

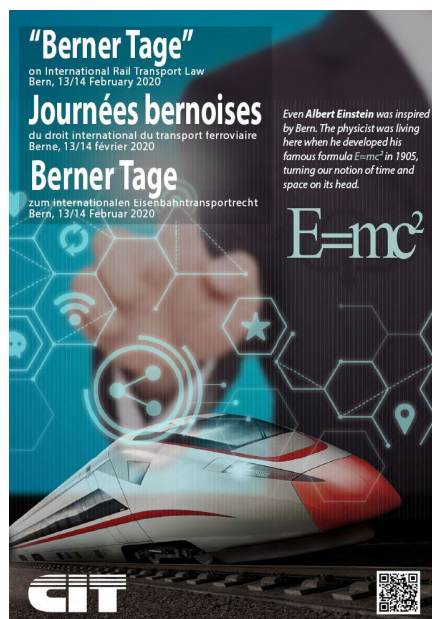


CONTENT

CIT General Assembly

We take pleasure in inviting our members to the General Assembly of the CIT, which will take place on Thursday, 14 November 2019 in Bern at the CIT headquarters (Weltpoststrasse 20, Saal A, on the ground floor). The official part of the meeting will begin at 9 am and will end at 12:15 am at the latest.

We look forward to seeing you again.



- 2 News from the CIT Workshop in Klaipeda with LG
- 3 20 years of COTIF. Quo vadis?
- 5 Changes ahead for the CIV Committee
- 6 CIT/UIC Conference of Passenger Claims Departments
- 7 The CIT's CIM working group bids farewell to Peter Schuld on his retirement
- 8 Latest news from the CIT/OSShD project «Legal Interoperability CIM/SMGS»
- 9 Court decision on infrastructure use
- 10 Freight consignments without transport documents?
- 11 CIT ITSELF



EDITORIAL

Dear readers,

Congratulations to the COTIF on its 20th birthday!



The COTIF 99 international railway law was developed in the 1990s with the impending liberalisation of the railway market in mind. It has been in force since 2006. An outstanding feature of these rules is their agreeably high legal quality. The law has proven itself in practice. The introduction of competition was completed only a few years after COTIF 99 was implemented, in 2007 for freight traffic and 2010 for international passenger traffic.

Since then, we have identified three important trends: digitalisation, increased competition and the demand on the part of customers for contractual «door-to-door» solutions. Today, 20 years later, we have to ask ourselves whether COTIF 99 needs to be adapted in response to these trends.

An extensive article in this issue looks at this question in more detail.

Greetings from Bern
Cesare Brand
CIT Secretary General



News from the CIT Workshop in Klaipeda with LG

From the CIT's vantage point, work on «multimodality» is making good progress. Two CIT documents, the GTC for Rail-Sea Traffic and a supplementary boilerplate contract, are now available to CIT members. These are being supported by the work of CIT's Multimodality Working Group, and practical applications on specific pilot services are planned. The results of this work were explained in detail at a CIT workshop on the Baltic Sea organised in partnership with the Lithuanian Railways (LG) in Klaipeda and attended by over 25 participants.

CIT documents for rail-sea traffic

The GTC Rail-Sea Traffic have been available to CIT members since 2015. In order to implement these GTC, the Multimodality Working Group was asked to draw up a boilerplate contract for organising the carriage by successive rail carriers and listed shipping companies. This has been available to CIT members on the [CIT website](#) in English, French, German and Russian since mid-2016. One possibility for practical implementation is to use these opting-in documents on certain pilot routes in the Baltic Sea.

To encourage maritime services to request inclusion, CIT joined forces with the LG to organise a workshop in Klaipeda on the Baltic Sea on 3 and 4 July 2019. The workshop, which was attended by over 25 participants, began with a visit to the port of Klaipeda in the afternoon of 3 July, followed by a very informative visit to the Draugyste freight station, where the use of the common consignment note for multimodal carriage was discussed. 4 July was dedicated to individual presentations by the CIT General Secretariat and CIT members LG, PKP, RZD, UZ, BPRM as well as by Plaske on the subject of rail-sea and multimodal traffic.

Implementation of the boilerplate contract for rail-sea carriage on various pilot runs

The CIT GS had already established contact with the Stena Line Freight shipping company on behalf of the multimodality working group to discuss the use of the boilerplate contract for rail-sea carriage as well as the GTC for rail-sea carriage on pilot runs in the Baltic Sea. One potential pilot run is a project that Stena Line Freight has been working on since the beginning of 2018 together with the German railway undertaking Pressnitzalbahn and the chemical group Deucon. The pilot for the use of the GTC and the boilerplate contract for rail-sea carriage carried out as part of the Stena Line Freight project was initially organised as a «virtual» pilot to enable a detailed legal analysis of the interfaces between rail-sea carriage. The aim is also to analyse which other CIT documents could be used for these carriages.

