



Intergovernmental Organisation  
for International Carriage  
by Rail

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by Rail

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## **Bulletin of International Carriage by Rail**

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### **Legal Matters concerning COTIF**

#### **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).

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

The amendments to the ATMF UR are published below, along with the Explanatory Report concerning these amendments.  
(Translation)

### **Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic**

(ATMF - Appendix G to the Convention)

#### **Text modifications**

##### **Article 1 Scope**

These Uniform Rules lay down, for railway vehicles and other railway material, the procedure for the admission to circulation or use in international traffic.

##### **Article 2 Definitions**

For the purposes of these Uniform Rules and their (future) Annex(es), the APTU Uniform Rules and their Annex(es) and the APTU Uniform Technical Prescriptions (UTP) the following definitions shall apply:

- a) "accident" means an unwanted or unintended sudden event or a specific chain of such events which have harmful consequences; accidents are divided into the following categories: collisions, derailments, level-crossing accidents, accidents to persons caused by rolling stock in motion, fires and others;

- b) "admission of a type of construction" means the right granted by which the competent authority authorises a type of construction of a railway vehicle, as a basis for the admission to operation for vehicles which correspond to that type of construction;
- c) "admission to operation" means the right granted by which the competent authority authorises each railway vehicle or other railway material to operate in international traffic;
- d) "Committee of Technical Experts" means the Committee provided for in Article 13 § 1, f) of the Convention;
- da) "contracting entity" means any entity, whether public or private, which orders the design and/or construction or the renewal or upgrading of a subsystem. This entity may be a railway undertaking, an infrastructure manager or a keeper, or the concession holder responsible for carrying out a project;
- e) "Contracting State" means a Member State of the Organisation which has not made a declaration in respect of these Uniform Rules in accordance with Article 42 § 1, first sentence of the Convention;
- f) "declaration" means the evidence of an assessment or an element of assessments carried out to confirm that a vehicle, a type of construction or an element of construction complies with the provisions of the APTU Uniform Rules and its UTP (including applicable specific cases and national requirements in force according to Article 12 of the APTU Uniform Rules);
- g) "element of construction" or "constituent" means any elementary component, group of components, complete or subassembly of equipment incorporated or intended to be incorporated into a railway vehicle, other railway material or infrastructure; the concept of an "element of construction" covers both tangible objects and intangible objects such as software;
- h) "entity in charge of maintenance" (ECM) means the entity that is in charge of the maintenance of a vehicle, and is registered as such in the vehicle register according to Article 13; this definition also applies to other railway material;
- i) "essential requirements" means all the conditions set out in the APTU Uniform Rules which must be met by the rail system, the subsystems and the interoperability constituents, including interfaces;
- j) "incident" means any occurrence, other than accident or serious accident, associated with the operation of trains and affecting the safety of operation;
- k) "infrastructure manager" means an undertaking or an authority which manages railway infrastructure;
- l) "international traffic" means the circulation of railway vehicles on railway lines over the territory of at least two Contracting States;
- m) "investigation" means a process conducted for the purpose of accident and incident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of causes (actions, omissions, events or conditions, or a combination thereof, which led to the accident or incident) and, when appropriate, the making of safety recommendations;
- n) "keeper" means the person or entity that, being the owner of a vehicle or having the right to use it, exploits the vehicle as a means of transport and is registered as such in the vehicle register referred to in Article 13;
- o) "Maintenance File" means the document(s) that specify the inspections and maintenance tasks to be carried out on a (type of) vehicle or other railway material, which is set up according to the rules and specifications in the UTP including specific cases and notified national technical requirements in force, if any, according to Article 12 of the APTU Uniform Rules;

- p) "Maintenance Record File" means the documentation relating to an admitted vehicle or other railway material, which contains the record of its operating history and the inspections and maintenance operations that have been carried out on it;
- q) "network" means the lines, stations, terminals, and all kinds of fixed equipment needed to ensure safe and continuous operation of the rail system;
- r) "open points" means technical aspects relating to essential requirements which have not explicitly been covered in a UTP;
- s) "other railway material" means any movable railway material intended to be used in international traffic that is not a railway vehicle;
- t) "rail transport undertaking" means a private or public undertaking
- which is authorised to carry persons or goods by rail and which ensures traction or
  - which only ensures traction;
- u) "railway infrastructure" (or just "infrastructure") means all the railway lines and fixed installations so far as these are necessary for the compatibility with and safe circulation of railway vehicles and other railway material admitted according to these Uniform Rules;
- v) "railway material" means railway vehicles, other railway material and railway infrastructures;
- w) "railway vehicle" means a vehicle suitable to circulate on its own wheels on railway lines with or without traction;
- x) "regional organisation" means an organisation as defined in Article 38 of the Convention within the exclusive competence that Contracting States have ceded to it;
- y) "renewal" means any major substitution work on a subsystem or part subsystem
- which does not change the overall performance of the subsystem;
- ya) "RID" means Appendix C to the Convention;
- z) "serious accident" means any train collision or derailment of trains, resulting in the death of at least one person or serious injuries to five or more persons or extensive damage to rolling stock, the railway infrastructure or the environment, and any other similar accident with an obvious impact on railway safety regulation or the management of safety; "extensive damage" means damage that can immediately be assessed by the investigating body to cost at least 1.8 million SDR in total;
- aa) "specific case" means any part of the rail system of the Contracting States which needs special provisions in the UTP, either temporary or definitive, because of geographical, topographical or urban environment constraints or those affecting compatibility with the existing system. This may include in particular railway lines and networks isolated from the rest of the network, the loading gauge, the track gauge or space between the tracks as well as vehicles and other railway material strictly intended for local, regional or historical use, and vehicles and other railway material originating from or destined for third countries;
- bb) "subsystems" means the result of the division of the rail system, as shown in the UTP; these subsystems, for which essential requirements must be laid down, may be structural or functional;
- cc) "technical admission" means the procedure carried out by the competent authority to authorise a railway vehicle or other railway material to operate in international traffic or to authorise the type of construction;
- dd) "technical certificate" means the official evidence of a successful technical admission in the form of a valid Design Type Certificate or a valid Certificate to Operation;

- ee) "Technical File" means the documentation relating to the vehicle or other railway material containing all its (the type's) technical characteristics, including a user manual and the characteristics necessary to identify the object(s) concerned;
- eea) "TSI" means Technical Specification for Interoperability adopted in accordance with Directives 96/48/EC, 2001/16/EC and 2008/57/EC by which each subsystem or part of a subsystem is covered in order to meet the essential requirements and ensure the interoperability of the rail system;
- ff) "type of construction" means the basic design characteristics of the railway vehicle or other railway material as covered by a single type examination certificate described in assessment module SB of the UTP;
- gg) "upgrading" means any major modification work on a subsystem or part subsystem which improves the overall performance of the subsystem.

### **Article 3**

#### **Admission to international traffic**

- § 1 Each railway vehicle must, for circulation in international traffic, be admitted in accordance with these Uniform Rules.
- § 2 The technical admission shall have the aim of ascertaining whether the railway vehicles satisfy
  - a) the construction prescriptions contained in the UTP,
  - b) the construction and equipment prescriptions contained in RID,
  - c) the special conditions of an admission under Article 7a.
- § 3 §§ 1 and 2 as well as the following articles shall apply *mutatis mutandis* to the technical admission of other railway material and of elements of construction either of vehicles or of other railway material.

### **Article 3a**

#### **Interaction with other international agreements**

- § 1 Railway vehicles and other railway material which have been placed in service according to applicable European Community (EC) and corresponding national legislation shall be deemed as admitted to operation by all Contracting States according to these Uniform Rules
  - a) in the case of full equivalence between the provisions in the applicable TSIs and the corresponding UTP and
  - b) provided the set of applicable TSIs, against which the railway vehicle or other railway material was authorised, cover all aspects of the relevant subsystems that are part of the vehicle and
  - c) provided these TSIs do not contain open points related to the technical compatibility with infrastructure and
  - d) provided the vehicle or other railway material is not subject to a derogation.

If these conditions are not fulfilled, the vehicle or other railway material shall be subject to Article 6 § 4.

- § 2 Railway vehicles and other railway material which have been admitted to operation according to these Uniform Rules shall be deemed as placed in service in the Member States of the European Community and in the States which apply Community legislation as a result of international agreements with the European Community in the case of
  - a) full equivalence between the provisions in the applicable UTP and the corresponding TSIs and
  - b) provided the set of applicable UTP against which the railway vehicle or other railway material was authorised covers all aspects of the relevant subsystems that are part of the vehicle and
  - c) provided these UTP do not contain open points related to the technical compatibility with infrastructure and

- d) provided the vehicle or other railway material is not subject to a derogation.

If these conditions are not fulfilled, the vehicle or other railway material shall be subject to authorisation according to the law applicable in the Member States of the European Community and in the States which apply Community legislation as a result of international agreements with the European Community.

- § 3 The admission to operation, the operation and the maintenance of railway vehicles and other railway material being used only in Member States of the European Community are regulated by the applicable Community and national legislation. This provision is also applicable to Contracting States which apply relevant European Community legislation as a result of international agreements with the European Community.
- § 4 §§ 1 to 2 apply *mutatis mutandis* to admissions / authorisations of vehicle types.
- § 5 An entity in charge of maintenance (ECM) for a freight wagon, certified according to Article 15 § 2, shall be deemed as certified according to applicable European Community and corresponding national legislation and vice versa in the case of full equivalence between the certification system adopted under Article 14a (5) of the EC Railway Safety Directive 2004/49/EC and rules adopted by the Committee of Technical Experts according to Article 15 § 2.

#### **Article 4 Procedure**

- § 1 Technical admission of a vehicle shall be carried out
- a) either in a single stage by the granting of admission to operation to a given individual vehicle,
- b) or in two successive stages, by the granting
- of admission of a type of construction to a given type of construction,
  - subsequently an admission to operation to individual vehicles corresponding to this type of construction by a simplified procedure verifying that they are of this type.

- § 2 The assessments of the conformity of a vehicle or an element of construction with the provisions of the UTP on which the admission is based may be divided into assessment elements each evidenced by a declaration. The assessment elements and the format of the declaration shall be defined by the Committee of Technical Experts.

- § 3 The procedures for the technical admission of railway infrastructure are subject to the provisions in force in the Contracting State in question.

#### **Article 5 Competent authority**

- § 1 The technical admission shall be the task of the national or international authority competent in the matter in accordance with the laws and prescriptions in force in each Contracting State.
- § 2 The authorities referred to in § 1 may or, according to the provisions in force in their State, shall transfer to bodies with residence in their State recognised as suitable, competence to carry out assessments as a whole or partly, including the issuing of the corresponding declarations.

The transfer of competence to

- a) a rail transport undertaking,
- b) an infrastructure manager,
- c) a keeper,
- d) an entity in charge of maintenance (ECM),
- e) a designer or manufacturer of railway material participating directly or indirectly in the manufacture of railway material,

including subsidiaries of the foregoing entities shall be prohibited.

- § 3 In order to be recognised as suitable the bodies mentioned in § 2 must fulfil the following conditions:
- a) The body must be independent in its organisation, legal structure and decision making from any railway undertaking, infrastructure manager, applicant and procurement entity; its Director and the staff responsible for carrying out the

assessments or issuing certificates and declarations may not become involved, either directly or as authorised representatives, in the design, manufacture, construction or maintenance of the constituents, vehicles or railway material or in the use thereof. This does not exclude the possibility of an exchange of technical information between the manufacturer or constructor and that body.

- b) The body and the staff responsible for the assessments shall carry out the assessments with the greatest possible professional integrity and the greatest possible technical competence and shall be free of any pressure and incentive, in particular of a financial nature, which could affect their judgement or the results of their inspection, in particular from persons or groups of persons affected by the results of the assessments.
- c) In particular, the body and the staff responsible for the assessments shall be functionally independent of the bodies in charge of investigations in the event of accidents.
- d) The body shall employ staff and possess the means required to perform adequately the technical and administrative tasks linked to the assessments; it shall also have access to the equipment needed for exceptional assessments.
- e) The staff responsible for the assessments shall possess
  - proper technical and vocational training,
  - satisfactory knowledge of the requirements relating to the assessments that they carry out and sufficient practice in those assessments and
  - the ability to draw up the certificates, records and reports which constitute the formal record of the assessments conducted.
- f) The independence of the staff responsible for the assessments shall be guaranteed. No

official must be remunerated on the basis of the number of assessments performed or of the results of those assessments.

