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by Rail

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Kunz, Wolfgang (editor), Eisenbahnrecht (Railway Law): Systematic collection with explanations of the German, European and international requirements, loose-leaf work with supplements, 26th supplement (April 2010), p. 50

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Official communications from the Secretariat of OTIF

Accession to COTIF

Montenegro

On 21 December 2009, the Government of Montenegro made an application for accession to COTIF. In his capacity as Depository of the Convention, the Secretary General notified the Member States of OTIF of this application for accession (see Bulletin 4/2009, p. 49). The period in which the Member States were able to lodge objections in accordance with Article 37 § 3 of COTIF expired on 20 April 2010. No objections were lodged.

This application for accession, which contained no reservations or declarations, is therefore accepted as legally binding.

In accordance with Article 37 § 3 of COTIF, the accession will take effect on 1 July 2010. COTIF and its Appendices will enter into force for Montenegro on that date. Montenegro will become the 45th 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 COTIF¹, including the reservations and declarations lodged by the Member States, and the texts thereof², is published on OTIF's website (www.otif.org, under "Publications").

Accession to OTIF

Jordan

On 4 February 2010, the Government of the Hashemite Kingdom of Jordan made an application for accession to OTIF as an Associate Member (Article 39 of COTIF). Article 37 §§ 2 to 5 of COTIF is applicable to the accession procedure accordingly. The Secretary General brought this application for accession to the attention of the Member States (see Bulletin 1/2010, p. 1).

The period in which the Member States were able to lodge objections expired on 12 May 2010. No objections were lodged. This application for accession is therefore accepted. In accordance with Article 37 § 3 of COTIF, the accession will take effect on 1 August 2010.

1 http://www.otif.org/html/e/pub_cotif_03_06_1999.php - OTIF - Publications – Convention – COTIF (3.6.1999) – Depository (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 - OTIF - Publications – Convention – COTIF (3.6.1999) – Declarations and reservations

Work of OTIF'S General Organs

Administrative Committee

113th Session

Berne, 2/3 June 2010

For its 113th session, the Administrative Committee met in Berne on 2 and 3 June 2010 under the chairmanship of Mr Petr Stejskal (Czech Republic).

In the financial area, the Committee approved the 2009 Financial Management Report. On the basis of the approved accounts, the Committee set the Member States' definitive contributions for 2009 at SFr. 3,057,369.20. It also noted OTIF's general financial situation, which it judged to be satisfactory, and the situation with regard to investments.

The Committee also approved the 2009 Annual Report.

The Committee also approved an amendment to Article 27 (Auditing of the Organisation's accounts) of the Finance and Accounts Rules to take account of the decisions taken by the Revision Committee in 2009 (see Bulletin 2/2009, p. 14 and Bulletin 1/2010, p. 2-4).

In addition, the Committee discussed at length developments in the Organisation's investments and the course to be followed with regard to the reserve fund and investments, as well as the resolution of outstanding legal and practical problems between the European Commission and OTIF.

Lastly, it should be noted that for the second consecutive time, Iran, which was designated as a member of the Administrative Committee by the 9th General Assembly (see Bulletin 3/2009, p. 32), was not present or represented at a session of the Committee. As a consequence, by virtue of Article 15 § 3 of COTIF, Iran's deputy member, Syria, will exercise Iran's functions in the Committee for the remainder of the current period (1 October 2009 – 30 September 2012).

The 114th session of the Administrative Committee will be held on 24 and 25 November 2010.
(Translation)

Legal Matters concerning COTIF

CIT/OSJD Project to make CIM and SMGS legally interoperable

On behalf of OTIF, the deputy Secretary General took part in the meeting of the CIM/SMGS Steering and Coordinators Group organised by the International Rail Transport Committee on 22/23 June 2010 in Vienna. The international forwarder Express-Interfracht acted as host. This company is active in the field of rail freight transport, particularly in the States of the former Soviet Union and the Balkans.

The progress report on implementing the CIM/SMGS consignment note, which formed a key point of the discussions, provided a welcome overall view. However, to be able to make a better statistical comparison of developments in the various relations, the CIT Secretariat would draft a standard report form showing the ratio of the consignments carried using the CIM/SMGS consignment note to the number of all consignments for which this form of carriage would have been possible, distinguishing between consignments in wagons and containers. It was emphasised that an important advantage of this form of transport, which needs to be communicated, was the 40 minutes that it can save. Software products developed by private service providers for such traffic bring other advantages in terms of facilitating transport.

With regard to the question of whether or when the possibility that now exists of using Chinese when issuing the form for the CIM/SMGS consignment note will really lead to the CIM/SMGS consignment note being used in traffic with China, there were different opinions. Russian Railways in particular reported some very positive signals.

The representative of OTIF recalled that the time-saving advantages could be nullified if they were not accompanied by improvements in official customs clearance procedures. The new Annex 9¹ to the Harmonization Convention², which is expected to enter into force at the end of 2011, could provide a new impetus for this. Implementation of this Annex will be discussed in OSJD's Commission 1 and within OTIF at the first meeting of the Rail Facilitation Committee to be held in November 2010.

1 <http://www.unece.org/trans/bcf/ac3/documents/ECE-TRANS-WP30-AC3-2010-1e.pdf>

2 <http://www.unece.org/trans/conventn/harmonie.pdf>

The question of extending application of the CIM/SMGS consignment note to ferries from Bulgaria, Turkey and the Ukraine on the Black Sea formed a key point. The representative of OTIF supported including the lines concerned in the list of maritime and inland waterway services in accordance with Article 24 § 1 (b) of COTIF, but pointed out that in the Ukraine's case, it would also be necessary to make a section of line approaching the port subject to the regulations (partial withdrawal of the reservation in accordance with Article 1 § 6 of CIM).

With regard to the electronic CIM/SMGS consignment note, further proposals from the users of SMGS are only expected for the next meeting.

In order further to improve cooperation and coordination between CIT and OSJD, particularly in continuing to develop the CIM/SMGS consignment note manual, CIT plans to strengthen its Secretariat's capacity in terms of the Russian language.

With regard to the draft CIM/SMGS Special Conditions of Carriage, it was decided to coordinate further work with the activities of UNECE (Group of Experts on Unified Railway Law) and OSCE, particularly by exchanging the relevant documents.
(Translation)

Revision of COTIF

On 21 December 2009, the Secretary General gave notification of the amendments to Articles 9 and 27 of COTIF and to Appendices B (CIM), E (CUI), F (APTU) and G (ATMF) to COTIF adopted by the Revision Committee (see Bulletin 2/2009, p. 14) and approved by the General Assembly (see Bulletin 3/2009, p. 31-33).

In accordance with Article 35 §§ 2 and 3 of COTIF, these amendments will enter into force on 1 December 2010.

The amendments to COTIF, the CIM UR and the CUI UR are published below, along with the Explanatory Reports concerning these amendments. The amendments to the APTU UR and the ATMF UR will be published in a future edition of the Bulletin.
(Translation)

Uniform Rules concerning the Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic

(APTU - Appendix F to the Convention)

Article 1 Scope

These Uniform Rules lay down, for railway material intended to be used in international traffic, the procedure for the validation of technical standards and the adoption of Uniform Technical Prescriptions (UTP).

Article 2 Definitions

For the purposes of these Uniform Rules, their Annex(es) and the UTP, in addition to the terms defined in Article 2 of ATMF, the term

- a) "carriage" (or "coach") means a railway vehicle, not provided with a means of traction, which is intended to carry passengers; the term includes a luggage wagon which is intended to be carried in a passenger train;
- b) "project in an advanced stage of development" means any project whose planning/construction stage has reached a point where a change in the technical specifications would be unacceptable to the Contracting State concerned. Such an impediment may be legal, contractual, economic, financial, social or environmental in nature and must be duly substantiated;
- c) "substitution in the framework of maintenance" means any replacement of components by parts of identical function and performance in the framework of preventive or corrective maintenance;
- d) "technical prescription" means a rule, other than a technical standard, included in the UTP, relating to the construction, operation, maintenance or safety aspects, or relating to a procedure concerning railway material;

- e) "technical standard" means a voluntary standard adopted by a recognised international standardisation body, according to the procedures applicable to it;
- f) "traction unit" means a railway vehicle provided with a means of traction;
- g) "wagon" means a railway vehicle, not provided with a means of traction, which is intended to carry goods.

Article 3 **Aim**

- § 1 The validation of technical standards relating to railway material and the adoption of UTP applicable to railway material shall have as its aim to
 - a) facilitate the free circulation of vehicles and the free use of other railway material in international traffic,
 - b) contribute to ensuring the safety, efficiency and the availability for international traffic,
 - c) take account of the protection of the environment and public health.
- § 2 When technical standards are validated or UTP are adopted, only those prepared at the international level shall be taken into account.
- § 3 To the extent possible
 - a) it is appropriate to ensure interoperability of technical systems and components necessary for international traffic;
 - b) technical standards and UTP shall be performance related; if appropriate, they shall include variants.

Article 4 **Preparation of technical standards and UTP**

- § 1 The preparation of technical standards concerning railway material and the standardisation of Industrial products and procedures shall be the responsibility of recognised national and international standardisation bodies.
- § 2 The preparation of UTP shall be the responsibility of the Committee of Technical

Experts assisted by appropriate working groups and the Secretary General on the basis of applications made in accordance with Article 6.

Article 5 **Validation of technical standards**

- § 1 The Committee of Technical Experts shall decide whether to validate a technical standard or specific parts of it in accordance with the procedure laid down in Articles 16, 20 and 33 § 6 of the Convention. The decisions shall enter into force in accordance with Article 35 §§ 3 and 4 of the Convention.
- § 2 An application for validation of a technical standard may be made by:
 - a) any Contracting State;
 - b) any regional organisation as defined in Article 2 x) of ATMF;
 - c) any national or international standardisation body having the task of standardisation in the railway field; Article 3 § 2 shall be taken into account;
 - d) any representative international association for whose members the existence of technical standards relating to railway material is indispensable for reasons of safety and economy in the exercise of their activity.
- § 3 The references to validated technical standards shall be published by the Secretary General on the website of the Organisation. Once the reference is published, the application of this technical standard gives presumption of compliance with the corresponding UTP.
- § 4 The application of validated technical standards is voluntary; however, a standard or a part of it may be made obligatory through provisions in a UTP.

Article 6 **Adoption of UTP**

- § 1 The Committee of Technical Experts shall decide whether to adopt a UTP or a provision amending it in accordance with the procedure laid down in Articles 16, 20 and 33 § 6 of the Convention. The decisions shall enter into force in accordance with Article 35 §§ 3 and 4 of the Convention.

§ 2 An application for adoption of a UTP or a provision amending it according to § 1 may be made by:

- a) any Contracting State;
- b) any regional organisation as defined in Article 2 x) of ATMF;
- c) any representative international association for whose members the existence of UTP relating to railway material is indispensable for reasons of safety and economy in the exercise of their activity.

