



ORGANISATION INTERGOUVERNEMENTALE POUR LES TRANSPORTS INTERNATIONAUX FERROVIAIRES
ZWISCHENSTAATLICHE ORGANISATION FÜR DEN INTERNATIONALEN EISENBAHNVERKEHR
INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL CARRIAGE BY RAIL

Session IV: Application of CIV, CIM and CUV Uniform Rules

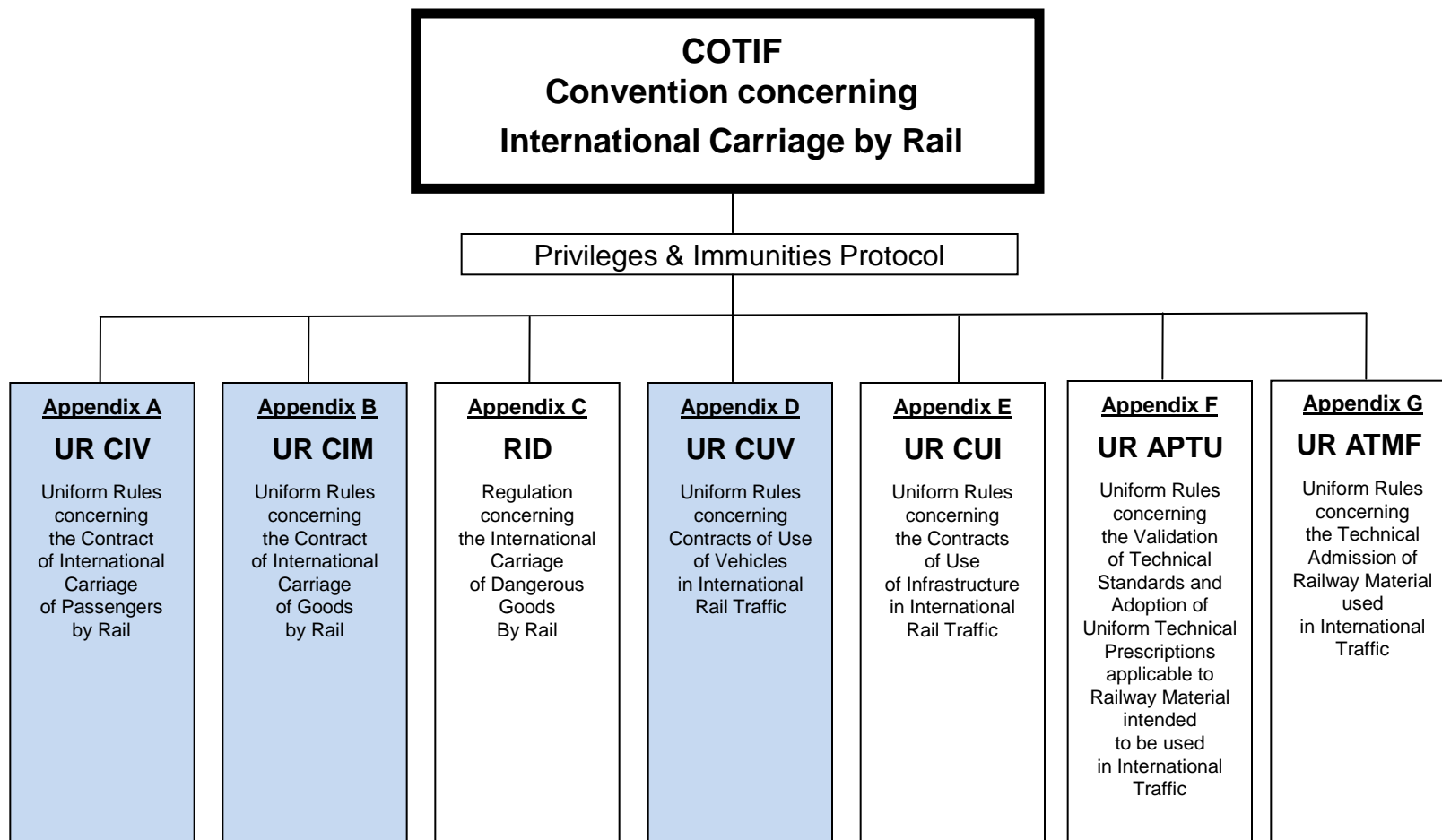
ECO/OTIF/UIC Workshop on COTIF

**Mr. Carlos del Olmo Morand
Head of Legal Section**

Tehran, 11-12 November 2014

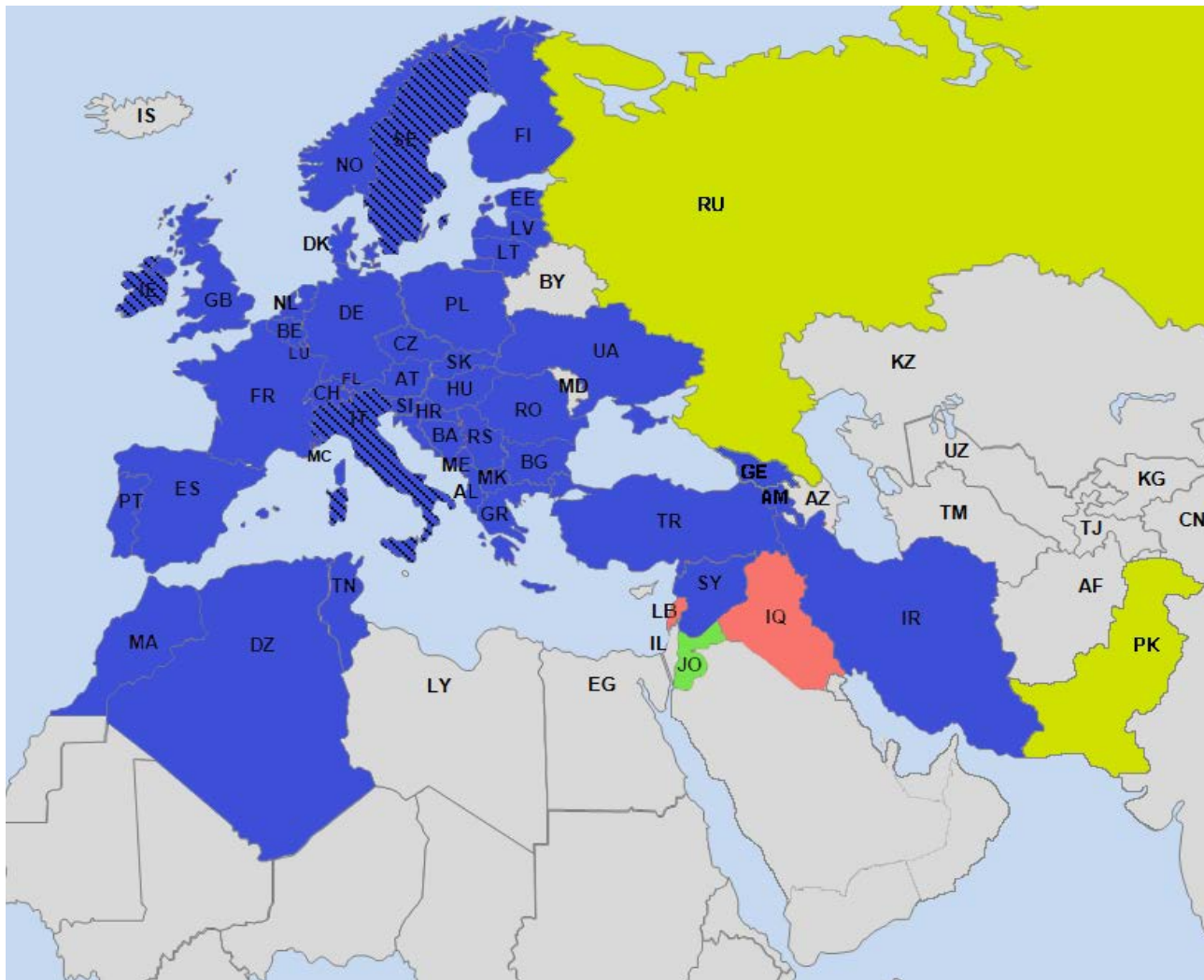


- CIV and CIM Contracts of Carriage,
- CIM/SMGS Common Consignment Note, differences compared with CIM Consignment Note,
- Use of Railway Vehicles.





Application of CIV



COTIF 1999 not yet ratified



OTIF Membership suspended



OTIF associate member



OTIF member (without CIV)



CIV

UA :Halmeu/Dyakovo-Batyopvo-Chop/Cierna nad Tisou-Chop/Záhony

•Epereszke/Batyovo-Mukacheve

•Medyka/Mostiska II - Mostiska I

•Dorohusk/Yagodin-Kovel

•Dornesti/Vadul-Siret; total: 232 km

GE : Gardabani – Kartsakhi, total 244 km

EE : Tallinn – Tapa – Valga, total 272,9 km



- Civil law – regulation of the contractual relationship between the passenger and the carrier
