



Intergovernmental Organisation  
for International Carriage  
by Rail

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Bulletin  
of International  
Carriage  
by Rail

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**2/2005**

113th Year • April - June

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# 2/2005

113<sup>th</sup> year – April - June

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### **Central Office Communications**

#### **Approval of the 1999 Protocol**

##### **Portugal**

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), Portugal deposited its instrument of approval of the 1999 Protocol with the Provisional Depository<sup>1</sup> on 7 April 2005.

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). Portugal is the 25<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 Depository Government provided for in Articles 22 to 26 of COTIF 1980 from 3 June 1999 to the entry into force of this Protocol.

#### **List of CIM lines**

(published on 1 May 1985)

##### **Central Office circular no 72, 20 April 2005**

###### *Chapter “Ukraine”*

Because of the modifications made in the chapter Ukraine, the chapter has been re-issued.

##### **Central Office circular no 73, 9 May 2005**

###### *Chapter “Germany”*

Deletion of the shipping line Puttgarden – Moss operated by the “Scandlines Euroseabridge GmbH” (Hochhaus am Fährhafen, DE – 18119 Rostock – Warnemünde) mentioned under II. c) 69.

See COTIF, article 10 §§ 1, 3.

## OTIF Organs

### Administrative Committee

103<sup>rd</sup> session

*Berne, 12/13 May 2005*

The Administrative Committee held its 103<sup>rd</sup> session in Berne on 12 and 13 May 2005 under the chairmanship of Mr Aymeric (France).

In essence, discussions in the Administrative Committee focussed on personnel matters and preparation of the 7<sup>th</sup> General Assembly, which will be held in Berne on 23 and 24 November – and if need be on 25 November – 2005. After lengthy discussion, the Administrative Committee approved a new version of the Staff Regulations, which will be applicable from 1 June 2005.

As regards the rest, the Administrative Committee approved the 2004 Annual Report and Financial Management Report. It set the rate per kilometre as the basis for calculating the definitive contributions in 2004 at SFr. 6.50. The outcome of the 2004 financial year showed an overspend of SFr. 120,641.86, which will be debited from the reserve fund. This overspend is explained mainly by the fact that the allocation to the provision for bad debtors was entered in the accounts in an expenditure account rather than in a reserve.

The Administrative Committee also noted OTIF's general financial situation and the current situation with regard to investments.

The 104<sup>th</sup> session will be held in Berne on 22 November 2005, i.e. immediately before the 7<sup>th</sup> General Assembly.  
(Translation)

### **RID Committee of Experts working group on tank and vehicle technology**

*Bonn, 21/22 April 2005*

see “Dangerous Goods”

### **RID Committee of Experts working group on standardized risk analysis**

*Bonn, 3/4 May 2005*

see “Dangerous Goods”

## Dangerous Goods

### **RID Committee of Experts working group on tank and vehicle technology**

6<sup>th</sup> session

*Bonn, 21/22 April 2005*

The following States took part in the discussions: Belgium, Germany, France, Lithuania, Netherlands, Poland, Sweden, Switzerland, Czech Republic and United Kingdom. The International Union of Railways (UIC) and the International Union of Private Wagons (UIP) were also represented.

#### **Derailment detectors**

As the problem of the false activation (false alarms) of derailment detectors fitted to tank-wagons by Swiss Railways (SBB) had not yet been resolved, the project has been put on hold for the time being.

Following the tests carried out by UIC, which had determined the place where the derailment detectors should be fitted, the tripping value and the influence of the condition of the infrastructure, it was agreed that:

- Switzerland, in agreement with UIC, would request the manufacturer to carry out trials at 6.5 g in order to gain experience of the significance of minor false activations,
- before whole fleets were equipped, it must be ensured by testing that the derailment detectors also trip reliably at high speeds,
- it was up to the industry, on the basis of existing electronic systems (e.g. telematics), to seek solutions for detecting derailments electronically,
- the working group should be closely involved in the development of electronic derailment detectors in order to be in a position to make a

recommendation to the RID Committee of Experts,

- the working group is to inform the RID Committee of Experts in good time if the deadline planned for including relevant requirements in RID (2009) cannot be met.