Article 7 Form of applications

Applications referred to in Articles 5 and 6 shall be sent to the Secretary General and addressed to the Committee of Technical Experts in one of the working languages according to Article 1 § 6 of the Convention. The Committee of Technical Experts may reject any application, if it considers the application not to be complete, coherent, properly reasoned or justified. The application shall include an assessment of social, economic and environmental consequences.

Article 7a Assessment of consequences

§ 1 The Committee of Technical Experts shall take its decision after consideration of the reasoning and justification provided by the applicant.

§ 2 The assessment shall indicate the likely impact for all Contracting States, operators and other relevant actors concerned. If the proposal has an impact on UTP other than the one for which the proposal is directly intended, these interfaces shall also be taken into account.

§ 3 All concerned entities shall participate in the assessment by providing free of charge the requisite data unless covered by intellectual property rights.

Article 8 UTP

§ 1 The adopted UTP shall be published on the website of the Organisation.

§ 2 In principle, each subsystem shall be subject to one UTP. Where relevant, a subsystem may be

covered by several UTP and one UTP may cover several subsystems.

§ 2a The UTP shall apply to new subsystems. They shall also apply to an existing subsystem when it is renewed or upgraded and in accordance with the migration strategy referred to in § 4 f).

§ 3 After the notification process according to Article 35 §§ 3 and 4 of the Convention and at least one month before entry into force, the Secretary General shall publish on the website of the Organisation

- a) the adopted and notified UTP;
- b) the date of its entry into force;
- c) the list of Contracting States to which this UTP applies;
- d) the updated list of UTP and their date of entry into force.

§ 4 To the extent necessary to achieve the aim set out in Article 3, the UTP referring to subsystems shall at least:

- a) indicate its intended scope (part of network or vehicles; subsystem or part of subsystem);
- b) lay down essential requirements for each subsystem concerned and its interfaces vis-à-vis other subsystems;
- c) establish the functional and technical specifications to be met by the subsystem and its interfaces vis-à-vis other subsystems. If need be, these specifications may vary according to the use of the subsystem, for example according to the categories of line, hub and/or vehicles;
- d) determine the elements of construction or interoperability constituents and interfaces which must be covered by technical standards, which are necessary to achieve interoperability within the rail system;
- e) state, in each case under consideration, which procedures are to be used in order to assess the conformity with the provisions of the UTP. These procedures shall be

based on the assessment modules defined in a general UTP referred to in § 8;

- f) indicate the strategy for implementing the UTP. In particular, it is necessary to specify the stages to be completed in order to make a gradual transition from the existing situation to the final situation in which compliance with the UTP shall be the norm; for each stage, appropriate transitional provisions shall be included and
- g) indicate, for the staff concerned, the professional qualifications and health and safety conditions at work required for the operation and maintenance of the subsystem concerned, as well as for the implementation of the UTP.

§ 5 Each UTP shall be drawn up on the basis of an examination of an existing subsystem and indicate one or more target subsystems that may be obtained gradually within a reasonable time scale. Accordingly, the gradual adoption of the UTP and compliance therewith will help gradually to achieve the interoperability of the rail system.

§ 6 The UTP shall retain, in an appropriate manner, the compatibility of the existing rail system of each Contracting State. With this objective, provision may be made in each UTP for “specific cases” covering one or more Contracting States, with regard to both network and vehicles; special attention must be given to the loading gauge, the track gauge or space between the tracks and to vehicles originating from or destined for third countries. For each specific case, the UTP shall stipulate the implementing rules of the elements indicated in § 4 c) to g).

§ 7 If certain technical aspects corresponding to the essential requirements cannot be explicitly covered in the UTP, they shall be clearly identified in it as “open points”.

§ 8 The Committee of Technical Experts may adopt UTP which do not refer to subsystems, such as general provisions, essential requirements or assessment modules.

§ 9 The UTP shall have a two column format. Text which appears in full width without columns is identical to corresponding texts of the European Community Technical Specifications for Interoperability (TSI). Text which is split into two

columns is different for the UTP and for the corresponding TSI or other corresponding European Community regulations. The left-hand column shows the UTP text (OTIF regulations), while the right-hand column shows the European Community TSI text. On the far right the TSI reference is indicated.

Article 8a Deficiencies in UTP

§ 1 If it comes to the attention of the Committee of Technical Experts that an adopted UTP contains errors or deficiencies including where an adopted UTP does not fully meet the essential requirements, the Committee shall take the appropriate measures including:

- a) the decision whether the relevant UTP may need to be amended in accordance with Articles 6 and 8 and
- b) recommendations for justified provisional solutions.

§ 2 The Contracting States, regional organisations and assessing bodies have the obligation to inform the Secretary General without delay if they discover errors or deficiencies in a UTP.

Article 9 Declarations

§ 1 Any Contracting State may, within a period of four months from the day of notification of the decision of the Committee of Technical Experts by the Secretary General, make a reasoned declaration notifying him that it will not apply or will apply only partially, the validated technical standard or the adopted UTP, so far as it concerns the railway infrastructure situated on its territory and the traffic on that infrastructure.

§ 2 The Contracting States which have made a declaration in accordance with § 1 shall not be taken into account in determining the number of States which must formulate an objection in accordance with Article 35 § 4 of the Convention, in order that a decision of the Committee of Technical Experts should not enter into force.

§ 3 A State which has made a declaration in accordance with § 1 may withdraw it at any time by notification to the Secretary General. This

withdrawal shall take effect on the first day of the second month following the notification.

Article 10 **Abrogation of Technical Unity**

The entry into force of the UTP, adopted by the Committee of Technical Experts in accordance with Article 6 § 1, in all the States parties to the 1938 version of the International Convention on the Technical Unity of Railways, signed at Berne on 21 October 1882, shall abrogate that convention.

Article 11 **Precedence of the UTP**

§ 1 With the entry into force of the UTP, adopted by the Committee of Technical Experts in accordance with Article 6 § 1, the technical standards and the UTP shall take precedence, in relations between Contracting States, over the provisions of the 1938 version of the International Convention on the Technical Unity of Railways, signed at Berne on 21 October 1882.

§ 2 With the entry into force of the UTP, adopted by the Committee of Technical Experts in accordance with Article 6 § 1, these Uniform Rules as well as the technical standards and the UTP, shall take precedence, in the Contracting States, over the technical provisions

- a) of the Regulation governing the reciprocal use of carriages and brake vans in international traffic (RIC),
- b) of the Regulation governing the reciprocal use of wagons in international traffic (RIV).

Article 12 **National technical requirements**

§ 1 Contracting States shall ensure that the Secretary General is informed of their national technical requirements which apply to railway vehicles and other railway material. The Secretary General shall publish these requirements in the data bank referred to in Article 13 of the ATMF Uniform Rules.

The information shall be received by the Secretary General within 3 months from the day when the revised Uniform Rules enter into force.

Such a requirement may stay in force only until it or an analogous requirement is brought into force through the adoption of prescriptions according to the Articles above. The Contracting State may at any time withdraw the temporary provision and notify this to the Secretary General.

§ 2 When a UTP has been adopted or amended, the Contracting State shall ensure that the Secretary General is informed - with justification - of those national technical requirements mentioned in § 1 which it will still require to be complied with in order to ensure the technical compatibility between the vehicles and its network concerned; this includes national rules applicable to “open points” in the technical prescriptions and applicable to the specific cases duly identified in the technical prescription.

The information shall include indication of the “open point(s)” and/or “specific case(s)” in the UTP to which each national technical requirement relates.

The national technical requirements shall only remain valid if the notification is received by the Secretary General within 6 months from the day when the technical prescription in question or the change to it has entered into force.

§ 3 The information shall include the full text of the national technical provision in an official language of the Contracting State as well as the title and a summary in one of the official OTIF languages.

Article 13 **Equivalence table**

§ 1 In order to minimise the assessments and thereby the costs for applying for a technical admission, national technical requirements in accordance with Article 12 shall be classified pursuant to the list of parameters and the principles set out in the Annex to these Uniform Rules. The classification shall be carried out under the responsibility of the Committee of Technical Experts. The Contracting States and the regional organisations shall cooperate with the Committee of Technical Experts and the Secretary General in this task.

§ 2 The Committee of Technical Experts may review the Annex taking account of the experience with the cross-acceptance of vehicles in the Contracting States.

§ 3 The Committee of Technical Experts shall ensure that a reference document is drawn up cross-referencing all the notified national technical requirements. The reference document shall also indicate the relevant provisions in the UTP and the corresponding TSI (Article 8 § 9). The reference document shall be published on the website of the Organisation and shall be kept up to date.

§ 4 Taking due account of the opinion of the Contracting States concerned and of the regional organisations involved, the Committee of Technical Experts may decide to declare the equivalence in railway safety terms:

- a) between national technical requirements of different Contracting States;
- b) between provisions in the UTP and the corresponding TSI; and
- c) between national technical requirements of one or more Contracting States and provisions in the UTP and/or provisions in the TSI.

The declared equivalence shall be indicated in an equivalence table in the reference document mentioned in § 3 above.

ANNEX

Parameters to be checked in conjunction with the technical admission of non-UTP conform vehicles and classification of the national technical requirements

1. List of parameters

1.1 General documentation

General documentation (including description of new, renewed or upgraded vehicle and its intended use, design, repair, operation and maintenance information, technical file, etc.)

1.2 Structure and mechanical parts

Mechanical integrity and interface between vehicles (including draw and buffer gear, gangways), strength of vehicle structure and fittings (e.g. seats), loading capability, passive safety (including interior and exterior crashworthiness)

1.3 Track interaction and gauging

Mechanical interfaces to the infrastructure (including static and dynamic behaviour, clearances and fits, gauge, running gear, etc.)

1.4. Braking equipment

Braking-related items (including wheel-slide protection, braking control, and braking performance in service, emergency and parking modes)

1.5 Passenger-related items

Passenger facilities and passenger environment (including passenger windows and doors, requirements for persons with reduced mobility, etc.)

1.6 Environmental conditions and aerodynamic effects

Impact of the environment on the vehicle and impact of the vehicle on the environment (including aerodynamic conditions and both the interface between the vehicle and the trackside part of the railway system and the interface with the external environment)

1.7 External warning, marking, functions and software integrity requirements

External warnings, markings, functions and integrity of software, e.g. safety-related functions with an impact on train behaviour including train bus

1.8 Onboard power supply and control systems

Onboard propulsion, power and control systems, plus the interface of the vehicle with the power supply infrastructure and all aspects of electromagnetic compatibility

1.9 Staff facilities, interfaces and environment

On-board facilities, interfaces, working conditions and environment for staff (including drivers' cabs, driver machine interface)

1.10 Fire safety and evacuation

1.11 Servicing

Onboard facilities and interfaces for servicing

1.12 Onboard control, command and signalling

All the on-board equipment necessary to ensure safety and to command and control movements of trains authorised to travel on the network and its effects on the trackside part of the railway system

1.13 Specific operational requirements

Specific operational requirements for vehicles (including degraded mode, vehicle recovery etc.)

