



Intergovernmental Organisation  
for International Carriage  
by Rail

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Bulletin  
of International  
Carriage  
by Rail

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**1/2006**

114th Year • January - March

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# 1/2006

114<sup>th</sup> year – January - March

## **Bulletin of International Carriage by Rail**

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### **Dangerous Goods**

#### **RID/ADR/ADN Joint Meeting**

*Berne, 20-23 March 2006*

Experts from 26 Governments (including the USA) and 16 international governmental (including the European Commission and OSJD) and non-governmental (including UIC, UIP, CEN and IRU) organisations took part in the work of this session chaired by Mr C. Pfauvadel (France). This session was shortened owing to the insufficient number of official documents (15) and was characterised by the presence of almost 90 participants, which represents the second highest level of participation since the Joint Meeting was set up. Another feature of this session was the setting up of two new informal working groups (transport in limited quantities and the BLEVE issue, see below) which will meet outside the Joint Meeting, while three other existing working groups (transport of wastes, safety advisor and revision of Chapter 6.2) will continue their work.

#### **Working group on standards**

Of the 16 standards CEN had proposed for adoption, only 6 were accepted. The Joint Meeting was not able to adopt a position on the other standards as there was no consensus in the working group that met outside plenary

session time, owing in particular to the large number of standards on the one hand and to the lack of agreement on their interpretation on the other. Further clarification would be required.

#### **Working group on tanks**

The working group, which met in parallel with the session, dealt primarily with the issue of the BLEVE, “Boiling Liquid Expanding Vapour Explosion” during the carriage of flammable gases (see Bulletin 4/2005, p. 52). This subject had already been debated at length in plenary.

Some delegations considered that the RID and ADR safety requirements deal, in principle, with risks encountered under normal transport conditions and not with possible accidents such as a fire. To have requirements for reducing the BLEVE risk in cases of fire or accidents would not be in keeping with this principle and would consequently require a revision of all the RID and ADR requirements with a view to making them much stricter; this does not seem to be justified by data relative to accidents, since BLEVE accidents in Europe remain exceptional cases. Some other delegations remarked that the existing regulations already take into account accident conditions.

Some delegations considered that, if work was needed in this area, a systematic approach should be adopted; in other words, all types of accidents that can cause a

catastrophic situation - not only accidents involving fires or flammable gases but also those involving toxic or corrosive gases, etc. - should be considered.

With regard to the proposed solutions (safety valves, thermal insulation), some delegations considered that such equipment also posed problems (escape through the valves of flammable gases feeding a fire; problems in checking tanks with thermal insulation; difficulty of cooling a tank with thermal insulation) and that the relevant risk analyses should be conducted.

It was pointed out that the requirements for UN tanks provide for such equipment but that, for the time being, they were not included for RID/ADR tanks because the risks involved in using such equipment seemed greater than the risk of a BLEVE.

The Joint Meeting requested the working group on tanks to consider, at the current session:

- (a) The various protection measures that can be envisaged for RID/ADR tanks to reduce risks in the event of an accident or a fire, bearing in mind the provisions applicable to UN tanks;
- (b) Other phenomena that can increase the risk of a BLEVE (for example, fatigue owing to wear and tear of materials);
- (c) Advantages and disadvantages of the measures envisaged.

The Joint Meeting will decide whether or not future work should be entrusted to the working group on tanks or to another group, on the understanding that representative organizations of emergency intervention services (CTIF) should participate and that it will be necessary to consider measures for reducing the causes of accidents and fires, for example stricter regulations on the construction and protection of fuel tanks of all vehicles in general, as well as preventive measures based on risk analyses, such as route restrictions that give priority to bypassing urban and other areas, and even favour certain modes of transport.

The Joint Meeting accepted the proposal by the tank working group to set up a separate informal working group to look at this matter in more depth. The Joint Meeting broadened the mandate proposed by the tank working group, particularly to cover questions of principle. It was also remarked that the work should not be restricted to UN No. 1965 only: other substances which could cause a BLEVE should be considered. Accidents that had happened in the past would have to

be taken into account and risk analyses would have to be used.

### Limited quantities

The Government of France proposed to include provisions to permit identification in the transport document of dangerous goods carried as dangerous goods packed in limited quantities, the classes to which they belong, the gross mass of these goods, the consignor and the consignee, when the transport operation involves quantities of more than 12 tonnes (gross mass) of these goods. The wagons and transport units should then bear diamond shaped labels displaying the letters "LQ" (Limited Quantities).

The representatives of the United Kingdom, Norway, AISE, CEFIC and IRU expressed their disagreement with this proposal, pointing to the arguments in other documents, and they considered in particular that France's proposal was not sufficiently supported by accident statistics and that implementation of the provisions proposed would entail logistical complications and disproportionate costs for the industry.

Several delegations disagreed with the criticisms made by the United Kingdom on the study carried out by France on the relevance of the exemptions relating to dangerous goods packed in limited quantities. Even though this study might not be perfect, it could not be blamed for being representative of storage conditions rather than transport conditions, as all the tests prescribed in the regulations, whether for classification, packages or tanks, are laboratory tests and not tests that are carried out in a real transport environment. They pointed out that no delegation had submitted any results of similar studies that would call into question, from a scientific point of view, the conclusions of France's study.

Several delegations also indicated their disagreement with the argument put forward by the United Kingdom that the work led by OECD and PIARC in the context of the safety of the transport of dangerous goods in road tunnels would demonstrate that dangerous goods packed in limited quantities do not present a sufficient risk to be subject to restrictions on being carried in road tunnels. They were of the view that the conclusion of OECD and PIARC did not rest on a risk analysis, as this analysis had not been carried out, and that in the absence of a study on this matter, OECD and PIARC had simply accepted the principle of least degree of danger reflected in a general way for limited quantities in ADR. They pointed out that up to now, the national authorities had been free to regulate or to prohibit the passage of

vehicles carrying dangerous goods packed in limited quantities in their road tunnels, on the basis of risk assessments carried out at national level. Not only would the new provisions of ADR entering into force on 1 January 2007 no longer permit them to do this, but they would also not permit them to regulate or to prohibit these vehicles from using these tunnels, even though no risk analysis had been carried out. They therefore considered it particularly important that the current RID and ADR system applicable to limited quantities be revised as a matter of urgency.

With regard to harmonisation with the other modal transport regulations, it was pointed out that the UN Model Regulations, the IMDG Code and the ICAO Technical Instructions prescribe that the transport document must indicate the presence of limited quantities, except for distribution to retailers of goods intended for consumers and packaged for that purpose. The IMDG Code also prescribes a specific marking for the means of containment carrying dangerous goods packed in limited quantities.

Several delegations mentioned that as dangerous goods in limited quantities are exempt from most of the provisions of RID and ADR, they did not receive any accident reports. Therefore it was difficult to establish statistics, but the specialist journals of the emergency services regularly reported on the difficulties these services come across when dealing with accidents in which these goods are involved.

Other delegations considered that it might be advisable to differentiate between the case of multimodal transport and that of purely European land transport. In order not to hinder multimodal transport, it is vital that any new provisions introduced into RID/ADR/ADN be compatible with the UN Model Regulations, and it would therefore be advisable also to take account of the work currently being carried out by the UN Sub-Committee of Experts. It was pointed out for example that the absence of provisions concerning documentation in ADR was currently causing problems when road transport was followed by maritime transport.

With regard to documentation, it was emphasized that under the CMR Convention, the consignor is required to inform the carrier of the exact nature of the danger of dangerous goods handed over for carriage (Article 22 of CMR).

