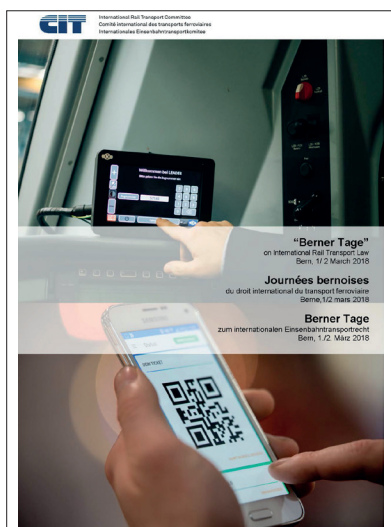




## CONTENT



«Berner Tage 2018»  
1 and 2 March 2018

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## EDITORIAL

Dear Readers,



The key focus in this issue is the report on the last meeting of the CIT's Executive Committee and that of the CUI Committee.

In the section on passenger traffic, you will find an article relating to the proposed revision of the Regulation on rail passengers' rights and obligations (PRR) published on 28 September 2017 by the European Commission, in addition to an article on the Passenger Claims Departments Conference, which was held in collaboration with the UIC in Frankfurt am Main.

In the section on freight traffic, we have information for you on the latest developments in the use of the CIM/SMGS consignment note. And finally, this issue also includes a detailed report on recent developments in digitisation and their impact on the railways.

I trust you will enjoy reading the latest issue!

**Best wishes from Bern**  
**Cesare Brand**  
**Secretary General of the CIT**



## PASSENGER TRAFFIC

### Revision of the European provisions for passenger rights

On 27 September 2017, the European Commission published its draft revision of the Regulation of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations 1371/2007 (pPRR<sup>(1)</sup>).

#### Purpose of the revision

This is an overall re-working of this regulation. The changes that had already been anticipated by the railway sector have been confirmed.

This draft brings to the fore the protection of passengers and their rights.

#### Fewer exemptions possible

Thus, while in the current PRR, various services could be exempted by the Member States, now this will no longer be the case for national long-distance traffic, and for urban, suburban and regional cross-border traffic. As for traffic to or from countries that are not members of the European Union, an exemption is only possible if the rights of passengers are guaranteed in the Member State granting the derogation (Art. 2 pPRR<sup>(1)</sup>).



*This draft brings to the fore the protection of passengers and their rights*

#### Passenger information

The Commission has also reinforced passengers' entitlement to information. This accrued duty to provide information is manifested in respect of information concerning the disruption of services (Art. 8 pPRR) but also information on train journeys (Art. 9 pPRR). It relates in particular to people with a disability and to people with reduced mobility, for whom various items of information must be provided in a way that, in particular, respects European standards in terms of accessibility (cf. Regulation (EU) No. 454/2011 particularly). Staff of railway undertakings and station managers must also receive training as a result of this (Art. 26 pPRR).

In the context of this draft, these various obligations have in some cases been extended, not only for railway undertakings, but also to the various actors in the field, such as station managers, infrastructure managers, and those involved with ticket sales.

#### Introduction of a force majeure clause

One of the other important points of this reform is the introduction of a force majeure clause (Art. 17 pPRR).

In fact, following the judgment delivered by the EU Court of Justice in the ÖBB-Personenverkehr AG case (Judgment C-509/2011), rail transport had become the only means of transport that did not benefit from such an exemption clause concerning ticket compensation in the event of delay. This is no longer the case, insofar as this force majeure clause is retained by the European Parliament and the Council.

The concept of "force majeure" is defined here as any difficult meteorological conditions or natural catastrophes compromising the operation of the service in complete safety. We do read however in the recitals of the draft that this should only relate to exceptional natural catastrophes and not to normal seasonal meteorological conditions, such as autumnal storms or regularly occurring floods (recital 21). One may wonder what the actual scope of this clause will be.

#### No generalised "through ticket"

It should also be noted that the Commission has decided to maintain the concept that a ticket = a contract, while some protagonists in the sector would like the concept of a "through ticket", or direct ticket, to be generalised. The Commission has however adopted the position that for this concept to be enforceable for the passenger, the latter must have been informed of this explicitly in writing, with the onus for the proof of this being incumbent on the railway undertaking, its agent, the tour operator or ticket seller.

#### Right of redress of railway undertakings

Finally, it will be noted that the Commission has included in its draft revision a right of redress for railway undertakings (Art. 19 pPRR).