1.14 Freight related items

Freight-specific requirements and environment (including facilities specifically required for dangerous goods)

Explanations and examples *in italics* above are for information only and are not definitions of the parameters.

2. Classification of the national technical requirements

The national technical requirements relating to the parameters identified in section 1 shall be attributed to one of the following three groups. Rules and restrictions of a strictly local nature are not involved; their verification involves checks to be put in place by mutual agreement between the railway undertakings and the infrastructure managers.

Group A

Group A covers:

- international standards,
- national rules deemed to be equivalent, in railway safety terms, to national rules of other Member States,
- national rules deemed to be equivalent, in railway safety terms, to the provisions in the UTP and/or provisions in the TSI.

Group B

Group B covers all rules that do not fall within the scope of Group A or Group C, or that it has not yet been possible to classify in one of these groups.

Group C

Group C covers rules that are strictly necessary and are associated with technical infrastructure characteristics, in order to ensure safe and interoperable use in the network concerned (e.g. the loading gauge).

Explanatory Report

NOTE: The general remarks and the remarks on individual provisions in this Explanatory Report contain a summary of the information in relation to the following points:

- a) Background to and justification for the amendments that were submitted to the Revision Committee and adopted by it, and
- b) Discussion on the provisions for which the General Assembly is responsible in accordance with Article 33 §§ 2 and 4 (f) of the Convention, including editorial amendments.

The information mentioned in

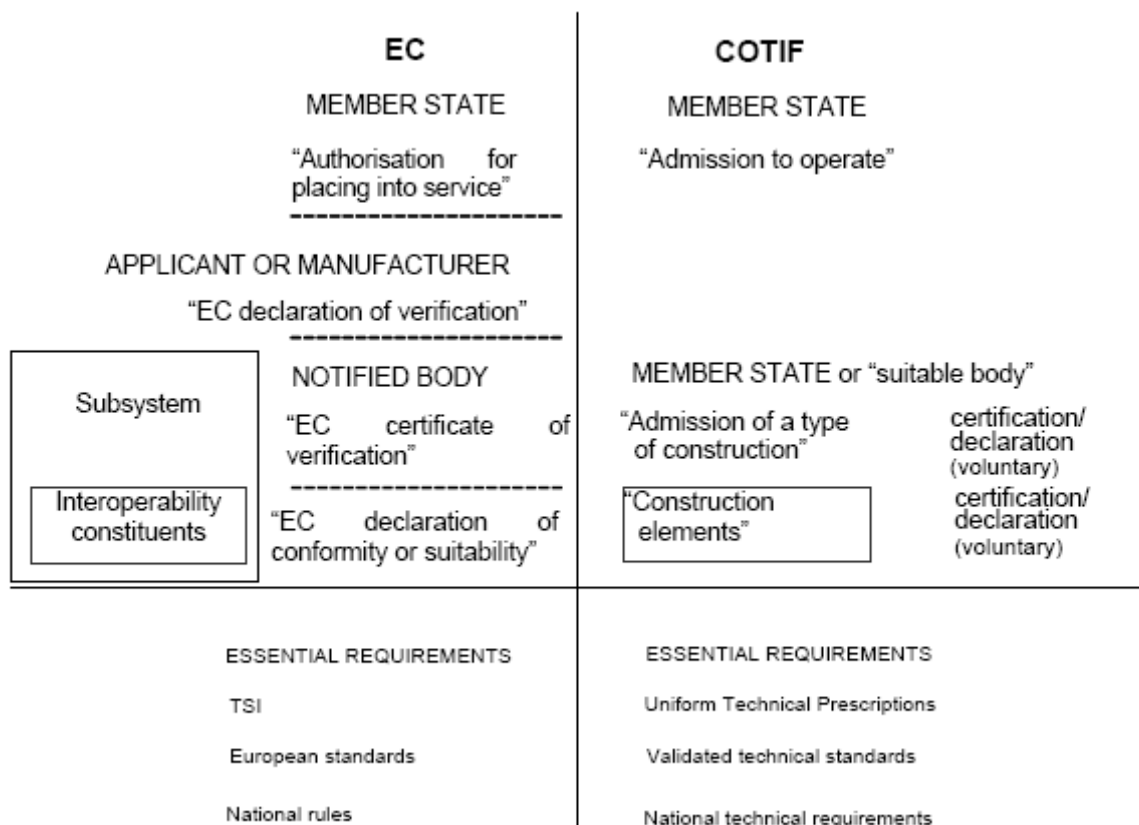
- a) has been examined and approved by the Revision Committee, together with the approved amendments and the General Assembly has noted them;
- b) has been examined and approved by the General Assembly following the Revision Committee's considerations and recommendations in this respect.

General Remarks

1. The General Assembly's decisions at its 7th and 8th sessions to support initiatives to resolve the legal and practical problems between the law of the European Community (EC) and COTIF 1999 envisage that the open questions with regard to Appendices F and G to COTIF 1999 should be discussed at technical level in conjunction with their implementation in order to find practical solutions. This might lead to meetings between the Secretary General and the European Commission and/or to the setting up of appropriate working groups.

2. A revision group set up in 2004, the so-called “Schweinsberg Group”, looked at realising these decisions and considered further significant developments in relevant provisions within the EC that had taken place since the Vilnius Protocol was adopted, notably the drafting of harmonised technical specifications for interoperability and acceptance procedures (Directives 96/48/EC, 2001/16/EC, 2004/49/EC and 2004/50/EC). All the Member States of OTIF, the European Commission and the sectoral organisations were invited to take part in this group. The objective the group set itself was to ensure compatibility between the rules of COTIF and EC legislation, particularly the “interoperability directives”, by reviewing and revising the APTU and ATMF Appendices in accordance with the following principles:
- a) The Member States of OTIF that are also members of the EC or the EEA are entitled to perform transport taking place exclusively between their territories exclusively in accordance with EC legislation;
 - b) Railway vehicles and other railway material from EC/EEA Member States may be approved for international traffic in Member States of OTIF that are not members of the EC or the EEA on the basis of the certifications and approvals issued in accordance with EC legislation;
 - c) Railway vehicles and other railway material from Member States of OTIF that are not members of the EC or the EEA may be approved for international traffic in EC/EEA Member States on the basis of the certifications and approvals issued in accordance with the COTIF 1999 system.
3. It was agreed that the Technical Specifications for Interoperability (TSI), as envisaged by the EC interoperability legislation, would be used as the COTIF 1999 “standard level” thereby ensuring full compatibility and that a “variant” would form a range of provisions contained in an APTU Annex that would give a group of non EC/EEA Member States the opportunity of applying a specification meeting a RAMS level (Reliability, Availability, Maintenance, Safety) other than that of a TSI.
4. The outcome of the first phase of the revision group’s meetings (2004-2006) was a proposal to amend the APTU and ATMF Appendices in such a way that
- a) it is sufficient for the EC/EEA Member States of OTIF to approve operations between the EC/EEA Member States exclusively on the basis of EC legislation;
 - b) it is sufficient for railway vehicles and other railway material from EC/EEA Member States to have certifications and approvals issued in accordance with EC legislation and assessments according to national requirements for the relevant network (compatibility) in order to be approved for international traffic in non EC/EEA Member States of OTIF;
 - c) railway vehicles and other railway material from non EC Member States of OTIF which
 - are approved for traffic (“admitted to operation”) on the basis of the COTIF 1999 “standard level” (identical to the TSI), shall also be approved for traffic or use in the EC Member States on the basis of the certifications and approvals issued in accordance with the COTIF 1999 system and assessments according to national requirements for the relevant network, or if these
 - are approved for traffic (“admitted to operation”) on the basis of a COTIF “variation” (see below), they shall also be approved for traffic or use in the EC Member States on the basis of the certifications and approvals issued in accordance with the COTIF 1999 system and the assessments according to national requirements for the relevant network, provided certain requirements of the standard level, particularly with regard to safety, are met.

5. The proposal included
- a) a range of amendments to APTU aimed particularly at aligning the APTU Annexes with the existing and planned TSI, creating the opportunity of including special cases and variations and of including new rules to clarify the relationship between the existing national technical requirements and the APTU Annexes, and
 - b) a range of amendments to ATMF aimed at ensuring equivalence between the various stages of the approval process in the EC interoperability directive and COTIF 1999 and thereby making cross-acceptance of the assessment authorisations and admissions/approvals possible.
6. If one compares the procedure prescribed by EC legislation and the procedure of the correspondingly amended ATMF, the various elements correlate as follows:



7. The fact that these documents are mutually recognised constitutes an important provision in the revised Appendices. Verification is carried out in accordance with the same technical provisions (provided the APTU Annex corresponds to the relevant TSI) and is carried out by organs that have been nominated with correspondingly clear responsibilities and criteria concerning their qualifications and independence.
8. One of the main prerequisites was that it had to be possible for the OTIF Revision Committee to adopt the requested amendments to the Appendices. Thus amendments could not concern those Articles which, according to the Convention, may only be amended by OTIF's General Assembly and which must subsequently be ratified – in other words, it was necessary to avoid a further delay of several years before the amendments were ratified and could enter into force.
9. The revised draft versions of the APTU and ATMF Appendices were brought to the attention of the Committee of Technical Experts (CTE) at its first session in July 2006, but at that time, the Revision Committee could not yet subsequently be tasked with looking at the drafts as the EC asked for more time to review the drafts. At the second session of the CTE in June 2007, the EC Member States submitted a common Community

