

International  
Rail Transport Committee

## Editorial

### CIT/IRU Conference and judgment of the ECJ relating to “force majeure” – the highlights



The CIT and the IRU held a very successful joint conference for the first time on 5<sup>th</sup> of September. High-level keynote speakers emphasised the importance of the complementarity of the various modes of transport in the logistics chain, with reference also made to the legal and practical difficulties of the interfaces between the various modes of transport – sea – air – road – rail – inland waterway. A key focus was on the numerous drawbacks resulting from the different legal regimes, which were also presented in detail. In some cases, the transitions from one mode of transport to another have become redundant and are not dealt with in a consistent manner. This has subsequently resulted in a distinct disadvantage for railway undertakings, which still have to struggle for legal interoperability between the different legal levels within the industry. The discussions also showed that the solution is not only to be found in a new multimodal convention. A more promising approach is to come up with a consistent way of dealing with the transitions between the various legal regulations. This on the one hand requires adjustments being made to the major conventions (e.g. Rotterdam Rules, Montreal Convention, and Convention on the Contract for the International Carriage of Goods by Road (CMR), CIM and SMGS). On the other hand, there is also the possibility of optimising the transition between the conventions at the contractual level. In the next few months, the CIT and the IRU will meet to discuss the current optimisation options and prepare appropriate proposals. A detailed report on the common conference is included in this issue on page 2.

Another important event in the field of passenger transport was undoubtedly the judgment of the European Court of Justice (ECJ) relating to “force majeure” delivered on 26 September 2013. The Court found that railway undertakings in future are not to be exempt from their obligation to pay compensation for delay, where the delay is attributable to force majeure. This judgment establishes a fundamental difference in the regulation of passengers’ rights for the various modes of transport (air, sea and road). This means that yet another intolerable disadvantage in intermodal operations has been established for railway undertakings. Regardless of this, force majeure as a ground for exoneration is one of the generally accepted legal principles of a fair legal system. The railway undertakings, which compete in a liberalised market, will have no alternative but to include this additional risk in the calculation of their fares. It is questionable as to whether the effects of a judgment that was intended to be customer friendly will ultimately turn out to be positive for the travellers. You will find a detailed report on the judgment of the ECJ on page 5.

Best wishes from Bern!  
Secretary General of CIT  
Cesare Brand

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## Transport Law and Policy

### CIT/IRU Conference on Multimodality: the opportunity for an update on the situation



*Isabelle Bon-Garcin, Prof. President of the IRU Commission on Legal Affairs*



*Erik Evtimov, Dr. iur. Deputy Secretary General*

The CIT and IRU jointly organised a major conference on the topic of multimodality recently. The conference was held in the CIT building in Bern on 5 September 2013. There were some seventy participants representing the various modes of transport, customers, multimodal operators, practical house-lawyers, academic lawyers and insurers and the objective was to examine the legal framework surrounding multimodal carriage.

Various texts covering multimodal transport were presented: the UNECE Convention of 1980 (ratified by just two states), the UNCTAD/ICC Rules, Article 2 of the CMR, COTIF/CIV/CIM for rail-sea traffic of both passengers and freight, the Montreal Convention for carriage by air and lastly the Rotterdam Rules for carriage by sea.

The Chairman of the CIT directed the conference and the Secretary General conducted the individual sessions. The conference showed:

- that logistic chains are now designed to cover the whole world;
- that manufacturers and consumers are situated in different regions separated from each other by enormous distances and hence;
- that there is a need for increased cooperation between all the modes of transport to manage worldwide traffic freight in an effective manner.

But the conference also showed that there are still shadow zones, sufficient of them for us to realise that solutions for all the problems have not yet been found. Because multimodal transport fulfils an existing need it is even more necessary for all the parties to consider what legal levers are required to help it develop whilst permitting balanced and harmonised relationships between the various constituent modes of transport.

#### The various legal levers

##### *Statutory or coercive tools*

Amongst the statutory tools, the first thing we are likely to think of is drawing up a convention on multimodal transport. It was said that there was an attempt to in the past. It was the United Nations Convention of 1980. It was opened for signature by the states in New York on 1 September 1980 but nevertheless it has never entered into force because of an insufficient number of ratifications. Amongst the problems are:

- the length of the process: more than a decade can pass between the time that the convention is drawn up and the time it is applied. That is much too long since multimodal transport has been a significant reality for some years;

- the difficulty that there will be to delimit the scope of application of a multimodal convention, whether in respect of the definition of 'multimodal' or in its compatibility with other transport conventions when they contain provisions for multimodal carriage.

The other legal solution would consist of a more radical approach: harmonising the contractual terms for contracts of carriage whatever the modes. Nevertheless, we need to remember that the law of carriage has evolved organically as a function of the characteristics of modes and those characteristics naturally differ. Although we can see a family likeness between the basic conventions, a likeness that becomes evident when they are amended (for example, the current CIM Uniform Rules were inspired by the CMR which itself followed rail practices), it is nonetheless still true that the (numerous) differences which can be seen between the modes of transport make **any thought of a single regime totally inconceivable**. We just need to remember that:

- the status and the economic size of the various players vary significantly between the modes: what relationship can we find between DB and a road haulier with a fleet of ten lorries?
- the natural hazards of transport are not comparable. It is always said that the perils of the sea are quite different from the risks by road and that could justify quite different grounds for exemption from liability;
- legal and/or regulatory obligations whether linked to safety, security, or even to conditions of employment are more or less strict, depending on the mode.

And there will be many other examples.