Any railway undertaking that has paid compensation or for other obligations, according to the PRR may thus seek reparation for costs from any entity, including third parties, in accordance with applicable law. No provision of the PRR or national law may restrict this right.

(1) pPRR : Revision project PRR

The draft specifies that this right of redress also concerns third parties, with whom the railway undertaking has concluded a contract, and who have contributed to the harmful event. Such a right of redress is however also granted to any third party, as well as the passenger, with which or with whom the railway undertaking has concluded a contract.

### Next stages in the procedure

The draft must now go before the Parliament, and then before the Council. It may therefore undergo significant modifications. The CIT, in collaboration with the CER, will undertake an in-depth analysis of this project and will communicate the result to its members. It will in any case ensure that this procedure is followed closely and that its members are kept informed of future developments.

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*Original: FR*

### Useful link

➔ [Proposal for revision of PRR](#)

## Digital Single Market: What's in for CIT members?

*In the age of digitalisation the functioning of the single market in the EU would be incomplete without seamless access to online goods and services. To ensure this, the European Commission aims to remove barriers to cross-border online activity by providing regulations suitable for the online business world.*

*CIT members play an active role in the digitalisation process in the transport sector, becoming active users and providers in the online environment, and can thus potentially be affected by and benefit from the new EU regulations.*

### The EU Digital Single Market Strategy

The European Commission introduced a Digital Single Market (DSM) Strategy in May 2015 based on three pillars: (i) improving access to digital goods and services for businesses and consumers; (ii) creating a level playing field for digital networks; (iii) exploiting the full potential of the digital economy. Overall sixteen specific initiatives were adopted as part of the DSM Strategy. However, only some of them are of special importance for the railway sector. The CIT Working Groups regularly discuss the new legislative developments from the perspective of implementation of future regulations and their impact on day-to-day rail transport business, in light of increasing digitalisation of services offered by CIT members. On all these matters CIT maintains close cooperation with the CER, especially in preparing rail sector positions towards European institutions.

### Prohibition of unjustified geo-blocking

Within its e-commerce package, the European Commission is proposing a new regulation to prevent unjustified geo-blocking. This new legislation is to ensure that EU consumers seeking to buy products and services in another EU country, be it online or in person, are not discriminated (e.g. in terms of prices, payment conditions etc.), unless this is objectively justified by valid reasons (e.g. taxation, public interest). The European Commission noted that in the online world, consumers are often blocked from accessing offers in other countries, for example being re-routed back to a country-specific website, or being asked to pay with a debit or credit card from a certain EU country. Such discrimination is not compatible with the EU Single Market. The new Regulation will reinforce the principle of non-discrimination that is already established under the Services Directive and will provide legal certainty and enforceability for products and services online or offline. With increasing online offers, CIT members will have to comply.

### Enhanced powers for national enforcement bodies in the digital environment

Another important element of the e-commerce package is the proposed recast of the Consumer Protection Cooperation Regulation. The updated regulation will give more powers to national authorities to better enforce consumer rights, among others enabling them to check if websites geo-block consumers or offer after-sales conditions not respecting EU rules (e.g. withdrawal rights). The Commission is also publishing updated guidance on unfair commercial practices to respond among others to the challenges presented by the digital world. This proposal may also have further implications for the coordination of work between NEBs responsible for compliance with the Rail PRR.

### Access to data

In January 2017, the European Commission adopted the "Building the European Data Economy" package. The initiative aims to explore issues related, among others, to the free flow of data (e.g. prohibiting potential restrictions on data storage within specific EU jurisdictions), access and transfer in relation to machine-generated data; liability and safety in the context of emerging technologies, portability of non-personal data, interoperability and standards, as well as common regulatory solutions in a real-life environment.

The European Commission pays specific attention to data generated by machines (non-personal data) and processes based on emerging technologies, which are also in place in the rail sector. Among others, the European Commission would like to improve access to anonymous machine-generated data and facilitate and incentivise the sharing of such data.

At the same time, it recognizes the need to protect investments (access against remuneration) and avoid disclosure of confidential data. In view of these developments, the CER published a position paper in April 2017 summarising the main issues from the railways' perspective with respect to the access to non-personal data in the rail sector. Following a public consultation and a dialogue with stakeholders, on 13 September 2017 the European Commission proposed a draft regulation on the free flow of non-personal data. Furthermore, the European Commission plans to prepare a proposal on accessibility and re-use of public data by spring 2018.