### **Measures to prevent and limit damage caused by the overriding of buffers**

The working group adopted the performance specification proposed by France for devices to protect against the overriding of buffers, the aim of which was to avoid more major reconstruction work on wagons, not to increase the risk to personnel in the "Bern rectangle", not to change the length of wagons and to prevent other wagons being compromised when taking curves. The RID Committee of Experts would be asked to look at the question of the equivalence of this device as compared with other measures already adopted. In addition, UIC was asked to prepare performance specifications relating to type approval in respect of compatibility with other devices to protect against the overriding of buffers, in order that they can be referred to in the regulations.

With regard to the representative of France's calling into question the applicability of the test method in standard EN 13094 to sandwich covers for tank ends, it was agreed that the representatives of France and Germany would try to find a more suitable test method.

In a draft proposal to the RID/ADR Joint Meeting, Belgium proposed prescribing for tank-containers the same measures adopted for tank-wagons concerning devices to protect against the overriding of buffers and the limitation of damage. In subsequent discussions, it was agreed that:

- Consideration should not be restricted to tank-containers used in European land transport, but must also include portable tanks. As easier conditions were already prescribed for UN portable tanks that do not apply in rail transport, other railway-specific requirements could be dealt with in the UN Sub-Committee of Experts.
- The frame structure of a tank-container cannot be changed because of the intermodal nature of this means of transport.
- Only the protective measures of the wagon can be examined. Measures relating to the wagons

cannot be applied, because the carrying wagons for tank-containers can carry any type of goods.

- It may be possible to achieve improved safety by positioning dangerous goods tank-containers in the middle of container wagons, to the extent that this is possible. However, owing to the considerable operational implications, these questions would first have to be discussed in depth with UIRR (International Union of Combined Road-Rail Transport Companies) and UIC.
- The different masses of tank-wagons and tank-containers, the design of tank-containers (frame construction) and the fact that tank-containers can only absorb horizontal forces and cannot absorb vertical forces because of the way they are fixed to the container wagons should also be included in the considerations.
- It must be checked whether there is a safety benefit in that tank-containers are carried primarily in complete train-loads that require less marshalling. In this context, accidents involving tank-containers and the volume of tank-container traffic must be considered.

### **Telematics**

Those participating in the working group were invited to an information seminar by the German Federal Ministry of Transport, Construction and Housing on the subject of "Improving safety in transport and safeguarding against misuse by means of technical and logistical measures" to be held at the "transport logistic" trade fair in Munich. They were also informed about the EU's MITRA Project (**M**onitoring and **I**ntervention for the **T**ransportation of Dangerous Goods).

### **Drip leaks**

The representative of the Netherlands introduced a document which, on the one hand, contained a proposal for control requirements for filling and emptying tank-wagons for substances carried in the liquid state, and on the other, a proposal for emptying service equipment after filling or emptying, in order to avoid leaks occurring during carriage.

In the subsequent discussion, the following points were addressed:

- This is not a problem that is specific to the railways. However, it was pointed out that rail

transport differs in principle from other transport modes, as firstly, in rail transport several participants are involved and secondly, in road or inland waterway transport, less serious problems can be established and dealt with quickly.

- The number of leakages detected should be placed in relation to the volume of transport in order to establish whether this really is a serious problem.
- It is not known whether the leakages detected are the result of the closures being in a bad condition or whether the closures are wrongly operated. If the problems are primarily technical, these could certainly be dealt with in RID. However, problems resulting from carelessness on the part of personnel would have to be resolved in some other way.

The representative of the Netherlands would submit a new proposal.

#### **Reports on incidents in the carriage of dangerous goods in accordance with RID 1.8.5**

The representative of Sweden introduced a report of an accident in which a complete train-load carrying 770 tonnes of chlorine in 12 tank-wagons hit a set of buffers at a speed of 45 km/h and partially derailed. He added that the fact that no dangerous goods escaped was due to the presence of crash buffers and protective shields.

