



Intergovernmental Organisation  
for International Carriage  
by Rail

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Bulletin  
of International  
Carriage  
by Rail

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**2/2004**

112th Year • April - June

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### **Central Office Communications**

#### **Ratification of the 1999 Protocol**

##### **Hungary and Slovakia**

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), Hungary and Slovakia deposited their instruments of ratification of the 1999 Protocol with the Provisional Depositary<sup>1</sup> on 15 April 2004 and 11 June 2004 respectively.

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). Slovakia is the 19<sup>th</sup> State to have ratified the 1999 Protocol.

<sup>1</sup> 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.

#### **Accession to the 1999 Protocol**

##### **Iran**

In application of Article 3 § 3 of the Protocol of 3 June 1999 for the Modification of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 (1999 Protocol), Iran, which did not sign this Protocol during the period provided for this purpose, has acceded to this Protocol by depositing an instrument of accession with the Provisional Depositary on 15 June 2004. Iran is the 20<sup>th</sup> State to have ratified or to have acceded to the 1999 Protocol. Seven ratifications of the 1999 Protocol are thus still outstanding.

According to Article 20 § 3 of COTIF 1980, when the 1999 Protocol enters into force, the application of the CIV and CIM Uniform Rules is suspended in respect of traffic with and between those Member States which, one month before the date fixed for such entry into force, have not yet deposited their instruments of ratification, acceptance or approval. Such suspension will not apply to Member States which notify the Central Office that, without having deposited their instruments of ratification, acceptance or approval, they will apply the amendments decided upon by the 5<sup>th</sup> General Assembly in Vilnius.

In the Secretariat's opinion, suspension of the application of the CIM Uniform Rules also entails

suspension of the application of the Annexes to the CIM Uniform Rules, in particular RID and RIP.

### **Applicability of the 1999 Protocol to Latvia and Serbia and Montenegro**

The States that applied for accession to COTIF after the 1999 Protocol was opened for signature and before it entered into force, i.e. Latvia and Serbia and Montenegro (formerly the Federal Republic of Yugoslavia), whose accession came into effect on 1 September 2000 (see Bulletin 5/2000) and 1 August 2001 (see Bulletin 3/2001, p. 5) respectively, have thus also acceded to the 1999 Protocol version of the Convention (Art. 3 § 4 of the 1999 Protocol). Latvia confirmed this accession to the 1999 Protocol in an instrument deposited on 2 April 2004 and in so doing declared in accordance with Article 2 § 1 of CIV that Latvia will not apply to passengers involved in accidents on its territory the whole of the provisions concerning liability in case of death of, or personal injury to, passengers, when such passengers are nationals of, or have their usual place of residence in Latvia.

### **List of lines CIM**

(published on 1 May 1985)

#### **Central Office circular no 71, 20 April 2004**

##### *Chapter “Poland”*

The railway line operated by the undertaking “PKP Linia Hutnicza Szerokotorowa sp. z o. o.” (PKP Broad-Gauge Metallurgical Line Ltd., rue Szczepieszka 11, 22-400 Zamość) [broad gauge line (1520)] Most na rzece Bug – Sławków Południowy (399 km) is subject to COTIF/CIM. [Border crossing Poland/Ukraine].

See COTIF, art. 10 §§ 1-3.

## **OTIF Organs**

### **Administrative Committee**

101<sup>st</sup> session

*Athens, 3/4 June 2004*

At the invitation of Greece, the Administrative Committee held its 101<sup>st</sup> session in Athens on 3 and

4 June 2004 under the chairmanship of Mr. Michel Aymeric (France).

The Administrative Committee approved the 2003 Annual Report and the 2003 Financial Management Report, which showed surplus income of SFr. 174,810.91, and set the rate per kilometre, which forms the basis for calculating the final contributions for 2003, at SFr. 6.50. The Committee also noted the general financial situation of OTIF and the current situation with regard to investments.

The Administrative Committee also had an orientation discussion on electing the future Director General and on how the election should be carried out. The election will take place at an extraordinary session to be held in Berne on 1 July 2004 (see Bulletin 4/2003, pp. 66-67).

To conclude, the Committee dealt with questions in connection with the preparation of the 7<sup>th</sup> General Assembly, such as the composition of the Administrative Committee for the next period and financing the expenditure of OTIF in accordance with the 1999 Protocol.

The 102<sup>nd</sup> session of the Administrative Committee will be held on 4 and 5 November 2004 in Berne. (Translation)

### **RID Committee of Experts Working Group on standardized risk analysis**

*Bonn, 22/23 April 2004*

see “Dangerous Goods”

## **Dangerous Goods**

### **RID Committee of Experts Working Group on standardized risk analysis**

*Bonn, 22/23 April 2004*

13 Governments and 7 governmental and non-governmental international organisations, including the European Commission, took part in this preliminary work.

This working group was mandated by the 40<sup>th</sup> session of the RID Committee of Experts (see Bulletin 4/2003,

p. 73) in the context of harmonization of RID Chapter 1.9 with ADR concerning restrictions on carriage imposed by the competent authorities.

The aim of this working group is to draft a standard for risk analysis, partly to justify restrictions on carriage and partly so that transport can continue to be planned and carried out. In addition, it was to extend these conditions to the other transport modes, with particular reference to road transport.

There were presentations on the various risk analysis procedures that already exist (in France, the Netherlands, Switzerland and the United Kingdom). These procedures will be examined by a small group of experts. It was noted in this context that these procedures differ from each other and were based on risk hypotheses and criteria which also differed.

The aim of the project was defined as part of the work concept, i.e. to achieve transparency of the methods making it possible to prove the need to take measures and to set certain requirements. It was also noted that this aim should not impede the promotion of unhindered transport nor restrict the sovereignty of States with regard to national restrictions imposed for reasons of safety.

UIC's proposal to submit a new causality (causes of accidents) was favourably received.

The next meeting will be held in Bonn on 21 and 22 October 2004. The work should be finished in 2005 so that a reference to this risk analysis standard can be placed in the 1.1.2007 edition of RID.

In the meantime, agreement will be sought to provide funding for this project, with a share from the European Commission (50%) and from non-governmental international organisations.  
(Translation)

### **Working Party on the Transport of Dangerous Goods (WP.15, UN/ECE)**

*Geneva, 3-7 May 2004*

27 ADR States, 15 governmental and non-governmental international organisations and the European Commission took part in this 76<sup>th</sup> session chaired by Mr. Franco (Portugal).

### **CRTD**

The Working Party was informed that in the Inland Transport Committee, the work on the Convention on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation (CRTD) had again been put on ice and that the Governments had been requested to examine carefully the new revised text prepared by the special working group and to consult directly with each other.

### **Standardized risk analysis**

The decision by the RID Committee of Experts to convene a working group on standardized risk analysis in the context of Chapter 1.9 (Restrictions on carriage imposed by the competent authorities), which also concerns ADR, was called into question, because the RID/ADR/ADN Joint Meeting had not been consulted beforehand.