### Protection of personal data in a digital environment

Finally, with respect to the protection of personal data in the digital environment, especially in electronic communications, the European Commission issued a proposal for a Regulation on Privacy and Electronic Communication, which should replace Directive 2002/58/EC dealing with the same issues. The proposed Regulation is a *lex specialis* to the General Data Protection Regulation targeted at the protection of electronic communications that qualify as personal data. The proposal also aims at protecting communications and related legitimate interests of legal persons (e.g. business secrets or other sensitive information with economic value).

The new Regulation will apply not only to providers of electronic communication services, but also to natural and legal persons who use e-communication services to send direct marketing commercial communications or collect information related to or stored in end-users' terminal equipment. Thus, railway undertakings may potentially fall within the scope of application of this Regulation, especially in the area of passenger transport services. The e-communications data within the scope of the Regulation will encompass machine-to-machine communications, localisation data, cookies and such like, which would be potentially of importance for various e-ticketing processes. The CIT closely follows these legislative developments within a broader topic of personal data protection in international passenger traffic.

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Original : EN

#### Useful links from the European Commission:

- ➔ [A Digital Single Market Strategy for Europe](#)
- ➔ [Legislative proposal to address unjustified geoblocking](#)
- ➔ [Legislative proposal to strengthen enforcement of consumers' rights](#)
- ➔ [Guidance on unfair commercial practice in the digital world](#)
- ➔ [Communication „Building the European Data Economy“](#)
- ➔ [Proposal for a Regulation on Privacy and Electronic Communication](#)
- ➔ [CER Position on European Data Economy \(April 2017\)](#)
- ➔ [Proposal for a Regulation on free flow of non-personal data](#)



## CIT/UIC Conference of Passenger Claims Departments

The revision of the Rail PRR, assistance in case of missed connections and the handling of delay compensation for rail passes were the main focus points of this year's Conference of Passenger Claims Departments, held on 28 September 2017 in Frankfurt. Over 60 participants from CIT and UIC members from all over Europe participated in the Conference of Passenger Claims Departments, this year arranged in Frankfurt at the kind invitation of Deutsche Bahn.

### Latest developments on the PRR

Isabelle Saintilan (SNCF) started the conference by providing a short update on interesting cases pending before national courts and national enforcement bodies (NEB). The other main topic was the revision of the Rail PRR. In fact, only the day before the European Commission had published its proposal for a revised Rail PRR, so the audience had the opportunity to have a preliminary discussion and exchange of views on this issue, which is very important for the European passenger railway undertakings.

### News in the CIT products

Jan Svensson and Sandra Dobler (CIT) gave an overview over this year's changes in the CIT products ranging from the GCC-CIV/PRR, via the AIV to the newly published CIT Guidelines on Data Protection (GDP).

### Customer service in the after sales departments at DB and SNCF

Dr. Daniel Schreiber (DB) gave a very interesting presentation on the conceptual development of the DB customer services and the main focus points in the operational work of the DB Customer Dialogue for long distance traffic and the DB Service Centre Passenger Rights. These units are processing an impressively huge number of customer contacts every year as DB is both a main rail carrier in Europe as well as a big seller of tickets.

As a comparison Kris Vierstraete (SNCF) presented the structure and working philosophies of the customer care centre of SNCF. Here a smaller quantity of customer contacts is processed, but with a very great complexity, as SNCF and the rail stations in Brussels are "the hub of Europe", having to deal with many different rail operators with sometimes quite different conditions and processes for complaints handling.

### Morning workshops – assistance, rerouting and trains in non-EU countries

The morning workshops presented different cases where assistance in the case of missed connections, onward journeys or rerouting with other rail carriers or other modes of transport, as well as total abandonment of the journey due to delays were in focus. The complexity in cases with delay-compensation for trains in non-EU countries was also discussed.



*The conference was chaired by Carmen Filipescu (Chair CIV Committee)*

### How to compensate for delays with rail passes

The afternoon section started with Martin Kojinkov from the Eurail GIE in Utrecht giving an interesting overview of the international rail passes Interrail and Eurail; how they look today, how the commercial delay compensation for the passes themselves is calculated and the challenges and possibilities for the rail passes in the future. M. Kojinkov also touched upon the subject which was dealt with in the workshop afterwards – how to deal with delay compensation for reservations bought in connection with international rail passes, which has arisen as one difficult issue for some railway undertakings. The discussions in the workshop showed that there is a great need for clarity on how to proceed with such delay compensation requests. Some concrete proposals to make the ticket layout of reservations more understandable were also made.

