

**International  
Rail Transport Committee**

## Editorial

### A really exciting year!



My first year as Secretary General of the CIT has now come to an end!

For me personally, it was a year full of new issues and fascinating challenges. I have learned a great deal this year and in the numerous meetings have had the privilege of getting to know many interesting and competent new colleagues.

In freight transport, the CIT continued to achieve progress in the implementation of the common CIM/SMGS consignment note, with the first pilot shipments from China successfully completed using the new procedure. Another key issue was promoting the legal framework for COTIF to cover multi-modal shipments and the work involved in its inclusion in the relevant CIT documents. The legal preparations for the use of the electronic CIM consignment note have also progressed significantly. And last but not least, the CIT documents have been developed further and brought in line with the current situation (primarily by integrating the CIM Consignment Note Manual for Combined Transport into the CIM Consignment Note Manual, in addition to the complete revision of the CUV Wagon Note Manual and the production of the new Wagon Manual – GTW-CIT).

In passenger transport, the focus remained on the implementation of Regulation (EC) 1371/2007 on rail passengers' rights and obligations and the associated support for the legal proceedings before the European Court of Justice. Of particular importance in this context was the workshop organised jointly with the CER that was held for the first time with the national enforcement bodies. A special challenge this year has been the work relating to the implementation of the TAP TSI. In its capacity as guardian of the legal and functional requirements for railway tickets, the CIT was able to make a constructive contribution to the work currently being carried out by the TAP-TSI project organisation, the authorities and other stakeholders involved. I would also like to draw attention to the successful completion of the "CIT Security Background 2012" project ticketing.

In the course of the year, an analysis of the use of the EGTC infrastructure was finally undertaken and the next steps agreed on.

I would like to close by adding that it was only possible to complete this work successfully with the active and competent involvement of numerous experts from our member companies. And now, to all of you, dear readers of the CIT-Info, may I send sincere greetings for the festive season and with you a happy and prosperous New Year!

Best wishes from Bern!  
Secretary General of CIT  
Cesare Brand

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## Transport Law and Policy

### The CIT with active participation at the 7<sup>th</sup> International VDV Railway Congress

On 25 and 26 October, the 7<sup>th</sup> International Railway Congress of the VDV Akademie was held in Berlin. The main topics were prospects for the future of East-West railway transport, and the conditions under which it would be possible for rail transport, now and in the future, to be improved between West, Central and Eastern Europe and Asia.

Other questions dealt with the following topics: How is the increased volume affecting the trade flows between Asia and Europe? Which corridors are in use and which are currently planned? Which companies already offer East-West rail transport services? How competitive is the railway system and how are other transport systems developing? Where are the current problems and/or constraints? What solutions are possible and which are currently planned?

The CIT, as a result of its many years of collaboration and successful association with the VDV, was represented by the Deputy Secretary General with a presentation on the subject of "What general conditions apply to the railways today and in the future?" He dealt with the importance of



clear and transparent conditions for Eurasian rail freight shipments, which experienced a significant boost in 2012 through the use of the common CIM/SMGS consignment note.

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### Approval of the Political Declaration on Eurasian Rail Transport Law

The declared long-term legislative goal is the establishment of a unified rail transport law. In anticipation of the new unified legal framework at government level, the Economic Commission for Europe (UNECE) supports the railway and railway organisations involved in bringing about harmonised solutions on a contractual basis.

At the last meeting of the "Railway" Working Group (SC.2) on 9 November 2012, the proposed Political Declaration prepared by the Group of Experts was unanimously approved.

The planned UNECE Declaration is to be signed on 26 February 2013 by the transport ministers involved and the European Union at the next meeting of the Inland Transport Committee. It is designed to express the relevant political will of the transport ministers responsible regarding the harmonisation of Eurasian rail transport law.

Under Item 3 of the Political Declaration, the following refers to GTC EurAsia:

*Ministers invite interested railway enterprises, other stakeholders and **international railway organizations** to pursue, on the basis of the UNECE Position Paper adopted by its Working Party on Rail Transport (SC.2) (ECE/TRANS/2011/3), work on the development of optional model rules for Euro-Asian rail transport*

*contracts (GTC EurAsia), in parallel and as a complementary direction from the strategic priorities contained in paragraph 2. This work should be in line with the principles of optionality, of providing uniform contracts, of being in line with the relevant provisions of the COTIF/CIM Convention and the SMGS Agreement and provide for a single (common) consignment note and, to the extent possible, a single liability regime. GTC EurAsia may be used for some types of rail freight transport and some types of cargo shipped by rail.*

*The UNECE secretariat is invited to provide its good offices to facilitate such endeavours. Progress achieved should be reported annually to the UNECE Working Party on Rail Transport (SC.2).*

This would primarily increase the appeal and competitiveness of the railways compared with the other modes of transport and provide railway customers with an additional legal instrument that would allow them to handle shipments between Europe and Asia under improved legal conditions.

