



# Leaflet on COTIF/CIV-PRR – SMPS liability regimes

# Introduction

The newly created traffic axes for international passenger traffic are the subject of international, regional and national legal regimes, just as are those for freight traffic. Since differing provisions can lead to legal uncertainty for passengers and also for the carriers involved, clarification of the rights and obligations which apply to international passenger traffic and a comparison between the applicable COTIF/CIV, Regulation (EC) No 1371/2007 (PRR) and the SMPS is essential. This will provide more transparency and legal certainty for the international passenger services offered for traffic by rail.

Considering these new parameters, the CIT project to make the CIV and SMPS interoperable was initiated in 2011, with the support of OTIF. The European Commission (DG MOVE) likewise took part energetically in the development of the project. CIT members such as SNCF, DB AG, RZD/FPC, LG, LDZ together with ČD Passenger traffic and PKP Intercity played an active part in the work on the scope of COTIF/CIT-PRR and also the SMPS.

A leaflet describing the various COTIF/CIV-PRR – SMPS liability regimes which are used in international passenger traffic was amongst the results of the first phase of the project to make the CIV and SMPS interoperable.

The leaflet was published by the CIT and OTIF in three languages (English, French and German) and also made available to CIT members in an electronic form. As an introduction it provides a summary of the most important findings from the comparative table and an interactive diagram of the various routes within the scope of COTIF/CIV-PRR – SMPS. Readers will be able to draw a systematic and coherent understanding of the various legal systems in international passenger traffic from that material.

The leaflet was also published in Russian and Chinese in conjunction with the committee of the OSJD.

In addition, the General Secretariat of the CIT is developing IT supported applications for an interactive map to show the routes used by international passenger traffic. The interactive passenger traffic map will not only take account of current international law but also EU law and specifically, the passengers' rights regulation, including all the exceptions granted in European Union Member States. It will be made available to CIT members, OTIF, European Union and OSJD Member States on the CIT website as well as on USB memory sticks.

As a CIT document for international passenger traffic, the leaflet on the COTIF/CIV-PRR – SMPS liability regimes consists of two main sections:

## Part I

1. Map showing the legal regimes which apply to East-West traffic;
2. Map showing direct international routes in East-West passenger traffic;
3. EU map showing exceptions to the application of PRR for international transport services where significant part of the service is outside the EU
4. Summary of the principles of the COTIF/CIV-PRR – SMPS liability regimes.

Part I of the leaflet will not only be available on the CIT website but will also be linked with the OTIF website. Its inclusion on the European Commission website is currently being clarified with the webmaster of the appropriate site.

## Part II

Comparative table on the COTIF/CIV-PRR – SMPS liability regimes.

The CIT expresses gratitude to all those, who have contributed actively to the success of this work.