With regard to the possible marking of vehicles, it was pointed out that for the moment, only the IMDG Code prescribes marking for the means of containment, but

that the subject had also been dealt with by the UN Sub-Committee of Experts, and it would also be advisable to take account of the conclusions of their discussions.

It was also pointed out that the systematic marking of wagons and transport units could have unexpected political consequences to the extent that it could lead to public opinion having an exaggerated perception of the risk involved.

Taking into account the discussions, which showed that a number of delegations supported at least the form of the ideas set out in France's proposal, the representative of France proposed to organise an informal working group to examine the question in more depth. In a vote, this proposal was adopted by a large majority (19 for, 4 against).

The Joint Meeting agreed that in the light of the discussions at this session, this group should:

- (a) Continue the work on the safety problems posed by the carriage of dangerous goods packed in limited quantities under the current conditions;
- (b) Clarify the contentious issues in the study carried out by INERIS on behalf of the Government of France;
- (c) Take account of the UN Model Regulations and of the work being carried out by the UN Sub-Committee of Experts on the Transport of Dangerous Goods;
- (d) Focus the work on the problems arising solely in the context of European land transport, and seek solutions that would not cause any complications.

### **Transport of non-flammable bitumen**

With regard to the classification of non-flammable bitumens, liquefied at temperatures at or above 100 °C during loading or unloading, and transported at temperatures below 100 °C, the Joint Meeting recalled that the classification of a substance is the responsibility of the consignor and cannot be altered during transport. Even if these bitumens are loaded at temperatures at or above 100 °C, they may be considered exempt from RID or ADR requirements if they are handed over for carriage by the consignor at temperatures below 100 °C, and if they are not reheated during carriage. It is up to the consignor to ensure that these conditions are met.

## Accident reports

The UNECE secretariat noted that in the four years that the obligation to report occurrences involving dangerous goods has been in force, only one report concerning road transport has been transmitted to the secretariat. This would seem to indicate either that road transport is very safe and that there have been no accidents in recent years, or that the competent authorities of the ADR contracting parties consider that there is no reason to inform the other contracting parties since there is no lesson to be learned from such accidents.

Several delegations mentioned that a number of accident reports had been transmitted to the competent authorities of their countries, but that it was not deemed useful to inform the other contracting parties.

The Chairman pointed out that all accident or incident reports could be of interest, if only to demonstrate, when such accidents do not have serious consequences, that the regulations make it possible to ensure an appropriate level of safety. He explained his idea of developing an international database for collecting all accident reports, which could be used for statistical purposes.

### Remark by the Secretariat of OTIF:

up to now, the Secretariat of OTIF has only received 4 accident reports, 2 of which were sent to and dealt with by the RID Committee of Experts' working group on tank and vehicle technology.

### Incorporation of new obligations for the unloader and the consignee

It was recalled that Spain's original proposal (see Bulletin 4/2005, p. 53) had been, in principle, approved by a majority. Spain's new proposal was the subject of a contentious debate.

In order to break the deadlock, the representatives of Austria and Germany made the following suggestions:

- Determine the areas where the unloader and the consignee's duties overlap;
- Define "unloader";
- Establish the obligations of the unloader and, where appropriate of the discharger and the cleaner in the case of carriage in tanks or bulk;
- Amend the obligations of the consignee accordingly.

The Joint Meeting did not express a view on the substance of the new version proposed by Spain. At the request of the chairman, the Joint Meeting was in favour of the principle of introducing a new participant – the unloader – with a definition and obligations (13 in favour, 8 against). Spain will therefore submit a new proposal which will take account of the observations and comments received.

### Use of the terms "filler", "packer" and "consignor"

Given that there is little chance of global harmonisation being achieved and that the concept differs between RID/ADR on the one hand and the UN Model Regulations on the other, the Joint Meeting was not opposed to Austria's submitting a proposal to the UN Sub-Committee of Experts in order that it no longer assigns specific obligations in the UN Recommendations and in order to leave it to the transport modes to deal with these specific provisions.

If the Sub-Committee did not take a decision, the Meeting could envisage a passive formulation.

### Affixing plates and orange-coloured markings to carrying wagons transporting road vehicles and in piggyback transport

Considering that ADR does not in principle prohibit placarding and orange-coloured marking in accordance with RID, either for rolling roads or other types of road-rail transport, the Joint Meeting was of the view that this could be done as a compromise on a voluntary basis, as was decided for road transport operations including a sea leg.

WP.15 was invited to take a similar decision on the basis of a proposal that will be submitted to that body.

In this context, the representative of UIC wished, if necessary, that the railways should be exempt from these labelling and marking obligations for this type of transport.

### Labelling/markings of small containers

Belgium's proposal to align RID and ADR in order to harmonise these different requirements was warmly welcomed by the Joint Meeting. Belgium will submit an appropriate proposal to the RID Committee of Experts.

In the context of small containers, the representative of Norway suggested that there should be a general review of the provisions applicable to this means of

containment for transport (for example as a container or overpack).

### **Guideline for risk assessment**

The Joint Meeting noted that the RID Committee of Experts had adopted the Guideline. Given that this Guideline was drafted generally to apply to all modes of transport, the Joint Meeting invited WP.15 to consider it for application to road transport on a voluntary basis, as in RID.

### **Report of the informal working group on the examination of the safety adviser**

The issues pending from the last meeting (see Bulletin 4/2005, p. 54) gave rise to a long debate. It was finally agreed to establish a small working group whose general mandate will be as follows:

- Goal: to reach a level of harmonized examination by referring to the level of competence that the safety adviser should have on the basis of this examination in order to be able to carry out the checks for which he is responsible.

The exchange of questionnaires and case studies could serve as the basis for the work on harmonizing the examination requirements.

(Translation)

## **Technology**

### **Four new CEN "standards" (CWAs) in the rail sector have been adopted.**

In Bulletin 3/2005 we provided information about the Secretariat's active involvement in the drafting of new CEN "standards" called CEN Workshop Agreements (CWAs) in the rail sector.

The public consultations between the interested parties have now been completed. At first, there was no consensus among the interested parties on the proposal concerning customer coding. Following a redraft, there was a second round of consultations.

All four CWAs have now been adopted by the interested parties who took part in the Workshop. They will be officially published by CEN in the "EN" (Euro-Norm) format and will then enter into force.

Their titles are:

- Coding for Customers in the Rail Transport Chain;
- Coding for Railway Undertakings, Infrastructure Managers and other Companies, involved in the Rail Transport Chain;
- Coding for Railway Business Locations;
- Numbering of and Coding System for Trains.

You will find these four CWAs on the OTIF website under Technology/Approval, Rolling stock register<sup>1</sup>. At the moment the CWAs are available in English only.

Each CWA describes a coding structure to identify unambiguously and uniquely the entity/object concerned.

The coding structures defined meet the requirements and vision of the EU TAF-TSI (telematic application for freight). The codes can be used in various applications and for different purposes (documents, messages, marking, etc.). Not only freight traffic has been taken into consideration in drafting them, but also passenger traffic. An EU TAP-TSI for passenger traffic is planned, but the European Railway Agency (ERA) has not yet begun the drafting.

The coding structures have sufficient flexibility to satisfy the expected demand for codes requested in future decades by OTIF, including the current EU single market, and non-OTIF States co-operating with OTIF.

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

### **United Nations Economic Commission for Europe (UN/ECE)**

#### **Inland Transport Committee (ITC)**

68<sup>th</sup> Session

*Geneva, 7-9 February 2006*

As usual, OTIF took part in the annual session of the UN/ECE Inland Transport Committee, which this year was held in Geneva from 7 to 9 February.

