



Organisation intergouvernementale
pour les transports internationaux
ferroviaires (OTIF)

Zwischenstaatliche Organisation
für den internationalen
Eisenbahnverkehr (OTIF)

Intergovernmental Organisation
for International Carriage
by Rail (OTIF)

Working group

"Revision of the CUV UR"

3rd Session

Minutes

Berne, 9 April 2014

Table of contents

DISCUSSIONS		4
1.	Opening of the session	4
2.	Election of Chairman	4
3.	Adoption of the agenda	4
4.	Approval of the minutes of the 2 nd session	4
5.	Revision of Appendix D (CUV UR) to COTIF	5
5.1	Article 2 b) - Definition of vehicle	5
5.2	Article 2 c) - Definition of keeper	5
5.3	Entity in Charge of Maintenance and amendment to Article 15 § 1 of ATMF	6
5.4	New Article 9 § 3	7
5.5	Proposal from Germany – new Article 1a of the CUV UR	9
5.6	Proposal from Slovakia – Amendment to Article 7 of the CUV UR	9
5.7	Addition to the Explanatory Report on Article 7 of the CUV UR	10
6.	Subsequent procedures	10
7.	Closing of the session	11
LIST OF PARTICIPANTS		12

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 3rd session of the CUV working group.

2. Election of Chairman

The **working group** elected the head of OTIF's legal service to chair the 3rd session of the CUV working group.

3. Adoption of the agenda

- Doc. CUV 3/1 – Provisional agenda

The **working group** adopted the agenda, as shown in document CUV 3/1.

4. Approval of the minutes of the 2nd session

- Doc. CUV 3/2 – Corrections requested by delegates

The **Chairman** reminded delegates that D and F had requested some corrections to the provisional minutes of the 2nd session. These corrections had been submitted to the working group in document CUV 3/2.

CER requested two further corrections to the minutes. The first was to add a new paragraph under the heading "4.4 New § 3 of Article 9 – second paragraph" (page 6 of the provisional minutes). This new paragraph reads as follows: "**CER** noted that there was a copy-paste error in document CUV 2/3 dated 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 second correction was to add the following new paragraph at the end of the text of heading "4.6 – Proposal from Slovakia – Amendment to Article 7 of the CUV UR": "**CER** emphasised that it should not be forgotten that CUV concerned more than just freight wagons and reminded the meeting that it was important to resolve the problem caused by the current wording of Article 7 § 1 of CUV."

The **working group** formally approved the minutes of the 2nd session with the corrections requested by D, F and CER.

5. Revision of Appendix D (CUV UR) to COTIF

- Doc. CUV 3/3 – Proposal from OTIF

5.1 *Article 2 b) - Definition of vehicle*

Coming back to a comment made by D on keeping the term "Wagen" (see minutes of the 2nd session of the working group, p. 4), the **Secretariat** highlighted the differences in terminology used in French and German with regard to the generic terms of "véhicule" and "Wagen", which only has this meaning in German. Point 2 of Article 2 of the Explanatory Report concerning definitions explains this difference. The Secretariat proposed to bring the same clarification to the English term "vehicle" and not to change the use of the term "Wagen" in the German version of CUV, even though using the term "Fahrzeug" throughout the German text would have had the advantage of making the various language versions completely homogeneous.

CER drew delegates' attention to the fact that while Directive 2008/57/EC also stated that vehicles had to be able to circulate on their own wheels, the European Parliament and the Council had agreed to delete this requirement in the 4th railway package, as there were articulated vehicles with different bodies each having their own number. CER also regretted that the current version of CUV did not apply to means of traction, given that there were currently numerous rolling stock operating companies (ROSCO).

The **SG** acknowledged that CER's comments were very relevant, but that the Secretariat of OTIF thought it was premature to regulate contracts between ROSCOs and railway undertakings concerning much more complex railway material.

The **working group** supported keeping the definition of "vehicle" as shown in document CUV 3/3 and supported including clarification of the term "vehicle" used in English in the Explanatory Report.