Inclusion of the Sassnitz/Mukran - Baltijsk maritime service for a real pilot project

There was also some discussion about following up with a real project. The context is BPRM's attempts to provide rail freight services from China to Germany via the Baltijsk – Mukran sea route on the basis of a through contract and the CIM/SMGS consignment note. To do this, the Sassnitz/Mukran - Baltijsk service must be included in OTIF's CIM list of maritime or inland waterway services. BPRM together with the SG CIT provided a detailed explanation of the process of including the sea route in the OTIF CIM list of maritime and inland waterway services. Participants at the CIT Workshop in Klaipeda were in general agreement that now was the right time to add services to the OTIF list of maritime and inland waterway services and that the CIT SG should provide support not only for the Sassnitz/Mukran – Baltijsk service but also for other services in the Black Sea.



CIT Workshop in Klaipeda

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20 years of COTIF. Quo vadis?

CIT Contribution to the OTIF Symposium celebrating the 20th anniversary of the Vilnius Protocol on 29.10.2019 in Vilnius.

The COTIF 99 was developed in the 1990s. At that time, liberalisation and opening of the railway market were on the cards. While it was possible to discern the beginnings of digitalisation at that time, this and other trends have now become much more apparent. Does the COTIF 99 need to be adapted to reflect these developments? Do the railways have to modernise the “legal” tracks on which they operate?

1. Digitalisation

The COTIF 99¹ was not unaware of the digital transformation; its arrival was already on the cards. Article 6 § 9 of the CIM² therefore defines the legal basis for the electronic consignment note. However, the electronic consignment note must have functional equivalence with the paper solution, particularly for reasons of evidential value.

Open questions about digitisation

There are three main questions concerning digitalisation and COTIF 99.

- *Is the requirement for functional equivalence in the context of technical developments in digitalisation still up to date?*

In tomorrow's digital world, only predefined data records will be transmitted electronically. IT systems will be interoperable and will no longer rely on «printable» interfaces. Data records will not only contain the content of the consignment note but will also contain information flows to the authorities (such as customs, RID) or to the infrastructure managers (such as TAF TSI). A governance system will regulate access to data. Whether the requirement for functional equivalence will still be appropriate in this kind of a digital environment is rather doubtful.

- *What about evidential value?*

On paper, it is quite clear; the paper-based consignment note (original and carbons) is proof of the contract and is recognised by the courts (Article 12 CIM). The situation is more complex in the digital world. An investigation by CIT has shown that the acceptance of digital documents (meaning print-outs of digital information) is regulated very differently in different countries. Today, this involves a huge amount of legal uncertainty and is one reason why the digitisation of consignment notes is progressing so slowly. The situation with passenger traffic is similar. Article 7 § 5 of the CIV³ states that a ticket can also take the form of electronic records that can be transformed into legible written symbols. The data must also be functionally equivalent in terms of its evidential value, although it is doubtful whether this will continue to be realistic in a digital world.

- *What about customs regulations?*

According to the current Article 6 § 7 a legal connection exists between the consignment note and customs law. Although the simplified customs procedure is likely to be with us for several years yet, the question remains as to how freight and customs law should act within a digital environment (new EU customs code). Paper will inevitably become less important.

¹ Convention concerning International Carriage by Rail, or COTIF for short, according to the Vilnius Protocol.

² Uniform rules concerning the contract for international carriage of goods by rail - Appendix B to COTIF

³ Uniform rules concerning the contract for international carriage of passengers by rail (CIV) - Appendix A to COTIF

2. Increased competition

Encouraging competition was one of the key objectives of COTIF 99. However, this was more a theoretical concept than a reality in the 1990s.

Today it is different. The introduction of competition was completed for freight traffic in 2007 and for international passenger traffic in 2010 national passenger traffic is following 2020. The share of the competitor railways in freight traffic is around 30%, although the share in passenger traffic is still well below 20%.⁴ The EU's market regulation of the railway sector has led to an increase in the number of players with differing financial incentives (railway undertakings, infrastructure managers, service facility operators, wagon keepers, etc.). COTIF follows the principle of the «one-stop shop» in the execution of contracts, which is well understood and appreciated by the customers. The complex railway system can only compete if it is easy for customers to understand and to use, even when there are problems. The pathways must remain clear and simple for the customer. They do not want to have to find their way through a maze.

What are the roles of the current players in this system? The doors to the previously mentioned, and certainly desirable, COTIF-«one-stop shop» are in the hands of the railway undertakings. These are the primary points of contact for passengers and consignors of freight in the event of a disruption in the performance of the contract of carriage. The allocation of responsibility and compensation between the various participants takes place «behind the scenes» as part of a recourse settlement. In other words, the most important matter is dealt with behind closed doors.

The rules in the background

In the event of death or personal injury, the passenger traffic carrier is liable in principle, irrespective of the infrastructure used.⁵ According to Articles 8, 11 and 12 of the CUI, recourse against the infrastructure manager is limited⁶ to the compensation due to the passenger on the basis of the CIV. Excluded from the recourse against the infrastructure manager are the increasingly important compensation payments for delays as prescribed by the EU Regulation on Passenger Rights. According to media reports, the annual compensation payments made by DB now amount to over 50 million EUR. The parties could, of course, reach an agreement on whether and to what extent the infrastructure manager is liable for the damages suffered by the carrier as a result of the delay or disruption (Article 8 § 4 CUI). But let's be frank – are infrastructure managers really interested?