<sup>1</sup> [www.otif.org/html/e/tech\\_adm\\_registre\\_mr2003.php](http://www.otif.org/html/e/tech_adm_registre_mr2003.php)

Two subjects of particular interest to OTIF were included on the agenda of this 68<sup>th</sup> session of the Inland Transport Committee: the **facilitation of border crossing** in international freight and passenger rail transport and **harmonisation** of the CIM and SMGS legal regimes, including harmonisation of the transport of dangerous goods.

During the session, no less than five subsidiary bodies of the Inland Transport Committee addressed these questions in one form or another, from one angle or another:

- the Working Party on Transport Trends and Economics (WP.5), in the context of the “Euro-Asian transport links - Feed-back from users” Seminar, which was organised in September 2005,
- the Working Party on Rail Transport (SC.2), in the context of preparations for the International Conference on Facilitation of Railway Border Crossing,
- the Working Party on Intermodal Transport and Logistics (WP.24), in relation to efficient intermodal transport in a pan-European context: follow-up to the ECMT Council of Ministers (Moscow, May 2005),
- the Working Party on Customs Questions affecting Transport (WP.30), in relation to the preparation of a new annex to the 1982 Convention on harmonisation,
- the Working Party on the Transport of Dangerous Goods (WP.15), with a view to closer co-operation with OSJD in order to harmonise Annex 2 of SMGS with ADR, RID and ADN.

In examining questions relating to **rail transport**, the representative of OTIF particularly emphasized the fact that OTIF would support any initiative that would permit the two draft legal instruments to be finalised (new Annex 9 to the 1982 Convention relating to the transport of goods and a new Convention modelled on the 1952 Convention relating to the transport of passengers). These two instruments had been prepared in the context of the preparation of the International Conference on Facilitation of Railway Border Crossing. She also assured the Inland Transport Committee that OTIF would continue to lend active support to the work underway and to apply itself to ensuring that the facilitation being sought takes a more specific form. This would be pursued on the basis of the proposals

OTIF had made throughout the work on these two drafts (see Bulletin 3/2005, p. 39/40 and Bulletin 4/2005, p. 61/62).

In this context, the Inland Transport Committee encouraged all efforts aimed at facilitating international rail border crossing, and called upon the parties involved to speed up work on the final elaboration of the two new legal instruments. The Committee also stressed the importance of close co-operation between the various Working Parties in the elaboration of the two drafts; to this end, it proposed a joint meeting of the Working Parties. The Committee further reiterated its support for the organisation of the International Conference and underlined that the effectiveness of the Conference would be significantly increased if the two new legal instruments could be adopted by the relevant Working Parties of the Committee beforehand.

Under the item on **intermodal transport and logistics**, the representative of OTIF again emphasized the fact that harmonisation of the CIM and SMGS legal regimes was and still is one of the crucial points of co-operation between OTIF and OSJD (see Bulletin 4/2005, p. 62/63 and Bulletin 3/2005, p. 39/40). She briefly informed the Inland Transport Committee of the work carried out by CIT and OSJD, with the active participation of OTIF, on the standard “CIM/SMGS” consignment note. This work had been one of the main focuses in 2005 and OTIF would continue to be actively involved in 2006.

In this field, the Inland Transport Committee noted the strategic and procedural elements which, according to WP.24, should in the long term constitute the lynchpin of international activities to overcome the problems of interoperability as well as administrative problems at border crossings that hamper efficient East-West rail and intermodal transport.

During the discussions on the **facilitation of border crossing**, it was again underlined that it was important that WP.30, SC.2 and WP.24 should work closely together on developing the new Annex 9 to the 1982 Convention. This was why the Inland Transport Committee had again recommended that a joint meeting be held between WP.30, SC.2 and WP.24 in particular, in which OTIF and OSJD would also take part with a view to finalising the text of Annex 9.

The Inland Transport Committee also adopted the amended text of the Convention on International Customs Transit Procedures for the Carriage of Goods by Rail under Cover of SMGS Consignment Notes.



Initially adopted by the Inland Transport Committee at its annual session in February 2005 (see Bulletin 1/2005, p. 9) certain provisions of the Convention were amended to take account of the amendments proposed by the UN Office of Legal Affairs, thus permitting the UN Secretary-General to become depositary to the Convention. The Convention will be open for signature in Geneva as from 1 June 2006 for one year. It will enter into force six months after the date on which five Contracting Parties to the SMGS Agreement have signed the Convention without reservations or have deposited their instrument of ratification or accession.

With regard to the carriage of **dangerous goods**, the Inland Transport Committee noted the comments of the representative of the Netherlands, supported by those of Austria and Belgium, that 80% of the provisions contained in the various international legal instruments applicable to the transport of dangerous goods for each of the five modes of transport were of a multimodal nature. As a consequence, elaborating a convention on the international multimodal transport of dangerous goods would significantly reduce the workload of the various international and regional organizations which presently spend considerable resources for adapting their respective legal instruments to the UN Model Regulations. Each international or regional organization could then concentrate on the remaining 20% of provisions which are specific to their respective mode of transport (see Bulletin 4/2005, p. 58/59).

The Committee also endorsed the request by WP.15 to initiate consultations with OTIF and OSJD in order to study the possibilities of closer co-operation with OSJD for ensuring harmonisation of Annex 2 of SMGS with ADR, RID and ADN (see Bulletin 4/2005, p. 55).  
(Translation)

## Working Party on Rail Transport

### 59<sup>th</sup> Session

*Paris, 10 January 2006*

The second joint meeting (so-called “back to back” meeting, see Bulletin 4/2004, p. 85) of the UN/ECE and ECMT “railway” working groups was held in Paris on 10 and 11 January 2006. The session was chaired by Mr Croccolo (Italy).

It should be noted that the date of this meeting was postponed from November 2005 to January 2006, mainly because OTIF’s 7<sup>th</sup> General Assembly met on the

dates that had been set for the end of November 2005 for the joint meeting of the two working groups.

Delegates from 17 of the 55 UN/ECE member countries attended the 59<sup>th</sup> session of the UN/ECE Working Party on Rail Transport (SC.2). Representatives from the trans-European railway project, the European Commission, ECMT, OSZhD and UIC also took part in the session, as well as a representative of OTIF.

Among other things, the Working Party dealt with the following matters that are regularly included on its agenda: safety and security in railway transport, study of the situation of railways in member countries, determination of railway infrastructure capacity including aspects related to the fee for the use of infrastructure, productivity in rail transport, facilitation of border crossing in international rail transport, interoperability and harmonization of conditions of different rail transport systems, European Agreement on Main International Railway Lines (AGC) and the TER Project.

With regard to the **facilitation of border crossing** in international rail transport, the discussion focussed mainly on the preparation of the International Conference, which should be held in 2006 under the aegis of the UN/ECE, and on the two draft texts (Annex 9 to the 1982 “Harmonization Convention” relating to the transport of goods and a new Convention relating to the transport of passengers) prepared in the context of the preparatory work for the International Conference (see Bulletin 4/2005, p. 61/62).

The representative of OTIF particularly emphasised the fact that the proposals submitted by her Organisation throughout the preparatory meetings for the International Conference had clearly been prepared with the aim of providing a strong impetus for the discussions, to contribute new ideas and to start discussions within the Ministries and administrations on more enterprising steps that could be taken to facilitate border crossing in rail transport. She also introduced to the Working Party the concept the Director General had presented to the UN/ECE Working Party on Intermodal Transport and Logistics in September 2005 (see Bulletin 3/2005, p. 39/40).

