



Organisation intergouvernementale pour les transports internationaux ferroviaires
Zwischenstaatliche Organisation für den internationalen Eisenbahnverkehr
Intergovernmental Organisation for International Carriage by Rail

**Commission de révision
Revisionsausschuss
Revision Committee**

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26TH SESSION

Partial revision of the CUI UR

Procedural issues associated with modifications to the CUI UR
(note prepared by the Secretariat)

Articles to be revised

The 26th session of the Revision Committee will deal with a partial revision of the CUI UR. The draft text from the Secretary General resulting from the work of the CUI UR working group, which he set up, contains proposals for modification, as follows:

Article	Substance	Nature	Competent Organ
Title	Uniform Rules concerning the Contract of Use of <u>Railway Infrastructure in International Rail Traffic</u>	Editorial	GA
1 (Scope)	<p>§ 1 These Uniform Rules shall apply to any contract of use of railway infrastructure (contract of use) in a Member State in international railway traffic for the purposes of international carriage within the meaning of the CIV Uniform Rules and the CIM Uniform Rules. They shall apply regardless of the place of business and the nationality of the contracting parties. These Uniform Rules shall apply even when the railway infrastructure is managed or used by States or by governmental institutions or organisations.</p> <p>§ 2 These Uniform Rules They shall apply irrespective regardless of the place of business and/or the nationality of the contracting parties and These Uniform Rules shall apply even when the railway infrastructure is managed or used by States or by governmental institutions or organisations.</p>	<p>§ 1, first sentence: substantial (clarification of the scope).</p> <p>§ 1, second and third sentence, § 2: editorial</p>	GA
3 (Definitions)	<p>aa) “international railway traffic” means traffic which requires the use of an international train path or several successive national train paths situated in at least two States and coordinated by the infrastructure managers concerned;</p> <p>b) “manager” [...] the railway infrastructure [...].</p> <p>c) “carrier” means the natural or legal person who which carries persons and/or goods by rail in international railway traffic under the CIV Uniform Rules or the CIM Uniform Rules and who which is licensed in accordance with the laws and prescriptions relating to licensing and recognition of licenses in force in the State in which the person undertakes this activity;</p> <p>g) “safety certificate” [...] the railway infrastructure [...] the railway infrastructure [...] the railway infrastructure [...].</p>	<p>aa) and c): substantial. The definition of “international railway traffic” is closely linked to the new definition of the scope (Article 1 § 1)</p> <p>b) and g): editorial</p>	RC

5 (Contents and form)	§ 1 [...] the railway infrastructure [...]	Editorial	RC
5bis (Law remaining unaffected)	§ 1 [...] the contract of use of infrastructure have to meet under the laws and prescriptions in force in the State in which the railway infrastructure [...] § 2 [...] the contract of use of infrastructure [...].	Editorial	RC
7 (Termination of the contract)	§ 2 [...] railway infrastructure [...].	Editorial	RC
8 (Liability of the manager)	§ 1[...] e) for pecuniary loss resulting from damages payable by the carrier under the CIV Uniform Rules and the CIM Uniform Rules, caused to the carrier or to his auxiliaries during the use of the railway infrastructure and having its origin in the railway infrastructure. <u>The manager shall also be liable for pecuniary loss resulting from damages payable by the carrier under the CIV Uniform Rules and the CIM Uniform Rules when such loss has its origin in the railway infrastructure [while it is being used].</u> § 2 [...] management of the railway infrastructure [...]	§ 1 (deletion of letter c) and inclusion of a new sentence): substantial. However, the intention is not to change the essence. §§ 1 and 2 (inclusion of the word “railway”): editorial	GA
9 (Liability of the carrier)	§ 1 [...] railway infrastructure [...]	Editorial	GA
10 (Concomitant causes)	§ 3 [...] railway infrastructure [...]	Editorial	GA

Division of competences between Revision Committee and General Assembly

- Among other matters, the Revision Committee is competent to take (final) decisions on modifications to Articles 3, 5, 5bis and 7 CUI. Moreover, according to Article 33 § 4 COTIF, one-third of the States represented on the Committee may require proposals aiming to modify the Convention to be submitted to the General Assembly for decision. The Revision Committee itself may do the same.
- Articles 1, 8, 9 and 10 CUI (irrespective of whether the modification is substantial or editorial) can only be modified by a decision of the General Assembly (Article 33 § 3 and 4 COTIF). Moreover, the General Assembly can declare its competence in respect of amendments to other

Articles when they are closely linked to fundamental provisions as listed in Article 33 COTIF and which can only be modified by decision of the General Assembly.