The statutory route is thus quite sensitive; moreover, market participants have not waited for international, European and national legislators to act; rather they have gone off to find simpler and more flexible solutions. Those solutions may be more limited in their application as we will show below.

##### *Contractual tools*

**Transport documents** – one or more documents are currently required for the carriage of freight and they are normally specific to each mode – that can make multimodal carriage more complex and increase legal uncertainty. Also, marine interests devised the bill of lading to cover both the maritime and land journeys for multimodal carriage. In 1992, the ICC in conjunction with UNCTAD drew up rules applicable to multimodal transport documents and thus these rules also cover the liability of the organiser. FIATA has likewise designed a transport document to cover multimodal transport. **Nevertheless, nothing obliges the parties to use this type of document. In addition, the contractual arrangements may lead to each stage in the carriage being subject to a different regime.** It is thus frequently the case that the issuer of a bill of lading is only liable for his own carriage and that his liability finishes with the handover of the goods to the next carrier. In this structure he acts as a forwarding agent on behalf of the shipper when he contracts with the second carrier. The UNCTAD/ICC rules have had little success given that the system is largely ineffective. Finally, we should mention that the European Commission



has also considered the creation of a single transport document (COM/2007/0607 – Freight Transport Logistics Action Plan) applicable to all modes, but one which remains optional. It would be linked to a standard liability clause for all transport operations. Nevertheless, the latter would be a clause which applies automatically except if the parties agree otherwise. It is planned that market participants will be consulted; a proposal is still awaited ...

**Using an organisation to organise transport** – this solution is very practical for the consignor who then doesn't have to worry about organising transport from end to end and who then has a single contact point for the whole of the carriage, especially for liability in the event of loss or damage.

In its White Paper of 2001, the European Commission confirmed its willingness to take action on the intermodality issue in particular by introducing the concept of a freight integrator. A study entitled 'Integrated Services in the Intermodal Chain' (ISIC) concluded by drawing up a report providing the Commission with all the information it needed to prepare and implement such measures ('Freight Transport Logistics in Europe – the key to sustainable mobility' (COM(2006) 336 final) of 28 June 2006). In that study, a transport integrator is defined as the person who concludes an international contract of carriage, involving at least two different modes of transport. The philosophy of the project depends on the combined transport integrator having an almost automatic liability with a high limit of liability which would only rarely be exceeded. It would only need the state

foreseen in the contract for acceptance or delivery of the goods to be a Member State of the European Union in order for the planned legal regime to apply. If the conditions for its application are met, the regime would apply in its totality and could only be voided if the parties agreed that regime would not apply to the contract. In that way we have what is known as a default system. At the moment however, the project does not seem to have been successful.

### Conclusion

It is necessary to stop thinking in terms of modes of transport, but rather to think together on the way in which carriers in the different modes could work together within a competitive framework.

Although statutory regimes at an intergovernmental level are only conceivable in the longer term, contractual relationships provide an appropriate basis for carrying out multimodal transport operations. Thus the role of the CIT in the development of documentation for multimodal transport by rail is more and more important. The CIT's first documentation in this area, the General Conditions of Carriage for Rail-Sea Traffic may also offer advantages to other parties, not only to railway undertakings, but also to shipping companies which are members of the CIT.

It therefore seems necessary to help carriers in the various modes to develop partnerships. The role of organisations such as the IRU and the CIT is precisely to draw up and to promote contractual models for working together. Collaboration between the various international organisations and their General Secretariats without doubt will allow decisive steps to be taken towards the implementation of multimodality. Contractual bridges between the rules created by the various professional organisations must be created in order to permit rapid implementation of contractual approaches based on which it may perhaps be possible to draw up an intergovernmental convention in the long term.

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## The CIT is preparing for the revision of COTIF

*OTIF has decided to start to prepare to revise COTIF. The revision will concern both the basic convention and its appendices. It will involve both amendments which fall within the competence of the Revision Committee and amendments which fall within the competence of the OTIF General Assembly but nevertheless the revision will remain limited in scope.*

The OTIF work programme will be decided at the next meeting of the OTIF Administrative Committee in November 2013. The OTIF Revision Committee should meet during the second quarter of 2014. The OTIF General Assembly itself will take place in September 2015.



At its most recent meeting, on 29 August 2013, the CIT's Group of Experts on the Revision of COTIF finalised the first package of suggestions for revisions which the CIT proposes to submit to OTIF. These suggestions were adopted formally at the most recent meeting of the CIT Executive Committee (on 19 September 2013). Most of the suggestions concern the replacement of the principle of functional equivalence between the electronic consignment note and the paper consignment note in Article 6 § 9 CIM by specific provisions for the electronic consignment note. These specific provisions also give the electronic consignment note precedence over the paper one. The suggestions for revisions to the CUI Uniform Rules were finalised at the meeting of the CIT's CUI Committee, on 23 October 2013, and then the suggestions will be submitted to members of the CIT Executive Committee for adoption in correspondence.

We will return to the issues to be covered in the revision of COTIF and the schedule for the work in the next edition of CIT Info. We will also provide more details of the suggestions which the CIT is making.

