



Intergovernmental Organisation  
for International Carriage  
by Rail

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Bulletin  
of International  
Carriage  
by Rail

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**3/2007**

115th Year • July - September

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**Bidinger, Helmuth**, Personenbeförderungsrecht, Commentary on  
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# 3/2007

115<sup>th</sup> year – July - September

## Bulletin of International Carriage by Rail

Quarterly publication of the OTIF

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### Official Communications from the Secretariat of OTIF

#### Accession to the 1999 Protocol

##### Ukraine

The Ukraine has acceded to the Protocol of 3 June 1999 for the Modification of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 (1999 Protocol) by depositing its instrument of accession on 31 July 2007. The accession will take effect on the first day of the third month following the notification sent by the Secretary General of OTIF to the Member States of COTIF, i.e. on 1 November 2007 (by analogy with the third sentence of Art. 37 § 3 of COTIF).

Up to now, the Ukraine has only applied de facto the CIM Uniform Rules/COTIF 1999 to five lines entered in the list of railway lines in accordance with Article 24 § 2 of COTIF (a total of 232 km) (see Bulletin 3/2005, p. 35).

#### Ratification of the 1999 Protocol

##### Belgium

On 14 August 2007, Belgium deposited its instrument of ratification concerning the Protocol of 3 June 1999 for the Modification of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 (1999 Protocol). The 1999 Protocol version of COTIF (COTIF 1999) entered into force for Belgium on the day on which the instrument of ratification was deposited. Before that date, Belgium applied the CIV and CIM Uniform Rules de facto (see Bulletin 3/2006, p. 33).

\* \* \*

An overview of the state of signatures, ratifications, acceptances and approvals of the Vilnius Protocol and its Annex, COTIF 1999, and of the accessions to this Protocol or to COTIF<sup>1</sup>, including the reservations and declarations lodged by the Member States, and the texts thereof<sup>2</sup>, is published on OTIF's website.

1 See [www.otif.org/html/e/pub\\_cotif\\_03\\_06\\_1999.php](http://www.otif.org/html/e/pub_cotif_03_06_1999.php) OTIF - Publications - Convention(s) - COTIF (3.6.1999) - Depository (Secretary General) (Art. 36 COTIF) - State of the signatures, ratifications, acceptances, approvals, accessions and entry into force

2 See [www.otif.org/html/e/pub\\_cotif\\_03\\_06\\_1999.php](http://www.otif.org/html/e/pub_cotif_03_06_1999.php) OTIF - Publications - Convention(s) - COTIF (3.6.1999) - Declarations and reservations

**Lists of lines 1999****CIV list of maritime  
and inland waterway services**

(published on 1 July 2006)

**Secretary General circular no 6, 2 July 2007***Chapter “Spain”*

Following the deletion of the shipping line Málaga - Tanger operated by the “Limadet-Ferry” (3, rue Henri Regnault, MA - Tanger) mentioned under B.I.9, the chapter has been re-issued.

See COTIF 1999, Article 24 §§ 1, 3-5.

**Secretary General circular no 7, 14 August 2007***Chapter “Belgium”*

As Belgium deposited the instrument of ratification of the 1999 Protocol on 14 August 2007, the Belgium chapter has been included in the CIV list of maritime and 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)

**Secretary General circular no 5, 14 August 2007***Chapter “Belgium”*

As Belgium deposited the instrument of ratification of the 1999 Protocol on 14 August 2007, the Belgium chapter has been included in the CIM list of maritime and waterway services in accordance with Article 24 § 1 of COTIF 1999.

See COTIF 1999, Article 24 § 1.

**CIM list of railway lines**

(published on 1 July 2006)

**Secretary General circular no 2, 20 August 2007***Chapter “Ukraine”*

This circular was sent out in connection with the deposition of the Ukraine’s instrument of accession to the 1999 Protocol.

**Legal Matters concerning COTIF****CIT/OSJD Project on “Interoperability  
of CIM/SMGS Transport Law”**

CIM/SMGS Steering Group

*Berne, 12/13 July 2007*

The Steering Group for the CIT/OSJD project on the “interoperability of CIM/SMGS transport law” met from 12 – 13 July 2007 in Berne. Numerous participants from interested undertakings working in the rail sector attended, as well as representatives of international organisations and associations; representatives of the Transport Ministries of Russia and Kazakhstan also took part. The Steering Group approved a range of proposals relating to the results of the Legal Group and Expert Group that had been achieved so far and concerning the direction that the work of both these groups should take in future. OTIF is represented in the Legal Group; a representative of the OTIF Secretariat also participates in all the meetings of the Steering Group (see Bulletin 1/2007, p. 3).

One of the most welcome results is the approval of the CIM/SMGS wagon and container list (single consignment note for several wagons/containers), approval of the model of the uniform CIM/SMGS report and of the rules concerning the procedure for enabling new transport links to use the CIM/SMGS consignment note. This all produces proposals for additions to the CIM/SMGS Consignment Note Manual and to Annex 22 to SMGS. These still have to be adopted by the responsible organs within OSJD and CIT (OSJD Commission II/CIT’s CIM Committee). The Steering Group agreed that the new rules should enter into force on 1 July 2008.

With regard to the container list, further amendments to SMGS will be required. Thus the CIM/SMGS container list may only be used if the railways involved in the transport operation so agree.

The Steering Group also set the direction for the work on the electronic CIM/SMGS consignment note, the uniform rules for dealing with complaints and on the provisions for liability throughout the whole transport operation. As a first step the Legal Group, which last met from 12 – 13 June 2007 in Riga, will highlight the principles of the liability provisions on the basis of tariffs (using examples of existing tariffs).

The Steering Group noted with satisfaction the status of the work concerning the creation of a parallel provision to Article 28 of CIM (presumption in case of reconsignment). The proposal to supplement SMGS that was drafted and finalised at the meeting of the Legal Group in Riga will be submitted to OSJD's Commission II for adoption. The proposal prescribes presumption when the place the loss or damage occurs is not known only for transport operations with the CIM/SMGS consignment note for the time being.

With regard to the third phase of the project, in which uniform rules for performing the carriage of goods by rail through Eurasia are to be drafted, the Steering Group noted that such work exceeded the CIM/SMGS Steering Group's remit. The Steering Group therefore considered it appropriate that questions concerning the work on such uniform rules should first be examined further by the heads of the three organisations, i.e. OTIF, CIT and OSJD.  
(Translation)

### Publications and interesting links

*Bulletin des transports et de la logistique*, Paris, n° 3187/2007, p. 495 – Déchargement d'office. Eviter la hâte ! (M. Tilche)

*Idem*, n° 3190/2007, p. 551/552 – Déficience et assurance (M. Tilche)

*CITINFO (Comité international des transports ferroviaires, CIT)* www.cit-rail.org, Publications, éditions 06/2007 et 07/2007; Veröffentlichungen, Ausgaben 06/2007 und 07/2007; Publications, editions 07/2007 and 06/2007

*Club Ferroviar*, Bucharest, No. 8/2007, p. 26-28 – All Tracks Lead to Luxembourg: The Luxembourg Rail Protocol (I. Enescu, M.J. Fleetwood)

