



### Bulletin of International Carriage by Rail

121<sup>th</sup> year : Nos.1/2 2013



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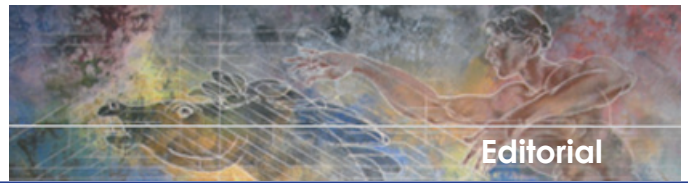
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## Editorial



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

This new edition of the Bulletin marks a new direction. From my perspective, this first edition since I was elected in September 2012 should make it possible to reflect the diversity of the Organisation's activities. The Bulletin will therefore cover our entire output, particularly the technical part, which is why I wanted a major part of this issue to focus on an article dealing with the substance of technical interoperability.

By means of the Uniform Technical Prescriptions (UTP), OTIF is creating a framework to enable its Member States to exchange vehicles on a harmonised basis. The European Union has fundamentally renewed these rules by introducing entities in charge of maintenance (ECM), which are already operational in the OTIF area. These new rules will entail a re-think of the architecture of the contract of use of vehicles (CUV). OTIF has the unique characteristic of being competent in contractual areas (CIM/CIV) and in areas touching on public law, such as the technical regulations (UTP/RID). It therefore occupies a special position in terms of settling complex issues surrounding liability in rail freight.

I would like the Bulletin to reflect this role as an interface between the regulations of OTIF by providing an interdisciplinary perspective of the rail sector, where I believe the obvious complexity is the result of very fragmented approaches.

**François Davenne**



## 1 Accession of Pakistan to COTIF

On 21 February 2013, the Government of Pakistan deposited an application for accession to COTIF.

The accession procedure should be concluded by September 2013. Pakistan will therefore become the 49th Member State of OTIF.

Pakistan's accession is linked to the initiative by the Economic Cooperation Organization (ECO) to set up a rail link for trains carrying containers between Islamabad and Istanbul via Tehran, which might one day be extended to western Europe and southern Asia.

Various auxiliary lines will link up with this corridor.



Shafqat Ali Khan (Deputy Permanent Representative – Permanent Mission of Pakistan to the United Nations in Geneva) and Dr Gustav Kafka (Deputy Secretary General of OTIF)

Pakistan's rail network covers almost 7,800 km. Most lines are 1676 mm gauge, except for a very few narrow gauge lines. There are also some projects looking in particular at establishing rail links towards China (682 km) and Afghanistan (900 km).



Applying the rules of COTIF will also enable freight traffic between Turkey, Iran and Pakistan to be developed, thanks largely to the CIM consignment note, which makes border crossing much easier.

In the long term, it would seem that Pakistan's accession to COTIF will mean not just that OTIF has another Member State, but that an entire region will be opened up to OTIF, and in future, this region will be able to benefit from the law of COTIF.

Eva Hammerschmiedová

## 2 Young Experts Programme

The Intergovernmental Organisation for International Carriage by Rail (OTIF) has set up a programme for "young experts" to encourage highly qualified young professionals to discover the unique and exciting work of an international civil servant.

The internships being offered will take place within OTIF's international Secretariat in Berne for a period of 9 or 18 months. The "young expert" will have the opportunity to discover the Organisation's various activities, from the technical area to the legal area, and to participate in various international meetings.



To encourage cultural diversity within the Secretariat, OTIF is encouraging applications from young people around the world.

OTIF is currently contacting various academic bodies and hopes to be able to meet its future "young experts"

To read the General Conditions for the programme, please [click here!](#) @

Samuel Flückiger







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## Secretary General's visit to Turkey

Turkey occupies a central place in traffic between Europe and Asia. For centuries, Turkey has been a hub for global trade. It was therefore logical that one of the first bilateral meetings between the Secretary General and a Member State should take place in Ankara.

The discussions with Mr Karaman, the Director General of TCDD (Railways of the Republic of Turkey) covered the ambitious development programme for the Turkish rail network in the context of the plan for 2013 put in place by the Turkish authorities.

The aim of this plan is to double the size of the rail network and modernise it comprehensively. In addition, on the day of the meeting, legislation on the liberalisation of the railways was discussed in parliament. This legislation will separate the infrastructure manager from the operator and will therefore open the way to the appearance of private operators, particularly in the freight sector.

In this framework, OTIF is ready to work together closely with TCDD to ensure in particular that the technical regulations (APTU and ATMF) are implemented and applied effectively. In fact it is vitally important for the development of trade that the new regulations on wagons and wagon maintenance be applied in an exemplary manner.

This was the purpose of the second part of the meeting, which provided the opportunity for some extremely productive exchanges between the high level representatives of TCDD and the members of the OTIF team.

The photographs that accompany this text cannot do justice to the warm welcome the OTIF delegation, comprising Mr Davenne (Secretary General) and Mr Leermakers (technical expert), received from their Turkish counterparts.



### Note from the Secretary General

"It was a great pleasure to visit Ankara, as the development of international rail links depends on having a close partnership with our Member States, particularly those which, like Turkey, although not yet members of the EU, have major political and economic links with Europe.

I should like to thank Mr Karaman and his entire team for the perfect organisation of our meeting and the quality of the exchanges we were able to have during the technical meetings.

I noted the extent to which TCDD is specifically interested in OTIF and its ability to deliver technical rules that are compatible with those of the European Union, not just as an operator, but also in terms of its activities in connection with the construction and maintenance of wagons. The links between OTIF and the European Railway Agency, which are going to be strengthened and formalised, also appear to be a source of future development.

I also noted that in recent years, we have perhaps not sufficiently explained the development of our regulations. The many productive exchanges we had with our Turkish colleagues encourage me to emphasise this aspect of our activities in future.

I would like to conclude by underlining the mutual enrichment that such meetings bring. OTIF's vocation is after all to build bridges between the EU regulations and those of its Member States for the greater benefit of international rail transport."





