OTIF
Quarterly
120th Year

Summary

Official part

Lists of lines 1999
CIM list of railway lines
Chapter: «Ukraine»

Official communications concerning COTIF
none

The editor’s note

Non official part

Other communications
none

Case law
Supreme court (A): Ruling of 30.05.2012
Scope of CMR

References
Kunz, Wolfgang
Railway law

Book review
none

Publications & interesting links

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
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).
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
Book review

none