenient business. This is something that Cesare Brand repeatedly points out. He is the Secretary General of the International Rail Transport Committee (CIT), an association of some 200 railway undertakings and shipping companies. Railway undertakings that operate on the key European rail transport corridor from Rotterdam to Genoa can be forced to read and fill out as many as 1,000 pages of contractual documents. This is because a journey through three EU states and Switzerland means they have to deal with at least four infrastructure managers, who demand different safety certificates and have drawn up different types of network statement. This can mean from four to eight contracts that rail operators are required to comply with and sign. In addition, there are different general terms and conditions, various types of contract on the use of service facilities and differently constructed agreements on access to the computer systems that vary from country to country. What this ultimately means is that each infrastructure manager lays down different rights and obligations for the railway undertakings - whether they apply to the ordering of rail slots, cancellations or to detours. To make the bureaucratic burden easier to bear, the CIT and RailNetEurope (RNE), an association of various infrastructure managers, have developed harmonised general terms and conditions, known as the E-GTC-I. These have been designed to simplify the regulations of the infrastructure managers and make it easier for them to be compared. The Community of European Railway and Infrastructure Companies (CER) and the lobbying organisation for European rail infrastructure managers (EIM) support harmonised terms and conditions. However, the majority of the infrastructure managers responsible for the European rail freight corridors are not interested in adopting the regulations. To the exasperation of Brand: “We in the sector should also be using simplified procedures that we ourselves are able to prepare.” But the obvious also has to be fought hard for: a “Task Force” has set itself the goal of moving ahead with the harmonisation of the contractual terms of the network statements. The state-owned railway undertakings from Switzerland and Austria, under the umbrella of which the national infrastructure managers also operate, have indicated their willingness to cooperate. Brand, on the other hand, is certain that it will take time before all those involved recognise “that harmonised terms and conditions are important”.



(1) The original German version of the article by Werner Balsen, which is entitled “Fahrt durch vier Länder – 1000 Seiten Verträge” and appeared on 6 October in the German transport journal *Deutsche Verkehrszeitung* (DVZ) can be downloaded at: <http://www.dvz.de/rubriken/politik/single-view/nachricht/fahrt-durch-vier-laender-1000-seiten-vertraege.html> (available only with a user account).

Passenger Name Record (PNR): is a one-size-fits-all approach suitable for all transport modes?

In the past two years the EU has been facing serious security threats. In line with the EU policy on prevention of serious crime and terrorism, a new Passenger Name Record Directive was adopted in 2016. While this Directive was meant for the air sector, the question was raised whether it could potentially be extended to other transport modes, including rail. In the following, we will explain why it is not an optimal solution for the rail sector.

The New EU PNR Directive

In May 2016 the new Directive (EU) 2016/681 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime entered into force. Before the Directive was adopted, several EU Member States already had the PNR system in place, but there was no EU-wide rule. Notably, the scope of the PNR Directive is limited to the air sector, and is focused on external EU flights. The EU Member States, however, may extend its scope of application to intra-EU flights as well. In this way, the PNR Directive went a step further in comparison to Directive 2004/82/EC on advanced passenger information (API), which mainly aims at improving border controls and combating illegal migration. The PNR data catalogue is also broader than the API data and should allow EU law enforcement authorities to identify “unknown” suspects.

The PNR Directive requires air carriers to collect passengers' information and transfer it to the national passenger information units (PIUs). These data are to be retained for five years, but after the initial six months they will be anonymised. The PNR measures to be taken according to the Directive fit well the existing air transport system. In fact, PNR data has been collected and exchanged for years on a bilateral basis with a number of countries outside the EU. In any event, the European Commission will assess and if necessary revise the PNR Directive two years after its transposition into national laws, especially in light of data protection concerns, as well as the necessity and proportionality of collecting and processing the passengers' data.

PNR for the rail sector?

Whereas the PNR Directive, as mentioned above, is meant for the air sector, the Belgian Government recently came up with a proposal to extend application of PNR requirements to other transport modes. In the rail sector, if adopted, it will apply to all long-distance connections with a destination in Belgium or transiting through Belgium. This legislative proposal is currently being discussed in the Parliament.

Whereas the security concerns in light of recent terrorist attacks are valid, the question arises as to whether the proposed PNR measures are the right ones for the rail sector.

The first thing that any lawyer would point out is the extra-territorial effect of the proposed legislation. In practice this means that foreign carriers, which operate the service or even those, which just sell tickets for the mentioned rail services (so-called issuing rail undertakings) would be subject to this Belgian law. The extraterritorial implementation of the proposed Belgian law will face several significant challenges. Belgium is the only EU Member State so far to consider introduction of the PNR in the rail sector. At the same time, some other EU Member States have very strict data protection requirements and prohibit economic operators from collecting extended personal data (including some elements of the PNR). Therefore, some non-Belgian EU operators may be precluded by their national law from collecting and submitting the PNR to the Belgian PIU.

