

## EDITORIAL

### The new COTIF



The moment has arrived! The new COTIF enters into force on 1 July 2006. This development represents a watershed in the history of international railway law, indeed by comparison with previous revisions it is even more remarkable because of the revolutionary changes it brings.

The principle objective of this revision was to reconcile international rail transport law with the liberalisation of the mode. The four most important changes to support this liberalisation were: carrying through the separation of infrastructure and transport into transport law, the removal of the obligation to carry and to publish tariffs for passenger and full-wagon traffic, the creation of a framework for sub-contracting and in general the introduction of much greater contractual freedom. Wagon law has been completely remodelled and absolutely new uniform rules for the use of infrastructure have been introduced.

Extension of the scope of the CIM Uniform Rules would seem particularly significant. In future it will not be necessary that (both) the forwarding and destination points for a consignment are in a contracting state of OTIF. Instead it will be sufficient that just one of them fulfils that criterion. In that way, the option to use the CIM Uniform Rules over the whole Eurasian economic area (including countries such as Russia and China) without making further international agreements is opened up. The option is conditional on the parties to the contract choosing it and there being no mandatory law that prevents it.

The European Community also took part in the work of revising COTIF. They plan to make use of the newly created option to accede to the convention as a regional economic integration association. There is no doubt that in this role they will crucially influence the development of COTIF in the future.

May the new COTIF contribute to the successful development of international traffic by rail by providing a certain legal basis!

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## TABLE OF CONTENTS

Editorial	1	Changes for wagon law	7
The new Convention itself	1	The use of infrastructure	8
Changes for passenger traffic	2	Practical issues for implementation	8
Changes for freight traffic	6	The CIT database	10

## THE NEW CONVENTION ITSELF

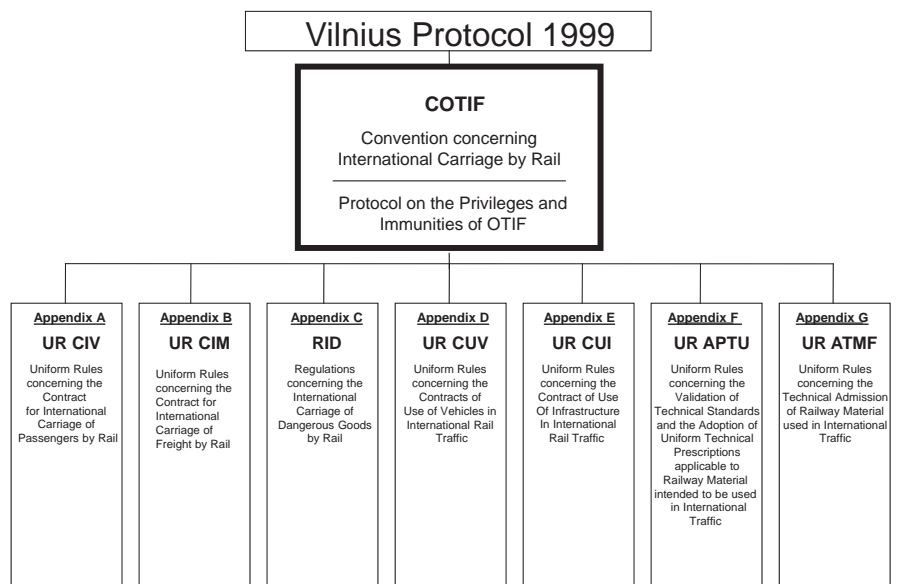
COTIF 1999 has a different structure to its predecessors. Its new structure is a basic convention with the following seven appendices:

- A Passenger traffic
- B Freight traffic
- C Dangerous goods
- D Use of vehicles
- E Use of infrastructure
- F Technical standards for railway equipment
- G Approval of railway equipment

### The objectives of OTIF

The Member States constitute the "Intergovernmental Organisation for International Carriage by Rail". Its objectives are stated quite openly: to promote, improve and facilitate international traffic by rail "in all respects" (Article 2 § 1 COTIF). In addition, within these objectives, OTIF may enact further Uniform Rules (Article 2 § 2 (a) COTIF).

The basic convention principally deals with organisational issues such as definition of objectives, organs, membership, etc.



#### The EC reservation

COTIF Article 3 is a new provision. Paragraph 1 governs "international co-operation in the railway field". Paragraph 2 contains a reservation in favour of the European Union. The CIT interprets this reservation as an organisational rather than a disconnection clause. If this interpretation is correct, then after any accession of the EU to COTIF, where there is conflict, then COTIF law as international law takes precedence over Community law (Article 300 para. 7 EC Treaty). Another view assumes that paragraph 2 of Article 3 empowers the European Union to legislate, derogating from COTIF. This issue is very contentious and probably will have to be decided in the courts. The General Secretariat of the CIT has studied the issue thoroughly and has published a study which can be ordered from <http://www.cit-rail.org/en/citct006.htm>.

#### Listing of lines

The system of listing the lines on which the CIV and CIM are to apply will shortly be discontinued. As an exception, maritime services and international inland waterway services which complement international carriage by rail, must still be listed.

#### Organs

COTIF's tasks will be undertaken by the organs which already exist: the General Assembly, the Administrative Committee, the Revision Committee and the Committee of Experts for the Carriage of Dangerous Goods. In addition two new organs have been created, the Rail Facilitation Committee and the Committee of Technical Experts. If necessary, arbitration tribunals may be set up.

#### Accession of organisations

COTIF Article 38 would seem to be of central importance, since in its new formulation it not only allows regional economic integration organisations association but also full membership. The provision is tailor-made for the European Union which intends to accede to COTIF as a full member. As a full member it will be able to speak and vote on all issues for which it has competence in accordance with Community law. It will do so in place of its Member States, each with one vote and accordingly will have a voting power of (currently) twenty-three votes. That means that for business in which only a simple majority is necessary (see Article 14 § 6 COTIF), it can significantly influence the further development of the convention.

