



Organisation intergouvernementale pour les transports internationaux ferroviaires  
Zwischenstaatliche Organisation für den internationalen Eisenbahnverkehr  
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**Partial revision of Appendix B (CIM UR)**

Report from the Secretary General

## Introduction

At its 25<sup>th</sup> session held in Berne on 25 and 26 June 2014, the Revision Committee decided to set up a Revision Committee working group and to ask it to prepare a revision of the CIM UR, with particular attention to the provisions to be put in place concerning the electronic consignment note.

The CIM UR working group set up by a mandate of the Revision Committee met twice in Berne (9 December 2014 and 18 March 2015). At these two sessions, the working group examined the proposals to amend the CIM UR which the Secretariat had submitted to the Revision Committee in June 2014, with particular attention to the issue of provisions to be put in place concerning the electronic consignment note.

The working group mainly agreed that the principle of the functional equivalence of data registration with the paper form is a prerequisite (current Article 6 § 9 of the CIM UR) for all the functions that the paper consignment note fulfils at present.

The principle of functional equivalence was developed to enable legislators to adapt the formalism of legal acts to the development of information technologies and hence electronic data exchange. The approach based on functional equivalence emerged in 1996 in the United Nations Commission on International Trade Law's (UNCITRAL) model law on electronic commerce. It was the first legislative text to adopt the fundamental principles of non-discrimination, technological neutrality and functional equivalence that are widely regarded as the founding elements of modern electronic commerce law. The principle of non-discrimination ensures that a document would not be denied legal effect, validity or enforceability solely on the grounds that it is in electronic form. The principle of technological neutrality mandates the adoption of provisions that are neutral with respect to the technology used. The functional equivalence principle lays out criteria under which electronic communications may be considered equivalent to paper-based communications. In particular, it sets out the specific requirements that electronic communications need to meet in order to fulfil the same purposes and functions that certain notions in the traditional paper-based system seek to achieve – for example, “writing”, “original”, “signed” and “record”.

However, this principle, which everyone could freely use as a basis for ideas, has been implemented differently and has therefore sometimes been a source of differences between national laws. In addition, it has not resolved all the issues, particularly with regard to the electronic signature.

The CIT, which has the competence for these matters under Article 6 § 8 of the CIM UR, is responsible for specifying in detail how the parties can put the electronic consignment note into effect in practice under the best possible conditions in terms of efficiency and legal certainty. At the second session of the working group (18 March 2015), CIT explained that the main railway undertakings were going to set up electronic platforms to enable them to act in concert with their customers and that CIT would consult its members and continue to examine the situation, beginning with the functional specifications. CIT thought it would be in a position to report in 2016 on what could be done within the sector, and on what the electronic consignment note should contain, based on lessons learnt from operations.

The Secretary General gave a report on this work at the 12<sup>th</sup> General Assembly (Berne, 29 and 30 September 2015).

The General Assembly noted the Secretary General's report on the progress of the work on revising the CIM UR and the continuation of the work on revising the CIM UR, particularly the work relating to the provisions to be put in place concerning the electronic consignment note, once the sector has re-examined the functional specifications of the electronic consignment note (point 7.7 of the final document).

Further to the decision of the 12<sup>th</sup> General Assembly mandating it to carry out this examination, CIT sent the Secretary General its report on the railways' digitisation of transport documents on 16 June 2017. According to CIT, this report was also going to be sent to the European Commission (DG Mobility and Transport), as requested, so that its conclusions could be taken over by the digital transport and logistics forum (DTLF).

The DTLF is a group of experts in the field of transport and logistics, which was set up on the basis of a European Commission decision of 9 April 2015<sup>1</sup>. The European Commission has recognised the need for measures fostering the acceptance and use of electronic transport documents. In spite of several initiatives in recent years to digitalise transport documents **in all transport modes**, the large majority of operations within the EU still involve the use of paper documents, often used in parallel or in combination with electronic information processing. This indicates that all modes of transport seem to be encountering the same difficulties. In addition, the application of the Union Customs Code since 1 May 2016 will in time raise the question of what is to happen to the CIM consignment note as a (customs) declaration of transit.

The Secretary General is therefore reporting new facts to the 26<sup>th</sup> session of the Revision Committee that have emerged since the 12<sup>th</sup> General Assembly. They are presented in three parts:

- The CIT's report on the railways' digitisation of transport documents and the conclusions of the report (I),
- The current work of the digital transport and logistics forum (DTLF) (II),
- Developments in the customs sector: will the CIM consignment note remain a transit document? (III).

#### **I. The CIT's report on the railways' digitisation of transport documents and the conclusions of the report**

In its report on the railways' digitisation of transport documents, which is annexed to this document, CIT's intention in particular is to inform the Member States of OTIF of the status of the work and the next steps to be taken with regard to:

- The electronic CIM consignment note,
- The electronic CUV wagon note,
- Ascertainment of partial loss or damage (CIT 20).