In addition, rail passenger transport is an open system and is not based on collection and exchange of passengers' data. This is very different from the air sector, which has already collected and exchanged extended passenger information for many years. Furthermore, since passengers' information will have to be not only collected but also checked, there will be significant infrastructure challenges. The majority of railway stations in Belgium and in other countries are not equipped with check-in gates. The reorganisation of railway stations is no short-term measure in terms of time or the financial resources required. Moreover, identity controls in the EU on a regular basis will definitely raise questions under the Schengen acquis, not to mention that railway operators are not competent and not empowered to conduct identity checks for PNR implementation.

Finally, think of the advantages that rail transport currently offers to passengers, and forget about them. The introduction of PNR in the rail sector will undermine the flexibility that the rail sector currently offers. Purchasing tickets will not be possible directly before departure and thus will limit passengers' mobility and deprive rail carriers of an important revenue item. Passengers will have to expect additional check-in time and queues, the latter also being recognised as soft targets for terrorist attacks. A further consequence of the proposed measure could be the need to reduce the number of stops in order to implement the PNR, which runs afoul of European mobility strategy and is utterly passenger-unfriendly. Why would not passengers in this situation switch to cars or travel by air? Thus, introduction of the PNR requirements for the rail sector will not only face significant implementation challenges, but also have damaging spillover effects on the cross-modal competitiveness of the railways and a negative environmental impact (shift to road).

Whereas the CIT fully shares pan-European security concerns, from just a few points mentioned above it becomes clear that the PNR is not a one-size-fits-all solution for security in the transport sector. Each transport mode bears different risks and functions differently and therefore, security measures, if taken, should be tailored to pay due

regard to these specificities. Moreover, the scope of security threats clearly goes beyond national borders. Therefore, coordinated action beyond the national level would seem more appropriate to achieve the set goals and to avoid disproportionate means in light of the end pursued, both in terms of costs and efficiency of implementation.

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

Useful links

- ➔ [Directive \(EU\) 2016/681 on the use of PNR](#)
- ➔ [Directive 2004/82/EC on API](#)
- ➔ [Draft Belgian Law as submitted to the Belgian Parliament \(in French and Flemish\)](#)



PASSENGER TRAFFIC

Revision of CIT documents for passenger traffic: constantly adapting to members' needs

The AIV agreement and the MIRT will be revised by the CIV Working Group by April 2017 to meet the constantly evolving needs of members.

Handling of complex claims within the framework of the AIV

The Agreement concerning the Relationships between Transport Undertakings in respect of International Passenger Traffic by Rail (AIV) contains useful rules for the customer service departments of railway undertakings. As such, it indicates who has to handle which complaint and who shall bear the costs of compensation paid to the passengers.

Certain processes are sometimes slowed down when claims concern several objects (compensation for delay, unused tickets, hotel or taxi costs, etc.) and involve several undertakings. The CIV Working Group will therefore consider new rules that will allow a single undertaking to be in charge of the handling of the claim within the deadlines fixed by the applicable law.

The CIV Working Group will also review the trilingual forms exchanged between customer service departments for the transfer of certain files. Here, it is a question of inserting a clause on data protection, to reflect the new EU requirements in this area. Moreover, some additional information has to be indicated in the forms for the handling of complaints in order to become more efficient and faster.

Focus on e-ticketing in the MIRT

The General Secretariat of the CIT also plans to propose a broad revision of the Manual for International Rail Ticketing (MIRT) over the next two years so that it focuses on e-ticketing. The MIRT will consider the work of the various UIC working groups on the barcodes and lay-outs of electronic tickets, including the recast of UIC leaflet 918-2 and 918-3 planned for autumn of 2017.

The CIV Working Group will also have to review the definition of actors in ticketing in light of the most accomplished initiatives with regard to e-ticketing and distribution (including the Full Service Model).

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

The role of NEBs in enforcement of passenger rights under the Air PRR

The Air PRR, similarly to the Rail PRR, requires EU Member States to designate a body responsible for the enforcement of passengers' rights. The question arises as to whether such national enforcement bodies (NEBs) are responsible for the enforcement of passengers' rights under each individual claim or rather for administrative enforcement from the perspective of general compliance by air carriers with their obligations under the PRR.

Factual background

In the joined cases C-145/15 and C-146/15 the Court of Justice of the EU (CJEU) was requested to deal with a question of competences of the NEBs in individual passenger claims according to the Air PRR (Regulation (EC) No 261/2004).

