



Intergovernmental Organisation
for International Carriage
by Rail

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by Rail

4/2008

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Summary

Official Communications from the Secretariat of OTIF

Lists of lines 1999

CIV list of railway lines, p. 39

CIM list of railway lines, p. 39

Work of OTIF'S General Organs

Administrative Committee

110th session - Berne, 12/13.11.2008 - p. 40

Legal matters concerning COTIF

CIT/OSJD project to make CIM and SMGS legally interoperable, p. 40

Publications and interesting Links, p. 41

Transport of Dangerous Goods

Committee of Experts on the Transport of Dangerous Goods

46th Session - Hamburg, 21-23.10.2008 - p. 42

Sub-Committee of Experts on the Transport of Dangerous Goods (UNECE)

34th Session - Geneva, 1-9.12.2008 - p. 43

Subjects in the Technical/Approval Field

Preparation of the 3rd session of the Committee of Technical Experts, p. 44

OTIF workshop in Belgrade for non-EC OTIF Member States

Belgrade, 26/27.11.2008, p. 47

Co-operation with International Organisations and Associations

United Nations Economic Commission for Europe (UNECE)

Working Party on Rail Transport - Geneva, 18-20.11.2008 - p. 48

Working Party on Customs - Questions affecting Transport (WP.30) - Geneva, 7-10.10.2008 - p. 48

United Nations Economic and Social Commission for Asia and the Pacific (ESCAP)

1st Meeting of the Committee on Transport - Bangkok, 29-31.10.2008 - p. 49

Other Activities

5th European and Asian Rail Summit (EARS)

Berlin, 26-29.9.2008, p. 49

3rd "Romanian Railway Summit"

Bucarest, 7/8.10.2008, p. 50

Accession of the Russian Federation to OTIF

Concluding discussions with the Russian delegation - Berne, 14.10.2008, p. 50

Preparation of the accession of Azerbaijan and Georgia to COTIF

Seminar on OTIF membership and COTIF legal systems - Baku, 16/17.12.2008 - p. 51

Secretary General's discussions with representatives of Azerbaijan - Baku, 18.12.2008 - p. 52

Case Law

Tribunal de commerce de Marseille – Ruling of 16.11.2007 – Liability for damage to vehicles – leasing contract (national law), p. 53

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Book Reviews

Kunz, Wolfgang (editor), Eisenbahnrecht (Railway Law): Systematic collection with explanations of the German, European and international requirements, loose-leaf work with supplements, 23rd supplement, status as at August 2008, p. 56

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Official Communications from the Secretariat of OTIF

Lists of lines 1999

CIV list of railway lines

(published on 1 July 2006)

Secretary General circular no 2, 20 October 2008

Chapter "Estonia"

Estonia acceded to the Convention concerning International Carriage by Rail (COTIF) by depositing its instrument of accession on 20 August 2008¹. As the instrument of accession contains a reservation on the scope of application in accordance with Article 1 § 6 of CIV, a new Estonia chapter will be included in the CIV list of railway lines in accordance with Article 24 § 2 of COTIF. COTIF and hence the CIV Uniform Rules will enter into force for Estonia on 1 January 2009.

See COTIF 1999, Article 24 § 2.

CIM list of railway lines

(published on 1 July 2006)

Secretary General circular no 4, 20 October 2008

Chapter "Estonia"

Estonia acceded to the Convention concerning International Carriage by Rail (COTIF) by depositing its instrument of accession on 20 August 2008¹. As the instrument of accession contains a reservation on the scope of application in accordance with Article 1 § 6 of CIM, a new Estonia chapter will be included in the CIM list of railway lines in accordance with Article 24 § 2 of COTIF. COTIF and hence the CIM Uniform Rules will enter into force for Estonia on 1 January 2009.

See COTIF 1999, Article 24 § 2.

¹ See Bulletin 3/2008, p. 29.

Work of OTIF'S General Organs

Administrative Committee

110th session

Berne, 12/13 November 2008

For its 110th session, the Administrative Committee met in Berne on 12 and 13 November 2008 under the chairmanship of Mr Carlos del Olmo Morand (Spain).

The Administrative Committee approved the 2009/2010 work programme as well as the budget for 2009 and the provisional budget for 2010.

The Administrative Committee also noted the current situation with regard to investments and the general financial situation of OTIF. It judged the latter to be satisfactory, while encouraging the Secretary General to do everything possible to ensure that Italy meets its financial obligations to the Organisation.

The Administrative Committee also continued its discussions on the procedure for designating delegates to the Committee and on the progress of negotiations between the European Commission and OTIF on the accession of the European Community to COTIF (see Bulletin 2/2008, p. 16).

Lastly, the Administrative Committee dealt with issues surrounding the preparation of the 9th General Assembly, and more particularly the question of the composition of the Administrative Committee for the next period (1.10.2009-30.9.2012).

The 111th session of the Administrative Committee will be held on 13 and 14 May 2009 in Berne.
(Translation)

Legal Matters concerning COTIF

CIT/OSJD project to make CIM and SMGS legally interoperable

In 2008, the CIM/SMGS Steering and Co-ordination Group met twice (Varna, 9-11 July; Warsaw, 8 December) and the CIM/SMGS Legal Group met four times (Warsaw, 29/30 January, 19/20 May; Krakow, 24/25 September; Berne, 27 November). The Secretariat

of OTIF was represented at most of these meetings. Several meetings of the CIM/SMGS Group of experts were also held in 2008; the OTIF Secretariat does not generally take part in the meetings of this group of experts.

One of the main focusses of the work of the CIM/SMGS Legal Group in 2008 was the handling of CIM/SMGS claims. In view of a difference of principle in how CIM carriers deal with claims (they follow the Agreement concerning the Relationships between Carriers in respect of International Freight Traffic by Rail (AIM) concluded within CIT) and how the SMGS railways deal with them (they follow the SMGS Instructions governing conditions of service), this issue turned out not to be quite so simple. The difference is that in the SMGS system, the customer making a claim cannot be compensated until the railway that is at fault has been found, while in the CIM area, compensating the customer takes precedence over the elaborate search for the carrier that is at fault. An agreement concluded between the carriers in the context of AIM makes it possible to forego this complex search. Despite this state of affairs, in December 2008 the Steering Group succeeded in agreeing a solution for a uniform claims handling procedure, as developed at the September 2008 meeting of the Legal Group in Krakow.

In addition to what has already been achieved, i.e. the CIM/SMGS report, which is recognised in both areas (see Bulletin 3/2007, p. 42/43) and the presumption of loss or damage in case of reconsignment (see Bulletin 1/2008, p. 1-5), the new rules concerning the claims handling procedure mean a further improvement for customers. Although two separate legal regimes apply in the case of liability – one in accordance with the CIM contract of carriage and the other in accordance with the SMGS contract of carriage – and although the claims are examined in accordance with the rules that apply in each area, the claimant will only have one contact person for claims under both contracts of carriage, i.e. the one to whom the claim was submitted.

If it turns out in dealing with the claim – in the CIM or in the SMGS area – that the cause of the loss or damage had its origins, wholly or partly, in the other area, the claim will not be sent back to the claimant with a negative decision, as has been the case up to now. The CIM carrier responsible or the regulating SMGS railway will forward it to the body responsible for handling claims in the area of the other transport law. In respect of the customer, this remains an internal affair between the collaborating CIM carriers and SMGS railways. After checking with all those involved, final settlement

(including payment of compensation) is the responsibility of the carrier responsible in accordance with AIM or of the regulating railway in accordance with SMGS, depending on whether the customer made the claim in the CIM or SMGS area. The new rules concerning the claims handling procedure should come into force on 1 January 2010 after they have been approved by the competent organs of CIT (CIM Committee) and OSJD (Commission II).