The CIT Secretary General actively participates in this work and has significantly influenced the basic principles for GTC EurAsia. The CIT Secretary General is in the process of planning further work on GTC EurAsia with the members affected.

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## Passenger Traffic

### Informative e-ticketing workshop organised by UIC and the CIT

*Around 75 participants met on 24 and 25 October 2012 at Deutsche Bahn's offices in Frankfurt am Main for the first e-ticketing workshop organised by UIC and the CIT. During the two-day event, they were given an excellent overview of how other countries and other transport undertakings were approaching e-ticketing in public transport and what progress they had made to date.*

#### Diversified e-ticketing landscape

Europe is complex and so are the e-ticketing systems that have already been implemented. There is currently no uniform international e-ticketing standard, because this technology-driven business is being introduced by the transport authorities for financial reasons at local and regional level. The technical challenges at this level are easier to deal with and are less complex in terms of the operational processes than is the case with international e-tickets, since there is in most cases a standard pricing structure and many customer service processes that are essential for international e-tickets issued by several large companies in what is geographically speaking a much larger area can be eliminated.

#### Basic principles for the further development of e-ticketing

The participants agreed that if international e-ticketing is to achieve any success, then it must be based on the following basic principles:

- The new technologies will have to focus on travellers' needs ("Don't downgrade the train experience") and provide them with information that covers situations they meet on their journey.
- One of the aims of e-ticketing is to remove barriers and make access to the public transport system easier, particularly for international services.
- "Door-to-door" solutions are needed to enable individuals to travel from their departure point (home) to their final destination (beyond the destination station).
- Another aim is to ensure that e-tickets are also cheap, maintain high security standards and are designed specifically to prevent fraud.

#### Key role of the railways

The various systems available are to be interlinked on the basis of international IT standards. No new rail sector standards are required. During the implementation of e-ticketing systems, the dependence of third parties (e.g. credit card institutes or providers of global distribution systems) is to be carefully analysed. Different laws (e.g. CIV, for data privacy) are to be taken into account.



The railways are to be given a key role in terms of integrating the numerous e-ticketing systems. On the one hand, they are often already involved with transport authorities as partners for regional transport companies (metro, tram, bus), while working on the other hand with other international carriers (airlines, shipping lines). They will thus be accorded a special role as "mediators" with the task of finding harmonised solutions.

#### The CIT's task with regard to e-ticketing

The task of the CIT is to ensure that international e-ticketing continues to develop in accordance with COTIF/CIV and PRR. This takes place at an early stage by establishing a clear positioning of the parties involved and their responsibility in the processing of transport and ticketing services. This makes sure that the legal and functional requirements of the contract of carriage are understandable and verifiable for the traveller, as is the case today with paper-based tickets, and apply to all new types and technologies used for international e-tickets.

#### Next steps

From the system operator's viewpoint, effectiveness and cost reductions are important goals. What might be an effective solution for long-distance journeys could, depending on the circumstances, be quite unsuitable for local transport services, because placing the focus on a minimum processing time is geared to ticket inspection. The international interlinking of ticketing systems is not a trivial matter and requires more in-depth analysis. The lively discussions and feedback from participants are evidence that e-ticketing is an important issue for the future and provides the kind of encouragement needed to begin immediately with preparations for a follow-up workshop next year.

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## CIT 2012 Security Background for better international protection

As of 9 December 2012, tickets may be issued with the new **CIT 2012 Security Background**. As a matter of principle, all CIT members now recognise tickets with the new security background 2012.



Legal clarifications on the security background have shown that the mechanisms in place to protect intellectual property, despite the CIT copyright declaration printed on the ticket, tend to be weak. The rights of the CIT and its member rail companies, in the event of unauthorised use of the security background by a third party, would have to be asserted through the courts in individual cases.

The legal position of the CIT and its members can be significantly improved if the design of the new security background is registered with **WIPO** (World Intellectual Property Organisation) in Geneva to obtain international

protection in accordance with the Hague Agreement Concerning the International Registration of Industrial Designs. To protect the rights of the CIT and its members, the CIT Executive Committee therefore decided to **register the design of the new security background with WIPO**. This was carried out by the CIT on 30 October 2012.

Design protection via the Hague Agreement can be obtained for the territory covered by each of the member railway companies, with the exception of Russia, Iran, Iraq and Kosovo. Registration in the latter countries – if this is possible at all – will be dispensed with for the moment, since the effort required for the relevant national registrations would exceed the benefit.

This means that the design is protected within the territory covered by the agreement as if it had been actually registered there. The authorities of the contracting parties named however have the possibility of refusing to provide protection for the design in their territory within a max. period of 18 months following notification by WIPO. If protection is partly or completely refused in one of the named contracting countries and the applicant remains interested in brand protection in this country, he can try to obtain the desired protection from the local authorities on the basis of the regulations applicable in that country. There are currently no known objections to the registration of the design by the CIT.