In the case C-145/15 Mr. R and Mr. J submitted a claim for compensation according to Article 7 of the Air PRR to Royal Air Maroc due to cancellation of their flight from Amsterdam to Casablanca. As this claim was refused by the carrier, the passengers requested the Dutch NEB to take enforcement action against Royal Air Maroc. The NEB rejected both the request and the complaint that followed. The passengers appealed this decision first to the District Court, Oost-Brabant, and consequently to the last instance - Raad van State (Council of State).

In the case C-146/15 Mrs. D-E claimed compensation from the KLM due to a 26-hour delay of her flight from Curacao to Amsterdam. As KLM refused her claim, she requested the Dutch NEB to take enforcement action against KLM. Similarly to the previous case this request was denied. Mrs. D-E appealed this decision to the District Court in The Hague and consequently to the Raad van State.

Request for a preliminary ruling

In both cases, Raad van State was not sure whether the Dutch NEB had authority to take enforcement action, as requested by the applicants. It referred the following question for a preliminary ruling of the CJEU: "Given that Netherlands law provides access to the civil courts to protect the rights, which passengers may derive under EU law from Article 5(1)(c) and Article 7 of the Regulation 261/2004, does Article 16 of that regulation oblige the national authorities to take implementing measures which form the basis for administrative enforcement action through the bodies designated under Article 16 separately in each individual case in which Article 5(1)(c) and Article 7 of the Regulation are infringed in order to be able to guarantee a passenger's right to compensation separately in each individual case?"

Interpretation by the CJEU: "It all depends on the national law"

The CJEU noted that Article 16(1) read in conjunction with recital 22 of the Air PRR imposes a duty on the NEB to ensure general compliance with the regulation. Thus, complaints submitted to the NEB by passengers can be seen as some kind of alert signal concerning the non-compliance. The Air PRR, however, does not impose an obligation on the NEB to act on each of such complaints individually to guarantee that each passenger obtains compensation. Furthermore, Article 16(3) of the Air PRR refers to the term "sanction", which has to be interpreted as a measure adopted in response to infringements, which the NEB identifies in the course of its general monitoring activities. The CJEU explained that any other interpretation of this provision could lead to occasional different assessment by the NEBs and the national civil courts of the same matter, which would ultimately be detrimental to passengers. In this light, the CJEU referred to its two earlier decisions (para. 51 in C-12/11, and para. 44 in C-83/10), where it touched upon related questions.

At the same time, the CJEU noted that the EU Member States enjoy discretion in allocating powers to the NEBs and it is up to a Member State to empower the NEB to adopt measures in response to individual complaints.

The CJEU concluded that Article 16 of the Air PRR should be interpreted as follows: "Where an individual complaint has been made by a passenger to the body designated by each Member State pursuant to Article 16(1) of the regulation following the refusal by an air carrier to pay to the passenger the compensation provided for in Article 7(1) of the regulation, that body is not required to take enforcement action against the carrier with a view to compelling it to pay the compensation". Thus, the Air PRR does not require individual enforcement of passengers' rights by the NEBs, but also does not prohibit it.

Given the similar wording of the Rail PRR in Article 30(1), the competence of the NEBs to deal with individual passengers' complaints in the rail sector similarly depends on the national legislation and varies among EU Member States.

Tetyana.Payosova(at)cit-rail.org

Original: EN

Useful links

- ➔ [CJEU, joined cases C-145/15 and C-146/15](#)
- ➔ [CJEU, C-12/11](#)
- ➔ [CJEU, C-83/10](#)



Autumn Meeting of the CIM Working Group of the CIT

The key focus on the agenda of the autumn meeting was on two major topics – the digitisation of transport documents and multi-modality.

CIM electronic consignment note and CUV wagon note

The CIT is currently preparing the legal and functional specifications of the CIM electronic consignment note and the CUV electronic wagon note at sector level based on the principle of functional equivalence (included in Article 6 § 9 CIM). The CIT is also actively supporting RailData and the UIC in the work involved in finalising the technical specifications required for the e-RailFreight project. In connection with the practical implementation of the CIM electronic consignment note and the ongoing digitisation in the rail sector, the GS CIT is working on clarification of the legal issues relating to the recognition of the electronic consignment note by the national courts and other national authorities as evidence of the contract of carriage (Article 6 § 2 CIM). In view of the interim status of the clarification work and as a result of the B2B relationship, the free appraisal of evidence by the national courts of the commercial transport documents is certainly possible (principle of freedom of contract), which a contrario does not make an electronic signature (eSignature) mandatory as a means of authentication of the consignment note. This would mean that the solution prepared by the GS CIT with the unique consignment identifier as a security guarantee for the consignment note is confirmed as an appropriate and cost-effective option for CIT members.

