



Bulletin of International Carriage by Rail

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By **François Davenne**,
Secretary General of OTIF

This new edition of the Bulletin appears against the background of some important news: Italy has now ratified COTIF 1999.

Italy, a founding member of OTIF and historically the originator of pioneering regulations (RIV - Regolamento Internazionale dei Veicoli and RIC - Regolamento Internazionale delle Carrozze), has obviously always had an active role within the Organisation.

This accession is nevertheless a strong signal of the interest our Member States have in OTIF.

It is an acknowledgement of the Secretariat's policy which seeks, above all, to implement projects whose added value for our Member States is proven. This is achieved by the ability to carry out legal and technical analysis, targeted studies and an openness to developments in the world of transport.

These are necessary conditions, but our main duty is also to listen to our Member States' requirements and questions. I am convinced that you will find this spirit of openness and responsibility in the diversity of the subjects covered in this Bulletin.

François Davenne



Italy accedes to the uniform law of COTIF 1999

Italy, a founding member of OTIF, has now ratified the 1999 version of the Convention concerning International Carriage by Rail (COTIF).

On 5 February 2015 the instrument of ratification was deposited with the Secretary General of the Intergovernmental Organisation for International Carriage by Rail (OTIF) in Berne. The text entered into force in Italy on the day on which the instrument was deposited

Although the Vilnius Protocol modifying COTIF 1980 entered into force in 2006, the Member States have only ratified it successively over a period of time. The accession of the European Union to OTIF in 2011 and the new projects that resulted from it have speeded up this process.









With its 16,751 km rail network, its innovative industry and involvement in several European freight corridors, Italy is one of the major railway countries in Europe. Ratification of the Vilnius Protocol now means that COTIF 1999 and its 7 Appendices will apply over the entire rail network in Italy.

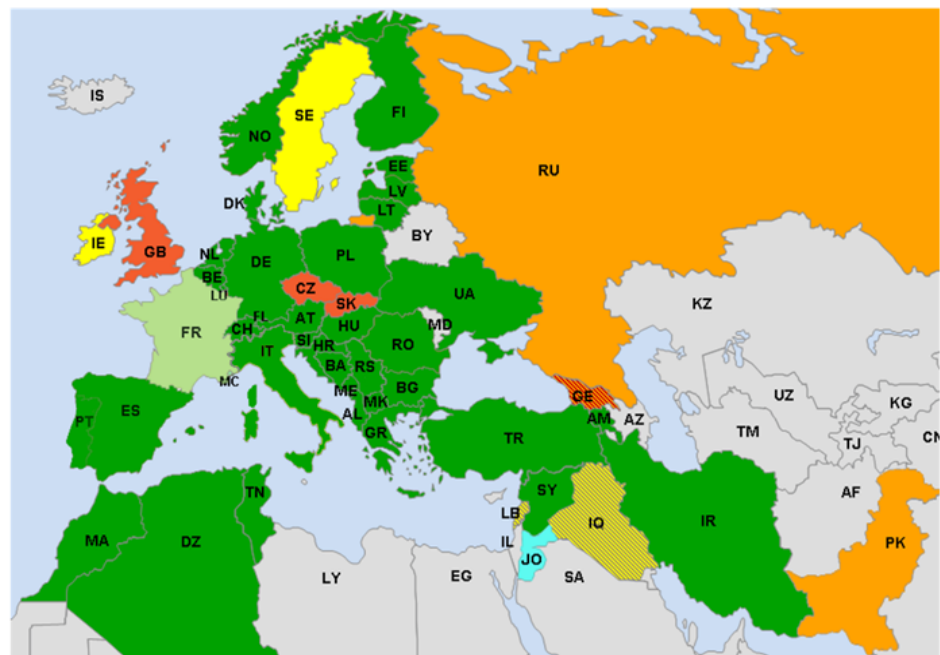
This therefore represents a major step forward in terms of legal certainty in international rail transport. It contributes to the development of a coherent area for international rail traffic from both a legal and a technical perspective.



Geographical scope of COTIF and its appendices

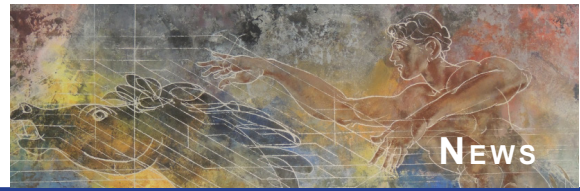
Situation on 1st March 2015

-  All COTIF appendices (36)
-  Without ATMF (2)
-  Without CUI/APTU/ATMF (3)
-  Without CUV/CUI/APTU/ATMF (1)
-  Without CIV/RID/CUV/CUI/APTU/ATMF (2)
-  COTIF 1999 not yet ratified (2)
-  Membership suspended (2)
-  Associate Members (1)



Scope of application of COTIF 2015

OTIF



OTIF's presentation to the 77th session of the United Nations Economic Commission for Europe's Inland Transport Committee OTIF

(Geneva, 25 February 2015)

The 77th session of the United Nations Economic Commission for Europe's (UNECE) Inland Transport Committee was held in Geneva from 24 to 26 February 2015. As an observer, OTIF is traditionally invited to attend the Inland Transport Committee.



Tadeusz Szozda, chairman of the OSJD Committee/Carlos del Olmo, head of OTIF's legal service



Cesare Brand, Secretary-General of CIT

This year, OTIF wished to reaffirm one of its aims, that of rail facilitation. Under the supervision of the head of the legal service, Mrs Daria Galushko therefore gave a presentation summarising the study she has carried out, entitled „Facilitation: OTIF can contribute further“.

In OTIF's work programme for 2014/2015, which sets out new challenges for the Organisation, Mrs Daria Galushko, who is working for OTIF as a young expert, was asked to carry out a study on rail facilitation. The study aims to identify obstacles to facilitation and to suggest solutions to the following question: in the framework of its task of facilitating rail transport, how can OTIF contribute further?

In essence, the study focuses on facilitating the carriage of goods by rail and on two corridors:

- Corridor 1, which reaches from China to the European Union via the Russian Federation
- Corridor 2 from Pakistan to Turkey via Iran with a possible extension to the countries of western Europe.

The study is based on talks Mrs Galushko held with representatives of OTIF's Member States, actors and operators in the rail sector and representatives of international associations and organisations active in this field. The study is also based on an in-depth analysis of publications from the UNECE, ESCAP, EU, OSJD, CAREC, ECO, UIC, CIT, etc. Mrs Galushko also took part in a number of groups and committees, such as OTIF's working

group on the revision of the CIM UR, CIT's Multimodality working group, OTIF's Revision Committee and the UNECE Group of Experts towards unified railway law.

The conclusions and recommendations our young expert presented at the 77th session of the Inland Transport Committee establish the fact that the Rail Facilitation Committee only had limited success. Based on this finding, the study concludes that a new, more pragmatic approach would be desirable for rail facilitation. Specifically, this means that facilitation must be envisaged as an interdisciplinary project within OTIF.

This project would harbour the activities that have already been initiated (2014/2015 work programme), such as training, monitoring, development of interoperability, etc., which are all likely to facilitate international rail transport. This cross-cutting project would be subject to a specific follow-up and would make it possible to tackle rail facilitation with flexibility and efficiency.



Daria Galushko, young expert at OTIF

Mrs Galushko presented her work to the Inland Transport Committee on Thursday, 26 February at 10.30. In the Committee's agenda, this came under item III – Transport policy and regulatory issues that require decisions by the Committee, 5. Strategic questions of a modal and thematic nature, e) Rail transport.

This OTIF study attracted the interest of the Committee members, who warmly congratulated Mrs Galushko.

Sarah Pujol

77th ITC/UNECE in Geneva and Rail Transport

With regard to the development of unified railway law, ITC expressed its satisfaction with the results of the Group of Experts for Unified Railway Law (GEURL) and encouraged all involved parties to fine-tune the wording both substantively and linguistically in three languages (English, French and Russian) and reach a decision on an appropriate management system for unified railway law.

The secretariat should ensure that all relevant documentation of the group meetings during 2015 (February, June and November), such as agendas, reports and series of official documents, is provided in three languages on time.

In addition, the ITC Executive Bureau has approved the extension of the mandate of the GEURL for one year more.

