



OTIF

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FOR INTERNATIONAL CARRIAGE BY RAIL

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SUMMARY

News

The Marmaray project: a dream come true 3

Withdrawal of declarations to article 42 § 1 of
COTIF 5

Development of railway law

ECM for wagons 7

43rd Session of the UN Sub-Committee of Experts
on the Transport of Dangerous Goods 10

Uniform law for the carriage of goods by rail in
Eurasia 13

OTIF – OSJD Common Position 16

The CIM/CIV/CUV Uniform Rules 18

Updates to the list of lines 20

Jurisprudence: Ruling of 9 October 2013 20



Editorial



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

This Bulletin, the last of the year, gives us the opportunity to review activities in 2013.

Firstly, as OTIF reactivated its partnership with OSJD, it was necessary to turn the spotlight on our relations with this organisation, which is essential for the development of international rail transport.

In addition, the entity in charge of maintenance regulation had to be explained and clarified. The article on page 7 looks at this issue. A number of Member States and stakeholders have asked us for a summary of this important subject, which is both complex and crucial for managing the maintenance of vehicles.

I should also like the Bulletin to be a tool for reflection which gives OTIF the opportunity to talk about work in progress and give its views on the place the Organisation has in developing international transport law. The question of unified law for the carriage of goods in Eurasia and the precise legal nature of the “contractual” Appendices to COTIF are therefore tackled from a new angle in this issue.

2014 will thus see our Organisation’s strategy implemented. I should therefore like to invite you to look at [the new work programme for 2014 and 2015](#), which the Administrative Committee approved in November. It presents the challenges that lie ahead in the next two years in a form which I hope you will find provides an overall perspective in an attractive layout.

François Davenne



The Marmaray project: a dream come true



Illustration video of the projet
(To play click on the image)

The **Marmaray** Project was officially inaugurated on **29 October 2013 in Istanbul** with a celebration in Uskudar Station followed by the inaugural train.

The Marmaray project – **a dream from 153 years ago** – was constructed by the General Directorate of Infrastructure Investments (AYGM) of Turkey and transferred to **Turkish State Railways (TCDD)** for operation, Marmaray will provide services for the residents of Istanbul. It is a project of high calibre with an undersea tube tunnel at a depth of 60 meters; the world's deepest immersed tunnel built with the most earthquake resistant technology, taking into account the most recent safety conditions.

The inauguration ceremony was honoured by the presence of His Excellency Abdullah Gül, President of the Republic of Turkey, Mr Recep Tayyip Erdoğan, Prime Minister of the Republic of Turkey, Mr Shinzo Abe, Prime Minister of Japan, Mr Victor Ponta, Prime Minister of Romania, Mr Binali Yildirim, Minister of Transport, Maritime Affairs and Communications of the Republic of Turkey and Mr Süleyman Karaman, Director General of TCDD.

Moreover, during its construction, the Marmaray project represented a great internship centre for worldwide engineering and scientific institutions.

In addition, representatives from different foreign governments, foreign railways and organisations and companies involved in the Marmaray Project were also present.

This project aims to transport people from one continent to the other in only 4 minutes with a capacity of **75,000 passengers per hour in each direction**, with one train every two minutes. This means an upgrade in the rail transport share of urban transport in Istanbul from 8% to 28%.

The inauguration of Marmaray represents **a great addition to the development of rail transport as a global transport mode**. The Marmaray project offers an ideal railway link connecting the European and the Asian sides of Istanbul and creating the first physical rail link between the two continents.

Ayoub Elkaroubi

After consultation with Mr. Şirinoğlu
(TCDD Foreign Relations)

The Bosphorus rail link connects East Asia to Western Europe, **from Beijing to London**. This project also highlights and emphasises the importance of Turkey's position at the crossroads between Europe, Asia, the Middle-East, and the beginning of the modern Silk Road or Silk Railway.



Some figures on the Marmaray project:

- **Total length of the line: 76.3 km**
- **Section on the ground: 63 km**
- **Number of stations on the ground: 37**
- **Length of immersed tunnels: 1.4 km**
- **Length of cut & cover tunnels: 2.4 km**
- **Number of passengers to be transported in one direction: 75,000/hour**

To view the press release on the participation of Mr Carlos del Olmo, head of legal section of OTIF, in the 11th Turkish Transport Forum [click here!](#) @





Withdrawal of declarations to article 42 § 1 of COTIF

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

So far, 17 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, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovenia and Estonia.

The reason for these withdrawals is the agreement concluded between the European Union and OTIF concerning the EU's accession on 23 June 2011 to the Convention concerning International Carriage by Rail of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 (COTIF 1999).

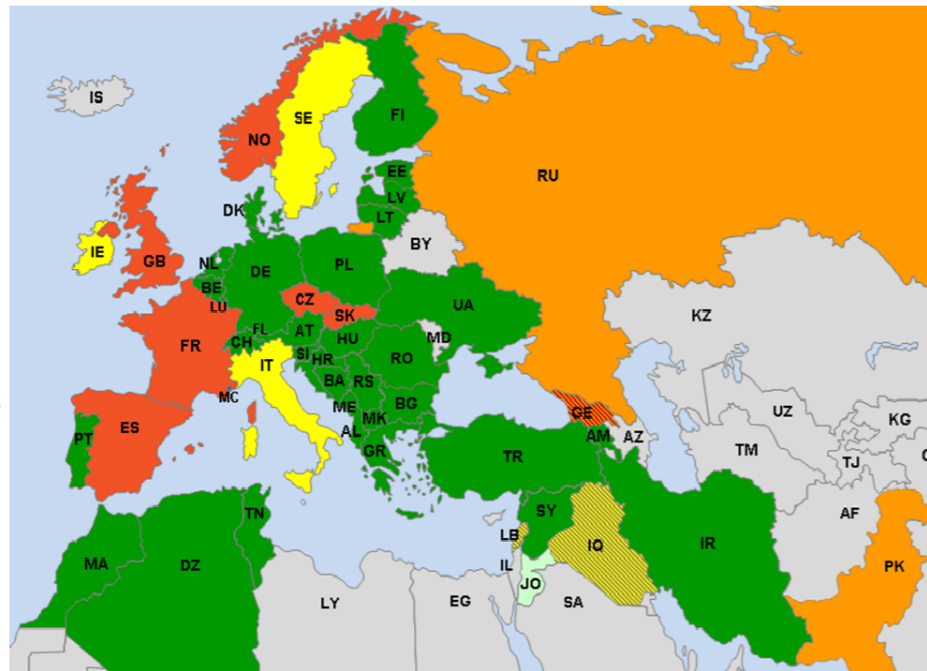
The map below and the table summary on the next page give a general overview of the scope of application of COTIF and the reservations.