- g) The body shall procure civil liability insurance unless that liability is covered by the State under national law or unless the assessments are carried out directly by that Contracting State.
  - h) The staff of the body shall be bound by professional secrecy with regard to everything they learn in the performance of their duties (with the exception of the competent administrative authorities in the State where they perform those activities) in pursuance of these Uniform Rules or any legal requirement and/or regulations of the Contracting State, including, where appropriate, the law of the European Community.
- § 4 The requirements of § 3 shall apply *mutatis mutandis* to the authorities carrying out technical admission.
- § 5 A Contracting State shall ensure, by notification or where appropriate by the means provided for in the law of the European Community or in the law of the States which apply Community legislation as a result of international agreements with the European Community, that the Secretary General is informed of the bodies responsible for carrying out the assessments, verifications and approvals, indicating each body's area of responsibility. The Secretary General shall publish a list of bodies, their identification numbers and areas of responsibility, and shall keep the list updated.
- § 6 A Contracting State shall ensure the consistent supervision of the bodies indicated in § 2 and shall withdraw the competence from a body which no longer meets the criteria referred to in § 3, in which case it shall immediately inform the Secretary General thereof.
- § 7 Should a Contracting State consider that an assessing or approving authority of another Contracting State, or a body having competence transferred from it, does not meet the criteria of § 3, the matter shall be transferred to the Committee of Technical Experts which, within four months, shall inform the Contracting State in question of any changes that are necessary for the



body to retain the status conferred upon it. In relation to this, the Committee of Technical Experts may decide to instruct the Contracting State to suspend or withdraw approvals made on the basis of work done by the body or by the authority in question.

### Article 6

#### Validity of technical certificates

§ 1 Technical certificates issued by the competent authority of a Contracting State in accordance with these Uniform Rules, shall be valid in all the other Contracting States. However the circulation and use on the territories of those other States shall be subject to the conditions specified in this Article.

§ 2 An admission to operation allows the rail transport undertakings to operate a vehicle only on infrastructures compatible with the vehicle according to its specifications and other conditions of the admission; it is the responsibility of the rail transport undertaking to ensure this.

§ 3 Without prejudice to Article 3a an admission to operation issued for a vehicle which is in conformity with all applicable UTP shall permit the vehicle free circulation on the territories of other Contracting States provided that

- a) all essential requirements are covered in these UTP and
- b) the vehicle is not subject to
  - a specific case or
  - open points that are related to technical compatibility with the infrastructure or
  - a derogation.

The conditions for the free circulation may also be specified in the relevant UTP.

§ 4 a) Where in a Contracting State an admission to operation has been issued for a vehicle which is
 

- subject to a specific case, an open point which is related to the technical compatibility with the infrastructure or a derogation, or

- not in conformity with the UTP on rolling stock and all other relevant provisions, or

b) where not all essential requirements are covered in the UTP,

the competent authorities of the other States may ask the applicant for additional technical information such as risk analysis and/or vehicle tests before granting a complementary admission to operation.

For the part of the vehicle which is compliant with a UTP or part of it, the competent authorities have to accept verifications that have been made by other competent authorities according to the UTP. For the other part of the vehicle the competent authorities shall take full account of the equivalence table referred to in Article 13 of the APTU Uniform Rules.

The fulfilment of

- a) identical provisions and provisions declared equivalent,
- b) provisions not related to a specific case and
- c) provisions not related to the technical compatibility with infrastructure,

shall not be assessed again.

§ 5 §§ 2 to 4 shall apply *mutatis mutandis* to an admission of a type of construction.

### Article 6a

#### Recognition of procedural documentation

§ 1 Assessments, declarations and other documentation made according to these Uniform Rules shall be recognised at face value by the authorities and competent bodies, the rail transport undertakings, the keepers and the infrastructure managers in all the Contracting States.

§ 2 If a requirement or a provision has been declared as equivalent in accordance with Article 13 of the APTU Uniform Rules related assessments and tests which have already been carried out and documented shall not be repeated.

**Article 6b****Recognition of technical and operational tests**

The Committee of Technical Experts may adopt rules for inclusion in an Annex to these Uniform Rules and requirements for inclusion in one or more UTP concerning the provisions for and the mutual recognition of technical inspections, maintenance record files for the admitted vehicles and operational tests such as train braking tests.

**Article 7****Prescriptions applicable to vehicles**

§ 1 In order to be admitted and remain admitted to circulation in international traffic, a railway vehicle must satisfy

- a) the UTP and
- b) where applicable, the provisions contained in RID.

§ 2 In the absence of UTP applicable to the sub-system, the technical admission shall be based on the applicable national technical requirements in force according to Article 12 of the APTU Uniform Rules in the Contracting State in which an application for technical admission is made.

§ 3 If the UTP do not cover all essential requirements or in the case of specific cases or open points, the technical admission shall be based on

- a) the provisions contained in the UTP,
- b) where applicable, the provisions contained in RID and
- c) applicable national technical requirements in force according to Article 12 of the APTU Uniform Rules.

**Article 7a****Derogations**

The Committee of Technical Experts shall adopt guidelines or mandatory provisions for derogations from the provisions of Article 7 and for the assessment methods that may or shall be used.

**Article 8****Prescriptions applicable to railway infrastructure**

§ 1 To ensure that a railway vehicle admitted to international traffic in accordance with these Uniform Rules will run safely on and be compatible with the railway infrastructure to be used this railway infrastructure must satisfy

- a) the provisions contained in the UTP and
- b) where applicable, the provisions contained in RID.

§ 2 Admission of infrastructure and supervision of its maintenance remain subject to the provisions in force in the Contracting State in which the infrastructure is located.

§ 3 Article 7 and 7a shall apply mutatis mutandis to infrastructure.

**Article 9****Operation prescriptions**

§ 1 The rail transport undertakings which operate railway vehicles admitted to circulation in international traffic shall be required to comply with the prescriptions relating to the operation of a vehicle in international traffic, specified in the UTP.

§ 2 The undertakings and administrations which manage infrastructure in the Contracting States, including operational safety and control systems, intended and suitable for operation in international traffic, shall be required to comply with the technical prescriptions specified in the UTP and satisfy them permanently in respect of the construction and the management of that infrastructure.

**Article 10****Application and granting of technical certificates and declarations and related conditions**

§ 1 The grant of a technical certificate shall be related to the type of construction of a railway vehicle or to the railway vehicle itself.

§ 2 An application for a technical certificate may be made by:

- a) the manufacturer,

- b) a rail transport undertaking,
  - c) the keeper of the vehicle,
  - d) the owner of the vehicle,
  - e) the infrastructure manager.
- § 3 The application for a technical certificate, including appropriate declarations, may be made to any competent authority or body within its competence referred to in Article 5, of one of the Contracting States.
- § 4 If Article 6 § 4 applies to the vehicle, the applicant shall indicate the Contracting States (if applicable the lines) for which the technical certificates are required to permit free circulation; in this case the competent authorities and assessing bodies involved should cooperate in order to make the process easier for the applicant.
- § 5 All costs arising from the admission process shall be covered by the applicant, unless provided otherwise according to the laws and prescriptions in force in the State where the approval is granted. Carrying out technical admissions for profit shall not be permitted.
- § 5a All decisions, assessments, tests etc. shall be carried out in a non-discriminatory way.
- § 6 The applicant shall elaborate and attach to his application a Technical File and a Maintenance File containing the information required in the UTP. The assessing body shall check, correct and add appropriate information to these files in order that the files reflect the properties of the vehicle.
- § 7 Every assessment carried out shall be documented by the assessor in an Assessment Report which shall substantiate the assessments carried out hereby, stating which provisions the object has been assessed against and whether the object passed or failed this assessment.
- § 8 A person who applies for a Certificate of Operation by the simplified procedure of technical admission (Article 4 § 1, b)), shall attach to his application the Design Type Certificate, established in accordance with Article 11 § 2, and demonstrate in an appropriate manner that the vehicles for which he is applying for a Certificate of Operation correspond to that type of construction.
- § 9 A technical certificate shall be granted in principle for an unlimited period; it can be general or limited in scope.
- § 10 If relevant provisions in the prescriptions according to Article 7 on the basis of which a type of construction has been admitted have been changed, and if no relevant transitional provisions can be applied, the Contracting State in which the corresponding Design Type Certificate has been issued, and after consultation of the other States where the Certificate is valid according to Article 6, shall decide whether the Certificate may remain valid or need to be renewed. The criteria which shall be checked in the case of a renewed type admission may only concern the changed provisions. The renewal of the type admission does not affect admissions to operation already granted on the basis of previously admitted types.
- § 11 In the event of renewal or upgrading, the contracting entity or the manufacturer shall send the Contracting State concerned a file describing the project. The Contracting State shall examine this file and, taking account of the implementation strategy indicated in the applicable UTP, shall decide whether the extent of the work means that a new admission to operation within the meaning of these Uniform Rules is needed.
- Such a new admission to operation shall be required whenever the overall safety level of the subsystem concerned may be adversely affected by the work envisaged. If a new admission is needed, the Contracting State shall decide to what extent the provisions in the related UTP need to be applied to the project.
- The Contracting State shall take its decision not later than four months after submission of the complete file by the applicant.
- When a new admission is required and if the UTP are not fully applied, the Contracting States shall notify to the Secretary General
- a) the reason why a UTP is not fully applied,
  - b) the technical characteristics applicable in place of the UTP and
  - c) the bodies responsible for providing the information required under a) and b).

The Secretary General shall publish the notified information on the website of the Organisation.

§ 12 § 11 applies mutatis mutandis to a Design Type Certificate and to any declaration concerning the construction or the elements of construction in question.

**Article 10a**  
**Rules for withdrawals**  
**or suspensions of technical certificates**

§ 1 If a competent authority of a Contracting State other than the one which has granted the (first) admission to operation discovers non-compliance it shall, with all details, inform the (first) admitting authority; if the non-compliance relates to a Design Type Certificate, the authority which issued it shall also be informed.

§ 2 A Certificate of Operation may be withdrawn

- a) when the railway vehicle no longer satisfies
  - the prescriptions contained in the UTP and in applicable national provisions in force according to Article 12 of the APTU Uniform Rules, or
  - the special conditions of its admission under Article 7a or
  - the construction and equipment prescriptions contained in RID or
- b) if the keeper does not comply with the requirement of the competent authority to remedy the defects within the prescribed time or
- c) when stipulations and conditions resulting from a limited admission under Article 10 § 10 are not fulfilled or complied with.

§ 3 Only the authority which has granted the Design Type Certificate or the Certificate of Operation may withdraw it.

§ 4 The Certificate of Operation shall be suspended

- a) when technical checks, inspections, maintenance and servicing of the railway vehicle prescribed in its Maintenance File,

in the UTP, in the special conditions of an admission pursuant to Article 7a or in the construction and equipment prescriptions contained in RID are not carried out (or if deadlines are not observed);

- b) if in case of severe damage to a railway vehicle, the order of the competent authority to present the vehicle is not complied with;
- c) in case of non-compliance with these Uniform Rules and prescriptions contained in the UTP;
- d) if applicable national provisions in force according to Article 12 of the APTU Uniform Rules or their declared equivalent provisions according to Article 13 of the APTU Uniform Rules are not complied with. The validity of the Certificate shall be suspended for the Contracting State(s) concerned.

§ 5 The Certificate of Operation shall become void when the railway vehicle is withdrawn from service. This withdrawal from service shall be notified to the competent authority which has granted the admission to operation.

§ 6 §§ 1 to 4 shall apply mutatis mutandis to a Design Type Certificate.

**Article 10b**  
**Rules for assessments and procedures**

§ 1 The Committee of Technical Experts is competent to adopt further mandatory provisions for the assessments and procedural rules for technical admission.

§ 2 In addition to, but not in contradiction with the provisions set by the Committee of Technical Experts according to § 1, Contracting States or regional organisations may adopt (or maintain) provisions for non-discriminatory detailed mandatory procedures for the assessments and requirements concerning declarations. These provisions shall be notified to the Secretary General, who shall inform the Committee of Technical Experts, and they shall be published by the Organisation.

### Article 11

#### Technical Certificates and Declarations

- § 1 The admission of a type of construction and the admission to operation shall be evidenced by separate documents called: "Design Type Certificate" and "Certificate of Operation".
- § 2 The Design Type Certificate shall:
- a) specify the designer and intended manufacturer of the type of construction of the railway vehicle;
  - b) have the Technical File and the Maintenance File attached;
  - c) if appropriate, specify the special operating limitations and conditions for the type of construction of a railway vehicle and for railway vehicles which correspond to this type of construction;
  - d) have the Assessment Report(s) attached;
  - e) if appropriate, specify all related declarations (of conformity and verification) issued;
  - f) specify the issuing competent authority, date of issue and contain the signature of the authority;
  - g) if appropriate, specify its period of validity.
- § 3 The Certificate of Operation shall include
- a) all the information indicated in § 2, and
  - b) the identification code(s) of the vehicle(s) covered by the certificate;
  - c) information on the keeper of the railway vehicle(s) covered by the certificate on the day of its issue;
  - d) if appropriate, its period of validity.
- § 4 The Certificate of Operation may cover a group of individual vehicles of the same type, in which case the information required according to § 3 shall be specified identifiably for each of the vehicles of the group and the Technical File shall

contain a list with identifiable documentation concerning the tests made on each vehicle.

- § 5 The Technical File and the Maintenance File shall contain the information according to the provisions in the UTP.
- § 6 The certificates shall be printed in one of the working languages according to Article 1 § 6 of the Convention.
- § 7 The certificates and declarations shall be issued to the applicant.
- § 8 The Certificate of Operation is related to the object. Once the vehicle is in operation the holder of the Certificate of Operation (including the Technical File and the Maintenance File), if not the current keeper, shall without delay hand it over to the current keeper together with the Maintenance Record File and make available all (additional) detailed instructions for maintenance and operations that are still in his possession.
- § 9 § 8 applies mutatis mutandis to vehicles and railway material admitted according to Article 19, whereby the documentation in question is the approval documentation and any other documentation containing any information similar to what is included in the requirements for the Technical File, Maintenance File and Maintenance Record File, whether in full or in part.

