Intergovernmental Organisation
for International Carriage
by Rail

Bulletin of International Carriage by Rail

1/2002 110th Year ● January - March

Summary

Annual subscription to the Bulletin : SFr. 48,-
Orders are to be sent to :

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1/2002

110th year – January - March

Bulletin of International Carriage by Rail

Quarterly publication of the Central Office
for international Carriage by Rail, Berne

Central Office Communications

Ratification of the 1999 Protocol

Romania

In application of Article 20 § 1 of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 and of Article 3 § 2 of the Protocol of 3 June 1999 for the Modification of COTIF (1999 Protocol), Romania deposited its instrument of ratification of the 1999 Protocol with the Provisional Depositary[1] on 8 March 2002.

The 1999 Protocol and thus the new version of COTIF will come into force only after they have been ratified, accepted or approved by more than two-thirds of the Member States of OTIF, i.e. at least 27 States (Article 20 § 2 COTIF 1980). Romania is the sixth State to have ratified the 1999 Protocol.

Panel of arbitrators

In accordance with Article 14 of COTIF, the Central Office establishes a panel of arbitrators and keeps it up to date. Each Member State may nominate two of its nationals who are specialists in international transport law. The last time the Central Office published the panel was in Bulletin 3/1991.

Since then, several amendments have been made, each of which has been published separately (see Bulletin 3/1993, 4/1993, 1/1994, 3/1995, and 4/1995). In addition, at the request of the Central Office, the following States have updated or corrected the panel entries, or have removed arbitrators or added new ones during 2001: Belgium, Bulgaria, Czech Republic, Germany, Iran, Norway, Tunisia, Turkey and United Kingdom.

The current panel of arbitrators is reproduced below. It is also available on the OTIF website (www.otif.org) where it will in future be updated each time a communication is received from a Member State in accordance with Article 14 of COTIF.

1 According to Article 2 § 1 of the 1999 Protocol, OTIF performs the functions of the Depositary Government provided for in Articles 22 to 26 of COTIF 1980 from 3 June 1999 to the entry into force of this Protocol.

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As at 1.2.2002

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OTIF Organs

Administrative Committee

Extraordinary session

Berne, 8 March 2002

The Administrative Committee held its extraordinary session in Berne on 8 March 2002 under the chairmanship of Mr. Michel Aymeric (France).

At this session, the Committee definitively approved the version of the 2002 budget corrected in accordance with the guidelines it had issued at its 96th session (see Bulletin 4/2001). The provisional rate per kilometre used as the basis for calculating contributions was set at SFr. 6.40.

In addition, in accordance with its decision of 8 and 9 November 2001 (see Bulletin 4/2001) and having heard the discussion at the Meeting on the Strategic Orientation of OTIF on 7 and 8 March 2002 (for this, see also p. 9), the Committee approved the creation of a technical officer post in 2002. The Committee approved the recruitment of a technical officer for a period of three years only.

Lastly, at its 97th session (Vienna, 23/24.5.2002), the Committee will have to decide the composition of the delegation tasked with negotiating accession with the EC, and its mandate.
(Translation)

Dangerous Goods

UIC "Carriage of Dangerous Goods" Group of Experts

Copenhagen, 20/21 February 2002

On 20 and 21 February 2002, the UIC "Carriage of Dangerous Goods" Group of Experts met for the first time. This group was formed from the amalgamation of the former Group of Experts for the RID Regulations and the Permanent RID Group.

First of all, the rules of procedure for the new group were discussed.

The Group of Experts discussed aligning UIC leaflet 471-3 V (RID Goods Regulations) with the 1 January 2003 edition of RID. This revised version is to be submitted to the 39th session of the RID Committee of Experts in November 2002 so that a reference to this leaflet can still be included in the 2003 edition of RID by means of a simplified procedure outside the eleven month notification period.

Mr. Visser, the UIC representative in the RID/ADR Joint Meeting, the RID Committee of Experts and the UN Sub-Committee of Experts on the Transport of Dangerous Goods informed the Group of Experts about the most important decisions of these bodies.

A Swiss proposal for the RID/ADR Joint Meeting was also discussed, in which it was suggested that a working group on "the adoption of standards in the RID and ADR Regulations" be set up. Mr. Kietaibl, who represents UIC within CEN, requested that this working group should not undertake subsequent examination of standards that had already been completed, but should be involved in the standardization process itself.

As at previous meetings of the UIC Permanent RID Group, there was an exchange of experiences on applying the restructured RID. It should be noted that consigners are still mainly using the 1999 edition of RID, which is still possible up to 31 December 2002 during a general transitional period prescribed in the 2001 RID. The SBB representative reported that the examination results of candidates trained on the basis of the new regulations were better than those who were still being trained and examined on the basis of the previous ones. In his view, this pointed to a clearer, more comprehensible structure in the dangerous goods regulations.
(Translation)

RID/ADR Joint Meeting

Berne, 18-22 March 2002

25 Governments and 12 governmental and non-governmental international organizations, including, for the first time, OSZhD, took part in this session with Mr. A. Johansen (Norway) as Chairman and Mr. H. Rein (Germany) as Vice-Chairman. This session was given over to the following three topics:

1. Proposals pending
2. Harmonization of RID and ADR
3. Tanks

Owing to the lack of time, the 4th topic, "New proposals" was deferred to the next session.