*European Transport Law / Droit européen des transports / Europäisches Transportrecht*, Antwerpen, No. 3-2007, p. 297-316 – The use of electronic means of communication under the Convention on the Contract for the International Carriage of Goods by Road (P.A.J. Martius) ; p. 355-382 – Degré de la faute suivant l'art. 29 de la CMR – II – aperçu par pays (O. Tuma)

*Internationales Verkehrswesen*, Hamburg, Nr. 10/2007, S. 456-459 – Bedingungen des transalpinen Eisenbahnverkehrs. Bericht von der Jahrestagung der Forschungsstelle für deutsches und internationales Eisenbahnrecht (FER) (B.H. Uhlenhut)

*Internationale Transport Zeitschrift (ITZ) / Journal pour le transport international (JTI) / International Transport Journal (ITJ)*, Basel, n° 29-30/2007, S. 54/55 – CMR-Haftungsdurchbrechung in Europa. Auslegung ist national unterschiedlich (E. Boecker)

*Transportrecht*, Hamburg, Nr. 6-2007, S. 226-231 – Fahrgastrechte im Eisenbahnfern- und -nahverkehr. Stand der Gesetzgebung (W. Kunz); S. 232-236 – Die Anwendung der CMR in der englischen Rechtspraxis (J. Becher); S. 236-238 – Zur Behandlung des Organisationsverschuldens des Frachtführers in der spanischen Rechtsprechung (C. Lubach)

*Idem*, Nr. 7-8/2007, S. 279-300 – Internationalprivatrechtliche Fragen des Multimodal-Frachtvertrages und des Multimodal-Ladescheins (K. Ramming)

Interesting aid for establishing the territorial distribution of legal instruments that are material to world trade:

Lega Carta – <http://legacarta.net/index.php>

Transnational Law Digest & Bibliography - [www.tldb.net](http://www.tldb.net)

List of Trade Facilitation Recommendations:

[www.unece.org/cefact/recommendations/rec\\_index.htm](http://www.unece.org/cefact/recommendations/rec_index.htm)

## Transport of Dangerous Goods

### RID Committee of Experts' Working Group on Standardized Risk Analysis

4<sup>th</sup> Session

*Berne/Ittigen, 23/24 April 2007*

The Swiss Federal Office for Transport (BAV) organised the 4<sup>th</sup> session.

The first day was spent examining the background to risk analysis in Switzerland and an explanation of the methodological principles on the basis of a specific risk assessment.

The second day was used to carry out a review, to exchange experiences and for discussions.

#### 1. Introduction

The working group's task would be concluded when the Generic Guideline for the Calculation of Risk due to Railway Transport of Dangerous Goods adopted at the 42<sup>nd</sup> session of the RID Committee of Experts was published.

At various meetings, representatives of States that do not have any formal risk analysis for the transport of dangerous goods said that they would like to be able to find out more about the methodology of risk analysis. States that have experience in the area of risk analysis should promote the exchange of information and provide access to their know-how. At the invitation of Switzerland, the Swiss representative offered to give his colleagues in the working group a clearer understanding of the risk analysis methodology used in his country.

#### 2. Objective

The aim of this meeting was to present to participants the methods used in Switzerland and to explain them using the specific example of Zurich-Oerlikon station. The correlation with the guideline should also be highlighted in the process.

Switzerland also wished to demonstrate that the risk analysis tool could be used not just to present and compare the extent of the risks posed by different dangerous goods, but that it could also be used to highlight the effect of safety measures, e.g. chlorine

tank-wagons with improved safety technology or derailment detectors.

All the participants, i.e. the authorities, rail and industry representatives, had been involved in developing and applying the methodology to assess the risks posed by the carriage of dangerous goods by rail. These people were present at the meeting and reported openly on their experiences over the last 10 years.

### 3. Presentations

#### 3.1 Legal basis for risk analysis in Switzerland

The representative of Switzerland's Federal Office for the Environment gave a presentation on Switzerland's "statutory order on hazardous incidents" as the background to risk analysis in Switzerland.

#### 3.2 Explanation of the methodological principles on the basis of a completed risk assessment

The explanation on the methodology of risk assessment included a presentation of the various elements, and definitions included in the RID Committee of Experts' guideline were referred to. The presentation by Ernst, Basler & Partner focussed on the fundamental concepts and conventions and on application opportunities and limits. The stages and content of risk analysis and risk assessment were explained using Zurich-Oerlikon station as an example.

#### 3.3 Experience with risk analysis – the authority's point of view:

The representative of the Federal Office for Transport (BAV) presented the standpoint of the enforcement authority and provided explanations on:

- the chronology of co-operation with the industry,
- the interdependence of risk analysis and assessment criteria,
- the importance of including the stakeholders,
- communication,
- effect of measures (chlorine wagons, derailment detector),
- risk assessment as a dynamic process,
- current status and outlook.

### 3.4 Experiences from the infrastructure manager's perspective (SBB)

The representative of Swiss Railways (SBB) talked about experiences and the benefits for the railways. He pointed out the need for good communication when publishing results.

### 3.5 Common Safety Targets and Common Safety Methods for the Railway Systems in Europe (ERA)

The representative of the European Railway Agency (ERA) reported on the Agency's activities in the area of safety aims and methods.

## 4. Conclusion

With the help of the presentations and the lively discussions on various subject areas, the meeting succeeded in providing a better understanding of the methods involved and of the correlations in a political context.

The Chairman of the RID Committee of Experts emphasised in his concluding remarks that this type of risk analysis would in future be an important tool in the risk-oriented further development of the international dangerous goods regulations.

The meeting expressed the wish that the working group would be able to obtain an even better overview of various risk analysis procedures thanks to such meetings in States that had relevant experience. It should then be decided in the RID Committee of Experts whether the requirements of RID – starting with the guideline referred to above – should be made even more detailed or whether the existing guideline provided sufficient detail.

(Transmitted by the Federal Office for Transport (BAV))  
(Translation)

## RID Committee of Experts' Working Group on Tank and Vehicle Technology

8<sup>th</sup> Session

*Munich, 14/15 June 2007*

The following States took part in the discussions at this meeting: Belgium, Germany, France, Netherlands, Austria, Sweden, Switzerland, Czech Republic and the United Kingdom. The European Commission and the European Railway Agency (ERA) were also represented. In addition, the International Rail Transport Committee (CIT), the International Union of Railways (UIC), the International Union of Private Wagons (UIP) and the Union of European Railway Industries (UNIFE) also took part.

On 14 June 2007, participants at the meeting had the opportunity of attending a workshop during the "transport logistic" trade fair. The workshop dealt with subjects surrounding telematics and derailment detectors and was attended particularly by representatives of the industry concerned.

### **Derailment detection** (see Bulletin 2/2006, p. 22/23)

In a presentation, the representative of ERA set out the statistical data from 2004 and 2005. If the need to reduce the risk of derailments arose, ERA would investigate the following points:

- construction, maintenance and inspection of rolling stock and infrastructure;
- operating regulations;
- requirements for staff training and the maintenance of professional competence;
- the Organisation's safety management system and the regulatory systems;
- hot axle box or derailment detection equipment on board the rolling stock or at the trackside.