Carlos del Olmo



My experience at OTIF

In autumn 2013, the OTIF Secretariat welcomed Mr Jan Hampf and Mr Ayoub Elkaroubi, two newly recruited “young experts”, to develop their professional skills in an international setting. After 18 months, they are leaving OTIF and giving us an impression of their experiences.

Jan Hampf: “After almost 18 months spent in the OTIF secretariat, it is time for a short summary of my stay.



In the context of the young expert programme, I was assigned to the technical department of OTIF. My main occupation here was to carry out a study about the TAF TSI and, in the second period of my internship, to develop application guides for several UTPs. Apart from that, I was also involved in the day to day tasks of the technical department and in those of the whole OTIF secretariat.

I had the opportunity to participate in various international meetings, presented topics relating to my study, assisted my colleagues with their preparations and helped them with different documents. This all made me very much aware of how such an international organisation works.

As part of the technical department, this position allowed me to develop a good understanding of technical regulations being developed jointly by OTIF and ERA. I also had access to much information on the legislative aspects of technical regulations. I also had the opportunity to become familiar with Bern, Switzerland and to meet new friends.

Last but not least, I learned that the position and significance of railways throughout the world continues to grow. It is not yet certain where, but the next stage of my career will certainly have something to do with railways.”

Ayoub Elkaroubi: “I was very pleased and fortunate to be part of the first wave of participants in the young expert programme organised by OTIF.

I was chosen to intern in the communication department. My duties revolved around the design of the Organisation’s publications. I had the privilege to design the layout of the latest work programme as well as the Annual Report. Apart from that, I prepared the quarterly bulletin for publishing. I was in charge of writing press releases and news articles and distributing them to our subscribers.

As my first working international experience, being a member of OTIF’s staff was an opportunity to discover, from within, the work of an international organisation and to become familiar with its structure and hierarchy.



Also, all the tasks assigned to me put to the test my skills and competences that I acquired during my years of studies. I learned a lot about internal communication as well as external communication in an international scheme. Moreover, and as I am a translation student, dealing with documents relating to railways was a chance for me to improve my knowledge and widen my vocabulary in such a technical field.

On the personal level, I was pleased to establish good relationships with OTIF’s staff members. I am sure that these relationships will keep growing. I also had the opportunity to discover the city of Bern, which I find very pleasant to live in, in addition to many parts of the “Swiss land” with all its beautiful landscapes and wonderful people.

All in all, my experience in OTIF as a young communication expert was a great one, and I believe that it will shape my future career on the professional and personal levels.”



Set of new and revised UTPs

As of 01.01.2015 some new technical rules came into force. This article provides a short overview of these rules and their implications.

All new and revised Uniform Rules have been adopted in accordance with the provisions of APTU, in particular Article 8, in the version as amended by the OTIF Revision Committee in 2009, which entered into force on 1 December 2010.

The new UTPs are:

- UTP LOC&PAS 2015
- UTP PRM 2015
- UTP Marking 2015
- UTP GEN-A 2015
- UTP GEN C 2015
- UTP WAG 2015

In addition, the OTIF National Vehicle Register (NVR) specifications have been updated to "NVR 2015".

Together with the regulations developed for freight wagons, which were completed in 2013, the regulations now cover all basic types of rolling stock. These developments establish the basis for the admission to international operation of railway vehicles in accordance with ATMF. These adopted regulations are the result of intensive cooperation between the OTIF Contracting States, the European Railway Agency, the European Commission and the OTIF Secretariat. The technical experts have succeeded in coordinating their work with the developments on vehicle regulations in the EU, meaning that the UTP LOC&PAS and the UTP PRM entered into force on the same date as their equivalent EU TSIs, i.e. 1 January 2015.

UTP LOC&PAS corresponds to European Regulation No 1302/2014 of 18 November 2014 concerning a technical specification for interoperability (TSI) relating to locomotives and passenger rolling stock (LOC&PAS).

The UTP is equivalent to the TSI, with the following additional elements:

- Appendix K, which includes provisions for train composition and the correct use of vehicles, corresponding to provisions from the TSI OPE, and
- Specific cases for Switzerland and Norway and specific environmental conditions for Switzerland.

This UTP is a major milestone as, for the first time, it gathers together the requirements for high-speed and conventional passenger rolling stock (e.g. train sets and passenger coaches) as well as locomotives. The UTP applies under the provisions mentioned in section 7 to new rolling stock admitted to international traffic as defined in ATMF. Existing rolling stock is only in the scope in case of renewal or upgrade in accordance with the provisions in section 7.1.2.

For the open points listed in Appendix I, the Contracting States should notify their applicable National Technical Requirements in accordance with APTU Article 12.

If a vehicle is admitted to international traffic by a Contracting

State in accordance with ATMF, for subsequent admissions in other Contracting States of vehicles that comply with all the UTP requirements, compliance checks in other States should be limited to:

- Subsystems that are not (yet) covered by UTP. At the time of writing, the on-board part of the command control and signalling subsystem is the only vehicle subsystem not covered by UTP.
- Specific cases that affect technical compatibility with the network of the State concerned.
- Open points in the UTP that relate to compatibility with the infrastructure.
- Elements of the vehicle which deviate from the UTP specification, e.g. due to a derogation in accordance with Annex B to ATMF.
- National technical requirements, which are notified and valid in accordance with Article 12 of APTU.

This means that if Member States wish to have international traffic not only with freight wagons and passenger coaches, but also with new locomotive or passenger rolling stock, the requirements are now available at international level.

UTP PRM was prepared in parallel with UTP LOC&PAS.

"Person with disabilities and person with reduced mobility" (PRM) means any person who has a permanent or temporary physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder their full and effective use of transport on an equal basis with other passengers or whose mobility when using transport is reduced due to age.

The UTP corresponds to European Regulation No 1300/2014 of 18 November 2014 on the technical specifications for interoperability (TSI) relating to accessibility for persons with disabilities and persons with reduced mobility.

The UTP applies to new rolling stock without prejudice to point 7.1.2. of the UTP.

COTIF includes infrastructure only to the extent related to interfaces with the vehicles and other movable railway material.

The interfaces between the rolling stock subsystem and the infrastructure subsystem covered by that UTP are **limited to the gap** between the platform and the vehicle entrance. The vehicle-related parameters in the UTP are mandatory for admissions according to ATMF of vehicles in the scope of the UTP.

The application of infrastructure-related parameters, in particular those for platforms and stations, is voluntary, but is also recommended.

In addition to this, the differences between the TSI and UTP are:

- Specific cases for Switzerland, as a non-EU MS, were added, and
- Appendices B and C, which refer to implementing provisions for the PRM TSI in the EU, do not apply to non-EU OTIF Contracting States.



With the entry into force of the UTP PRM there is now a harmonised definition of requirements for accessibility for people with a disability and people with reduced mobility in new rolling stock. The UTP PRM, for example, sets out requirements for wheelchair accessible toilets, easy to use door controls, priority seats, etc.

UTP MARKING defines provisions for the marking of all vehicles used in international traffic.

It covers in particular:

- the vehicle numbering,
- the code of the registering State and
- the format and location of the vehicle keeper marking (VKM)

The UTP applies not only to new, but also to existing rolling stock.

This UTP does not follow the standard structure for UTPs as referred to in APTU Article 8 § 4.

Instead:

- Sections 1 to 6 of that UTP are equivalent to Appendix P of OPE TSI
- Sections 7 to 18 are equivalent to Appendix 6 of EU NVR
- The tables associated with standard numerical markings of wagons, as described in section 14, are published on the ERA website
- The tables and detailed information provided in sections 15 to 18 are equivalent to the documents which were published on the ERA website at the time this specification was adopted.

In addition to these specifications, the UTPs applicable to vehicles include voluntary and mandatory specifications relating to external markings, such as:

- UTP WAG sections: 4.2.2.2, 4.2.4.3.2.2, 7.1.2 and appendix C
- UTP LOC&PAS sections: 4.2.2.6.

Many of the requirements are equivalent to those previously applicable through UIC leaflets, so normally there would be no need to modify markings on existing rolling stock.

The UTP MARKING prescribes a set of minimum requirements relating mainly to vehicle and keeper identification. UIC leaflets continue to prescribe additional markings for operational purposes.