1. Proposals pending

In this context, the Joint Meeting made amendments not just to the future 2003 edition of RID and ADR, but also corrections to the restructured version of 1 July 2001 which will be incorporated into an erratum No. 6!!! For some of the amendments to the 2003 edition, it will only be possible to take them into consideration on 1 January 2004 for RID, since on the one hand they are partly amendments of substance rather than corrections, which have first to be endorsed by the RID Committee of Experts, and on the other the notification period has expired, which is not the case for ADR. The following important topics were dealt with in respect of the 2005 edition:

Dangerous goods packed in limited quantities and exempt from the conditions of carriage (Chapter 3.4)

The Joint Meeting noted that the current situation was confusing since requirements for the carriage of dangerous goods packed in limited quantities were not harmonized in the regulations for carriage by land, sea and air, thus causing major practical problems for multimodal transport.

Since it was envisaged that the Sub-Committee of Experts on the Transport of Dangerous Goods would be discussing the transport of consumer products again, the Joint Meeting decided not to undertake a full-scale discussion of the issue and to limit itself to discussing the proposals of the working group on Chapter 3.4 which had met in Berne on 6 and 7 September 2001 to clarify the new requirements of Chapter 3.4 of the restructured RID/ADR vis-à-vis the requirements previously in force. The working group was asked to submit a complete new proposal taking account of the comments it had received and the amendments for 1 January 2003.

It was suggested that the requirements in which the same limits were applied could be grouped together so as to prevent duplication, provided the consequences for Table A in Chapter 3.2 were taken into account, and that cases in which non-dangerous goods were packed together with dangerous goods should be taken into consideration.

In a more general context, the representative of Austria proposed, as part of an in-depth reform, to restrict the maximum quantity per transport unit of complete loads of certain goods in view of the large exempted quantities carried in this way. He was requested to submit a written proposal on the subject.

Radioactive material with other predominant hazardous properties

The representative of Austria pointed out the difficulties of interpretation concerning excepted packages of Class 7 where other hazardous properties took precedence; in his opinion, they were still, however, radioactive material and he noted that some requirements of Class 7 were therefore not applicable.

The meeting considered that they were excepted packages and not exempt material of Class 7 but that the predominance of hazards should not be attributed to radioactivity.

It was pointed out that where the relevant special provision concerning the predominant class was concerned, radioactivity was not mentioned in the other classes.

The secretary of UN/ECE reminded the meeting that the question of subsidiary risks was part of the calendar of work of IAEA, in particular for the purpose of taking account of requirements for these subsidiary risks, and he pointed out that Austria's comment was nevertheless relevant since the new requirements did not permit the radioactivity hazard of excepted packages containing substances presenting another class of hazard to be identified from the markings on the package. He explained that for these excepted packages, the requirements of RID/ADR (no Class 7 UN number marking, but marking of the UN number of the other class on the package; in the documentation, indication of the UN number and the proper shipping name of the other class with, in addition, the proper shipping name of Class 7 but without the Class 7 UN number) did not conform to the United Nations Model Regulations, the IMDG Code, or the ICAO Technical Instructions for documentation (since in addition to the particulars required by RID/ADR, the Class 7 UN number must also be indicated). Neither did they conform to the IAEA Regulations, according to which two UN numbers should be marked on the package and the UN number and the proper shipping name of the other class indicated in the transport document, but only the UN number for the Class 7 hazard (without the proper shipping name). He proposed alignment either with the United Nations Model Regulations or with the IAEA Regulations, on the basis of a new text for the relevant special provision.

The Joint Meeting considered that the United Nations Sub-Committee of Experts should be consulted before amending the special provision to bring it into line with the IAEA Regulations, and that there was no reason to amend RID/ADR for the time being.

Subsection 6.1.6.2 - Revision of the list of substances to which the standard liquids may be regarded as equivalent to prove the chemical compatibility of plastics drums and jerricans with liquids

After a lengthy discussion on whether it was necessary to amend subsection 6.1.6.2 to take account of the work done by Germany, or rather to refer to a standard being prepared by CEN and ISO on compatibility with plastics packagings, the Joint Meeting decided by a very large majority that action should be taken on the proposal by Germany.

It was noted in particular that the ADR and RID regulations were the forerunners in this context and that experience with ISO Technical Committee TC 296 had not been very conclusive since, instead of complementing RID and ADR, the draft standards prepared to date reproduced their provisions in an amended form; this was neither efficient nor acceptable for the purposes of regulation.

The Joint Meeting accepted the offer by Germany to convene an informal working group to prepare appropriate texts for RID/ADR. A reference to the standards could be inserted at a later stage in accordance with present practice, if the standards were in conformity with the regulations. The Joint Meeting also decided that the work should concern packagings and IBCs.

Procedure to be followed in the event of the detection of radioactive material

The representative of Germany introduced the proposed procedure to be followed in the event of the detection of radioactive material; its advantage was that it did not modify the regulations (classification according to 2.2.7, separation if required, followed by remanufacturing, and if classification was impossible, a subsequent procedure to be determined by the competent authority). The objective of the proposal was to obviate previous procedures, in particular, elimination in debatable conditions. In his opinion, separation was the first priority and was easy to effect, while the second priority consisted in ensuring an emergency transport operation with the authorization of the competent authority.

The representative of France introduced an informal document by the French nuclear safety authority on the procedure followed in France. He pointed out that it was not always possible to separate, reclassify and remanufacture; the diagram proposed made it possible to ease this situation to some extent.

The representative of Austria drew attention to paragraph 1.4.2.2.4 of RID/ADR and recommended that the competent radiation protection authorities who drew up the relevant rules should collaborate.

The idea was mooted in the course of the discussion that it would be wise to collaborate with IAEA, generally to refer matters to the competent authority in order to have pragmatic guidelines and for the French procedure to be vetted by a working group with the Class 7 experts. It was suggested that the representative of France might, if appropriate, undertake the necessary formalities.

The Joint Meeting finally decided to adopt the procedure described below.