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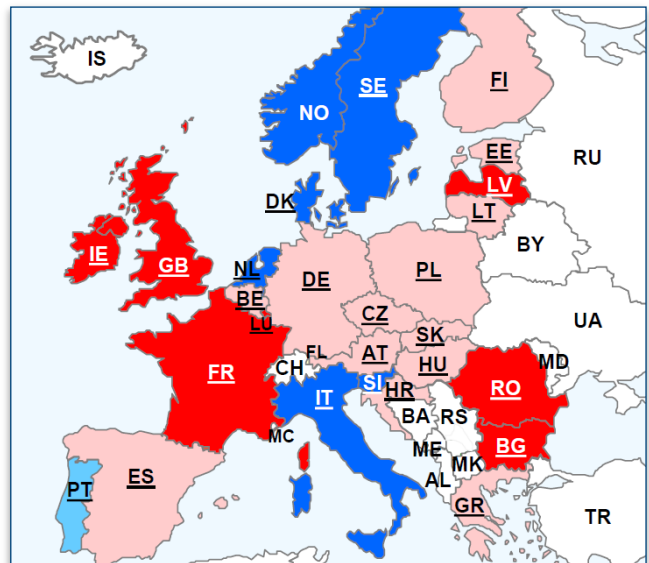
## Exemptions to the PRR in Croatia

*What are the consequences of Croatia joining the European Union on 1 July for passenger traffic?*

Croatia has granted all its domestic services exemptions from a number of articles of Regulation (EC) No 1371/2007 on rail passengers' rights and obligations (PRR). The articles concerned are 13, 15, 16, 17, 18, 25 and 28. These exemptions apply until 2 December 2014 and may then be renewed.

The CIT has its own list of exemptions which it keeps up to date. The list provides more extensive details of the exemptions to Article 17 PRR to help members' customer services departments. The list is available to download from <http://www.cit-rail.org/en/passenger-traffic/legislation/>.

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### Overview of the exemptions

- No exemption
- Domestic legislation on exemptions still awaited
- Exemption from all non-mandatory articles
- Exemption from specific articles
- XX EU Member State

## Euro-Asia Economic Forum 2013



At the invitation of the Chinese authorities, the CIT was given the opportunity of presenting the benefits of the CIM/SMGS consignment note to an interested audience from the logistics sector. The event venue in Xi'an, the starting point of the Silk Road, had been chosen for its symbolic importance. The GS CIT's presentation attracted lively interest and

the CIT/OSJD brochures that were taken along on the uniform CIM/SMGS consignment note in Chinese, Russian and English were snapped up in no time! The CIT's efforts will pay off for its members as soon as the uniform CIM/SMGS consignment note becomes the standard document used for rail shipments between China and Western Europe.

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[The new flyer "CIM/SMGS Consignment note"](#)

## Passenger Traffic



### ÖBB Judgment: carriers are liable even in the event of force majeure

*In its judgment of 26 September on the 'ÖBB case' (C-509/11), the European Court of Justice decided that railway undertakings could not relieve themselves of their liability to pay compensation for delay in the event of force majeure. That judgment has significant and immediate consequences for all European railway undertakings.*

#### The force majeure at issue

Why did the court reject force majeure? The Regulation is intended to provide a high level of protection for passengers. Hence we now know that any restriction on the rights of passengers must be interpreted in a restrictive way.

To reach the decision it did, the European Court of Justice interpreted Article 17 of Regulation (EC) No 1371/2007 on rail passengers' rights and obligations (PRR) very literally. That article guarantees passengers compensation of 25% after 60 minutes of delay and 50% after 120 minutes. However, there is no specific reference to force majeure. The court noted however that that reference had been deleted at the time of the second reading of the draft regulation by European Union legislators.

Did legislators consciously impose an obligation on railway undertakings to pay compensation in the event of delay for an earthquake? The European Commission does not seem to see things in that way because it declared in its recent report (see the article below) that it wanted to revise the PRR on that point in order to clarify that carriers have the right to be protected against force majeure.

#### Consequences for railway undertakings

For railway undertakings, the judgment signifies that passengers have the right to compensation when a rail passenger service subject to the PRR has a delay which causes those passengers to be delayed by more than sixty minutes at the final destination indicated on the ticket. The compensation may be calculated by reference to the fare for the service which has been delayed. Numerous railway undertakings nevertheless offer more advantageous conditions, for NRT tickets in particular.

The only options for relief from the obligation to pay compensation are the following which are listed in points 9.5.1 and 9.5.2 of the GCC-CIV/PRR (amended following the ÖBB judgment):

- 1) the passenger was informed of the delay before buying his ticket;
- 2) the passenger was rerouted and reached his destination with a delay of less than 60 minutes;
- 3) the cause of the delay was situated in a non-Member State of the European Union;
- 4) the cause of the delay was on a rail passenger service exempted from the PRR;
- 5) the cause of the delay was on a non-rail service.

On the day that the ÖBB judgment was published, the CIT recommended its members to change procedures in their customer services departments and, if necessary, their special conditions of carriage.

#### Comparison with other modes of transport

By contrast with the PRR, the regulations governing the rights of passengers in other modes of transport explicitly allow the carriers exemptions from their obligation to pay compensation in the event of force majeure. Nevertheless, it should be mentioned that air carriers have to offer assistance free of charge to passengers (i.e. hotel, meals, etc.) even in the event of force majeure, as was confirmed in the McDonagh judgment (C-12/11) which concerned the closure of the 'European sky' in April 2010 because of the eruption of the Eyjafjallajökull volcano.

The court has thus judged that each mode is different and can have its own rules. The court has thus rejected any application of force majeure to carriage by rail by analogy.

#### The link between PRR and the CIV Uniform Rules

The court clarified that the purposes of the PRR and the CIV Uniform Rules are different: whilst the PRR is intended to guarantee compensation on a standardised and inclusive basis, the CIV Uniform Rules imply an individual evaluation of the loss and damage sustained (i.e. hotel costs). The court noted the same difference between the Air PRR and the Montreal Convention in its judgment IATA/ELFAA (C-344/04). That was a further reason for it choosing not to extend the exclusions in the CIV Uniform Rules to the PRR although the regulation is intended to be part of the international law applicable (according to recitals 6 and 14). It seems as if there might have been a hiccup when the PRR were drawn up.

