



Intergovernmental Organisation  
for International Carriage  
by Rail

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Bulletin  
of International  
Carriage  
by Rail

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**4/2009**

117<sup>th</sup> Year • October - December

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## Bulletin of International Carriage by Rail

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### Official communications from the Secretariat of OTIF

#### Accession to COTIF

##### Russian Federation

On 21 August 2009, the Government of the Russian Federation made an application for accession to COTIF. In his capacity as Depositary of the Convention, the Secretary General notified the Member States of OTIF of this application for accession (see Bulletin 3/2009, p. 29). The period in which the Member States were able to lodge objections in accordance with Article 37 § 3 of COTIF expired on 27 November 2009. No objections were lodged.

This application for accession, which contains reservations in accordance with Article 28 § 3 (Arbitration) and the first sentence of Article 42 § 1 of COTIF relating to Appendices A, C, D, E, F and G, as well as a reservation on the scope of application in accordance with Article 1 § 6 of CIM, is therefore accepted as legally binding.

In accordance with Article 37 § 3 of COTIF, the accession will take effect on 1 February 2010. COTIF and the CIM Uniform Rules will enter into force for the Russian Federation on that date. The Russian Federation will become the 44<sup>th</sup> Member State of OTIF.

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 ([www.otif.org](http://www.otif.org), under "Publications").

##### Montenegro

On 21 December 2009, the Government of Montenegro made an application for accession to COTIF. As Depositary of the Convention, the Secretary General brought the application for accession to the attention of the Governments of the OTIF Member States in a circular dated 20 January 2010.

Unless five Member States of OTIF lodge objections, the application for accession will be deemed to be accepted as legally binding three months after this notification, i.e. on 20 April 2010. The accession will then take effect on the first day of the third month following the Secretary General's notification to the Member States that the application for accession has been accepted as legally binding.

1 [http://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 – COTIF (3.6.1999) – Depositary (Secretary General) (Art. 36 COTIF) – State of the signatures, ratifications, acceptances, approvals, accessions and entry into force

2 [http://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 – 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's circular No. 10, 1 December 2009

##### Chapter "Germany"

Amendment concerning the following shipping lines:

*Dagebüll – Amrum*, Wyker Dampfschiffahrts-Reederei Föhr-Amrum GmbH (DE-25938 Nordseebad Wyk auf Föhr) and

*Hamburg – Helgoland (27.03-24.10)*, FRS Helgoline GmbH & Co. KG (Postfach 26 26, DE-24916 Flensburg)

Following these modifications the chapter has been re-issued.

See COTIF 1999, Article 24 §§ 1, 3-5.

### CIM list of maritime and inland waterway services

(published on 1 July 2006)

#### Secretary General's circular No. 6, 30 November 2009

##### Chapters "Russia" and "Germany"

Upon acceding to the Convention concerning International Carriage by Rail (COTIF), with the agreement of Germany, Russia entered the following ferry routes:

1. Ust-Luga – Sassnitz
2. Baltiysk – Sassnitz

Both are operated by the Baltic Shipping Co Ltd., Birzevoy per. 6/A, RU - 199004 St. Petersburg and are subject to the particular regime of CIM Article 38.

As a result of this entry and the entry by Germany, with the agreement of Russia, of the Sassnitz/Mukran –

Baltiysk<sup>1</sup> ferry route, which is operated by DFDS A/S (Sundkrogsgade, DK-2199 Copenhagen), the accordingly amended Chapter Germany is also being republished, together with the new Chapter Russia.

See COTIF 1999, Article 24 §§ 1, 3-5.

##### Chapters "Germany" and "Switzerland"

A change notified by Germany to the name of a shipping company that operates between Germany and Switzerland on Lake Constance will be taken into account in the newly published Chapters.

### CIM list of railway lines

(published on 1 July 2006)

#### Secretary General's circular No. 5, 30 November 2009

##### Chapter "Russia"

As Russia is acceding to the Convention concerning International Carriage by Rail (COTIF), with a reservation on the scope of application in accordance with Article 1 § 6 of CIM, a new Chapter "Russia" 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 Russia on 1 February 2009.

See COTIF 1999, Article 24 § 2.

## Work of OTIF'S General Organs

### Administrative Committee

112<sup>th</sup> Session

*Berne, 25/26 November 2009*

The Administrative Committee, in the new composition decided by the 9<sup>th</sup> General Assembly for the period from 1 October 2009 to 30 September 2012 (see Bulletin 3/2009, p. 32), met in Berne on 25 and 26 November 2009 under the chairmanship of Mr Petr Stejskal (Czech Republic).

<sup>1</sup> This ferry line was previously only entered in the Chapter "Germany" for the purposes of the application of CIM Article 1 § 2

The Administrative Committee approved the work programme for 2010/2011, the budget for 2010 and the provisional budget for 2011.

The Committee also decided to maintain the status quo with regard to the procedure for appointing delegates to the Committee. As a consequence, it decided not to amend its Rules of Procedure in this regard.