The Unique Vehicle Number must be changed when, due to technical modifications to the vehicle, it no longer reflects the vehicle's interoperability capability or technical characteristics. Such technical modifications may also then require a new admission to operation (to international traffic) as defined in Articles 3 and 4 of ATMF (Appendix G to the Convention).

UTP GEN-A on essential requirements was amended in 2014. The amendments are in line with the amendments to Annex III of Directive 2008/57/EC brought about by European Directive 2013/9/EU. The main changes are:

- Introduction of the new essential requirement: accessibility to persons with disabilities and persons with reduced mobility, and
- Modification relating to the essential requirement 'noise' in section 1.4.4.

UTP GEN-C on the requirements applicable to the technical file was amended in 2014. The adopted amendments are in line with the amendments to Annex VI, Section 4 of European Directive 2008/57/EC brought about by Directive 2011/18/EU, which mainly concerns editorial improvements and updates to legal references.

The **UTP WAG** was updated as a consequence of the new UTP MARKING. The scope of this UTP includes freight wagons with a maximum operating speed lower than or equal to 160 km/h and a maximum axle load lower than or equal to 25 t and which are intended to be operated on one or more of the following nominal track gauges: 1435 mm, 1524 mm, 1600 mm, and 1668 mm.

The latest amendments deal with

- deleting Appendix PP and changing the current reference from Appendix PP to the new UTP MARKING,
- updating the reference in Appendix G to the latest list of approved composite brake blocks,
- Introducing a minor change to Appendix I in order to reflect correctly the EU TSI OPE.

The **NVR Specification** was also updated as a consequence of the new UTP MARKING with the following decisions:

- The Annex to document A 94-20/2.2012 dated 01.03.2013 is replaced by the Annex as adopted. The adopted amendments concern changing the reference in: "1.Data, 1.Vehicle number, Content", to "Unique vehicle number as defined in the UTP for vehicle marking",
- Decisions 2, 3 and 4 of document A 94-20/2.2012 dated 01.03.2013 remain in force,
- The OTIF secretariat will publish on its website a consolidated version of document A 94-20/2.2012 dated 01.03.2013 and the decision adopted by CTE 7.

The NVR Specification continues to set out mandatory requirements for OTIF Contracting States to implement their own National Vehicle Register in a harmonised way and to connect their NVR to the central search engine so that all connected States can search in each others' vehicle registers. All NVRs are to be electronically linked (via the internet) to the central Virtual Vehicle Register (hereinafter called "VVR") managed by the European Railway Agency.

Within **9 months** from the entry into force of the original decision [by 1.12.2013] each Contracting State should have provided a link to the VVR. The NVR links each register vehicle to its owner, keeper, entity in charge of maintenance, etc.

Bas Leermakers



TAF TSI study: to be transposed into OTIF law or not?

The Bulletin of International Carriage by Rail No. 1/2014 reported on TAF TSI (Telematic application for freight technical specification for interoperability). TAF TSI was developed to facilitate the exchange of information on cross-border rail freight. It sets the functional and technical standards for exchanging information and these provisions should be implemented by 2021. This should ensure that the telematic systems of infrastructure managers (IMs), railway undertakings (RUs) and other stakeholders involved across the EU are interoperable.

As international rail freight traffic also crosses the EU's external borders, Bulletin No. 1/2014 announced that OTIF would analyse the question of how non-EU OTIF Contracting States could join the standardised area for data exchange in international rail freight traffic based on TAF TSI. For this reason the study, entitled 'Analysis of how OTIF should proceed with TAF TSI' was carried out and recently finished. The aim of the study is to help WG TECH and OTIF's Committee of Technical Experts decide on developments related to the TAF TSI, e.g. whether or not the TAF TSI should be transposed into OTIF law.

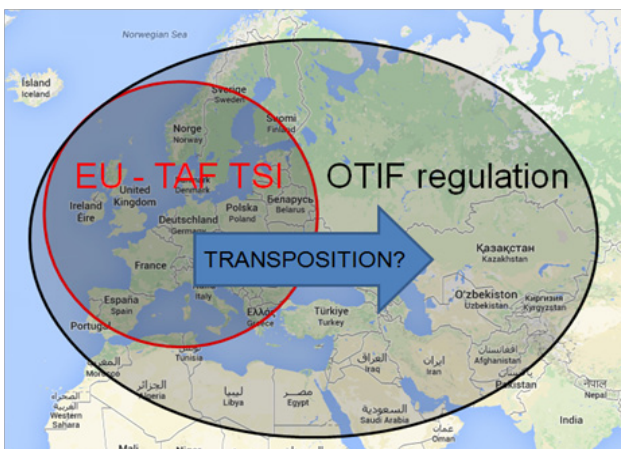


Diagram 1: This picture represents the main question of the study: whether or not to transpose TAF TSI into OTIF's regulations

The transposition of TAF TSI into UTP TAF is foreseen, as set out in APTU Article 8 § 2 in connection with the UTP GEN-B. Nevertheless, this question of whether and how to transpose the TAF TSI is very specific, as demonstrated by the main findings of the study, which can be summarised as follows:

- The provisions of the TAF TSI assume a splitting of responsibilities between the IM and RU according to the EU regulation. Even in fully integrated railway companies, where both the IM and RU are the same entity, some of the TAF functions (e.g. path allocation) still exist. Therefore, parts of the TAF data model can also be used for integrated railway systems. On the other hand, the vast majority of international rail freight traffic among the non-EU OTIF contracting states is organised on the "exchange of vehicles" principle,

which requires less exchange of information (than specified in the TAF TSI). Not all TAF TSI specifications are therefore suitable or necessary for transposition into OTIF law at this time.

- Another finding of the study is the relatively high cost of implementation for non-EU OTIF countries and also the non-existence of financial support for them (in the EU, TAF TSI implementation is co-funded by EU funds). Where only a limited number of neighbouring countries apply the "TAF TSI concept", it is questionable whether countries such as, for example, Iran, would benefit from the use of the TAF TSI concept. On the other hand, there are also certain investment costs if the TAF TSI concept is not implemented, but another IT system. From this perspective, it may also be interesting for non-EU States to take over a Europe-wide, recognised IT standard for the exchange of information in rail freight traffic.
- Due to different transport requirements and different models for organising the railways (exchange of vehicles versus interoperability), different regions may need different approaches in terms of international information exchange. The TAF TSI concept is not the only possible platform dealing with the exchange of information. There is no evidence suggesting that the TAF solution is the best option for the exchange of information in the Euro-Asian region. OTIF should therefore be careful before giving preference to the "TAF TSI concept" by transposing it into OTIF law.
- A legal basis for the transposition of TAF TSI into UTP TAF is set out in APTU Article 8 § 2 in connection with the UTP GEN-B. If the TAF TSI were to be transposed into OTIF law, this would not be straightforward, as the core TAF TSI regulation itself refers to several detailed technical appendices that are published and regularly updated on the website of the European Railway Agency, including the data and message model in XML files. This combination of law and IT specifications makes the situation very specific and particularly tricky to transpose into international OTIF law.

- Today we can also see examples of the voluntary use of the TAF TSI data model, e.g. in Serbia, Ukraine or Russia, whose railway companies realise the need to exchange information for freight traffic and which have already applied some of the IT modules based on TAF TSI (RNE, RAILDATA), which help them to exchange information for trains operating from/to the EU. Such platforms are very useful and suitable for international traffic outside the EU as well. They are available to the non-EU OTIF contracting states and can handle basic information and ensure the interoperability of the following information, e.g.:
 - o Electronic consignment note
 - o Tracking of trains/wagons
 - o Estimated time of arrival of consignment



The findings of the study do not draw a conclusion on how OTIF should proceed with TAF TSI, as such a conclusion should be drawn by OTIF's Member States at CTE 8, which is competent to decide on the next steps. Possible ways on how to proceed have been suggested and can be summarised as follows:

1) Do not transpose TAF TSI:

- a) Do nothing within OTIF
- b) Promote the use of TAF TSI solutions on a voluntary basis
- c) Voluntary scheme + application guide issued by OTIF

2) Transpose TAF TSI into an OTIF regulation:

- a) Full transposition of the TAF TSI into OTIF law (UTP), including its technical appendices.
- b) Partial transposition, meaning that the core requirements of the TAF TSI would be transposed into OTIF law, but would refer to the technical details as published centrally on the website of the European Railway Agency.

