



Intergovernmental Organisation
for International Carriage
by Rail

Bulletin
of International
Carriage
by Rail

2/2006

114th Year • April - June

Summary

Central Office Communications

Ratification of the 1999 Protocol

Turkey, p. 19

Entry into force of the 1999 Protocol, p. 19

Ratification and approval of the 1999 Protocol

Bosnia-Herzegovina, France, United Kingdom and Luxembourg, p. 20

Application de facto

Greece, p. 20

List of CIV lines, p. 20

List of CIM lines, p. 20

Lists of lines 1999

CIV list of maritime and inland waterway services,
p. 21

CIM list of maritime and inland waterway services,
p. 21

CIM list of railway lines, p. 21

OTIF Organs

Administrative Committee

105th session – Berne, 10/11.5.2006 – p. 21

RID Committee of Experts working group on tank and vehicle technology

See "Dangerous Goods"

Dangerous Goods

RID Committee of Experts working group on tank and vehicle technology

7th session – London, 6/7.4.2006 – p. 22

Co-operation with International Organizations and Associations

Organization for Railway Cooperation (OSJD)

Meeting of Experts on "SMPS"
Almaty, 16-19.5.2006 – p. 24

CIT - OSZhD

CIM/SMGS Consignment Note – Legal Group
Berne, 24/25.1, 4/5.4 and Warsaw, 6/7.6.2006, p. 25

Case Law

Aréopage (Greece) - Rulings of 17.5.2004 and of 10.1.2005
Reconsignment – Capacity of the destination railway to be made a
defendant – p. 26

Miscellaneous Information

Meeting of the Academy of the German Association of Transport Undertakings (VDV Academy)

Hanover, 6/7.4.2006, p. 27

Seminar: "European Railway Legislation for the 21st Century"

Olomouc, 12.4.2006, p. 28

II International Conference on Transport

Castellón de la Plana (Spain), 3-5.5.2006, p. 29

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

Prague, 22-24.5.2006, p. 29

Book Reviews

Beck's Commentary on the Allgemeines Eisenbahngesetz (German General Railways Act), ed. **Professor Georg Hermes** and **Dr. Dieter Sellner**, p. 29

Publications on transport law and associated branches of law, and on technical developments in the rail sector, p. 31

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

Central Office for International Carriage by Rail,
Gryphenhübelweg 30, CH - 3006 Berne
Phone : + 41 31 359 10 10
Fax : + 41 31 359 10 11
E-mail : info@otif.org
Internet : www.otif.org

2/2006

114th year – April - June

Bulletin of International Carriage by Rail

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

In case of reproduction of essays and texts translated by the Central Office, full acknowledgment of author, publisher and source must be given. The opinions expressed in essays are those of the authors.

Central Office Communications

the decisions of the 5th General Assembly have been met.

Ratification of the 1999 Protocol

Turkey

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), Turkey deposited its instrument of ratification of the 1999 Protocol with the Provisional Depositary on 3 April 2006.

As Turkey is the 27th Member State to have ratified the Protocol, the period leading to the entry into force of the new version of the Convention has now started. Turkey has thus again demonstrated that it attaches great importance to rail transport. Repeated initiatives by Turkey for setting up new rail links between Europe and Central Asia on the one hand, and in the Near and Middle East on the other, have made Turkey a focal point for the organization and further development of such transport services.

This means that more than two-thirds of the Member States have ratified, accepted or approved the 1999 Protocol or have acceded to it. Thus the conditions of Article 20 § 2 of COTIF 1980 for the entry into force of

Entry into force of the 1999 Protocol

The Secretariat of OTIF (Provisional Depositary) notified the Member States on 5 April 2006 of the deposit of the 27th instrument of ratification of the Protocol of 3 June 1999 for the Modification of COTIF (1999 Protocol), by which the conditions of Article 20 § 2 of COTIF 1980 are fulfilled. According to Article 4 § 1 of the 1999 Protocol, it enters into force on the first day of the third month following that notification, i.e. on **1 July 2006**. With regard to the legal consequences of the entry into force of COTIF 1999 if not all States have ratified the Vilnius Protocol in due time, please see 7th General Assembly, final document, paragraph 7.3 and Annex 2 (Bulletin 4/2005, p. 48-50).

At the latest six months after the entry into force of the Vilnius Protocol the General Assembly has to be convened in accordance with COTIF 1999. On 6 June 2006, the Central Office (replaced by the Secretary General as from 1.7.2006) convened the 8th General Assembly for 6 and 7 September 2006.

Ratification and approval of the 1999 Protocol

Bosnia-Herzegovina, France,
United Kingdom and Luxembourg

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), Bosnia-Herzegovina deposited the instrument of ratification of the 1999 Protocol with the Provisional Depositary on 16 May 2006 and France deposited the instrument of approval of the 1999 Protocol with the Provisional Depositary on 29 May 2006. In addition, the United Kingdom and Luxembourg deposited their instruments of ratification on 29 June 2006.

The conditions of Article 20 § 2 of COTIF 1980 for the entry into force of the decisions of the 5th General Assembly were met when the 27th instrument of ratification was deposited. The 1999 Protocol entered into force on 1 July 2006 for all Member States that deposited their instrument of ratification, acceptance or approval with the Provisional Depositary before this date. The same applies to those Member States that acceded to COTIF after the 1999 Protocol was opened for signature and before it entered into force (Latvia and Serbia).

An overview is published on OTIF's website under "State of the signatures, ratifications, acceptances, approvals, accessions and entry into force" (www.otif.org, see under "Publications", COTIF 3.6.1999). It can also be seen from this overview which Member States have made which declarations and reservations.

