

International
Rail Transport Committee

Editorial

Thank you and farewell



This edition of CIT Info is my very last. After thirty-four years in the service of the railway community, I am retiring at the end of the year. I look forward to lots of free time and less stress. I won't retire completely, however, but will still make myself available where I can be helpful.

When I arrived in SBB's legal department in 1977 as a newly qualified lawyer, I assumed that I wouldn't be there for long. How wrong I was! The work became more and more interesting and the challenges ever more absorbing. It was particularly fascinating to witness and help shape how SBB evolved from a state industry to a business and how legal officials became professional in-house lawyers.

The last ten years of my career were the most interesting. They provided the opportunity for our trade association to help railway undertakings implement policies for liberalisation and to achieve the following goals:

- hiving the CIT off from the SBB and setting our organisation up as a trade association just for carriers;
- building up of a team of young lawyers with an international focus and technical competence in EU law as well;
- strengthening the passenger team and ensuring the railways were able to implement the EU passengers' rights regulation punctually and effectively;
- creating balanced and comprehensive contractual regulations for the relationship between the infrastructure manager and the carrier;
- establishing the CIT as the builder of bridges between the western (CIV/CIM) and eastern (SMPS/SMGS) rail transport law.

All of this could only have been done as part of a team; accordingly, I would like to take this opportunity to thank Henri Trolliet, my closest colleague, for many years of loyal and reliable work. As Deputy Secretary General he led the freight area carefully but successfully and will likewise be taking well earned retirement.

My thanks also go to all the staff of the General Secretariat and to the representatives of our member railways in the CIT's managing and working groups. The spirit of cooperation at all levels and in all areas was always inspiring and led to impressive results. I can therefore retire with positive memories and in good spirits.

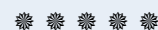
Lastly, I wish you the season's greetings, a prosperous New Year and all the best for the future.

With best wishes,

Thomas Leimgruber

Contents

The new team takes the reins	2
Georgia to join OTIF	3
SBB Regulation Conference 2011	3
Another PRR case before the ECJ	3
Revision of the GCC-CIV/PRR	4
New Passenger Transport Manual	4
Comparison between COTIF/CIV and the SMPS	5
Continuing development of CIT freight transport products	5
New legal framework for CIM electronic consignment note	6
The legal regimes for rail traffic between Europe and Asia must be interoperable and we must be willing to work together	7
Dangerous development in legal precedent	8
Law in practice	9
The 2011 General Assembly	9
"Bernier Tage"	11



The CIT sends its best wishes for the New Year.

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

Finally, we wish you an enjoyable festive season.

Your CIT Team



Transport Law and Policy

The new team takes the reins



*Jean-Luc Dufournaud,
Chairman of the CIT*

The end of 2011 will be marked by the departure of Thomas Leimgruber, Secretary General of the CIT and Henri Trolliet, his deputy. Over the past thirty years they have guided the CIT, firstly within SBB and then as an independent organisation to become a "Dream Team" at the head of the General Secretariat over the last decade.

This provides the opportunity for me to underline the complementary nature of the partners in the Thomas Leimgruber/Henri Trolliet team. They are both full of energy and entrepreneurial spirit and have put their skills and experience at the service of the CIT.

Thomas Leimgruber, acknowledged expert in railway law and in the law of carriage in particular, studied law in the University of Basel. He was admitted as a lawyer in 1973 and was awarded the degree of doctor of law in 1977. In that same year he joined SBB. In 1994 he succeeded Eric Bertherin at the head of SBB's legal division and as head of the General Secretariat of the CIT (then still attached administratively to SBB). As head of the CIT he worked on the most recent revision of COTIF, on making the CIT independent of the SBB, on the work to make CIM and SMGS law interoperable and on the development and implementation of new legal topics, such as the law on the use of infrastructure and passengers' rights.

Henri Trolliet started his career on SBB as early as 1967 and was trained in commercial and operating skills. After several years in operations and sales, he joined the legal division as a staff member in the claims department. With effect from 1978, he has been a member of the CIT General

Secretariat team where he finally became Deputy Secretary General, in charge of freight work in particular. He contributed to the development of international law for the carriage of freight and is still steadfastly committed to the transposition of that law, constantly trying to provide CIT members with the products they need for the markets they serve.

In the name of the CIT, in the name of the whole General Secretariat team and personally, I would like to thank Thomas Leimgruber and Henri Trolliet for their untiring commitment on behalf of the CIT and its members and to wish them both a happy and long retirement with their nearest and dearest.

To succeed this "Dream Team", the General Assembly has elected Cesare Brand to the post of Secretary General and Erik Evtimov to the post of Deputy Secretary General.

Cesare Brand is 53 years old and is a Swiss citizen. Trained as a lawyer, he has held several senior positions within the railway industry over the past twenty years. After starting as Head of the Legal Section in the Swiss Confederation's Federal Office of Transport, he moved to SBB in 2002 where he took on management of the central legal service. Over the last three years he has managed the "Regulation and International Affairs" unit.