For the latter two options, the TAF TSI could be transposed in such a way that the requirements are either voluntary or mandatory in non-EU OTIF Contracting States. The arguments set out in the study suggest making any transposed requirements voluntary.

All details on the above points can be found in the complete report, available on the OTIF website in the section entitled "working documents for CTE 8".

Jan Hampl



46th Session of the UN Sub-Committee of Experts on the Transport of Dangerous Goods (Geneva, 1 – 9 December 2014)

The 46th session of the UN Sub-Committee of Experts on the Transport of Dangerous Goods was held from 1 to 9 December 2014 under the chairmanship of Mr Jeff Hart (United Kingdom). 22 States entitled to vote and 28 non-governmental organisations were represented at the session. As all the decisions of the UN Sub-Committee of Experts have repercussions for the dangerous goods provisions of the various modes, the Intergovernmental Organisation for International Carriage by Rail (OTIF) was represented as a modal organisation, along with the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO).

The UN Sub-Committee of Experts on the Transport of Dangerous Goods develops the so-called UN Model Regulations, which constitute the common basis for all the mode-specific dangerous goods provisions, thus helping to simplify the multimodal carriage of dangerous goods.

This was the last session in the 2013/2014 biennium. In the context of harmonising RID/ADR/ADN with the UN Recommendations on the Transport of Dangerous Goods, OTIF will carry its decisions over into the 2017 edition of RID and the UNECE will do the same for the 2017 editions of ADR and ADN.

Classification

Classification of substances mentioned by name

Dangerous goods must always be assigned to UN numbers and proper shipping names on the basis of their hazards and composition. The most frequently carried goods are referred to in the dangerous goods list. The consignor no longer has to classify these substances on the basis of their hazardous properties. Instead, the classifications and conditions of carriage shown in the list of dangerous goods can be used. It is not possible to derogate from this classification unless this is explicitly permitted by a special provision.

If it is established on the basis of available data that the hazards of a substance mentioned by name are not sufficiently reflected by the entry in the dangerous goods list, a proposal to change the classification and adapt the conditions of carriage must be submitted to the UN Sub-Committee of Experts on the Transport of Dangerous Goods. Once the UN Sub-Committee of Experts has adopted the proposal, the entry is amended in the next edition of the UN Recommendations and subsequently in the modal regulations. This approach, which is set out at the beginning of the UN Model Regulations, together with a model data sheet, was practised in the past, e.g. for UN 2381 Dimethyl disulphide and UN 2809 Mercury, when these two substances were assigned the subsidiary hazard of Class 6.1.

However, it is not clear how to proceed in the period between additional properties becoming known and the amendment of the dangerous goods list. There are three possible alternatives:

- Carriage under the entry in the dangerous goods list,
- Carriage under the current entry in the dangerous goods list, with the possibility of indicating the additional subsidiary hazard by means of a danger label/placard and a note in the transport document,
- Carriage under a suitable n.o.s. entry covering the additional subsidiary hazard.

Following several discussions, the UN Sub-Committee of Experts adopted a new provision in the biennium just ended; this provision permits the carriage of substances listed in the dangerous goods list, but which exhibit other hazards not identified in the dangerous goods list, under the control of the competent authority. According to this, carriage can take place either under the most appropriate collective or n.o.s. entry that reflects all the hazards, or under the current entry in the dangerous goods list with additional information on the hazard, although in this case, the class of the principal hazard and the conditions of carriage of the substance mentioned by name may not be changed.

UN 2000 Celluloid

Celluloid is a group of plastics compounds manufactured from cellulose nitrate and camphor. Celluloid, which is easy to melt and shape, is considered to be the first thermoplastic. Celluloid was first used as an inexpensive replacement material for ivory in billiard balls and later as the medium for photographic films. As celluloid is readily inflammable, nitrocellulose films in film archives may only be stored under special safety conditions. One of the last products still to be made of celluloid is table tennis balls.

As UN 2000 Celluloid is shown in the dangerous goods list with the restriction “in block, rods, rolls, sheets, tubes, etc., except scrap”, the question has arisen as to whether table tennis balls come under this entry.





The UN Sub-Committee of Experts decided to adopt a special provision exempting the carriage of table tennis balls with a net mass of 3g and a total net mass per package of 500g from the application of the dangerous goods rules. In so doing, the provisions for carriage in limited and exempted quantities were taken into account which, for UN 2000 in limited quantities, prescribe a maximum mass per inner packaging or article of 5kg and in terms of ex-empted quantities, a maximum net mass per outer packaging of 1kg.

In addition, table tennis balls have been included in the alphabetical list with a reference to UN number 2000.



Fuels in engines or machinery

In addition to vehicles and fuel cell vehicles powered by flammable gas or flammable liquid, similarly powered internal combustion engines or fuel cell engines also come under UN number 3166. In land transport, this UN number is not subject to the provisions.

There is also UN number 3363, which covers dangerous goods in machinery or apparatus and which, in land transport, is also exempt from the provisions.

Special provision 363, which in RID/ADR/ADN is assigned to various fuels, exempts fuels in means of containment integral to equipment or machinery from the other provisions of RID/ADR/ADN if the fuel containers meet certain conditions.

The distinction between UN number 3166, UN number 3363 and special provision 363 is not clear, as engines can also be subsumed under the description "equipment or machinery" and can therefore come under UN number 3363 or special provision 363 as well.

To resolve this problem of demarcation, the UN Sub-Committee of Experts agreed the following approach following several discussions:

- Distinguish between vehicles and machinery and restrict UN number 3166 to vehicles;
- Include three new UN numbers (UN 3528, UN 3529 and UN 3530) for internal combustion engines, machinery with such engines and machinery with fuel cell engines depending on the fuels used (flammable gas of Class 2, flammable liquid of Class 3, fuel cells of Class 9);
- Delete the reference to special provision 363 for UN numbers 1202, 1203, 1223, 1268, 1863 and 3475 and instead assign special provision 363 to the new UN

numbers 3528, 3529 and 3530;

- Amend the wording of special provision 363. This new wording also contains explanations concerning the allocation of the various engines and machinery to individual UN numbers;
- Include of a new packing instruction applicable to UN numbers 3528, 3529 and 3530 based on the packing instruction that applies to UN number 3363 in the UN Model Regulations.

Polymerizing substances

At several meetings in the biennium just ended, the UN Sub-Committee of Experts dealt with the classification of polymerizing substances. The investigation of the accident involving the container ship MSC Flaminia on 14 July 2012 was also brought into the discussions. The investigation revealed that the polymerization of divinylbenzene and the associated heat release had played a significant role in the accident. The MSC Flaminia was sailing from Charleston (USA) to Antwerp (Belgium) when, on the open sea between Canada and the UK, there was a fire and an explosion which killed three crew members and seriously injured two of them. Unloading of the ship could only begin three months after the accident at the Jade-Waser Port in Wilhelmshaven (Germany), after several states had refused the vessel entry to their ports.

Polymerization is a chemical reaction in which low-molecular compounds (monomers, oligomers) are converted into high-molecular compounds. The increase in pressure and heat of reaction that result from polymerization can pose a risk during transport.

The dangerous goods list contains around 45 substances mentioned by name which can polymerize and which therefore have to be stabilized. These substances can have the main hazard of Class 2, 3, 5.1, 6.1 or 8. Examples of such substances are UN 1086 Vinyl chloride, UN 1301 Vinyl acetate, UN 1303 Vinylidene chloride and UN 3073 Vinylpyridines. The word "stabilized" always appears in the proper shipping name of these substances.

"Stabilized" means that the substances have been conditioned so as to exclude uncontrolled polymerization. Examples of stabilization include the addition of an inhibitor (a chemical substance which prevents polymerization), degassing of the substance to remove dissolved oxygen and make the empty space in the package inert, or carriage under temperature control.

For polymerizing substances that do not come within the definition of another Class, the risk that has to be taken into account is limited to the risk of excess pressure and the associated loss of stabilization, together with the generation of heat. The uncontrolled generation of heat and build up of pressure can lead to fire and explosion or, in very serious cases, to destruction of the container. An increase in temperature caused by solar radiation or storage near sources of heat can lead to degradation of the inhibitor and encourage such reactions. In order to control this risk, it



is important to ensure that the means of containment is sufficiently ventilated in order to avoid excess pressure if there is a loss of stabilization. Precautionary measures would also have to be included in the modal regulations in order to ensure that the effects of heat sources are avoided.