Application de facto

Greece

With the entry into force of the 1999 Protocol and hence COTIF 1999, application of the CIV and CIM Uniform Rules is suspended in respect of traffic with and between those Member States which, one month before the date fixed for such entry into force, have not yet deposited their instruments of ratification, acceptance or approval.

This suspension will not apply to Member States which have notified the Secretariat that, without having deposited their instruments of ratification, acceptance or approval, they will apply the amendments decided upon

by the 5th General Assembly (de facto application, see Art. 20 § 3, para. 2 of COTIF 1980).

The Ukraine has made such a declaration in respect of the CIM Uniform Rules (see Bulletin 3/2005, p. 35).

On 28 June 2006, Greece also gave notice that it will apply the CIV and CIM Uniform Rules to traffic with and between the Member States that have ratified, accepted or approved the Vilnius Protocol or have acceded to it.

List of CIV lines

(published on 1 May 1985)

Central Office circular no 60, 1 June 2006

As COTIF 1999 enters into force on 1 July 2006, the chapters concerning the following Member States that have ratified the 1999 Protocol or that acceded to COTIF after the 1999 Protocol was opened for signature and before it entered into force (Art. 3 § 4 of the 1999 Protocol) have been removed from the list of lines: Albania, Germany, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, Spain, Finland, France, Hungary, Iran, Latvia, Liechtenstein, Lithuania, Macedonia (FYR), Monaco, Norway, Netherlands, Poland, Portugal, Romania, Serbia and Montenegro, Slovakia, Slovenia, Switzerland, Syria, Czech Republic, Tunisia and Turkey.

The list of CIV lines in accordance with COTIF 1980 will no longer be published, as it no longer has any significance for the application of the CIV UR, but is only used to calculate the contributions from some of the Member States.

List of CIM lines

(published on 1 May 1985)

Central Office circular no 76, 1 June 2006

As COTIF 1999 enters into force on 1 July 2006, the chapters concerning the following Member States that have ratified the 1999 Protocol or that acceded to COTIF after the 1999 Protocol was opened for signature and before it entered into force (Art. 3 § 4 of the 1999 Protocol) have been removed from the list of lines: Albania, Algeria, Germany, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, Spain, Finland, France, Hungary, Iran, Latvia, Liechtenstein, Lithuania, Macedonia (FYR), Monaco, Norway,

Netherlands, Poland, Portugal, Romania, Serbia and Montenegro, Slovakia, Slovenia, Switzerland, Syria, Czech Republic, Tunisia and Turkey. In addition, the chapters concerning those Member States that have made a declaration in accordance with Article 20 § 3 of COTIF 1980 (de facto application) without having deposited an instrument of ratification, acceptance, approval or accession in respect of COTIF 1999 have also been removed.

The list of CIM lines in accordance with COTIF 1980 will no longer be published, as it no longer has any significance for the application of the CIM UR, but is only used to calculate the contributions from some of the Member States.

Lists of lines 1999

CIV list of maritime and inland waterway services

(published on 1 July 2006)

Central Office circular no 1, 1 June 2006

The chapters covering the following Member States have been included in the CIV list of maritime or inland waterway services on 1 July 2006: Germany, Austria, Denmark, Spain, Finland, France, Norway, Netherlands, Switzerland and Turkey.

See COTIF 1999, Article 24 § 1.

Secretary General circular no 2, 3 July 2006

Chapter "United Kingdom"

As the United Kingdom deposited the instrument of ratification of the 1999 Protocol on 29 June 2006, the United Kingdom chapter has been included in the CIV list of maritime and inland waterway services in accordance with Article 24 § 1 of COTIF 1999.

See COTIF 1999, Article 24 § 1.

CIM list of maritime and inland waterway services

(published on 1 July 2006)

Central Office circular no 1, 1 June 2006

The chapters covering the following Member States

have been included in the CIM list of maritime or inland waterway services on 1 July 2006: Germany, Algeria, Denmark, Finland, France, Lithuania, Poland, Romania, Switzerland and Turkey.

See COTIF 1999, Article 24 § 1.

Secretary General circular no 2, 3 July 2006

Chapter "United Kingdom"

As the United Kingdom deposited the instrument of ratification of the 1999 Protocol on 29 June 2006, the United Kingdom chapter has been included in the CIM list of maritime and inland waterway services in accordance with Article 24 § 1 of COTIF 1999.

Chapter "Poland"

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

See COTIF 1999, Article 24 §§ 1, 3, 5.

CIM list of railway lines

(published on 1 July 2006)

Central Office circular no 1, 1 June 2006

Only the chapter on the Ukraine has been included in the CIM list of railway lines on 1 July 2006.

See COTIF 1999, Article 24 § 2.

OTIF Organs

Administrative Committee

105th session

Berne, 10/11 May 2006

The Administrative Committee in the new composition determined by the 7th General Assembly for the period 2006-2010 (see Bulletin 4/2005, p. 47 and p. 51) met in Berne on 10 and 11 May 2006 under the chairmanship of Mr Carlos del Olmo Morand (Spain).

The 105th session is very likely to be the only session the Administrative Committee will hold during this period, as the 8th General Assembly, which will be held in Berne on 6 and 7 September 2006, will designate a new

Administrative Committee (members and deputy members) in accordance with COTIF 1999. The new Committee's term of office should begin on 1 October 2006.

