



**Economic and Social  
Council**

Distr.  
GENERAL

TRANS/SC.2/2001/1  
12 January 2001

ENGLISH  
Original: FRENCH

---

**ECONOMIC COMMISSION FOR EUROPE**

**INLAND TRANSPORT COMMITTEE**

Working Party on Rail Transport

**HARMONIZATION OF CONDITIONS OF DIFFERENT LEGAL  
RAIL TRANSPORT SYSTEMS**

Note by the secretariat

The Working Party on Rail Transport (SC.2) at its fifty-fourth session added a new item to its agenda concerning the harmonization of conditions of different legal rail transport systems.

Following consideration of this item, SC.2 requested the Intergovernmental Organization for International Carriage by Rail (OTIF) and the Organization for Cooperation between Railways (OSZhD) to prepare a report on progress made in the harmonization of the COTIF-CIM/CIV and SMGS/SMPS systems by the end of the year (TRANS/SC.2/194, para. 59).

The secretariat reproduces below the report prepared by the OTIF secretariat in collaboration with OSZhD, as received. The present document also contains the first measures based on the Vilnius Protocol concerning the implementation of the new COTIF, although the latter has not yet entered into force.

\* \* \*

Harmonization of international rail transport law

1. The Working Party on Rail Transport of the United Nations Economic Commission for Europe decided at its fifty-second session (Geneva, 5-7 October 1998) that the competent organizations in the field of international rail transport law, namely, OTIF and OSZhD, should submit to it every two years a report on the results obtained in the efforts to harmonize the CIM and SMGS legal systems. At its fifty-fourth session (Geneva, 3-5 October 2000), the two organizations were requested to prepare a report concerning the harmonization not only of CIM and SMGS but also of CIV and SMPS.
2. In its document G 01-00/501.97 of 1 May 1997, approved by the Administrative Committee of OTIF and transmitted to UN/ECE (TRANS/SC.2/1997/5/Add.1), the Central Office described in detail the endeavours which have been made for decades to harmonize CIM and SMGS. Express reference is made to this document.
3. The OTIF strategy set out in this document has been successfully followed and as regards the main point it contains (see paragraph 33.2 of the document in question), which materialized in the adoption of the Protocol of 3 June 1999 for the Modification of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 (Protocol 1999), a legal framework for international rail traffic has been established over and above transport law as such, which takes into account the new political, economic and legal situations in the member States of OTIF and strengthens the competitiveness of the railways.
4. OTIF's Revision Committee and General Assembly took into account in the revision of COTIF the existence of a parallel convention of a comparable nature, for example, in defining the scope and by maintaining the broad notion of "Presumption of loss or damage in case of reconsignment" (see CIM, article 1, §6 and article 28 in the version of Protocol 1999, cf. CIM 1980, article 38). There were no proposals beyond this, that is, proposals for a rapprochement or harmonization of CIM and SMGS.
5. In view of the maintenance of the existence of two legal systems for rail transport, the new CIM Uniform Rules allow direct carriage to or from States which are not member States of OTIF when the parties to the contract of carriage so agree (see CIM, article 1, §2, in the version of the 1999 Protocol). There is no contradiction with SMGS, since according to article 1 of the latter, its scope is restricted to *through* carriage by the railways of the member States of SMGS, i.e. it does not also include the carriage of goods by rail by the railways of States which are not members of SMGS. These new regulations do not oblige the parties to apply the CIM Uniform Rules. They may continue to conclude several contracts of carriage, as is currently required in East/West traffic.
6. Theoretically, the harmonization of CIV and SMPS would only take effect as regards the carriage of luggage, since SMPS has no provisions concerning the liability of the railways for the death or injury of passengers. When the CIV Uniform Rules were revised, there were no proposals for harmonization of the provisions concerning the carriage of luggage to be found in CIV and SMPS. The member States considered rather that it was appropriate to bring the provisions of the CIV Uniform Rules dealing with an additional transport service - contrary to the carriage of passengers even as a main service - into line with the corresponding provisions of

the CIM Uniform Rules on the carriage of goods; their view was that the carriage of luggage was economically less important than the carriage of goods. When the scope of the CIV Uniform Rules was defined, as in the case of the scope of the CIM Uniform Rules, the possibility was introduced of entering a reservation concerning the scope; this was for States which were parties to “a convention concerning international through carriage of passengers by rail comparable with” the CIM Uniform Rules (CIV, article 1, §6 in the versions of the 1999 Protocol), the reference could, in the circumstances, be to SMPS. This was also to take account, in the area of passenger transport, of the fact that two different legal systems currently exist for such transport.

7. As long as the political, economic and legal framework conditions in the main States applying the two systems continue to be too different, no rapprochement can be expected between CIM/SMGS and CIV/SMPS. A major goal in the revision of COTIF was nevertheless to establish a legal basis which in the long term would make it possible to get the better of the unnecessary dispersal of provisions concerning international rail traffic, including also the provisions of transport law, in various conventions and international agreements. A similar obligation for member States of OTIF is defined as follows in COTIF, article 3, §1, in the version of Protocol 1999:

“The Member States undertake to concentrate their international cooperation in the railway field, in principle, within the framework of the Organisation, and this to the extent that there exists a coherence in the tasks which are attributed to it in accordance with Articles 2 and 4. To attain this objective, the Member States will adopt all measures necessary and useful in order that the international multilateral conventions and agreements in force to which they are contracting parties should be adapted, to the extent that these conventions and agreements concern international cooperation in the railway field and attribute competences to other intergovernmental or non-governmental organisations which cut across the tasks attributed to the Organisation.”

8. Although the establishment of standard law in railway matters thus remains in the long term one of OTIF's main goals, it devolves on it for the time being to manage this situation as well as possible. It should at all times be at the service of the railways, i.e. at the service of their competitiveness and their market opportunities.

9. This point of view is also shared by OSZhD. Both organizations are fully aware of their responsibility. It is up to them to find a way forward together. The first steps have already been taken, which is why they have submitted their report jointly to UN/ECE. This should enable them to inform the States members of the Working Party on Rail Transport without the need to put the question back on the agenda.

-----