



ORGANISATION INTERGOUVERNEMENTALE POUR LES TRANSPORTS INTERNATIONAUX FERROVIAIRES

INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL CARRIAGE BY RAIL

Groupe de travail "RU CIM"
Arbeitsgruppe ER CUV
Working group "CIM UR"

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Position of the international organisations and associations concerned

In its letter A 72-00/502.2014 dated 9 October 2014, the Secretariat of OTIF asked the Member States and the international organisations concerned to send it any standpoints or comments they might have concerning the documents annexed to that circular.

By the deadline, 10 November 2014, only the International Rail Transport Committee (CIT) and the International Association of Tariff Specialists (IVT) had informed us of their position with regard to these documents. The comments received are set out below.

It should be noted that in its comments, IVT included some of the comments it made before the 25th session of the Revision Committee¹, which were sent in German with the circular dated 2 June 2014 (A55-25/505.2014) and which do not exist in any other language (cf. Art. 11 § 3 of the Revision Committee's Rules of Procedure).

POSITION OF IVT

1. Introductory remark

Firstly, IVT has requested that the suggestions it submitted in document CR 25/5 Add.2² for the 25th session of OTIF's Revision Committee, but which could not be dealt with at that time, be taken into account in the working group's future programme. This is partly because, according to information from IVT, at least one member of the Revision Committee would be prepared to support these suggestions within the meaning of the 2nd sentence of Article 11 § 1 of the Revision Committee's Rules of Procedure, but above all because these suggestions are directly linked to practice in international rail freight and deal with issues which have been and are the subject of legal disputes before the authorities and courts.

2. Document CIM 1/2 – Partial revision of Appendix B (CIM UR)

This document is based on document CR 25/5 of the 25th session of OTIF's Revision Committee. IVT still supports the proposed amendments it contains.

Article 16 Transit periods

IVT is disappointed that the amendment to Article 16 to delete the suspension of the transit period on Sundays and public holidays prescribed in the last sentence of § 4 was not made, particularly as the arguments put forward by the Secretariat in support of deleting this provision are well founded and that the length of transit periods maintained, despite technical progress, should be sufficient to take account of delays resulting from different public holidays in the States affected by the transport operation.

¹ xxxx

²

http://www.otif.org/fileadmin/user_upload/otif_verlinkte_files/04_recht/03_CR/03_CR_25_2014/CR_25_5_Add_2_f_Revision_partielle_CIM_Suggestion_IVT.pdf

Article 22

Consequences of circumstances preventing carriage and delivery

For Article 22, IVT again suggests looking at whether the consequences of circumstances preventing carriage and delivery should perhaps be dealt with in separate articles.

3. Document CIM 1/2 Add.1 – Explanatory document and suggestions for additions to the Explanatory Report

Introduction

The reasons set out in the introduction for the Revision Committee's purely formal treatment of document CR 25/5, for transferring it to a working group and for the future approach to be taken gave rise to some reservations, especially as, according to the legal experts, a Revision Committee vote using the written procedure on the proposals submitted to the General Assembly for decision according to Article 33 § 2 of COTIF does not constitute an "examination" within the meaning of Article 17 § 1 b) of COTIF and is in contradiction of the allocation of tasks to the Revision Committee and General Assembly laid down in COTIF.

Article 6a (new)

Form of the electronic consignment note

With regard to the postponement of amendments concerning the electronic consignment note, it must be emphasised that the version of Article 6 § 9 of CIM in force already entitles carriers to use the electronic consignment note, which some already do. The fact that they can only do so within the limits of public law is obvious³ and is also explicitly mentioned in Article 2 of the CIM. The provisions of EU public law for customs questions and sanitary and phytosanitary measures do not therefore require any particular reservation. They do not constitute a legal obstacle to the planned amendment, but only mean that the carriers' right to make use of the provisions of the CIM UR in question remains limited until they are amended accordingly.

The Additional Protocol to the CMR adopted by the UNECE without an EU reservation, which assimilates the electronic consignment note fully with the paper consignment note, has been in force under the same conditions since 2011 for eight EU States (and Switzerland).

In view of the above, a reference to Article 2 of CIM and to the associated explanations could be added to the proposal for the Explanatory Report on **Article 6a § 5**. It is not clear whether the relevant initial text ⁴ of the explanations proposed for Article 6a § 5 in document CR 25/5 Add.1 is simply deleted or whether it just has to be supplemented.

³ See the explanations on Article 2 of CIM:

http://www.otif.org/fileadmin/user_upload/otif_verlinkte_files/07_veroeff/03_erlaeut/COTIF_Rapport_explicatif_01_01_2011_e.pdf, p. 112.

⁴ "The parties to the contract of carriage should only agree to draw up the consignment note in paper form as an exception and to the extent that this is necessary (e.g. simplified procedure for rail transit, absence of appropriate electronic system). "

Article 18
Right to dispose of the goods

With regard to the proposal for the Explanatory Report on **Article 18 § 3**, we suggest not to include "returning to the wording of Article 31 of the 1980 CIM UR", as this is not really accurate.

4. Document CIM 1/3 – Preliminary considerations on adapting the maximum amounts of compensation

Appendix B

Article 30
Compensation for loss

It is recalled that it was already suggested in paragraph 6 of document CR 25/5 Add.2 to increase the limit of liability and to consider a general mechanism for adapting the amount.

Note by the Secretariat

In document CR 25/5 Add.2, paragraph 6 concerning Article 30 § 2 read as follows:

"6. Article 30 (Compensation for loss), § 2

Discussion

In this provision, in case of total or partial loss of the goods, the maximum amount of compensation the carrier must pay does not exceed 17 units of account (IMF Special Drawing Right, see Article 9 COTIF) per missing/damaged kilogramme of gross mass. This maximum amount has not been changed since 1985, even though the value of the SDR has decreased not insignificantly since then. In air transport, a value of 19 SDR has been applied since 2009.

Suggestion

Increase the maximum amount to 19 units of account.

As the loss in value of the SDR has also led to the reduction of other amounts specified in the Appendices to COTIF, it is suggested that a general mechanism for adapting the amount should be examined, following the example of air transport (see Article 24 of the Montreal Convention). "

CIT POSITION

1. Document CIM 1/3 – Preliminary considerations on adapting the maximum amounts of compensation

Appendix B

Article 30 Compensation for loss

CIT cannot support a liability limit greater than the existing limit of 17 SDR in COTIF and CIM, particularly in times of economic crisis.

CIT believes that a higher limit is of no use, because:

- the last time the CIM were revised, this issue was discussed and rejected by a large majority of the Member States;
- the big difference between the automatic increase of the limit in the Montreal Convention (up to 19 SDR) should be reconsidered, as the railways are mainly in competition with road and maritime transport and not with air transport;
- there is a significant disparity between COTIF/CIM on the one hand and CMR and the Hamburg Rules on the other, which prescribe 8.33 SDR for road transport and 2.5 SDR for maritime transport respectively.

This is why rail carriers and CIT are in favour of equitable conditions and cannot accept such differences to the positive liability limits of road and maritime carriers.