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by Rail (OTIF)

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## **Working group**

# **"Revision of the CUV UR"**

## **2<sup>nd</sup> Session**

# **Minutes**

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**Berne, 28 January 2014**



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## DISCUSSIONS

### 1. Opening of the session

The Secretary General, **Mr Davenne**, opened the session and welcomed the experts from the States, the national safety authorities and the stakeholders who were present at this 2<sup>nd</sup> session of the CUV working group.

### 2. Election of Chairman

The **working group** elected the Secretary General to chair the 2<sup>nd</sup> session of the CUV working group.

### 3. Approval of the minutes of the 1<sup>st</sup> session of the working group

The **working group** approved the minutes of the 1<sup>st</sup> session (Berne, 17.10.2014) with the corrections requested by D on 26 November 2013.

### 4. Discussion of OTIF's draft new proposal

- Doc. CUV 2/2 – New proposal from OTIF
- Doc. CUV 2/3 – Analysis of the contributions received on the revision of the CUV UR
- Doc. CUV 2 – Meeting room document – Document for consideration:  
Promoting legal certainty for the exchange of vehicles

In general terms, what can be retained from this 2<sup>nd</sup> session is that the working group thought it was necessary to discuss the amendments proposed by the OTIF secretariat in its document CUV 2/2; these amendments could be included in the ATMF UR in whole or in part.

#### 4.1 *Article 2 c) – amendment to the definition of keeper*

The **SG** emphasised that the aim of the amendment to the definition of keeper proposed in the secretariat's document was to align this definition with the definition in the ATMF UR.

**D** wondered whether it was necessary to amend the definition of keeper in the CUV UR, as the amendments being proposed were minimal. In addition, in the German version, the term "Wagen" (vehicle) had been replaced by "Fahrzeug" (vehicle). But the CUV dealt with the contract of use of vehicles ("Verträge über die Verwendung von **Wagen**"). The term "Wagen" should therefore be kept in the German version of the CUV UR. **D** also criticised the deletion of the term "dauerhaft" ("permanently"), which should also be kept in the definition of keeper in the CUV UR.

**CER**, supported by **UIC** and **CIT**, was in favour of keeping the wording "right to dispose of" in the CUV UR, rather than the proposed wording "right to use it". It was in fact the railway undertaking that used the vehicle, and the keeper was the person who made the vehicle available.

**CIT** also noted that the term "die Stelle" ("the entity") was difficult from the legal point of view, at least as far as the German version was concerned.

The **European Commission** said it had no problem with the definition proposed in English by the secretariat, as this definition also appeared in EU law.

**F** said it was quite satisfied with the definition proposed by the secretariat, although "the person or entity" should be replaced with "the physical or legal person".

The secretariat would take these various comments into account, particularly with regard to the linguistic issues.

#### **4.2 Article 2 d) – Introduction of a definition of entity in charge of maintenance in the CUV UR**

The **SG** and **D** drew delegates' attention to the discussions currently underway at WG TECH (working group of the Committee of Technical Experts) on the revision of the ATMF UR and the possible deletion of the definition of ECM from the ATMF UR, as this definition was linked to being registered in a register, whereas not all EU Member States were States parties to the ATMF UR.

In view of these developments in particular, **D** wondered how the definition of ECM that might be proposed for the CUV UR would be worded. **D** repeated that in its view, it was not very useful either to introduce a definition of ECM into the CUV UR or to revise the CUV UR.

**F** on the other hand thought it was important that the definition of ECM be placed in the CUV UR.

The **SG** explained that depending on the discussion in WG TECH and the Committee of Technical Experts, two solutions could be considered for the CUV UR. The first would be to frame the definition of ECM without referring to particular provisions of the ATMF UR. The second would be not to introduce a definition of ECM into the CUV UR, as the ECM was already defined in the ATMF UR.