The representative of ERA confirmed that there was no requirement for derailment detection in the TSI for freight wagons. In the presentation it was explained that the Agency has at present no reason to include this requirement in the TSI. According to this TSI, freight wagons for the transport of dangerous goods must also fulfil RID requirements. If the RID Committee of



Experts decided to include requirements for derailment detectors on dangerous goods wagons in RID, then freight wagons for the transport of dangerous goods would have to fulfil these requirements.

The representative of Belgium was of the view that derailment detectors on individual dangerous goods wagons would only resolve part of the problem, as other wagons in the same train composition could derail without being detected and cause the derailment of other wagons. She also emphasised that container carrying wagons, which carried all types of containers, would not be fitted with detectors when dangerous goods were being carried.

Representatives of Swiss Railways (SBB) and a manufacturer of detectors had explained that the mechanical pneumatic derailment detectors with the modified tripping thresholds (9.0 +/- 2.5 g instead of 7.5 +/- 2.5 g) were no longer subject to false activation. In trials carried out with ONCF (Office national des chemins de fer du Maroc) in Morocco, it had been demonstrated that despite the modified tripping thresholds, the derailment detectors tripped reliably. An accident in Cornaux (Neuchâtel, Switzerland) had shown that in accidents, derailment detectors could reduce the extent of the damage. In this particular accident, wagons without derailment detectors had derailed before the derailment detector on a following wagon tripped as a result of the damaged track.

Following this discussion, the working group recommended to the RID Committee of Experts to include provisions in RID 2009, in the context of a pilot project, for fitting tank-wagons/ battery wagons with derailment detectors, without prescribing specific systems (mechanical/pneumatic, electronic). The locomotive driver had to receive a clear signal indicating that a derailment had occurred. The venting of the main brake pipe was considered to be a clear signal. This measure should only apply to new-build tank-wagons/battery-wagons for the carriage of certain groups of substances, which had yet to be established. However, before that could be done, it would have to be proved in trials that the derailment detector tripped reliably at speeds between 35 and 40 km/h. After two to four years, it should be checked what the effects of this pilot project were in practice and which groups of substances derailment detectors should be prescribed for.

The representative of UIP saw the need for a long introductory phase in order to avoid a situation where only one manufacturer's products could be fitted.

The representative of Germany said he was prepared to draft a proposal along these lines for the RID Committee of Experts, but the working group should examine it first.

**Position of the wagon in the train (barrier wagon rule) (see Bulletin 2/2006, p. 24)**

In a detailed presentation, the representative of UIC presented the results of his investigations into the subject of barrier wagons.

He noted that different States have different barrier wagon rules in place for domestic transport. In Sweden, for example, it had been prescribed until the end of 2006 that two-axle barrier wagons had to be loaded. In the United Kingdom, there is a very complex list of dangerous goods that are incompatible in a train composition. In Italy, barrier wagons are required behind the locomotive in order to protect the locomotive driver. In Poland, Romania and Hungary, barrier wagons are also used for braking purposes.

He explained that an analysis of 1110 accidents had not been able to provide proof that a protection distance would have reduced the scale of an accident. In particular, it had not been possible to establish whether the potential risk also constituted an actual risk.

He referred to the additional costs that arose as a result of low wagon and train productivity (maximum train length) and to the increase in marshalling movements. Also, it was not clear at present which trains barrier wagons should be prescribed for (only for trains moving between marshalling yards or also for trains moving between the customer and the marshalling yard).

Following an analysis of the advantages and disadvantages, his view was that for reasons of operational efficiency, the barrier wagon rule in 7.5.3 should not be extended.

The representative of CEFIC warned against shifting traffic to the roads if additional barrier wagon rules led to an increase in carriage charges. In response to this, the representative of UIP pointed out that the barrier wagon would have to be loaded in order not to increase the risk of it lifting up. This would make it more difficult to provide suitable wagons and would lead to increased costs.

The representative of the Netherlands explained that an alternative to barrier wagons might be only to approve the carriage of certain compatible substances in the same train composition.

The majority of the working group saw no need for further action above and beyond the existing rule in RID 7.5.3, as the UIC study had shown that barrier wagons did not improve safety.

**Telematics** (see Bulletin 2/2006, p. 23 and 1/2007, p. 5/6)

For the time being, the working group postponed dealing with the subject of dangerous goods telematics, pending the discussion at the Joint Meeting for all the European land modes. The working group would then come back to this subject if rail-specific requirements had to be established for specifications on what has to be done and how.

#### **Four-axle wagons**

The representative of UIC pointed out that the statement contained in a document from the 42<sup>nd</sup> session of the RID Committee of Experts, according to which the risk of derailment for two-axle wagons was in principle greater than for bogie wagons, was incorrect. In the UIC-ERRI study referred to, which was carried out in 1999 and 2000, it had simply been established that if the speed was increased from 100 to 120 km/h, the suspension system used previously was not stable enough. The working group decided not to pursue this item until new documents were submitted.

**Drip leaks** (see Bulletin 2/2006, p. 23/24)

This agenda item was deferred to the next meeting so that a discussion could then be held on the basis of the results or interim results, which would be available by then, of the research project being carried out by the German Petroleum Industry Association. The Member States were requested to notify the causes of any drip leaks that were detected in the meantime.  
(Translation)

### **Sub-Committee of Experts on the Transport of Dangerous Goods (UN/ECE)**

31<sup>st</sup> Session

*Geneva, 2-6 July 2007*

Experts and observers from 29 countries and 30 governmental and non-governmental international organisations took part in the work of this first session of the new 2007-2008 biennium for the 16<sup>th</sup> revision of the UN Model Regulations under the new chairmanship of Mr R. Richard (United States of America) and the new

vice-chairmanship of Mr C. Pfauvadel (France). More than 150 delegates were present, **probably a record number of participants!**

**A breath of fresh air seems to be blowing through the Sub-Committee<sup>1</sup>.**

The following few examples illustrate this revival:

With regard to **the classification of substances listed by name in the dangerous goods list**, some delegations supported in principle the proposal for a more general approach that would make it possible, in accordance with a special provision, for those dangerous goods that were included in the list and that did not meet the classification criteria to be excluded from the regulation, provided they were not listed on the basis of experience of their effects on humans. Other delegations pointed out that, while they did not oppose the proposal, the principle was not a general one in RID and ADR, which had various approaches depending on the Class. In addition, in these cases, RID/ADR required that a note be included in the transport document to say that “this substance is not a substance of Class X”. Others considered that provisions should also be made for cases in which the classification criteria would point to a more stringent classification than the one provided in the list. A new proposal was announced.

**With regard to the assignment of substances and articles to a packing instruction referring to the competent authority for the conditions of carriage**, the consequences of which were a lack of harmonisation and difficulties during inspections, the Sub-Committee noted that the land transport regulations prescribed classic packing instructions, while the IMDG Code required approval by the competent authorities. This might cause practical problems in multimodal transport since it would mean involving the competent authorities of the different countries concerned by the international transport.

It was also noted that the IMDG Code set out more stringent requirements for instructions than those in the UN Model Regulations; the Sub-Committee accordingly adopted by consensus the IATA proposal on the allocation of this group of substances to specific packing instructions.

For certain substances, the Sub-Committee noted that most **modal regulations prohibited the carriage of**

<sup>1</sup> More information can be found in the column entitled “Last but not least”.