### Presentation by Mr Leermakers, Head of technical section

There are three points underpinning the basis of OTIF's technical regulations.

1. Firstly, rail vehicles are mutually approved by the States parties, put into service and maintained in accordance with the Uniform Rules and the procedures set out in APTU and ATMF.
2. These rules were drafted at government level and have the character of international law.
3. Strict separation between the entity that applies the rules and the entity that checks whether they have been correctly applied is necessary and is required by ATMF.

OTIF's objective is to promote, improve and facilitate international traffic by rail. The EU's aim is to achieve the interoperability of the systems and to open the common market to promote competition between railway undertakings. The objective here is the uninterrupted movement of trains. APTU and ATMF cannot be considered equal to the European regulations, but they are compatible with them.

OTIF's technical regulations are contained in Appendices F and G (APTU and ATMF). The development of uniform technical prescriptions (annexes to COTIF 1999) is carried out by:

- WG TECH, which meets three times a year and prepares the provisional UTP;
- the Committee of Technical Experts, which meets once a year to validate the provisional UTP by voting;
- the Secretariat of OTIF, which notifies and publishes the UTP;
- the States parties, which are responsible for the correct implementation of the UTP.



The principle of the mutual acceptance of wagons is founded on an international basis in which three points must be observed. Firstly, for a new wagon to be approved in the EU zone, it must meet the EU requirements, or the OTIF requirements if the latter are fully equivalent.

Secondly, an independent assessment body in which the other States can have confidence has to validate the technical approval of the vehicle. Lastly, the new wagons have to be approved by all the States parties. This is why it is very important that the rules are complied with correctly, as this means the States parties can have confidence in the work the assessment bodies carry out in other States.

In summary, **approval of the vehicle** is shared between the competent authority, the manufacturer, the underwriter and the assessment body.

With regard to **placing the vehicle into operation**, this is the responsibility of the competent authority, the railway company, the keeper, the entity in charge of maintenance and the manager of the railway infrastructure on which the vehicle travels.

Lastly, Mr Leermakers gave a brief overview of the structure of the regulations concerning the transport of dangerous goods. He reminded those present that the version of RID in force can be downloaded from OTIF's website ([www.otif.org](http://www.otif.org)).

**Bas Leermakers**



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### Withdrawal of the declarations of non-application made by Latvia, Romania and Portugal

In an instrument issued on 26 April 2013, Latvia completely withdrew the declaration it had made in accordance with Article 42 § 1 of COTIF, with immediate effect.

On 29 April 2013, the Secretariat of OTIF also received the withdrawal of Romania's declaration, with effect from 1 March 2013.

Lastly, on 13 May 2013, the Secretariat received the withdrawal of Portugal's declaration, with immediate effect.

The Member States of OTIF and the European Union were informed of these withdrawals in a circular.

Article 42 of COTIF says that any Member State may declare, at any time, that it will not apply in their entirety or in part certain Appendices to the Convention.

Like several other Member States of OTIF and of the European Union, Latvia, Romania and Portugal entered reservations and decided not to apply the CUI, APTU and ATMF Appendices.

These three States benefit from the fact that they are again applying all the Appendices to the Convention on their territories, as this means they have become States Parties to the Convention.

So far, 16 Member States of OTIF that are also members of the EU have withdrawn their declarations. These are Austria, Belgium, Bulgaria, Denmark, Finland, Germany, Greece, Hungary, Lithuania, Luxembourg, Netherlands, Poland, Slovenia and now Latvia, Romania and Portugal.

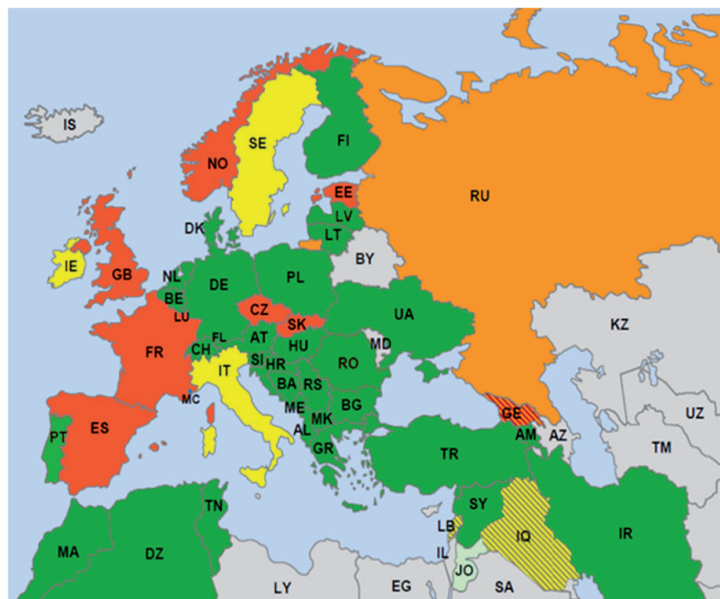
The **map below** and **the table summary on the next page** give a general overview of the scope of application of COTIF and the reservations.



#### Champ d'application géographique de la COTIF et ses appendices Geografischer Anwendungsbereich des COTIF und dessen Anhänge Geographical scope of COTIF and its appendices

Etat au 13 mai 2013  
Stand 13. Mai 2013  
Situation on 13 May 2013

- Tous les appendices de la COTIF (32)  
Alle Anhänge des COTIF (32)  
All COTIF appendices (32)
- Sans ATMF (1)  
Ohne ATMF (1)  
Without ATMF (1)
- Sans CUI/APTU/ATMF (7)  
Ohne CUI/APTU/ATMF (7)  
Without CUI/APTU/ATMF (7)
- Sans CUI/CUI/APTU/ATMF (1)  
Ohne CUI/CUI/APTU/ATMF (1)  
Without CUI/CUI/APTU/ATMF (1)
- Sans CIV/RID/CUI/CUI/APTU/ATMF (1)  
Ohne CIV/RID/CUI/CUI/APTU/ATMF (1)  
Without CIV/RID/CUI/CUI/APTU/ATMF (1)
- COTIF 1999 pas encore ratifiée (3)  
COTIF 1999 noch nicht ratifiziert (3)  
COTIF 1999 not yet ratified (3)
- Suspension de la qualité de membre (2)  
Rühen der Mitgliedschaft (2)  
Membership suspended (2)
- Membres associés (1)  
Assoziierte Mitglieder (1)  
Associate Members (1)