Erik Evtimov is 44 years old and is likewise a Swiss citizen. He studied law in Bulgaria, Germany and Switzerland and concluded his studies with a dissertation on European law. Following subsequent academic and professional commitments, he joined the CIT in 2004. Within the CIT, his focus has been on institutional and freight issues. In particular, his success in coordinating the CIT/OSJD project to make the CIM and SMGS legally interoperable must be highlighted.

I welcome these appointments and am convinced that Cesare Brand and Erik Evtimov will be committed to following the path traced by their predecessors. They will also bring new ideas on board and new blood into the organisation to continue the development of the CIT. In the name of the CIT, and personally, I would like to wish them all success in their new roles.

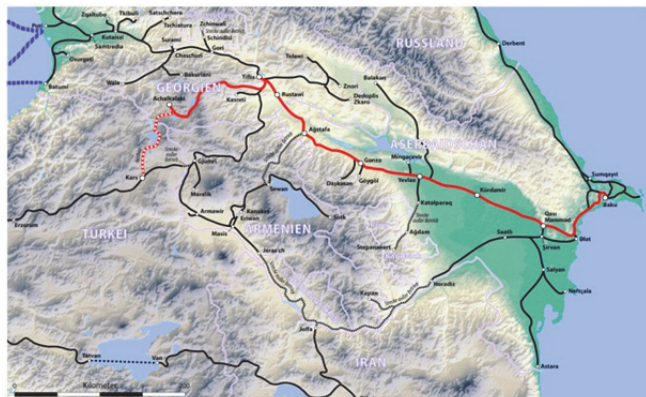
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Original : FR



*From left to right:
Henri Trolliet, Thomas Leimgruber,
Cesare Brand and Erik Evtimov.*

Georgia to join OTIF

In October this year, Georgia submitted its application to OTIF for accession. The accession formalities will now follow. It may be assumed that Georgia will become the forty-eighth member of OTIF in summer 2012.



The Georgian rail network has a total length of some 1,600 km and is completely electrified. Around 250 km of the network will be subject to the CIV and CIM Uniform Rules. Specifically, this will include the sections between the ports and freight terminals in Poti and Batumi, in addition to the important section from Gardabani to Kartsakhi on the Kars-Tbilisi corridor, which links up the Azerbaijani port of Baku on the Caspian Sea with Turkey and Europe.

When these sections become subject to CIV and CIM, a major step will have been taken towards legal unity and legal certainty in the Caucasus. This will eventually result in an estimated annual freight volume of thirty million tonnes.

Georgia's accession is also important for the development of rail freight transport in Eurasia. China and Kazakhstan have an economic interest in handling their freight flows to Europe via the Baku-Tbilisi-Kars line. When it finally goes into service, the Marmaray Tunnel, which is regarded as the key element along this route, will open up completely new prospects.

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Original: DE

SBB Regulation Conference 2011

"What will rail regulation look like in 2020?" was the question dealt with at the SBB Regulation Conference that was held on 10 November 2011.

Jean-Eric Paquet from the EU Commission sees the European reply to this question in the adoption of the EU's fourth railway package. In addition to liberalisation, the new package will address the issue of integrated rail, while Mr. Paquet indicated that he was receptive to proposals from the railways with regard to the structural model.

Ambassador Henri Guétaz, Head of the Integration Office (IM), described the further autonomous adoption of EU law in land transport as a likely development in bilateral relations between Switzerland and the EU.

Mr. Zenhäusern from *Polynomics* outlined regulatory developments in Switzerland with the aid of three scenarios: continuation of the *status quo*, alignment with the EU and incentive regulation. The latter, according to Frank Miram from Deutsche Bahn (DB) is a current issue in Germany

As both he and Mr Marcel de la Haye from SNCF emphasised during the panel discussion, these major regulatory matters are also currently in a state of flux in France and Germany, so that until 2020 considerable and in some cases unforeseen developments are still pending.

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Original: DE

Passenger Traffic

Another PRR case before the ECJ

The first case, which concerns the obligation to inform passengers about connecting trains, was elevated to the European Court of Justice (ECJ) in March 2011 (see CIT Info 3/2011, page 5). A second case concerning the compensation to be paid in the event of delay is now before the court (case C-59/11).

The story so far

The most recent case has its origins in Austria in 2010 when the national enforcement body (NEB) responsible for enforcing the rights of passengers contested ÖBB's right to escape its obligation to pay compensation for delay to passengers in the event of force majeure. The NEB also com-

mented unfavourably on several points in ÖBB's general conditions of carriage. ÖBB appealed against that judgment. The Austrian court which was to judge the case has now put two questions to the ECJ for a preliminary ruling.