⁴ Figures from to fifth report on monitoring development of the rail market by the European Commission from 2016

⁵ Article 26 CIV

⁶ Uniform rules concerning the contract of use of infrastructure in international carriage by rail - Appendix E to COTIF

The same principles also apply to freight traffic, where the carrier is liable for loss or damage and for exceeding the transit period (Article 23 § 1 of CIM). The carrier is also liable for the loss of or damage to the wagon or its accessories.⁷ Here too, recourse against the infrastructure manager for damages suffered by the carrier as a result of a delay or operational disruption is only possible if the parties have concluded an appropriate agreement (Article 8 § 4 CUI).

The wagon keeper is liable to the carrier for damage caused by the wagon only if the carrier can demonstrate fault on the part of the keeper (Article 7 § 1 CUV). In practice, such proof is difficult to provide.

Obvious disincentives

It is clear that one side is at a disadvantage, and that is the railway undertaking. There is no commercial reason for infrastructure managers to conclude an agreement on delays and operational disruptions for either passenger or freight traffic. The principle of (voluntary) agreements does not go far enough here. Mandatory regulation is needed. And it should eliminate disincentives from the system at the same time.

What is the incentive for an infrastructure manager to offer high-quality train paths if he doesn't have to pay for the financial consequences of delays, even if he has caused them? Experience has shown that state-owned infrastructure managers subsidised by the public sector point to the lack of a statutory framework and refuse to «voluntarily» increase their contractual liability. While this is understandable, it is far from satisfactory.

The same applies to wagon law: why should a wagon keeper invest in safety measures when he is unlikely ever to be liable for the damage caused by his wagons? After all, during the negotiations on the GCU (General Contract of Use of Wagons), the wagon keepers agreed to reduce the strict burden of proof placed on railway undertakings towards the wagon keepers in the CUV.

The railways can only compete with road if the regulations provide economic incentives (such as liability rules, for example) to support an improved «system performance» by the railway towards its customers.

Acting more quickly

The growth in competition is making it necessary to alter some of the COTIF appendices. For example, there is the matter of whether, in view of the changes in the logistics sector, the consignment note can be made a letter-of-credit-compliant document. In order to respond to these rapid changes in the market environment, the adjustment mechanisms for regulation need to be accelerated. The basis for doing so was put in place at the last OTIF General Assembly in 2018.

3. Door-to-door solutions

The railways have a reputation with customers for being extremely complicated. The complexity of the law and contracts is a major reason for this negative perception, as well as quality. Freight traffic customers in particular want to send their goods from A to B without being confronted with the different regulations for each mode of transport and the likelihood of having to deal with complex transport contracts. Digital platforms such as blockchain and smart contracts are helping them to conclude and process intermodal transport contracts from A to B more conveniently and easily. For this reason, carriers are under an increasing obligation to bear the legal and financial risks of the transport chain.

The question here is whether and how COTIF can support this technical development from a legal point of view. On this same matter, the authors of COTIF 99 have already implemented a multimodal approach to regulation (Article 1 §§ 2,3 of CIV and 3, 4 of CIM). This approach should be continued.

In view of the increasing national importance of COTIF (CIV, for example, passed into national law as part of the EU Passenger Rights Regulation), it is regrettable that the last revision of the CUI missed the opportunity to adjust the scope of application of CIM, CIV and CUI and to simplify their contractual structure, at least for international traffic.

4. Conclusion

From CIT's point of view, COTIF and its appendices provide a valuable, high-quality legal framework for the performance of international rail transport. The framework has proved to be very successful in practice. In the 1990s, COTIF was devised to be modern and forward-looking. This forward-looking approach of the «founding fathers» must be maintained – especially in the face of digitalisation, increased competition and multimodal door-to-door transport! The overriding objective must be to make the complex railway system even more competitive with other modes and systems of transport through the use of innovation, legal certainty and the highest level of quality and customer awareness.

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⁷Article 4 § 1 CUV; Uniform rules concerning the contracts of use of wagons in international rail traffic - Appendix D to COTIF



Changes ahead for the CIV Committee

The outcome of the 21st CIV Committee involves a large number of new documents adopted and amended existing documents, having also had to decide upon several operational changes concerning future stages of its activities.

European and international legislative initiatives

The CIV Committee opened with a presentation of various initiatives currently under discussion before the European authorities and OTIF, as well as European and international regulations that have been recently adopted. The impact of the [Directive on accessibility](#), the Convention on the facilitation of border crossing procedures for passengers, luggage and load-luggage carried in international traffic by rail, but also, and above all, the revision of the European Regulation (EC) No. 1371/2007 on rail passengers' rights and obligations, were on the agenda.

Data protection: a new manual for CIT members

The CIV Committee has adopted as a new product, a manual on data protection (MDP). This includes the guidelines and the two CIT boilerplate contracts. It also includes examples of best practice clauses and a commented part on the articles of the GDPR, with summaries of decisions and judgments, and the responses provided to the questions raised by CIT members.

On the basis of discussions and suggestions formulated during the CIT Data Protection Workshop, which is covered on page 11, the CIT General Secretariat, in collaboration with the data protection group of experts, will from this autumn, be pursuing the revision of the MDP and add standard procedures particularly concerning the impact analysis concerning data protection in rail traffic, the balance of interests, and the transfer of data to third countries.