# Summary of the scope of application of COTIF and its Appendices

	CIV	CIM	RIID	CUV	CUI	APTU	ATMF	Not ratifed	Comments
AL	✓	✓	✓	✓	✓	✓	✓		
DZ	✓	✓	✓	✓	✓	✓	✓		
AM	✓	✓	✓	✓	✓	✓	✓		
AT	✓	✓	✓	✓	✓	✓	✓		Reservations against the CUI/APTU/ATMF lifted with effect from 1 July 2011
BE	✓	✓	✓	✓	✓	✓	✓		Reservations against the CUI/APTU/ATMF lifted with effect from 8 February 2012
BA	✓	✓	✓	✓	✓	✓	✓		Reservations against the CUI/APTU/ATMF lifted with effect from 17 December 2012
BG	✓	✓	✓	✓	✓	✓	✓		
HR	✓	✓	✓	✓	✓	✓	✓		
CY	✓	✓	✓	✓	✓	✓	✓		No railway infrastructure (no OTF membership)
CZ	✓	✓	✓	✓	✓	✓	✓		
DK	✓	✓	✓	✓	✓	✓	✓		Reservations against the CUI/APTU/ATMF lifted with effect from 7 July 2011
EE	✓	✓	✓	✓	✓	✓	✓		Application on specific lines only
FI	✓	✓	✓	✓	✓	✓	✓		Reservations against the CUI/APTU/ATMF lifted with effect from 1 July 2011
FR	✓	✓	✓	✓	✓	✓	✓		
GE	✓	✓	✓	✓	✓	✓	✓		
DE	✓	✓	✓	✓	✓	✓	✓		Reservation against the CUI lifted with effect from 1 January 2012 and against the APTU/ATMF with effect from 1 January 2013
GR	✓	✓	✓	✓	✓	✓	✓		Reservations against the CUI/APTU/ATMF lifted with effect from 13 Sept. 2011
HU	✓	✓	✓	✓	✓	✓	✓		Reservations against the CUI/APTU/ATMF lifted with effect from 16 February 2012
IR	✓	✓	✓	✓	✓	✓	✓		
IQ									OTF membership suspended
IE								✓	
IT								✓	
LV	✓	✓	✓	✓	✓	✓	✓		Reservations against the CUI/APTU/ATMF lifted with effect from 26 April 2013
LB									OTF membership suspended
FL	✓	✓	✓	✓	✓	✓	✓		
LT	✓	✓	✓	✓	✓	✓	✓		Reservations against the CUI/APTU/ATMF lifted with effect from 10 Nov. 2011
LU	✓	✓	✓	✓	✓	✓	✓		Reservations against the CUI/APTU/ATMF lifted with effect from 11 January 2012
MK	✓	✓	✓	✓	✓	✓	✓		
MT									No railway infrastructure (no OTF membership)
MC	✓	✓	✓	✓	✓	✓	✓		
ME	✓	✓	✓	✓	✓	✓	✓		
MA	✓	✓	✓	✓	✓	✓	✓		
ML	✓	✓	✓	✓	✓	✓	✓		Reservations against the CUI/APTU/ATMF lifted with effect from 1 January 2012
NO	✓	✓	✓	✓	✓	✓	✓		
PL	✓	✓	✓	✓	✓	✓	✓		Reservations against the CUI/APTU/ATMF lifted with effect from 1 January 2012
PT	✓	✓	✓	✓	✓	✓	✓		Reservations against the CUI/APTU/ATMF lifted with effect from 13 May 2013
RO	✓	✓	✓	✓	✓	✓	✓		Reservations against the CUI/APTU/ATMF lifted with effect from 1 March 2013
RU	✓	✓	✓	✓	✓	✓	✓		Application on specific lines only
RS	✓	✓	✓	✓	✓	✓	✓		
SK	✓	✓	✓	✓	✓	✓	✓		
SI	✓	✓	✓	✓	✓	✓	✓		Reservations against the CUI/APTU/ATMF lifted with effect from 19 October 2012
ES	✓	✓	✓	✓	✓	✓	✓		
SE	✓	✓	✓	✓	✓	✓	✓		
CH	✓	✓	✓	✓	✓	✓	✓		
SY	✓	✓	✓	✓	✓	✓	✓		
TN	✓	✓	✓	✓	✓	✓	✓		
TR	✓	✓	✓	✓	✓	✓	✓		
UA	✓	✓	✓	✓	✓	✓	✓		Application on specific lines only
GB	✓	✓	✓	✓	✓	✓	✓		
EU	✓	✓	✓	✓	✓	✓	✓		



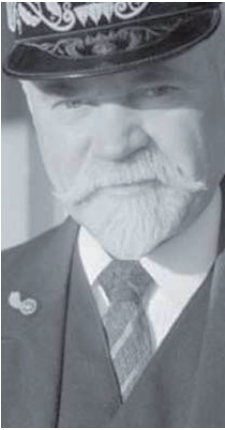
As at 13 May 2013

OTIF and EU Member State  
 OTIF Member State only



## 5. The Member States of OTIF: Switzerland and CFF\*

### History of CFF/SBB/FFS



The first railway line in Switzerland entered into service in 1847 and ran between Zurich and Baden (30 km).

In the 19th century, the entire Swiss railway network was in the hands of private undertakings. As a result of their political and economic interests, these undertakings built lines in parallel. This competition caused some of them to go into liquidation.

On 20 February 1898, the Swiss people voted in favour of setting up a national railway company.

