

6/2009

## International Rail Transport Committee

# Editorial

#### Half way through the year



The first half of the year is already behind us, an opportunity therefore to take stock and to look ahead towards the second half of the year.

The CIT was right on target in implementing the new EC Passengers' Rights Regulation. The Regulation will come into effect on 3 December 2009 and the CIT's *General Condi-*

tions of Carriage for Rail Passengers (GCC-CIV/PRR) (which bring Community law and COTIF law together into a standard basic contractual document) are ready for it. A productive workshop (see page 3 of this CIT Info) was the starting signal for individual railway undertakings to start their own implementation work. It now only remains to set up the international relationships between railways and in particular to draw up the rules for allocating the compensation paid out between railways themselves. This will require a fundamental revision of the Agreement concerning the Relationships between Carriers in respect of International Passenger Traffic by Rail (AIV). This work will be completed before the end of the year, also on time.

The CIT and OSJD project to make the CIM and SMGS legally interoperable is also making good progress. Now that SNCF has accepted the common CIM/SMGS consignment note and RZD has extended its scope to a further nine regions, the consignment note can be used right through from the Atlantic to the Urals. In the second half of the year, the project will concentrate on Central Asia and the use of Chinese (see page 5 of this CIT Info). In addition, a study will be made of the extent to which the liability systems of the CIM and the SMGS can be aligned more closely on a contractual basis.

Lastly, we can also point to significant progress in reconciling the law applying to the use of infrastructure. At the end of June 2009, the OTIF Revision Committee decided to revise the CUI to make CUI law wholly compatible with Community law (see page 2 of this edition of CIT Info). Even if the CIT did not get what it wanted, railway undertakings may be content with the final outcome. In so far as the mutual liability of infrastructure managers and railway undertakings to each other in the future is concerned, legal consistency and legal certainty appear to have been guaranteed. The key issue for the CIT is that all the problems standing between CUI law and Community law have now been removed and nothing more stands in the way of EU Member States rapidly withdrawing their reservations.

Some progress has therefore been made in the first half of 2009; much remains to be done in the second half however.

In the meantime, we wish all our readers a pleasant and relaxing summer holiday.

Thomas Leimgruber Secretary General to the CIT

## Contents

Revision of the CUI	2
The Agreement on the Trans-Asian Railway Network comes into effect	2
Workshop on Passengers' New Rights held on 30 June 2009	3
The East-West Tariff	4
Using the CIM/SMGS consignment note from the Atlantic to the Urals: current state of work	5
CIT/OSCE/UNECE seminar on the facilitation of border- crossing and the cooperation of central Asian railways in Turkmenistan	6
e-RailFreight – Project leaders' meeting	7
CIM Working Group's spring meeting	8
Law in practice	8

## **CIT Diary of Events**

Date	Event	Location
8/10 Sept.	Joint Meeting of the CIM/SMGS Group of Experts and CIM/ SMGS Legal Group	Ulan Bator
17/18 Sept.	CIV Working Group	Bern
24 Sept.	Executive Committee 3/2009	Bern
7 Oct.	Meeting to clarify some issues related to seals and sealing	Benr
12/13 Oct.	CIV Working Group	Bern
21/22 Oct.	CIM Working Group	Bern
5 Nov.	General Assembly	Bern
25 Nov.	CIM/SMGS Co-ordination Group	Bern
26 Nov.	CIM/SMGS Steering Group	Bern



## **Transport Law and Policy**

#### **Revision of the CUI**

The twenty-fourth session of the OTIF Revision Committee took place in Bern from 23 to 25 June 2009. On the agenda were amendments to the CUI, APTU and ATMF Uniform Rules and the objective of the meeting was to achieve complete compatibility between the Uniform Rules and the European Community law which has been enacted since the ninth revision of COTIF.

The content of the APTU and ATMF technical appendices falls within the UIC's remit, the content of the CUI (Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic) falls within the CIT's competence. The CIT General Secretariat had already drawn up a position paper on the CUI and OTIF had passed the paper on to its Member States before the Revision Committee's meeting.

