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Lists of lines 1999

No updates

Rail link Baku – Tiblisi – Kars

Legend of the shown infrastructure

- Baku – Gardabani Rail section
- Gardabani – Kartsakhi Rail section: 244 km
- Kartsakhi – Kars - Rail section
- Baku – Tiflis – Ceyan Pipeline
- Pipeline
- Pump station

Official Communications concerning COTIF

Accession to COTIF

Georgia

On 24 October 2011, the Government of Georgia made an application for accession to COTIF. As Depositary of the Convention, the Secretary General brought the application for accession, including the reservations and declarations made with it, to the attention of the Governments of the OTIF Member States in a circular dated 2 November 2011.

Unless five Member States of OTIF lodge objections, the application for accession will be deemed to be accepted as legally binding three months after this notification, i.e. on 2 February 2012. The accession will then take effect on the first day of the third month following the Secretary General's notification to the Member States that the application for accession has been accepted as legally binding (probably on 1 May 2012).

Georgia will make transport on the section from Gardabani to Kartsakhi/state border with Turkey (244 km) subject to the COTIF regime (CIV and CIM). This section forms part of the new Baku-Tbilisi-Kars line. With regard to freight transport, Georgia will also make the short sections between the Ports of Poti and Batumi and their respective stations subject to CIM, so that in future it will also be in a position to apply the railway law regime of CIM to multimodal rail-sea transport.

Eva Hammerschmiedová ■





References

Andresen, Bernd / Valder, Hubert:
The Law on Forwarding, Freight and Storage (Speditions-, Fracht- und Lagerrecht; transport law handbook with commentaries)

This continually updated loose-leaf volume, which was first published in 2000, contains the texts of various regulations concerning the law on forwarding, freight and storage and extensive commentaries on the various provisions.

In terms of the increasing globalisation, increased dynamism of the markets and consequently increasing competitive pressure, it is becoming increasingly important to have a good knowledge of the legal relationships that arise on the basis of freight, forwarding and storage law. The commentary by Andresen/Valder answers all the important questions on these legal relationships, including those resulting from the application of international conventions.

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.

Supplement 1/11 continues the commentary on the German general conditions for forwarders (Allgemeine Deutsche Spediteur-Bedingungen - ADSp) and the CMR.

Explanations, with examples from the case-law, relate to the scope of ADSp, the obligations of the contracting entity and the obligations of the freight forwarder.

This supplement also includes a revised commentary on Article 3 of CMR (Persons for whom the carrier is responsible). Since certain parallels

Other Communications

Gulf Cooperation Council

Conference on Transport & Rail in October in Doha

The Secretary General of OTIF took part in a conference of the Gulf Cooperation Council (GCC) for the first time. The title of the conference was "Transport and Railways" and was held from 17 to 19 October 2011 in Doha (Qatar). There were more than 200 participants, some of them ministers, representing the GCC Member States, which include all the States on the Arabian Peninsula with the exception of Yemen. Some important railway undertakings, infrastructure managers, planning and construction companies and research organisations were also represented at high level (CEO Grube for Deutsche Bahn). The Secretary General presented OTIF and the Uniform Rules it has developed in the field of liability law, dangerous goods regulations and the technical provisions in COTIF 1999.

In 2010 the GCC Member States had already taken a decision at the highest level to build a cross-border rail network by 2016 for passenger and freight transport to link their States to each other and to the OTIF Member States through Saudi Arabia to the border with Jordan. The network will comprise more than 2,200 km. More than 120 billion US\$ will need to be invested. The parts of the network that are already in operation show some remarkable performance parameters. For example, the axle load on a section on which mostly phosphate is carried to the Gulf ports is 34.5 tonnes. Trains with 130 to 150 wagons are composed, so the weight of the train can reach more than 20,000 tonnes. The challenges involved in planning and building the lines are similarly impressive, including the large amount of earth moving required and the removal of natural obstacles, such as dry river beds (wadis) and ridges. It would be wrong to assume that tracks can just be laid in the flat desert. With regard to infrastructure requirements, it is also important to consider the substantial differences in day-time and night-time temperatures, sometimes more than 50 degrees celsius, and the measures



exist between this provision of the CMR and those provisions in the Appendices to COTIF dealing with liability for servants and other persons (Art. 51 CIV, Art. 40 CIM, Art. 9 CUV, Art. 3 d) and Art. 18 CUI), lawyers working in the rail sector should also be interested in this commentary.