Procedure to be followed in the event of detection of radioactive material during transport, in particular of steel scrap

If a high dose rate is noted, classification should then take place in accordance with section 2.2.7 of RID/ADR, before the transport operation can continue.

Generally speaking, reliable classification is only possible once the dangerous substances have, where necessary, been separated out (e.g. pieces in which a high dose rate is detected).

If classification, assignment to a UN number and observance of the applicable requirements are not possible at the point where the material is detected, the procedure to be followed subsequently shall be determined by the competent authority.

2. Harmonization of RID and ADR

The Joint Meeting noted that the RID Committee of Experts and WP.15 had not adopted all the amendments adopted by the Joint Meeting for the 2003 version of RID/ADR, that OCTI had been requested to submit these definite differences for RID to the UN/ECE Working Party on the Transport of Dangerous Goods (WP.15) for alignment of ADR, and that OCTI, in accordance with working procedures, had considered that they should first be re-submitted to the Joint Meeting.

The Joint Meeting confirmed most of the comments of

the RID Committee of Experts. The Joint Meeting therefore recommended that Working Party 15 should consider bringing ADR into line accordingly. The following remark was made, however.

The UN/ECE secretariat asked whether these questions should be raised again in the Joint Meeting if Working Party 15 did not accept the new conclusions of the Joint Meeting. The reply was in the affirmative.

3. Tanks

The Chairman of the tank working group, Mr. Ludwig (Germany) presented the results of the work of his group which met from 11 to 13 March 2002 in Bonn. The most important discussions and decisions of this report were as follows:

Vacuum operated tanks for the carriage of wastes

The Joint Meeting adopted proposals whose aim was to introduce into RID/ADR requirements concerning tank-containers and vacuum operated portable tanks for the carriage of wastes similar to those that exist in ADR for tank vehicles.

The Joint Meeting noted that it would perhaps be necessary to do this additional work in the RID Committee of Experts if requirements covering vacuum operated tank-wagons for the carriage of wastes were also to be introduced into RID.

The representative of Germany wished the new requirements to be included in ADR from 2003. However, in principle, it had been anticipated that, apart from some outstanding matters for 2003, WP.15 would only be discussing proposals for amendments for 2005 at its session in May 2002.

It was confirmed that these tanks for the carriage of wastes may be used to carry wastes of packing group I and that they may also be used for pumping pure substances from other tanks and for their subsequent carriage.

Carriage of ammonia, anhydrous

The Joint Meeting accepted the principle of adding a special provision for ammonia, anhydrous (UN No. 1005) for additional checks for cracking on these high pressure tanks, thus following the working group's recommendation. However, an official document with editorial amendments will still have to be submitted to the next meeting, which would also consider the period between these checks.

Mutual recognition of testing experts and testing bodies

The Joint Meeting agreed in principle with the objective of introducing a new section 1.8.6. However, delegates were requested to send their comments to the representative of UIP, who would submit a new proposal in the light of these comments and suggestions made during the discussion, particularly with regard to the legal consequences, harmonization of the procedures, and tests and requirements for experts and, if necessary, to mandate CEN to develop a relevant standard.

Setting up a standards working group

This subject was discussed at length. In an initial vote on the request to reconsider the setting up of this working group which the Joint Meeting had already approved (see Bulletin 2/2001), a small majority (10:8) was not in favour of going back on the setting up of this group.

The Joint Meeting also decided that the working group would not meet in parallel with the Joint Meeting. Also, there had been a bad experience at the last intersessional meeting of the tank working group with regard to the number of states represented. It was finally agreed that at the next Joint Meeting, Monday morning would be spent assigning a task (documents to be dealt with) to the two working groups (tank and standards). From Monday to Wednesday, the tank working group would meet in parallel and the standards working group would meet outside plenary hours. It was expressly requested that standards and particularly draft standards which would have to be referred to in RID/ADR definitely be made available to Joint Meeting delegates. A Member of the UN/ECE Secretariat said the Secretariat was obliged to restrict the volume of documentation and that it did not want to reproduce the considerable number of standards on paper. It would be easier and less expensive to make them available as informal documents on the Transport Division's website.

It was finally agreed that the proposed mandate and procedures not yet discussed in detail and not adopted would be examined and subject to relevant decisions by the Joint Meeting.

FUTURE WORK

The provisional agenda for the next Joint Meeting (Geneva, 9 - 13 September 2002) is as follows:

1. Outstanding matters
2. Corrections to RID/ADR

3. New proposals
4. Tanks
5. Standards
6. Harmonization
7. Any other business
8. Future work

The Chairman of the Joint Meeting announced that the next Joint Meeting would be the last he would chair and asked delegations to think about finding a successor. (Translation)

Other Activities

Meeting on the Strategic Orientation of OTIF

Berne, 7/8 March 2002

The Meeting on the Strategic Orientation of OTIF, convened on the initiative of the Administrative Committee (see Bulletin 4/2001), was held in Berne on 7 and 8 March 2002. It was chaired by the serving Chairman of the Administrative Committee, Mr. Michel Aymeric (France).

In all, 21 States were represented at this Strategy Meeting, including all Members of the Administrative Committee, and a further 9 Member States (Germany, Belgium, Bulgaria, Finland, Italy, Sweden, Czech Republic, Turkey and the Federal Republic of Yugoslavia), the aim of which was to define and legitimate the preparatory work necessary for the implementation of COTIF 1999 over the next two to three years.

