



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

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**Commission de révision  
Revisionsausschuss  
Revision Committee**

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**26<sup>TH</sup> SESSION**

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**Partial revision of the CUV UR**

UIP position paper concerning partial revision of the CUV UR

## Agenda point 13: Proposal submitted by Switzerland to the OTIF 26. Revision Committee on the revision of Article 7 CUV (Annex D to the COTIF)

### BACKGROUND

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UIP, the International Union of Wagon Keepers, would like to express its strong opposition to the proposal of the Swiss Federal Office of Transport (FOT) to reopen, modify and debate again the liability provisions embedded in Article 7 Annex D (UR CUV) of the COTIF. This proposal not only comes at improper time, but it **was already discussed debated and closed as one of the central issues of discussions between Sector representative bodies at international level during the period of 2013 - 2016**. In this sense, allow us first to recall the path that was chosen to clarify this liability issue:

- **In November 2013**, the Joint Committee of the General Contract of Use (GCU: [www.gcuoffice.org](http://www.gcuoffice.org)) sent an opinion to OTIF, in which the signatories (i.e. the associations UIC, ERFA and UIP) pleaded for a contractual solution within the Sector and considered the option of revising Article 7 UR CUV as an inappropriate mean. (see Appendix 1)
- **On the 26th of November 2014** and under the initiative of the Single European Railway Area Committee (SERAC), the European Commission convened a working group meeting in Brussels on this matter. The approach in favour of a sectoral solution finding within the GCU was also identified as the most appropriate and effective. The Sector parties (UIC, ERFA and UIP) held several rounds of negotiations to define through an agreement the necessary amendments to the General Contract of Use and recommend their adoption by all parties to the GCU.
- **As of 1st of January 2017**, new amendments to the Articles 7 (OBLIGATIONS OF THE WAGON KEEPER) and 27 (LIABILITY IN THE EVENT OF DAMAGE CAUSED BY A WAGON) of the GCU entered into force after having been unanimously (!) approved by more than 600 companies (RUs and wagon keepers). The implemented changes concern in particular a better and clearer definition of the keepers' duties in Article 7 of the GCU and the introduction of a presumption of fault in Article 27 of the GCU if the keeper does not fulfil his obligations. This presumption of fault **makes explicit the liability of the keeper for a defect on the vehicle in case of a breach of its duty to maintain this vehicle**. To exonerate himself, a keeper would have to provide the evidence that this breach of duty did not cause or contribute to the damage.

### UIP POSITION

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The approach taken by Switzerland in reopening the discussions on this topic is very surprising **as it counteracts, if not ignores, the negotiated and successfully implemented solution by the Sector** so far. In addition, the approach doesn't consider the changes to the UR CUV adopted by the 25th OTIF Revision Committee in June 2014 with regard to the clear identification of roles and mutual obligations of individual actors.

Furthermore, the request of Switzerland towards tighter liability provisions for defects on vehicles is already an implemented reality since the 1st of January 2017, albeit in a different wording and leveraging the contractual freedom granted to the contracting parties in the UR CUV (current Article 7 §2). Therefore, an amendment to Article 7 UR CUV can't be justified based on the ruling of the Commercial Court of Vienna dated from 2012, which relates to a case from August 2006.

In conclusion, there is, in our opinion, **no material reasons to follow-up on the Swiss proposal**. We thank you in advance for considering the arguments above in forming your opinion and remain at your disposal should you need any further information on the subject.

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Founded in 1950, the UIP – International Union of Wagon Keepers, with its seat in Brussels, is the umbrella association of national associations from fourteen European countries, thus representing more than 200 keepers and ECMs with approximately 210.000 freight wagons, performing more than 50 % of the rail freight tonne-kilometres throughout Europe. UIP represents the members' concerns at international level. By means of research, lobbying and focused cooperation with all stakeholders and organisations interested in rail freight transportation, the UIP wants to secure on the long term the future of rail freight transport.  
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