Solutions developed so far, unresolved questions and the next steps were presented at a workshop entitled "CIM/SMGS claims handling" organised by CIT and OSJD in Berne on 25 November 2008. Together with a representative of an SMGS railway, a representative of the OTIF Secretariat took part in the presentation on "presumption in the case of reconsignment".

Another main focus of the work within the CIT-OSJD project was the specifications for the CIM/SMGS electronic consignment note. The Legal Group drafted the legal specifications, while the Group of experts dealt with the functional specifications. At the Steering Group meeting in December 2008, the legal and functional specifications of the CIM/SMGS electronic consignment note were approved at project level. Once editorial improvements have been made to the Russian version, the CIT General Secretariat and the OSJD Committee should publish these specifications as a recommendation. The Steering Group also approved a procedure for drafting the technical specifications.

With regard to using the CIM/SMGS consignment note, the Steering Group noted with satisfaction that the number of transport operations using the CIM/SMGS consignment note is increasing. It adopted measures to extend the project to traffic with Kazakhstan, Mongolia and China. It therefore satisfied a request that had been made and set down in a declaration by participants at a seminar organised by Russian Railways (RZD) on 7 November 2008 in Kaliningrad.

Provided it is instructed to do so by the competent organs of CIT and OSJD, in accordance with a suggestion from the Steering Group, the Legal Group should seek a contracts-based solution that will allow a through contract of carriage.

(Translation)

Publications and interesting links

Bulletin des transports et de la logistique, Paris, n°3242/2008, p. 639/640 – Vol de cigarettes. Accises indemnissables (CMR)

Idem, n° 3245/2008, p. 676 – Ferroviaire. Un train de retard ... (M. Tilche)

Idem, n° 3246/2008, p. 693/694 – Marchandises sensibles. Secret défense ? [Faut-il révéler la nature de l'envoi ?] (M. Tilche)

Idem, n° 3247/2008, p. 707 – Vol de sensibles. Une première ! (M. Tilche) ; p. 715 – Jurisprudence. Vol. Silence = nullité

Idem, n° 3248/2008, p. 725/726 – Sous-traitance. Portée de l'interdiction; p. 727- Aérien. Le malheureux destin de l'expéditeur réel (M. Tilche) ; p. 735/736 – Jurisprudence. CMR. Droit de disposition

Idem, n° 3249/2008, p. 741/742 – CMR. Les arcanes des délais (M. Tilche) ; p. 748/749 – Ferroviaire. Voyageurs inconscients

CIT-Info (Comité international des transports ferroviaires / Internationales Eisenbahnttransportkomitee / International Rail Transport Committee, CIT) <http://www.cit-rail.org>, éditions 8/2008, 9/2008, 10/2008

DVZ - Deutsche Verkehrszeitung, Hamburg, Nr. 147/2008, Beilage „Container“, S. 28 – Land- oder Seerecht – entscheidet sich vor Gericht. Wenn ein Schaden im Hafen verursacht wird, ist zunächst unklar, auf welcher Haftungsgrundlage der Schadenersatz ermittelt wird. (E. Boecker)

European Transport Law / Droit européen des transports / Europäisches Transportrecht, Antwerpen, No. 5-2008, p. 531-558 – Legal aspects of the Logistics contract and partnership in logistics (B. Jerman)

Transportrecht, Hamburg, Nr. 9/2008, S. 333-339 – Die Rechtsnatur des Umschlagsvertrages und ihre Bedeutung für die Teilstrecke (I. Koller)

Idem, Nr. 11-12/2008, S. 428-435 – Darlegungs- und Beweislast im Transportrecht (K.-H. Thume)

Zeitschrift der OSShD, Warschau, Nr. 5-6/2008, S. 23-29 – Erleichterung des grenzüberschreitenden Eisenbahngüterverkehrs im Rahmen des gemeinsamen CIT/OSShD-Projekts „Transportrechtliche Interopera-

bilität CIM/SMGS“ – Ergebnisse und Perspektiven (H. Trolliet, E. Evtimov)

Transport of Dangerous Goods

Committee of Experts on the Transport of Dangerous Goods

46th Session

Hamburg, 21-23 October 2008

18 Member States (a quorum) and the European Commission, CIT, UIC, UIP, FIATA, UIRR and ERA (European Railway Agency) took part in the work of this session chaired by Mr H. Rein (Germany).

Marking in piggyback transport

On the basis of a mandate from the 44th session, an informal working group organised by UIC proposed to do away with the subsequent marking on the sides of carrying wagons when the markings on the road vehicle are visible and recognisable and are in accordance with ADR.

First of all, the Committee of Experts decided to make the definition of piggyback transport clearer as follows:

““Piggyback transport” means the carriage of transport units or vehicles within the meaning of ADR in combined road/rail transport. This definition also includes the rolling road (loading of transport units within the meaning of ADR (accompanied or unaccompanied) onto wagons designed for this type of transport).”

The majority of the RID Committee of Experts supported the core of the proposal from the informal working group to accept the markings used in road transport without modification, although UIC was asked to submit a new proposal in order to remove any remaining uncertainty.

Introducing the concept of instructions in writing into RID for locomotive drivers

The Committee of Experts adopted the principle of this concept, which comes from ADR and ADN, particularly in support of the aim of international harmonisation. However, the Committee ruled out, for example, the intervention of the locomotive driver in fires in the load and in clearing up leaks, and it adapted the equipment

that has to be carried in the driver's cab. Germany will submit a revised proposal based on the decisions that were taken.

Work of the working group on tank and vehicle technology

With regard to monitoring the main brake pipe and checking the air brake, the representative of ERA explained that in order to include new provisions in the TSI (Technical Specifications for Interoperability), impact assessments and a cost/benefit analysis would have to be carried out in the context of railway safety. Before ERA could start a costly study, it would have to be provided with justification of the necessity and explanations of the aims for the dangerous goods sector.

The working group was mandated to collect together the findings from accidents that had occurred and to make them available to ERA so that it could initiate the necessary procedures.

With regard to the minimum distance of 300 mm between the headstock plane and the tank – inclusion of a provision from UIC leaflet 573 - the representative of ERA explained that the derogation adopted by the working group to take account of the minimum loading gauge or the loading gauge in Great Britain should be specified in RID itself.

It was pointed out that the only aim of this exception was to compensate for drawbacks in the reduction in volume resulting from a smaller vehicle gauge. The representative of the United Kingdom confirmed that it was not the intention to allow tank-wagons constructed in Great Britain in accordance with the exception to operate in continental Europe. Tank-wagons constructed in Great Britain that were also intended for use in continental Europe would already have a distance of 300 mm between the headstock plane and the tank.

The RID Committee of Experts adopted a text drafted by the representative of the United Kingdom taking this restriction into account and referring to the TSI Freight Wagons in respect of the freight vehicle gauge G1, rather than to UIC leaflet 505-1.

With regard to the mechanical strength of tank-wagons, the representative of UIP explained that the wording in RID concerning the stress test to be carried out on tank-wagons caused problems of interpretation. The Committee of Experts thought that in order to make things clear, a footnote referring to the TSI Freight Wagons would have to suffice, because this TSI already said that wagons for dangerous goods have to meet the

requirements of both RID and the TSI. A provisional text was adopted, which could be re-examined at the next session of the Committee of Experts.