### **Carriage for delivery/sale**

The Working Party noted that the practices described by the representative of Spain formerly took place mainly as domestic transport operations, but that since the free movement of goods in the European Union, such operations were possible in international transport and were becoming more frequent in the border areas of the European Union countries.

Bearing in mind also that the twenty five countries of the European Union have to apply the Annexes of ADR to domestic traffic in accordance with Directive 94/55/EC, the Working Party considered that it would be necessary in future to take account in ADR of this type of situation, which up to now appeared to be specific to domestic traffic and justified local derogations. The meeting noted that in some countries, the term "local" was interpreted to mean all of the national territory and hence that ADR was only applicable to intracommunity traffic for this type of transport.

Following an exchange of views on her proposal concerning the problems of distributing products such as diesel oil or butane sold retail to private individuals upon request during delivery rounds, the representative of Spain offered to review her proposal in the light of the various practices which are already subject to national derogations within the European Union. She invited the representatives of those new Member States of the European Union who had not yet registered such derogations with the European Commission, as well as the representatives of the other Contracting Parties to ADR who are not Members of the European Union, to

send her their national provisions concerning the matters in connection with her proposal by 30 June 2004.

### Security

The Working Party decided to deal with questions of terminology and interpretation of the provisions of the new Chapter 1.10 on security at an informal meeting to be organized by the United Kingdom from 6-8 September 2004.

### Safety in tunnels

The special working group mandated to finalize these new provisions (see Bulletin 1/2004, p. 8) completed its work. The texts prepared will be submitted to the next session for approval.  
(Translation)

## Other Activities

### OTIF – UNIDROIT

#### Colloquium

*Warsaw, 15/16 April 2004*

The colloquium, entitled "The preliminary draft Rail Protocol to the Cape Town Convention on international interests in mobile equipment: an opportunity for Government and Industry to compare notes in the run-up to the diplomatic conference" was held at the headquarters of the Organization for Railways Cooperation (OSZhD). The Polish Government was represented by the Ministry of Infrastructure. The first day was chaired by Mr. Krzysztof Kulesza (Ministry of Infrastructure, Poland). The second half-day was chaired by Dr. Herbert Kronke (UNIDROIT) and the round table was chaired by Mr. Gerfried Mutz (OTIF).

After the opening addresses by the Deputy Chairman of OSZhD, the Secretary General of UNIDROIT and the Deputy to the Director General of OTIF, the Secretary General of UNIDROIT, Dr. Herbert Kronke gave an overview in the introductory session of the colloquium of the objectives and main features of the Cape Town Convention on International Interests in Mobile Equipment. The Vice-Chairman of the *Kreditanstalt für Wiederaufbau* (German Development Bank), Mr. Michael Jung, then explained the fundamentals of "asset-based financing" from the perspective of the lender or lessor.

Mrs. Marie-José Riverain next highlighted the practical interest in the future Rail Protocol from the point of view of rolling stock manufacturers and Mr. Mark Stevenson, Finance Director of Ahaus Alstätter Eisenbahn, did so from the point of view of operators and financiers.

The second half of the day was given over to specific issues in respect of a draft Rail Protocol:

- Definition and identification of railway rolling stock, which was dealt with by Mr. Henrik Kjellin of the Swedish Ministry of Justice and Co-Chairman of the Rail Registry Task Force.
- Specific requirements on provisional remedies, a subject for which Mr. Howard Rosen, Chairman of the Rail Working Group, was responsible.
- Reconciling private financing with the EU bankruptcy regime, presented by Mr. Jérôme Carriat of the European Commission, Directorate-General Justice and Home Affairs.
- Public service exemptions, explained by Mr. Christoph Henrichs of the German Federal Ministry of Justice.
- Supervisor and Registrar and related issues, presented by Mr. Mutz (see above) and
- Integration of existing registries, covered by Mr. Kjellin (see above) again.

Following the presentations, a lively discussion took place.

The Friday was given over to a round table discussion on the application of the Rail Protocol in Central and Eastern Europe. This discussion was introduced with a presentation by Prof. Stanislaw Zoltysinsky, a member of the Governing Council of UNIDROIT who, as a professor and lawyer, had closely followed the introduction and application of the Polish law on registered liens.

The colloquium was held in English only, although simultaneous interpretation into Russian and Polish was provided for participants who required it. In all, excluding the speakers, around 30 people from 12 States took part (Bulgaria, Croatia, Czech Republic, Germany, Hungary, Latvia, Poland, Romania, Russian Federation, Serbia and Montenegro, Slovak Republic and the Ukraine). Institutions represented were the European

Investment Bank and the Community of European Railways.

Thanks to excellent organisation, for which the Secretariat of UNIDROIT, the Polish Ministry of Infrastructure and the Organization for Railways Cooperation (OSZhD) are warmly thanked in this Bulletin, and the great interest shown by the numerous participants, the colloquium was a great success. It is to be hoped that this will produce the political pressure required for the work on the Rail Protocol to be continued and concluded quickly.

(Translation)

### **Co-operation with International Organizations and Associations**

#### **United Nations Committee for International Trade Law (UNCITRAL)**

##### 13<sup>th</sup> Meeting of Working Group III (Transport law)

*New York, 3-14 May 2004*

The 13<sup>th</sup> meeting of Working Group III continued its discussions on the basis of the revised draft instrument prepared by the Secretariat (UNCITRAL documents A/CN.9/WG.III/WP.32 and A/CN.9/WG.III/WP.36). The Secretariat of OTIF was represented by an observer in the first week of the meeting.

In this week of the meeting, the Working Group dealt with Chapter 5, the liability of the carrier, and in particular liability in the event of late delivery, calculation of the compensation to be paid and the obligations to come to an arrangement in the event of loss, damage or late delivery. The discussions on joint and several liability and on counter claims when contracting carriers are involved were wide ranging. The cumulative compensation is not on any account to exceed the maximum limits of liability as a result of the planned Convention. However, the relevant provision should make clear that it is not applicable to contracting carriers that are non-maritime carriers.

Several delegations emphasized the need to conclude the work on the draft instrument within a useful timescale. Various delegations proposed 2005 or 2006 as a sensible target, but no decision was taken with regard to a specific timescale. The time factor must be kept in mind

in all the future discussions and must constantly be reviewed.

(Translation)

#### **European Conference of Ministers of Transport (ECMT)**

##### 88<sup>th</sup> Meeting of Council of Ministers

*Ljubljana (Slovenia), 26/27 May 2004*

The headquarters of ECMT are in Paris, adjacent to those of OECD. Each year, ECMT holds a meeting of its Council of Ministers in the country that holds the chair. As the key preparatory organ, the Committee of Deputies of the Ministers of Transport holds two regular sessions per year.