Bern, April 2014

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# Part I

## General Part

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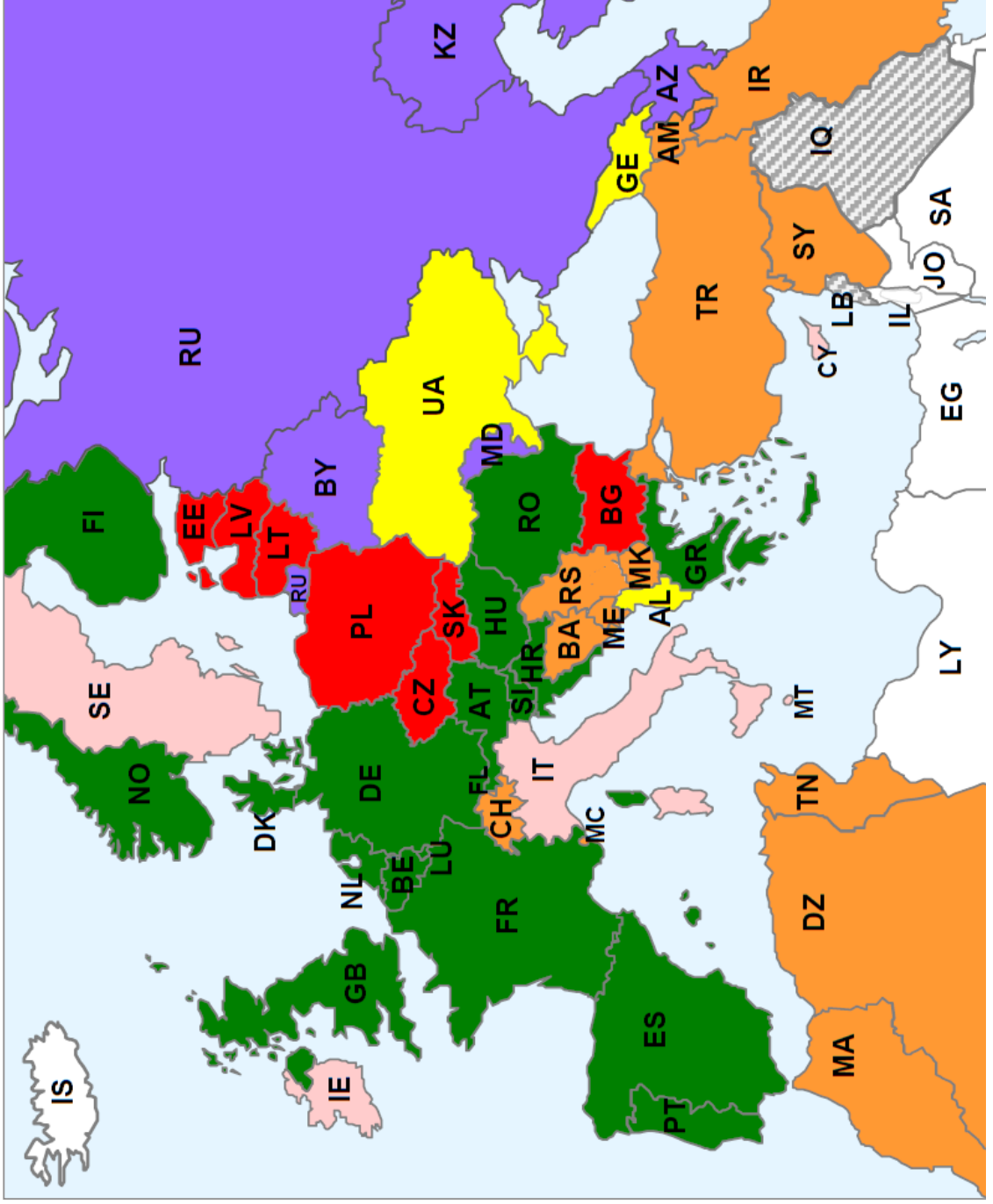
\* The maps (A–C) contain only general information on the legal regimes COTIF/CIV-PRR and SMPS. Authentic information concerning the Member States of the EU is available on the web-page of the European Commission. These maps are prepared without prejudice to the obligations of carriers to inform their passengers according to the UR CIV and PRR, and without prejudice to the GTCs of individual carriers.