The Strategy Meeting arrived at conclusions on the activities to be undertaken in all the areas of strategic importance for OTIF. At its 97th session (Vienna, 23/24.5.2002), the Administrative Committee will formally approve the summary of conclusions of the Strategy Meeting, which will then be made available to all the Member.
(Translation)

Co-operation with International Organizations and Associations

United Nations Economic Commission for Europe (UN/ECE)

Inland Transport Committee (ITC)

64th Session

Geneva, 18-21 February 2002

OTIF was represented at the 64th session of the Inland Transport Committee, for some of the time by the Director General of the Central Office.

The Inland Transport Committee approved the report of the Working Party on Rail Transport, which had dealt with the usual subjects at its 55th session, such as the European Agreement on Main International Railway Lines (AGC), the Trans-European Railway Project (TER), the facilitation of border crossing in international rail transport and the role of the railways in the promotion of combined transport (see Bulletin 4/2001).

The Inland Transport Committee also approved the reports of the Working Party on Combined Transport, which had held two sessions in the previous year (see Bulletin 2/2001 and 3/2001). In addition to handling and further developing the European Agreement on Important International Combined Transport Lines and Related Installations (AGTC), this Working Party also concerns itself with the possibility of harmonizing the civil liability regime in multimodal transport. The Inland Transport Committee prolonged the mandate on this of the Working Party and its ad hoc expert group. Cooperation in this area with the United Nations Commission on International Trade Law (UNCITRAL) and the United Nations Conference on Trade and Development (UNCTAD) is to be continued. In contrast, the Committee was unable to issue guidelines on the further work of the informal expert group in which OTIF takes part (see Bulletin 1/2000 and 3/2000) concerning the scope of the liability rules in multimodal transport (regional or global) being considered, and its legal nature (mandatory or dispositive).

The Inland Transport Committee dealt with numerous other topics, ranging from implementation of the decisions of the Regional Conference on Transport and the Environment (Vienna Programme of Joint Action, 1997) and the London Charter on Transport,

Environment and Health (1999), safety matters, especially with regard to road transport, new developments and implementation of international instruments in inland water transport, harmonized provisions concerning the carriage of dangerous goods (see also Bulletin 2/2001, 3/2001 and 4/2001), to various items of business of a statutory and organizational nature.
(Translation)

International Institute for the Unification of Private Law (UNIDROIT)

Draft Railway Protocol to the Convention on International Interests in Mobile Equipment

Drafting Group

Rome, 2–4 February 2002

The task of the Drafting Group, in which the OTIF Secretariat was also represented, was to make the adjustments that arose from:

1. discussions at the Joint Committee of Governmental Experts in March 2001 in Berne (see Bulletin 1/2001),

2. discussions and decisions of the Diplomatic Conference, Cape Town, 29 October – 16 November 2001, on the base Convention on International Interests in Mobile Equipment and the associated Aircraft Protocol (see Bulletin 4/2001).

The Drafting Group was able to conclude the work up to Article XV (the Joint Meeting of Governmental Experts, Berne, 15/16.3.2001 had only discussed the aforementioned Articles). On the basis of the decisions of the Diplomatic Conference, the Secretariats will provisionally clean up the text for the other Articles directly. The Drafting Group also gave the Secretariats the task of preparing the final editorial revision of the French version.

This will mean the second Joint Meeting of Governmental Experts, planned for June 2002, will have available the appropriate draft texts.
(Translation)

Registry Task Force

Rome, 20–22 March 2002

The first meeting of the Registry Task Force set up in March 2001 by the Joint Meeting of the Committee of Governmental Experts for the preparation of a draft Protocol on Matters Specific to Railway Rolling Stock to the Convention on International Interests in Mobile Equipment was held under the chairmanship of Mr. Peter Bloch (USA). Mr. Fabio Croccolo (Italy) was Co-Chairman. In addition to the Chairman, the coordinator of the Rail Working Group and the representative of OTIF, the meeting was also attended by experts from the UK, Canada, China, Finland, Hungary, Sweden, USA and the Société Internationale des Télécommunications aéronautiques (SITA – International Aeronautical Telecommunications Association).

Following an overview of existing systems, principally in the USA and Canada, problems arising from the different concepts of a register based on the object and one based on the debtor were discussed. The question of possible clear identification mark(s) was discussed in depth, but the meeting was not yet able to find a generally suitable solution. The possibility and advantages of a glossary to link together different registration systems was also considered.

SITA presented to the meeting participants the fully electronic registration system that it is developing, which is already at a very advanced stage of development. Lastly, Members of the Registry Task Force were given various specific tasks towards preparation of the next meeting.
(Translation)

European Conference of Ministers of Transport (ECMT)

Hearing of International Organizations

Paris, 11 March 2002

Essentially, the purpose of the hearing was to give the surprisingly large number of non-Governmental Organizations the opportunity of commenting on the documents prepared for the next meeting of Ministers to be held in Bucharest in May. At the same time, guidelines were sought on what ECMT's future role should be and on appropriate cooperation from the point of view of this Organization.

The discussion was particularly constructive, evidently because amongst other things, ECMT documents and the platform of the ECMT Ministers' meetings are perceived as a corrective to the European Commission's last White Paper on European transport policy, the content of which, according to various parties, barely reflects reality. An interesting debate developed around the subject of re-storage policy and intermodality. With regard to a really intermodal approach in transport policy, it was said that there is no political will in support of it, and the aims need to be better defined, beginning with the principle that each transport mode is important and its investment needs cannot be neglected in favour of other transport modes without there being negative consequences. There was an unfinished discussion on the partly new terms "modal split", "modal shift" and "modal merge".

From OTIF's point of view, there was no need to take up a particular position. It was possible, without going any further, to approve the consensus that crystallized, i.e. that ECMT's legitimacy is founded mainly in its role as a think tank of the Ministers of Transport within an area that goes considerably beyond that of the EU (41 Member States – which is comparable to OTIF). Its activities are concentrated on in-depth analysis and coherency from the point of view of overall transport problems.