Should COTIF law and EC law conflict after the accession of the European Union to COTIF, then COTIF law takes precedence over Community law.

## CHANGES FOR PASSENGER TRAFFIC

#### The new CIV

The 1999 CIV does not contain many changes, but those it does contain are important. They concern liability for personal injury, loss and damage to possessions and liability for delay.

#### Increased liability for personal injury

The maximum limit for the death of a passenger or injury to him has been increased from 70 000 SDR (special drawing rights) to 175 000 SDR in so far as national law provides for a lower limit. Put more positively, that means that every CIV passenger is guaranteed a limit of at least € 210 000 in the case of an accident.

#### Increased liability for loss of and damage to possessions

The compensation for loss of or damage to possessions has been doubled to 1 400 SDR (about € 1 680). The limit for registered luggage has likewise been doubled to become 80 SDR per kilogram or 1 200 SDR per piece if the amount of the loss or damaged suffered is proven and 20 SDR/kg or 300 SDR per piece if it's not proven. The compensation for motor vehicles forwarded on car-carrier trains remains unchanged at 8 000 SDR or about € 9 600.

#### Completely new: liability for delay

The CIV introduces a wholly new liability for late running, missed connections and the cancellation of trains. If the passenger can no longer reach his destination the same day, the costs of overnight accommodation and notification of those waiting for him are to be refunded to him. This mandatory regulation was long debated because, in the view of some states, it exceeds the financial resources of the railways.

In this respect it should be pointed out that the railways of the European Union have committed themselves to extending compensation significantly further. The Charter on Rail Passenger Services defines the rights of passengers in the case of late running and missed connections and the CIV General Terms and Conditions of Carriage (GTC-CIV) (see below) incorporate them into the contract of carriage.

Both the statutory and contractual protection afforded to passengers by rail compare favourably with other modes.

The new CIV increases the limit of liability for personal injury by 150% and for hand and registered luggage by 100%.



The new CIV introduces a mandatory liability for delay; the railways of the European Union have voluntarily extended that (in their passenger charter and in the CIT GTC-CIV).

## The new CIT documentation for passenger traffic

A distinction is to be made between the three types of documentation newly produced by the CIT for passenger traffic:

- General terms and conditions
- Manuals
- Agreements.

They will be up-loaded to [www.cit-rail.org](http://www.cit-rail.org) by end of May. Apart from the CIV Uniform Rules, the CIV General Terms and Conditions of Carriage (GTC-CIV) and excerpts from the CIT Passenger Manual (GTV-CIT) and from the Agreement concerning the Relationships between Carriers in respect of International Passenger Traffic by Rail (AIV), all the CIT documentation is only available in the "member-only" area of the website.

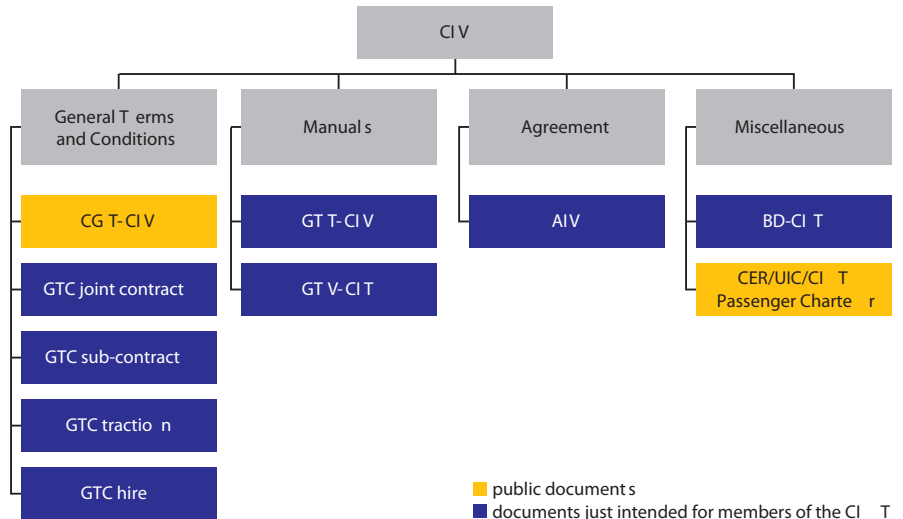
### Introduction

In 1999, at the time the new electronically issued tickets, known as RCT2, were introduced, both of the principle CIT manuals for passenger traffic, the PIV (Passenger Instruction Manual) and the MDI (International Rail Ticket Design Manual) were restructured. This restructuring was carried through to all the documentation in readiness for the 1999 CIV. The new documentation includes all the instructions that apply to each of the (current) ways in which tickets may be issued. This has had the consequence that the size of the manuals has not reduced but increased. Nevertheless, the two new manuals are comprehensive and user-friendly and contain sections, for example, on electronically issued tickets, etc.

At this point it should be mentioned that new terminology has made an entrance with the 1999 COTIF. The term "railway" which had become imprecise, has been replaced by either "infrastructure manager" or "carrier". The new CIT texts take account of these changes.

The new CIV Uniform Rules also cover the carriage of registered luggage. Nevertheless, the provisions only come into effect if the carrier actually offers this service. According to the information currently available to us, there are only a few geographically limited services offered under the 1980 CIV Uniform Rules today. For this reason, the CIT decided not to revise the earlier instructions for this service.