Marc Guigon (UIC) then concluded then this conference.

### Feedback and further actions for the CIT

The conference gave the General Secretariat of the CIT valuable feedback on how to further develop and refine the CIT products in passenger traffic and also ideas for themes to bring up in next year's conference of passenger claims departments, which will take place on 20 September 2018.

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Original: EN

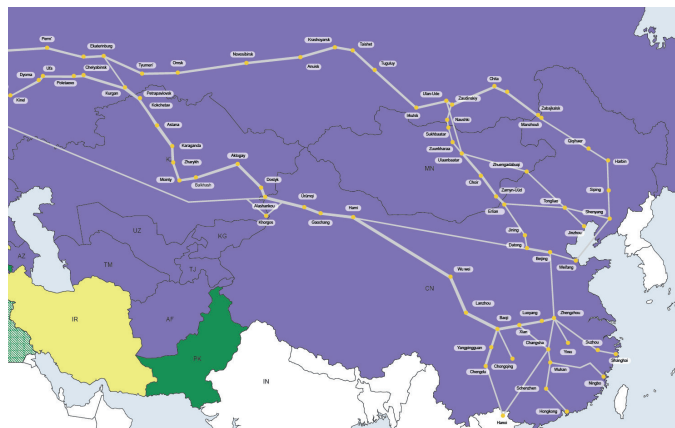


## The CIM/SMGS Group of Experts is making further progress in the joint CIT/OSJD project

*The success story of the common CIM/SMGS consignment note continues. The 22nd meeting of the CIM/SMGS Seals Group during the OSJD Committee, which was held in Warsaw at the beginning of September, focused on the amendments to the revision of the SMGS, in addition to issues related to its use due to the rapid increase in the acceptance of the CIM/SMGS common consignment note. A joint CIT/OSJD seminar on CIM/SMGS shipments was proposed for the purpose of speeding up the inclusion of Tajikistan, Uzbekistan, Turkmenistan and Afghanistan in Appendix 1 to the GLV-CIM/SMGS and Appendix 6 to the SMGS.*

### Use of the common CIM/SMGS consignment note in practice

The RZD WG presented the latest, very pleasing statistical data on the use of the common consignment note for CIM/SMGS shipments. One point worthy of mention is the 41% increase in use in 2016 compared with 2015. In 2016, a total of 18,193 export shipments were processed using the common CIM/SMGS consignment note, 11,592 import shipments and 6,821 transit shipments. The CIM/SMGS export and import shipments were carried out primarily with Germany, Romania, Slovakia and the Czech Republic. In the first eight months from January to August 2017, a total of 24,672 wagon and container shipments, in addition to 51,864 container shipments were processed using the common CIM/SMGS consignment note. They included 13,307 export shipments, 7,705 import shipments and 3,660 transit shipments.



Visual representation of the roads and border crossings to PR of China

### Further development of the GLV-CIM/SMGS

The project promoters CIT and OSJD constantly strive to further develop and update the legal provisions contained in the GLV-CIM/SMGS and Appendix 6 to the SMGS.

At its meeting, therefore, the CIM/SMGS Experts Group also dealt in depth with amendments to the specimen CIM/SMGS consignment note, taking into consideration the changes to the SMGS Convention that had come into force on 1 July 2015.

In the course of the discussion, the experts noted that the pages of the specimen CIM/SMGS consignment note would have to be renumbered and the references to the new pages in the GLV-CIM/SMGS modified accordingly. The amendments that had been made were discussed by the CIM/SMGS Steering Group during its meeting on 7/8 September 2017 in Warsaw and will also be examined and approved by the OSJD Commission for Transport Law (October 2017) and the CIM Committee (March 2018).

### Preparation and publication of the technical specifications for the CIM/SMGS electronic consignment note

The technical specifications for the CIM/SMGS electronic consignment note were finalised at the meeting of the ECN CIM/SMGS Ad Hoc Technical Working Group in April 2017. The main work focused on dealing with unclarified issues relating to the EDIFACT – XML deviation analysis. The final results will be incorporated into the XML schema by RailData. The complete document, entitled "Technical Specifications for the Electronic CIM/SMGS Consignment Note", will in future consist of the revised version of the current specifications and the XML schema for the CIM/SMGS electronic consignment note. Additionally, the technical specifications are to be amended in order to bring them in line with changes that became necessary as a result of the revision of the SMGS Convention. The technical specifications are to be published on **1 January or 1 July 2019** by the GS CIT and the OSJD Committee.

