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### Data Protection Workshop

On 18 June 2019, CIT will be holding a workshop in Bern on data protection. All employees of CIT member railways are welcome to attend; attendance is naturally free of charge. The day will offer participants the opportunity to acquaint themselves with the latest developments concerning EU Regulation 2016/679 on data protection and its implementation in the rail sector.



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## EDITORIAL

Dear readers,

### Is state regulation really always necessary?



There is an increasingly widespread understanding that the rail sector can only become more competitive if cooperation between the various actors in the system improves. Though there is necessarily a tension between cooperation and competition, the two are not entirely mutually exclusive, especially if the result is improved quality for the customer. Many quality issues are the consequence of a lack of cooperation between rail system actors, in particular between railway undertakings and infrastructure managers. Efficient utilisation of network capacity, punctuality, customer information, digitalisation, and the elimination of technical, operational and legal obstacles at borders: all these can only be improved if railway undertakings and infrastructure managers keep all options on the table and work constructively and creatively together to develop solutions. And they can do this with no need for EU or government regulations. The solutions to many of these problems are within the remit of the sector and the sector alone. The focus must not be on each party short-sightedly looking after its own interests, but rather on optimising the rail system as a whole and customer service! And to do that, it will take a change in mindset and a strong lead from management.

With best wishes from Bern  
**Cesare Brand**  
CIT Secretary General



## New OTIF Secretary-General elected

*The extraordinary OTIF General Assembly on 27 February 2019 elected Mr Wolfgang Küpper as new OTIF Secretary-General.*

Mr Küpper has worked on national and international railway policy matters for over 28 years, and was Head of Division at the German Ministry of Transport, with responsibility for national, European and international railway policy. He assumed office at OTIF on 8 April 2019. We congratulate Mr Küpper on his appointment, and look forward to working with him.

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Mr. Wolfgang Küpper

## Afghanistan accedes to COTIF

*From 1 May 2019 Afghanistan became the 51st OTIF Member State and applied the COTIF and its appendices in full.*

On 7 November 2018, the Islamic Republic of Afghanistan applied to accede to COTIF in accordance with Article 37 COTIF. On 15 November 2018, the Secretary-General notified OTIF Member States of the application. Afghanistan's accession statement made no indication that it intends to restrict the scope of application of COTIF. Afghanistan's accession to COTIF and appendices will take effect on the first day of the third month after the Secretary-General's notification of the Member States concerning the application and the conditions governing acceptance thereof.

Railways in Afghanistan are operated by the Afghan Railway Authority (AfRA), a state body. Afghanistan has been a member of the Organisation for Cooperation between Railways (OSJD) since 2015. All rail traffic in Afghanistan is presently freight traffic. In this context, one technical barrier to be overcome is the fact that Afghanistan possesses and operates three different track gauges. The country's neighbours to its north use the 1520 mm gauge, Pakistan has a broad gauge of 1676 mm, and the Iranian railways build their lines to the standard gauge of 1435 mm.

CIT will make its expertise available to this new member and establish contact with AfRA. Preliminary discussions on a regional seminar took place with representatives of the Iranian Railways (RAI) in Bern in late February 2019.



Afghanistan accedes to COTIF

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## PASSENGER TRAFFIC

### New projects in abundance for the CIV Working Group

The CIV Working Group held its 45th meeting in Bern in February 2019. During the two-day meeting, CIV Working Group members discussed various projects for 2019 on which CIT is currently working.

#### PRR revision: still on the agenda

The revision of Regulation (EC) 1371/2007 on passenger rights (PRR) is a constant source of work for the CIV Working Group (CIV WG), which discussed the position paper and amendments to the draft recast of the PRR drawn up and published by CER in collaboration with CIT. The group also discussed the upcoming milestones in the revision process.

#### Strikes and claims settlement

The 2018 Passenger Claims Conference touched several times upon issues pertaining to claims handling for trains affected by strikes and cooperation between railway undertakings in this context. In the light of what was said, it was proposed that the Agreement concerning the Relationships between Transport Undertakings in respect of International Passenger Traffic by Rail (AIV) be modified by adding some clarifying provisions concerning strikes. The 45th CIV Working Group meeting discussed the proposed amendments, which have now been reworked ahead of the next CIV Committee.

