



# Bulletin

124<sup>th</sup> year: No. 2/2016

**OTIF**

Organisation intergouvernementale pour les transports internationaux ferroviaires  
Zwischenstaatliche Organisation für den internationalen Eisenbahnverkehr  
Intergovernmental Organisation for International Carriage by Rail

Unified railway law to connect Europe, Asia and Africa



## SUMMARY

### NEWS

#### OTIF

- 4 Departure of the head of the legal department  
Mr Carlos del Olmo Morand
- 4 Young Expert Dariia Galushko
- 5 Internship : Çağlar Tabak

#### COTIF

- 6 Accession of Ireland to COTIF 1999
- 6 Amendment to Article 6 § 7 of the CIM UR Entry into force on 1 May 2016
- 7 RID now published in Russian

#### COMMUNICATING AND DISSEMINATING

- 7 The Railways of Iran Publish RID in Farsi
- 8 TAF Workshop in Vienna
- 8 When the Secretariat of OTIF welcomes students
- 9 The "COTIF" workshop in Baku: a unanimous success

### DEVELOPMENT OF RAILWAY LAW

#### COTIF

- 10 The procedure for revising COTIF should be made quicker and more consistent

#### RAILWAY TECHNOLOGY

- 14 How to make interoperability between OTIF's Member States a reality

#### DANGEROUS GOODS

- 18 RID/ADR/ADN Joint Meeting (Bern, 14 to 18 March 2016)

#### TRANSPORT LAW

- 21 Public consultation by the European Commission's DG MOVE concerning regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (PRR)

### DIARY OF EVENTS

Picture by  
Valerio Compagnone-OTIF

Baku / Credit Photo by Ziya Mammadov



Ireland's accession to the 1999 Protocol is an important event for the Organisation. Apart from the fact that it enables COTIF 1999 to enter into force across the whole EU, the accession by Ireland, which has been a member of OTIF since 1970, sends a message.

It demonstrates that OTIF's added value lies in the operational nature of what it contributes to international traffic and in the vitality of its regulations.

For international rail transport, it is more vital than ever to be able to have the functionalities of a network. This is OTIF's task. This Bulletin reflects this desire to provide efficient tools to

set up an integrated and interoperable network.

The transfer of technology between the world of the internet and the world of transport has already started. It revolutionises our perception, and the Secretariat's work is part of this change, as witness the participation in the workshop in Vienna on 27 April 2016, which was jointly organised with the European Railway Agency and which dealt with telematics applications for freight.

In this edition of the Bulletin you will find a set of articles that illustrate the variety of our contribution to international rail transport.

**François Davenne**

## DEPARTURE OF THE HEAD OF THE LEGAL DEPARTMENT MR CARLOS DEL OLMO MORAND



Before his appointment as the head of the OTIF Secretariat's legal department, Mr del Olmo Morand held several senior positions in Spain at the Spanish railway infrastructure manager, ADIF, and the national railway undertaking, RENFE. He was RENFE's principal legal adviser for freight traffic, head of international relations and standards development at RENFE and ADIF's principal legal adviser for the infrastructure on high speed lines. He

was also a barrister and is a member of the Madrid bar association of lawyers.

Mr del Olmo Morand was also very active internationally. Since 1989 he has participated in various developments within OTIF and COTIF. He was a member of the Administrative Committee on several occasions and he was its chairman between 2006 and 2009. He also represented Spain for many years on the Revision Committee and the General Assembly, which he chaired in September 2012. He was Spain's arbitrator on OTIF's arbitration tribunal.

Mr del Olmo Morand became head

of the OTIF Secretariat's legal department on 1 May 2013 for a period of three years. During these three years, he was involved primarily with the revision of COTIF and its Appendices and the amendments adopted by the 25<sup>th</sup> session of the Revision Committee in June 2014 and the 12<sup>th</sup> General Assembly in September 2015.

Mr del Olmo Morand will continue his career in Spain. The Secretariat of OTIF would like to wish him every success in his future career and personal life.

*Iris Gries*

## YOUNG EXPERT DARIIA GALUSHKO



After 24 months as an intern, Daria Galushko, a young expert from Ukraine, left the Secretariat of OTIF at the end of April to complete a post-graduate course in marketing in Switzerland. Before starting her career at Ukraine's State Railway Administration, Ms Galushko studied economics and transport sciences at Kiev State University, where she obtained a Master's Degree specialising in the "organisation of railway transport".

During her time at OTIF, Ms Galushko worked initially in the legal department and then in the RID department.

In the legal department, Ms Galushko's main task was to carry out a study on the facilitation of rail transport (Corridor Study). The aim of the study was to identify the obstacles to smooth international transport and to

examine the extent to which OTIF can contribute more to the facilitation of rail transport in the framework of its activities. The study is published on OTIF's website.

Ms Galushko took part in numerous meetings of OTIF's bodies dealing with the revision of different parts of COTIF (CIM and CUI working groups, Revision Committee, General Assembly). She also played an active role in the work on multimodal (rail-sea) transport and took part in CIT meetings (Multimodality Working Group and Committee).

During her internship at OTIF, Ms Galushko also gained an insight into the activities of the United Nations Economic Commission for Europe. She was involved in the work on the unification of railway law and was given the opportunity of presenting her work on the Corridor Study to the UNECE Inland Transport Committee.

In the second half of her internship, Ms Galushko was entrusted with preparing a Russian version of the Reg-

ulations concerning the International Carriage of Dangerous Goods by Rail (RID).

RID contains more than 1000 pages of provisions that have to be complied with for the international carriage of dangerous goods by rail. OTIF publishes a German, English and French edition of RID. Since 2012, attempts have been made to harmonise more closely RID and Annex 2 of the OSJD's Agreement concerning International Goods Traffic by Rail (SMGS), which is applicable in eastern Europe and Asia. The aim of this harmonisation is to simplify the carriage of dangerous goods by rail between these two legal regimes. As SMGS Annex 2 is published in Russian and Chinese, it was considered useful for the harmonisation work to produce a Russian version of RID.

For this work, Ms Galushko was greatly helped by her comprehensive linguistic skills in Russian, English and German.

In addition to her work in the legal and RID departments, Ms Galushko also took on other tasks in the Secretariat. There was great interest among the

staff of the Secretariat in the Russian course given by Ms Galushko.

The Secretariat of OTIF wishes Ms

Galushko the best of luck and every success in her future career.

*Eva Hammerschmiedová &  
Jochen Conrad*

## INTERNSHIP : ÇAĞLAR TABAK



Since 11 February 2016 I have been participating in OTIF's expert training programme. I am a civil engineer in Turkey and I have been working for the General Directorate of Railway Transport Regulation in The Ministry Of Transport, Maritime Affairs and Communication in Turkey. At the same time, I am studying Transport and Logistics Engineering at Gazi University as a PhD student. Before coming to Switzerland, I had been working on preparing technical specifications for a logistics master plan covering the whole of Turkey. I also attended working groups in DGRR, which is working on the preparation of the Level-Crossing Regulations in Turkey, the draft Safety Regulation regarding Railway Transport in Turkey, organisation of the 11<sup>th</sup> "Transportation Maritime Affairs And Communications Forum" as a secretary, and preparation of the draft Regulation

on "Planning Location and Capacity of Freight Village, Centres or Bases" in Turkey. When I learnt that I was to be a new candidate for OTIF's training programme, I was very pleased, as it will help me improve my knowledge of the international railway system. The traineeship lasts from 11 February to 10 June, which allows me to participate in the 28<sup>th</sup> session of the standing working group technology (WG TECH), as well as the 9<sup>th</sup> session of the Committee of Technical Experts (CTE).

I would like to express my gratitude to everyone, particularly Mr Bas Leermakers and Mr Dragan Nešić. Thanks to their help, I rapidly adapted to living in Bern and working at OTIF.

During my traineeship I will be studying and reporting on how international provisions to support interoperability and safety of international railway traffic might be useful for Turkey. When I arrived, the OTIF team helped me to understand the scope of COTIF and its Appendices and

OTIF's area of work. I understood clearly what I am required to do and where I should start my work. I have started to read the COTIF Appendices, and with the help of my OTIF colleagues, I am trying to understand every Article, so that when I return to Turkey, I will have the best possible understanding of COTIF. The traineeship is also proving beneficial to my PhD work. On the one hand, I am trying to understand how to implement COTIF and its Appendices, in particular in Turkey. On the other hand, I would like to organise an international conference in Turkey, with my colleagues' support, on COTIF and interoperability. This will be particularly interesting, as Turkey provides a bridge between east and west and COTIF is an important instrument to operate railways over this bridge. The aim for the conference is to invite speakers not only from OTIF, but also from other organisations which are active in the field of international railways. To sum up, it is good to be in OTIF!