- Cross border carriage of passengers under one uniform legal regime
- Rights and obligations of the parties to the contract of carriage are clearly defined
- A certain harmonisation in liability issues is guaranteed = legal certainty
- Iran, Turkey and Georgia apply these rules
- Reference in ECO Transit Transport Framework Agreement (TTFA) – Art. 24, 5

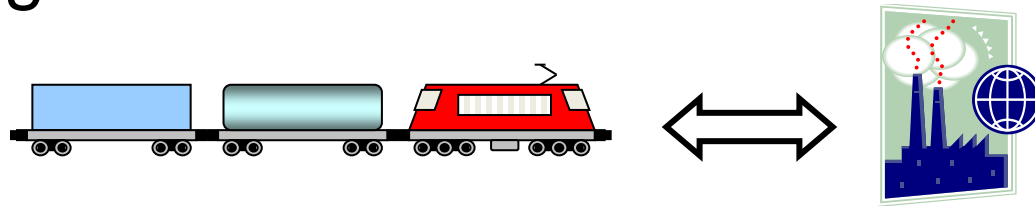


Civil law regimes containing rules on

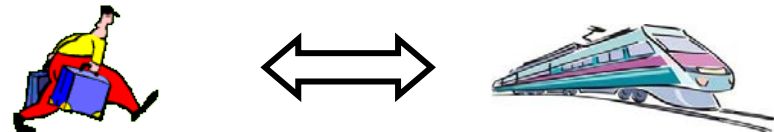
- Contract of carriage (+ the corresponding transport documents)
- Liability (principle of strict liability of the carrier with a few exactly formulated grounds for exoneration)
- Assertion of rights (claims, actions, forum, extinction of rights, time limitation of actions)
- Relations between carriers (a few provisions)
- Same definitions: carrier, substitute carrier, General Conditions of Carriage
- Similar provisions or same principles: carriage of goods – carriage of registered luggage (joint and several liability)



- CIM: relationship between two commercial undertakings as a rule



- CIV: the passenger as private person is the weaker party in the contractual relationship with the carrier