#### **4.3 New § 3 of Article 9 – first paragraph**

The following views were expressed on paragraph 1 of the new § 3 as proposed in document CUV 2/2:

- paragraph 1 was most appropriate; in the scope of application of the CUV UR, the ECM keeper should certainly be considered as a servant of the keeper (**CER/UIP/UIC**);
- Paragraph 1 made little sense, because it just contained a definition and left it open as to whether and under what conditions the keeper is liable for the ECM (**D**);
- limiting the application of this provision to the scope of application of the ATMF UR certainly caused a problem (**D, UIP, CER**); all that had to be prescribed was that if there were an ECM, it was the servant of the keeper (**UIP**).

The **European Commission** confirmed that it agreed with the substance of the proposal the secretariat had suggested in paragraph 1. It did seem though that the reference to the ATMF UR could cause some problems.

Bearing in mind these discussions, the **SG** suggested deleting the restriction to the scope of application of the ATMF UR, as the EU Member States that did not apply the ATMF UR applied the EU regulations.

#### **4.4** *New § 3 of Article 9 – second paragraph*

**D** was of the view that these questions of public law should be dealt with in the ATMF UR and not in the CUV UR. In addition, the proposed paragraph 2 in fact reflected Article 15 § 3 of the ATMF UR, which said that "the ECM must ensure that reliable information about maintenance processes and data are available for the operating railway undertaking". **D** therefore wondered whether it was necessary to have a provision along these lines in the CUV UR and whether the rail sector, particularly UIC and UIP, really needed it.

For **CER**, it seemed necessary to create a bridge between the CUV UR and the ATMF UR.

For **UIP** and **CER**, this paragraph caused a problem of application in practice, because it would be impossible to designate an ECM for each contract of use, as the wagons exchanged between railway undertakings could be subject to different contracts of use during the same transport chain. As for the ECM, it did not change with each contract.

For **CER** and **UIC**, it was not the contract that should define an ECM for each wagon; instead, this ECM was registered in a database (register) and it was up to the keeper to have this ECM registered in the database.

**CER** noted that there was an editorial copy and paste error in document CUV 2/3 of 21 January 2014 (page 9, right-hand column - wording proposed by **CER**): the second paragraph, "It is the responsibility of the keeper to designate in the contract defined in Article 1 all ECMs assigned to railway vehicles that he is in charge of and to ensure that the exchanges of information between ECMs and railway undertakings are in conformity with the provisions of ATMF" should be deleted.

The **European Commission** pointed out that it was good to clarify the keeper's responsibility for designating an ECM, but that a solution other than the contract of use could perhaps be found.

With regard to the question of the information to be included in the contract, **F** shared the view of **CER** and the European Commission. Things could change, and it was not easy to communicate these changes by means of riders to contracts. On the other hand, with regard to the registers, **F** was not in favour of making the register prevail, given that it was only an administrative register. Railway undertakings and keepers should therefore organise themselves so that the information was exchanged in some other way.

**F** therefore proposed that the new paragraph 3 of Article 9 should read as follows:

"§ 3           The entity in charge of maintenance (ECM) shall be considered as a person whose services the keeper makes use of to maintain the vehicle.

It is the responsibility of the keeper to designate an ECM and to specify in the contract defined in Article 1 the means used to ensure the exchanges of information between the ECM and the railway undertaking, in conformity with the prescriptions of ATMF."

The following views were expressed on F's proposal, particularly paragraph 2 of the proposal:

For **D, I, UIC and CIT**, a number of issues dealt with in the GCU were not necessarily dealt with in the CUV UR; developments in the discussions on ATMF with regard to the interface between the ECM and the keeper would have to be awaited, and only then could it be seen what the sector needed in the framework of the CUV UR:

**CER** thought the ATMF UR defined clear obligations that had to be expressed somewhere, and the contract seemed to be the right place for this.

The **European Commission** said that at first glance, F's proposal seemed to be acceptable. The Commission nevertheless supported D's proposal to await developments in the discussions on the revision of the ATMF UR and only then to see whether it was necessary to amend the CUV UR.

**D** maintained its reservations on amending the CUV UR.

The **SG** therefore suggested raising the questions discussed on 4.3 and 4.4 at the next WG TECH, which would be held in Bonn on 5 February 2014, and to transmit the results of WG TECH's comments to the working group.