For two major reasons, the UN/ECE Secretariat expressed doubt as to whether the International Conference could be held in spring 2006 as initially planned. Firstly, at the time of the Working Party’s meeting, no State had said that it was prepared to host the International Conference. Secondly, the two UN/ECE Working Parties responsible for this issue

(WP.30 and SC.2) would have to examine and discuss the two draft texts in depth beforehand.

Lastly, the Working Party was of the view that the International Conference would have a more significant impact if the two draft texts could be adopted at the International Conference. The two draft texts would be sent to all the UN/ECE member countries for their comments and so that they could give their views regarding their possible accession to the two Conventions at the International Conference. The Working Party would examine the replies received at its next session in November 2006. In the meantime, the UN/ECE Working Party on Customs Questions Affecting Transport (WP.30) was asked to examine the latest text of the draft Annex 9 to the 1982 Convention as soon as possible.

With regard to the **interoperability and harmonization of conditions of different rail transport systems**, the representative of OTIF emphasised the co-operation between OTIF and OSZhD, which had continued in 2005 on the basis of the annual plan of joint activities/joint work agreed between the managers of the Central Office and the OSZhD Committee (see Bulletin 1/2005, p. 10). She also informed the Working Party about the work carried out by CIT and OSZhD with regard to the joint "CIM/SMGS" consignment note, which OTIF had participated in very actively (see Bulletin 4/2005, p. 62/63) and which it would continue to monitor closely. Lastly, she informed the Working Party of the decision adopted by OTIF's 7<sup>th</sup> General Assembly concerning the assumption of the role of Secretariat of the Supervisory Authority in accordance with the preliminary draft Protocol on Matters specific to Railway Rolling Stock to the Cape Town Convention and concerning the General Assembly's conclusions on the development and implementation of the COTIF approval system (Appendices F and G to COTIF 1999) (see Bulletin 4/2005, p. 50 ff.).

(Translation)

## **International Union of Railways (UIC)**

UIC Legal Group

Information Session

*Paris, 8 February 2006*

This session provided the representative of OTIF with the opportunity of using a presentation and discussion to

deal with various problems in connection with the imminent entry into force of the Vilnius Protocol, and of answering questions. The questions covered subjects such as, for example, which ratifications can be expected when, the General Assembly's decision concerning the legal consequences if not all Member States of OTIF ratify in due time, and OTIF's efforts with regard to the harmonisation of EU law and OTIF law, particularly in the technical field.

The head of UIC's legal section, Mr Jean-Pierre Lehman, gave two speeches in which he presented the ECJ's decision on the question of the compatibility of Regulation 261/2004 of 11.02.2004 and the Montreal Convention (legal action by IATA and ELFAA, which represents the low cost carriers). He also looked in detail at the problems in connection with the transition from the RIV regime to a new system of wagon law.

Mrs Delphine Brinkmann-Salsedo (CER legal adviser) reported on the latest developments in Brussels and emphasised that DG TREN was still active, particularly in the field of passenger rights and that future activities can certainly not be ruled out in the field of freight transport quality.

Mrs Isabelle Oberson, who is responsible in CIT for matters concerning passenger rights and the use of infrastructure, reported on the status of the work on preparing the entry into force of the Vilnius Protocol, particularly the efforts concerning the general terms and conditions for the use of infrastructure.

(Translation)

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

CUI Committee

*Berne, 17 January and 9 March 2006*

### **General Terms and Conditions for the use of infrastructure – liability provisions**

The Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (Appendix E to COTIF 1999, CUI) govern the relationship under civil law between the parties to the contract of use, the carrier and the infrastructure manager (see Bulletin 6/1999)<sup>1</sup>. The main focus of the rules is the mutual liability of the parties to the contract. The rules concern

<sup>1</sup> The text of the CUI, together with explanatory notes, is also published on OTIF's website [www.otif.org](http://www.otif.org) (see Publications, COTIF 3.6.1999)

statutory contractual liability, the provisions concerning liability are mandatory, with the exception of loss or damage caused by delay and disruption to operations. In addition, the contracting parties are free to arrange their contractual relations as they wish.

It is in the interests of both sides to standardise their contractual relations in the form of General Terms and Conditions, as this facilitates conclusion of the contract and saves costs. As this is a new area, with which there has not been much experience and as each party is in a different economic situation, the aim – balanced contractual conditions – is not easy to achieve.

Now that the carriers' and managers' associations have each prepared their respective ideas, each in their own document (CIT/UIC draft General Terms and Conditions for the use of infrastructure – GTC-I on the one hand and RailNetEurope Standard Contract of Use of Infrastructure on the other), they are now in the process of developing standardised contractual conditions together. Following a Workshop organised by the European Commission in Brussels on 13 June 2005, they were under pressure to negotiate if they wished to avoid their freedom of contract being restricted by an additional regulation from the EC institutions.

A CUI Committee was set up to support the General Secretariat of CIT in its negotiations with RNE. It has already met five times in Berne since October 2005, most recently on 9 March 2006. A member of its Secretariat represented OTIF in all the meetings. The basis for the discussions, which have not yet been completed, is a draft of the "European General Terms and Conditions of Use of the Railway Infrastructure" ("European GTC"). The base document was produced by RNE, and CIT had assumed the task of drafting the provisions concerning liability. These have so far constituted the main object of discussions in the CUI Committee.

In the course of the Committee's work, particularly at its 4<sup>th</sup> and 5<sup>th</sup> meetings (17.1 and 9.3.2006), some questions concerning the interpretation of CUI were raised. The Secretariat of OTIF replied to the questions raised by CIT as follows:

#### **Article 8 § 1 (c) of CUI**

**CIT's question:** "This Article governs the infrastructure manager's (IM) liability for all loss of or damage to property arising from the fact that the carrier (rail transport undertaking, RU) has to pay damages in accordance with the CIV and CIM UR. In addition,

Article 23 of CUI prescribes that the IM may not dispute the legal validity of a payment made on the basis of the CIV/CIM UR when compensation has been determined by a court or tribunal. Are all the damages paid by the rail transport undertaking on the basis of a CIV/CIM contract covered by this Article, including the damages which, as a result of special agreements, go beyond the statutory obligations (which are allowed in accordance with Art. 5 of CIV/CIM, 33 § 6 of CIM, 34 or 35 of CIM) and including those that arise from the application of national law (e.g. in accordance with Art. 30 § 2 of CIV)?"

**Answer:** The following are covered:

- damages in accordance with mandatory liability provisions of the CIV and CIM UR,
- other, more extensive damages if liability has been extended in accordance with Article 5 of CIV or CIM, but only if the manager has agreed to the extension of liability.

The expression used in Article 23 of CUI, "payment made ... on the basis of the CIV UR or the CIM UR" is to be understood in the same sense. If, by means of a third-party notice, the manager has been duly served with notice of the proceedings concerning damages arising from a CIV or CIM Contract of Carriage, with regard to claims over and above mandatory liability provisions, these will depend on whether or not the manager has agreed to the extension of liability in accordance with Article 5 of CIV or CIM: if the manager has not agreed to the extension of liability, as an intervening third party, he can only act in respect of the damages in accordance with mandatory liability provisions and only in respect of these can he not then contest the lawfulness of the damages decided by the courts and dispute the validity of the payments made. In this case, further claims can only concern the carrier.

Damages in the event of death of and injury to passengers also form part of the damages in accordance with the mandatory liability provisions of the CIV UR, irrespective of the fact that the amount of damages to be paid is based on national law. According to Article 30 § 2 of CIV, the amount of damages is unlimited in all cases where the relevant national law does not provide for an upper limit. In Member States where an upper limit of the damages to be paid is prescribed, either the minimum limit in accordance with Article 30 § 2 of CIV (175,000 units of account) applies if national law provides for a lower limit, or the upper limit prescribed in national law is applied when this is higher. The damages in all these cases are those in accordance with

the CIV Uniform Rules in the sense of Article 8 § 1 (c) of CUI.