**such substances**, but that competent authorities could conclude bilateral or multilateral agreements to permit their carriage under mutually agreed conditions. It would therefore make sense to retain the packing instruction provided in the Model Regulations, even if some experts considered it preferable to prohibit the carriage of these substances on principle. Most delegations were of the view that harmonized packing instructions should be required, rather than reference to a competent authority, but opinions were divided on which instructions should be applied. It was therefore decided that the issue should be studied more closely and revisited at a subsequent session.

In the context of the **multimodal harmonisation of the provisions for dangerous goods packed in limited quantities** and exempted from the provisions, which has been attempted without success over the last 15 years, there is light at the end of the tunnel. The principle of this was accepted almost unanimously. It would certainly be difficult to harmonise the quantities and the substances concerned, owing to the fact that there were different circumstances in air and maritime transport. But it should be possible to achieve harmonisation with regard to the marking symbols (which vary according to the mode of transport) and the need for a transport document (which was required in maritime and rail transport). The meeting considered that the information should be continuous for all multimodal transport, particularly for the emergency services. The Sub-Committee agreed that a wide consultation of the modal organisations concerned would be necessary and requested the secretariat to transmit the report of the ad hoc working group to the relevant international organisations in order to seek feedback which would allow the development of further proposals at the next session.

With regard to the revision of classification in Class 9 (**Miscellaneous dangerous substances and articles**), IMO had noted that there were some differences between the modal regulations, which were sometimes justified, particularly those in RID/ADR, which included examples to facilitate the classification of these substances and articles. Several experts supported improved harmonisation pending the submission of an official proposal.

Other important items dealt with by the Sub-Committee:

At present, the Class for **explosives** is constantly being revised, partly to keep up with technical developments and partly because of the accidents that keep occurring, particularly with fireworks. This work is being carried

out in an ad hoc working group that meets during and outside the sessions.

The provisions for **radioactive material** are also revised on a regular basis, sometimes more for reasons of form than of substance. With regard to the problem of denied shipments (see Bulletin 4/2006, p. 59-60), the Sub-Committee noted with appreciation the efforts made by the industry and the IAEA to solve this problem. It was felt that a detailed analysis of the various obstacles to the transport of radioactive material in each country would assist in identifying where problems exist. This problem also seemed to concern consignments of some infectious substances. Lastly, the Sub-Committee looked at the question of excepted packages containing radioactive material with subsidiary risks from other classes.

The more recent problem of the **carriage of lithium batteries** (e.g. for mobile telephones and laptops) was gradually becoming more persistent, as there was an increasing number of incidents, particularly in air transport. IATA would organise a meeting to establish the various causes to find out whether they should be resolved through regulation (stricter approval tests, stronger packagings) or whether the causes derived from an intrinsic safety defect in the products.

With regard to **training**, most experts considered that it was already clear from the Model Regulations that training had to be provided or verified upon employment, and not after employment. However, since a court in Sweden had concluded from the current text that it was sufficient for a company to promise that employees would receive training after employment, it was agreed to amend the text to make it clear that workers have to be trained before being involved in dangerous goods transport activities. Some experts felt that this new provision should not prevent untrained workers from working under the supervision of a trained person during the training period.

A proposal to authorise **big bags with a capacity of 10 m<sup>3</sup>** as IBCs (IBCs up to a maximum of 3 tonnes) was not adopted because the tests required for IBCs were not appropriate (they would have to be loaded to nearly 60 tonnes for the drop test), and there was no evidence in the documentation submitted that these bags met the testing requirements for IBCs and that they caused problems during loading or unloading. However, some delegations expressed support for further work on this issue, in which case it would be useful to have more information on test reports.

With regard to **electronic data interchange (EDI)** for documentation purposes for the carriage of dangerous goods, several experts recalled that in many cases, paper documentation was still needed for the carriage of dangerous goods, firstly because electronic documents or signatures were still not legally accepted in many countries as evidence of a contract of carriage, but also because the availability of the information on the dangerous goods transported on board the means of transport was necessary for emergency response purposes and this was not generally guaranteed with the use of electronic data interchange.

Nevertheless, the Sub-Committee agreed that steps had to be taken to start studying the possibility of removing the mandatory requirements for a physical dangerous goods transport document and instead to permit the use of EDI as an alternative without prejudice to safety. The Sub-Committee noted that there was a lack of uniformity in the various EDI systems currently used as an aid to paper documentation, and agreed that it was necessary to establish a harmonised structure for the contents of such systems and that cooperation with the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) should be sought through the secretariat of the UN/ECE.

(Translation)

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

*Geneva, 11 – 21 September 2007*

Experts from 24 Governments (including the USA and Canada) and 17 international governmental organisations (including the European Commission and OSJD) and non-governmental organisations (including UIC, UIP, CEN and IRU) took part in the work of this session chaired by Mr C. Pfauvadel (France).

As is usual, the main focus of the last Joint Meeting of this biennium was harmonisation with the latest revised edition of the UN Recommendations (Model Regulations). This work had been prepared by an ad hoc working group at a three day meeting held in Geneva in May. Among the new features, the following deserve particular mention:

- the provisions relating to substances packed in exempted quantities and exempted from the regulations, a specific feature of air transport
- the carriage of infected animal carcasses

- alignment with the criteria of the Globally harmonised system of classification and labelling (GHS) and with the UN Model Regulations for environmentally hazardous substances and with regard to the conditions of carriage, with the approach used in the IMDG Code (maritime transport)
- the revision of Chapter 6.2 concerning pressure receptacles, with partial integration of the provisions relating to the European TPED Directive
- withholding certification in the event of a negative tank test in order to avoid tank “tourism”
- the marking of transport units and containers for substances packed in limited quantities and exempted from the regulations.

Questions concerning standards and tanks were dealt with by the usual relevant working groups. Lastly, the Joint Meeting looked at some new issues in so far as time permitted. All these amendments, totalling more than 150 pages, will enter into force in 2009 and will be included in a new edition of RID/ADR/ADN once they have been approved by the competent organs of the modes of transport concerned.

The German version of the full report of this meeting will be available on our website and the French and English versions will be available on the website of the UNECE Transport Division.

(Translation)

### **Publications et liens intéressants**

*Gefährliche Ladung*, Hamburg, Nr. 10/2007, S. 12-13 – Aufgerüstet für den Ernstfall – Crash-Puffer (M. Kratzsch-Leichsenring)

*Gefährliche Ladung*, Hamburg, Nr. 10/2007, S. 18-20 – Liberalisiert in regelten Bahnen – Allgemeiner Vertrag für die Verwendung von Güterwagen (AVV) (Dr. G. Fischer)

*Gefährliche Ladung*, Hamburg, Nr. 10/2007, S. 38-39 – Alles klar für 2009 (I.) – Gemeinsame RID/ADR/ADN-Tagung (Genf, 11. bis 21. September 2007) (J. Conrad)

*Gefährliche Ladung*, Hamburg, Nr. 10/2007, S. 40-43 – 50 Jahre ADR (U. Heins)

## Subjects in the Technical/Approval field

### **Activities of the OTIF Working Group “WG TECH”**

Three meetings of Working Group TECH, which was established at the first session of the Committee of Technical Experts at the suggestion of the European Commission, were held on 16/17 November 2006, 31 January/1 February 2007 and 10/11 May 2007. Eleven Member States, two supranational organizations (DG TREN and ERA) and three international non-governmental organizations (CIT, UIC and UIP) participated in the work of the working group. Some of the Member States were not present at all three WG TECH meetings. The main aim of these three sessions was to prepare the second session of the Committee of Technical Experts.