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

État au 1^{er} septembre 2013
Stand 1. September 2013
Situation on 1st September 2013

- Tous les appendices de la COTIF (33)
Alle Anhänge des COTIF (33)
All COTIF appendices (33)
- Sans ATMF (1)
Ohne ATMF (1)
Without ATMF (1)
- Sans CUI/APTU/ATMF (6)
Ohne CUI/APTU/ATMF (6)
Without CUI/APTU/ATMF (6)
- Sans CUV/CUI/APTU/ATMF (1)
Ohne CUV/CUI/APTU/ATMF (1)
Without CUV/CUI/APTU/ATMF (1)
- Sans CIM/RID/UV/CUI/APTU/ATMF (2)
Ohne CIM/RID/UV/CUI/APTU/ATMF (2)
Without CIM/RID/UV/CUI/APTU/ATMF (2)
- 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)
Ruhe 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	RID	CUV	CUI	APTU	ATMF	Not yet ratified	Comments
AL	✓	✓	✓	✓	✓	✓	✓		
DZ	✓	✓	✓	✓	✓	✓	✓		
AM	✓	✓	✓	✓	✓	✓	✓		Reservations against the CUI/APTU/ATMF filed with effect from 1 July 2011
AT	✓	✓	✓	✓	✓	✓	✓	✓	Reservations against the CUI/APTU/ATMF filed with effect from 8 February 2012
BE	✓	✓	✓	✓	✓	✓	✓	✓	Reservations against the CUI/APTU/ATMF filed with effect from 17 December 2012
BG	✓	✓	✓	✓	✓	✓	✓	✓	Reservations against the CUI/APTU/ATMF filed with effect from 7 July 2011
HR	✓	✓	✓	✓	✓	✓	✓	✓	Reservations against the CUI/APTU/ATMF filed with effect from 9 August 2013
CZ	✓	✓	✓	✓	✓	✓	✓	✓	Reservations against the CUI/APTU/ATMF filed with effect from 1 July 2011
DK	✓	✓	✓	✓	✓	✓	✓	✓	Reservations against the CUI/APTU/ATMF filed with effect from 1 January 2012 and against the APTU/ATMF with effect from 1 January 2013
EE	✓	✓	✓	✓	✓	✓	✓	✓	Reservations against the CUI/APTU/ATMF filed with effect from 13 Sept. 2011
FI	✓	✓	✓	✓	✓	✓	✓	✓	Reservations against the CUI/APTU/ATMF filed with effect from 16 February 2012
FR	✓	✓	✓	✓	✓	✓	✓	✓	OTIF membership suspended
GE	✓	✓	✓	✓	✓	✓	✓	✓	OTIF membership suspended
DE	✓	✓	✓	✓	✓	✓	✓	✓	Reservations against the CUI/APTU/ATMF filed with effect from 28 April 2013
GR	✓	✓	✓	✓	✓	✓	✓	✓	OTIF membership suspended
HU	✓	✓	✓	✓	✓	✓	✓	✓	Reservations against the CUI/APTU/ATMF filed with effect from 10 Nov. 2011
IR	✓	✓	✓	✓	✓	✓	✓	✓	Reservations against the CUI/APTU/ATMF filed with effect from 11 January 2012
IQ	✓	✓	✓	✓	✓	✓	✓	✓	
IE	✓	✓	✓	✓	✓	✓	✓	✓	Reservations against the CUI/APTU/ATMF filed with effect from 1 January 2012
IT	✓	✓	✓	✓	✓	✓	✓	✓	Reservations against the CUI/APTU/ATMF filed with effect from 1 January 2012
LV	✓	✓	✓	✓	✓	✓	✓	✓	Reservations against the CUI/APTU/ATMF filed with effect from 13 May 2013
LB	✓	✓	✓	✓	✓	✓	✓	✓	Reservations against the CUI/APTU/ATMF filed with effect from 1 March 2013
LE	✓	✓	✓	✓	✓	✓	✓	✓	Application on specific lines only
LI	✓	✓	✓	✓	✓	✓	✓	✓	Application on specific lines only
LU	✓	✓	✓	✓	✓	✓	✓	✓	Reservations against the CUI/APTU/ATMF filed with effect from 19 October 2012
LT	✓	✓	✓	✓	✓	✓	✓	✓	
LU	✓	✓	✓	✓	✓	✓	✓	✓	
MC	✓	✓	✓	✓	✓	✓	✓	✓	
ME	✓	✓	✓	✓	✓	✓	✓	✓	
MA	✓	✓	✓	✓	✓	✓	✓	✓	
MO	✓	✓	✓	✓	✓	✓	✓	✓	
MT	✓	✓	✓	✓	✓	✓	✓	✓	
NL	✓	✓	✓	✓	✓	✓	✓	✓	
NO	✓	✓	✓	✓	✓	✓	✓	✓	
PL	✓	✓	✓	✓	✓	✓	✓	✓	
PT	✓	✓	✓	✓	✓	✓	✓	✓	
RO	✓	✓	✓	✓	✓	✓	✓	✓	
RU	✓	✓	✓	✓	✓	✓	✓	✓	
RS	✓	✓	✓	✓	✓	✓	✓	✓	
SK	✓	✓	✓	✓	✓	✓	✓	✓	
SI	✓	✓	✓	✓	✓	✓	✓	✓	
SJ	✓	✓	✓	✓	✓	✓	✓	✓	
ES	✓	✓	✓	✓	✓	✓	✓	✓	
SE	✓	✓	✓	✓	✓	✓	✓	✓	
CH	✓	✓	✓	✓	✓	✓	✓	✓	
SY	✓	✓	✓	✓	✓	✓	✓	✓	
TN	✓	✓	✓	✓	✓	✓	✓	✓	
TR	✓	✓	✓	✓	✓	✓	✓	✓	
UA	✓	✓	✓	✓	✓	✓	✓	✓	
UK	✓	✓	✓	✓	✓	✓	✓	✓	
PK	✓	✓	✓	✓	✓	✓	✓	✓	
GB	✓	✓	✓	✓	✓	✓	✓	✓	
EU	✓	✓	✓	✓	✓	✓	✓	✓	



As at
1 September 2013

- OTIF and EU Member State
- OTIF Member State only



ECM for wagons

1. Introduction

States must be able to have a sufficient degree of confidence that freight wagons operating on their territory are safely constructed and well maintained. Apart from basic operational checks, it is not realistic or efficient to assess fully the technical state of each wagon at each border crossing. Harmonised international rules for the construction and maintenance of wagons are therefore necessary.

Previously, technical and maintenance agreements were made between national railway companies in the framework of RIV¹. Typically, these national railways were responsible for all aspects of the railways, including operations, infrastructure management, maintenance, technical and safety rules, etc.

Today the OTIF Contracting States should rely on two pillars to ensure that a railway undertaking can operate freight wagons safely in international traffic:

Safety of railway operations: railway undertakings must observe the limits and conditions of use of a wagon	
<p>Pillar 1: admission</p> <p><i>technical design and construction of the wagon</i></p> <p>Wagons must comply with the applicable UTPs (WAG and NOI). Compliance must be assessed and validated by an assessing entity, which must be independent from the manufacturer, keeper, railway undertaking and infrastructure manager.</p> <p>The check of compliance with this first pillar is done as a 'snapshot' during the process leading to the technical admission. After admission, compliance is managed under pillar 2.</p>	<p>Pillar 2: operation</p> <p><i>correct maintenance of the wagon</i></p> <p>Wagons must have an Entity in Charge of Maintenance (ECM) assigned to them, which shall ensure that the wagons for which it is responsible are in a safe operational state using a system of maintenance. It must always be ensured that the wagon is in conformity with the regulations, that it is safe and that its operational and organisational environments are in order.²</p> <p>The railway undertaking may only operate wagons on infrastructure with which they are compatible.</p> <p>Compliance with this second pillar should be maintained.</p>

This document explains the ECM Regulation in the context of the second pillar (See OTIF ECM regulation, doc. A 94-30/1.2012 dated 1 May 2012).

2. The main actors

With the liberalisation of the rail market in the EU and some other OTIF Contracting States, several tasks and responsibilities have been allocated differently. For example, rules are now defined and adopted at government level. An independent entity must assess whether the rules have been complied with.

For the operation of freight wagons:

- The railway undertaking operates trains,
- The keeper owns or operates vehicles for profit, and
- The Entities in Charge of Maintenance (ECM) take responsibility for the maintenance of the vehicle.