#### The powers of national enforcement bodies

The court was also asked to rule on an issue concerning the powers of the national bodies tasked with enforcing the PRR. It ruled that these national enforcement bodies may not use Article 30 of the PRR as a justification for extending their powers beyond what is provided for in their national law. Nevertheless, the court reiterated that all the national authorities must ensure that European law is applied to its fullest extent. It thus asked the authorities to interpret and apply national law within the context of the PRR and its objectives in order to ensure passengers' rights are protected.

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#### Useful Links :

- 1) Judgment [ÖBB](#)
- 2) General Conditions of Carriage for Rail Passengers ([GCC-CIV/PRR](#)).



## European Commission report on rail passengers' rights

*On 14 August the European Commission published a report on the way railway undertakings have implemented rail passengers' rights. On the whole the*

*report was positive. The Commission identified special efforts which railway undertakings had made to help persons with reduced mobility and to handle claims (for delays, in particular).*

### Top marks for railway undertakings

According to the European Commission, railway undertakings had implemented Regulation (EC) No 1371/2007 on rail passengers' rights and obligations (PRR) particularly well in the following areas: general conditions of carriage, information, refunds and compensation in the event of delays, reports on the quality of service, insurance cover, etc. Moreover, the number of complaints sent to the national bodies with the task of enforcing the PRR is ten times less than that noted for the air mode. The CIT actively supports its members to help them apply the PRR to international traffic and welcomes these highly satisfactory results.

### Some points that need attention

The European Commission regretted that the range of through tickets that was being offered was limited. It is therefore considering ways to allow EU Member States to impose systems for integrated ticketing within the framework of the Fourth Railway Package. It is also considering improving the rights of passengers in the event of their connection being broken. Nevertheless, in reply to a parliamentary question (E-004099/2013), the Commission recognised that through tickets relied on commercial agreements between carriers. At the same time it accepted that several tickets were equivalent to several contracts of carriage for a single journey.

### Failure to fulfil obligations?

The European Commission sent letters to ten EU Member States asking them to explain possible failures to meet obligations under the PRR. Amongst the states and the railways concerned are Austria and ÖBB, the Czech Republic and ČD, Denmark and DSB, Italy and Trenitalia, Lithuania and LG, Poland and PKP together with France. If the Commission is not satisfied with the replies it receives it could open infringement proceedings against those states. The Commission however is not empowered to take any direct action against railway undertakings, that role is reserved for the national authorities.

### Next steps: interpretation and revision of the PRR

Is it necessary to revise the regulation to improve the implementation of the PRR? The Commission wants all the states to review their exemptions because exemptions rob the majority of passengers, travelling on domestic services, of their rights. In addition, domestic services are to be liberalised with the adoption of the Fourth Railway Package in the next few months. Furthermore, the Commission is intending to clarify some unclear concepts, in particular on force majeure and to strengthen the rights of passengers in some areas, particularly for persons with reduced mobility.

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### Useful Links :

- 1) [Report](#) on the Application of Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (COM/2013/587).
- 2) Steer Davies Gleave [report](#) (EN only).
- 3) European Commission's [reply](#) to parliamentary [question](#) E-004099-13 put by Michael Cramer on 11 April 2013.

## Small Aztec barcode for printed tickets on secured paper

*Ticket vendors may print barcodes on the front of paper tickets using the RCT2 compressed or the Rail Credit Card Sized Ticket (RCCST) format which have both been specially developed for rail use. This barcode was developed to replace the former magnetic stripe on the back of the RCT2 format. CIT's task was to adapt the CIT security background especially for the use of barcodes.*

### New Procedures

Another task of CIT is to propose new procedures to support ticket inspectors. The implementation of a barcode can increase the detection of fake tickets, because their data is generated by an additional technical path, which is hardly available for ordinary forgers of paper tickets. In addition, a barcode facilitates the exchange of data between the ticket vendor and the ticket control organisations involved, which allows introducing seamless control processes. Such processes exist already on a bilateral basis for print@home

tickets. In connection with the introduction of credit card sized paper tickets, where a barcode is required, the standard control process should be reviewed and improved in the next year.

### Aztec barcode definitions in UIC leaflet 918-2



The Aztec code is a 2D barcode which can encode information inside a square barcode. The Aztec barcode is an ISO international standard (IEC 24778). It is an open standard which can be used by everyone.

The Aztec barcode for tickets on secured paper is defined in UIC leaflet 918-2 and its size is 41x41 dots. This small barcode was studied in the ad hoc group.

Two small barcode versions 1 and 2 are defined in UIC leaflet 918-2 chapter C.3 and C.4. Aztec Barcode Version 2 is used by ZSSK. Aztec barcode Version 1 is not implemented or used by any railway undertaking. All other companies using Aztec barcodes implemented their own version for domestic tickets.

The size of the Aztec Barcode defined in UIC leaflet 918-3 for print@home tickets is 87x87 dots. This larger barcode cannot be used for printed tickets on secured paper. It is totally different from the smaller one.

### Third-generation Aztec barcodes

Because the Aztec barcode version 2 does not cover Rail Pass Tickets (RPT) needs, a UIC ad hoc working group proposed a new Aztec Barcode version 3. This new version 3 will be an evolution of version 2, which will be modular and will cover description of IRT and NRT (like version 2) but also RPT and Group Tickets (GRT).