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Original : DE



## USE OF THE INFRASTRUCTURE

### 24th meeting of the CUI Committee

*The 24th meeting of the CUI Committee was chaired by the nominated Deputy Chairman Alberto Gallo (Trenitalia). The focus of the meeting was on the forthcoming revision of the CUI Uniform Rules. The meeting began in traditional fashion with a discussion among participants on recent developments in international law and relevant court cases.*

#### Support for the work by a new Deputy Chairman: Alberto Gallo

At the start of the meeting, the CUI Committee confirmed it would nominate Alberto Gallo as the Deputy Chairman of the Committee at the CIT General Assembly in November. The Committee has thus decided in favour of "dual leadership" for the work it carries out: in addition to the current Chairman of the CUI Committee, Adriaan Hagdorn (NS), Alberto Gallo will in future also determine the focus of the work to be carried out.

Alberto Gallo then took over as Chair of the meeting and competently chaired the meeting on behalf of Adriaan Hagdorn.

#### Exchange of views and information on international law and court decisions

The participants use the meeting regularly to exchange their views on cases brought before their own respective courts or authorities and to discuss the various aspects. On this particular occasion, the focus once again was on a number of fascinating developments: how will German courts, for example, in future understand the term "international train paths"? A lively discussion subsequently resulted in a decision that in future the most important decisions were to be documented and stored for further reference.

In addition, Miguel Caramello (Chief Legal Officer at CER) informed the Committee of recent developments in European law, to ensure that any future work could take such developments into consideration.

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

An important focus of the work carried out by the CUI Committee currently consists of keeping track of the progress being made in the revision of the CUI Uniform Rules <sup>(1)</sup> and developing a strategy designed to safeguard the rights of the railway undertakings. To this end, the Committee discussed a new position paper that is to be used by the members when dealing directly with the ministries and also in the OTIF Revision Committee.

The OTIF representative, Eva Hammerschmiedová, reaffirmed that the revision of the CUI Uniform Rules would be discussed at the next meeting of the OTIF Revision Committee before being submitted to the General Assembly for approval at the end of 2018.

#### European rail freight corridors

Sandra Ferrari (UIC, Senior Freight Advisor) presented the ECCO project to the CUI Committee. In the ECCO ("Efficient Cross Corridor Organisation") project, the UIC coordinates the interests of the railway undertakings in the "Rail Advisory Groups" of the rail freight corridors.

#### Implementation of the E-GTC-I and negotiations on the European Standard Contract for the Use of Railway Infrastructure (E-SCU-I)

Participants at the meeting discussed the next phase of the strategy to implement the European General Terms and Conditions of Use of Railway Infrastructure (E-GTC-I). A project in which considerable emphasis is currently being placed on the implementation of the E-GTC-I is Project No.3<sup>(2)</sup> in the "CEO Work Plan Rail Freight in the 21st Century" managed by the CER and UIC, for which SBB Cargo has assumed responsibility. Another item on the agenda for work to be carried out by the Committee in future is the development of a European Standard Contract for the Use of Railway Infrastructure (E-SCU-I) for which a number of important questions have still not been clarified: how does one differentiate in contractual terms between "access to" and "use of" infrastructure? How are contracts of use of infrastructure classified in legal terms in the various countries in which they apply?

At the end of the meeting, the Committee said farewell to Ms. Hammerschmiedová, who retires at the end of the year. The CUI Committee expressed its thanks to Ms. Hammerschmiedová for her regular participation as the OTIF representative and for her active involvement in the work of the Committee.

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Original : DE



Alberto Gallo (third from left) was nominated as Deputy Chairman

(1) CUI UR: Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic

(2) Project No. 3: "Harmonisation of conditions of use in the contracts between JMs and RUs"





## General Assembly of the CIT

We cordially invite our members to the General Assembly of the CIT.

It will be held **on Thursday, 16 November 2017** in the *UPU head office building (Conference Room Montgomery Blair) at Weltpoststrasse 4* in Bern. The official part of the meeting will begin at 9:00 a.m. and will end at 11:30 a.m. at the latest.

In the second part of the meeting, which will last until 12:30 p.m., Jean-Pierre Loubinoux, Director General of the UIC, will speak on "The role of UIC in a globalised railway world".

We look forward to welcoming you soon.

