

Editorial

Standardisation of contractual relationships as a way of making law interoperable



Liberalisation of the rail industry marches relentlessly forward. Liberalisation not only improves the performance of railway undertakings but also increases the complexity of the system, including, in particular, the legal system. More than ever, therefore, standards which ensure coherent and certain law are required.

Accordingly, standardisation of contractual relationships by the use of general terms and conditions (GTC) was the main topic at the most recent "Berner Tage". Professor Andreas Furrer from the University of Luzern gave a seminal presentation which illuminated the legal status of GTC, the relevant legislation, case law and both national and international features and problems. In view of the fundamental importance of his comments we have summarised them in this edition of CIT Info.

General terms and conditions are particularly topical for the CIT because two important sets of regulations are being discussed at the present time, the *General Conditions of Carriage for Rail Passengers (GCC-CIV/PRR)* and the *European General Terms and Conditions of use of railway infrastructure (EurGTC)*.

Drawing up general terms and conditions is time-consuming and demanding. Firstly, the various interests within our association must be analysed and brought to the lowest common denominator. Then faultless contractual clauses have to be drafted. After that follow discussions with our contractual partners or their trade associations. Lastly, the general terms and conditions have to be implemented in practice, a process in which both the contractual freedom of the individual undertakings and higher level considerations such as simplicity and efficiency must together be taken into account.

The creation and maintenance of general terms and conditions comes within the core competence of the CIT. In addition to political skill, drawing them up and maintaining them requires openness to differing legal cultures, staying power and faultless legal drafting skills. Nevertheless, careful legal work early on brings its own rewards in the end. Clear and balanced rules avoid uncertainty and disputes; they create trust and thus save time and money.

Thomas Leimgruber
Secretary General to the CIT

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CIT Diary of Events

Date	Event	Location
28/29 April	CIM/SMGS Group of experts	Warsaw
29/30 April	CIM/SMGS Legal Group	Warsaw
30 April	CIV Committee	Bern
28 May	Conference of Freight After-Sales Service Departments	Bern
10 June	Executive Committee 2/2009	Varna (BG)
17/18 June	CIM Working Group	Bern
30 June	Workshop on "New Passengers' Rights"	Paris
7 July	CIM/SMGS Co-ordination Group	Bern
8 July	CIM/SMGS Steering Group	Bern

“Berner Tage” 2009

The fourth “Berner Tage” took place on 4 & 5 February 2009. More than 150 railway lawyers, commercial lawyers, insurance experts and risk managers from all over Europe took part. We reported on some of the presentations in the last CIT Info.

Professor Andreas Furrer, from the University of Luzern, gave the keynote speech on general terms and conditions. Because general terms and conditions are of crucial importance to the CIT, the most significant points and insights in his presentation are summarised below. In addition, we also report on the topics which were handled in the freight section of the “Berner Tage”.

General terms and conditions in theory and in practice

General terms and conditions (referred to below as GTC) are contractual clauses which have been drawn up in advance, defined by a single party for a large number of contracts and not negotiated individually. All organisations which do business with thousands, even millions, of customers, such as railway undertakings, have general terms and conditions.



Prof. A. Furrer

These terms and conditions certainly allow these businesses to rationalise contractual relationships with customers, but how can an undertaking be certain that the GTC are actually valid and applicable to all the contracts it concludes with its customers? Professor *Andreas Furrer's* presentation brought valuable savoir-faire to participants in the “Berner Tage”.

Criteria for GTC to be valid and enforceable

In general, European states have introduced statutes to protect consumers into their private law. Essentially, these rules, which have been inspired by Community Directives, are intended to limit any possible injustice to consumers in mass contracts. In the event of litigation on the validity or enforceability of GTC for a particular contract, a national court will check the following four aspects:

- 1) **incorporation:** have the GTC been incorporated into the individual contract validly? Is there a reference to GTC to be found in the contract? Have the GTC been made available to the customer before the conclusion of the contract, or has it been reasonably possible for the customer to consult them?
- 2) **validity:** do the general terms and conditions contain unusual or surprising provisions? Have the parties negotiated terms other than those contained in the GTC?
- 3) **interpretation:** is the language used in the GTC sufficiently clear and comprehensible for the consumer to understand?
- 4) **the content:** do the GTC contain excessive provisions or provisions which are contrary to mandatory law? Are the GTC unbalanced and do they depart significantly from the rights and obligations which would arise normally from the nature of the contract?