The CIT continues its work on passenger multimodality

Two boilerplate contracts on air/rail multimodality have been developed by the CIT. These set out the models for co-operation that are the most commonly used in practice. These two new boilerplate contracts have been adopted by the CIV Committee.

The CIT also plans to continue its work on multimodality, and is supporting the UIC in a number of projects that it has launched in this field.

Revision of existing documentation

The Committee has had to adopt a number of modifications in CIT documents: the Manual for International Rail Tickets (MIRT) has thus had a number of linguistic and terminological modifications, and the Agreement concerning the Relationships between Transport Undertakings in respect of International Passenger Traffic by Rail (AIV) has also been modified to better take into account the case of strikes, the Passenger traffic glossary has been expanded based on new terms that have appeared in the MIRT, MDP, and also in the UIC leaflets.

Digitisation on CIT's radar

A large number of initiatives are in progress concerning new technologies. By way of example one can cite the MaaS projects or the use of blockchain in rail traffic. Under the mandate of the CIV Committee, the CIT is closely following these initiatives and is studying the legal implications they will have for the sector. It is already involved in this connection with various UIC projects in this area.

Organisational changes

The CIV Committee has agreed that the new CIT documents and all modifications to existing documents shall now come into force on the same date, namely the timetable change date, which this year falls on 15 December 2019.

At its 21st meeting, the Committee was also involved in decisions taken on the organisation of its future meetings. In fact, it has determined over recent years that the CIV Work Group meetings had moved closer and closer to the CIV Committee meetings due to the Easter holidays, which made the work of the CIT General Secretariat more complex. It has thus decided that, henceforth, the CIV Committee meetings will take place in September, coupled with the Conference of passenger claims departments. The CIV WG meetings will take place in February, May, and November. The next meeting of the CIV Committee will take place at the end of September 2020 (the exact date yet to be decided) at the Trenitalia head office, in Rome.

This 21st Committee was also marked by the announcement of the departure of Mrs Isabelle Oberson (Senior Legal Adviser, CIT) from the CIT. The CIV Committee expressed its thanks for her commitment and for the quality of the work she has done over almost fifteen years with the CIT, and wished her every success in the continuation of her activity. She will continue to provide her support to the CIT as a consultant.



An agenda as full as ever for the 21st CIV Committee

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CIT/UIC Conference of Passenger Claims Departments

The revision of the Rail PRR, night trains in Europe and the handling of claims and complaints in connection with night trains were some of the highlights of this year's CIT/UIC Conference of Passenger Claims Departments, held in Vienna on the kind invitation of ÖBB. More than 70 participants from CIT and UIC members participated in the conference this year under the chairmanship of Enrico Trapazzo (FS).

Latest developments on the rail PRR

Isabelle Saintilan (SNCF) started the conference by providing a state of the art on the revision of the Rail PRR, now being discussed in the Council of the EU. The first proposals being made under the Finnish Presidency are rather favourable for the railway undertakings, but it is still too early to say how the final text of the revised Rail PRR will look like.

Night trains in Europe – ÖBB NightJet and Thello

The main focus of this year's conference was night trains and how to handle claims and complaints in connection with night train services. Olivia Lancerotto (ÖBB) started with a general presentation of the ÖBB NightJet, now connecting the main cities of central Europe; in the afternoon Giuseppina Galoppo together with Marie-Charlotte Perfumo (Thello) presented the night train service from Paris to Milan. Both presentations showed the advantages, and the challenges, of night trains today. On one hand, in the light of the present environmental discussions, night trains are considered as one of the best ways to travel overnight, on the other hand the operation and after sales activities of night trains present a lot of challenges.

How can we make the after sales of night trains as efficient as possible?

Christian Stubits (ÖBB) presented the general objectives and internal processes of the ÖBB Customer Service by especially highlighting the need to adapt to the rising volumes of customer claims and to push the digitization of the processes. David Sarfatti (UIC) followed with the latest developments within the UIC aiming at supporting after sales activities, e.g. the creation of international database solutions enabling the railway undertakings to store information about international tickets as well as their use. In the presentations of Oliver Hirschfeld (DB) and Jan Vávra (CD) the very complex situation about the different types of cooperation for night trains were highlighted (successive carriage, substitute carriage, "mixed carriage"), who is legally responsible towards the customer and how this should be correctly communicated on the tickets.

The discussions continued in both the morning and the afternoon workshops where complicated after sales cases involving night trains were analysed and commented by a very interested and active audience. Some of the questions raised: Do all kinds of tickets (both classic paper tickets and different kinds of e-tickets) contain the correct information about the night train journey? How and when to apply commercial gesture ("Kulanz") and is it always to be decided by the carrier(s) involved and not by the issuer? How to handle the complicated situation regarding connecting train services to/from night trains, especially when different tariff systems are used as in Germany?

News in the CIT products

Sandra Dobler and Jan Svensson (CIT) also took the opportunity to give an overview over this year's changes in the different CIT passenger products, coming into force on 15 December 2019, especially highlighting the clarifications in the AIV concerning strikes and the new enlarged handbook for data protection, MDP, not only containing the Guidelines in their present version but also comments on the articles of the GDPR from a railway point of view and examples of clauses.