European Commission's Interoperability Committee

In a presentation, the representative of ERA explained the tasks his Agency has to carry out in connection with the introduction of derailment detectors decided by the Committee of Experts. Among other things, these tasks would include an assessment of the effectiveness, the social, environmental and economic effects and the efficiency. In addition, a cost/benefit analysis would have to be carried out.

Exchange of experiences for experts

Provided the Secretariat received a sufficient number of suggestions for topics to put together an agenda, it was agreed to hold a one-day exchange of experiences for experts in Brussels on 10 June 2009 before the next session of the working group on tank and vehicle technology.

Working group on standardized risk analysis

The Committee of Experts noted the conclusions and observations of this working group. It was pointed out in particular that in different countries, a risk analysis could lead to different results, because there were national differences in assessing external safety. The meeting welcomed UIC's offer to provide figures on accidents and transport services, on the basis of which calculations could be further improved.

The Committee of Experts supported the Chairman's proposal to ask the Joint Meeting to continue the work of the working group, taking into account the results achieved and information provided so far, now that WP.15 (ADR) would probably also decide to use the guidelines developed by the working group for road transport as well. The original aim of the working group to standardize procedures had not yet been achieved. In view of a renewed discussion to make transport facilities and premises subject to the Seveso Directive, in order to maintain the status quo, it would be necessary to have similar tools available that could provide the same level of safety.

Information from CIT and UIC on the "e-Rail Freight" project

The Committee of Experts received information on this project. The aim of the project was to save money and meet customs requirements by having paperless trans-

port. In concluding his presentation, the representative of CIT asked the Committee of Experts whether it might be conceivable in future to dispense with marking and labelling and to consider the EDI procedure as the main procedure, with paper-based transport as a fallback option. The Committee of Experts did not think it was in a position to answer this question, as this was an intermodal issue that would have to be dealt with by the Joint Meeting in the context of telematics.

Next session

The 47th session of the Committee of Experts will be held from 16 to 20 November 2009, probably in Luxembourg.

The complete report is available on our website.
(Translation)

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

34th Session

Geneva, 1-9 December 2008

Experts and observers from around thirty countries and around forty international governmental and non-governmental organisations took part in the work of this 4th and last session of the 2007-2008 biennium dealing with the 16th revision of the UN Model Regulations. The meeting was chaired by Mr R. Richard (USA). The vice-chairman was Mr C. Pfauvadel (France).

45 Official documents and 75 informal documents had been submitted (all in English, and more than half of which had been issued only a very few days before the session or during the session following some ad hoc working groups). These working groups were necessary in order to finalise the 16th revision. Numerous amendments, including amendments to texts adopted at previous sessions, as well as new provisions, were adopted at this session. As is customary, this will result in a new edition of RID for 2011.

The main decisions and subjects dealt with were as follows:

With regard to **permeation through the walls of plastics packagings**, the Sub-Committee considered that on the whole it was up to the consignor to ensure the use of packagings suitable for the transport of a particular material. However, several experts were of the

view that the packaging manufacturer bore some responsibility for the provision of suitable packagings and that this provision conferred on the manufacturer an indeterminate degree of responsibility that would be a source of confusion in the event of a dispute. However, this provision was nevertheless adopted.

In the context of **special provision 274** (indication of the technical name for n.o.s. entries – not otherwise specified or generic) (see Bulletin 3/2008, p. 31), the Sub-Committee no longer resisted and finally decided to align with RID/ADR/ADN, with a few exceptions, on the basis of justification that had been submitted and in order to resolve the documentation problems. In its spirit of harmonisation, it also agreed to assign this special provision along with a new special provision specifying the prohibition of carriage for specific substances to which no UN number has been assigned and which have not been covered by the Model Regulations up to now, and which are not therefore prohibited from carriage, which is not the case in RID/ADR/ADN.

With regard to **substances that are toxic upon inhalation**, the Sub-Committee decided to add a new special provision to identify these substances and to introduce stricter portable tank instructions.

The proposals concerning the **testing of large lithium batteries and lithium battery assemblies** were adopted. Several experts emphasised the importance of improving the current provisions relating to the testing of large lithium batteries, in particular to allow for the increased use of such batteries in electric or hybrid vehicles, taking into consideration global concerns about greenhouse gases. However, some experts noted that while it was necessary to take urgent measures to facilitate the use of large batteries, the subject should be kept on the programme of work for the next biennium, so as to ensure that such measures ensured sufficient safety, and to improve them, if necessary.

With regard to the **revision of the IAEA Regulations**, the Sub-Committee noted that IAEA would be publishing a new edition of its Regulations in 2009 and that the next edition after that would not be published before 2013 at the earliest, but this did not prevent it from continuing the process of revising its Regulations. It also noted that IAEA intended to develop a mechanism to ensure communication and cooperation so that the UN Model Regulations and the IAEA Regulations may remain harmonised. Furthermore, the Sub-Committee noted that the IAEA had published a guide on security in the transport of radioactive material. As it had just been published, it had not been possible to prepare proposals for amendments to the UN Model

Regulations at this session, but this could be considered in the next biennium.

Concerning **genetically modified organisms (GMOs) and genetically modified micro-organisms (GMMOs)**, some experts expressed the view that it was not appropriate to keep provisions in the UN Model Regulations for GMOs and GMMOs because they considered that there is no evidence that there is any risk during transport and that their use and movement was otherwise regulated under different legislative frameworks. Others felt on the contrary that their release during transport could cause long term damage to the environment and that their transport, especially in countries where their use was not allowed or was restricted, should also be regulated to prevent accidental release. The principle was maintained and the Sub-Committee decided that the Model Regulations should contain provisions for regulating the transport of these substances.

In the context of accelerating **worldwide multimodal harmonisation**, called for by the chemical industry and carriers, a working group had established a mandate requesting the modal organisations to look into their differences as compared with the UN Model Regulations and their justification for them and requesting Governments to do likewise for their own national rules. This work would not be easy, given that some differences were not recent and dated back to times when the Model Regulations had not yet been made into legislation. Only some former experts would be able to explain them. In this context, it was even envisaged to take a worldwide convention that had never seen the light of day out of the bottom drawer...

The full text of this report can be consulted on the UN/ECE Transport Division's website.
(Translation)

Subjects in the Technical/Approval Field

Preparation of the 3rd session of the Committee of Technical Experts

The 3rd session of the Committee of Technical Experts will be held in Berne on 11 and 12 February 2009. The agenda of the third session contains among other things important items for adoption, such as the Rules of Procedure for the Committee, four APTU Annexes and a document on setting up the National Vehicle Register (NVR) for non-EC OTIF Member States, so that the

NVR register can be implemented as near a time as possible in the European Community and in all other OTIF Member States.

The documents for this session were prepared by the working groups WG LEGAL and WG TECH.

1. Setting up of WG LEGAL

At the 2nd session of the Committee of Technical Experts (CTE) in June 2007 the European Community (EC) proposed to establish an additional ad hoc working group under CTE, besides WG TECH (on technical questions): WG LEGAL on legal questions concerning the APTU and ATMF Appendices, in order to prepare the next session of CTE. With regard to participants' travel costs the Secretariat proposed to hold the meetings of WG LEGAL and WG TECH on two consecutive days, WG LEGAL on the first day, WG TECH on the second.

The Secretariat proposed to use English only as the working language of the working groups.

At the request of French speaking delegates, at the 2nd session of the CTE, the Secretariat proposed to provide interpretation from French into English. At the 1st session of WG LEGAL the Secretariat was prepared for this, but participants did not require this service.

2. Activities of WG LEGAL

From October 2007 to November 2008 WG LEGAL held five meetings.