The two questions requiring a preliminary ruling

The first question refers to the powers of the national authorities responsible for enforcing the PRR on behalf of the Member States. The second question concerns the compensation paid for delay on the basis of Article 17 PRR: may carriers by rail escape their obligation to pay compensation for delay in the event of force majeure? In the CIT's view, the answer to this second question is clearly "yes". The PRR falls within the legal framework of the CIV Uniform Rules which provide for strict liability in the event of delay:

the carrier is liable for delay except where he proves force majeure, the fault of the victim or a third party. Article 32 CIV, annexed to the PRR, specifies these three grounds for relief in a more detailed way.

Linkage between the PRR and CIV

The sixth and fourteenth recitals to the PRR and Article 15 PRR create the linkage between the PRR and the CIV Uniform Rules. Several national legislations adopted the CIV mechanism when they transposed the PRR into their national law. They have specified the instances of force majeure defined in Article 32 CIV as being grounds for relieving the carrier from his obligation to compensate passengers for delays. The European Commission itself has published a summary of the PRR on its website and that summary makes it clear that there is no obligation to pay compensation for delay in the event of force majeure.

Equality in the treatment of the various modes of transport

The other three modes of transport (air, sea and road) are likewise governed by EU regulations. These regulations provide detailed provisions for carriers to be relieved of liability in the event of delay caused by force majeure. Although the obligations placed on the various modes cannot be identical, there is at least a need to avoid any discrimination.

The CIV Working Group meeting on 15 November last, discussed this issue and decided strategy for the next few months. It will take great care to monitor developments in this case and any other cases which follow.

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Original: FR

Revision of the GCC-CIV/PRR

The CIV Committee approved the amendments to the GCC-CIV/PRR proposed by the CIV Working Group during November. These amendments follow from the experience gained since the end of 2009 with *Regulation (EC) No 1371/2007 on rail passengers' rights and obligations* (PRR). The amendments will come into effect on 1 January 2012, at the same time as the revised AIV.

These changes essentially provide for:

1. Creating an obligation to be punctual: in order to ensure a train departs on time, passengers must join it before the departure time shown in the timetable or before the time shown on the special conditions of carriage and/or on tickets, for high-speed trains in particular (for example, passengers must arrive at least two minutes in advance to join Thalys or TGV trains);
2. Creating an obligation to submit any claims within two months of the rail journey: to be able to check the detail of delays or other disruption in IT systems, undertakings

must receive claims from passengers as quickly as possible, since IT systems rarely archive data for more than two or three months. Because railway undertakings must settle claims within one month, three months as a maximum, it is reasonable likewise to require passengers to exercise a certain promptness in sending in their claims

3. Subjecting all legal action to the provisions of the CIV Uniform Rules: although the PRR clearly refers to CIV provisions for legal action as a result of accidents, the situation is less clear for other legal action. The CIT is accordingly advocating standardisation and certainty as a principle for the benefit of railway undertakings and passengers.

The new GCC-CIV/PRR are available on the CIT website under:

<http://www.cit-rail.org/en/passenger-traffic/cit-products/>

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Original: FR

New Passenger Transport Manual

The CIT General Secretariat has been commissioned by the CIV Committee to revise and combine the two CIT manuals for passenger transport and tickets. This work will be supervised and supported by an ad hoc group from the CIV Working Group, consisting of ticketing and legal experts. The aim is to prepare a new manual for passenger transport that is easy to use and meets all the requirements of the Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV) and simplifies cooperation between the RUs.

The following standardisation issues will be examined and assessed:

1. Data elements of international tickets that are compulsory or optional for all kinds of tickets (tickets printed on security paper, barcode tickets [print@home, SMS] and paperless e-tickets);
2. Manufacture and issuing of international tickets (security background, paper formats and grades for all types of ticket);
3. Minimum requirements for barcode and e-tickets to comply with the legal requirements that are based on the CIV and now feasible for the first time due to the technical UIC standards;
4. Additional services and activities such as inspection and validation of the tickets, in addition to endorsements and certificates.

During the revision, consideration will be given to the fact that the new passenger transport manual will be distributed electronically (normally via the CIT website). Only specimens and samples of selected products will still be manufactured as reference products for quality assurance purposes. Secure and confidential data (such as the CIT security background used for tickets) will be transmitted on a signature only basis.

The development of the new manual is expected to have reached the stage by middle of the year that it can be examined and accepted by the CIV Committee. It is then likely to be available to CIT members in late summer 2012.