- position with a number of substantial comments, principally that the APTU and ATMF Appendices needed further revision in order to simplify them (the concept of variations overlapped with other possibilities, such as specific cases and exemptions) and in order to take account of the EC's new plans to amend its regulations, e.g. those relating to mutual recognition and to include entities in charge of vehicle maintenance.
10. In addition to the technical working group, WG TECH, which began its work after the first session of the CTE, the second session of the CTE set up another working group, WG LEGAL, to discuss the legal aspects of the amendments to the technical Appendices F and G.
 11. WG LEGAL started its work by discussing a proposal from the Secretariat concerning a new Article 3a of ATMF and the broader link between the interoperability directives and the APTU and ATMF Appendices. The aim of Article 3a of ATMF was to include in this Article the specific law for the EC/EEA Member States to apply Community law to vehicles which are only used in transport between the EC/EEA Member States. With regard to the format of the APTU Annexes, WG LEGAL came to the conclusion that a simple reference to the TSI would not be acceptable and instead adopted the Secretariat's proposal for a two-column format; identical/equivalent provisions would be shown across the whole width of the page (both columns), whilst provisions specific to COTIF 1999 would be shown in the left-hand column and the corresponding EC provisions (TSI and/or others) would be shown in the right-hand column, but only for information. This way, both sets of provisions could be shown in the same document.
 12. With regard to the further revision of the APTU and ATMF Appendices, it was concluded that the Schweinsberg Group should be reactivated and given the task of looking at whether further amendments to Appendices F and G that would result from the outcome of developments in the EC provisions were necessary. The Group was to be asked to draft the necessary amendments by revising the versions that were produced between 2004 and 2006.
 13. The main aim was to align both Appendices with the principles of the new version of the EC interoperability directive (Directive 2008/57/EC). Once it had started its work, the Group also dealt with the soon to be adopted revision of the EC Safety Directive (2008/110/EC), to the extent that vehicle maintenance was concerned.
 14. In June 2008, it was decided to relinquish the "variants" included in the proposals from the period 2004-2006 and to replace them with the possibility of achieving the same aim by including specific cases (extended and common to more than one State) or alternative target systems included in the APTU UTP and by considering exemptions. In addition to technical reasons, economic reasons are also accepted as justification for a Member State's application to apply such a solution.
 15. At the 3rd session of the CTE (11/12 February 2009), the proposals to amend the APTU and ATMF Appendices were discussed again and it was agreed that these should now be submitted to the Revision Committee for adoption. When submitting them, the Secretariat should take into account three suggestions on details that were raised at the meeting and to ensure correct terminology and consistency.
 16. On the part of the European Commission, it was explained that from the technical point of view, there were no objections to the texts of the amendments to the APTU and ATMF Appendices. On legal aspects, comments were subsequently provided by the legal service, and these have been taken into account in the explanations on the relevant provisions.
 17. When the Explanatory Report refers to EC Member States, it also applies *mutatis mutandis* to States where the Community legislation applies as a result of international agreements with the European Community.
 18. The Revision Committee (24th session, Berne, 23-25.6.2009) followed to a large extent the suggestions made by the Schweinsberg Group as endorsed by the CTE. Article 4 § 2 was amended in order to avoid misunderstandings concerning the procedure to be followed according to Article 6 and the relevant provisions of the Convention. Furthermore the impact of newly adopted UTP to existing subsystems was clarified by inserting a new § 2a in Article 8. Section 1 of the Annex was replaced by a newer version. The Revision Committee also agreed on additional text to be included in the Explanatory Report in

particular on Articles 9 to 11 (for details see the relevant particular remarks).

19. The 9th General Assembly (Berne, 9/10.9.2009) noted the results of the 24th session of the Revision Committee concerning the amendments to Appendix F (APTU) of the Convention and the Explanatory Report and approved the editorial amendments and the Explanatory Report on Articles 1, 3 and 9 to 11 of APTU. It noted that these amendments are not decisions to which Article 34 of the Convention applies and instructed the Secretary General with regard to bringing these amendments into force to proceed in accordance with Article 35 of COTIF. It also authorised the Secretary General to summarise its decisions on the results of the Revision Committee in the general part of the Explanatory Report.

In detail

Articles marked with * may not be changed by the Revision Committee, only by the General Assembly.

Article 1 * **Scope**

According to Article 33 §§ 2 and 4 (f) of the Convention, only the General Assembly could decide on an amendment to this Article, not the Revision Committee. The Article lays down the general scope. The specific rules on the cases in which provisions adopted according to the procedures under APTU for the use of railway material in international transport are applicable, particularly when this concerns States in which EC law applies, are dealt with in the amended ATMF. Where particular matters are not covered by APTU and ATMF or by the provisions that are based on them, it is generally community law on approvals (“admissions”), interoperability and safety that applies in the case of the States referred to.

Article 2 **Definitions**

In order to avoid expanding the texts unnecessarily, it was decided only to include in Article 2 of ATMF terms that are used in both Appendices. This Article in APTU therefore contains a reference to the definitions in ATMF as well as definitions of those terms that are only used in APTU. In the English version, the terms are arranged alphabetically. The other language versions follow the sequence of the English version.

Article 3 * **Aim**

According to Article 33 §§ 2 and 4 (f) of the Convention, only the General Assembly could decide on an amendment to this Article, not the Revision Committee. The term “variants” used in § 3 should be understood not as a *terminus technicus*, but as an overarching term for corresponding terms taken from the TSI, such as the terms “alternative target system”, “specific case” and “open point”.

Article 4 **Preparation of technical standards and UTP**

1. This Article clarifies responsibilities of:
 - a) standardisation bodies for technical standards concerning railway material and for the standardisation of industrial products and procedures (§ 1) and
 - b) the CTE for the UTP, which corresponds to Articles 20 and 33 § 6 of the Convention, with specific support from working groups and the Secretary General.
2. § 2 shall not prevent the Secretary General from supporting applicants according to Article 6 § 2.

Article 5 **Validation of technical standards**

1. In § 1, which corresponds to § 2 in the 1999 version of APTU, reference is made to the provisions of the Convention that are significant for the decision on validation. The validation of a standard means that the CTE ascertains that the provisions of this standard or of more precisely defined parts of it can be used as a viable solution for indication of the fulfilment of legal requirements. Application of validated standards is voluntary. In addition however, such validated standards or validated parts of standards can be made into binding requirements by means of a provision in the UTP.
2. § 2 corresponds to § 1 in the 1999 version of APTU.
3. §§ 3 and 4 are new. In § 3, the Secretary General is required to publish references to validated technical standards on OTIF’s website; the voluntary application in accordance with § 4 of a technical standard published thus is linked to a

positive legal consequence. The voluntary application of a validated standard does not preclude the assessing entity from checking the correct use of it and the compliance with the regulations.

Article 6 Adoption of UTP

In § 1, which corresponds substantially to § 2 of the 1999 version of APTU, reference is made to the provisions of the Convention that are significant for the decision on the adoption of a UTP. Text was added to this paragraph, and to § 2, which otherwise corresponds to § 1 of the 1999 version of APTU, to the effect that the decision may also affect amendments to an adopted UTP.

Article 7 Form of applications

This Article has been extended. It was made clear that the application

- is indeed to be sent to the Secretary General, although it is intended for the CTE,
- must also contain an assessment of the social and economic consequences and of the effects on the environment, and
- may, for certain reasons, be refused by the CTE.

Article 7a Assessment of consequences

1. This Article is new. The consequences for all
 - Contracting States,
 - transport undertakings,
 - other actors in relevant areas of activity and
 - other UTP, where there are interfaces with them
 must be assessed.
2. According to § 3 the entities concerned must provide data free of charge.

Article 8 UTPs

1. The title was amended because the annexes listed in the 1999 version of APTU have been replaced with the UTP, which correspond to the TSI and which, according to §§ 1 and 3, must be published on OTIF's website. The UTP have to be published with their date of entry into force. The website will show an updated list of the UTP, with information on which Contracting States apply them.
2. The wording of the Article was also completely revised along the lines of the principles for TSI.
3. § 2a has been included in order to clarify the impact of a newly adopted UTP on existing sub-systems, concerning e.g. an existing wagon, locomotive, passenger coach or piece of infrastructure.
4. § 9 contains the basis for the two-column layout. The texts of the UTP that have the same wording as the TSI are written across the whole width of the page, the texts of the UTP that differ from the TSI are written in the left-hand column and the corresponding text of the TSI is shown in the right-hand column for information.

Article 8a Deficiencies in UTP

This is a new Article. § 1 deals with the approach the CTE must take if it discovers that a UTP that has already been adopted contains errors or other deficiencies, particularly if the source of the discovery is those who are obliged to notify the Secretary General in accordance with § 2. From the main example given (contradiction with or insufficient provisions concerning the essential requirements) and any measures to be taken (amendment to the UTP and transitional solution), it ensues that the only deficiencies concerned are those for which an impact on the material content of the provision cannot be ruled out *a priori*.

Article 9 * Declarations

1. According to Article 33 §§ 2 and 4 (f) of the Convention, only the General Assembly could decide on an amendment to this Article, not the Revision Committee.

2. § 1 states that declarations of non-application may be made not only against an adopted UTP but also against a validated technical standard. According to Article 5 § 4 the application of validated technical standards is in principle voluntary but a standard or a part of it may be made obligatory through provisions in a UTP. § 1 is in this regard therefore to be understood as offering the possibility to make a declaration of non-application against a validated technical standard or part of it which has been made obligatory through provisions in a UTP.

Article 10 *

Abrogation of Technical Unity

1. According to Article 33 §§ 2 and 4 (f) of the Convention, only the General Assembly could decide on an amendment to this Article, not the Revision Committee.
2. In this Article which has been editorially adapted as consequence of changes in other Articles¹ it is stated that the entry into force of the UTP, adopted by the CTE in accordance with Article 6 § 1, in all the States parties² to the 1938 version of the International Convention on the Technical Unity of Railways (Technical Unity 1938), shall abrogate that convention. However it does not seem that the wording of this provision gives an exact answer to the question if and when the abrogation of that Convention would take effect. It has been assumed that this would be the case when all relevant UTP and validated standards covering the provisions of the Technical Unity 1938 are in force. But it is unlikely that a common interpretation among the Member States of OTIF and the States parties to the Technical Unit 1938 can easily be achieved. Taking account in particular of States where the abrogation of the Technical Unity 1938 would concern their national legislation any interpretation on the validity of the Technical Unity 1938 or of parts of it needs to remain the prerogative of its States parties.

Article 11 *

Precedence of the UTP

1. According to Article 33 §§ 2 and 4 (f) of the Convention, only the General Assembly could decide on an amendment to these Articles, not the Revision Committee.
2. This Article which has been editorially adapted as consequence of changes in other Articles³ contains rules of precedence over the provisions of the Technical Unity 1938 as well as of RIC and RIV. As to the provisions of the Technical Unity 1938, see remarks to Article 10.
3. § 2 which refers to RIC and RIV as applicable before 2000 is to be understood as that the APTU and UTP shall also take precedence over agreements replacing RIC and RIV; e.g. as of 01.07.2006 parts of RIV has been replaced by the General Contract of Use (GCU).

Article 12

National technical requirements

1. This is a new Article.
2. When the new version of the APTU Appendix adopted in 2009 enters into force, the Contracting States shall ensure that the Secretary General is informed of all their applicable national technical requirements. In order to avoid that EC Member States would have to notify the same rule twice (once to the European Commission, once to the Secretary General), the European Commission will make sure that the Secretary General has access to the data base being set up by DG TREN and the European Railway Agency (ERA). In that case, for the Contracting States which are also members of the European Community, the data base shall at the deadline indicated in § 1 second sentence contain the information on the National technical requirements as required by this article and the presence or non-presence in the EC data base is considered to be legal proof in relation to this Article. National technical requirements that are covered by a UTP that has entered into force expire automatically, unless the Secretary General receives notification beforehand, with justification, of the need to maintain the national requirements in question.

1 see b) of the NOTE under the heading "Explanatory Report"

2 Belgium, Bulgaria, Czechoslovakia, Denmark, France, Germany, Greece, Hungary, Italy, Luxembourg, Netherlands, Norway, Poland, Romania, Sweden, Switzerland, Turkey, Yugoslavia.