CIT documentation for passenger traffic is structured as shown below



### General terms and conditions

The CIV General Terms and Conditions of Carriage (GTC-CIV) are a new CIT publication. They set down standardised contractual conditions for the relationship between the customer and the carrier. In part, they cover issues which legislators consciously left open in the CIV Uniform Rules and indeed the legislation referred to such general terms and conditions. In many cases they highlight what is possible but leave actual regulations and the detail to special conditions of carriage and of the tariff (SCT). The GTC-CIV contain well known, rarely changed basic principles. Nevertheless they are framed in such an open way that they can be used for both the TCV tariff conditions and for the marketing unions (mainly with inclusive prices). International and national passenger representative associations have had the opportunity to provide input.

The general terms and conditions for co-operation (GTC joint contract, GTC sub-contract, GTC traction and GTC hire) are also new. They set down the relationships between the carriers (railway undertakings). With the withdrawal of the obligation to carry, every railway undertaking is free to decide with whom and in what form it wants to co-operate with other railway undertakings (in its own country and internationally). In international passenger traffic there is already co-operation within the TCV, the marketing unions and in Forum Train Europe (FTE). As a rule the co-operation is based on the joint contracting model. Until other specific agreements to work together are concluded, membership of these organisations may be construed as an expression of a desire to work together within the joint contracting model.

### Manuals

The CIV Ticket Manual (Guide Titres de Transport CIV, GTT-CIV) contains the instructions for the production of travel tickets and manual reservation tickets. It is organised in terms of the way tickets are issued. Each work sheet is complete in itself and consists of written specifications together with specimens. A minimal specification for the sale of tickets via the internet (International Rail Ticket Home Printing, IRTHP) is contained in the work sheet dealing with tickets issued electronically. A work sheet for "electronic tickets" (tickets which are only electronic, for example stored in a card with a chip, in a mobile phone or in a notebook) will be produced later, if necessary. The manual leaves scope for specific solutions for particular traffics.

The CIT Passenger Traffic Manual (Guide du Trafic Voyageurs du CIT, GTV-CIT) is structured like the GTT-CIV. Specific work sheets detail the delivery of tickets to the points of issue, the checking and validation of tickets, the procedure for claims in the event of the death of passengers or injury to them and the processing of lost property. A minimal specification for the sale of tickets via the Internet is also contained in the work sheet dealing with tickets issued electronically. Here too, the content of a work sheet for "electronic tickets" is to be drawn up later.



All the passenger documentation will now fit in a single file.

vices and the GTC-CIV. In both cases division of the compensation paid between the carriers has been avoided pro tem. Lastly, a third chapter contains regulations for compensation on commercial grounds.

#### Miscellaneous

The CIT Member Database (BD-CIT) [Base de données des membres du CIT] is to be found in the "member only" part of the CIT web site. It contains general information on the various undertakings and provides information on traffic restrictions applying currently to international traffic. The data base is fed by CIT members and by other undertakings which have asked to take part in the system. For more information about the CIT Database see page 10 in this CIT Info.

#### Agreements

The Agreement concerning the Relationships between Carriers in respect of International Passenger Traffic by Rail (AIV) contains a chapter dealing with statutory compensation under Article 32 CIV (cancellation or missing

the last connection of the day). It sets out the procedure for submitting and processing of claims for compensation. Another chapter sets down the procedure for processing claims for compensation for delay to an international train during the day in accordance with the CER/UIC/CIT Charter on Rail Passenger Ser-

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## CHANGES FOR FREIGHT TRAFFIC

#### The new CIM Uniform Rules

In recognition of the influence which liberalisation has had, the new CIM Uniform Rules allow considerable scope for contractual freedom. A list of the principle changes is shown below.

#### Scope

Application of the CIM Uniform Rules to every contract for carriage for reward between OTIF Member States is mandatory (Article 1 § 1).

They are likewise applicable to contracts of carriage for reward when just the place at which the goods are accepted or delivered is situated in an OTIF Member State when the parties to the contract of carriage so agree (Article 1 § 2).

When an international movement by rail is supplemented by domestic carriage by road or by domestic carriage by inland waterway within an OTIF Member State, the CIM Uniform Rules apply likewise (Article 1 § 3).

#### Contract of carriage

The contract of carriage is designed to be a consensual contract. It is concluded as the result of a mutual agreement between the parties. Its existence therefore no longer depends on having a consignment note; the consign-

ment note simply provides proof of the contract (Article 6 §§ 1 and 2). The contract of carriage may therefore be concluded much earlier than at present. Whilst the liability for the goods starts with their acceptance, the liability for performance of the contract of carriage starts with its conclusion.

Despite the change to being a consensual contract of carriage, all movements passing over the customs territory of the European Community or the territory on which the common transit procedure is applied, must be accompanied by a consignment note (Article 6 § 7 – a requirement of customs law).

The consignment note may also be created as an electronic data record. The procedures used must be equivalent from the functional point of view (Article 6 § 9).

#### Obligation to carry

This obligation has been withdrawn, both in respect of the relationship with the customer and that between the carriers. In future, every carrier will be free to accept goods for carriage and the conditions for acceptance of those goods may be freely negotiated. The classic joint contracting model (successive carriers) will be complemented by two new models; those of sub-contracting (substitute carrier) and the single end to end carrier.

#### Payment of charges

Except where otherwise agreed between the consignor and the carrier, charges are to be paid by the consignor (Article 10 § 1). The CIT's boilerplate general terms and conditions of carriage (GTC-CIM) cross-refer to the CIM Consignment Note Manual (GLV-CIM), which contains the standardised phrases for the payment of charges.

#### Right to take control of goods

The right to take control of goods belongs to the consignor (Article 18 § 1). This right nevertheless transfers to the consignee once the consignment note has been created unless the consignor specifies otherwise on the consignment note (Article 18 § 3 CIM).