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Original: DE

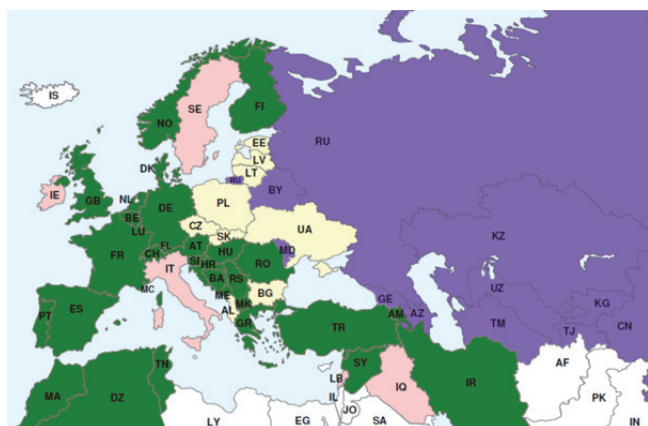
Comparison between COTIF/CIV and the SMPS

The CIT and OSJD will be making a comparison of the two international conventions which govern the contracts of passengers making international journeys, i.e. the CIV Uniform Rules in OTIF Member States and the SMPS in OSJD Member States. The CIV/SMPS Group of Experts, which held its second meeting on 29 November last, has organised the work to be undertaken so as to be able to

finish at the end of 2012. The objective is to prepare a table comparing the liability regimes for COTIF/CIV, the PRR and the SMPS. The study is intended to facilitate a better understanding of the various statutory regimes.

There are numerous differences between the regimes existing in the east and in the west. They cause uncertainty and additional costs for railway undertakings which have to work with these two regimes every day. It would therefore be sensible to identify the differences clearly and transparently. Railway undertakings can then develop contractual solutions to address the problems as necessary.

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Original: FR



International passenger traffic has to contend with two legal regimes, one in the east and one in the west

- SMPS
- CIV
- CIV + SMPS
- COTIF 1999 not yet ratified

Freight Traffic

Continuing development of CIT freight transport products

The CIM Working Group of the CIT met in October 2011 for the last time under the chairmanship of Guy Charrier, who has since retired. The CIT sends him its most sincere thanks for the work he has done and wishes him all the best for the future. His successor will be Jean-Marie Sié, Director of the Legal Department at SNCF GEODIS.

A key item on the agenda was the additional work to be carried out for the project to make the CIM and SMGS legally interoperable and the drafting of the general terms and conditions of carriage for rail-sea transport as part of the "Multimodality" project.

Specimen CIM consignment note for combined transport

According to the feedback received from UIRR and the members of the CIM Working Group, the consignment note for combined transport should be retained, but fields a – k and additional sheets can be eliminated. Since the content of the new CIM consignment note for combined transport is



The new Chairman of the CIM Working Group, Mr. Jean-Marie Sié (on the far right) next to his predecessor Guy Charrier.

virtually identical to the information required on the CIM consignment note, the new specimen consignment note for combined transport is included as an appendix to the GLV-CIM. The GLV-TC will therefore no longer be available in future.

Damage report

As a result of the discussions that took place at the last Conference of Freight Claims Departments in May 2011, the provisions of the formal report (Appendix 20 of the GTM-CIT) have now been updated. The aim is to encourage the use of photos as a means of providing additional evidence to substantiate the damage report and to simplify the instructions for preparing the formal report. Compared with the current wording, few material changes will be included in Appendix 20. The new structure, however, makes it possible to find specific information more quickly.

Other work completed by the CIM Working Group

At the last meeting, additional topics were dealt with, such as the question as to whether the carrier is required to be a railway undertaking, more precise wording of specific provisions to comply with customs regulations, amendments to RID 2011 and loading regulations for the performance of the contract for the movement of empty wagons.

The amendments proposed by the working group will be presented to the CIM Committee for approval at its meeting on 27 March 2012 and, following approval, are expected to become effective on 1 July 2012. We will report on the details in due course.

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Original: DE

New legal framework for CIM electronic consignment note

In the course of the work being carried out for the implementation of e-RailFreight, it has turned out that the basic legal principle of functional equivalence is making the e-RailFreight system complicated and costly. It is extremely difficult to transfer paper-based procedures unchanged into electronic procedures. In addition, the requirements result in the need for complex program routines and additional applications.

Electronic CIM consignment note

In view of this situation, an alternative to the principle of functional equivalence as specified in CIM Article 6 Section 9 must be found.¹ The aim is to find a standard solution, at least for the most important function of the consignment note, i.e. to provide evidence for the conclusion and content of the contract for carriage and for the acceptance of the goods. In this process, it is clear that the provisions of the applicable national laws are to be taken into account when the remaining functions of the consignment note are involved (receipt for tax purposes, bank document, etc.).

What this means in concrete terms is that the principle of functional equivalence contained in the CIM Uniform Rules should be replaced by specific material provisions relating to the electronic consignment note, and – if possible – to the electronic accompanying documents. At the same time, it is important in the case of passenger transport to determine whether the identical CIV Article 7 Section 5 for electronic tickets can also be replaced.