With regard to the functional specifications of the electronic consignment note, the CIT report only indicates that these have been prepared by the CIT's CIM Working Group in the two freight transport manuals, i.e. the Consignment Note Manual (GLV-CIM) and the Freight Traffic Manual (GTM-CIT)<sup>2</sup>, that these manuals were adopted by the competent body of CIT, the CIM Committee, and that they entered into force on 1 January 2017. CIT concludes that the sector has an important foundation on which to digitise the transport documents.

Furthermore, in connection with actualising the electronic CIM consignment note and the progress of digitisation in the rail sector, CIT surveyed its members on whether the national courts and other

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<sup>1</sup> European Commission decision C(2015) 2259 final of 9 April 2015 setting up an expert group on Digital Transport and Logistics ("the Digital Transport and Logistics Forum") see [http://www.dtlf.eu/sites/default/files/public/uploads/fields/page/field\\_file/com20152259\\_en.pdf](http://www.dtlf.eu/sites/default/files/public/uploads/fields/page/field_file/com20152259_en.pdf).

<sup>2</sup> The CIT manuals are available on CIT's website <http://www.cit-rail.org/en/freight-traffic/manuals/>.

national authorities recognise the electronic CIM consignment note as a means of proving the contract of carriage (Article 6 § 2 of the CIM UR) and what value is attached to the electronic signature in this context.

The second sentence of Article 6 § 9 of the CIM UR says that “the procedure used for the registration and treatment of data must be equivalent from the functional point of view, particularly so far as concerns the evidential value of the consignment note represented by those data.” In this provision, the evidential value is only highlighted as an example, because this is the area where more significant difficulties can occur in some national legislations. However, it should be pointed out that the only conclusion that CIT has been able to draw from this survey is that the evidential value of the electronic transport documents differs according to national law and that this evidential value is subject to the court’s unconstrained consideration of the evidence.

The decision of the 12<sup>th</sup> General Assembly requested the sector to “re-examine[d] the functional specifications of the electronic consignment note”.

In its letter to the Secretary General of OTIF, CIT summarises as follows the conclusions of its work and the results of its efforts in terms of digitising the transport documents:

- The second sentence of Article 6 § 9 of the CIM UR on the functional equivalence of the electronic consignment note is a sufficient legal basis for the new sector standard, which has been available to the users since 1 January 2017.
- Based on these standards, the sector is currently preparing the implementation of the electronic CIM consignment note, including with respect to customs.
- CIT will assess the need for further legislative development in COTIF/CIM after a certain period of time based on practical use and experience and if necessary will come back to OTIF with further suggestions for a revision of the legal framework.

## **II. The current work of the digital transport and logistics forum (DTLF)**

The DTLF provides a platform where Member States of the European Union and relevant transport and logistics stakeholders can exchange technical knowledge and cooperate and coordinate with a view to supporting measures aimed at promoting the efficient electronic exchange of information in transport and logistics.

The overarching objective of DTLF is to improve digital interoperability in logistics and freight transport across Europe. It aims to provide impetus for a coherent strategy for the removal of technical, operational and administrative barriers between and within transport modes by means of a more efficient electronic exchange of information.

Its task is to assist the Commission in developing and implementing policy measures. It identifies challenges and areas where common action in the EU is needed, makes recommendations, and supports the implementation of these recommendations where appropriate.

Currently, the DTLF has two active subgroups, with two main areas of activity:

- Fostering of the use of electronic transport documents,
- Developing interoperable digital information systems to optimise cargo flows along transport corridors.

In May 2017, the European Commission (DG MOVE) launched an “inception impact assessment” on the “Recognition of electronic transport documents for freight carriage by public authorities and/or commercial partners”<sup>3</sup>.

The initiative aims to foster the electronic exchange of documents/information along the transport and logistic chains, particularly as regards multimodal and cross-border transport operations. This will enable the sector to take more advantage of the potential benefits of digitalisation. These benefits include improved reliability and cost-efficiency of transport operations, as well as increased competition and quality of services across the EU Member States and across modes.

The actual acceptance of electronic documents by the national authorities and institutions concerned (customs, police, sanitary and phytosanitary authorities, courts, etc.) is likely to continue at a slow pace and will lead to fragmented application. It will require piecemeal investment by these authorities in IT software and equipment capable of verifying basic requirements, such as the authenticity and integrity of the electronic documents received, as well as ensuring their confidentiality and security.

The impact assessment will consider a number of policy options (mix of non-legislative and legislative measures) for targeted EU level intervention with a view to addressing the two problem drivers identified above. A preliminary list of these measures, grouped by area of intervention, is outlined in the inception impact assessment, which addresses the lack of recognition and/or approval of electronic documents, as well as the problem of multiple non-interoperable standards for electronic document solutions.