5.2 *Article 2 c) - Definition of keeper*

The **Secretariat** explained that the definition of the term "keeper" proposed in document CUV 3/3 had been amended to align it as closely as possible with the definition in Directive 2008/110/EC, which had been included in ATMF at the 24th session of the Revision Committee (Berne, 23-25.6.2009), taking account of the particular features of the CUV UR.

D again criticised the deletion of the term "in a permanent manner" from this definition (see minutes of the 2nd session of the working group, p.2) and asked that it be kept. If these words were deleted, this would cause a problem as, for good reason, the definition of keeper in the CUV was based on the definition used in road transport. A number of obligations, as well as rights, were linked to the operation of a vehicle economically and in a permanent manner. D saw no need to amend this definition in CUV and therefore asked that it not be changed.

UIC explained that the definition of keeper in the GCU had been aligned as closely as possible with the definition of keeper in Directive 2008/110/EC. The definition in the GCU required that the keeper be registered in the relevant official register or, in the absence of such

a register, that the keeper be declared to the GCU Bureau. The concept of economic operation made sense and made it possible to distinguish between the keeper and the ECM. The keeper had a commercial perspective, whereas the ECM had a safety perspective. On the other hand, UIC was uneasy with the expression "in a permanent manner", which could mean 5 months, or which could just as well mean 5 years.

In the ensuing discussion between UIP, F, CER, the European Commission, CIT and the SG, the following arguments were raised:

- It was difficult to define what "in a permanent manner" might mean (**F, CER, UIC**);
- The concept of a register might cause a problem within OTIF, but it was desirable for the keeper to be linked to a register (**F, CER**), and some thought was needed as to what parallels should be made with the proposal currently being discussed for the 4th railway package (**F**);
- If a keeper were listed in a register, this would certainly help identify the keeper externally. But the fact remained that economic operation "in a permanent manner" was an objective economic element which made it possible to impose obligations and recognise the keeper's rights, because he had the right of disposal over the wagon (**D**);
- Entering the keeper in a register could perhaps express the concept of permanence (**F**);
- These issues had already been raised in 2005 and 2006 during the discussions on the definition of keeper in Directive 2008/110/EC; the European Commission could accept the definition proposed in document CUV 3/3; it would request a negotiating mandate from the Council (**European Commission**);
- It might be a bit risky for the future if the definition of keeper in CUV required the keeper to be entered in a register, because it was not very clear which register was being referred to (the EU register or the GCU register) (**SG and European Commission**).

Following these discussions, the **working group** kept the definition of keeper proposed in document CUV 3/3.

However, there was no consensus on this definition, as D entered a reservation on deleting the words "in a permanent manner".

5.3 Entity in Charge of Maintenance and amendment to Article 15 § 1 of ATMF

The **SG** recalled that the discussions at the 2nd session (see minutes, p. 5) had led the working group to ask **WG TECH** for its view on the possible inclusion in ATMF of all the provisions proposed in document CUV 2/2 (definition of ECM and keeper's obligation to designate an ECM). **WG TECH** (Bonn, 5.2.2014) had concluded that the provision concerning the keeper's general responsibility for designating an ECM resulted from Article 15 § 1 of ATMF and adopted the wording set out on page 3 of document CUV 3/3. At **WG TECH**, D had accepted that decision.

The **European Commission** recalled that it had entered a reservation, as this wording was not identical to the provisions of EU law, particularly the safety directive. The EU would have to take a position at the Revision Committee; it would exercise exclusive competence.

The **working group** noted the amendment to Article 15 § 1 of ATMF, and left it up to the 7th session of the Committee of Technical Experts (Berne, 4 and 5 June 2014) to come up with wording in OTIF's three working languages which would satisfy both lawyers and engineers.

5.4 *New Article 9 § 3*

The **SG** explained the proposed amendments to Article 9 of CUV. In the new § 3 proposed in document CUV 3/3, the keeper assumes his obligations in respect of the maintenance of the wagon under the contract of use in international traffic by having recourse to an ECM, which is his servant in line with the model of § 2 of Article 9, which deals with the infrastructure manager. It enables identification of both the person responsible and the legal instrument which underpins this responsibility. As for the proposed new § 4, it was essential that the GCU make it possible clearly to identify the actors' reciprocal role and obligations. This provision was of a suppletory nature to enable the sector to implement other arrangements if need be.