The UN Sub-Committee of Experts had to respond to the following particular questions:

- Should polymerizing substances be classified as self-reactive substances?
- Are the test methods for self-reactive substances suitable?
- In view of the low risk of these substances, should the competent authority decide the classification, or is classification by the consignor sufficient?
- Under which proper shipping name should substances be carried whose only hazard is polymerization?

Initially, the experts were unable to agree whether this new group of substances should be included in Class 4.1 (Self-reactive substances) or Class 9 (Miscellaneous dangerous substances and articles). It was therefore necessary to take a vote and the majority supported Class 4.1.

In order not to interfere with the entries that have been contained in the regulations for a long time, the UN Sub-Committee of Experts agreed that the new provisions for polymerizing substances should only apply to substances and mixtures that do not come within the definition of another Class. However, these substances will be assigned a new special provision setting out the precautionary measures required to ensure stabilization.

- Sufficient chemical stabilization must be carried out to prevent polymerization at an average loading temperature of 50°C (45°C for tanks). In so doing, the following have to be taken into account, among other things: the capacity and geometry of the means of containment, the insulation, the temperature of the substance when it is handed over for carriage, the duration of the transport operation, the temperature conditions that usually occur during carriage (also bearing in mind the season) and the properties of the stabilizer used.
- If chemical stabilization becomes ineffective at temperatures below 50°C or 45°C respectively, the substances must be carried under temperature control.

For polymerizing substances, the new term “self-accelerating polymerization temperature” was added, but this temperature is determined in accordance with the test procedures for determining the temperature of the self-accelerating decomposition of self-reactive substances contained in the Manual of Tests and Criteria.

Packing

Leakproofness testing of packagings and IBCs

According to the provisions of RID/ADR/ADN, every packaging intended to contain liquids must successfully undergo a suitable leakproofness test before it is first used for carriage and after remanufacturing or reconditioning before it is re-used for carriage, and it must be capable of reaching the appropriate test level. The same also applies to IBCs.

With the testing devices available within production lines, the manufacturers of packagings and IBCs intended to contain liquids cannot ensure 100% the required leakproofness test. As a result, it can only be considered as part of the quality assurance programme which the competent authority considers to be satisfactory and according to which the packagings and IBCs have to be manufactured, reconditioned and tested in order to ensure that each packaging and IBC meets the requirements of Chapter 6.1 and 6.5 respectively.

In view of the detection methods available in the context of the production process and the actual speed of production, the UN Sub-Committee of Experts decided to allow sample test-ing as part of the quality assurance programme, instead of the 100% leakproofness testing of all packagings and IBCs.

Marking

Marking of portable tanks

In contrast to various mode-specific regulations (e.g. RID/ADR/ADN 5.3.1.7.3), the UN Model Regulations do not currently permit placards to be reduced in size for certain design types of portable tanks. The UN Model Regulations prescribe the following dimensions:

- 250 mm x 250 mm for placards and the marking for environmentally hazardous substances,
- Indication of the UN number in figures at least 65 mm high
- Side length of the marking for elevated temperature substances at least 250 mm.

For small portable tanks, it is sometimes impossible to comply with these minimum dimensions.





The UN Sub-Committee of Experts agreed with a proposal from the chemical industry to allow the minimum dimensions of placards and other signs to be reduced in certain cases. As RID/ADR/ADN already permits various relaxations, these amendments do not have to be taken over 1:1 in the context of harmonisation.

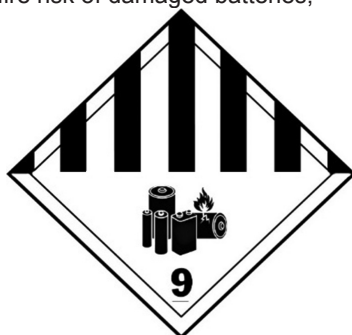
Hazard marking on lithium batteries

In the biennium just ended, the UN Sub-Committee of Experts attempted in several meetings to improve the hazard communication for dangerous goods of Class 9. Various proposals had been submitted to this last session of the biennium on how the danger label according to model No. 9 could be supplemented with symbols in the bottom half to indicate various hazards (heat, environmentally hazardous, fine dust, flammable vapours, electric current, formation of dioxins, genetically modified organisms).

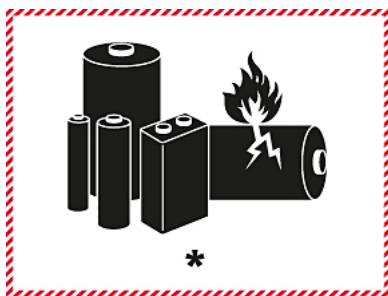
Although it was not possible to reach a consensus with regard to all the groups of substances of Class 9, an additional danger symbol for lithium batteries was at least adopted, which helps visualise the hazards of these articles. The discussions on the other danger label models proposed were postponed to the next biennium.

The introduction of an additional danger symbol leads to amendments in various places in the regulations

- Assignment of the new danger label model to UN numbers 3090, 3091, 3480 and 3481;
- Inclusion of a new danger label after model 9A to point out the fire risk of damaged batteries;



- Inclusion of a new package marking for lithium batteries carried in accordance with special provision 188;



- Deletion of the requirement for an accompanying document

- Transitional provisions to permit the use of existing package marking in accordance with special provision 188 (f) and use of the current danger label according to model No. 9 up to 31 December 2018.

Overpacks

5.1.2.1, which deals with the marking of overpacks with the word “overpack” and with the UN numbers and danger labels of the dangerous goods contained in the overpack, is worded differently in the various mode-specific regulations. This has led to ambiguities in terms of the following questions:

- Must an overpack be marked fully when only some, but not all UN numbers and danger labels are visible?
- Must the approval marking also be visible through the overpack?

In the discussion, it was recalled that originally, the “overpack” marking had not been introduced to communicate hazards, but to facilitate handling procedures for air transport. This replaced the written declaration of conformity that the contents of the overpack met the requirements. This declaration of conformity also included the use of suitable packagings.

With regard to the first question, the UN Sub-Committee of Experts agreed that only the UN numbers and danger labels that were not visible have to be repeated on the overpack.

On the second question, it was emphasised that the packaging approval marking was not a hazard marking, so it did not have to be visible externally. On the other hand however, there was a risk for the consignor that air transport companies might refuse carriage if these approval markings were not visible and an “overpack” marking was not also shown.

In order to harmonise the dangerous goods provisions of the various modes, it was decided to revise the provision in 5.1.2.1 and the provisions for using overpacks for dangerous goods packed in limited and exempted quantities.

Provisions concerning carriage

Prototype lithium batteries

Special provision 310 exempts small production runs and pre-production prototype lithium batteries and cells from the testing requirements of section 38.3 of the Manual of Tests and Criteria when these prototypes are carried for testing. This special provision is assigned to UN numbers 3090 and 3480, but not to UN numbers 3091 and 3481 (lithium batteries contained in equipment or packed with equipment).

In practice, this leads to difficulties, particularly in the manufacture of highly-specialised pieces of equipment which



are only produced in small quantities and into which batteries developed specially for the purpose are fitted. It is not possible in every case to remove the batteries for transport. In addition, removing the batteries does not necessarily improve safety during transport.

The UN Sub-Committee of Experts already decided at the last session to broaden special provision 310 to cover UN numbers 3091 and 3481 as well. To make it more user-friendly, it was decided at this session to transfer the packaging requirements in special provision 310 to a separate packing instruction.

New chairman

For the 2015/20 biennium, Mr Duane Pfund (USA) was elected as the new chairman following the retirement of Mr Jeff Hart. Mr Claude Pfauvadel will continue as the deputy chairman.

Next meeting

The 47th session will be held in Geneva from 22 to 26 June 2015 and will start work on the 20th revised edition of the UN Model Regulations, the results of which will also feed into RID/ADR/ADN in 2019.