Indicative planning: second quarter 2018.

### **III. Developments in the customs sector: will the CIM consignment note remain a transit document?**

#### 1. The current framework

Article 6 § 9 of the CIM UR stipulates that in the case of carriage which takes place on the customs territory of the EU or the territory on which the common transit procedure is applied, each consignment must be accompanied by a consignment note satisfying the requirements of Article 7 of the CIM UR.

This provision, which does not directly concern transport law, but rather customs law, was adopted when COTIF was revised in 1999 on the basis of a proposal from the European Commission (formerly DG XXI) in order to ensure application of the common transit procedure and hence also to do away with customs checks at borders, not just on the customs territory of what has become the EU, but also on the customs territory on which this procedure is applied<sup>4</sup>.

Among the information the consignment note must contain in accordance with Article 7 of the CIM UR is a detailed list of the documents which are required by customs or other administrative authorities to be attached to the consignment note or held at the disposal of the carrier at the offices of a duly designated authority or a body designated in the contract (Article 7 § 1 n)).

In accordance with the Community Customs Code and its implementing provisions<sup>5</sup>, railway undertakings benefited from a simplified transit regime for goods carried by rail or in large containers.

<sup>3</sup> See [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-2546864\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-2546864_en)

<sup>4</sup> The legal basis for the common transit procedure is the Convention of 20 May 1987 on a common transit procedure. This Convention is applied between the 28 EU Member States, the EFTA countries (Iceland, Liechtenstein, Norway, Switzerland), the former Yugoslav Republic of Macedonia, Serbia and Turkey.

<sup>5</sup> See Article 372, paragraph 1, letter f) and sub-section 8 “Simplified procedures specific to goods carried by rail or large container” (Articles 412 to 442 bis of Commission Regulation (EEC) No 2454/93 of 2 July 1993

Formalities under the common/Community transit procedure were therefore simplified for the carriage of goods by railway companies with a CIM consignment note. The CIM consignment note was therefore a valid Community transit declaration.

2. The new Customs Code foresees the end of paper documents.

The Union Customs Code (UCC)<sup>6</sup>, which entered into force on 30 October 2013, has been applicable since 1 May 2016. It is part of the modernisation of customs. Its essential objective in particular is to make all customs formalities paperless by 31 December 2020. When the UCC was being drafted, negotiated and adopted, the European Union institutions and the Member States and commercial operators recognised that not all the IT systems would be deployed on 1 May 2016. This is why Article 278 of the UCC allows the transitional use up to no later than 31 December 2020 of other means of exchange and storage until the IT systems concerned are designed, upgraded and deployed across the board.

It was on this basis that on 17 December 2015, the European Commission adopted a regulation concerning the transitional measures for certain provisions of the UCC where the IT systems are not yet operational<sup>7</sup>. In accordance with this regulation, and until the new Computerised Transit System (NCTS) is upgraded, the EU's paper-based transit regime applies particularly to goods carried by rail and the paper consignment note continues to be used as a transit declaration.

The NCTS is an electronic transit system (customs) based on the exchange of electronic messages. In particular, these messages replace the various paper documents.

Electronic messages are exchanged at three levels:

- between economic operators and the customs authorities (“external area”),
- between the customs offices of a country (“national area”),
- between the national customs administrations and between these administrations and the European Commission (“common area”).

Before 1 May 2016, the NCTS already applied to all common/Community transit operations, whichever mode of transport was concerned, with the exception of the simplified transit procedures, for which the transit declaration was provided by a commercial document (the waybill or a consignment note, for example, in the simplified “air”, “sea” or “railway” procedures).

3. What is the future of the consignment note as a customs document?

It should be pointed out that Article 233, paragraph 4, letter e) of the UCC stipulates that:

“upon application, the customs authorities may authorise any of the following simplifications regarding the placing of goods under the Union transit procedure or the end of that procedure:

- (e) the use of an electronic transport document as customs declaration to place goods under the Union transit procedure, provided it contains the particulars of such declaration and

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laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code. See consolidated version under:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1993R2454:20130131:EN:PDF>

<sup>6</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.

<sup>7</sup> Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards transitional rules for certain provisions of the Union Customs Code where the electronic systems concerned are not yet operational and amending Delegated Regulation (EU) 2015/2446.

those particulars are available to the customs authorities at departure and at destination to allow the customs supervision of the goods and the discharge of the procedure ".

This provision of the UCC therefore prescribes the application of simplified (customs) transit procedures which nevertheless involve using electronic transport documents.

It applies to all air and maritime transport operations. However, its application still had to be clarified for rail transport and the electronic consignment note would then have been adapted so as to satisfy the customs conditions.