These responsibilities may be borne by separate entities or by a single entity. In international traffic, the identity of the keeper², the ECM and the railway undertaking must always be clearly defined.

Any organisation meeting the ECM requirements may be certified as an ECM. Therefore, a keeper or railway undertaking may also be an ECM.

3. Principles

Even though the railway undertaking and ECM may be one single company, the ECM responsibilities should be separately identified and independently certified by an independent certification body. After an ECM has been certified, it must be checked at least once a year. *The competent authority in each Contracting State supervises ECMS.*

An ECM's ability to fulfil its tasks and obligations must be confirmed by an independent assessing entity recognised by one of the OTIF Contracting States. ATMF Article 15(3) states that the railway undertaking is responsible for the safe operation of its trains and must ensure that vehicles are properly maintained.

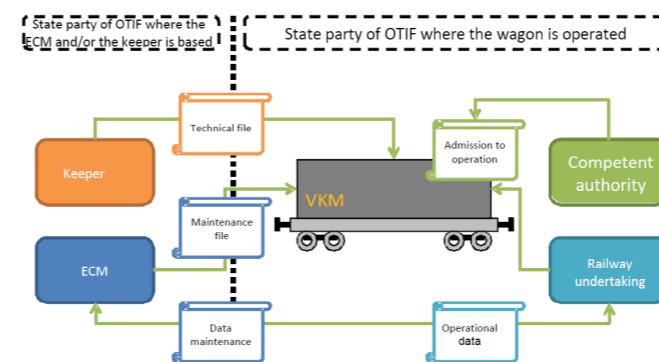
Wagons in international traffic are generally operated by different railway undertakings, while the ECM remains the same.

The ECM regulation helps these railway undertakings to assume their responsibilities in a practical manner. It is the responsibility of the railway undertaking to check that a certified ECM is assigned to each wagon it operates. If this is confirmed, the railway undertaking may assume that the wagon is correctly maintained. It is up to the railway undertaking to check³ that an ECM has in fact been allocated to each of the wagons it operates. If this is the case, the railway undertaking may assume that the wagons are well maintained. If these checks reveal problems, the railway undertaking must use the procedures in place to resolve the problem or refuse further carriage.

Every wagon in international traffic must have an ECM assigned to it and it is the duty of each railway undertaking to check this before operating a wagon.

It is imperative that information is exchanged between the ECM and the railway undertakings which operate the wagon. It is the responsibility of each railway undertaking to provide information to the ECM about the operating performance (km, tonne.km), malfunctions, accidents, repairs, etc. The ECM must have procedures in place to receive and use the data from the railway undertakings and to provide data relevant to the use of the wagons. Operational databases, such as RSRD⁴ and WIMO⁵, may help the ECM and railway undertakings to exchange these data.

The ECM must exchange information about the operating performance and technical state of the wagon with all railway undertakings that operate the wagon.



The ECM must exchange information about the operating performance and technical state of the wagon with all railway undertakings that operate the wagon. The methods of exchanging information must be specified in contractual agreements.

In practice, ECMs often do not have contractual arrangements with ECMs. In this case, contractual agreements between the keeper and the railway undertaking should ensure the exchange of information that is required⁶.

4. Organisation and discharge of responsibilities

Whether an organisation can become an ECM must be assessed and certified by an independent ECM Certification Body. These independent ECM certification bodies must at least meet the criteria set out in annex II to the OTIF's ECM Regulation. This body can either be a governmental entity, or a private company. According to OTIF's ECM regulations, every Contracting State must notify the OTIF Secretary General of certification bodies that have their place of business on their territory.

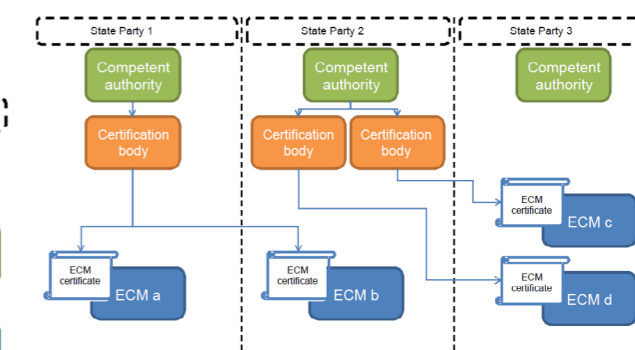
⁴ Rolling Stock Reference Databases
⁵ Wagon and Intermodal Unit Operational Database
⁶ Exchange of information as prescribed in Article 5 § 2 and 3 of the ECM Regulation

A list of certification bodies and certified ECMs with their place of business in non-EU Member States is published in the ECM register on the OTIF website. The EU entries are registered in the ERADIS database, which is accessible through the ERA website.

All ECMs and ECM certification bodies are registered either on the ERA or the OTIF website.

It is not mandatory for Contracting States to have an ECM Certification Body on its territory, since applicant ECMs can use the services of ECM Certification Bodies from other Contracting States. The existence of an ECM certification body in a particular Contracting State is not therefore a prerequisite for application of the ECM Regulation.

Registered ECMs and ECM certification bodies may work internationally.



The diagram above illustrates that Contracting States may have one or more certification bodies, or none. These certification bodies are also qualified to assess and certify applicant ECMs abroad.

5. Functions of an ECM

Every wagon must have one ECM assigned to it. This ECM bears full responsibility for the maintenance of the wagon. However, this does not mean that the ECM must perform all the ECM functions itself; it may also outsource some functions under its own responsibility. The following functions are set out in the ECM regulation:

- The management function (a) supervises and coordinates the other functions (b) to (d) and may not be outsourced.
- The maintenance development function (b) is responsible for the management of the maintenance documentation, including the configuration management based on design and operational data as well as on performance and return of experience for each wagon;
- The fleet maintenance management function (c) manages the wagon's removal for maintenance and its return to operation after maintenance;
- The maintenance delivery function (d) delivers the required maintenance of a wagon, or parts of it.

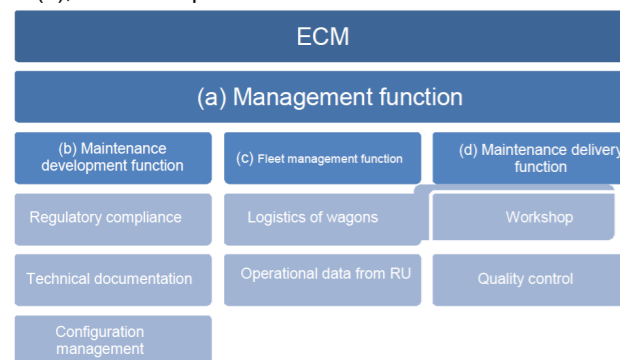
¹ The International Wagon Regulations (RIV – Regolamento Internazionale dei Veicoli) on the international use of goods wagons in Europe were first agreed between the European railways in 1922. As a commercial agreement, it was replaced by the General Contract of Use of Wagons (GCU) in 2006. Since it entered into force on 1 December 2012, the UTP WAG takes precedence over the RIV, in accordance with the provisions of Article 11 of APTU.
² (table) E.g. by application of the Common Safety Methods for risk evaluation and assessment (UTP GEN-G).

² The keeper of each wagon is identified by the Vehicle Keeper Marking (VKM) which is a 3-5 letter code marked on the wagon.
³ OTIF regulation A 94-20/2.201201.03.2013, setting out the requirements for establishing and keeping operational a national vehicle register (NVR) in each Contracting State. However, as the NVR is not an operational register, it cannot be considered as proof.



Even though the ECM may outsource selected functions it still has final responsibility for the result of all outsourced activities.