In Member States that have made a declaration concerning liability in case of death of, or personal injury to passengers in accordance with Article 2 of CIV, the provisions of the CIV UR on liability in case of death of, or personal injury to passengers do not apply to accidents involving passengers who are nationals of, or have their usual place of residence in that State if the accident occurs on the territory of these States. Thus in these cases, no damages are paid in accordance with the CIV UR, but damages in accordance with national law are paid. These are not covered by Article 8 § 1 (c) of CUI. Austria and Latvia have made such declarations in relation to the 1999 CIV UR<sup>2</sup>.

In the agreement concerning the transit period that the carrier concludes with his customer in accordance with Article 16 § 1 of CIM, account must of course be taken of the possibilities the infrastructure can offer when it is running optimally. A carrier who, for example, agrees an unrealistic transit period, which entails payment of damages to the customer, has no recourse against the manager. The same goes for the carrier's agreements with his customers in accordance with Article 34 (declaration of value) and 35 (declaration of interest in delivery). The carrier may agree – even for more valuable goods, by means of the information in accordance with Article 34 or 35 – a transit period that can be kept to if the infrastructure in question functions without hitch, without having to involve the manager in each individual case in order to secure his right of recourse.

**In summary:** In order to be liable for the full extent of the compensation in accordance with an agreement between the parties to the contract of carriage, the infrastructure manager would have to agree the extension of liability in accordance with Article 5 of CIV/CIM; in contrast, he need not be included in every agreement in accordance with Article 16 § 1, 34 or 35 of CIM.

#### Article 8 § 4 of CUI

**CIT's question:** “This Article allows the parties to the contract to conclude special agreements concerning loss and damage that arises as a result of delay or disruption to operations. Are the damages paid to the RU's customer in the event of delay in accordance with the

2 See OTIF website, Publications, COTIF (3.6.1999), State of signatures, ratifications, approvals, accessions and entry into force.

CIV/CIM UR, mandatory under para. 1 c), included if the parties do not come to an agreement in accordance with Article 8 § 4?”

#### Answer:

The manager's liability for pecuniary loss in respect of the carrier as a result of delay or disruption to operations is left up to the contracting parties in Article 8 § 4. As loss or damage caused by delay or disruption to operations is covered (not exclusively but additionally) by Article 8 § 1 (c) (for instance compensation in accordance with Article 32 of CIV/33 of CIM), the question arises as to the relationship between the two provisions. Opinions differ on this. The first assumes that as opposed to (a) and (b), paragraph (c) in Article 8 § 1, contains a dispositive provision in relation to loss or damage caused by delay or disruption to operations. Accordingly, the agreement between the parties can go in various directions: it can exclude or limit contractually the statutory claim in accordance with (c), or in contrast, it can stipulate liability that goes beyond that prescribed under § 1(c), for example to cover additional costs incurred by the carrier (e.g. resulting from overtime worked by the locomotive driver) that arise from delay or disruption to operations. The Secretariat of OTIF held this view in its comments<sup>3</sup>. The second view limits the pecuniary loss covered by Article 8 § 4 to so-called “direct pecuniary loss”, i.e. loss that has occurred directly in the sphere of the contracting party concerned (additional operating costs) and which is not connected to loss or damage to persons or property (“pecuniary loss only”)<sup>4</sup> while § 1 (c) covers “indirect pecuniary loss”, i.e. loss that originally occurred to a third party (in this case the transport customers). Ultimately, the CUI Committee supported this second view.

**In summary** (and this is valid irrespective of these different opinions): even if the parties cannot agree on the liability for loss or damage caused by delay and disruption to operations, the carrier's full statutory entitlement in accordance with Article 8 § 1 c) of CUI stands in all cases.

3 See also the study by Dr. T. Leimgruber, Contractual basis for the use of infrastructure, Bulletin 3/2004, pp. 55-62.

4 Presentation by Prof. R. Freise, Liability in accordance with CUI at CIT's seminar on “International Railway Liability Law”, Berne, 22-24.11.2005.

### Article 9 § 4 of CUI

**CIT's question:** "Article 8 § 4 of CUI refers to "delay" in addition to disruption to operations, while Article 9 § 4 of CUI only refers to "disruption to operations". Does this specifically rule out all statutory liability on the part of carriers for loss or damage caused to the infrastructure manager by delay?"

**Answer:** It is the case that in Article 9 § 4 of CUI – in contrast to Article 8 § 4 of CUI – only disruption to operations is referred to and not delays. The only reason for this is that it is assumed that delays do not occur in the operational area of the infrastructure, but in that of the carriers. However, delays occurring in the operational area of various carriers can lead to disruptions to the infrastructure manager's operations.

It must not be concluded from the different wording in Article 8 § 4 and Article 9 § 4 of CUI that the parties are not permitted to agree carrier liability for delays, for instance in the case where a delayed train causes additional operating costs for the manager (e.g. because of overtime worked by his auxiliaries). On the contrary, the provisions in Article 8 § 4 and 9 § 4 make it possible for the contracting parties to agree balanced rules on which loss or damage in connection with delays and operational disruptions the other party in each case is liable for. Such an agreement could also cover pecuniary loss on the part of the manager, which he has suffered because he has paid compensation to other carriers in accordance with Article 8 of CUI<sup>5</sup>.

If the parties cannot come to an agreement on this liability, the carrier's liability to the manager remains limited to the cases provided for in Article 9 § 1 (a) and (b) of CUI (bodily loss or damage, or loss of or damage to property). However, bodily loss or damage, or loss of or damage to property caused by delay or disruption to operations is difficult to imagine.

**In summary:** For cases in which a delayed train leads to a disruption of operations on the infrastructure and damages or costs are therefore incurred by the infrastructure manager, the RU's liability in accordance with Article 9 § 4 of CUI can be contractually agreed. Without such an agreement, the RU is not liable for pecuniary loss that it causes to the infrastructure manager as a result of its trains being delayed.

### Article 8 § 1 of CUI

**CIT's question:** "What is the meaning of the expression "having its origin in the infrastructure" in Article 8 § 1 of CUI? Does this cover any kind of non-observance of the IM's contractual obligations (e.g. no energy supply when this was provided for in a mixed contract on the use of infrastructure and the supply of energy, or, for example missing information on the particular features of a line, which has led to a severe accident)? This question also arises for Article 9 § 1 of CUI which, with regard to the possible causes of loss or damage, only cites the "means of transport used or the persons or goods carried."

**Answer:** According to the definition in Article 3 (a) of CUI, the infrastructure includes "all the railway lines and fixed installations, so far as these are necessary for the circulation of railway vehicles and the safety of traffic". In adopting this definition, it was in fact decided not to use or to refer to a definition that already exists in European Community legislation (see paragraph 2 of the Explanatory Report on Art. 3). Nevertheless, in a historical interpretation, reference may be made to Annex I, Part A of (EEC) Commission Regulation No. 2598/70 of 18 December 1970 specifying the items to be included under the various headings in the forms of accounts shown in Annex I to Council Regulation (EEC) No 1108/70 of 4 June 1970, the introductory sentence of which formed the basis of Article 3 (a) of CUI, without including the comprehensive list. According to this source, there is no doubt that "plant for transforming and carrying electric power for train haulage" or "safety, signalling and telecommunications installations on the open track, in stations and in marshalling yards, including plant for generating, transforming and distributing electric current for signalling and telecommunications" belong to the infrastructure. In any event, loss or damage caused by loss of power or by an insufficient power supply is deemed to be loss or damage having its origin in the infrastructure.