All meetings were held in Berne with the exception of the 4th session which, because of a clash with EURO 08 (European football championship in Austria and Switzerland), took place at the kind invitation of the Railway Authority of the Czech Republic in Prague. The 5th session was held in Paris, thus helping participants, especially those from EU Member States and the European Commission (DG TREN and ERA), to reduce the time spent travelling.

Delegations from the following **23 Member States** took part in the meetings: Albania, Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Lithuania, the Former Yugoslav Republic of Macedonia, Netherlands, Poland, Serbia, Spain, Slovakia, Slovenia, Sweden, Switzerland, Syria and United Kingdom.

The following Member States were represented at all the meetings: Czech Republic, Netherlands, Serbia, Slovakia, Switzerland and United Kingdom.

The following supranational organisations were represented at all meetings: European Community DG TREN and ERA.

The following international non-governmental organisations or associations were also represented: CER, CIT, UIC and UIP; UIP attended all meetings.

a) The main items dealt with by WG LEGAL:

- procedure for adopting the final minutes,
- amendments to APTU and ATMF,
- definition and role of the keeper,
- format of the APTU Annexes,
- variations, specific cases and derogations related to APTU Annexes,
- improving the information flow from EC to non-EC OTIF Member States

and item for information

- disconnection (transparency) clause.

In order to avoid going into all the details of the revision of APTU and ATMF, the 2nd meeting of WG LEGAL concluded that the first Revision Group, still under the chairmanship of Mr. Schweinsberg, should be reactivated (see Bulletin 4/2004, p.82/83 and Bulletin 3/2006 p. 49).

This re-activated “Schweinsberg” group started its work in May 2008 and held 5 meetings up to November 2008 to prepare the amendments to the APTU and ATMF Appendices, aligning both Appendices with the principles of the new version of the EC Interoperability Directive (2008/57/EC). After starting the work it also considered the draft revision of the EC Safety Directive (2004/49/EC) as far as maintenance of vehicles is concerned. This revision group has been very keen to ensure the same cross-acceptance as in the EC, including between the non-EC OTIF Contracting States, and beyond the external borders of the EC, in both directions.

b) The results

WG LEGAL

1. agreed on the amendments to APTU and ATMF prepared by the re-activated “Schweinsberg” group and proposed to submit these amendments to the 3rd session of CTE for discussion.
2. adopted the two column format of the APTU Annexes. Identical/equivalent provisions are shown across the whole page width (both columns), whereas specific COTIF regulations are shown in the left-hand column, with the corresponding EC regulations (TSI and/or other) shown in the right-hand column. Both regulations can therefore be read in one document.
3. decided to abandon the “variations” concept and to replace them by the possibility of achieving the same objective by using specific cases (expanded to more than one State) or alternative target systems to be included in the Uniform Technical Prescriptions according to APTU and by considering the possibility of derogations. In this way the harmonisation of handling national differences between EU and OTIF regulations has been achieved.
4. agreed upon the non-EC OTIF Member States input to the draft TSI during the consultation period (period between ERA preliminary draft and ERA final draft).

The task of WG LEGAL has been achieved and it will be up to the 3rd session of CTE to decide whether to continue working group or not.

3. Activities of WG TECH

From October 2007 to November 2008 WG TECH held five meetings.

All meetings were held in Berne with the exception of the 7th session which, because of a clash with EURO 08 (European football championship in Austria and Switzerland), took place at the kind invitation of the Czech Railway Authority in Prague. The 8th session was held in Paris, thus helping participants especially from EU Member States and the European Commission (DG TREN and ERA), to reduce the time spent travelling.

Delegations from the following **22 Member States** took part in the meetings: Albania, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Lithuania, the Former Yugoslav Republic of Macedonia, Netherlands, Poland, Serbia, Spain, Slovakia, Slovenia, Sweden, Switzerland, Syria and United Kingdom.

The following Member States were represented at all the meetings: Czech Republic, Netherlands, Serbia, Slovakia, Switzerland and United Kingdom.

The following supranational organisations were represented at all meetings: European Community DG TREN and ERA.

The following international non-governmental organisations or associations were also represented: CER, CIT, UIC and UIP; UIP attended all meetings.

a) The main items dealt with by WG TECH:

- procedure for adopting the final minutes,
- vehicle numbering system (Annex P)
 - concept of the central body,
- National Vehicle Register (NVR)
 - Setting up of NVR for non-EC OTIF Member States,
 - Concept – principles and architecture,
- Principles of registers,
- APTU Annex 1, General provisions with subannexes 1A to 1F,
- APTU Annex 1N – Noise (work not continued because of another format of APTU Annexes being adopted – two column format),
- APTU Annex 3 freight wagons (work postponed because of the revision of TSI Wagons),
- Presentation of ERA website,
- Vehicle Keeper Marking (VKM)

- Deletion of point 3.1.6 in the Rules of Registration,
- Information about cooperation with OSJD

b) The results

WG TECH prepared the following for adoption by the CTE at its 3rd session in February 2009

1. the following APTU Annexes:
 - a. Annex 1A to Annex 1 to APTU: ESSENTIAL REQUIREMENTS
 - b. Annex 1B to Annex 1 to APTU: SUBSYSTEMS
 - c. Annex 1C to Annex 1 to APTU: TECHNICAL FILE
 - d. Annex 1E to Annex 1 to APTU: ASSESSING ENTITY – QUALIFICATIONS AND INDEPENDENCE
2. amendment to point 3.1.6 in the Rules of Registration of VKM,
3. draft document for setting up the NVR register for non-EC OTIF Member States

c) Tasks pending from the WG TECH work:

1. Document concerning the decision on setting up the central body for vehicle numbering system (7th session of WG TECH, item 4 Vehicle numbering system, conclusion 1),
2. Agreement between OTIF Secretariat and EC concerning joint schedule for establishing NVR in EC and non-EC OTIF Member States.

d) Future tasks:

1. General architecture of registers
2. Development of further Uniform Technical Prescriptions.

OTIF workshop in Belgrade for non-EC OTIF Member States

Belgrade, 26/27 November 2008

At the request of OTIF Member States which are not members of the European Community the Secretariat arranged an informative workshop on 26/27 November 2008. The government of Serbia had kindly offered to host the workshop in Belgrade and colleagues in the Serbian Directorate for Railways receive our warm thanks for the perfect organisation of the workshop.

The idea of arranging the workshop in the “local” area was appreciated, as this reduced the travel costs and made it possible for more representatives from the area to participate. Not only representatives from the governments were present, but representatives from the users of the OTIF regulations, such as the railway undertakings and private wagon owners, also participated actively. In total 21 people from Albania, Bosnia-Herzegovina, Montenegro, Serbia and Switzerland took part.

The purpose was to exchange information on current topics of interest, especially the recent proposals from the working group set up to analyse and propose the necessary changes to the two technical Appendices to COTIF 1999 (APTU and ATMF) in order to make them compatible with the current EC regulations and to ensure free circulation also in the EC Member States of vehicles admitted to operation by the non-EC OTIF Member States according to the COTIF regulations and vice versa for vehicles authorised according to the EC regulations. The proposals from the working group which are to be discussed at the 3rd session of the Committee of Technical Experts were not opposed in the workshop and seemed to be accepted in general after some questions were clarified.

Other main issues discussed were the proposals for the 3rd session of the Committee of Technical Experts in February 2009, such as the establishment of national vehicle registers (NVR), the APTU Annexes parallel to EC regulations in force concerning the division of the railway system into subsystems and the regulations setting out the essential requirements. The new EC Interoperability Directive, the functioning of the Vehicle Keeper Marking regulations that are in force, the rights and obligations of the Member States and the administrative functioning of the Committee of Technical Experts, such as the Rules of Procedure, were also discussed.