ECMT presently has 44 Member States. In addition, it has 7 associated States, including the USA, Canada and Japan. Morocco has observer status. Compared with OTIF, it is of note that with a practically identical number of Members (if, for OTIF, you include Estonia, whose accession has been decided) ECMT already includes many States of the former USSR, in particular Russia herself, whose moving towards OTIF is now starting to be discussed more or less intensively. On the other hand, OTIF also covers North Africa and the Middle East and stretches as far as Iran, not within ECMT's sphere of influence up to now, which in contrast includes Iceland and Malta, countries that will probably always remain outside OTIF since they do not have any railways. With regard to the States associated with ECMT, there are parallels with OTIF: formalized cooperation with the USA/Canada, or also Japan, is certainly an issue in the long term in the context of OTIF's strategy, the objective of which is a globally representative position in the rail sector at State level. This brief comparison confirms the already oft repeated view that ECMT and OTIF operate in approximately the same areas with a consistent strategy of expansion.

In this sense, the Director General has already on several occasions expressed his wish to ECMT that the significance of OTIF be recognized accordingly. The 88<sup>th</sup> meeting of the Council of Ministers in Ljubljana provided an opportunity to emphasize this wish and to request an official invitation for the Director General. However, the Secretariat of ECMT advised that the formal requirements for this did not exist; for this to happen, the Council of Ministers would have to take a decision of principle, for which there would never be sufficient time. The Director General decided to attend

unannounced, which at the venue meant that the required authorisation had to be obtained in order to gain entrance to the conference premises, where strict security precautions were in place. This proved ultimately not to be a problem, with unbureaucratic support from the Slovenian organisers and also not least because up to now, the Director General's view had been consistently sympathetically received by the relevant representatives of ECMT Member States. In order to meet the formal requirements in future, the necessary application to the Council of Ministers must now be prepared; a suitable moment for submitting it will be when the Vilnius Protocol enters into force.

The matters for negotiation at the 88<sup>th</sup> meeting of the ECMT Council of Ministers with the associated documents concerned various subjects which were important from OTIF's point of view:

- It is apparent that the pan-European corridors as defined in the conferences of Crete and Helsinki should in fact be a reliable target geared to the long term for the main axes of the transport infrastructure connecting Central and Eastern Europe. However, in the course of being realized, they are subject to requirements for adaptation, extension and prioritization, which are also related not least to the funding that can actually be mobilized and the general difficulties inherent in transfrontier infrastructure projects. With a view to the railway connections, there might be an increasing need to coordinate effectively with the OSZhD corridors, although in practice in the competition for investment resources, it is frequently the railways that hold worse cards as compared with road transport.
- With regard to the railways' chances of having available in future an efficient infrastructure that can be used under competitive conditions over a wide area and connectedly, the setting of fees for using it plays a crucial role, as this is closely linked to the question of infrastructure funding. At present, we are still a long way from the required harmonization, for which it is imperative that flexible approaches to funding, including cross-funding, must be possible.
- The latent threat of terrorist attacks has given the security problem for the different transport modes, including the railways, a new dimension. Additional, elaborate protective measures are being discussed, also partly in connection with intermodal and globally oriented concepts (an

example being container transport). It is agreed that the risk cannot be eliminated; the issue is one of effective, but economically viable risk management, with no illusions.

- Because they are complex issues, the time spent and the costs at border crossings for international transport are ongoing topics, in which the various aspects have different significance depending on the specific features of the particular border crossing. Concerted action at a political level will certainly be useful, and the problems of the new EU Member States, which, as a rule, are both countries with borders as well as transit countries, can be turned to as a good point of reference for measures. The introductory talk on this matter by the Hungarian Minister of Transport was evidence of this.

As could be expected, the ECMT Council of Ministers was an ideal platform for contacts in the interest of OTIF's position and strategy for the future, and in respect of specific open issues:

- The opportunity arose to speak with representatives of the (large) Russian delegation concerning OTIF's initiatives with regard to a made-to-measure accession of Russia modelled on the Ukraine's membership. The interest does exist; however, in view of the fundamental changes in the Russian Ministry of Transport, which have not yet been concluded, the commencement of specific negotiations will have to wait for the time being.
- It was possible to negotiate with the head of the Lithuanian delegation and the new Polish Minister of Transport on the status and the next step required in the joint "Corridor I+" Project. It was particularly important to ensure support from Poland at the highest level.
- The good relations that have in part existed for years with the representatives of Slovenia were renewed. It was again evident that Slovenia invests a great deal of interest in OTIF at both State and railways level.

(Translation)



## **Organization for Railways Cooperation (OSZhD)**

XXXII<sup>nd</sup> Session  
of the Conference of Ministers

*Chisinau, 1-4 June 2004*

The Secretariat of OTIF fosters regular contact with OSZhD and its organs (see Bulletin 1/2003, p. 6, 2/2003, p. 28, 1/2004, p. 13). It was also represented this time by an observer at the plenary session of the meeting of OSZhD's highest organ, the Conference of Ministers.

The agenda covered a wide range of business:

- Statutory business dealt with every year (report on activities, work plan, budget and other financial matters),
- Questions of a statutory or organisational nature which the Conference of Ministers has to deal with regularly, but not every year (deciding the headquarters of the Organisation for the next 5 years and the venues for the next 10 sessions of the Conference of Ministers) and
- Intermediate results and continuation of the work relating to some of the issues that are important for international rail transport: increasing efficiency in the OSZhD transport corridors, updating the rules concerning the carriage of dangerous goods (Annex 2 to SMGS) and a draft UN/ECE Convention on international customs transit for goods carried by rail with an SMGS consignment note.

With regard to development of the transport corridors, certain progress was noted with respect to modernization of the infrastructure and rolling stock. However, this positive development has only resulted in higher average speeds on part of the corridors. This led to a recommendation from the Conference of Ministers to set up a steering committee for each corridor, as has already been done for some corridors. In order to increase efficiency, committee members should be at as high a grade as possible in the respective Ministries and railway undertakings.

With regard to updating the rules concerning the carriage of dangerous goods, it was possible to overcome some differences of opinion that arose in Commission 2 (e.g. in relation to the cycle of technical

inspections of tank wagons). As a large part of the work on aligning SMGS Annex 2 with the interim development of the UN Model Regulations, ADR and RID has still to be completed, the Conference of Ministers established measures to speed the work up.

With reference to the draft UN/ECE Convention on international customs transit for goods carried by rail with an SMGS consignment note, the Conference of Ministers firstly requested the Members of OSZhD to take part in the 67<sup>th</sup> session of the UN/ECE Inland Transport Committee to be held in Geneva in 2005, and to contribute to the adoption of the Convention. Secondly, it recommended the SMGS Contracting States to use and to recognize the SMGS consignment note as a customs document in anticipation of this Convention.

The Conference of Ministers mandated the Committee and the working organs of OSZhD to prepare an international conference concerning the facilitation of border crossing. According to the mandate issued by the Conference of Ministers, this conference should be held under the aegis of UN/ECE, with the participation of representatives of Governments, Railway Ministries, customs and border organs, railway administrations, OSZhD, UIC, Directorate-General Transport and Energy of the European Commission and other interested organizations and authorities. According to the report of the 66<sup>th</sup> session of the UN/ECE Inland Transport Committee (Geneva, 17-19.2.2004), the planned conference is expected to have the widest possible participation, including OTIF (doc. ECE/TRANS/156 dated 17.3.2004, item 84; see also Bulletin 1/2004, p. 10).