Inaugural meeting of the "CIM and electronic consignment note" Group of Experts

Following the initial discussions on the CIM electronic consignment note, which took place on 21 October 2011 in Siders, the experts came to the conclusion that the electronic consignment note, complete with all its accompanying documents, was to be given precedence in the CIM Uniform

Rules over paper-based documents. This was to apply to both the electronic consignment note's function of providing evidence (authenticity) and to the integrity of the data.

Accordingly, the work is to be started at both the regulatory level in COTIF/CIM/CIV and the implementation level in the relevant CIT products. The group of experts will examine CIT's freight transport products and prepare a list of the provisions to be modified in time for the next meeting. Particularly the working sheets of the GTM-CIT still give precedence to the paper version.

The CIT General Secretariat, after consultation with the OTIF, will propose the draft of a new CIM Article 7a "Electronic Consignment Note" for discussion in the next meeting, which will specifically take into account the following requirements:

- Precedence of the electronic consignment note and electronic accompanying documents over paper-based documents;
- Legal relevance of the electronic consignment note for the contract of carriage;
- Authentication of the electronic consignment note;
- Guarantee that the prerequisites are included in the applicable national laws.

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Original: DE

¹ CIM Article 6 Section 9 is as follows: "The consignment note and its duplicate may be created in the form of an electronic data record which can be transformed into legible written symbols. The procedures used for data storage and processing must be functionally equivalent to those for the paper system particularly in so far as the evidential value of the consignment note represented by that data is concerned."

The legal regimes for rail traffic between Europe and Asia must be interoperable and we must be willing to work together

Discussion at the seminar organised by the CIT and OSJD in Basel on 30 November 2011 concentrated on reviewing the results already achieved within the project to make the CIM and SMGS legally interoperable. More than a hundred participants from all the stakeholder groups (customers, carriers, logistics experts, authorities, international organisations) from more than twenty countries of Europe and Asia took part in the event.

Common CIM/SMGS consignment note

The common consignment note has now become the standard document since it is used for more than half of all CIM/SMGS traffics. It also acts as a customs transit document as well as a banking document for transactions involving documentary credit. It allows time and money to be saved. Finally, it provides increased legal certainty compared with the classic system of reconsignment. The electronic version will increase its attractiveness even more.

Handling of CIM/SMGS claims

Although the majority of consignments move without problem, it sometimes happens that there is damage which gives rise to a claim. The CIM/SMGS formal report and the standard procedure for handling claims, which was developed as part of the CIM/SMGS project, allow the customer to assert his rights in the simplest and fastest way.

Harmonising the provisions for liability

A further step has been taken with the creation of the Special Conditions of CIM/SMGS Liability (SC CIM/SMGS). These are standard provisions for liability for the loss of or damage to the goods. These special conditions replace the equivalent provisions in the CIM and SMGS, given that they will only be applied on a voluntary basis.



There is still a lot to do

The participants paid tribute to the significant results obtained so far. Nevertheless CIM/SMGS movements still remain subject to two distinct contracts of carriage, contracts which are themselves shaped by quite different regimes. Rail is the only mode of transport which has this unfortunate problem – road, sea and air do not suffer in the same way.

A new standard statutory regime is necessary

This new statutory regime should replace the existing regimes. Together with the main organisations involved (CIT, OTIF, OSJD) and the European Union (EU), the United Nations Economic Commission for Europe (UNECE) has started to think about the issue. Before the work proper starts, the organisations involved will get political commitment to the project.

Waiting for the new statutory regime

Drawing up and adopting this new statutory regime will require many years. Whilst waiting, it will be necessary to make use of all the options allowed by using contract law. General conditions of carriage governing the contract for international carriage of goods by rail for through traffic between Europe and Asia, conditions which are applicable on a voluntary basis, will allow movements to be made under a single contract. Those general conditions will then govern the main elements of the contract (conclusion of the contract, consignment note, payment of charges, right to control the goods, liability and claims).

A first draft for these general conditions (GTC EurAsia) has been drawn up by the CIT. First of all, we must check whether this draft will satisfy the requirements that have been set. The content of the draft will then be updated in such a way as to permit customers and carriers to have access to this additional set of terms and conditions; a set of terms and conditions optimised for the movement of traffic between Europe and Asia and designed to act as a stopgap whilst awaiting the new standard statutory regime which is so much needed.

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Original: FR

Use of the Infrastructure

Dangerous development in legal precedent

We now have the first judgments on liability between infrastructure managers (IM) and railway undertakings (RUs). In the CIT's view, they are tending in the wrong direction, not least because they have to rely on inappropriate legal foundations to support them. The legal relationship between the IM and the RU is of a specific nature and cannot simply be considered as part of general national liability law! Much greater importance must be given to the *CUI Uniform Rules* on the one hand, and to the *European General Terms and Conditions of Use of Railway Infrastructure (EGTC)* on the other.



The CUI Committee meets.