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## The European Court of Justice (ECJ) hands down first judgment on rail passengers' rights (EC 1371/2007)

On 22 November 2012, the ECJ handed down its first judgment relating to the PRR<sup>1</sup>. In Case C-136/11, *Westbahn Management GmbH vs. ÖBB Infrastruktur AG*, it clarified two preliminary questions that had been submitted to it by the Austrian enforcement body for the PRR (NEB), the Rail Control Commission.

The ECJ was asked to clarify the legal relationship between the railway undertaking's obligation to provide its passengers with information on the one hand and on the other hand the confidentiality of the railway undertaking's data to be maintained by the infrastructure manager in a non-discriminatory manner<sup>2</sup>.

The ECJ stated in its judgment that infrastructure managers are required to make available to railway undertakings real-time data relating to trains operated by other railway undertakings on the basis of their access to railway infrastruc-

ture<sup>3</sup>, if this is necessary to meet its information obligations in accordance with the PRR. The minimum information in accordance with the PRR is information provided during the journey on delays and on "main connecting services"<sup>4</sup>, whereby the ECJ has now stated that this also refers to data relating to delays of the connecting services of other transport undertakings that arise during the journey. Since scheduled data do not meet the passenger's needs, real-time data are to be made available.

The ECJ has also now stated that real-time data (which is displayed on platforms for example) is not to be considered as confidential. Real-time data on main connecting services therefore are not to be made available only to the transport undertaking whose services are affected, but to any transport undertaking offering such connecting services.

<sup>1</sup> Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations.

<sup>2</sup> Directive 2001/14/EC of the European Parliament and of the Council on the "allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification".

<sup>3</sup> The ECJ judgment was that providing real-time data on "main connecting services" within the meaning of the PRR is not to be considered as an ancillary service (Directive 2001/14 EC, Annex II, Point 4 b) "provision of supplementary information", but as "all other [necessary] information required to implement or operate the service for which capacity has been granted" as part of the minimum access package in accordance with Directive 2001/14 EC, Annex II Point 1e.

<sup>4</sup> PRR Annex II Part II, sentences 3 and 4

## Public hearings before the ECJ in the second PRR case

Oral hearings also took place on 22 November 2012 in Luxembourg before the ECJ in Case C-509/11, ÖBB-Personenverkehr vs. Austrian NEB, on the question of the permissibility of exclusions from liability in accordance with Art. 32 CIV (i.e. Annex 1 to the PRR) in the Conditions of Carriage for compensation for the ticket price in accordance with Art. 17 PRR. The CIT's General Conditions of Carriage for Rail Passengers (Art. 9 GCC-CIV/PRR) and the Conditions of International Carriage for Passengers of most Euro-

pean carriers include a corresponding provision. The hearings were attended by Italy, Germany and the European Commission. The latter two mentioned had already affirmed the permissibility of corresponding exclusions from liability in their written statements of January 2012. The scope of the assistance and support provided in the event of a delay is not the matter in dispute. A judgment is expected in spring 2013.

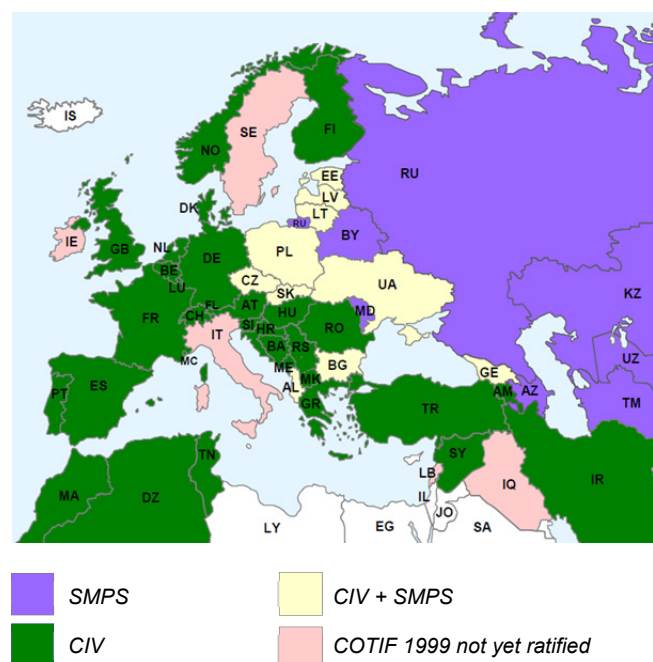
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## Making CIV/SMPS legally interoperable: next steps

In mid-2011, following the decisions of the CIT General Assembly in 2010, the CIT General Secretariat together with the OSJD and OTIF and with the support of SNCF, DB AG, LG and RZD launched a project to make the CIV/SMPS legally interoperable. The Federal Passenger Company (FPC), which operates international passenger services and had joined the CIT on 1 May 2012, has also been actively involved in this work since the beginning.