The 113<sup>th</sup> session of the Administrative Committee will be held on 2 and 3 June 2010 in Berne.  
(Translation)

## Legal Matters concerning COTIF

### Publications and interesting links

*Bulletin des transports et de la logistique*, Paris, n° 3288/2009, p. 572/573 – Faute inexcusable. Ainsi soit-elle ! (M. Tilche)

*Idem*, n° 3294/2009, p. 669/670 – Force majeure. Au pays de la grève (B. Colette)

*Idem*, n°3295/2009, p. 688/689 – Prescription. Incidence de la fraude (M. Tilche)

*Idem*, n° 3296/2009, p. 700/701 – Transport aérien des voyageurs. La barre des trois heures (B. Colette)

*Idem*, n° 3298/2009, p. 731/732 – Transport/-Commission. Requiem pour une faute lourde... ; p. 734/735 – Emballage. Responsabilité du chargeur (M. Tilche)

*CIT-Info* (Comité international des transports ferroviaires/Internationales Eisenbahntransportkomitee/International Rail Transport Committee, CIT) <http://www.cit-rail.org>, éditions/Ausgaben/éditions 7/2009, 8/2009

*DVZ - Deutsche Verkehrszeitung*, Hamburg, Nr. 146/2009, Beilage Container, S. 14 – Rotterdam Rules. Kein Schreckgespenst. Risikomanagement gewinnt an Bedeutung (E. Boecker)

*Transidit, Recueil de jurisprudence et d'information en droit des transports*, Rouen, N° 59/2009, p. 2-7 – Les perspectives d'amélioration de régime juridique de l'intermodalité (I. Bon-Garcin)

*Transportrecht*, Hamburg, Nr. 10/2009, S. 389-393 – Multimodaltransport, bekannter Schadensort und § 452d Abs. 3 HGB (P. Bydlinski)

*Idem*, Nr. 11-12/2009, S. 451-461 – Der Unterfrachtführer als Schuldner und Gläubiger (I. Koller)

## Transport of Dangerous Goods

### Working Party on the Transport of Dangerous Goods (WP.15, UN/ECE)

87<sup>th</sup> Session

Geneva, 2 - 6 November 2009

The 87<sup>th</sup> session of WP.15 was held in Geneva from 2-6 November 2009. 22 States, the European Commission and 7 non-governmental organisations were represented.

### Interpretation of ADR

In an informal document, Poland pointed out that the provisions of ADR 8.1.4 concerning the fire extinguishers to be carried in transport units were interpreted differently in the various Member States. Some Member States would not apply the provision in ADR 8.1.4.1 (c), according to which the capacity of the fire extinguisher provided for fighting a fire in the engine or cab may be deducted from the minimum total capacity of the additional fire extinguishers, which depends on the maximum permissible mass of the transport unit.

WP.15 confirmed that the minimum total capacity laid down in 8.1.4.1 (b) applies irrespective of the number of fire extinguishers and in any event includes the capacity of the fire extinguisher provided for fighting a fire in the engine or cab. However, it was agreed that the wording of 8.1.4.1 could be improved in the future so as to rule out different interpretations.

### Work of the RID/ADR/ADN Joint Meeting

WP.15 adopted the amendments adopted by the Joint Meeting in March and September 2009, although it particularly checked the tunnel restriction codes proposed by the ad hoc working group on the harmonisation of RID/ADR/ADN with the 16<sup>th</sup> edition of the UN Model Regulations for newly included UN numbers and for UN numbers whose classification had been changed.

Various corrections to the texts were also adopted and transitional provisions were drafted, which were considered necessary in connection with the inclusion of new provisions. The RID Committee of Experts also subsequently adopted these additional amendments.

WP.15 was unable to resolve some of the issues and these were forwarded to the Joint Meeting, which will deal with them at its session in spring 2010. These few unresolved issues will be adopted by WP.15 and the RID Committee of Experts in May 2010 so that they can also be included in the 2011 editions of RID, ADR and ADN.

### **Training certificate for the drivers of vehicles for the carriage of dangerous goods**

Various amendments to the provisions in Chapter 8.2 of ADR concerning the training of the vehicle crew had already been decided at the 86<sup>th</sup> session of WP.15 (Geneva, 5 – 8 May 2009). In the process, the question of the period of validity of the training certificate in the various possible cases was left open. This issue was to be resolved by a correspondence working group led by the representative of Ireland (see Bulletin 2/2009, p. 15-16).

WP.15 adopted the principle that extending the scope of the training certificate by attending specialization training courses and passing specialization training examinations does not entail any change to the period of validity of existing training certificates. Thus the new training certificate to be issued confirming the successful completion of special training examinations must have the same date of expiry as the original certificate for the basic training.

WP.15 agreed to adapt the duration of the refresher training and for individual courses, to prescribe half the duration that is required for the corresponding initial basic course or the initial specialization course. It was also agreed to include the opportunity for vehicle drivers to attend an initial training course and to take an initial training examination instead of a refresher training course and refresher training examination.

At the request of the United Kingdom, a transitional provision was included to allow the continued use of the previous model of the training certificate until 31 December 2012. These training certificates may also continue to be used until their five year period of validity expires.

Discussions on other amendments to Chapter 8.2 proposed by the representative of Sweden in an informal document were deferred to the next meeting.

### **Instructions in writing**

In a document, the representative of the European Chemical Industry Council (CEFIC) proposed various amendments to the model of the instructions in writing. The aim of these was mainly to achieve a complete description of the hazards of each of the classes and to include the markings for substances hazardous to the environment and substances carried at elevated temperature.