*Çağlar Tabak*

## ACCESSION OF IRELAND TO COTIF 1999

On 14 April 2016 in Berne, His Excellency the Ambassador of Ireland to Switzerland, Mr Breifne O'Reilly, presented to the Secretary General of the Intergovernmental Organisation for International Carriage by Rail (OTIF), Mr François Davenne, the instrument of accession to the 1999 Protocol for the Modification of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, signed in Dublin by Mr Charles Flanagan, the Minister for Foreign Affairs and Trade.

Submission of the instrument of accession results ipso facto in the entry into force of COTIF 1999 and its seven Appendices in Ireland and specifically on the Irish railway network. Ireland's network has almost 1900 kilometres of 1,600 mm (5 foot 3 inches) gauge lines.



This accession to the 1999 Protocol also means that the Chapter on Ireland will be included in the 1999 CIV and CIM lists of maritime and inland waterway services. The Uniform Rules concerning the Contract of In-

ternational Carriage of Passengers and Goods by Rail of COTIF 1999 therefore apply to the following CIV lines: Dun Laoghaire – Holyhead, Dublin Port – Holyhead and Rosslare – Fishguard, and to the CIM line Dub-

lin – Liverpool (Seaforth).

Ireland has been a member of the Organisation since 1970 and the Secretariat welcomes this accession.

## AMENDMENT TO ARTICLE 6 § 7 OF THE CIM UR ENTRY INTO FORCE ON 1 MAY 2016

The amendment to Article 6 § 7 of the CIM UR is of an editorial nature, whereby the term “European Community” will be replaced by “European Union” throughout this provision to take account of the new title of the European Community since the entry into force of the Treaty of Lisbon.

The Revision Committee adopted this editorial amendment on 20 April 2015

using the written procedure. It entered into force for all the Member States on 1 May 2016.

In the round of amendments to COTIF and its Appendices started in 2014, this is the last of the amendments that fall within the Revision Committee's competence (Article 34 of COTIF) to enter into force.

In order to enter into force, the amend-

ments to COTIF and its Appendices adopted by the 12<sup>th</sup> General Assembly in 2015 will have to be approved in accordance with a more usual revision procedure, as these amendments have to be approved by the Member States in accordance with their internal law (Article 34 of COTIF).

*Iris Gries*

## RID NOW PUBLISHED IN RUSSIAN

Since 1 June 2016, the Russian version of the 2015 edition of the Regulations concerning the International Carriage of Dangerous Goods by Rail (RID) has been available on OTIF's website [Link]. This is another milestone in the work on harmonising RID and Annex 2 to the Agreement concerning International Goods Traffic by Rail (SMGS) of the Organization for Co-operation be-

tween Railways (OSJD).

RID contains more than 1000 pages of provisions that have to be complied with for the international carriage of dangerous goods by rail. OTIF has previously published a German, English and French edition of RID. Since 2012, attempts have been made to harmonise more closely RID and SMGS Annex 2, which is applica-

ble in eastern Europe and Asia. The aim of this harmonisation is to simplify the carriage of dangerous goods by rail between these two legal regimes. As SMGS Annex 2 is only published in Russian and Chinese, the Russian translation of RID will be of considerable help in simplifying the harmonisation work.

*Katarina Guricová*

## NEWS | COMMUNICATING AND DISSEMINATING

## THE RAILWAYS OF IRAN PUBLISH RID IN FARSI

Article received from RAI

The Islamic Republic of Iran, as an active member of OTIF, and the Railways of Iran (RAI) comply with OTIF regulations in international traffic. RAI applies all seven Appendices of the Convention concerning International Carriage by Rail (COTIF). To this end, and to enable RAI experts to understand fully the content of the regulations, the International Affairs Bureau has translated the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID) into Farsi, taking as a basis the latest version of the regulations published in 2015. The regulations (in three volumes) were also published and distributed to all districts and to all sections of RAI.

The Railways of the Islamic Republic of Iran (RAI) are part of the Ministry of Roads and Urban Development of

the Islamic Republic of Iran. Currently, RAI has 10,500 km of railway lines. At present, a further 9,000 km are under construction.

In order to develop transport, a medium-term programme up to 2021 is to boost the rail share of transport up to 30% and 18% for freight and passenger traffic respectively.

In its medium-term programme up to 2021, RAI intends to increase passenger transport from the present 27 million up to about 34 million passengers, and to achieve this goal 1801 coaches are needed; RAI also intends to increase the tonnage from the present 34 million to 91 million tons, which will require 12,000 freight wagons to be added to the fleet.

*Azadeh Poursaddami*



سازمان بين الدول حمل و نقل بين المللي ريلي (OTIF)

RID ۲۰۱۵



ضميمه C: مقررات مربوط به

حمل و نقل بين المللي كالاهاى خطرناك باره آهن (COTIF)

دى ماه ۱۳۹۴

جلد ۳

## TAF WORKSHOP IN VIENNA

On 27 April 2016, the OTIF Secretariat and the European Railway Agency (ERA) organised a workshop on the introduction of the general framework of telematics applications for freight (TAF). The TAF Workshop took place at the premises of the RailNetEurope (RNE) joint office in Vienna. It was attended by representatives of competent authorities, private companies and logistics companies from the Netherlands, Bosnia and Herzegovina, Bulgaria, Serbia, Switzerland and Turkey. Organisations that cooperate closely with the OTIF Secretariat also attended, namely the International Union of Wagon Keepers (UIP), RailData, the European Rail Manufacturing Industry (UNIFE) and the RU/IM Telematics Joint Sector Group (JSG).

The workshop represented one of the elements in support of the ongoing policy discussion on whether to transpose the TAF specifications at OTIF level. It raised awareness of the TAF

specifications and explained the principles and benefits of the TAF TSI to the non-EU OTIF Member States, with an explanation of the content of the TAF TSI, users' experiences and the feasibility and advantages of applying the TAF specifications.

The main messages from the speakers can be summarised as follows:

- Transpose the TAF TSI into a UTP and make reference to the appendices that are published and regularly updated on ERA's website, including the data and message model in XML files.
- Implementation should be voluntary in OTIF non-EU Member States. They should gradually migrate to the TAF technology, processes and protocols, ensuring that if IT investments and developments in the scope of the UTP TAF are made, they are done in a harmonised and compatible way, so as to facilitate

international rail traffic.

- Many commercially available solutions can help in implementing the TAF TSI efficiently.
- The OTIF Secretariat could become a member of the TAF TSI Cooperation Group, allowing non-EU OTIF Member States to influence future developments of the TAF TSI.

Participants were also interested in the obligations and responsibilities of the TAF actors, namely keepers, railway undertakings and entities in charge of maintenance, and indicated their interest in holding similar workshops in future.

All in all, the workshop revealed that implementation of TAF has great potential to increase the efficiency and international coordination of rail freight traffic.

*Dragan Nešić*

## WHEN THE SECRETARIAT OF OTIF WELCOMES STUDENTS

As part of its compulsory courses, the University of Berne's Institute of European and International Economic Law includes a module on "European and International Rail Transport Law", taught by Dr Erik Evtimov, who is also Deputy Secretary General of the International Rail Transport Committee (CIT). The aim of this course is to provide an understanding of international and European rail transport law.

For two years, Dr Evtimov has wanted to give this theoretical course a more practical perspective. In order to achieve this, on Monday, 9 May 2016 he visited the Secretariat of OTIF accompanied by some of his students. They were welcomed by OTIF's Secretary General and technical department and were able to ask

questions and see the place where the Convention concerning Interna-

tional Carriage by Rail took shape and is regularly updated.





## THE “COTIF” WORKSHOP IN BAKU: A UNANIMOUS SUCCESS

In November 2015, Azerbaijan became the 50<sup>th</sup> Member State of OTIF. At the same time, the Azeri authorities, the Railways of Azerbaijan (ADY) and OTIF agreed to organise together a post-accession workshop; the objective was to provide the tools to apply the Appendices to the Convention concerning International Carriage by Rail (COTIF) and to exchange information on best practice, with the particular involvement of the International Rail Transport Committee (CIT).

To this end, a workshop entitled “Passengers, goods and dangerous goods: the ways of applying and implementing COTIF and its Appendices” was held on 2 and 3 May 2016 in Baku, bringing together experts and representatives from OTIF and CIT and a broad range of speakers from Azerbaijan, Georgia, Turkey and Ukraine.