The GS CIT has also completed the work involved in modernising the presentation and appearance of the CIT documents for freight traffic and the use of wagons and on exploiting the benefits of IT technology and the Internet. This has resulted in the introduction of new internal procedures within the GS CIT for the publication of CIT documents and the associated additions to the CIT website. The electronic version will be given absolute priority in the new presentation of the CIT documents for freight traffic and the use of wagons as of 1 January 2017.

Collaboration with the Multimodality Committee

The GTC Rail-Sea Traffic prepared by the CIM Working Group in collaboration with the Multimodality Working group entered into effect on 1 January 2015. To implement the GTC Rail-Sea Traffic, the CIM Working Group has been preparing a boilerplate contract for the organisation of the suc-



cessive rail carriers and the registered shipping companies. Following approval by the CIM Committee and subsequent approval by the Multimodality Committee, the boilerplate contract came in force on 1 July 2016 and has been made available to CIT members in electronic form at <http://www.cit-rail.org/en/freight-traffic/contractual-documents/> in English, French, German and Russian.

As the basis for the harmonisation work on road transport law and rail transport law, a CMR – CIM – SMGS comparative table was prepared by the CIT and the IRU, in addition to the relevant IRU and CIT documents. The comparative table includes a synthesis of the most important findings obtained from this comparison of the legal regimes. Based on these findings, the GS CIT presented a checklist to the CIM Working Group for a rail-road framework agreement containing the following key components in the form of standard clauses: standard provisions for truck to rail transshipment operations and standard provisions for loading transport units onto a rolling road. The checklist also includes the draft of a standard clause on network liability for the internal road-rail relationship in transshipment and loading operations. To ensure that the checklist is applied by all those involved in rail and road transport services, the regulations are to be examined in detail by members of the CIT and the IRU and included in their internal documents (opting-in).

The GS CIT used the opportunity to express its special thanks to the members of the CIM Working Group chaired by Jean-Marie Sié (SNCF) for the support it had received throughout the year.

The next meeting of the CIM Working Group in 2017 will be held on 27/28 June in the CIT head office building in Bern.

Erik.Evtimov(at)cit-rail.org

Original: DE

CIT Multimodality Committee: finalisation of important work and new projects

The new objectives of the Multimodality Committee focus on the interface between railway law and road transport law and between railway law and maritime law in freight traffic. In both areas, key standard clauses will be dealt with at contractual level. In addition, the interaction of inland waterways and rail transport was also examined at the meeting for the first time.

Interaction between railway law and road transport law

In collaboration with IRU (International Road Transport Union), the GS CIT is currently working on the development of practical tools to bring about an improvement in the interaction between the legal provisions relating to international combined road-rail transport services. A basis for bringing these legal regimes closer together is a Comparative Table on Road Transport Law with the CMR Convention (Convention on the Contract for the International Carriage of Goods by Road) on the one hand and on the other hand the international law on the carriage of goods by rail with the CIM Uniform Rules and the SMGS Convention, in which the most important issues are examined and compared from a legal viewpoint. The GS CIT has finalised the work in conjunction with the IRU in the course of the last few months and was able to present the most important findings with the representatives of the IRU that were present at the meeting. The benefits that will result from this work cannot be emphasised enough, particularly as the CMR has also been included for the first time in addition to the CIM Uniform Rules and the SMGS, so that the comparison of rail and road from a geographical viewpoint now covers the scope of application of COTIF/CIM and SMGS and also that of the CMR. A set of joint guidelines on the CMR-CIM-SMGS legal regimes is to be published in the course of next year and will also include a synthesis and a map in addition to the comparative table.

At its last meeting, which was held last year, the Multimodality Committee considered it to be very important that this comparative work would ultimately result in a specific document – such as a checklist for a rail-road framework



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agreement. To this end, such a checklist for a rail-road framework agreement that included the key components in the form of standard provisions for truck to rail transshipment operations and for loading transport units onto a rolling road, in addition to a standard clause for road-rail network liability in the case of transshipment and loading operations, was presented and discussed by the participants at the meeting. The participants resolved to continue the work on this checklist during the next meetings of the Multimodality Working Group.

Interaction between railway law and maritime law

The work being carried out by the CIT on multimodal rail-sea traffic is now at an advanced stage of completion. This is in part due to the participation of shipping companies, as members of the CIT, at meetings on multimodality issues. The Multimodality Committee is chaired, for example, by Maria Kalimeri, who, as the representative of the Attica Group, is employed by a company that operates international ferry services.

The introduction of the GTC Rail-Sea Traffic in 2015 established a basis for preparing a boilerplate contract for the organisation of through successive shipments, which subsequently came into effect on 1 July 2016. CIT members and in particular those who organise direct services to and from ports with shipping companies will benefit considerably from this boilerplate contract.

