

Summary and conclusions of the Commission workshop on wagon use on 26 October 2005 in Brussels

The workshop examined the issues faced by wagon keepers who are either a railway undertaking or a private wagon owner (“independent keeper”). The Commission wished to look at the overall legal framework, consisting of the relevant EU rules, of the international regulatory framework provided by the Convention on International Carriage by Rail (COTIF) and other relevant rules such as those related to the contractual relationship including the General Conditions of Use (GCU) concluded between railway undertakings (UIC/ERFA) and private wagon keepers (UIP). The agenda of the workshop is attached.

The changes which this complex framework has undergone over the last few years, in particular due to the process of market opening, is affecting all the actors (including public authorities) in the rail freight sector to varying degrees, for instance, by having an impact on the legal certainty of the relevant business environment. The workshop intended to bring together all actors (including public authorities) within this sector in order to explore the problems and discuss possible solutions, including both regulatory and non-regulatory ones.

The technical discussions addressed three major issues: a) design, registration, maintenance and related issues ensuring the safe operation of wagons; b) the conditions of wagon use and c) insurance issues. The discussions of these three panels can be summarised and concluded as follows:

a) Panel on the design, registration, maintenance and related issues ensuring the safe operation of wagons

In the session a number of interventions underlined that the new GCU would bring benefits to the sector, but some problems were also identified:

- the role of the wagon keeper is not sufficiently clarified in EU legislation
- the transition phase between RIV and TSI/GCU in Member States legal framework is not defined in EU legislation
- the national vehicle registers, required by the directives are still to be defined and put in place

The main immediate problems relate to the rules for authorisation to place in service and to rules for maintenance of wagons.

Conclusions:

- In a medium to long term perspective, the Commission may consider to fine-tune legislation to take into account the new contractual relations between wagon keepers of different kinds and the railway undertakings holding a safety certificate.
- The Agency will develop the necessary specifications for the national vehicle registers and recommend a system for certification of maintenance workshops.

- Immediate action is necessary to ensure that Member States' authorities accept the former RIV wagons on their networks under the GCU framework from January 2006. The Commission should consult the Member States on this issue as soon as possible in order to better identify all issues at stake (placing into service, registration, operation, maintenance, etc.) and to define appropriate transition arrangements.

b) Panel on the agreement on General Conditions of Use (GCU)

The audience was generally favourable of the text of the agreement General Conditions of Use (GCU) for wagons on which the negotiating parties UIC, ERFA and UIP had finally found a common position on 25 October 2005.

The discussion revealed the following **advantages** of a contractual approach to define the GCU:

- Flexibility compared to a regulatory approach: changes to the document can be made rapidly when needed; the revisions will be based on a light decision making structure
- Cost-effective implementation of its provisions: Features such as optional shared liability and standard liability rules for damages to the wagons below €750 through a damage catalogue ensure low transaction costs of operating the agreement

Some **risks** were however voiced as well:

- Lack of full legal certainty due to the existence of some optional provisions
- The full benefits of the GCU can only be reaped if the agreement covers all actors of the sector: giving rise to the statement of some that basic mandatory rules applicable to everyone are needed; however, there are build-in mechanisms that will push towards full membership (e.g. as the railway undertaking that applies the GCU has the responsibility for wagon used in a transport chain, it is likely that it will not contract with a railway undertaking that is not member of GCU)
- The definition of the wagon keeper needs to be clarified (e.g. user of wagon, lessor or entity under which the wagon is registered and whose name is marked on the wagon?) also in view of its compatibility with Community legislation.
- The challenge is to manage the transition period between 1.1.2006 (end of RIV) and the full implementation of the Community rail safety and interoperability provisions: are the rules for wagon maintenance and safety acceptance for existing wagons sufficiently clear and transparent?

Conclusions:

A. For the sector:

- Refine the contractual framework and develop it further responding to needs;
- Ensure a full coverage of the sector by encouraging all railway undertakings and wagon keepers to adhere to the GCU agreement.

B. For public authorities:

- Design and enforce clear and simple rules on safety management of wagons as rail freight has only a future if doing business becomes simpler and less costly;

- Ensure fair and efficient framework conditions in intermodal competition.

c) Panel 'Covering the risk; the insurance issue'

COTIF 1999 will modify the allocation of liabilities between wagon keeper and railway undertaking for damages caused by freight wagons. For example, liability for simple negligence will be shifted from the railway undertaking to the keeper. Consequently, the coverage needed for their liabilities will have to change then.

The General Contract of Use, where it will be applied, will clarify the liabilities, which in turn is an important prerequisite for the provision of good insurance coverage at reasonable price.