To assert the right to take control, the consignor or consignee must present the duplicate of the consignment note to the carrier (Article 19 § 1).

#### Liability

The principle that the carrier has strict liability for the goods in the case of loss, damage or exceeding the transit period has been maintained (Article 23).

The carrier's liability for fault has been extended to railway rolling stock consigned as goods unless the carrier can prove to the contrary (Article 24).

The principle of joint and several liability has been maintained for the successive carrier model (Article 26 CIM).

Specific clauses have been introduced for the substitute carrier model: even if the substitute carrier has no contractual relationship with the customer, he is liable to the customer for the services he supplies. The carrier nevertheless remains liable in respect of the entire movement (Article 27).

The carrier and the substitute carrier are likewise liable to the customer for the actions of the infrastructure manager who is himself considered as an auxiliary (Article 40), subject to their right of recourse against the infrastructure manager [Article 8 § 1 c CUI].

The limits of liability for loss, damage and exceeding the transit period remain unchanged (Articles 30, 32 and 33). Nevertheless, new provisions have been created for the case of loss of railway rolling stock consigned as goods and loss of intermodal transport units (UTI) (Article 30 § 2). It is also specified that in future, excise duties for goods carried under a procedure suspending those duties will not form part of the compensation in the case of loss (Article 30 § 4).

New provisions for compensation have been introduced for those cases in which an enhanced value has been declared (Article 34).

Lastly, it is to be noted that the carrier may assume a liability and obligations which are more onerous than those set down in the CIM Uniform Rules (Article 5). This provision will be used where special provisions are applied for liability in „quality“ agreements.

Carriers against whom an action may be brought

Actions based on the contract of carriage may be brought against the first carrier or the last carrier or against the carrier having performed the part of the carriage on which the loss or damage occurred (Article 45 § 1).

Within the joint contracting model, carriers shown with their consent on the consignment note as having to deliver the goods may be sued even if they have received neither the goods nor the consignment note (Article 45 § 2).

The CIT's new documentation for freight traffic

In response to the increased contractual freedom allowed by the new CIM Uniform Rules, the CIT wanted to draw up its new documentation for freight traffic adopting the guiding principle: "as many provisions as necessary (to ensure the unity of the contract of carriage and the legal certainty to which both carriers and their customers legitimately aspire), but as few as possible (to avoid constraining undertakings' freedom of action)". It is clear that this principle has been successfully applied because, despite the increase in the number of contractual relationships (and therefore the number of documents), the volume of CIT freight documentation has been reduced to approximately one half of its previous volume.

Liberalisation means that these new provisions are no longer to be applied simply as a consequence of an undertaking being a member of the CIT but rather are applied on a voluntary basis. For this reason the quality of the documentation has taken on greater importance. In the interests of transparency and legal certainty, members of the CIT have been asked to use the new documentation and not to derogate from it or to supplement it except

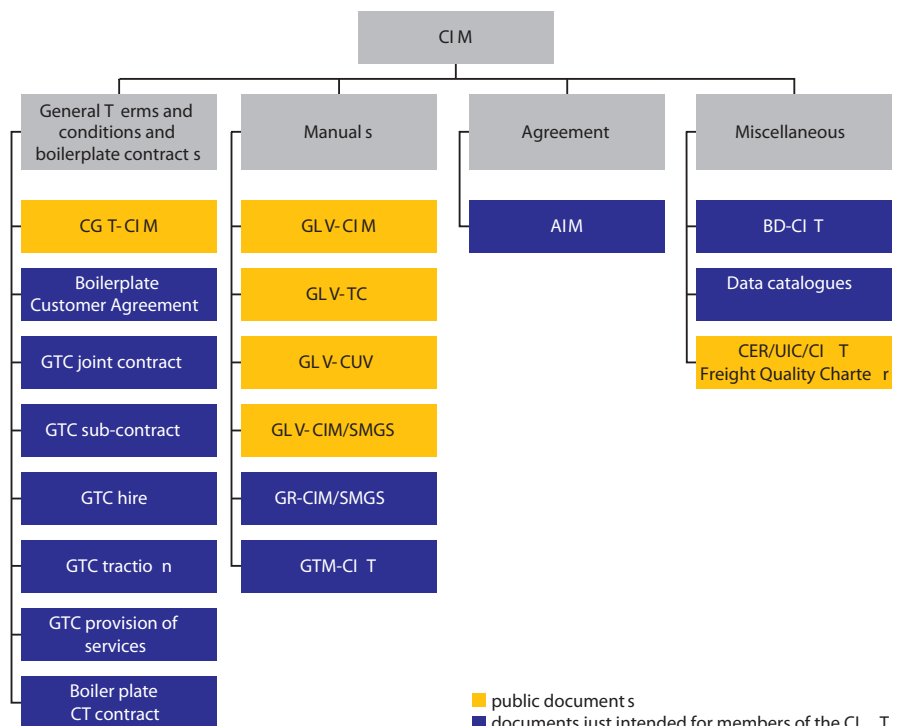
when absolutely necessary (for particular traffics, for example).

The new documentation may be classified into three categories:

- general terms and conditions and boilerplate contracts,
- manuals,
- agreements.

They can all be found on the CIT website [www.cit-rail.org](http://www.cit-rail.org). Documentation intended just for CIT members is to be found in the "member only" part of the site.

CIT documentation for freight traffic is structured as shown below





All the freight documentation will now fit in a single file.

#### General terms and conditions and boilerplate contracts

The General Terms and Conditions of Carriage CIM (GTC-CIM) are an entirely new document. They contain the standard contractual terms and conditions for the relationship between the customer and the carrier. Application of these standard terms and conditions to all international freight traffic is recommended. The content of the general terms and conditions has also been examined and approved by international trade associations representing customers.