The ECMT Secretariat envisaged regularly organizing a similar hearing, but restricted to intergovernmental organizations.
(Translation)

Case Law

Cour d'Appel de Paris

Ruling of 28 April 2000

1. **Having abandoned some perishable goods carried under temperature control without checking that a responsible person had been made aware that the goods had been deposited and had accepted their delivery, the carrier was held accountable for gross negligence with no limitation of liability.**

2. **The period of limitation in action for damages cannot run in the event that the carrier abandons the goods within the undertaking's premises without having obtained a receipt, as this does not qualify as delivery.**

Cf. Articles 103 and 108 of the Commerce Code [1]

On Friday, 6 October 1995, a laboratory (L.F.B.) entrusted Sernam[2] with the carriage of two pallets of pharmaceutical products under temperature control to be delivered to a hospital in Bordeaux. According to the latter, the goods were discovered on Sunday 8th on a pavement in direct sunlight. That same day, the consignee wrote to the laboratory requesting that the products be exchanged. On 8 October 1996, the consignor summoned SNCF to pay 132,227.- FRF, i.e. the value of the goods.

In its ruling of 4 November 1997, the Meaux Commercial Court did not accept that the action was time-barred on the grounds of limitation of actions and ordered the EPIC[3] to pay the amount claimed. In support of its appeal, SNCF invoked Article 108 (now L. 133-6) of the Commerce Code, as the summons to pay was issued more than one year after 7 October 1995, the date prescribed by contract for handing over and for the actual day of delivery (since this may not be a Sunday).

On the merits, SNCF called for the application of Sernam's compensation limitations in order to set the damages at 15,000.- FRF, rejecting the claim of gross negligence, as the goods consignor should have provided packaging that was suitable for carriage, particularly when the goods were subject to temperature control.

In contrast, for the consignor, the one year period was not established as there was nothing to impute delivery on the 7th. Furthermore, the consignor added that the loss was not total, so that the reference to the day for the hand over was invalid. Lastly, he emphasized the lack of care in leaving perishable goods that had, moreover, been delivered late, exposed to heat and without protection.

The Court had therefore to settle two problems: the admissibility of the action and gross negligence.

Article 108 of the Commerce Code (now L. 133-6) sets the period of limitation at one year, which:

1 Comparable provisions are contained in Articles 36, 44 and 58 § 2 (b) of the CIM UR
2 Part of French railways (SNCF)
3 In accordance with its Statute, SNCF is an EPIC (Etablissement Public à caractère Industriel et Commercial – Public Enterprise of an Industrial and Commercial nature)

- in case of total loss, runs from the date on which the hand over should have been made (expiry of agreed period or, by default, the date specified in the model contracts);

- in all other cases, runs from the day of the hand over or of the offer.

In this particular case, there were three ways of dealing with the matter: as total loss, as damage or as non-performance of the transport contract. The latter solution could be excluded because the goods arrived at the designated place. Total loss might just be conceivable in as much as the consignee had requested that the goods be exchanged: so the limitation started from the **day prescribed** for the hand over (i.e. before midday on the 7th) and was established. On the other hand, if "damage" was reasoned, there had been neither an offer nor a hand over, in default of physical and legal acceptance of the goods, which constitutes the definition of delivery (enacted, moreover, by the new model contracts). This is therefore outside the scope of Article 108, so the limitation could not run: the action was therefore admissible.

There remained gross negligence, which the carrier denied owing to the consignee being absent. This is a false argument: if delivery is prevented, it is the carrier's duty to alert the principal and, if there are no instructions, to act professionally and take care to safeguard the goods. Abandoning perishable products, especially when the delivery period had been missed, amounted to negligence.

"Whereas the transport operation is concluded by making delivery; whereas, in this particular case, SNCF did not provide proof that delivery would duly have been made on 7 October 1995, since it did not prove that the goods were handed over to a person authorized by the consignee to receive them who was in a position to check what condition they were in and to take possession of them; whereas, if it alleges that its driver unloaded the goods within the hospital premises and abandoned them thus, without having obtained a receipt, this would not count as delivery; whereas, proceeding from this, the limitation period prescribed under Article 108 of the Commerce Code could not begin to run on 7 October 1995; whereas the summons to pay was issued on 8 October 1996, the action is not barred;

Whereas SNCF reported to its customer that its driver stated that he reported to the place where he usually delivers the goods and that this being closed, he placed the pallets under a roof space as requested by a nurse who refused to sign the delivery note;

Whereas by abandoning the pallets carried in these conditions without checking that a responsible person had been made aware that the goods had been deposited and had accepted them, even though the consignment note expressly stated that the goods were urgent medicines and that the type of express transport was to guarantee the consignor that the goods would be handed over within the short period prescribed in the contract, the driver was held accountable for negligence for which SNCF was answerable; whereas this negligence is of such seriousness that it borders on wilful misconduct and demonstrates his unsuitability for the contractual task with which he was entrusted; whereas L.F.B. is therefore justified in accusing SNCF of gross negligence with no limitation of liability."

(Taken from: Bulletin des transports et de la logistique, Paris, No. 2865, 23.10.2000).
(Translation)

Miscellaneous Information

Private Goods Wagon Forum

Berne, 24 January 2002

Under the title "Private Goods Wagon Forum: Economic Requirements and Legal Framework", the International Rail Transport Committee (CIT) and the Swiss Association of Sidings and Private Goods Wagon Owners (VAP) issued invitations to a forum. The inexorable advance of the liberalization of the railways also primarily affects private goods wagons. The purpose of the forum organized by CIT and VAP was to sound out the industry's requirements and expectations and to investigate a suitable legal framework for them. The forum was aimed at logistics people, particularly members of VAP, railway representatives, representatives of the Federation and the Cantons and the national transport media.