#### The CIT's position

In its paper, the CIT expressed the view that the proposed new Article 5bis CUI constituted a "disconnection clause" which made CUI law subservient to EC law and in that way displaced the key clauses in the CUI - the international standardised law set down in Articles 8 and 9 CUI on the mutual liability of railway undertakings and infrastructure managers. The CIT maintained its view that, if the CUI is interpreted sensibly, it is not incompatible with EC law and pressed for deletion of Article 5bis, at least in so far as the CUI liability provisions are concerned.

#### Discussion in the Revision Committee

After extensive discussions, the Revision Committee decided on a formulation for Article 5bis which makes a differentiation between the liability provisions of the CUI and its other provisions. In that way, it is possible to provide for European Community law, but not national law, to take precedence over the liability provisions in the CUI. In addition, it became clear from the discussions that the European Community did not want to put the CUI liability system, as such, in question, but simply wanted to leave scope for recourse under the new Passengers' Rights Regulation (see Regulation (EC) No 1371/2007) and for the "performance scheme" defined in Article 11 Directive (EC) 2001/14.

In accordance with the decision taken by the Revision Committee, this reasoning will be included in the "Explanatory Report" to the revised CUI. This report will be submitted to the OTIF General Assembly on 9 & 10 September 2009 and then will become supplementary means of interpretation within the meaning of Article 32 of the Vienna Convention on the Law of Treaties.

#### The way is clear for the withdrawal of reservations

In conclusion, railway undertakings can be satisfied with the formulation which was decided. We can also confirm that, in so far as the mutual liability of infrastructure managers and railway undertakings to each other in the future is concerned, legal consistency and legal certainty appear to have been guaranteed. In the CIT's view, the key issue is that all the problems standing between CUI law and Community law have now been removed and nothing more stands in the way of EU Member States rapidly withdrawing their reservations.

Thomas.Leimgruber(at)cit-rail.org Original: DE

## The Agreement on the Trans-Asian Railway Network comes into effect

On the 11th June 2009, the entry into effect of the Agreement on the Trans-Asian Railway Network was announced in Bangkok. The Agreement came into effect after the eighth ratification, by the People's Republic of China. A further seven countries have already ratified the Agreement: the Russian Federation, Mongolia, India, South Korea, Tajikistan, Thailand and Cambodia.

This Framework Agreement has its roots in the lap of the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP). Its main objective is to offer improved crossborder rail services over the existing railway infrastructure (ca. 114,000 km) in the 28 ESCAP Member States. The new Agreement also foresees coordination of those railway undertakings in the region which are active in cross-border traffic. A further acknowledged objective of the new Agreement is the creation of railway corridors for rail freight consignments between Asia and Europe.

Seen against the background of recent World Bank studies, according to which the investment of only \$1 in transport easements generates a reciprocal value of over \$1,500 profit in international trade, the new Framework Agreement in the Eurasian railway corridors envisaged by it is a further milestone in the promotion of the railway community at a global level.

With the project "CIM/SMGS Legal Interoperability", the CIT, in close cooperation with the OSJD, the OTIF and the Economic Commission for Europe (UNECE) is striving towards offering uniform rules for these traffics. A clear and uniform legal framework also at the global level forms an important pre-condition for the comprehensive promotion of climate-friendly rail transport.

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

2 CIT-Info 6/2009



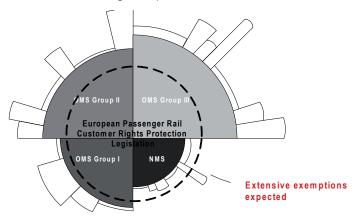
## Passenger Traffic

## Workshop on Passengers' New Rights held on 30 June 2009

More than a hundred managers and line-staff from member railways of the CIT, UIC and CER took part in the Passengers' New Rights Workshop in Paris on 30 June 2009.

Ákos Érsek of the CER opened the workshop by explaining the political background to the EC Regulation on Rail Passengers' Rights (PRR)¹ and by describing the progress being made in implementing it. Analysis of the second questionnaire circulated by the CER led to the conclusion that even in mid-2009 the situation in most states still isn't clear. There are differences in respect of:

- the economic background,
- applications for exemptions made by railway undertakings (domestic long distance, regional suburban and urban traffic and rail services to and from non-EU Member States (i.e. direct trains),
- the decision process within the various states and their attitude to allowing exemptions.



