Legal interoperability for Rail in the Euro-Asian Links

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Scope of the COTIF/CIM and SMGS vs EGKS

State of 1 July 2010
## Legal duality in the international rail law

<table>
<thead>
<tr>
<th>CIM (Uniform Rules concerning the Contract of International Carriage of Goods by Rail - Appendix B to COTIF)</th>
<th>SMGS (Agreement on International Goods Transport by Rail)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annex to the main convention</td>
<td>Main convention</td>
</tr>
<tr>
<td>Consensual contract</td>
<td>Formal contract</td>
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<tr>
<td>Contractual freedom</td>
<td>Obligation to set and publish tariffs and to carry</td>
</tr>
<tr>
<td>Consignment note design within the competence of RUs</td>
<td>Consignment note defined in SMGS itself</td>
</tr>
<tr>
<td>Joint and several liability</td>
<td>Individual liability</td>
</tr>
</tbody>
</table>
# Different organisations

<table>
<thead>
<tr>
<th>OTIF (Intergovernmental Organisation for International Carriage by Rail)</th>
<th>OSJD (Organisation for Cooperation between Railways)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bern</td>
<td>Warsaw</td>
</tr>
<tr>
<td>Since 1985 (Central Office since 1893)</td>
<td>Since 1956</td>
</tr>
<tr>
<td>46 Member States</td>
<td>27 Member States</td>
</tr>
<tr>
<td><em>Only</em> Member States with Infrastructure</td>
<td>States <em>and</em> railways</td>
</tr>
<tr>
<td>Majority</td>
<td>Unanimity</td>
</tr>
<tr>
<td>German/French/English</td>
<td>Russian and Chinese</td>
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</tbody>
</table>
(1) Relevant international transport conventions and international transport organisations

Road transport:

CMR: Convention on the Contract for the international carriage of 

   *goods* by road (1956)  
   Multilateral Protocol to the Convention on the contract for the  
   international carriage of goods by road (1978)  
   Additional Protocol to the Convention on the contract for the  
   international carriage of goods by road concerning the electronic  
   consignment note (2008, not in effect)

ADR: European Agreement concerning the international carriage of  

dangerous goods by road (1957)

CVR: Convention on the Contract for the international carriage of  

   *passengers* by road (1973)

UNECE – Transport division (Geneva)  
IRU – International road transport union (Geneva)
(2) Relevant international transport conventions and international transport organisations

Air transport:

Warsaw Convention: Convention for the unification of certain rules relating to international carriage by air (1929)

Additional protocol No. 1 to amend the Convention for the unification of certain rules relating to international carriage by air (1975)

Additional protocol No. 2 to amend the Convention for the unification of certain rules relating to international carriage by air (1975)

Chicago Convention: Convention on Civil Aviation (1944)


ICAO – International Civil Aviation Organisation (Montreal)

IATA – International Air Transport Association (Montreal)
(3) Relevant international transport conventions and international transport organisations

Inland waterway:


ADN: European Agreement concerning the international carriage of dangerous goods by inland waterway (1997)

ADNR: Regulation for the carriage of dangerous substances on the Rhine (1972)

Danube Commission (Budapest)
Central Commission for Rhine Navigation (Strasbourg)
Other River Commissions (for Mosel or Main)
(4) Relevant international transport conventions and international transport organisations

Sea transport:

Hague rules: International Convention for the unification of certain rules of law relating to bills of lading (Brussels, 1924)

Visby rules: Protocol to amend the International Convention for the unification of certain rules of law relating to bills of lading (Brussels, 1968)


Rotterdam rules: United Nations Convention on contracts for the international carriage of goods wholly or partly by sea (Rotterdam, 2009)

IMO – International Maritime Organisation (London)

CMI – International Maritime Committee (Antwerp)
CIT/OSJD Project: Legal Interoperability for rail

Phase 1:
Common transport documentation

Phase 2:
Standardised legal instruments

Phase 3:
Single rail transport law
Common CIM/SMGS consignment note

- “Sum” of the CIM- and SMGS-consignment notes
- Based on the United Nations Layout Key for Trade Documents
- Recognition as:
  - Customs document
  - Letter of credit
Electronic consignment note CIM/SMGS

- Legal basis for the electronic exchange of consignment note data:
  - Article 6 § 9 CIM: based on functional equivalence
  - Article 7 § 14 SMGS: based on an agreement between the carrier and the customer

- Electronic consignment note CIM/SMGS:
  - Functional specifications
  - Legal specifications
  - Technical specifications
  - Practical Implementation – the participating railways (support Raildata / OSJD / CIT)
Common CIM/SMGS formal report, legal presumption and claims handling rules

• **CIM/SMGS formal report** (Annex 8, 8.1)
  - used by the RU when it sees loss or damage

• **Legal presumption** (28 § 3 CIM / 23 § 10 SMGS)
  - when there is no formal report of loss or damage
  - advantage for the consignee: the last carrier must handle his claim

• **Claims handling rules** (Point 12.3)

• **Payment of compensation rules** (Point 12.4)
Phase 3: Two legal areas one single law
Uniform international law for rail

Uniform rail law

CIM and SMGS

Common CIM/SMGS consignment note

CIM/SMGS claims handling rules

CIM/SMGS liability
Overall advantages for railway customers

- Single transport documentation CIM/SMGS
- Mutual recognition of the formal report CIM/SMGS
- Matter of facts for partial loss or damage
- Transparent rules for the customers for the claims handling
- Standardised rules of procedure for the claims departments
- *Single windows* for claims handling and payment of compensations
- *Harmonised* liability rules CIM/SMGS
- Overcome the *legal duality* in the international carriage by rail
- *500 000 €: the CIM customers have lost in the time period 2008-2009*
Demands for customs facilitations for rail

- Common customs procedure for transcontinental rail transportation
- Single customs declaration based on single transport documentation
- Safety and security transportation on a long distances
- Better interconnection with the up-coming customs security obligation of the European Union
- The new Customs Union Russia, Belarus, Kazakhstan
- Securing the comparative advantages of the railway on a global level
- The role of the UN Bodies in the process

- Possible solutions:
  - Implementation of the existing UN Conventions
  - Up-grading the existing UN Conventions
  - Put in place a new UN Convention on simplified rail custom transit procedure to the Eurasian rail corridors