Cooperation between OSZhD and OTIF was covered under the agenda item dealing with the "report on OSZhD activities in 2003", and particularly in the discussion on the work plan for 2005 and subsequent years.

(Translation)

## **International Rail Transport Committee (CIT)**

General Assembly 2004

*Berne, 13 May 2004*

OTIF follows with particular interest the organisational changes within CIT that have proved necessary against the background of the changing environment and the

reform of the railways that is progressing in numerous European States. New CIT statutes had already been adopted at the 2003 General Assembly. The few, but nevertheless important questions that were still unresolved at that time (see Bulletin 2/2003, p. 29), such as the wider-ranging purpose of CIT, have now been settled. The 2004 General Assembly adopted the corresponding amendments to the statutes.

The infrastructure managers' membership of CIT had to be reviewed. According to the statutes as adapted, infrastructure managers and their associations may only take part in CIT's work as associate members. In future, CIT will only represent the interests of the carriers, which, incidentally, is already predominantly the case. The infrastructure managers' interests are represented by their own associations (European Rail Infrastructure Managers EIM und RailNetEurope RNE). The General Terms of Business for using the infrastructure should accordingly be negotiated between CIT on the one hand and these associations on the other.

The subject of "EU law" was a separate item on the agenda, particularly the third rail package adopted by the European Commission on 3 March 2004. The specific issue concerns those Commission proposals that have a bearing on rail transport law, namely the proposal for a Regulation of the European Parliament and of the Council on International Rail Passengers' Rights and Obligations (doc. COM(2004)143 final) and the proposal for a Regulation of the European Parliament and of the Council on compensation in cases of non-compliance with contractual quality requirements for rail freight services (doc. COM(2004)144 final)<sup>1</sup>.

The Assembly had before it the result of an in-depth analysis of these proposals carried out by selected transport lawyers commissioned by the CIT Board. In addition, the standpoint of the Community of European Railways (CER) with regard to the third rail package was presented. The further process for bringing forward the views of the railway associations on the proposed regulations was discussed. According to a decision of the General Assembly, CIT's point of view will be submitted to the European Commission after coordination between the Chairman of CIT and the Directors General of the International Union of Railways (UIC) and CER.

It was also decided to introduce English as the sole negotiating language by 2008, although French and/or German may be chosen as the working language(s) for

individual working groups according to requirements. Finally, a new meetings calendar was approved for the meetings of the General Assembly and of the Board. (Translation)

## Case Law

### Cour d'Appel de Paris

#### Ruling of 3 July 2002

**The railway's making wagons available to the transshipment undertaking to carry out marshalling operations in the port area (i.e. placing the wagons on the transfer track before being shunted onto the quay line) does not constitute delivery or acceptance of the goods. Acceptance of the goods being carried only takes place once the wagons are opened.**

Cf. Article L 133-3 of the French Commercial Code (Code de commerce)<sup>2</sup>

#### The facts:

French National Railways (SNCF) carried flour in sacks from various stations to Sète. The flour was bound for Libya. The consignor and consignee in Sète were the Grands Moulins de France (GMDF).

Before carrying out unloading and loading operations on board the ship Sumatra, the company Comptoir Général Maritime Sétois (SCGMS) marshalled the wagons in the port area in order to bring them as close as possible to the dockside, loaded part of the cargo on 15 December 1997 and then, noticing some damage upon opening some of the wagons, SCGMS entered reservations, requested that a legal expert be designated, and loaded the goods not refused by the inspector of the Libyan purchasers.

It was against this background that GMDF and the insurance companies (hereinafter referred to as the insurers) started proceedings against SNCF and SCGMS at the Tribunal de commerce de Paris (Paris Commercial Court) which, in its ruling of 11 December 2000:

1 Accessible under [http://europa.eu.int/comm/transport/rail/package2003/new\\_en.htm](http://europa.eu.int/comm/transport/rail/package2003/new_en.htm)

2 Article 57 § 1 of CIM contains a comparable provision: "Acceptance of the goods by the person entitled shall extinguish all rights of action against the railway arising from the contract of carriage in case of partial loss, damage or exceeding of the transit period."

- ordered SNCF to pay the insurers the sum of 3,500,000 FF with interest at the legal rate to run from the time the claim was made, plus compound interest,
- dismissed GMDF's claim concerning the damage stated and the associated costs,
- ordered provisional enforcement,
- ordered SNCF to pay the insurers by moiety the sum of 30,000 FF by reason of Article 700 of the New Code of Civil Procedure.

The appellant SNCF requests that the ruling be set aside, except dismissal of GMDF's claims concerning payment of the sums of 207,276 FF for the uncompensated material damage and of 623,943.44 FF for the alleged associated costs, and requests the court to:

- declare the action brought by the respondents to be extinguished as a result of default,
- subsidiarily declare the action as unfounded by reason of relief from liability and thus to relieve the appellant of all liability,
- order the insurers in solidum to reimburse the appellant the sum of 568,669.32 Euros paid on the basis of the provisional enforcement,
- limit its debt very subsidiarily to the sum of 73,471 Euros and order the insurers in solidum to reimburse the appellant the overpayment of 495,197.41 Euros,
- order the respondents in solidum to pay the appellant the sum of 7,622.45 Euros by reason of Article 700 of the New Code of Civil Procedure.

GMDF and its insurers request the court to:

- note Commercial Union Assurances' new name, CGU Courtage, and the assumption by Generali France Assurances of the rights of Generali Transports,
- confirm the ruling made, i.e. that it ordered SNCF to pay the insurers the principal sum of 3,500,000 FF and to set aside the ruling in respect of the surplus,
- set the beginning of the time for the legal interest to run at 19 March 1998 for the sum of 2 million

Francs and at 10 August 1998 for the remaining 1.5 million Francs,

- order SNCF to pay GMDF the additional sums of 31,599.02 Euros corresponding to the uncompensated material damage, 35,858.67 Euros for dead freight, 16,682.34 Euros for "SCGMS extra costs" and US\$ 40,226.23 for demurrage, all with interest at the legal rate to run from the time the claim was made, plus compound interest,

and subsidiarily to:

- dismiss SCGMS's exception by reason of limitation, against GMDF,
- order SCGMS to pay the insurers and GMDF all principal sums identical to those applied for from SNCF or the balance if the court intends partly to relieve SNCF, all with interest at the legal rate and compound interest,
- dismiss SCGMS's action for warranty against GMDF as unfounded, since the first time it was brought forward was at the appeal stage,
- order in any case all losing parties to pay on the one hand the insurers and on the other GMDF the sum of 10,000 Euros by reason of Article 700 of the New Code of Civil Procedure.

