



OTIF



**Bulletin of
international carriage
by rail**

**Intergovernmental Organisation
for International Carriage
by Rail**



@

Bulletin of international carriage by rail

... since 1893



OTIF

Quarterly 120th Year

Intergovernmental Organisation
for International Carriage
by Rail

Gryphenhübeliweg 30
CH - 3006 Berne

Secretary general

Stefan Schimming

Chief-Editor

Katja Bürkholz

contact

@: Media@otif.org

Mobile: +41.799.44.17.45

Internet: www.otif.org

Summary

Official part

Lists of lines 1999

CIM list of railway lines

Chapter: «Ukraine»

3

Official communications concerning COTIF
none

3

The editor's note

3

Non official part

Other communications

none

3

Case law

Supreme court (A): Ruling of 30.05.2012

Scope of CMR

4

References

Kunz, Wolfgang

Railway law

4

Book review

none

6

Publications & interesting links

6



@

Bulletin of international carriage by rail

... since 1893

Lists of lines

CIM list of railway lines

(published on 1st July 2006)

Chapter:

„Ukraine“

Inclusion of the new railway line, „Uzhgorod – Matevce (State Border)“. Following this inclusion, the chapter „Ukraine“ has been re-issued

Secretary general's circular no. 9 dated 14 November 2012 may be consulted online.

Samuel Flückiger •

Official part

3

Official communications concerning COTIF

none

--

The editor's note

This last 2012 issue of the Bulletin is dedicated to the Secretary general, Mr. Stefan Schimming. He had both bravery and know-how to take up the challenge of „updating“ an International Organisation. So it be prepared to face realities and needs of a globalised rail sector and – what matters most – able to make its precious and concrete contributions. From 2005 to 2012 he devoted himself to carry out the missions entailed by COTIF. – Missions accomplished !

... much obliged ...



Stefan Schimming • OTIF Secretary general

Katja Bürkholz •



@

Bulletin of international carriage by rail

... since 1893

Indications

Kunz, Wolfgang: Railway law

(Systematic collection with explanations of the German, European and international requirements, loose-leaf work with supplements)

In 2012, two extensive supplements, the 32nd and 33rd, were published to update this four volume collection of mostly national legal provisions relating to railway law.

From the point of view of the subject areas OTIF deals with, a key area of the 32nd supplement can be seen in the updated provisions of German dangerous goods law. These are the Regulations on exemptions from the provisions on the carriage of dangerous goods, the Regulations on the domestic and cross-border transport of dangerous goods by road, rail and inland waterways and the Regulations on the appointment of dangerous goods safety advisors in undertakings. The updated provisions in the field of environmental protection are linked to the foregoing. The rest of the updates concern, among other things, transport infrastructure funding, the transport of severely disabled people by public transport free of charge and the awarding of public contracts.

There are explanations on many of the provisions by well-known experts from the various legal branches. The 32nd supplement contains a revised version of M. Zumpe's explanations concerning an Act on the «financing of transport infrastructure». The author explains how transport routes are built and maintained in Germany and the funding instruments that can be used for this purpose.

With regard to European law, consolidated versions of two Directives and six Regulations have been brought up to date, including Directive 2004/49/EC («Railway Safety»), Annex I of which (common safety indicators) was revised in 2009, and Regulation (EC) No. 881/2004 establishing a European Railway Agency. A new inclusion is R. Eiermann's explanations of the term «transport infrastructure» as described in Regulation (EEC) No. 2598/70 («forms of accounts») and of the term «railway infrastructure», which, unlike the definition in Regulation No. 2598/70, has been

Non official part

4

Case law

Supreme court (Austria)

Ruling of 30.05.2012

(No. 7 Ob 21/12g; previous instances: commercial court Vienna, regional appeal court Vienna)
(Source: Transportrecht, Hamburg No. 8/2012, p. 337)

CMR scope

Head note 1

Whether a transport operation is subject to CMR must be decided on the basis of CMR itself. Even though CMR does not mention the fixed price freight forwarder (*Fixkostenspediteur*), fixed price freight forwarding (*Fixkostenspedition*) is still freight business to which the provisions of CMR are applicable.

Comment

The same also applies to the scope of the CIM UR, i.e. that the fixed price freight forwarder is equivalent to the carrier and is subject to freight law (see the ruling of 28.2.2001 by the Austrian supreme court „Oberster Gerichtshof“ published in the Bulletin of International Carriage by Rail 1/2003, p. 10-12).