Jochen Conrad



4th Session of the RID Committee of Experts' standing working group (Madrid, 17 - 20 November 2014)

The fourth session of the RID Committee of Experts' standing working group was held in Madrid from 17 to 20 November 2014 under the chairmanship of Mr Helmut Rein (Germany). 19 States, the European Commission, the European Railway Agency (ERA), the Committee of the Organization for Cooperation of Railways (OSJD) and 5 non-governmental international organisations were represented at this meeting.

This second session of the 2015/2016 biennium mainly discussed proposals to amend RID for the 2017 edition



However, as some delegations were still not clear about the division of responsibilities between the various participants, among other things, there was a discussion in the working group in which the following positions were expressed:

- It is not necessary to include further requirements in RID, as what is said in the tank-wagon operator's amended obligations and in ATMF is sufficient.
- The tank-wagon operator should maintain overall responsibility, even if the ECM is responsible for maintenance.
- The ECM's responsibility should not just be limited to the periodic inspection, but should also cover the exceptional check.

This issue will be discussed again at the next session of the standing working group on the basis of a text to be drafted and proposed by the International Union of Railways (UIC) and the International Union of Wagon Keepers (UIP).

Standard reference for checks in the carriage of dangerous goods in tanks

Following the checklists of the European Chemical Industry Council (CEFIC) for the filling and emptying of tank-wagons for liquids, which have been referred to in the regulations since 1 January 2013, Italy also proposed checklists for the filling and emptying of liquefied gas tank-wagons. Italy also proposed a new provision to require evidence in the transport document of who carried out the checks described in the carrier's obligations.

UIC and CEFIC called into question the proposed new provision, which would lead to a great deal of work for the filler, the unloader and the carrier, as it would only affect the rail mode, which might distort competition with road transport. In addition, the extent to which safety would be improved by signing documents was not clear. Since 1 January 2013, RID has prescribed that the checks listed in the carrier's obligations have to be carried out before each consignment of dangerous goods is accepted for carriage and not just on the basis of samples taken by the carrier. Acceptance for carriage means that the carrier has ascertained that the checks have been carried out successfully. The question arose as to whether providing a signature is a useful measure that is compatible with the rest of the regulations.

UIC and CEFIC also pointed out that Chapter 4.3 already contains control measures for liquefied gas tank-wagons and that, in contrast to the drip leaks that occurred in the carriage of liquids in the past, very few problems had so far been detected in the carriage of liquefied gases. However, Germany pointed out that according to the German Federal Office for Railway's (EBA) 2013 Annual Report, the rate of defects in tank-wagons for pressurised

Proposals to amend RID

New obligation for the carrier with respect to the locomotive driver

In contrast to decision 2011/314/EU concerning the technical specification for interoperability relating to the 'operation and traffic management' subsystem of the trans-European conventional rail system, according to the current provisions of RID the carrier is required to inform the locomotive driver of the presence of dangerous goods in the train, but not of their position in the train. The standing working group agreed that the carrier should also be assigned the additional obligation of providing the locomotive driver with information on the position of dangerous goods in the train. In addition, a note should be included to point out that this obligation is deemed to have been met if UIC leaflet 472 is applied, which prescribes that a braking sheet and consist list be issued.

While the braking sheet indicates generally the presence of dangerous goods in the train, it can be seen from the consist list which dangerous goods are in the train and where.

Wagon keeper versus ECM: In future, who is responsible for testing tank-wagons?

In the 2015 edition of RID, the tank-wagon operator's obligations were amended to say that he is required to select an entity in charge of maintenance (ECM) and to monitor it in such a way as to ensure that the tank-wagon satisfies the requirements (see Bulletin 2/2014).



gases was twice as high as in tank-wagons for other dangerous goods.

It was agreed that an informal working group would analyse these issues in detail.

No crash buffers for less dangerous substances

The 2nd session of the standing working group (Copenhagen, 18–22 Nov. 2013) discussed a proposal from the Netherlands to extend TE 22 (fitting crash-buffers) to less dangerous substances. The representative of the Netherlands was asked to demonstrate the positive effects of such a measure on the basis of a cost/benefit analysis (see Bulletin1/2014).

The cost/benefit analysis submitted to this meeting assumed that 86,400 tank-wagons would be retrofitted, at a cost of 7,500 € per tank-wagon. The total cost of the measures would therefore be 648 million €. Bearing in mind the savings from accidents that would be avoided, this would take about 25 years to amortise.

On the basis of the cost situation described, the standing working group did not think retrofitting was justified. However, it was also noted that with better data on the causes and consequences of accidents, this measure or other measures to protect against the overriding of buffers could be reconsidered. Using other measures to increase the energy absorption was not ruled out either.

Harmonisation of RID and SMGS Annex 2

Aligning the provisions for tank-containers

The standing working group welcomed the final decision of the OSJD bodies to take over the construction and testing requirements for tank-containers from RID Chapter 6.8 into the 2015 edition of SMGS Annex 2. Two divergent provisions for tank-containers in traffic on 1520 mm gauge railway lines would now be included in SMGS Annex 2, Chapter 4.3. One of them concerned the ability to absorb a longitudinal inertial load of 4 times the gross mass, rather than twice the gross mass as in RID (each multiplied by the acceleration due to gravity), and the other concerned the lower value of the design temperature range of -40°C instead of -20°C in RID.

Transport between two legal regimes – asymmetry in the languages prescribed

For carriage into or through the territory of an SMGS State, a new provision was included in RID 2015 to prescribe the use of Russian or Chinese – in addition to the languages prescribed in RID – for the marking of packages, overpacks, tank-wagons and tank-containers and for the information in the transport document. It was anticipated that an analogous provision would be included in SMGS Annex 2 for carriage into or through the territory of an RID Contracting State (see Bulletin 2/2014).

The standing working group was informed that at the last session of the OSJD Commission for Transport Law (Warsaw, 27-31 Oct. 2014), Russia had not supported adopting this provision. As the OSJD bodies work on the principle of unanimity, the new provision for the 2015 edition of SMGS Annex 2 was not adopted. As a result, in applying the two legal regimes, an asymmetrical situation arises, because for carriage from RID States into or through SMGS Contracting States, the use of additional languages is prescribed, but not for consignments travelling in the opposite direction.

As the new provision simplifies matters for the RID Contracting States on the border between the two legal regimes, at least for west-east traffic, the national representatives agreed that this newly arisen asymmetrical situation did not require any consequential amendments in RID. However, efforts should continue in the next biennium to include a similar provision in SMGS Annex 2.

Differences in calculating the degree of filling

The Secretariat of OTIF informed the standing working group of the OSJD Member States' decision not to take over for the time being the wording of the provisions in Chapter 4.3 concerning the calculation of the degree of filling of tanks for the carriage of liquids.

The representative of Russia explained that by using a fixed value of 50°C for the maximum mean temperature of the goods loaded, the RID requirements would not take account of carriage performed under extreme climatic conditions. Following the example of the calculation formulae for portable tanks in Chapter 4.2, he proposed using a variable. While it was true that the provisions of Chapter 4.2 set the maximum mean temperature of the goods loaded at 50°C, for carriage under extreme climatic conditions, the competent authority could prescribe a lower or higher temperature.

As this was an issue that did not concern rail transport alone, the RID/ADR/ADN Joint Meeting's working group on tanks was asked to check whether the degree of filling concept that applies to portable tanks should also be carried over into Chapter 4.3 for RID/ADR tanks. In so doing, attempts should be made to make the wording of the provisions in Chapter 4.2 clearer. Above all, it should be stated clearly which competent authorities are allowed to set a different maximum mean temperature of the goods loaded, and under what conditions.

In view of past accidents caused by the overfilling of tanks, the representatives of Germany and the Netherlands asked that extreme care be taken in any amendments to these provisions.

Unresolved issues from the RID/ADR/ADN Joint Meeting

Inclusion of flexible bulk containers

The Joint Meeting (Geneva, 15-19 Sep. 2014) had



flexible bulk containers be included in the 2017 editions of RID, ADR and ADN. Following the example of WP.15, the standing working group also adopted the provisions for the carriage of flexible bulk containers. At the next meeting, the value of the height/width ratio for these containers would have to be confirmed. For the time being, the conservative value of 1.1, which had already been adopted for ADR, was included in the RID provisions in order to simplify multimodal transport.



Holding time for refrigerated liquefied gases in tanks

The standing working group also adopted the provisions proposed by the RID/ADR/ADN Joint Meeting's working group on tanks in relation to the holding time for refrigerated liquefied gases in tanks (see Bulletin 2/2014).