Mr Igbal Huseynov, Deputy Chairman of Azerbaijan Railways (CJSC);  
Mr Guram Guramishvili, Deputy Director General of Georgian Railways (JSC);  
Ms Nevin Kaygısız, Acting Division Manager, TCDD Freight Department, Turkish State Railways;  
Mr Afik Mustafayev, Permanent Representative (National Secretary) of the

TRACECA in the Republic of Azerbaijan;

Mr Howard Rosen, Chairman of the Rail Working Group;

Mr Yuriy Merkulov, Director of Commercial Department, Ukrzaliznytsia (Ukrainian Railways).

There was also a great diversity of participants: ministerial officials and people from the private sector.

Following the two days, a round table with the participants was organised in order to obtain their impressions and views of the quality of the workshop and speeches. There was a high level of satisfaction all round. First of all, Azerbaijan’s Railways (ADY) organised the workshop extremely well and gave participants and speakers a very warm welcome; secondly, there was alternation between theoretical presentations on the legal instruments and practical presentations on how to apply them in practice. The workshop finished with some joint conclusions:

- The railways of Azerbaijan and Georgia should coordinate activities on implementing CIV/CIM (Appendices A and B to COTIF) before opening the Baku-Tbilisi-Kars route and should organise practical training for national experts

with TCDD and Ukrainian Railways.

- Further to this training, a practical seminar could be organised to set up a roadmap for implementation. OTIF and CIT would provide the necessary support.
- The issue of managing border controls on the Baku-Tbilisi-Kars route should be addressed with the customs authorities of Azerbaijan, Georgia and Turkey, ideally in order to grant an origin/destination control based on the model of the CIM consignment note (Art. 6 § 7 CIM - Appendix B to COTIF), which prevails in the European Union. In this framework, TCDD will provide a model regulation for the practical arrangements concerning border crossing between Turkey and Georgia (interchange station, wagon delivery, etc.).
- A tariff for passenger and freight transport should be established for traffic on the Baku-Tbilisi-Kars route.

The Secretariat of OTIF would like to thank the workshop’s co-organisers and welcomes the opportunity to be of service to its Member States.



## THE PROCEDURE FOR REVISING COTIF SHOULD BE MADE QUICKER AND MORE CONSISTENT

The work programme for 2016-2017 says that “with a view to the consistent and rapid implementation of amendments to COTIF and its Appendices, the legal department will carry out a study on the feasibility of adapting Article 34 of COTIF to enable amendments adopted at the General Assembly to be applied by a fixed deadline.”

In order to initiate the study on the feasibility of adapting Article 34 of COTIF and to usher in effectively the entry into force of the amendments adopted by the 12<sup>th</sup> General Assembly, the legal department thought it useful to carry out a preliminary analysis of the procedure for revising COTIF and of the simplifications already introduced in the last two revisions (I) before tackling the question of the practice the depositary will follow with regard to the notifications and declarations laid down in Article 34 of COTIF 1999 (II).

Efforts to simplify the revision system currently required by COTIF date back to the 3<sup>rd</sup> Conference on the revision of the CIM Convention<sup>1</sup> (1923/1924). At that conference, Annex I<sup>2</sup> to the CIM Convention was subject to a simple and rapid revision procedure, as the conference had noted that “it was vital that the provisions of Annex I take account of the continual progress in science and technology and that they are frequently revised and modified as a result”. This procedure enabled amendments to Annex I to be given effect as soon as possible, while avoiding the long, formal procedures prescribed for amendments to other parts of the CIM Convention.

Since then, two systems of revision have been applied to what has become COTIF and its Appendices.

- The more “classical” revision system in international public law for amending fundamental provisions that fall within the competence of the General Assembly and which,

owing to their importance, are in the legislative domain in many States.

- The so-called simplified or accelerated revision system for “non-essential” or more “technical” provisions in a broad sense, which fall within the competence of the Revision Committee and which, in the States, come more within the domain of regulatory authority.

During the revision that led to the adoption of the 1999 Protocol, the question of the revision was once again the subject of lengthy discussions, the aim of which was to broaden the competence of the Revision Committee, thus enabling the revision procedure to be simplified as much as possible.

The relevant provisions of COTIF 1999 that were finally adopted partly renounced the revision system applied up to then by the corresponding provisions of COTIF 1980, but did not go as far as the broader simplification initially suggested by the Secretariat of OTIF.

However the case may be, the amendments to COTIF and its Appendices adopted by the 12<sup>th</sup> General Assembly are the first amendments adopted under the revision system laid down in Article 34 of COTIF, which raises a number of specific questions in terms of its implementation, not just for OTIF’s Member States, but also for the Secretariat of OTIF.

### I. Procedure for revising COTIF

#### 1. Under the regime of COTIF 1980

The procedure relating to amendments that fell within the competence of the General Assembly was governed by Article 20 of COTIF 1980. It was considerably more formal than the procedure prescribed now. This procedure required that:

- Amendments decided upon by the General Assembly had to be recorded in a Protocol. Two Protocols were adopted under this regime: the Protocol of 20 December 1990 and the Protocol of 3 June 1999 (Vilnius Protocol);
- The Protocol had to be signed by the representatives of the Member States. It also included final provisions relating to its “signature, ratification, acceptance or approval”, its “entry into force”, “accession” to the Protocol and its “relationship to the COTIF in force”;
- The Protocol was then subject to ratification, acceptance or approval by the Member States;
- Instruments of ratification, acceptance or approval had to be deposited with the Depositary Government, which was Switzerland for the 1990 Protocol, then with the Provisional Depositary (OTIF) for the 1999 Protocol (Article 2 of the 1999 Protocol);
- Amendments entered into force automatically when a specified period had expired after they had been ratified, accepted or approved by

<sup>1</sup> At that time, the “International Convention on the Transport of Goods by Rail”.

<sup>2</sup> Namely the “Provisions relating to articles admitted for transport under certain conditions”, now called the “Regulation concerning the International Carriage of Dangerous Goods by Rail” (RID – Appendix C to COTIF).

more than two thirds of the Member States.

At the time, the procedure was nevertheless considered to be a step forward on the road towards simplification, compared with the rules that had existed beforehand, in that it had the following advantages:

- No more general, periodic revisions. The 1980 Convention no longer had to be completely revised at regular intervals. In other words, depending on requirements, it was now possible to take decisions on amendments to individual provisions in the Convention;
- Owing to the careful separation of competences, the General Assembly no longer had to deal, in principle, with the more “technical” texts subject to the simplified revision procedure that fell within the competence of the Revision Committee (Article 21 of COTIF 1980);
- With regard to the General Assembly’s decisions, which had to be ratified, accepted or approved, the competent state bodies, particularly the parliaments, were now only confronted with relatively short texts and therefore no longer had to approve entire conventions, as in the past. It was expected at the time that this would considerably reduce the length of the procedure.
- The automatic entry into force of the General Assembly’s decisions upon the expiry of a fixed period after they had been ratified, accepted or approved by two thirds of the Member States should also have reduced the period of time between when decisions were taken and when they entered into force.

## 2. The work on revising COTIF 1980

In its draft of 30 August 1996, the Secretariat of OTIF proposed to do

away entirely with the unwieldy system of Article 20 §§ 1 and 2 of COTIF 1980 that required a procedure of ratification, acceptance or approval.

In the Secretariat’s view, the experience gained with the entry into force of COTIF of 8 May 1980 (entry into force on 1 May 1985) and the Protocol of 20 December 1990 (amendments entered into force on 1 November 1996) justified this fundamental change. It therefore proposed a rule based on Article 62 of the Geneva Convention of 6 March 1948 on setting up the IMO.

The OTIF Secretariat’s initial proposal was not adopted. The following **arguments** were put forward **against** the simplification, which made it possible no longer to have to submit the General Assembly’s decisions to a procedure of ratification, acceptance or approval:

- Important amendments or those that concerned the provisions of civil law, particularly principles concerning liability, should be subject to ratification; this concerned matters which, in some Member States, have to be dealt with at legislative level and have therefore to be adopted by parliament, e.g. the provisions relating to the basis of liability, the burden of proof, the scope of application, compensation, the statute of limitations, the extinguishment of rights and the forum. If the provisions on these matters fell within the competence of the Revision Committee, the entry into force period (12 months)<sup>3</sup> of these provisions at national level would be too short to transpose these provisions into national law.
- Amendments to a Convention which has been subject to ratification require another ratification.

- If the period for applying the decision were too short (12 months),

particularly as the national law of some States prescribes ratification and hence amendments would have to be submitted to parliament for approval, this would compel the States concerned to oppose amending these provisions, owing to requirements dictated by constitutional law, even though they would approve the amendment in substance.

- A Member State’s approval of amendments should always be explicit and it should not be possible to interpret its silence as agreement.