Essentially, discussions focused on preparation of the 8th General Assembly. In this context, the Administrative Committee examined questions such as the venue, date, duration, agenda and chairmanship of the General Assembly. The Committee also dealt with the particularly important questions relating to finances in connection with the entry into force of the Vilnius Protocol (application of Article 26 of COTIF 1999, application of Article 6 § 7 of the 1999 Protocol and budgetary consequences for 2007 and 2008). It also approved the draft report to the General Assembly on the activities of the Administrative Committee. Lastly, the Committee adopted provisions relating on the one hand to the composition of the Administrative Committee for the next period and on the other to fixing the maximum amount that the expenditure may reach in each budgetary period for the period 2007 to 2012.

In addition, the Administrative Committee approved the Annual Report and the 2005 Financial Management Report. It fixed the rate per kilometre that forms the basis for calculating the definitive contributions for 2005 at SFr. 6.60. The outcome of the 2005 financial year was a surplus income of SFr. 408,766.73, which will be credited to the reserve fund.

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

The 106th session of the Administrative Committee will be held in Berne on 29 and 30 November 2006. (Translation)

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

London, 6/7 April 2006

see "Dangerous Goods"

Dangerous Goods

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

7th session

London, 6/7 April 2006

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

Derailment detection (see Bulletin 2/2005, p. 28-29)

The representative of Switzerland described the developments and the current status of the derailment detectors that have been put into service in Switzerland. He explained that for the derailment detector, a tolerance range of 5 g would have to be maintained because of the possibility of oscillations in the main brake pipe pressure, possible temperature fluctuations and manufacturing tolerances. Thus because of the falsely activated detectors, both the lower and the upper threshold had been increased by 1.5 g. If the trial with the derailment detectors set at these values yielded a positive result, Switzerland would propose an amendment to UIC leaflet 541-08.

In the subsequent discussion, it was again pointed out in particular that fitting wagons with mechanical derailment detectors can only be prescribed if, due to the negative effects on all railway operations, false activations can be ruled out, and if it has been proved that derailment can be detected with certainty even with the higher threshold values.

As the RID Committee of Experts alone can only take a decision on the use of mechanical/pneumatic derailment detectors on wagons for the carriage of dangerous goods and as an infrastructure is necessary for using electronic derailment detectors, and this infrastructure will be used for other purposes and is therefore within the competence of the European Railway Agency (ERA), co-operation with ERA in this area was again called to mind. In addition, such co-operation is necessary because consideration must also be given to fitting other wagons with derailment detectors. For the future work,

the working group considered it vital that ERA give its views on the use of telematics.

It was decided to continue to pursue developments concerning mechanical-pneumatic derailment detectors in Switzerland. At the next meeting of the working group, there should also be a discussion on electronic derailment detectors with industry representatives.

Telematics (see Bulletin 2/2005, p. 29)

The representative of Germany provided information on the current status of the EU's MITRA Project (**M**onitoring and **I**ntervention for the **T**ransportation of **D**angerous **G**oods). This project comprised the following main elements: vehicle location, two or three dimensional visualisation of the scene of the accident, retrieval of additional information concerning the vehicle and load, integration of dangerous goods databases for substance-related data, "transfer" of a transport operation between two control centres in order to permit uninterrupted monitoring, also beyond national borders, raising an alarm via panic buttons, sensors or external signals. In addition to information on the dangerous goods being carried, the emergency services receive information on the precise location of the accident and can arrange rapid evacuation if necessary. By taking into account weather data, assessments can also be made as to how the effects of an accident may spread.

The working group welcomed this project, as a range of research projects and the telematics solutions currently used in practice often only include specific applications, and to some extent these only apply to one mode of transport. This is an obstacle to the formation of an uninterrupted intermodal chain of information and surveillance, which is essential in the carriage of dangerous goods. But a forward-looking method of resolving this problem should place prevention at the centre of a framework of actions, as well as the limitation of damage by means of direct and appropriate measures in the event of damage occurring. The representative of Germany therefore said he was willing to prepare a discussion paper for the next session of the RID Committee of Experts setting out the requirements of a telematics system from the point of view of dangerous goods and the possible participants and the benefit for these participants. After suitable discussion in the RID Committee of Experts, this discussion paper should then be sent to the Joint Meeting, as such a system is only of use if it can be applied to all modes of transport.

Reducing the speed of complete train-loads of dangerous goods

The working group agreed that RID already provided Member States with the possibility of laying down speed restrictions at certain points, evidence of the need of which must be provided. As no separate networks are available in Europe for passenger and freight traffic, a general speed restriction for complete train-loads of dangerous goods would have considerable negative effects on passenger and freight transport, as in addition to increased energy consumption and wear and tear, an increase in braking and accelerating operations would also lead to an increased risk. For these reasons, the working group did not support a general speed reduction. It recommended that this issue be deferred until new proposals containing quantitative assessments of the advantages and disadvantages could be submitted.

By-passing built-up areas and stations

The working group also agreed on this item that RID already gives Member States the possibility of requiring built-up areas to be by-passed if evidence of the need for this is provided. However, in this case, a risk comparison should be carried out in order to avoid the by-pass route leading to an increased risk, for example because of numerous level crossings. In many cases, it would only be possible to by-pass built-up areas by building new lines. The working group recommended that this issue be deferred until new proposals containing quantitative assessments of the advantages and disadvantages could be submitted.

Emergency management and dangerous goods atlas

The working group considered the subject of "emergency management" to have been dealt with, as the obligations of the participants were already covered sufficiently from 2007, and in many States, implementation of these provisions had already begun.