The working group also received information concerning an incident that occurred in the Netherlands and that raised the question of the allocation of responsibilities, because the cause of this incident was human error in checking equipment. The representative of Germany reminded the meeting that there would have to be detailed allocation of obligations in each individual State in order to penalise those who could have intervened directly. In his view, it was not enough to carry out checks during carriage. Checks to ensure that obligations were being met had to be carried out at the place of departure and destination. He called for solutions to be sought not just in updating the requirements, but also in improving checking practice. The working group agreed unanimously that in order to carry out checks, sufficient financial resources also had to be provided.

**Next session:** April 2006.  
(Translation)

### **RID Committee of Experts working group on standardized risk analysis**

*Bonn, 3/4 May 2005*

Following WP.15's "lack of enthusiasm" (see Bulletin 4/2004, p. 79) for setting up a joint working group under the auspices of the RID/ADR Joint Meeting, participation at this 3<sup>rd</sup> meeting had again dwindled (only 5 governments and 2 international organisations). However, these were the governments that already carry out risk analysis in order to demonstrate, among other things, the need for the measures they take with regard to transport restrictions (see Bulletin 4/2004, p. 77).

The working group examined the draft guidelines for carrying out risk analysis prepared by Germany on the basis of existing procedures. It was agreed that this revised draft would be submitted to the RID Committee of Experts for approval. The latter would also have to say whether it wished the working group to continue with its work, which could include setting up a platform for exchanging experience and a research project aimed at comparing risk analysis systems, both qualitative and quantitative, on the basis of specific scenarios, with a view to standardizing them.

(Translation)

## Case Law

### Cour d'Appel de Paris

#### Ruling of 2 October 2003

**In accordance with the "General Conditions for Combined Transport", the combined transport companies that are members of UIRR<sup>1</sup> commit themselves, on the basis of the contract of combined transport, to organising the loading on to the wagon, the consignment as freight and the unloading of road vehicles entrusted by their customers<sup>2</sup>. When the combined transport companies' liability is implicated by reason of**

1 International Union of combined Rail-Road transport companies

2 Article 1.2.1 of the General Conditions for Combined Transport

**the commitments contracted, such liability is governed by the CIM Uniform Rules<sup>3 4</sup>.**

Cf. Article 36 § 3 and Article 37 § 2 of CIM<sup>5</sup>.

The Court has before it the appeal brought by Novatrans plc against the ruling given after due hearing of the parties on 14 June 2001 by the tribunal de commerce de Paris (Paris Commercial Court) which, in the case opposing it on the one hand to Logistra Ltd and to the insurance companies AGF Mat and AXA Global Risks and on the other hand, to French National Railways (SNCF):

- pronounced the action by Logistra Ltd, the company AGF Mat and the company AXA Global Risks to be admissible,
- ordered the appellant to pay, in addition to costs, 32,664.60 FF, or 4,979.69 Euros, to the insurance companies and 10,000 FF, or 1,524.49 Euros, to Logistra Ltd,
- dismissed SNCF's claim of inadmissibility by reason of limitation and dismissed Novatrans plc's action for warranty brought against SNCF.

...

Whereas, entrusted by the company Rizerie Franco Americaine et Coloniale, the consignee of the goods, with the carriage by rail of 26,300 kilos of long-grain rice in bulk from Italy to France, Logistra Ltd called upon Novatrans plc, a combined transport company, to carry out transport from Modane (Italy) to Noisy-le-Sec (France), which company then entrusted SNCF with performance of the carriage by rail;

Whereas on 22 January 1999, when the container it had consigned on the instructions of Logistra Ltd arrived at Noisy-le-Sec station, Novatrans plc entered the

following reservations in the consignment note, reproduced in substance in the report prepared on 27 January 1999 by SNCF: "observations on the wagon made upon arrival. Dome partly open (incorrectly closed upon departure), traces of dampness in the goods (bulk rice) outside liability of Novatrans plc;"