However, the Revision Committee adopted the following principles to be followed in the context of continuing the revision work:

- It was appropriate to maintain separate revision procedures depending on competences (General Assembly/Revision Committee/RID Committee of Experts/other Committees);
- As far as possible, the regulations should exclude the possibility of two or more versions of the Basic Convention or Appendices being in force at the same time;
- The regulations should be designed to be as flexible as possible. However, the limitations imposed by certain Member States’ constitutional provisions should be respected in order not to compel them to accept an amendment they do not want or to withdraw from OTIF.

In view of these arguments, the provision that was finally adopted (Article 34 of COTIF 1999) requires that **amendments adopted by the General Assembly would still be subject to approval by the Member States.**

<sup>3</sup> See Article 35 § 3 of COTIF 1999 (Decisions of the Revision Committee).

### 3. Under the regime of COTIF 1999

The procedure relating to amendments that fall within the competence of the General Assembly is governed by Article 34 of COTIF 1999.

The procedure that applies under the regime of COTIF 1999 is simpler than the procedure prescribed in COTIF 1980:

- Amendments adopted by the General Assembly no longer have to be recorded in a Protocol signed by the Member States and subjected to mandatory ratification, acceptance or approval.
- However, amendments adopted by the General Assembly still have to be **approved by the Member States**, and the arrangements for providing this approval are **determined by the constitutional law** of each Member State.
- As in the case of declarations that they do not approve these amendments, the Member States' approval of amendments must be **notified to the Secretary General**; the **approval** of amendments by a Member State or the **declaration** that they do not approve them must therefore be **explicit**.
- Amendments to the Appendices (approval by half the Member States) may enter into force sooner than amendments to the Convention itself (approval by two thirds of the Member States).
- Modifications **enter into force for all Member States** twelve months after their approval **with the exception of** those which, **before the entry into force**, have made a **declaration** in terms that they do not approve such modifications. The Member States do not therefore have to accept an amendment they do not want, but they must make this known explicitly before the amendment in question enters into force.
- As soon as the decisions enter into force, application of the Appendix or

Appendices concerned is suspended with and between the Member States that have declared within the specified deadline that they do not approve the amendments. This system ensures that international transport law is uniform by avoiding the simultaneous application of several versions of the Uniform Rules between different Member States.

### II. Practice to be followed by the depositary: notifications and declarations by the Member States provided for in Article 34 of COTIF

The amendments adopted by the 5<sup>th</sup> General Assembly in Vilnius in 1999 entered into force in accordance with the regime of COTIF 1980, which, in particular, required the Member States to deposit "instruments of ratification, acceptance or approval" (see also Article 3 of the 1999 Protocol). The practice to be followed by the depositary did not therefore raise any particular questions in terms of its implementation, as it was a classical practice in international public law.

In accordance with Article 34 of COTIF 1999, and as described above, amendments that fall within the General Assembly's competence must be approved by the Member States, which have to send the Secretary General:

- **Their notifications** concerning approval of the amendments and, if necessary
- **The declarations** under which they do not approve these amendments.

As the depositary of COTIF (Article 36 of COTIF), the Secretary General has so far taken as a basis the practice followed by the Secretary General of UN in this respect.

It would therefore seem justifiable to reflect on the practice to be followed with regard to the notifications and declarations by Member States provided for in Article 34 of COTIF.

If no particular form is prescribed for notifications and declarations, the

main question that arises in this context is which competent authorities should sign them.

#### 1. Notification by Member States concerning the approval of amendments

The terms "ratification", "acceptance" and "approval" refer, as the case may be, to the international act thus called, by means of which a State establishes at international level its consent to be bound.

It should be pointed out that the act of ratification, acceptance or approval at national level, which a State may be required to carry out in accordance with its own constitutional laws before agreeing to be bound at international level, is not sufficient to establish this State's agreement to be bound at international level.

In the context of the revision of COTIF that falls within the General Assembly's competence, this agreement to be bound at international level will be given expression by means of the **notification** the States send the Secretary General **concerning the approval of amendments** to the Convention and its Appendices adopted by the General Assembly.

Generally, the term "notification" may have different meanings:

- The aim of "notifications" might simply be to **provide information required by a convention**. In this case, a State communicates certain facts or events that have legal significance. So they do not have an effect similar to that of a declaration or reservation and they do not have to be signed by one of the three competent authorities, which are the Head of State, the Head of Government or the Minister of Foreign Affairs or a person who has been given full powers by one of these three qualified authorities for this purpose.
- "Notifications" are also often **akin to instruments**, in the sense that they are instruments **by means of**

which the State expresses its consent to be bound at international level, which bind the State in the same way as an instrument of ratification, acceptance or accession. In this case, they have to be signed by one of the three competent authorities, which are the Head of State, the Head of Government or the Minister of Foreign Affairs or a person who has been given full powers by one of these three qualified authorities for this purpose. This practice takes into account the importance of these notifications, which bind the notifying State and which have the effect of extending or modifying this State's commitments in the same way as an instrument of accession.

In fact, increasing use of notifications is made in order to express definitive consent. Instead of exchanging documents or depositing an instrument, States may restrict themselves to notifying the other party or the depositary of their consent, which is also permitted under the 1969 Vienna Convention on the Law of Treaties (Article 16 c). However, all the other acts and instruments relating to the life of a treaty may also be subject to notifications.

For the depositary, there is therefore the question of whether notifications concerning the Member States' approval of amendments to the Convention itself or to its Appendices, as adopted by the General Assembly, constitute:

- "Notifications" that might simply be to provide information required by the Convention. In this case, notifications of approvals do not have to be signed by one of the three qualified competent authorities (Head of State, Head of Government or Minister of Foreign Affairs) or by a person who has been given full powers by one of these three qualified authorities for this purpose;

or

- Notifications akin to instruments

by means of which the State expresses its agreement to be bound at international level. In this case, notifications of approvals have to be signed by one of the three qualified competent authorities referred to above, or by a person who has been given full powers by one of these three qualified authorities for this purpose;

### 2. Declarations by Member States according to which they do not approve the amendments

Whatever it is called, a declaration by a State which aims to exclude or modify the legal effect of certain provisions of a convention in their application in that State is akin to a "reservation" and the UN Secretary General deals with it accordingly. A reservation can enable the State that makes it to participate in a convention in which it would not or could not participate otherwise.

These declarations entail legal rights and obligations for those that make them. As a result, they have to be signed by one of the three qualified authorities, which are the Head of State, the Head of Government or the Minister of Foreign Affairs or a person who has been given full powers by one of these three qualified authorities for this purpose.

### 3. Practice followed by the depositary

Unlike amendments to the Convention itself or to the Appendices, as adopted by the Revision Committee, the RID Committee of Experts or the Committee of Technical Experts, amendments adopted by the General Assembly require the Member States to send the Secretary General their **notifications concerning approval** of these amendments in order that they can enter into force. In other words, by means of this notification, the Member States **explicitly** express their approval of the amendments adopted by the General Assembly.

Thus the notifications provided for in Article 34 of COTIF are akin to instruments by means of which the State expresses its agreement to be bound

at international level by the amendments to COTIF and its Appendices adopted by the General Assembly.

The **declarations** referred to in Article 34 of COTIF are also clearly akin to reservations in the sense that their effect, as the case may be, is:

- to preclude the application of amendments to the Convention itself or to the Appendices adopted by the General Assembly in the Member States that have made such a declaration;
- to suspend application of the Appendix concerned, in its entirety, as soon as the decisions on the amendments have entered into force, for traffic with and between those Member States that have made such a declaration.

The notifications and declarations referred to in Article 34 of COTIF form part of one and the same system of revision and will therefore logically be dealt with identically by the depositary. They have to be signed by the Head of State, the Head of Government or the Minister of Foreign Affairs or by a person who has been given full powers by one of these three qualified authorities for this purpose. A notification of approval can be signed by, for example, an ambassador, provided that he has communicated his full powers. A minister other than the Minister of Foreign Affairs (Minister of Transport) might also be someone who has been given full powers to this end.

In order effectively to accompany the entry into force of the amendments adopted by the 12<sup>th</sup> General Assembly in all the OTIF Member States, the legal department has in particular initiated a **preliminary survey of the national approval procedures**.

The legal department will also take this as the basis for carrying out the study referred to in the 2016-2017 work programme concerning the feasibility of adapting Article 34 of COTIF.

*Iris Gries*

## HOW TO MAKE INTEROPERABILITY BETWEEN OTIF'S MEMBER STATES A REALITY

In order to adjust to technological progress and the increasing need for efficient international traffic by rail, OTIF and its Secretariat are continuously looking for ways to improve and further develop the rules under COTIF. While COTIF traditionally deals mainly with international railway traffic that is based on the exchange of vehicles at border stations, it may also develop further to support interoperability in terms of complete trains crossing borders. This type of operation has the potential to improve the efficiency of rail transport hugely, but also requires the extensive international alignment of rules.