#### Impact on ticketing of modifying the CIT statutes

The modification of the CIT statutes in late 2018 has led to a number of changes needing to be made to the CIT products and their use, specifically the Manual for International Rail Tickets (MIRT). Various proposals were made, but were not discussed at length during the meeting. Other modifications were suggested during the meeting.

These concerned, inter alia, the granting of sub-licenses for the 2012 security background, and language and terminology-related questions. Work on this matter will continue in coming months.

#### Towards a data protection handbook

CIT continues to work on data protection. Having developed boilerplate contracts for data processing in 2018, in 2019 CIT has begun drafting a data protection handbook which will contain articles with comments and sample clauses, all written with the railway user in mind. The CIV WG stresses the need to include decisions taken by authorities as well as issues and practical case studies sent in by CIT members in the handbook.

#### Multimodality remains a central topic of discussion

The CIT GS used the winter break to rework the air-rail cooperation models it developed in 2018. Based on the remarks and comments received from members of the CIV WG, the Secretariat has modified these draft models ahead of the next CIV WG

#### Next passenger traffic meeting

The next passenger traffic meeting will take place in Bern on 19 June 2019. This will be the meeting of the CIV Committee, the purpose of which will be to adopt the proposed new products and proposed amendments to existing products described in this article.



*A constructive, well-attended meeting - as usual!*

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## CIT / IRU “Rail-Road” workshop

In 2019, CIT has set itself the goal of building on 2018 as the European Year of Multimodality by organising various events throughout the year. This is the context in which the joint IRU/CIT “Rail-Road” workshop was held in late February.

### Part one of the workshop: fascinating presentations and lively discussion

CIT and the IRU (International Road Union) have been liaising on the subject of international rail-road transport for some time now. In 2017, this cooperation gave rise to a comparative analysis of the bodies of law governing the international carriage of freight by rail and road. Currently, the two organisations are working on a check-list for a framework contract for road-rail transport. The workshop grew out of an idea that arose during this joint working.

The venue was an apt choice to host such a workshop, and participants were delighted to be invited to attend the workshop at the “Eurohub Sud” intermodal terminal in Dudelange/ Luxembourg by CFL Multimodal. The workshop was opened and moderated by CIT Multimodality Committee Chairwoman Maria Kalimeri.

The first presentation was from an IRU member, Ms Antoaneta Ivanova, an expert in intermodal transport who gave participants a fascinating insight into road haulage in the context of a multimodal transport chain. To counterpoint this, Maria Kalimeri and Erik Evtimov (CIT) used the opportunity to present CIT’s important work on multimodality and the challenges facing the rail sector in connection with multimodal freight movements.

Eric Lambert (CFL Multimodal) then made the link between the IRU and CIT presentations by recounting practical experiences with multimodal transport at terminals. In so doing, he successfully convinced participants of the environmental benefits of combined transport whilst also highlighting the legal and operational challenges.

There was then a lively discussion of the various presentations, during which participants also touched upon the very topical matter of the revision status of EU Directive 92/106 (on combined transport) and shared their positions thereon. Later in the workshop, there were two presentations of the joint projects and documents worked on by IRU and CIT: Ana Taliberti (IRU) and Nina Scherf (CIT) informed [participants of the guide to the CMR-CIM-SMGS](#) liability regimes and drew a number of conclusions comparing the law of international carriage of freight by rail (COTIF/CIM) and the law of international carriage of freight by road (CMR).

Erik Evtimov then described an ongoing IRU/CIT project, engaging everyone’s interest in the checklist for a road-rail framework contract. The workshop then voiced the idea of presenting the checklist to the UIC Combined Transport group as a source of further expert insights.

Part one of the workshop concluded by examining two practical case studies: Aleksandra Zaronina (IRU) presented a multimodal pilot project between Slovenia and Iran being run by WIT Logistica, on which WIT Logistica director Mr Velimir Glamocanin then built by sharing his experience of the pilot. Nina Scherf then cited a number of practical cases in which there could be a conflict between CIM and CMR.