A very important subject, especially for the railways and private wagon owners, was the planned certification of keepers and Entities in charge of maintenance (ECM) and the Memorandum of Understanding between the Member States concerning the mutual recognition of the certificates and the audits made according to the certification rules.

The participants concluded at the end of the workshop that it had been very useful and that getting answers to their questions had substantially raised the level of participants' knowledge and understanding, both with regard to the new EC regulations and OTIF.

Co-operation with International Organisations and Associations

United Nations Economic Commission for Europe (UN/ECE)

Working Party on Rail Transport

62nd session

Geneva, 18-20 November 2008

The Working Party on Rail Transport met in Geneva from 18 to 20 November 2008 for its 62nd session, which was chaired by Mr Kulesza (Poland). The Vice-Chairman was Mr Groot (Netherlands).

While participation in the first day of the session was rather low (no more than 10 States were represented), delegates from 19 of the 56 member countries of the UN/ECE finally took part in the second day of the session. Representatives from the European Commission, the European Railway Agency (ERA), the TER project, UIC and CIT also took part in the session. OTIF was also represented.

Among other matters, the Working Party dealt with the following questions that are regularly included on its agenda: European Agreement on main international railway lines (AGC), TER project, Euro-Asian transport corridors, facilitation of international rail transport and productivity in rail transport.

With regard to the **facilitation of international rail transport**, the Working Party mainly took note of the activities undertaken in other bodies, including recent

developments in connection with the draft Annex 9 to the 1982 Convention on the Harmonization of Frontier Controls of Goods, which the Working Party on Customs Questions affecting Transport should adopt in 2009, progress on the common CIM/SMGS consignment note, presented by CIT, and the report submitted jointly by OTIF and OSJD on activities concerning interoperability and harmonization of the different rail transport systems, presented by OTIF. The Working Party nevertheless stressed that it was prepared to act as an intergovernmental forum for discussions that would lead to the elaboration of a uniform legal regime at pan-European level, particularly in co-operation with OTIF and OSJD.

The highlight of the session was primarily the **workshop on rail security** organised in close co-operation with UIC. The latter presented the activities undertaken by the UIC's security platform, with the aim of making governments aware of the need to tackle the question of security in rail transport. The Working Party decided to set up a "task force", which would prepare recommendations on this issue for the next session of the Working Party in November 2009.

Lastly, it is worth noting that the Working Party decided to hold a workshop in 2009 on the carriage of **persons with reduced mobility** by rail.
(Translation)

Working Party on Customs Questions affecting Transport (WP.30)

120th Session

Geneva, 7-10 October 2008

OTIF was represented on the first day of this session of the Working Party. The draft prepared jointly by OSJD and OTIF for a new Annex 9 ("Facilitation of border crossing procedures for international rail freight") to the 1982 Convention on the Harmonization of Frontier Controls of Goods ("Harmonization Convention") was discussed again. Following co-ordination of the last proposals for amendments on the part of OSJD and the European Commission, it is anticipated that the draft, the revised version of which is now available¹, will be adopted at the Working Party's next session (2-6.2.2009). The next step towards its entry into force is then for it to be dealt with by the Administrative

¹ See <http://www.unece.org/trans/bcf/wp30/documents/ECE-TRANS-WP30-2009-02e.pdf>

Committee (AC.3) at its 9th session to be convened in 2009.

(Translation)

United Nations Economic and Social Commission for Asia and the Pacific (ESCAP)

1st Meeting of the Committee on Transport

Bangkok, 29-31 October 2008

After a process of restructuring within ESCAP lasting several years, which also concerned the setting up of new committees with special responsibilities, the Organisation's Committee on Transport, which was newly set up in the context of this process, met for the first time. As, among other things, 5 Member States of OTIF (France, Islamic Republic of Iran, the Netherlands, Turkey and the United Kingdom) are also members of ESCAP, as well as the States of central Asia, the Russian Federation and the People's Republic of China, whose rail transport policy is important for OTIF, with the agreement of the Administrative Committee, the Secretary General took part in this first meeting of the ESCAP Committee on Transport.

The Committee on Transport, at the meeting of which 24 of the 53 Member States and 9 Associate Members, as well as a range of international governmental and non-governmental organisations took part, adopted four core documents and two so-called declarations. The core documents contained proposals concerning "Transport and development", "Transport and poverty", "Transport and environment" and "Transport and safety", which will be submitted to a conference of the ESCAP Ministers of Transport. The provisional date for this Conference is autumn 2009. The two declarations concern the 50th anniversary of the existence of the so-called Trans-Asian Highway Network and the organisation of a convoy of lorries, which is to leave from Japan next year and travel west through more than 20 ESCAP Member States to Turkey.

With regard to the future frequency of meetings, it was decided – subject to confirmation by the Ministers in 2009 – to meet every 2 years, alternating with the Conference of Ministers. OTIF's participation in the first meeting has ensured that in future, the Organisation will be kept informed of the further work of the Committee. However, without appropriate important developments impacting directly on OTIF's interests, there are no plans in the medium term for representatives of the Organisation to take part again.

(Translation)

Other Activities

5th European and Asian Rail Summit (EARS)

Berlin, 26-29 September 2008

During InnoTrans, the world's biggest trade fair for transport technology, which was held in Berlin from 23-26 September 2008, Deutsche Bahn AG organised the so-called 5th European and Asian Rail Summit (EARS). Summit participants included transport ministers and directors general of national and international associations, and this year the Organisation for Railways Cooperation (OSJD) and OTIF also took part. OTIF was represented by the Secretary General. Altogether, around 400 participants followed the panel discussion on "Europe-Asia: from test train to regular service". In a discussion chaired by the Executive Secretary of CER, Mr Ludewig, high-ranking representatives of European railway companies, including the CEO of RZD, Mr Yakunin, discussed issues surrounding the safety and reliability of such transport operations, the competitiveness of the railways as compared with maritime transport and the administrative tasks associated with setting up such transport. What was surprising was the extent to which DB AG and RZD in particular were clearly convinced that the trial runs, which had demonstrated the feasibility of such transport using several test trains, would be replaced by regular movements at the beginning of next year. All the participants stressed that the main obstacles to setting up such transport connections are still the procedural and time aspects required for customs clearance and the lack of transparency in the anticompetitive tariffs on the various infrastructures of the transit countries concerned. In the Russian Federation as well - probably because of the different geographical responsibilities of the relevant authorities - a considerably lower tariff is charged at place A than at place B for the same service. Various people who took part in the discussion pointed out that forwarders were keeping such an immediate and detailed watch on the market that even tiny pricing differences in carriage by rail, or irregularities, e.g. damage and loss, would lead to goods being transferred to maritime transport.

Overall the discussion gave the impression – which is also reinforced for other reasons – not just that trans-Eurasian rail traffic will be a reality in the very near future and will become established, but that it will also become very up-to-date from a practical and legal point of view.

(Translation)

3rd “Romanian Railway Summit”

Bucarest, 7/8 October 2008

On 7 and 8 October 2008, the Secretary General attended the 3rd “Romanian Railway Summit” in Bucharest. This third summit focussed mainly on the 10th anniversary of the complete privatisation of Romania’s rail sector on 7 October 1998. The particular feature of the Romanian version of privatisation is that even then, the principles of the European Community’s so-called First Railway Package were applied, which meant that the undertakings dealing with passenger transport, freight transport and the operation of the infrastructure were completely separated from each other, both de facto and de jure. So apart from the United Kingdom, Romania is the only member of the European Community that has opted for this model of privatisation. Undertakings in all three sectors suffer from the fact that there has not been a coherent national Romanian railway policy since then and that the undertakings operating in the various areas hardly have the opportunity to work with stable investment programmes supported financially by the Government. At the summit, many of the representatives from Romania also expressed regret that, owing to the impending national parliamentary elections in November 2008, there was no sufficiently reliable planning documentation for subsequent years.