A representative of the OTIF Secretariat, Dr. Mutz, also gave a talk on current and future "wagon law", which was followed by a lively discussion. It was gratifying to hear in the closing words of the VAP Secretary General, Mr. Furrer, that he considered the CUV Uniform Rules, as adopted in Vilnius in 1999, to be a suitable Instrument for international rail transport.
(Translation)

International Liaison Group of Government Railway Inspectors (ILGGRI)

Amsterdam, 31 January/1 February 2002

This was a good meeting with a solid programme of information, no doubt as a result of being intensively occupied with Community law in the rail sector, which is being formed rapidly. The second rail package and particularly the Safety Directive and the planned European Railways Agency are topical at the moment. It is not the case that the railway supervisory authorities see only problems in this context and wish to gain time. There are branches (the Safety Directive for one) where it is hoped the work will be speeded up, and for this reason there has apparently been consideration of dividing up the Commission's programme.

On the other hand though, it is obvious that within the EU, and even more so outside the Community, there are still different starting points, ideas and speeds.

OTIF is called upon to play its role as crystallized at the meeting on 5 December 2001, i.e. with a quickly set up pilot Committee of Technical Experts and other services which would not otherwise be readily available. With services such as these, OTIF can mark its presence and make itself useful.

In this respect, it was specifically agreed in Amsterdam

- to carry out quickly a survey on the ideas surrounding terminology and on organizational arrangements in the railway supervision sector and on the sovereign tasks that exist. The survey should deliver results that can be presented at the next ILGGRI meeting to be held in Lisbon in May;

- to hold a meeting in Berne, organized by the Central Office, in connection with rail safety, with particular emphasis on the carriage of dangerous goods and methods of environmental risk assessment. A suitable concept for this has still to be worked out. The earliest this could happen would be in the second half of 2002. It will be a question of suitably involving the RID Committee of Experts, thereby strengthening its role.
  (Translation)

Book Reviews

Frohnmayer, Albrecht/Mückenhausen, Peter (editors), *EG Verkehrsrecht* (EC Transport Law), Verlag C.H. Beck, Munich, 2000, 2nd supplement, May 2001

The loose-leaf format base volume was published in 2000 (see review in Bulletin 1/2000). Following the first supplement, which complemented and updated the work (see Bulletin 2/2001), the second supplement now develops the work further by explaining for the first time both new Directives issued in 2001 concerning rail transport and Directives that were issued before then, but which have partly been amended in the meantime.

The commentary on Council Directive 91/440/EEC on the development of the Community's railways was revised in consideration of Directive 2001/12/EC. It is explained how, by means of this Directive, the traditional network monopoly of the state railways is limited considerably more in favour of network access for competing railway undertakings. The extended scope of access rights is defined precisely and explained together with further aspects of the amendment. EC Member States now have until 15 March 2003 to implement the new Directive. It is pointed out that the EC Member States' railways still have different structures; a formally independent form of law, as has been introduced in some states, will not guarantee independence from the State for a long time yet. However, there is no specific presentation of the individual steps for implementing the railways reform in different states, as was the case in the previous edition.

Smaller adjustments – consistent with Directive 2001/13/EC of the European Parliament and of the Council – followed in the commentary on Council Directive 95/18/EC on the licensing of railway undertakings. There is a new version of some Articles in the latter as a result of Directive 2001/13/EC.

The second supplement also includes explanations on Directive 2001/14/EC of the European Parliament and the Council on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification; these replace the observations concerning Council Directive 95/19/EC and its implementation in Germany.

Among the other Directives dealt with for the first time in the second supplement, particular mention should be made of Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of

the trans-European conventional rail system. Logically, the same structure for the commentary on this Directive was chosen as was chosen for the commentary on Directive 96/48/EC on the interoperability of the trans-European high speed rail system.

No specialist library should be without this excellent commentary on the most important provisions of the EC's secondary transport legislation. It is intended both for State Institutions involved in implementing these laws and for transport industry undertakings and lawyers.
(Translation)

Fromm, Fey/Sellmann/Zuck, *Personenbeförderungsrecht, Kommentar* (Passenger Transport Law, commentary)**,** 3rd edition, Verlag C.H. Beck, Munich, 2001, Pages XXIV, 296

Six years ago on 1 January 1996, the new German Passenger Transport Law entered into force; none the less, this branch of law is constantly developing.

In this section, readers have for years been kept up to date with developments by means of the review of Bidinger's commentary. In Bulletin 4/2001, the comprehensive commentary on the Passenger Transport Law by Fielitz/Gräz, published in loose-leaf format in two volumes, was reviewed for the first time. Here, the editors of the Bulletin would like to make reference to another commentary on the Passenger Transport Law, which, at about 300 pages, is much more concise.

In addition to the Passenger Transport Law, the Order on the right of access to the profession is explained, with reference to significant case law.

The texts of the most important EU requirements are printed in an Annex. These are Regulation (EEC) No. 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway, Regulation (EEC) No. 684/92 on the international carriage of passengers by coach and bus, Regulation (EC) No. 12/98 laying down the conditions for the approval of carriers to operate passenger transport services and Regulation (EC) No. 2121/98 laying down rules for the application of the two Regulations mentioned above.

Of the national requirements which are also printed in the Annex, only the Law on Regionalizing Local Public Passenger Transport (Regionalization Law) need be mentioned here.