At the end of the complex topic covering rail-sea traffic, Oliver Kießling from DB Cargo gave the Multimodality Committee a very interesting overview of the way operations are handled in the port area from an intermodal viewpoint, taking the Port of Hamburg as an example.

Interaction between inland waterways law and railway law

At the last meeting of the Multimodality Committee, it was decided that research should begin on the interaction between railway transport law and inland waterways law.

Prof. Isabelle Bon-Garcin gave an important overview of the subject from a multimodal viewpoint. She focused in her presentation in particular on the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI). She pointed out for the work ahead that the CMNI Convention, in contrast to other conventions, contains no provisions on multimodal transport. This means that, if the requirements are met, Article 1 para. 4 of the CIM UR will apply to rail-sea freight traffic and Article 2 CMR to sea-road traffic.

In the Multimodality sector, emphasis must also be given to the multimodal challenges for passenger traffic. Isabelle Saintilan, the Chair of the CIV Working Group, subsequently informed the Committee about the fascinating multimodal challenges that exist in this area.

At the close of the meeting, which had covered a wide range of topics, the Chair of the Multimodality Committee, Maria Kalimeri, then gave an in-depth presentation of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea.

The next meeting of the Multimodality Committee will be held on 17 November 2017 in the CIT head office building in Bern and once again is certain to include many fascinating and varied topics.

Nina.Scherf(at)cit-rail.org

Original: DE

Useful links

➔ [Athens Convention](#)

➔ [CMNI Convention](#)

CIT Expert group on “Seals”: a busy year

In September 2015, the CIT Committee decided to attach the Expert Group “Seals” to the CIT as of 1 January 2016 to meet the demand of the CER, to which this group belonged thus far.

During its second meeting in Mainz, in October 2016, the Expert group “Seals” finalised three important points of the agenda:

- ➔ Out of the difficulties encountered and practice, a “Seals” FAQ was finalised to answer the most common questions that carriers are likely to ask. This information will be available in January 2017 on the CIT website for the exclusive use of members of the CIT.
- ➔ Preparation of a new edition of UIC leaflet 426 “Guidelines for sealing wagons and intermodal transport units”. Revision work on the leaflet was done by the group of experts to adapt it to the conditions of the Union’s new Customs Code, in particular, as regards the simplified rail transit procedure and to take account of developments in the seals area since the last edition in 2014.
- ➔ Proposal for adapting the Checklist for Sealing Wagons. In order to overcome recurrent difficulties encountered by carriers in international carriage in the Balkans, some states require the application of additional seals on tank wagons. To make carriers aware of national requirements to be met for the sealing of the bottom drain valves of tank wagons, a proposal to amend the Z... wagons pages of the checklist (Appendix 1 of the GTM-CIT) was made.



Zas tank wagon: Sealing of the roof cover and the drain valve.

For the 2017 work programme, Ms. Vaisson, President of the Expert group “Seals”, expressed two wishes: recruit new experts to answer questions relative to seals in East-West exchanges and enrich the list of Contact points for sealing issues on the CIT website.

Joel.Forthoffer(at)cit-rail.org

Original: FR



The CUI Working Group welcomed its new Chair

The 3rd meeting of the CUI Working Group was chaired for the first time by Adriaan Hagdorn (NS). Discussions focused on the implementation of the European General Terms and Conditions for the Use of Infrastructure (E-GTC-I), the next steps to be taken in the preparation of a European Standard Contract of Use of Rail Infrastructure ("E-SCU-I") and the revision of the CUI Uniform Rules. The meeting began as always with a discussion among members on current developments in international law and relevant legal cases.

Discussion and information relating to international law and court decisions

Participants regularly attend the meetings of the CUI Working Group to exchange opinions on and to discuss cases brought before their own respective national courts. In addition, participants at the meetings of this Working Group are informed by the CER representative of current developments in European law in order to provide a guideline for any future work to be carried out by the Working Group.

Work on the partial revision of the CUI Uniform Rules (CUI UR)

The Secretary General of OTIF had set up a Working Group CUI UR in 2014 to deal with issues relating to the revision of the CUI Uniform Rules and to prepare revised text proposals for the OTIF Revision Committee in 2017 and for the General Assembly in 2018. The working group's task was primarily to examine the scope of application of the CUI Uniform Rules and their liability regime. This working group has now met for the last time, in September 2016.