### Part two of the workshop: technical visit

Following the formal presentations, participants were able to enjoy a technical tour of the modern «Eurohub Sud» intermodal terminal. Paul Kronenberger (CFL intermodal) gave an impressive presentation of the operational processes and participants were able to look “behind the scenes” at the work of a terminal. What was particularly interesting was the increasing use of digital systems: for example, the terminal has an electronic weighing system, and every truck entering or departing the facility can be photographed from all sides by with optical character recognition of its number plates.

At the end of the workshop, it was clear to all that rail and road needed to join forces wherever practicable in order to cope with future transport volumes and provide the environmental and social benefits of combined transport.

Participants all thanked CFL Multimodal for such an excellent, hospitable day, and for the unique opportunity of seeing live operations at the “Eurohub Sud” intermodal terminal!



Participants during the fascinating tour of the terminal

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All the presentations can be consulted on the CIT website at:  
<https://bit.ly/3024KcG>

## News from the meeting of the CIM Committee

Chaired by Jean-Luc Dufournaud (SNCF), the meeting in late March 2019 of CIT's leading body for freight traffic took a number of decisions that will guide the work of the CIT General Secretariat and approved all the motions put to it.

### CIM/SMGS electronic consignment note

The group approved the functional, legal and technical specifications in the document for the CIM/SMGS electronic consignment note, which has been drawn up in close collaboration with OSJD and RailData and is to take effect from 1 July 2019. On this way soon the work will begin on the future "maximum dataset" for the CIM, SMGS and CIM/SMGS electronic consignment notes. The CIT GS will share its thinking on this project at the next meeting of the CIM/SMGS Legal and Expert Group in early July 2019.

CIT and OSJD plan to hold a joint seminar on the electronic CIM/SMGS consignment note during 2020. Given that China has recently joined the CIT/OSJD "Legal interoperability between CIM/SMGS" project, and given that most freight flows originate in China and the electronic CIM/SMGS consignment note needs to be compiled at the place of departure, such a seminar could be very helpful in terms of the practical implementation of the electronic CIM/SMGS consignment note.

### Check-list for a road-rail framework contract

The check-list for a framework contract to be used in international road-rail transport is being compiled on the basis of the comparative analysis of the CMR-COTIF/CIM-SMGS liability regimes, which CIT published jointly with the IRU (International Road Union) in 2017. The checklist has already been discussed at a number of working meetings between CIT and the IRU and has since been thoroughly overhauled once more. It now comprises the following sections: preamble, table of contents, standard clauses plus relevant comments, operational processes, and applicable law in the event of a conflict of laws. Most recently, the checklist was discussed at length during the workshop on "rail-road traffic" held jointly with IRU in Bettembourg (Luxembourg) in late February 2019 – very aptly, in view of the intermodal terminal hosting the event.

### Electronic formal report (CIT20a)

As part of the digitalisation of carriage documents, a digital version of not only the electronic CIM consignment note but also of other documents used in the course of a movement is to be developed. CIT is in the process of finalising the functional and legal specifications for the electronic CIM formal report, and work is proceeding to schedule. The CIM WG discussed the outstanding issue of whether a digital signature is required for an electronic formal report at its last meeting, and came to the view that no electronic signature is needed, just that authentication has to take place in an appropriate manner. Further, it should be possible for the substitute carrier to be involved in issuing the electronic formal report.

Once work concludes as of 2020, the electronic formal report is to be incorporated into the GTM-CIT as Appendix CIT20a (the paper version of the formal report will be Appendix CIT20b), with the electronic version to take precedence.

Furthermore, as of the start of this year RailData was due to begin work to define the technical specifications so that carriers can implement the electronic formal report in their processes and systems from 2020.

### 2019 CIT Conference of Freight Claims Departments

As early as 2016, the CIT Conference of Freight Claims Departments highlighted a number of issues around the processes and systems connected with the use of the electronic formal report and electronic wagon damage report, as well as the links between damage documentation and carriage documents. It was suggested at the 2016 conference that the rail sector also develop its own digital processes for claims handling, taking the electronic formal report as a basis, before any such rules and regulations were drawn up at European level.