The GTC in practice

Based on his personal experience and that of some of his law students, *Professor Furrer* remarked that it is almost impossible to get a copy of the general conditions of carriage for passengers at station booking offices, whether it be for a domestic or an international journey. In addition, there is no indication of

the general conditions of carriage on domestic tickets issued by SBB. It is therefore doubtful if the SBB general conditions of carriage are actually incorporated into individual contracts of carriage in Switzerland. The issue may perhaps be different in states in which the general conditions of carriage (still frequently called “tariffs”) are set by the ministry of transport and published in the official journal.

Professor Furrer then analysed several actual examples of international tickets issued by SBB, SNCF and NS Hispeed. It appeared that tickets currently frequently make reference to the law applicable or to the general conditions of carriage applicable, sometimes giving details of the website on which the text of the conditions is available. Nevertheless, *Professor Furrer* expressed some doubts on whether the general conditions are actually incorporated in individual contracts of carriage if the ticket simply makes a general reference to the carrier’s website and if the general conditions are not available on paper from the booking office.

The meaning of the obligation set out in Article 8 PRR, i.e. to inform the passenger of the general conditions applicable to his contract, is not very clear at the moment. Formally, this article requires the passenger to be informed “in the most appropriate format”. What does that mean given current practice, given technical options, given organisational limitations and given the expectations of consumers? Only the decision of a court will make that clear.

For freight traffic, incorporation of the carrier’s general conditions of carriage is much less difficult, since the standard CIM consignment note refers to them explicitly.

Validity of the clauses selecting the jurisdiction

In general, courts are very sensitive about unusual or surprising clauses selecting the jurisdiction. Undertakings should therefore take great care in making their choice. If a court considers a clause selecting jurisdiction to be unusual, it will strike the clause out and replace it by the private international law applicable. For contracts of carriage, all the texts applicable at European level (the CIV and CIM Uniform Rules, Regulation (EC) No 44/2001¹, the Lugano Convention²), provide for the parties being able to choose a jurisdiction other than that of the domicile of the defendant. Nevertheless the jurisdiction should not be unusual

1 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJEU L 12, of 16.1.2001, p. 1.

2 Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, concluded in Lugano 16 September 1988. The convention has recently been revised to align it with Regulation 44/2001. Although signed on 30 October 2007, the revised Convention has not yet been ratified by the contracting parties (Switzerland, Norway, Iceland, EU).

because a court could then invalidate it and replace it by the jurisdiction of the location in which the contract is performed (as provided in Regulation 44/2001 and the Lugano Convention). In certain states, it may also be that the jurisdiction chosen will be contrary to its international private law since certain states consider contracts of carriage to be consumer contracts and that in that event the jurisdiction of the domicile of the consumer takes precedence over the jurisdiction chosen.

Terminology used in GTC

The terminology used in the GTC must be as simple and clear as possible. Legal and technical terms such as “successive carrier” or “substitute carrier” must be avoided in general conditions of carriage because they are not part of every-day vocabulary and not easily understood by a non-lawyer. These terms would therefore be interpreted in favour of the consumer on the “*in dubio contra stipulatorem*” principle.

Amendment to the GTC

When undertakings amend their general conditions of carriage, they must take care to provide for a transitional period to deal with the situation arising from contracts of carriage concluded under the former conditions of carriage. That will be the case, for example, for annual season tickets or pass type products (Eurail, Interrail, etc.)

In addition, undertakings must not consider that changing the general conditions of carriage shown on their websites and declaring that the changes will apply in seven days will be satisfactory. Every significant change to the general conditions of carriage should be notified to a broad public by posters and press releases.

Conclusions

Contractual relationships between railway undertakings and their customers are increasingly less determined by tariffs decided and published by governments. Private law is becoming increasingly important because of the liberalisation of rail services. Hence, railway undertakings must pay particular attention to the general principles governing general terms and conditions within the European context.

Participants in the “Bernier Tage” will certainly have drawn two essential messages from *Professor Furrer’s* presentation:

- 1) publication of GTC and making them available are of crucial importance for their incorporation in individual contracts of carriage;
- 2) for GTC to be valid and enforceable on customers, they must be perfect both in their content and wording.

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Original: FR

Freight section

Henri Trolliet, Assistant General Secretary to the CIT, chaired the freight session of the “Bernier Tage 2009”. In the first part of the afternoon’s programme there were three main items.