The conference was closed by Enrico Trapazzo (FS), underlining the importance of the feedback from the conference to the CIT in the light of the upcoming revision of the AIV, thanking the participants for their active participation and inviting all to next year's conference of passenger claims departments, which will take place in September 2020 in Rome (exact date has yet to be determined).



CIT /UIC Conference of Passenger Claims Departments

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The CIT's CIM working group bids farewell to Peter Schuld on his retirement

In June 2019, the CIT Working Group on Freight Traffic (AG CIM) met for its summer meeting in Bern. At this meeting, the DB Cargo representative, Peter Schuld, officially retired. Digital trends and innovations are constantly evolving. To keep its finger on the pulse, the CIM working group revisited the subject of digitalisation.

Digitalisation

The CIM working group was informed of the status of the European Commission's «Digital Transport and Logistics Forum» (DTLF) project. The CIT General Secretariat was once again selected as a strategic partner for the follow-up project (known as DTLF II) and is carrying out this work together with the CER in the «Paperless Transport» subgroup 1.

Digital trends and innovations are constantly evolving and the CIM working group is interested in keeping up to date with developments. This is why Philip Hanke, Director of Publishing at Weblaw AG, was invited to give a presentation on the topic «Saving and verifying documents in the blockchain with weblaw memory». «Weblaw memory» enables you to save a document's «fingerprint» in the blockchain in order to demonstrate its authenticity. The participants of the CIM WG discussed the topics of blockchain and smart contracts and talked about the solutions currently being developed in their undertakings. It appears that the undertakings are pursuing a variety of approaches. The general conclusion was that the subject of digitalisation should be closely monitored.

New transport models and how they are reflected in CIT's freight documentation

Members of the CIM working group had another opportunity to discuss the subject of transport models and the implementation/adjustments that might need to be made to the freight documentation. The main purpose of the discussions was to ensure that the information entered in the CIM consignment note was correct and consistent and complied with the legal requirements of the CIM Uniform Rules.

It was interesting to note during a discussion of the practical relevance of individual models that some CIM WG members said they had noticed the reoccurrence of a trend towards the increased use of successive carriage and that this often amounted to as much as 50% of all carriages.

Electronic formal report (CIT20a)

The final outstanding questions on the implementation of the electronic formal report (CIT20a) were resolved, allowing the work completed so far to be concluded. The technical work being undertaken by RailData will be supported.

Seals expert group

At the meeting of the «Seals» expert group, Fabienne Vaisson (SNCF Logistics), Chairman of the expert group and member of the CIM working group, informed the CIM working group that she unfortunately had to resign from her post in the Seals expert group because of other priorities. The CIM working group would like to thank Mrs Vaisson for the valued contribution she has made.

Future developments of the AIM?

In response to some of the proposals made by the UIC RCF2¹ working group to the CIM working group for altering Chapter 6 of AIM («Misroutings»), members of the CIM working group asked about possible further development as well as the applicability of the AIM agreement to substitute carriers. The members of the CIM WG therefore decided at the meeting they would take the first step of checking the AIM for the use by substitute carriers in their own undertakings.

Next meeting

The next meeting of the CIM working group will take place on 27/28 November 2019 in Bern.



The Chairman of the CIM WG, Cristian Cuenca of DB Cargo (left) and Erik Evtimov of GS CIT (right) say goodbye to Peter Schuld at the end of a successful meeting.

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¹UIC's RCF2 working group is concerned with freight traffic billing and the rules governing financial relations between undertakings.

Latest news from the CIT/OSShD project «Legal Interoperability CIM/SMGS»

The coexistence of two different legal regimes, COTIF/CIM and SMGS, poses a serious challenge to the provision of global rail transport services in the transcontinental corridors between Europe/Russia and Asia/China. When issuing new consignment notes at the regimes' boundaries, there is, over a distance of more than 11,000 km, always a risk of errors that can cause delays in transport operations and significant legal uncertainty. In the meantime, the digital transformation demands seamless planning and organisation of Eurasian traffic and the universal use of the new electronic consignment note.

Electronic CIM/SMGS consignment note

The specifications for the electronic CIM/SMGS consignment note entered into force on 1 July 2019. The technical specifications were prepared by the CIT/OSShD ad-hoc technical group CIM/SMGS and in consultation with the EDIFACT and XML sub-units. The Russian and Chinese versions of the specifications were also completed by OSJD on 1 July 2019 and published on the website. The challenge is now to plan and organise pilot traffic using the electronic CIM/SMGS consignment note, which should not be confused with the advanced consignment information that some railways exchange electronically. In order to organise these pilot traffics, two additional CIM railways would need to exchange data electronically and log the outgoing consignment note electronically along with the customer's original data. The project managers have a multi-stage procedure in mind.

Another important aspect is the sharing of data with the customs authorities by means of the electronic CIM/SMGS consignment note. The CIT SG together with the CIM/SMGS steering group will provide the necessary coordination between the CER customs working group and the customs authorities in Russia, Belarus and Kazakhstan.

Proposals for supplementary provisions in the CIM/SMGS Consignment Note Manual on liability for exceeding the transit period

At the meeting of the CIM/SMGS legal and expert group in July 2019, the representative of the Belarusian Railway (BC) presented supplementary proposals for new provisions concerning exceeding of the transit period in the CIM/SMGS Consignment Note Manual - GLV-CIM/SMGS and/or Appendix 6 SMGS. The BC proposes that subsections 12.3.1 and 12.4.1 of the CIM/SMGS Consignment Note Manual be supplemented by provisions on the presentation and handling of claims for exceeding the transit period as well as by complementary provisions for the payment of compensation awarded for carriages with the CIM/SMGS consignment note.