The Specimen Customer Agreement is intended to draw the attention of railway undertakings to the need to define some specific aspects of their relationships with their customers contractually. The boilerplate contract includes pre-prepared contractual clauses but more importantly, recommendations for the phrasing of Customer Agreements.

The general terms and conditions for co-operation (GTC joint contracting, GTC sub-contracting, GTC hire, GTC traction and GTC provision of services) are also completely new. They determine the relationships between railway undertakings themselves. With the withdrawal of the obligation to carry, every railway undertaking is free to work with other organisations and likewise to choose the form that relationship will take. Nevertheless in the interests of simplification and increased legal certainty, the CIT recommends the use of the appropriate set of general terms and conditions in every case.

At the request of the UIC Combined Transport Group, a boilerplate contract for sub-contracting combined transport has even been drawn up. It refers to the GTC sub-contracting but contains several specific provisions for combined traffic.

#### Manuals

The CIM Consignment Note Manual CIM (GLV-CIM) and the CIM Consignment Note Manual

for Combined Transport (GLV-TC) both contain specimens of the new consignment notes and instructions for their use. The manuals cover both the paper and the electronic consignment note. The content of the manuals has been approved by trade associations representing customers and the customs authorities of OTIF Member States. It should be noted that the new consignment notes will also be documents recognised by customs authorities for the purposes of the simplified transit procedure for rail just as the current ones are. A detailed description of the new design for the CIM consignment note appeared in CIT Info 5/2004.

The CIM/SMGS Consignment Note Manual (GLV CIM/SMGS) contains a specimen of the new CIM/SMGS consignment note. This consignment note provides evidence of the existence of both the CIM and SMGS contracts of carriage and is likewise recognised as a customs document. The new system allows the creation of a new consignment note at the interface between the two legal regimes to be avoided. In consequence, customers and carriers will save time, reduce their costs and enjoy a higher level of legal certainty. The new system will be applicable with effect from 1 September 2006.

The CIM/SMGS Reconsignment Manual (GR-CIM/SGMS) sets down the arrangements for the classic process of reconsignment at the interface between the two legal regimes (creation of a new consignment note). Following the GLV CIM/SMGS coming into force, the traffic manual will of course lose some of its importance but nevertheless it will be retained to allow reconsignment of traffic for reasons of commercial confidentiality (for example, where the consignee must not know who the original consignor is).

The CIT Freight Traffic Manual (GTM-CIT) is intended for use by the staff of railway undertakings. It sub-divides the process of transport into individual procedures. For each of these procedures it contains work-sheets specifying

the operations to be undertaken, when they are to be undertaken and the individuals involved.

#### Agreements

The Agreement concerning the Relationships between Carriers in respect of International Freight Traffic by Rail (AIM) contains the rules for sharing compensation paid out for loss and damage between railway undertakings. To encourage undertakings to concentrate on the quality of their services, a principle known as the "principle of two silos" has been introduced. The first silo represents cases where liability is uncertain, in these cases the procedure applied at present will continue to apply, i.e. sharing the compensation on a kilometer basis, but only between the railways involved. The second silo represents cases where liability is certain, considered as those in which the carrier or his sub-contractor acknowledges his liability in writing or where liability has been attributed by the supervisory authority in a binding declaration or established by a judgment of a competent court. For these last two cases to apply, compensation must nevertheless exceed 500 000 units of account. It should be noted that for the customer, nothing changes. As far as outside parties are concerned, the carrier against whom an action is brought, still remains competent to settle the claim, quite independently of the issue of who is actually liable.

#### Miscellaneous

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The CIM Consignment Note and Charges Note Data Catalogues contain the functional specifications for the data contained in the CIM consignment note and in the charges note. These two documents are also to be found in the "member only" part of the CIT web site.

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## CHANGES FOR WAGON LAW

### Use of wagons – The 1999 CUV Uniform Rules and the provisions for their application

In future, technical approval of wagons will take place in a new statutory framework. This new framework is formed by COTIF Appendices F (Uniform Rules concerning the Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic – APTU) and G (Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic – ATMF) together with the European Union's TSIs.

The use of wagons will comply with these new provisions and with the Standard Usage Contract (CUU) itself based on the new Appendix D to COTIF (Uniform Rules concerning the Contracts of Use of Vehicles in International Rail Traffic).

These new regulations offer the various parties, whether keepers or users of wagons, increased legal certainty. They also allow significant scope for contractual freedom; freedom which will be necessary to allow optimum deployment of wagons to feed the market for carriage by rail as it becomes liberalised.

#### Brief overview of the CUV Uniform Rules

Readers will recall that in future will be possible to consign wagons as goods (when they will be subject to the CIM Uniform Rules) or as means of transport. In the latter case, they will be subject to the CUV Uniform Rules which apply to bi- or multilateral contracts concerning the use of railway vehicles as means of transport for carriage in accordance with the CIV Uniform Rules and in accordance with the CIM Uniform Rules.

The majority of the provisions of the CUV Uniform Rules are in the nature of back-up clauses allowing the various parties (keepers and users of wagons) to reach agreement on a contract which best suits their circumstances. The CUV Uniform Rules no longer make a distinction between categories of wagons and their keepers (privately owned and railway owned wagons). The provisions of the CUV essentially concern liability, forum and limitation of action.