The GCU allows, as an option, the Railway undertaking to cover certain risks of the wagon keeper. It is expected that this option would only be used when a wagon is used by few railway undertakings.

Infrastructure managers providing insurance to railway undertakings and/or wagon keepers as a mark-up on the charge for infrastructure use, was considered problematic, among other things because this would not cover for incidents off the infrastructure managers' network, e.g. on sidings. Moreover, it could involve higher insurance cost, because of divided coverage and de-responsibilisation.

Several representatives of wagon keepers said that it had been possible for them to obtain suitable insurance coverage in the market. Railway undertakings and keepers have to be proactive and express and negotiate their insurance needs to the insurers and brokers in order to develop a European common insurance market. Insuring railways has in many cases afterwards proved to be a 'good' risk for the insurers.

Brussels, 17 November 2005

Agenda of the Commission workshop on wagon use issues on 26 October 2005 in Brussels

1. EU Policy in the rail freight sector with special emphasis on the role of wagon keepers

The view of the EU Commission (Jean-Arnold Vinois, Head of railway unit, DG TREN)

2. The position of the wagon keeper under the revised regulatory framework

- The new EU regulatory regime : The role of wagons in rail freight transport and their contribution to achieve the objectives of the EU's rail liberalisation policy (Dr. Heiko Fischer, President UIP, CEO VTG)
- The new international legal framework: The contribution of COTIF to the regulation of rail freight transport within Europe (Dr. Gerfried Mutz, vice general director OCTI)
- The new contractual framework: Strengths and weaknesses of the envisaged new system concerning the use of freight wagons from the point of:
 - a railway undertaking (Jean-François Meunier, head freight operations SNCF) –
 - a private wagon owner (Gernot Schwayer, CEO KVG, Vice President UIP)
 - a user / client company (Dieter Trapp, Director BASF)
- Discussion

3. Specific issues under the New Legal Regime : creating the proper framework conditions for the use of wagons

This session will examine in more detail a number of issues under the New Legal Regime which have a significant impact on P-Wagons. For each issue the workshop will determine the main problems and pitfalls which remain after the creation of the new regime and will discuss ways and means of establishing the right framework conditions in order to allow P-Wagons to contribute to efficient rail freight transport in Europe.

a. Assuring the quality and integrity of the Wagons

This session will look at the design stage of the wagons, their registration, their maintenance and related issues as they apply today under the new legal regime.

Panel: Michael Schmitz (EBA), Anders Lundström (ERA - Coordinator of the Safety Unit), Henning Traumann (Secretary General VPI), Bruno Muller (SNCF)

- Discussion

b. Conditions of use

The impacts of the future new legal environment will be considered. The new wagon law creates equal treatment of railway owned and private wagons, the application of uniform conditions of use going beyond UIC railway undertakings and greater independence of the wagon keeper not being at the same time a railway undertaking. The loss of one interlocutor for the wagon keeper, the registering railway undertaking, may lead to a legally more complicated situation, especially concerning liability questions, with consequences for the transaction costs of rail freight traffic. The solutions offered by the new General Contract of Use (GCU) and the annex of the new COTIF (CUV) will be discussed. Equally, the consequences of the legal changes for wagons owned by railway undertakings and used by other railway undertakings will be looked at.

Panel: Messrs. Henning Traumann (Secretary General VPI Germany), Dr. Frank Furrer (Secretary General VAP Switzerland), Stefan Schimming (general director OCTI), Eric Peetermans (SNCB)

- Discussion

c. Covering the risk: the insurance issue

In the new legal environment liabilities of wagon keepers will be re-defined and new insurance needs will be created. Keepers of private wagons will lose their former protection under the UIC-Indemnity Agreement and will have to look for insurance cover instead. Also railway undertakings in their capacity as wagon keepers will have to make sure that their liabilities are properly insured while their wagons are being used by other RUs in international traffic. Insurance markets will have to be developed to offer adequate insurance cover for reasonable premiums. The panel will try to define the specific liability risks of the wagon keeper under the new COTIF and the GCU, the solutions already offered and the need for further development of insurance markets as well as the need for further harmonization of insurance requirements for railway undertakings and infrastructure managers.

Panel: Messrs Stefan Lohmeyer (Head of Legal and Insurance Department VTG AG), Prof. Dr. Rainer Freise (Director DVA), Mr. Bruno Dambrine (ERMEWA President AFWP, Vice President UIP), Frank Jost (DG TREN)

- Discussion

4. Conclusions

Rapporteurs' conclusions of the three panels (Anders Lundström, ERA; Jan Scherp, DG TREN; Frank Jost, DG TREN)

Chairman's conclusions (Jean-Arnold Vinois, Head of railway unit, DG TREN)