

**Intergovernmental Organisation for International Carriage by Rail
(OTIF)**

**Organization for Cooperation of Railways
(OSZhD)**

Co-operation between OSZhD and OTIF

COMMON POSITION

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1. Starting point

- 1.1 The origins of OTIF go back to 1890, the year CIM (Uniform Rules concerning the Contract for International Carriage of Goods by Rail) came into being. CIV (Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail) was added in 1923. The Central Office for International Carriage by Rail (OCTI), first set up to deal with CIM, has been in existence since 1893. OTIF has been an international organisation with its own legal personality since 1980, or rather 1985, the year in which COTIF (Convention concerning international carriage by rail) in the form it applies today came into force. OTIF currently has 41 Member States and COTIF covers a geographical area stretching from Portugal to the border of the Russian Federation and to the Near East as far as Iran, and stretching from Finland to Morocco.

The object of COTIF as it applies today, and beforehand of CIM and CIV, is uniform transport law for international carriage by rail, including the carriage of dangerous goods. In other words, it is a question of international law in the rail sector; OTIF's task as an intergovernmental organisation, which ensures its validity, is limited to this. The International Rail Transport Committee (CIT), founded in 1902, acts on behalf of the railways for transposition into railway practice.

At present, the CIM/CIV (Uniform Rules – UR) created by COTIF are applicable to about 240,000 km of railway lines, including supplementary road routes (520 for goods traffic, 7,000 for passenger transport) and maritime routes (10,000 for goods traffic and 12,000 for passenger transport).

The 3 June 1999 Protocol (Vilnius Protocol) version of COTIF, which will enter into force once more than two thirds of the OTIF Member States have ratified it, broadens the aims of OTIF and incorporates further areas of regulation over and above transport law, which has, moreover, been adapted to economic and political developments. The new CIM UR (in the Vilnius Protocol version) give the parties more freedom in how they formulate contracts. A large degree of harmonization with the law applicable to other transport modes has been achieved, particularly with the Convention on the Contract for the International Carriage of Goods by Road (CMR) currently in force.

- 1.2 OSZhD, also an intergovernmental organisation, was founded in 1956. OSZhD is an entity under international law and possesses the legal capacity necessary for its activities. The OSZhD membership is comprised of the Transport Ministries and central state bodies responsible for railways, authorized by their Governments, of 27 Member States within Eurasia, having a total railway track length of over 270,000 km. The main areas of OSZhD's activity are the development and improvement of international rail

transport, particularly between Europe and Asia, including combined transport, co-ordination of international rail traffic transport policy; improvement of how 1435/1520 gauge rail networks work together; co-operation with other international organisations; improvement of international transport law.

The Agreement on International Passenger Transport by Rail (SMPS) and the Agreement on International Goods Transport by Rail (SMGS) form the legal basis for guaranteeing transport operations. SMGS currently regulates all international rail freight transport operations concerning the railway and the customers. The provisions of SMGS regulate how transport contracts must be concluded and honoured and how liability is to be shared. SMGS also regulates how transport costs are to be borne and how tariffs are to be calculated, etc. The currently applicable service instructions were drafted on the basis of SMGS (SMGS SI). The Conference of Ministers has stressed that SMGS has over many years demonstrated and proved its viability as a multilateral international contract in the field of performing freight transport operations in international transport.

The Conference of Ministers is the highest authority of the OSZhD. Its competencies include matters concerning transport policy, economic aspects of transport, management of the SMPS and the SMGS and improving these legal documents.

The authority at the level of the railways (rail transport undertakings) is the Conference of the Directors General, which takes decisions concerning the operation of railways and the technical, IT, economic and ecological aspects of rail transport.

Observers and associated undertakings take part in OSZhD's activities.

During the period between the Conference of Ministers and the Conference of the Directors General, OSZhD's activities are taken care of by the OSZhD Committee, which is an executive organ.

- 1.3 The world of railways is today in a state of flux as the result of a tense reverse development trend. On the one hand, a reduction in the amount of goods carried by rail is discernable – rail freight transport is in an unfavourable competitive position – and on the other hand, railways are the focus of particular attention in transport policy, which sees for it an important role in the future, with major plans for development in the name of the environmentally sustainable development of the transport infrastructure. This requires a very differentiated outlook, taking into account conditions that are also changing, since the role of the railways cannot be defined in the same way in all transport sectors.