A. Map showing relevant legal regimes in East-West passenger traffic



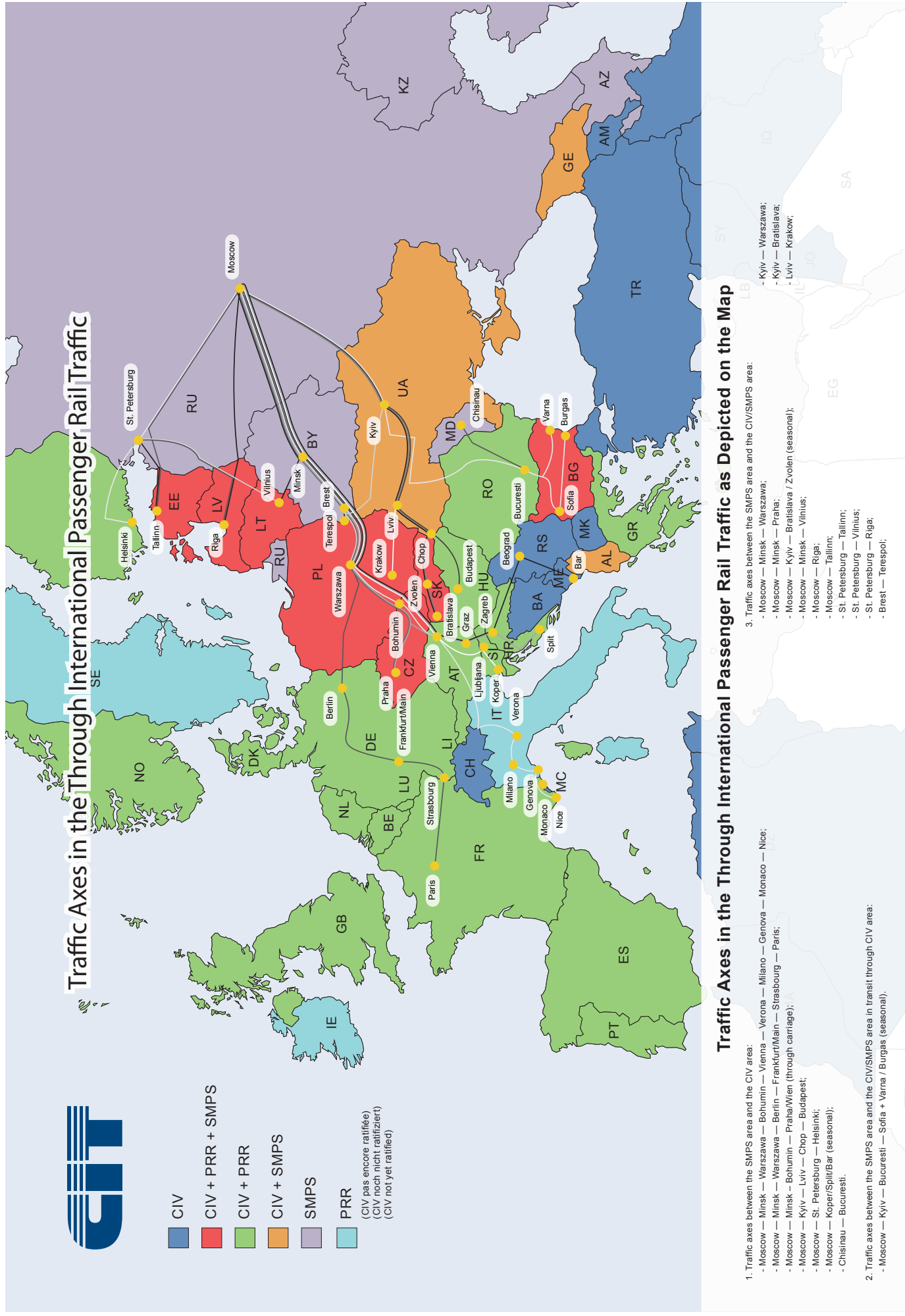
Champ d'application géographique CIV – PRR – SMPS  
 Geografischer Anwendungsbereich CIV – PRR – SMPS  
 Geographical scope of CIV – PRR – SMPS

Etat au 1<sup>er</sup> octobre 2014  
 Stand 1. Oktober 2014  
 Situation on 1 October 2014



-  CIV
-  CIV + PRR + SMPS
-  CIV + PRR
-  CIV + SMPS
-  SMPS
-  PRR  
(CIV pas encore ratifiée)  
(CIV noch nicht ratifiziert)  
(CIV not yet ratified)
-  Suspension de la qualité de membre  
Ruhen der Mitgliedschaft  
Membership suspended

## B. Map showing direct international routes in East-West passenger traffic




## C. EU map showing exceptions to the application of PRR for international transport services where significant part of the service is outside the EU





Etat au 1<sup>er</sup> octobre 2014

Services ferroviaires internationaux de transport de voyageurs dont une partie importante est effectuée en-dehors de l'UE : dérogations selon l'art. 2.6 PRR

### Dérogations à l'art. 17 PRR selon l'art. 2.6 :

 L'art. 17 PRR est applicable : indemnité de 25% ou 50% en cas de retard de 60' ou 120' et plus constaté au lieu de destination indiqué sur le billet

 L'art. 17 PRR est applicable ponctuellement : indemnité de 25% ou 50% uniquement sur les trains Ekspress, InterCity, Express InterCity, EuroCity et EuroNight