The following diagram illustrates the different functions (a) to (d), which comprise the activities of the ECM.



6. OTIF ECM regulations compared to the EU regulations

The OTIF ECM regulations are equivalent to the corresponding EU regulations⁷. In other words, ECMs certified under the EU regime are equivalent to those certified under the OTIF regime. The ECM certification bodies may also assess and certify ECMs in all OTIF Contracting States, whether their place of business is inside or outside the EU.

So-called “self-declarations”, which are valid in the EU in accordance with Article 12(6) of the EU Regulation, are not recognised in ATMF. Self-declarations do not meet the requirement of ATMF Article 15 § 2, which requires ECM certifications to be issued by external auditors.

All wagons in international freight traffic outside the EU (including wagons coming from the EU) must have an ECM assigned to it which is certified by an ECM certification body. This attribution is certified by an ECM certification body. Voluntary ECM certifications are not valid within OTIF.

In addition, Article 7(8) of the EU Regulation sets out the relations between the safety management system (SMS) of railway undertakings and the ECM responsibilities. This Article permits EU railway undertakings that maintain wagons themselves to have their ECM capacity assessed as part of the SMS certification. In the absence of harmonised SMS requirements in OTIF, this is not possible for railway undertakings outside the EU.

7. Implementation

The OTIF ECM regulation entered into force on 1 May 2012 and will be implemented in stages. Some key milestones are summarised below:

A. By 1 August 2012:

- Contracting States must notify the OTIF Secretary General of the ECM certification bodies having their place of business on their territory
- Certification bodies are permitted to issue certificates on the basis of national law equivalent to the OTIF ECM regulation, or on the basis of the Memorandum of Understanding⁸. Such certificates expire on 31 May 2015.

B. By 31 May 2014:

- Certificates for maintenance workshops with the maintenance delivery function (not other functions) may be issued on the basis of national law equivalent to the OTIF ECM regulation. Such certificates expire on 31 May 2017.

C. From 1 August 2012:

- All (new or renewed) ECM certificates must be issued by a certification body in accordance with the ECM regulation.

D. From 31 May 2013:

- All entities in charge of maintenance for freight wagons shall be certified in accordance with the ECM regulation.

8. Summary

An ECM is an entity with full responsibility for the state of maintenance of a wagon.

ECMs are assessed and certified by independent certification bodies in accordance with the ECM regulations. From 31 May 2013, all ECMs must be certified in accordance with the ECM regulation.

Each freight wagon in international operation must have an ECM assigned to it. The railway undertaking operating a train must check this and may only operate wagons to which an ECM is assigned.

Railway undertakings and ECMs must exchange information about the wagons. Electronic databases can simplify these exchanges.

Peter Sorger/ Bas Leermakers

⁷ COMMISSION REGULATION (EU) No 445/2011 of 10 May 2011 on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007

⁸ Memorandum of Understanding establishing basic principles of a common system of certification of entities in charge of maintenance for freight wagons, signed by several EU Member States and Switzerland.

43rd Session of the UN Sub-Committee of Experts on the Transport of Dangerous Goods (Geneva, 24 – 28 June 2013)

The 43rd session of the UN Sub-Committee of Experts on the Transport of Dangerous Goods was held from 24 to 28 June 2013 under the chairmanship of Mr Jeff Hart, Head of Dangerous Goods Division in the Department for Transport of the United Kingdom. 22 States entitled to vote, 3 observer States and 30 non-governmental organisations were represented at the session. As all the decisions of the UN Sub-Committee of Experts have repercussions for the dangerous goods provisions of the various modes, the Intergovernmental Organisation for International Carriage by Rail (OTIF) was represented as a modal organisation, along with the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO). This was the first session in the 2013/2014 biennium. In the context of harmonising RID/ADR/ADN with the UN Recommendations on the Transport of Dangerous Goods, OTIF will take its decisions over in the 2017 edition of RID and the UNECE will do the same for the 2017 editions of ADR and ADN.

Radiation detectors

During the discussion on neutron radiation detectors containing boron trifluoride of UN No. 1008, for which special provision 373 was included in the 2015 edition of RID/ADR, it was noted that there are other radiation detectors that employ other gases that act as the radiation detection medium, which should also be referred to in the regulations.

These detectors typically contain non-flammable and non-toxic gases in a compressed state. The gases concerned are as follows: UN 1006 argon, compressed, UN 1013



carbon dioxide, UN 1046 helium, compressed, UN 1056 krypton, compressed, UN 1065 neon, compressed, UN 1066 nitrogen, compressed, UN 2036 xenon and UN 1956 compressed gas, n.o.s.

Since, for practical reasons, these detectors cannot be made to a recognised pressure receptacle standard and

have hitherto been carried under special authorisations, the UN Sub-Committee of Experts agreed to include a new special provision containing requirements for the pressure receptacles, packaging and documentation.

Transitional provisions for the marking of capacitors (UN numbers 3499 and 3508)

UN number 3499 CAPACITOR, electric double layer (with an energy storage capacity greater than 0.3 Wh) was included in the 2013 edition of RID/ADR with the accompanying special provision 361. The 2015 edition of RID/ADR will also include the new entry UN 3508 CAPACITOR, ASSYMETRIC (with an energy storage capacity greater than 0.3 Wh), together with special provision 372. These so-called super-capacitors are capacitors that have a rapid charge and discharge capacity, high energy density, are very durable and owing to their properties, they are increasingly used in vehicle applications (recovery of braking energy, energy supply for peak loads in railways, buses and motor



vehicles), and in the storage of renewable energy.

Among other things, both special provisions stipulate that capacitors must be marked with their energy storage capacity in Watt hours (Wh). As most capacitors of UN number 3499 manufactured before the entry into force of the 2013 edition of RID/ADR are not thus marked, and as it is anticipated that this will also be the case for the capacitors of UN number 3508 that will be included in the 2015 edition of RID/ADR, a transitional provision was included post hoc in the special provisions, as proposed by Japan. According to this transitional provision, only capacitors manufactured after 31 December 2013 and 2015 respectively need be marked.

The UN Sub-Committee of Experts asked the organisations responsible for the mode-specific dangerous goods regulations to include this transitional provision in the next edition of each of their revised editions.



Life of composite cylinders

Composite cylinders are built in accordance with ISO standards ISO 11119-1:2002, ISO 11119-2:2002 and ISO 11119-3:2002, which are referenced in RID/ADR. However, the application of these standards is constrained by two notes. On the one hand, one note requires that such cylinders must be designed for an unlimited service life, while the other note stipulates that after the first 15 years of service, they may be approved for extended service by the competent authority which was responsible for the original approval.

The advantage of composite cylinders is their light weight. In the view of the gas industry, the requirement for cylinders to be designed for an unlimited service life leads to unnecessarily stringent requirements concerning the design, which go hand in hand with greater material thickness and hence a heavier cylinder weight. This would limit the technical and economic advantage compared with conventional cylinders.

However, the ISO standards referred to and European standards EN 12245 and EN 12257 allow design types which are designed for different minimum service lives and which weigh less and are cheaper.

As proposed by a working group, the UN Sub-Committee of Experts adopted further provisions to permit a design for a shorter service life. This concept provides for the following additional markings for composite cylinders:

- for all composite cylinders:
 - the date of manufacture (already prescribed);
- for composite cylinders having a **limited design life of 15 years**:
 - the design life by marking the word "FINAL", followed by the year and month of final use;
- for composite cylinders having a design life of more than 15 years:
 - the design life by marking the word "FINAL", followed by the year and month of final use;
 - the initial service life by marking the word «SERVICE», followed by a date (year and month) 15 years after the date of manufacture. This marking showing the initial service life is concealed as soon as the original design type has undergone the service life test programme demonstrating that cylinders manufactured accordingly remain safe until the end of their design life. For cylinders built according to a design type which has already successfully passed the service life test programme, the marking showing the initial service life is no longer necessary.

