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**Partial revision of the CUI UR**

CIT position paper concerning partial revision of the CUI UR



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## **Partial Revision of the Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (“CUI”)**

Dear Secretary General

We would like to thank you for the opportunity to comment on the documents that we received from the OTIF Secretariat on the partial revision of the CUI Uniform Rules (LAW-17128-CR 26/7.1 and LAW-17129-CR 26/7.2).

With this position paper the International Rail Transport Committee (“CIT<sup>1</sup>”) would like to draw attention to the revised scope, definitions and carrier’s recourse since these text proposals are leading to a fragmentation of the law, giving rise to negative consequences for railway undertakings providing international services.

### **1 Appraisal of the text proposals from the point of view of the railway undertakings**

#### **1.1 Comments on the scope of application (Article 1 § 1) and on the definition of “international railway traffic” (Article 3 aa)**

Firstly, the revision foresees that the CUI’s scope of application (Article 1 § 1) should remain linked to the CIV<sup>2</sup> and CIM<sup>3</sup> Uniform Rules and secondly, that the term “international railway traffic” should be inserted, on the assumption of the existence of an international train path or subsequent national train paths located in at least two States and coordinated by the infrastructure managers.

The system of the CUI has to date not defined the term “international railway traffic”. Inclusion of this term in combination with the current definition means an unnecessary limitation in the CUI’s scope of application. The first point is that virtually no “international train paths” exist in practice, and the second point depends on a coordination of train paths between infrastructure managers, which does not always work in practice or is totally inexistent (especially with non EU Member States). The formulation of the scope of application as it stands at present would have the consequence that the CUI would indeed be applicable for transport in international trains for international CIV and CIM carriage, but that the necessary domestic legs of the journey beforehand or afterwards, however, would be excluded. It can happen in practice, for instance, that a passenger in possession of an international CIV ticket uses a train that only runs domestically (national train/national train path) and that their journey then continues across the border using the same CIV ticket.

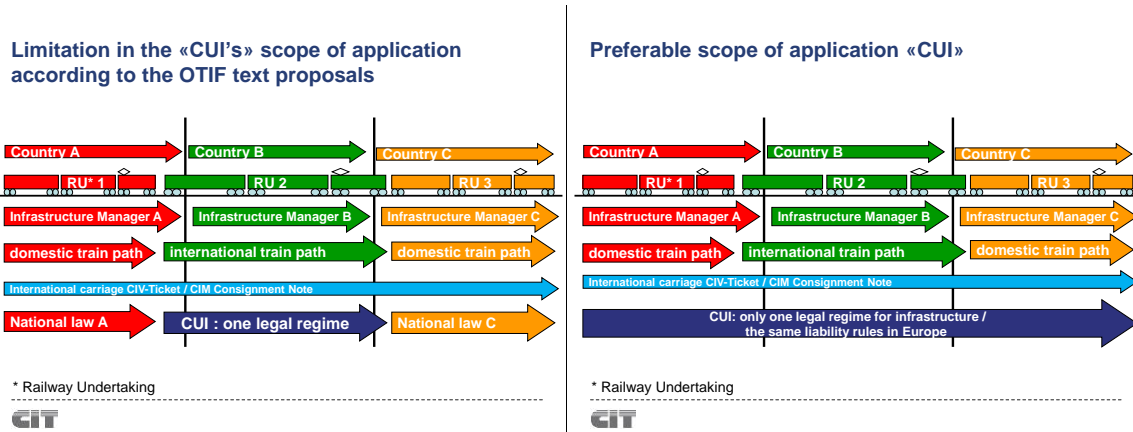
<sup>1</sup> <http://www.cit-rail.org/en/>

<sup>2</sup> Contract of International Carriage of Passengers by Rail (CIV)

<sup>3</sup> Contract of International Carriage of Goods by Rail (CIM)

It is true that the passenger would have a claim in accordance with the CIV for the use of the national train, but the CUI would not, however, be applicable for the recourse between the railway undertakings and the infrastructure managers. Such an interpretation of the CUI scope of application is quite simply inappropriate and leads to a fragmentation of the law, which is not in the spirit of the harmonised, closed international COTIF legal system.