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Original : DE



Jean-Pierre Loubinoux, Director General of the UIC

## News from the CIT Executive Committee

At its second meeting in Locarno on 27 September 2017, the Executive Committee chaired by its President (Jean-Luc Dufournaud, SNCF) evaluated the progress made by CIT in implementing its 2017 work programme.

The Executive Committee also made preparations for the 2017 General Assembly, particularly with regard to the 2018 budget and work programme and the appointment of chairpersons for some of the CIT's bodies.

Preparations for the 2018 *Berner Tage*, which will take place on 1 and 2 March 2018 with "The impact of digitisation on transport law" as its theme, were also discussed.

The Executive Committee took the opportunity to enter into a dialogue with the new director of FART, Claudio Blotti, who gave an impressive presentation on his transport undertaking, which offers rail, bus and cable car services, focusing in particular on the challenges of cross-border rail traffic.

Ferrovie Autolinee Regionali Ticinesi (FART) operate public transport services in the north of Lake Maggiore and is a long established CIT member.

The next meeting will be held on 26 April 2018.

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Original : DE



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## CALENDER-CIT 2017 / 2018

Date	Event	Location	CIT Contact
14/15 November 2017	CIV Working Group	Bern	Isabelle Oberson
16 November 2017	General Assembly 2017	Bern	Cesare Brand
17 November 2017	Multimodality Committee	Bern	Erik Evtimov
28 November 2017	Training Seminar for SBB	Bern	Isabelle Oberson
29/30 November 2017	CIM Working Group	Bern	Erik Evtimov
14/15 February 2018	CIV Working Group	Bern	Sandra Dobler
1/2 March 2018	«Berner Tage» 2018	Bern	Cesare Brand
13 March 2018	Seals Group of Experts	Sopron	Fabienne Vaisson
21 March 2018	Multimodality Working Group	Bern	Nina Scherf
22 March 2018	CIM Committee	Bern	Erik Evtimov
18/19 April 2018	CIV Working Group	Budapest	Sandra Dobler
26 April 2018	Executive Committee 1/2018	Bern	Cesare Brand
15 May 2018	CUI Committee	Bern	Nina Scherf
16 May 2018	CIV/SMPS Working Group	Bern	Erik Evtimov
24 May 2018	Conference of Freight Claims Departments	Bern	Erik Evtimov / Nina Scherf
21 June 2018	CIV Committee	Bern	Isabelle Oberson
27/28 June 2018	CIM Working Group	Bern	Erik Evtimov

## Agenda with CIT participation 2017 / 2018

Date	Event	Org.	Location	CIT Contact
27 October 2017	SSC Eisenbahnrechtstagung	SSC	Bern	Erik Evtimov
1-3 November 2017	URL Expert Group	UNECE	Geneva	Erik Evtimov
6 November 2017	UIC Commercial and Distribution Forum	UIC	Paris	Cesare Brand
7 November 2017	European Rail Summit	Railway Gazette	Brussels	Cesare Brand
8 November 2017	FERRMED Conference	FERRMED	Brussels	Erik Evtimov
9/10 November 2017	DTLF Plenary	GD MOVE	Tallinn	Erik Evtimov
15 November 2017	UIC/CIT MNGT Meeting	UIC/CIT	Bern	Cesare Brand / Erik Evtimov
22 November 2017	Stakeholder Meeting Eurasian Corridors	UIC	Paris	Erik Evtimov
23 November 2017	CER Assistants Meeting	CER	Brussels	Nina Scherf
23 November 2017	Freight Forum	UIC	Paris	Erik Evtimov
1 December 2017	10 Years	ČD Cargo	Prague	Erik Evtimov
6 December 2017	European General Assembly	UIC	Paris	Cesare Brand
7 December 2017	UIC General Assembly	UIC	Paris	Cesare Brand
25/26 January 2018	TAP MD	CIT	Bern	Jan Svensson
5-8 February 2018	UIC Technical Meeting	UIC	Brussels	Jan Svensson
20 February 2018	CER/UNIFE European Railway Award	CER	Brussels	Cesare Brand
21 February 2018	General Assembly	CER	Brussels	Cesare Brand
27/28 February 2018	26th Revision Committee	OTIF	Bern	Cesare Brand / Erik Evtimov
7/8 March 2018	High Level Passenger Meeting	CER	Rome	Cesare Brand
20 March 2018	Digital Railways Fair /CER Assistant Meeting	CER	Brussels	Erik Evtimov
20/21 March 2018	TAF/TAP TSI CCM Working Group	ERA	Lille	Jan Svensson

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