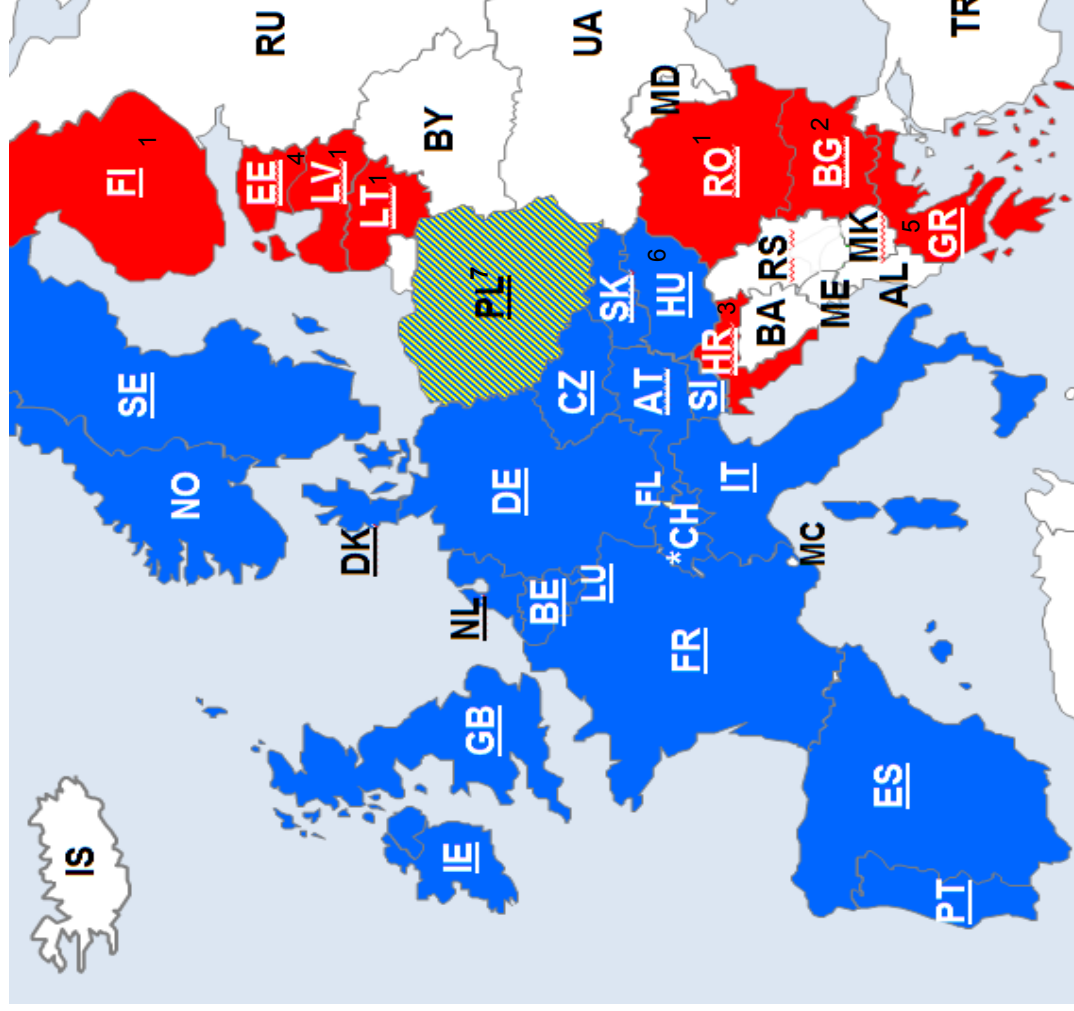
 Dérogation à l'art. 17 PRR : aucune indemnité

**xx** Etat membre de l'UE

\* Application de l'art. 17 PRR sur une base volontaire par les CFF

### Toutes les dérogations au PRR selon l'art. 2.6 :

- 1) Le PRR n'est pas applicable
- 2) Dérogation à toutes les dispositions du PRR, à l'exception des art. 9, 11, 12, 19, 20(1), 26
- 3) Dérogation aux art. 13, 15, 16, 17, 18, 15, 28 PRR
- 4) Dérogation aux art. 8, 10, 13(2), 15, 16, 17, 18(2)/(4)/(5), 20(2), 21, 22, 23, 24, 25
- 5) Dérogation aux art. 13, 15, 16, 17, 18, 28 pour les services de transport via l'ARYM et la Turquie
- 6) Dérogation aux art. 10(1)/(2)/(4), 18(2)(a-b), 18(5), 21(1), (23)
- 7) Dérogation à toutes les dispositions du PRR, à l'exception des art. 4, 5, 7, 8(1), 9, 11, 12, 16, 19, 20(1), 21(2), 22-29. Les art. 13 et 17 sont applicables sur les trains Ekspress, InterCity, Express InterCity, EuroCity et EuroNight