The CUV Uniform Rules provide wagon law with comprehensive new regulations

#### The new Standard Usage Contract (CUU)

Making use of the freedom allowed by the CUV Uniform Rules, the UIC, ERFA and the UIP have drawn up the new CUU. This contract and its appendices determine the conditions for consigning wagons to be used empty or loaded by railway undertakings as means of transport in international and domestic traffic. The principle characteristics of the CUU are the following:

- keepers of wagons (owners of privately owned and railway owned wagons) and user railway undertakings may adhere to the CUU;
- the right to deploy the wagon belongs to the keeper;
- empty wagons are to be accompanied by a wagon note;
- liability for loss and damage to wagons is based on the fault of the railway undertaking (except for loss and damage caused by the keeper of the wagon), with reversal of the burden of proof. Loss and damage costing less than € 750 is to be borne by the user railway undertaking. Loss and damage caused by the wagon keeper are to be borne by him subject to his right of recourse against the railway undertaking for loss and damage exceeding € 750 if he is able to prove fault by the railway undertaking;
- liability for loss and damage caused by wagons is based on the fault of the keeper of the wagon; as appropriate, it may be matched by a liability ceiling up to which the user railway undertaking agrees not to assert its rights against the keeper.

To facilitate the introduction of the CUU, the parties to the contract may agree to use the Practical Guide for Applying the CUU drawn up by the UIC.

#### The CUV Wagon Note Manual (GLW-CUV)

The new model for the operation of wagons is based on the current operational model for private wagons. This choice of principle is also extended to documentation: empty wagons consigned as means of transport will be accompanied by a wagon note. Instructions for the use of the wagon note are contained in the CUV Wagon Note Manual (GLW-CUV) which has been drawn up by the CIT (cf. Article 14.2 CUU).

The wagon note will make it evident that the keeper is exercising his right to deploy the wagon and will provide the data for invoicing the empty movement. The new consignment note designs have been slightly amended to allow them to be used either as consignment notes or as wagon notes.

The GLW-CUV is a reference document containing the instructions for the use of the wagon note. Except where otherwise agreed, it applies to consignments subject to the CUU within the keeper – user railway undertaking relationship. Essentially, it contains a chapter which is common to both the paper and the electronic wagon note (content of the wagon note, payment of charges), a chapter dedicated to the paper wagon note (specimens of the wagon note) and a chapter on the electronic wagon note (functional and legal requirements).

A detailed account of the new wagon note and the manual on its use appeared in CIT Info

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## USE OF THE INFRASTRUCTURE

The new "Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic" (CUI - Appendix E to COTIF) apply mandatorily to all contracts for the use of railway infrastructure for the purposes of international carriage subject to the CIV and CIM Uniform Rules.

This new appendix prescribes the relationship between the infrastructure manager (IM) and the carrier exclusively. It offers some freedom to the parties to the contract of use of infrastructure, allowing a great deal of freedom on the content of the contract but specifying issues of liability more closely.

The CUI Uniform Rules establish a system of strict liability (or "présomption de responsabilité" in French law) for bodily loss or damage and the loss and damage to property which is suffered by the parties to the contract (Article 8 § 1 a-b and 9 § 1 a-b). They likewise provide for the infrastructure manager's strict liability for the indirect pecuniary loss suffered by the carrier from having to pay compensation to his customers under the CIV or CIM Uniform Rules (Article 8 § 1 c). Therein lays the significance of the CUI Uniform Rules for railway undertakings (RU). It is always the railway

undertakings that are liable to the customer even when the cause of the loss or damage is manifestly attributable to the infrastructure manager; this follows from the fact that the infrastructure manager is considered as the auxiliary of the railway undertaking in the CIV and CIM Uniform Rules (Article 51 CIV and 40 CIM). The CUI Uniform Rules therefore complete the system partially put into place in the other appendices.

Finally, the parties to the contract have the option to agree between themselves on any compensation payable for direct pecuniary loss suffered in the case of delay or disruption (Article 8 § 4 and 9 § 4). This freedom must be used with care because at the present moment there are very few reliable statistics concerning delay and disruption to operations available.

It is in the interests of all those involved with transport by rail to find all-encompassing but standard solutions for domestic and international traffic. That is why the CIT is negotiating general terms and conditions for contracts for the use of infrastructure with the RNE, the UIC, the CER, ERFA and the EIM at the moment. The results of this work are to be presented to the European Commission in June 2006.



The use of infrastructure is a new area of law which still requires practical terms and conditions to be drawn up

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## PRACTICAL ISSUES FOR IMPLEMENTATION

### Non simultaneous entry into force of the new COTIF

#### The problem

Under Article 20 § 3 COTIF 1980 "the application of the CIV and CIM Uniform Rules shall be suspended in respect of traffic with and between those Member States which, one month before the date fixed for such entry into force, have not yet deposited their instruments of ratification, acceptance or approval". It follows from this that after the new COTIF comes into force, i.e. after 1 July 2006,

- for traffic with and between states that have all already ratified, the new COTIF applies exclusively, but between states that
- for traffic with and between states that have not all already ratified, neither the old nor the new COTIF applies, but rather national law applies, (including rules on the conflict of law).

In those states which ratify COTIF after 1 June 2006, it will enter into force a month after deposit of the instrument of ratification.

When the entry into force of the new COTIF (1st July 2006) was announced (6 April 2006), the following ten states had not ratified or depos-

ited their ratification: Bosnia-Herzegovina (BA), Belgium (BE), United Kingdom (GB), Greece (GR), Ireland (IE), Italy (IT), Luxembourg (LU), Morocco (MA), Sweden (SE) and France (FR).

Along some traffic axes – in particular along north-south traffic axes, significant legal fragmentation and legal uncertainty can thus arise.