The working group considered the dangerous goods atlas as a possible working tool to enable the emergency services to receive targeted training on the dangerous goods carried in their area. The data that the carrier will have to provide to the infrastructure manager from 2007 onwards could be used to produce such a dangerous goods atlas. The working group recommended not to include any specific provisions in RID, as some States already had national rules concerning civil protection.

Drip leaks (see Bulletin 2/2005, p. 29-30 and 4/2005, p. 57)

The representative of the Netherlands wished to have the working group's advice on whether a pressure test should be prescribed for internal shut-off devices and whether emptying the filling and discharge devices after filling or discharge should be prescribed.

The representative of Germany considered that a majority of substance leaks could be avoided if the existing provisions were made clearer, the aim being not to allow any residues of the load to remain in the filling and discharge devices.

Several delegations confirmed that drip leaks had also been discovered in their countries. However, they were of the view that these were minor problems that could also be resolved on an individual basis. If additional provisions were to be incorporated into the regulations, only the protective aim should be formulated, but not individual measures which, in addition, were not applicable to all valve design types.

It was also pointed out that the 2007 amendments would specify that the last shut-off device must be leakproof to the extent that the substance is retained without leakage. Up to now, the last shut-off device has to some extent been interpreted only as a dust-proof closure.

The working group was of the view that more detailed investigations should be carried out on the classes involved and the quantities that leak in relation to the quantities carried. It would also have to be investigated whether technical failures or human error were involved. In connection with this, it should be checked whether the provisions for the filler were sufficient or whether clarification should be provided on the complete emptying of the filling and discharge devices.

Position of the wagon in the train (barrier wagon rule)

The working group's view was that before this problem was dealt with in more depth, it should await the discussion that was taking place in a new Joint Meeting working group on the subject of BLEVE (Boiling Liquid Expanding Vapour Explosion) and other catastrophic situations.

UIC said it was prepared to carry out a study on the advantages and disadvantages of barrier wagons in a train composition.

Next meeting

Germany said it was prepared to hold the next meeting of the working group in April 2007 in Munich, where

various railway technology undertakings were based. (Translation)

Co-operation with International Organizations and Associations

Organization for Railways Cooperation (OSJD)

Meeting of Experts on "SMPS"

Almaty, 16-19 May 2006

The regulatory subject matter of the current version of the Agreement concerning International Passenger Transport by Rail (SMPS), together with the corresponding service regulations, is approximately equivalent to the 1980 CIV Uniform Rules (UR), together with the international tariffs and the general terms and conditions for implementing the CIV UR produced by the International Rail Transport Committee (CIT).

As reforms in the rail sector are also underway in the OSJD Member States, a meeting of officials responsible in this area held at the end of 2005 endorsed the necessity of revising SMPS, thus following a proposal that was made at the meeting of experts held in Pilsen (Czech Republic) from 17 – 20 May 2005.

The revision of the Agreement concerning International Goods Transport by Rail (SMGS) had already been initiated one year previously. Separation of railway infrastructure operations from the provision of transport services is being carried out primarily in the Member States of OSJD that are also Member States of the European Union, but also in some other States. The versions of the SMPS and SMGS Agreements that apply at present are not consistent with these new conditions.

On the basis of the plan for co-operation between OTIF and OSJD, a representative of the OTIF Secretariat again took part in this year's meeting of experts of OSJD's Commission II, following her participation in last year's meeting in Pilsen. This year, the meeting was held from 16 to 19 May in Almaty (Kazakhstan) and dealt with both the further development and revision of SMPS.

The extensive rules of SMPS require frequent amendment. Such detailed amendments are made and

brought into force each year. In contrast, the revision is dealing with amendments of a wider scope in connection with the ongoing upheavals in the rail sector. It is likely that they will continue to be discussed over a number of years.

In addition to amendments in connection with the reorganisation in the rail sector, discussions were initiated on two subjects which have not hitherto been covered in SMPS: liability in the event of death of, or injury to, passengers and liability in the event of delay and cancellation of international trains.

With regard to liability in the event of death of, or injury to, passengers, a new provision was included in 2005 according to which the railway is liable for damage arising from a passenger's being killed, injured or otherwise affected with regard to his physical or mental health by an accident in connection with railway operations while he is in the railway wagon or when boarding or alighting from a train. With regard to the procedure and extent of compensation, reference is made to national law. This new provision entered into force on 1 May 2006.

It has not yet been possible to conclude the discussions on a new provision concerning liability in the event of delay and cancellation of international trains. Nevertheless, there is a draft text on this, which was discussed by the meeting of experts in 2005 and by a temporary working group this year. However, it does not appear that this provision could be adopted soon. It will be examined further in the context of the revision.

The basis for the work of the meeting of experts in Almaty on the revision of SMPS was firstly, a comparative analysis of the texts of SMPS and the 1999 CIV UR (prepared by Poland in collaboration with Belarus, Lithuania, Latvia and the Ukraine) and secondly, proposals from Russia for a new version of Articles 1 – 8 of SMPS. In preparing the comparative analysis, Poland took as its basis the Russian translation of COTIF 1999 published by the Central Office.

The aim of a proposal from Poland was to keep only the main regulations concerning the contractual relationship between the carrier and the passenger in SMPS, as is the case in the CIV UR, and to transfer all the detailed regulations either to the service regulations or to other sets of regulations (to be newly drafted), for instance general conditions of transport. However, the majority supported the current concept of comprehensive regulations and did not consider such restructuring to be useful.