- for composite cylinders with an **unlimited design life**:
 - the initial service life (see cylinders with a design life of more than 15 years).

Packing instruction for the carriage of adsorbed gases

Provisions for the new group of adsorbed gases will be included in the 2015 edition of RID/ADR. These are gases which are concentrated on the surface of a porous material which is permanently contained in a metal cylinder. The forces of attraction between the means of adsorption and the adsorbed gas molecules lead a reduction in energy of the individual gas molecules and hence to a reduction in pressure compared to the compressed or liquefied state. In total, 17 new UN numbers for adsorbed gases will be included in the RID/ADR dangerous goods table, together with provisions concerning carriage, packaging and testing. The new packing instruction applicable to these adsorbed gases stipulates that the cylinders to be used must satisfy Chapter 6.2 and standards ISO 11513:2011 or ISO 9809-1:2010.

According to COSTHA estimates (Council on Safe Transportation of Hazardous Articles), there are currently some 160,000 adsorbed gas cylinders in service which, despite positive safety evidence, may no longer be used in accordance with the new provisions.

The UN Sub-Committee of Experts adopted a proposal by the United Kingdom to amend the packing instruction so that cylinders manufactured before the entry into force of the new packing instruction may continue to be used for the carriage of adsorbed gases.

Verification of the wall thickness of shells

The representative of Spain pointed out in a document that in recent years, inadmissible reductions in wall thickness had been detected in portable tanks. He proposed that verification of the wall thickness should be prescribed in the period inspections. According to information from ITCO (International Tank Container Organisation), inspecting the wall thickness would cost around 6,000 \$ per tank, so the UN Sub-Committee of Experts agreed to prescribe verification of the wall thickness in those cases where signs of reduced wall thickness are detected in the internal and external inspections.

Mixed loading of explosives with ammonium nitrate emulsion, suspension or gel

RID/ADR allows the mixed loading of explosives and ammonium nitrate of UN numbers 1942 and 2067, provided the aggregate is treated as blasting explosives under Class 1 for the purposes of placarding, segregation, stowage and maximum permissible load.

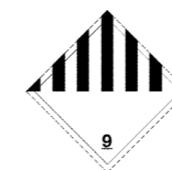
During blasting activities, UN 3375 ammonium nitrate emulsion or suspension or gel, which has nearly the same characteristics as UN 1942 and UN 2067, is commonly used. While ADR permits the mixed loading of UN 3375 and blasting explosives on Mobile Explosives Manufacturing Units (MEMUs), general permission for mixed loading has not so far been included in RID/ADR.

The UN Sub-Committee of Experts agreed with Sweden's proposal to deal with UN number 3375 in the same way as UN numbers 1942 and 2067 and to extend the mixed loading provisions of RID/ADR accordingly.

Appropriate hazard marking for Class 9

Class 9 includes miscellaneous dangerous substances and articles for which only one danger label is used for the marking. In relation to lithium batteries, which present both electrical and chemical (flammable electrolyte) hazards, the International Civil Aviation Organization (ICAO) in particular has raised the question of whether one danger label is sufficient to communicate the hazards of the many substances and articles of Class 9. This problem would become worse in future if, as a result of ongoing technical developments, other articles are included in Class 9.

The majority of delegations conceded that using a single danger label meant that it was not possible to achieve appropriate communication of the hazards presented by the



various groups of substances and articles of Class 9. This is particularly the case for articles which contain dangerous goods of other classes or which present particular hazards, such as electric shock or a short-circuit. However, it was not possible to reach a consensus or take a final decision on how the hazard information for Class 9 could be improved.

Hazard marking is important for both transport workers and the emergency services. It might therefore be useful to establish for each mode of transport which additional elements are really necessary for the communication of hazards. Owing to the multitude of hazards presented by the various electrical storage systems, it has not previously been possible to deal uniformly with these systems.

The experts and all the organisations concerned were asked to discuss the problem raised by ICAO so that a solution can be found which would avoid having different approaches for the various transport modes.

Next meeting

The 44th session was held from 25 November to 4 December 2013 in Geneva. Results from this meeting will be published in Bulletin 1 / 2014.

Jochen Conrad / Katarina Guricová



What are the solutions for uniform law for the carriage of goods by rail in Eurasia?



The signature on 26 February 2013 by 37 UNECE countries of the joint declaration on the promotion of rail transport between Europe and Asia and of the activities carried out to this end has breathed new life into the UNECE project on “**Unified Euro-Asian Railway Law**”. The Group of Experts set up for this purpose by the UNECE has started its work to give substance to this unified law.

For the article “Towards unified railway law between Europe and Asia” on the Bulletin 1/2 2013, please [click here @](#)

In order to facilitate the work in relation to the unification of Euro-Asian rail freight transport law, for the discussion of the Group of Experts which held its sixth session in Geneva on 2 and 3 December 2013, OTIF proposed its analysis on the general framework to be put in place to develop unified Euro-Asian law for the transport of goods by rail.

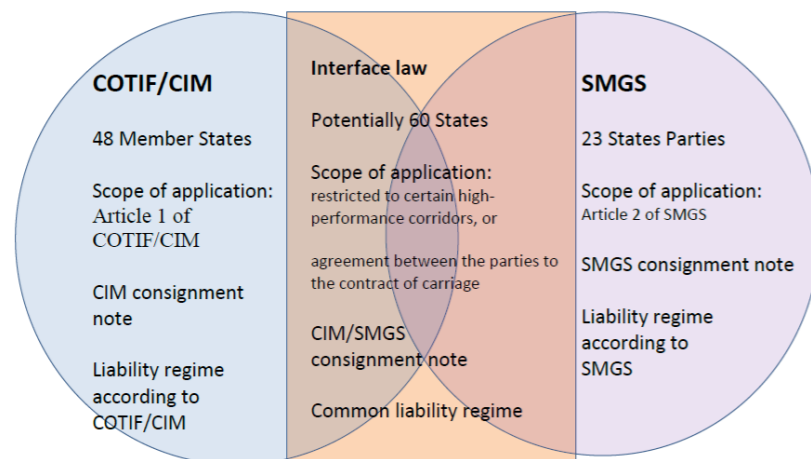
To view this document, please [click here @](#)

Rather than creating law overarching the two legal regimes of the CIM UR and SMGS, or creating autonomous law, OTIF advocates and will defend the establishment of an **interface regime** between the CIM UR and SMGS, with a common consignment note and a common liability regime. With this in mind, the validity of COTIF/CIM and SMGS for transport that is governed strictly by their respective rules would not be called into question.

The proposed interface law would only apply if goods consignments crossed the border between the areas where COTIF/CIM and SMGS are applied. In addition, it would be applied on a voluntary basis if the parties to the contract of carriage so decided. This new regime could also apply to certain high-performance corridors to be defined between the parties.

Lastly, if they consider it necessary, the parties to the contract of carriage could also continue to apply COTIF/CIM and SMGS and thus to arrange reconignment at the border of the two legal regimes.

Interface law for the carriage of goods in Euro-Asia.



