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Working Party on Rail Transport

Group of Experts on Unified Railway Law

First session

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Item 4 of the provisional agenda

Discussion of issues

“Appeal from Bern” by railway undertakings

Every year, the International Rail Transport Committee organises the “Berner Tage” on international rail transport law. Both the last event, in February 2009, and the event this year have focussed on the conflicts between the differing legal systems which apply to the rail mode.

The participants in the “Berner Tage”, numbering over one hundred and overwhelmingly from railway undertakings, assert that through traffic by rail which is not to be held up at frontiers requires continuous and standardized law. Up to now that has not been achieved; instead in addition to national law, up to three systems of international law are applied to international traffic by rail and in many respects these three systems are not compatible:

- European law in the form of European Union Directives and Regulations (for those twenty-five states of the European Union with railways),
- international transport law under the aegis of OTIF (itself composed of forty-four states),
- for much Eurasian traffic, the SMPS and SMGS Conventions in addition.

By contrast, international freight traffic by road, as the main competitor of the railway, has a single standard legal structure in the form of the Convention on the Contract for the International Carriage of Goods by Road (CMR) and the CMR extends right through into Asia.

Divergent legal regimes for international traffic by rail (which even go so far as conflicting with one another) hinder rapid and formality-free crossing of frontiers based on standard and certain legal principles and make claims for compensation more difficult as the non-application of the CUI Appendix to COTIF in most EU states shows.

The railways' customers, passengers and shippers, increasingly press for a through rail offer based on a single contract and with standard terms and conditions from beginning to end.

Railway undertakings link their own aspirations with the demands of their customers in making the following

Appeal

to the various legislators who legislate in Europe and beyond:

1. For carriage under equivalent circumstances, railway undertakings require standardised law of carriage with standardised legal terminology.
2. Legal regimes that overlay each other must not compete with each other or block each other; rather they should be coordinated so that they complement rather than contradict each other.
3. The railways require simple, comprehensible law which can be easily applied both by them and by their customers, even when several legal regimes complement each other.
4. In the interests of legal certainty, once statutes have been passed, the law must remain unchanged for a certain period of time.
5. In the preparatory process of EU legislation the EU Commission should provide a maximum of transparency.

With this in mind, the railway undertakings call on those international legislators relevant to rail:

- the European Union (the Commission, the European Parliament and the Council)
- the Intergovernmental Organisation for International Carriage by Rail, OTIF
- the United Nations, Economic Commission for Europe, UNECE
- the Organisation for Co-operation between Railways, OSJD

to coordinate and harmonise their legislative activities in the areas of overlap whenever it is intended to create new legislation.

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