OMS = old EU member states (EU-15)

NMS = "new" EU member states (Bulgaria, Czech Rep., Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia)

#### Unavoidable diversity

It is only in Germany that the situation is clear; no exemptions will be granted in Germany. The Regulation was implemented in Germany by means of national law at the end of July 2009. By contrast, central and south-eastern European railway undertakings have submitted a large number of applications for exemptions; in western European states (as a rule) applications for exemptions have been restricted to regional, suburban and urban services.

The CER's representative made reference to the Air Passengers' Rights Regulation<sup>2</sup> which came into effect in 2005 and the proposals for Regulations for the rights of passengers in buses and coaches<sup>3</sup> and those travelling by sea and inland waterway<sup>4</sup>. He considered that the PRR was wholly in keeping with the trend for EU legislation to increase consumer protection in the transport market.



#### Efforts to unify

Enrico Trapazzo (Chairman of the CIT's CIV Committee) spoke on the implementation of the PRR at the interface between law and practice. The new CIT General Conditions of Carriage for Rail Passengers (GCC-CIV/PRR) apply to the relationship between railway undertakings and passengers. To avoid any threat of legal fragmentation in EU Member States there is a particular requirement:

- to create standardised contractual conditions which are equally applicable to all carriers, both those within the European Union and those outside it;
- to bring the CIV and the PRR together into one unified text;
- to cover both international and domestic transport services in the same contractual document.

To reach this ambitious goal, a lowest common denominator must be found such that it both satisfies all the provisions of the PRR and is also acceptable to all railway undertakings.

In this context, *Wolfgang Zoller* (Deputy Chairman of the UIC Passenger Forum) highlighted the commercial freedom which railway undertakings possess in a liberalised market for carriage of passengers by rail. They could and should use this freedom to offer more attractive options by using *special conditions of carriage* either by themselves or coordinated with other railway undertakings (in alliances, business units or tariff unions, etc.).

#### Communication and transparency as key factors

Signor Trapazzo also placed great importance on good communications and a high level of transparency. He appealed for standard processes to be specified and joint databases (internet and data exchange) to be used so that both the general and railway undertakings' special conditions of carriage together with any exemptions can be available and comprehensible online. In addition, the addresses of customer service departments responsible for compensation should be available on-line and regular exchanges between railway undertakings on best practice should be organised.

CIT-Info 6/2009 3



Summing up, Signor Trapazzo said that

- the PRR will greatly change the railway world; railway undertakings would therefore be well advised to participate actively in this change,
- the standardisation of contractual terms by means of the new GCC-CIV/PRR is a key factor,
- the GCC-CIV/PRR will become the definitive standard when the majority of carriers apply them,
- an integrated initiative for coordinated communication and common information resources is essential.

At the end of the workshop, Thomas Leimgruber (Secretary General of the CIT) provided a preview of the work being done to revise the *Agreement concerning the Relationships between Carriers in respect of International Passenger Traffic by Rail (AIV)*. The AIV defines railway-internal processes. In addition to revision of the existing sections, sections are to be added (action to be taken in the event of disruption and the financial allocation



From left to right: À. Èrsek, CER; E. Trapazzo, Chairman of CIV Committee; Th. Leimgruber, Secretary General of CIT; W. Zoller, DB AG.

of out-payments from compensation and refund applications in accordance with the PRR). In this way, simple and cost effective procedures are being developed so that the ratio of costs to the amounts actually paid out is acceptable. The work has already started and the revised AIV is due to be approved by the CIV Committee on 3 December 2009.

#### The DB as pacemaker

Using practical examples, participants explored particular issues (such as through or sectioned contracts of carriage, calculation of compensation for successive carriage, ticket sales by travel agencies, etc) in small syndicate groups organised by language. Participants from DB contributed useful extra information based on their initial experience of the German legislation which is already in place. *Oliver Hirschfeld* (Syndikus, DB) gave an interesting summary of the arrangements in Germany and pointed out particularly that passengers who are diverted by an alternative route over which two or more carriers operated can choose between them.