3 see b) of the NOTE under the heading "Explanatory Report"

3. In § 1 the term “analogous” means that the requirement concerns the same objective, not necessarily prescribes the same solution, e.g. the visibility of a vehicle.

Article 13 Equivalence table

1. This is a new Article.
2. The equivalence table provides a new way of compiling cross-references between national requirements, UTP and TSI and ultimately of making easier the cross acceptance of vehicles built and approved according to different standards. The CTE can take decisions on equivalence between
 - national technical requirements of various Contracting States,
 - UTP and TSI and
 - UTP and national requirements.
3. Equivalence must be indicated in the published reference (equivalence) document.

ANNEX

Parameters to be checked in conjunction with the technical admission of non-UTP conform vehicles and classification of the national technical requirements

This Annex corresponds to Annex VII of Directive 2008/57/EC as amended by Directive 2009/131/EC. Group A is expanded to include national rules equivalent to provisions in UTP (as in Article 13).

Publications and interesting links

Bulletin des transports et de la logistique, Paris, n° 3318/2010, p. 296 – Aérien. « immatériel » inclus [= dans la limite prévue par la Convention de Montréal] (M. Tilche) ;

Idem, n° 3320/2010, p. 328/329 – Règles de Rotterdam. « The baby is born » (M. Tilche)

Idem, n° 3322/2010, p. 359/360 – Faute inexcusable. Les quatre critères (M. Tilche)

Idem, n° 3323/2010, p. 375/376 – Action directe. Une porte se ferme (M. Tilche) ; p. 383 – Article L. 132-8 du Code de commerce français : Loi de police ? (non) Texte d’ordre public ? (non)

CIT-Info (Comité international des transports ferroviaires /Internationales Eisenbahntransportkomitee /International Rail Transport Committee, CIT) <http://www.cit-rail.org>, éditions/Ausgaben/editions 2/2010, 3/2010

DVZ - Deutsche Verkehrszeitung, Hamburg, Nr. 41-42/2010, S. 10 – Bundesgerichtshof entlastet Speditionen. Anspruchsteller muss bei Schäden den Vorwurf des groben Organisationsverschuldens beweisen¹ (H. Valder)

Idem, Nr. 48/2010, S. 13 – Haftung der Airlines denkbar. Selbst bei höherer Gewalt wie Vulkanasche ist eine Entlastung nicht immer möglich (W. Müller-Rostin)

Transportrecht, Hamburg, Nr. 4/2010, S. 125-127 – Neues vom Bundesgerichtshof zur Schadenregulierung im Transportrecht (Zugleich Anmerkung zum Urteil des BGH vom 10.12.2009) [Artikel 23 und 29 CMR] (K.-H. Thume)¹

Idem, Nr. 5/2010, S. 165-174 – Neue Haftungs- und Entschädigungsregelungen in der Personenschiffahrt – Harmonisierung durch Europarecht (B. Czerwenka); S. 174-179 – Die Darlegungs- und Beweislast bei qualifizierten Verschulden im Transportrecht nach der aktuellen Rechtsprechung des Bundesgerichtshofs (N.F. Marx)

Verkehr (Internationale Wochenzeitung für Logistik), Wien, Nr. 17/2010, S. 7 – Rotterdam Rules [aus Sicht des Warentransport- und Verkehrshaftungsversicherers] (O.J. Tuma)

¹ This article relates to decision I ZR 154/07 of the German Bundesgerichtshof (Federal Court) of 10.12.2009 (CMR). It is published on www.bundesgerichtshof.de.

Transport of Dangerous Goods

Working Party on the Transport of Dangerous Goods (WP.15, UNECE)

88th Session

Geneva, 3-7 May 2010

The 88th session of WP.15 was held from 3-7 May 2010 in Geneva and was chaired by Mr J. A. Franco (Portugal). Representatives from 22 States took part.

Accession of Turkey

WP.15 noted with satisfaction that Turkey had acceded to ADR on 22 February 2010, and that ADR had consequently entered into force in Turkey on 22 March 2010.

Interpretation of ADR

3.4.10 (a) and 3.4.13 (a) of ADR 2011 prescribe that transport units carrying packages containing dangerous goods in limited quantities must bear the limited quantity mark at the front and at the rear, except when the orange-coloured plate marking is displayed.

Opinions differed with regard to the question raised by Switzerland as to whether transport units carrying only dangerous goods in limited quantities should be able to bear orange plates instead of the marking for limited quantities.

Some delegations considered that the paragraph was intended only to avoid double marking when transport units were carrying packages containing limited quantities and other dangerous goods at the same time. The orange-coloured plates could mislead emergency and inspection services as affixing them could be interpreted to mean that all the provisions of ADR applied.

The representative of Switzerland said that he would submit a proposal to amend the texts so as to avoid any ambiguous interpretation.

Work of the RID/ADR/ADN Joint Meeting

WP.15 approved the texts adopted by the Joint Meeting (Berne, 22-26 March 2010) (Bulletin 1/2010, p. 10). It also adopted various consequential amendments that had been found necessary in the meantime.

Proposals to amend Annexes A and B of ADR

Implementation of the new marking for transport units containing dangerous goods packed in limited quantities

The representative of the International Road Transport Union (IRU) had submitted a proposal to the Joint Meeting in March 2010 to require for the marking of transport units containing dangerous goods packed in limited quantities, from 1 January 2011, only the diamond-shaped marking which would come into force on 1 January 2011. The Joint Meeting had rejected that proposal, as the IMDG Code allows the current marking with the letters "LTD QTY" to be used up to 31 December 2011 and only prescribed using the diamond-shaped marking from 1 January 2012, so for this reason, as much flexibility as possible should be retained (Bulletin 1/2010, p. 14).

The representative of IRU had submitted a new proposal in light of the comments made, in which it was proposed to implement the new marking on transport units from 1 July 2011 and on containers from 1 January 2012. IRU's proposal was again amended on the basis of comments received during the meeting to say simply that transport units containing dangerous goods packed in limited quantities in accordance with the former LQ provisions may also be marked with the new marking. In addition, transport units may be marked with the new marking, even if the container being carried still bore the old marking.

This amended proposal, which clearly falls within the competence of the Joint Meeting, was adopted by WP.15 in contravention of the usual rules of procedure.

Driver training

In a second reading, WP.15 examined the amendments to Chapter 8.2 concerning driver training discussed at the last two meetings and decided to republish a complete new edition of Chapter 8.2.

Orange-coloured plate marking on trailers without a motor vehicle

WP.15 did not adopt a joint proposal from Germany and Sweden to treat trailers without a motor vehicle as transport units so that they bear orange-coloured plates, to ensure they are clearly marked when in temporary parking areas.

At the last session of the RID Committee of Experts, it was decided to dispense with affixing orange-coloured markings and placards to carrying wagons in piggyback

transport if the transport units or trailers being carried bear orange-coloured plates and placards in accordance with the provisions of ADR, even in cases where ADR only prescribes marking on the front and rear end of the transport unit. The only exception to this was considered to be trailers carrying packages only, as once they become separated from the traction unit, they only bear an orange-coloured marking on the rear end and no placards on the sides. For this situation, an orange-coloured marking on the front of the trailer was required (Bulletin No. 4/2009, p. 53).

Against this background, the representatives of Germany, Austria and Sweden prepared an amended proposal during the meeting. The aim of this proposal was to require an orange-coloured marking on the front, at least for trailers intended to be carried in piggyback transport. As no consensus could be reached on the proposed wording, the representatives of these States were asked to propose new wording for the next meeting.

Handling and stowage of containers and tank-containers

7.5.7.4 lays down that the provisions of 7.5.7.1 on the stowage of packages also apply to the loading and stowage of containers on vehicles and to the unloading of containers from vehicles. In line with a proposal from Germany, WP.15 also decided to refer to tank-containers, portable tanks and MEGCs, in addition to containers. However, at the suggestion of the Russian Federation, this amendment was placed in square brackets for the time being, as not all the provisions of 7.5.7.1 were applicable to the handling and stowage of the various containers and the wording of 7.5.7.4 should therefore be made clearer.

Instructions in writing

At its 47th session (Sofia, 16 – 20 November 2009), the RID Committee of Experts had adopted instructions in writing for the locomotive driver based on the ADR model and instructed the Secretariat of OTIF to report back to WP.15 with the editorial corrections this had entailed. WP.15 only agreed to discuss these proposals for amendment after a lengthy discussion, as it was of the view that owing to the different operating conditions for the two modes of transport, it was not necessary to harmonise the instructions in writing. Although numerous amendments to the instructions in writing had already been adopted for the 2011 edition, it was even argued that because they would be printed in large quantities, they should be amended as little as possible.

Traffic restrictions in road tunnels

The representatives of FIATA, IRU and CEFIC reminded the meeting that since 1 January 2010, the ADR Contracting Parties could only apply traffic restrictions in road tunnels in accordance with the provisions of ADR. They pointed out that a number of Contracting Parties had not yet met their obligations with regard to categorising tunnels, signalling and notifying the Secretariat, which was causing major logistical problems.

As various delegates noted that the authorities responsible for road transport were not always the same as the competent authorities for ADR, it was agreed that this problem would be brought to the attention of the UNECE Inland Transport Committee.

Next meeting

The 89th session of WP.15 will be held from 25 to 29 October 2010.
(Translation)

RID Committee of Experts Working Group on Tank and Vehicle Technology

Berne, 18 and 19 May 2010

The 11th session of the RID Committee of Experts working group on tank and vehicle technology was held on 18 and 19 May 2010.

Derailment detection

At the request of the European Commission, the RID Committee of Experts had decided at its 47th session to defer by two years the introduction of provisions into RID concerning the detection of derailments. The European Commission and the European Railway Agency (ERA) should use this two year deferment period to finalise by the end of 2011 their studies relating to the prevention or the detection of derailments and to notify the RID Committee of Experts of the results (see Bulletin 4/2009, p. 54).

As there were not yet any interim results from the studies commissioned by the European Commission and ERA, no progress could be made on this item of the agenda. The representative of Germany urgently requested that the studies currently being carried out would

really in fact lead to provisions on the detection of derailments being included in the regulations in 2013.

The representatives of Switzerland and the European Rail Industry Association (UNIFE) supported this request and explained that it was only possible to develop alternative systems to detect derailments on the basis of clearly defined objectives. In addition, the time needed to carry out tests and to complete the approval procedure would have to be taken into account.

As the result of ERA's cost/benefit analysis concerning derailment detectors was moderately positive, the representative of Germany asked ERA to check whether it was not rather counter-productive, in terms of making progress in the work, to limit application of derailment detectors only to wagons carrying very dangerous substances and whether it should not be extended to all wagons carrying dangerous goods.