These proposed amendments were adopted with various modifications. However, several delegations regretted the fact that the instructions in writing would again be amended only a few months after they had entered into force and stressed that it would not be desirable to amend them on a regular basis.

### **Tunnel restrictions**

In an informal document, several European associations pointed out that the transitional provision for the application of national requirements for tunnel restrictions expired on 31 December 2009. According to ADR 1.9.5.3.7, the ADR Contracting Parties must notify the Secretariat of UNECE of tunnel restrictions in accordance with 1.9.5 so that this information can be made publicly available on the UNECE website. So far however, only a few restrictions had been made public under [http://www.unece.org/trans/danger/publi/adr/country-info\\_e.htm](http://www.unece.org/trans/danger/publi/adr/country-info_e.htm).

The Member States were reminded to provide the Secretariat with this information, which is extremely important for the carriage of dangerous goods by road, as soon as possible, so that it can be made publicly available on the UNECE website before 31 December 2009.

### **Next meeting**

The 88<sup>th</sup> session of WP.15 will be held from 3 to 7 May 2010 in Geneva.

(Translation)

## **RID Committee of Experts**

47<sup>th</sup> Session

*Sofia, 16 – 20 November 2009*

The 47<sup>th</sup> session of the RID Committee of Experts was held from 16 to 20 November 2009 in Sofia under the chairmanship of Mr Helmut Rein (Germany). 17 of the 43 Member States of OTIF were represented.

As at the 86<sup>th</sup> session of WP.15, which was held in Geneva two weeks previously, the main topics were harmonisation with the 16<sup>th</sup> edition of the UN Recommendations on the Transport of Dangerous Goods and the adoption of other amendments adopted by the RID/ADR/ADN Joint Meeting in 2008 and 2009.

### **Transitional provisions**

The RID Committee of Experts decided to bring the amendments into force on 1 January 2011, with a general transitional period of six months.

In connection with the deletion of transitional provisions that have expired, the RID Committee of Experts again noted that in many transitional provisions, it was not clear which construction provisions could be derogated from. This lack of clarity meant that these tanks did not even have to meet marking provisions introduced at a later date, while for other tanks, marking had subsequently to be affixed at the time of the next inspection. The RID Committee of Experts therefore asked the Joint Meeting's tank working group to deal with this issue.

The RID Committee of Experts' working group on tank and vehicle technology was also asked to check whether the transitional provisions in 1.6.3.1, 1.6.3.3 and 1.6.3.4, which apply to tank-wagons built before 1 January 1978 or before 1 January 1988, were still necessary.

### **Marking in piggyback transport**

A proposal for simplified markings in piggyback transport prepared by an informal working group was submitted to the last session of the RID Committee of Experts. The RID Committee of Experts took a decision of principle to dispense with orange-coloured markings and placards on carrying wagons in piggyback transport when the transport units or trailers being carried bear orange-coloured plates and placards in accordance with the provisions of ADR, including in cases where ADR only prescribes a marking on the front and back of the transport unit (see Bulletin 4/2008, p. 42).

Trailers carrying packages only were considered an exception, as once they become separated from the traction unit, they only bear an orange-coloured marking on the back and no placards on the sides. For this situation, an orange-coloured marking was required on the front of the trailer.

A proposal from Belgium also to require this orange-coloured marking on the front of tank trailers or trailers for carriage in bulk was rejected, because in this type of transport, the sides of the trailers bear placards in every case.

In connection with this, the RID Committee of Experts noted a proposal from Sweden for WP.15 to require the orange-coloured marking on the front of parked trailers (trailers not attached to a motor vehicle), as the markings on the sides can be obscured by other trailers parked nearby.

### **Introducing instructions in writing into RID**

A decision of principle had already been taken at the last session of the RID Committee of Experts to include instructions in writing for the locomotive driver in RID on the basis of the rules in ADR and ADN (see Bulletin 4/2008, p. 42). Germany had taken on the task of revising the original proposal, taking particular care to ensure that there was no conflict with Directive 2007/59/EC (on the certification of train drivers operating locomotives and trains on the railway system in the Community) or the Technical Specifications for Interoperability for the subsystem "Operation and Traffic Management" for the conventional trans-European rail system.

The RID Committee of Experts again examined this revised proposal in detail, paying particular attention to ensuring that the terminology used was aligned as far as possible with the relevant European directives.

The amendments to the ADR model of the instructions in writing proposed by the European Chemical Industry Council (CEFIC) at the last session of WP.15 were also taken into account.

Pages 2 and 3 in particular of the four-page RID model of the instructions in writing (hazard characteristics of dangerous goods) are now virtually congruent with the equivalent pages of the ADR model, except that the locomotive driver does not need to take any measures to protect the environment or drainage system.

## Derailment detection

The 45<sup>th</sup> session of the RID Committee of Experts (Zagreb, 19 – 23 November 2007) decided provisionally to include in the 2011 edition of RID provisions for fitting derailment detectors to tank-wagons for the carriage of certain very dangerous substances. This compromise concerning the time frame had become necessary because the European Commission objected that with regard to vehicle technology requirements, the RID Committee of Experts was not solely competent. It was agreed at that time to use the interim period to set up an impact assessment study by the European Railway Agency (ERA) and to carry out field trials in Sweden and Finland on how derailment detectors function at low ambient temperatures (see Bulletin 4/2007, p. 65-71).