The complete documentation for the workshop is available to CIT members on the CIT website under <a href="http://www.cit-rail.org/personenverkehr/prr-workshop.html">http://www.cit-rail.org/personenverkehr/prr-workshop.html</a>.

Max.Krieg(at)cit-rail.org
Original: DE

- 1 Regulation (EC) No 1371/2007 on rail passengers' rights and obligations
- 2 Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights
- 3 Proposal for a Regulation on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (COM(2008) 817 final)
- 4 Proposal for a Regulation concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (COM(2008) 816 final)

#### The East-West Tariff

The East-West Tariff allows the interface between the legal regime applied in COTIF/CIV states and the regime applied in the SMPS states to be bridged. It provides passengers with standard conditions for the whole of their journey between these states. This means that the East-West Tariff applies to direct services between Berlin, Warsaw, Minsk and Moscow and to services between the capitals of the Baltic States and the principal Russian, Belarusian and Ukrainian cities. The East-West Tariff Steering Group met in Vilnius at the beginning of July to take stock of the last year's events and to decide what changes to make for the 2009–2010 timetable year.

East-West traffic weakened somewhat in 2008. In part, that was due to the world economic crisis but it was also affected by the European Union, Russia and Belarus all increasing the fees for visas. Representatives from the Russian (RZD), Ukrain-

ian (UZ) and Belarusian (BC) railways briefed the meeting on the changes they had made in recent months for the benefit of their passengers. These included: sale of tickets via the internet, renovation of passenger rolling stock, facilitating access by persons with reduced mobility, etc. RZD are currently giving priority to the construction of high speed lines from Moscow to St Petersburg, Samara, Helsinki and even to Sochi (for the Winter Olympics in 2014). Representatives from the European Union railway undertakings provided details of the work being done to implement the Passengers' Rights Regulation (PRR).

The Passengers' Rights Regulation involves governments as well as railway undertakings because it is governments who have to decide on exemptions from its scope. The PRR itself can apply to all transport services right up to the EU frontier; however, Article 2 of the PRR allows international rail passenger services for which "a significant part ... is operated outside the Community" to be exempted. These exemptions must be ap-



proved by (all?) the EU Member States involved. All the direct services between the EU and Russia, the Ukraine and Belarus are therefore potential candidates. An exemption would mean that in the event of delay the rights of passengers on these services and the rights of passengers with restricted mobility would



both be somewhat less than they would enjoy under the Passengers' Rights Regulation. Nevertheless, it needs to be pointed out that the East-West Tariff currently provides the majority of the basic rights laid down in the Passengers' Rights Regulation. For example, the East-West Tariff already provides a standardised liability regime for accidents in all the COTIF/CIV states and provides for compensation for delays in those states.

The CIT proposed to the Steering Group to incorporate the new GCC-CIV/PRR in the East-West Tariff to cover movements made by railway undertakings from COTIF/CIV states. The CIT also presented a practical case which showed how complex the legal situation which railway undertakings will have to face in future can be. Specific rules will have to be drawn up during the summer to deal with any issues which may arise.

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

## Freight Traffic

## Using the CIM/SMGS consignment note from the Atlantic to the Urals: current state of work

This year's meetings of the Co-ordination and Steering Groups for the CIT/OSJD project "CIM/SMGS Legal Interoperability" took place on the 7th and 8th July in Bern. The conclusion of both meetings was that there would be more and more intensive usage of the CIM/SMGS consignment note for cross-border rail freight consignments on the four trans-European corridors.

#### The Co-ordination Group meeting

RZD's approval for use of the CIM/SMGS consignment note for destinations up to the Urals appears particularly beneficial. Nine of this railway's regional companies are affected by it. The approval enables use of the document area-wide over the whole European territory of the Russian Federation. In view of the fact that the SNCF has recently stated its desire to use the CIM/SMGS consignment note, this means that nothing more stands in the way of its use from the Atlantic to the Urals.

The new freight document permits the rapid and secure development of large and regular trainload traffics. In this context, the CIM/SMGS container and wagon lists have proved to be especially useful. In the SMGS area of application, the CIM/SMGS container list has even been successfully used with the SMGS consignment note.