However, the negotiations in the task force set up for this purpose, which is made up of railway undertakings, representatives of national customs (Austria, Germany, Hungary, Lithuania, Netherlands and Switzerland) and DG Taxation and Customs Union, have not yet finished. At its meeting at the end of March 2017, it emerged that the solution finally chosen would be to use the national transit system, the NCTS in fact.

Against this background, the link between the CIM contract of carriage and the simplified transit procedure disappears. On the other hand, it is still not certain when the transitional period will end. The rail transit system will have to be adapted to the NCTS procedure and will in particular have to find relevant interfaces with its own digital information system.

#### **IV. Future work**

It would seem that at both European and global level, it is now necessary to work on a solution for simple digital rail transit which has an efficient interface with the transport documents. In OTIF-Secretariat's view, this will require definition of the interfaces to be developed with the sector's digital solutions.

It was with this in mind that the World Customs Organization (WCO) and OTIF signed a memorandum of understanding (MoU). This MoU reifies the willingness of WCO and OTIF to strengthen their discussions, particularly with regard to the removal of obstacles to border crossing for international traffic.

In order effectively to accompany the implications of these developments for the CIM UR and to prepare their revision under the best conditions, the Secretary General intends to include the following two priority issues in the work programme of the working group of legal experts that he will be setting up in 2018:

- Assessment of interfaces between customs and transport regulations in order to ensure efficient international railway traffic, particularly in the area of freight transport.
- Assessment of digitalisation of international transport, in particular transport documents.

For more information on this working group, see document LAW-17137-CR 26/12.

#### **Proposal for decision**

The Revision Committee notes this report from the Secretary General and the information on the future work of the working group of legal experts concerning customs issues and the digitalisation of freight transport documents.

It invites the Member States to participate as widely as possible in the future work of the working group of legal advisers.

It also instructs the Secretary General to submit to its 27<sup>th</sup> session a report on the progress of work on customs issues and the digitalisation of freight transport documents and, if necessary, to submit proposals to amend the CIM UR.

## **Annex**





International Rail Transport Committee  
Comité international des transports ferroviaires  
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### **CIT Status Report on Digitisation of transport document (ETD)**

Dear Mr Secretary General,

We send for your kind attention and consideration attached to this letter the CIT Status Report on the railways' digitisation of transport documents. The CIT Status Report was approved at the most recent meeting of the CIT Executive Committee held in April 2017 in Berne, following its approval on the working level at the recent meeting of the CIM Committee on 23 March 2017.

This Status Report was decided as follow-up of the decision of 12<sup>th</sup> OTIF General Assembly (art. 7.7 of the final document) following the specification of tasks decided during the second meeting of OTIF Working Group on the UR CIM 2015 as follows: "It would be up to the international organisations of carriers, in this case the CIT, to specify what would be useful and necessary in practice to enable the parties to agree on the procedures used for recording and processing electronic data operable for all parties interested in the performance of the contract of carriage." The CIT examined this question in the year 2016 within the framework of the CIM Working Group.

In connection with the practical realisation of the CIM electronic consignment note and advancement of digitisation on the sector level, the CIT, in addition to the task mentioned above, clarified the recognition of the electronic consignment note CIM as evidence and proof of the contract of carriage (article 6 § 2 CIM) by national courts and other national authorities and illustrated the on-going project on the electronic formal report (CIT20). You will find the results of these efforts in the CIT Status report.

The results of our work in the CIT can be summarised as follows:

- The current CIM regulatory framework on functional equivalence of the electronic consignment note is a sufficient legal basis for the new sector standard which is available to the users since 1 January 2017 (see CIT Manuals GLV-CIM / GTM-CIT under [www.cit-rail.org](http://www.cit-rail.org)).
- Based on these standards, the sector is actually preparing the implementation of the electronic consignment note CIM also with respect to customs.
- The CIT will assess the need for further legislative development in COTIF/CIM after a certain period of time based on practical use and experience and if necessary will come back with further suggestions to OTIF for a revision of the legal framework.



Furthermore, and as has been already communicated to the representatives of OTIF in the context of the CIM Committee, the CIT Status Report will be also sent, as requested, to the European Commission (DG MOVE) for including its findings in the dedicated Digital Transport and Logistic Forum (DTLF) as well (see Inception Impact Assessment on Electronic documents for freight transport – DG MOVE – Unit D1 – 18/05/2017).

Please do not hesitate to contact us if you have any further questions on this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'C. Brand', is positioned to the left of the printed name.

Cesare Brand  
Secretary General

A handwritten signature in black ink, appearing to read 'E. Evtimov', is positioned to the right of the printed name.