This article summarises the current scope of COTIF and explores possible future developments to further improve the efficiency of international transport by rail by means of interoperability.

### Introduction

**C**OTIF is a multilateral instrument, supporting States, railway actors and railway customers in international railway traffic. COTIF covers transport contracts, contractual conditions of use of vehicles and infrastructure, regulations for the transport of dangerous goods and requirements for the international admission and use of vehicles. COTIF therefore provides fully for the exchange of freight or passenger vehicles across borders. However, COTIF does not cover all the legal requirements for the operation of complete trains across borders. This particular type of international

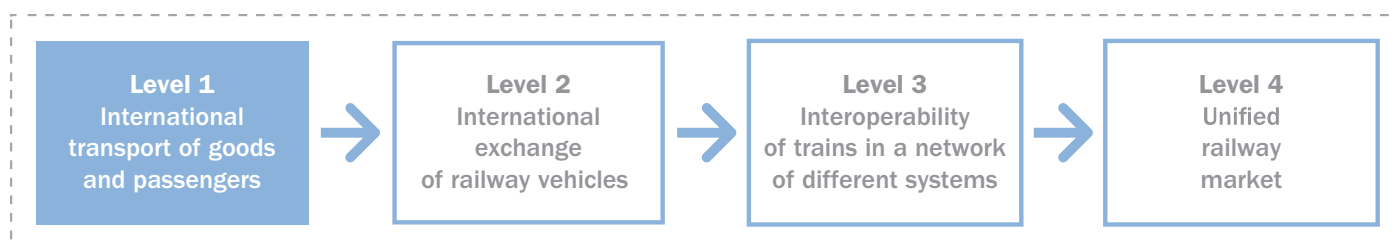
railway traffic, where a railway undertaking runs its trains on a foreign state's railway infrastructure, is further referred to as 'interoperability'. Interoperability is one of the principles on which the EU bases its common railway policy, with a view to making the railways more efficient and customer-focussed. For states outside the EU, interoperability could also be a concept that might help to increase the added value of their rail systems.

The aim of the analysis in this article is to explore the gap between the existing requirements of COTIF and those needed to support interoperability.

### Four level model of international railway harmonisation

The railway systems that rely on COTIF for their international relations could be seen as a network of connected but separate systems model, where passengers, goods, vehicles and/or trains are exchanged between the national systems. The network could be modelled on the basis of virtual levels, where harmonising to a higher level would allow smoother and more harmonised international traffic, but would also require more complex and harmonised regulations.

### Level 1: railways and their customers



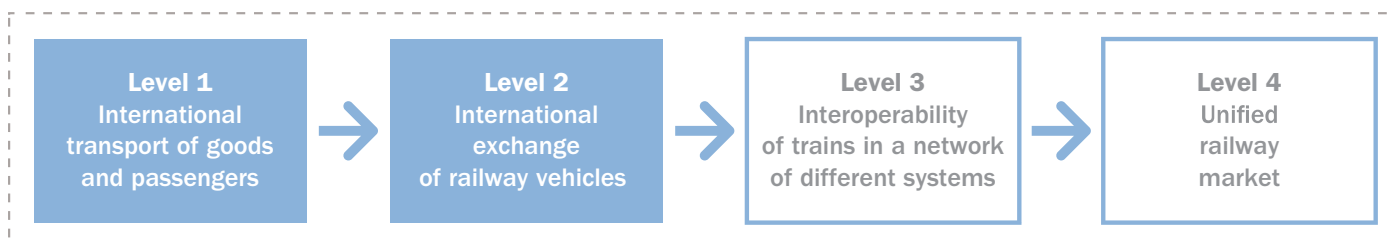
At the first level of this network model is COTIF contract law as set out in CIM and CIV, which facilitates the transport of goods and passengers across borders by means of harmonised contractual provisions. These are business-driven provisions, intended to establish sufficient legal certainty for consignors and passengers to use

the railways as a mode of international transport. These provisions have been developed under COTIF since the first Convention at the end of the 19<sup>th</sup> century. These provisions do not regulate the railway system itself, but provide an interface between the railways and their customers. They are considered to be private or contractu-

al law, defining the relations between the contracting parties. These provisions are also used for international traffic within the EU.

RID is applied across the different levels of this model as it applies whenever dangerous goods are concerned.

Level 2: exchanging vehicles across borders and between railway companies



A second level of this model sets out requirements to be applied in the railway system itself by facilitating the use of freight wagons or passenger coaches in international traffic. In order for vehicles to be used in different railway systems, harmonised technical provisions need to be applied to the interfaces between the vehicle and the infrastructure and between the vehicles themselves. These provisions were previously set out by the Technical Unity<sup>4</sup> and the RIC and RIV agreements. RIC and RIV were agreed, updated and applied by railway companies, whereas COTIF provisions are agreed between states. Technical Unity, RIV and the technical parts of RIC are no longer in use.

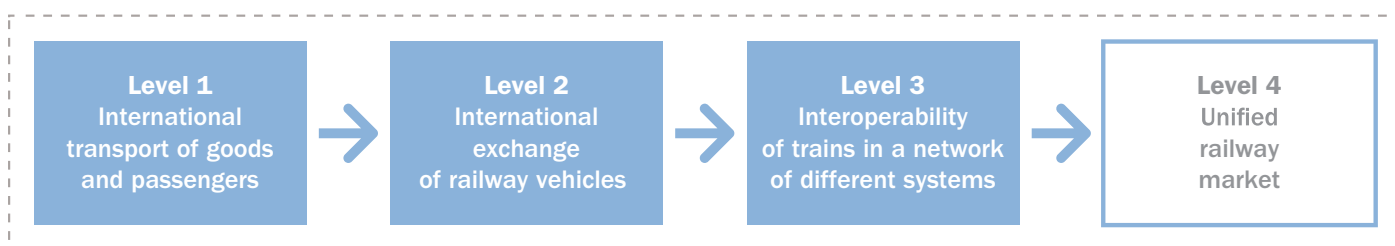
Today, superseding provisions have been set out in the UTPs and the approval processes are set out in ATMF.

In addition, ATMF makes reference to the EU provisions in its Article 3a, which sets out the conditions under which vehicles authorised in the EU can be used in non-EU OTIF Contracting States and vice versa. By transposing all vehicle-related TSIs into UTPs under COTIF, all vehicle rules (including those necessary for interoperability and safe design) are fully covered in level 2.

Railway undertakings that operate foreign vehicles in their trains should be in a position to have confidence that the vehicle is well maintained. For this purpose, the entity in charge of maintenance (ECM) has been defined, which must ensure that each vehicle is in a good state of maintenance. All these provisions are considered public law, describing obligations for any person or entity.

In order to establish sufficient legal certainty for vehicle keepers to have them used abroad, the CUV sets out provisions that regulate the contractual liability between the keeper and the railway undertakings using the vehicles. The CUV is considered to be private or contractual law, defining the relations between the contracting parties. The CUV provisions are also used for contracts between keepers and carriers within the EU. In order to implement the provisions of CUV, but also elements from public law, such as the ECM regulation, the railway sector has developed standard multilateral contracts in the form of the General Contract of Use for wagons (GCU), which set out the detailed contractual provisions between the signatories.

Level 3: interoperability; running complete trains across state borders



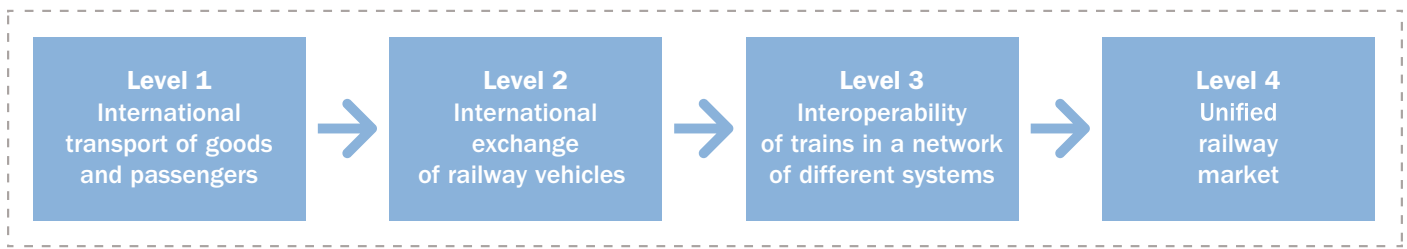
A third level of the network model is referred to as interoperability. Interoperability means that a train coming from one country will operate on the network of the neighbouring country. This means that a complete train will cross the state border to continue

operating on the infrastructure of the neighbouring state. Such types of operation require the infrastructure manager of the host state to be able to cooperate with more than one railway undertaking. It is therefore necessary that the mutual responsibilities be-

tween railway undertakings and infrastructure managers are clear and that they have the procedures and communication tools in place to take on these responsibilities.