The aims were to clean up and harmonise the various third-generation Aztec barcodes for NRT, IRT, RES, BOA, GRT and RPT in UIC leaflet 918-2. Even with the first proto-

types, sizing errors were eliminated and the calculation of the data could be harmonised. New in the barcode is the year of issue (in contrast to the printed layout of the ticket).

The encryption and decryption will be accurately described in UIC Leaflet 918-2. In the UIC a central website should be established for the exchange of decryption keys. The exact processes of the registration, administration and renewal of the "public" crypto data were only briefly discussed. The roles and responsibilities of the product owners, the issuing undertakings and the ticket vendors should first be assessed in detail.

The standard will now be finalised within the Ticketing Action Group at UIC in October 2013. The goal is to publish the new Aztec barcode 3 standard in UIC Leaflet 918-2 (version 7) on 1 January 2014.

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## A full in-tray for passenger specialists

*Passengers' rights, dialogue with the bodies enforcing their implementation, revision of the documents specifying contractual terms for working together, ticketing, etc. The agenda for the first autumn meeting of the CIV Working Group (which took place on 24 & 25 September) was very full.*

### Positive welcome for the redesigned boilerplate specifying contractual terms for working together

The CIV Working Group was totally committed to the proposal to standardise contracts for railway undertakings to work together to plan and operate international trains. In future, members of the CIT should have a boilerplate contract, standard appendices to the contract as well as general terms and conditions aligned with the model chosen (successive carriers or substitute carriers, traction, hire or other ancillary services). The UIC is working on a new leaflet specifying the operational aspects to be taken into account for rolling stock, staff, the exchange of information, etc. This new leaflet will conform to European Union TSIs.



The CIV Working Group, Isabelle Saintilan (SNCF) is in the chair.

### Rights of passengers making air+rail journeys

The airline passengers' rights regulation is being revised. Railway undertakings should expect that the scope of this regulation will be extended to air+rail tickets. As a result, in the event of a delay of 90 minutes to a train at the airport, railway undertakings will have to pay compensation for delays of between € 300 and € 600 except in the case of force majeure! For travel by air the grounds for exemption are numerous: there were thirty of them in the list recently put on-line by the national enforcement bodies for air passengers' rights.

### Rail passengers' rights

The working group asked for several clarifications on the European Commission's report on the implementation of the PRR (see the article above, page 6). These were passed to the Commission and to the national enforcement bodies for the PRR at their meeting in Brussels on 14 October.

At the meeting, on 23 October, the working group considered the revision of the AIV in order to align it with the ÖBB judgment (see the article above, page 5). The group also considered a number of other issues which the judgment raises.

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### Useful Link :

- 1) Preliminary [list](#) of extraordinary circumstances drawn up following the Air NEB meeting held on 12 April 2013 (EN only).

## Passenger claims departments' conference

*This year's conference demonstrated to the participants very clearly how important the international exchange of views and the collaboration of the sales and legal departments of the members of the CIT and UIC are, particularly as it coincided with the publication of the judgment of the Court of Justice of the European Union in Luxembourg in Case C-509/11 ÖBB-Personenverkehr AG, according to which rail passengers travelling within the EU in the event of significant delays are entitled to a partial refund of the price of their train ticket, even where that delay is attributable to force majeure. More information is included in the article entitled ÖBB court judgment (see page 5) in this issue of CIT-Info.*

### Passengers' rights

One of the conclusions of the presentations during the morning sessions was that the interpretation of the Rail Passengers' Rights Regulation (PRR) is made with increasing frequency by the courts or regulatory authorities. The tendency in the delivered judgments is towards an improvement in the protection of consumers' rights. This imposes an obligation on the railway undertakings to constantly improve the interconnected and updated passenger information provided on both their own trains and on connecting to trains operated by their competitors.

This addresses an important area of the CIT's activities: only when the railways operating in an international environment, despite competition on a commercial level, are prepared to support each other in running the operational side of their business when a partner railway (or competitor) is experiencing difficulties, will it be possible to counteract the more restrictive EU regulations. The discussions with the so-called national enforcement bodies (NEBs) also help the railways to promote a common understanding in support of a coherent interpretation of passengers' rights.

### Alternative dispute resolution

A modern approach to the protection of consumers' rights, as laid down in EU law requires simpler procedures with respect to passengers when mediation is necessary to settle disputes in the handling of claims. Not every unresolved dispute needs to be brought before the judge, because this is time consuming and costly. Modern approaches to resolving disputes, on a voluntary basis, with the assistance of a court are offered by mediation or ombudsman centres, who are able to make mediation proposals based on their independence and experience that reconcile the interests of all the parties concerned.

This development is still in its infancy and it can be seen that its implementation varies quite considerably in the individual states. The areas of responsibility and the decision-making authority of the mediation centres involved are



organised differently. Among other things, the national enforcement bodies also act as mediation centres, as in the case of the Schienen-Control Kommission in Austria.

### Ticket fraud

After lunch, the focus was on dealing with ticket fraud and forged tickets. When are tickets genuine and how can forgeries be identified? What patterns of fraudulent behaviour are there and what precautions are the railways taking? Daniel Fankhauser, who is in charge of the Colpofer Working Group on Ticket Fraud, presented an astounding and worrying glimpse behind the scenes of this important work on securing revenue and quality assurance. The conclusion in this case is that the railways ought to train their security staff to identify malpractice and forgeries, primarily on key international routes.