Since CIM and SMGS have quite different liability regimes for dealing with liability for exceeding the transit period, and since there is no through transit period CIM-SMGS due to the disruption of the contracts of carriage, one CIM, the other one SMGS, it should first be agreed whether the proposed additions are actually relevant.

Multimodal carriage to Europe from the Republic of Korea

The undertakings RZD Logistics and FESCO have tested a new multimodal route from the Republic of Korea. It combines three modes of transport: shipping, rail and truck. The new route connects the country with the European Union via the Trans-Siberian Railway. This interesting carriage and the multimodal carriages that have just started from Japan to Europe – also via the Trans-Siberian Railway – raise several additional legal questions for CIM/SMGS traffic from a multimodal perspective. The Russian Railways and the Intermodal Operators Association of Japan (TSIOAJ) are continuing their efforts to establish regular direct connections between the ports of Japan and the Russian Far East.

The challenges of CIM/SMGS multimodal traffic were discussed in detail at a CIT workshop held in Klaipeda at the beginning of July 2019. Further information can be found in this issue of CIT Info.



CIM/SMGS legal and expert group

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¹Further information on the different liability regimes and how they deal with exceeding the transit period is contained in the comparative analysis of COTIF/CIM and SMGS:

<https://bit.ly/2pjyULb>

Court decision on infrastructure use

The CIT regularly reports on and discusses interesting decisions on infrastructure use made by the courts and regulatory bodies. Starting in 2020, the CIT will create a database of these cases and publish it on its Website. The decisions described here involve a preliminary ruling procedure before the EU Court of Justice (ECJ) and a decision by the German Regional Court in Frankfurt am Main.

1. Question by the Schienen-Control Commission on the interpretation of the term «passenger platforms» within the meaning of Directive 2012/34/EU - ECJ decision of 10 July 2019 (C 210/18)

Schienen-Control, the regulator for the railways in Austria (as a court with jurisdiction to give rulings pursuant to [Article 267 TFEU](#)¹) had referred a question to the ECJ for a preliminary ruling on whether the «passenger platforms» used for station stops by railway undertakings, as mentioned in the second indent of Annex I (list of railway infrastructure installations) to Directive 2012/34/EU, are part of the service facility as described in Annex II point 2(a) “passenger stations whose buildings and other facilities” are to be subsumed under Directive 2012/34/EU or whether passenger platforms are included in the minimum access package referred to in Annex II point 1(c) «use of railway infrastructure».

The background to the question was a dispute between the Austrian infrastructure manager ÖBB-Infrastruktur and an RU about whether the passenger platforms belong to the minimum access package or if they are considered as service facilities and their use for boarding and alighting of passengers can therefore qualify as a service. This question is crucial for ascertaining the access arrangements and the acceptable level of charges to be paid for the use of passenger platforms. As far as the charges levied by ÖBB-Infrastruktur are concerned, if passenger platforms come under the minimum access package, ÖBB can only levy the amount of the costs directly incurred as a result of operating the train service (art. 31(3) of Directive 2012/34/EU). If they are considered to be service facilities, a reasonable profit may be added (article 31(7)).

In its question to the ECJ, the Schienen-Control commission stated that a literal interpretation would favour the view that the use of passenger platforms falls within the scope of the minimum access package. On the other hand, a systematic interpretation could consider the passenger platforms to be service facilities. It was also stated that, before the national implementation law on Directive 2012/34/EU came into force, the provision of passenger platforms was considered to be one of the service and promotional activities carried out by RUs in their passenger stations, and was part of the «passenger station» service facility.

The Advocate General of the EU suggested to the ECJ in his Opinion that «passenger platforms» should be included in the minimum access package. In its decision of 10 July 2019, the ECJ agreed with this view: passenger platforms should be considered part of the railway infrastructure, the use of which is part of the minimum access package (Annex II, point 1(c)). In its decision, the Court referred to the intention of the EU legislators to distinguish between passenger platforms and passenger stations, with only the latter being service facilities within the meaning of Annex II point 2(a) to Directive 2012/34/EU.

How will this decision affect the RU - infrastructure manager relationship?

The decision of the European Court of Justice has implications for the future form of usage charges in European countries. Some operators had previously supported the legal opinion expressed by the ECJ and structured their charges accordingly. Others, however, had set the charges according to the view previously held in Austria (at the rates applicable for service facilities). It is also important to note that the parts of the minimum access package are operated or carried out by infrastructure managers. This is in contrast to service facilities, which may be run by RUs or by third parties.

2. Ruling by the Regional Court of Frankfurt am Main, judgment of 6 September 2016 (Ref.: 2-23 O 160/16)

This judgment concerned a disputed claim for damages against the infrastructure manager for the derailment of several wagons at his station. The contractual relations on the claimant's side were very complex. The claimant (a Dutch wagon rental company) rented wagons, which it leased to its sister company, a rail freight forwarder. The latter asked an RU to shunt the wagons in the station, where the wagons derailed. The station is operated by the defendant, the infrastructure manager. To claim damages for the wagons, the claimant had the damages suffered by the wagon owner assigned to himself in order to make the claim against the infrastructure manager.