At the centre of co-operation between the two international organisations is the creation of suitable legal conditions, primarily to enhance the competitiveness of the railways in the transport market. Despite the differences that exist between the two legal systems, co-operation in past years has formed a basis that can be built upon.

2. Basic concept for co-operation

2.1 EU railways policy is leading to new structures, taking as a starting point a clear separation between the state and railway undertakings and, at least as far as the accounts are concerned, between infrastructure and traffic, the aim being liberalized access to the network, including for new transport undertakings. This policy, which also aims to create more room for open market forces in the rail sector too, calls for appropriately adapted roles for those involved at both state and railways level, and not least for an independent regulatory authority to oversee observance of the new market rules. We must assume that the new structures will, within a certain range, come about in the next few years, and that in the longer term they will have an effect even beyond the EU's area of influence.

The strategic aim of the OSZhD Member States' transport policy is the development of a transport system that effectively supplies the needs of passenger and freight transport, environmental protection requirements and other special concerns. In addition, transport policy is aimed at restructuring the railway sector, improving its ability to compete, developing a uniform transport area incorporating the rail networks of the OSZhD Members and the largest economic centres of Asia, based on a co-ordinated OSZhD rail transport policy, concentrated working together on particular rail corridors and specific border crossing points by improving co-operation between neighbouring countries.

A forward-looking railways policy requires a clear international and intermodal direction. The intermodal perspective is indeed important, as the potential of the railways (with a considerable need for investment) can only be fully exploited if they are included in an optimized logistical transport chain.

2.2 But in the short term and pending further developments, we will have to live with the two legal systems, which means both the organisations dealing with them are obliged to find suitable means of managing the situation so that there are no barriers in the market that cause difficulties for the railways. At the same time, the conditions must be created whereby time can be of benefit to the developing market conditions.

2.3 The objective of creating a uniform global system of transport law by harmonizing CIM/SMGS is still relevant, though in the light of current development trends, the latest

versions of COTIF and SMGS must be regarded as the base documents. Even if harmonization of CIM/SMGS cannot be guaranteed in the short-term, this should be considered essential in the long term, because a harmonized/uniform system of transport law is in the interest of the customers.

- 2.4 We therefore need to ensure, by means of our working intelligently together, that the demand potential is exploited to the full, using specific measures, to the benefit of the railways, by removing barriers and offering specific instruments that facilitate transition between the two systems.
- 2.5 The existence of two different systems of transport law is a reality at the outset. The result is that the areas of influence of CIM/CIV on the one hand and SMGS/SMPS on the other will overlap, individual states will be members of both OTIF and OSZhD, and there will be a need for OTIF and OSZhD to work together, especially in those states where, because of their geographical situation, they must ensure the transition between the two systems.

But this should not lead to a competitive mentality in the two organisations. In the interests of the railways, they should exploit the possibilities offered by the instruments they have at their disposal, whilst accepting that the states, with their specific situation, and ultimately the global market, will decide.

An individual state will only be a member of one organisation if only one or other of the legal systems largely serves that particular state's interests. Where it is obvious that both systems must be applied, membership of both organisations is appropriate.

- 2.6 Using this common basis as the starting point, both organisations will give others the impression of being co-ordinated, particularly as regards contact with other international organisations working in the rail sector. They will be supporting a collaborative effort that exploits the strengths of each organisation and avoids useless duplication.

Particular mention should be made of UIC, which brings together railways from states where different systems of transport law are applied. UIC works closely together with both OTIF and OSZhD.

3. Formalized contacts

By the very nature of the thing and owing to the structural characteristics of each organisation, co-operation will take place at different levels:

- 3.1 Regular contact at management level in the two organisations should ensure that strategic questions of joint interest, but also any differences of opinion, can be discussed openly and in good time.
- 3.2 With regard to transport law, the different orientation of each organisation must be taken into account:
- at the legislative level (CIM/CIV and SMGS/SMPS respectively), there should be contact between the Central Office (the OTIF Secretariat) and OSZhD's Permanent Commission for Transport Law (Commission II). A contact person from each side will be firmly designated;
 - with regard to requirements concerning implementation (contract level/instructions), CIT plays an independent role within the COTIF area. Within the SMGS/SMPS area, Commission II is also competent. Contact between the legislative level and the level of the railways'

implementing the law is established for OTIF via CIT; for OSZhD, this is a matter for its Commission II.