<sup>4</sup> Technical Unity was an intergovernmental agreement that came into force on 1 April 1887. These rules were prepared at two international conferences on the Technical Unity of Railways in October 1882 and July 1886. The participating countries explored and found solutions to facilitate cross-border operations from the technical point of view. Technical Unity was applied from the beginning in Austro-Hungary, France, Germany, Italy and Switzerland and later, other countries also joined: Belgium, Bulgaria, Denmark, Greece, Luxembourg, Turkey and Yugoslavia. Article 10 of APTU regulates the abrogation of Technical Unity by the entry into force of the UTP.

## Level 4: market regulation – not in the scope of COTIF



In addition to levels 1,2 and 3, states may agree on market regulations, which, for example, set out access rules and rules for competition. This market harmonisation is referred to as level 4.

The EU, for example, adopted a single system vision, by harmonising the tasks and responsibilities of all railway actors active in the EU. The provisions applied in the EU in the framework of the Interoperability, Safety and Access Directives (in addition to the provisions of COTIF for contract law and the dangerous goods regulation) describe a unified railway market. These provisions conditionally allow new railway undertakings to be established, to obtain access to the national networks, to run national and international trains and to compete with other railway undertakings.

The EU provisions take far-reaching legal integration as a basis and as such are not suitable for use outside the EU. Even if a neighbouring state of the EU wished to adopt (part of) the EU railway regulations, it would still need a bilateral agreement with the EU for it to interact correctly with EU law.

COTIF is a convention between sovereign states and not an instrument for economic integration. For these reasons it is not feasible to consider developments in COTIF leading to the systematic integration of national railway systems or to the introduction of a unified railway market. Therefore, the further development of COTIF should focus on level 3 of the described model. It should however be ensured that any provision under COTIF does not conflict with EU law

as all EU Member States with a rail network are also members of OTIF.

### The future of COTIF: a network of connected systems?

COTIF does not comprehensively cover interoperability; however, it does provide elements relating to interoperability, such as technical provisions for locomotives and passenger rolling stock and, with the new Article 15a ATMF, some elementary provisions for train composition and operation. In addition, the CUI, which sets out the contractual relations between railway undertakings and infrastructure managers, is applied in an interoperable model.

As facilitating the interoperability of trains fits fully within the aims of the Organisation as set out in Article 2, Article 2 § 2 and Article 6 § 1 h) of COTIF, the Convention in principle allows the creation of a new Appendix to COTIF relating to interoperability and safety. There is therefore a basis for discussing the subject.

Interoperability is perhaps best known from EU rail policy, where it is combined with market opening. However, the concept of interoperability does not depend on competition or market opening, as interoperability is equally possible in a cooperation framework. In addition, the desire to make railways more efficient and business-oriented is not exclusive to Member States of the EU. It is clear that within their own borders, states can organise their railway system in a manner which is most efficient and beneficial in terms of their situation. However, in order to use railways to their full potential, international traffic should also be coordinated

and agreed upon with neighbouring states. Such coordination and agreement could be achieved under COTIF in order to avoid multiple and potentially incompatible agreements.

The basic assumption should be that states that apply the possible future provisions under COTIF will be pleased to welcome new railway undertakings on their network (otherwise they would not apply the new Appendix) and will therefore create transparent rules. In this respect, the new provisions under COTIF could be limited to imposing transparent publication by the regulator (the competent authority in the OTIF legislation) of comprehensive high level safety rules, where the new provisions under COTIF would indicate the items to be addressed.

The next logical step for the development of COTIF is therefore to facilitate the operation of complete trains, rather than just vehicles, across borders. For two reasons, this would best be done under a new Appendix to COTIF:

- firstly, the existing Appendices do not fully cover interoperability and the associated safety provisions in their scope;
- secondly, not all Member States of OTIF may be interested in interoperability, which implies having foreign railway undertakings operating trains on their territory. A new Appendix to COTIF would allow each Member State that already applies APTU and ATMF to choose whether or not to apply the new Appendix.

Possible future COTIF requirements



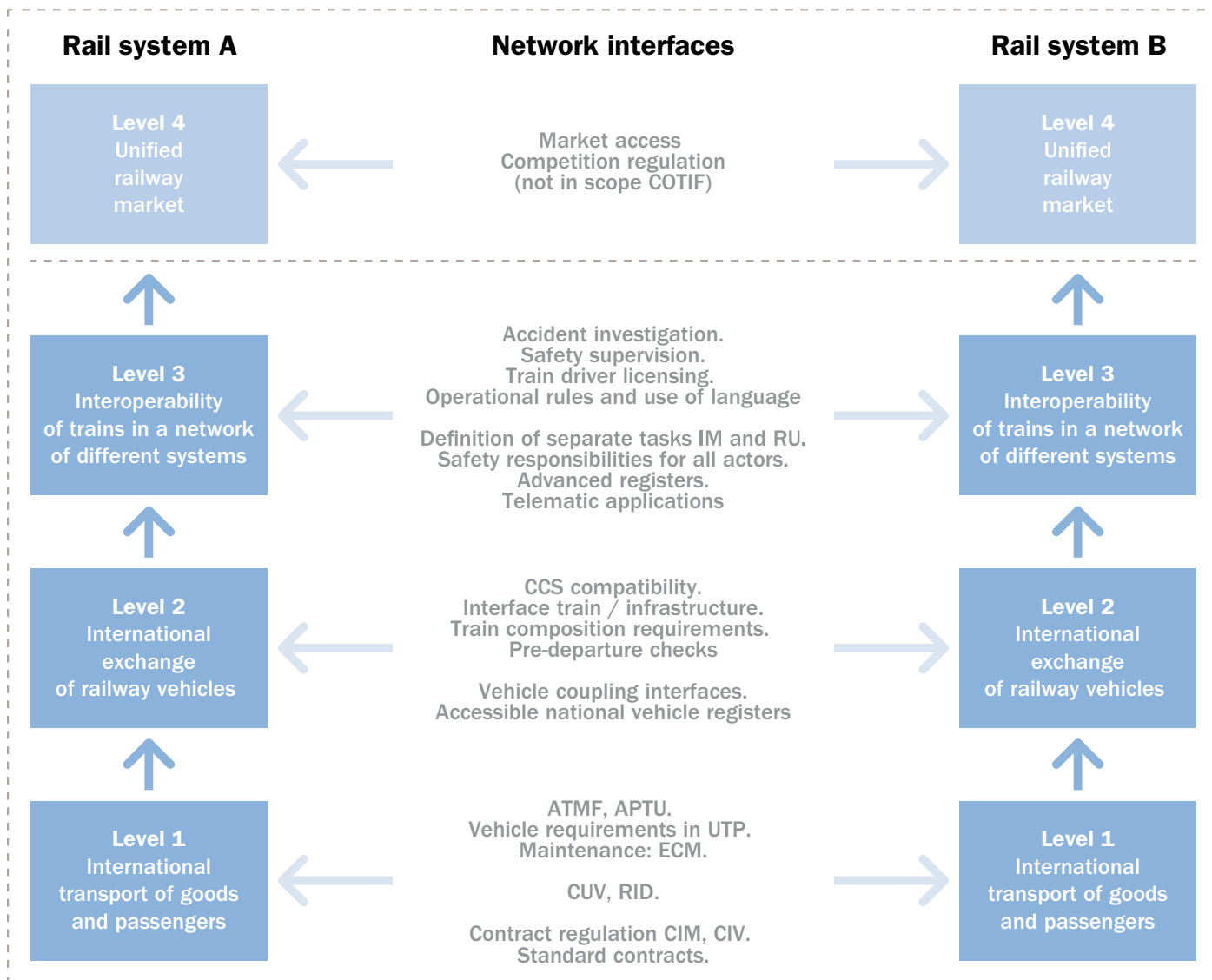
should for example cover the operational interfaces between railway undertakings and infrastructure managers as they are, in addition to technical compatibility, which is at the core of interoperability. Specifications could be developed at a conceptual level first, focussing on the principal safety responsibilities of the actors and

between the actors, by setting them out in a new Appendix to COTIF. As a second step, more detailed provisions could be set out in “secondary” legislation developed under the new Appendix, in a way similar to how UTPs are developed under APTU.

None of the existing organs of OTIF ex-

PLICITLY cover the scope of interoperability and safety, although these issues are probably most closely associated with the Committee of Technical Experts, so a discussion could therefore be initiated in this Committee.