SCGMS requests confirmation of the ruling and subsidiarily the ordering of GMDF to guarantee to relieve SCGMS of all claims against it and the payment of 35,880 Francs, including taxes, by reason of Article 700 of the New Code of Civil Procedure.

#### **Grounds for the ruling:**

##### I. Concerning extinction of the action

Whereas SNCF asserts that extinction of the respondents' action is made by application of Article L 133.- of the Commercial Code, since according to its works rules and Articles 1, 2, 3 and 4 of the contract concluded between SNCF and SCGMS the goods are considered as delivered under the terms of the contract from the moment they are placed on the transfer track, that the dates the wagons were made available were between 4 and 8 December 1997 and that the appointment of an expert on 19 December 1997, i.e. more than 3 days after the goods were delivered, does not constitute acceptance of the reservations, that in addition the records

submitted in the context of the expert opinion do not meet the requirements of the Commercial Code and the case law so as to be considered as reservations;

Whereas SCGMS claims that having acted as the transshipment undertaking for GMDF from the time of the loading and unloading operations and not having received any complaints from GMDF and its insurers before April 2000, the latter's appeal is inadmissible as prescribed by application of Article 56 of the Act of 10 June 1966;

Whereas GMDF responds that the reservations made between 16 and 27 December 1997 were not made too late, since the goods had not been delivered and delivery was not possible, even materially, before these dates, as it was not possible to carry out any checks on the transfer track, that in fact delivery had taken place at the time of the acceptance procedures carried out by SCGMS, that in addition, SNCF had at least tacitly and unequivocally accepted the reservations made by SCGMS when the goods in the wagons were presented, that furthermore they had taken the initiative to request an expert opinion on the basis of Article 106 of the Commercial Code, which relieved the consignee from having to lodge an objection extrajudicially or by registered letter;

Whereas, with regard to delivery, Article 3 of the contract concluded between SNCF and SCGMS "for carrying out marshalling of wagons in the port area of Sète" refers to the works rules, which in Article 9.2.1 concerning "damage to goods upon delivery" specify that "at the request of the customer, the checks are carried out on the quay lines by the 'after-sales' service specialists";

That it can be noted that the purpose of the transfer tracks is to enable the wagons to be stabled before SNCF authorizes them to be taken to the quay lines for loading and unloading operations and any checks;

That the judges in the case at first instance rightfully ruled that making the wagons available cannot constitute delivery or acceptance within the meaning of Article L 133-3 of the Commercial Code;

That in consideration of the clause relating to the ascertainment of damage, "acceptance of the

goods transported" occurred when the wagons were opened;

Whereas it is evident, particularly from the expert's report, that the wagons carrying the goods in question were opened as from 19 December 1997;

That on this date, GMDF requested by means of an injunction under Article L 133-4 of the Commercial Code that a legal expert be appointed, who began his activities on 20 December 1997;

That the grounds for appeal based on extinction of the action will therefore be set aside.

## II. Concerning the disputation of liability on the part of SNCF

Whereas SNCF argues that except in exceptional cases as set out in the expert's report, the wagons, which evidenced no particular defects and were entirely suitable for carrying flour, were subject to extreme bad weather conditions, which can be classified as *force majeure*, that the error made by the consignee relieves SNCF of liability, since SCGMS, which was acting on behalf of the consignee, had begun its operations on 15 December 1997, although the wagons had already been made available to them on 4 and 8 December; that lastly, the issue of SCGMS's fault is not a new request but a new issue and is therefore admissible in accordance with Article 563 of the New Code of Civil Procedure;

That GMDF counters that SNCF failed in its duty to maintain the wagons placed in its charge, which wagons proved not to be hermetically sealed, that the criteria of *force majeure* are absent, that the fault committed by SCGMS, who did everything to sort the goods and to minimize the damage, has not been demonstrated, and lastly that the wilful attitude of SNCF can be deemed as gross negligence;

That SCGMS applies for SNCF's claim against it to be rejected on the grounds that it has been newly brought before the court and is therefore inadmissible, barred by statute of limitations and unfounded;

Whereas it is discernable from the records of climatic conditions at Sète which, in recent years, have been identical or similar to those pertaining

on 16, 17 and 18 December 1997, i.e. easterly and east-south-easterly winds of more than 100 km/h with rain, that since 1982 the weather conditions have several times been identical or even worse;

That the bad weather during the period in question does not occur frequently, but cannot be classified as *force majeure*, that in addition, the status of natural disaster had only been declared in respect of "floods and mechanical shocks resulting from the effects of waves";

That by invoking fault on the part of the consignee to justify this claim, SNCF is only developing a new issue, which as such, is admissible on the basis of Article 563 of the New Code of Civil Procedure;

That as this issue is intended to refute GMDF's reasoning, the issue derived from the grounds of limitation raised by SCGMS is unfounded;

Whereas, moreover, SNCF claimed before the judges in the case at first instance to be relieved of all liability by reason of there being a case of *force majeure*;

Whereas having begun the unloading operations on 15 December 1997, the date on which the first wagons were delivered, the ship having docked on the morning of Sunday, 14 December and the ship inspection and approval for the Libyan consignees having taken place on the morning of Monday, 15 December, then having ceased operations on 15 December at 21.30, without being able to recommence them before 19 December at 8.00 owing to the bad weather, SCGMS has not committed any fault;

That it follows that SNCF cannot be relieved from liability, with the observation that the legal expert attributes the damage partly to the climatic conditions and partly to the condition of some of the wagons.

### III. Concerning compensation

Whereas SNCF argues that the expert's report demonstrates that the sacks of flour could be exported without difficulty, subject to possible damage, that SNCF considers this damage to be 13% of the load refused, which corresponds to 73,471.92 Euros, that in addition, the expert attributed damage to SNCF which was due both

to climatic conditions and defects in the wagons which had a detrimental effect on them;

That SNCF also claims that GMDF does not justify the sums it is claiming as a result of damage suffered other than that which occurred through loss of the goods;

That GMDF counters that the percentage determined by SNCF is only the result of the expert's misjudgement of the "exceptional weather conditions" factor, that the report's conclusions are not those invoked by SNCF, that the Libyan inspector had prohibited continuation of loading on the evening of 27 December 1998, that loading of the goods on the ship without this consent would have resulted in non-payment of the whole load and the ship being detained indefinitely at the dockside; lastly, that GMDF substantiates the damage it suffered as a result of the related costs which were not covered by the insurers;

Whereas the legal expert's report states that "all the wagons inspected and refused wholly or in part contained some sacks which showed signs of dampness and sometimes sacks whose contents were moist, lumpy and mouldy" and that even though the majority were "apparently" in good condition, the Libyan consignees did not wish to take the risk of discovering damaged sacks upon arrival, particularly increased mouldiness;

