



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**

**LAW-17144-CR 26/13
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26TH SESSION

Partial revision of the CUV UR

Proposal transmitted by Switzerland



To the Secretary General of OTIF
Mr François Davenne
Gryphenhübeliweg 30
3006 Bern

7 November 2017

Art. 7 CUV

Dear Secretary General,

At the next General Assembly, Switzerland intends to propose an amendment to Article 7 CUV. According to Article 17 § 1 b) of COTIF, the Revision Committee considers proposals to be submitted, in accordance with Article 33 § 2, to the General Assembly for decision.

We should therefore like to request that consideration of this proposal be placed on the agenda of the next Revision Committee (27 February 2018 to 1 March 2018).

Art. 7 CUV currently reads as follows:

Article 7 Liability for loss or damage caused by a vehicle

§ 1 The person who, pursuant to a contract referred to in Article 1, has provided the vehicle for use as a means of transport shall be liable for the loss or damage caused by the vehicle when he is at fault.

§ 2 The contracting parties may agree provisions derogating from § 1.

The proposal to the General Assembly to be considered by the Revision Committee is as follows:

Proposal:

Amend Art. 7 § 1 CUV as follows:

Art. 7 § 1 CUV:

§ 1 The person who, pursuant to a contract referred to in Article 1, has provided the vehicle for use as a means of transport shall be liable for loss or damage which has its origins in a defect on the vehicle. There shall be no liability if the defect on the vehicle was caused during operation, which neither the keeper nor the entity in charge of maintenance knew about or should have known about.

Justification:

At present, according to Art. 7 § 1 CUV, a rail transport undertaking can only obtain recourse for loss or damage caused by a vehicle if it can prove that the person who provided the vehicle is at fault. If the rail transport undertaking cannot do so, it is liable for the loss or damage, even if the loss or damage can demonstrably be ascribed to a defect on the vehicle.¹

The existing rule is unsatisfactory, as it does not place the economic risks on the person who is technically and operationally responsible for them. By rights, the economic risks should be placed on the person who can influence them. In terms of vehicle defects, this is the keeper (or in the internal relationship with the keeper, the entity in charge of maintenance). An exception is when the defect arises outside the keeper's sphere of influence, i.e. during marshalling or as a result of tampering while the vehicle is stabled.

In 2014, France submitted a proposal intended to transfer the economic risk of vehicle defects from the rail transport undertaking to the keeper. Switzerland would like to be associated with that draft and in view of the additional aspect that there are also defects that are outside the keeper's sphere of influence, would like to propose an amendment to Art. 7 § 1 CUV.

We should like to thank you for taking the steps necessary to enable this proposal to be considered by the forthcoming Revision Committee.

Yours faithfully,
Federal Office for Transport

Dr. P. Füglistaler
Director

cc:

- hem/aa

By e-mail to:

- secretary.general@otif.org

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- BAG, koe, scj, mec