Electronic consignment note

The first contribution was by *Rainer Wilke*, the e-RailFreight project leader. It focused on the problems currently being addressed in the electronic CIM consignment note project together with the approach being adopted to solve them. The CIT drew up the functional and legal specifications for the first

phase of the consignment note project as part of the e-Rail-Freight work. Management of the project however, was passed to the UIC on 1 January 2008 so that the technical specifications for the implementation of the electronic consignment note could be drawn up on behalf of the railways who are to participate. The first test movements are being planned to take place during 2009.

Herr *Wilke’s* conclusion was that, apart from some small sticking points which still remain to be resolved (such as electronic signatures and the movement of dangerous goods), the work to make transport documents electronic is moving forward rapidly and that it should be possible to finish it by the middle of 2009. Herr *Wilke* took the opportunity to thank everyone who has been involved with the project.

Making CIM and SMGS transport law interoperable

The second contribution, from *Erik Evtimov*, CIM/SMGS Project Coordinator, briefed the conference on the progress being made on the project to make the CIM and the SMGS legally interoperable. In this project, the CIT, together with the OSJD, aim to create a bridge between the two current statutory regimes, the CIM and the SMGS. At the same time, the project seeks to minimise the penalties in terms of the time, costs and security requirements which the interface causes.

The project reflects the future-oriented approach which the CIT adopts towards its work in two respects. Firstly, the integrated transport documents (common CIM/SMGS consignment note, CIM/SMGS wagon list and container list) and the associated legal procedures (CIM/SMGS formal report and CIM/SMGS claims handling) allow the railways to take a full part in the global market for transport services. In addition, customs authorities



The freight section of the “Bernier Tage” keeps participants engrossed.

(in particular) consider that the creation of an electronic CIM/SMGS consignment note is of prime importance for crossing the external frontiers of the European Union.

The outlook for freight traffic by rail

The closing contribution, from *Ferdinand Schmidt*, member of the Management Board of Rail Cargo Austria (RCA), dealt with the short and medium-term outlook for European railways. He described developments in the transport market from a practical viewpoint, not only as seen by RCA but also from the viewpoint of all freight railways. Freight railways must quickly recognise the characteristics of the new global markets and the opportunities these markets provide and then exploit them. In doing so, railways must allow for risks; they must take action to push up quality and they must become more efficient to meet price competition from other modes. Lastly, Herr *Schmidt* addressed a message to the participants in the "Berliner Tage 2009": use the global economic crisis as a spur to find even better and more efficient solutions for the railway community. It is the task of the CIT to make standard, transparent and consistent minimum standards in the form of general terms and conditions available to railways for their daily work.

In the late afternoon, the topics which had been raised earlier were examined in more detail in three lively workshops. The workshop leaders, Messrs. *Charrier*, *Heidersdorf* and *Evtimov* reported back on the main conclusions of the discussions the following day.

Main conclusions

International transport law comes more and more into contact with other industries and new ways of moving goods because of the globalisation and diversification of transport services. New developments in transport are taking place and new legal issues are arising: the role of the carrier as a logistics provider, of the customer as a forwarding agent and the various forms of working together to provide international transport of freight by rail.

The stimulating discussion both in the plenary meeting and outside it provided ample evidence that international transport law is a living, constantly developing entity.

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Original: DE

Transport Law and Policy

Transport policy 2010-2050

The European Commission organised a conference on 9 & 10 March which was dedicated to the future of rail traffic, looking forward to 2050. Some 500 leading figures from the political and business world took part. The CIT was represented by its Chairman and Secretary General.

In his introduction, Antonio Tajani, Vice-President of the European Commission admitted that the transport industry was going through a difficult phase. It was essential however, to look beyond the current crisis and to understand that innovation, technical development, globalisation, sustainability and overloaded infrastructure called for fundamental changes. The current "mobility concepts" need to be thought through and the appropriate players involved in joint studies. The European Commission's objective is to produce a white paper in 2010 which will define transport policy right through to 2050.

Subsequently, expert speakers presented various issues from differing viewpoints in three workshops (urban transport, passenger transport and freight transport). The CIT considered that the insight that the interface between the various modes of transport

(and that whether passenger or freight), would play a central role was of particular importance. Future transport law, the transport documents to go with it and data exchange must therefore be developed so that they can be used multi-modally.

Law will also be able to make a significant contribution to the shaping of future transport policy and indeed must do so.

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Future transport law must be multimodal.

Passenger Traffic

CIV Working Group

The *General Conditions of Carriage* (GCC-CIV/PRR) were finalised by the CIV Working Group on 17 & 18 March 2009. A small trilingual group of experts then checked the terminology used in each of the three languages to ensure consistency on 1 April 2009. The GCC are therefore now ready to be approved by the CIV Committee on 30 April 2009.