(only available in German language)

(ISBN -978 3 503 05904 1, supplement 1/11, as at October 2011, ed. Erich Schmidt Verlag, Berlin)

www.esv.info/sort/date/topdiv/recht/page/3/loseblattwerke.html

Eva Hammerschmiedová ■

Spera, Kurt: *Agreement on International Goods Transport by Rail SMGS (new edition with amendments and additions up to 1 September 2011)*

The “Agreement on International Goods Transport by Rail (SMGS)” undergoes a process of amendments which are discussed and adopted annually. SMGS has been in force since 1951, when it was developed by the railway administrations under the auspices of the Organisation for Cooperation between Railways (OSJD), to some extent as a “planned economy alternative” to CIM, which was influenced by moves towards denationalisation and liberalisation of the markets. Although only part of these amendments are of any significance, the differences compared to the last version published in 2004 (discussed in Bulletin 1/2004, p. 26/27) have grown to such an extent, in terms of number and content, that publication of this new edition now seemed appropriate. The interest in an up-to-date German edition of SMGS is even greater now because since the GDR’s membership was dissolved following the reunification of Germany, German has not been an official language of OSJD, so the only official versions of SMGS are in Russian and Chinese.

that have to be taken to keep the continuous sanding up of the tracks to the minimum necessary in terms of safety aspects.



As most of the Gulf States have not previously had any national railway legislation, as there has been no need for it, the future need for legal certainty that will arise once cross-border traffic has been established could be covered without much trouble by the accession of these States to OTIF. For decades, the rules of COTIF have proved their worth in cross-border traffic between OTIF’s 47 Member States.

There is a lot of interest in what OTIF can offer. Some States have already made initial enquiries concerning their potential membership contributions and have asked to be sent the English version of COTIF 1999.

The next step will be to explore the opportunities for strengthening cooperation between OTIF and the GCC.

Stefan Schimming ■



For CIM/SMGS traffic, the most important amendments include the following:

- use of the common CIM/SMGS consignment note,
- provisions concerning the report to ascertain loss or damage (formal report),
- carriage of out of gauge goods, containers and load units,
- provisions on loading and securing on trains carrying motor vehicles,
- special features of transshipment onto wagons of other gauges,
- new indexes of stations opened to deal with the handling of certain types of container and up-to-date models of the SMGS consignment note and wagon list.

The text still omits Annex 2 (provisions on the transport of dangerous goods) and Annex 14 (provisions on the loading and securing of goods in wagons), the original versions of which have been published in a separate volume. However, the differences between RID and SMGS Annex 2 are currently being examined in the RID groups, so it is hoped that there will soon also be transparency in this respect. In the light of efforts to develop an urgently required unified legal regime for rail transport, especially for the promising Euro-Asian rail traffic, it is very important to improve awareness of the respective “unfamiliar” law. This would put an end to the dualism of CIM and SMGS and would ultimately pave the way for the amalgamation of OTIF and OSJD, both of which are basically pursuing the same aims and carrying out the same tasks. In terms of the CIM, this aim is served by the publication on OTIF’s website of a working translation of COTIF in Russian

see
www.otif.org/fileadmin/user_upload/otif_verlinkte_files/07_veroeff/02_COTIF_99/COTIF_199_ru_05122008.pdf

and in terms of the SMGS, this public-

Case Law

Regional Appeal Court Düsseldorf (D)

Ruling of 20.04.2011

(Source: Transport Law / (Transportrecht), Hamburg, No. 9/2011, p. 347/348)

(No. I-18 U 158/10)

Injury on platform

The facts of the ruling by the Regional Appeal Court (OLG) Düsseldorf relate to a domestic contract of carriage. The case concerned an accident involving black ice at S.-O. station before a train was boarded.