In **D's** view, these amendments were superfluous, especially as the proposed amendment to Article 15 § 1 of ATMF was very clear. In addition, as noted at previous sessions, the proposed amendment to § 3 was a mixture of provisions under public and private law. Up to now, matters of public law and private law had been carefully kept apart in COTIF and should remain so. The rule in § 2, i.e. to consider the infrastructure manager as a person whose services the rail transport undertaking makes use of, had been included to avoid customers having to suffer from the separation of railway undertakings and infrastructure managers. Lastly, the new § 3 was unnecessary, as it referred to obligations which were not contractual, but which came under public law, particularly Article 15 § 3 of ATMF.

UIP shared D's view.

The **European Commission**, **F**, **CER** and **UIC** supported the amendment to § 3.

However, **CER** thought the parallel with § 2 meant that these two provisions were identical and that the second part of the sentence ("for the safe state of running of the vehicle") should not be vague when matters were in fact clear.

The **European Commission** did not share this view, as the ECM was not defined in Article 2 of CUV.

As a compromise, **UIC** suggested that only the first part of the proposed sentence should be kept, with a reference to the definition of ECM contained in Article 15 § 3 of ATMF.

CIT called for caution with this provision, as railway undertakings were having more and more difficulties with the application of Article 9 § 2 as a result of the problems they were encountering with infrastructure managers.

In light of the arguments brought forward in the discussion, the **working group** adopted the following wording for the new paragraph 3 (new paragraph 1) of Article 9 CUV:

"The entity in charge of maintenance (ECM) as defined in Article 15 § 2 of the ATMF Uniform Rules shall be considered as a person whose services the keeper makes use of."

D maintained its position and again emphasized the fact that the new paragraph 3 was superfluous. Moreover, it was not correct in terms of the substance. **D** submitted a written proposal in all three working languages for a new Article 1a concerning the areas governed by CUV. The meeting participants refused to discuss the content and the Secretariat proposed that **D** should submit the proposal for discussion at the meeting of the Revision Committee.

The other participants thought it was important that the working group should agree on proposals that could be submitted to the Revision Committee.

The **SG** added that it was indeed very important to obtain a prior opinion on these issues from the Member States, the European Commission and the stakeholders. But the majority of participants at this session seemed to support the proposed amendment to § 3. The discussion of the keeper's role in terms of safety should take place between the EU Member States, because it concerned the safety aspect.

The discussions continued with the new § 4, which the **SG** thought was the core of the proposed amendment, as it specified where the exchange of information between the railway undertaking and the ECM should be regulated. It must be stated clearly that the railway undertaking and the ECM can use the GCU or another channel to organise this exchange of information.

D again highlighted the fact that this provision was a mixture of public and private law. CUV dealt with contracts between keepers and railway undertakings; the ECM was not party to this contract. The proposed text contravened this principle. The keeper who, on the other hand, is a party to the contract of use, was not mentioned in the new § 4. This provision should not be in CUV. In addition, there was a contradiction between the two parts of the text proposed, which made it inapplicable.

In contrast, the **European Commission** thought this provision made sense because it specified the contracting parties' obligations in terms of the information that had to be exchanged. On the other hand, the European Commission shared **D**'s last remark. It suggested passing on directly to the obligation of the parties to exchange information ("the parties referred to in Article 1 shall indicate ...") and to specify what information had to be exchanged, which **D**, **CER** and **UIC** supported.

Like **D**, **UIP** did not think it was necessary to deal with the obligation to exchange information on safety between the various actors in CUV, as this obligation was dealt with in the legislation, whether in EU law or under COTIF. The way in which contracts were concluded under the GCU regime should also be taken into account. It was not necessary to conclude a written contract; the contract would also be concluded as soon as a wagon crossed the border. This provision would be difficult to apply in practice.