## **D. Principles underlying the COTIF/CIV-PRR – SMPS liability regime**

### **Key:**

*COTIF/CIV – refers to the Uniform Rules concerning the Contract of International Carriage of Passengers by Rail as Appendix A to the Convention concerning International Carriage by Rail (COTIF) of 9 June 1999 in force since 1 July 2006.*

*PRR – refers to Regulation (EC) No. 1371/2007 of the European Parliament and of the Council on rail passengers' rights and obligations of 23 October 2007, in force since 3 December 2009*

*SMPS – refers to the Agreement on International Passenger Transport by Rail of 1 November 1951, as amended on 1 May 2014.*

### **I. Scope of application**

1. The scopes of COTIF/CIV, PRR and SMPS overlap in terms of the international carriage of passengers and luggage on the territory of States that apply COTIF/CIV, PRR and SMPS simultaneously.
2. COTIF/CIV constitutes the Uniform Rules concerning the Contract of International Carriage of Passengers by Rail between the Member States of COTIF. The PRR postulates rail passengers' rights and partially incorporates the CIV UR as Annex I to Regulation 1371/2007/EC. The PRR also establishes pre-contractual and contractual consumer protection rights. The SMPS contains rules on handling the carriage of passengers and express goods and the obligations of the parties involved in the transport operation.
3. COTIF/CIV also applies to maritime or road transport prior to or following the carriage of passengers by rail in the sense of multimodal transport. The PRR only applies to the carriage of passengers by rail within the European Union and its Member States (and offers the possibility of exceptions); for the other modes, separate laws apply in the EU<sup>1</sup>. The SMPS only applies to the carriage of passengers by rail between railway stations on the territory of the SMPS participants; it does not therefore deal with multimodal passenger transport.

### **II. Transport models**

4. Comparable models of successive transport with joint and several liability of carriers participating in the transport operation, except in the case of death and physical injury.
5. Unlike COTIF/CIV, which has detailed provisions for the substitute carrier model, in SMPS this model is only dealt with in the definition, and not in the provisions concerning liability.

### **III. Pre-contractual and contractual relations**

6. According to COTIF/CIV, the ticket is only proof of the contract (Art. 6 § 2 CIV – consensus-based contract). According to SMPS, a person only becomes a passenger after the ticket has been purchased and if he is carried or if, when he is boarding or alighting, he is on the station premises or the platform (Art. 5 SMPS – real contract). The PRR follows the logic of COTIF/CIV and obliges the rail transport undertakings (RTUs), where available, to sell tickets.
7. SMPS requires the carrier to conclude a contract (Art. 4 SMPS). In contrast, COTIF/CIV gives the passenger and the carrier the freedom to conclude the contract of carriage (Art. 4 § 3 CIV).
8. According to the PRR, the ticket vendor may conclude the contract of carriage on behalf of the railway undertaking. However, the parties to the contract of carriage remain the passenger on the one hand and the carrier on the other (Art. 6 CIV).
9. According to COTIF/CIV and SMPS, paper tickets and tickets in the form of electronic data registration must be functionally equivalent (Art. 7 § 5 CIV, Art. 9(2) PRR and Art. 5 § 7 SMPS).

<sup>1</sup> Regulation 1177/2010 (in force since 18.12.2012) applies to the carriage of passengers by sea and inland waterways, Regulation 181/2011 (in force since 1.03.2013) applies to buses and coaches and Regulations 889/2002, 261/2004 and 1107/2006 apply to air transport.

10. COTIF/CIV provides the possibility of carrying vehicles "on the occasion of the carriage of passengers" (Art. 12 CIV). SMPS has no provisions concerning vehicles accompanying passengers. According to SMPS, bicycles, although not specifically mentioned, could be carried as luggage if the total weight of the luggage is not more than 100 kg (the weight of individual pieces not more than 75 kg) (Art. 17 SMPS); according to COTIF/CIV, this is dealt with in the General Conditions of Carriage.
11. Only the PRR contains extensive provisions on the pre-contractual and contractual rights of persons with reduced mobility (PRM – Chapter V of the PRR). In SMPS and COTIF/CIV, this is dealt with under national law or in the various carriers' General Conditions of Carriage.