Erik Evtimov  
Deputy Secretary General

Annex:

CIT Status report on the railways' digitalisation of transport documents



## **Status report on the railways' digitisation of transport documents**

### **1. Context**

In submitting this report, the CIT's General Secretariat (CIT GS) would like to inform its stakeholders (including the OTIF, the European Commission, the CER, the UIC and its own members) about the status of the work and the next steps to be taken in digitising the transport documents in the railway sector: the electronic CIM consignment note, the electronic CUV wagon note and the formal report (CIT20) in electronic form.

The project is essentially comprised of three phases:

- Determination of the legal and functional specifications, which is the responsibility of the CIT GS or the CIT's CIM Working group (CIM WG) respectively
- Determination of the technical specifications to be based on the legal and functional specifications, which is the responsibility of RailData
- Finally, practical tests to be carried out by selected railway undertakings (RUs).

This work is crucially influenced by the requirements of the European Union's Customs Code from 1 May 2016 onwards as well as the requirements of the "Telematics applications for freight service – TAF TSI". One difference between the new Customs Code and the TAF TSI is that the requirements arising out of the former are still unclear and will need to be incorporated at a later point in time. This status report, finally, deals with the discussions surrounding the question of the judicial recognition of digital transport documents and conformity with the existing bases in transport law.

### **2. Legal and functional specifications of the electronic CIM consignment note and the CUV wagon note**

The CIT's CIM WG has drawn up the legal and functional specifications for the electronic CIM consignment note and the CUV wagon note in the framework of the CIT's four manuals on Freight transport and Use of wagons (CIM Consignment Note Manual (GLV-CIM), CIT Freight Traffic Manual (GTM-CIT), CUV Wagon Note Manual (GLW-CUV) and CIT Wagon Manual (GTW-CIT)). These manuals have been approved by the competent CIT body (the CIM Committee) and entered force on 1 January 2017. As a result of that, the sector has an important foundation on which to digitise the transport documents. The electronic version of these documents has been available at [www.cit-rail.org](http://www.cit-rail.org) since 1 January 2017.



### **3. Technical specifications of the electronic CIM consignment note**

In a second step, the time has now come to draw up the technical specifications for the electronic consignment note. This work is being done in close cooperation with RailData within the framework of the UIC's eRailFreight project. Interested railways are encouraged to participate in this implementation work by joining in pilots using the electronic consignment note. RailData is not only taking charge of the development of the technical specifications for the electronic consignment note (based on the CIT's legal and functional specifications), but is also making the ORFEUS system available to the interested railways, that is to say a platform for the electronic exchange of the consignment note data. Whereas the initial version of the ORFEUS message was used primarily for the electronic exchange of consignment data sent forward electronically in advance (in parallel with the use of paper consignment notes), all the users of the original version are currently switching over to an ORFEUS version with which the exchange of electronic CIM consignment notes and CUV wagon notes is possible and practicable. This work is in full swing.

### **4. TAF TSI**

The railways' digitisation activities are also affected by the European Commission's Regulation on the Technical Specification for the Interoperability (TSI) of the Railway Systems in the European Union (EU). Amongst the rules dealing with the subsystem "Telematics applications for freight service (TAF)", the Regulation contains a series of provisions on the exchange of information amongst train operating companies and between them and the railway infrastructure managers. One of the matters provided for in the TAF TSI is that the leading train operating company is to provide all the other train operating companies involved in a transport with the necessary information for the operational performance of their part-service in the form of a standardised electronic ConsignmentOrderMessage (COM). In parallel with that, the increased use of purchases/sales of transport services by the railways, it has also become necessary to supply the necessary data for the commercial processing of their part-performance to those substitute carriers who do not make use of the (electronic) consignment note. In order to be able to solve that challenge with the maximum degree of automation, the "COM" is currently being further developed at sectoral level into the "COM+". The latter contains all the commercial and operational data necessary for provision a part-performance (on the basis of the consignment note data saved electronically). At its next meeting in June 2017, the CIT's CIM WG is to deal with questions of generating extracts/subsets from the electronic consignment note for the subcontracting model and, if appropriate, the necessary implementation in the CIT products, while RailData is in charge of adapting the technical specification and realising the COM+ messages in the central component of the ORFEUS systems.

### **5. Practical testing**

The implementation of the electronic consignment note, and thus the move over to "paperless shipments", is to take place a step at a time over the period 2017-2018, since it requires adaptations to be made to the processes of the individual railways and partly to their systems too. A workshop on the CIM electronic consignment note and the electronic wagon note was held for all CIT members on 23 March 2017. The UIC's eRailFreight project is providing support for the interested railways in the practical implementation of the digital solutions developed at sectoral level.