### Article 12

#### Uniform formats

- § 1 The Organisation shall prescribe uniform formats of the certificates indicated in Article 11, of the declarations decided according to Article 4 § 2 and of the Assessment Report according to Article 10 § 7.
- § 2 The formats shall be prepared and adopted by the Committee of Technical Experts.
- § 3 The Committee of Technical Experts may decide to allow certificates and declarations made according to another specified format than that prescribed in these Uniform Rules, but containing the information required according to Article 11, to be recognised as equivalent substitutes.

### **Article 13 Registers**

- § 1 A register in the form of an electronic data bank containing information concerning the railway vehicles in respect of which a Certificate of Operation has been issued and the types of constructions in respect of which a Design Type Certificate has been issued shall be established and kept up to date under the responsibility of the Organisation. The register shall include railway vehicles admitted according to Article 19; it may contain railway vehicles admitted for national traffic only.
- § 2 The data bank shall also contain a register with information concerning the competent authorities and bodies to whom competence is transferred according to Article 5 and the accredited/recognised auditors according to Article 15 § 2.
- § 3 The Committee of Technical Experts may decide to include other data to be used in railway operations in the data bank, such as information concerning declarations, inspections and maintenance of the admitted vehicles (including next inspection due), information on accidents and incidents and registers concerning coding of vehicles, locations, rail transport undertakings, keepers, infrastructure managers, workshops, manufacturers, entities in charge of maintenance (ECM) etc.
- § 4 The Committee of Technical Experts shall establish the functional and technical architecture of the data bank, as well as the necessary data, when and how the data shall be provided, what the access rights will be and other administrative and organisational provisions, including which database structure should be applied. In all cases, change of keeper, change of ECM, withdrawals from service, official immobilisations, suspensions and withdrawals of certificates, declarations or other evidence and modifications to a vehicle which derogate from the admitted type of construction shall be notified to the Secretary General without delay.
- § 5 When applying this Article, the Committee of Technical Experts shall consider registers set up by Contracting States and regional organisations in such a way so as to reduce undue burden on the involved parties such as regional organisations, Contracting States, competent authorities and industry. In order also to minimise the cost

for the Organisation and obtain coherent register systems, all parties involved shall coordinate with the Organisation their plans and the development of registers which are within the scope of these Uniform Rules.

- § 6 The data registered in the data bank shall be considered as *prima facie* evidence of the technical admission of a railway vehicle.
- § 7 The Committee of Technical Experts may decide that the costs of setting up and running the data bank shall be covered, in whole or in part, by the users; supplying and amending data shall be free of charge, whereas consulting data may be subject to a fee.

### **Article 14 Inscriptions and signs**

- § 1 Railway vehicles admitted to operation must bear
- a) a sign, which establishes clearly that they have been admitted to operation in international traffic according to these Uniform Rules, and
  - b) the other inscriptions and signs prescribed in the UTP, including a unique identification code (the vehicle number).

The competent authority which grants the admission to operation is responsible for ensuring that the alphanumeric identification code is assigned to each vehicle. This code, which shall include the country code of the (first) admitting State, must be marked on each vehicle and be entered in the National Vehicle Register (NVR) of that State as required according to Article 13.

- § 2 The Committee of Technical Experts shall lay down the sign provided for in § 1 a) and the transitional periods during which the railway vehicles admitted to circulation in international traffic may bear inscriptions and signs derogating from those prescribed in § 1.

### **Article 15 Maintenance**

- § 1 Railway vehicles and other railway material must be in a good state of maintenance in such a way that they comply with the provisions specified in the UTP and satisfy them permanently and that their condition would not in any way compromise

operational safety and would not harm the infrastructure, environment and public health by their circulation or their use in international traffic. To that end, railway vehicles and other railway material must be made available for and undergo the service, inspections and maintenance as prescribed in the Maintenance File attached to the Certificate of Operation, the UTP, the special conditions of an admission pursuant to Article 7a and in the provisions contained in RID.

§ 2 Each railway vehicle, before it is admitted to operation or used on the network, shall have an entity in charge of maintenance (ECM) assigned to it and this entity shall be registered in the data bank referred to in Article 13. A railway undertaking, an infrastructure manager or a keeper may be an ECM. The ECM shall ensure that the vehicles for which it is in charge of maintenance are in a safe state of running by means of a system of maintenance. The ECM shall carry out the maintenance itself or make use of contracted maintenance workshops.

The ECM for a freight wagon must hold a valid certificate issued by an external auditor accredited/recognised in one of the Contracting States.

The Committee of Technical Experts shall adopt further detailed rules for certification and auditing of ECM, for accredited/recognised auditors, their accreditation/ recognition, the audits and audit certificates. The rules shall indicate whether they are equivalent to the criteria related to the ECM certification system adopted in the European Community or in the States which apply Community legislation as a result of international agreements with the European Community.

These rules, which shall also include rules for the withdrawal and suspension of certificates and accreditations, shall be defined in an Annex to these Uniform Rules and shall form an integral part thereof.

§ 3 An operating railway undertaking is responsible for the safe operation of its trains and shall ensure that vehicles carried are properly maintained. Therefore, the ECM must ensure that reliable information about maintenance processes and data are available for the operating railway undertaking, and the operating railway undertaking must in due time provide the ECM with information and data concerning its operation of the vehicles and other railway material for which

the ECM is in charge. In both cases the information and data in question shall be specified in the Annex indicated in § 2.

§ 4 The ECM of an admitted vehicle shall keep and update a Maintenance Record File for that vehicle. The file shall be available for inspection by the competent national authority.

§ 5 The Committee of Technical Experts may adopt guidelines or regulations on the certification and auditing of maintenance workshops and the mutual recognition of the certificates and audits. Regulations according to this paragraph shall be defined in an Annex to these Uniform Rules and shall form an integral part thereof and be published on the website of the Organisation.

#### Article 16

##### Accidents, incidents and severe damage

§ 1 In case of accident, incident or severe damage to railway vehicles, all parties involved (the infrastructure managers, the keepers, the ECM, the railway undertakings concerned and possible others), shall be required

- a) to take, without delay, all necessary measures to ensure the safety of railway traffic, respect for the environment and public health and
- b) to establish the causes of the accident, the incident or the severe damage.

§ 1a The measures according to § 1 must be coordinated. Such coordination is the obligation of the infrastructure manager unless otherwise prescribed by provisions in force in the State in question. In addition to the duty of investigation placed upon the parties involved, the Contracting State may require an independent investigation to be carried out.

§ 2 A vehicle shall be considered severely damaged when it cannot be repaired by a simple operation which would allow it to be joined in a train and to circulate on its own wheels without danger for operations. If the repair can be carried out in less than 72 hours or the cost is less than 0.18 million SDR in total, the damage shall not be considered as severe.

§ 3 The accidents, incidents and severe damage shall be notified, without delay, to the authority or

body which admitted the vehicle to circulation. That authority or body may require the damaged vehicle to be presented, possibly already repaired, for examination of the validity of the admission to operation which has been granted. If appropriate, the procedure concerning the grant of admission to operation must be repeated.

§ 4 The Contracting States shall keep records, publish investigation reports including their findings and recommendations, inform the approval certificate issuing authority and the Organisation of the causes of accidents, incidents and severe damage in international traffic that occurred on their territory. The Committee of Technical Experts may examine the causes of serious accidents and incidents or severe damage in international traffic with a view possibly to developing the construction and operation prescriptions for railway vehicles and other railway material contained in the UTP and may if appropriate decide to instruct the Contracting States within a short time limit to suspend relevant Certificates to Operation, Design Type Certificates or declarations issued.

§ 5 The Committee of Technical Experts may prepare and adopt further mandatory rules concerning the investigation of serious accidents, incidents and severe damage, requirements concerning independent State investigation bodies and the form and content of reports. It may also change the values/numbers in § 2 and in Article 2 ff).

#### **Article 17**

##### **Immobilisation and rejection of vehicles**

§ 1 A competent authority, another rail transport undertaking or an infrastructure manager may not reject or immobilise railway vehicles to prevent them from running on compatible railway infrastructures if these Uniform Rules, the prescriptions contained in the UTP, the special conditions, if any, for the admission set out by the admitting authority as well as the construction and operation prescriptions contained in RID, are complied with.

§ 2 The right of a competent authority to inspect and immobilise a vehicle is not affected if non-compliance with § 1 is suspected, but the examination to establish certainty should be carried out as quickly as possible and in any case within 24 hours.

§ 3 However, if a Contracting State does not suspend or withdraw a certificate within the limit indicated according to Article 5 § 7 or Article 16 § 4, other Contracting States are entitled to reject or immobilise the vehicle(s) in question.

#### **Article 18**

##### **Non-compliance with the prescriptions**

§ 1 Subject to § 2 and Article 10 a § 4 c), the legal consequences resulting from failure to comply with these Uniform Rules and the UTP, shall be regulated by the provisions in force in the Contracting State of which the competent authority has granted the first admission to operation, including the rules relating to conflict of laws.

§ 2 The consequences in civil and penal law resulting from failure to comply with these Uniform Rules and the UTP shall be regulated, so far as concerns the infrastructure, by the provisions in force in the Contracting State in which the infrastructure manager has his place of business, including the rules relating to conflict of laws.

#### **Article 19**

##### **Transitional provisions**

§ 1 Article 3 § 1 applies to upgraded, renewed and existing vehicles. For vehicles which have been approved for international traffic under RIV, RIC or other pertinent international agreements and which are marked accordingly, transitional provisions are prescribed in this Article.

§ 2 At the time of entry into force of these Uniform Rules, existing vehicles marked with RIV or RIC as proof of current compliance with the technical provisions of the RIV 2000 agreement (revised edition of 1 January 2004) or the RIC agreement respectively, shall be deemed to be admitted to operation on the networks of the Contracting States in accordance with their compatibility with the railway infrastructures (in respect of the markings on the wagon) for which it is admitted by one of the Contracting States.

§ 2a Existing vehicles not marked RIV or RIC but admitted and marked according to bilateral or multilateral agreements between Contracting States notified to the Organisation shall also be deemed to be admitted to operation on the networks covered by the agreement.



§ 3 The transitional admission according to §§ 2 and 2a is valid until the vehicle requires a new admission according to Article 10 § 11.

§ 4 The inscription RIV, RIC, or another marking on the vehicle accepted by the Committee of Technical Experts, together with the data stored in the database indicated in Article 13, shall be considered as sufficient proof of the approval. Unauthorised changing of this marking shall be considered as fraud and prosecuted according to national law.

§ 5 Regardless of this transitional provision, the vehicle and its documentation shall comply with the provisions in force of the UTP concerning marking and maintenance; compliance with the provisions of RID in force shall also be ensured, where applicable. The Committee of Technical Experts may also decide that safety-based provisions introduced in the UTP shall be complied with within a certain deadline regardless of any transitional provisions.

§ 6 Existing vehicles which are not covered by the scope of §§ 2 and 2a can be admitted to operation upon the request of an applicant to a competent authority. The latter may request additional technical information from the applicant, risk analysis and/or vehicle tests before granting a complementary admission to operation. However the competent authorities shall take full account of the equivalence table referred to in Article 13 of the APTU Uniform Rules.

§ 7 The Committee of Technical Experts may adopt other transitional provisions.

### **Article 20 Disputes**

Disputes relating to the technical admission of railway vehicles and other railway material intended to be used in international traffic, may be dealt with by the Committee of Technical Experts if there is no resolution by direct negotiation between the parties involved. Such disputes may also be submitted, in accordance with the procedure specified in Title V of the Convention, to the Arbitration Tribunal.

### **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 (g) of the Convention, including editorial amendments.

The information referred to 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 Remarks concerning the text amendments to APTU also apply to the ATMF Appendix.
2. When the Explanatory Report refers to EC Member States, it also applies *mutatis mutandis* to States where Community legislation applies as a result of international agreements with the European Community.
3. The Revision Committee followed to a large extent the suggestions made by the Schweinsberg Group as endorsed by the Committee of Technical Experts. Clarifications in the texts and the Explanatory Report were added in particular with regard to the "Entity in charge of maintenance" mentioned in Article 3a and 15, and to the limits of the admission to operation and to the obligations of the competent authority in Article 6.
4. The 9<sup>th</sup> General Assembly (Berne, 9/10.9.2009) noted the results of the 24<sup>th</sup> session of the Revision Committee concerning the amendments to Appendix G (ATMF) of the Convention and the Explanatory Report and approved the editorial amendments and the Explanatory Report on Articles 1, 3 and 9 of ATMF. 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

1. According to Article 33 §§ 2 and 4 (g) of the Convention, only the General Assembly could decide on an amendment to this Article, not the Revision Committee.
2. 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 this Appendix. Traffic between the following groups of States is dealt with:
  - a) only between Member States of OTIF that are not members of the EC or the European Economic Area Agreement (EEA), Article 6 § 3,
  - b) only between Member States of OTIF that are also members of the EC or EEA, Article 3a § 3,
  - c) from one OTIF Member State that is also a member of the EC or EEA to an OTIF Member State that is not a member of the EC or EEA, Article 3a § 1 and
  - d) from one OTIF Member State that is not a member of the EC or EEA to an OTIF Member State that is also a member of the EC or EEA, Article 3a § 2.
3. With regard to matters that are not covered or that are only partly covered by UTPs, see the remarks on Article 7.
4. Where particular matters are not covered by APTU and ATMF or by the provisions that are

based on them, it is generally the national technical provisions that apply in the Contracting State in which the application for technical approval is made (see Article 7). In the case of States in which EC law applies, this particularly concerns aspects covered by the EC directives on interoperability (placing interoperability constituents on the market, conformity assessment and verification by notified bodies, etc.), safety (safety certification, safety authorisation, compliance with Common Safety Methods and Common Safety Targets, obligation to report on Common Safety Indicators, accident investigation procedures, etc.) and market access (Directive 95/18/EC on licensing of railway undertakings, Directive 2001/12/EC on the development of the Community's railways, Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, etc.).