### Initial situation

In view of the scope of the work to be done, the CIV/SMPS Group of Experts laid down in its second meeting that, in addition to the OSJD and OTIF, European Union competences and legislation also needed to be taken into account for the preliminary work to make CIV/SMPS legally interoperable. The CIV/SMPS Group of Experts also expressly welcomed the fact that a representative of the MOVE Directorate General has been regularly invited to its meetings. This was also in view of the fact that on 1 July 2011 the European Union had acceded to COTIF and OTIF. The third meeting was held on 20/21 February 2012 in Warsaw in the OSJD Committee's offices.



### Planned project work

The first task in setting up the project work to make CIV/SMPS legally interoperable was to explore and evaluate the contractual freedom the railways will have within the statutory framework of the SMPS and the CIV Uniform Rules as well as European Regulation (EC) No 1371/2007. During the discussions held by the CIV/SMPS Group of Experts, it became increasingly clear that there is also a need for a detailed comparison of the current legal regimes for international passenger transport – SMPS, COTIF/CIV and CIV/PRR – based on the individual international movements of passengers by rail.

Accordingly, the following specific activities are planned:

- Creation of a guide in a tabular form on the SMPS-COTIF/CIV-PRR liability regimes including relevant commentary from the experts. The first thorough discussion of this topic took place at the third meeting of the group of experts in February. The CIT General Secretariat will draw up a revised version of the comparative table in advance of the next joint meeting and submit it to the group of experts.
- Special attention is to be paid to setting up specific international rail passenger services between Moscow and Nice and the Moscow – Minsk – Warsaw – Berlin – Paris service that was launched in December 2011. A list of the existing trunk routes (e.g. the new Kiev – Warsaw – Berlin or Vilnius – Minsk – Moscow service) complete with an overview of the applicable statutory regimes will also be prepared.
- The knowledge gained will be summarised in the form of syntheses in the second phase of the project to make CIV/SMPS legally interoperable, which will involve a charter of passengers' rights, information leaflets for passengers on international journeys and posters, etc.
- Running parallel to this, an in-depth study of current bilateral standard contracts will be made, in particular those for handling FPC's two direct rail passenger services, plus the multilateral "General Terms and Conditions for Cooperation" and the CIT's AIV.

The next meeting of the CIV/SMPS Group of Experts is scheduled for the end of January in Bern at CIT's headquarters.

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## Freight Traffic

### Global Rail Freight Conference in Tangier

Around 250 delegates from over 30 countries attended the extremely well organised 3<sup>rd</sup> Global Rail Freight Conference on 18 and 19 October 2012, which was hosted jointly by UIC and Moroccan Railways (ONCF). The CIT was repre-

sented at the conference by its Chairman, Jean-Luc Dufournaud, and the Secretary General, Cesare Brand. UIC has reported in detail on this successful event in its e-News No. 314.



The new port Tangier 2

The CIT representatives used the opportunity offered by the conference setting to speak to the Director General of ONCF, Mr Mohamed Rabie Khlie on the application of COTIF. In view of the ratification of COTIF 1999 by Morocco in 2011, this is a very topical issue. The CIT was also able to present its services to ONCF and speak about future collaboration. In particular, it was agreed that the possibilities of using the “multimodal” CIM consignment note for rail-sea shipments between Morocco and Europe would be examined in more detail.

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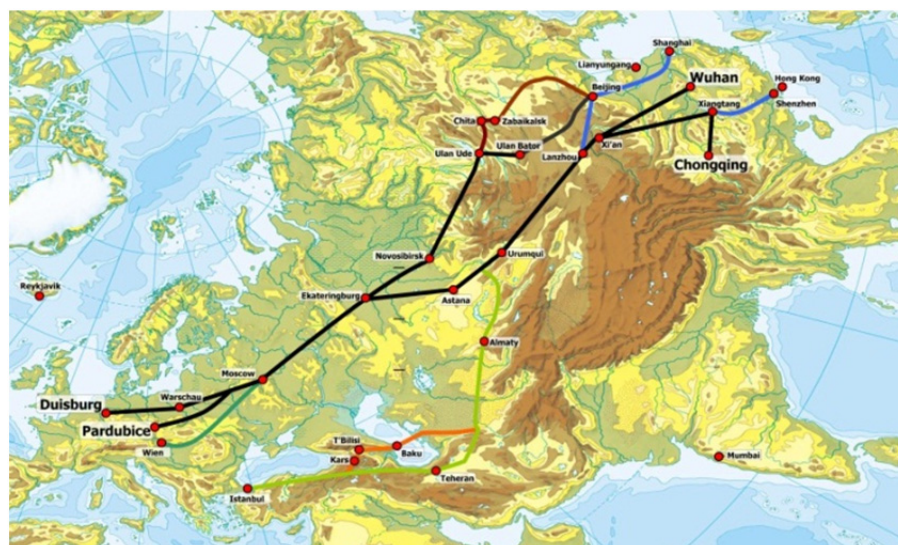
### First rail freight shipments from China to Europe using the common CIM/SMGS consignment note

With the creation of the common CIM/SMGS consignment note in the joint CIT/OSJD project “Making CIM/SMGS legally interoperable“, key interim targets to ease cross-border rail freight shipments within the areas in which the COTIF/CIM and SMGS statutory regimes apply had already been achieved.