That Mr. L., an agri-food engineer acting in his capacity as an assessor, took samples which, when analysed, revealed that the moisture content was above the norm and that yeast contamination/mildew was not very extensive, with the exception of the lumpy sample, and that he therefore offered the damaged load of 3150 tons for sale, specifying in the sales note that the buyer would have to "accept the goods in the qualified condition in which they were found, in full awareness of the events to which they had been subjected (refused loading on board a ship owing to partial dampness)";

That it follows that there was no certainty with regard to the actual condition of the sacks which were refused and that the value of the cargo had decreased as a result of the partial dampness, so that the ultimate consignee rightly refused to load on board the contents of several wagons that were at the dockside;

That the expert correctly assessed the depreciation, taking account of the value of the goods tested and that of the proceeds from the distress sale;

That the damage therefore amounts to 3,707,263.30 FF;

That consequently, SNCF will be ordered to pay the sum of 533,571.56 Euros to the insurers, the sum at which they compensated their insured party, and to pay GMDF the sum of 31,597.09 Euros;

That interest at the legal rate is due to run from each act of subrogation;

Whereas GMDF paid the shipowner the whole of the intended freight, i.e. 110,000 FF, whilst the tonnage of the freight actually loaded was considerably less owing to the damage, that the expert had calculated the value of the dead freight paid by GMDF at exactly 235,517.50 FF;

That in addition, the expert had on the one hand checked that the additional handling costs of 100,470 FF directly linked to the damage – the testing and sorting operations having slowed down the dockworkers' operations – did in fact correspond to the services provided by SCGMS who issued an invoice for them, and that they were in conformity with the rates applicable; on the other hand, he checked that the demurrage was correctly calculated, whereby it should be noted that he took account of the time during which the ship remained available for loading and did not therefore include the period during which it rained;

That the total amount due in respect of the above is therefore 379,466.96 FF;

That in contrast, GMDF's claim for payment of the sum of 8,958.98 FF to cover the costs of moving and ship's agent's fees, which include services that had in any case to be performed, be dismissed;

That GMDF's claim is consequently 614,984.46 FF, which is equivalent to 93,753.78 Euros;

That on 4 December 1998, the date from which compound interest is claimed, the conditions for applying Article 1154 of the Civil Code were in

place, and capitalization of the interest will therefore be ordered;

That it is reasonable to allocate the insurers the additional sum of 2,500 Euros and the same amount to GMDF and to SCGMS;

That the claim of the losing party, SNCF, made in this regard is rejected.

### **On these grounds**

The court:

Sustains the ruling in the case at first instance, except that it dismisses GMDF's claim submitted on the basis of the damage referred to and the additional costs, and sets the interest to run from when the claim was made,

Rules again on these claims, and in addition,

Sets the legal interest on the sum of 304,898.03 Euros to run from 19 March 1998 and on the balance, i.e. 228,673.53 Euros, to run from 10 August 1998,

Orders SNCF to pay GMDF the sums of 31,597.09 Euros and 93,753.58 Euros with interest at the legal rate to run from when the claim was first made and capitalization of interest plus the sum of 2,500 Euros by virtue of Article 700 of the New Code of Civil Procedure,

Orders SNCF to pay the insurance companies the sum of 2,500 Euros and to pay SCGMS the sum of 2,500 Euros.

[Related decisions]

(Direct communication)  
(Translation)

## **Miscellaneous Information**

### **"Visit to the Balkans"**

The Director General's visits to Serbia and Montenegro/Belgrade, Bulgaria/Sofia, Romania/Bucharest and Croatia/Zagreb

*10 –14 May 2004 and 25/26 May 2004*

Frequent invitations to make such visits were already issued a long time ago. The Director General had also

signalled his interest and readiness on each occasion, but only in the event of a good opportunity presenting itself.

At the beginning of the year, the time had come to honour the promises and actively to create the opportunity to do so, under the clear condition of realizing an overall programme, since isolated, separate visits would hardly have been possible. The programme had to take in a railway seminar in Ljubljana (Slovenia), which had originally been planned for 2003 with the Director General taking part as a speaker, and which would now be held definitely on 27/28 May 2004. It was especially important to include this because directly before the seminar, Ljubljana was expecting an ECMT Conference of Ministers with Slovenia in the chair.

In the end, a two part programme was arranged, with a week of visits to Belgrade, Sofia and Bucharest in succession, and attendance at the ECMT Conference of Ministers and in particular at the IRCA Seminar in Ljubljana, via Zagreb.

It was possible to achieve the objectives that had been set. The result is set out in detail in an internal report. In summary, from OTIF's point of view the following conclusions can be drawn:

Such trips to foster contacts are prudent, if not essential, in order to have personal links at OTIF Director General/Secretary General level with the key people in the Member States and to learn of requirements and expectations at management level and to discuss questions of strategy.

The experience gained confirms that networking must be actively pursued, because being available as somebody to speak to on a one-to-one basis is in itself a certain service (the Director General/Secretary General does have a certain position of prestige, not least because it may be assumed that in his role, he has a good overview and if need be can help as an intermediary). The belief was also confirmed that by means of such contact initiatives, it can be better ascertained to what extent interest and understanding exists in relation to COTIF/OTIF and how far OTIF's role is recognized.

It became apparent that OTIF, with its Secretariat, still needs to increase specific services. This cannot of course be in the direction of infrastructure planning and funding or investigations, clarification and reports on problems that exist generally in the transport sector and concerning the railways in particular (comparable to the work in the ECMT and UN/ECE railway working groups). OTIF's core business must always remain the

basis. But around this basis, the scope for more intensive activities in the context of services can be used:

- Platform for certain initiatives;
- Cooperation in representative projects;
- Organisation of the (COTIF-related) relaying of experience.

It is also specifically with a view to increased services that it is of course crucial to preserve the OTIF Secretariat as a centre of competence and to strengthen it. It should be a tool in the hands of the Member States that is known and used.

(Translation)

### **International Railway Congress Association (IRCA)**

#### **Seminar "LJUBLJANA 2004"**

*Ljubljana (Slovenia), 27/28 May 2004*

The IRCA Seminar on rail freight transport, which was finally held in conjunction with the 88th ECMT Council of Ministers in Ljubljana, was to have taken place a year earlier. However, it had to give way to the priority "EurailFreight" Conference on the same subject organized at short notice by the Community of European Railways (CER) on 22/23 May 2003 in Munich (see Bulletin 2/2003). This nonetheless proved to be advantageous. Without having to change the original idea behind the meeting, the 2004 IRCA Seminar used the opportunity to take stock of the situation in the first year following Munich. An ambitious resolution was adopted in Munich with specific, time-scheduled concepts that challenge one to monitor their real content and implementation with attention.

The Director General took part in the seminar programme as a speaker. The value for OTIF of the contribution expected from him, starting with the provocative question "COTIF and EC Directives: complementary or conflicting?" on the one hand, and the actual time available for a podium discussion with a larger number of participants on the other, made it advisable to differentiate between a comprehensive, finalized written contribution and a summary in the form of a PowerPoint presentation. Subsequently, from OTIF's point of view, the written contribution is mainly of importance. However, this will not be published in

the Bulletin. IRCA will publish it in one of the coming editions of its journal, "Rail International". In addition, both contributions can be found on OTIF's website.