The court of first instance dismissed the claim for damages (damages for pain and suffering). It was of the opinion that the contract of carriage did not give rise to the obligation to ensure that the path leading to the train until it was boarded was safe. The court of appeal did not share this opinion, but did not decide on the matter, as the question of neglect of duty to make the premises safe for persons had to be decided by the court of first instance.

In this case the appeal was allowed on the basis that “the question of whether the railway infrastructure undertaking, particularly insofar as it operates stations, should be considered as an auxiliary of the rail transport undertaking in meeting the contractual obligations to make the premises safe for persons, is of fundamental importance.”

Furthermore, the court of appeal was guided by the following considerations in relation to German law (Liability Act, General Railways Act):

Rail transport undertakings and railway infrastructure undertakings jointly direct railway operations (cf. Geigel/ Kaufmann, Der Haftpflichtprozess (The Process of Liability), 25th edition, Chapter 26, marginal 14).

The fact that the railway infrastructure undertaking is responsible for its area of competence, particularly for stations, and as the owner and entity with the right of disposal is responsible for maintaining the obligation to ensure that the premises are safe for people, does not preclude – at least in the contractual context – a corresponding contractual obligation on the part of the railway undertaking. It is not unusual for several persons to be responsible for removing the source of a



cation, which is aimed not just at users involved directly at the crossover point between CIM and SMGS, but at all those who are interested in overcoming the current dualism.

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Transport-GmbH, Vienna, 248 pages)

Gustav Kafka ■

Publications & interesting links

Bulletin des transports et de la logistique, Paris, n° 3382/2011, p. 567/568 - Brusque rupture [du contrat]. L'international aussi [Où assigner? Subsidiatement, quelle loi appliquer?]
(M. Tilche); p. 571 - Contrat résilié. Jurisdiction compétente

Idem, n° 3383/ 2011, p.583/584 - Absence de livraison. Distincte du retard (M.Tilche); p. 587/588 - CMR. Champ d'application des réserves

Idem, n° 3384/2011, p. 596/597 - Force majeure. Evènement extérieure? (M.Tilche); p. 597/598 - Aérien voyageurs. Protection du « consommateur » (B. Colette); p. 600/601 - Marchandises dangereuses. Diligences du chargeur (M. Tilche)

Idem, n° 3388/2011, p. 660/661 - CMR. Savoir réclamer (M. Tilche); p. 667 - CMR. Suspension de la prescription

CIT-Info (Comité international des transports ferroviaires / Internationales Eisenbahntransportkomitee / International Rail Transport Committee, CIT) www.cit-rail.org, édition/Ausgabe/édition 5/2011

Deine Bahn, Berlin, Nr. 10/2011, S. 25-29 - Einheitsfrachtbrief CIM/SMGS Rechtliche Interoperabilität für den eurasischen Güterverkehr (E. Evtimov)

Idem, Nr. 10/2011, S. 31-34 - Interoperabilität im grenzüberschreitenden Verkehr? (K. Bürkholz)

hazard and to be jointly liable (cf. Bundesgerichtshof, ruling of 13.7.1976 - III ZR 156/66).

The contract of carriage of passengers covers not just the act of carriage itself, but also comprises, as an accessory obligation, safe access to and departure from vehicles. If this infrastructure is provided by third parties, the railway undertaking must answer for any misconduct on the part of these third parties (cf. Filthaut, Haftpflichtgesetz (Liability Act, 8th edition, § 12 marginal 139).

The legal separation of operations and infrastructure was not intended to put injured parties in a worse position. To begin with, this applies to the area of the Liability Act (cf. the above-mentioned ruling of the Bundesgerichtshof, Transportrecht (Transport Law) 2004, p. 256); however, nothing else can apply in the case of claims made in the context of a contract.