Last changes to the GCC-CIV/PRR before they are formally approved by the CIV Committee.

The working group also produced an extract of the general conditions of carriage in simple and user-friendly language for passengers. This extract will be used as general information for passengers on the CIT website and on the www.railpassenger.info website. It could also provide a basis for those undertakings which would like to make their own user-friendly versions of the GCC available. A draft of a poster to be displayed on stations is also being supplied to undertakings. It was designed by the UIC "Charter Group" and will be presented to the UIC Passenger Forum on 28 April 2009.

The working group has also revised the CIT's two manuals, (GTV-CIT and GTT-CIV) to reflect the new requirements. These amendments will also be submitted to the CIV Committee for approval. It now only remains to revise the *Agreement concerning the Relationships between Carriers in respect of International Passenger Traffic by Rail* (AIV). The work has already started and is planned to continue right up to the beginning of December 2009.

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Meetings of the Price and Commercial Questions and Distribution and Systems Study Groups

Both study groups met for their spring meetings on 11 March 2009 in Paris. The groups met jointly in the morning and then dealt with their specific business in the afternoon in separate meetings.

The UIC/CER spokesman briefed the groups on the progress made on work on the TAP-TSI. Several simplifications for railway undertakings had been achieved. The change-management system will be at two levels, one for the technical appendices, for which the ERA working group will be responsible and the other for the body of the TAP itself, for which the Article 21 (RISC)-Committee will be responsible. The CER has initiated a consultation on the common standpoint (That consultation will have been completed by the time this CIT Info appears. The standpoint should have been discussed in the ERA working group on 1 April 2009. That did not happen however, and the issue will now only be considered on 12 May 2009). The Article 21 Committee will discuss the draft in June. The technical appendices should be revised by December 2009.

The MERITS system is being actively pursued. The quality of the data being delivered is continually improving. At the same time, tests with Rail Pass Port (RPP) on <http://passport.uic.org> are being carried out. This application could replace the "market price catalogue" [which is also managed by Sysrail (SNCF)]. The Price and Commercial Questions Study Group expects that SNCF will reactivate the working group in question and convene a meeting before autumn 2009.

The Price and Commercial Questions Study Group expressed the request to permit the option of showing either "fare including service charge ..." or "fare + service charge ..." for providing details of the service charge.

Lastly the study group took note of the results of the work of its ad-hoc group on the restructuring of the special conditions of carriage and the reconciliation of the structures with the topics to be treated within them. The ad-hoc group was mandated to submit the proposed alterations to UIC leaflets 106, 108-1 and, as appropriate, 108-2 to the September meeting for approval.

The Distribution and Systems Study Group subsequently created a direct link with its own work. The approach adopted in UIC leaflet 918-2 for showing service charges will be aligned with the Price and Commercial Questions Study Group's demand. For booking assistance for passengers with reduced mobility a solution developed by Sysrail outside the HERMES messages will be tested. It is to be financed by those undertakings that are going to use the booking system.

David Sarfatti of Sysrail was appointed as the new Chairman of the Ticketing Action Group. Amongst his first tasks will be finding solutions for the changes proposed by the CIT (particularly the relocation of the abbreviation "CIV" in the RCT2-layout and better embedding of cross-referencing in the conditions). These changes have been confirmed by the Study Group Price as work that needs to be done.

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Annual conference of the European Passenger Federation (EPF)

It was certainly not by chance that the EPF was founded in Lille, at a new European rail transport crossroads. Since its founding, in 2002, it has played an active part in representing passengers. Its annual conference this year took place in Switzerland, at an old European crossroads. The Verkehrsclub der Schweiz [Swiss Transport Club] and Pro Bahn Schweiz [a Swiss public transport users' association] organised the event in the headquarters of the SBB Passenger Division in Bern on 14 March 2009.

The conference revealed many aspects of Swiss transport policy. The SBB's Chief Executive Officer, Andreas Meyer, was the first of many able speakers. He used the opportunity to invite Pro Bahn to the first meeting of a Swiss "Transport Council" which is being set up. The council will be composed of representatives of public transport undertakings and passenger representatives.

All the speakers used the opportunity to present the Swiss integrated traffic and tariff system, including Postauto AG [post buses], the Verband öffentlicher Verkehr [Swiss Public Transport Operators' Association], the SBB Passenger Division and Cisalpino.