Rail freight shipments between Europe, Russia and Asia also represent significant transport potential; just 1% of this is currently being exploited. To further increase the appeal of East-West rail freight shipments, the railways began to dispatch test shipments at the end of October 2012 between China and Europe using the common CIM/SMGS consignment note.

#### Chongqing – Duisburg in 19 days

According to information provided by DB Schenker Rail AG (DBSR DE) and Russian Railways (RZD), backed by information from the Ministry of Railways of the People's Republic of China, the first rail freight shipments from the People's Republic of China to Europe began on 30 and 31 October 2012. The departure point was Chongqing, south-east of Peking; the shipment then continued through the Alashankou-Dostyk border crossing in transit through the territory of Kazakhstan, Russia, Belarus and Poland to its destination Duisburg in Germany. The first container train, which left on 30 October 2012, was followed on 2 November 2012 by another container train – organised by DB Schenker China – also destined for DB's Customer Service Centre in Duisburg.



The first train, consisting of 50 x 40' containers, carried consumer electronics equipment (notebooks and monitors). The second train, this time hauling 42 x 40' containers, was carrying notebooks, in addition to garments, footwear and hats.

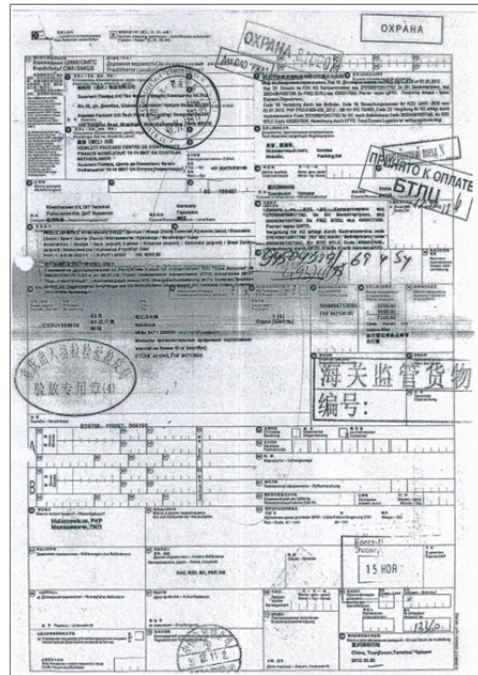
Interest in rail shipments from the People's Republic of China is also growing in Switzerland. In September 2012, the Swiss retailer Migros in cooperation with rail services provider InterRail dispatched a test container from Shanghai to Switzerland.

Primarily for time-saving reasons and environmental considerations, this is becoming increasingly attractive. InterRail has since confirmed that it and GETO (the Association of European Transsiberian Forwarders and Operators) support the use of the common CIM/SMGS consignment note, which is also integrated into the “electronic train” IT portal. It is also planned to use the CIM/SMGS consignment note for InterRail’s current projects between China and Europe.

InterRail has organised another train from Wuhan in the eastern part of Central China to Pardubice in the Czech Republic. The pilot train hauling 50 x 40’ containers filled with computer components was dispatched by CRIMT (China Railway Intermodal Transport) on 24 October. Transshipment at the Chinese-Kazakhstan border in Alashankou-Dostyk required just under 10 hours. Customs clearance for the train took only an hour and a half, which represents a very respectable performance.

The CIT congratulates all those involved in each of these first shipments and assures them of constant support in terms of issuing the common CIM/SMGS consignment note and legal standardisation.

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First common CIM/SMGS consignment note for pilot shipment from China to Europe

## An update on the work of the CIM Working Group

The issues below were amongst the more significant issues which the working group reviewed at its most recent meeting (which was held in Bern on 17 & 18 October last):

### Multimodality

The draft General Conditions of Carriage for Rail-Sea Traffic have to include specific provisions for carriage by sea. Representatives of the companies involved will make proposals for what they should contain. The purpose of these new general conditions is specifically to provide for contractual models in which a carrier by sea acts as the contractual carrier or a successive carrier. The model in which a carrier by sea acts as an auxiliary to a railway undertaking will be studied later.

These new General Conditions of Carriage for Rail-Sea Traffic will also require to have appendices containing the CIM list of maritime and inland waterway services and provisions for the carriage of dangerous goods.

### Electronic consignment note

The working group has also approved a draft new Article 7a in the CIM. It is intended to replace the principle of functional equivalence by appropriate specific provisions. Accordingly, this new article will replace § 9 of Article 6 CIM. Inevitably changes will need to be made to CIT documentation and a timetable for implementing them has been drawn up. The UIC and RAILDATA have been invited to take part in the work of revising CIT manuals to accommodate the practical aspects of giving priority to the electronic consignment note.