It is relatively simple to establish such a legal framework in practice. In fact, thanks to the constant efforts of OSJD, CIT and OTIF, a lot of progress has been achieved in bringing together the legal provisions of COTIF/CIM and SMGS, such as:

- the rapprochement of the provisions concerning the presumption of damage in case of reconignment;
- the creation of the CIM/SMGS consignment note;
- the model wagon and container list form and the uniform CIM/SMGS report model.

The question of the legal form of the institution intended to support this new instrument is very complex. OTIF believes this should be discussed at the end of the process, as it depends to a great extent on what the law contains. OTIF uses the model of COTIF to propose high-level provisions, giving the sector the responsibility of deciding the precise conditions for applying them.

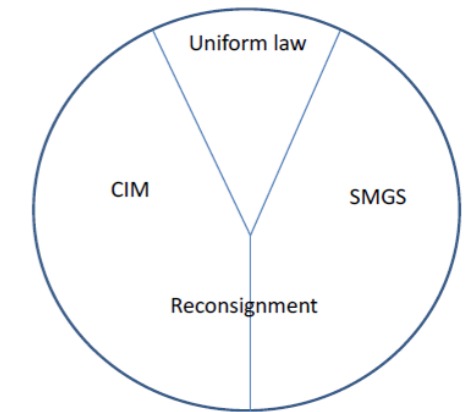
These provisions assume that contractual relations between the parties will be given an important place. This is the point that will have to be particularly discussed with our partners in OSJD, who are still attached to the principle of an actual contract and to very detailed provisions on the precise conditions of application in the corpus of the future regime.

In addition, it is essential that the provisions of the new instrument are simple and practical and enable rail transport undertakings to develop. If this is not the case, as at present, the parties to the contract of carriage will choose to apply the agreed national law, with all the legal risks this entails. The aim of the developments taking place under the aegis of the UNECE is to avoid this risk.

This is why, in order to implement this law sooner and more effectively, OTIF tends to support the creation of a specific Appendix to COTIF and a specific Appendix to SMGS, for which the means of coordinating their adoption in the two organisations would have to be found.

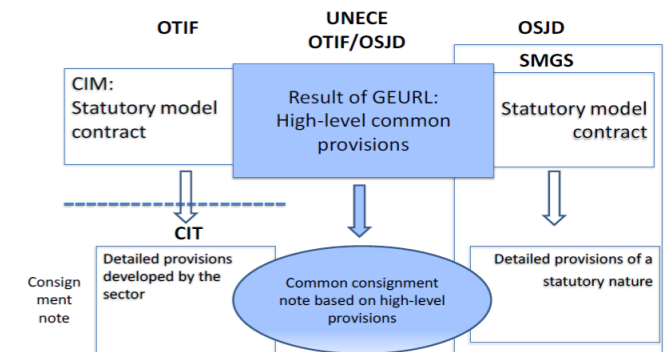
During the discussions in Geneva at the beginning of December 2013, OTIF’s concept was opposed by that of OSJD, particularly the Russian Federation, which called for the creation of a new convention to replace COTIF/CIM and SMGS.

However, OTIF remains convinced that only interface law could be put in place quickly in the area of application of COTIF/CIM and SMGS, which reaches from the Atlantic to the Pacific.



OTIF will therefore submit a proposal to the 7th session of the Group of Experts, which will take place in Geneva on 3 and 4 April 2014, which will be limited to high-level provisions which will be used as the basis for a common contract, evidenced by a common consignment note.

However, the difficulties in applying such a law should not be underestimated. The high-level provisions that are proposed can only be applied if the corresponding consignment note is put in place quickly. A working basis already exists with the common CIM/SMGS consignment note put in place by CIT and OSJD, with active participation from OTIF. In this respect, it would seem necessary for the practitioners to begin drafting such an instrument in a tripartite OSJD/CIT/OTIF working group.





OTIF is convinced that the broad promulgation of uniform legal rules for the carriage of goods by rail in Eurasia will only be possible if tried and tested provisions, such as SMGS and COTIF/CIM, are taken over. In this framework, a common legal base, developed under the auspices of the UNECE and compatible with the two sets of legislation, will be such as to give a solid legal basis to a single contract.

François Davenne / Iris P. Gries



OTIF – OSJD “Common Position” – Review and Outlook

An agreement signed by both organisations in 1991 laid down the common aims and the first specific rules for cooperation between the Central Office for International Carriage by Rail (the then Secretariat of OTIF) and the OSJD Committee (the OSJD’s executive body).

In compliance with this agreement, three joint OTIF-OSJD meetings were held in 1995-1997 against the background of the far reaching revision of COTIF. On the part of OTIF, the question arose as to whether and to what extent the revision of COTIF and its Appendices could be utilised to take into account the interests of the OSJD Member States that apply the SMPS Agreement for the carriage of passengers and the SMGS Agreement for the carriage of goods. It was hoped that by involving OSJD in OTIF’s revision work at a very early stage, it might be possible to achieve major progress in harmonising the two sets of transport law, CIV/CIM on the one hand and SMPS/SMGS on the other.

The fact that this turned out not to be the case (instead, the two sets of transport law moved further apart from each other) was due to the different political and economic situation in the (west) European States on the one hand, where it was clear that there was an urgent need to revise the law to align COTIF with the new situation brought about by the legislation of the European Communities in the rail sector (trend towards liberalisation, separation of the operation of infrastructure and the provision of transport services), and in the majority of the OSJD Member States on the other, where rail transport was still firmly part of the State administration. The reforms in the rail sector in several of the OSJD Member States, and not just those in Europe, took place later or are being carried out at present.

At a meeting between the heads of the two organisations in 2001, all sides realised that the amendments to COTIF (Vilnius Protocol) adopted in 1999 were linked to the political, economic and legal changes that had taken place in most of the COTIF Member States, but that the experience gained in the revision of COTIF can also be of use to the OSJD Member States, where similar changes in administrative structures are taking place and where the market economy is being introduced. Both sides agreed to put their cooperation into concrete terms and to establish a common philosophy for action.

As the result of an intensive exchange of correspondence and several meetings between negotiating delegations from both organisations in two successive years, a comprehensive document, entitled “Common Position”, was finally signed on 12 February 2003 as a basis for co-operation.

This document assumes that in the short term, the two legal systems set up (by OTIF and OSJD) will have to be put up with and that by cooperating, both organisations must ensure that the demand potential in favour of the railways can be exploited as much as possible by means of specific measures, by removing obstacles and providing specific instruments to make the transition between the two legal systems easier. At the same time, both organisations agreed that a long term aim is to set up a uniform global system of transport law.

In order to implement this fundamental idea of cooperation, institutionalised contacts were established at management level with regard to the legal aspects, and at implementation and application level, and common strategic orientations were outlined.

Having subsequently been approved by the two organisations’ competent bodies, i.e. OTIF’s Administrative Committee and the session of OSJD’s Conference of Ministers, the “Common Position” thus instituted cooperation which, in the long term, should lead to international rail transport law that is fully harmonised throughout the Eurasian region.

Again in 2003, a conference on international rail transport law was organised in Kiev. This saw the basis of trust created by the “Common Position” bear fruit. The Central Office had initiated the idea of this conference which, although it had been organised together with the European Commission and the Ukrainian Ministry of Transport, saw OSJD’s constructive participation in drawing up the programme. OSJD had also lent its unreserved support to the conclusions of the conference in terms of a useful basis and specific proposals for a follow-up programme. The first thing to do was to draw up a common CIM-SMGS consignment note. As it is the International Rail Transport Committee (CIT), in the scope of application of COTIF, which has the competence to draw up the model consignment note, the corresponding work was carried out by CIT in cooperation with OSJD. OTIF took part in that work insofar as legal issues were involved.