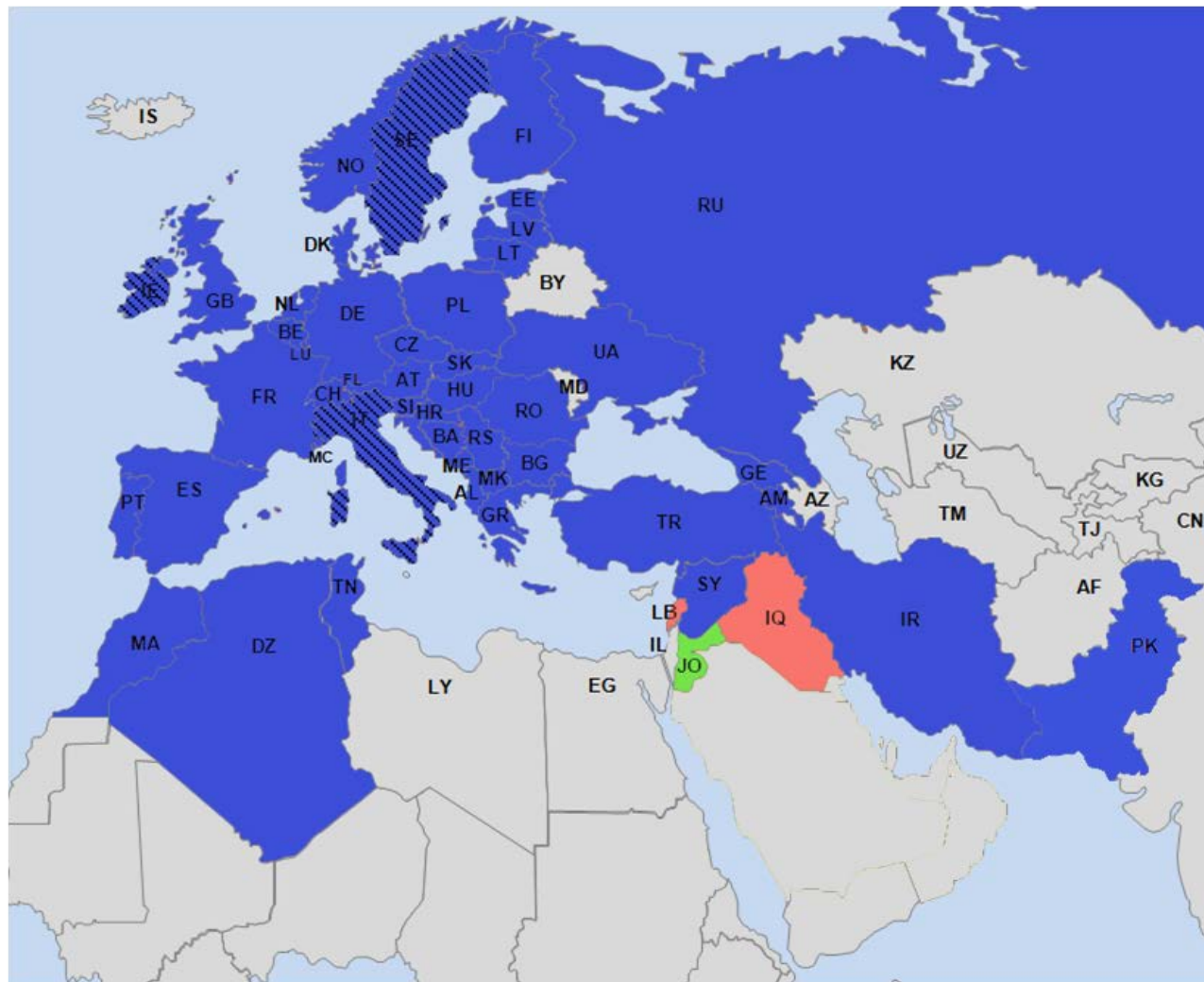
➔ grounds for relief from carrier's liability are formulated more restrictively in CIV



- Application of CIV is mandatory,
- General Conditions of Carriage (GCC) are developed by the sector within CIT and can include **derogations** only where expressly allowed
- CIV refer to GCC for **more detailed rules**
- CIV contain certain **supplementary rules** that only applies if nothing else has been agreed – GCC can then include **other specific rules**
- **CIV UR are a proven regime for international passenger traffic taken over in 2007 by European Union in its Passengers' Rights Regulation.**



Application of CIM



COTIF 1999 not yet ratified



OTIF membership suspended



OTIF associate member



CIM

UA : Halmeu/Dyakovo-Batyopvo-Chop /Cierna nad Tisou-Chop/Záhony

•Epereszke/batyovo-Mukacheve

•Medyka/Mostiska II - Mostiska I

•Dorohusk/Yagodin-Kovel

•Dornesti/Vadul-Siret

•Illichivsk ferry Terminal - Illichivsk portside station

•Uzgorod – Chop/ Matevce; total: 269 km

GE :Port of Poti – Poti Railway station

•Port of Batumi - Batumi Railway station

•Gardabani – Kartsakhi, total 248,6 km

EE : Tallinn – Tapa – Valga, total 272,9 km

RU : Port of Baltiysk – Baltiysk Railway Station

•Port of Ust-Luga – Luzhskaya Railway station; total 4,54 km

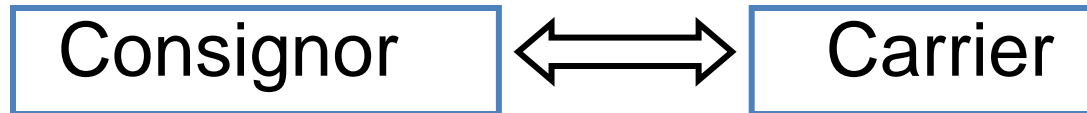
•Lines operated by Russian undertakings . Art 38 CIM UR

•Ust-Luga – Sassnitz 1128 km

•Baltiysk – Sassnitz 419 km



- Private law – regulation of the relationship of the parties to the contract of carriage



- Cross border carriage of goods by rail under one single legal regime
- Rights and obligations of the parties to the contract of carriage clearly defined = legal certainty
- Iran, Turkey, Georgia and Pakistan apply these rules
- Reference in ECO Transit Transport Framework Agreement (TTFA) – Art. 24, 5



- COTIF State → COTIF State:

mandatory application of CIM (Art. 1 § 1)
(sea and inland navigation services only on
lines entered into List of lines)

- COTIF State → NON – COTIF State:

CIM UR applicable if the parties to the
contract of carriage so agree (Art. 1 § 2) –
choice of law:

either the State of departure or the State of
destination in an OTIF Member State