Since mid-2008, over 500 block trains have been successfully operated from Mlada Boleslav in the Czech Republic and Velka Ida in the Slovak Republic to Kaluga 1, to the south of Moscow, and also in the opposite direction. The transit time e.g. for the consignments from Mlada Boleslav to Kaluga 1 has been substantially shortened, to currently only 4 days, compared with 12 days previously. In a west-east direction ca. 40,000 20' containers, and in an east-west direction ca. 20,000 20' containers, have been moved using the CIM/SMGS consignment note since the beginning of 2009.

From the 25th July 2009, these movements will be joined by traffic from Wolfsburg to Kaluga 1. These will be organised as far as Brest by DB Schenker Automotive RailNet GmbH, and from Brest to Kaluga 1 or Perspektivnaya, by the TransContainer company.

In the opinion of the co-ordinators, the pro-active promotion of the CIM/SMGS single consignment note will continue to be necessary in the future. Furthermore, the expansion of its area of application to the Pacific remains a recognised objective. A firm course of action will be decided upon at the next meeting, in Ulan Bator at the beginning of September 2009.

#### The Steering Group meeting

The Co-ordination Group meeting was followed by the CIM/SMGS Steering Group meeting. This Group is responsible for the endorsement of the working results of the CIM/SMGS Group of Experts and the Legal Group at project level.

Firstly, the work connected with the electronic CIM/SMGS consignment note was approved. As well as the functional and legal specifications, the technical specifications are now also available at project level. These will be published separately by the CIT and the OSJD.

CIT-Info 6/2009 5



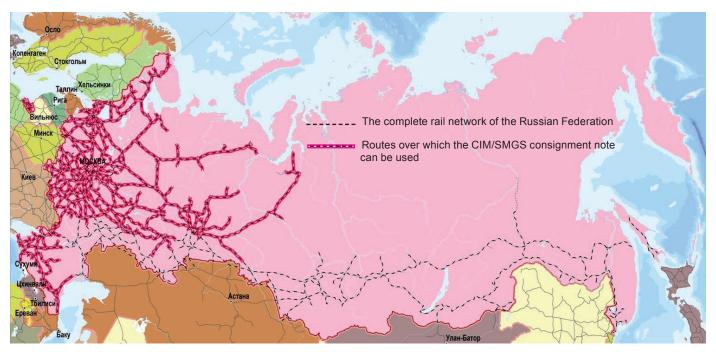
Parallel to this, the realisation of stage 1 of the electronic CIM/ SMGS consignment note ("consignment data sent forward electronically in advance") is planned by the end of 2010. As the major part of the information required by customs authorities is included in the CIM/SMGS consignment note, the measure will enable the participating railways to conform to the new customs requirements in the security field.

In addition to this, and in view of the use of the CIM/SMGS consignment note on the transcontinental routes between Europe and Asia/China, the use of the Chinese language in the handbook was arranged.

Finally, the Steering Group agreed the rules elaborated by the CIM/SMGS Legal Group for the payout of acknowledged amounts of compensation. These rules simplify the work of the claims departments, as they establish a standardised procedure.

The second important proposition of the Legal Group concerned the elaboration of procedural rules for subsequent amendments to the handbook. With the growing use of the CIM/SMGS consignment note it is namely essential to be in possession of a tight and well-rehearsed procedure for updating the relevant documentation and instruments in the various language versions.

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



Use of the CIM/SMGS consignment note as far as the Urals

# CIT/OSCE/UNECE seminar on the facilitation of border-crossing and the cooperation of central Asian railways in Turkmenistan

A 2-day railway seminar took place in Balkanabat (Nebit-dag), at the invitation of the regional office of the Organisation for Security and Cooperation in Europe (OSCE). Over 30 representatives of the railways and customs authorities of Kazakhstan, Uzbekistan, Kyrgyzstan and Turkmenistan took part in the management seminar. The CIT supported the organisers in the provision of content for the seminar programme, with a main eye on the realisation of legal interoperability for cross-border rail freight consignments.

After a variety of presentations and the subsequent absorbing discussions, work was begun on the elaboration of short and medium term courses of action for the future work of the CIT.



Seminar delegates discussing the benefits of the CIM/SMGS consignment note.