### Model for performing carriage

The provisional logic to underpin the new models for providing carriage which was put forward at the meeting of the CIM Working Group was reviewed and corrected. Mem-



bers of the working group have until the end of January 2013 to comment on the requests made. These issues include processing the consignment note, allocating and distributing revenue, indemnifying loss and damage and the allocation of a company code, all this making the assumption that the contractual carrier is not a railway undertaking.

### Creation of a compliance clause

The CIM Working Group thought it appropriate to prohibit corruption by inserting a compliance clause in the terms and conditions for working together. That clause, in which the parties agree mutually not to commit any corrupt act or other offence in relation to the anti-corruption laws in force, is intended to come into effect on 1 July 2013. The CIM Working Group invites members of the CIV Working Group to consider the option of including a similar clause in the terms and conditions for working together in passenger traffic.

### Haulage of empty wagons covered by the GCU

The CIM Working Group has approved drafts for the GLW-CUV and the new GTW-CIT. Proposals for changes to the GLW-CUV were circulated to members of the CIM Com-

mittee to be voted on by correspondence so that they could come into effect on 1 January 2013. The draft of the GTW-CIT will be submitted to the CIM Committee for approval at its next meeting with the objective of its coming into effect on 1 May 2013.

### 2012 questionnaire on CIT freight documentation

Lastly, the CIM Working Group analysed the replies to the questionnaire on the CIT's freight documentation. The questionnaire had been circulated in order to allow mem-

bers to provide details of the use they made of CIT freight documentation. The replies included several proposals for changes. Those proposals will be examined and, if necessary, appropriate changes will be made to the documentation. The frequency of the survey will be reduced to every three years instead of every two (as at present). The next questionnaire will therefore not be sent out until 2015.

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### New design for the CIM consignment note for combined transport/CUV wagon note for combined transport

The CIM Working Group has decided to put the new design for the CIM consignment note for combined transport/CUV wagon note for combined transport into the GLV-CIM as an appendix and then to withdraw the GLV-TC.

This change will come into effect on 1 January 2013. A transitional period (until 31 December 2013) will be provided for members to use up stocks of the CIM consignment note for combined transport/CUV wagon note for combined transport with the current design.

### Seals on international freight traffic by rail

At the time the movement of freight traffic by rail was liberalised in Europe, a lot of effort was made to abolish formalities at frontiers so that international movement of freight by rail could be speeded up. One of the initiatives that helped achieve that objective was to attach seals to covered wagons and closed intermodal transport units. Seals are attached both to satisfy customs requirements and to provide proof that goods are intact for the purposes of the law of carriage. In order to address the difficulties that were caused by railway undertakings' using many different types of seal, a new UIC leaflet was produced in May 2007 (UIC

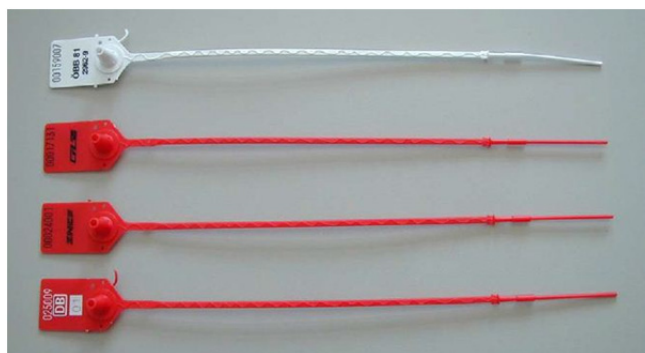
leaflet 426: Standardised railway seals – Europlombs – Guidelines for sealing wagons and intermodal transport units).

Since then, the leaflet has proved its worth. Nevertheless, with the objective of improving the competitiveness, quality and security of international freight traffic by rail, the "Seals" Sub-Group, created by the CER Customs Group, is currently working on revising this leaflet. It is intended to make it more user-friendly and also to cover a number of new issues which have arisen. These new issues involve the choice of seals to be used, where to put them and irregularities in their use.

At its most recent meeting, on 30 October 2012, the "Seals" Sub-Group finalised the draft of the new leaflet. The CIT is represented in this group in order to cover those aspects which concern the law of carriage and the provisions for applying it. The draft will now be submitted to members of the CER Customs Group before being sent to the UIC Freight Forum for its approval.

Adoption of the new leaflet will mean several changes to CIT freight documentation; the CIM Working Group will consider these changes at its next meeting, in June 2013.