According to the decisions of the meeting of experts, which would still have to be adopted by OSJD's Commission II (Transport Law), new terminology should be introduced into SMPS, including "passenger", "carrier", "keeper" or "passenger carriage operator", "rail transport infrastructure", "infrastructure manager" and "participant in the transport process". The obligation to carry is to be retained.

For the further work, the meeting of experts drafted a work plan, in which OTIF's participation is again anticipated. While it is true that OTIF only takes part in these meetings in an advisory capacity, it can nevertheless make a contribution, particularly with regard to the proposed inclusion of some provisions from the CIV UR, by providing appropriate information on correlations between these provisions and on their background.

(Translation)

International Rail Transport Committee (CIT)

Organization for Railways Cooperation (OSJD)

CIM/SMGS Consignment Note

Legal Group

*Berne, 24/25 January, 4/5 April
and Warsaw, 6/7 June 2006*

A CIM/SMGS consignment note model and a corresponding manual have been prepared in a joint CIT and OSJD project (see Bulletin 4/2005, p. 62). In the first few months of 2006, these were both approved by each of the organisations' highest bodies and by the competent customs authorities on each side, so that the CIM/SMGS consignment note will be available from 1 September 2006 and can be used both as a transport and as a customs document.

The CIM/SMGS consignment note represents a contribution to the facilitation of rail transport between the Member States of COTIF and the Member States of OSJD. Despite this progress however, there are still two regimes governing liability, CIM and SMGS. This fact causes difficulties and disadvantages for customers. To find a remedy, a legal group has been set up which is comprised of lawyers from each of the railways operating in pan-European corridors II and III, CIT, OSJD and OTIF.

This group first of all decided to draft guidelines on CIM-SMGS liability as a source of information, which can be of use to the contracting parties when using the CIM/SMGS consignment note from as early as 1 September 2006. In a second stage, harmonised provisions governing liability on a contractual basis for certain transport links are to be drafted.

All three meetings of the legal group, which were held in the first half of 2006 with the involvement of the representative sent by OTIF, were given over to the CIM-SMGS liability guidelines. The starting point for the work was a table prepared by Ukrainian Railways (UZ) comparing the various CIM/SMGS liability provisions. In preparing the table, UZ took as its basis the Russian translation of COTIF 1999 and a list of the CIM liability provisions provided by OTIF. During the discussions, comments were added briefly summarising the conclusions resulting from the comparison of the texts. Based on this work, a synthesis of the most important basic principles and differences between the two liability regimes was produced. Both parts of the guidelines, the table of comparison and the synthesis, were tidied up at the legal group's meeting in Warsaw (6/7.6.2006) and should be approved by the steering group (Košice, 11.7.2006).

At this meeting of the legal group, which is the last for the time being, the representative of Latvian Railways, who was also consulted with reference to the future work, reported on the current status of the work on revising SMGS. Restructuring SMGS with the aim of adopting it as an international Agreement at Government level was still the subject of discussions. At present, there was agreement, at least in the temporary "Revision of SMGS" working group, for which Russia and Latvia are responsible, that SMGS should only regulate the relationship between the customer and the carrier; everything concerning transport technology (operating procedures) should be regulated at a lower level. The revision was only in its initial stages and it was not yet possible to estimate when it would be concluded. In the mean time, it could be observed which new features of the CIM UR proved to be of value. In so far as the concept favoured by the temporary working group prevailed, the text of SMGS could be tightened up, thus creating more contractual freedom, similarly to the revision of the CIM UR.
(Translation)

Case Law

Aréopage (Court of Appeal, Greece)

Rulings of 17 May 2004¹ and of 10 January 2005²

The fact that for practical reasons two consignment notes were made out for one and the same consignment, because of reconsignment, does not prevent the consignee from asserting his claims against the destination railway, irrespective of the part of the transport operation during which the loss occurred.³

Cf. Articles 35 § 2 and 55 § 3 CIM 1980⁴

Summary:

A Greek company entrusted a German railway to carry goods purchased in Germany from Germany to Athens (Greece). The carriage was performed in several consignments, in complete wagon loads. The goods were loaded onto the wagons by the German seller at its private warehouse sidings at Crailsheim and Euskirchen (Germany), successively. Seals were affixed to all the wagon doors in accordance with German law. The wagons were taken from Germany to Sopron (Hungary) where they were hitched to other convoys bound for Athens. The transport was covered by two separate consignment notes, the first for the Germany-Hungary leg, the second for the on-carriage to Greece. Upon arrival of all the consignments, several seals were found to have been broken and replaced by others of Hungarian, Greek, Yugoslav or Bulgarian origin, depending on the itinerary. ... Each time, a considerable number of packages were found to have been stolen. As each of the loads was taken over, the Greek company entitled to the goods brought suit against the Greek railways (OSE) as the railway of destination in a series of actions before the Athens court. Notwithstanding the

1 Ruling No 578/2004

2 Ruling No 17/2005

3 Introductory sentence by the Bull. Int. Carriage by Rail; cf. the rulings of the Athens Court of Appeal published in Bulletin 1/2004, pp. 19-22.

4 Bull. Int. Carriage by Rail editor's note: Article 12 § 1 CIM also quoted in the ruling does not deal with the question of reconsignment; it merely establishes that the consignment note may only relate to a single wagon load.

defences on substantial and procedural issues advanced by defendant railway, OSE was ordered to pay damages to claimant, and the appeals lodged against the decisions of the Athens Court of Appeal (Decisions Nos. 6634/2001, 4529/2002 and 8206/2002 respectively, unpublished) were dismissed by the *Aréopage*.