Since then, cooperation between OTIF and OSJD has been based on a plan agreed each year between the two organisations. Cooperation has focused on the CIT-OSJD project to make CIM/SMGS transport law interoperable (the CIM/SMGS consignment note forms part of this), in which OTIF took part. There was also cooperation in connection with the facilitation of border crossing, the development of OSJD transport corridors, the revision of SMPS, updating the provisions relating to the transport of dangerous goods and technical questions concerning rail traffic.

The CIM/SMGS consignment note has been available since 1 September 2006, including a CIM/SMGS consignment



note manual with the list of CIT members and SMGS participants applying it and traffic axes on which the consignment note can be used, explanatory notes and a lot of further data.

With regard to the facilitation of border crossing, cooperation between OTIF and OSJD in the period 2005-2010 focused on the UNECE International Convention on the Harmonization of Frontier Controls of Goods (1982), specifically to add a new Annex 9 to this Convention to deal with border crossing in rail freight transport. In 2007 both organisations transmitted to UNECE not only a draft joint proposal for the new Annex 9 to the Harmonization Convention, but also a draft proposal for a new passenger traffic facilitation convention (based on the 1952 International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage Carried by Rail, the text of which was adapted according to the needs of OSJD Member States). With regard to the facilitation of border crossing in rail freight transport, the joint proposal by both organisations was adapted after a discussion with the European Union in 2008. The new Annex 9 was adopted on 27 May 2010 and entered into force on 30 November 2011. In contrast, it was not possible to adopt a new Facilitation Convention for Passenger Traffic owing to the fact that the original 1952 Convention was still in force (even though it was considered obsolete by most of its contracting parties).

Thanks not least to the increased cooperation following adoption of the "Common Position", success was achieved in updating the rules of SMGS on the carriage of dangerous goods (SMGS Annex 2) almost at the same time as RID. At the same time, the content and structure of the provisions were closely harmonised and only minor technical differences remain. A further step towards harmonisation – examination of the remaining differences – was started in 2012 and should be able to result in complete harmonisation by 2017.

The meeting between the heads of OTIF and OSJD on 18 September 2013 in Warsaw resumed the tradition of regular meetings at management level.

Following that meeting, the representatives of both organisations agreed on a number of specific tasks requiring a joint approach:

- the process underway to harmonise the various provisions of the documents relating to international transport law for the carriage of goods and passengers, which are a matter for both our organisations;
- the continuation of cooperation to update and harmonise the regulations of the transport of dangerous goods;
- the legal interoperability of CIM/SMGS, with the help of CIT; work aimed at the development of the CIM/SMGS consignment note manual;
- strengthening technical cooperation in order to develop interoperability.

Moreover, the participants agreed to cooperate in the work towards Unified Railway Law initiated by UNECE.

Following this meeting, both organisations nominated contacts to be responsible for cooperation in each of these areas.

In future, OTIF will participate more actively in the relevant OSJD commissions, such as the Transport Policy and Development Strategy Commission, the Transport Law Commission and the Infrastructure and Rolling Stock Commission.

Eva Hammerschmiedová

The CIM/CIV/CUV Uniform Rules: Statutory model contracts for international transport

COTIF takes the form of a multilateral convention between States and its aim is to be an institutional convention. On the one hand, it enshrines the creation of the new Organisation and on the other, it lays down the rules concerning OTIF's personality, aim and functioning. These provisions define the Organisation's «constitutional law»: to a great extent in fact, they fulfil the role in internal law of a constitution. These organic provisions are binding on the Member States and come under public law, and more specifically, international public law.

The actual regulations of OTIF are contained in the Appendices to the Convention.

In this context, the Uniform Rules concerning the international contract of carriage of goods (CIM), the contract of international carriage of passengers (CIV), or the contract of use of vehicles (CUV) are often presented as private law, as opposed to RID (Regulation concerning the international carriage of dangerous goods by rail) and ATMF (Uniform Rules concerning technical admission), which are presented as public law.

This distinction is imprecise and explains little in terms of the nature of these instruments. It is imprecise because the OTIF set of regulations comes within the province of public international law in the organic sense. It explains little because if one takes the subject of the various Appendices to COTIF, they apply to relations between private actors, even though these private actors may be invested with prerogatives of a public nature for the ATMF rules.

This article aims to introduce a clearer distinction by speaking, on the one hand, of contractual Appendices (CIM, CIV, CUV) that establish model contracts, and on the other, statutory Appendices (RID and ATMF), which establish directly applicable international regulations in the technical field.

Character and legal nature of the CIV, CIM and CUV UR

The provisions contained in the CIM/CIV UR have a dual nature:

- firstly, like transport law in general, they come under private law, as their aim is to govern relations arising out of the international contract of carriage between the carrier and his contracting partners;
- secondly, they constitute uniform law applicable in all Member States, which is needed and acts as a substitute for national law and by the same token, has the character of international law.

The CUV UR apply to the contract for providing vehicles and not to the contract of carriage, but fall under the same dual logic.

Legal nature of RID

The first international regulation of the transport of dangerous substances and articles appeared in § 1 of the statutory provisions for the implementation of the International Convention of Bern of 14 October 1890 on the transport of goods by rail, annexed to the Convention.

The requirements of this annex were only conditions concerning the contract of carriage, which were imposed on those carrying the dangerous substances and articles concerned. The aim was to ensure the safety of persons and property in rail traffic.

Legally, if the conditions were not complied with, the railways also had the option to refuse transport (although in principle, the obligation to carry did in fact exist). However, according to the legal situation of the time, the railways were not prohibited from carrying such goods. On the other hand, when concluding a contract of carriage, they could require the consignor to comply with his obligations under civil law resulting from these specific conditions of carriage and, in the event of any damage, demand compensation.

As the Regulation concerning the international carriage of dangerous goods by rail (RID) has developed, the emphasis has shifted: the initial private law regulation turned into mandatory rules which actors must comply with and which are best qualified at present as requirements of public law.

Legal nature of the APTU and ATMF UR

The APTU and ATMF UR are rules of public law par excellence. Railway vehicles have to comply with certain provisions relating to construction and operation, and admission to operation (operating approval) is an administrative act in the form of approval of a model or type of vehicle, followed by admission to operation of the individual vehicle.

In essence therefore, the ATMF UR contain uniform rules relating to the procedure for technical admission, by the authorities of the Member States, of material intended to be used in international traffic. The uniform technical prescriptions concerning the construction and operation of vehicles and infrastructure contained in the annexes to the APTU UR form the basis of this technical admission.



The technical approval of vehicles to operate is a prerogative of a public nature (state or at least public), which can partly be entrusted to private bodies.

Thus, for example, the authorities in charge of approval also often act as technical supervisory authorities with responsibility for periodically checking the safety of vehicles, as required by law, either by carrying out these checks or by supervising them. This task is in part delegated to private bodies. Although they are private, these bodies would be able, if necessary, and depending on the powers entrusted to them, to take administrative action.

CIM, CIV and CUV UR: the concept of the supplementary statutory model contract

The provisions of these various Appendices apply to private contracts, but they are public policy provisions, which are either mandatory, or supplementary:

- the mandatory provisions, such as, for example, the basis of liability in Article 23 of the CIM UR, apply to all international contracts and are valid whatever agreements the parties make between themselves¹.
- for the supplementary provisions, such as the liability regime for keepers in the event of an incident under Article 7 of the CUV UR, the reverse is the case: what is agreed and formally accepted by each of the parties (in a framework contract, general conditions or an individual contract) takes precedence over the provisions of the model contracts, except of course in the case where these latter provisions refer to rules of a public nature. In addition, the supplementary clauses apply in the event that any of the clauses of the contract are null and void.