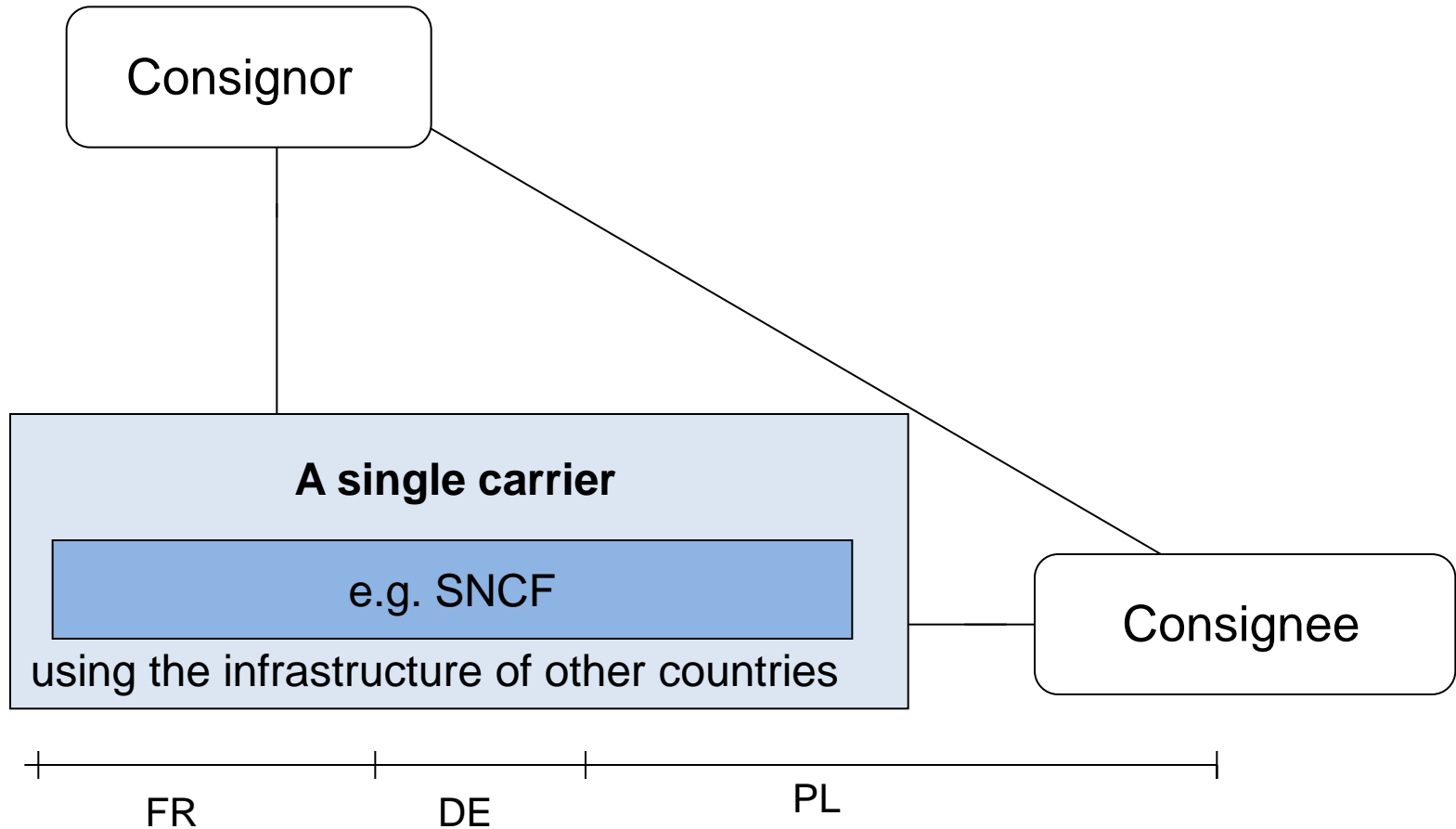
- The contract of carriage is concluded as soon as the consignor and the carrier so agree (consensual contract).
- CIM contain certain **suppletory rules** that only applies if nothing else has been agreed – The actual contract and/or the Consignment note can then include **other specific rules**.
- The actual taking over of the goods for carriage can follow later.
- The contract of carriage is always for reward.
- **CIM offers a legal uniform and neutral regime for the transport of goods by rail**

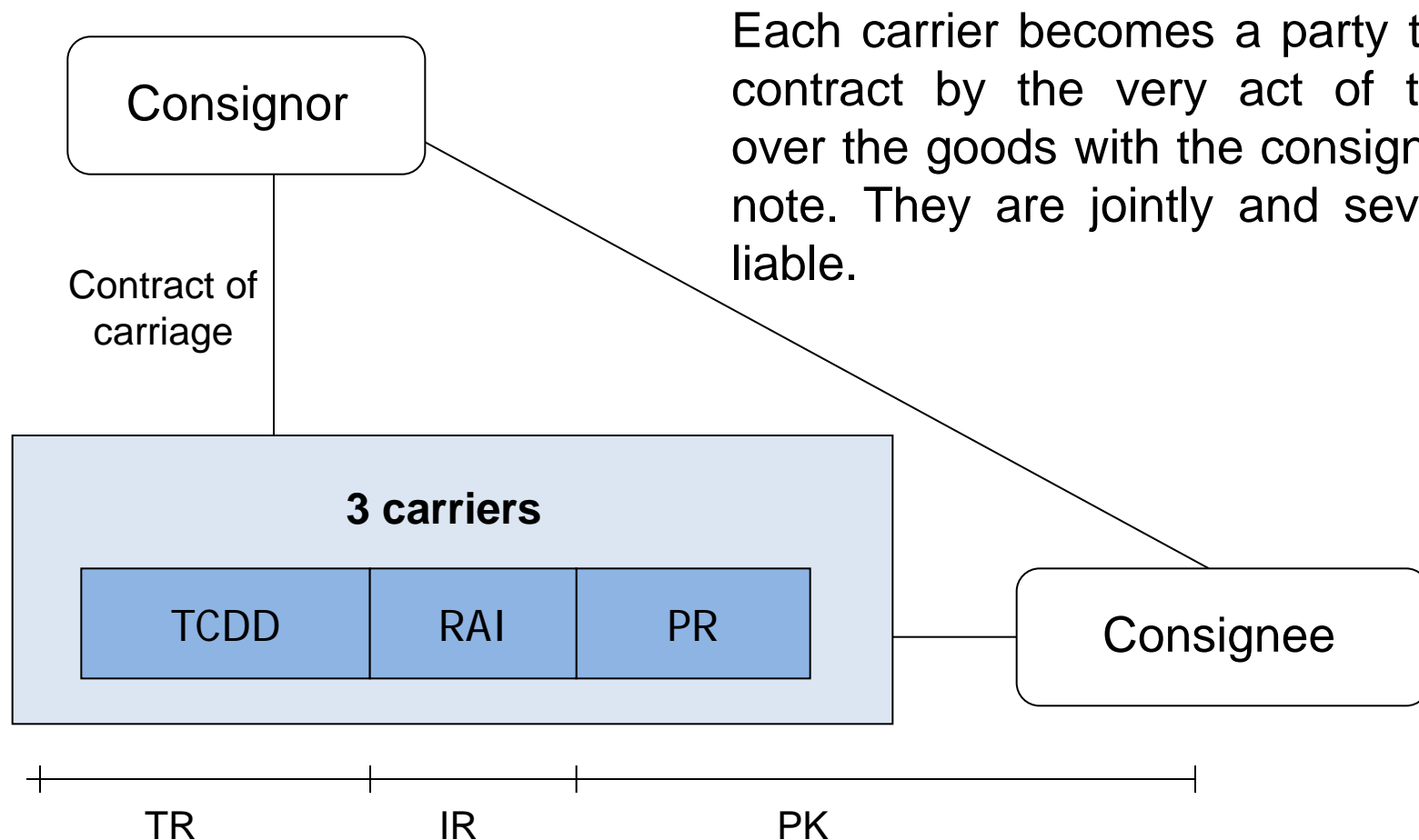


- has only evidential value and does not affect the existence of the contract (Art. 6 § 2), but
- is obligatory for customs purposes (carriage taking place in the European Union - Art. 6 § 7 CIM)
- CIT which is an International associations of carriers establish uniform model consignment notes based on Art. 6 § 8 CIM.
- Electronic consignment note (Art. 6 § 9 CIM)
- **OTIF's CIM WG on 9th December 2014 will propose to next General Assembly to adopt electronic consignment note as a standard**