This impact assessment by ERA was forwarded to the European Commission's Railway Interoperability and Safety Committee, with a recommendation not to accept this equipment requirement. This then led to a joint meeting of the European Commission's Transport of Dangerous Goods Regulatory Committee and the Railway Interoperability and Safety Committee and to a Community position, to the effect that the provisions for the detection of derailments should only be included in the 2013 edition and in the meantime, a range of further studies should be carried out. Among other things, these studies should look at measures to prevent derailments, the impact of false alarms and automatic braking in tunnels or on bridges and market research on products that meet the planned provisions. These additional measures should ensure that compatibility is maintained between RID and the Technical Specifications for Interoperability.

The RID Committee of Experts reinforced its aim of including provisions for the detection of derailments in RID, but agreed to defer the entry into force of the provisions. The working group on tank and vehicle technology was asked to examine whether the detection of derailments should also be prescribed for other dangerous substances in order to increase the benefit for the railway infrastructure (less damage to assets, shorter line closures, etc.).

## Next session

The 49<sup>th</sup> session of the RID Committee of Experts will be held in Bern on 19 and 20 May 2010 to adopt any last-minute amendments for the 2011 edition of RID. (Translation)

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

### 36<sup>th</sup> Session

*Geneva, 30 November - 9 December 2009*

The 36<sup>th</sup> session of the UN Sub-Committee of Experts on the Transport of Dangerous Goods was held from 30 November to 9 December 2009 under the chairmanship of Mr C. Pfauvadel (France). 22 States and 30 non-governmental organisations were represented. This was the second session of the 2009/2010 biennium, whose decisions in the context of harmonisation will be included in the 2013 edition of RID/ADR/ADN.

### Exempted quantities

The International Council of Chemical Associations (ICCA) observed that for the carriage of dangerous goods packed in exempted quantities, chlorosilanes of Class 4.3 were assigned code E0, but chlorosilanes of classes 3 and 8 were assigned code E2 and chlorosilanes of Class 6.1 were assigned code E4. On a proposal from ICCA, the UN Sub-Committee of Experts decided to assign code E0 to all chlorosilanes and hence to prohibit carriage in exempted quantities, as is also already the case for carriage in limited quantities.

### Compatibility of gases with the materials of pressure receptacles

The representative of the United Kingdom pointed out a possible conflict between standards ISO 11114-1:1997 and ISO 11114-2:2000 referred to in packing instruction P 200 and the provisions of the UN Recommendations. Although these standards on the use of aluminium pressure receptacles are only guidelines, special packing provision "a" in the UN Recommendations says that such pressure receptacles may not be used for certain gases.

The UN Sub-Committee of Experts adopted the United Kingdom's proposal to delete the reference to the above-mentioned standards in connection with the materials compatibility. The assignment of special packing provision "a" to other gases in Tables 2 and 3 in packing instruction P 200 was placed in square brackets for the time being, because standard ISO 11114-1 was currently being revised and it had already been established that other gases were also incompatible with aluminium alloys.



### Instructions for portable tanks

On a proposal from the representative of the United States of America, the instructions for portable tanks for liquids of Class 4.3 were amended in those cases where they were not assigned in accordance with the Guiding Principles for the Development of the UN Model Regulations. The industry representatives were asked to check whether these amendments made transitional provisions necessary.

In an informal document, the representative of the USA also pointed out that for various substances of Class 4.3 (UN 1389, 1392, 1411, 1420, 1421 and 1928), an additional hazard can arise in that the flammable gases that are generated in contact with water can ignite as a result of the heat of the reaction with water. While these substances may be carried in tanks in Europe and North America, carriage in portable tanks is currently prohibited. Some experts were of the view that this prohibition on carriage in tanks should be maintained, while others thought these substances could be carried safely in portable tanks T 21. The representative of the USA would submit an official proposal to the next meeting.

### Special provision 274

In the previous biennium, the European Chemical Industry Council (CEFIC) had made great efforts to harmonise the assignment of special provision 274 worldwide (indicating the technical name in the transport document). In a recent check, it had been noticed that only for two UN numbers had it not yet been possible to achieve this harmonisation. The UN Sub-Committee of Experts adopted the proposal to add special provision 274 to UN No. 1707 and to delete it from UN No. 2571, so as to respect the criterion under which provision 274 was assigned to the n.o.s. entries under Class 6.1. This would be taken into account for the 2011 edition of RID/ADR/ADN.

The International Council of Chemical Associations (ICCA) was asked to draft these criteria for inclusion in the Guiding Principles for the Development of the UN Model Regulations.

### Classification of nitroglycerin solution in alcohol

It was pointed out that the concentration values for nitroglycerin in the entries for UN No. 0144 in Class 1 (more than 1% but not more than 10% nitroglycerin) and UN No. 3064 in Class 3 (more than 1% but not more than 5% nitroglycerin) overlap, making it unclear which entry nitroglycerin solutions in alcohol with more

than 1% and not more than 5% nitroglycerin have to be assigned to. To resolve the problem, the meeting was guided by RID/ADR/ADN special provision 500, which is assigned to UN No. 0144 and which says that assignment as a substance of Class 3 (UN 3064) is possible if the provisions of packing instruction P 300 are observed. A corresponding special provision referring to UN No. 0144 was assigned to UN No. 3064.