After it had originally been decided in the course of revising the scope of application (Article 1 para. 1 CUI) in the previous meetings of the OTIF Working Group that the current reference linking the CUI UR scope of application with the CIM and CIV contracts of carriage would be replaced by another reference, the OTIF Working Group at its last meeting decided to keep the original reference. In addition, the term "international railway traffic" is to be included in the scope of application of the CUI UR and means, in accordance with its definition, traffic which requires the use of an international train path or several successive national train paths situated in at least two States and coordinated by the infrastructure managers concerned. The OTIF Working Group also dealt with considerations being given to redefining the carrier's right of recourse against the infrastructure manager for compensation paid to customers as a result of loss or damage having its origin in the infrastructure.

The majority of the Member States present at the last meeting of the OTIF working group decided in favour of maintaining the right of recourse in Article 8 of the CUI UR, which was primarily to be amended linguistically and editorially⁽¹⁾.

The members of the CUI Working Group of the CIT pointed out in the CIT's position relating to the OTIF draft texts that the draft text relating to the scope of application did not adequately clarify the scope of application of the CUI UR, and instead even placed restrictions on it. With regard to the carrier's right of recourse against the infrastructure manager in the event of pecuniary loss or damage, the CIT members unanimously agreed that, as a result of the modified wording, this was inappropriately restricted solely to international traffic. The carrier should also have a right of recourse for other legal pecuniary loss or damage, besides any such loss or damage arising under the CIM and CIV UR (e.g. under the EU Passengers' Rights Regulation (PRR)).

Implementation of the "E-GTC-I"

During the meeting, participants discussed the future strategy for implementing the European General Terms and Conditions for the Use of Infrastructure (E-GTC-I). Details of a project in which vigorous efforts are being made to implement the E-GTC-I on Corridor 1 (Rhine-Alpine) were presented to the participants by the Head of Legal and Compliance at SBB Cargo, Daniel Lützeltschwab. SBB Cargo has assumed the leadership in this CER/UIC 'CEO task force project and is also currently examining the in-house physical inclusion of the E-GTC-I provisions in the GTCs of SBB Infra.

Negotiations on the European Standard Contract of Use of Rail Infrastructure (E-SCU-I)

The CIT had already begun talks with RNE for the purpose of drawing up a common European Standard Contract of Use of Rail Infrastructure ("E-SCU-I"). The members of RNE have since announced, however, that the decision on collaboration and the preparation of this standard contract has been postponed. The CUI Working Group has nevertheless decided to move ahead with its vision of a standardised contract, so that the associated structure, the content and the next steps to be taken were discussed at the meeting.

The article "Standardisation of contracts for use of the infrastructure: reducing administrative complexity" by Isabelle Oberson on the background details and the next steps to be taken to implement the E-SCU-I appears in this issue on page 11.

Nina.Scherf(at)cit-rail.org

Original: DE

(1) The results of the meeting can be downloaded from the OTIF website at http://www.otif.org/fileadmin/user_upload/otif_verlinkte_files/04_recht/03_CR_2_Revision_ER-CUI/2016_ER-CUI/LAW-16041-CUI_4_annex_report-e.pdf

Standardisation of contracts for use of the infrastructure: reducing administrative complexity

The CIT is committed to increased harmonisation in the area of use of the infrastructure. The first step is to implement the E-GTC-I; the second step is to standardise the contracts for the access to infrastructure. In fact, the current variety and complexity of contracts with the different infrastructure managers in the same corridor have an administrative cost that is difficult to justify.

Analysis of the situation in three countries

During the last meeting of the CUI Working Group, the CIT analysed DB Netz, ÖBB Infra and SBB Infra contracts - three infrastructure managers having the same language and a relatively similar legal culture. However, major differences in the design of these contracts were noted, concerning the purpose of the contract, its duration, the hierarchy of its constituent parts or the possibility of amending it.

Why so many differences? How are they justified? Couldn't one and the same contract be used when confronted with the same situation and the same contractual relationship each time?

The current administrative complexity represents a cost to the railway undertakings, not only at the time of conclusion of the contract but also and especially in the event of problems in the relationship with the infrastructure manager.

How to reduce the complexity

RailNetEurope tried to standardise this type of contract in 2004, even before the beginning of negotiations on the E-GTC-I in 2005. In the opinion of the CIT, this standard contract should be simpler, more targeted and revised in light of the E-GTC-I.

A standard contract should be very short and only specify the few points that are not already set out in the E-GTC-I, for example:

- The purpose of the contract, specifying the services that are included and excluded;
- The moment the necessary contract or contracts are concluded, either before requests for train paths or after allocation of these paths;
- The hierarchy between the different elements of the contract, with clear references to the E-GTC-I and the documents of the relevant infrastructure manager;
- The contract period, either definite or indefinite;
- The terms for amending the contract itself and its different elements.