Widespread application of the CUI

At its fifteenth meeting (Bern, 27 October 2011), the CUI Committee of the CIT noted with satisfaction that the EU's accession to COTIF has now eliminated all obstacles to unrestricted application of the CUI. Numerous EU Member States have already withdrawn their reservations, in some cases with immediate effect, in others with withdrawal scheduled for a later date. Currently, i.e. as of 1 January 2012, the CUI will apply in Denmark, Germany, Finland, Greece, Lithuania, the Netherlands, Austria and Poland.

Since the withdrawal of reservations in a number of individual states has yet to be approved by parliament, it is likely to take some time before EU-wide application of the CUI is achieved. The Committee has thus decided to monitor developments closely in the individual states and to intervene if necessary via local CIT members.

Widespread use of the EGTC

The widespread use of the EGTC is also important. These general terms and conditions are the result of protracted negotiations between RailNetEurope (RNE) and the CIT, and are recognised as being the "standard of best practice". They ultimately protect the Railway Undertakings as the weaker party to the contract.

The CUI applies to international traffic only; it does not include domestic traffic. Furthermore, it grants the Railway Undertaking recourse in the event of damages payable under CIV only, but this does not include damages under the passengers' rights regulation (PRR). This means that the EGTC contractual agreement is also required whenever and wherever the CUI is applied.

The information available to the CIT at the moment, however, would suggest that the EGTC are probably in for a rough ride. The CUI Committee has therefore decided to put a monitoring system in place both for the CUI and the EGTC. If the EGTC do not achieve the degree of acceptance expected, then it would be necessary to talk to RNE and also, if necessary, to the European Commission and the national regulatory authorities.

Continuing development of the EGTC

The language of the EGTC is admittedly not perfect. RNE therefore proposes appointing a joint Editorial Commission and beginning with an appropriate review.

The CUI Committee of the CIT, on the other hand, is afraid that it is hardly possible to distinguish between editorial improvements and material changes and there is thus the risk of reopening compromises that were the result of painstaking negotiation. It therefore suggests living with the current EGTC to begin with and gaining practical experience. In three to four years' time, they could then undergo an in-depth review, with the aim of producing a single version in three languages (English, German and French).

Contractual, not tortious liability

The precedent mentioned at the beginning obviously assumes that the Infrastructure Manager accepts liability with respect to the Railway Undertaking only in the event that it does not comply with safety standards. This view fails to recognise the legal nature of infrastructure use. The contractual relationship between Infrastructure Manager and Railway Undertaking is an exchange relationship governed by civil law that, regardless of safety issues, gives the parties the right to demand proper performance (similar to a purchase or rental agreement). Whether and to what extent safety standards have not been complied with – at least in terms of contract law – is initially of no importance.

It is in the interest of the CIT and its members to ensure that, in the field of infrastructure use – a new field of law that has received little attention to date – an appropriate and sound legal precedent is established. The CUI Committee will therefore discuss these issues in detail at its next meetings.



Lucio Lanucara, Trenitalia (left), is the new Chairman of the CUI Committee.

New Chairman of the CUI Committee

The CUI Committee has proposed that the General Assembly elect Lucio Lanucara, who is currently Deputy Director EU and International Affairs in the Legal Department of Trenitalia, as the successor to Thomas Leimgruber, who retires at the end of the year. Lucio Lanucara has been involved from the very beginning in the negotiations with

RNE on the *European General Terms and Conditions of Use of Railway Infrastructure (EGTC)* and is thus very well acquainted with all the details. The CIT thanks Lucio Lanucara for his commitment and wishes him every success and satisfaction in his new position.

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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.

Handover of consignments between carriers

May a carrier who notices that the details of the consignee on the consignment note are incorrect (consignee unknown) on handover of the consignment from another carrier refuse to accept the consignment?

Incorrect consignee details on the consignment note do not constitute grounds for refusing to accept a consignment in accordance with working sheet 03-02 of the CIT Freight

Traffic Manual (GTM-CIT). The receiving carrier is not therefore entitled to refuse to accept the consignment. On the other hand, he is authorised to initiate the procedure for "circumstances preventing carriage" within the meaning of Article 20 CIM and working sheet 05-01 GTM-CIT, if it is then clear that the consignment cannot be delivered to the consignee.

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Original: FR

CIT Itself

The 2011 General Assembly

Of the decisions made at the CIT General Assembly on 17 November last, the election of Cesare Brand as the new Secretary General and Erik Evtimov as the Deputy Secretary General must be mentioned specially. The presentation made by Jean-Pierre Loubinoux, Director General of the UIC on Globalisation and the Role of International Railway Organisations provided a superb finale to the event. The General Assembly was also briefed on the main activities being undertaken by the association, in particular on COTIF, on the carriage of passengers and freight and on the use of infrastructure. The 2012 General Assembly will take place on 22 November 2012.

COTIF

Three states still haven't ratified COTIF 1999: Italy, Ireland and Sweden. Armenia became the forty-seventh Member State of COTIF on 1 July 2011. Georgia's membership is expected to take effect in mid-2012.

