

Practical cases Rail-Road

CIT/IRU Workshop “Rail-Road”

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Summary



- Case study “Rolling Road” – conflict of laws?



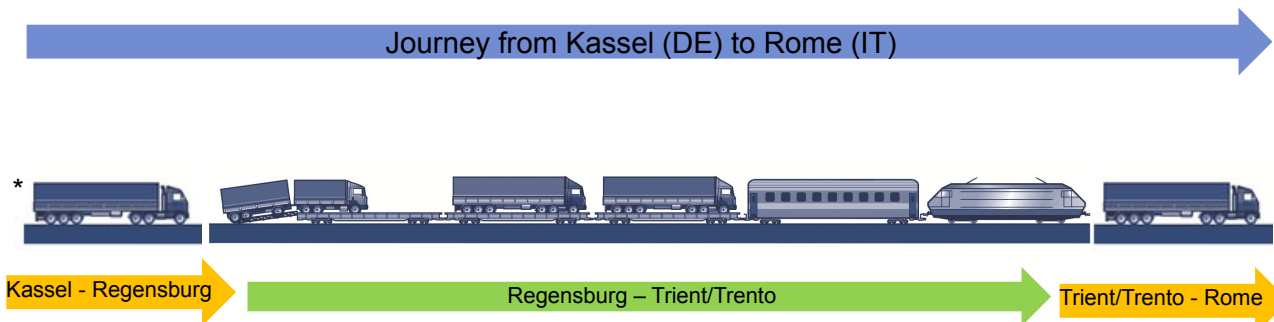
- Federal Court of Justice (DE) ruling of Oct 2013 – application of Art 1§3 CIM?



- Ecological aspects of combined transport

Description of the case

On the journey from Kassel to Rome, the road carrier has his loaded lorry transported by rail on the rolling road (“RoLa”) from Regensburg to Trient/Trento.



* Source of images: HUPAC



3

Description of case A



Assumption A: Damage occurs on the RoLa (this is proven)

Article 1 § 3 CIM:

“When international carriage being the subject of a single contract *includes carriage by road* or inland waterway in internal traffic of a Member State as a *supplement to transfrontier carriage by rail*, these Uniform Rules shall apply”.

Article 2 § 1CMR:

“Where the vehicle containing the goods is carried over part of the journey by (...) rail, (...) and (...) the goods are not unloaded from the vehicle, this Convention shall nevertheless apply to the whole of the carriage. *Provided that to the extent it is proved that any loss, damage or delay in delivery of the goods which occurs during the carriage by the other means of transport was not caused by act or omission of the carrier by road, but by some event which could only occurred in the course of and by reason of the carriage by that other means of transport, the liability of the carrier by road shall be determined not by this convention but in the manner in which the liability of the carrier by the other means of transport would have been determined if a contract for the carriage the goods alone had been made by the sender with the carrier by the other means of transport in accordance with the conditions prescribed by law for the carriage of goods by that means of transport. If, however, there are no such prescribed conditions, the liability of the carrier by road shall be determined by this convention.*”



4

Solution of case A



Solution A: Liability shall be in accordance with CIM (as a "mandatory fictitious law governing legs of a journey" in accordance with Article 2.1 CMR).

CMR does not apply according to Article 2 § 1 CMR 2nd sentence:

- ✓ It is proven that the damage occurred on the RoLa (rail leg)
- ✓ CIM is the mandatory law governing the damage on the rail leg
- ✓ CIM is applicable in this special case



5

Description of case B



Assumption B: It is not clear on which leg of the journey the damage occurred.

In this specific case, **the two legal regimes come into conflict.**

1. From the point of view of CIM, the pre- or post-carriage by road is probably only supplementary and CIM would therefore be applicable;
2. From the point of view of CMR, CMR's liability would remain if proof that the damage occurred during carriage by rail cannot be furnished and:
 - the vehicle containing the goods is carried over part of the journey by (...) rail
 - goods are not unloaded



6

Solution of case B



How can we avoid these conflicts?

- In our IRU/CIT-checklist road/rail we recommend an applicable rule if a conflict between international railway transport law and the law applying to the international carriage of goods by road occurs (see point 3 of the checklist).



7

Federal Court of Justice (Germany) ruling of Oct 2013 (I ZR 115/12) - application of Art 1 § 3 CIM on rail-road transportation (1/4)

Facts of the case:

- Transport of a **container from Istanbul to Nuremberg**. The goods were transported by lorry from the consignor in Istanbul to the railway station there, the container was transported by rail from the station in Istanbul to Nuremberg. On arrival at the railway station in Nuremberg, a driver took over the container by lorry and transported it to the final destination
- The claimant argued that the goods transported in the container had a net value of (rounded) € 120'000. When the container was unloaded, the consignee's employees found that **goods** on the loading list **were missing** by a net amount of € 30'000
- The claimant therefore demanded the amount of € 30'000 as well as 13% loss of profit and € 700 proportionate freight costs



8

Federal Court of Justice (Germany) ruling of Oct 2013 (I ZR 115/12) - application of Art 1 § 3 CIM on rail-road transportation (2/4)

Opinion of the previous instances:

- The claim for damages has to be asserted under German law because the scope of application of CIM (which contains priority conflict-of-law rules) would not be open
- The "supplementary" criterion to apply CIM (Article 1 § 3) would require that the railway cannot reach the take-over point or the place of delivery by rail, e.g. because of the absence of a siding



9

Federal Court of Justice (Germany) ruling of Oct 2013 (I ZR 115/12) - application of Art 1 § 3 CIM on rail-road transportation (3/4)

Opinion of the Federal Court of Justice (DE):

- The transport in the present case was a multimodal transport: the transport of the goods from the consignor to the consignee should be carried out by various means of transport (lorry and railway), § 452 of the German Civil Code applies in principle BUT only if no applicable international conventions provide otherwise
- CIM applies in the present case; the "supplementary" criterion in Article 1 § 3 does not require that the railway cannot reach the take-over point or the place of delivery by rail, what is decisive is that road transport is only of minor importance in relation to rail transport



10

Federal Court of Justice (Germany) ruling of Oct 2013 (I ZR 115/12) - application of Art 1 § 3 CIM on rail-road transportation (4/4)

- **Art 30 § 1 CIM** applies in case of partial loss of the goods: the carrier must pay, to the exclusion of all other damages, compensation; but limitation according to Art 30 § 2 (17 SZR/kg of gross mass short)
- **Art 30 § 4** applies regarding the carriage charges
- Generally NO loss of profit to be compensated by CIM (here 13 %): “to the exclusion of all other damages”; exception: Intention or gross negligence of the carrier (Art 36 CIM)



11

Practical case: ecological aspects of combined transport from Bettembourg to Le Boulou (source: CFL terminals)

PROTECTING THE ENVIRONMENT

The development of alternative transport modes in order to reduce CO₂ emissions is a major challenge on a national and European scale. Multimodal transport provides a real response to this challenge, as it **reduces carbon emissions by an average of 70% compared to road transport.**

CO₂ SAVINGS OF COMBINED TRANSPORT



Example of 1 ITU of 21t transported for 1 045 km from Bettembourg to Le Boulou



CO₂ consumption of 1 semi-trailer by road: 1 843 kg CO₂



CO₂ consumption of 1 semi-trailer by train: 256 kg CO₂

- ▶ CO₂ SAVINGS of transporting 1 semi-trailer by train: 1 587 KG CO₂
- ▶ CO₂ SAVINGS of transporting 1 full train: 63 480 KG CO₂



12

Thank you!

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