### Clarification of delays at Deutsche Bahn

Customer complaints that contain references to cross-border tickets are dealt with in Germany by a specially trained team in the service centre for passengers' rights. The prerequisite is that the main tickets were issued by DB or that the customer used additional services (e.g. taxi, hotel) within Germany. Customer concerns are systematically clarified, possible delays and principles of liability researched.

Around half of the international trains can be clarified using the *Train Information System* (TIS, formerly EUROP-TIRAILS) offered by RailNetEurope. TIS is a web-based application that supports international train management by supplying real-time train data on international passenger and freight trains.

If it is not possible to check a delay using TIS, the search request is sent by e-mail using the AIV form, the introduction of which was proposed at last year's conference.

The next conference for the passenger claims departments will take place on Thursday, 25 September 2014 in Bern.

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## Clear distinction between “carrier” and “issuer” must appear on tickets

*Does the current layout of international tickets still meet the requirements of a standard contract of carriage? The answer is: “Yes, if ...”*

In accordance with CIV Article 7, the ticket represents the contract of carriage and must therefore include all the information required to enable the traveller or travellers to complete the train journey independently.

The contract of carriage is required to indicate, among other things, who is to perform the transport service and who is liable for the transport service to be performed. CIV Article 6 defines the relationship between the contract of carriage and the ticket: on the basis of the contract of carriage, the carrier undertakes to carry the passenger to the place of destination. The ticket shall be prima facie evidence of the conclusion and the contents of the contract of carriage.

For passenger services provided on an international network today, travellers very frequently buy their tickets from a railway undertaking (or from a travel agency that has a sales contract with the railway undertaking) that is not directly involved in the transport service, i.e. does not actually perform the transport service itself. To ensure that passengers are able to understand which company is responsible for selling the tickets and which company is responsible for providing the transport service and is liable for the transport

service, the information printed on international tickets is to be specified on an even more systematic basis. The correct interpretation of the different areas of responsibility is important, because they affect the customer service procedures (e.g. compensation for delays) or legal issues relating to liability in the event of accidents.

### Why is it important for passengers to be aware of the different roles?

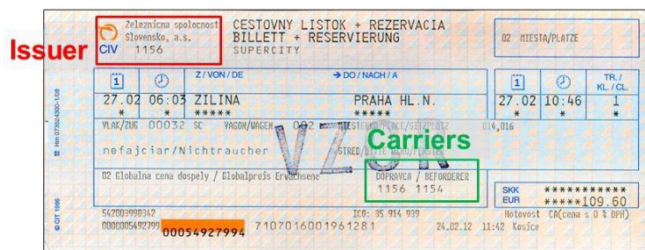
- 1) The **issuing company**, otherwise known as the **issuer**. It concludes the contract of carriage with the passenger acting by order of and on behalf of the carrier who is involved in the contract of carriage. This can be a railway undertaking or a company that operates on the registered maritime, road or inland waterways services. It can itself be a party to the contract of carriage as the carrier, but this must not necessarily be the case. The issuing company is identified on the ticket by its logo (today, in addition, still by its UIC company code) located top left on the ticket.
- 2) **Carriers**. They are responsible for the performance of the contract of carriage with respect to the passenger. Carriers are identified on the ticket by their UIC company code.

### Can the current layout still fulfil its purpose?

In principle, yes. However, the relevant ticket fields used must always be the same and no mixing of functions should occur, which has sometimes occurred in the past.

The CIT and UIC working groups responsible are currently preparing concrete layout proposals with the customers and railway undertakings in mind.

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



## Freight Traffic

### News from the last meeting of the CIM/SMGS Legal Group and Group of Experts

*The Legal Group and Group of Experts dedicated their last meeting, which was held in mid-September on the German Baltic coast, to key issues of the on-going development of the “CIM/SMGS Consignment Note Manual”.*

#### Eurasian shipments using the common CIM/SMGS consignment note

Using the common CIM/SMGS consignment note, key shipments between the People’s Republic of China and Europe can currently be carried out (or performed) in 16-18 days, which is twice as fast as the sea route. The use of the common CIM/SMGS consignment note simplifies customs clearance procedures, since it is also recognised as a customs transit document, which is also very important for transport of dangerous goods (e.g. from Kazakhstan).



The efforts being made by the railways and railway organisations to implement harmonised solutions on a contractual basis for such shipments have received extensive support from the United Nations Economic Commission for Europe (UNECE). In Item 3 of the Political Declaration of 26 February 2013, which was signed in the session of the Inland Transport Committee by 37 Ministers of Transport, an explicit reference is made to contractual solutions, such as the GTC EurAsia. On this basis, the GS CIT has now finalised the GTC EurAsia and will discuss its contents in the various committees and organisations.

### Electronic CIM/SMGS consignment note takes shape

The RZD representatives made a very powerful presentation on the technical possibilities available for carriage of empty wagons on the Ust-Luga – Sassnitz rail-sea connection, using the electronic CIM/SMGS consignment note.

RZD reinforced its interest regarding pilot projects in this area with its partner railways DB AG and PKP Cargo on the basis of a gradual process that also includes loaded wagons. RZD also expressed its interest in testing an XML-based solution for using electronic CIM/SMGS consignment notes. Prior to the next meeting, RZD representatives, together with RailData, will prepare a possible approach for using XML-based solutions.

In this particular area, the CIT and OSJD as project organisers have published the adjusted and updated functional, legal and technical specifications for the electronic CIM/SMGS consignment note effective as of 1 October 2013 on the websites of the CIT and OSJD (see circular letter 23/2013).