This decision is of particular interest to those working in the field of «infrastructure use». The regional court ruled that the infrastructure manager must compensate the claimant in full for the damages on the grounds of strict liability under § 1 of the German Liability Act. The provision states that if a person is killed, (...) or an object is damaged during the operation of a railway, the operating undertaking is required to compensate the injured party for the damage caused. Exclusions include the obligation to pay compensation in cases of force majeure. German Supreme Court case law says that railway undertakings and infrastructure managers are both operating undertakings. An operational accident therefore requires an immediate external, local and chronological link to be established between the accident and a specific operation/facility or an accident caused by a risk peculiar to the operation of the railway. If both the RU and the infrastructure manager are involved in the operational accident, they are jointly and severally liable to a third party (in the case in question, the court only looked at the claims against the infrastructure manager).

The court considered that all the conditions of the German Liability Act were fulfilled but, because the infrastructure company was already liable for its operational risks irrespective of the cause of the accident, did not offer an opinion on whether the wagons derailed because they were incorrectly loaded or because the tracks were in poor condition.

¹Treaty on the Functioning of the European Union - [TFEU](#)

How does this decision affect the liability relationship between RUs and infrastructure managers under § 1 of the German Liability Act?

The claimant in the judgement was not a railway undertaking, but a company that rents and leases wagons. If an RU's wagons are damaged, the German Federal Court of Justice has already ruled that the reciprocal liability for compensation between the RU and the infrastructure manager depends on the extent to which each one was responsible for the damage. When an RU encounters an obstacle on the track, for example, the general operational risk of the RU is considered to be 1/3, and the increased operational risk of the infrastructure manager 2/3.

Moreover, the judgement highlights the importance of investigating the different liability relationships between the parties, the RU and the infrastructure manager, as well as other stakeholders such as wagon owners.

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LAW AND PRACTICE

Freight consignments without transport documents?

The cross-border carriage of goods without transport documents, such as a consignment note or other supporting documents, is possible in theory according to the principles of freedom of contract described in the 1999 CIM Uniform Rules (CIM UR). It follows therefore that the absence, irregularity or loss of a consignment note does not affect the existence or validity of the contract, which remains subject to the CIM Uniform Rules (Article 6, § 2, second sentence, CIM). But how should the participating railways deal with the consignment in such cases? Should it be accepted or refused by the receiving carrier and sent back to the handing over carrier?

On the one hand, these discrepancies can cause serious problems for international rail freight traffic and have a lasting negative effect on its attractiveness to rail customers. On the other hand, such lapses are another reason for the flaws in international rail freight traffic, since Annex 18 (Accompanying document) based on working sheet 07-02 GTM-CIT ([CIT](#) Freight Traffic Manual) could not be used in this case.

In this specific case, the goods in question are not surplus goods that have arrived at their destination, but goods in transit without any transport documents. As far as the procedure is concerned, it is also advisable in this case to follow the procedure described in the third indent of working sheet 07-02, [GTM-CIT](#) since, if the transport documents are missing in their entirety, copies of the CIM consignment note (duplicate) and the attached documents which would be mentioned in field 9 of the CIM consignment note must be requested from and must be supplied by the contractual carrier – working sheet 07-02 of GTM-CIT in connection with the explanatory notes in Annex 2, field 9 of the CIM Consignment Note Manual (GLV-CIM).

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A great success for the second CIT Data Protection Workshop

The impact of GDPR on the internal organisation of railway undertakings, new technologies and future regulations on data protection: some of the specific subjects addressed at this second workshop dedicated to data protection.

Extensive participation and high quality contributions for this second presentation

On the occasion of “one year” of the Regulation (EU) 2016/679 (GDPR), the CIT has decided to run a workshop to update on the situation regarding implementation of GDPR in the rail sector. This event, which was open to CIT members, was a huge success, with no fewer than 57 participants from nearly thirty different companies. This shows the ever-increasing interest on the part of CIT members in questions linked to GDPR, not only concerning passenger traffic, but also freight traffic.

But this success would not have been possible without the engagement and quality of the presentations of the various contributors. The CIT General Secretariat therefore expresses its warm thanks to them.

Application of GDPR to rail traffic

The morning continued with a discussion on a range of different subjects specific to the railway sector: Mr Johan Vandendriessche (lawyer, Affluo) thus addressed the question of the processing of personal data of minor passengers; Mr Claudius Ettlinger (data protection officer, CFF) dealt with the impact analysis of data protection particularly in relation to mobility data, before handing over to Mr Marek Andrzejewski (Vice-Director, IT department, PKP) who explained the role of the subcontractor (“data processor”) in the railway sector. Mrs Sandra Dobler (legal adviser, CIT) closed the morning with a presentation of CIT’s new documents relating to data protection.

Practical cases and GDPR

Following a midday break which gave participants the opportunity for more informal exchanges, the second part of the workshop was devoted to a number of practical cases: Mrs Ieva Lizunaite (Security division expert, LG) addressed the question of the lawfulness of the processing of personal data, Mrs Katarína Tichá (legal adviser and data protection officer, ZSSK) continued with a presentation on the blacklisting of customers, and Mrs Monique Sturny (lawyer, Walder Wyss Ltd) closed this third part with a presentation on the transfer of personal data to third countries.