Among other items discussed at the first meeting were the interface between OTIF and EU and collaborative approaches. OTIF and the EU are not represented equally at various meetings, particularly at those where major decisions are taken. For example, the EU explained that it is not possible for OTIF to participate in the EU Committee established under Directive 96/48/EC (Article 21 Committee) “for legislative reasons” (OTIF is not listed among the organizations that can be invited). On the other hand, the EU, represented by the Commission (DG TREN) and ERA, is always invited to all OTIF meetings dealing with technical regulations.

WG TECH discussed and proposed a structure for the APTU Annexes, taking into account as a priority the TSIs that are already in force.

### **Committee of Technical Experts**

2<sup>nd</sup> session

*Berne, 20/21 June 2007*

The second session of the Committee of Technical Experts (CTE) was held on 20/21 June 2007. For the second session of the Committee, the Secretariat prepared documentation important in number and volume in the expectation that decisions could now be taken, as a quorum was established this time, contrary to the first session in July 2006.

Of the 33 members of the Committee (Member States

that have deposited their instrument of ratification or approval of COTIF 1999), 23 members were present at the second session. Another 3 Member States that have not ratified COTIF 1999 took part in this session, as well as two supranational organizations (European Commission and ERA) and three international non-governmental organizations (CIT, UIC and UIP).

The technical Appendices F and G to COTIF 1999 have been in force since 1 July 2006. At the date of the session 8 EU Member States had a declaration in force in accordance with Article 42 of COTIF not to apply Appendices E, F and G. As a consequence (Article 16 § 1 of COTIF 1999) these Member States are no longer members of the CTE when it is deliberating and taking decisions on the Appendices concerned.

At the beginning of the session there was some question as to whether the Committee had a quorum because some of the EU Member States entitled to vote said that they wanted to participate as observers only. Subsequent to establishing the fact that this is not possible according to the COTIF regulations, the representative of the European Commission asked these EU States to leave the meeting room, which they did. This resulted in the lack of a quorum and no decisions could then be taken on any item. Knowing the effect of the walk-out, some EU Member States regretted that they had thus not only prevented decisions concerning the APTU Annexes but also any formal decisions on the Rules of Procedure and the election of a chairman were not possible. The EU Member States then decided to stay during the discussions concerning these topics but to block any decision on adoption of the APTU Annex proposals. Subsequently, the meeting tacitly agreed to change the agenda item on the APTU Annexes to an item for discussion only, so that no texts could be adopted.

Although the draft Rules of Procedure of the Committee of Technical Experts were not related directly to questions concerning Appendices F and G, they were not adopted. Some delegations had questions concerning the definitions in the Rules of Procedure and asked for more clarification on the provisions concerning the right to vote; they also asked that the provision relating to the agenda be amended to the effect that the agenda should specify whether an agenda item was for information only or for discussion or decision, which may entail a vote. The Secretariat was asked to revise the draft text and try to resolve these issues so that the Rules of Procedure could be adopted by vote in writing.

At the request of the European Commission, proposals for amendments to Appendices F and G were not discussed in the first session of the CTE but were

postponed for 8 months. Now, a year later, the European Commission had only the day before the start of the second session sent the Secretariat an official EU position. However, this was not discussed in detail either because of the EU's position, which was that a "suitable" disconnection clause had to be included in the agreement on the EU's accession to COTIF before the Appendices could be amended to make them compatible with the EU regulations; the EU would allow OTIF to adopt texts for the APTU Annexes equivalent to the EU TSIs only after Appendices F and G had been amended and after finalisation of the ongoing discussions concerning revisions of the interoperability and safety directives resulting in revised EU regulations. This will result in a huge gap between the EU and the OTIF regulations, which the stakeholder organisations very much regretted. Under this "fait accompli" of the EU Member States, it was decided that the CTE itself should postpone these issues for at least 6 months; in the meantime the working groups were asked to prepare the necessary proposals.

In principle, the proposed structure of the APTU Annexes and the technical requirements are fully in line with the TSIs. The European Commission endorsed the Secretariat's idea of including regulations common to different vehicle types, such as the assessment modules, in one place (APTU Annex 1), instead of repeating them in each TSI. No detailed discussion took place as the CTE will await proposals from WG TECH. A question concerning the format of the APTU Annexes and possible references to the EU regulations and some other issues was transmitted to a new working group concerning legal matters (WG LEGAL).

The agenda of the CTE also contained topics concerning implementation of the vehicle numbering and OTIF vehicle registers.

### **Vehicle Keeper Markings (VKM)**

The Vehicle Keeper Marking (VKM) is made up of a five letter code of the keeper as defined in Annex P to the TSI for Traffic Operation and Management. At the first session of the Committee of Technical Experts, the OTIF Secretariat and ERA had been requested to negotiate a joint solution for the administration of VKM codes, ensuring their uniqueness. ERA and the OTIF Secretariat jointly drafted the "Rules for registration of a vehicle keeper marking code", which contained the agreement between the two parties, rules on how to apply for a code, and rules for the administration of the system. ERA and the OTIF Secretariat together formed the "central body" specified in Annex P and would

publish a joint list of registered VKMs on their websites. ERA would register vehicle keepers who have their registered place of business in a State that is a member of the EU or EEA. OTIF would register vehicle keepers in the other OTIF Member States and – on a voluntary basis – in States that are not members of OTIF. A preliminary list of VKMs was published on the ERA and OTIF websites at the beginning of July 2007. The Committee of Technical Experts welcomed the cooperation between the OTIF Secretariat and ERA and the practical joint solution, which may form a model for future cooperation.

### **Vehicle Registers**

Article 13 of ATMF requires that an OTIF vehicle register should be set up. Article 13 does not clearly specify the content of the register or its purpose. ERA has set up a working party to draft the specifications for the National Vehicle Registers (NVR) in accordance with Article 14 of the Interoperability Directive. The NVR should contain information on the approval of vehicles. The ERA working party was continuing to draft the Rolling Stock Register in accordance with Article 24 of the Directive, which was supposed to contain the technical data on vehicles. The Secretariat considered it essential that the OTIF and EU registers should be harmonized, with identical specifications for data elements and formats, with no redundancy and only one query entry. The Secretariat had participated in the ERA working party. For the second session of the Committee of Technical Experts, the Secretariat had prepared a document on registers, setting out the main principles and the development of the system in two steps, starting first in OTIF with NVRs equivalent to the EU NVRs containing data concerning the approval and then moving on to a fully developed system also containing data concerning the technical characteristics of the vehicle type.

The European Commission welcomed the work carried out by the Secretariat and encouraged it to continue on this course and with the work on the OTIF registers in WG TECH, taking into account the EU decision on the NVR that might be taken in October 2007.

### **Future work**

Three areas were identified for the OTIF WGs future activities: technical, i.e. evaluation of documents to be adopted by the Committee of Technical Experts, operational, such as setting up registers (WG TECH), and legal, such as cross-referencing TSIs when adopting APTU Annexes (WG LEGAL).

The next session of the Committee of Technical Experts will be held in 2008 after WG TECH has again met two or three times and has produced proposals for discussion/adoption of APTU Annexes.