Bas Leermakers



## RID/ADR/ADN JOINT MEETING (BERN, 14 TO 18 MARCH 2016)

Although this was the first Joint Meeting of the 2016/2017 biennium, most of the discussions were still on the 2017 edition of RID/ADR/ADN, which WP.15 and the RID Committee of Experts will still have to adopt finally in May 2016. 26 States, the European Union, the Committee of the Organization for Cooperation of Railways (OSJD) and 16 non-governmental organisations were represented at this meeting.

### Tanks

A working group on tanks was again set up to deal with issues relating to tanks. This group met in parallel to the plenary and was chaired by Mr Arne Bale (United Kingdom).

Carriage of tanks, battery vehicles (battery wagons) and MEGC following the expiry of deadlines for periodic and intermediate inspections

After expiry of the periodic test/inspection period (5 yearly or 2.5 yearly test/inspection), portable tanks and IBCs may be carried for a further 3 months if they were filled prior to the date of expiry of the test/inspection period. In March 2015, the International Union of Railways (UIC) submitted its first proposal to the RID/ADR/ADN Joint Meeting to extend this possibility to tank-wagons, tank-vehicles, demountable tanks, battery-wagons and battery-vehicles.

Owing to the shorter transport times in land transport compared with maritime transport, the working group on tanks did not initially think such a rule was necessary. Following this, UIC presented some specific examples that showed that tank-wagons or tank-containers filled before the deadline for the periodic test had expired might also exceed the deadline during the journey, thus leading to a situation that was not in conformity with the regulations. However, UIC conceded that for tank-wagons and tank-containers, it would suffice if they were allowed to exceed the deadline by a maximum of one month. But for sending the load back for recycling or disposal, a period of three months should be allowed.

The working group on tanks adopted this revised proposal.



*MEGC being unloaded from a lorry using a hook arm lift*

Carriage of MEGCs with hook lift systems

Norway addressed various questions to the Joint Meeting concerning the carriage of multiple element gas containers (MEGC) that are loaded onto a carrying vehicle using a so-called hook arm lift.

For the construction of battery-wagons/battery-vehicles and MEGCs, 6.8.3.1.5 requires that elements and their fastenings must be capable of absorbing under the maximum permissible load the forces defined in 6.8.2.1.2. There are no provisions saying that the MEGC itself and its fastenings must be capable of absorbing these forces, as is required for tank-containers and UN MEGCs.

The Joint Meeting decided to amend 6.8.3.1.5 to make clear that in addition to the individual elements of the MEGC, the frame of the MEGC must also be capable of withstanding the normal stresses that occur in rail and road transport.

Neither the definition of MEGC, nor the definition of UN MEGC says that MEGCs must meet the definition of container. However, in addition to the provisions



*MEGC with hooks loaded onto a trailer*

of RID/ADR, an MEGC that meets the definition of container within the meaning of the 1972 International Convention for Safe Containers (CSC), as amended, must also meet the applicable provisions of this Convention. MEGCs were therefore added to 7.1.3, which already contains such a provision for large containers, portable tanks and tank-containers.

Another proposal dealing with devices for fastening the MEGC to carrying vehicles was transmitted to the body competent for this issue, WP.15.

## Proposals to amend RID/ADR/ADN for a date of entry into force of 1 January 2017

### Use of IBCs as salvage packagings

A provision was included in the 2015 edition of RID/ADR/ADN to the effect that, in addition to packagings, large packagings and IBCs may also be used as salvage packagings and large salvage packagings. A proposal was then submitted to the UN Sub-Committee of Experts to allow IBCs in addition to large packagings in the UN Model Regulations. However, the UN Sub-Committee of Experts rejected this on the grounds that IBCs were not designed and tested to contain articles and that large packagings should be used in this case.

The European Federation of Waste Management and Environmental Services (FEAD) pointed out to the Joint Meeting that in Europe, IBCs are currently used as salvage packagings. These are metal IBCs of type 11A, which can hold drums with a capacity of up to 200 litres.

The Joint Meeting therefore decided to continue to allow IBCs to be used as salvage packagings in European land transport, but to restrict them to the type used at present (11A).

### Transitional provision for danger labels

The 2013 edition of RID/ADR/ADN allowed danger labels on small packages to have smaller dimensions, provided they remained clearly visible. In the context of harmonising RID/ADR/ADN with the 18<sup>th</sup> edition of the UN Recommendations on the Transport of Dangerous Goods, the possibility of reducing the size of the danger labels was made more stringent by specifying that the line inside the edge had to be 5 mm from the edge and this line still had to be 2 mm wide. As a result of these additional requirements, a transitional provision was included to enable the continued use of older danger labels up to 31 December 2016.

However, these constraints mean that the symbols on the danger label have to be made even smaller than would

be necessary if the danger label only had to be reduced in size proportionately. This unnecessarily impairs the visibility of the important elements of the danger label. Based on a proposal from Germany, the last session of the UN Sub-Committee of Experts adopted another amendment to require only that the proportions be maintained.

However, as this amendment can only be carried over into RID/ADR/ADN in 2019, the Joint Meeting decided to extend the transitional provision for danger labels in 1.6.1.30 until 31 December 2018.

### Carriage in bulk under BK or VC codes

Carriage in bulk is permitted under the conditions laid down in Chapter 7.3 of RID/ADR, which provides two alternatives. One alternative is to use intermodal bulk containers (BK codes) and the other is to use wagons/vehicles and containers (VC codes) in European land transport. An examination of Table A of RID/ADR reveals that there are many UN numbers which are assigned a VC code, but not a BK code. While BK containers have to comply with specific provisions, this is not the case for VC means of containment (wagons/vehicles and containers). Nevertheless, it is not clear whether a BK bulk container may also be used in all those cases where it is permitted to use a VC bulk container.

The Joint Meeting adopted a proposal from Spain to include a Note to 7.3.3.1 to make clear that if a VC1 code is given in column (17) of Table A, a BK1 bulk container may be used and if a VC2 code is given, a BK2 bulk container may be used, provided that all the provisions under 7.3.3 are complied with.

## Proposals to amend RID/ADR/ADN for a date of entry into force of 1 January 2019

### Dangerous goods safety adviser

The European Association of Dangerous Goods Safety Advisers (EASA), which was only recently granted consultative status, submitted a proposal to the Joint Meeting for com-

prehensive amendments to 1.8.3, which applies to safety advisers. Although this proposal led to some very controversial discussions, the Joint Meeting was able to agree various amendments.

For example, the obligation to appoint a dangerous goods safety adviser, which currently applies only to undertakings whose activities include the carriage, packing, loading, filling or unloading of dangerous goods, will in future be extended to dangerous goods consignors. In some RID, ADR and ADN contracting states, this obligation is already set out in national legislation. However, the representative of EASA was asked to draft a proposal for transitional provisions for a period of four years from the date of entry into force, i.e. until 2023. As the amendments required in connection with this also concern the dangerous goods safety adviser's training certificate, a separate transitional provision must also be provided for the validity of existing training certificates.

EASA's proposal to prescribe a dangerous goods safety adviser for tank-wagon operators as well was transferred to the RID Committee of Experts' standing working group, which is the competent body to deal with this. In this context though, more information would have to be provided as to why the obligation to appoint a dangerous goods safety adviser should apply to tank-wagon operators, but not to tank-container or portable tank operators.

Another proposal from EASA concerned the dangerous goods safety adviser's annual report, which he has to prepare for "the management of his undertaking or to a local public authority, as appropriate, on the undertaking's and the adviser's activities in the carriage of dangerous goods". EASA proposed that this annual report should be standardised, as the quality of these reports varied greatly from one contracting state to another.

As views on using a harmonised report model differed, the representative of EASA was asked to analyse the significance and purpose of these reports, take into account report models that already exist and consider the option of producing guidelines.

The Joint Meeting rejected EASA's proposal to have training within the meaning of Chapter 1.3 (Training of persons involved in the carriage of dangerous goods) provided only by people with a dangerous goods safety adviser certificate. The majority of governmental and non-governmental delegations were of the view that the training was linked to specific functions in the undertaking. For targeted training relating to the undertaking's internal working environment and bearing in mind provisions other than those on the transport of dangerous goods, qualified and experienced people within an undertaking were often more competent than dangerous goods safety advisers.

#### Any other business

Carriage of pressure receptacles approved by the Department of Transportation (DOT) of the United States of America

The Joint Meeting in March 2015 discussed the expiry of ADR multilat-

eral special agreement M 237, which allows the carriage of gas cylinders approved by the United States' Department of Transportation, but which do not meet the provisions for RID/ADR receptacles or those for UN pressure receptacles (see Bulletin 2/2015, page 18).