The very well organized Seminar, which was supported by superb Slovenian hospitality, conveyed a comprehensive view of the problems and a broad spectrum of opinion on them, which was by no means unanimous. What was striking was the up and down outlook of many of the participants with regard to the future chances for rail freight transport, which varied from unshakeable optimism to serious doubts about the ability of the rail sector to achieve in sufficient time, with political support, a competitive position over a wide area for the rail mode. By 2007, full liberalization of rail freight transport is to take its place within the EC. It will remain to be seen whether liberalization brings with it the success desired for the railways. The railways can in fact claim in their favour to have increased productivity continually in the last few years, as they were urged to do, but gaps remain. The difficult discussion on charges for using the infrastructure, or track access fees, within the EC does not engender optimism. It is essential to have the same benchmarks with regard to the external costs for rail and road. Politics must ultimately have a vision of the contribution the various transport modes should make in the long term. In so doing, it must be taken into account that even investment in the railways takes a long time, which requires a firm policy and sustainable funding. Decisions of principle must be taken in good time, with a substantial risk of failure, at least from a business management perspective; the "waiting until demonstrably sufficient demand exists would avoid any risk" view is not tenable, because then the investment necessary, which consistently exhibits a structural-controlling component, inevitably comes too late. An added aggravating factor is that the key features of the European rail reform are certainly not commonly implemented. There are many different points of view, beginning with the question of the benefit of open access that is as broad as possible and the complete commercial separation of infrastructure from the business of transport, up to the dispute as to whether, in an area where strong State support is at work in the background, new, fully internationally placed monopolists do not prevent other successful market players from flourishing and hence in practice hinder real intramodal competition. The question of the definition of the railway system is also linked to this: to what extent is it really objectively justified to maintain the "integrated undertaking" and should not the "slot" be considered as the defining product and delimiting criterion of the railway as a transport system in respect of the transport market, which provides this market with

as much freedom as possible? Lastly, the effects of ostensibly non-essential further regulation in support of liberalization and the open market are causing concern. Such regulation includes the standards of full technical and operational interoperability, which can only be implemented with considerable effort to effect changes, and also quality specifications, which are really the responsibility of the market players. There is a risk that the costs of the rail system will go through the ceiling and in the real competitive struggle, will obliterate all the efforts to obtain for it a stronger position. It will be a question of looking at all the problems in the overall context relevant to the future of rail freight transport. This context ultimately arises from a worldwide intermodal perspective, but with the priority being a view towards the European – Central Asian region, which is to a certain extent moving together into a "new continent". It provides new perspectives for the railways; the conditions for implementing them successfully should be set up quickly: promote pan-European development, do away with national legislation, remove borders.

At the beginning of the Seminar, the host Slovenian Railways, together with CER and UIC, highlighted their position in a "Ljubljana 2004 Declaration" (Rail Freight in a New Century and in an Enlarged Europe: A challenge for railways, customers and political stakeholders!). This must be considered more as a confirmation of the Munich Resolution than as an intermediate review one year after. A short term based appraisal of success could not in any case produce much, even though it will be essential to ask firmly and impartially about the results from time to time.

The IRCA Congress, which will take place in Moscow in autumn 2005, should be used as the next significant opportunity. The way in which the Russian Railways hosting the Congress will be involved should provide an apt measure for checking the real content of the big visions in the "new continent".

From the point of view of OTIF, the following conclusions can be drawn:

- OTIF, with its international regulations for international carriage by rail on the basis of COTIF 1999, which are adapted to modern requirements, must become actively involved in the game. OTIF is primarily responsible for ensuring that its regulations get a chance in the course of the ever wider-ranging and clearly intermodal participation of the rail mode in the global freight transport system, in order to guarantee a uniform legal basis.



- In this context, it will also be a matter of providing more targeted information on OTIF/COTIF than hitherto in areas where there has not previously been a need for such regulations or for involvement with the competent organisation which is essential for them. Suitable forms of appropriate participation must be developed, depending on geo-graphical position and interests, which is targeted towards securing for OTIF the representative role worldwide at State level in those areas where uniform legal provisions are needed in respect of the railways' requirements concerning freight transport.
- That such a view is not merely the result of wishful thinking can be seen in the example of Japan, where not so long ago, freight carried by rail was hardly an issue. On the basis of specially developed containers that could be used for a variety of purposes, an interesting new business came into being for the railways. The responsible people are already no longer dealing only with national trade on the islands of Japan; they are looking towards the mainland, where the containers can be carried by ship. The Japanese rail network would thus emerge from its insular existence and would be connected intermodally to the wider sphere of transport activities.

(Translation)

### Book Reviews

**Kunz, Wolfgang** (editor), *Eisenbahnrecht* (Railway Law). Systematic collection with explanations of the German, European and international regulations, loose-leaf work with supplements, Nomos Publishing, Baden-Baden, ISBN 3-7890-3536-X, 15<sup>th</sup> supplement, status as at 30 January 2004.

The base volume appeared in 1994 (see Bulletin 1/1995). The ongoing provision of supplements means that in addition to the necessary updating, the texts and commentaries are made more complete step by step (see Bulletin 3/2003, p. 62).

The collection includes three volumes, two of which are reserved for German law and the law applicable in the Federal Lander. The third volume covers the categories of "European law, "international law", "recommendations/requirements/tariffs" and "other law".

The 15<sup>th</sup> supplement contains more than 200 new or replacement page inserts. A part of these results from the continuous development of legislation in the field of dangerous goods law. The user will therefore find in this supplement the version of the Act on the national and international carriage of dangerous goods by road and rail (*Gefahrgutverordnung Straße und Eisenbahn*) announced in September 2003, which was amended by the Maritime Dangerous Goods Act (*Gefahrgutverordnung See*) in November 2003. In addition, the German General Railways Act (*Allgemeines Eisenbahngesetz*) and the explanations on it have also been adapted.

From time to time, regulations are included which still formally apply because they have not been revoked, although they came into being several decades ago. For example, the "Convention on the International Railway Legal System" (*Convention sur le Régime International des Voies Ferrées*), set up in 1923 under the auspices of the League of Nations, together with its "Statute", has rightly been included in the collection, although it is more a programme that has to be carried out by means of specific contractual agreements; as is generally known, these are only fragmentarily available.

The Statute referred to sets out, amongst other things, the general basic rules aimed at facilitating border crossing both in international goods transport and in international passenger transport, for example: "The Contracting States shall arrange customs and police formalities in such a way that international traffic is obstructed and delayed as little as possible" (Art. 8). Minimizing the periods trains spend waiting at borders, which occur partly as a result of legally prescribed formalities and checks and partly as a result of procedures of a technical and administrative nature on the part of the (State) railways themselves, is still the subject of discussions in various international bodies and the programmes for action that result from them. This is apparently an old problem that has not - at least outside the European Union - so far been satisfactorily resolved. After looking into the "Statute on the International Railway Legal System", it would seem that the problem is not solved by setting down general guidelines such as these, which, in order to be carried out, require special agreements under international law (see Bulletin 3-4/1984, G. Mutz: Railway operations on foreign territory, item 36).