### Classification of E-bikes

At the last session, the representative of Germany had already raised the question of which UN No. electrically powered bicycles should be assigned to. In principle, several UN Nos. could be chosen, as follows:

UN 3171 Battery-powered vehicle or equipment

UN 3091 Lithium metal batteries contained in equipment or packed with equipment (including lithium alloy batteries)

UN 3481 Lithium ion batteries contained in equipment or packed with equipment (including lithium ion polymer batteries).

Based on special provision 240, which was assigned to UN No. 3171 in the UN Model Regulations and which make specific mention of battery operated mobility aids, on the one hand, classification to UN No. 3171 would suggest itself, but the result of this would be that these bikes would not be subject to the provisions of RID/ADR/ADN, as UN No. 3171 is basically exempt from those regulations. On the other hand, the question arose of whether UN Nos. 3091 and 3481 were not more specific entries.

As a separate, specific regime had been created for lithium batteries by creating UN Nos. for this battery type (3090, 3091, 3480 and 3481), Germany's view was that special provision 240 should be amended in such a way that only vehicles and equipment containing wet batteries and sodium batteries should be assigned to UN No. 3171.

An ad hoc working group set up to discuss this issue followed Germany's proposal in principle, but was of the view that special provision 240 should only be restricted to wet batteries and sodium batteries in relation to equipment and that it should be clearly seen from these examples that only electrically powered passenger vehicles are considered as vehicles. In addition, in special provision 240, UN Nos. 3091 and 3481 should be referred to in relation to equipment powered by lithium batteries. In return, a special

provision should be included for UN Nos. 3091 and 3481 to say that vehicles powered by lithium metal or lithium ion batteries must be assigned to UN No. 3171. As a result, packing instruction P 903 would also have to be amended to allow large equipment that cannot be packed in UN tested packagings to be carried unpacked. However, as the terms “vehicle” and “large equipment” needed to be clarified, these decisions were placed in square brackets for the time being.

### Reference to ISO standard 10460

At the request of the International Organization for Standardization (ISO), 6.2.2.4 would in future refer to ISO standard 10460:2005, although the repairing of weld seams described in paragraph 12.1 of this standard would not be permitted. This constraint had become necessary because referring to this standard had been rejected at the last session of the UN Sub-Committee of Experts.

### Marking for environmentally hazardous substances

For environmentally hazardous substances of UN Nos. 3077 and 3082 assigned to Class 9, the environmentally hazardous substances mark (dead fish and tree) also has to be affixed in addition to the danger label for Class 9. Although the symbol for environmentally hazardous substances is always described in the provisions as a mark, users considered it as a danger label and in practice, it was also manufactured as such. To rule out a false interpretation to the effect that the environmentally hazardous substances mark replaced the Class 9 danger label, the representative of the International Air Transport Association (IATA) proposed that a note be included in 5.2.1.6 (RID/ADR/ADN 5.2.1.8) referring to the labelling provisions of 5.2.2 which also have to be observed. The proposal by Sweden to require that the environmentally hazardous substances mark and the Class 9 danger label be located adjacent to one another was considered excessive.

### “De minimis” quantities of dangerous goods

At the last session of the UN Sub-Committee of Experts, at the suggestion of the representative of the USA, an informal working group was set up to discuss the inclusion of provisions for packages containing minute (“de minimis”) quantities of dangerous goods. The background to the discussion was that minute quantities of dangerous goods packed in good quality packagings pose a negligible risk in transport. Currently the Model Regulations did not set out any quantity threshold below which certain substances meeting the classification criteria of Part 2 are considered to be non-dangerous in

transport. As such, under a strict application of the classification criteria, even a small fraction of a gram of a flammable solid, for example, would be considered a dangerous substance. In practice however, were a fire to occur during transport, the packaging for the material itself would contain far more potential energy than such a small quantity of the substance.

The UN Sub-Committee of Experts agreed to include exemptions for minute quantities of dangerous goods under the following conditions:

- the new provisions would be integrated into Chapter 3.5 (dangerous goods packed in excepted quantities);
- the new, further-reaching exemptions could be applied to dangerous goods to which the code E1, E2, E4 or E5 is currently assigned. This would therefore rule out the application of these exemptions to substances assigned to packing group I in classes 3, 4.1, 4.2, 4.3, 5.1, 6.1 and 8;
- it was not necessary to limit the number of packages in any means of transport, as was the case for the dangerous goods packed in excepted quantities (see 3.5.5), since these packages were not identified by any marking or labelling, and it was thus impossible to check them.

### 14<sup>th</sup> Session of the IMO Sub-Committee on Goods, Solid Cargoes and Containers (DSC)

The chair of the IMO DSC Sub-Committee informed the UN Sub-Committee of Experts of various decisions in connection with harmonisation with the 16<sup>th</sup> edition of the UN Recommendations on the Transport of Dangerous Goods which would have repercussions for the UN Model Regulations. The UN Sub-Committee of Experts adopted the amendments proposed by the IMO.