On the morning of 1 January 1901, the first train belonging to the State railways travelled from Zurich to Geneva via Berne.

However, it was only on 1 January 1902 that the Swiss Federal Railways officially came into existence. Since being set up, CFF has carried passengers as well as freight.

In 1999, the former national company CFF acquired the status of a public limited company and all its shares are held by the Federal State.

### Swiss rail network

The CFF network covers more than 3138 km of railway lines, 6077 bridges and 308 tunnels.

CFF is split into four separate branches:

1. Passenger transport
2. Freight transport, particularly CFF cargo
3. Management of the railway infrastructure
4. Management of property assets

For an overview of CFF's network, please [click here!](#) @



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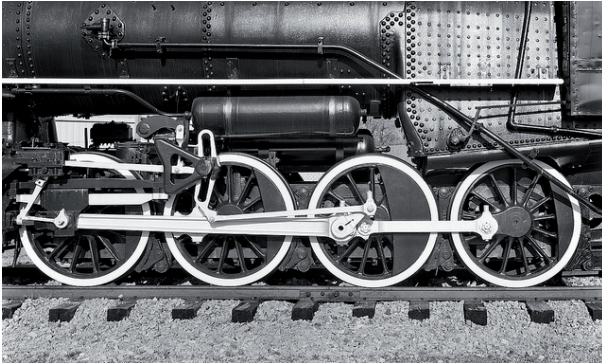




## Development of railway law

### 1. Railway Technology

#### Brief history of the technical harmonisation of railways



Economic growth and international transport are inextricably linked. More than any other mode of transport, rail transport depends on technical compatibility between the infrastructure and the vehicles running on it. Harmonisation is therefore indispensable to enable international rail traffic.

The first steps in history towards such harmonisation were established as an intergovernmental agreement that came into force on 1 April 1887 known as Technical Unity. 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.

When the UIC was founded in 1922 it took over the administration of Technical Unity. Technical Unity set out a standard gauge, the standard vehicle measurements and signs on the vehicles (conditions for approval).

The basic requirements applied both to locomotives and coaches and wagons. The first famous example of interoperability in Europe arising from that regulation was "The key of Berne" – a quadrangular key still used for passenger coaches these days. By the time of the 1938 version, regulations on the loading of wagons and equipment for the transport of customs goods were added to the Technical Unity.

After WWI, most of the private railways were nationalised and the standardisation and harmonisation processes were transferred from the intergovernmental level to the state railways, where UIC took over the main role.

International traffic traditionally consists of the exchange of wagons and coaches. At each border the wagons or coaches are uncoupled from the locomotive and coupled to another locomotive operated by another railway operator. The exchange of wagons and passenger coaches across borders required only the harmonisation of these wagons and coaches, not locomotives and operational rules.

The supporting (but now obsolete) rules such as the RIV and RIC contained a mix of technical interface requirements and operations-related requirements applicable to international traffic.

At the same time as international standards for the exchange of wagons and coaches were being established, the development of signalling systems and electric power supply were not coordinated internationally.

Little harmonisation was achieved in these areas, leaving a patchwork of different incompatible systems in the area now largely covered by the EU. The result: wagons and coaches can cross borders, but for locomotives and train sets this is often not possible. In contrast and for historical reasons, the countries applying OSJD rules have a much higher level of technical and operational compatibility.

The challenge now and for the future is to achieve the right balance between regulations imposed by the authorities on the one hand and harmonisation of technical solutions by the rail industry and operators on the other. The key is to create a regulated basis which ensures cross-border technical compatibility for all rail vehicles, including locomotives and train sets, whilst not imposing unnecessary technical solutions. In both OTIF and EU law, rule-making powers have been transferred from the integrated railway companies to the competent government authorities.

Likewise, the assessment of conformity with rules is no longer a matter for the railway company, but is the responsibility of a recognised and independent assessment entity. These principles support the creation of a level playing field in cases where more than one rail transport undertaking uses the same national network.

The right balance between regulation and harmonisation should allow the rail industry to innovate and find optimal solutions for each market segment.

#### Technical harmonisation and interoperability in the EU

In the early 1990s, the EU put in place Directive 91/440/EEC on the development of the community's railways, which was the first step towards one single EU railway area and towards increasing the efficiency of rail as a mode of transport. It required the management of railway infrastructure and the operation of rail transport to be separated, at least on the accounts level, until complete separation. It also established the basis for the right of access for railway undertakings to the railway infrastructure in other Member States.

The consecutive EU railway packages further elaborated these principles, resulting in the opening of the national (2006) and international (2007) rail freight transport markets and the consecutive opening of the international passenger market by 2010. These EU railway packages regulate access conditions, the definition of responsibilities across the actors and interoperability. They also establish market access conditions for railway products in line with the New Approach.



Interoperability as defined in Directive 2008/57/EC is *“the ability of a rail system to allow the safe and uninterrupted movement of trains which accomplish the required levels of performance for these lines. This ability depends on all the regulatory, technical and operational conditions which must be met in order to satisfy the essential requirements”*.

Fully implemented interoperability allows trains to cross borders without changing staff and without reconfiguring the train at borders. The requirements for interoperability require a significant step further in harmonisation than the traditional exchange of vehicles (wagons or coaches) at the border from one railway to the other.

In its White Paper of 2011, the European Commission announced its vision to establish a Single European Railway Area and clarified that this objective implies creating the (EU) internal railway market, where railway undertakings licensed in one of the EU Member States can provide services without unnecessary technical and administrative barriers.



#### From COTIF 1980 to COTIF 1999

In the late 1980s and early 1990s the railway world started to undergo profound changes in the majority of the OTIF Member States. The political, economic, legal and technical conditions governing international rail traffic were no longer the same as in May 1980 when the COTIF 1980 Convention was signed.

The OTIF world responded to it with four years of work on the revision of COTIF 1980, which led to the signing of the Vilnius Protocol in June 1999, which paved the way for the COTIF 1999 Convention. COTIF 1999 took into account a great need to adapt and align the regulations to the new situation.