The countries of Central Asia are landlocked. The distance to the nearest seaports in Iran, Turkey or China is over 6,000 km. Cross-border freight consignments require about a week to reach the ports and even more time to reach subsequently the consignee by sea. This occasions an above-average increase in operating costs.

Customers for export goods from the Central Asian countries are to be found principally in the global marketplace (raw materials, cotton, aluminium, steel). For this reason trial movements are being organised and carried out, in the hope that this will awaken interest in a direct rail link to these landlocked countries and regions. In this context, a rapid crossing of the State borders concerned plays a crucial role. It is to the great credit of the organisers of the meeting in Balkanabat that they provided the representatives of the railways with a platform on which they were able to discuss topics of common interest, such as e.g. facilitations of border-crossing, with representatives of the customs authorities.

The delegates agreed to carefully examine the use of the CIM/ SMGS consignment note as an integrated transport and customs document in the practical organisation of the trial movements, including customs formalities. Above and beyond this, the representatives of Kazakhstan declared themselves prepared to also use and promote this freight document within the scope of SPECA (UN Special Programme for the Economies of



A freight train in Turkmenistan, 2 July 2009.

Central Asia) for cross-border rail freight consignments in Central Asia and to and from China. For its part, the ECO (Economic Cooperation Organization) announced its intention to use the CIM/SMGS consignment note as a single transport and customs document for the container train from Istanbul via Teheran, Ashkhabad and Almaty to Urumqi in China.

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



## Project leaders' meeting

The UIC and RAILDATA have now completed the technical specification for the e-RailFreight system. The technical specification was drawn up on the basis of the CIT's functional and legal specifications. These CIT specifications (which came into effect on 1 July 2009) apply to both the electronic consignment note and the electronic wagon note.

The central system to exchange messages has been finished and is ready to be tested. This system, which was developed by RAILDATA, will allow all the railway undertakings taking part to exchange their EDI messages through a single interface. The railway industry associations have now completed the preparatory work for the implementation of the project. All the pre-conditions for the introduction of the e-RailFreight system have thus been satisfied.

The technical specifications (which include the data catalogue, the message catalogue and the logic for the transmission of the messages) only cover the exchange of data between railway undertakings. Railway undertakings themselves are responsi-

ble for the links and interfaces between railway undertakings and customers and between railway undertakings and customs authorities. However, tables in the functional specification showing the transmission logic, the messages to be exchanged, their content and the rules for access to data are provided to help them.

All the participants at the project leaders' meeting on 8 July 2009 supported the preparation of technical specifications for the links between railway undertakings and customers. The UIC asked RAILDATA to draw up those specifications. As the first step, RAILDATA will prepare a summary of the messages to be exchanged and send it to the project leaders to allow them to make comments and suggestions for further items. These technical specifications will then be examined at the next meeting in October 2009.

The objective is to finalise the technical specifications for the links with customers before the end of the year.

Nathalie.Greinus(at)cit-rail.org Original: DE

CIT-Info 6/2009 7



### CIM Working Group's spring meeting

The CIM Working Group held its seventh meeting on 17 and 18 June 2009. The task of the group is to prepare papers and recommendations to support the CIM Committee in its work to develop the CIT's freight publications.

The following issues were considered:

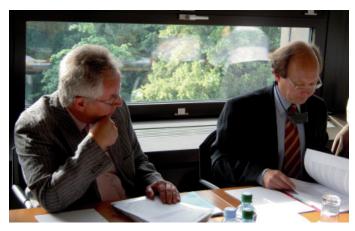
- options to assert rights against the contractual carrier,
- differentiating the scope of the AIM from that of the GCU,
- re-examining the burden of proof in the event of damage to goods,
- liability conditions for customers acting as forwarding agents,
- compensation agreements: drawing up a boilerplate contract,
- special conditions of carriage for international combined transport by rail, and
- wagons detached from trains use of a copy of the consignment note instead of an accompanying document.

Individual members of the working group will examine these issues further so that the group can take decisions on all the proposed amendments to the CIT's freight documentation at the next meeting.