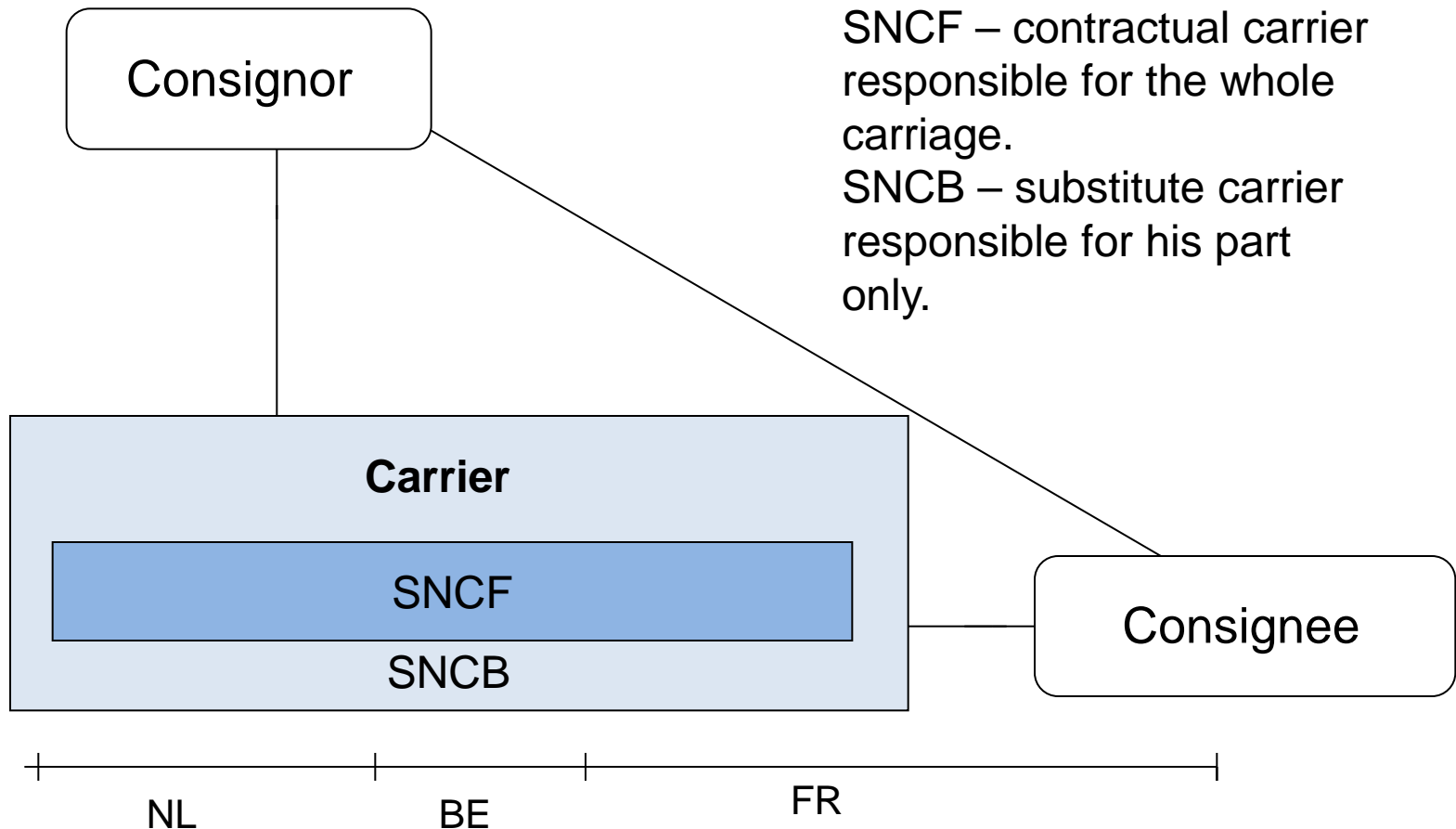
A single carrier







Substitute carrier





- **CIM (Uniform Rules concerning the Contract of International Carriage of Goods by Rail - Appendix B to COTIF)**

- Annex to the main convention
- Consensual contract
- Contractual freedom
- Consignment note design by CIT (international carrier association)
- Joint and several liability

- **SMGS (Agreement on International Goods Transport by Rail)**

- Main convention
- Formal contract
- Obligation to set and publish tariffs and to carry
- Consignment note defined in SMGS itself
- Individual liability



- Common CIM/SMGS consignment note (in force)
- Standardised claims handling mechanism (in force)
- Unified Rail Transport Law (to be done)

CIM/CIV/CUV UR are developed by OTIF's Member States taking in account the position of the various stake holders : CIT, UIP, UIC, OSJD and UNECE, and in coordination with EU.



General and common provisions for paper and electronic consignment notes are in appendix 22 SMGS and



Edition 7 February 2012

CIM/SMGS Consignment Note Manual (GLV-CIM/SMGS)

Applicable with effect from 1 September 2006



An overview of the CIM/SMGS consignment note (Model)