#### **4.5      *Addition to the Explanatory Report on Article 13 of the CIM UR***

The **SG** referred delegates to section 5 of document CUV 2/2 and reminded them that when the UTP WAG had been discussed (6<sup>th</sup> session of the Committee of Technical Experts, Geneva, 12 June 2013), it had seemed necessary to ensure that Appendix I, 6<sup>th</sup> point of the revised version of this UTP, was in conformity with Article 13 of the CIM. The provisions of Article 13 of the CIM UR provided a clear framework of responsibility between the consignor and the loader, which enabled the consignor to be made responsible for the consequences of defective loading on his part. Nevertheless, the extent of this responsibility and how it is reconcilable with the railway undertaking's obligation to ensure the safe operation of the train was not made explicit. The secretariat therefore proposed to clarify this interface by adding a paragraph to the part of the Explanatory Report dealing with Article 13 of the CIM UR.

**CER** and **UIC** were of the view that the proposed addition resolved the issues raised at the 6<sup>th</sup> Committee of Technical Experts.

**D** noted that the law of COTIF was silent on the "safety management system". **D** also entered a general reservation on the addition proposed by the secretariat and would take time to analyse this proposal.

**CIT** also recalled that Article 13 of the CIM UR was based on the contract of carriage and that giving the carrier additional obligations should be avoided.

The **Chairman** invited all the members of the working group to send the secretariat their comments on the proposal shown in section 5 of document CUV 2/2.

#### **4.6 Proposal from Slovakia – Amendment to Article 7 of the CUV UR**

**F** thought the wording of which had not taken account of developments in the legal framework now in force, would at present cause a legal imbalance, a source of a major dispute, which needed to be resolved. However, before the working group proposed any amendments to this Article, **F** welcomed the idea of the sector's first having an in-depth discussion in the context of the GCU so that a more precise definition could be included in the GCU for the concepts of fault and cause. However, **F** underlined the demands dictated by OTIF's schedule and pointed out that the working group should take a position between now and April if the sector had not come to an agreement by then.

**UIC** and **UIP** shared **F**'s view in terms of preferring, as far as possible, discussion within the GCU and said that in November 2013, the GCU Joint Committee had sent the SG a letter along these lines.

**D** recalled that it had entered a reservation on this amendment at the 1<sup>st</sup> session of the working group (see minutes, p. 8).

The **SG** emphasised the fact that because of the lack of rapid agreement in the framework of the GCU, it was unlikely that this point could be included in the CUV UR revision process.

**CER** underlined that it must not be forgotten that CUV concerns more than just freight wagons and reminded that it was important to resolve the problem raised by the current wording of CUV Article 7 § 1.

#### **Document for consideration: Promoting legal certainty for the exchange of vehicles**

The **SG** explained that all the working group participants would be sent this document. At this stage, as indicated by the title, it was only a document for consideration concerning the marking of coaches, which had been brought to the working group's attention before being discussed at WG TECH, which would be meeting in Bonn on 5 February 2014, and at the joint ERA/OTIF seminar on 6 February 2014.

The sector reaffirmed the importance of having a technical annex in the TSI on marking so that vehicles could be exchanged.

### **5. Subsequent procedures**

#### **Timetable of work**

The **provisional minutes** of the 2<sup>nd</sup> session of the working group would be sent to participants on **17 February 2014**. They would then have until 7 March 2014 to inform the SG in writing of any corrections they wished to have made to the minutes.

The working group would hold a **3<sup>rd</sup> session** in Berne on **9 April 2014**.

Depending on the outcome of discussions at WG TECH on the revision of the ATMF UR, the secretariat would send out the **documents** for the 3<sup>rd</sup> session by no later than **10 March 2014**.



## **6. Closing of the session**

The **Chairman** closed the session and thanked all the experts present for their active participation. He hoped the working group would be able to find an appropriate solution to these questions.

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Hat sich entschuldigt.  
Sent apologies.

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