## Other legal Matters

### Rail Protocol

#### Preparatory Commission

1<sup>st</sup> Session

*Berne, 16/17 July 2007*

The Preparatory Commission to establish the International Registry for railway rolling stock according to the Luxembourg Protocol (see Bulletin 2/2007, p. 18 et seq.) held its first session on 16/17 July 2007 at the headquarters of OTIF in Berne. The meeting was jointly led by Sweden and the United States of America.

The discussions were based on drafts prepared by the Secretariat of OTIF for the Rules of Procedure of the Committee and of the future Supervisory Authority, draft Registry regulations and a draft Request for Proposal (RFP) for the registrar. Following an initial examination, it was agreed to continue the work in three working groups. The first of these, headed by Germany, should look at the contentious issue of the registrar's liability (limited for reasons of insurability). In addition to Germany, Finland and other States, the Rail Working Group (RWG) and the insurance industry should make a particular contribution to finding a solution. The second working group, comprised of Slovakia, the Russian Federation, Canada, OTIF and the RWG, should deal with finalising the Request for Proposal. The third working group dealing with the subjects of the Registry regulations and the Rules of Procedure of the Supervisory Authority is to include France, Algeria, an Asian State, UNIDROIT and the RWG. In addition, a separate working group should be set up to have an expert discussion on the Preparatory Commission and to understand the interests of the economic sectors concerned.

According to the timetable that was agreed, the Request for Proposal should be completed in October 2007 – if necessary after a second session of the Preparatory

Commission – and the first registrar should be established at the second or third session of the Preparatory Commission in spring 2008.  
(Translation)

## Co-operation with International Organizations and Associations

### United Nations Commission on International Trade Law (UNCITRAL)

“Modern Law for Global Commerce” Congress

*Vienna, 9-12 July 2007*

More than 400 people from 80 States took part in the congress organised on the occasion of the 40<sup>th</sup> anniversary of the founding of UNCITRAL. The packed programme covered numerous topical issues concerning international trade law, including the general issue of the future of international rule-making. In the area of purely private law at least, the practice is shifting more and more away from binding agreements to so-called “soft law” (model laws, legal guidelines, basic principles etc.).

As regards the security of transactions and the associated mobilisation of financing and demonstrable cost reduction, particular emphasis was placed on the importance of modern legal instruments and electronic registers, such as that of the Rail Protocol.

In the transport sector, the main focus was on the draft of a new Convention on the carriage of goods [wholly or partly] [by sea] prepared by UNCITRAL's Working Group III. The final version of the title/scope will depend on whether or to what extent the provisions that have been developed, particularly the provisions on documentation and liability, seem applicable either to all international multimodal goods transport or only to sea transport, including prior and subsequent overland transport (door-to-door) or only to sea transport (port-to-port). Speakers, who were arguing particularly from the point of view of carriers, e.g. with a view to land transport with short sea (ferry) crossings, considered the latter to be more probable. The conclusion of the work in WG III and finalisation is expected in 2008.

(Translation)

## Case Law

### Cour d'Appel de Paris

#### Ruling of 14 December 2005

**The railway, which omitted to take measures to prevent people from going near the tracks and which stocked materials near the tracks that it had the means to remove, contributed, by reason of these failings, to bringing about the damage.**

Cf. Article L 121-12 of the French Insurance Code

Although no direct parallel can be drawn in this ruling with any provisions of an Appendix to COTIF, the following extract may be instructive in connection with considerations concerning liability in cases where

- the damage has been caused by the infrastructure,
- the act that caused the damage is attributable to a third party, and
- the infrastructure manager has not fulfilled his duty of care<sup>1</sup>.

#### **The facts:**

On 1 December 1993, a collision occurred on the railway killing four passengers and injuring twenty five.

In a ruling of 30 November 1996, the Oise Juvenile Assize Court found F.M., aged 16 at the time of the facts, guilty of intentional incitement to derail a train, causing deaths and injuries; in a civil ruling of 1 December 1996, the Court then:

- with regard to SNCF's action for damages, ordered a report to be carried out by an expert to assess SNCF's material damage and declared that two thirds of the compensation for the bodily loss or damage of the victims paid by SNCF – a total of 570,114.14 French Francs (FF) – would be borne by F.M.'s parents in their capacity as persons civilly liable and one third would be borne by SNCF,
- with regard to the applications by the other civil parties, jointly ordered F.M. and his parents either

to compensate the victims or to pay them contingency amounts pending the result of the medical reports.

On 19 August 1997, Garantie mutuelle des fonctionnaires (GMF), Mr and Mrs M.'s insurer, having declared that it paid the victims a total of 989,870.45 FF, brought an action against SNCF to reimburse one third of this amount.

In a ruling of 2 July 1998, the Paris Court of First Instance ordered SNCF to pay GMF 329,956.82 FF, with interest, to run from the date the action was brought, as well as compensation of 10,000 FF by virtue of Article 700 of the new Code of Civil Procedure.

With regard to the appeal lodged by SNCF, the Paris Court of Appeal (*Cour d'Appel*), in a set-aside ruling of 6 October 1999, dismissed GMF's claims; the Court maintained that the civil ruling handed down by the Oise Juvenile Assize Court had established that liability for the damage suffered by SNCF and the damage suffered by the victims that had been compensated by this carrier be shared, but that liability was not shared as regards the other victims with whom GMF had settled.

With regard to the appeal submitted by GMF, the Court of Appeal (*Cour de Cassation*), in a ruling of 18 February 2003, quashed and repealed all the provisions of the ruling given on 6 October 1999, for breach of Article L 121-12 of the Insurance Code; the Court returned the case and the parties to the Paris Court of Appeal with a different bench.

In its final conclusions of 20 September 2005, SNCF requested the Court to annul the ruling and to:

- 1) – return the case to the Paris Administrative Tribunal so that the fault committed by SNCF concerning the design and maintenance of the public structures constituted by the railway lines and their appurtenances could be assessed,
  - delay a decision until the procedure before the administrative jurisdictions was completed,
- 2) alternatively, as to the substance
  - declare that there is no direct cause/effect connection between the fault committed intentionally by F.M. and the ease with which he was able to commit his offence

<sup>1</sup> Cf. Article 8 §§ 1, 2 and 3 of CUI



- and, consequently, to dismiss all GMF's claims,
- reduce, in any case, GMF's claim to the amount proven by incontestable documents,
  - if necessary, order a measure of inquiry with the aim of verifying this claim, at GMF's cost, owing to their default,
  - entertain SNCF's counterclaim, order GMF to compensate SNCF for the entire amount or, if not, two thirds of its material loss, i.e. order GMF to pay SNCF 1,290,361.10 euros or, if not, 860,234.07 euros, with interest at the legal rate to run from 31 January 2000, to confirm to SNCF that on 6 October 2004 it received payment of 860,234.07 euros, which is not satisfactory and which will simply be deducted from its claim,
  - if necessary, order that the reciprocal claims be compensated,
  - order SNCF to pay it 20,000 euros by virtue of Article 700 of the new Code of Civil Procedure.

