



OTIF



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by Rail**

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for International Carriage
by Rail**



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Editorial

**“The artist must
communicate
his life’s work to the public”**

Hans Erni

Virtualising the Bulletin will open an almost endlessly broad spectrum of graphic presentation going beyond the relatively simple question of black and white or colour. With this in mind, achieving a high degree of



identification with OTIF by means of the visual impact of the Bulletin was a fundamental concern. The image integrated into the header is from a fresco by the renowned Swiss artist, Hans Erni, who was born in Lucerne in 1909: a wall relief created by the co-founder of the group of abstract Swiss artists “Allianz” (1937) for the building of OTIF’s predecessor organisation in 1965.

In his works, Erni often fused man with his technical and scientific achievements. Like the artist communicating his message “*to the public*”, the aim of the Bulletin is to reach a varied public and make a contribution to the positive development of the rail sector.

Dear Readers,

This is the first edition of OTIF’s e-Bulletin as announced in Bulletin 4/2010. Since 1893, the Organisation’s traditional Bulletin developed into a real set of archives: a collection of volumes in which OTIF’s activities in general and the various steps in the procedures for adopting legal texts were documented and the texts ultimately adopted were published. This concept was the optimised legacy of a time in which the flow of specialist information relied exclusively on the written press. These days, the printed press is a useful addition to other communication media, such as the internet and so-called e-papers, whose success and cost effectiveness depend increasingly on high circulations and ultimately on a genuinely interested readership.

As the Bulletin is not intended to be commercially viable and is not a platform for the full-time professional focus of the authors, the editor believed it was now time to realign the Bulletin in such a way as to take account of the media scenarios and production processes that have now developed. In addition, we no longer wished to sell you the information that can also be obtained from the Organisation’s website, even if it is brought together in a practical and manageable format. So in future, the Bulletin will concentrate on announcements relevant to OTIF in the sense of an official gazette and will only be published electronically. For the time being, there will still be 4 editions per calendar year. Subscription costs will no longer apply.

Stefan Schimming
Secretary General



Official Part

Lists of lines 1999

Maritime or inland waterway services CIV

(published on 1 July 2006)

Secretary General's circular No. 11, dated 1 February 2011 concerns the chapters "Germany", "Switzerland" and "Austria" and can be downloaded from the following website:

www.otif.org/en/publications/civ-lists-of-lines-or-services/civ-list-of-maritime-and-inland-waterway-services.html

Following the rearrangement of services on Lake Constance, the chapters Germany, Switzerland and Austria have been re-issued (See COTIF 1999, Art. 24 §§ 1, 3-5).

Beatrice Moser ■

Official communications concerning COTIF

Consolidated new version of the Convention

Four years after the Convention concerning International Carriage by Rail (COTIF) entered into force, from 1 December 2010 there has no longer been any obstacle to applying Appendices E, F and G, including in the Member States of OTIF that are also members of the European Union.

Fine tuning the Appendices to the Convention concluded on 3 June 1999 was only possible thanks to the proficient, creative and indefatigable work of the OTIF experts.

The incompatibilities between EU and OTIF legislation are perhaps due to the seven year process of ratification of the Convention, during which it could of course happen that the European Union unilaterally took incompatible legislative initiatives, while COTIF was virtually waiting to be called forward in Berne.

The consolidated version of the text can be downloaded from the Organisation's website:

www.otif.org/en/law/revision-committee/notification-texts.html

Katja Bürkholz ■



Non official Part

Publications & interesting links

CIT-Info (Comité international des transports ferroviaires / Internationales Eisenbahntransportkomitee / International Rail Transport Committee, CIT)
www.cit-rail.org, édition/Ausgabe/edition 1/2011

DVZ
Deutsche Verkehrszeitung, Hamburg,
 Nr. 15/2011, S. 10 - Nur eine Eisenbahn haftbar halten (F. Wilting)

Idem, Nr. 18/2011, S. 10 - Beschädigt, verspätet und kein Geld (F. Wilting)

ERA Forum, Trier, Nr. 1/2010, S. 93-110
 Transporting goods in the EU: an interplay of international, European and national law (S. Lamont-Black)
www.springerlink.com/content/m74461n016004071/

EuR - Europarecht, Baden-Baden,
 Nr. 6/2010, S. 774-791
 Die Vergabe von Dienstleistungsaufträgen im Eisenbahnverkehr (H. Pünder)

International Journal of Transport and Shipping Logistics, Olney, Nr. 4/2010, S. 347-363 - The use and legal effects of carriage documents in international multimodal transport (D. Glass/P. Marlow/R. Nair)

NVwZ
Neue Zeitschrift für Verwaltungsrecht, München, Nr. 22/2010, S. 1406-1408
 Aktuelle Probleme des Eisenbahnrechts XVI - Tagung an der Eberhard-Karls-Universität in Tübingen (M. Hellriegel/Th. Schmitt)

Case Law

Court of Appeal Versailles of 10.06.2010

Carriers obligations

(Source: Bulletin des Transports et de la Logistique, No. 3334/2010, p 559)

In terms of the Warsaw Convention, the clause whereby the air carrier reserves the possibility of delivering the goods to someone other than the consignee is null and void.