- 3.3 The carriage of dangerous goods is also part of transport law. In the context of COTIF, the requisite uniform legal text, including requirements concerning implementation, is set out in RID.

In recent years, RID has undergone a fundamental reworking and has, from 1 July 2001, been in force with a new structure. Like ADR (European Agreement concerning the International Carriage of Dangerous Goods by Road), ADN (European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterway), the IMDG Code (International Maritime Dangerous Goods Code) and the ICAO Technical Instructions (Technical Instructions for the Safe Carriage of Dangerous Goods by Air), RID has been aligned with the structure of the UN Model Regulations (UN Recommendations). The assumption is that the new structure and harmonization with the other modes will make the multimodal carriage of dangerous goods considerably easier.

RID is subject to ongoing revision; amendments to the globally applicable UN Model Regulations and developments in the rail sector are both taken into account.

In the part concerning the carriage of dangerous goods (SMGS Annex 2), the structure of SMGS does not correspond fully to that of the UN Model Regulations. In order to

progress the updating of the requirements for the carriage of dangerous goods, closer organizational links with OTIF's RID Committee of Experts should be established. Names of persons responsible and contacts should be firmly established on both sides.

- 3.4 As regards technology/approvals legislation, COTIF 1999 defines for the first time uniform legal provisions and the rules for implementing them. This is a consequence of the European railways reform. The instruments have yet to be drafted in detail, and this must be done in close co-operation with the EU, where the determining developments are underway, not least because competence in this area no longer lies with the Member States but with the European Commission. The COTIF rules for approval must realistically be regarded as supplementing in particular those instruments that are to contribute within Europe to the best possible interoperability and harmonization of the rail network.

Seen in this light, the COTIF rules for approval, managed by the institutional means of OTIF, play a double role:

- focussing on mutually recognized official approvals for international transport and
- application in the EU area and beyond.

OSZhD is interested in following developments in this matter very closely. Establishing contact between the Central Office (OCTI) and OSZhD's Commission for Infrastructure and Vehicles (Commission V) should serve this purpose. The name of a contact will be firmly established on each side, in order to ensure an exchange of information on activities in this area.

4. Common lines of action

- 4.1 The differences between the central idea of CIM/CIV in accordance with COTIF 1999 on the one hand and SMGS/SMPS on the other, along with the consequences they have in practice, should be considered as the starting position that actually exists. Both organisations should, where necessary, provide each other with information in this respect within their respective areas.
- 4.2 The modus vivendi that enables us to live with the different systems of transport law for the time being without there being any significant disadvantages for international rail transport in the areas of overlap between OTIF and OSZhD should be set out as specifically as possible.

In this respect, it might be worth looking at the most important transport corridors and to make a joint effort to get them used, since these corridors lie within both the CIM and SMGS areas and are of prime importance for the extensive development of rail freight transport.

Both organisations will together undertake to work so that:

- interoperability between railways is promoted in the interests of market development on the Eurasian continent,
- corridors of prime importance are clearly described with regard to the problems they pose in transport law,
- the practical problems at the system switch-over points within these corridors are systematically recorded,
- the competencies/responsibilities for overcoming these problems are transparent,
- instruments are developed or improved that serve to bring about administratively easier through-transport operations.

4.3 Together with OTIF, OSZhD will ensure that the rules concerning the carriage of dangerous goods (Annex 2 to SMGS) are revised on the basis of the July 2001 edition of the restructured RID.

In the future, i.e. from 2004 onwards, the rules covering the carriage of dangerous goods will be brought up to date with RID on a running basis in order to make it possible for the logistical chain between Eastern and Western Europe to function normally by using the harmonized rules.

4.4 OTIF will inform OSZhD about measures it takes for the purpose of following, with a view to its own task, European efforts concerning technical harmonization and the mutually recognized approval of railway material.

4.5 OTIF and OSZhD will work at global level to develop instruments whose purpose will be the worldwide promotion of the interests of the railways at a legislative and official level.

This document shall be endorsed by both Organisations in accordance with their internal rules. OSZhD and OCTI shall inform each other of such endorsement. German

and Russian versions of the "Common Position" document were available in duplicate.
Both versions are equally valid.

Warsaw, 12 February 2003

Chairman of the OSZhD Committee

Director General of OCTI

signed

signed

T. Szozda

H.R. Isliker