Comment from the CIV perspective

An injury such as this is outside the scope of the carrier's liability under CIV as defined in Article 26 § 1 of CIV. The period of liability is defined as follows: "while the passenger is in, entering or alighting from railway vehicles". If such an accident had occurred in the context of a CIV contract of carriage before the passenger boarded the train, national law would apply, and in the EU Member States this would include the Regulation on rail passengers' rights and obligations (Regulation No. 1371/2007). See also Article 26 § 4 of CIV, which says that any liability which may be incurred by the carrier in cases not provided for in § 1 of this Article is not affected. An accident on the platform before boarding the train or after alighting is among the circumstances not covered by § 1.

www.justiz.nrw.de/nrwe/olgs/duesseldorf/j2011/I_18_U_158_10urteil20110420.html

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Railway Gazette, Sutton, No. 10/October 2011, p.37-42 – Does vertical separation always make sense? (J. Drew, Ch.Nash);

Idem, No. 10/October 2011, p. 47/48, – Two gauges must co-exist on one continent (V. Yakunin, U. Magonis)

www.railwayinsider.eu

www.railwaypro.com

Transportrecht, Hamburg, Nr. 10/2011, S. 359-362 – Wer ist der ausführende Verfrachter ? (R. Herber)

www.ville-rail-transports.com (La Lettre)

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In memoriam

Wieger Johannes Visser

On 12 October 2011, Mr Wieger Johannes Visser, Conseiller honoraire of OTIF (see Bulletin 1/2005, p. 2) passed away at the age of only 67 in his home country, the Netherlands. The world has therefore lost not just a recognised expert in the field of international dangerous goods transport and a great aficionado of the rail sector, and not just the technical aspects, but also, for many, a very good friend.

During his many decades of activity as a national representative and subsequently as a representative of an association in various expert bodies dealing with the safe transport of dangerous goods, often also as chairman, he played a major role in helping to develop the international safety requirements. His vast store of knowledge and his way of bringing this knowledge into the discussions contributed to the success of major projects, such as the “restructuring” of RID, with which he pressed ahead as chairman at the request of many delegates, despite his initial scepticism, or the introduction of the “participants’ obligations”, although when they started, it sometimes seemed that the aims of these projects were unachievable.

Visser was the type of “international delegate” one would wish to meet more often: always trying not to discriminate between countries and languages and giving “weaker” participants a voice. Wherever possible, he used his excellent linguistic abilities to listen to other delegates in their own language, rather than in translation, and he was always prepared to use the language which would help others’ understanding. His unique sense of humour is also remembered. This made even the most difficult discussions easier.

As a dedicated railwayman and as an expert, Visser was not without pride, although he was never self-important. He always took it in good spirit when people joked about his predilection for beer and hearty meat dishes or his personal knowledge of the various model railway shops in the European capitals. He was also very vulnerable, but did not display any feelings of being insulted if he lost a vote or was even deselected. He loved classical music and good books, but never played the “intellectual”. His sometimes barbed assessment of human failings was also apposite.



The ten most positive & most negative things

according to Wieger Johannes Visser



- Nice ladies
- Friendship
- Classical music in minor thirds
- Old-fashioned train, real ones and models
- Good food and drink
- Good cooking
- Watching films
- Walking / cycling in the country
- Gardening
- Reading (books, newspapers, magazines)



- Militarism and war
- Any kind of sport
- Modern design and architecture
- Warm, sunny summer weather
- Inconsiderate and unreliable behaviour
- Modern light music
- Bleak care homes
- Computers
- Religious fanaticism
- Uncontrolled power

Now that Wieger Johannes Visser has gone, the memory of how and why many provisions of dangerous goods law came about will unfortunately fade. This ability to remember historical facts also enabled him to conjure up old documents unerringly from his countless packing cases; being a self-proclaimed “technophobe”, he always dismissed the accomplishments of modern information technology.

What remains is the memory of Wieger Johannes Visser as an outstanding expert and exceptional person, and the hope that his spirit will also give future delegates the impetus and courage to advocate, as he did, a safe approach to the carriage of dangerous goods in general, and by rail in particular, as well as human ideals.

In a moving ceremony, at which many of his friends and companions looked back at their life together with him, Wieger Johannes Visser was buried on 18 October 2011 in his home town of Hilversum. OTIF will always honour his memory.

Gustav Kafka ■