Next steps

The CIT has recently expressed its vision to the RNE, highlighting the benefit of standardising the relations between infrastructure managers and railway undertakings: balanced, non-discriminatory documents that are flexible and efficient in terms of cost. RNE answered that it currently wanted to focus on a pilot project undertaken by the lawyers of the infrastructure managers involved in freight corridor no. 3 (ScanMed).

During the next CUI Committee, the CIT will continue to analyse the current contracts and the margin for further standardisation in this area. The aim of the CIT is to reduce administrative complexity by improving transparency and readability of the contracts.

Isabelle.Oberson(at)cit-rail.org

Original: FR

Useful links

- ➔ [2004 Standard RNE Contract for the use of the railway infrastructure](#)
- ➔ [E-GTC-I](#)



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.

Entering details of the contractual carrier on the consignment note

If several carriers conclude a contract of carriage with a consignor, does this mean that all contractual partners of the carrier are contractual carriers? Does this also apply if one person simultaneously acts on behalf of the other carriers? Are several contractual carriers entered accordingly on the CIM consignment note?

Contractual carrier in accordance with the CIM UR

The legal definition provided by the CIM UR as specified in Article 3 letter a) unequivocally describes the contractual carrier with whom the consignor has concluded the contract of carriage pursuant to the CIM Uniform Rules. The liability of the contractual carrier thus applies jointly and severally with the successive carriers from the taking over of the goods to their delivery (Article 23 § 1 CIM). For the substance of the contract of carriage, Article 6 § 1 CIM postulates initially that the carrier undertakes to carry the goods for reward to the place of destination and is required to deliver them there to the consignee.

These regulatory provisions clearly indicate that the contract of carriage is concluded in an external relationship between a contractual carrier on the one hand and the consignor as a party to the contract of carriage on the other, and that it should be incorporated as such in a consignment note (Art. 6 §§ 2-3 CIM).

Entering details of the contractual carrier on the CIM consignment note

Accordingly, and complying with the principle expressed in Article 6 § 8 CIM, the CIT has foreseen for the required details of the contract of carriage to be included in Box 58

of the consignment note according to the explanatory notes in Appendix 2 of the GLV-CIM for CIT members and their customers. According to the explanatory notes, Box 58 indicates this in letter a) with "Contractual carrier". This is given in the singular in the GLV-CIM, since, in accordance with Article 6 § 3 CIM, only two parties to the contract of carriage are involved for the external relationship – the consignor on the one hand and the contractual carrier on the other, and for two additional considerations:

- On the one hand, Box 57 is entitled "Other carriers" (plural), followed by two status categories – Code 1 = "successive carrier" (singular again), or alternatively Code 2 = "substitute carrier" (singular again). This box is to be completed by the carrier at departure, but only if carriers other than the contractual carrier participate in the carriage.
- On the other hand, in accordance with the explanatory notes to Box 58 letter b), only the contractual carrier (singular again) having his registered office in the EU or in another contracting party of the EU-EFTA Convention on a common transit procedure may act as the principal of the simplified transit movement.

To sum up, CIT documents used as implementing provisions for the relevant provisions of the CIM UR and in particular the CIM Consignment Note Manual (GLV-CIM) are based on the assumption of a single contractual carrier. This is all the more important in view of the importance of customs and technical safety aspects for the international carriage of goods by rail.

Erik.Evtimov(at)cit-rail.org

Original: DE



CIT ITSELF

CIT General Assembly 2016

Digitisation – at this year's CIT General Assembly on 17 November in Bern, this megatrend was once again the focus of the previous and current work carried out by the CIT and will remain so in the coming year. The CIT Chairman, Jean-Luc Dufournaud (SNCF), skilfully guided the participants through the mixed programme.

In addition to passing the resolutions on the statutory business, the participants were also informed of the work completed by the GS CIT in the Passenger traffic, Freight traffic,

Multimodality, Wagon law and Use of infrastructure sectors last year and on the focus for the year ahead.

In the statutory part of the meeting, the General Assembly approved among other things the work programme for 2017, in addition to approving the annual financial statements for 2015 and the budget for 2017. In addition, Ms Nevin Kaygısız (TCDD) was confirmed as a member of the Executive Committee for a further term of office and Mr Platon Guryanov (RZD) was elected to the executive committee for a first term of office. And finally, the General Assembly election of Mr Adriaan Hagdorn (NS) as Chair of the CUI Committee.

In the report given on Passenger traffic, the decisions taken by the CIV Committee on the further development of CIT documents were outlined and key current business relating to the application of the Passenger Rights Regulation (PRR), in addition to the work to be done on the revision of the PRR, was reported on. Finally, the GS CIT informed the participants of the impact of the new EU General Data Protection Regulation and the relevant activities foreseen by the CIT, in addition to the work planned in the field of CIV/SMPS legal interoperability.