Causation by the infrastructure relates primarily to the material properties and condition of the rails and the associated plant. However, it is also indisputable that certain services must in any case be provided in order to make possible the circulation of railway vehicles on a particular infrastructure and to ensure the safety of traffic. In so far as the non-provision or defective provision of such services results in loss or damage in accordance with Article 8 § 1 (a), (b) or (c) of CUI, it may be assumed that the loss or damage has its origin in the infrastructure. This does not apply automatically to all the manager's services according to the Contract of

5 Prof. R. Freise is of a different view, see footnote 4.

Use. The main object of the Contract of Use and the main service provided by the manager consists in making the infrastructure available. Services above and beyond this must be assessed differently, depending on whether or not they are necessary for the circulation of railway vehicles or for the safety of traffic. In so far as the manager's obligations to provide information serve this purpose, loss or damage that occurs as a result of a breach of such obligations would have to be considered as loss or damage caused by the infrastructure (e.g. omission of information on the particular features of a line that has led to an accident). Marshalling services provided by the manager will, as a rule, probably constitute a service above and beyond this purpose, so that loss or damage and costs incurred by the carrier as a result of the defective provision of this service cannot be considered as loss or damage caused by the infrastructure. Compensation of such loss or damage and costs cannot be justified by an extensive interpretation of Article 8 § 1 of CUI. However, this does not exclude the manager being liable as a result of another contractual reason, e.g. a contract of work and labour, or a service contract.

The question could only arise in the same way for Article 9 § 1 of CUI if breaches of contractual obligations on the part of the carrier can themselves be the sole cause of direct bodily loss or damage, or damage to property of the manager. The railway undertaking must be responsible for such loss or damage, irrespective of the possibility of recourse against the consignor of the goods or the person being carried.

If a breach of a contractual obligation on the part of the carrier (for instance an obligation to provide information) can in itself lead to an operational disruption, carrier liability for this case can only be agreed in accordance with Article 9 § 4 of CUI.

**In summary:** The infrastructure as the cause of loss or damage not only includes everything that comes under the definition in Article 3, but also the associated service and information activities, in so far as they are necessary for the safe running of the railway vehicles. However, liability because of deficient additional services is not based on CUI, but on the rules of the corresponding contract that has been inserted in the contract of use.

### Status of the work

Based on the current status of the negotiations between CIT and RNE, in which the International Union of Railways (UIC), the Community of European Railways and Infrastructure Companies (CER), the European Rail

Infrastructure Managers Association (EIM) and the European Rail Freight Association (ERFA) are also taking part, the following can be stated in relation to the provisions governing liability: in the intended rules, the associations are making use not only of the room for manoeuvre provided in CUI for the contracting parties (see Art. 4, 8 § 4, 9 § 4, 20), but are also trying to achieve contractual standardisation of liability well beyond this, including in areas that are outside the scope of regulation of CUI and which are regulated in national laws, such as recourse in the event of compensation to third persons, liability for additional services and liability for other breaches of contractual obligations, e.g. commercial secrecy. From a legislative point of view, it would be advisable to distinguish between the two areas of regulation. It is not just that no new liability provisions may be laid down where CUI regulates liability exclusively. The differentiation is also of significance when the question arises as to whether recourse can or must be had to national law. While there is no place for the application of national law in the area where CUI governs liability exclusively, in the other area, the precedence of mandatory provisions of national law is valid.

Another two meetings of the Committee and two meetings with RNE are planned. The associations intend to submit the version of the European GTC that they will agree upon to the European Commission around the middle of the year.

(Translation)

## Case Law

### Bundesgerichtshof (Germany)

#### Ruling of 3 February 2005<sup>1</sup>

**Apportionment of loss or damage by reason of contributory fault on the part of the consignor in respect of omission of the declaration of value cannot, in principle, be considered if the carrier is aware, because of the payment to be collected, of the value of the goods in a cash-on-delivery consignment.**

<sup>1</sup> 1 ZR 276/02; first instances: Oberlandesgericht Düsseldorf, ruling of 2 October 2002; Landgericht Düsseldorf

Cf. §§ 422, 425 para. 2, § 435 of the *Handelsgesetzbuch* – HGB (German Commercial Code)<sup>2</sup>

### Facts:

The plaintiff is the transport insurer for P. Vertriebs-GmbH. She is claiming against the defendant, who operates a parcel carrying service, by reason of the loss of goods transported in three instances in 1999. The claim, under the law of subrogation, is for payment of compensation of 68,081 DM, together with interest. In all the consignments, the value of the goods was to be collected cash-on-delivery from the consignees.

The Landgericht (≈ regional court) allowed the claim. In essence, the appeal was unsuccessful.

With her appeal allowed by the Senate (≈ appeals court), the defendant pursues her request for the claim to be dismissed. The plaintiff applies for the appeal to be dismissed.

### Grounds for the ruling:

The appeal is unfounded.

- I. The appeal asserts without success that the defendant cannot be accused of careless conduct within the meaning of § 435 of HGB. According to the procedurally correct conclusions of the court of appeal, the defendant does not carry out sufficient checks upon receipt and dispatch. This justifies the allegation of careless conduct (cf. *Entscheidungen des Bundesgerichtshofs in Zivilsachen* – BGHZ (Decisions of the Bundesgerichtshof in Civil Court Matters) 158, 322, 327 ff.; Bundesgerichtshof (BGH), ruling of 17.6.2004 – I ZR 263/01, *Transportrecht* (Transport Law) 2004, p. 399, 401; ruling of 11.11.2004 – I ZR 120/02, reproduced on p. 11 – 14).
- II. Equally unsuccessfully, the second appeal contests the ruling by the court of appeal that in the case, omission of the declaration of value in respect of the lost consignments must not be imputed to the plaintiff as contributory fault on the part of the insurance holder/the consignor.
  1. According to the conclusion established correctly in accordance with the procedures by the court of appeal, the defendant did not submit that she had

a control system for value-declared consignments, which would have ruled out the allegation of careless conduct. It cannot therefore be assumed that the omitted declaration of value really had any effect on the cases of loss (cf. BGHZ 149, 337, 355; BGH, ruling of 8.5.2003 – I ZR 234/02, *Transportrecht* 2003, p. 317, 318). The prerequisite for this would be that the defendant would have fulfilled her duties of care better if she had provided the correct value and this would then have at least decreased the risk of loss (cf. BGH, *Transportrecht*, 2003, p. 317, 318).