More than 300 representatives from national and international railway undertakings took part in the summit, as well as relevant associations in the legal, operational, infrastructure and technical sectors. Along with the conference, there was an impressive exhibition of national and international undertakings. Most of the more than 20 contributions to the discussion dealt with individual issues concerning Romania’s railway policy, the management of rail transport undertakings and infrastructure funding issues. On the afternoon of the first day of the conference, which was entitled “Liberalisation of the rail system in European States”, the Secretary General gave a presentation on “legislation versus reality: the competitiveness of the rail sector in a liberalised environment”. Using specific case examples, he showed in the presentation that the European legislation on the liberalisation of the market for rail transport services is not implemented to the full extent, and neither are all parts of it that have been implemented followed in practice. He said he understood the European Commission’s decision to institute infringement procedures against 24 Member States for insufficient implementation of the First Railway Package. If even the Governments of EU Member States were not prepared to put into effect the so-called European

“acquis”, nobody should be surprised to observe that, in many areas on the private sector side of the rail industry, there is a reluctance on the part of undertakings to make full use of the advantages of the possible courses of action available to them in a liberalised market setting. This reluctance is damaging the competitiveness of the rail sector.

As before, both European and national law-makers are still called upon to further the achievement of the aims of liberalisation by making the content of each piece of legislation clear, in order to rule out any possibility of its being circumvented, partially applied or not applied at all. The competitiveness of the rail sector depends entirely on all the undertakings concerned being wholly committed to using the opportunities available, while complying with competition rules.

(Translation)

Accession of the Russian Federation to OTIF

Concluding discussions with
the Russian delegation

Berne, 14 October 2008

On 14 October 2008, a Russian delegation led by the head of department from the Russian Ministry of Transport, Mr Sergei Tugarinov, who was accompanied by other colleagues, visited OTIF at its headquarters in Berne. The subject of this most constructive discussion was mainly questions that remained unresolved as far as Russia was concerned, which were of major importance in launching and carrying out the national decision-making processes in the Council of Ministers and in both houses of the Russian parliament.

Among these unresolved issues was the significance of Article 28 § 1 of COTIF (arbitration in disputes between Member States), which is a problem for the Russian Federation because according to national law, it cannot simply subordinate itself to such procedures without taking further action. In addition to the legal explanations, the Secretariat of OTIF pointed out in particular that there had been no such cases in recent decades, and referred to the possibility provided under Article 28 § 3 of COTIF not to apply this rule by making a corresponding declaration when acceding to the Convention.

The Russian delegation also broached the possibility of introducing Russian as the Organisation’s fourth working language in accordance with Article 1 § 6. The OTIF Secretariat explained the steps that would be necessary

as regards content and procedure and pointed out in particular – subject to Russia’s full membership coming into effect in good time – that the General Assembly in September 2009 could take a decision along these lines. On the other hand, it was made clear to the Russian delegation that the Convention did not allow them to make a reservation saying that membership was dependent upon the introduction of Russian. In connection with this, the Russian delegation said that investigations were already underway to extend the scope of application of the CIM UR to the rail links that join up with the maritime leg from Mukran to Baltijsk and Ust-Luga in both ports up to the next railway station (see Bulletin 1/2007, p. 2/3) to include other lines. The Secretary General of OTIF gave assurances that he would fully support efforts to this end and explained the organisational and budget-related prerequisites that would have to be put in place if Russian were to become the fourth working language of OTIF.

Other topics in the bilateral discussion concerned the COTIF rules on membership contributions and annual advance contributions, the amount of a possible Russian membership contribution and how it might develop if further parts of the network were made subject to the CIM or CIV UR.

The Russian delegation provided the representatives of the OTIF Secretariat with detailed information on the progress that had been achieved so far, the further course of action that was planned with a view to effecting the decision on accession within the competent national bodies and a timescale that might be conceivable for this to happen. According to the planning, the Russian view was that the application for accession should in any case be deposited with the Secretary General in the first quarter of 2009. The fact that the discussions in Berne had fully and satisfactorily answered all the questions raised by the Russian Ministry of Transport tended to reinforce this.

Lastly, both sides agreed that in the event that accession took place within the timeframe discussed, a seminar organised jointly by OTIF and the Russian Ministry of Transport should be held, preferably in the second half of 2009. The seminar should offer an insight into the content, significance and consequences of Russia’s membership of OTIF and the COTIF regime that would then apply to the Russian Federation. This would ensure that all the bodies involved within Russia would have available the information necessary for a smooth start to the application of the rules of the Convention.
(Translation)

Preparation of the accession of Azerbaijan and Georgia to COTIF

Seminar on OTIF membership and COTIF legal systems

Baku, 16/17 December 2008

Azerbaijan and Georgia have been taking an interest in OTIF’s activities for some years. Up to now, this has been limited to the written exchange of information and participation in OTIF’s General Assemblies with observer status. In order to lend support to both these States’ preparations for accession to COTIF, together with the Ministry of Transport of the Republic of Azerbaijan, OTIF organised a seminar in Baku on 16 and 17 December entitled “Rail Conventions, OTIF Membership and COTIF Regimes”.

The programme for the seminar included not only the imparting of knowledge about the uniform law of COTIF and membership of OTIF, but also very informative talks and presentations on current developments in the rail sectors of Azerbaijan and Georgia (economic environment of the State-owned railways, their organisational structure, capital investments in infrastructure and rolling stock, legal basis of rail transport).

The first part of the seminar, which was led by Azerbaijan’s deputy Minister of Transport, Mr Musa Panahov, was used to discuss issues surrounding Azerbaijan’s and Georgia’s membership of OTIF (the Organisation and its funding, accession procedure and specific effects of accession for both States) against the background of the start-up of the transport corridors that go through their territories, particularly the new Baku-Tbilisi-Kars railway line that is being built. These issues were the focus of the talk given by the Secretary General of OTIF and of the discussion that followed.

The second part of the seminar, which was led by the Secretary General of OTIF, provided in particular an overview of COTIF and its Appendices (speaker: G. Kafka, OTIF), the CIM consignment note, the simplified consignment procedure and the CIM/SMGS consignment note (speaker: E. Evtimov, CIT), issues surrounding liability and insurance (speaker: E. Hammerschmiedová, with contribution from R. Freise on insurance questions), the carriage of dangerous goods and technical approval (speaker: G. Kafka), as well as the structural reforms of Azerbaijan’s and Georgia’s railways that have been carried out or that are being planned, national

regulations concerning the carriage of passengers and goods by rail (speakers: A. Suleymanli, AZ, N. Abuashvili, GE).

Between 50 and 60 people took part in the seminar, including members of staff from the Ministry of Transport and other central authorities of Azerbaijan (Cabinet of Ministers, Ministry of Foreign Affairs, Ministry of Justice, Ministry of Economic Development, Ministry of Finances, State Customs Committee, State border service), a representative from the TRACECA Organisation and from the project to implement the agreement on partnership and cooperation between the EU and Azerbaijan (PCA Implementation Project) as well as staff from Azerbaijan and Georgian railways.

As can be concluded from the discussions, some of which were in English and some in Russian, the topics dealt with at the seminar reflected the interests of the participants. It was also evident that participants had already looked into different aspects of the COTIF legal systems beforehand, and in different contexts.