Solution which includes one Article in the competence of the General Assembly and one in the competence of the Revision Committee

The main issue and main purpose of this revision is to clarify the scope of the CUI UR, i.e. modification of Article 1 CUI. There is no doubt that the new specific definition of the term “international railway traffic” to be introduced in Article 3 **is closely linked to the proposed modification of Article 1**, in which this term is used. This new definition presents a part of the proposed solution. The definition of the term “international railway traffic” is provided for the purpose of defining the scope of application. Once they are adopted, both these revised Articles have to be read together and Article 1 has to be interpreted in the light of Article 3 letter aa). Since it is up to the General Assembly to adopt appropriate wording for the scope of application in Article 1, it should also decide which definition of “international railway traffic” is appropriate.

Therefore, it would be logical and consistent to **submit the whole solution**, i.e. modification of Articles **1 and 3 CUI, to the General Assembly**.

The same editorial amendment to Articles partially in the competence of the Revision Committee and partially in the competence of the General Assembly

It would certainly be up to the Revision Committee to adopt editorial amendments to the Articles listed above in so far as their modification falls within its competence. However, no progress would be made if the same editorial adaptation (e.g. “railway infrastructure” instead of “infrastructure”) were only to be made to Articles 3, 5, 5bis and 7 CUI, while the same editorial modification could only be introduced in Articles 8, 9 and 10 CUI by a decision of the General Assembly. Since there are different rules regarding the entry into force of modifications to the Convention decided by the General Assembly on the one hand (Article 34 COTIF) and the entry into force of modifications to the Convention decided by the Revision Committee on the other (Article 35 COTIF), there would be two different points in time for the entry into force of the same editorial modification.

In order to ensure consistency and make the text clear, it would seem advisable that a final decision regarding modification of all the Articles listed above be taken at the same time.

Two procedures regarding entry into force, depending on which organ has adopted the modifications

It should be kept in mind that in the COTIF legal system there are two revision procedures, depending on which organ adopts the modifications:

1. The simplified revision procedure applies when modifications have been adopted by the Committees, including the Revision Committee. This is a tacit approval procedure with a four-month-period for objections, running from the notification of these modifications by the Secretary General (Article 35 COTIF). If one quarter of the Member States do not formulate an objection against the decision of the Revision Committee within this deadline, the modifications to the Appendix in question enter into force on the first day of the 12th month following that during which the Secretary General has given notice of them to the Member States. They enter into force for all Member States, but application of the Appendix in question will be suspended in traffic with and between Member States which have formulated objections.
2. The classical revision procedure applies when modifications have been adopted by the General Assembly. The modifications adopted must then be expressly approved by half of the Member States once the Secretary General has notified them (Article 34 COTIF). The modifications to the Appendix in question adopted by the General Assembly enter into force 12 months after their approval by half of the Member States which have not made a declaration pursuant to Article 42 § 1, first sentence COTIF with regard to this Appendix. They enter into force for all

Member States with the exception of those which, before the entry into force, have made a declaration in terms that they do not approve the modifications, and with the exception of those which have made a declaration according to Article 42 § 1, first sentence COTIF with regard to this Appendix.

It goes without saying that if the Revision Committee has required that the modifications be submitted to the General Assembly and the General Assembly adopts these modifications, in terms of entry into force, Article 34 COTIF will apply to all the modifications, including those which, according to Article 33 § 4 first sentence letter e) COTIF, would fall within the competence of the Revision Committee.

Procedure to be followed

On the basis of the above analysis, the OTIF Secretariat proposes that the Revisions Committee:

should adopt, in accordance with Article 17 § 1 letter b) COTIF, proposals for amendment to Articles 1 § 1 [and 2], 3 (new letter aa) and amendments to letters b), c) and g)), 5 § 1, 5bis § 1 and 2, 7 § 2, 8 § 1 and 2, 9 § 1, and 10 § 3 CUI, including an editorial amendment to the title of this Appendix

and

should require the Secretary General, in accordance with Article 33 § 4 second sentence COTIF, to submit all the modifications to the CUI Uniform Rules to the General Assembly for decision, since the modification of Article 3 (own competence of the Revision Committee) is closely linked to the proposed modification of Article 1 (competence of the General Assembly); moreover, the same editorial adaptation in several Articles partially falls within the competence of the Revision Committee and partially within the competence of the General Assembly.