The Passenger Transport Law regulates not only the complex rights and obligations of undertakings and their staff, but also those of its customers. For this group of people too, it is therefore important that they can quickly find their bearings on the basis of a concise, but competently written commentary. In addition, these recommended brief commentaries are intended for all lawyers in administration, jurisdiction and associations who wish to obtain an overview of this complex material, and no legal library among this group of people should therefore be without them.
(Translation)

Koller, Ingo, Roth, Wulf-Henning, Morck, Winfried, *Handelsgesetzbuch: Kommentar* (Commercial Code: Commentary), C.H. Beck Verlag, Munich 2002, ISBN 3 406 4848 5, Pages XXVII, 1,120

The third edition of the "yellow commentary" on the Commercial Code has just been published by Beck Verlag. The second edition was covered in the 3/1999 issue of this Bulletin.

All parts of the commentary were revised and it is now current as at 1 July 2001. Various legislative changes that have been made since 1999, new judgements and the ever increasing literature on the Commercial Code have been incorporated.

In the interests of improved legibility, the commentary largely avoids abbreviations, but the clear and concise language makes it possible to accommodate a lot of information in a small space. The short commentary allows those who have to deal with questions of commercial law on a daily basis, and students, a quick overview of the fundamental problems in application. The comprehensive subject index makes it easy to use.

The noted and experienced authors ensure that the editing is of a high quality. For obvious reasons we have not commented on the fifth book concerning maritime trade. However, this commentary can be recommended without reservation as a valuable aid to taking the first steps into commercial law.
(Translation)

Tavakoli, Anusch Alexander, *Privatisierung und Haftung der Eisenbahn* (Railway Privatization and Liability) 1st edition 2001, Nomos-Verlagsgesellschaft, Baden-Baden

This work was accepted by the University of Constance Law Faculty as a dissertation and published by Prof.

Werner F. Ebcke as Volume 20 in the "German, European and Comparative Commercial Law" series.

As the publisher notes in his preface, the structural reform of the railways undertaken in Germany in 1994 was often described as the task of the century. Perhaps, or precisely because of the numerous changes in the law though, a lot of questions remain unanswered. In particular, the interaction between the structural reform of the railways and the laws governing liability was not officially resolved, although, as the publisher points out, "the laws governing liability are exceptionally important for a smoothly operating transport system".

With regard to the author, it should be noted that following his suggestion in the draft of a 2nd law on amending the provisions of railway law, the regulations concerning compulsory insurance for railways were amended, and loops that he pointed out in insurance were closed.

The aim of the work was to explore how the provisions covering liability that have not yet been adapted are to be interpreted and implemented in the light of the structural reform of the railways. The provisions of the newly created compulsory insurance matters in rail transport are also given critical appraisal.

The first chapter sets out the development of and changes in the trends towards deregulation in the rail sector. The Second World War marks a significant turning point in this respect. In addition to the reasons that led to the major reform of 1994, and the aims of this reform, the development of Community Law in this sector is also taken into account, as this is to be regarded as a fundamental driving force behind privatization.

The question of the relationship between railway law on the one hand and competition law on the other is of major significance for the open access to the network discussed. The author refers in this respect to the wording of § 14, paragraph 5 of the General Railways Act. This conveys a clear and unambiguous message on this matter when it says that in accordance with the law against restricting competition, the tasks and responsibilities of the government bodies concerned with the control and supervision of cartels remain unaffected.

The second chapter describes the historical development of railway liability in passenger traffic, beginning with the Prussian Railways Act introduced in 1838. In Germany, this introduced for the first time strict liability irrespective of fault – "liability for exposure to danger" – which was in fact considered a revolutionary novelty at the time. The Reich's Liability Act of 1871 was supplemented by the 1940 Act concerning the Liability for Damage of Railways and Tramways.
The centrepiece of Tavakoli's work is the third chapter dealing with railway liability according to current law. With just under 270 pages out of a total of 400, this chapter is also the most comprehensive and important part of the work.

The result of the structural reform of the railways was that a multitude of different people can be involved in carrying out a rail transport operation. This is also the reason for a range of uncertainties surrounding the interpretation of the existing laws, and for the closing of loops that can arise as a result of deficient amendment of the legislation. Principles for dealing with questions of liability that are specific to the railways can then only be established if all the groupings of individuals that are legally possible are taken into account. The author cites the following people as possible participants in a rail transport operation:

- the passenger,
- the carrier,
- the infrastructure undertaking,
- the rail transport undertaking that carries out the operation/traction provider,
- the railway wagon or locomotive lessor,
- the wagon user,
- the wagon owner,
- the locomotive owner.

The most important basis for making a claim for damages for personal injury or material damage caused by accidents is the 1978 text of the Liability Act. The advantage of this basis for making a claim lies in the non-fault liability, the disadvantage being the limited extent of the liability. Although the structural reform of the railways – particularly the separation of track and operation – brought with it major innovations for the whole rail sector, the liability clauses of the Liability Act have not yet been adapted to these new conditions. In the following, the author shows in a very thorough examination what effects the reform is having on the problems concerning the laws governing liability. He looks at the precedents set so far and what they mean for this new situation, and from this, comes to the conclusion that unaltered application of the principles established by precedent to the current situation would lead to the following absurd outcome:

1. The infrastructure undertaking would not be the operator, as it does not carry out transport operations on its own account.

2. The transport undertaking would not be the

operator, as it does not have the right of disposal with regard to the equipment relevant to safety.

The term "operator" has therefore become a legal term that needs to be better defined, as neither the wording of the Act nor the principles established in this respect up to now offer sufficient clarity. By means of various criteria and, above all, by making comparisons with other liabilities for exposure to danger in the transport sector (air transport, road transport), the work attempts to arrive at a solution. In particular, the compatibility of keeper liability with rail-specific aspects is examined. One can agree with the author when he calls the "operator" within the meaning of § 1 of the Liability Act whoever actually provides the tractive service. The author then proposes the introduction of a statutory "keeper liability" against the background that each rail vehicle keeper must insure himself against third-party risks.