Implements both contracts of carriage

Recognised as a customs and bank document

Does not undermine the CIM/SMGS liability conditions

The “sum” of the CIM and SMGS consignment notes

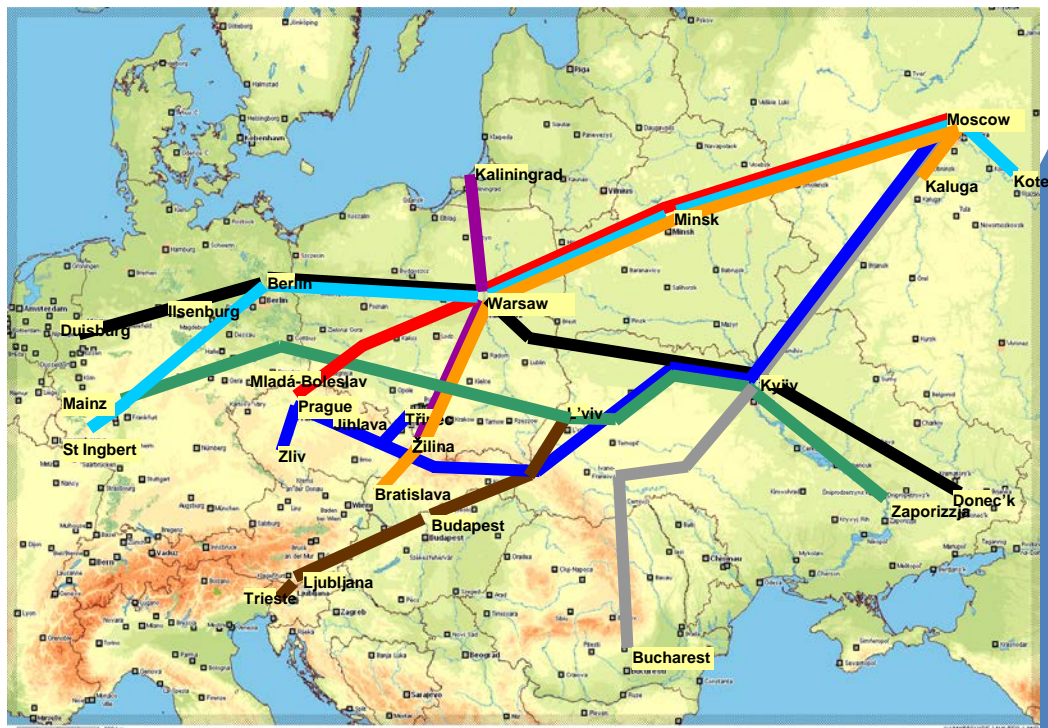
Based on:

- Article 6 § 8 CIM + Article 6 § 11 and 7 § 15 SMGS
- Layout based on the United Nations Layout
- Key for trade documents

The image shows a detailed, multi-sectioned form for a CIM/SMGS Consignment Note. The form is divided into several numbered sections (1-10) and includes various fields for data entry, such as consignor and consignee details, description of goods, carriage details, and customs declarations. It also features a section for 'Remarks' and a 'Signature' section. The form is presented in a grid-like layout with checkboxes and lines for text entry. The title 'Накладная CIM/СМГС' (CIM/SMGS Consignment Note) is prominently displayed at the top left of the form.



Use of the common CIM/SMGS consignment note



More than fifty traffic flows along four TEN corridors

More than half the traffic between the CIM and SMGS areas

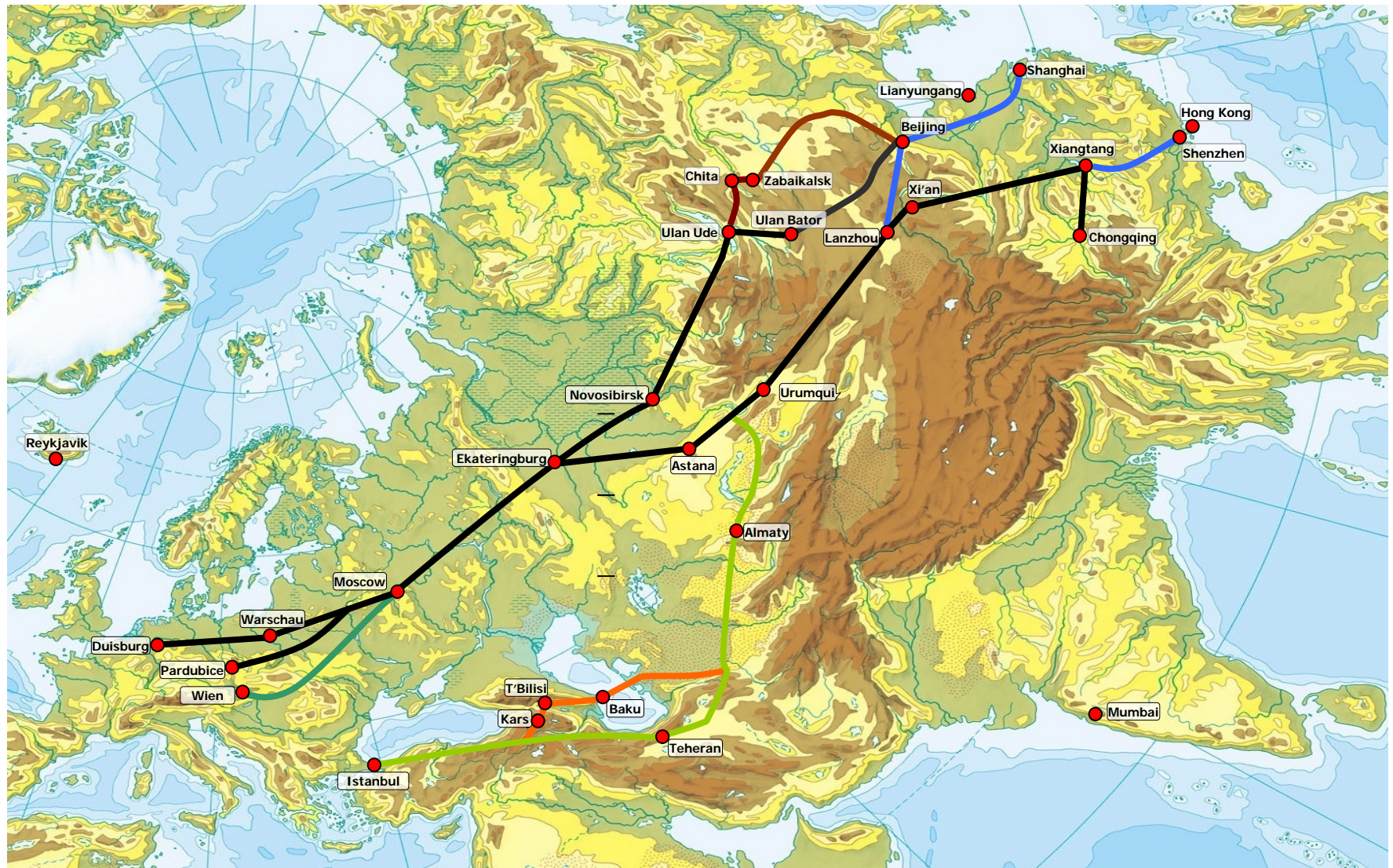
Savings in time:

- some 40 minutes per wagon
- 8 to 10 hours per train

Cost savings of some € 40 per consignment



Eurasian Freight Corridors between China und Europe

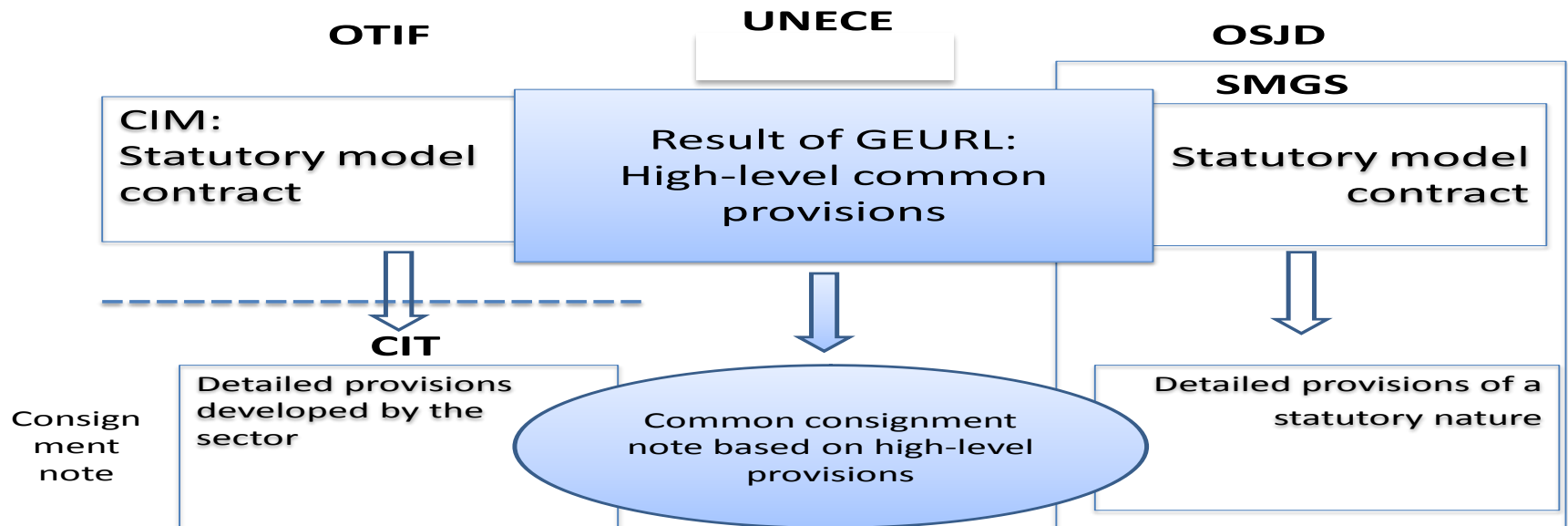




Simultaneous Activities and Cooperation at the UNECE:

Activities in the UNECE Framework:

- Joint Declaration: signed by 37 Transport Ministers on the Promotion of Euro-Asian Rail Transport and Activities towards Unified Railway Law (26 February 2013, Geneva)
- Collaboration and participation with CIT/OSJD in the “Group of Experts towards Unified Railway Law” for the Unification of international railway law with the objective of allowing rail carriage under a single legal regime. **Nature of the work to be done,**





Advantages on use the common CIM/SMGS consignment note

- CIM/SMGS consignment note
- Standardised CIM/SMGS claims handling procedure
- Special conditions of CIM/SMGS liability