By delivering the consignments (grand cru wines) to the address shown without checking the consignees' capacity to take delivery of the consignment, the air carrier commits an inexcusable fault.

See Article 23, para. 1 of the Warsaw Convention: Article 5 of CIM contains a similar provision, according to which a carrier may assume greater liability and more burdensome obligations (but may not limit them).

Extract:

- Whereas delivery of the goods is the essence of the contract of carriage and constitutes an essential obligation incumbent upon every carrier, including the air carrier within the meaning of the Warsaw Convention; whereas the litigious clause stipulating that company F. may deliver to a person other than the one indicated in the air transport document, which exempts the air carrier from handing over the goods to the consignee identified in the transport document and authorises the carrier to hand them over to a third party without checking the capacity of the person to whom it hands them over, contravenes this obligation. [With regard to such provisions, or similar ones, Article 5 of CIM is clearer than Article 23 of the Warsaw Convention: from the wording (a contrario) of this Article, it can certainly be concluded that it is not only those derogations from mandatory law that exclude or reduce the carrier's liability which are null and void, but also any such contractual agreements which would relax the carrier's obligations in any way.];

- Whereas Article 23 of the Warsaw Convention says that any provision tending to relieve the carrier of liability ... shall be null and void; whereas these provisions included in Chapter III, "Liability of the Carrier", are of a general scope;



Non official Part

Transportrecht, Hamburg, Nr. 1/2011, S. 10-16 – Neue Fahrgastrechte im Eisenbahnverkehr (H. Lindemann)

Idem, Nr. 2/2011, S. 53-56 – Aktuelle höchstrichterliche Rechtsprechung zum Transportrecht (G. Pokrant), s. IV. Internationales Gütertransportrecht (CMR, MÜ)

WiVerw – Gewerbearchiv, Alfeld, Nr. 2/2010, S. 152-158

Wettbewerbsorientierte Regulierung deutscher und europäischer Eisenbahntransportmärkte (Ch. Kirchner)

Dr. Eva Hammerschmiedová ■

Book Reviews - References

Hoeks, Marian, *Multimodal Transport Law The Law Applicable to the Multimodal Contract for the Carriage of Goods*, Kluwer Law International, Alphen/Rhein 2010, ISBN 978 90411 3246 8

Keller, Stefan (Haupthrsg.),

Stangl, Brigitte, Pezenka, Ilona (Hrsgb.), *Reiserecht. Europäisches Reiserechtsforum 2008*, Springer Verlag, Wien 2010, ISBN 978 3 211 09458 7. S. Kap. 8 – *Licht am Ende des Tunnels? Streitfragen zur Verordnung über Rechte und Pflichten der Fahrgäste im Eisenbahnverkehr (1371/2007/EG) sowie zur außergerichtlichen Streitbeilegung* (A. Staudinger)

Dr. Eva Hammerschmiedová ■

• Whereas in these circumstances, Article 14.2 of company F.'s general conditions of sale, which contractually allow the option of handing the goods over to a person other than the one indicated in the transport document, tend to relieve the air carrier of its liability, so that this clause is null and void.

Dr. Eva Hammerschmiedová ■

Book Reviews

Spera, Kurt: *A Life in Two Centuries*

These memoirs, [ISBN 3-901472-05-1, logotrans, Vienna], by OTIF's conseiller honoraire and transport lawyer of international renown, Professor Kurt Spera, cover the not inconsiderable period from 1928 to 2010. In addition to depicting the panorama of his eventful life, revealing some interesting new aspects, even for those who think they know him well, the memoirs also illuminate a number of important phases in the development of international railway law, including those areas for which the Central Office (OCTI) and OTIF have been responsible. Although he had been the victim of persecution and ill-treatment, particularly during his childhood and youth, and had cause to become bitter and revengeful, throughout his life Spera was anxious, above all, to overcome divisiveness, and therefore made great efforts to bring people together. In the light of this, his activities, which always focused on bringing together the transport and legal systems of East and West, were ultimately the incarnation of his ideas. It is rare that a representative of this branch of the law also reveals personal motivations and feelings, as expressed particularly in the collection of his own poetry that is included with the memoirs. Let us hope, therefore, that in addition to providing his readers with some interesting facts, it will encourage them, as he has done, to stand up to the noticeable trend towards selfishness and nationalism and the crudity from which, unfortunately, no area is spared.

Dr. Gustav Kafka ■