#### Article 2 Definitions

1. 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 therefore contains definitions of terms used in APTU and ATMF as well as definitions of those terms that are only used in ATMF. In the English version, the terms are arranged alphabetically. The other language versions follow the sequence of the English version.
2. Regarding the "Committee of Technical Experts" in letter d) it should be noted that for border crossing infrastructure objects such as tunnels, bridges, etc. two Contracting States may agree to set up a specific joint authority like the "Intergovernmental Safety Commission" for the Euro-tunnel between France and United Kingdom. Such authorities are allowed to be separately represented in the Committee of Technical Experts according to Article 16 § 5 c) of the Convention, i.e. without the right to vote.
3. Under the definition "other railway material" in letter s) fall movable equipment not being a railway vehicle for which equipment common specifications to achieve interoperability would be important.
4. For the definition of "serious accident" in letter z) an amount in SDR is mentioned. SDR means the

currency of the International Monetary Fund (IMF) which according to Article 9 of the Convention is the unit of account referred to in its Appendices. 1 SDR is equal to approximately 1.10 € (July 2009).

### Article 3 \*

#### Admission to international traffic

According to Article 33 §§ 2 and 4 (g) of the Convention, only the General Assembly could decide on an amendment to this Article, not the Revision Committee. With regard to the editorial amendments to the references in § 2 b) and c), see paragraph b) of the NOTE under the heading “Explanatory Report”.

### Article 3a

#### Interaction with other international agreements

1. This article is new.
2. § 1 deals with the operating approval according to ATMF of a railway vehicle and other railway material which has been approved in accordance with the applicable EC law by a Contracting State. Such item is deemed admitted to operation according to ATMF if
  - a) there is full equivalence between the applicable TSIs, which must cover all the vehicle’s subsystems, and the applicable UTP in accordance with APTU, and
  - b) the applicable TSIs do not contain any open points in relation to technical compatibility with the infrastructure, and
  - c) no derogation applies to the item in question.
3. § 2 deals with the authorisation of placing into service in EC Member States and in Contracting States which apply EC law as a result of international agreements with the European Community of a railway vehicle and other railway material approved in accordance with ATMF. Such item is deemed authorised to be placed into service in accordance with the EC law if
  - a) there is full equivalence between the applicable UTPs, which must cover all the vehicle’s subsystems, and the corresponding TSIs, and

- b) the applicable UTPs do not contain any open points in relation to technical compatibility with the infrastructure, and
- c) no derogation applies to the item in question.

4. § 3 deals with railway vehicles and other railway material that is only used in Contracting States that apply EC law as EC Member States or on the basis of international agreements. For such items, the applicable EC law applies.
5. The cross-acceptance dealt with in §§ 1 and 2 concerns not only individual approvals, but also admissions of vehicle types in accordance with § 4.
6. The full title of the EC Directive mentioned in § 5 is “Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community’s railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive)”. The Directive was published in the EC Official Journal (OJ) L 164, 30.4.2004, p. 44 – 113 and amended by Directive 2008/110/EC, published in OJ L 345, 23.12.2008 p. 62 – 67.

### Article 4 Procedure

1. This Article only deals with the approval procedure for vehicles, while with regard to the approval of infrastructure, § 3 refers generally to the provisions that apply in the State concerned (clarified further in Article 8 § 2). For EC Member States, these provisions include the relevant EC law.
2. According to § 1, the procedure is single stage (admission of a vehicle) or two stage (admission of a type of construction with subsequent admission of individual vehicles corresponding to this type of construction).
3. The conformity assessment to be carried out in the approval procedure in accordance with § 2 may cover the entire vehicle or, on the basis of corresponding guidelines from the CTE, it may be split into assessment elements, whose confor-

mity must be evidenced by a declaration in accordance with a model that also has to be decided by the CTE.

4. According to Article 3 § 3, the provisions of this Article also apply to other railway material.

#### **Article 5 Competent authority**

1. With regard to official responsibility, § 1 refers in principle to the law that applies in the respective Contracting State, which, in the case of EC Member States, includes the relevant EC law. However, according to § 4, certain requirements apply to these competent authorities and “suitable recognised bodies” appointed by these authorities. Only the competent authority may issue Certificates of Operation and Design Type Certificates.
2. § 2 does not exclude the competent authority in accordance with § 1 from transferring its competence in respect of conformity assessments wholly or partly to suitable recognised bodies in accordance with § 3, although these bodies may not be
  - rail transport undertakings (RU),
  - infrastructure managers (IM),
  - keepers,
  - entities in charge of maintenance (ECM),
  - design undertakings participating directly or indirectly in the manufacture or maintenance of railway material, or
  - subsidiaries of any of the above indicated.

The bodies listed are mainly the same as those that are entitled in accordance with Article 10 § 2 to submit applications for a technical certificate to be issued.

The word “partly” indicates that a “suitable body” may be appointed only for a specific technical competence, e.g. a specific UTP/TSI.

3. § 2 will allow a Contracting State to appoint “suitable bodies” residing in the State. They may carry out tasks equivalent to the EC Notified Bodies. Article 6 § 1 will ensure that the appro-

ving authority of all Contracting States and other “suitable bodies” shall accept assessments of compliance with the UTPs that have been carried out by a “suitable body”. § 3 contains detailed conditions for bodies recognised as suitable taken from provisions that apply in the EC, particularly as regards their organisation, workforce, working methods, abilities, independence and discretion.

4. § 5 requires that the Secretary General be notified of the bodies responsible for assessments, certifications and approvals and that he must publish this information in a list which must be kept up to date.
5. § 6 requires that the Contracting States “consistently supervise” (monitor continually) the bodies referred to in § 2. If it is ascertained that they are not meeting the requirements in accordance with § 3, their competence must be withdrawn and the Secretary General must be informed accordingly.
6. § 7 deals with the course of action in cases where a Contracting State has come to the view that an authority or body for which another Contracting State is responsible is not meeting the requirements in accordance with § 3. Such cases must be submitted to the CTE, which has to take certain measures.

#### **Article 6 Validity of technical certificates**

1. § 1 prescribes as a general rule that technical certificates issued by a competent authority (Article 5) in a Contracting State are valid in all other Contracting States. However, use of them for certain vehicles or types of construction (§ 5) is subject to the following conditions.
2. According to § 2, the Railway Undertaking (RU) operating a vehicle must ensure that the vehicle is compatible with the infrastructure to be used.
3. The admission to operation for a vehicle which is in conformity with all the applicable UTPs is valid in all other Contracting States if these UTPs cover all the essential requirements and do not contain any open points in respect of compatibility with the infrastructure and provided that the vehicle is not subject to any specific cases or derogations.
4. For vehicles that do not meet the conditions of § 3, the applicant must meet the conditions

according to § 4 for a complementary admission to operation. These conditions are set by the respective competent authorities of the Contracting States in which the admission is to apply, in accordance with the notified national technical provisions that apply there. Such conditions may involve risk analysis and/or additional tests, although duplication and repetition must be excluded and the equivalence table shall be taken account of; furthermore, national technical provisions concerning open points that are not related to compatibility with the infrastructure are not to be checked before the admission to operation is complemented as the necessary checks of such open points have been made when the vehicle is admitted by the first Contracting State according to the national requirement of that state and those requirements shall be cross-accepted. This constitutes the same principles as in the Interoperability Directive.

5. The Certificate of Operation for a vehicle does not grant its holder rights to operate trains or other rights. When operating the vehicle in a train, the law on the use of infrastructure has to be observed, including where applicable the Appendix E (CUI) concerning liability and insurance and including the law of the State where the carrier undertakes the activity of carrier. If that law is that of the EC or corresponding domestic law, the relevant conditions, in particular the requirement for licensing, safety certification etc., have to be met and a liability insurance for the vehicle might have to be taken out.

#### **Article 6a**

#### **Recognition of procedural documentation**

#### **Article 6b**

#### **Recognition of technical and operational tests**

The aim of these provisions is to exclude administrative duplication and repetition, particularly as regards technical assessments and tests.

#### **Article 7**

#### **Prescriptions applicable to vehicles**

1. According to § 1, the prerequisite for vehicles to be allowed to circulate in international traffic is that the UTPs be observed, and if they (are to) carry dangerous goods, RID.

2. Where there are no applicable UTP for a subsystem, i.e. the essential requirements have not (yet) been implemented in an UTP, according to § 2 the technical provisions that apply are those national requirements in force according to Article 12 of APTU of the State in which the vehicle is to be approved.
3. If the UTPs do not cover all the essential requirements or if there is a specific case or an open point in relation to the compatibility of the vehicle with the infrastructure, the national technical provisions applicable to these issues also have to be met. In this case, it must be kept in mind that the equivalence table shall be applied and national technical provisions concerning open points that do not deal with compatibility with the infrastructure may only be checked by the Contracting State that first carries out the approval.

#### **Article 7a**

#### **Derogations**

This Article instructs the CTE to decide necessary rules for derogations and the related assessment methods.

#### **Article 8**

#### **Prescriptions applicable to railway infrastructure**

1. § 1 makes clear that the provisions in the UTPs and RID that apply to infrastructure must be observed.
2. § 2 gives further effect to what is laid down in Article 4 § 3.
3. § 3 provides that the rules for cases not covered or not sufficiently covered by UTPs and for derogations also apply by analogy to the area of railway infrastructure.
4. The application of the UTP infrastructure to existing infrastructure is dealt with in APTU Article 8.

#### **Article 9 \***

#### **Operation prescriptions**

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

### Article 10

#### Application and granting of Technical Certificates and declarations and related conditions

1. According to § 1, technical certificates may be issued for types of construction or for individual vehicles.
2. § 2 contains an exhaustive list of those entitled to make an application. These correspond largely with those that are excluded from transferring decision-making competence in accordance with Article 5 § 2.
3. § 3 makes clear that the application may be made to the competent authority (Article 5) in any Contracting State, i.e. with no geographical link.
4. § 4 concerns technical certificates for vehicles which, because of their limited degree of conformity, require complementary admissions in accordance with Article 6 § 4. The scope applied for must be described precisely. If this results in the need for admissions/assessments by several competent authorities, these must coordinate in order to speed up the approval process and minimise the cost for the applicant.
5. § 5 provides that admissions may not be carried out for profit and all costs associated with the admission procedure must be borne by the applicant. However, the latter only applies subsidiarily to the national law of the State in which the approval is issued.
6. § 5 a) makes clear that all procedures concerning technical admissions/assessments must be non-discriminatory.
7. § 6 lays down requirements concerning the application documents. These must in all cases contain technical documentation and documentation on servicing and must set out the vehicle characteristics in a way that is sufficient to provide all the information required by the assessing body.
8. According to § 7, assessors must document the content and results of assessments in an Assessment Report.
9. In the (simplified) admission of vehicles for which an admission of the type of construction is already available, § 8 requires that the applicant must attach the certificate of type of construction

to the application and must demonstrate in an appropriate manner that the vehicles to be admitted correspond to the type of construction.

10. The first sentence of § 9 makes clear that in principle, technical certificates are to be granted for an unlimited period. However, this does not mean that it may also be used for an unlimited period. The second sentence reminds users that the scope of the certificate may be limited, although this is not at the discretion of the issuing body, but depends on the particular conditions.
11. § 10 concerns the continued use of technical admissions of the type of construction if the issuing provisions are amended (Article 7). The Contracting State in which the admission of type of construction was issued and the States in which the admission may be used must have consultations on this or, if necessary, on the re-issuing. Even if it is decided that the admission must be re-issued, the type of construction may only be checked that it fulfils the amended provisions, and admissions to operate remain valid.
12. § 11 concerns the continued use of the admission to operate – and, according to § 12, of other certificates also – when vehicles are renovated or upgraded. Appropriately documented projects must be submitted to the Contracting State. This State must involve the CTE if, upon issuing the new approval, there is not full conformity with the applicable UTPs.