Whereas on 5 February 1999, Mr T. Leclercq, an expert, prepared at the request of Cesam a report in which he notes that no reservation was made concerning the external condition of the container at the time it was taken over by Novatrans plc and concludes that Novatrans plc "acknowledges *de facto*, in its reservations of 22 January 1999, that the load was damaged by the opening of a hatch during transport while the container was within its full responsibility";

Whereas on 21 January 2000, Logistra Ltd, as well as the company AGF Mat and the company AXA Global Risks, summoned Novatrans plc to appear before the tribunal de commerce de Paris to obtain, on the basis of the expert's report and Article 36 of the Berne Convention<sup>6</sup>, known as CIM, compensation for the damage caused by the spoiling noted;

Whereas on 27 January 2000, Novatrans plc summoned SNCF to be ordered to underwrite all the orders that might be issued against Novatrans plc;

Whereas, this being the case, the appellant is justified in submitting that the companies' AGF Mat and AXA Corporate Solutions Assurances right to bring an action has not been proved; that in fact, as is the case for Logistra Ltd, they do not produce the insurance contract that would link them to their insured party; that in addition, the document of subrogation drawn up on 8 April 1999 for the sum of 42,664.60 FF does not mention the "insurance companies shown in contract No. 13021", it being observed here that no information on this contract has been provided; that finally, no other document mentions the insurers of Logistra Ltd for the incident that forms the subject of this case;

Whereas, with regard to the action directed by Logistra Ltd against Novatrans plc, which does not contest its right to bring an action for compensation of the damage it caused estimated at 10,000 FF, or 1,524.49 Euros, it must be noted:

- that the "General Conditions for Combined Transport" linking the parties prescribe, in respect

3 Article 6.1.1 of the General Conditions for Combined Transport

4 In the original text, the title "International Convention concerning the carriage of goods by rail", CIM, is quoted, which is not correct, as this Convention lapsed with the entry into force of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, Appendix B of which forms the CIM Uniform Rules – see Article 24 § 2 of COTIF.

5 Contractual application on the basis of a reference to the General Terms of Business for Combined Transport, see footnote 3; in addition, see the publication in "Revue de droit uniforme", Rome, No. 2004-1, p. 220-222.

6 See footnote 4.

of the international regime, the application of which is not contested,

- on the one hand that "by virtue of the contract of combined transport, the member companies of UIRR commit themselves to organising the loading on to the wagon, consignment by rail and unloading of the road vehicles – full or empty – entrusted by their customers" (Article 1.2.1),
  - on the other hand that "when the liability of the combined transport companies is implicated by reason of the commitments contracted under Article 1.2.1, such liability is determined in accordance with the provisions of the "International Convention concerning the carriage of goods by rail (CIM)"<sup>7</sup> (Article 6.1.1),
  - lastly that "the combined transport companies cannot be held liable for all damage, including that caused to third parties (including railways) originating from an irregularity of the vehicle consigned" (Article 6.2.1),
- that the incident that occurred, i.e. the rice becoming damp, was caused by incorrect closure of the dome of the container,
- that while Novatrans plc is responsible for loading the container on to the wagon and for unloading it, nothing establishes that, as Novatrans plc submits, it was able to check the closure of the container, which rested on the consignor responsible for packing the rice into the container, so that the absence of reservations at the time of loading cannot be imputed to the company;

Whereas consequently, Logistra Ltd's claim must be dismissed;

...

On these grounds:

the Court sustains the ruling submitted in respect of its findings that are not contrary to this ruling concerning the one-off costs, quashes it in respect of the surplus

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7 See footnote 4.

and, making a new ruling, declares the insurance companies' claims inadmissible, dismisses Logistra Ltd's claim for compensation for the damage it invokes and consequently declares that there is no need for SNCF to assume any liability.

...