Both the old and the new CIV Uniform make reference to national law to determine the level of damages for death and injury to passengers. Article 30 § 2 CIV 1980 or 1999 simply sets down a minimum limit of liability (old 70 000, new 175 000 special drawing rights<sup>1</sup>). The – time triggered – suspension of the CIV Uniform Rules on the basis of Article 20 § 3 COTIF 1980 would seem therefore to present a problem for traffic with and between states which have less onerous grounds for liability (for example only for proven fault) or a lower limit of liability than that provided for in the CIV Uniform Rules (maximum limit of liability lower than € 225 000).

<sup>1</sup> 2006-05-01: 1 SDR = 1.17 €

#### Freight traffic

For international freight traffic, the situation is more complex. Here, difficult questions such

as "what law is actually applicable?" arise. How much is the compensation for the loss of and damage to the goods or for exceeding the transit period? Which undertaking is liable if it cannot be established when and where the loss and damage was caused (as is the normal case)? Under what law and under which regulations can the undertaking liable have recourse against the other participating undertaking(s)?

Article 1 § 2 CIM 1999 allows the parties to the contract of carriage to choose the CIM Uniform Rules as the law to apply. Hence the CIM Uniform Rules may be applied if the point of acceptance and that of delivery of the goods are situated in two different states of which only one is a Member State, provided the parties to the contract of carriage agree to that.

The choice of law to apply based on Article 1 § 2 CIM 1999 is only an option if either the forwarding or the destination state have not ratified. If neither the forwarding nor the destination state have then ratified, this option has to be discounted. Even so, in this case, the parties to the contract of carriage may choose to apply the new CIM Uniform Rules as the terms of the contract in so far as the national law applicable (including the rules of international private law) permit that.



Declaration on the contractual use of the new CIV Uniform Rules and/or CIM Uniform Rules

The CIT has drawn up a declaration on the contractual use of the new CIV Uniform Rules and/or CIM Uniform Rules. It is designed to allow CIT members to have a quick and reliable indication of which carriers along critical traffic axes - therefore taking account of states which have not ratified the new COTIF at the time it enters into force - will apply the CIV Uniform Rules and/or CIM Uniform Rules on a contractual basis. This list is published on the CIT website ([www.cit-rail.org](http://www.cit-rail.org)).

Until the 23 May 2006, the following CIT members have signed the declaration:

For the CIV Uniform Rules: BDZ (Bulgaria), CFARYM (Former Yugoslav Republic of Macedonia), CFL (Luxembourg), CFR MARF\_ (Romania), GySEV (Hungary), HŽ (Croatia), LG (Lithuania), SBB/CFF/FFS (Switzerland), SŽ (Slovenia), VR (Finland), ŽCG (Serbia and Montenegro) and ŽRS (Republik Srpska in Bosnia) and ŽS (Serbia and Montenegro).

For the CIM Uniform Rules: BDZ (Bulgaria), BLS (Switzerland), ČD Cargo (Czech Republic), CFARYM (Former Yugoslav Republic of Macedonia), CFL (Luxembourg), CFR MARFĂ (Romania), EWS (United Kingdom), Green Cargo (Sweden), GySEV (Hungary), HŽ (Croatia), LG (Lithuania), MÁV Cargo AG (Hungary), PKP S.A. (Poland)<sup>1</sup>, Railion Deutschland (Germany), Railion Italia (Italy), Railion Nederland (Netherlands), RCA (Austria), RENFE (Spain), SBB/CFF/FFS (Switzerland)<sup>2</sup>, Servtrans Invest S.A. (Romania), SŽ (Slovenia), Trenitalia (Italy), VR (Finland), ŽCG (Serbia and Montenegro), ŽRS (Republik Srpska in Bosnia), ŽS (Serbia and Montenegro) and ŽSSK Cargo (Slovakia).

Addressees of the declaration are the CIT and its members. The declaration therefore only has legal effect for customers if the carrier actually agrees the application of the new CIV Uniform Rules and/or CIM Uniform Rules with them. For freight traffic, it can be assumed that the use of the new design of CIM consignment note represents such an agreement.

<sup>1</sup> Applies to PKP Cargo and PKP LHS

<sup>2</sup> Also applies to SBB Cargo Deutschland and SBB Cargo Italia

Practical implications, taking account of time and geographical factors

Between the ratification of the twenty seventh and the forty second state will certainly take some months, if not years. The undesirable legal fragmentation and legal uncertainty for traffic with and between states which have not ratified COTIF at the time it enters into force will therefore continue for a long time.

Since just one missing ratification along any given traffic axis excludes the application of COTIF, the problems do not only concern the railways of the states that have not ratified COTIF at the time it enters into force, but all the undertakings that take part in movements via those states.