2. In the case, the court of appeal also refuted the allegation of contributory fault on the part of the consignor, considering that the consignments were cash-on-delivery consignments, so the defendant had been aware of the value of the goods carried. This cannot be objected to on legal grounds. With the defendant's knowledge of the value of the consignments, as established by the court of appeal, joint liability of the consignor cannot be based on the allegation that an unusually high loss was not pointed out (§ 254, paragraph 2, 1<sup>st</sup> sentence of the *Bürgerliches Gesetzbuch* – BGB (German Civil Code)). Lessening the liability for loss of the injuring party who has acted without due care – which party, in such a case, knowingly assumes the risk of insufficiently secured transport – would also be in contradiction of the principle of utmost good faith, which has been given a specific legislative form in § 254 of the BGB (cf. BGHZ 149, 337, 355). As a rule, a substantial negation of one's own interests in accordance with § 425, paragraph 2 of HGB, and one which therefore leads to joint liability, exists when the first time the consignor notifies the carrier of the considerable value of the consignment is after the loss of the goods being carried. In contrast, contradictory actions on the part of the consignor are not established if the goods can only be delivered to the consignee upon receipt of a cash-on-delivery payment, in accordance with an agreement concluded between the parties (§ 422, paragraph 1 of HGB) or in accordance with instructions issued by the consignor after the contract of carriage has been concluded (cf. Koller, *Transportrecht*, 5<sup>th</sup> edition, § 422 of HGB, marginal note 13). In this respect, the appeal invokes, without success, the reasoning that notification of the value made in this connection does not serve to make the carrier aware of the risk of an unusually high loss. In so doing, the appeal does not take sufficient account

<sup>2</sup> Cf. Articles 17, 36 and 44 of CIM 1980 and Articles 7 § 2 (d), 23 and 36 of CIM 1999

of the fact that specifying cash-on-delivery in principle presupposes an appropriate contractual agreement (cf. § 422, paragraph 1 of HGB; Koller, op. cit., § 422 of HGB, marginal notes 11 to 13) and in addition, in accordance with § 422 paragraph 3 of HGB, this agreement is at any rate of material significance for the extent of the carrier's liability.

[Ruling on the costs]

(Original text available from:  
www.bundesgerichtshof.de;  
published in: *Transportrecht* (Transport Law),  
Hamburg, volume 5/2005, pp. 208/209)  
(Translation)

## Miscellaneous Information

### The Organization for Security and Co-operation in Europe (OSCE)

#### 14<sup>th</sup> Economic Forum - Part I

*Vienna, 23/24 January 2006*

The theme of OSCE's 14<sup>th</sup> Economic Forum, part I, was "Transportation in the OSCE area: Secure Transportation networks and transport development to enhance regional economic co-operation and stability". OTIF was represented by the deputy Director General and also provided a written contribution to the discussion on the topic of the first plenary session, "The role of transport in fostering economic integration at the pan-European level as well as between Europe and Asia" and on the topic of the second plenary session, "Obstacles and challenges to transport development - the OSCE role: a) the co-ordination and governance challenges".

Among other things, this written contribution provided a description of OTIF, reported on its efforts in the field of facilitation of border crossing in international rail transport, and pointed out the importance, as well as the political and economic advantages, of pilot projects in individual corridors.

In its contribution, the Secretariat of OTIF also emphasised the importance of supporting all efforts by the private sector and of fighting corruption, and the difficulties posed by the latter.

Lastly, in connection with questions of financing, the Secretariat of OTIF touched on the Rail Protocol to the Cape Town Convention, which is currently being developed.

Those participating in the forum agreed that transport should be promoted and facilitated in the interest of the economy and that this would make a valuable contribution to stability and amicable co-operation between the OSCE Member States. OSCE's role in the transport sector can be to support the necessary high-level decision-making, which is essential.

The forum was extraordinarily well attended, mostly by very senior delegations from the OSCE Member States and from various intergovernmental and non governmental international organisations.

The second part of the 14<sup>th</sup> OSCE Economic Forum is to be held from 22 to 24 May 2006 in Prague. The aim of the second part is to review implementation of the existing international legal instruments and obligations and to propose measures to improve them.  
(Translation)

### Association of German Transport Undertakings Academy Seminar

The new wagon law –  
operational and legal aspects

*Frankfurt am Main, 16/17 March 2006*

The liberalisation of the European freight transport market provides railway undertakings with various opportunities for entrepreneurial activities. To be able to perform carriage by rail based on customer requirements, the railway undertakings need, not least, the transport receptacle known as the "goods wagon". Without suitable goods wagons that meet the specific requirements, freight railways cannot provide an adequate range of services.

Against this background, the amendments the entry into force of COTIF 1999 will entail, attain considerable importance. COTIF 1999 will probably enter into force on 1 June or 1 July 2006. Appendix D, the CUV Uniform Rules, provides a legislative model that will apply in cases where the railway undertakings and wagon keepers have not agreed something else. In addition, the previous differentiation between private wagons and railway-owned wagons ceases to exist. Under COTIF 1999, rail transport undertakings that have their own rolling stock are also wagon keepers.



The “Standard Usage Contract” (CUU), which has been negotiated between UIC and UIP, forms the contractual framework for the definition of future contracts of use. However, the parties to the CUU will be the rail transport undertakings and the wagon keepers.

The aim of the seminar was to inform both the rail transport undertakings and the wagon keepers of the main changes that COTIF 1999 and the 1999 CUV UR will bring with them and to provide all the economic sectors concerned with information about the forthcoming “Standard Usage Contract” (CUU) in good time.

In an introductory presentation, the deputy Director General of OTIF took the opportunity to introduce COTIF 1999 in its entirety, to look at the status of the ratification procedure and the probable date of entry into force and also to provide outline information about the efforts to achieve harmonisation between the OTIF law on approval and EU law in the technical area.

Professor Freise gave a presentation on the new liability regime in accordance with the CUV UR and dealt with questions in connection with the transition from the historical “liability agreement” to new solutions that are customary in the market. Andreas Spiegel, head of the vehicle systems section in the notified body for interoperability of the German Federal Railway Authority, gave a presentation on the future certifications of rail systems and components in Europe, Mrs Angelika Brugger, Deutsche Bahn AG, reported on the Standard Usage Contract as the basis for future co-operation between keepers and freight railways and Mr Henri Trollet, CIT, gave a presentation on the new wagon consignment note.

The lively discussions attested to the great interest that exists in the new wagon law and the CUU.  
(Translation)

## Book Reviews

**Allégret Marc, Taïana Philippe**, *Transport ferroviaire interne* (Inland Rail Transport), JurisClasseur Transport, volume 640 (11, 2005 – up to 31.7.2005)

In volume 640, the authors analyse in detail the question of the limitation of an action in respect of contracts of carriage of goods, and more particularly in respect of (French) inland rail transport, regulated by the provisions of Article L. 133-6 (former Article 108) of the Commercial Code.

In this regard, it should be noted, broadly speaking, that Article L. 133-6 deals with the carriage of goods by land (rail and road) as well as inland waterway transport within France. In contrast, it does not apply to the carriage of goods by sea or air.

The volume is set out in seven parts, which deal in particular with the basis of limitation and with the relinquishment of limitation, the scope of application and the beginning of limitation, the suspension or interruption of limitation, recourse actions and the effect of limitation.

Although the volume concentrates on domestic French law, the authors nevertheless do not omit to make connections or to establish comparisons with international transport law, whether it be the international rail transport law applicable in accordance with COTIF 1980 or the international transport law applicable to other modes of transport, such as road transport.

Thus the authors note, to quote only one example, that for international rail transport, the effect of a written claim presented to the railway by the person entitled in accordance with the contract of carriage is to suspend the period of limitation until the day that the railway rejects the claim by notification in writing and returns the documents submitted with it (Article 58 § 3 of CIM 1980 – identical provision in Article 48 § 3 of CIM 1999), while in domestic law, this is not the case at all. In fact, in French law, a claim presented to SNCF does not have the effect of suspending or interrupting the limitation of one year under Article L. 133-6.

As usual, the legal authority, case law and considerations useful in practice find their rightful place in this volume of the JurisClasseur collection. With a clear presentation, the commentary on the provisions examined is preceded by key points, an analytical summary and an alphabetical index. As one of the co-authors is one of the best legal experts in rail

transport law, both national and international, this volume upholds the reputation of this collection, which is an essential tool for legal professionals.  
(Translation)

**Bidinger, Helmuth**, *Personenbeförderungsrecht* (Law on the Carriage of Passengers - PBefG), commentary on the Carriage of Passengers Act and other relevant provisions, continued by **Rita Bidinger**, with assistance from **Ralph Müller-Bidinger**, ISBN 3503008195, supplements 2/04 as at December 2004 and 1/05 as at December 2005, Erich Schmidt Verlag, Berlin-Bielefeld-Munich.