The European Union's accession to COTIF, which took effect on 1 July 2011, will help to advance the process of withdrawing reservations against the CUI Uniform Rules. Quite independently of the application of the CUI Uniform Rules, however, it is still important to get the EGTC applied comprehensively. The EGTC also apply to domestic traffic and also provide for railway undertakings to have recourse against infrastructure managers for compensation paid out on the basis of Regulation (EC) No 1371/2007 on rail passengers' rights and obligations.



Carriage of passengers

Railway undertakings have faced a flood of claims from passengers ever since the regulation on rail passengers' rights and obligations (PRR) came into effect on 3 December 2009. The national bodies responsible for enforcing the PRR are very active in certain states. The CIT and its members are paying particular attention to the way the PRR is being implemented; they are anxious to ensure that the PRR is interpreted and applied in a way which is as standard as possible.

Parts of the AIV agreement on the relationships between undertakings have been revised to allow passengers' claims for delay to be handled in a way which is as simple, rapid and economic as is possible. The changes will come into effect on 1 January 2012.

Work on making CIV and SMPS law interoperable has started. Initially, the work will involve comparing the liability provisions of the CIV Uniform Rules, the PRR, the SMPS and the SMPS as revised.

In the ticketing area, the CIT is participating actively in the relevant work-streams led by the CER and UIC. It is currently developing a new security background for tickets; the new security background is being designed to cater for new requirements and to be more secure. In addition, a major task has just been started; it involves the recast of the two passenger manuals managed by the CIT, the one dealing with the carriage of passengers and the other with tickets. One of the objectives is to bring them together into a single manual in future.

Carriage of freight

The work to draw up proposals for substantive provisions for the electronic consignment note in the CIM Uniform Rules (instead of the principle of functional equivalence between the electronic and paper consignment notes) has started.

Work on multimodality has likewise started. It is intended to draw up general conditions of carriage for rail-sea traffic and to monitor the work being done on multimodality within other organisations such as UNCITRAL for the Rotterdam Rules and the EU for the White Paper on Transport (which was adopted on 28 March 2011).

Meteoric progress has been made in the use of the CIM/SMGS consignment note. It is now used for more than fifty flows of traffic and covers more than half the volume of CIM/SMGS traffic. The common consignment note allows time savings of some forty minutes per wagon, i.e. eight to ten hours over the whole transit of a train. Not needing to re-write CIM and SMGS consignment notes at the interface between the two legal regimes allows costs to be reduced by some forty euros per consignment. The project sponsors will now concentrate on using it for traffics to and from Kazakhstan and China and for rail-sea traffic across the Black Sea and Caspian. A further step is proposed for 2012 - applying standard provisions for liability for loss and damage on a voluntary basis. Lastly, general terms and conditions of carriage for freight traffic between Europe and Asia by rail are being drawn up; these conditions will make it possible to use a single contract of carriage and thus represent the first stages of a new and crucial development.

New management team in the General Secretariat

Thomas Leimgruber has reached retirement age. Henri Trollet wanted to take advantage of the option to retire early. Both of them will leave the CIT on 31 December 2011. To succeed them, the General Assembly elected Cesare Brand as the new Secretary General and Erik Evtimov as the new Deputy Secretary General. Please refer to the article at the beginning of this edition of CIT Info for more details of these important changes.

Several other important changes within CIT committees will also take place on 1 January 2012:

- Lucio Lanucara will replace Enrico Trapazzo as a member of the Executive Committee (since Enrico Trapazzo will be taking on new duties within Trenitalia). Lucio Lanucara will likewise chair the CUI Committee, replacing Thomas Leimgruber.
- Carmen Filipescu will replace Enrico Trapazzo at the head of the CIV Committee; she will be supported by Jan Svensson, who will remain responsible for the CIV Working Group.

- finally, Jean-Marie Sié will replace Guy Charrier, as the head of the CIM Working Group (since Monsieur Charrier will be retiring from SNCF shortly).

Globalisation and the Role of International Railway Organisations

The second part of the General Assembly was devoted to a presentation by Jean-Pierre Loubinoux, Director General of the UIC on the topic of globalisation and the role of international railway organisations in the new environment.



Jean-Pierre Loubinoux, UIC Director-General, at the General Assembly 2011 of CIT.

Firstly, Monsieur Loubinoux wanted to point out that the task of the UIC is to promote the development of rail traffic on a global scale in order to respond to the challenges of mobility and sustainable development. This global scale is underlined by the UIC's presence on all the continents.

Rail is promoted in various ways, starting with on-site technical support, the exchange of experience by means of seminars, presentations and opportunities for discussion, bringing in innovative approaches with support for key projects and lastly the development of standards, interfaces and specifications. These activities are very frequently carried out in conjunction with political organisations (UN, EU, etc.), standards organisations (ISO, CEN, IEC, etc.) as well as diverse stakeholder groups such as the other railway trade organisations and organisations representing customers (OSJD, CER, CIT, UIP, UIRR, etc.).