In its last conclusions of 2 September 2005, GMF requests the Court to:

- 1) declare the plea of lack of jurisdiction entered by SNCF inadmissible and unfounded, declare that there is no need to send the case back to the Paris Administrative Tribunal and declare that there is no need to delay the decision,
- 2) with regard to the substance:
  - confirm the ruling whereby the Court ordered SNCF to pay GMF 329,956.82 FF, i.e. 50,301.59 euros, with interest at the legal rate to run from 19 August 1997 – and order that the interest be compounded by application of Article 1154 of the Civil Code,
  - order SNCF to pay it the additional sum of 58,745.57 euros, by application of Article 1251, paragraph 3 of the Civil Code and 4,573.47 euros in damages for having opposed abusive and misused its right,

- confirm to GMF that it does not contest owing SNCF 860,234.07 euros, note that it paid this sum on 6 October 2004, declare that this payment effects full discharge and dismiss all SNCF's other claims,
- order SNCF to pay GMF the sum of 15,000 euros to cover its costs of proceedings incurred at first instance and at appeal.

### Whereupon the Court

Whereas SNCF, before the Tribunal, did not enter a plea of lack of jurisdiction in favour of the administrative jurisdictions, but claimed that the civil ruling of the Oise Juvenile Assize Court of 1 December 1996 was not definitive and that the procedure had to be suspended until the conclusion of the procedure in the criminal court (*le criminel tient le civil en l'état*); that by application of Article 74 of the new Code of Civil Procedure, its plea of lack of jurisdiction raised for the first time in the appeal case must be declared inadmissible, while the rules invoked in support of its plea of lack of jurisdiction would come under the area of public order;

Whereas SNCF submits that the fault of which it is accused has no direct causal connection with the damage, that the civil ruling of the Assize Court did not specify in the operative part of its ruling that SNCF was responsible for a third of the accident and that the grounds for its ruling are not binding; that it asserts that shared liability cannot be instructed by dint of intentional offence against property as in this case; that it distinguishes between, on the one hand, the relationship between F.M. and SNCF as a civil party in the hypothesis that SNCF paid compensation to the passengers, and on the other, the relationship between F.M. and the victims, who joined as a civil party; that it alleges that shared liability was only decided in the first case and not in the second;

But whereas it is established that the damage compensated by SNCF, like that compensated by GMF, all result from the derailment of the train, concerning which the jurisdiction of the criminal courts decided in a civil ruling of 1 December 1999, which has become final, that liability should be shared between the minor (two thirds) and SNCF (one third); that the result of this ruling is that SNCF's faults consisted of not having made all the arrangements to prevent people from going near the tracks, and having stocked material near the tracks, which it had the means to remove; that these faults contributed to the cause of the damage; that GMF

has good grounds, by application of Article L 121-12 of the Insurance Code, to bring an action against SNCF by virtue of subrogation of the rights of its insureds to ensure that SNCF contributes to liability for its share of the damage;

Whereas SNCF claims that the documents communicated by GMF are not sufficient to prove its claim; that it underlines that GMF does not produce a subrogation receipt nor any evidence of the nature of the sums paid; that it adds that it does not have to reimburse the bailiff's costs which, because they are attributable to GMF's default, must remain payable by GMF;

But whereas it can be seen from the documents submitted to the hearing by GMF that it paid the victims or their lawyers and the welfare institutions 1,156,037 FF in addition to the sum of 989,870.48 FF; that SNCF does not specify the bailiff's costs that would be attributable to a default on the part of GMF; that the ruling must therefore be upheld to the extent that it ordered SNCF to pay GMF one third of the sum of 989,870.48 FF, i.e. 50,301.59 euros with interest at the legal rate to run from 19 August 1997; that it is appropriate to order that the interest be compounded as from 2 July 2004, the date on which the conclusions requesting this were reached in accordance with the provisions of Article 1154 of the Civil Code; that SNCF must also be ordered to pay GMF one third of the sum of 1,156,037 FF, i.e. 58,745.57 euros;

Whereas SNCF did not let its right to oppose GMF's requests degenerate into misuse; that GMF's request for damages therefore be dismissed;

Whereas the Assize Court, in a ruling of 31 January 2000, set the material damage suffered by SNCF at 1,290,035.10 euros and by application of shared liability, ordered F.M. and his civilly liable parents to pay 860,234.07 euros; that GMF paid this sum on 6 October 2004; that it still owes interest at the legal rate on the sum of 860,234.07 euros to run from 31 January 2000 up to 6 October 2004;

Whereas the reciprocal debts of SNCF and GMF will be compensated at the appropriate level;

Whereas SNCF, which cedes the main part of its claims, must bear the expenses and may not claim compensation under Article 700 of the new Code of Civil Procedure; that it is appropriate to award GMF 10,000 euros compensation for its unrecoverable costs incurred at first instance and at appeal:

### On these grounds

Declares SNCF's plea of lack of jurisdiction inadmissible,

Consequently, declares that there is no need to delay the procedure,

Confirms the ruling of 2 July 1998 in that it ordered SNCF to pay GMF 50,301.59 euros with interest at the legal rate to run from 19 August 1997,

In addition,

Orders that the interest be compounded from 2 July 2004 under the conditions laid down in Article 1154 of the Civil Code,

Orders SNCF to pay GMF 58,745.57 euros, as well as the compensation of 10,000 euros by virtue of Article 700 of the new Code of Civil Procedure,

Dismisses GMF's claim for damages,

Notes that GMF paid SNCF the sum of 860,234.07 euros on 6 October 2004,

Orders GMF to pay SNCF interest at the legal rate on the sum of 860,234.07 euros to run from 31 January 2000 and up to 6 October 2004,

Declares that the reciprocal debts of SNCF and GMF will be compensated at the appropriate level,

Dismisses the rest of SNCF's claims and its claim for compensation by virtue of Article 700 of the new Code of Civil Procedure,

...

(Direct communication)  
(Translation)

## Book Reviews

**Alter Michel, Franck Turgné** (volume update)  
*Transport terrestre, Responsabilité du transporteur international de marchandises* (Land Transport, Liability of the International Carrier of Goods), LexisNexis JurisClasseur Civil liability and insurance, volume 470-30 (1,2007 – up to date as at 10.11.2006)

In this volume of about forty pages, the authors analyse and comment in detail on the international land carrier's liability in respect of the consolidated international "Conventions" covering the international land transport of goods. For international rail transport, these are the Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM UR – Appendix B to COTIF) and for international road transport, the Convention on the Contract for the International Carriage of Goods by Road (CMR).

The volume is structured in four parts. In the first part, the authors deal with the question of the scope of application of the consolidated Conventions (conditions relating to the journey agreed, conditions relating to the international nature of the transport and special cases of successive road transport and mixed transport legs). In the second part, which is also the longest part, they examine the conditions of the carrier's contractual liability (carrier's liability by law and carrier's grounds for relief, whether the grounds for relief are general, specific or preferential). In the third part, the authors expand on the question of the compensation to be paid by the carrier (calculation of the compensation, principle of a compensation maximum and exceeding the maximum, either because of the volition of the carrier's co-contractor – declaration of value or declaration of interest in delivery – or as a result of fault on the part of the carrier). In the fourth and last part, they tackle the issues relating to liability action (parties in the proceedings, competent courts, foreclosure or bar to proceeding with a case and negative prescription).