### Criteria to assign packing groups to corrosive substances

Paragraph 2.8.2.5 of the UN Model Regulations (RID/ADR/ADN 2.2.8.1.6) contained the criteria for assigning packing groups to corrosive substances of Class 8. On a proposal from Spain, the UN Sub-Committee of Experts decided to summarise the criteria of 2.8.2.5 in a Table, following the example of 2.3.2.6 of the UN Model Regulations (RID/ADR/ADN 2.2.3.1.3).

**Next session**

The 37<sup>th</sup> session of the UN Sub-Committee of Experts will be held in the period between 21 and 30 June 2010. (Translation)

## Other legal matters

**Rail Protocol****Preparatory Commission****3<sup>rd</sup> Session**

*Berne, 1/2 October 2009*

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 third session on 1/2 October 2009 at the headquarters of OTIF in Berne. The meeting was jointly chaired by Finland and the United States of America.

The main purpose of the meeting was to provide Members of the Commission with detailed information on developments since the second session, especially the failed negotiations on the contract with the successful bidder for the tender for the International Rail Registry, and to clarify the further course of action. With a view to the possible re-tendering of the setting-up and operation of the Registry, the Secretariats had drafted the Request for proposal (RFP), which differed considerably from the previous version in terms of structure and content. This was welcomed by the Commission, which also decided that an information day for potential bidders should be organised jointly by both Chairmen, the Secretariats and the Rail Working Group (RWG) to be held in the first quarter of 2010. The new tender would be issued if there was sufficient interest from bidders at this event. The EU's forthcoming accession to the Luxembourg Protocol could also play a role. To prepare the event, it is anticipated that an information paper will be drafted to explain the Cape Town Convention (CTC), the Luxembourg Protocol and the tender.

The Commission also looked at how to develop the Registry Rules and, in connection with this, the still unresolved problem of how to identify clearly the railway material to be registered.

As a further step, it is planned to set up a working group to deal with the formation of the Supervisory Authority for the Registry and to draft its Rules of Procedure. In addition, issues surrounding the legal personality, immunities and the pros and cons of locating the Registry in Switzerland or Luxembourg should be clarified.

To take account of the difficulties in achieving the quorum for the Commission's meetings, which arise as a result of the increasing number of Commission members following numerous accessions to the CTC, the Commission decided to amend its Rules of Procedure to establish a fixed quorum and to introduce the possibility of voting in writing. (Translation)

## Co-operation with International Organisations and Associations

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

**Working Party on Rail Transport****63<sup>rd</sup> Session**

*Geneva, 18-20 November 2009*

The Working Party on Rail Transport met in Geneva from 18 to 20 November 2009 for its 63<sup>rd</sup> session, which was chaired by Mr Kulesza (Poland). The Vice-Chairman was Mr Groot (Netherlands).

Delegates from 12 of the 56 UN/ECE Member States took part in the first day of this session of the Working Party. Representatives from the European Commission, the TER project, OSJD, CIT, UIC and CER also took part in the session. OTIF was also represented on the first day.

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 and facilitation of international rail transport.

The Chairman of the Task Force on **Rail Security** set up by the Working Party at its 2008 session (see Bulletin

4/2008, p. 48) presented the report and recommendations<sup>1</sup> prepared by the Task Force on this subject. In particular, it emerges from this report that:

- The Task Force preferred a broad definition of security, which also includes the prevention of ordinary criminal activities, as the measures are the same as those implemented to act against terrorism.
- It is useful to adopt an international approach to the question. However, it would be desirable for this approach not to be inflexible or uniform. Security is an important issue, which is also the subject of national policies involving not only the Ministries of Transport, but also other Ministries, such as the Ministries of Justice, for example.
- For the time being, mandatory rules and standards at UN/ECE level are neither desirable nor necessary, as the security risks differ greatly from one country to another.
- Instead, a suitable architecture for a toolbox of guidelines and good practices should be developed by setting up a technical working group, whose terms of reference could be submitted to the UN/ECE Inland Transport Committee at its session in February 2010.

The Working Party expressed its appreciation to the Task Force on Rail Security for the timely fulfilment of its mandate and took note of the recommendations proposed in its report, including the formation of a new technical working group of government and industry representatives outside the UN/ECE.

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 of the 1982 Convention on the Harmonization of Frontier Controls of Goods, progress on the draft CIM/SMGS consignment note and the report submitted jointly by OTIF and OSJD on activities concerning interoperability and harmonisation of the different rail transport systems. The Working Party expressed its full support for all initiatives that aim to unify railway law in the pan-European region and decided to set up an informal group of experts that would prepare a position paper on this issue for its next session in 2010. The group would also be tasked to prepare, in cooperation with the OSCE

and TER secretariat, a workshop on the principal Euro-Asian rail transport issues that would take place during the session of the Working Party in 2010. Representatives of UN/ECE Member States, OTIF, OSJD, the European Community and railway industry organisations (CIT and UIC in particular) would be invited to participate in the work of the informal group of experts.

(Translation)

## **Working Party on Intermodal Transport and Logistics**

52<sup>nd</sup> Session

*Geneva, 12/13 October 2009*

The Working Party on Intermodal Transport and Logistics (WP.24) held its 52<sup>nd</sup> session in Geneva on 12 and 13 October 2009. The meeting was chaired by Mr Viardot (France) and the deputy chairman was Mr Maillard (Belgium).