In Georgia, several attempts have been made to privatise the railways. For the time being, Georgian Railways (Georgian Railway Ltd.) remain within State ownership. However, a new business model is being developed.

Azerbaijan is following the development of EU legislation in the rail sector with interest and is assessing whether its national legislation can align itself with the EU legislation and in what respect. In June 2008, a TAIEX¹ seminar was held in Baku on the initiative of the International Union of Railways (UIC) to look at the reform of the railways in Azerbaijan. The seminar was held with the cooperation of representatives of European Rail Infrastructure Managers (EIM), the Community of European Railways and Infrastructure Companies (CER) and railway undertakings from some of the EU States. Azerbaijan's accession to COTIF should form one element of the forthcoming reforms.

The seminar organised by OTIF and the Ministry of Transport of Azerbaijan in December 2008 has now completed the picture. There is a growing conviction that, against the background of the development of trade relations with European States, introducing the COTIF legal systems will be of vital importance in gaining new markets for rail transport.
(Translation)

Secretary General's discussions with representatives of Azerbaijan

Baku, 18 December 2008

After the two days of the seminar, on 18 December 2008 the Secretary General of OTIF had the opportunity of meeting Azerbaijan's deputy Minister of Transport, Mr Musa Panahov, and the chairman of Azerbaijan's State railway undertaking (Azerbaijan State Railway), Mr Arif N. Askerov, for separate discussions. In the discussions, both highlighted the general importance of the seminar, the quality of the contributions as regards content and the good attendance at the event organised by OTIF and Azerbaijan's Ministry of Transport. The deputy Minister also made clear that the high level of interest on the part of Azerbaijan and Georgia also reflected the Governments' political targets in each of these countries.

With regard to the question of Azerbaijan's and Georgia's accession to OTIF, the Minister was convinced that Azerbaijan would in any case be able at least to take a decision on accession in 2009, and might even be able to conclude Azerbaijan's accession procedure by depositing the corresponding instrument with the Depositary. The decision on accession, which was ultimately something the President of the Republic of Azerbaijan would have to judge, had been got underway. However, the Minister stressed that the accession was linked closely to the realisation of the Baku-Tbilisi-Kars project, although there was no doubt that the project would be realised, owing to the joint decisions of the Presidents of Azerbaijan, Georgia and Turkey that underlay the project. As far as Azerbaijan was concerned, there could be no question of calling upon anything other than the CIM UR for the liability regime for this important railway link.

Also at the forefront of the discussion with the chairman of Azerbaijan's State railway undertaking (ADDY) was the project concerning the infrastructure link from Baku to Kars via Tbilisi. As the chairman had taken part in a meeting of the coordination council for this project in Tbilisi on both days of the seminar, he was able to give a progress report based on the latest information. According to this information, construction work has started both in Turkey and in Azerbaijan. Mr Askerov also pointed out that the decisions of the Presidents of the three countries involved require all participants to complete the project by 2010. Nobody could avoid this obligation. The chairman also reported on the project for a link from the border between Azerbaijan and Russia at Yalama, via Baku, to the border between Iran and Azerbaijan. For this link too, which is expected to carry

¹ EU "Technical Assistance and Information Exchange" programme

15 million tonnes of freight per year, the major share of the investment funds had already been agreed by the Governments of Azerbaijan and Iran. For this link, 20 km would have to be built on Azerbaijan's territory and 170 km on Iran's. Construction work had already begun on this link as well and was already being completed as far as an important bridge link was concerned. Lastly, the question of ADDY's membership of CIT was broached. The impression given was that Mr Askerov sees no difficulties in becoming a member of CIT. It was agreed that the Secretary General of CIT would send the chairman of Azerbaijan's State railway undertaking a suitable letter of invitation.
(Translation)

Case Law

Tribunal de commerce de Marseille

Ruling of 16 November 2007

A rail transport undertaking which leased wagons and containers is liable for the loss and damage that occurred during the period of the leasing contract unless it proves that the damage does not result from fault on its part. The rail transport undertaking cannot be relieved from liability on the basis of the contract of use of the wagons (leasing contract) by asserting that the derailment and the damage caused to the wagons and containers happened while the user of the private siding was using these wagons and containers; they were not therefore under the care of the rail transport undertaking. Given that the user of the private siding cannot be considered as a third party, it has not been proven that the damage is not the result of fault on the part of the rail transport undertaking.

Cf. Article 1732 of the French Civil Code (*Code civil français*)¹

Groupama Transport S.A. and Ecorail (SNC participations) S.A. v. the Société Nationale des Chemins de Fer Français (SNCF).

Whereas in a summons issued on 3 February 2005, Groupama Transport S.A. (hereinafter "Groupama") and Ecorail (SNC participations) S.A. (hereinafter "Ecorail")

summoned SNCF to appear before the Marseilles High Court of Justice (*Tribunal de Grande Instance de Marseille*) to:

- have it ordered to pay:
 - Groupama 8,518.54 euros
 - Ecorail compensation of 16,200 French Francs, i.e. 2,469.67 euros, and excess of 1,524.50 euros

with interest at the legal rate to run for Groupama from 14 April 2004 and for Ecorail to run from the first summons and annual compound interest;

- and to pay Groupama 3,000.- euros by virtue of Article 700 of the new Code of Civil Procedure (*Code de procédure civile*);

- all to be executed provisionally;
- all costs to be borne by SNCF, to be paid to ... (lawyers in Marseilles);

Whereas by procedural order of 5 September 2006, the procedural judge of the Marseilles High Court of Justice declared that it did not have the relevant competence and referred the case to the Marseilles commercial court (*Tribunal de commerce de Marseille*);

Whereas the case is therefore reopened before this commercial court;

Whereas by means of written conclusions developed orally at the bar, SNCF requests the court to:

- order that this case be consolidated with the case between SNCF and Gan Eurocourtague;
- say that judgement will be deferred pending a ruling by the administrative court (*Tribunal administratif*) on the liability of the Communauté urbaine Marseille Provence Métropole (Marseilles Provence Metropolitan District) (hereinafter "MPM");

Subsidiarily, in view of Articles L 133-6 of the Commercial Code and Article 31 of the new Code of Civil Procedure:

- dismiss all actions, assertions and conclusions submitted by Ecorail and Groupama;

¹ Cf. Article 4 § 1 of CUV, according to which the wagon user is also subject to a presumption of fault.

- order them to pay the submitting party 3,000.- euros under Article 700 of the new Code of Civil Procedure;
- order them to pay all costs, including the appraisal ordered by the court;

Whereas at the bar, Groupama and Ecorail request the court:

- to declare SNCF's conclusions inadmissible, as they were submitted 7 days before the pleas were heard;
- for authorisation to produce the insurance policy for the deliberations;
- to order payment in cash or receipts, concerning container No. 106.

...

The facts and the proceedings:

Ecorail supplied SNCF with containers or metal "caissons" and wagons leased from France Wagons which are used for the carriage of municipal waste from MPM.

On 18.01.2001, train No. 485878 derailed following a signalling error. This caused damage to three containers and to wagons and facilities belonging to SNCF.

Considering that MPM was responsible for the accident, SNCF subsequently instituted proceedings before the High Court, which said it was not competent and referred the matter to the Marseilles administrative court, where the case is still pending.

For their part, Ecorail and France Wagons brought an action against SNCF before the High Court, but as France Wagons reached a compromise with SNCF, it waived its case.

The matter was annulled, but by mistake, because Ecorail had not waived its case, so the latter again summoned SNCF on 03.02.2005, together with its insurer, Groupama.