The high point of the conference was to have been the presentation by Antonio Tajani, the Transport Commissioner of the European Commission. However at the last minute, he could not take part. Accordingly the EPF's representative at the EU meeting on transport policy held on 9 March 2009 reported on the issues discussed. At that meeting, the draft Regulations, firstly on bus and coach transport and secondly, when travelling by sea and inland waterway were discussed. The EPF is well aware that even after these Regulations come into force, there will not be a level playing field in terms of passengers' rights between the air, rail, road and water modes. One might well ask oneself why it seemed at the time that it was only European railways and the implementation of Regulation 1371/2007 on rail passengers' rights (PRR) that were enjoying so much attention from the EPF.

The comprehensive study commissioned by "Passenger Focus" (a state-supported passenger association) in the United Kingdom, leads to the conclusion that the national organisations which are affiliated to the EPF do take up issues which concern



Attentive participants at the European Passengers' Federation Conference

regular users of the railway. In that study all the characteristics of rail traffic, from the offer itself, the prices, the punctuality, and value for money both in the United Kingdom and in several countries in continental Europe were compared.

The EPF's representative had already made it clear (in the "Berner Tage" on 4 & 5 February 2009), that the EPF places great importance on having through tickets, that the EPF would prefer that passengers only ever had one contact point, that there should be no exclusions of liability for delays and that for delays that give rise to compensation, the total fare should always be used as the basis of calculation. Repeating these demands in the conference itself was therefore not a surprise for the CIT's observer or for any of those involved in the implementation of the PRR. The conference unfortunately did not allow the opportunity to correct some misunderstandings in the reading of the general conditions of carriage (GCC-CIV/PRR) drawn up by the CIT.

The General Assembly of the EPF, which followed the conference, was not a public event. Nevertheless, the work programme for the next four years (under the new European Parliament to be elected in June) was decided.

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Fiftieth COLPOFER Conference – Berlin 2 & 3 April 2009

After twenty-eight years of activity, this fiftieth gathering offered the opportunity, firstly to review progress but also, as tradition also demands, to exchange experiences, to look right across the rail system at developments in progress and those upcoming. Numerous organisations contributed, such as the European Forum for Urban Safety, the International Centre for the Prevention of Crime and the SBB with its initiative to prevent violence in the classroom. The EU's COUNTERACT project was also explained. The UIC, UITP, EIM and RAILPOL reported on their activities.

COLPOFER's own working groups and the CIT also reported on their activities. Of these, the "Metal Theft" Working Group has now completed its work with the issue of a brochure and a

poster. In addition to the existing "Protection against Terrorist Attacks" working group with its exercises, a new group will be set up to consider normal security requirements for every-day international and domestic rail traffic.

This initiative accords with the concerns of CIT members who feel a need to exchange ideas on the implementation of Article 26 PRR (Personal security of passengers). The UIC Security Platform will table the knowledge it has accumulated so far. The CIT will be able to take part in the work as required.

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Freight Traffic

Annual meeting of the CIM Committee

The CIT's CIM Committee held its twelfth meeting on 31 March 2009 under the chairmanship of Christian Heidersdorf (DB Schenker Rail DE).

The e-RailFreight project

The committee approved all the amendments to take the functional specifications for the electronic CIM consignment note and CUV wagon note forward. These included the following elements: a review of the mixed system, better documentation of the interchange of consignments between railway undertakings, accompanying documents in an electronic form and revision of the specifications for data exchange with customs authorities.

The revised legal specifications for the electronic CIM consignment note and CUV wagon note were likewise agreed. The issue of electronic signatures was nevertheless left in abeyance. The CIM Working Group will study this issue in more detail at a special meeting and submit the results to the CIM Committee in writing for their approval. This will allow these further amendments to come into effect with the revised specifications on 1 July 2009.

The project to make the CIM and SMGS legally interoperable

The committee welcomed the news that over twenty regular flows of traffic already make use of the CIM/SMGS consignment note. It approved all the propositions on the handling of claims for loss and damage in transit; these proposals had already been approved by the CIM/SMGS Steering Group on behalf of the project. These provisions are intended to improve the position of customers in the period before a standard legal system can be put in place for movements between Europe and Asia. They are due to come into effect on 1 January 2010 after having been approved by the OSJD's II Committee in October 2009.