Drip leaks

The representative of the European Chemical Industry Council (CEFIC) informed the working group that the German Chemical Industry Association had set up a national working group to look at the problem of drip leaks. This working group, which comprises representatives of the chemical and petroleum industries, among others, should examine more closely the filling and discharge processes and the results of this examination could perhaps lead to the development of guidelines for fillers.

The representative of Germany informed the working group of his country's intention to carry out systematic checks, with the focus on the various aspects of these problems. The representative of France provided information on the French authorities' efforts to improve the situation in this area. By analysing the reports on incidents involving drip leaks, the competent authorities had been able not only to identify the causes of the drip leaks but also the fillers concerned, whom they contacted directly. This had led to an improvement in the situation.

Transitional provisions in RID 1.6.3

At the 47th session of the RID Committee of Experts, the working group was mandated to check the transitional provisions in RID 1.6.3, which did not make clear which construction requirements could be derogated from. The working group had been asked to check which transitional provisions could be deleted because they had become obsolete or because the tank-wagons or battery-

wagons concerned had reached the end of their useful service life (see Bulletin 4/2009, p. 53).

As the proposals in a document from Germany to amend or delete transitional provisions could also have repercussions for fixed tanks (tank-vehicles), demountable tanks, battery-vehicles and tank-containers, and as some of the transitional provisions reviewed were common to both modes of transport (RID and ADR), the working group requested that this matter should first be examined by the Joint Meeting's tank working group.

Composition of dangerous goods trains to avoid a BLEVE (Boiling Liquid Expanding Vapour Explosion)

The representative of the Netherlands informed the working group of his government's intention to set up a basic rail network for the carriage of dangerous goods on a risk basis approach, which would take into account the composition of trains carrying dangerous goods, with the aim of avoiding the risk of a "hot" BLEVE. Analysis of risk assessments in the Netherlands had shown that the greatest risk of a so-called "hot" BLEVE (complete failure of a tank-wagon as the result of an external fire), the effects of which were more harmful than those of a "cold" BLEVE (complete failure of a tank-wagon with liquefied flammable gas, caused by a derailment/collision), arose from trains composed of tank-wagons containing liquefied flammable gas placed next to tank-wagons containing highly flammable liquids. The Dutch government encouraged participants in the carriage of dangerous goods to make a commitment to compose trains in such a way that the distance between a tank-wagon filled with liquefied flammable gas and a tank-wagon containing highly flammable liquid is at least 18 metres. As a significant number of wagons carrying liquefied flammable gas in the Netherlands arrive from abroad, the representative of the Netherlands invited the members of the working group to reflect on the international aspect of this problem.

The working group decided to deal with this subject again once the results of the work of the Joint Meeting's informal working group on reducing the risk of a BLEVE were available. When the subject was dealt with at a later stage, it should also be borne in mind that the risk of a "hot" BLEVE could also be reduced if the requirement to fit energy absorption elements were extended to tank-wagons carrying flammable liquids. It must also be taken into account that more frequent marshalling movements in connection with more complex provisions on the formation of trains could generate additional risks of accidents and incidents.

Report on an accident in Barendrecht (Netherlands)

The working group took note of the preliminary report of the accident which occurred on 24 September 2009 in Barendrecht near Rotterdam. One of the drivers passed a red light and this was the cause of the frontal collision of two freight trains. In one of the two trains, seven tank-wagons filled with UN No. 1268 (petroleum distillates or petroleum products) had been fitted with energy absorption elements, even though RID does not prescribe them for this dangerous substance.

The representative of the Netherlands pointed out that the Dutch authorities would continue with their investigation of the accident and that the final results should be available some time this year.

Report on an accident near Stewarton (United Kingdom)

The representative of the United Kingdom informed the working group of the accident that occurred near Stewarton on 27 January 2009. After a railway bridge collapsed, some wagons in a freight train carrying gas oil, diesel and kerosene (UN Nos. 1202 and 1223) derailed and overturned. Nearly 220 000 litres of diesel and kerosene leaked from four of the derailed wagons, causing considerable environmental damage. The analysis of the accident revealed that following the overriding of the buffers, the drawhooks punctured the tanks on three of the adjacent wagons.

The United Kingdom Rail Accident Investigation Branch suggested evaluating the case for extending the application of special provision TE 25 in 6.8.4 (b) (devices to protect against the overriding of buffers), which at present is only prescribed for very dangerous goods, to other dangerous goods. Such an extension would also require a cost/benefit analysis to be carried out, which should also look at extending the application of other technical measures, such as derailment detection and energy absorption elements.

Measures taken by the Italian authorities after the accident in Viareggio (Italy)

The representative of France informed the working group of the decisions taken by the Italian Rail Safety Authority for the carriage of dangerous goods by rail between Italy and France. She asked for the opinion of working group members on the validity of these decisions and the way in which Italy had acted. She thought it was necessary to investigate whether the way these additional measures were implemented (virtually immediate application or within very short deadlines)

contravened Article 5 of Directive 2008/68/EC and RID 1.9.4. She also pointed out that the texts of the decisions referred to various paragraphs in RID which had not been correctly interpreted (e.g. 6.8.2.4.4).

The representative of the European Commission informed the working group that the European Commission had begun an enquiry to establish whether Italy had contravened European law by implementing these additional measures. He regretted that the representatives of Italy were not present at this meeting to explain the reasons behind these decisions. (Translation)

RID Committee of Experts

48th Session

Berne, 19 and 20 May 2010

The 48th session of the RID Committee of Experts was held in Berne and was chaired by Helmut Rein (Germany). 16 of the 41 Member States of OTIF entitled to vote were represented.

Approval of the amendments adopted by the last Joint Meeting for a date of entry into force of 1 January 2011

The purpose of this two-day meeting was to adopt the final amendments to enter into force on 1 January 2011. As WP.15 had done two weeks previously, the RID Committee of Experts approved all the amendments the Joint Meeting had adopted in March to enter into force on 1 January 2011.

Exceeding the date of the intermediate inspection when the tank-wagon is not marked with the letter “L”

Unlike ADR, RID also prescribes that the date of the next inspection must be marked on the tank-wagon, supplemented by the letter “L” if it is an intermediate inspection – this is in addition to the marking of the tank plate with the date of the last inspection carried out. This additional marking is required to avoid the inspector’s having to climb up onto the tank-wagon to check the dates. As the transitional provision in 1.6.3.25 prescribes that tank-wagons only have to be marked with the letter “L” at the time of the first inspection carried out after 1 January 2009, during the transitional period the inspector can only ascertain whether the period for

the inspection may be exceeded by three months by climbing up onto the tank-wagon.

For this reason, the Czech Republic proposed only to permit the period for carrying out the intermediate inspection to be exceeded by three months if the date of the next inspection shown on the tank-wagon was actually supplemented by the letter “L”. The RID Committee of Experts adopted this proposal.

1.4.3.6 (b)

1.4.3.6 (b) prescribes that the railway infrastructure manager has rapid and unrestricted access to the following information at any time during carriage: composition of the train, UN numbers of the dangerous goods being carried, position of these wagons in the train, and mass of the load.

In the Joint Meeting’s informal working group on telematics, when information that can be made available by telematics applications was being compiled, various questions arose in connection with RID 1.4.3.6 (b) which were to be resolved on the basis of a proposal submitted by the Secretariat.

The RID Committee of Experts accepted this proposal and the majority were of the view that the railway infrastructure manager should also have information on dangerous goods being carried in limited quantities when a mark is required on wagons and large containers. The current fourth indent, which prescribes information on the mass of the load, was deleted, as the mass concerned did not relate specifically to the dangerous goods. Rather, it is required in order to calculate the braking weight and must therefore be provided to the railway infrastructure manager on the basis of general provisions of railway law, irrespective of whether dangerous goods are being carried or not.

Carriage of dangerous goods as hand luggage, registered luggage and express parcels

At the last session of the RID Committee of Experts, the representative of Switzerland provided information on an incident that had occurred when a sample of a virus (UN number 3373) was being carried as hand luggage in a passenger train. According to special provision 319 and paragraph (11) of packing instruction P 650, no provisions of RID other than those of this packing instruction had to be observed, so carriage as hand luggage would also have been allowed. It became clear in the discussion that the provisions for carriage as hand luggage and registered luggage in Chapter 7.7 did not apply at all if the conditions for an exemption in

accordance with 1.1.3 were met and if the other provisions of RID did not need to be observed. The RID Committee of Experts had therefore decided to ask an informal working group to deal with resolving this legalistic issue.

Shortly before the 48th session of the RID Committee of Experts, this informal working group was held at the invitation of Switzerland. The working group’s proposals can be summarised as follows:

- 1.1.2 concerning the scope should be amended to make clear that RID also governs the carriage of dangerous goods in trains other than freight trains. In so doing, a distinction should be made between carriage of express parcels on the one hand and carriage of hand luggage or registered luggage on the other.
- The carriage of hand luggage and registered luggage should then be dealt with in detail in the new 1.1.3.8 and Chapter 7.7. It was considered necessary to include a provision in 1.1.3 to make clear which exemptions also applied to hand luggage and registered luggage. In so doing, additional exemptions were included compared with the current legal situation, which at present play a role in road transport particularly, and which might therefore also be relevant to car trains (e.g. “tradesmen’s rule” in 1.1.3.1 (c)).
- However, as references in 1.1.3.8 alone were not considered to be sufficiently user-friendly, a written list of all exemptions applicable to hand luggage and registered luggage was included in Chapter 7.7.
- The working group was unable to find a solution for express parcels, the carriage of which had decreased greatly in Europe, but had started giving consideration to deleting the CE provisions in Chapter 7.6 and in column (19) of Table A and to permit the limited quantities of Chapter 3.4 and the exempted quantities of Chapter 3.5 for carriage as express parcels. The working group asked the International Rail Transport Committee (CIT) and the International Union of Railways (UIC) to check this course of action and to submit a specific proposal at a later stage if necessary.

In the discussion in the RID Committee of Experts, the representative of Austria questioned the need to deal with the same issue in both 1.1.3.8 and Chapter 7.7, as

this could be a source of error in any subsequent amendments.

It was explained that the working group considered the double rule to be necessary because there had to be a link to the exemptions in 1.1.3 applicable to freight trains and if there were only a rule in Chapter 7.7, there would be no information to the effect that Chapter 7.7 is applicable irrespective of the exemptions in 1.1.3. This double rule had also been brought in against the background that the different parts of RID were aimed at different people. While Part 1 applied to all users, Part 7 was also aimed at carriers, and hence railway staff who dealt with taking over luggage.

As there were no legal contradictions between 1.1.3.8 and Chapter 7.7 at the moment, the RID Committee of Experts adopted the text proposed by the working group. However, the question of the double rule could be reconsidered on the basis of a proposal for the 2013 edition of RID.