The CIT GS's focus for this year's CIT Conference of Freight Claims Departments, on 14 May 2019, is thus on how to treat the challenges of digitalisation as an opportunity for railway claims managers. The conference will be held at CIT Headquarters in Bern; for further details, please see the conference programme.



Mr Dufournaud and Evtimov and Mrs Scherf during CIM committee

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## IM liability in the event of delay

**W**hat rules currently govern an infrastructure manager's liability vis-à-vis railway undertakings in the event of disruption on its network?

### Damage due to delays

The forms of damage railway undertakings may sustain in the event of a delay are many and varied: monetary damage due to the company-internal reorganisations needed (e.g. additional staff costs, cost of laying on rail replacement buses for passengers), monetary damage due to having to pay passengers or freight customers compensation for delay, lost earnings due to rolling stock being unavailable, damage to corporate image, etc. When and how is compensation for this damage to be paid by the infrastructure manager when it is the cause of delay?

### National rules predominate

Relationships between carriers and infrastructure managers are governed by the contract of infrastructure use. This contract is based on the IM's network statement and general terms and conditions, which are subject to national and international law.

At domestic level, contract law generally gives infrastructure managers wide-ranging contractual freedom to limit - or even rule out entirely - their liability. For example, in France the IM's general terms and conditions rule out it being held liable for delay, irrespective of the cause.

Sometimes infrastructure managers set a minimum threshold for liability; this is notably the case in the Netherlands and Belgium. And liability is often fault-based, meaning that carriers have to prove that the IM was at fault for it to be held liable.

What this boils down to is that it is very difficult in practice for a carrier to obtain redress for damage sustained due to delays caused by the infrastructure manager.

### Harmonised solutions

At international level, the CUI Uniform Rules foresee the possibility of redress for pecuniary loss due to carriers having to pay compensation for delay to passengers (CIV) or freight customers (CIM). However, the CUI UR only apply de jure for international traffic, and their scope of application is to be further restricted in future (for more information about the CUI UR revision, see the article in [CIT-Info 3/2018](#), p. 8).

The European General Terms & Conditions for the use of railway Infrastructure (E-GTC-I) incorporate the liability regime foreseen by the CUI UR and extend it to all infrastructure use, both national and international. The E-GTC-I also foresee redress for compensation paid to passengers, either on the basis of Regulation 1371/2007 on rail passengers' rights (PRR) or under national law. As a harmonised solution to this issue, CIT is striving to see the E-GTC-I applied as widely as possible across Europe.

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#### Useful links

- [CUI Uniform Rules](#)
- [E-GTC-I](#)

## Re-railing of derailed trains

*Who in Europe is responsible for re-railing derailed trains – the infrastructure manager, the railway undertaking, or a separate service provider?*

### A patchwork situation

With support from members of the CUI Committee, CIT recently investigated the re-railing of trains. In Europe, the separation between track and train which began in the 1990s has required States to decide who – carriers or infrastructure managers – should be entrusted with important jobs crucial to the operation of the rail network. In the case of re-railing trains, a number of countries have entrusted this task to the infrastructure manager. And yet many operators still own the rolling stock needed to re-rail trains; this is notably the case in Belgium, Greece, and Italy. This fact gives these operators a significant responsibility in re-railing trains belonging to third-party carriers with which they have no contractual relationship.

### Obligation to re-rail

Can railway undertakings be obliged to re-rail derailed trains belonging to third-party carriers? Directive 2012/34/EU, article 54 provides that infrastructure managers are obliged to restore the situation to normal as soon as possible in the event of disruption. To do so, they may request assistance from railway undertakings with the requisite resources. The network statement generally details the arrangements foreseen for managing disruption, specifically derailments, in operational terms. This still leaves open who covers the cost of re-railing operations and liability in the event of damage.