Further decisions

The committee adopted resolutions on the further development of CIT freight documentation basing them on recommendations made by the CIM Working Group (chaired by Guy Charrier (SNCF Fret)). The principal issues were:

- clarifying the GTC provision of services and traction and the AIM;
- amplifying the GTC joint contract and sub-contract to provide for more certainty in the procedures for consignments subject to customs formalities;



From left to right: Erik Evtimov, CIT; Guy Charrier, Chairman of the CIM Working Group; Christian Heidersdorf, Chairman of the CIM Committee; Henri Trolliet, Deputy GS CIT and Nathalie Greinus, CIT.

- amending Appendix 18 GTM-CIT "Accompanying document" to cover wagons detached from a block train or group of wagons;
- accounting for a consignment by a carrier other than the carrier at the forwarding station or the carrier at the destination station.

These decisions will come into effect on 1 July 2009.

Survey of CIT freight documentation user satisfaction

The results of the survey revealed that once again the GLV-CIM, GLW-CUV and GTM-CIT manuals together with the GTC-CIM and the AIM have the most use and furthermore with almost no derogations from them. The GTC joint contract and the checklist for customer agreements likewise fill a significant need.

The committee decided to retain all the CIT's freight documentation for the time being and instructed the CIM Working Group to mount the next survey in mid-2010.

The unsatisfactory number of entries in the database and the fact that it is consequently not up-to-date were also discussed. Members of the CIT are strongly urged to improve the situation. Decisions on further action are to be taken at the next meeting.

The CIM Committee will hold its next meeting on 30 March 2010.

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CIM/SMGS consignment note also in use on Corridors V and IX

Major traffic flows for Renault have commenced on *Corridor IX* between Rumania and the Russian Federation, in transit via the Ukraine, using the CIM/SMGS consignment note. CFR Marfă has provided information concerning the consignments of Renault car parts in 40' containers from Ciumesti to Moscow Pavletzkaya freight yard, which have been operating regularly since 24th February 2009. The shipments are routed via the Rumanian - Ukrainian border Dornesti-Vadul-Siret and via the Ukrainian-Russian border Zernovo-Suzemka. Currently, a CIM/SMGS consignment note is issued for each individual container, as the CIM/SMGS container list has not yet been put into practice in Russia, for customs technical reasons.

CFR Marfă, Ukrzaliznytsya (UZ) and the Russian Railways (RZD) are cooperating closely for the realisation of this substantial rail freight traffic. And so the project, led by CFR Marfă, and closely accompanied and supported by the CIT, has successfully come to fruition.

At the same time, further movements for Renault are imminent - organised by Geodis Group, and also using the CIM/SMGS consignment note – from Kiev Liski to Ciumesti and return.

According to Express-Interfracht, the beginning of March 2009 also saw the start of the first rail freight consignments using the CIM/SMGS consignment note from Moscow Latskaya, Russia, to Villach Süd in Austria. The wagonload traffic of iron ore in open wagons moves from Russia via Zernovo-Suzemka, in transit through the Ukraine and the Slovak Republic, via Čierna nad Tisou and Bratislava, as well as via Marchegg to Villach Süd.

With this traffic, the CIM/SMGS consignment note is now in use on the northern axis of *Corridor V*, something that was of particular concern to the coordinators of the implementation of the CIM/SMGS consignment note (see CIT-Info 3/2008, p. 7). RZD, UZ, ZSSK Cargo and RCA cooperated to realise the traffic. It is the second largest rail freight movement in the East-West direction which will continue on a regular basis in the future (see CIT-Info 10/2008, p. 5).

This confirms that the CIM/SMGS consignment note has established itself comprehensively, and attests in practice to the great importance of the integrated legal solutions for the bridging of the two legal regimes, CIM on the western side and SMGS on the eastern side.

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The CIM/SMGS consignment note links important production locations in Central and Eastern Europe.

Comprehensive border easements are a key issue for the Kazakh customs authorities

This was the conclusion reached at a two day seminar in mid-March, which was organised by the Organisation for Security and Co-operation in Europe (OSCE) and the United Nations Economic Commission for Europe (UNECE), in the Kazakh capital of Astana.

Over 50 participants from the Kazakh customs authorities took part in the international organisations' high profile confidence-building measure. At the invitation of the organisers, OSCE and UNECE, the coordinator for the "Legal Interoperability CIM/SMGS" project took part in the seminar on behalf of the CIT.

The seminar was opened by the Deputy Chairman of the Kazakh customs authority, Serzhan Duisenbaev. The head of the OSCE delegation in Astana, Ambassador Alexandre Keltchevsky also gave his support for the proposed measures for the harmonisation of the national customs legislation with international customs practices, within the framework of the revised Kyoto Convention¹.