In COTIF 1999, besides adapting and introducing other Appendices to the Convention, two new technical Appendices were introduced, Appendix F (APTU – Uniform Rules concerning the Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions) and Appendix G (ATMF – Uniform Rules concerning Technical Admission)

These two Appendices have already been revised following changes in the EU regulations, leading to the versions applicable as from 1 December 2010.

A small majority of OTIF Member States are also EU Member States. Compatibility between EU law and OTIF law is therefore indispensable; however, there are some differences.

The aim of OTIF is to promote, improve and facilitate international traffic by rail in accordance with the Convention, as defined in Article 2 thereof. COTIF 1999 applies to international rail traffic and is compatible with the EU open market principle, but it does not require competition in railways.

Appendices F and G to the Convention aim at facilitating the authorisation of vehicles in more than one Member State, so that the (individual) vehicle (not necessarily complete trains) can be operated on different networks.

Obviously, the scope of the rules required for the circulation of vehicles is not identical to that of trains.

Therefore the aim and scope of the OTIF technical regulations are not identical to those of the EU railway regulations. Some of the differences between the EU and OTIF objectives could be summarised as follows:

- The aim of OTIF regulations is to establish uniform law in order to facilitate international traffic by rail. In contrast, EU regulations also affect domestic traffic.
- Unlike EU law, OTIF regulations do not impose opening the freight and international passenger markets to competition.

Many non-EU OTIF Member States are opening up their railways in similar ways, even though the EU market principles are not embedded in the Convention. Nevertheless some principles associated with market opening set a framework for more efficiency, which would be of benefit to any rail system.

Also, in several non-EU countries, recent decades have seen a structural reform from integrated state-owned monopoly railways towards more open and market-oriented rail operations.

One of the underpinning principles of Appendices F and G to the Convention is the mutual acceptance of vehicles, when these vehicles comply with either EU or OTIF regulations. The vehicle is assessed only once before it receives a certificate of operation (in the EU the equivalent term is ‘placing in service’), which will then be valid in all OTIF Contracting States.

The condition for this is full equivalence between the EU regulations in the form of TSIs and the OTIF regulations in the form of UTPs. Exceptions only apply in case of notified and duly justified national technical requirements.

With the entry into force of the first set of UTPs (for Wagons and Noise) in December 2012, this full equivalence is established and applicable to wagons for the first time under COTIF 1999. This milestone provides a clear legal basis for the approval of freight wagons in international operations.



## Development and application of UTPs

In 2006 the EU adopted the first Technical Specification for Interoperability for freight wagons (WAG TSI).

Since 2008 the EU has been working on a revised WAG TSI which would provide more design flexibility.

The result of this work is a revised WAG TSI which enters into force on 1 January 2014. Whilst continuing to allow the construction and approval of 'RIV' type wagons, the revised WAG TSI will also allow the use of wagons of different designs. It will make the elementary requirements for technical interoperability mandatory, but will impose as few technical solutions as possible, paving the way for innovation.

For this reason, when the revised WAG TSI enters into force, it will no longer be mandatory to fit all freight wagons with 'heritage' systems and components, which are considered known to all railway transport undertakings using them.

However, it will still be allowed to use the heritage systems as one way of complying with the rules.

Since the summer of 2012 OTIF has been working hard on the revision of the UTP WAG in order to align it with the revised WAG TSI and in order to continue maintaining full equivalence between OTIF and EU regulations concerning freight wagons after 1 January 2014.

**Bas Leermakers/ Peter Sorger**





## 2. Transport law

### 1

#### Towards unified railway law between Europe and Asia

On 26 February 2013, a Joint Declaration to promote rail transport between Europe and Asia and associated activities for this purpose was signed at a ministerial meeting organised at the Palais des Nations in Geneva. This is an important step towards the unification of railway law between Europe and Asia.



This declaration, which has been signed by 37 countries, constitutes the expression of the political will of these States to implement the five point strategy described in the declaration in order to establish legal conditions for railway transport equivalent to those existing for competing modes, such as road, air, inland water and maritime transport.

In parallel and as a complementary direction, these States also invited interested railway enterprises, other stakeholders and international railway organisations and associations to pursue work on the development of general terms and conditions of transport for Euro-Asian rail transport (GTC EurAsia).

These general terms and conditions of transport will be developed without amending the existing law. Following the model of the work carried out in connection with the common CIM/SMGS consignment note developed by CIT and OSJD, these general terms and conditions will seek to include common application provisions likely to cover a single contract of carriage.

As of now, this productive cooperation between the various stakeholders, in which OTIF was heavily involved, will enable the development of Euro-Asian trade. Thus in 2012, the common CIM/SMGS consignment note was used in more than 85% of container traffic and more than 18% of wagonload traffic in CIM/SMGS traffic. RZD and UZ statistics show that use of the common CIM/SMGS consignment note has tripled, with a clear upward trend in 2012.

The UNECE will provide its good offices to help expedite this work and the mandate of the Group of Experts set up in 2011 to develop the joint declaration was extended for two years. Its work will focus on the following issues, which make up the roadmap for achieving unified railway law:

Joint Declaration of the Economic Commission for Europe  
[click here! @](#)

- a) unified set of transparent and predictable legal provisions and rules applicable to rail transport operations in all countries concerned that would facilitate border crossing procedures;
- b) analysis of existing international modal transport (road, rail, air, maritime and inland water transport) and related agreements in order to identify provisions and procedures important for the establishment of unified railway law;
- c) unification of international railway law with the objective of allowing rail carriage under a single legal regime from the Atlantic to the Pacific;
- d) analysis to identify an appropriate management system for unified railway law using the experience of international organisations in the field of railway transport (OSJD, OTIF and others) as well as of international organisations whose activities concern other modes of transport.

OTIF welcomes the signature of this declaration and the continuation of the work towards achieving unified railway law between Europe and Asia. As in previous years, OTIF will participate actively in this work and will contribute all its expertise with a view to strengthening cooperation in the field of rail transport between Europe and Asia and to securing a single legal regime for rail transport from the Atlantic to the Pacific.