Among the many defences advanced by defendant in all three court cases, one in particular is worth mentioning. OSE claimed that, since there had been two separate consignment notes for each leg of the journey (Germany – Hungary – Greece), each consignment was covered by two contracts of carriage, and that it (defendant) was a party only to the second such contract. OSE further argued that the thefts had already taken place by the time the carriages reached Sopron (Hungary) and did not occur on the Sopron-Athens leg of the journey. As a consequence, OSE submitted that it could not be held liable, as the destination railway under Article 55(3) of the Uniform Rules, for damage that occurred in performing a contract to which it was not a party (cf. Article 35(2) ! This line of reasoning probably arose from a misinterpretation of Article 12(1) al. 2, according to which “a separate consignment note shall be made out for each consignment,” a provision from which it may legitimately be inferred that “each consignment must be covered by a consignment note.” Defendant, however, went one step further in claiming that “each consignment must be covered by a *single* consignment note” and in concluding that there should be as many consignments as there were consignment notes. However judicious such reasoning might be, it is nevertheless mistaken.

The *Aréopage* could have simply dismissed this defence as unfounded since the lower courts had already established that the thefts had occurred in the course of transport from Hungary to Greece. The Court did dismiss the defence, but not before demonstrating that, despite the existence of two consignment notes, the carriage was nevertheless a single carriage for the purpose of which OSE was the destination railway. The goods were never unloaded, deposited and reloaded at Sopron; the wagons were merely moved to be hitched onto other trains, under the supervision of the local railway. Such transit operations are quite common: wagons bound for Balkan countries are gathered together at Sopron, sorted by country of destination and loaded onto trains bound for the relevant country. For practical reasons, two consignment notes are made out for each leg, but the international contract of carriage remains a single contract.

In clearly addressing the economic function of the contract of carriage and the consignment note, the *Aréopage* does full justice to the meaning of Article 12(1) al. 1 and to the judicious application of Article 55(3) by rejecting a line of reasoning which, although not without legal merit, had no bearing on commercial reality.

(From: Uniform Law Review, publication of the Institute for the Unification of Private Law – Unidroit, Rome, No. 2005-4, p. 926-928, with following references: *Dikaio Epikheiréseon kai Etairiôn (Enterprise and Company Law)*, 10 (2004) 1285, 11 and (2005) 699 & 832, respectively. *Summary kindly submitted (in French) by Mr Georgios Panopoulos.* (Translation)

Miscellaneous Information

Meeting of the Academy of the German Association of Transport Undertakings (VDV Academy)

COTIF – The new international rail freight law

Hanover, 6/7 April 2006

In view of the imminent entry into force of COTIF 1999 on 1 July 2006, the VDV Academy again organised a seminar to acquaint the most important market players with the principle legal requirements for international rail freight transport and the changes as compared with COTIF 1980, and to broaden their knowledge.

The seminar was aimed mainly at board members, managers and executive staff from among shippers and freight railways operating in international rail freight transport.

The meeting was given a particularly up to date note owing to the fact that on the day before, 5 April 2006, the Secretariat of OTIF had notified the Governments of the Member States that the instrument of ratification which, in accordance with Article 4 of the Vilnius Protocol, will bring about the entry into force of COTIF 1999 on 1 July 2006, had been deposited.

The aim of the presentation by the deputy Director General of OTIF was to provide participants at the seminar with a complete overview of the content,

individual elements and questions of application in relation to the new Convention. Dr Heidersdorf (Railion Deutschland AG) and Dr Frisch (Rail Cargo Austria AG, representing Dr Killmeyer) explained the 1999 Uniform Rules concerning the Contract of International Carriage of Goods by Rail (CIM UR 1999) and the consequences they have for customers, and the new CIM rules concerning liability and what they mean for the customers of freight railways (basis of liability, amounts of liability, exemptions from liability, extent of liability).

A second part of the seminar dealt with the practical implementation of COTIF 1999. Dr Heidersdorf presented the new “CIM General Terms and Conditions of Carriage” (GTC-CIM) as uniform general conditions for co-operation between the forwarding industry and the freight railways. Dr Leimgruber (Secretary General of the International Rail Transport Committee, CIT) explained various aspects of the practical implementation of the new international railway freight law (parties to the contract of carriage, form of conclusion of contract, carriage of dangerous goods, etc.) and presented the new CIM consignment note.

Overall, meeting participants deemed the new COTIF 1999 to be a successful and systematically cohesive international law of contracts providing the railways with new opportunities in international transport.
(Translation)

Seminar: “European Railway Legislation for the 21st Century”

Olomouc, 12 April 2006

This seminar, which was intended for carriers, forwarders, shippers and wagon owners as well as railway employees, was organised by the Czech firm JERID. JERID provides solutions in the professional processing and provision of information in European rail freight transport. The company has customers in 18 countries, among which are major forwarders and carriers. Among other things, JERID has published the first electronic rail map of Europe, which contains a lot of useful information concerning networks and stations.

The representative of DG TREN, Mr Ivan Sørensen, gave an introductory talk on the European Community’s directives in the rail sector that are already in force or that are being prepared, and the political objectives behind them. Following this, the deputy Director

General of OTIF was able to take the opportunity to draw attention to the imminent entry into force of COTIF 1999 and the related substantial legal changes. Dr J. Soušek of the Czech Republic’s Ministry of Transport dealt with the reform of the legal requirements for rail freight transport in the Czech Republic, Mr Y. Le Gars of UIP talked about the position and role of UIP under the new legal conditions and Mr J. Komarek of CER presented his organisation and its role in the European railway legislative process.