Next session

The 5th session of the RID Committee of Experts' standing working group will provisionally be held from 23 to 27 November 2015 in Croatia.

Katarina Guricová



Case Law

Damage to goods being carried (cars) as a result of a train derailment Compensation and recourse – to what extent do the CIM UR apply?

Ruling of 6 March 2014 by the Paris Court of Appeal ((RG No. 13/08130)

Usually, the sometimes complicated issues surrounding the jurisdiction of a court are on the periphery of the OTIF Secretariat's interests. However, in the context of efforts to achieve the correct application of COTIF and its Appendices following the European Union's accession to COTIF, which took effect on 1 July 2011, the ruling of 6 March 2014 (RG No. 13/08130) by the Paris Court of Appeal concerning international jurisdiction is of particular interest.¹ In addition, the facts of the case provide the opportunity of demonstrating the correlation between COTIF law and EU law on the one hand, and between the various Appendices of COTIF on the other

In the annual overview of case law in the specialist journal **"Bulletin des transports et de la logistique"**, the brief conclusion relating to the jurisdiction of the court reads as follows: *"The Court recognised the competence of the Paris Commercial Court by virtue of the Articles of Regulation 44/2001 concerning the plurality of defendants and the introduction of third parties. Note that the Court excluded the CIM UR, over which the Regulation takes precedence, which is debatable."*²

The specific Articles concerned are Article 46 § 1 CIM and Article 5, point 3, Article 6, point 2 and Article 71, para. (1) of Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. An interpretation of the Agreement between OTIF and the European Union on the European Union's accession to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as revised by the Modification Protocol of Vilnius of 3 June 1999 (declaration by the European Union in relation to Article 2 of the Agreement)³ also plays a role.

As mentioned at the beginning, the case is of interest not just because of the question of jurisdiction, but also in the current context of looking for cases in which the CUI UR should be applied, and of examining the criteria for their scope of application within a working group set up by the Secretary General. Although application of the CUI UR was **not** considered in these court proceedings, because the infrastructure manager's role in the proceedings was only that of an intervening third party involved as a result of a third party notice (*intervention forcée*), the facts of this case, i.e. damage to the goods being carried caused by derailment of the train, can serve as a practical example for

¹ A summary, an extract and critical comments on this ruling were published in the „Bulletin des transports et de la logistique“, No. 3497, 24 March 2014, and under http://www.wk-transport-logistique.fr/preview/BeDhHlDgEiFjLrBeBfBf/presse/bt/bulletin_des_transports_et_de_la_logistique_2014.

² BTL No. 3534, 19 January 2015, p. 21

³ Accession Agreement is published on OTIF's website, see <http://www.otif.org/recht/cotif.html>

situations that can arise and to which the CUI UR should be applicable.

Facts of the case

Renault commissioned the "Société de Transports de Véhicules Automobiles" (STVA, a company specialising in the transport of motor vehicles) to transport 208 motor vehicles from Romania to France. STVA transferred the performance of carriage to SNCF, which then transferred transferred part of the carriage to "Rail Cargo Austria AG" (RCA) (substitute carrier). ÖBB Produktion provided the traction on the infrastructure operated on Austrian territory by ÖBB Infrastruktur.

During carriage on the Austrian leg, the train derailed on 16 June 2010 and 201 motor vehicles were destroyed or damaged.

On 1 June 2011, Renault sued STVA, its insurer Allianz, and RCA, for damages at the Paris Commercial Court. Another three of STVA's insurers joined the proceedings as voluntary intervening third parties (*intervention volontaire*).

At the same Court, STVA and its insurer Allianz took recourse in warranty against RCA, ÖBB Infrastruktur, ÖBB Produktion and the undertaking responsible for maintaining the railway wagons, Sogeefer, and its insurer. Conversely, RCA and ÖBB Produktion took recourse in warranty against SNCF, STVA and Sogeefer and their respective insurers.

RCA, ÖBB Produktion and ÖBB Infrastruktur objected that the Court was not competent. In a ruling of 31 January 2013, the Paris Commercial Court overruled this objection and declared itself competent.

On the basis of the appeal submitted by RCA and ÖBB Produktion, the Court of Appeal examined the ruling of the court of first instance and endorsed its decision concerning its competence.

From the reasons for the decision:

"Consequently, given that even if this dispute had come under the Protocol of 3 June 1999 with regard to determining territorial jurisdiction, the Paris commercial court would still have been territorially competent to rule on the third party claims as the court within whose jurisdiction two of the defendants in the main proceedings, STVA and Allianz, have their registered offices;

That however, the regulation that actually applies in this



case is not COTIF, but Regulation (EC) No. 44/2001 of the Council of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters in the European Union;

That in fact, it follows from Articles 5-3, 6-1 and 6-2 of this Regulation that a person domiciled on the territory of a Member State may be sued in another Member State in matters relating to delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur, or, if there are a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings, or as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;

That Article 71-1 of the Regulation of 22 December 2000 stipulates that this shall not affect any conventions to which the Member States are parties and which in relation to particular matters, govern jurisdiction, which means that in the case of concurrence of the rules, if the dispute comes within the scope of a special convention, it is appropriate to apply the rules laid down in the convention and not those laid down in Regulation No. 44/2001, in order to enable the Member States to comply with their international commitments to third countries and to apply the said conventions, even within the European Union;

But given that this Article 71-1 also has to be interpreted in light of Article 57-1 of the Brussels Convention of 1968, which governed legal jurisdiction within the European Union before the entry into force of Regulation 44/2001; that in fact, Article 57-1 stipulated that the 1968 Convention did not affect any conventions "to which the Contracting States are or will be parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgment";

*...
That in addition, while the Union has itself acceded to the Vilnius Protocol in an agreement signed with OTIF on 23 June 2011 (published on 13 July 2011) in the Official Journal of the European Union, it nevertheless appears that Article 2 of this Agreement ... confers upon COTIF 1999 a suppletory nature in the European Union in relation to the EU's rules and hence in relation to the Regulation of 22 December 2000."*

Comments from the perspective of COTIF

I. Forum

As emerges from the Article published in the **Bulletin des transports et de la logistique**, there are different views on the question of whether the COTIF/CIM rule (Art. 46 CIM) or Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and

commercial matters applies to the forum in such cases.

In the past, different opinions have been expressed in various specialist articles, primarily on the question of the forum in relation to legal disputes in cases where damage occurs during transport in international road transport⁴. In these articles, the question arose as to whether the forum should be governed by Article 31 CMR or by Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁵. This issue was the interpretation of Article 71 of Regulation (EC) No. 44/2001. This Article says that the Regulation shall not affect any conventions to which the Member States are parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.⁶

For the CMR area, this question was finally resolved by a decision of the European Court of Justice (ECJ) in 2010⁷. The question remains as to whether the solution found for international road transport (see inset below) is also suitable for international rail transport. It is not the purpose of this article to provide a response to this question. What interests us more in the following is the interplay between two COTIF Appendices, the CIM UR and the CUI UR. However, it might be thought that the decision of the Paris Court of Appeal goes much further in considering that "Article 2 of the Agreement on the EU's accession to COTIF confers upon COTIF 1999 a suppletory character in relation to the European Union's internal rules". If such a decision were to create a precedent, this would give cause to consider the actual applicability of the rules of COTIF within the European Union and to wonder whether clarification was needed in order to be sure that the uniform rules of COTIF constitute the legal framework for international freight transport.