Iris P. Gries

### 2

#### Updates to the CIV/CIM lists of railway lines and inland waterway services

##### CIV/CIM Lists of Lines:

None

##### CIV/CIM Lists of maritime and inland waterway services:

For a brief overview of the geography of the maritime and inland waterway services...

for CIV [Click here! @](#)

for CIM [Click here! @](#)

Samuel Flückiger



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Eva Hammerschmiedová



### 3. RID/ADR/ADN

#### RID/ADR/ADN Joint Meeting (Berne, 18 - 22 March 2013)



The penultimate RID/ADR/ADN Joint Meeting of the 2012/2013 biennium was held in Berne from 18 to 22 March 2013. The meeting was chaired by Mr Claude Pfauvadel (France). 22 States, the European Commission, the Committee of the Organization for Cooperation of Railways (OSJD) and 11 non-governmental organisations were represented at this meeting.

A separate working group was 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).

#### Harmonisation with the UN Recommendations on the Transport of Dangerous Goods

RID/ADR contains a chapter with the construction and testing requirements for portable tanks. These portable tanks are multimodal tank-containers that can be used anywhere in the world. Although these requirements should be congruent with the equivalent chapter in the UN Model Regulations, it was established that some amendments from the 12th revised edition of the UN Recommendations on the Transport of Dangerous Goods relating mainly to multiple-element gas containers (MEGCs) had not been taken over in the 2003 edition of RID/ADR. The working group on tanks put matters right.

#### Alternatives to the hydraulic pressure test in the periodic testing of liquefied gas tanks

The tanks of tank-wagons have to undergo periodic testing and inspection every eight years, tanks of road tank-vehicles every six years and tanks of tank-containers every five years. Among other things, the testing includes a hydraulic pressure test at the test pressure shown on the tank plate.

The European Liquefied Petroleum Gas Association proposed that instead of the hydraulic pressure test, other suitable non-destructive tests described in standards (e.g. magnetic particle examination or ultrasonic testing) should also be permitted. The justification for this was that with suitable non-destructive test procedures, surface breaking cracks 3 mm long and 1 mm deep and non surface breaking cracks 3 mm long and 2 mm deep can be detected. Defects such as these would not cause the tank to fail a hydraulic pressure test and would not be detected in a normal visual inspection.

After an initial discussion, in which the advantages of non-destructive test methods were acknowledged, the working group on tanks was of the view that further work on this subject should be carried out first. In so doing, one of the things to be checked was whether non-destructive testing should be allowed as a supplement to the current testing programme.

#### Explosion-pressure proof design of vacuum-operated tanks as an alternative to flame traps

For vacuum-operated tanks for flammable waste, devices to prevent the direct passage of flame are required for pumps that might create sparks. As it can be assumed that there will in principle be sparks when the pumps that are usually used malfunction, flame traps that prevent the passage of flame into the tank must be used. For various reasons (risk of contamination, reduced airflow, ...), these flame traps are not technically suitable for vacuum-operated waste tanks.



Alternative solutions, such as the explosion pressure proof construction allowed for other tanks, are not currently provided for vacuum-operated tanks.

Based on a proposal from Germany, an explosion pressure proof construction also covering the piping was also permitted for vacuum-operated waste tanks.

#### Carriage of refrigerated liquefied gases in portable tanks

Various Norwegian transport companies have declared their intention to carry liquefied natural gas in combined rail/road transport in multimodal portable tanks. In order that portable tanks can also be used directly in distribution transport, hydraulic pumps are to be installed and the tanks are to be fitted with surge plates. In road transport, surge plates are necessary in order that surges due to the degree of filling of the liquid contained in the tank do not impair the stability of the moving vehicle.

As a result, Norway raised several questions:

**A.** Is distribution of refrigerated liquefied gases allowed in portable tanks?





The working group on tanks said such transport was allowed, as the definition of “portable tanks” did not exclude distribution.

**B.** Are surge plates allowed in portable tanks for the carriage of refrigerated liquefied gases and if so, is a new approval needed when outfitting existing tanks?

The working group on tanks also confirmed that this was the case. According to the construction requirements for portable tanks, surge plates are allowed and are used to reduce the dynamic loads on the tank ends and to minimise the movement of liquids when braking. As surge plates generally have an impact on the design of the tank, a new approval is necessary.

### Standards

#### Status of standards referenced in standards

In the past, standards have been referred to more and more in RID/ADR so that detailed technical requirements do not need to be included in the regulations. Application of the standards referred to is mandatory.

In the United Kingdom, the question was raised as to whether standards referenced in a standard (so-called normative references) have to be followed or whether alternative standards or specifications can be used instead.

The Joint Meeting confirmed the United Kingdom’s point of view that the standards referenced are part of the regulations and that, with the exception of provisions that conflict with RID/ADR, they must be applied with the same rigour. Standards were developed in order to create a safe piece of equipment or to give a safe method of work. As standards are based on research and operational experience, it would be potentially unsafe to vary requirements.

#### Proposals to amend RID/ADR/ADN

##### Scope of the provisions for substances presenting a risk of asphyxiation when used as cooling agents or for conditioning purposes

Substances added to a consignment for the purpose of refrigeration or conditioning may become concentrated in the means of transport and present a risk of asphyxiation to people opening the vehicle. For this reason, special provisions from the UN Model Regulations were taken over in the 2013 edition of RID/ADR/ADN.

As the substances used for refrigeration (dry ice, nitrogen or argon) present a risk of asphyxiation per se, this means that irrespective of the quantity of these substances that is present, a warning label has to be affixed to the vehicle in every case.



In the case of courier, express and postal services that only carry a few small packages over short distances in an urban environment, there is no risk of asphyxiation and affixing the warning label must therefore be considered as disproportionate.