All the speakers took part in the subsequent in-depth panel discussion, in which the representative of OTIF commented particularly on the question of the possible chaos in rail transport law. The main message was that this was not to be feared and that COTIF 1999 provides various tools to avoid this happening. The significantly increased freedom of contract that COTIF 1999 provides for all those involved will doubtlessly also require the standardisation of future contracts. Such standardisation is possible from a legal point of view and is currently being prepared under the aegis of CIT, together with the various interested associations, such as UIC, UIP and ERFA. It is true that these tools have not yet been tried in practice and are perhaps not yet perfect, but they can be improved over time on the basis of practical experience.

On the whole, the participants at the seminar gave a positive judgement of the innovations that the revised COTIF 1999 will bring with it when it enters into force on 1 July 2006.
(Translation)

II International Conference on Transport

**Towards safer, sustainable
and more efficient transport**

Castellón de la Plana (Spain), 3-5 May 2006

For OTIF, the deputy to the Director General took part in this Conference organised by CEDIT (Centre for International Transport Law) of the Facultad de Ciencias Jurídicas y Económicas at the Jaume I University in Castellón. The aim of his presentation and the following discussions was to acquaint Conference participants with the fundamental change in the legal situation and its consequences for international rail transport brought about by the entry into force of COTIF on 1 July 2006.

In addition, the Conference provided many opportunities for discussions with today’s and future leading

representatives of transport law and the transport industry.

In the presentations and discussions however, regret was repeatedly expressed regarding the poor performance of the rail mode and the complex legal situation in multimodal transport. However, there is hope that the efforts towards liberalisation and the new international railway law in accordance with COTIF 1999 will help the railways as a transport mode to make a better contribution than it does at present to safer, sustainable and more efficient transport.

(Translation)

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

14th Economic Forum – part two

Prague, 22-24 May 2006

Part 2 of OSCE's 14th Economic Forum had the same theme as part 1: "Transportation in the OSCE area: Secure transportation networks and transport development to enhance regional economic co-operation and stability". OTIF was again represented by the deputy Director General.

First of all, in a so-called "review session", implementation of the international commitments under the various instruments entered into by the Contracting States was reviewed. The basis report prepared by the UN/ECE Secretariat investigated not only implementation in the past, but also looked at possibilities for achieving improvements in the future.

In accordance with the priorities set at the preparatory conferences in Dushanbe and Baku and with part one of the Economic Forum in Vienna, 23 and 24 January 2006 (see Bulletin 2006, p. 14), part two of the Economic Forum dealt with the following main themes in five plenary sessions:

1. "Transport development to enhance regional economic co-operation and stability; the special case of landlocked countries".
2. "The key role of governance: effective practices in border management and the fight against corruption".
3. "Addressing risks to transport security in the various transport modes".

4. "OSCE transport activities and their contribution to confidence building and the solution of unresolved conflicts".
5. "The link between transport and the environment".

The plenary sessions were each introduced by two speakers as keynote speakers in order to structure the subsequent discussion accordingly. The contributions to the discussion were mainly political statements, in line with OSCE's role in this area, which is to influence the political climate so that the common aims can be achieved. In contrast, there was no discussion in the plenary sessions of details concerning the more legal aspects.

As at part 1, the consistently high-ranking participants were Government representatives, but there were also representatives from the industrial and scientific community.

The results of the 14th OSCE Economic Forum are summarised in OSCE document EF.GAL/9/06, dated 8 May 2006, prepared by the Belgian chairman.
(Translation)

Book Reviews

Beck's Commentary on the *Allgemeines Eisenbahngesetz* (German General Railways Act), ed. **Professor Georg Hermes** and **Dr. Dieter Sellner**, Verlag C.H. Beck, Munich 2006, XXIII, 923 pages, ISBN 3-406-50210-5, cloth edition € 218.00

Privatisation of the classic State railways and the enabling of intramodal competition on the railways as a result of the need to open the rail network to independent rail transport undertakings are fundamental elements of the structural change in the rail transport sector. From a legal point of view, this change was echoed most clearly in Community law through Directive 91/440 and in German law through the 1993 German General Railways Act (AEG). As a result of the 3rd and 4th Acts amending the legal requirements relating to railways in 2005, the reorganisation of railway law in Germany reached a conclusion, albeit a tentative one. This was what prompted the Beck Verlag's publication of the AEG Commentary.

The Commentary has three main focuses. The first deals with the development of standards at European and national level and with the systematic correlation between the different levels of regulation. It specifies the various instruments for implementing and checking these standards and groups them into the official levels of competence. The second focus is the “securing of effective and undistorted competition in rail transport”, which requires non-discriminatory access for transport undertakings to the railway infrastructure. With the amendments that entered into force in 2005, regulation of access to the infrastructure and access fees brought with it a reorientation, implementation of which is to be ensured by the Federal Network Agency. The Commentary’s third main focus concerns state planning of the railways’ operational facilities under the revised conditions of a privatised and liberalised rail sector.

The comprehensive introduction, which covers more than 120 of the Commentary’s 900 plus pages, deals with the historical background of the rail sector in Germany, the European legal foundations, the reform of German State Railways, the arrangement of the rail sector in other European States and the perspectives of a European railway law.

It goes without saying that this review cannot examine all the details of the Commentary, so only some questions can be mentioned as examples.