WP.24 examined the effects of the financial and economic crisis on intermodal transport on the basis of a report prepared by the Secretariat (see Bulletin 1/2009, p. 8). It noted that in the first half of 2009, intermodal transport in Europe had decreased in the order of 20 to 25% for unaccompanied and up to 15% for accompanied traffic. The Working Party also noted that European Governments, with the exception of Switzerland and France, had not yet decided to provide specific short-term fiscal, financial or regulatory support measures allowing intermodal transport operators to counter the crisis. It was felt that the transport industry should use the crisis to adjust to new trends and demands, streamline internal procedures, enhance cooperation and improve quality of services.

Among the other items on the agenda of this session of WP.24, OTIF has a particular interest in the issue of the **reconciliation and harmonisation of civil liability regimes**. The discussion on the new **Rotterdam Rules** was very lively. The discussion focussed on the possible impact and advantages of the new Rotterdam Rules, particularly for European intermodal transport. WP.24 decided to continue, in cooperation with the European Commission, its consideration of civil liability regimes to increase the competitiveness of intermodal transport at the pan-European level.

Lastly, WP.24 discussed its role, its main activities and its operation in the future, with a view to increasing the

<sup>1</sup> <http://www.unece.org/trans/doc/2009/sc2/ECE-TRANS-SC2-63-inf01e.pdf>

participation of the countries of Eastern Europe, the Caucasus and Central Asia. It decided to focus discussions at each session of WP.24 on specific themes, moderated by a lead country or organisation, and to arrange back-to-back sessions with other UN/ECE Working Parties, such as the Working Party on Rail Transport, in order to reap synergies. Increased participation by the countries of Eastern Europe, the Caucasus and Central Asia would also be achieved by organising sessions of WP.24, round-tables and seminars away from the UN/ECE headquarters in Geneva.

(Translation)

## **Economic Cooperation Organization (ECO)**

### **Transit Transport Coordination Council**

4<sup>th</sup> Session

*Astana, 6 November 2009*

In view of the importance of transport for the development of regional and international trade relations, the Member States of ECO (Economic Cooperation Organization)<sup>1</sup> have concluded an ECO “Transit Transport Framework Agreement” (TTFA) relating to all the transport modes, including the railways. To implement this Agreement, the Transit Transport Coordination Council (TTCC) was set up. This will be convened every year. A representative of OTIF took part in the 4<sup>th</sup> session of this body, which was immediately preceded by meetings of three supporting bodies (Road Committee, Transit Trade Committee and Railway Committee).

At this session, the following issues were among those discussed: preparation of a regional programme to implement the TTFA (including training measures in cooperation with other international organisations), financial matters and accession to the TTFA and to other international agreements that are of importance for transit transport.

In connection with a project for a new rail link between Turkey, Iran and Pakistan, attention turned to COTIF. As Turkey and Iran apply COTIF, ECO advocates Pakistan’s accession to COTIF, so that consignments travelling on this rail route can be processed under a uniform legal regime. The representative of OTIF

pointed out that the flexible COTIF system allows interested States to apply all or only some of the seven COTIF Appendices, depending on requirements.

The first trial run of the container train on the Islamabad–Tehran–Istanbul route began on 14 August 2009. It is also planned to run a trial train in the opposite direction. After that, regular traffic should follow in 2010. In addition, ECO demonstration trains are planned on the Istanbul–Almaty route and the Bandar Abbas–Almaty route. For CIM/SMGS traffic, the ECO Secretariat recommends using the CIM/SMGS consignment note and wishes to commit itself to achieving further harmonisation of both systems of transport law.

In this context, it will be recalled that at the Workshop on “Rail Transport between Europe and Asia” held on 9/10 June 2009 in Istanbul, a Memorandum of Understanding between OTIF and ECO was signed (see Bulletin 2/2009, p. 24)<sup>2</sup>.

(Translation)

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

### **Workshop on Integrated Approach to Supply Chain Security for the Mediterranean Region**

*Malta, 16-17 December 2009*

For OTIF, the deputy Secretary General took part in this event, which was attended by around 60 participants, mainly from the countries concerned and from international organisations with an interest in the subject. The deputy Secretary General gave a presentation on security in the carriage of dangerous goods by land. It emerged particularly from the workshop’s findings, at which the subject of supply chain security was hardly dealt with specifically for the region, that the term “supply chain”, which did not have a clear legal definition, is often conceived too narrowly and that the vulnerability of the economic system, from production to use or disposal of the product, must be taken into account. It must also not be forgotten that attacks on security are increasingly carried out in cyberspace. Expenditure to secure the supply chain should not automatically be seen as additional costs, it can also be considered as a profitable investment. However, economic aspects and above all restrictions on civil liberties require an approach based on risk

1 <http://www.ecosecretariat.org>

2 See [www.otif.org](http://www.otif.org), News

assessment. Bearing in mind the often supraregional character of supply chains, international co-operation in both the public and private sector is essential, although with regard to regulation, global standards are to be preferred above regional standards. Technological security applications must be promoted, although they are not a panacea, as they can also have a sensitive effect on the supply chain. A striking example of this, which was referred to on several occasions, was the scanning (required by 2012 under a national law) of 100% of all containers destined for the USA. Little is happening at international level in terms of adequate international measures in the area of sanctions or incentives to take account of the different motivations for breaching security. In the final analysis, global expenditure to prevent security attacks has already achieved one of the terrorists' aims, i.e. to damage the economy. For this reason, the measures should focus on strengthening the resilience and enabling rapid recovery of the systems.