### Article 10a

#### Rules for withdrawals or suspensions of technical certificates

1. § 1 deals with the procedure that applies to the withdrawal or suspension of technical certificates in the international arena.
2. Provisions on the withdrawal of the admission to operation, which, according to § 6, also apply by analogy to the admission of type of construction, are given in §§ 2, 3 and 5, and those concerning suspension (of the validity/use) of these certificates are given in § 4.
3. Reasons for a mandatory suspension are
  - insufficient technical maintenance of the vehicle (inspections, servicing, etc.),

- failure to observe the order to present a vehicle with severe damage, and
  - non-compliance with the provisions of ATMF, the UTPs or the national provisions on which the approval is based.
4. Reasons for a possible withdrawal are
- non-compliance with the applicable technical requirements in accordance with the UTPs etc.
  - in some cases failure to correct any deficiencies causing non-compliance, and
  - non-compliance with the conditions imposed for a limited approval.
5. According to § 3, only the body that has granted the design type certificate or the certificate of operation may withdraw it (as opposed to suspension).

#### **Article 10b**

##### **Rules for assessments and procedures**

1. § 1 authorises the CTE to adopt mandatory rules for the assessments and procedural rules for technical admission.
2. If there are supplementary rules within the Contracting States or at EC level, § 2 requires that these be notified to the Secretary General so that the CTE can examine them and they can be published.

#### **Article 11**

##### **Technical Certificates and Declarations**

1. According to § 1, separate certificates must always be issued for the Design Type Certificate and the Certificate of Operation, but according to § 4, one certificate of operation may be issued for several vehicles of the same design type.
2. The details of what both certificates must contain are laid down in §§ 2 and 3.
3. What is contained in the technical documentation and the documentation on servicing must correspond to the UTPs.
4. A certificate must be prepared in one of the working languages of OTIF (currently German,

French and English) and be available in printed form.

5. §§ 7 – 9 prescribe that when the right of disposal over the vehicle changes, the certificates originally issued to the applicant must be handed over.

#### **Article 12**

##### **Uniform formats**

Mandatory uniform formats of the certificates, declarations and assessment reports specified in ATMF shall be prepared and adopted by the CTE. The CTE may also recognise other existing formats as equivalent, provided they contain at least the same information.

#### **Article 13**

##### **Registers**

1. This Article serves as a legal basis for an international data bank containing registers of approved railway vehicles (individual vehicles or design types) (§ 1) and of competent authorities who deal with approvals (§ 2). The CTE may include other information in the data bank (§ 3).
2. The CTE has to decide on the following details (§ 4), although consideration must be given to structures that already exist in the Contracting States (national vehicle registers NVRs) or in the EC (ERA) (§ 5):
  - a) functional and technical architecture of the data bank,
  - b) when and how the required data must be provided,
  - c) access rights,
  - d) data bank structure and
  - e) other administrative and organisational provisions.
3. The data bank may be based on decentralized electronic registers in the Contracting States, including National Vehicle Registers (NVR), but the information shall be retrievable via a central search engine; the data bank and its operating rules need to be coordinated with the National Vehicle Registers set up by EU Member States under Commission Decision 2007/756/EC.

4. In addition, § 7 gives the CTE the right to charge users of the data bank. However, supplying and amending data shall be free of charge.
5. Certain important pieces of information, e.g. a change of keeper, withdrawals from service or immobilisations must be notified to the Secretary General immediately.
6. The registration of data in the data bank has consequences with regard to the provision of evidence (§ 6).

#### **Article 14 Inscriptions and signs**

1. The admission of railway vehicles to operation must be demonstrated by affixing a sign to the vehicles (§ 1 a). This sign will be decided by the CTE.
2. Vehicles must also bear the following: an alphanumeric code (“vehicle number”) used to identify the vehicle clearly, which has to be assigned by the competent authority granting the admission to operation, and which must contain the country code of the first admitting State, and other inscriptions and signs prescribed in the UTPs (§ 1 b)).
3. The authority granting the admission to operation must ensure that the signs and inscriptions are marked on the vehicle and that the vehicle number is registered in the NVR (Article 13).
4. According to § 2, the CTE must adopt transitional rules for vehicles that are already in use.

#### **Article 15 Maintenance**

1. § 1 sets out the objectives and elements of maintenance.
2. According to § 2, it is up to an accordingly instructed body (Entity in Charge of Maintenance – ECM), which must be registered in the data bank, to organise the maintenance of each vehicle. Such a body is also required according to the law of the EC (see Article 14a of the Railway Safety Directive 2004/49/EC).
3. §§ 3 to 5 contain provisions regarding the interaction between the ECM and the operating railway undertakings, the Maintenance Record

File and the possibility to specify further details in Annexes to the ATMF.

4. According to § 4, the ECM shall, for each vehicle for which it is registered as the ECM, keep and update a Maintenance Record File to contain the information required in accordance with § 3 for that vehicle. This includes the vehicle itself and any tank and equipment for which inspections and tests are required. This Maintenance Record File shall be available to the competent authorities for their ordinary inspections and investigations in the case of the vehicle being involved in incidents or accidents.
5. According to § 5, the CTE may adopt guidelines or regulations concerning maintenance workshops and include them in an Annex to ATMF.

#### **Article 16 Accidents, incidents and severe damage**

1. According to § 1, in case of accident, incident or severe damage, all parties involved, specifically the IMs, keepers, ECMs and RUs, are required
  - to take measures to ensure the safety of railway traffic, respect for the environment and public health and
  - to establish the causes.
2. § 1 a) supplements § 1 to the effect that the measures referred to must be coordinated, primarily by the IM, and the investigations referred to and any investigations commissioned by the State must be considered as independent from each other.
3. § 2 says that damage is considered to be “severe” if its repair takes at least 72 hours or costs at least 0.18 million SDR. SDR means the currency of the International Monetary Fund (IMF) which according to Article 9 of the Convention is the unit of account referred to in its Appendices. 1 SDR is equal to approximately 1.10 € (July 2009). According to § 5, the CTE may change the minimum amount referred to in § 2.
4. § 3 contains the obligation – which, within the meaning of § 1 a), mainly concerns the IM – to notify the authority or body (Article 5) which admitted the vehicle to circulation of any accidents, incidents or severe damage. That authority or body may require the damaged vehicle to be



presented, possibly already repaired, for examination of the validity of the admission to operation and to decide whether the procedure concerning the granting of admission to operation must be repeated.

5. § 4 deals with accident assessment and resulting questions with a view to amending the construction and operating provisions of the UTPs and measures concerning technical certificates affected by this. The CTE has a key role in this respect.

### **Article 17**

#### **Immobilisation and rejection of vehicles**

1. Subject to the exceptions in §§ 2 and 3, § 1 lays down as a general rule that railway vehicles that meet all the requirements that apply to them may not be immobilised or rejected.
2. § 2 makes clear that authorities (and their organs) entitled to inspect vehicles may immobilise a vehicle if non-compliance with requirements is suspected, although the examination to establish certainty should be carried out as quickly as possible and in any case within 24 hours.
3. § 3 deals with ordering immobilisations and rejections, which is in any case permissible, as a result of unresolved questions between Contracting States concerning the qualification of a competent authority (Article 5 § 7) and consequences arising from the results of an accident assessment (Article 16 § 4).

### **Article 18**

#### **Non-compliance with the prescriptions**

Apart from the consequences in accordance with Article 10 a) with regard to technical certificates, for the legal consequences of failure to comply with the prescriptions, reference is made to national law (including the rules relating to conflict of laws), i.e.

- to the law of the Contracting State in which the IM has his place of business, for the civil and penal consequences concerning infrastructure, and
- in all other cases to the law of the Contracting State whose competent authority (Article 5) issued the first admission to operation.

### **Article 19**

#### **Transitional provisions**

1. This is a new Article.
2. The following vehicles that do not meet the requirements of Article 3 § 1 may continue to be used, provided they already exist at the time this Article enters into force, and until they are renovated/upgraded (§ 3):
  - vehicles marked with “RIC” or “RIV” under the conditions set out in §§ 2, 4 and 5,
  - vehicles without such a marking, but which have an approval and marking in accordance with the agreements notified to OTIF between two or more Contracting States, under the conditions set out in §§ 2 a), 4 and 5, and
  - other vehicles on the basis of a complementary admission to operation to be requested from a competent authority, under the conditions set out in § 6.
3. Section 21.1 of RIV 2004 restricts the RIV marking to the case that the wagon is approved by the competent authority in accordance with the rules in force (at the time and place of approval) and that it complies with the “Technical Unity” (TU) and UIC standards. Section 31 contains provisions concerning maintenance (overhaul). Similar provisions are included in RIC.
4. Approval by a railway undertaking which is a contracting party to RIV or RIC is considered as an approval by the State in the case where there was no other authority with the responsibility for approving railway vehicles at the time of this approval by the railway undertaking.
5. If future decisions taken by the CTE create the need for further transitional provisions, the CTE may adopt them itself in accordance with § 7, i.e. without the Revision Committee having to make an addition to Article 19.

### **Article 20**

#### **Disputes**

There are several phases for resolving disputes between Contracting Parties concerning questions on the enforcement of ATMF:

- direct negotiation,
- submission to the CTE and
- arbitration in accordance with COTIF under the conditions of Title V thereof.

Arbitration is an option, not an obligation.

### Publications and interesting links

*Bulletin des transports et de la logistique*, Paris, n° 3327/2010, p. 444/445 – CMR. Des risques très particuliers (M. Tilche)

*Idem*, n° 3328/2010, p. 456/457 – Faute inexcusable. Interprétation anticipée (M. Tilche); p. 463/464, 466/467

*Idem*, n° 3331/2010, p. 506 – Lettre de voiture. Place du commissionnaire; p. 508/509 – Assurance. Sort des « immatériels » (M. Tilche)

*Idem*, n° 3333/2010, p. 536/537 – Transport international. Sort des droits et frais (M. Tilche)

*CIT-Info* (Comité international des transports ferroviaires / Internationales Eisenbahntransportkomitee / International Rail Transport Committee, CIT) <http://www.cit-rail.org>, édition/Ausgabe/edition 4/2010

*Court of Justice of the European Union – case law*: [http://curia.europa.eu/jcms/jcms/j\\_6/](http://curia.europa.eu/jcms/jcms/j_6/) - ruling of 4.5.2010 C-533/08<sup>1</sup>

*International Transport Journal (ITJ)*, (swissprofessionalmediaAG), ITZ/JTI home [http://www.transport-journal.com/index.php?id=489&no\\_cache=1&L=0](http://www.transport-journal.com/index.php?id=489&no_cache=1&L=0); 19.04.2010 - Transportrecht in Osteuropa (E. Boecker) [http://www.transportjournal.com/index.php?id=489&no\\_cache=1&tx\\_ttnews%5Bpointer%5D=3&tx\\_ttnews%5Btt\\_news%5D=18160&tx\\_ttnews%5BbackPid%5D=441&cHash=bdc1c0e2415e295cf6081ed50a1377c6](http://www.transportjournal.com/index.php?id=489&no_cache=1&tx_ttnews%5Bpointer%5D=3&tx_ttnews%5Btt_news%5D=18160&tx_ttnews%5BbackPid%5D=441&cHash=bdc1c0e2415e295cf6081ed50a1377c6)

*RailwayPRO, the railway business magazine*, Bucharest, No. 8/2010, p. 23 - CIM/SMGS consignment note simplifies cross-border procedures (E. Ilie) <http://www.railwaypro.com/wp/?p=2442>

*Social Science Research Network*, Working Paper Series [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=-1133002](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=-1133002), The use of the „Disconnection clause” in International Treaties: What does it tell us about the EC/EU as an Actor in the Sphere of Public International Law? (M. Smrkolj);

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=-1632433](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=-1632433), Disconnection clause: An Inevitable Symptom of Regionalism? (K. Dawar), working paper N° 2010/11, Society of International Economic Law, Second Biennial Global Conference, the University of Barcelona, 8-10.7.2010

*Transportrecht*, Hamburg, Nr. 9/2010, S. 321 -327 – Wo endet die « Luft » im Sinne des Montrealer Übereinkommens? (G. Kirchhof); S. 327-337 – Der multimodale Transport – eine Bestandsaufnahme (K.H. Drews)

*Zeitschrift der OSShD*, Warschau, Nr. 5/2010, S. 33-38 – Benutzung von Güterwagen im internationalen Eisenbahnverkehr CIM/SMGS: Sachstand und Zukunftsperspektiven (J.-P. Lehman, E. Evtimov)

## Transport of Dangerous Goods

### UN Sub-Committee of Experts on the Transport of Dangerous Goods

37<sup>th</sup> Session

Geneva, 21 - 30 June 2010

The 37<sup>th</sup> session of the UN Sub-Committee of Experts on the Transport of Dangerous Goods was held from 21 to 30 June 2010 under the chairmanship of Mr C. Pfauvadel (France). 23 States and 32 non-governmental organisations were represented. This was the third session of the 2009/2010 biennium, whose decisions in the context of harmonisation will be included in the 2013 edition of RID/ADR/ADN.

Shortly before the meeting, the United Nations Economic and Social Council elected Switzerland, which has already participated actively in the work of the UN Sub-Committee, as a full member.

<sup>1</sup> The ruling relates to Article 31, paras. 2 and 3 of CMR (i.e. the *lis pendens* rule and the rule relating to enforceability). For parallel provisions, see Article 46 § 2 of CIM and Article 12 § 1 of COTIF. According to this ruling, it is possible to apply specialised conventions which are already in force, provided that the principles of judicial cooperation in civil and commercial matters in the EU are not compromised (and that they do not lead to results which are less favourable for achieving sound operation of the internal market). However, the EU Court of Justice is not competent to interpret these provisions.