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

## The CIT Multimodality Experts Group approves GTC Rail-Sea Traffic

*An increase in the demand for rail-sea freight shipments in the Baltic region is a proven fact. The interest in the application of the common CIM/SMGS consignment note for Eurasian shipments via the Baltic ports is currently growing. At the last Meeting of the Multimodality Experts Group on 10/11 September 2013 in Sassnitz on the Island of Rügen off the German Baltic coast, the CIT was at the cutting edge of events.*

### Experts Group meeting in Sassnitz on the Island of Rügen

In the beginning of the meeting, the experts shared their experience in the inclusion of services in the CIM list of maritime services between the Baltic ports and also between the ports on the Black Sea. OTIF representatives at the meeting and others also promised that further efforts would be made to support this project. This means that rail-sea transport will receive increasing political and legal attention, as end-to-end rail freight shipments on the basis of a single CIM contract of carriage on land and sea represent vital hinterland potential for linking the ports to the main production and consumption centres in Europe, Russia and Asia.

### Registration of maritime services under COTIF law

To clarify the legal situation regarding the inclusion of services in the CIM list of maritime services, the OTIF representatives were asked to interpret COTIF Article 24 relating to the procedure for and the consequences of including services in the CIM list of maritime services. At the moment, individual COTIF Member States continue to use different procedures for maintaining or cancelling CIM maritime or inland waterway services. In Germany, for example, the decision is dependent on whether a COTIF CIM or CIV maritime service can be operated on a profitable basis. If no shipping company expresses its interest in operating the service, the application for cancelling the service will be submitted to OTIF.

The GS CIT has subsequently been authorised by the Experts Group to send the updated CIV and CIM lists of maritime and inland waterway services to CIT members in a



circular once every year, in consultation with OTIF, at the end of the meeting of CIT's Multimodality Committee.

### Approval of the GTC Rail-Sea Traffic

At the end of the meeting, the Multimodality Experts Group unanimously approved the final version of the GTC Rail-Sea Traffic, including Appendix 1 on CIM maritime services and Appendix 2 on the carriage of dangerous goods, at project level. The launch of the GTC Rail-Sea Traffic as a new CIT document primarily regulates the business models in which the maritime carrier acts as the contractual or successive carrier. The model in which the shipping company acts as the vicarious agent of the railway undertakings will be dealt with at a later date. In the model of the successive carriers, the carrier accepts the goods and consignment note on the basis of the single transport contract. This offers considerable benefits – also for shipping companies who are CIT members.

The continuing development and updating of CIT documents for rail-sea shipments is to be dealt with by the new Multimodality Committee, where the shipping companies as CIT members are to play an important role.

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

## 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.*

### Bicycle delivered two days late

*In accordance with Articles 36 to 43 CIV, passengers are entitled to compensation for any delay in the delivery of their registered luggage. How much does that compensation amount to for a bicycle delivered two days late? Who should pay the compensation?*

A Swiss passenger, going to Austria for a holiday, handed his bicycle to SBB for SBB to take it to his holiday destination. The bicycle was delivered two days late, the passenger should be entitled to compensation for delay equivalent to:

- 28 SDR<sup>1)</sup> (= approximately € 32) if he is able to prove that he sustained a loss as a result of this delay, for example, that he had to hire a replacement bicycle or use other means of transport to make the journeys he had planned; or
- 5.6 SDR (=approximately € 6.40) if he is not able to prove such loss.

The compensation does not have to be paid in the event of force majeure or fault of the customer.

The passenger may claim compensation from the first or the last carrier or from the carrier providing carriage when the delay occurred. In this particular case, action may be taken against either carrier, SBB and ÖBB.

1) SDR = 'special drawing right'. The rate of exchange between the SDR and the euro and other national currencies may be found on the International Monetary Fund website:  
[http://www.imf.org/external/np/fin/data/param\\_rms\\_mth.aspx](http://www.imf.org/external/np/fin/data/param_rms_mth.aspx)



*Bicycles about to be loaded on train* © SBB CFF FFS

The principles for sharing out compensation for delay to registered baggage between railway undertakings are no longer covered by multi-national agreements because registered luggage for international journeys has become so rare. Carriers providing the service should therefore provide for sharing out compensation in their contracts for working together.

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

## CIT Itself

### The Executive Committee of the CIT met for the second time at the end of September

#### Three key mid-term action programmes of the CIT debated by the Executive Committee

*The Chairman, Jean-Luc Dufournaud (SNCF), opened the Executive Committee's second meeting this year at the CIT head offices in Bern. A special welcome was given to the recently designated representative of Trenitalia on the Executive Committee, Alberto Gallo. His election to the Executive Committee will be submitted to the CIT General Assembly.*

The Chairman focused primarily on CIT's three key action programmes that are currently underway:

- The Revision of COTIF including the Appendices (in particular CIM, CUV and CUI) in view of the fourth EU railway package and the further development of secondary EU law – (in particular Directive 2012/34/EU, the so-called recast);

- The required harmonisation of international rail transport law following the political declaration of the United Nations Economic Commission for Europe (UNECE) and parallel to that the preparation of the General Terms and Conditions EurAsia by the CIT (GTC EurAsia);
- The globalisation of the logistics chains and the handling of multimodal shipments on the basis of single contracts of carriage – and in accordance with CIT's new GTC for Rail-Sea Traffic.

#### Communications activities in 2013

In order to familiarise interested customer groups with the benefits of the common CIM/SMGS consignment note, the GS CIT has published a brochure on the uniform CIM/SMGS consignment note in Chinese, Russian and English in collaboration with the OSJD.