The contributions of the panel and the following discussions provided an enlightening addition to the information delivered by the Kazakh representatives in the light of national practices

for border easements. In the process, the transport indicators provide an important benchmark for the efficient operation of the customs authorities.

Against this background, the recently published World Bank indicators for good business practices in the «Doing Business in Landlocked Economies 2009»² project appear extremely questionable, as, in the component “cross-border trade”, they only take into account the transit time from the conclusion of the contract of carriage to the nearest port. This means that all other transport modes – and principally the railways - remain at a disadvantage in foreign trade in a landlocked country such as Kazakhstan.³

In the case of Kazakhstan, a freight consignment by rail to Europe requires roughly 6 days for the distance of ca. 6 000 km. For the same consignment, the transit time according to the recommended World Bank indicators is initially calculated to the next port (e.g. Shanghai in China or Bandar Abbas in Iran). This requires over a week, and then the subsequent deep sea journey to Europe takes a further 40 days. Consequently, the transport costs exceed those of the product itself by several times. A further negative consequence is that the railways lose their political support and investment opportunities (no *level playing field*), even though a well developed railway infrastructure exists for transport to Europe.

The presentation of the CIM/SMGS single consignment note fitted perfectly into the sustained integration of transport documents into measures for border easements, which was recom-

mended by the World Customs Organisation (WCO). It is clear that the project managers CIT and OSJD will now intensify their efforts to win the Kazakh Railways for the “CIM/SMGS Legal Interoperability” project, and also to achieve recognition of the CIM/SMGS consignment note as a customs transit document against the background of the customs union between Kazakhstan, Russia and Byelorussia which is currently in the process of being formed.

The CIM/SMGS consignment note has been recognised as a customs transit document since 2006 by the customs authorities of the Russian Federation, Byelorussia and the Ukraine. The scheduled meetings of the CIM/SMGS Group of Experts and Legal Group in Ulan Bator at the beginning of September will present a good opportunity to realise this intention completely.

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- 1 Revised Convention on the Simplification and Harmonisation of Customs Procedures from 2006.
- 2 Doing Business in Landlocked Economies 2009: Comparing Regulation in 38 Economies, The International Bank for Reconstruction and Development / The World Bank, Washington DC 2008, www.doingbusiness.org, P. 19 ff. Sic! Astonishingly, Turkmenistan does not figure amongst the 38 landlocked countries in Central Asia in the market analyses.
- 3 See also p. 46-47.

UNECE is turning increasingly towards intermodality at a global level

The optimisation of smooth cooperation between the different transport modes stood at the centre of this year’s meeting of the UNECE Working Party on Intermodal Transport and Logistics (WP.24) on 19th/20th March 2009 in Geneva. At the suggestion of the Chairman of the working party, Mr. Michel Viardot, an exchange of views will be increasingly cultivated within a framework of small interest groups and through e-mails, in order to generate firm proposals during the periods between meetings. These will subsequently be submitted to WP.24 for discussion. Strengthened cooperation with the UNECE Working Party on Rail Transport SC.2 was also considered.

For several years, the CIT has had excellent opportunities to inform the Working Party of relevant progress in the “CIM/SMGS Legal Interoperability” project. Thanks to this beneficial cooperation, the CIM/SMGS single consignment note is finding ever-wider support in the Eurasian region and consequently constitutes an important element of the aspirations for border easements in the Eurasian region.

Of great interest to the participants were the integrated solutions for transport documents, the accompanying legal instruments and, building on these, the efforts towards harmonisation of the General Conditions of Carriage on a contractual basis (“GCC Eurasia”). For the Russian Federation, the First Deputy Director General of the Russian Railways (RZD), Mr. Boris Lapidus, also took part in the meeting.

The planned “GCC Eurasia” are dependent on further easements in customs areas through the creation of a customs transit procedure (“Unified Rail Customs Transit System”). For this, the CIT has the solid support of the CER. In a letter to the Director of the UNECE Internal Committee, Mrs. Eva Molnar, the Executive Director of the CER, Dr. Johannes Ludewig, pleads for the realisation of a sustainable customs transit procedure to the east of the European Union. This plan is also a major concern of the Community of European Railways, and can be connected firmly to the work in progress for the creation of a customs union between Russia, Byelorussia and Kazakhstan.