### New entry for krill meal

Krill is a **shrimp**-like marine **invertebrate** animal which, because of the omega 3 oils it contains, is increasingly used in producing food products. The transport of krill meal amounts to approximately 200,000 tons per year globally. Norway proposed that a new entry be included (UN No. 3497), as UN No. 1374 fish meal cannot be used as it has different properties. This proposal was adopted.

### UN 1792 Iodine monochloride

The Secretariat pointed out that in the UN Model Regulations, UN 1792 iodine monochloride is considered to be a solid, whereas in RID/ADR/ADN, it is considered to be a liquid. Based on the available data, the Sub-Committee decided to add the word “solid” to the proper shipping name of UN No. 1792 and that the new UN No. 3498 should be assigned to the liquid.

### Chemicals under pressure

In various countries, pressurised chemical products contained in gas cylinders are being offered on the market. The products are liquids or solids such as adhesives, coatings and cleaners combined with a gas or gas mixture in pressure receptacles under sufficient pressure to expel the contents.



Today these products are classified as liquefied gases, although the product is usually a combination of a propellant gas and a liquid or solid component. As they are not filled in aerosol dispensers and as the receptacles used exceed the volume limitations for aerosols, the International Council of Chemical Associations (ICCA) proposed at the last but one session of the UN Sub-Committee of Experts to create new UN numbers for these chemicals.

The UN Sub-Committee of Experts adopted the ICCA's proposed amendments, which were revised by an ad hoc

working group. The proposals were to create six new UN numbers (3500 to 3505), an explanatory special provision and a new packing instruction.

### Fuels contained in machinery or equipment

The exemption in RID/ADR 1.1.3.1 (b) says that the carriage of machinery or equipment not specified in RID/ADR and which happen to contain dangerous goods in their internal or operational equipment are exempt from the provisions of RID/ADR, provided that measures have been taken to prevent any leakage of contents. In the past, some carriers used this exemption provision to carry generators, for example, which can sometimes contain up to 3000 litres of fuel, and none of the provisions of RID/ADR are applied.



At the request of the United Kingdom, a special provision setting out the provisions that must be observed for tanks in machinery or equipment will now be assigned to the various entries for fuels. In addition, a reference to this new special provision will be included in special provision 301, which is assigned to UN 3363 Dangerous goods in machinery or apparatus, and which prescribes that the dangerous goods contained must not exceed the quantity limits in accordance with column (7a) of Table A.

However, the next session will have to return to the question of the labelling of means of containment with a capacity of less than 450 litres and will also have to check whether UN No. 1170 Ethanol should also be included in the list of fuels concerned.

## Packagings for aerosols

The representative of the Federation of European Aerosol Associations (FEA) had noted that for packaging PP 17 of packing instruction P 003, the special provision that applies to aerosols prescribes a mass limit of 55 kg for fibreboard packagings and 125 kg for other packagings, while the limits in air transport are 75 kg for passenger aircraft and 155 kg for cargo aircraft, although the packagings have to be design type tested. However, for the packaging of aerosols, large packagings may also be used in accordance with packing instruction LP 02 from a net mass of 400 kg or a capacity of 450 litres.

To close this gap between existing packing instruction P 003 and the packing instruction concerning the use of large packagings LP 02, the UN Sub-Committee of Experts adopted FEA's proposal to include a new packing instruction P 207 applicable only to aerosols. Firstly, this packing instruction allows the use of drums and boxes with no mass limit, provided they are design type tested and meet the requirements for packing group II. Secondly, it maintains the existing quantity limits for packagings that are not design type tested. However, it was also established that large packagings need only meet the test requirements for packing group III.

## Ultracapacitors

Ultracapacitors are electrical energy storage devices that are increasingly being used as a replacement for batteries in view of their reliability and long life. They are particularly suitable for applications where there is a need to store and release energy quickly.



Examples of ultracapacitors with a capacity of between 650 and 3000 Farad.



Example of an ultracapacitor module with a capacity of 500 Farad and a voltage of 16 V.

The Kilo Farad International Association (kFI) submitted a proposal to include measures for ultracapacitors in the dangerous goods provisions to avoid short-circuiting, establish suitable provisions for carriage, introduce a limit below which the dangerous goods provisions need not be applied and to establish provisions for ultracapacitors contained in items of equipment.

kFI proposed various options for the above, such as using UN No. 3363 Dangerous goods in machinery or apparatus, revising special provision 301, which applies to UN No. 3363, or including a new UN number (UN 3499) for ultracapacitors, which is what the UN Sub-Committee ultimately decided.

After a discussion, the UN Sub-Committee of Experts also decided to set the threshold limit for the energy storage capacitance above which capacitors should be regulated as dangerous goods at 10 Wh. The drop test should be carried out as a design type test on unpackaged capacitors, not on capacitors as packaged for transport. Despite the fact that the usual practice was to indicate voltage in volts and capacitance in farads and that the energy storage capacitance in Wh could be deduced from that data by means of a formula, the UN Sub-Committee of Experts decided that the energy storage capacitance should be marked on the capacitor in Watt hours.

## Use of packagings in metal other than steel or aluminium

The UN Sub-Committee adopted a proposal by Italy to permit the use of packagings other than aluminium or steel in all packing instructions in which the use of packagings made of steel or aluminium is permitted. As the general packing instructions P 001 and P 002 already permitted other metals, there seemed to be no reason why this should not be possible in specific packing instructions. Because of its better mechanical

properties, titanium in particular stands out, especially as it is not magnetic, which is very important in military applications. However, packing instruction P 010 would not be amended, as the chlorosilanes under this packing instruction could corrode metals other than steel.

In this context, the working group on explosives also realised that not all packaging instructions permitted the use of inner packagings or intermediate packagings made of wood. These packing instructions were amended accordingly.

### **Revision of various packing instructions**

It was noted that some packing instructions required that the packagings need only comply with the test requirements for packing group II or III. This could be interpreted to mean that packagings that meet these test requirements may be used without having to bear a UN marking. This rather vague statement could also lead to bags also being used as outer packagings.

The representatives of Sweden, the United Kingdom and IATA had given themselves the task of revising the specific packing instructions in this respect and of making matters clearer. In particular, the individual packing instructions would now specify which precise types of packaging are permitted.

### **Indicating the stacking load on large packagings**

Large packagings which are designed to be stacked must undergo a stacking test according to 6.6.5.3.3 as a design type test. According to 6.6.3.1 (g), these large packagings must bear the stacking test load from the stacking test in kg. In order to align with the provisions applicable to IBCs, large packagings must in future bear a symbol indicating the maximum permissible stacking load.

### **Salvage pressure receptacles**

The UN Model Regulations and RID/ADR/ADN contain provisions for salvage packagings. Although salvage pressure receptacles may also come under the definition of “salvage packaging” in 1.2.1, Chapters 4.1 and 6.2 do not contain any specific provisions for the former.

However, there may be cases where pressure receptacles do not fully comply with the provisions, but still being filled with gas, are to be transported e.g. for purposes of

safe emptying or disposal. This may happen after an accident but also in some special cases such as when gas cylinders have been found on abandoned former industrial areas where it can no longer be verified whether they have been correctly stored and maintained. As specialised disposal facilities for certain gases are not always available close by or sometimes not even in the same country, international provisions for carriage in salvage packagings were considered necessary.

On the basis of a proposal from Germany, the UN Sub-Committee of Experts adopted a new definition and provisions for the construction and use of salvage pressure receptacles.

### **Cargo Transport Units (CTU) with coolants/conditioners**

For the carriage of temperature sensitive goods, which are not necessarily dangerous goods themselves, dry ice (carbon dioxide, solid) is sometimes used as the coolant. For personnel who open a container, dry ice may pose the same risk as when opening a fumigated container, which led in the past to section 5.5.2 being included in RID/ADR/ADN.

As it must be assumed that particularly in cases where dry ice is used for non-dangerous goods, the personnel involved are not familiar with the law on the carriage of dangerous goods, it was acknowledged that it was necessary to bring all the applicable provisions together in one section, as for fumigants, so that those involved could be guaranteed basic training.

### **Next session**

The 38<sup>th</sup> session of the UN Sub-Committee of Experts will be held from 29 November to 7 December 2010. At this session, the work on the 17<sup>th</sup> revised edition of the UN Recommendations on the Transport of Dangerous Goods will be concluded. For European land transport, the amendments referred to will enter into force on 1 January 2013 in the context of harmonisation with the 17<sup>th</sup> edition of the UN Recommendations.

(Translation)

## RID/ADR/ADN Joint Meeting

*Geneva, 13 - 17 September 2010*

The second RID/ADR/ADN Joint Meeting of the 2010/2011 biennium was held in Geneva from 13 to 17 September 2010. 23 States, the European Commission and the Committee of the Organization for Cooperation between Railways (OSJD) and 14 non-governmental organisations were represented at this meeting.

### Tanks

To deal with the documents on issues concerning tanks, a working group on tanks meeting in parallel was set up.

#### Carriage of calcium carbide in bulk

UN 1402 calcium carbide is a substance of Class 4.3 and is primarily used in the production of steel and acetylene. The use of calcium carbide mixtures as a desulphurisation agent is necessary for producing quality steel.

While prior to the restructuring of RID/ADR, there was only one entry for packing group II, in the course of restructuring an entry for packing group I was also included. For substances of packing group II, carriage in RID/ADR tanks and in bulk is permitted, while for packing group I, only carriage in portable tanks is permitted.

After the industry recently established that the substance primarily used today is to be assigned to packing group I, it was realised that the current practice of carrying this substance in RID/ADR tanks or in silo tanks would have to be stopped. As carriage in portable tanks is not an alternative, because these tanks do not have the bottom openings necessary for discharging this powdery substance, a short term solution to continue carrying this substance in safe conditions had to be found. Germany, Austria, the European Chemical Industry Council (CEFIC) and the International Union of Private Wagons (UIP) had defined conditions for this, which the working group on tanks considered to be sufficient for safe carriage and which are now to be implemented by means of a multilateral special agreement.

The medium term solution to the problem is to assign a tank code to the substance to enable carriage in RID/ADR tanks. On the other hand, carriage in bulk in silo tanks should not be continued. A suitable tank code should be decided at a later meeting on the basis of further background information on the substance.

### Review of transitional measures for tanks

In the past, transitional measures were a constant topic of discussion, essentially because older transitional measures are not always precisely drafted, and once they are combined with, in particular, transitional measures included later, it becomes impossible to tell exactly which provisions can be derogated from.

At its meeting in May, the RID Committee of Experts' working group on tank and vehicle technology had already looked at this problem, but because of the effects on tank-vehicles, had decided to involve the Joint Meeting's working group on tanks first.

The working group on tanks supported the following principles set out in Germany's original document:

- All tanks must comply with the respective RID/ADR provisions currently in force.
- There can be no exceptions to this rule unless they are explicitly stipulated in transitional measures. The transitional measures should be worded in such a way that the provisions which can be derogated from are clearly indicated.
- New provisions included in RID/ADR later also apply to tanks that are subject to these transitional measures, provided that this is not qualified by special transitional measures (this approach has already been taken into account in the decisions of the Joint Meeting in recent years).

The working group on tanks will continue its review of transitional measures at the next meetings on the basis of earlier decisions which led to the inclusion of tank provisions and the corresponding transitional measures.

#### Measures according to 6.8.2.1.20

According to ADR 6.8.2.1.19, the competent authority may allow the prescribed minimum wall thicknesses to be reduced if the tanks have protection against damage through lateral impact or overturning. ADR 6.8.2.1.20 lists the relevant protective measures, although other measures are allowed if they offer equivalent protection. Since, for tanks built after 1 January 2010, 6.8.2.6 also prescribes the application of standard EN 13094:2008, which refers to measures other than those listed in 6.8.2.1.20, the question arose as to whether equivalent measures not contained in the standard may be used as are.

The Joint Meeting agreed with the working group's interpretation that measures that are not listed in 6.8.2.1.20 or in standard EN 13094 may only be applied if they are included in a national technical code in accordance with 6.8.2.7.

### **Proposals for amendments to RID/ADR/ADN**

#### **Classification of synthetic diesel fuel, gasoil and heating oil (light)**

Note 2 to RID/ADR 2.2.3.1.1 specifies that diesel fuel, gasoil and heating oil (light) having a flash-point above 60°C and not more than 100°C are deemed to be flammable liquids, irrespective of the criteria of Class 3. Sweden already raised the question at the last Joint Meeting of whether synthetically produced diesel fuels with the same flash-point range are also covered by this note.

The Joint Meeting's view was that neither the name of the entry UN 1202 nor Note 2 to 2.2.3.1.1 laid down the production method of diesel fuels, so products obtained through synthesis must be dealt with in the same way as products obtained from distillation of petroleum, when the flash-point is between 60°C and 100°C.

To avoid synthetically produced diesel fuel being carried without RID/ADR being applied, the Joint Meeting made Note 2 to 2.2.3.1.1 clearer.

#### **Carriage of contaminated medical devices**

There is an increasing tendency among medical practices and hospitals not to carry out the disinfection, cleaning or sterilisation of their used medical instruments/medical devices themselves, but to assign these tasks to external service providers.