The General Secretariat of the CIT, in collaboration with the internet company "kong", is currently updating the address management system for CIT members and a restructuring of the document archiving system.

#### CIT training concept to be implemented as of 2014

Due to a lack of time, the development of a training concept has been repeatedly postponed by the General Secretariat. The need for training programmes in international rail transport law and courses on CIT documentation has been pointed out by members on a regular basis. The Executive Committee has taken note with satisfaction that the GS CIT has proposed a training concept.

As of 2014, the new CIT training programme will be broken down into modules with the participation of potential advisers, in which the subject matter will be dealt with in detail. They will form the basis for the first two pilot seminars to be held in February/March 2015.



#### Next meeting

The next meeting of the CIT Executive Committee will be held on Thursday, 24 April 2014 at the CIT head offices in Bern.

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

#### Change of staff in the freight traffic department

##### We wish him a warm welcome and every success!



*Dominic Quiel*

Dominic Quiel has been with the CIT since 1 September 2013 and is employed on a temporary basis to take on some of the legal workload in the freight traffic department.

He recently passed his bar examination and has since gained experience as a court legal adviser for various employers and as a lawyer.

We wish Mr. Quiel every success and valuable experience in his work at the CIT.

Katja.Siegenthaler(at)cit-rail.org  
Original: DE

##### Good-bye and our sincere thanks for everything



*Michel Libis*

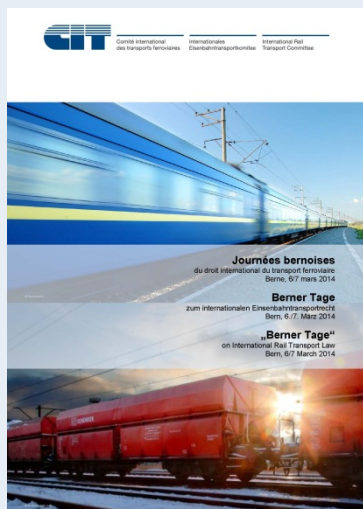
At the end of September, the General Secretariat of the CIT officially said farewell to Michel Libis, who left the CIT several months ago for health reasons.

Mr Libis has been a member of the clerical staff dealing with freight traffic since November 2011, in addition to being responsible for the dangerous goods area.

We would like to thank Mr. Libis for the work he has done and wish him good health and every success for the future.

Katja.Siegenthaler(at)cit-rail.org  
Original: DE

## Seventh “Berner Tage” on International Rail Transport Law Bern 6 & 7 March 2014



The “Berner Tage” reflect the most recent developments in international rail transport law. They are specially designed to appeal to in-house railway lawyers, specialists from claims and claims prevention departments, specialist lawyers, insurance experts and representatives from the ministries of justice and transport.

The main topic of the 2014 event will be the various facets of multimodality in freight and passenger traffic both in theory and in practice. The on-going revision of COTIF will also form an important part of the 2014 “Berner Tage”.

The following topics will be considered in separate modules:

#### Passenger traffic:

- implementation of rail passengers’ rights and practical cases;
- contractual models for working together in passenger traffic;
- legal bases for ticketing.

#### Freight traffic:

- general terms and conditions for rail sea traffic;
- regulations for freight traffic by rail between Europe and Asia;
- Incoterms;
- electronic consignment note.

The “Berner Tage 2012” will conclude with a panel discussion on current developments in railway law. Well-known experts from politics, industry and academia will give their views and be available to discuss them with seminar participants (the “Berner Tage” are recognised as satisfying requirements for the professional development of specialist lawyers).

Further information may be obtained from the General Secretariat of the International Rail Transport Committee (CIT),  
Weltpoststrasse 20, CH-3015 Bern, telephone +41 (0)31 350 01 90.

Registration may be made by e-mail ([info@cit-rail.org](mailto:info@cit-rail.org)), by fax +41 (0)31 350 01 99 or by means of the CIT website: [www.cit-rail.org](http://www.cit-rail.org).

### CIT Diary of Events

Date	Event	Location	Participation
13/14 November	CIM Working Group	Bern	Erik Evtimov
21 November	CIT General Assembly	Bern	Cesare Brand
27/28 November	CIM/SMGS Co-ordinator Group and Steering Group	Warsaw	Erik Evtimov
4/5 December	CIV Working Group	Bern	Isabelle Oberson
23 January	Experts Group “Revision COTIF”	Bern	Erik Evtimov
30 January	CIV/SMPS Working Group	Bern	Erik Evtimov
5/6 February	CIV Working Group	Bern	Isabelle Oberson

## Events with CIT participation

Date	Event		Location	Participation
29/30 October	Working Group on the transport of dangerous goods RID	UIC	Basel	Henri Trolliet
30 October	Juristensitzung Transportrecht	BAV	Ittigen	Erik Evtimov
7/8 November	Logistics Conference 2013	EU	Brussels	Erik Evtimov
14/15 November	Coordination Council on Transsiberian Transportation Annual Meeting	CCTT	Budapest	Jean-Luc Dufournaud Erik Evtimov
3 December	Wagon Users Study Group	UIC	Paris	Henri Trolliet Dominic Quiel
2/3 December	Group of Experts on Unified Railway Law	UNECE	Geneva	Cesare Brand Erik Evtimov
5 December	RNE Business Conference	RNE	Vienna	Myriam Enzfelder
11 December	European Regional Assembly	UIC	Paris	Cesare Brand
12 December	General Assembly	UIC	Paris	Cesare Brand
12 December	Assistants Meeting	CER	Paris	Cesare Brand

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