



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-18001-CR 26/13 Add. 2
19.01.2018**

Original : FR

26TH SESSION

Partial revision of the CUV UR

Review of proposals to amend Article 7 of the CUV UR

In a circular of 22 November 2017 (LAW-17143-CR 26), the Secretary General sent the Member States of OTIF and the regional organisations that have acceded to COTIF a proposal from Switzerland relating to the amendment to Article 7 of the CUV UR.

In its proposal, Switzerland recalled that France had submitted a proposal to amend this provision in 2014. In this document, the Secretariat of OTIF retraces the history of proposals to amend Article 7 of the CUV UR between 2013 and 2015.

The question of revising Article 7 of the CUV UR was dealt with as early as the **first session of the working group on the revision of the CUV**, which met on 17 October 2013, on the basis of a proposal from Slovakia, supported by UIC and CIT (see [annex](#) to the [minutes of the 1st session](#)).

The proposal to amend Article 7 was left open until the 2nd meeting of the working group, so that all the delegations could examine it in more detail.

Following the 1st meeting, the GCU Joint Committee also sent the Secretary General a letter to inform him that UIC, UIP and ERFA, as well as other stakeholders in the sector, would have to discuss the proposal to amend Article 7 of the CUV UR in more depth. UIC, UIP and ERFA indicated their willingness to discuss possible solutions and, if necessary, to find solutions at the contractual level, i.e. in the General Contract of Use for Wagons (GCU).

Slovakia's proposal was included in the document submitted to the **2nd session of the working group**, which met on 28 January 2014.

Serbia also submitted a proposal to amend Article 7 and France tended to favour an amendment, but also noted that some work would be carried out in the context of the GCU.

With regard to the stakeholders, CER supported Slovakia's proposal.

All these positions are included with the comments by the Secretariat of OTIF in document CUV 2/3 "[Analysis of contributions received on the revision of the CUV UR](#)".

At this session, France, as well as UIC and UIP, were of the view that the liability regime of Article 7 should first be discussed in detail by the sector in the framework of the GCU group (see point 4.6 of the [minutes of the 2nd session](#)).

The OTIF Secretariat reserved its position on the grounds that in its current wording, Article 7 was a suppletory rule, which the parties could choose not to apply. Therefore, the Secretariat shared France's position, which was to await the GCU's internal work in 2014 before proposing any amendments.

At the **3rd session of the working group**, it emerged that the sector had not yet found a solution (see point 5.6 of the [minutes of the 3rd session](#)). France therefore announced that it would propose a provision for the Revision Committee, unless the sector was able to make progress and propose a solution by the 25th session of the Revision Committee.

France finally proposed an amendment to Article 7 of the CUV UR at the **25th session of the Revision Committee** held on 25 and 26 June 2014. This proposal was included in [document CR 25/7 Add.2](#).

However, it was not discussed, as the EU had to analyse it in more depth (see annex to the [Council decision of 24 June 2014](#)¹).

¹ Council Decision of 24 June 2014 establishing the position to be adopted on behalf of the European Union at the 25th session of the OTIF Revision Committee as regards certain amendments to the Convention concerning International Carriage by Rail (COTIF) and to the Appendices thereto, published in EU OJ No L 293 of 9.10.2014.

In addition, as this proposal seemed directly to concern the interests of the sector, France suggested that the sector should start negotiations on this matter (see point 7 [of the minutes of the 25th session of the Revision Committee](#)).

No proposal to amend Article 7 of the CUV UR was submitted to the 12th General Assembly (29 and 30 September 2015).

In the meantime, the sector nevertheless amended Article 27 of the [GCU](#) concerning the principle of liability in the case of damage caused by a wagon, in order to achieve a better balance and provide more clarity for the whole sector in the event of damage caused by a wagon (see [Amendment history](#)).

This amendment was unanimously adopted; it has been applicable since 1 January 2017.

Article 27 of the GCU currently reads as follows:

“Article 27: Principle of liability

- 27.1 The keeper or a previous user subject to this contract shall be liable for damage caused by the wagon when they can be shown to be at fault. The keeper shall be presumed to be at fault if he has not correctly fulfilled his duties as these arise from Article 7, unless this breach of duty did not cause or contribute to the damage.
- 27.2 The liable party shall indemnify the user RU against any third party claims if the user RU is not at fault.
- 27.3 Where the user RU is partly responsible, the compensation shall be borne by each party in proportion to its respective share of responsibility.
- 27.4 When a third party is responsible or partly responsible for the damage, the parties to the contract shall claim compensation for the damage primarily from this third party. In particular the signatory which has a contract with the third party shall pursue the claim vis-à-vis the third party as a matter of priority.
- 27.5 Upon request, the keeper shall be required to provide proof of his civil liability insurance in accordance with applicable laws.”