[Related decision]

(Direct communication)  
(Translation)

### Miscellaneous Information

#### Association of German Transport Undertakings Academy

*Bad Homburg, 21/22 April 2005*

On 21 and 22 April 2005 in Bad Homburg, the Association of German Transport Undertakings Academy, together with the International Rail Transport Committee (CIT), organised a seminar on "The new COTIF Convention, implications of the new international freight law for freight railways". This event provided the Secretariat of OTIF with the opportunity of presenting COTIF 1999 and in the discussion, to go into a range of problems that are connected with the entry into force for only some of the Member States of OTIF. The event was very well attended and again highlighted the need to provide the user groups concerned with sufficient information.

For the second half of 2005, the Academy is planning a focus seminar on the subject of "wagon law".  
(Translation)

#### Rail Cargo Information Netherlands

*Rotterdam, 24 May 2005*

To provide information to its customers, Rail Cargo Netherlands organised a seminar on COTIF 1999 and the new legal aspects in the rail transport sector that it will bring. With around 80 participants, the seminar was very well attended and provided the Secretariat of OTIF with another opportunity of presenting COTIF 1999.



This seminar too demonstrated the considerable demand for first-hand information and met with great interest, which led to a lively discussion.  
(Translation)

### **International Association of Private Sidings Users (AIEP/IVA)**

*Bonn, 9 June 2005*

On the occasion of its annual General Assembly, the International Association of Private Sidings Users organised a "Private Goods Wagon Forum" under the heading "Cargo Rail Europe", at which a representative of the OTIF Secretariat had the opportunity of presenting the new wagon law on the basis of COTIF 1999 under the heading "Legal basis now and in the future". The panel discussion and the active involvement of the numerous participants at this event once again demonstrated the great interest that exists in this subject.  
(Translation)

### **International Summer Academy 2005**

"Train by train for Europe"

*Sopron (Hungary), 23-26 June 2005*

The 15<sup>th</sup> International Summer Academy was held at the end of June 2005 under the scientific guidance of Prof. Spera, manager of LOGOTRANS GmbH. Railway experts from nine countries attended the Academy. Among them were representatives of international institutions, railway undertakings, insurance and logistics undertakings, international consultants and universities. OTIF was represented by the Director General, who gave a presentation on the opportunities and risks for the railways in Eurasia. Other subjects covered in presentations included the "Hamburg Rules", the perspectives of logistical processes in a globalised environment, the effects of EU enlargement on cross-border road freight transport, European inland waterways transport and the services provided by freight transport, particularly in relation to its users. In the technically detailed discussions over three days, the almost 40 participants exchanged views on the existing and future options for activities at the political and private sector level that might be an aid to furthering the competitiveness of the rail sector and to optimising its performance. In so doing, it was possible to gain wide understanding of the fact that even with the

opportunities for taking action that are already available, clear progress could be made in this direction. Nevertheless, the participants also all agreed that it is becoming increasingly important for the railways to carry out more prospective analysis on developments, e.g. also in Russia and China, in order better to utilise the opportunities for accessing the markets that such analysis would reveal. As the participants will no doubt be able to relay the information gathered to their respective specialist circles, it was agreed that the format of the event chosen constitutes a useful addition to the customary international congress events.  
(Translation)

## **Book Reviews**

**Wittenberg/Heinrichs/Mittmann/Zwanziger, *Kommentar zum Allgemeinen Eisenbahngesetz (AEG)*** (Commentary on the German General Railways Act), TZ-Verlagsgesellschaft mbH, Hamburg 2004, ISBN 3-7771-0313-6.

This commentary on the German General Railways Act (*Allgemeines Eisenbahngesetz - AEG*) of 27 December 1993, as amended by the accompanying budget law 2004 of 29 December 2003, begins with a brief historical outline of the developments that led to this Act. There then follows an almost 20 page overview of developments in European railway law with a look at the European Commission's 2<sup>nd</sup> and 3<sup>rd</sup> rail packages, which were not yet adopted at the time this commentary went to press.

The actual commentary on the AEG sets out the official justification according to the respective printed matter of the Federal Diet and supplements this with further explanations. The responsibilities of the supervisory and approval authorities in accordance with § 5 of AEG are clearly presented in tabular format. The commentary on AEG is supplemented by the reproduction of a range of other legal requirements, with the explanatory report for them. These are

- the law on the Federation's rail transport administration
- the railway undertaking-professional access order
- the use of railway infrastructure order
- the railway traffic manager order

- the railway traffic manager examination order and
- the order on the fees and expenses for official acts by the Federation's rail transport administration.