Ensuring safe railway operations (§ 1, para. 1 of AEG) is still a key task of the State even after privatisation. In future, this task will be performed in collaboration with European and national bodies. The commentary on § 4 of AEG, safety obligations, the responsibilities of the Federal Railway Authority, especially marginals 41 et seq. are also of particular interest to readers of this Bulletin.

The Commentary examines in depth the relationship between the COTIF regulations and EC law. In so doing, it is rightly established that it is ultimately a matter for the Contracting States to COTIF and in particular for the Committee of Technical Experts, in collaboration with the bodies responsible for drafting the TSIs, to make sure that no conflict arises between the international rules of COTIF and Community law. If need be, a Member State of the EU has the opportunity in accordance with Article 9 § 1 of APTU of sending the Secretary General of OTIF a reasoned declaration to the effect that it will not apply or will apply only partially the validated technical standard or the adopted uniform technical prescription, so far as it concerns the railway infrastructure situated on its territory and the traffic on that infrastructure. With regard to the relationship

between the COTIF regulations and EC law, as the authors rightly note, there is a particular problem in Germany in that the TSIs, in so far as they are implemented, have the status of a statutory regulation. In contrast, in accordance with the general principles concerning the transposition of international regulations into national law, the COTIF regulations are equivalent to ordinary Federal law. Thus a conflict between TSI and COTIF rules would mean that the precedence of application of Community law compared with national law would no longer be upheld. However, the authors add that in view of the efforts to achieve co-ordination, no conflict is in fact expected.

Another example is the commentary on § 6 of AEG, issue and refusal of approval. This provision on the approval for providing rail transport services should ensure effective control of the transport market.

The provisions of § 12 of AEG, tariffs, now only have very limited significance for the carriage of *goods* by rail. The only real material provision that applies to rail freight transport is contained in § 12, para. 1, according to which if there are several public transport railways following on from each other, the rail freight transport undertakings must make arrangements for *through consignment*.

Lastly, mention should be made of the explanations of the term “keeper” of railway vehicles in connection with §§ 31 and 32 of AEG, independent participation in railway operations. This, according to the view expressed in the Commentary on what the AEG legislator was seeking in respect of the capacity of keeper, depends primarily on the position of the owner, but must also be linked to the right of disposal. In future, for international traffic, a mandatory obligation to provide identification on the vehicle is prescribed in Article 3 of CUV, Appendix D to COTIF. Thus in future, if there is any doubt, the person identified on the wagon is to be considered as the keeper.

As a general point, it is good to see that the Commentary does not consist of a small amount of text and a huge list of notes, as is usually the case, but that quotes and references, in so far as they are absolutely necessary, are inserted directly into the text, which significantly improves the legibility of the volume.

The Commentary is aimed at railway undertakings, railway supervisory authorities, planning assessment authorities and lawyers and courts working in administration law. The Commentary can be recommended not only for this group of people, but also for lawyers in other branches of industry. For example,

the zoning procedure for railway law also acts as a model zoning procedure in respect of highways and waterways law.
(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° 3128/2006, p. 291/292 – Future CNUDCI. Le point par l'expert (P. Delebecque)

Idem, n° 3131/2006, p. 335-338 – Le jubilé de la CMR (M. Tilche)

Idem, n° 3134/2006, p. 394/395 – Garantie du poids. Quid des différents modes ? (M. Tilche)

CIT Info, Berne, N° 2/2006 - numéro spécial / Sondernummer /special edition COTIF 1999

DVZ - Deutsche Verkehrszeitung, Hamburg, Nr. 59/2006, S. 11 – Waggoneinsatz wird effektiver. COTIF-Änderung bringt neuen Standard für die Verwendung von Güterwagen (S. Lohmeyer)

Idem, Nr. 67-68/2006, S. 11 – Endstation Weiche. Der Individualisierung des Schienenverkehrs sind technische Grenzen gesetzt (R. Kümmerlen)

Idem, Nr. 78/2006, S. 7 – Transportrecht jenseits des Rheins. Frankreich. Zahlungsziel bei Frachtverträgen auf 30 Tage begrenzt. Erfolgshaftung des Frachtführers (J. Kohagen)

Gefährliche Ladung, Hamburg, Nr. 6/2006, S. 36-38 – Einen Tag gespart. Die Gemeinsame Tagung hat in Bern vom 20.-23. März 2006 mit den Änderungen 2009 zu RID/ADR/ADN begonnen. Einige Beschlüsse wirken sich bereits zum 1. Januar 2007 aus (J. Conrad)

Journal pour le transport international, Bâle, n° 19-20/2006, p. 43 – Nouveau droit ferroviaire

Idem, n°21-22/2006, p. 13 – Nouvelle COTIF et CUU. Nouveau régime de responsabilité (P. Schenkendorf)

Transportrecht, Hamburg, Nr. 4/2006, S. 146-150 – Frachtgüterschäden im internationalen Straßen- und Lufttransportrecht. Ein Vergleich der Haftung nach dem Montrealer Übereinkommen und der CMR (J. Brinkmann)

Idem, Nr. 5/2006, S. 177-184 – Der Multimodale Transport im historischen Zusammenhang (K. Drews)
Verkehr, Int. Wochenzeitschrift für Logistik und Transport, Wien, Nr.18/2006, S. 1/3 – Neues COTIF tritt Anfang Juli in Kraft

Zeitschrift der OSShD, Warschau, Nr. 2/2006, S. 15-22 – Harmonisierung der technischen Standards auf dem Gebiet der Herstellung und des Betriebs von Fahrzeugen für den Eisenbahnverkehr innerhalb der Europäischen Union (J. Raczynski)