## **6. Side-issue: CIM-SMGS consignment note**

In parallel with the ongoing work on digitising the CIM consignment note, the CIT and the UIC/RailData are to attempt, within the 2017-2018 timeframe, to develop a “maximum data set” in electronic form for the CIM, SMGS and CIM/SMGS consignment notes used in both legal spaces and to do that in liaison with the OSShD (Organisation for Collaboration between Railways). A logical basis to use for that is the data set for the CIM/SMGS consignment note, which contains the data for the two separate CIM and SMGS consignment notes. It might be feasible to define subsets for the other (electronic) consignment notes (CIM and/or SMGS and possibly also the national ones), which it would then be possible to print as necessary using various paper consignment note templates.

## **7. Formal report (CIT20) in electronic form**

It was back in 2014 that the CIT started its work on the possible use of electronic documents and/or mobile terminals for the documentation of loss or damage established in connection with transport.

The CIT conference of claims departments held in May 2016 looked in depth into the questions concerned with the processes and systems for the use of the formal report and the damage report for freight wagons and also the connections between the damage documentation and the transport document. Given that there are different starting situations and different settings, the formal report and the damage report for freight wagons are being dealt with separately, with the CIT’s work concentrating on the formal report.

In connection with the rules on forwarding the electronic document, the question of verification is currently being examined, using an (electronic) signature or some other means of identification. On the basis of the requirements input by the CIT for the formal record in electronic form, it ought to be possible for the companies to create the tools as a function of the development of their internal digitisation (considering, amongst other matters, the digitisation of the processes and the rollout of technical equipment, such as tablets).

The preconditions for the practical realisation of the formal report in electronic form are to be made available in 2018.

## **8. Judicial recognition of digital (transport) documents**

### **8.1 Starting situation**

In connection with the practical realisation of the CIM electronic consignment note and the advancing digitisation in the railway sector, it is also of central importance that it be recognised as evidence of the contract (Art. 6 § 2 CIM) by the national courts and other authorities. The CIM WG had therefore called on the CIT GS, with the support of the representatives of the member railways in the CIM WG, to produce an overview of the situation in the various states based on replies to the following questions:

- Are electronic documents generally recognised by the particular national court within the framework of its freedom to evaluate evidence?
- Are transport documents (consignment note and accompanying documents, such as protected designations of origin, phytosanitary certificates, dangerous goods certificates, etc.) recognised by the courts concerned?

- If electronic documents are recognised, is an electronic signature then necessary for evidence in legal proceedings?
- Are electronic documents admissible for the archiving of data and for documenting guarantees, for example before fiscal and financial authorities?
- For what purposes are electronic documents otherwise provided for and recognised?

## 8.2 Fundamental questions

In the case of transport documents, such as the CIM consignment note, the CIT's CIM WG's clarifications show that for the *B2B* (business-to-business) relationship it is always possible for the national courts to apply their freedom in evaluating evidence (principle of freedom of contract), which, *a contrario*, does not necessarily make an electronic signature an absolute necessity as a security guarantee for the consignment note and confirms the appropriateness of the solution variant drawn up by the CIT GS in 2009 with the unique consignment identification number (a single combination of digits from the carrier's system for each individual consignment).

The use of the consignment identification number for the authentication of the electronic consignment note was recognised as practicable at the latest customs meeting by the representatives of the railways, the national customs authorities and GD TAXUD.

For further work on the digital signature, it may be necessary, depending on the circumstances, to consider Regulation (EU) No 910/2014 of the European Parliament and of the Council on Electronic Identification and Trust Services for Electronic Transactions in the Internal Market, which has been in force in the European Union since September 2014 (eIDAS regulation). The substantive provisions of the regulation have only been directly applicable since 1 July 2016. One innovative point in the regulation is that explicit passages on evidence have now been included in the European provisions. The regulation extends the legal possibility for a high level of evidential certainty for electronic documents. It is, however, still an open issue as to how the national courts will put the new provisions into practice.

## 8.2 Case studies into the judicial recognition of electronic transport documents

### **Switzerland:**

The Swiss courts fundamentally admit electronic documents as evidence in national legal proceedings. Applying their freedom to evaluate evidence (Art. 157 CivPC) – and on the basis of cantonal procedural law even before the Swiss federal CivPC came into being – the courts have, for example, been accepting e-mails as evidence in civil proceedings. According to the provisions concerning the retention of business documents, those kept in an electronic form (for example e-mails) have the same evidential value as do paper documents, provided it can be shown that they have been kept properly. There must, in particular, be a guarantee of the genuineness and integrity of the data.

The electronic signature within the meaning of the federal act of the same name (ESigA; cf. Art. 14 para 2<sup>bis</sup> CO as well) is not a binding precondition for the recognition of electronic documents as evidence in legal proceedings. However, an electronic signature does enhance the usability and quality of an item of electronic evidence, especially in cases in which one party doubts the evidential value, invoking the potential danger of falsification.