(Translation)

## Case Law

### Cour d'Appel de Rouen

#### Ruling of 17 June 2008 <sup>1</sup>

**The behaviour of a passenger who released the carriage door by breaking the seals to alight at a station where the train he had taken did not stop constitutes a very serious fault which contributed to the damage. However, this behaviour was not totally unforeseeable for the carrier. Consequently, the carrier was only able to be relieved of liability 75%.**

Cf. Article 1384, para. 1 of the French Civil Code (Code civil français) <sup>2</sup>

<sup>1</sup> The case was referred back to this court after being quashed.

<sup>2</sup> For comparison, see other cases where the passenger was at fault, judged on the basis of liability in tort or quasi-tort, published in Bulletin 4/2001 (Austria) (German and French only), 3/2006, p. 50 and 2/2009, p. 24 (France) as well as other cases judged on the basis of contractual liability, published in Bulletin 4/2005, p. 77 (Denmark) and 2/2008, p. 24, 25 (France). If it had been a case of international transport subject to the CIV regime, cf. Article 26 § 1 (basis of liability) and § 2 of this Article of CIV (grounds for relief; however, the element of unforeseeability is lacking both in the definition of unavoidable circumstances and in relation to the fault of the passenger).

With regard to the practice of the French Court of Appeal, which interprets *force majeure* and fault of the passenger "very restrictively, with the consequence that SNCF is still liable for the grossest passenger misconduct (train surfing, for example [moving

### Summary:

A passenger who took a non-stop direct train from Rouen to Paris fell onto the railway line and was killed after unlocking a door at the station where he intended getting off. His body was discovered a few hundred metres from this station, on the line, without a ticket <sup>3</sup>. The victim's mother, sister and brother brought an action against SNCF to have it declared entirely liable for his death and to obtain compensation for their loss.

In the absence of proof of the existence of a validly stamped ticket, contractual liability on the part of the carrier cannot be claimed.

The system for closing carriage doors is placed under the supervision of SNCF. The fact that a passenger operates this system does not give him control and management over it, which SNCF continues to assume. Consequently, as the opening of the train door had a causal role in the occurrence of the accident, SNCF is liable (in tort) on the basis of Article 1384, para. 1 of the Civil Code.

By breaking the seals which kept the carriage's two safety handles in place and by operating these handles, as well as by opening the train door, the passenger committed a very serious fault of carelessness which contributed to the damage. However, this passenger's behaviour was not entirely unforeseeable for SNCF insofar as putting in place a closure system that could be unlocked in an emergency demonstrates that SNCF had foreseen that a passenger might attempt to unlock the device and open the doors, even at high speeds. As a result, for SNCF the fault on the part of the victim was not of the nature of *force majeure*, and was not inevitable or unforeseeable, and does not completely relieve it from liability. However, the very serious fault of carelessness on the part of the victim partly relieves SNCF (75%).

(Direct communication, extract from: JurisData n° 2008-001795, LexisNexis SA)

(Translation)

along on the running board of a moving train after having deliberately forced open the automatic door locking mechanism]), considered in the light of the (then imminent) application of CIV liability law to national carriage by rail by virtue of Regulation (EC) No. 1371/2007, see Th. Leimgruber, "Sweeping changes in liability law for railways" in CIT-Info 4/2009, p. 6 (<http://www.cit-rail.org>).

<sup>3</sup> The toxicological analysis revealed that the victim had consumed a significant amount of cannabis shortly before boarding the train. However, the Court did not take this factor into account when considering the reasons for the ruling.

## 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, 24<sup>th</sup> supplement (August 2009) and 25<sup>th</sup> supplement (October 2009).

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 (most recently, see Bulletin 4/2008, p. 56). 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, although it also contains provisions of European and international law.

The 24<sup>th</sup> supplement contains numerous railway regulations of different types or updates of these regulations, such as rules relating to responsibilities, and regulations for staff from administrative law, provisions of competition law (awarding of public contracts) and two sets of guidelines (recommendations) published by the Association of German Transport Companies (VDV), one concerning the railway driver's licence and the other concerning route knowledge.

It is particularly worth mentioning that together with a version of the (German) Regulation on the Interoperability of the trans-European Rail System amended in 2008, which implements the EC Directives and decisions of the European Commission concerning various subsystems, the text also now includes explanations on this Regulation by Yorck Schäling.

Looking through the 25<sup>th</sup> supplement, two very extensive texts can be found. In addition to the new version of the General Railway Act, there is also a new version of the accompanying explanatory notes by Urs Kramer (463 pages). The newly included explanatory notes on the Civil Liability Act by the well-known author of the separate commentary on this Act, Werner Filthaut, accompanied by numerous practical examples and references to case law, provide the railway lawyer with a particularly valuable addition (211 pages). These explanatory notes also cover Regulation (EC) No. 1371/2007 on Rail Passengers' Rights and Obligations, which entered into force in Germany on 29 July 2009, together with other provisions that were aligned in

connection with this Regulation. Thus the CIV Uniform Rules (insofar as they have been taken over as an Appendix to the EC Regulation), which also since apply to domestic transport in Germany, are also covered in the commentary.

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.

(Translation)