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*The Europlomb has proved its worth.*



## Use of the Infrastructure

### 16<sup>th</sup> meeting of the CUI Committee on 7 November 2012

The members of the CUI Committee at their 16<sup>th</sup> meeting discussed among other things the results of the survey on the implementation status of the joint "European General



Terms and Conditions" (EGTC) approved by the CIT and the infrastructure managers at the end of 2010. The members discussed action to be taken to support the integral implementation of the EGTC and instructed the Secretary General of the CIT to maintain contact with the European infrastructure managers association, RailNetEurope (RNE) and discuss the possibilities of achieving synergies in the preparation of its services – primarily the standardised European legal solutions for international transport services prepared by both associations and to encourage institutionalised discussion at Secretary General level and at expert level. The first meeting of the two Secretaries General is scheduled for the end of January 2013 in Vienna.

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## 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.***

### Compensation in the event of damage

*In the course of a movement subject to the CIM Uniform Rules, a wagon (consigned as goods rather than as a means of transport) and an intermodal transport unit (UTI) are damaged. The customer claims reimbursement of the charges for hiring a replacement wagon and UTI whilst his wagon and UTI are being repaired.*

*What liability does the carrier have and what compensation must he pay?*

Article 23 CIM (Basis of liability) is to be used to assess liability for the damage to the UTI and Article 24 CIM (Liability in case of carriage of railway vehicles as goods) is to be used to assess liability for damage to the wagon.

If the carrier is liable, then compensation is to be calculated in accordance with Articles 32 §§ 3 and 4 CIM for the damage to the UTI and the wagon (the compensation shall be limited, to the exclusion of all other damages, to the cost of repair. The compensation shall not exceed the amount payable in case of loss). As appropriate, compensation for exceeding transit time may likewise be due in accordance with Article 33 §§ 1, 4 and 5 CIM.

By "other damages", damages other than the cost of repair, essentially we mean loss of profit but in this case they also include the charges for hiring another wagon and another UTI. It is to be noted that at the time the CIM Uniform Rules were last revised, a proposal intended to provide compensation for losses arising from the loss of use of a rail vehicle in addition to compensation for repair of the vehicle was rejected.

Article 32 § 4 CIM (refund of the carriage charge, customs duties already paid and other sums paid in relation to the carriage of the goods lost as a proportion of the loss of value at the destination) cannot cover the charges for hiring the replacement wagon and UTI since that article only targets amounts paid out for carriage and related activities. The hire charges in question, however, follow from the damage and not from carriage. In addition, we might query whether Article 32 is located in the right place in the CIM; compensation for the damage to the rail vehicles and to the UTI is not calculated as a function of loss in value at the destination (c.f. Article 32 § 1 CIM), but on the basis of the costs of their repair (c.f. Article 32 § 3 CIM). This issue is worth examining when the CIM Uniform Rules are next revised.

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## CIT Itself

### CIT General Assembly 2012

*This year's General Assembly took place on 22 November 2012 at the CIT's headquarters in Bern. Special attention was given to the following topics of the CIT:*

#### **COTIF – general issues and the accession of the EU**

Georgia's accession to COTIF became effective in May 2012, with Azerbaijan's application to accede expected to take place soon. The accession of these countries is a significant step in binding the Caucasian region to Europe in terms of transport law. COTIF law will thus apply to all the states bordering the Black Sea and through traffic in particular from and to the Black Sea ports will command more attention. The importance of the maritime services in the CIM list will increase. Pakistan is also seeking to obtain information from OTIF in order to accede to COTIF and OTIF as soon as possible.

The ratification by the three COTIF EU Member States Ireland, Italy and Sweden is still pending.

The accession of the EU to COTIF, which became effective on 1 July 2011, means an adjustment to CIT's previous working practices – in particular with regard to the planned revision of COTIF 1999. The EU's accession to COTIF and OTIF should simplify the current withdrawal of the existing reservations against the CUI, APTU and ATMF Uniform Rules.

#### **Passenger traffic and making CIV/SMPS legally interoperable**

The Passengers' Rights Regulation contains a requirement for the European Commission to lay a report before the Parliament and the Council by December 2012 on the implementation of the regulation. In parallel with the Commission's report, the CIT and CER have worked closely together to prepare a report from the viewpoint of the industry. It outlines current practice (including measures which go beyond the requirements of the PRR).

As instructed by the CIV Committee, the CIT General Secretariat has analysed the effects of the TAP TSI documentation on the tasks of the CIT and on the CIT's own passenger documentation. The CIT General Secretariat therefore made contact with both the ERA and the GDS and ticket vendors' associations in August 2012. The ERA showed a readiness to work with the CIT and welcomed the fact that the CIT had taken the initiative to start a dialogue with the GDS and ticket vendors.

The CIT General Secretariat was instructed to press on with the work and efforts designed to make CIV/SMPS legally interoperable in consultation with the Committee of the OSJD. The next meeting of the CIT's CIV/SMPS Group of Experts to finalise the comparative table and bring it in line with the current transport rights for East-West cross-border passenger services is planned for spring 2013.