The CIM Working Group has already approved the amendments to the CUV Wagon Note Manual (GLW-CUV) drawn up by customs and wagon experts together with representatives from the

CIT. The problem here is that it is often difficult in practice to establish which wagons are subject to customs' formalities. In accordance with the General Contract of Use for Wagons (GCU), wagons are regarded as means of transport. Nevertheless, if a wagon is subject to customs formalities, it must be consigned as goods. It will then be subject to the CIM Uniform Rules. The new text will substantially simplify this distinction. Because it was necessary to implement this amendment quickly, it was sent to the CIM Committee for its approval in correspondence. It has now been approved and will come into effect on 1 October 2009

Nathalie.Greinus(at)cit-rail.org Original: DE



Henri Trolliet, Deputy Secretary General of CIT and Guy Charrier, Chairman of CIM Working Group.

## 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.

## Exclusive jurisdiction in general terms and conditions is considered to be unfair

A national court has the power and indeed the obligation to rule that a contractual clause which has not been negotiated between the parties to a contract may be considered to be unfair without further reference. The court may set aside the application of any unfair clause, except where the consumer, having been informed of that fact by the court, waives his right to assert that the clause in question is unfair and not binding. In summary, that was the decision of the European Court of Justice (ECJ), given on 4 June 2009, in a case between a Hungarian pensioner and a mobile telephone company (case C-243/08).

So, what are the criteria which determine if a contractual clause is unfair? Directive 93/13/EEC¹ is somewhat vague on this point, leaving a great deal of discretion to the court. It refers to notions of good faith and significant imbalance in the parties' rights and obligations arising under the contract. Examples of unfair clauses are listed but the list is not exhaustive.

In this particular case, the mobile telephone company insisted that the court competent for disputes was that of its offices in Hungary. The ECJ therefore repeated that it had ruled in another case in 2000 that "a term, the purpose of which is to confer jurisdiction in respect of *all* disputes arising under the contract on the court in the territorial jurisdiction of which the seller has his principal place of business" is unfair. Exclusive jurisdiction is unfair because it makes it more difficult for the consumer to appear in court if the court chosen is a long way from his home. This type of clause therefore constitutes an unacceptable obstacle to the consumer exercising his rights.

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

8 CIT-Info 6/2009

<sup>1</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21.4.1993, p. 29.



# **Events with CIT participation**

Date	Event	Location	CIT contact
11/12 August	Ad hoc-Group of the UIC Commercial Group (CG)	Bern	Max Krieg
14 August	Container Train Launch Islamabad-Tehran-Istanbul	Islamabad	Erik Evtimov
3 September	EPR Legal Group	Rome	Isabelle Oberson
7-11 September	RID/ADR/ADN Joint Meeting	Bern	Max Krieg
9/10 September	OTIF General Assembly	Bern	Thomas Leimgruber
14-18 September	RID/ADR/ADN Joint Meeting	Geneva	Max Krieg
15 September	CER Freight Focus Group (FFG)	Brussels	Erik Evtimov
16 September	CER Passenger Working Group	Brussels	Isabelle Oberson
23 September	EPR Legal Group	Vienna	Isabelle Oberson
22/23 September	UIC Commercial Group (CG) and Technical Group (TG)	-	Max Krieg
1/2 October	ERA Annual Conference on European Consumer Law	Trier	Isabelle Oberson
6. October	e-RailFreight Subset Project Manager	Paris	Nathalie Greinus
7 October	UIC Passenger Forum	Paris	Thomas Leimgruber
8 October	UIC Freight Steering Committee	Paris	Henri Trolliet
12/13 October	UNECE Working Party on Intermodal Transport and Logistics (WP.24)	Geneva	Erik Evtimov
13/14 October	The OSJD'S Committee II Meeting	Warsaw	Erik Evtimov
14 October	CER General Assembly	Gdansk	Thomas Leimgruber
21/22 October	UIC Passenger Messages Management Group	Paris	Max Krieg
22/23 October	UIC/FIATA Market Place Seminar	Istanbul	Erik Evtimov
27/28 October	UIC Seminar Use of Freight Wagons	Sochi	Erik Evtimov
28/29 October	UIC's Expert Group on the Transport of Dangerous Goods	Clervaux (LU)	Max Krieg

CIT-Info 6/2009



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