The main focus in the report on Freight traffic was on the work relating to the CIM electronic consignment note and CIM/SMGS. The CIT has established the legal and functional requirements for the electronic consignment note together with the members. The corresponding manuals will be published for the first time at the beginning of next year. The CIT has thus achieved an important milestone in the digitisation of transport documents. As part of the report, reference was also made specifically to an interesting new project dealing with the legal framework conditions for the shipment of postal consignments from China to Europe.

The report on Multimodality focused on the continuing development of CIT documents at the interfaces between sea and road traffic. In the case of Wagon law, the new liability regime for wagon keepers in the GCU, which takes effect as of 2017, was explained.



The focus in the Use of Infrastructure was on the work related to the revision of the Unified Rules concerning the Contract of Use of Infrastructure, abbreviated as "CUI" (Appendix E to COTIF), and the efforts currently being made to implement the European General Terms and Conditions of Use of Infrastructure ("E-GTC-I").

In the second part of the meeting, M. François Davenne (Secretary General of OTIF) presented the new developments of COTIF and pointed out the importance of interoperability beyond the EU borders. He concluded his presentation with some comments on the Protocol of Luxemburg as a new instrument for financing investments of new rolling stock.

Next meetings

The next CIT General Assembly will be held on 16 November 2017 at the CIT head office building in Bern.

The CIT Executive Committee on the other hand will hold its meetings on 27 April and 21 September 2017.

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

Obituary

We regret to inform you that Chris Dugdale, an important support for the CIT for the translation of its texts into English, passed away on October 25, 2016. Chris worked as a translator for the CIT for more than a decade, and contributed greatly to the consistency and quality of CIT publications.

The CIT is infinitely grateful for the fruitful and friendly collaboration with Chris over these years.

Our thoughts are with his family and friends.

CIT-Team / info(at)cit-rail.org
Original: FR



CIT DIARY OF EVENTS

Date	Event	Location	CIT contact
8-9 February	CIV Working group	Bern	Tetyana Payosova
1 March	Group of experts on «Seals»	Bern	Joël Forthoffer
23 March	CIM Committee	Bern	Erik Evtimov
24 March	Multimodality Working group	Bern	Erik Evtimov
5-6 April	CIV Working group	Brussels	Tetyana Payosova
26 April	CIM/SMGS Group of experts	Warsaw	Lothar Schneemann
27 April	Executive Committee 1/2017	Bern	Cesare Brand
11 May	Conference of Freight Claims Departments	Bern	Erik Evtimov
16 May	CUI Committee	Bern	Nina Scherf
17 May	CIV/SMPS Working group	Bern	Erik Evtimov
21 June	Data Protection Workshop	Bern	Tetyana Payosova
22 June	CIV Committee	Bern	Isabelle Oberson
12-13 July	CIM/SMGS Group of experts	Bern	Tetyana Payosova

Events with CIT participation

Date	Event	Org	Location	CIT contact
11 January	WCO-OTIF-CIT – Meeting	OTIF	Bern	Erik Evtimov
18 – 19 January	TTR/WG 5	RNE-FTE	Paris	Nina Scherf
26 January	DB Symposium	DB	Berlin	Cesare Brand
31 Jan – 01 Feb	TAP MD ad hoc group – requirement analysis on ticket control data in the booking process	UIC	Paris	Jan Svensson
31 Jan – 01 Feb	Travel Partners Standards Council	IATA	Geneva	Tetyana Payosova
2 February	RCF2	UIC	Strasbourg	Erik Evtimov, Nina Scherf
06 – 07 February	Ticketing Action Group, Reservation Experts Group	UIC	Paris	Jan Svensson
07 February	Passenger Working Group	CER	Brussels	Tetyana Payosova
07 – 08 February	General Assembly & Railway Award	CER	Brussels	Cesare Brand
14 – 15 February	OSJD Seminar	OSJD	Warsaw	Cesare Brand, Erik Evtimov
14 – 15 February	TAG ad-hoc group – reshuffling of UIC leaflets	UIC	Brussels	Jan Svensson
15 February	Commercial and Distribution Steering Committee	UIC	Paris	Tetyana Payosova, Isabelle Oberson
15 – 16 February	IRT Meeting	UIC	Frankfurt	Jan Svensson
20 – 22 February	UIC-CIT Management-Meeting & Meeting SNCF	UIC/SNCF	Paris	Cesare Brand, Erik Evtimov
22 – 24 February	ITC	UNECE	Geneva	Cesare Brand
22 – 23 February	TAP-TAF TSI CCM Working Group	ERA	Lille	Jan Svensson
2 March	Coordination Meeting CIT-Raildata	RailData	Bâle	Erik Evtimov
14 – 15 March	Commercial & Technical Group	UIC	Paris	Jan Svensson

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