As the risk of infection of contaminated medical devices is comparable to wastes assigned to waste code 18 01 04<sup>1</sup> in accordance with the European Waste Catalogue, which, according to Note 2 to 2.2.62.1.11.2, are not subject to the provisions of RID/ADR, Germany proposed also to exempt the carriage of these medical devices, subject to some minimum requirements concerning the packaging.

<sup>1</sup> Wastes from human or animal health care and/or related research – wastes from natal care, diagnosis, treatment or prevention of disease in humans – wastes whose collection and disposal is not subject to special requirements in order to prevent infection (e.g. bandages, plaster casts, laundry, disposable clothing, nappies).

This proposal, which had already been discussed at the last Joint Meeting and revised in the light of various comments, was adopted.

#### **Soils and construction and demolition waste contaminated with PCBs**

The last Joint Meeting rejected a proposal to increase the permitted concentration of PCBs from 1000 ppm (0.1 %) to 5 % in special provision VW 15/VV 15, which applies to UN Nos. 2315 and 3151 (polychlorinated biphenyls, liquid and polyhalogenated biphenyls and terphenyls, liquid), because this would constitute a derogation from the provisions for the disposal of dangerous wastes. However, it was noted that it was difficult to determine the actual concentration, as biphenyls and terphenyls were not distributed evenly in the transported waste (see Bulletin 1/2010, p.12).

In a new proposal, Belgium reminded the meeting that special provision VW 15/VV 15 had been introduced to deal with the problem of removing fairly large quantities of soil, contaminated with polychlorinated or polyhalogenated biphenyls and terphenyls (mainly due to leakage from electrical equipment). In such a situation, the concentration of the contamination would be very low, when calculated on the total quantity of soil to be removed, but it would be much higher in the soil underneath the source of the contamination. A sample, taken at random to determine the concentration of the contamination and coming from underneath the source of that contamination, may therefore distort the result sufficiently to prohibit the application of VW 15/VV 15 without any real safety reason.

The Joint Meeting adopted Belgium's proposal to amend special provision VW 15/VV 15 to say that the average concentration of biphenyls and terphenyls allowed may not be greater than 1 000 mg/kg, but that at individual points, the maximum concentration may also be 10 000 mg/kg.

#### **Including Emergency Action Codes on orange-coloured plates**

The International Association of Fire and Rescue Service (CTIF) had submitted a proposal to the Joint Meeting to include the so-called emergency action code on orange-coloured plates, in addition to the hazard identification number and the UN number. The emergency action code indicates immediate measures that can be taken, such as the extinguishing agent to be used, suitable protective clothing and evacuation measures. In the early 1990s, the Joint Meeting had already discussed and rejected a similar proposal to

display the HAZCHEM codes used in the United Kingdom instead of the hazard identification number.

The Joint Meeting unanimously rejected CTIF's proposal. Among other things, it was of the view that a proliferation of different codes on the orange-coloured plate could cause confusion. In addition, it did not seem appropriate to prescribe in the regulations precise action to be taken when, most of the time, the emergency services have to adapt their response to the accident conditions or the resources available. Also, progress in modern means of communication meant that all the necessary information could be obtained much more easily and quickly from the UN number. Lastly, the Joint Meeting was of the view that the use of telematics, which was currently being examined by an informal working group, would lead to further improvements.

#### **Separate conformity assessment of pressure receptacles**

The current version of RID/ADR 6.2.3.6.1 permits a separate conformity assessment of the valve for all types of pressure receptacles. In contrast to a refillable gas cylinder, a non-refillable gas cylinder must be fitted with a non-reusable valve, where the valve is an integral part of the design, so that it cannot be changed, which makes the cylinder unsuitable for refilling. For this reason, separate conformity assessment should not be allowed for non-refillable gas cylinders.

In order to take account of this restriction, which is already the case in the new TPED Directive, the Joint Meeting adopted an amendment to 6.2.3.6.1.

#### **Test samples for the vibration test of IBCs**

RID/ADR 6.5.6.3.3, which was taken over from the UN Model Regulations, prescribes that in order to prove the chemical compatibility with dangerous goods of rigid plastics or composite IBCs with plastics inner receptacles, samples of the IBCs must be subjected to six months storage holding the substance they are supposed to contain or an equivalent substance. Afterwards, the IBCs must be submitted to all the tests prescribed under 6.5.6.3.7, including the vibration test, which, like the drop test, could be carried out on a separate IBC of the same model.

However, RID/ADR 6.5.6.3.5 offers an alternative method for demonstrating the chemical compatibility of rigid polyethylene IBCs or of composite IBCs containing inner receptacles in polyethylene, which is also permitted in accordance with 6.5.6.3.4 of the UN Model Regulations. This method entails a preliminary storage period of three weeks instead of six months, with the use

of an appropriate reference liquid. After this storage period, the test samples must undergo the bottom lifting test, the top lifting test, the stacking pressure test, the leakproofness test, the hydraulic pressure test and the drop test. This storage period is not provided for the vibration test.

The representative of the European Plastics Converters (EuPC) proposed that the preliminary storage period prior to the vibration test, i.e., storage of six months with the substance the IBC is intended to contain, should not be required when the UN Model Regulations method was used.

Opinions in the Joint Meeting differed. Some delegations considered that preliminary storage should be required, no matter what method was used to verify the chemical compatibility, otherwise the equivalence of the alternative method with the one recommended by the UN Model Regulations could not be guaranteed. Others pointed out that the decision in question had been taken intentionally, and that it was for the Contracting Parties to determine how to verify chemical compatibility in conformity with 6.5.6.3.2 and 6.5.6.3.4 of the UN Model Regulations.

The Joint Meeting agreed first to submit to the United Nations Sub-Committee of Experts the question of whether it would be acceptable if IBC samples used for vibration tests were not subjected to preliminary storage in order to verify chemical compatibility.

#### **Periodic testing of IBCs**

RID/ADR 6.5.1.1.3 requires that the construction, equipment, testing, marking and operation of IBCs shall be subject to acceptance by the competent authority of the country in which the IBCs are approved. As 6.5.1.1.3 is part of the general provisions, it also applies to the periodic tests and inspections in accordance with 6.5.4.4.

While some delegations were against amending 6.5.1.1.3, which originated from the UN Model Regulations, a large majority of delegations was in favour of an additional note to make it clear that the competent authority of the country of approval need not approve the tests and inspections carried out abroad after the IBC has entered into service, but that the tests and inspections carried out abroad must correspond to the specific provisions of the design type approval.



## Next meeting

The next Joint Meeting will be held from 21-25 March 2011 and will continue discussion of the 2013 amendments to RID/ADR/ADN.

(Translation)

## Subjects in the Technical/Approval Field

### “Working together” to help the railways?

Experience of working together with  
the European Railway Agency

#### 1. Background

In November 2005, OTIF's 7<sup>th</sup> General Assembly decided unanimously to include the EU regulations set out in Annex P of the Technical Specifications for Interoperability OPE (Operation) (Bulletin 4/2005, p. 53) concerning vehicle numbering in the COTIF technical Appendices (F and G), in a suitably adapted form. These regulations prescribe the creation of a 5 letter code for the Vehicle Keeper Marking (VKM), as defined in the mandatory UIC leaflets 438-1 to 438-4.

At its first meeting on 4-6 July 2006, the OTIF Committee of Technical Experts decided to ask the OTIF Secretariat and the European Railway Agency (ERA) to negotiate a joint solution as soon as possible for the administration of the Vehicle Keeper Marking codes, ensuring their uniqueness.

#### 2. The solution

In July 2007 an agreement between the OTIF Secretariat and ERA was reached. ERA and OTIF would together form the "central body" specified in Annex P and publish a common list of registered VKMs on their websites. ERA would register vehicle keepers who have their registered place of business in a State which is a Member of the EU or EEA. OTIF would register vehicle keepers in the other OTIF Member States and – on a voluntary basis – even in States that are not members of OTIF. The Guidelines for Registration of a Vehicle Keeper Marking Code (VKM) are common to ERA and OTIF. They specify the setting up and administration of a joint register to hold all records (identical) of railway vehicle

keepers and their VKM codes according to Annex P of the TSI OPE in both organisations. A preliminary VKM list was published in September 2007. After resolving the problem of duplicate codes, the first edition of the VKM list was published in January 2010. An updated edition of the VKM list is published on the ERA ([www.era.europa.eu](http://www.era.europa.eu)) and OTIF ([www.otif.org](http://www.otif.org)) websites on the first Wednesday of each month.

#### 3. Aim and content

The VKM is an international, unique alphanumeric code consisting of 2 to 5 letters. At present the register contains more than 1700 VKM codes. The aim of the register is to ensure the uniqueness of each VKM to allow the vehicle keeper to be identified in case of incidents or when freight wagons are returned. Use of the register is free of charge.

The VKM register contains public data which are

- the VKM as inscribed on the vehicle, which may contain diacritical signs,
- the VKM to check uniqueness (without diacritical signs),
- full name of the keeper,
- country where the keeper has his place of business and if available,
- his website address.

Additional information for administrative purposes includes a contact person for administrative information, office address, telephone number and name of the organisational unit responsible for vehicle management.

#### 4. Registration process

The keeper fills in an application for a new VKM, amendments or revocation. Keepers whose place of business is in an EU or EEA Member States submit the application to the National Safety Authority (NSA) of the country where they have their place of business. For OTIF Member States which are not an EU or EEA Member State, the keeper submits the application to the competent national authority. The NSA/competent authority has the obligation to check that applicable regulations have been complied with and in case

of compliance, sends the application to ERA/OTIF indicating the date when the application was received from the keeper (for reasons of priority).

## 5. Functions

After receiving the application ERA and OTIF check uniqueness against existing VKMs in the register and against applications which ERA or OTIF may have received earlier, but which have not yet been assigned or published. The way this happens is that before updating the list of VKMs, OTIF notifies new applications to ERA and vice versa. Following this check, a unique identification code is allocated to the keeper. The VKM register includes all vehicles (locomotives, passenger carriages and freight wagons). The users are railway companies (infrastructure managers, railway undertakings), their customers and the authorities. All users are able unequivocally to identify the keeper from his VKM code, which is marked on the vehicle.

## 6. Unilateral suspension of cooperation by ERA

This agreed procedure was abandoned unilaterally by ERA as of the May 2010 edition of the VKM. ERA said it was obliged to adopt the European Commission's policy of non-cooperation with OTIF. Other explications could not be obtained. The European Commission made no comment.

This situation, where ERA is still obtaining OTIF information about newly assigned VKMs, is still ongoing. The consequence of this infringement by ERA of the common Guidelines for Registration of a VKM Code is amongst others that since May 2010, there have in effect been two different VKM code registers.

The ERA VKM code register is not complete, because it does not contain new VKM codes assigned by OTIF to keepers in the countries within OTIF's responsibility, even though information on newly assigned codes is regularly sent to ERA. On the other hand, for its VKM register, OTIF uses the data from the last ERA edition (although OTIF no longer receives this data directly from ERA website) and complements them with VKMs newly assigned by OTIF. This means that the VKM register administered and published by OTIF is the only complete, up-to-date and therefore functional VKM register

available. Again OTIF complies with its tasks to contribute to interoperability in the railway field (Art. 2 § 1 c) of COTIF 1999) and to the removal of obstacles to cross-border rail transport.

It is regrettable that such a boycott by ERA started at the time the scope of the VKM register is expanding to include the OSJD Member States. The XXV<sup>th</sup> session of the General Managers of the OSJD railways (Ulan Bator, 19-23 April 2010) decided to cooperate with OTIF in questions relating to the VKM register.

## Co-operation with International Organisations and Associations

### International Union of Railways (UIC)

#### Global Rail Freight Conference

*Saint Petersburg 6/7 July 2010*

At this Global Conference organised jointly by UIC and Russian Railways (RZD), which was attended by around 300 senior managers from the rail freight transport sector and representatives of logistics partners, customers, legislators and transport organisations, OTIF was one of the cooperation partners and was represented by the deputy Secretary General and an expert from the legal service.

In his presentation dealing with "legal harmonisation", the deputy Secretary General described the background, which at international governmental level, is characterised particularly by the relationship between OTIF, OSJD and the EU and the Member States' various affiliations, and the development possibilities that depend on the fundamental vision of the national decision-makers concerned.

The Conference dealt extensively with interregional transport connections, with various presentations on the situation in terms of supply and demand, and on the prospects for the future, particularly for land bridges between Asia, Europe and the USA.

The question of funding the railway infrastructure, both publicly and privately, was also discussed at length during the Conference. In connection with this, it was underlined that governments had an essential role when

it came to promoting private funding in the context of public-private partnerships.

Based on the analysis of the American market, where wagonload transport is flourishing, the various options set up to develop international wagonload transport in Europe were presented and explained, particularly by DB Schenker Rail and the X-Rail Alliance. The conclusion of those who took part in the discussion was unanimous: while wagonload transport represents a challenge, it is also the backbone of rail transport in Europe, as 50% of European freight is carried in wagonload transport.

Examples of the successful use of “green logistics” using the railways to make deliveries to supermarkets in the Paris area, free from traffic jams, showed that the railways can also be successful on short routes.

As far as the prospects for freight are concerned, it was stressed that in future, services will have to be adapted more closely to customers’ increasingly complex requirements.