#### IV. Provisions governing liability

12. COTIF/CIV and SMPS contain similar liability provisions for death of and injury to passengers (strict liability) and for luggage and animals (liability based on fault).
13. SMPS makes no provision for liability in case of failure to keep to the timetable: national law applies. However, onward carriage is possible in certain cases (Art. 15 § 2 SMPS). PRR provides for assistance in the event of delays (Art. 18 PRR). In the PRR, reimbursement is dealt with in terms of standardised compensation in kind for delays in accordance with Art. 16 PRR or partial reimbursement of the ticket price in accordance with Art. 17 PRR, which goes further than COTIF/CIV.
14. COTIF/CIV and SMPS define national law differently – COTIF refers to the law of the State in which the person entitled asserts his rights (Art. 8 § 3 COTIF), whereas SMPS refers to the law of the State in which the loss or damage occurred (Art. 32 SMPS).
15. COTIF/CIV and SMPS stipulate similar grounds for relief from liability for carriers, but have different rules concerning compensation.

#### V. Compensation

16. COTIF/CIV harmonises the minimum compensation limit in case of death of, or injury to passengers (Art. 30 § 2 CIV), but with extensive references to the national laws of the Member States. This is without prejudice to the higher level of protection of the EU Member States' national consumer protection laws according to Art. 11 PRR. According to SMPS, compensation for death and injury to passengers is dealt with in accordance with national law.
17. In the PRR, the provisions concerning advances in case of death or injury are only provided as a support measure unrelated to liability, and are not designed to be indemnification in the sense of compensation.
18. The provisions of COTIF/CIV and SMPS for compensation in case of loss or damage to luggage differ. According to SMPS, the declaration of value is the determining factor, whereas according to COTIF/CIV, the level of compensation is much higher without the declaration of value.
19. The methods of calculating compensation for loss or damage to luggage differ. COTIF/CIV defines a maximum amount per kilogram of gross mass or per item; SMPS uses the amount of the loss in value. The amount of the maximum payment according to COTIF/CIV varies, depending on whether or not the person entitled can prove the amount of loss or damage. According to SMPS, the declaration of value is the deciding factor.
20. The methods for calculating compensation for delays in delivering luggage also differ. COTIF/CIV defines a maximum amount per kilogram of gross mass or per item per 24 hours. The maximum amount of compensation varies, depending on whether or not the person entitled can prove the amount of loss or damage. In SMPS, the maximum amount of compensation is calculated as a percentage of the carriage charge for each day of delay. In this case, the declaration of value is the deciding factor.
21. COTIF/CIV and SMPS stipulate that it is the passenger's responsibility to supervise hand luggage and animals that he takes with him. COTIF/CIV makes provision for strict liability of the carrier for luggage and animals in the case of death of or injury to the passenger.

## VI. Procedural provisions

22. COTIF/CIV only governs the assertion of contractual claims. The assertion of non-contractual claims may not lead to a different result than the assertion of the claim on the basis of a CIV contract of carriage.
23. Claims in accordance with COTIF/CIV may be submitted to all the participating carriers (not just to the carrier that is liable). According to SMPS, a claim may only be submitted to the contractual carrier. COTIF/CIV do not restrict which persons are entitled to make a claim, On the other hand, SMPS has a fixed list of persons who are entitled to bring an action for the submission of claims; there is no institute of subrogation according to SMPS.
24. Submitting a claim on the basis of the ticket is a prerequisite for the judicial assertion of claims according to SMPS. COTIF/CIV allows freedom of choice for submitting a claim and for the judicial assertion of claims.
25. COTIF/CIV prescribes a period of limitation of a maximum of 3 years in case of death of or injury to passengers; there are various other periods of limitation for other claims. SMPS has no time limit for the submission of claims in the case of death and for injury to life and health of the passenger. Limitation of the assertion of claims before a court is based on the national law of the SMPS participants. The PRR (Art. 27 § 2) and SMPS (Art. 36 § 7) set deadlines for the carrier's response to claims (1 or 3 months according to the PRR) and other complaints (180 days according to SMPS).
26. COTIF/CIV offers the possibility of dealing with relations between carriers in terms of allocating compensation and the right of recourse (in the same ways as AIV for the members of CIT).