Next session

The 49th session of the RID Committee of Experts will be held from 2 to 5 November 2010 in Luxembourg. (Translation)

Subjects in the Technical/Approval Fields

OTIF Workshop

UTP Rolling Stock - Freight Wagon,
UTP Rolling Stock - Noise

Skopje, 26/27 May 2010

At the 9th session of the standing working group WG TECH (Berne, 18 and 19 November 2009) the participants praised the workshop organised by OTIF in June 2009 in Zagreb and asked that such workshops be organised more frequently. The aim of the OTIF Secretariat, as requested by the Member States and the industry, is to adopt UTP (Uniform Technical Prescriptions) Rolling Stock - Freight Wagons and UTP Rolling Stock - Noise at the 4th session of the Committee of Technical Experts in September 2010. To reach as many experts as possible and to obtain feedback from them, the OTIF Secretariat decided to organise a workshop on these UTPs at the end of May 2010. The representative of the FYR of Macedonia proposed that this workshop should be held in Skopje.

The idea of arranging the workshop in the “local” area was again appreciated (as for the workshop in November 2008 in Belgrade and the workshop during the consultation of the non-EU OTIF Member States on draft TSIs), as this reduced travel costs and made it possible for more representatives from the area to participate. The workshop was attended not only by government representatives, but also by representatives from the users of the OTIF regulations, such as the railway undertakings and railway industry. In total, 50 participants from Belgium, Bosnia-Herzegovina, FYR of Macedonia, Montenegro, Serbia, Slovakia, Slovenia and Switzerland took part. As the workshop was boycotted by the European Commission and ERA, the OTIF Secretariat tried to find another solution to ensure the quality of the workshop. Thanks to the kind assistance of CER, all the necessary presentations were maintained and the speakers (Mr. Bikowski from DB and Mr. Letourneaux from SNCF) presented the TSI Rolling Stock - Freight Wagons and TSI Rolling Stock - Noise very objectively and clearly.

The language of the workshop was English, as this is the working language of the standing working group WG TECH and the working language of ERA at the preparatory stage of draft TSIs. OTIF provided simultaneous translation into/from Serbo-Croatian, Macedonian and Albanian, which also allowed experts from the successor States of Yugoslavia with little or no knowledge of English to participate and provide their feedback.

The aim of providing basic information about the legal framework of OTIF technical regulations, information about the procedure for adopting OTIF regulations in the Committee of Technical Experts, and especially drafting UTPs, was met. This information was provided to participants in presentations excellently prepared by representatives of CER and the OTIF Secretariat .

The workshop was a great success. All the participants concluded that they had benefitted from their attendance and that their knowledge of the OTIF regulations has increased. This will be of benefit to the railway world in the OTIF area.

All documents and presentations from the workshop in Skopje can be downloaded from the OTIF website (<http://www.otif.org/en/technology/consultations-workshops-and-presentations.html>).

Co-operation with International Organisations and Associations

United Nations Economic Commission for Europe (UNECE)

Working Party on Customs Questions affecting Transport

124th and 125th Sessions

Geneva, 2-5 February and 25-28 May 2010

In the context of efforts to facilitate rail transport, OTIF and OSJD have for some years been following the project to add a new Annex concerning the border crossing of goods in rail transport to the 1982 International Convention on the Harmonization of Frontier Controls of Goods (“Harmonization Convention”)¹. A joint draft of this new Annex 9 to the Harmonization Convention, prepared by both organisations, was discussed at several meetings of the UNECE Working Party on Customs Questions affecting Transport (WP.30), and among other things, proposals from the European Commission were taken into account. Discussions on the draft were concluded later than was originally expected (see Bulletin 4/2008, p. 48 and 1/2009, p. 7), but in time for it to be submitted to the Administrative Committee (i.e. the competent body for amendments in accordance with Art. 22 of the Convention) before its meeting, which was scheduled for 2010 (the Committee meets every five years).

This was done after the final amendments (of an editorial nature) to the draft were made at the 124th session. A representative of the OTIF Secretariat attended part of the 124th and 125th sessions. At the 125th session, there was no further discussion on the draft new Annex 9 to the Harmonization Convention.

Instead, there was a discussion on another OTIF and OSJD project, i.e. facilitation in the carriage of passengers by rail. At the same time as a draft new Annex to the Harmonization Convention, both organisations working in the rail sector also submitted to WP.30 a draft new Convention to facilitate border crossing in international rail passenger transport (see Bulletin 1/2007, p. 6/7). This draft was based on the existing 1952 International Convention to Facilitate the Crossing

of Frontiers for Passengers and Baggage carried by Rail¹, but the requirements of those States which apply SMPS² were to be taken into account.

As the question arose in this project as to the relationship between the new Convention and the existing one, WP.30 was more inclined to revise the existing one. However, the fact that the 1952 Convention does not contain any provisions on amending the text thereof (only a provision concerning the amendment of the international customs declaration it contains) was an obstacle to this solution.

The 125th session of WP.30 established that following the UN legal service’s examination of this question, the only way to resolve it was as follows: the obstacle can be removed by adding an additional protocol to the Convention with appropriate rules for revising it. According to the draft of such a protocol prepared by the UNECE Secretariat, this protocol could be adopted by the (10) contracting parties that exist so far and provided no objections are received within six months (from the date on which the Secretary General gives notification of the adopted text), it would enter into force automatically. The SMPS States could then accede to the Convention and the amendment procedure in accordance with rules to this end that have now been included in the Convention could be started. The next session of WP.30, for which the draft additional protocol should be submitted as an official document in all three UNECE working languages, including Russian, should take a decision on it.

(Translation)

¹ see <http://www.unece.org/trans/conventn/legalinst.html#customs> (English, French and Russian)

² Agreement on the international carriage of passengers by rail, see <http://www.osjd.org> (Documents/Transport law – Russian only)

Administrative Committee for the 1982 “Harmonization Convention”

9th Session

Geneva, 27 May 2010

This meeting was convened to adopt the draft new Annex 9 to the International Convention on the Harmonization of Frontier Controls of Goods (1982 “Harmonization Convention”¹) concerning the facilitation of border crossing procedures for the international carriage of goods by rail. This draft, which was available in the four languages of the Convention (English, French, Russian and Spanish)² was the result of joint initiatives by OSJD and OTIF and several years of discussions in the UNECE Working Party on Customs Questions affecting Transport (WP.30), which the EU had also joined in the final phase as a contracting party to the Convention. The EU representative informed the meeting that the internal procedures had been concluded and the text submitted had been approved. However, amendments would require the EU services concerned to look at the text again. It came as a surprise that Switzerland’s customs administration had submitted objections at short notice, which the Secretariat distributed as an INF document; it seemed advisable to study these, even though Switzerland was not represented. This was because even if only one contracting state raised objections, this would prevent the Annex from coming into force. The result of the discussion, in which the deputy Secretary General of OTIF and the representatives of the EU and OSJD supported maintaining the texts concerned, was that all the objections could be taken into consideration by means of appropriate explanations on the text. These explanations would appear in the report of the meeting³. Accordingly, the version of Annex 9 submitted was adopted unanimously. In view of the entry into force of the new Annex, which is anticipated next year, it would seem appropriate to start giving consideration at international and national level to implementing it. In OTIF’s remit, the opportunity to do this will arise at the first meeting of the Rail Facilitation Committee planned for mid November 2010.

(Translation)

International Transport Forum 2010

Leipzig, 26-28 May 2010

This year again, the International Transport Forum was held in Leipzig. It was chaired by Canada. This event will continue to be held in Leipzig for the next few years. 49 Ministers of Transport and more than 900 delegates took part in the annual conference, representing governments, international and national organisations and associations, although private industry representatives formed the majority. The Forum was accompanied by an exhibition of major players in the industry, which was even bigger than last year. Because of the focus of this year’s conference, more emphasis was placed on particularly innovative companies and suppliers from the various transport sectors. OTIF was represented by the Secretary General. The main speaker at this year’s event was Bertrand Piccard, who, in a perfect presentation, reported on the planning, construction and preliminary tests on the “Solar Impulse” aeroplane, which runs exclusively on solar power. As expected, the theme of this year’s conference, “Transport and Innovation: unleashing the potential”, resulted in a focus on issues that dealt more closely with aspects surrounding energy consumption, emissions performance and the avoidance of transport altogether. Therefore, as the environmental credentials of the rail mode are well known, aspects surrounding rail transport were not the central issue.

Nevertheless, it emerged from the various presentations of principle and the panel discussions that the body politic is determined to reduce CO₂ emissions, particularly in road, air and sea transport, in order to achieve the various environmental objectives which vary from State to State and globally. Comments concerning the exceptional position of the motor industry were especially critical, as many participants were of the view that it still succeeds in influencing political decisions too strongly in its own favour. Also, the subject of “road pricing”, which, not surprisingly, encompassed a broad range of the discussion, is not entirely considered as the engine of modal shift from road to rail. In connection with this, it was noted that so far, politics has not succeeded in creating a direct correlation between “road pricing” and using the potential of modal shift, as there is still a strong tendency to use the income it generates for general budgetary purposes, rather than allocating it to the specific field. This caused mistrust among people and subsequent resistance.

1 see <http://www.unece.org/trans/conventn/harmonie.pdf>

2 see <http://www.unece.org/trans/bcf/ac3/ac3-documents.html>

3 see <http://www.unece.org/trans/bcf/ac3/ac3-reports.html>

Next year's meeting of the International Transport Forum in 2011 will look at the subject of "transport and society".

(Translation)

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

18th OSCE Economic and Environmental Forum

Prague, 24-26 May 2010

On behalf of OTIF, the deputy Secretary General took part in this event, which was attended by around 300 participants from 47 States and numerous organisations and undertakings. The deputy Secretary General gave a presentation in plenary V, "The impact of transportation on environment and security". The aim of the meeting was firstly to finalise the assessments presented in the previous preparatory meetings of OSCE of the current situation in the fields of environmental protection and security measures and facilitation of land transport, particularly with States outside Europe, and secondly to suggest ideas for a follow-up in the sense of specific and feasible recommendations to OSCE. With regard to the key issue of dangerous goods transport, the following ideas, among others, were put forward by Kazakhstan and OTIF:

- Analysis of the remaining differences between OTIF and OSJD law in terms of provisions, and the definition of harmonisation measures;
- Development of a programme for the step by step modernisation of railway rolling stock, taking into account the requirements of safety and EU technical standards;
- Investigation of traditional Eurasian routes for the carriage of dangerous goods with a view to measures to prevent accidents and mitigate the consequences of such accidents;
- Allow the possibility of letting dangerous goods be carried on the territory of OTIF Member States for a transitional period using rolling stock that meets the requirements of OSJD;
- Promote technical innovations, particularly in the field of telematics;
- Expand specialist capacity within the competent government bodies;

- Support the translation into other languages of international regulations on the carriage of dangerous goods;
- International training measures for staff engaged in official dangerous goods checks;
- International training measures for national instructors training drivers and dangerous goods safety advisors;
- Regular representation of other sectors, particularly customs and police, in meetings of the bodies responsible for the international carriage of dangerous goods.

It remains to be seen which of these ideas OSCE will pursue, and how.