In Switzerland, within the ambit of various federal legislative proposals on the organisation of the courts and procedure, the parties have also had the possibility since 2011 of making submissions to the courts or authorities electronically. The Federal Council has spelt out in two ordinances how the parties' submissions and the service of the judgments and/or orders are to be handled in the various proceedings. To the best of the CIT's knowledge, the use of electronic means for handling legal relations in practice is, however, only marginal in Switzerland at present.

#### **France:**

Act no. 2000-230 of 13 March 2000 adapting the law on proof and evidence to new information technologies and on the electronic signature, amending the Civil Code in this respect, introduces the electronic signature into French law. The secure electronic signature requires the use of a secure device for its creation and also the use of a qualified electronic certificate defined by Decree no. 2001-272 of 30 March 2001. Once all the admissibility conditions have been met, the electronic document enjoys the same evidential value as a private agreement (absence of discrimination) and can consequently only be challenged by another electronic document or a private agreement.

The advanced electronic signature is automatically taken to have the same value as a handwritten signature and is admissible as evidence in legal proceedings. According to Article 1 of Act 2000-230 of 13 March 2000, documents such as wagon notes, designations of origin or certificates are documents recognised by the courts. The importance of the wagon note as an evidential instrument is therefore considerable.

#### **Poland:**

The legal situation in Poland is laid down in the Polish Code of Civil Procedure (CCP). In private legal relationships, particular evidential value is attached to private deeds. "A private deed is evidence that the person who signed it made a declaration contained in said deed" (Art. 245 CCP).

What is of decisive importance for the evidential value of an electronic declaration of intent is the provision contained in Article 78 §2 of the Civil Code, which lays down that "a declaration of intent made electronically and bearing a secure electronic signature verified by a valid qualified certificate is equivalent to a declaration of intent made in writing". Declarations of intent can therefore also be submitted in electronic form in addition to that. What this requires is an electronic signature, the legal basis for which is to be found in the Act on Electronic Signatures. Article 3 of that act states that an electronic signature is of the same value as a handwritten signature if that signature can clearly be assigned to one person, if it was produced with such means as are subject to the sole control of the signatory and if it is connected with other data pertaining to the signatory in such a way that any subsequent change in that data would be immediately recognisable.

Amended versions of the provisions of the Code of Civil Procedure and the Civil Code came into force in Poland on 8 September 2016. They include the introduction of a new Art. 78[1] CC containing a definition of electronic form: "§1. In order to preserve the electronic form of a legal transaction, it is sufficient for there to be a declaration of intent in electronic form bearing a secure signature verified by means of a qualified certificate. §2. A declaration of intent made electronically is equivalent to a declaration of intent made in writing."

Summing up the provisions referred to above, it can be ascertained that, as far as the legal situation in Poland is concerned, a document issued electronically as a private agreement can be considered as evidence in civil proceedings if it bears a secure signature that has been verified by means of a valid, qualified certificate.



## **Germany:**

It is the predominant view that simple electronic documents constitute “objects of personal inspection”, which, according to §286 of the Code of Civil Procedure are to be evaluated as evidence at the court’s discretion and conviction in civil proceedings, the consequence of which is that it is up to the court to decide freely on the basis of its conviction, taking into account the entire content of the hearings and the results obtained by evidence being taken, whether the declaration contained in the electronic document is to be deemed to be true or false. The upshot of this is that all electronic documents, including those without a particular signature, are generally assessed by the court applying its freedom of evaluation. An electronic signature is not necessary for that purpose. However, the evidential value of a qualified digital signature is so much stronger, given that a document signed in that way is admissible within the meaning of § 371a of the Code of Criminal Procedure as evidence equivalent to a document.

Since 2001, an enabling clause in the Code of Civil Procedure has made it possible to introduce electronic legal relations in Germany through a statutory order. In the time since then, a number of German federal states have set up individual pilot courts. A federal act of parliament is intended to make sure that from 2020 onwards all the federal states in Germany will have introduced electronic legal relations.

## **Bulgaria:**

If a contract is concluded by two separate but congruent declarations, then the statute that is applicable by precedence in Bulgarian law is “ZEDEP” (the Electronic Documents and Signatures Act). Article 2 of that act defines the electronic declaration (of intent) as a declaration made using language and represented in the form of figures by applying a general common standard for the conversion, decoding and visual representation of information, which may also contain information of a non-linguistic nature. According to Art. 9 ZEDEP, an electronic declaration is deemed to have been transmitted when it enters an information system not under the control of its author; Article 4 ZEDEP states that the author of the electronic declaration is the natural person who is indicated in the declaration as having generated it. According to Art. 8 ZEDEP an electronic declaration is regarded as having been received when the addressee acknowledges its receipt; the decisive point in time for that, according to Art. 10 para. 1 ZEDEP, is when the acknowledgment of receipt is sent off.