With regard to container transport, the continuing general success story is being compromised by flawed developments, such as less safe “one way containers”, insufficient monitoring of the ACEP<sup>1</sup> in accordance with the CSC<sup>2</sup> and delays in adapting the CSC technical Annex to the greater stresses resulting from larger ships and heavier loads.

A declaration by conference participants published after the conference placed emphasis on the main areas where the development of rail transport needs support.  
(Translation)

## Studies/Essays/Speeches

### Right of the consignee to bring an action

Comments on the interpretation  
of Articles 43 § 4 and 44 § 6 of CIM

Dr. Eva Hammerschmiedová, Berne<sup>1</sup>

According to Article 43 and Article 44 of CIM, either the consignor or consignee is entitled to make a claim or bring an action based on the contract of carriage, depending on the time at which the consignee carried out certain actions relating to the contract of carriage (e.g. asked for delivery). The provisions of Articles 43 and 44 of CIM 1999 correspond largely to those of Articles 53 and 54 of CIM 1980. A new rule following the example of Article 30 of CMR, according to which the right of action would be dependent on the existence of a substantive right, was considered in the last comprehensive revision, but in the end, it was dropped with reference to the advantage of the legal clarity provided by the existing rule (see Explanatory Report on Art. 43 and 44, Bulletin 5/1999 (German and French only), or the website, [www.otif.org](http://www.otif.org), Publications).

Hence the principle that still applies is not only the principle whereby, from a particular point in time, the right of action shifts from the consignor to the consignee, but also the provision relating to their documents evidencing the right to bring an action. For the consignor, the duplicate consignment note he obtains when he hands the goods over for carriage acts as such a document, and for the consignee, it is the original consignment note, which he takes possession of when he has accepted the goods.

However, there are situations where the consignor can enforce his claims by legal action even without producing the duplicate consignment note, i.e. if the consignee agrees, or if there is evidence that the consignee refused to accept the goods. The version of CIM currently in force contains a specific provision on this, as did the earlier versions. According to CIM 1999 – in accordance with the prevailing concept of the contract of carriage as a consensual contract – evidence of the absence or loss of the consignment note can also be taken into consideration.

<sup>1</sup> Approved Continuous Examination Programme, a programme officially approved for the container owner for the continuous examination of the container, which replaces the strictly prescribed time intervals between inspections with appropriate data on the CSC safety placard.

<sup>2</sup> International Convention for Safe Containers, see <http://www.admiraltylawguide.com/conven/containers1972.html>

<sup>1</sup> Legal service of the OTIF Secretariat

The following comments are given against the background of a court decision dismissing an action brought by the consignee (in this case, it was the action of a person to whom the consignee had transferred its actions by assignment), because the plaintiff was unable to produce the original of the consignment note<sup>2</sup>. The facts of the case and the reason for and extent of liability were undisputed.

As the claim for damages related to a CIM contract of carriage concluded in 2001, the legal provisions of **CIM 1980** were applied. It concerned a consignment of paper rolls from Hungary to Poland via the Czech Republic. After the train derailed, the railway reloaded the consignment onto open wagons, on which it was only protected by covers. When it arrived at its destination, it was ascertained that the consignment had been damaged so much as a result of getting wet that it was of no use to the consignee.

The railway accepted that it was liable. However, in accordance with Article 53 § 3 of CIM 1980, it requested that the original of the consignment note be produced, which the complainant was unable to do. As the claimant assumed that the only purpose of this condition was to prevent the same claim being asserted twice, it instead provided the railway with written acceptance of compensation in case someone else produced the original of the consignment note and demanded compensation.

Neither the railway in the claim procedure, nor the court in the civil law procedure considered this sufficient. They had interpreted the wording “the consignee must produce the consignment note if it has been handed over to him” to mean that producing the original of the consignment note was a *sine qua non* for asserting a claim.

The second sheet of the consignment note (invoice) that was submitted to the court confirmed that the consignee had taken possession of the consignment note and accepted the goods. The court also had before it sheet 4 of the consignment note (duplicate of the consignment note) and the ascertainment of the facts produced immediately after the train derailed.

The court ruling also referred to Article 13 § 4 of CIM 1980<sup>3</sup>. However, this Article is not a suitable argument

for the *sine qua non* nature of the consignment note as a document required in order to bring an action, because in accordance with the systematic arrangement of the regulations, this provision related to the conclusion of the contract of carriage (Title II) as a formal contract, as it was then considered to be, and not to the assertion of claims (Title V).

Also in accordance with **CIM 1999**, to make the claim the consignee must produce the consignment note if it has been handed over to him (Art. 43 § 4). Exactly the same is required under Article 44 § 6, which says: “In order to bring an action the consignee must produce the consignment note if it has been handed over to him.”

If the consignee (or a person to whom the consignee’s actions have been transferred by assignment) brings the action, he must prove that he has carried out one of the acts set out in Article 44 § 1 b) of CIM, as a consequence of which the time is reached at which the right to bring an action has passed from the consignor to the consignee. As a rule, the easiest way of proving that the consignee has taken possession of the consignment note and has therefore acquired the right to bring an action is to produce the original of the consignment note.

In the same way as producing the duplicate of the consignment note in order for the consignor to bring an action is not the only possibility (Art. 44 § 5 of CIM), producing the original of the consignment note in order for the consignee to bring an action (Art. 44 § 6 of CIM) is not the only possibility, i.e. this is not the only proof, not to be substituted by anything else, that can be considered.

Even in the days when the CIM contract of carriage was conceived of as a formal contract, the prevailing view was that **there is no formal requirement in CIM to prove the right to bring an action**, see the Commentary by Béla von Nánáßy, *Das internationale Eisenbahnfrachtrecht* (International Rail Freight Law)<sup>4</sup>. In connection with this, it must be explained that the version of CIM applicable at that time already contained the wording: “To make the claim, the consignor must produce the duplicate of the consignment note.” The further stipulation concerning the document the consignee had to submit to bring an action was added later.

However, it is inconceivable to assume the existence of a formal requirement only in relation to one of two alternative persons entitled to bring an action.

2 Vrechní soud v Olomouci (Czech Republic) 7 Crno 239/2008-174, 28.7.2009

3 This Article read: “The consignment note shall not be replaced by other documents ...”

4 GOF-Verlag, Vienna, 1956, p. 688

Irrespective of whether the consignor or the consignee brings the action, producing the duplicate of the consignment note or the consignment note constitutes a **formal provision, the purpose of which is to provide evidence.**

Detailed explanations of this can be found in the Commentary by Kurt Spera, *Internationales Eisenbahnfrachtrecht* (International Railway Freight Law)<sup>5</sup>. These explanations do relate to CIM 1980, but they are still useful. With regard to CIM 1999, see the *Münchener Kommentar zum Handelsgesetzbuch* (Munich Commentary on the Commercial Code)<sup>6</sup> by Rainer Freise.

As the consignment note (including a consignment note in accordance with CIM 1980), unlike a bill of lading, is not a negotiable instrument, it is not necessary to have it declared invalid if it is lost in order for the court to allow other means of evidence of the right of the parties to the contract of carriage to bring an action.

For CIM – and indeed for CMR, in which the right of disposal, but not explicitly the right to bring an action is dealt with – it is the case that to allow the claim, the consignment note constitutes *prima facie* evidence as to who the consignor and the consignee are, but no more than that<sup>7</sup>.

The provisions of Article 44 § 5 and 6 of CIM do not invalidate the **principle of free consideration of evidence.**  
(Translation)

## Case Law

### Kammergericht Berlin

#### Ruling of 9 April 2009<sup>1</sup>

1. **The contract of use of infrastructure concluded between a railway infrastructure undertaking (infrastructure undertaking) and a private rail transport undertaking should not be qualified as a contract for work and services, but as a leasing contract.**
2. **The main characteristic of the contract of use of infrastructure is that it grants the spatial right of use of the railway. Any other planning and coordinating services to be provided by the infrastructure undertaking (operation of points, signals, etc.) only have a service function.**
3. **The infrastructure undertaking's obligation to provide a service under the contract of use of infrastructure is not based on success in terms of a "guarantee of punctuality". The infrastructure undertaking is only obliged to provide non-discriminatory access to the railway infrastructure it manages. The prohibition of discriminatory practices has only been infringed if the rail transport undertaking is adversely affected, particularly in the handling of disruptions to operations. For factual reasons, discrimination in this sense was not established.**

Cf. § 631 para. 2 of the German Civil Code and § 3 para. 1, second sentence of the *Eisenbahninfrastruktur-Benutzungsverordnung* (Ordinance on the Use of Railway Infrastructure)<sup>2</sup>

Summary of the ruling:

A claim by the rail transport undertaking (carrier) against the infrastructure manager to reduce payment for use of the infrastructure was dismissed in a case in which impaired usage as a result of construction works had already been assumed when the route was reserved

5 GOF-Verlag, Vienna, 1991

6 Verlag C.H. Beck, Munich 2009, volume 7 – *Transportrecht* (Transport Law), p. 1381/1382 on Art. 43 and p. 1384/1385 on Art. 44 of CIM

7 See Ralpf de Wit "Right of suit against the carrier in CMR" in European Transport Law 4/2007, p. 483-494.

1 19 U 21/08; lower instance: Landgericht Berlin, ruling of 13.8.2008

2 For the use of infrastructure for international transport where the CUI are applied, the question of a reduction of the payment for use in the event of a material defect or absence of a warranted characteristic would also have to be decided in accordance with national law (see Art. 8 COTIF).

and the single-track routeing was therefore in accordance with the contract.

On the other hand, the right to reduce payment for use was awarded in another case in which the conditions agreed in the contract were subsequently changed because of construction works, i.e. after the route had been reserved.

(Headnotes from: *Transportrecht (Transport Law)*, Hamburg, 5/2010, p. 194-200)  
(Translation)

## Book Reviews

**Allégret Marc, Taïana Philippe**, *Transport ferroviaire interne* (Inland Rail Transport), LexisNexis Juris-Classeur Transport, volume 637 (5,2009 – up to 15.10.2009)

In volume 637, which is devoted to the extent of compensation (in the event of liability on the part of SNCF), the authors examine the following particular issues: proof of damage, nature of the compensable damage, wilful intent and inexcusable fault and the effect of VAT.

It is worth recalling that since June 2005, Fret SNCF's new commercial conditions have contractually adopted CIM to govern domestic French transport (see Bulletin 1/2007, p. 13) and only a few provisions of French law are still applicable.

Consequently, the (French) domestic land transport modes are in future subject to separate legal regimes as regards compensable damage: common law for road transport and the CIM UR for rail transport.

More particularly, it should be remembered that the conditions for exercising claims and compensation are those of the CIM UR, and that practice shows that the CIM UR compensation limit of 17 SDR per kilogramme covers nearly all the requests for compensation for loss or damage submitted by customers.

We would also underline that in contrast to the classic system of the CIM UR, declaration of interest in delivery is not allowed under Fret SNCF's general conditions of sale and transport. In other words, the consignor may not raise the compensation limit conventionally. Only transport insurance could be used to cover damage above and beyond the limit in the CIM UR.

This publication is once again characterised by the depth and relevance of its analysis and its reliability and comprehensiveness. It is co-authored by one of the best national and international legal experts in rail transport law. All these qualities make it an essential working tool for legal professionals.

(Translation)

**Andresen, Bernd/Valder, Hubert**, *Speditions-, Fracht- und Lagerrecht* (The Law on Forwarding, Freight and Storage), transport law handbook with commentaries, ISBN 978 3 503 05904 1, supplement 1/10, as at June 2010, Erich Schmidt Verlag, Berlin.

This loose-leaf volume, which was first published in 2000 (see Bulletin 4/2004, p. 111), contains the texts of regulations (acts, general conditions) concerning the law on forwarding, freight and storage and related commentaries. The volume also contains texts of international conventions that are applicable to the carriage of goods performed by different means of transport in international traffic.

Supplement 1/10, which completes supplement 1/09 (see Bulletin 3/2009, p. 46), updates the text section and continues the commentary on the German general conditions for forwarders (*Allgemeine Deutsche Spediteur-Bedingungen - ADSp*).

Among other things, the text section now includes the amendments that were necessary following the increase in the levels of liability in the Montreal Convention (MC). This is because the Montreal Convention stipulates a regular review and revision of the limits of liability if the inflation factor has exceeded 10% (Art. 24 MC). By virtue of this Article, among other things the limit of liability for destruction, loss, damage or delay in the carriage of cargo has been increased from 17 Special Drawing Rights (SDR) to 19 SDR (Art. 22 MC). In case of death or injury of passengers, the limit has been increased from 100,000 SDR (extent of damage up to which no exclusion or limit of liability is possible) to 113,100 SDR (Art. 21 MC).

The topics dealt with in the new commentary on the *ADSp* are: goods insurance, place of performance, jurisdiction and applicable law.

The authors, who are practising lawyers, have made use of their experience in applying the provisions of transport law and associated branches of law, thus producing this practice-based guide, which provides answers in a lot of significant problem areas. This handbook makes all the important sources and

information on the current legal situation accessible. It is aimed at all practitioners and lawyers as an aid to their work, whether it be in undertakings, insurance companies or associations.

(Translation)