#### **Freight traffic and making CIM/SMGS legally interoperable**

The Chairman of the CIM Committee, Christian Heidersdorf, was thanked most warmly for the valuable skills he had placed at the CIT's disposal and for his efforts on behalf of the CIT in carrying out his mandate. Ms Marianne Motherby, Head of Corporate Law at DB AG, was elected to succeed him with a mandate of three years (2013 – 2015) as chair of the CIM Committee.

The CIT will continue to make every effort to make CIM/SMGS legally interoperable, in particular under the common CIM/SMGS consignment note, in order to support the carriage of goods by rail from the People's Republic of China to Europe, which began on 30 October 2012 (see the article on this subject in this issue of CIT-Info).

#### **Elections**

The CIT General Assembly elected Liselotte Schöll, Head of the Legal Department of ÖBB-Personenverkehr AG; Anna Tyńska-Ząbecka, Principal Expert PKP Intercity; Larisa Kuznetsova, Head of the Department for International Cooperation RZD; Nevin Kaygisiz, Head of the Freight Department in TCDD and Igor Hribar, Director, Freight of SŽ-Tovorni promet (SŽ-Freight) to the CIT Executive Committee for a period of office of four years.

The General Assembly approved the Executive Committee's recommendation to elect Maria Sack, Head of the International Associations and Transport Policy Team DB AG, as Vice Chairman of the CIT.

The General Assembly would like to place its thanks to the out-going members of the Executive Committee on record. Mesdames Kounka Kirkova (Vice-Chairman), Carmen Filipescu (CFR Calatori) and Maria Urbanska (PKP Cargo) began their period in office on 1 January 2005 and, under the CIT Statutes, reach the limit to their time in office at the end of 2012.

## Public discussion

In the afternoon following the statutory business, there was a public discussion on “What have we learned from the past for the future of rail?”. Keynote speeches by Kilian T. Elsasser (historian and museum consultant), Patrick Zehnhäusern (Polynomics AG), Marco L. Sorgetti (Director General of FIATA) and Christopher Irwin (Vice President of the European Passengers' Federation) provided input. These were followed by a lively discussion with the participants present.

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Original: DE



## Legal expertise for the benefit of the railways

Compétence juridique au service des entreprises ferroviaires  
Juristische Kompetenz im Dienste der Bahnen

CIT

## New CIT brochure “Legal expertise for the benefit of the railways“

At this year’s General Assembly, which was held on 22 November 2012, the Secretary General of the CIT presented a new communications brochure. The new CIT brochure has been designed as an “image brochure“ in the CIT’s three working languages. It will be used to attract new members and to provide information for interested third parties. The brochure focuses on the services CIT provides for its members and is available for download from CIT website at [www.cit-rail.org](http://www.cit-rail.org) or can be ordered directly by e-mail from the CIT Secretariat at [julien.dornbierer\(at\)cit-rail.org](mailto:julien.dornbierer(at)cit-rail.org).



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*The CIT sends its best wishes for the New Year.*

*We would also like to take this opportunity to thank you for all your support and commitment over the past year and look forward to being able to work closely together in the future.*

*Finally, we wish you an enjoyable festive season*

*Your CIT Team*

## CIT Diary of Events

Date	Event	Location
29 January	CIV/SMPS Group of Experts	Bern
19/20 February	CIV Working Group	Bern
21 February	1 <sup>st</sup> preparatory Workshop PRR Workshop with NEB 2013	Bern
21 February	Group of Experts "CIM Electronic Consignment Note"	Bern
19/20 March	Group of Experts "Ticketing Manual"	Bern
20 March	CUI Committee	Bern
26 March	CIM Committee	Bern
27 March	Group of Experts "Multimodality"	Bern
9 April	2 <sup>nd</sup> preparatory Workshop PRR Workshop with NEB 2013	Brussels
18/19 April	Committee 1/2013	Bern
23/24 April	Group of Experts "Ticketing Manual"	Bern
25/26 April	CIM/SMGS Legal Group and Experts Group	Warsaw

## Events with CIT participation

Date	Event	Location	CIT contact
11 January	TAP-PM Working Group "Online Sales Interface" (OSI)	UIC	Thomas Gyger
24 January	Freight Focus Group (FFG)	CER	Brussels Erik Evtimov
13 February	Assistants European MN Committee	UIC	Paris Erik Evtimov
18 February	Ticketing Action Group (TAG)	UIC	Paris Thomas Gyger
26 February	European Railway Award	CER	Brussels Cesare Brand
26 February	Passenger Working Group	CER	Brussels Myriam Enzfelder
26/27 February	Inland Transport Committee	UNECE	Geneva Erik Evtimov
27 February	General Assembly	CER	Brussels Cesare Brand
13-15 March	International Rail Freight Conference "Eurasia Rail Freight Business"	IRFC	Prague Erik Evtimov
19 March	Steering Committee Freight Forum	UIC	Paris Erik Evtimov
11 April	CER Assistants Meeting	CER	Brussels Erik Evtimov

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