### Costs and liability

The obligations of railway undertakings and the infrastructure manager may be defined either in the network statement or contractually. Issues of liability must be clarified in order to manage any damage occurring during re-railing or during the operation of the rolling stock needed for the re-railing. In practice, some operators can seek redress for any costs or damages thereby sustained from the infrastructure manager directly, whilst others can only claim against the third-party company whose train derailed. Once more, CIT observes that there is wide variance in liability regimes - as is often the case with infrastructure use. This topic will be discussed at the next CUI Committee on 16 May 2019.

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Re-railing of the RER B between Saint-Rémy-lès-Chevreuse et Gif-sur-Yvette.  
Source: Radio France - Emilie Defay



## Sub-contracted carriage of empty vehicles in international railway law?

*Sub-contracted carriage is a legal innovation in the law of international carriage by rail which was enshrined by the COTIF 1999.*

For passenger and freight transport, it is expressly cited in parallel provisions in the Uniform Rules Concerning the Carriage of Passengers by Rail (CIV), Article 3 b) and Article 39, and in the Uniform Rules Concerning the Carriage of Goods by Rail (CIM), Article 3 b) and Article 27.

However, the Uniform Rules Concerning the Use of Vehicles in International Rail Traffic (CUV) makes no express provision for the substitute carriage of empty vehicles. What does this silence on the part of COTIF/CUV mean? Is this simply a legal vacuum in the law governing international carriage by rail, or are the rules governing the conveyance of empty vehicles different from those governing the carriage of people and goods?

Firstly, Article 1 CUV is the default rule applicable to bilateral or multilateral contracts concerning the use of railway vehicles as means of transport. This optional character has enabled further multilateral implementation in the shape of the General Contract of Use for wagons (GCU), which entered into force concomitantly with COTIF 1999 on 1 July 2006. The parties to the contract of use are on the one hand keepers, as defined in GCU Appendix 2, and on the other hand user railway undertakings (RUs).

Under GCU Article 14, the conveyance of empty wagons takes place under a CUV international wagon note (not a CIM consignment note, though both are CIT products). The question now is whether the user RU can transferred all or part of the conveyance of the empty wagons to a substitute carrier as defined in Articles 3 b) and 27 CIM?

Neither the CUV UR nor the GCU contain any such parallel provisions to Articles 3 b) and 27 CIM / 3 b) and 39 CIV. Our view is that the CUV and GCU system is differently oriented, namely towards a direct usage interest of the user RU over the wagons thus provided, whether they come directly from a keeper or indirectly from a GCU signatory prior user as defined in Article 27 GCU, which talks of a “keeper or a previous user” in relation to the user RU. Under the CUV and the GCU, therefore, the focal point of the contract of use is the use of the wagons handed over empty. In the case of a prior user RU, this is embodied in the direct relationship between the user and keeper, although this legal relationship cannot be considered equivalent to a contract of subcontracted carriage such as may be concluded with a substitute carrier.

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## Data Protection Workshop – diaries at the ready!

On 18 June 2019, CIT will be holding a workshop in Bern on data protection. All employees of CIT member railways are welcome to attend; attendance is naturally free of charge. The day will offer participants the opportunity to acquaint themselves with the latest developments concerning EU Regulation 2016/679 on data protection and its implementation in the rail sector.

### GDPR one year after – What now?

The CIT workshop is so titled for a simple reason: Regulation (EU) 2016/679 on data protection, also known as the GDPR, has been applicable since 25 May 2018. The regulation is applicable to all industries, specifically the railways, and has led not only to a renewed focus on and awareness of data protection, but also - and in particular - to a great deal of structural corporate reorganisation. It has also thrown up a host of key questions as to how it is to be interpreted and applied. Some cases have already been heard at national level, and the rulings highlight the new regulation's importance.

### Topics to be covered during the workshop

The one-day workshop will be divided into four sessions:

- the first will examine the impact of the GDPR on railway undertakings' internal organisation: organisational structure, data protection officers' general overview of company business, and companies' contractual relationships in the light of the GDPR;
- the second will deal with railway-specific issues arising in connection with the GDPR: how to handle minors' personal data, impact assessment of data protection in the railways, the role of data processors, and a presentation of the CIT products in the field of data protection;
- the third will discuss a variety of case studies: the lawfulness of data processing, transfer of personal data to third countries, and customer blacklisting;

- the last will look at the GDPR going forward: GDPR and its impact on blockchain and MaaS, IoT, artificial intelligence and social media, and future regulations (e.g. the e-Privacy Regulation, implementation of the PNR Directive).