At its meeting in November 2012, the UNECE Working Party WP.15, which is responsible for ADR, confirmed that these special provisions need only be applied when there was a risk of asphyxiation in the transport unit and that it was for the parties concerned (in particular the consignor) to assess this risk, taking into consideration the hazards presented by the substances used for refrigeration or conditioning, and also the quantities concerned and types of containment used (in bulk or in packages). The UN Sub-Committee of Experts on the Transport of Dangerous Goods also took note of this and several experts supported the approach.

The Joint Meeting decided to limit the scope of the special provisions to cases where there was a real risk of asphyxiation.

The representative of the United Kingdom said he would initiate a multilateral special agreement to enable this simplified approach to be used as soon as possible.

#### Marking of bundles of cylinders

Bundles of cylinders, which can have a capacity of up to 3000 litres, consist of several gas cylinders assembled together and bound in a manifold. They are carried as an inseparable unit. At the request of the European Industrial Gases Association (EIGA), the provisions on marking bundles of cylinders were made clearer in the 2013 edition of RID/ADR. Previously, the regulations had only stated that the provisions for the marking of bundles of cylinders only applied to the individual cylinders and not to the assembly structure.





RID/ADR/ADN

However, an industry examination had recently revealed that not all bundles of cylinders would comply with these new requirements. For this reason, EIGA requested that a transitional provision be introduced subsequently into the 2015 edition of RID/ADR and that to cover the period until the publication of the 2015 edition, a multilateral agreement be concluded.

The Joint Meeting adopted this transitional provision with various amendments. Belgium said it would initiate an appropriate multilateral special agreement.

#### **Next session**

The next Joint Meeting from 17 to 27 September 2013 will continue the discussions on the amendments for the 2015 edition of RID/ADR/ADN. The discussions will focus on harmonisation with the 18th revised edition of the UN Recommendations on the Transport of Dangerous Goods.

**J. Conrad /K. Guricová**



#### 4. OTIF’s new tasks according to the Luxembourg Protocol

At OTIF’s 7th General Assembly in November 2005, the Member States decided that the Organisation should take on the task of Secretariat of the Supervisory Authority in accordance with the then draft Protocol to the Cape Town Convention on International Interests in Mobile Equipment (Convention) on Matters Specific to Railway Rolling Stock (subsequently called the “Luxembourg Protocol” – LP ).

At the moment, the LP adopted at the Diplomatic Conference of Luxembourg on 23 February 2007 is not yet in force. More details on the LP can be obtained from an article published in the Bulletin at the time. At the time of the 7th General Assembly, Article 4 § 1 of COTIF 1999, which deals with the taking on of new attributions by OTIF, and Article 14 § 2 h) of COTIF 1999, which deals with the relevant competence of the General Assembly, were not yet in force, but can be considered as the legal basis retroactively. The General Assembly’s decision was subject to three conditions:

*a) The Secretariat of the Supervisory Authority shall enjoy the usual international immunities from jurisdictional and administrative procedures and exemption from taxes and such other privileges as may be provided by agreement with the host State.*

This condition is already met, because according to Article XII(6) LP, OTIF (as an organisation) is the Secretariat of the Supervisory Authority. OTIF’s privileges are already set out in the Host State Agreement and these will presumably continue to apply to OTIF without modification when the new task is assumed. The question of the Supervisory Authority itself is a different matter (see below).

*b) The fees of the International Registry shall cover the costs of the Secretariat associated with the performance of its function.*

This condition must be seen in the light of Article XIV(2) LP, which limits these costs to the Secretariat’s “reasonable costs”. According to the initial draft texts of the Supervisory Authority’s Statute and the Rules of Procedure for its meetings, only English will be used to start with.

*c) the conditions for the Secretariat to fulfil its activity will be set out in an agreement between the Administrative Committee of OTIF and the Supervisory Authority of the Rail Registry.*

This condition must be considered further in the light of COTIF and the LP:

1. The tasks of the Administrative Committee laid down in Article 15 of COTIF do not provide for the authority of this organ of OTIF to conclude agreements with other international organisations.

All documents concerning the LP are available by [clicking here@ !](#)

2. The conditions for the Secretariat of the Supervisory Authority in accordance with the LP to fulfil its activity will be set out in the Statute of the Supervisory Authority and the Rules of Procedure for its meetings.

3. To adopt these documents, OTIF must give its approval to take on the task of Secretariat of the Supervisory Authority under the conditions set out in the documents.

4. OTIF’s agreement can be given by the Secretary General, who, in accordance with Article 12 § 3 b) of COTIF is authorised to represent the Organisation externally, although in terms of the above-mentioned decision of the 7th General Assembly, he must obtain the Administrative Committee’s approval beforehand.



#### Next steps

a) Conclusion of the contract with the Registrar

As soon as the PrepCom team’s negotiations with the Registrar have produced a contract with the Registrar that is ready for signature, this will be submitted to the PrepCom for approval. The PrepCom team consists of its chairman, representatives of the Secretariats of UNIDROIT, OTIF and the Rail Working Group (RWG).

b) Establishing a working group to set up the Supervisory Authority

c) Strategy for implementing the LP

A depositary procedure must be followed before the LP can enter into force. The instrument of ratification, adoption or approval must be deposited by the fourth State wishing to become a contracting party to the LP

This means that at the same time as the Registry is set up in accordance with the requirements of the contract with the Registrar and the preparatory work to establish the Supervisory Authority, efforts must be made to ensure that the minimum number of States is achieved in good time. The formally required minimum number of States must be reached in any case, but also the number of States needed to make the Registry economically viable, with sufficient potential to make use of the Registry (volume of registrations and searches with the corresponding income from fees).





The current draft of the contract with the Registrar makes provision for instigating a “ratification strategy” as soon as it is signed. Part of the strategy will be to support the production of documents, e.g. model instruments of ratification or accession, together with any explanations on the LP. This is to help States in considering their intentions with regard to such issues.

In addition, export credit agencies and other such institutions should be contacted in order to promote the creation of economic incentives for transactions relating to the LP. Continuous links to the IR Host State (Luxembourg) must be maintained.