Such supplementary statutory contracts exist, for example in French law, in order to govern flexibly the different aspects of contracts for road transport.

Legal nature of the COTIF Appendices

Partially supplementary statutory model contracts	Directly applicable technical regulations
Appendices A, B, D, E: CIV, CIM, CUV and CUI UR	Appendices C, F, G: RID, APTU, ATMF

Conclusion

At the end of this analysis, it would therefore seem more descriptive – and more accurate – to characterise Appendices A, B and D (CIV, CIM and CUV UR) of COTIF as partially supplementary statutory model contracts. Appendix E, which contains the CUI UR (Uniform Rules concerning the contract of use of infrastructure), could also probably be placed in this category.

¹ However, Article 5 of the CIM UR allows the carrier to assume greater liability and more burdensome obligations.

The provisions laid down in these Appendices are in fact of a statutory nature, because the international law of COTIF applies directly in internal law, and because, as a result of this, in the absence of explicit clauses to the contrary, they apply in full to contracts. However, certain provisions are guideline provisions, which may or may not be agreed upon by the parties, which determines the supplementary character of the latter.

As for Appendices C, F and G (RID, APTU and ATMF), they must be defined as directly applicable technical regulations.

François Davenne

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

CIV/CIM Lists of railway Lines:

None

CIV/CIM Lists of maritime and inland waterway services:

CIM List of lines

In an official letter dated 13 September 2013, the Ministry of Transport and Communications of the Republic of Lithuania (Vilnius) informed us of the deletion of the following maritime service:

- Klaipeda – Sassnitz/Mukran, operated by DFDS A/S, Copenhagen

On 29 November 2013, the Ministry also informed us of the insertion of the following service:

- Klaipeda – Sassnitz/Mukran, operated by Black Sea Ferry & Investments LLC.

The Member States were informed of the above in circulars dated 7 October 2013 and 15 January 2014. As a result of these amendments, the chapters on Lithuania and Germany have been re-issued.

In an official letter dated 4 December 2013, the German Ministry of Transport, Construction and Urban Development (Bonn) informed us of the deletion of the following maritime service:

- Sassnitz – Ust Luga, operated by DFDS A/S, Copenhagen

The Member States were informed of the above in the circular dated 15 January 2014. As a result of this amendment, the chapters on Germany and Russia have been re-issued.

See www.otif.org, under “Publications”.

At a glance

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

for CIV [Click here!](#) @

for CIM [Click here!](#) @

Samuel Flückiger

Bundesgerichtshof (Germany) Ruling of 9 October 2013¹

Scope of application of the CIM UR – multimodal road-rail transport – international rail transport Turkey-Germany, carriage by road “as a supplement to carriage by rail” – sealed container – liability of the carrier – compensation for partial loss – means of proof

Article 1 § 3 CIM

Head note formulated by the court:

“The “as a supplement” criterion in Art. 1 § 3 CIM does not require that the railway cannot reach the place where the goods are taken over or delivered by rail, for example because there is no track. What is more significant is simply that less significance is attributed to carriage by road than to carriage by rail.”

The original full text has been published on the website of the Bundesgerichtshof: [click here @](#)

For a sound and detailed analysis of the various elements of the ruling, please refer to the study entitled “*Das internationale Eisenbahnfrachtrecht als Einheitsrecht für bestimmte Multimodalverkehre*” (International rail freight law as uniform law for certain multimodal consignments). Likewise, a discussion of the Bundesgerichtshof ruling of 9 October 2013 – I ZR 115/12 by Professor Rainer Freise, published in the journal “Transportrecht” (Transport Law)², volume 11/12-2013 (pp. 426-428).

From OTIF’s perspective, what should be noted above all is that in this ruling, the highest court in Germany interpreted the legal text exactly in accordance with the legislator’s aim and hence rejected a restrictive interpretation, by means of which an additional, unintended criterion was added to the definition of the scope of application of the CIM. The [Explanatory Report](#) on Article 1 of CIM says: “The term “as a supplement” is intended to express the idea that the principal subject matter of the contract of carriage is trans-frontier carriage by rail.”

In addition, with this ruling the court confirms the view according to which the CIM carrier need not necessarily be a rail (transport) undertaking. If the carrier is not a rail transport undertaking himself, he must make use of such an undertaking to be able to comply with his contractual obligations.

¹ Ref. I ZR 115/12: courts of lower instance: Landgericht Nuremberg-Fürth, ruling of 28.9.2010 – 2 HKO 8146/09, Oberlandesgericht Nuremberg, ruling of 31.5.2012 – 12 U 2078/10
² Luchterhand Verlag, Wolters Kluwer Deutschland GmbH, Cologne; publisher: Prof. Dr. Rolf Herber, Hamburg



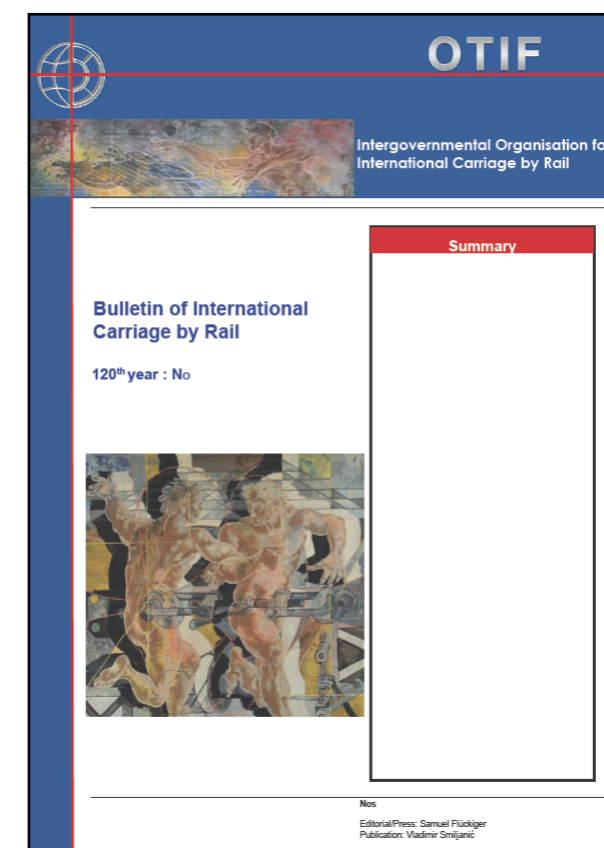
Ultimately, if a CIM consignment note was only produced when the container was handed over to the first participating railway, which Professor Freise considers likely in this case, and perhaps only part of the consignment is documented in a CIM consignment note, in the light of Article 6 § 2 of CIM, this does not present an obstacle to the application of the CIM UR to the entire consignment³. On the other hand, it goes without saying that there must be no doubt that the entire consignment is covered by a single contract of carriage (consensus-based contract).

From OTIF's point of view, the ruling is welcome. It should help broaden awareness (and not just in the German courts) of the fact that the CIM UR also apply to specific cases of multimodal transport such as this one, where the focus is clearly on rail transport.

It would also be useful if, with regard to general questions on the application of the COTIF regulations, the courts in the COTIF Member States, as well as other users of COTIF, would refer directly to OTIF's website (Publications/ Depository and Law/Scope of application – particular features), rather than to commentaries dealing with this information.

Eva Hammerschmiedová

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The Bulletin editor

³ The second sentence of Article 6 § 2 of CIM reads: "However, the absence, irregularity or loss of the consignment note shall not affect the existence or validity of the contract which shall remain subject to these Uniform Rules"