To [register for the workshop](#), please contact the CIT General Secretariat!

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## New arrival at the CIT General Secretariat

The CIT General Secretariat has recently recruited Mr Loïc Gioria in the position of administrative assistant. Loïc began on 1 March 2019, and is mainly involved IT matters and in communication in CIT.

We would like to welcome Loïc to CIT and are pleased to have him on board.

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## CIT CALENDER

Date	Event	Location	CIT Contact
14.05.2019	Conference of Freight Claims Departments	Bern	Erik Evtimov/Nina Scherf
16.05.2019	CUI Committee	Bern	Nina Scherf
22.05.2019	«Seals» Group of Experts	Vienne	Fabienne Vaisson
22/23.05.2019	Working Group CIV/SMPS	Bern	Erik Evtimov
18.06.2019	Workshop Data Protection	Bern	Sandra Dobler
19.06.2019	CIV Committee	Bern	Isabelle Oberson
26/27.06.2019	Working Group CIM	Bern	Erik Evtimov
3/4.07.2019	Working Group Multimodality/Workshop	Klaipeda	Erik Evtimov/Nina Scherf
10/11.07.2019	CIM/SMGS Group of Experts	Bern	Erik Evtimov
4/5.09.2019	CIM/SMGS Steering Group	Warsaw	Erik Evtimov
25.09.2019	Conference of Passenger Claims Departments	Vienna	Jan Svensson
26.09.2019	Executive Committee 2	Berlin	Cesare Brand
16/17.10.2019	Working Group CIV/SMPS	Bern	Erik Evtimov
29/30.10.2019	Seminar Multimodal Traffic / Multimodality Committee	Venedig	Erik Evtimov
12/13.11.2019	Working Group CIV	Bern	Sandra Dobler
14.11.2019	General Assembly	Bern	Cesare Brand
27/28.11.2019	Working Group CIM	Bern	Erik Evtimov

## Agenda with CIT participation

Date	Event	Organisation	Location	CIT Contact
15.05.2019	RU Dialog	EU	Brussels	Cesare Brand
15.05.2019	High Level Freight Meeting	CER/UIC	Paris	Cesare Brand
15.05.2019	RailFreight Summit	Europoint	Gdansk	Erik Evtimov
22.05.2019	Study Group wagon users	UIC	Berlin	Nina Scherf
19.06.2019	DTLF II Plenary	EU	Brussels	Erik Evtimov
20.06.2019	CER Assistants	CER	Brussels	Erik Evtimov
24.06.2019	28th European Regional Assembly	UIC	Budapest	Cesare Brand
25.06.2019	UIC General Assembly	UIC	Budapest	Cesare Brand
24-27.06.2019	UIC Technical Meetings	UIC	Stockholm	Jan Svensson
27.06.2019	CER Passenger WG	CER	Brussels	Sandra Dobler
3/4.07.2019	EWT Meeting	UIC	Bucharest	Daria Scarlino

## In memoriam: Professor Kurt Spera

On 5 August 2018, we celebrated Kurt Spera's 90th birthday. On 2 February 2019, and after a long and fulfilling life, Professor Spera passed away. As President of the International Organisation of Tariff and Transport Experts (IVT), one of Professor Spera's core concerns was to foster active and constructive collaboration between our associations, and he was a regular visitor to CIT events. In the eight years since I joined CIT I came to know and appreciate Professor Spera, and found him to be not only an outstanding lawyer but also a man with a fascinating and admirable personal history. Professor Spera made an enduring contribution to the field of logistics, particularly transport law, in the post-war period.

We have lost a good, bright, witty friend, and take this opportunity to convey our heartfelt sympathies to Professor Spera's family.

C. Brand and CIT-Team



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