The **SG** explained that exchange of information should be understood to mean information in the sense of Article 15 § 3 of ATMF. It would be good if the working group could agree a standard clause requiring that exchanges of information between the ECM and the railway undertaking in the sense of Article 15 § 3 of ATMF be transmitted through the keeper.

Following a discussion between **F, D, the European Commission, UIC, CER** and the **SG**, the **working group** agreed the following wording, which, instead of a new § 4, would become a new paragraph 2 in the new § 3:

"The contract defined in Article 1 shall contain the relevant provisions to ensure the exchange of information as defined in Article 15 § 3 of the ATMF Uniform Rules between the ECM and the railway undertaking."

D and **UIP** entered a reservation on the new § 3 proposed in Article 9 of CUV.

5.5 Proposal from Germany – new Article 1a of the CUV UR

The proposal from D distributed during the session was worded as follows:

"Article 1a CUV
Areas governed by the CUV Uniform Rules

These Uniform Rules govern only the rights and obligations of the parties which arise from a contract concerning the use of railway vehicles as means of transport for carriage in accordance with the CIV Uniform Rules and in accordance with the CIM Uniform Rules. Public law provisions applicable to the use of railway vehicles, in particular those provisions relating to the technical admission of vehicles, to maintenance and to operational safety, shall remain unaffected."

D explained that its proposal was based on a strict separation between obligations under public law and those of private law, which had always been the case in COTIF and its Appendices. This proposal was based on Article 2 (Prescriptions of public law) of CIM. It should establish clearly that CUV only governs the rights and obligations of the parties to a contract of use of vehicles and that the provisions of public law remained unaffected.

As this proposal had only been submitted during the session, **F, the European Commission** and **CER** said they were unable to take a position straight away.

D found this surprising. It had been possible to discuss the amendments to Article 9 very quickly at this session so that they could be submitted to the Revision Committee, so D did not understand why the working group was unable to discuss its proposal.

The **SG** replied that the amendments to Article 9 were not recent, as they went back to the 2nd session of the working group. The SG had exercised his right of initiative to submit proposals for discussion by the Member States and stakeholders. If the participants at this session were not able to take a position on D's proposal, it seemed to be a matter of sound administration not to take a decision on this proposal at this session. D was nevertheless free to submit its proposal to the Revision Committee.

5.6 Proposal from Slovakia – Amendment to Article 7 of the CUV UR

The **SG** drew participants' attention to the fact that the Secretariat had not received any proposals to amend Article 7. There was the proposal from Slovakia (see p. 8 of the minutes of the 1st and 2nd sessions of the working group), but Slovakia did not really seem to be pushing its proposal.

UIC confirmed that this provision caused a problem for its members. In a joint declaration sent to the SG in November 2013, UIC, UIP and ERFA had committed themselves to finding a solution to deal with this issue in the GCU rather than to legislate in the CUV UR. So far, despite the proposals submitted by UIC, the working group made up of these three stakeholders had not found a solution. UIC estimated that the amount of compensation paid out for damage caused by wagons was more than 40 million euros over 5 years and that between 8 and 10 million euros worth of damage was settled without determining liability. As a result, UIC was under a great deal of pressure from its members and wished to find a solution.

UIP said it was confident that the sector would find a solution. The first meeting of the sector in March had been constructive and a second meeting would be held at the end of April 2014.

F hoped that it would hear more positive news. In view of the number of legal cases and the relatively unstable legal situation, F would propose a provision to the Revision Committee, unless the sector was able to make progress by then and propose a solution.

5.7 Addition to the Explanatory Report on Article 7 of the CUV UR

The **SG** recalled that this addition had also been discussed at the second session of the working group (see minutes, p. 7) and that it had been amended to take account of the comment D had made at that time.

D rejected the proposed amendments as superfluous. Up to now, the term “obvious anomaly” had not been used anywhere in CIM or the Explanatory Report and itself needed to be explained. This was confusing and led to problems of demarcation.