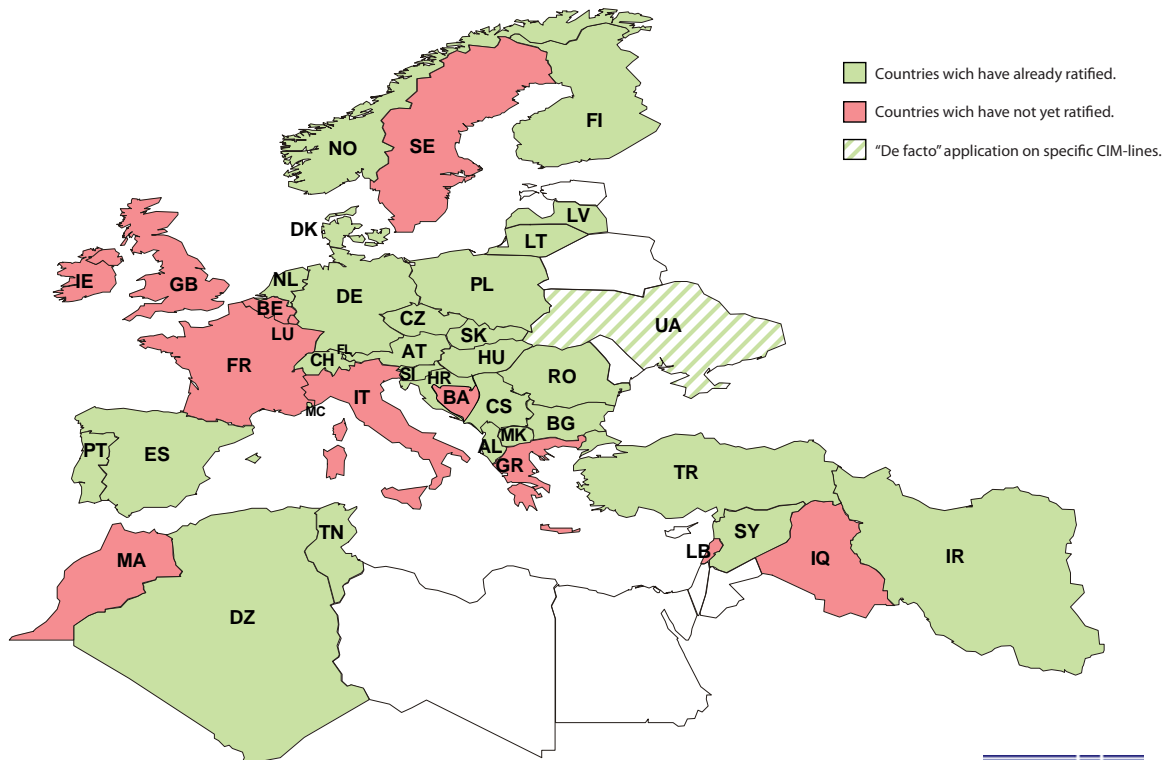
Practical implications for customs procedures

Under Article 6 § 7 CIM 1999, every consignment which enters the customs territory of the European Community or the territory on which the common transit procedure is applied, must

## Entry into force new COTIF 1999

Entry into force 1 July 2006

Dated 4 April 2006



be accompanied by a consignment note satisfying the requirements of Article 7 CIM 1999. In accordance with the new provisions on the use of the simplified transit procedure for rail, only the contractual carrier shown on the consignment note may ask for application of the procedure. However, only the new CIM Uniform Rules contain the concept of a contractual carrier.

This means that after the 1999 COTIF enters into force, the simplified transit procedure for rail can only be used for a traffic flow which enters the customs territory of the European Community or the territory on which the common transit procedure for rail is applied if the new CIM Uniform Rules apply to the traffic flow in question.

Despite this situation, a number of railway undertakings which are entitled to use the simplified transit procedure for rail have not yet signed the CIT declaration.

#### Appeal for signature

The more undertakings sign the declaration, the simpler it will be for every CIT member to clarify on which traffic axes the new CIV Uni-

form Rules and/or CIM Uniform Rules will apply after the new COTIF enters into force and to what extent the simplified transit procedure for rail is possible. The CIT therefore makes an urgent appeal to all members to make this declaration, at least for freight traffic, and in this way contribute to the greatest possible clarity and transparency.

It remains to be said that it cannot be assumed from the fact that a CIT member has not made the declaration, that that member does not want to apply the CIV Uniform Rules and/or CIM Uniform Rules contractually. It would therefore seem essential to clarify the exact legal position with those undertakings in every case before consigning traffic.

#### The Database of CIT Members

Once the new COTIF comes into force, the General List of Frontier Points (LIF) and the Compendium of Special Regulations for International Freight Traffic by Rail (RSM) will be withdrawn. At the same time, further lists showing the addresses of various departments of CIT members (PIM, AIM, ARM, PIV, AIV and ARV) will likewise disappear.

To continue to provide undertakings with the opportunity to record and look up the details and addresses of particular departments on a single medium, the CIT is to make a database (BD-CIT) available to members on its own website ([www.cit-rail.org](http://www.cit-rail.org)). Undertakings will enter their own information to the database themselves, and will be able to consult and print out the entries made by other participants. Participants will be able to notify details of changes by e-mail.

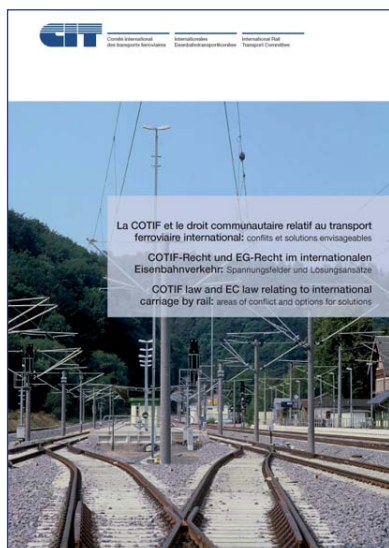
In a second part of the database, it will be possible to publish details of traffic restrictions. A "search" option will allow information to be targeted.

This database is itself based on a concept which has been approved by the CIM and CIV Committees. It will be mounted in the password-protected part of the CIT website. Non-members of the CIT will be able to participate in the BD-CIT on payment of an annual fee of CHF 1000.

The conditions of use of the BD-CIT and the regulations for its operation are set down in

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## COTIF Law and EU Law relating to International Carriage by Rail: Areas of Conflict and Options for Solutions



This is the title of a paper which has been prepared over the last few months by the General Secretariat of the CIT. As public international law and Community law impinge, various difficult but quite fundamental questions arise. In this paper, the CIT tries to provide logical answers and a pragmatic approach to these problems.

The study is available as a three language paper document and can be obtained from the CIT General Secretariat free of charge. The order form may be found on the CIT website [www.cit-rail.org](http://www.cit-rail.org) under Contact/Order form for information material.

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