In the article published in the **Bulletin des transports et de la logistique** in March 2014, the Court's recital undeligning the difference between the wording of Article 71-1 of Regulation (EC) 44/2001 ("conventions to which the Member States are parties") and Article 57-1 of the Brussels Convention of 1968 ("to which the Contracting States are or will be parties") is considered to be an "ingenious but rather weak" argument. It just remains to be added that from our point of view, even though the interpretation by the Court of Appeal was in line with the European legislator's intention not to apply the rule to future conventions, it is not correct to consider the Vilnius Protocol and its Annex, COTIF 1999,

4 Dr Peter Mankowski: „Der europäische Erfüllungsortsgerichtsstand des Art. 5 Nr. 1 lit. B EuGVVO und Transportverträge“, *Transportrecht* 2-2008, p. 67-78; Dr Rolf Wagner: „Normenkonflikte zwischen den EG-Verordnungen Brüssel I, Rom I und Rom II und transportrechtlichen Rechtsinstrumenten“, *Transportrecht* 3-2009, p. 103109; Dr Rolf Wagner: „Die EG-Verordnungen Brüssel I, Rom I und Rom II aus Sicht des Transportrechts“, *Transportrecht* 7/8-2009, p. 281-289; Waldemar Czapski: „CMR. Interprétation et application“, *Bulletin des Transports et de la Logistique* No. 3198/2006, p. 457-459

5 A ruling by the Austrian Supreme Court in favour of CMR as *lex specialis*: 10Nc19/04g, 26.07.2004, published on www.ris.bka.gv.at

6 With effect from 10 January 2015, this Regulation was replaced by a Regulation of the same name, Regulation 1215/2012.

7 Case C-533/08 (TNT Express Nederland BV v. Axa Versicherung AG), see <http://curia.europa.eu/juris/document/document.jsf?text=&docid=81174&pageIndex=0&doclang=DE&mode=req&dir=&occ=first&part=1>



as a new special convention, as the Vilnius Protocol was adopted in accordance with the provisions of COTIF 1980 (Article 20), while observing the rule of continuity.

In what follows, our interest is focused more on the correlation between two COTIF Appendices, namely the CIM UR and the CUI UR.

European Court of Justice's interpretation of Article 71 of Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (C-533/08):
Application of conventions applicable to particular fields of law, insofar as the following conditions are met:

- (the rule on jurisdiction is) highly predictable
- facilitate the sound administration of justice
- ensure the free movement of judgments in civil and commercial matters and mutual trust in the administration of justice in the European Union
- under conditions at least as favourable as those provided for by the Regulation.

II. Correlation between CIM and CUI

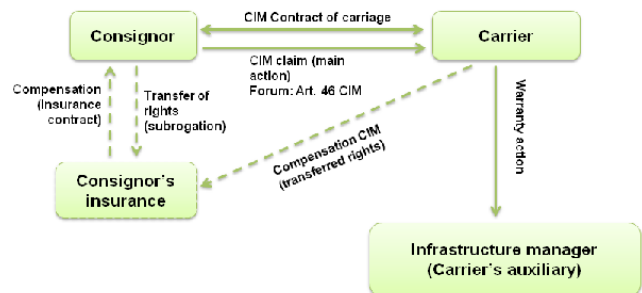
In a case such as this, where the goods being carried were damaged as the result of a derailment, the first thought that comes to mind is to look for the cause in the infrastructure. In view of the carrier's objective liability for damage to the goods being carried, from the injured party's perspective, the cause of the damage is irrelevant; all that matters is that the damage occurred during transport. The relationship between the carrier and the infrastructure manager is immaterial when it is a matter of claims by the customer arising from the contract of carriage. The infrastructure manager is considered as a person whose services the carrier makes use of for the performance of the carriage and for whom he is liable (Art. 40 CIM).

In fact, it is in the interest of the carrier, who is in principle liable for compensation (unless he can be relieved from his objective liability), to clarify the cause so that, after the customer has been compensated, he will be entitled to recourse. The outcome of the legal dispute between the freight transport customer (or an insurance company to which the freight transport customer's claims have been transferred) and the carrier is therefore significant for the subsequent settlement (between the carrier and the infrastructure manager) of the indirect damage caused to the carrier by having to pay the customer compensation.

This interest on the part of the carrier, in this case as the defendant in a legal dispute initiated by the consignor, led the carrier to serve a third party notice on the infrastructure manager, because he assumed that ultimately, the infrastructure manager would have to accept responsibility for the damage (as opposed to the carrier). Against this background and in the same proceedings, he took recourse in warranty against the infrastructure manager. Insofar as the basis for liability or the scope of liability is contentious, the infrastructure manager can thus support the main

defendant in the legal action. However, in this case only the liability rules of CIM apply. The following diagram illustrates this scenario:

Application of the CIM UR (a single procedure)



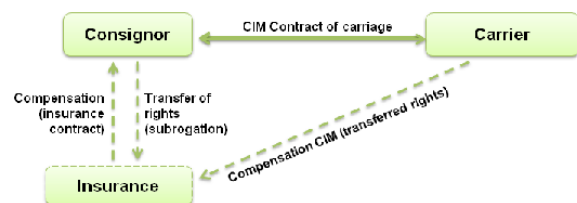
Another scenario, which would also have consequences in terms of the forum, would emerge if the two claims for compensation were dealt with separately in two phases:

1. the carrier compensates the consignor in accordance with the CIM UR, whether in the form of an amicable agreement between the contracting parties or in court proceedings and
2. the infrastructure manager compensates the carrier in accordance with the CUI UR (for the resulting indirect damage caused to the carrier).

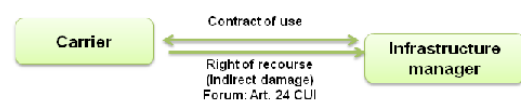
This scenario can be illustrated as follows:

Application of the CIM UR and the CUI UR

1. Application of the CIMUR



2. Application of the CUI UR



With regard to material and indirect damages (consequence of compensation paid in accordance with CIM), the liability provisions of the CUI UR (principle of objective liability and grounds for relief from liability) are designed along the lines of the liability provisions of Article 23 CIM.

With regard to the forum, in the second phase of the second scenario Article 24 CUI would have to be applied. This means that unless the parties to the contract of use



of infrastructure have agreed otherwise, the courts where the infrastructure manager has its headquarters would be competent.

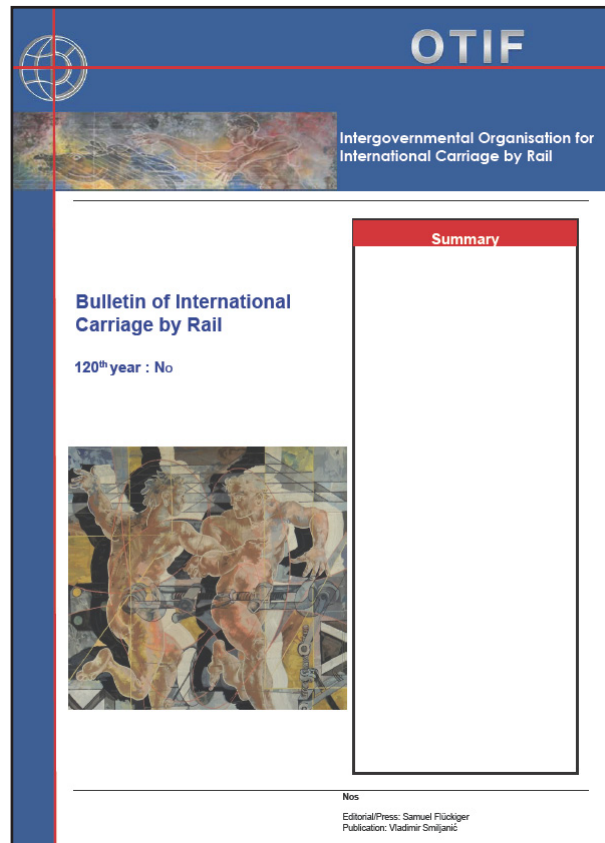
For the sake of completeness, it should be recalled that four Appendices to COTIF also contain a rule for cases in which the person entitled does not address the compensation claim to his contracting partner, but instead to another actor whom he suspects of being the cause of the damage (claim on the basis of tort), e.g. the consignor to the infrastructure manager or the infrastructure manager to the consignor. These cases are governed by Article 41 CIM and Article 19 CUI. There are also parallel provisions (“Other actions”) in the CIV UR (Article 52) and the CUV UR (Article 10). These Articles ensure application of the same liability rules in every scenario, so that the rules laid down in the Appendices to COTIF (liability prerequisites and limitations) cannot be circumvented by means of a **claim on the basis of tort**.

The COTIF system is well thought out and consistent. As illustrated above, it is applied in the same way no matter at what point the infrastructure manager becomes involved, and even no matter whether the injured party addresses his claim for compensation to his contracting partner, as is the norm, or, for whatever reasons, addresses it to a third person (from the perspective of each contract).

Eva Hammerschmiedová



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The Bulletin editor