(Translation)

Organization for Cooperation of Railways (OSJD)

Conference of Ministers

XXXVIIIth Meeting

Prague, 15-18 June 2010

23 of the 27 OSJD Member States¹ were represented at the meeting. A representative of OTIF took part in the plenary meeting (17/18.6.2010). Two items on the agenda concerned the OSJD process of reform, the progress of which OTIF has been following with interest for some years at successive Conferences of Ministers.

At the XXXVIIth Conference of Ministers (Astana, 2009), it had been decided to start the work concerning the adoption of new OSJD statutes by means of a Diplomatic Conference (see Bulletin 2/2009, p. 22). Underlying this decision was the concept of a two-step reform process. According to the assessment at that time, the first step would entail the adoption of new institutional provisions (statutes), which seemed realistic within a short timescale, followed later by the second step involving the adoption of a new Convention modelled on COTIF, which should govern various areas of international rail transport. Finalising and adopting this Convention was likely to take a great deal of time.

¹ Twelve of these are also Member States of OTIF and nine are EU Member States,

However, it was not possible to implement this decision of the previous Conference of Ministers. It was somewhat compromised by the Member States' lukewarm reactions to efforts on the part of the Committee chairman to initiate preparations for such a Diplomatic Conference. In these circumstances, the question of how to proceed with regard to reforming OSJD was again submitted to this year's Conference of Ministers. The Conference did not consider that convening a Diplomatic Conference solely to adopt new statutes was a suitable way to proceed.

This means that the text dealt with separately under the heading "OSJD Statutes" in a transitional phase in the working group on the OSJD basic documents would now be developed as part of the draft of a new Convention and could only be adopted together with this Convention. In another decision, the corresponding mandate to this working group was clarified. Among other things, it was instructed to work together with other working groups, particularly those dealing with the revision of SMPS, the revision of SMGS and "PGW" (rules concerning the use of goods wagons).

According to reports, the decisions taken in the plenary meeting without discussion were the result of difficult informal negotiations during the first two days (meeting of the accredited representatives), at which the nine OSJD Member States which are also members of the EU negotiated with a coordinated position.

The Conference of Ministers also took a range of decisions in relation to administrative and financial management, e.g. the adoption of the annual report, the statement of accounts, the budget, resolving the issue of unpaid contributions and the allocation of posts in the Committee. The term of office of the current management was extended to 2014. The next meeting of the Conference of Ministers will be held in Beijing from 7-10.6.2011.

(Translation)

Other Activities

Middle East Rail 2010

Dubai, 11/12 May 2010

For the first time, The Middle East Rail Conference 2010 was organised by the firm TERRAPINN, which was also responsible for the "EurasiaRail 2010" Conference (Bulletin 1/2010, p. 16). High-ranking representatives of government and industry from Saudi

Arabia, Bahrein, Qatar, the United Arab Emirates, Oman, Kuwait, Iraq, Jordan, Egypt, Syria and Iran took part in the Conference. OTIF was represented by the Secretary General, who gave one of six keynote presentations.

The reason behind the decision to take part was Jordan's accession and the intention of the States on the Arab Peninsula to develop and build a cross-border railway network in the framework of the Gulf Cooperation Council (GCC). In the GCC, the Heads of State and government of the participating States decided to invest more than a total of 119 billion dollars in this network. OTIF must of course have an interest in raising awareness in this area of COTIF 1999 that will extend beyond Jordan and in lobbying for, initially, associate membership of OTIF, as in the case of Jordan. As there are no railway lines in this area, with the exception of local networks, COTIF 1999 could provide a modern legal regime that has been tried and tested in practice. This would make it unnecessary for the participating States to have to take any steps in this direction themselves.

In his presentation, the Secretary General pursued these aims and made clear the advantages that adopting COTIF 1999 would entail for the rail transport system being built on the Peninsula. At the same time, he offered close cooperation between OTIF, the GCC and the individual States concerned in the region so that the preparatory and implementation work required could be started in due course. Since the Conference, the Secretary General has also written to the Secretary General of the GCC to offer such cooperation.

Another reason it was worthwhile for OTIF to take part in the Conference was that for the first time, it was possible to obtain more detailed first-hand information about the plans of the various States on the Arab Peninsula with regard to possible routes for national and cross-border lines, their intended capacities and the various planning and implementation dates. In addition of course, the Secretary General established personal contacts, which the OTIF Secretariat will use in the coming weeks to start relevant initiatives.

Although the scale of the planned investments and the intention of building an efficient, cross-border rail network on the Arab Peninsula, practically out of the desert, far exceed European proportions, the seriousness of the GCC Member States' intentions in connection with this project are credible and understandable, because the States ultimate intention is to arrive at a regional economic integration organisation by creating a customs union and free trade mechanisms. This will

require an efficient rail network, and the model for it is of course the European Community in its earlier form. (Translation)

Case Law

Bundesgerichtshof (Germany)

Ruling of 26 March 2009 ¹

A clause in conditions of carriage governing which type of goods the forwarder/carrier does not wish to carry is not null and void by reason of infringement of the first sentence of paragraph 1, Article 41 CMR.

Cf. Article 41 para. 1 CMR ²

The facts (summary):

A package containing electronic micro-components to the value of 102,000.- € was handed over for carriage by road from Eindhoven (Netherlands) to Regensburg (Germany). The consignor was a regular customer of the carrier.

Among other things, the General Conditions of Carriage (which, according to the defendant, its customer was aware of), contain a rule saying that the defendant does not carry any packages whose value exceeds the equivalent value of 50,000.- US\$ in the respective national currency.

The consignment was lost. The insurance compensated the consignor for the resulting loss and subsequently claimed full compensation for the loss of the goods from the carrier under assigned rights. Referring to the lack of interface checks by the carrier, the insurance requested that no liability limits be applied, as in its view, there was qualified fault on the part of the carrier.

The court of first instance upheld the claim. The appeal was unsuccessful.

Decision (summary/extract):

In response to the defendant's appeal, the ruling by the Nuremberg Oberlandesgericht (Higher Regional Court) of 4 July 2007 was overturned. The matter was referred

back to the Court of Appeal for re-examination and decision.

Grounds for the ruling (extract):

The Court of Appeal assumed unlimited liability on the part of the carrier in accordance with Article 17, para. 1 and Article 29 of CMR ³. In the opinion of the Court of Appeal, it could remain open as to whether the defendant's General Conditions of Carriage had been part of the contents of the contract. Even if this were the case, the liability limits they contained would be null and void in accordance with Article 41 of CMR.

It is not entirely clear from the Court of Appeal's explanations whether it considered as null and void the clause on preclusion of carriage because it infringed Article 41, para. 1 of CMR, which says that "any stipulation which would directly or indirectly derogate from the provisions of the Convention shall be null and void". If the Court of Appeal considered that the clause on preclusion of carriage was null and void, the Bundesgerichtshof does not share this view. In so far as the Court of Appeal considered the rule on the prohibited goods to be valid, it should have dealt with this in the grounds for the ruling, which, as the appeal rightly criticised, was not done, which is in contravention of § 286 of the Civil Code.

The clause on the preclusion of carriage contained in the conditions of carriage is not invalid in accordance with Article 41, para. 1, 1st sentence of CMR, as it does not derogate either indirectly or directly from provisions of CMR, especially not from the inapplicability of liability limits governed by Article 29, para. 1 of CMR. The clauses of the conditions of carriage referred to do not govern the extent to which the defendant (if a valid contract of carriage exists) is liable for loss of or damage to goods transported when the loss or damage that has occurred is attributable to qualified fault on the part of the defendant. Instead, the clauses deal more with the conditions under which the defendant is not prepared to accept a transport order. As the litigious clause on the preclusion of carriage only describes the scope of the services to be provided by the defendant and does not govern the defendant's liability for loss of and damage to goods transported, it does not contradict mandatory provisions of CMR (Koller, Transportrecht (Transport Law), 6th edition, Art. 41 of CMR, marginal 1; cf. also House of Lords, ruling of 16.5.2007 [2007] UKHL 23 = [2007] 1 WLR 1325 - Datec Electronics Holdings Ltd. v. UPS Ltd., particularly item 30; also Becher,

¹ I ZR 120/07; courts of lower instance: Landgericht Regensburg, Oberlandesgericht Nuremberg

² Article 5 of CIM contains a similar provision.

³ Article 23 § 1 and Article 36 of CIM contain similar provisions.

Transportrecht 2007, p. 232, 233 et seq.). In the clauses ... it is only a matter of the defendant's freedom of contract, which has not been regulated in CMR. Therefore, a clause governing what type of goods the forwarder/carrier does not wish to carry is not invalid because it infringes Article 41, para. 1, 1st sentence of CMR.

As in addition to CMR, Dutch substantive law would also be applicable to a valid contract of carriage between the consignor and the defendant, the question of whether a contract was in fact concluded at all is also to be judged in accordance with this law.

For the re-opened appeal procedure, the *Senat* pointed out the following:

According to Article 29, para. 1 of CMR, the question of whether the carrier is to be charged with qualified fault, the consequence of which is the inapplicability of the exemptions and limits of liability contained in Articles 17 to 28 of CMR, is to be judged in accordance with the law of the adjudicating Court, i.e. German law in this case.

If, in the re-opened appeal procedure, the Court of Appeal establishes the valid conclusion of a contract between the consignor and the defendant incorporating the defendant's conditions of carriage, in dealing with the question of the consignor's contributory fault, it will also have to take account of the clause on the preclusion of goods in the conditions of carriage.

The Court of Appeal instructed an expert, Dr. H., to examine whether "in accordance with Dutch law, in the case of loss of a consignment, it can be considered as reducing the amount of the claim if the consignor of the transported goods has not provided the contractor with a possible declaration of the value of the goods, although the contractor has not necessarily asked for such a declaration". The appeal rightly criticised the fact that the Court of Appeal had formulated the question of proof too narrowly. The Court of Appeal should have clarified whether Dutch law provides for reducing the amount of the claim in the event that the consignor has breached a contractually agreed preclusion of carriage.

(The full text of this decision of principle has been published on the Internet, see www.bundesgerichtshof.de).
(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, 26th supplement (April 2010).

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 4/2009, p. 61). 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 26th supplement updates a range of national German laws and regulations connected to rail transport. In addition, the explanations on some provisions are clarified or completed, e.g. those by Wolfgang Kunz on the German law for regionalising local public passenger transport or those by Werner Filthaut on the Liability Act.

The latter also refer to Regulation (EC) No. 1371/2007 on rail passengers' rights and obligations and to the CIV Uniform Rules, insofar as they have been taken over as an Appendix to the EC Regulation. Therefore the CIV UR also apply to German domestic traffic insofar as the Liability Act does not contain rules that are more favourable to passengers. Those who apply the law, for whom it is not always obvious at first glance which rule is more favourable to passengers, can find help with the easily understandable explanations, which are accompanied by numerous examples.

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)