The UIC is concentrating its activities at a global scale on five axes; these are:

- the environment and sustainable development;
- safety and security;
- freight and intercontinental corridors;
- railway signalling and the control of trains;
- standardisation.

The work done by the UIC on freight and international corridors complements that done by the CIT and vice versa: the UIC can benefit from the CIT's expertise in legal areas and on transport documentation; the CIT can benefit from the structures set up by the UIC to promote the systems the CIT has developed with the OSJD within the project to make the CIM and SMGS legally interoperable. In addition, the UIC and CIT work together particularly within the UNECE.

Henri.Trollet(at)cit-rail.org
Original: FR

“Berner Tage” on International Rail Transport Law Bern, 8 & 9 March 2012



The main topic of the 2012 event will be the EU's accession to COTIF. Liability issues which arise in the relationship between carriers form a second key topic. In addition, the CIT and the infrastructure managers' association RailNetEurope (RNE) will present and discuss the General Terms and Conditions of use of infrastructure (EGTC); terms and conditions which they drew up together.

The following topics will be considered in separate modules:

Passenger traffic:

- taking stock of Regulation (EC) No 1371/2007 on rail passengers' rights and obligations (PRR)
- e-ticketing
- new procedures for settling disputes

Freight traffic:

- Rotterdam Rules
- liability within the triangular relationship between railway undertakings, infrastructure managers and wagon keepers
- electronic consignment note
- rail transport between Europe and Asia

The “Berner Tage 2012” will conclude with a panel discussion on the objectives of and cooperation between governmental organisations and the role of the railway trade associations in the development and implementation of the international law of carriage by rail. Well-known experts from politics, industry and academia will give their views and discuss them with seminar participants (the “Berner Tage” are recognised as satisfying requirements for the professional development of specialist lawyers).

As usual, the seminar not only offers participants the opportunity to be briefed on the most recent developments and to update their professional knowledge, but is also a unique opportunity to share opinions and experiences with international experts.

Papers for the seminar and 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\(at\)cit-rail.org](mailto:info(at)cit-rail.org)), by fax +41 (0)31 350 01 99 or by means of the CIT website:

http://www.cit-rail.org/media/files/public/Publications/Flyer_Berner_Tage_2012-03-08_09.pdf

CIT Diary of Events

Date	Event	Location
10/11 January	2 nd meeting ad hoc-group CIV Manual	Bern
31 January	Group of Experts “CIM Electronic Consignment Note”	Bern
7/8 February	CIV Working Group	Bern
8/9 February	3 rd meeting ad hoc-group CIV Manual	Bern
20/21 February	CIV/SMPS Group of Experts	Warsaw
8/9 March	“Berner Tage”	Bern
27 March	CIM Committee	Bern
28 March	Group of Experts “Multimodality”	Bern
29 March	4 th meeting ad hoc-group CIV Manual	Bern
19 April	Executive Committee 1/2012	Bern

Events with CIT participation

Date	Event	Location	CIT contact
11 January	Raildata Transmission of Messages of CIM Electronic Consignment Note	Basel	Nathalie Greinus
17 January	UIC Project Manager meeting eRailFreight	Paris	Erik Evtimov
17 January	EPR Legal Working Group	Vienna	Isabelle Oberson
27 January	15 th SSC-SeeFrachtseminar	Interlaken	Erik Evtimov
6 February	UIC European NM Committee (EMC)	Paris	Cesare Brand
9 February	CER General Assembly	Brussels	Cesare Brand
13/14 February	UIC Ticketing Action Group (TAG)	Paris	Thomas Gyger
14 February	UIC Wagon Users Study Group	Paris	Erik Evtimov
14/15 February	UIC Team Message TM	Paris	Thomas Gyger
15/16 February	UIC TAP Maintenance and Development (TAP-MD)	Paris	Thomas Gyger
16/17 February	OTIF Rail Facilitation Committee	Bern	Erik Evtimov
27/28 February	Assessing & Managing Disaster Risks	Berlin	Erik Evtimov
29 February/ 1 March	UNECE Inland Transport Committee	Geneva	Erik Evtimov
13 March	UIC Commercial Group	Paris	Isabelle Oberson
16 March	Multimodal Transport Meeting FIATA Headquarter Session	Zurich	Erik Evtimov
20 March	CER Passenger Working Group	Brussels	Isabelle Oberson
5 April	UIC Wagon Users Study Group	Paris	Erik Evtimov
19 April	UIC Passenger Forum	Paris	Isabelle Oberson
24 April	Customer Liaison Group	Brussels	Isabelle Oberson
25 April	UIC Freight Steering Group	Paris	Erik Evtimov
26 April	UIC Freight Forum	Paris	Erik Evtimov

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