The European Industrial Gases Association (EIGA) submitted a document to the Joint Meeting responding to various questions that had been raised by the contracting states. Annually, a total of 10,000 gas cylinders were affected, which were used for the carriage of special gases from the USA to Europe. As there were around 35 million such cylinders for industrial gases, these formed a very small percentage of the total. These gases were used for example for manufacturing fibre-optics and semi-conductors, in photovoltaic research, sight corrections and medical research. As the industry's items of equipment were adapted to these cylinders, changing to UN pressure receptacles was not readily possible. EIGA's document also explained the restrictions Title 49 of the United States Code of Federal Regulations (49 CFR) set out with regard to the filling and carriage of certain foreign cylinders intended for export, as well as the emptying

and carriage of imported foreign cylinders.

EIGA also said that in the second quarter of 2016, the DOT would be handed a petition aimed at approving European gas cylinders for import, carriage and emptying in the United States and for filling for export. This petition process would take at least two years.

The United Kingdom announced that it would draft a new multilateral special agreement to replace the special agreement that would expire on 1 June 2016. The new agreement would be valid for a maximum of three years. While some delegations said they would sign such a new agreement, others asked that this special agreement be limited to those gases that were currently carried in DOT receptacles.

#### Next session

The next RID/ADR/ADN Joint Meeting will be held in Geneva from 19 to 23 September and will continue discussions on the amendments for 2019.

*Jochen Conrad*

# PUBLIC CONSULTATION BY THE EUROPEAN COMMISSION'S DG MOVE CONCERNING REGULATION (EC) No 1371/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 23 OCTOBER 2007 ON RAIL PASSENGERS' RIGHTS AND OBLIGATIONS (PRR)

On 9 February 2016, the European Commission's Directorate-General for Mobility and Transport launched a public consultation as the first step towards the possible revision of Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (PRR). This European Regulation has applied to rail passenger transport in the countries of the European Union since 4 December 2009.

In a letter of 1 March 2016, DG MOVE invited OTIF to take part in this public consultation via its website

## Introduction

The aim of this consultation was to enable the EU bodies to gather the data necessary to assess the impact of applying the various provisions of the PRR and different options submitted for consultation so that the provisions of these options can be amended. The consultation also represents one step on the roadmap to identify the preferred options for revising the PRR, the aim of which is to strengthen passengers' rights on the territory of the European Union.

The European Commission started the initial impact analysis procedure at the end of 2015.

An initial impact analysis is mandatory before each revision of an important European legislative act.

## Need for the regulation to be revised and problems to be resolved

An a posteriori assessment of Regulation No 1371/2007 has shown that only five EU Member States apply the Regulation in full, while the other 21 States only apply it in part, as they still make use of a number of exemptions.

The European Commission therefore established that passengers do

not benefit fully from the provisions of the Regulation and that they are not sufficiently protected, especially in national transport. This observation implies major legal uncertainty for passengers, as their rights vary completely from one state to another. For example, compensation in the event of delays varies, depending on whether or not the country has exempted its transport undertakings from applying certain provisions of the Regulation.

As a result, railway undertakings that operate in different Member States are not treated equitably.

In this context, the question also arises as to whether transport undertakings are confronted with provisions which are superfluous or incompatible with the international convention COTIF/CIV.

The Commission has also noted a serious risk of discrimination between rail transport undertakings on the one hand and the other modes of transport on the other. This mainly concerns the different treatment of rail transport and air transport in terms of the payment of compensation for delays, and in particular the advantage that air transport has in being able to invoke force majeure for extraordinary circumstances as a result of the decision of the Court of Justice of the European Union in

case C-509/11. Following that decision, rail transport undertakings may no longer invoke force majeure in order to exempt themselves from paying compensation for delays.

The main addressees of the consultation are passengers, the railway industry and the EU Member States' national authorities.

Annex I of Regulation (EC) No 1371/2007 carries over the CIV Uniform Rules (Appendix A to COTIF concerning the contract of international carriage of passengers by rail, Articles 6 to 64, with the exception of Article 57), which govern the contractual relationship between the carrier and the passenger. According to the European Commission's observations, it appears that the link between the provisions of CIV and those of the PRR is not always clear, which can lead to legal uncertainty for the various rail transport undertakings that have to apply them. Some of the definitions, for example the definition of carrier, are not consistent in the two texts in force.

The Commission envisages revising several parts of the Regulation, particularly with regard to the carriage of passengers with reduced mobility, in order to align them with Regulation (EU) No 1300/2014 of the Commission of 18 November 2014 on the technical specifications for interoper-

erability relating to accessibility of the Union's rail system for persons with disabilities and persons with reduced mobility

#### OTIF Secretariat's participation in the consultation

On 22 March 2016, the Secretariat of OTIF duly filled in and returned the consultation form to the Commission.

On the form, the Secretariat of OTIF pointed out that one of the negative aspects of the Regulation is that "as long as the CIV UR form an annex to the PRR, it is difficult to coordinate when it is necessary to revise the CIV UR".

In addition, the Secretariat supported the principle that all modes of transport must be on an equal foot-

ing with regard to the payment of compensation for delays.

With regard to the best way to eliminate inconsistencies between the PRR and the CIV UR, the Secretariat emphasised that the best solution was to separate the two sets of regulations; in other words, the CIV UR should no longer be annexed to the PRR. This is because: "Following the EU's accession to COTIF, the CIV UR have become an integral part of EU law. As a result, it should be possible to be able to refer to them without annexing them to the regulation. Such a reference could read as follows: "Relations resulting from contracts of carriage of passengers by rail when the places of departure and destination are situated in two different Member States of the European Union are governed by the Uniform

Rules concerning the Contract of International Carriage of Passengers by Rail (CIV UR), Appendix A to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999."

With regard to this reference, the objective of the PRR could be defined as follows:

"It extends the application of the provisions of CIV to carriage by rail within a single Member State; it provides a higher level of protection for passengers for the EU Member States; it lays down certain additional provisions to make the protection of passengers more effective".

Carlos del Olmo

## CALENDAR OF OTIF'S MEETINGS IN 2016

DATE	EVENT	LOCATION
7 - 8 June	Committee of Technical Experts 9 <sup>th</sup> session	Berne - Switzerland
9 - 10 June	Working group RID-ATMF	Berne - Switzerland
29 - 30 June	OTIF's Administrative Committee 125 <sup>th</sup> session	Berne - Switzerland
7 - 8 September	29 <sup>th</sup> session of the standing working group WG TECH	Lille - France
19 - 23 September	RID/ADR/ADN Joint Meeting	Geneva – Switzerland

## EVENTS WITH OTIF PARTICIPATION IN 2016

DATE	EVENT	ORG	LOCATION
31 May - 3 June	OSJD Temporary Working Group "Rules for the Transportation of Dangerous Goods"	OSJD	Warsaw - Poland
8 - 10 June	MCXLIV session of OSJD Ministerial Conference	OSJD	Baku - Azerbaijan
13 - 14 June	Group of Experts towards Unified Railway Law-13 <sup>th</sup> session- (SC.2/GEURL)	UNECE	Geneva – Switzerland
15 - 16 June	CIM Working Group	CIT	Berne - Switzerland
21 June	TEN-T Days	European Commission - DG MOVE	Rotterdam-Netherlands
22 - 24 June	Global Rail Freight Conference	UIC	Rotterdam-Netherlands
27 June - 6 July	49 <sup>th</sup> session of the ECOSOC Sub-Committee of Experts on the Transport of Dangerous Goods	United Nations - ECOSOC	Geneva – Switzerland
5 - 6 July	88 <sup>th</sup> General Assembly	UIC	Rome - Italy
8 July	76 <sup>th</sup> Rail Interoperability and Safety Committee (RISC)	European Commission - DG MOVE	Brussels - Belgium
8 July	Administrative Arrangements meeting	DG MOVE ERA	Brussels - Belgium
23 - 26 August	Experts Meeting on Annex 2 to SMGS "Rules for the Transportation of Dangerous Goods"	OSJD	Warsaw - Poland
6 September	Working Party for OPE TSI	ERA	Lille - France
6 - 8 September	Steering and Experts Group CIM/SMGS	CIT	Warsaw - Poland

Dear readers

If you would like to subscribe to OTIF's publication, the Bulletin of International Carriage by Rail, please send an e-mail to the following address: [media@otif.org](mailto:media@otif.org)

You can also read the Bulletin on OTIF's website ([www.otif.org](http://www.otif.org)) under the tab headed "Press".

Thank you for your continued interest.

**The Bulletin editor**

Gryphenhübeliweg 30 CH - 3006 Berne

Tél. : + 41 (0)31 359 10 10 | Fax : + 41 (0)31 359 10 11 | [info@otif.org](mailto:info@otif.org) | [www.otif.org](http://www.otif.org)