In the space of 10 years, "Railway Law" has developed into a comprehensive compendium of regulations concerning the many legal relationships in the rail sector. It can serve as a useful work aid to specialists in administrations, undertakings and associations. The

updated brief summary with the titles of Acts and other regulations in alphabetical order makes it easier still to look up the required provision.  
(Translation)

**Dr. Karl-Heinz Thume/Harald de la Motte**, (editors), *Transportversicherungsrecht*, (Transport Insurance Law), Verlag C.H. Beck, 2004, XXXII, 807 pages, ISBN: 3/406/49557/5, € 178.-

After seven years planning and preparation, the long-awaited first comprehensive commentary on transport insurance law has been published in German.

There were various reasons for the difficulties that arose in connection with the editorial preparation: on 1 June 1998, transport law (except for maritime law) in Germany underwent a fundamental restructuring and was reintegrated into the German Commercial Code. There were also numerous national and international changes in respect of the general contractual and insurance conditions. The general German requirements concerning forwarders were adapted and amended several times and finally, in 2003, the insurance automaticity of the forwarder's liability and loss/damage insurance ceased to exist. The range of insurance models is continuously expanding and there is brisk competition.

In all, the editors and the publisher were able to obtain the services of 13 well-known German authors for the project. Although revision of the Insurance Contract Act is on the horizon, it was not possible to wait any longer for this to happen.

The commentary covers the three major branches of this area of the law, namely transport insurance itself in the narrower sense, i.e. the insurance of goods, and comprehensive and liability insurance. The commentary is aimed primarily at all practitioners involved with transport and transport insurance law, i.e. mainly lawyers, courts and the insurance industry.

Chapter 1, Introduction, explains the function and concept of insurance, in which it must be borne in mind that an insurance claim in the legal sense is not a claim for compensation, but a claim for performance. This part also looks at the history, particularly of transport insurance. The oldest class of insurance is maritime goods transport insurance, which was practised as long ago as the second millennium b.c. by associations of phoenician traders in an organisation that very much resembled a mutual insurance society of today. The introduction also contains a description of the legal basis

of transport insurance and an overview of insurance control.

Chapter 2 contains the Insurance Contract Act, with a commentary on each paragraph, and the tenth section of the German Commercial Code, insurance against the risks of maritime shipping, as well as a description of international insurance contract law. Chapter 3 looks at the various general conditions for insuring goods (German Transport Insurance – Freight Insurance Conditions 2000, General German Maritime Insurance Conditions – Freight Insurance 73/84/94, German Transport Insurance – Freight 2000, special clauses, Air Freight Insurance, own account transport and special branches of the Association of German Insurers).

Chapter 4 deals with the general insurance conditions of comprehensive insurance and Chapter 5 the so-called "transport liability insurance": "transport liability insurance" can be considered as a statutorily regulated compulsory third party insurance, the special feature of which is that it serves a particular branch of industry, i.e. freight transport. What is insured is not the interest of the shipper, i.e. of the person interested in the goods transported, but the interest of the transport mode (of the carrier, forwarder or warehouse keeper) in not having a claim made against them under the contract of carriage. Contract of carriage is the generic term for a freight, forwarding and storage contract, irrespective of the type of goods, the means of transport and the medium in which it moves.

As is to be expected in a volume published by the renowned Verlag Beck, there is a comprehensive table of contents, an index of abbreviations and a quick overview of important headwords.  
(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° 3029/2004, p. 235/236 – Action directe à l'international. Cadeau pascal (M. Tilche)

*Idem*, n° 3041/2004, p. 460/461 – Aérien. Montréal en vigueur (M. Tilche)

*CIT Info*, Berne, N° 2/2004, Modèle de titre de transport pour le trafic Est-Ouest / Fahrscheinmuster für den Ost-West-Verkehr / Specimens of tickets for East/West journeys / Lettre de voiture unique CIM/SMGS / Einheitsfrachtbrief CIM/SMGS / Standard CIM/SMGS consignment note

*European Transport Law*, Antwerpen, No. 2/2004, p. 151-157 – A new European Regulation 261/2004 on compensation and assistance in the event of denied boarding, cancellation or long delay of flights, extends the rights of air passengers (M. Wouters)

*Gefährliche Ladung*, Hamburg, Nr. 6/2004, S. 20 – Gefahrgutrecht. Recht im Wandel I. (W. Spohr)

*Transportrecht*, Hamburg, Nr. 3/2004, S. 93-99 – Haftungsbegrenzungen und deren Durchbrechung im deutschen und internationalen Transportrecht. Überblick über die gesetzlichen Regelungen in Deutschland und in internationalen Übereinkommen (R. Herber); Sonderbeilage, S. IX-XII – Bedarf es einer Revision der CMR zur Einführung des elektronischen Frachtbriefs im internationalen Straßenverkehr? (B. Czerwenka); S. XXV-XXVII – Der Zeitpunkt der Rechtsvereinheitlichung ist zugleich Zeitpunkt neuer Rechtszersplitterung (W. Müller-Rostin); S. XXVIII/XXIX – Die autonome Auslegung der CMR (anhand von vier Entscheidungen) (H. Neumann); S. XXXIV-XXXVI – Die „Luftfahrtunternehmen der Gemeinschaft“ und das Montrealer Übereinkommen (E. Ruhwedel); S. XXXVII-XL – Ökonomie des Transportrechts – oder ökonomisches Transportrecht? (J. Temme)

*Idem*, Nr. 4/2004, S. 137-141 – Haftungsbegrenzungen und deren Durchbrechung im Luftrecht. Oder: Die absolute Beschränkung der Haftung bei Schäden an Luftfrachtgütern (E. Ruhwedel); S. 142-146 – Haftungsbegrenzungen und Haftungsdurchbrechungen im Seerecht (D. Rabe); S. 147-152 – Haftungsbegrenzung und deren Durchbrechung im Seehandelsrecht: Die englische Auffassung (R. Asariotis)

*Idem*, Nr. 5/2004, S. 181-194 – Schadensverhütung und Schadensausgleich bei Güter- und Verspätungsschäden nach dem Montrealer Übereinkommen (I. Koller)

*Uniform Law Review / Revue de droit uniforme*, Rome, N° 2004-1, p. 51-82 – The New Draft CRTD : Modernizing the International Civil Liability and Compensation Regime for the Inland Transport of Dangerous Goods (J. E. de Boer)

Zbornik Pravnog Fakulteta u Zagrebu, N° 2/2004, p. 361-382 – Budimpeštanska Konvencija o ugovoru o prijevozu robe unutaršnjim plovnicim putovima (CMNI) / Budapest Convention on the Contract for the Transport of Goods by Inland Waterways (CMNI) (V. Polić)