The problem is illustrated in the following diagram:



## 1.2 The CIT's suggestion on the scope of application / definition of "international railway traffic"

In consideration of the problem presented, the CIT is proposing to adapt the definition of the term "international railway traffic" as follows:

### Article 3

aa) *"international railway traffic" means traffic which requires the use of an international train path, ~~or~~ of several successive national train paths situated in at least two States and coordinated by the infrastructure managers concerned; or of one train path for the purpose of international railway carriage with the meaning of the CIV Uniform Rules and the CIM Uniform Rules.*

This adaptation would make sure that the CUI was also applicable to the necessary domestic legs of a train journey beforehand and afterwards in cases of carriage with a CIM consignment note or a CIV ticket and also for international trains running on national train paths not coordinated by the infrastructure managers.

The proposal would avoid having several national legal provisions applicable to cross-border carriage to the disadvantage of the railway undertakings, so that the railway undertakings would only be able to enforce their claims under more difficult conditions. Moreover, this proposal maintains the unity of the COTIF legal system.

## 1.3 Comment on the manager's liability (Article 8 § 1)

In COTIF law, the railway undertakings are liable towards their customers for all actions by the infrastructure managers, since the latter are defined as persons whose services the railway undertakings use (Article 51 CIV und Article 40 CIM). It is only the CUI that makes provision for railway undertakings to have an explicit right of recourse against the infrastructure manager as regards the compensation that the railway undertakings must pay to their customers on the basis of the CIV and CIM for instance in the event of accidents and the travellers' hotel costs and also in the event of losses of or damage to goods (Article 8 CUI).

The revision of the CUI is problematical for the railway undertakings in that it limits the scope of application, thereby rendering the right of recourse impossible for them to use. As well as that, the revision leads to a fragmentation of the law: to the extent that the railway undertakings lose their right of recourse through the CUI revision, they can then base themselves on the particular national law and the terms and conditions imposed by the infrastructure managers to obtain refunds of the



amounts paid to the traveller in the event of accidents or the compensation paid to the customer in the event of damage to or loss of the good.

The concept of the railway undertakings' right of recourse against the infrastructure manager being placed under national law is problematic in terms of transparency and legal certainty, given that the general national (contract) law of the particular countries is coloured by fine differences especially as regards the distribution of the burden of proof or consequential damage to or loss of assets.

## 2 Conclusions and requests

From the perspective of the railway undertakings, the aim of a revision ought to be an international scope of application that is as clear in law, as certain in law and as uniform as possible. That would make it possible for the railway undertakings, which, in particular as far as freight transport is concerned, are more and more dependent on international transport through various countries, to move about within a single (legal) area, without having to countenance legal uncertainty caused by fragmentation into different national bodies of law. That is to be considered against the background that the CUI Uniform Rules are now applicable in all the EU countries.

According to information from the OTIF Secretariat, amendments are currently taking between five and seven years to make their way through the OTIF General Assembly. Short-term adaptations to the uniform rules are thus excluded. For that reason, it is important that the revision of the CUI Uniform Rules should result in a satisfactory outcome, i.e. a legally clear, legally certain and harmonised scope of application including a balanced liability system.

These preconditions are not satisfied by the current text drafts. From the CIT's point of view, the proposals for revising the CUI therefore constitute a step backwards.

With the present position paper, the CIT is calling on the stakeholders concerned to support the amendment suggested under Point 1.2 concerning the definition of the term "international railway traffic".

Yours sincerely

A handwritten signature in blue ink, appearing to read 'C. Brand'.

Cesare Brand  
Secretary General

A handwritten signature in blue ink, appearing to read 'N. Scherf'.

Nina Scherf  
Legal Adviser