Explanations beyond reproduction of the explanatory reports are only included in respect of the railway traffic manager order of 7 July 2000.

Practical use of the commentary is made easier by a table of contents, a list of abbreviations and a subject index.

The commentary is aimed at people working in the railway sector in railway undertakings and in the supervisory authorities as well as at experts in the rail construction and rail vehicle industry sectors, and is of major interest not only to lawyers.

(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° 3077/2005, p. 265/266 – CMR. Interprétation « maison » (M. Tilche)

*Idem*, n° 3086/2005, p. 415/416 – Prescription. L'effet du dol (M. Tilche)

*Idem*, n° 3087/2005, p. 438/439 – CMR : vice d'emballage (jurisprudence)

*CIT Info*, Berne, N° 3/2005, p. 2/3 – La responsabilité du transporteur ferroviaire international en cas de décès ou blessure de voyageurs : examen du régime issu de la COTIF (1999) et de celui envisagé par la Proposition de Règlement communautaire sur les droits et obligations des voyageurs ferroviaires internationaux / Die Haftung des Beförderers im internationalen Personen-Eisenbahnverkehr : Ein Vergleich der Regelung gemäß COTIF (1999) und gemäß Vorschlag für eine Verordnung der Europäischen Union / The liability of international carriers by rail for the death of or injury to passengers : a comparative examination of the regimes under COTIF (1999) and the proposed European Union Regulation on International Rail Passengers' Rights and Obligations (J.-L. Dufournaud)

*European Transport Law/Droit européen des transports*, Antwerpen, N°2/2005, p. 161-173 – A comparative law study of the relationship between the

obligations of sea carriers and the exceptions (M.L. Hendrikse/N.J. Margetson); p. 189-193 – Limitation of liability and breaking limitation in maritime law (C. Breitzke)

*Gefährliche Ladung*, Hamburg, Nr. 4/2005, S. 30-34 – Klärwerk. Die Gemeinsame Tagung RID/ADR/ADN konnte im März eine Reihe von Detailfragen klären, was das Leben in der Praxis vielfach wesentlich vereinfachen wird (J. Conrad)

*Transidit, Recueil de jurisprudence et d'information en droit des transports* (Publication trimestrielle de l'Institut du Droit International des Transports – IDIT), Rouen, N° 42/2005, p. 1-6 – La Convention de Montréal relative au transport aérien international (V. Bailly-Hascoët)

*Transportrecht*, Hamburg, Nr. 4/2005, S. 133-138 – Globale Haftungsbeschränkung in der Binnenschifffahrt – Empfiehlt sich eine Revision der CLNI? (B. Czerwenka)

*Idem*, Nr. 5/2005, S. 177-181 – Unbeschränkte Haftung des Luftbeförderers nach dem Montrealer Übereinkommen 1999? (I. Koller); S. 182-185 – Carrier's Liability in Cross-Border Air Cargo Substitute Transportation (M. Clarke); S. 185-189 – Neuauslegung des Art. 1 Abs. 5 CMR? (S. Rogov); S. 189-203 – § 656 Abs. 2 Satz 2 HGB und das überkommene Rechtsinstitut der Skripturhaftung. Ein Beispiel für die Inkompatibilität von internationaler Rechtsvereinheitlichung und nationalen Rechtsinstituten (H.A. Giermann); S. 203-206 – Der Teilstreckenvertrag beim Multimodal-Vertrag (J.F. Bartels)

*Idem*, Nr. 6/2005, S. 225-228 – Aktivlegitimation und Regressverfolgung in Deutschland dargestellt am Beispiel der CMR (K.-H. Thume); S. 229-233 – Aktivlegitimation und Regressvoraussetzungen betreffend transport- und versicherungsrechtliche Ansprüche nach österreichischer Rechtslage und Rechtsprechung (W. Walch)