New technologies and new regulations

The day ended with a session dedicated to GDPR and the future, with the central subject of the impact of GDPR on the use of new technologies and future data protection regulations. Following a presentation by Mrs Barbara Möri (legal adviser, SBB) on blockchain and MaaS, Mrs Gonnine Kruize (data protection officer, NS) covered the internet of things, artificial intelligence, and social networks. Mrs Bianca Jonas (data protection officer, SNCB) brought this very enriching day’s proceedings to a close with a presentation on the future [ePrivacy regulation](#) and the [implementation](#) of the Belgium [PNR Directive](#).

Data protection group of experts, and future workshops

The feedback, both during and after the workshop, was very positive and gave weight to the idea of organising an annual meeting dedicated to data protection. In the light of the energy and resources needed for holding such an event, it was however decided that such a workshop should be organised every two years, but that in tandem with this, an annual meeting solely for the data protection experts should be organised. The aim of this annual meeting will be to discuss with the various experts in the member undertakings of the CIT the issues that each of them may have encountered, and to develop common solutions, in order to ensure an application of the law in accordance with the provisions of GDPR. This meeting will also be an occasion for working on the development of the CIT documentation on data protection.

A call was launched during the workshop for employees dealing data protection in CIT member undertakings (both for passenger traffic and freight traffic) to join this group of experts. For those not yet included on this list of experts, they are invited to contact the CIT as soon as possible by writing to info@cit-rail.org.

The next meeting of the group of data protection experts should take place in spring 2020.



Strong attendance by CIT member undertakings at this second workshop on data protection

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Second meeting of the Executive Committee in 2019

Under the chair of CIT President Maria Sack (DB AG), the second CIT Executive Committee meeting took place on 26 September 2019 at the headquarters of DB AG in Berlin.

After the CIT President had opened the meeting in Berlin, Frank Myram, Group Representative, Head of Economic, Political and Regulatory Affairs at DB AG, welcomed the CIT Executive Committee personally. In his welcome message, he made special mention of rail's increasingly important role in solving environmental and climate issues, and underlined the value of CIT's work for its members.

The Executive Committee made preparations for the 2019 General Assembly due to take place in Bern on 14 November. It approved the proposed 2020 budget and noted the implementation status of the 2019 work programme by the General Secretariat. The "Berliner Tage" 2020 programme was also approved. An important topic at the meeting was the strategic direction of CIT's work between now and 2025. The President will present the results of this work to CIT members at the General Assembly.

CIT would like to thank DB AG for organising the meeting so efficiently. The next Executive Committee meeting will take place on 23 April 2020 in Bern.



Berlin Hauptbahnhof

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Training courses for CIT members

Following Bratislava and Amsterdam, the CIT General Secretariat delivered its tailored training course in Vienna at the premises of ÖBB. There was very good attendance at this workshop, once again demonstrating the value and relevance of this internal training.

A very high level of participation for this training at the premises of the Austrian Railways

The CIT General Secretariat took the opportunity of the Vienna location, in the context of the Conference of passenger claims departments (see the article at page 6) to deliver internal training at the premises of the Austrian Railways. With nearly 35 participants, mainly from customer service departments, the CIT GS was able to count on a high level of participation from ÖBB. Given the composition of this group, the CIT GS placed the emphasis in this training on questions relating to the handling of claims.

A very full programme

This training morning enabled the CIT GS to review various themes that the ÖBB wanted to examine in greater depth: the legal framework for passenger rights, various recent judgments, the handling of claims and customer service, data protection, and ticketing.

The participants were naturally able to raise questions on the various subjects proposed, which they certainly did, leading to very interesting and enriching discussions.

Interested in tailored training for your undertaking?

The CIT GS can run tailored training for its members, according to the needs of each undertaking.

Any undertaking interested in receiving such training is invited to contact the CIT GS.



A very high level of participation by the Austrian Railways in this internal training

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New member of staff at the CIT secretariat

The General Secretariat of CIT has appointed Mr. Ardian Balaj as legal designer. He took up the post on 1 August 2019. His appointment strengthens our expertise in freight traffic and he will handle matters such as the digitisation of the CIT documentation.

We welcome our new employee to CIT and look forward to working with him.





CIT CALENDER

Date	Event	Location	CIT Contact
12/13.11.2019	Arbeitsgruppe CIV	Bern	Sandra Dobler
14.11.2019	General Assembly	Bern	Cesare Brand
27/28.11.2019	Working Group CIM	Bern	Erik Evtimov

Agenda with CIT participation

Date	Event	Organisation	Location	CIT Contact
5.11.2019	Intelligent Transport Conference	Intelligence T.	London	Jan Svensson
6.11.2019	Digital Rail Revolution Conference	Gl. Railway	London	Erik Evtimov
7.11.2019	UIC PSG Plenary	UIC	Paris	Cesare Brand
7.11.2019	CER Assistants	CER	Paris	Erik Evtimov
10/11.12.2019	UIC GV	UIC	Paris	Cesare Brand

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