Events such as conferences and seminars must be found where the LP can be publicised. The entire implementation process will be monitored by a separate Ratifications Task Force consisting of the chairman of the Supervisory Authority and representatives of UNIDROIT, OTIF, the RWG and the IR and other representatives nominated by the Supervisory Authority. The Task Force will also decide on a target date for the entry into force of the LP.





## OTIF news

1

### Mr. Gustav Kafka has retired

From 2007 to the end of April 2013, Dr Gustav Kafka was the deputy Secretary General and head of the legal section at OTIF. He has now retired at the age of 65 with a successful career to look back on.

Before his appointment as the deputy Secretary General of OTIF in February 2007, he worked in the Austrian Ministry of Transport for 21 years, where his last post was head of the transport of dangerous goods section. Even then, he already had very close connections with OTIF, and before that the Central Office for International Carriage by Rail, as it was known, where he participated actively in numerous meetings of the RID Committee of Experts and the RID/ADR/ADN Joint Meeting and headed the work of the Revision Committee on drafting a new Appendix C to COTIF.

His work as head of the working group on the legal restructuring of RID deserves special praise. In the 1990s, this working group was given the task of extricating the carriage of dangerous goods from CIM and creating a separate COTIF Appendix for such transport. First of all, the working group had to establish which participants, other than the consignor, the carrier and the consignee, have obligations in connection with the carriage of dangerous goods.

These participants then had to be assigned specific obligations. As the Member States had completely different views, this was not an easy task, and in the end, it was only possible to finish it by including an additional provision allowing the Member States to assign obligations differently at national level. It is to his credit that despite this very controversial debate, he succeeded in arriving at a text which is recognised by all sides and which is now accepted even by those Member States that originally wanted to do things differently at national level.

As the deputy Secretary General and head of the legal section at OTIF, one of Mr Kafka's exceptional contributions was the drafting of legal solutions enabling Appendix E to COTIF (CUI) to be brought into line with European Union requirements.



He also supported the technical section in the work on adapting Appendices F (APTU) and G (ATMF). To achieve this aim, he was active at all levels: firstly in working groups, then in the Revision Committee and lastly at the General Assembly.

The adoption of the revised Appendices E, F and G in 2009 and their entry into force in December 2010 can be considered as a milestone on the road towards the rapprochement between OTIF and the European Union and which ended in the EU's accession to COTIF in 2011. In the OTIF Secretariat, it was Mr Kafka who made the definitive contribution to the compromise that was ultimately found, and which was only possible because of the mediating role played by Switzerland.

Throughout the entire period he worked at OTIF, from the first day, which coincided with the Diplomatic Conference to adopt the Luxembourg Protocol, to his last day in the office, Mr Kafka dealt with a matter that is important to OTIF and to the rail sector as a branch of industry, namely international security interests. This instrument will make it easier for the private sector to finance rolling stock. It is not possible here to list all the subjects Mr Kafka was involved with. In order to look forwards as well as backwards, it is worth noting here that despite his approaching retirement, Mr Kafka devoted his energies to preparing the next revision of COTIF. Among the subjects for the next revision, particular mention should be made of the issue of the "electronic consignment note". Everybody involved in this work after Mr Kafka will benefit from the preliminary work he carried out.



The list of adjectives that could be used to describe Mr Kafka is long: friendly, fair, motivating, professionally competent, adaptable, efficient, respectful, objective, kind, educated, eloquent, humorous, charming ...

To sum up, it can be said that as a colleague and as a man, he was respected and appreciated throughout his career, both for his legal expertise and for his humanity.

**Colleagues**





2

**Mr. François Davenne,  
new Secretary General of OTIF**

**A few key dates:**

**1964:** Born in Avignon, France  
**1985 – 1988:** Ecole Nationale Supérieure des Télécommunications - Evry  
**1990 – 1996:** Project Manager for mobile satellite communications at France Télécom (road, sea and air transport)  
**1997 – 1999:** École nationale d'administration (ENA)  
**1999 – 2002:** Head of the Financial Studies Bureau at the French Ministry of Housing  
**2003 – 2004:** Head of Housing, Urban Planning and Development department at the Departmental Directorate of the Island of Réunion  
**2005 – 2008:** Head of Housing and housing funding for the City of Paris  
**2008 – 2011:** Deputy Sub-Director of Railway Safety and Regulation at the French Ministry of Transport  
September 2011 - end of 2012: Rapporteur (Auditor) at the French Court of Auditors.

Mr Davenne was elected to the post of Secretary General of OTIF in September 2012. With his experience as the representative of France in OTIF's Administrative Committee from 2009 to 2011, head of the French delegation at OTIF's General Assembly and a varied career in positions of great responsibility, Mr Davenne is able to bring to OTIF in-depth technical, financial and legal expertise.

Mr Davenne has broad international experience gained in different sectors, enabling him to develop a sense of dialogue and partnership. In the field of telecommunications, he has led projects involving international partnerships in Europe and North America. At the French Department of Transport, he was in charge of renegotiating the first railway package.

As the representative of France in the Safety and Interoperability Committee (RISC), he contributed to the production of technical standards. Finally, on the Administrative Board of the European Railway Agency, Mr Davenne worked on budgetary issues within a multicultural environment and proposed a revival of the technical doctrine, which was supported by a large number of delegations.



3

**Mr. Carlos del Olmo Morand,  
new head of the legal service**



Mr Carlos del Olmo Morand (Spain) succeeds Mr Kafka in the post of head of the legal section.

Mr del Olmo Morand has been a member of the Administrative Committee on a number of occasions. He has also worked in the Revision Committee and the Committee of Technical Experts. He was also Spain's arbitrator for OTIF.

More recently, he chaired the 11th General Assembly held on 19 and 20 September 2012 in Geneva.

He has occupied several responsible posts as the legal advisor to ADIF, the head of international relations and development of standards at RENFE, and advisor to the director general of RENFE.

He has also been a lawyer at the Madrid bar association of lawyers.