One of the advantages of keeper liability would be harmonization of transport sector liability requirements, as both road and air transport have damages regulations that confer responsibility upon the keeper. In connection with this, the author points out that the regulations of the CUV Uniform Rules decided upon in Vilnius also put across that considerable importance is conferred upon the wagon keeper, and that the possibility of making the keeper responsible is also therefore created in the context of the CUV Uniform Rules (although in this case it is a question of fault-based keeper liability that can be changed by agreement of the parties involved).

However, following the structural reform of the railways, a wagon owner/keeper is not considered to be an "operator", as he does not have the necessary right of disposal over the operation of the railway – or at least a part of it. Wagon owners/keepers cannot therefore be considered as liable persons within the meaning of the railways' liability for exposure to danger, even following the structural reform of the railways. As there is also a liability in tort in accordance with §§ 823 ff the Civil Code for the aggrieved party, in addition to the statutory liability in accordance with the Liability Act, which is important for the aggrieved party, the author also looks at the questions related to this. As regards the offence, liability in tort in accordance with the Civil Code differs from that of the Liability Act in that the damage need not have been the result of an accident. Ultimately, there could still be contractual claims if damage has occurred in the context of a rail transport operation. The structural reform of the railways and the associated opening up of the rail network mean for the aggrieved party that in future, various people, collectively as well, can enter into consideration as the liable person; up to now, it was generally Deutsche Bundesbahn (German Federal Railways). Here too, the author examines the various types of case, particularly in passenger traffic.

The last chapter, Chapter 4, deals with compulsory insurance. Whilst originally, third-party insurance was to protect the insured against economically unsupportable damages, the primary aim of all third-party insurance has in the mean time become to cover the aggrieved party. The author points out that until 1995, the railways did not have regulations equivalent to those in the other transport sectors. The lack of compulsory insurance did not cause any problems where Deutsche Bundesbahn was concerned, because it was covered by the financial power of the Federation as separate Federal property. In 1995, the "Railways Third-Party Insurance Ordinance" laid down for the first time in Germany nationally uniform compulsory insurance for railway undertakings. However, compulsory insurance was limited to damages from the Liability Act, which the author criticizes as ill-conceived and wholly insufficient regulation. There is also no compulsory insurance for railway wagons (in general and for leased wagons in particular).

This work will in any case be of immense practical significance both for the academic and practical handling of damages in the rail sector, and probably not just in Germany. No transport or liability law library should therefore be without it.
(Translation)

Publications on transport law and associated branches of law, and on technical developments in the rail sector

Bulletin des transports et de la logistique, Paris, n° 2929/2002, p.140/141 – Contrat de transport. Prêt-à-porter ou sur mesure ? (M. Tilche)

Idem, n° 2932/2002, p. 194/195 – CMR. Quel champ d'application ? (M. Tilche)

DVZ - Deutsche Verkehrszeitung, Hamburg, Nr. 6/2002, S. 9 – ADR/GGVSE: Das Netz wird dichter; Neues Recht

Idem, Nr. 18/2002, S. 1 – ADSp gelten als stillschweigend vereinbart

Idem, Nr. 19/2002, S. 6 – Gefahrgutverordnung Straße/Eisenbahn: Die Pflichten rufen. Bei der

Umsetzung der GGVSE sind Kreativität und Flexibilität erforderlich (W. Spohr)

Idem, Nr. 21/2002, S. 1 – Gefahrgutrecht relativ perfekt Helmut Rein auf Gefahrgut-Tagen

Idem, Nr. 30/2002, S. 3 – Von Haag über Visby und Hamburg nach … . Neue Perspektive für einheitliches Seetransportrecht (H.H. Nöll)

Idem, Nr. 35/2002, S. 12 – Gefahrgut-Kleinmengen - alles hat seine Grenzen (W. Schmitz); S. 14/15 – Alles was im Gefahrgut Recht ist (H. Rein)

European Transport Law, Antwerpen, No. 6/2001, p. 831-842 – Gabriele Wehr revisited. Some notes on article 2 CMR (P. Ruitinga, R.J. de Haan); p. 843-877 – La Convención CMR según la Jurisprudencia del « Tribunal Supremo » de España (F.J. Sánchez-Gamborino)

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Transportrecht, Hamburg, Nr. 11-12/2001, S. 425-432 – Die Auswirkungen der Reform des deutschen Schuldrechts auf das Transportrecht (I. Koller); S. Zum Verlustbegriff, insbesondere bei weisungswidriger Ablieferung einer Sendung (K.-H. Thume)

Idem, Nr. 1/2002, S. 1-7 – Durchbrechung der Haftungsbeschränkungen nach § 435 HGB im internationalen Vergleich (K.-H. Thume)

Idem, Nr. 2/2002, S. 62-64 – Ist die Russische Föderation ein Vertragsstaat der CMR? (S. Rogov)

Uniform Law Review/Revue de droit uniforme, Rome, N° 2001-3, p. 643-648 – La jurisprudence du Tribunal Supremo espagnol en matière de CMR (F.J. Sánchez Gamborino)

Zeitschrift der OSShD, Warschau, Nr. 2/2002, S. 22-23 – Neue Vorschriften sichern den reibungslosen Transport gefährlicher Güter im Verkehr Europa-Asien (A. Glonti)

Zeitschrift für Verkehrsrecht, Wien, Nr. 2/2002, S. 38-46 – Künftige Änderungen im deutschen und europäischen Schadenersatzrecht (Ch. Huber)