SNCF then posited the lack of jurisdiction of the High Court, which consented to its request. The procedural judge referred the matter to this commercial court on 5th June 2006.

The case is thus presented; Groupama claims that it has been assigned the rights of the insured, claims the amount of the compensation it paid to the insured, i.e. the sum of 8,518.54 euros and Ecorail, for its part, requests 1,524.50 euros corresponding to the insurance excess and 2,469.67 euros relating to the repair of a container, in addition to 3,000.- euros under Article 700 of the new Code of Civil Procedure to be executed provisionally pending the final ruling.

...

On the stay of proceedings:

To oppose the stay of proceedings requested by SNCF pending the decision of the administrative court concerning MPM's liability, Groupama and Ecorail allege that it does not much matter who is liable for the derailment, that indeed Ecorail leases its containers to SNCF, which has the obligation to return them to Ecorail in good condition, that in addition, the private siding contract between SNCF and MPM is not binding on Ecorail by application of Article 1145 of the Civil Code.

SNCF responds that:

1. the train was not in its care at the time the derailment occurred and was for the sole use of MPM,
2. its capacity as lessee is not established by any document produced,
3. in any case, as the keeper of the object, it can be relieved from liability by providing proof that a third party is at fault,

that in this case, it is impossible to make a ruling as long as the administrative court has not commented on the fault committed by MPM.

Whereas it emerges from the factual elements that Ecorail has no contractual links with MPM, while it does with SNCF, the latter itself recognising the reality of the leasing, as it writes in its initial summons before the administrative court "for the carriage of wastes SNCF leases wagons equipped with containers from Ecorail. The containers are the property of Ecorail .../..."; that the existence of documents proving a leasing contract is not necessary as proof of leasing is demonstrated by the circumstances of the case;

Whereas since SNCF is required to return the containers in good condition and then to compensate Ecorail and its insurer for damage caused and cannot obtain relief from liability by stating that the train was not in its care

at the time the derailment occurred, which only concerns Ecorail very indirectly, since the private siding contract was not binding on Ecorail, as it rightly points out.

Whereas consequently, the court rejects SNCF's request to stay proceedings;

On the statutory limitation of the actions:

...It is obvious that the relationship between SNCF and Ecorail is contractually established in the context of a leasing contract, i.e. with a limitation of 10 years, and not in the context of a contract of carriage with a limitation of one year, so it can be said that the action brought by Ecorail is not subject to statutory limitation.

On the admissibility of Groupama's actions:

SNCF posits the inadmissibility of the action brought by Groupama for the reason that the latter does not provide proof either of conventional subrogation in the absence of concomitance of the payment of compensation and the act of subrogation, or of legal subrogation, because on the one hand, it appears in the light of the subrogation release established more than two years after the accident occurred, that the insurer paid the compensation after the two-year limitation had been reached, and on the other hand, the obligatory nature of the payment is not proved, as the insurance policy was not placed on the files.

Groupama replies that it never contested the principle of its guarantee and consequently, cannot oppose the two-year limitation in relation to its insurer and asks the court that the insurance policy be presented during the deliberations.

Whereas the court accepted presentation of the policy during the deliberations and after examining the said policy received during the deliberations, notes that the obligatory nature of the payment was respected, while being aware that it is also obvious that the two-year limitation has not been reached, as Groupama never in fact contested its guarantee;

Whereas with regard to the compensation of 8,518.54 euros that has been paid, it corresponds to an amount slightly below that indicated by the expert, Mr. S., i.e. 11,320.- euros, less the excess of 1,524.50 euros = 9,795.50 euros, the difference apparently being explained, despite the absence of an average adjustment, by the application of a depreciation co-efficient.

Whereas consequently, it must be said that the legal subrogation is in conformity with Article L 172-29 of the Insurance Code and the actions brought by Groupama are deemed admissible.

On SNCF's liability:

SNCF agrees that the actions are misdirected because it appears that the train was in the care of the metropolitan district at the time of the accident and that even in the hypothesis where a contract on providing the containers had been concluded between SNCF and Ecorail, it must be pointed out that the lessee is not responsible for the loss of the object when this loss is attributable in particular to the actions of a third party, in this case MPM, which is a third party for SNCF and that it is up to Ecorail, in the context of the action brought before the administrative court, to request that MPM be held responsible for the damage.

Groupama and Ecorail emphasise the fact that the action is not directed against SNCF as the party responsible for the derailment, but as the lessee and that under the terms of Article 1732 of the Civil Code, the lessee is responsible for deterioration or losses that occur during its custody, unless it proves that they occurred without fault on its part and the lessor cannot be forced to await the outcome of the administrative procedure to obtain compensation, as SNCF confirmed to the administrative court that it had compensated Ecorail, which was inaccurate, and that in addition, MPM is not a third party, but a user of the wagon containers.

Whereas as already indicated above, the matter should be analysed in the context of the relationship between SNCF and Ecorail, i.e. a leasing contract, and that it must be recognised that MPM does not appear as a third party in respect of SNCF, so the latter remains liable for the damage caused to the containers;

On the groundless nature of the actions brought by Ecorail:

...

On these grounds:

The Marseilles commercial court,

After having deliberated in accordance with the law,

Bearing in mind today's hearing

Declares and judges the written conclusions established by Groupama and Ecorail admissible;

Declares that there is no need to stay proceedings;

Declares the actions by Groupama and Ecorail admissible;

Establishes that SNCF is liable in the context of this dispute;

Orders SNCF to pay:

- Groupama the sum of 8,518.54 euros,
- Ecorail the sum of 1,524.50 euros,

as principal with interest at the legal rate and with compound interest to run from the initial legal actions;

Notes that SNCF has said that it has instituted third party proceedings against Gan Eurocourtage in its capacity as MPM's insurer;

Orders SNCF to pay Groupama 2,000.- euros under the provisions of Article 700 of the new Code of Civil Procedure;

Orders SNCF to pay all costs, including all taxes, of this case;

In accordance with the provisions of Article 515 of the new Code of Civil procedure, orders that the whole be executed provisionally;

For the rest, rejects all other actions, assertions and conclusions contrary to the findings of this ruling;

...

(Direct communication)
(Translation)

Book Reviews

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, 23rd supplement, status as at August 2008.

The base volume appeared in 1994 (see Bulletin 1/1995). The ongoing provision of supplements ensures the necessary updating; the texts and commentaries are made more complete (most recently, see Bulletin

2/2008, p. 25). In addition to the editor, around 20 other authors have worked in partnership.

The collection is in four volumes and covers all areas of the law that applies to the rail sector. The biggest part of the collection is made up of national German laws and other regulations. In the 23rd supplement, it is evident that it was mainly these laws and regulations that needed to be updated. Around three quarters of the newly inserted sheets deal with "German Law" and the "Law of the Federal Lander".

In the section dealing with "European Law", Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure has been brought up to date (it has been amended by Directive 2007/58/EC), and Directive 2007/59/EC on the certification of train drivers operating locomotives and trains on the railway system in the Community has been newly included. Among the Regulations, a new inclusion is Regulation (EC) No.1371/2007 on rail passengers' rights and obligations. An unofficial overview of the contents has been included before the text of the Regulation itself in order to help users find what they need.

The general part of the Rail Network Conditions of Use for Infrastructure Managers has been included in the section on "Recommendations/Provisions/Tariffs" since 2006. Now the Conditions of Use for Service Facilities (also the general part) have also been included. These are optional recommendations from the Association of German Transport Undertakings (VDV) for their business relations with those who have access rights.

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 flood of information, he can easily retain an overview.

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