With regard to the scope of CMR, the Austrian supreme court has already taken several decisions (on 25.4.1984, 16.1.1985, 4.6.1987 and 11.12.2007) which follow the legal rule according to which the fixed price freight forwarder is also liable as the carrier in accordance with the provisions of CMR when it is not carrying the goods using its own vehicles (RIS-Justiz RS0073686).

The German federal court of justice also follows the same principle (see Bulletin of International Carriage by Rail 1/2009, p. 12).

However, the case law on this issue varies from State to State. While there is firm case law on the term „Fixkostenspediteur“ in the German-speaking area, in France there is extensive case law on the term „commissionnaire de transport“, to which national law applies rather than the provisions of CMR or CIM. French law defines the “commissionnaire” as the person who agrees with his contracting entity to carry out the legal negotiations necessary for the transport of the goods, to organise the transport from beginning to end and who, in so doing, is free to decide on the route and means of transport used (see e.g. ruling of the French court of cassation of 5.6.2012, appeal H 09-71.894).



@

Bulletin of international carriage by rail

... since 1893

Indications

made more comprehensive in the German Act on the reorganisation of the railways in order to support non-discriminatory access to the network for railway undertakings.

The amendments to COTIF (the basic Convention) and to Appendix E (CUI) adopted during the revision in 2009 have also been taken into account in the texts reproduced in this collection. On the other hand, the new versions of Appendices F (APTU) and G (ATMF) have not been taken into account. This is apparently due to the fact that at the time of publication of the 32nd supplement, Germany had not yet withdrawn its 2006 reservation concerning the non-application of these Appendices (Art. 42 § 1 of COTIF) following their revision (entered into force on 1.12.2010) and following the EU's accession to COTIF (1.7.2011) – in contrast to the reservation against CUI, which Germany has already withdrawn. Information on the reservations concerning COTIF would be useful for those using this publication. Future updates should also take account of the fact that Germany has in the meantime withdrawn its reservation concerning the non-application of Appendices F and G with effect from 1.1.2013.

The 33rd supplement mainly contains an updated version of R. Freise's very interesting explanations on the provisions of railway law in Germany's constitutional law.

The collection of texts now includes the Luxembourg Protocol to the Cape Town Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock. On the other hand, SMGS is no longer included.

The systematic "Railway Law" collection is a practical aid to the work of railway specialists, working with all types of railway legislation applicable in Germany. A quick alphabetical overview for each volume and a well thought-out separation into different headings help the user find the information he requires quickly and reliably.

(ISBN 3-7890-3536-X, publ. in German only. Nomos Verlagsgesellschaft, Baden-Baden 32nd, 33rd supplements April/August 2012)

Eva Hammerschmiedová •

Non official part

5

Head note

The provision of Article 27 of CMR is mandatory and the rule it contains is final, so no differing amounts of interest can be derived from any national rules on the payment of interest.

Comment

The same applies to Article 37 § 2 of CIM (COTIF consolidated text p. 99.).

Eva Hammerschmiedová •



@

Bulletin of international carriage by rail

... since 1893

Publications

interesting links

Bulletin des transports et de la logistique

Paris, no. 3424/2012, p. 497-499 – Maritime. Responsabilité du chargeur (O. Lebrun)

Idem, no. 3430/2012, p. 593/594 – Commissionnaire. Omni-garant ? (M. Tilche)

Idem, no. 3431/2012, p. 607/608 – Vente et transport. Le couple infernal (M. Tilche) ; 610-612 – Supports de charge. En quête d'identité (M. Tilche et O. Lebrun)

Idem, no. 3432/2012, p. 627/628 – Faute inexcusable aérienne. L'absente (M. Tilche)

Idem, no. 3434/2012, p. 655/656 – Transport routier international. Assiette de l'indemnité (M. Tilche)

CIT-Info

édition/Ausgabe/edition 4/2012

European Transport Law / Droit européen des transports / Europäisches Transportrecht

Antwerpen, No. 5/2012, p. 461-472 – Essay on Ethics in International Maritime Law (M. Pavliha)

Transportrecht

Hamburg, Nr. 8/2012, S. 309-320 – Kollisionslage im europäischen und internationalen Eisenbahnrecht (W. Kunz) ; 324/325 – Keine haftungseinschränkende Wirkung des Art. 38 Abs. 1 des Montrealer Übereinkommens (W. Müller-Rostin)

Idem, Nr. 10-11/2012, S. 400-407 – Art. 2 CMR und die UND ADRIYATIK (K.U. Bahnsen)

Eva Hammerschmiedová

Non official part

6

Book review

none