However, the Bulgarian courts, applying their freedom to evaluate evidence, judge (transport) contracts concluded electronically in accordance with the Code of Civil Procedure in a way that corresponds to contracts concluded on a paper medium.

## **Austria:**

[Electronic legal relations](#) have already been put into practice in various ways in [Austria](#) (for example as regards the land register and the company/commercial register). Lawsuits have already been processed electronically in Austria since 1999 and physical processing is virtually never still undertaken today (further information is available at <https://www.justiz.gv.at/web2013/html/default/2c9484852308c2a60123708554d203e7.de.html>).

A similar solution to electronic legal relations also exists in the financial domain, thus in particular in the realm of taxes (further information is available at <https://www.bmf.gv.at/egovernment/fon/rund-um-finanzonline.html>).



## Hungary:

The increasing presence of the services of electronic business dealings and the electronic administration in Hungary quickly led to a situation in which authentic electronic documents have to be used in order to ensure that the requirement of certainty in legal transactions is satisfied in this area as well and, in the final analysis, to make it possible for authentic electronic declarations to be created.

That has now become possible with the use of the electronic signature as a method of authentication. The electronic signature makes it possible for the electronic document to remain in electronic form throughout its entire use. This use of predominantly electronic documents has been reflected in amendments in recent years to the corresponding passages in Act no. III of 1952 concerning the Code of Civil Procedure (hereinafter: CCP).

It is laid down in §196 CCP that (until the opposite is proven) a private document may provide the entire evidence that the issuer of the private document made the declaration contained in it, or accepted said declaration, or entered into a commitment to be bound by said declaration. If electronic private documents are to attain full evidential value then the condition must be fulfilled that the issuer has appended a qualified electronic signature. If the genuineness of the handwritten signature on the private document is neither challenged nor proven, then the text preceding the handwritten signature or at least the advanced electronic signature (or the signed data for electronic documents) is to be considered as not falsified. That applies until the opposite is proven. If the identity of the signatory of the electronic document bearing at least an advanced electronic signature or the genuineness of such a document is disputed, then the court first of all contacts the authenticator in order to decide on the matter.

In those cases in which the provisions of the CCP do not specifically lay down what the evidential value of particular documents is, the court examines all the data and then decides to what extent the outcome of the evidence submitted can be considered in the proceedings.

### 8.4 Conclusions from the case studies

The question of the evidential value of electronic transport documents is decided differently in accordance with national law and is fundamentally subject to the courts' freedom to evaluate evidence.

## 9. Conclusions

- At sectoral level, the CIT has drawn up the legal and functional specifications for the CIM electronic consignment note and the CUV wagon note. These specifications have been available to potential users since January 2017 and are also to be found in the relevant manuals.
- The CIT is strongly supporting the UIC/RailData in the finalisation of the technical specifications and in carrying out pilot shipments this year and next year within the framework of the UIC's eRailFreight project. The next version of the ORFEUS message is to make it possible to use electronic transport documents for shipments that still need a paper version today (for example shipments under customs supervision and dangerous goods).

- Having ascertained that there is an increasingly strong move amongst some important carriers towards new transport-law models, such as purchases/sales of transport services, the CIT is planning to examine the inclusion of provisions to support that in its products. In this context, RailData, in liaison with the CIT, is revising the technical specifications with a view to making appropriate adaptations to the flow of ORFEUS messages, which is today still generally focused on joint contracting for freight traffic. The COM subsets resulting from the TAF TSI are being further developed into COM+ messages at sectoral level for commercial subcontracting within the framework of purchases/sales of transport services.
- The CIT is working on simple solutions fit for business use for the digitisation of the formal report (CIT 20), with the aim of making the necessary bases available to the railway companies by 2018.
- In connection with the practical implementation of the CIM electronic consignment note and the advancing digitisation in the railway sector, the CIT GS is working to clarify the legal situation as regards recognition of the electronic consignment note as evidence of the contract of carriage (Art. 6 §2 CIM) before the national courts and other national authorities. According to the interim stage reached by these clarifications and working on the basis of it being a *B2B* relationship, it is most certainly possible for the national courts to subject the commercial transport documents to a free evaluation of evidence. The solution variant drawn up by the CIT GS, with the unique consignment identification number as the security guarantee for the consignment note, can thus be confirmed as appropriate and practicable.
- The CIT is working jointly with the OSShD to complete the preconditions for digitising the CIM-SMGS consignment note by 2018.
- After the digital transport documents have been implemented in practice, it is then going to be necessary to check at regulatory level, considering Article 6 § 9 CIM, which makes it possible for the consignment note to be in the form of electronic data records, and also the electronic CUV wagon note (in accordance with Article 14 para. 2 of the GCU (General Contract for Use of Wagons) to establish whether there is a need for the further development of the legal bases in the COTIF.

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