Throughout the study, the authors compare and establish parallels between the 1980 CIM UR and the 1999 CIM UR on the one hand and between the CIM UR and the CMR on the other. The literature and case law are also well represented in this volume.

With its clear presentation, the commentary on the provisions examined, as usual in LexisNexis JurisClasseur, is preceded by key points, an analytical summary and an alphabetical index.

The volume updated by Mr Turgné only serves to reinforce the reputation of this collection, which is an indispensable tool for legal professionals.

(Translation)

**Bidinger, Helmut**, *Personenbeförderungsrecht*, Commentary on the Carriage of Passengers Act and other relevant provisions, continued by **Rita Bidinger**, with assistance from **Ralph Müller-Bidinger**, ISBN

3503008195, supplement 1/07 as at May 2007, Erich Schmidt Verlag, Berlin-Bielefeld-Munich.

Supplement 1/07, which was published as a follow-on shortly after supplement 2/06 (see Bulletin 1/2007, p. 13), continues the complete revision of the commentary on the German Regulations concerning the operation of road passenger transport undertakings (BOKraft). This supplement deals mainly with a new version of the explanatory remarks concerning the rules applicable to the taxi trade (identification, serial number and company address).

Current developments in three areas provided the incentive for this revision. Firstly, there is an emerging tendency in Germany to deregulate taxi colours (numerous approvals for exemptions, an as yet unimplemented Bundesrat decision to change the standardized colour rule). Secondly, the new version of the commentary takes account of a Federal Constitutional Court ruling of 30.06.2005, according to which the prohibition on self-advertising on taxis and hire cars laid down in Article 26 § 3 of BOKraft is unconstitutional. In the context of this ruling, the provision in question is only interpreted restrictively to the extent that the prohibition only relates to adverts that may cause confusion with respect to the form of transport being offered (taxi or hire car). Lastly, using examples from various cities' taxi regulations, the new explanatory remarks explain how the provision concerning the driver's identification sign is implemented in practice.

The commentary on road passenger transport law, which is accompanied by a comprehensive collection of regulations in this area, is enhanced by its clear layout and user-friendly approach.

(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, 21<sup>st</sup> supplement, status as at 1 June 2007.

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 (most recently, see Bulletin 3/2006, p. 51). In addition to the editor, around 20 other authors have worked in partnership.

## Last but not least

### A breath of fresh air?

The collection is in four volumes and covers all areas of the law that applies in the rail sector. The biggest part of the collection is made up of national German laws and other regulations. The first two volumes contain regulations that apply to the whole of Germany, while the third volume sets out regulations that apply to the individual Federal Lander. The fourth volume contains general conditions for various services in the rail sector and the laws and other regulations that are not specific to the railways (labour law, administrative procedures, etc.). Whilst “European Law” has a section to itself in volume III, the “international law” category forms a section in volume IV. Each volume contains an alphabetical summary of the laws, regulations and other provisions and an index covering the whole collection.

The very comprehensive 21<sup>st</sup> supplement (520 pages) relates mainly to the section on German law. Most of the amendments are connected with the latest developments in the area of railway safety and technical interoperability. These include the new version of the Federation’s “Railway Transport Administration” Act (creation of an advisory council on railway safety within the Federal Railway Authority) and the related explanations by H.-J. Kühlwetter, the law for the establishment of administrative and legal institutions to carry out the tasks required under the railway interoperability directives 96/48/EC and 2001/16/EC within the Federal Railway Authority (EBA) and Eisenbahn-Cert (EBC), a notified body for interoperability which is part of the Federal Railway Authority, as well as numerous amendments to the German General Railways Act (AEG), the purpose of which is to implement directives 96/48/EC and 2001/16/EC, as amended by directive 2004/50/EC (four amendment acts in 2006 and one in 2007). In view of the fact that they are rather extensive (327 pages), the adaptations to the explanations of the AEG that will be required, which are written by U. Kramer, will probably follow in one of the next supplements.

The systematic “Railway Law” collection is a practical aid to the work of railway specialists. The well thought-out separation into different headings helps the user find the information he requires quickly and reliably so that despite the rapid developments and the flood of information, he can easily retain an overview.

(Translation)

A breath of fresh air seems to be blowing through the Sub-Committee of Experts on the Transport of Dangerous Goods (UN/ECE)<sup>1</sup>. The experts came down off their pedestals and, for the time being at least, put aside the dogma of infallibility they have adhered to previously. They used to turn a deaf ear to requests from the transport modes to harmonise the provisions of the Model Regulations with those of the transport modes when there were differences – in fact, it was usually the modal regulations that had to be aligned with those of the UN. Now though, some of these requests have been accepted, at least in part, or are on the way to becoming accepted. However, nothing has been won for sure.

**So what has happened?** The new chairmanship (new chairman and vice-chairman), the absence of former chairmen and vice-chairmen within international organisations and the ongoing partial replacement of the head and experts of some delegations doubtless have something to do with it, as the new chairman observed.

Formerly, in the seventies and eighties, **explosives** were dealt with in a separate Sub-Committee, some of whose members were replaced every 4 or 5 years. This Sub-Committee met for one week each year, and had an annual working group outside the session (generally in the USA, Canada, the United Kingdom or Germany). However, the consequence of this same phenomenon of renewal was that the new experts, some of whom were former military personnel, constantly called into question the work their predecessors had done, with the result that it took almost 20 years to revise this Class completely once and for all.

(An indiscretion by a former secretary in the UN/ECE Transport Division!)

(Translation)

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<sup>1</sup> The report of the 31<sup>st</sup> session of the Sub-Committee of Experts on the Transport of Dangerous Goods is published in the “Transport of Dangerous Goods” column.

### **Humour is on the agenda!**

For the first time, the Joint Meeting has introduced Latin terminology into RID/ADR/ADN – specifically “mutatis mutandis”, in connection with the placarding of aquatic pollutants. This has upset some delegates, who do not understand what this means in their national languages, even after searching the internet. They argued that the majority of transport users and those consulting the regulations are not usually lawyers. This intrusion of Latin culture led the chairman to suggest that a Latin edition of these regulations should be produced ... it would be interesting to know what the Latin translation of the organic peroxide “1-(2-tert-BUTYLPEROXY-ISOPROPYL)-3-ISOPROPENYLBENZENE” is. After all, hasn't the new Pope just re-authorized the mass to be sung in Latin! Unfortunately, when the session was closed, the chairman forgot to intone the famous “Ite missa est”.

What about you? Can you provide a correct Latin translation of the name of the organic peroxide? The competition is open to everybody who would like to win a year's free subscription to the Bulletin! (Any legal procedure is excluded). So get writing!

During the tribute paid to the Norwegian delegate, who is retiring, the latter recalled that during his 7 years as chairman, there had been some good and some bad moments, and that he had sometimes wished to strangle a certain impertinent, trouble-making delegate, even though the delegate in question was in fact often right... The current chairman then asked him why he hadn't strangled this particular delegate on his behalf! It should be explained that the person in question has nothing to do with the compatriot politician tipped as the future head of the Government and who sang the “Marseillaise” at the national celebrations, rather than the national anthem of his country that he was asked to sing – which prompted a humorous journalist to quip: “anyone can make a mistake, said the hedgehog, dismounting a brush”!

Like the ridiculous, humour doesn't kill, and “honi soit qui mal y pense”!  
(Translation)