The speedy implementation of Appendix 9 to the Harmonisation Convention of 1982, Article 8 of which also provides for the alternative use of the CIM/SMGS consignment note as a customs transit document, constitutes the third pillar. Practical steps by the countries concerned are all the more necessary, as the ratification of the Agreement on the recognition of the SMGS consignment note as a customs transit document has not experienced wide acceptance. It has been ratified to date solely by the Ukraine.

In the future too, the CIT will look to cooperate with the UNECE Working Parties, and will use these opportunities to communicate proactively the results of the “CIM/SMGS Legal Interoperability” project.

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Original: DE



Conference of Freight After-Sales Service Departments Bern, 28 May 2009

This conference of freight after sales service departments is intended for the after-sales service staff, the sales departments and the legal departments of CIT member undertakings. This year, the main theme is the reinvigoration of after-sales services.

The conference will also provide the opportunity to consider problems of general interest which arise in practice. It will also provide the opportunity for participants to exchange views, whether on improving cooperation between their departments in general or resolving specific outstanding issues.

The prospectus for the conference together with the booking form are also available on our website:
http://www.cit-rail.org/fileadmin/public/Seminare/Flyer_After-Sales_Service_Dept.pdf



Workshop on new rights for passengers by rail

The UIC and CIT are organising a workshop to be held in the UIC building in Paris on 30 June 2009. It will focus on the new rights to be enjoyed by passengers by rail. It is primarily intended for the managers of CIT and UIC member undertakings who will have to organise the implementation of *Regulation (EC) No 1371/2007 on rail passengers' rights and obligations* (PRR) within their undertakings, i.e. those responsible for:

- drawing up and implementing tariffs and special conditions of carriage
- organising and supervising after-sales services
- training members of staff and preparing internal briefing material.

The workshop will provide the opportunity for participants to become familiar with the text of the *General Conditions of Carriage* (GCC-CIV/PRR) and to understand what is at stake legally and commercially. Seminar work in small groups will consider liability for delay, passenger claims and the commercial freedom which undertakings will still have in concluding contracts of carriage with passengers.

The prospectus for the conference together with the booking form are also available on our website:
http://www.cit-rail.org/fileadmin/public/Seminare/Flyer_Workshop_Passengers-New-Rights.pdf

Further information together with the documentation for this conference and for this workshop may be obtained from the CIT General Secretariat,
 Weltpoststrasse 20, CH-3015 Bern, telephone +41 (0)31 350 01 92.

Bookings may be made by e-mail to [info\(at\)cit-rail.org](mailto:info(at)cit-rail.org) or by fax to +41 (0)31 350 01 99.

Events with CIT participation

Date	Event	Location	CIT contact
23 April	CER Sub-working group on Seals	Duisburg	Nathalie Greinus
23/24 April	4 th European Forum for In-House Counsel	Brussels	Isabelle Oberson
27-29 April	UNECE/ECO Workshop "Transcontinental Corridors"	Tehran	Thomas Leimgruber
29 April	E-RailFreight Project Managers' Meeting	Paris	Henri Trolliet
29 April	UIC Passenger Forum	Paris	Enrico Trapazzo
30 April	E-RailFreight Steering Group Meeting	Basle	Henri Trolliet
30 April	UIC Freight Steering Committee	Basle	Henri Trolliet
5/6 May	CER Railways/Customs Liaison Meeting	Oslo	Nathalie Greinus
7 May	SNCF: Symposium on liability issues for passenger traffic by rail	Paris	Thomas Leimgruber
12 May	EURASIA Conference Transport Logistic	Munich	Thomas Leimgruber
12-14 May	TCV Working Group	Gdansk	Max Krieg
26 May	CER General Assembly	Brussels	Thomas Leimgruber
3 June	UIC Freight Steering Committee	Paris	Henri Trolliet
4 June	UIC Freight Forum	Paris	Henri Trolliet
3/4 June	OSJD Ministers' Conference	Astana (KZ)	Thomas Leimgruber
9/10 June	COTIF/ECO Workshop "Rail Transport between Europe and Asia"	Istanbul	Erik Evtimov
15 June	CER General Assembly	Paris	Thomas Leimgruber
15 June	UIC European Management Committee	Paris	Thomas Leimgruber
18 June	CER High level meeting Passenger	Rome	Thomas Leimgruber
23 June	UNECE Expert Group Meeting on Hinterland Connections of Seaports	Geneva	Erik Evtimov
23-25 June	OTIF Revision Committee	Bern	Henri Trolliet
24/25 June	UIC Passenger Messages Management Group	Paris	Max Krieg
2 July	East-West-Tariff Meeting	Vilnius	Isabelle Oberson

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