Savings in
time and
costs

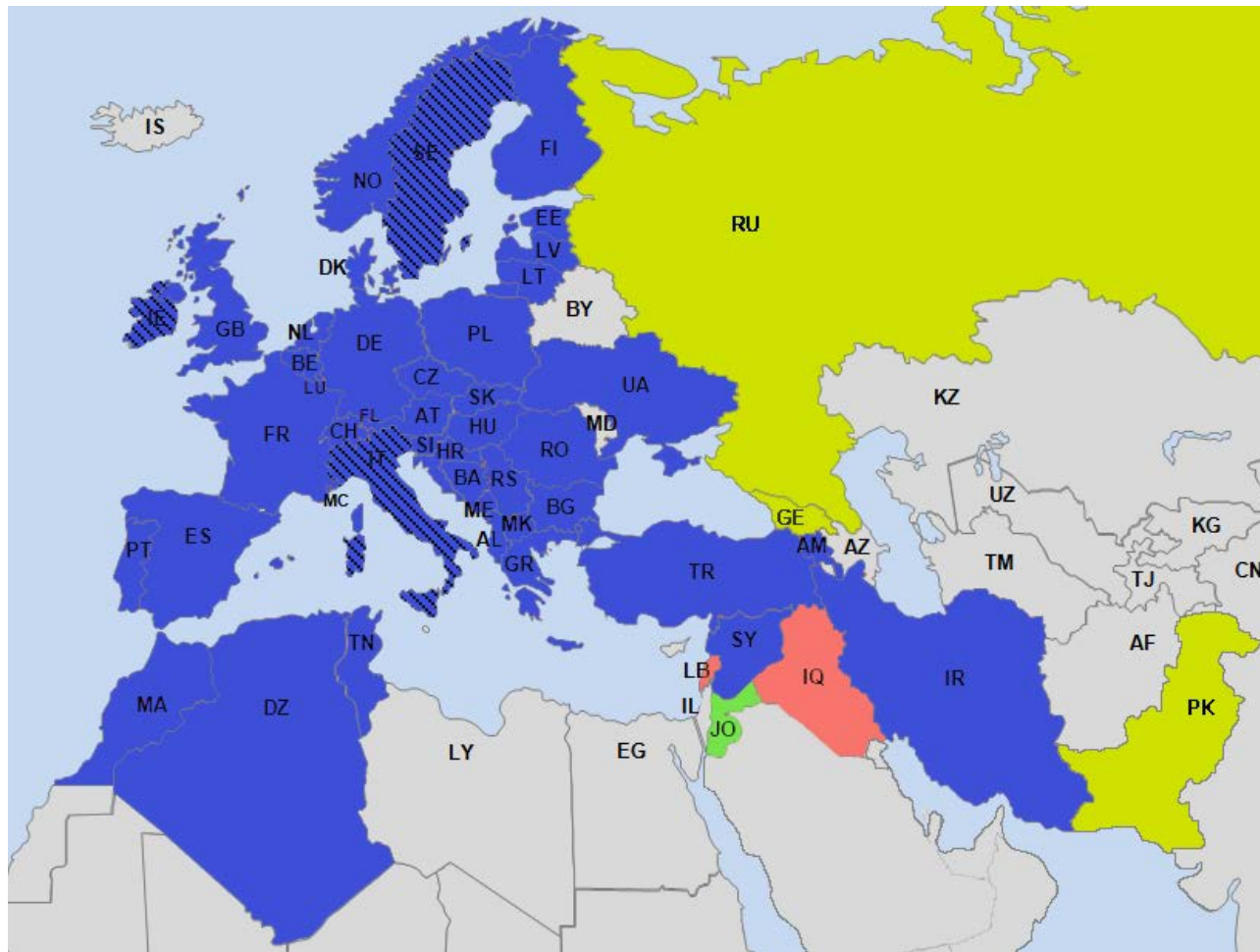
Simplification
of customs
formalities

Greater legal
certainty

Larger share of
the market



Application of Uniform Rules CUV (as at 01.01.2014)



- CUV
- COTIF 1999 not yet ratified
- OTIF membership suspended
- OTIF associate member
- OTIF member (without CUV)



Contract of use of vehicles in international rail traffic (CUV)

- Application of CUV is mandatory
- Use of the CUV UR for privately owned wagons and network wagons as a means of transport for performing CIM and CIV transport
- The CUV UR are limited to regulating the main points of the contract and allow plenty of room for contractual freedom
- Based on CUV the sector (keepers and railway undertakings) has developed the GCU (General contract of use) model contract.
- CUV contain a large part of **supplementary rules** that only applies if nothing else has been agreed – GCC can then include **other specific rules**



Contract of use of vehicles in international rail traffic (CUV)

Some definitions

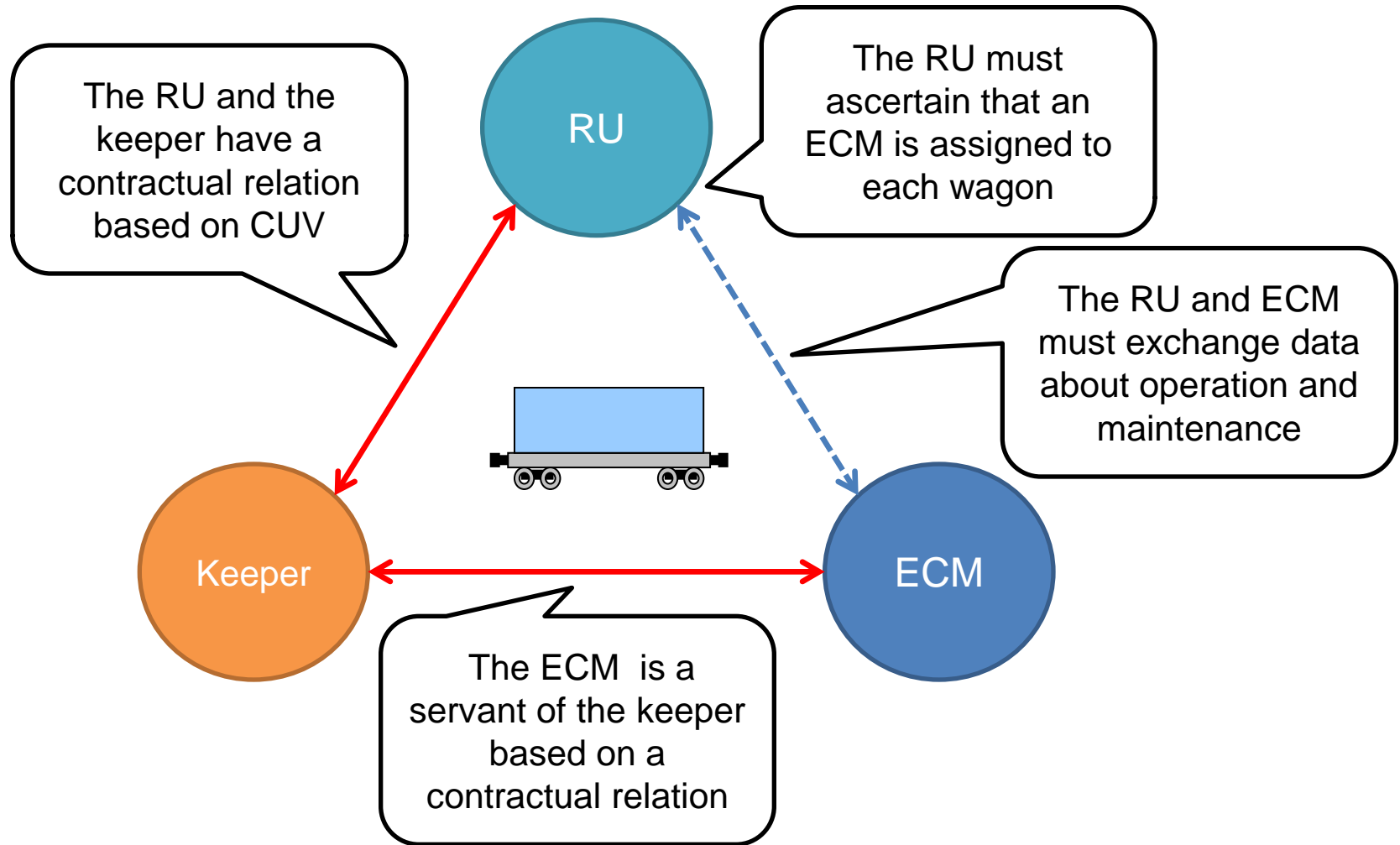
- "Vehicle" means a vehicle, suitable to circulate **on its own wheels** on railway lines, **not provided with a means of traction**;
- "Keeper" means **the person** who, being the owner or having the right to dispose of it, exploits a vehicle **economically in a permanent manner** as a means of transport;



- As a result of the 25th session of OTIF's Revision Committee (25-26.6.2014) two important amendments were made :
- Definition of "keeper" was improved, deleting the term : " economically in a permanent manner "
- Implementation of the role of the entity in charge of maintenance (ECM) in CUV UR to be submitted to OTIF's next General Assembly.
- **Result = Harmonisation between CUV and ATMF.**



Relation keeper – ECM shall be better formalised





**Thank you for
your attention**