The book produced in 1961, the 2<sup>nd</sup> loose-leaf 1971 edition of which is continuously adapted to developments in the law, contains 3,944 pages in two folders. As previously, the commentary on the current version of the German Carriage of Passengers Act forms a major part of the work. This Act deals with the trading laws for road transport and the related matters of transport safety and the administrative procedure.

There is extensive analysis of case law, including numerous unpublished rulings. A comprehensive list of contents makes it possible to find the respective details quickly. A clear layout and the successive introduction of margin numbers ensure that the work is very user-friendly.

Supplement 2/04 brings up to date the commentary on the PBefG in respect of its scope of application, the duty to obtain a permit, the scope of the permit issued and the refusal to issue a permit. The part of the text containing provisions relating to the PBefG, such as the *Fahrpersonalgesetz* (Crew Act) or the regulation concerning the costs for official acts, has also been brought up to date. In addition, extracts have been included from the *Gesetz über die Statistik der See- und Binnenschifffahrt, des Güterkraftverkehrs, des Luftverkehrs sowie des Schienenverkehrs und des gewerblichen Straßen-Personenverkehrs* (Act on statistics relating to maritime and inland waterway transport, road haulage, air transport, rail transport and commercial road transport of passengers).

The PBefG, among other acts, has also been amended in connection with newly passed laws, which mainly have other purposes (deregulation, action against restrictions on competition). These amendments have been taken into account in supplement 1/05. Revised acts and regulations form a major part of this supplement. In view of the fact that obligations of public utility interest in the field of passenger transport are also the subject of

a rule in the PBefG, this part of the text has now been expanded to include the European Communities' Commission proposal for a Regulation of the European Parliament and of the Council on public passenger transport services by rail and by road (COM (2005) 319 final, 20.7.2005).

The commentary on passenger transport law, the development of which has been followed under this heading for many years, still fulfils its objective of "ensuring practice-oriented and sound commentary on the law on the carriage of passengers".  
(Translation)

**Kunz, Wolfgang** (editor), *Eisenbahnrecht* (Railway Law). Systematic collection with explanations of the German, European and international requirements, loose-leaf work with supplements, Nomos Publishing, Baden-Baden, ISBN 3-7890-3536-X, 19<sup>th</sup> supplement, status as at 1 June 2005.

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 3/2005, p. 42). In addition to the editor, around 20 other authors have also worked in partnership.

The collection is in four volumes. The first two volumes cover the law of the Federal Republic of Germany and the third covers the law applicable in the Federal Lander and European law; the fourth volume covers the categories of "international law", "recommendations/requirements/tariffs" and "other law". Each volume contains an alphabetical summary of the laws, regulations and other provisions and an index covering the whole collection.

The 19<sup>th</sup> supplement mainly includes the amendments made by way of the third and fourth German "railway legal requirements amendment acts" of 2005, which transpose Directives 2001/12/EC, 2001/13/EC and 2001/14/EC in Germany. The most extensive part of this supplement is formed by the new version of the German General Railways Act, with a commentary by Urs Kramer, which has been revised and expanded (225 pages in all). Other parts of the collection are concerned to a lesser extent with the amendments.

Part D – International Law – contains the text of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Modification Protocol of 3 June 1999 (Vilnius Protocol). The 19<sup>th</sup> supplement contains Wolfgang

Kunz's commentary on Appendix F (Uniform Rules concerning the Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic - APTU) and Appendix G (Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic - ATMF). The fact that the first step that follows publication of the Convention itself is a comment on the two technical Appendices is evidently a response to a particular need for information in this area, and should thus be welcomed. However, it should be noted that the commentary largely restricts itself to reproducing the Central Office Report on the revision of COTIF and the Explanatory Report on the texts adopted by the 5<sup>th</sup> General Assembly (document AG 5/6)<sup>1</sup>, unfortunately without indicating the source.

“Railway Law” has developed into a comprehensive compendium of regulations concerning the many legal relationships in the rail sector and it has proved to be a practical aid to the work of railway specialists.  
(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° 3116/2006, p. 88/89 – Transport Fer-terre. Statut juridique (M. Tilche)

*Idem*, n° 3118/2006, p. 119-122 – « Sous-traitance » et commission : inséparables (M. Tilche)

*Idem*, n° 3121/2006, p. 179 – CMR. Transporteurs successifs (M. Tilche)

*Idem*, n° 3122/2006, p. 195/196 – Transport de conte-neurs. Source de problèmes (M. Tilche)

*CIT Info*, Berne, N° 1/2006, p. 2-4 – De l’Atlantique à l’Oural avec un seul document de transport : la lettre de voiture CIM/SMGS / Vom Atlantik zum Ural mit einem einzigen Beförderungsdokument: dem Frachtbrief CIM/SMGS / From the Atlantic to the Urals with a single transport document: the CIM/ SMGS consignment note (H. Trolliet, E. Evtimov) ; p.5/6 – Affaire IATA/ELFAA : l’arrêt de la CJCE délimite clairement les domaines d’application du droit

communautaire dérivé et de la Convention de Montréal / Das Urteil des EuGH zur Abgrenzung der Regelungsbereiche des sekundären EG-Rechts und des Montrealer Übereinkommens / The judgment of the ECJ on the boundary between the regulatory scope of secondary community law and the Montreal Convention

*DVZ - Deutsche Verkehrszeitung*, Hamburg, Nr. 17/2006, S. 11 – Instandhalten statt haften. Neues Eisenbahnrecht COTIF 1999 bringt Wagenhaltern ein eher geringes Verschuldensrisiko (S. Lohmeyer)

*European Transport Law/Droit européen des transports*, Antwerpen, N° 6/2005, p. 801-809 – Aktivlegitimation und Regressverfolgung in Deutschland, dargestellt am Beispiel der CMR (K.-H. Thume); p. 811-822 – Aktivlegitimation und Regressvoraussetzungen betreffend Transport- und Versicherungsrechtliche Ansprüche nach österreichischer Rechtslage und Rechtsprechung (W. Walch)

*Gefährliche Ladung*, Hamburg, Nr. 12/2005, S. 32-33 und Nr. 1/2006, S. 31-34 – Fragen + Antworten. Arbeiten an den ADR/RID/ADN-Änderungen für 2007 erfolgreich beendet – Ergebnisbericht (J. Conrad)

*Idem*, Nr. 2/2006, S. 32-34 – Abschied vom Tarif (J. Conrad)

*Transportrecht*, Hamburg, Nr. 2/2006, S. 45-49 – Versicherungen des gewerblichen Eisenbahnverkehrs (R. Freise)

*Uniform Law Revue/Revue de droit uniforme*, Rome, Unidroit, 2005-4, p. 785-823 – Rescuing the Rome Convention of 1952 : Six Decades of Effort to Make a Workable Regime for Damage Caused by Foreign Aircraft to Third Parties (M. Jennison)

*Zeitschrift der OSShD*, Warschau, Nr. 1/2006, S. 17-20 – Nutzung der Eisenbahn-Korridore für weitergehende Erleichterungen beim Grenzübertritt (S. Schimming)

1 See [www.otif.org](http://www.otif.org), Publications, COTIF (3.6.1999), Explanatory Report on the APTU Uniform Rules and the ATMF Uniform Rules