Unified railway law: Harmonization of liability rules (Part 2)

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Summary

- Background

- CIM/SMGS Consignment note manual: GLV-CIM/SMGS and Appendix 22 SMGS

- Standard principles for CIM/SMGS liability

- Special Conditions for CIM/SMGS carriage by rail (SC CIM/SMGS)
Areas in which the CIM and/or the SMGS apply

As at: 1 July 2010
Duality of the international railway law

CIM (Uniform Rules concerning the Contract of International Carriage of Goods by Rail (CIM – Appendix B to COTIF))
- Consensual contract
- Contractual freedom within the bounds set by Article 5 CIM
- Design of the consignment note within the competence of the railways
- Several models of carriage and liabilities

SMGS (Agreement concerning International Freight Traffic by Rail)
- Formal contract
- Obligation to carry
- Consignment note is an appendix to the SMGS
- No substitute carriage and individual liability of the railways
CIT/OSJD project to make the CIM and SMGS legally interoperable
Summary

- Background
- CIM/SMGS Consignment note manual: GLV-CIM/SMGS and Appendix 22 SMGS
- Standard principles for CIM/SMGS liability
- Special Conditions for CIM/SMGS carriage by rail (SC CIM/SMGS)
CIM/SMGS Consignment note manual: GLV-CIM/SMGS and Appendix 22 SMGS

• Two contracts of carriage

• One CIM/SMGS consignment note as the sum of the CIM and SMGS consignment notes (also available in electronic form)

• Two liability regimes – the CIM regime and the SMGS regime

• CIM/SMGS rules for procedures and documents
  – CIM/SMGS formal report (point 12.2 and Appendices 8 and 8.1)
  – presumption in accordance with Article 28 § 3 CIM and Article 22 § 10 SMGS
  – CIM/SMGS claims (point 12.3)
  – departments of CIM carriers and SMGS railways to which claims must be sent (Appendix 9)
  – payment of compensation (point 12.4)

• CIM/SMGS Liability Manual
  – principles of CIM/SMGS liability
  – provisions for liability in the CIM and SMGS which are identical or similar
Summary

- Background
- CIM/SMGS Consignment note manual: GLV-CIM/SMGS and Appendix 22 SMGS
- Standard principles for CIM/SMGS liability
- Special Conditions for CIM/SMGS carriage by rail (SC CIM/SMGS)
Standard principles for CIM/SMGS liability

- Two contracts of carriage
- One consignment note with a reference to the SC CIM/SMGS (likewise for electronic consignment notes)
- Standardised liability system for loss of and damage to goods: more customer-friendly than the CIM (Article 5) and compatible with the SMGS
  - joint and several liability
  - standardised principles for liability
  - grounds for relief aligned with the CIM and SMGS
  - limits to compensation
  - sharing of compensation between the carriers/railways
- Liability for exceeding the transit period in accordance with the CIM and SMGS
- Assertion of rights in accordance with (points 12.3 and 12.4 of the CIM/SMGS manual)
Summary

• Background

• CIM/SMGS Consignment Note Manual: GLV-CIM/SMGS and Appendix 22 SMGS

• Standard principles for CIM/SMGS liability

• Special Conditions for CIM/SMGS carriage by rail (SC CIM/SMGS)
Special Conditions for CIM/SMGS carriage by rail: based on International Private Law (IPR)

- One contract of carriage
- One consignment note
- One liability regime
- Standard conditions of carriage
- Standard procedures to assert rights?

- **Framework contract**: for participating railways
- **Applicable law**: compatible with mandatory provisions of the national law applicable
- **Precondition**: assent by the participating railways
- **Legal basis**: International Private Law (IPR)
Special Conditions for CIM/SMGS carriage by rail: Treaty between states

- One contract of carriage
- One consignment note
- One liability regime
- Standard conditions of carriage
- Standard procedures to assert rights

- **Multilateral convention**: for participating states
- **Applicable law**: mandatory statutory provisions
- **Precondition**: ratification by the participating states
- **Legal basis**: International Law