According to **CIT**, Article 13 of CIM was very clear and the explanations on this Article currently given in the Explanatory Report were sufficient. Once again, CIT advised caution. These matters were dealt with in the UIC's loading provisions, which railway undertakings referred to in their general conditions.

CER recalled that this issue had been discussed at WG TECH and the Committee of Technical Experts for 3 years and that there should be no blurring between Appendix I, section 6 of the UTP WAG and Article 13 of CIM.

Following these discussions, the **working group** agreed to replace "any obvious loading anomalies" with "any visible loading anomalies".

6. Subsequent procedures

The **SG** said the Secretariat would finalise the working group's proposals to amend the CUV UR so that they could be submitted to the Revision Committee.


He then informed the meeting that he had received a letter from D expressing its surprise at the language regime used in this working group. This was a working group set up by the SG. In future, OTIF would need these working groups to deal with Appendices A, B, D and E. The SG would try to produce some rules of procedure that were less rigorous than those that applied to the Revision Committee.

7. Closing of the session

The **Chairman** closed the session and thanked all the experts present for their active participation.


LIST OF PARTICIPANTS**Allemagne/Deutschland/Germany****Mme/Fr./Ms Kristina Peters**

Referentin
Bundesministerium der Justiz und für
Verbraucherschutz
Mohrenstrasse 37
DE-10117 Berlin

 +49 (30) 18 580 92 08
Fax +49 (30) 18 580 95 25
E-mail peter-kr@bmjv.bund.de

Allemagne/Deutschland/Germany**M./Hr./Mr. Michael Schmitz**

Head of Department
Eisenbahn-Bundesamt
Referat 10
Heinemannstrasse 5
DE-53175 Bonn

 +49 (228) 9826 160
Fax +49 (228) 9826 9160
E-mail SchmitzM@eba.bund.de


Irlande/Irland/Ireland

S'est excusé.
 Hat sich entschuldigt.
 Send apologies.

France/Frankreich/France

M./Hr./Mr. Jérôme **Fedelich**

Chef de Division Système, interopérabilité et interfaces (Direction des référentiels)
 Etablissement public de sécurité ferroviaires (EPSF)
 60 rue de la Vallée
 CS 11758
 FR-80017 Amiens Cedex 1

 +33 (3) 22 33 96 24
 Fax +33 (3) 22 33 95 99
 E-mail jerome.fedelich@securite-ferroviaire.fr

Italie/Italien/Italy

M./Hr./Mr. Rocco **Cammarata**


Head of Technical Standards of Vehicles Office
 Agenzia Nazionale per la Sicurezza delle Ferrovie
 Piazza della Stazione 45
 IT-50123 Firenze

 +39 (055) 298 97 19
 Fax +39 (055) 238 25 09
 E-mail rocco.cammarata@ansf.it

**Commission européenne/Europäische
Kommission/European Commission**

M./Hr./Mr. **Patrizio Grillo**

Deputy Head of Unit
Single European Rail Area Unit
European Commission - DG MOVE
EC - DG MOVE - B2
DM28 4/51
B-1049 Brussels/Belgium

 +32 (2) 296 09 57

Fax +32 (2) 299 02 62


E-mail patrizio.grillo@ec.europa.eu

**Commission européenne/Europäische
Kommission/European Commission**

ERA

Mme/Fr./Ms **Nathalie Duquenne**

Project Officer
Safety Unit - Management System Sector
European Railway Agency (ERA)
120 rue Marc Lefrancq
BP 20392
FR-59307 Valenciennes Cedex

 +33 (3) 27 09 65 83

Fax +33 (2) 27 09 66 83


E-mail nathalie.duquenne@era.europe.eu

**I. Organisations et associations internationales non-gouvernementales
Nichtstaatliche internationale Organisationen und Verbände
International non-governmental Organisations or Associations**

AIEP/IVA/CRE

M./Hr./Mr. Markus **Vaerst**


Regulation Technik
Generalsekretariat VAP/AIEP/IVA/CRE
Ringlikerstrasse 70
CH-8142 Uitikon

 +41 (44) 491 15 95
Fax +41 (44) 491 28 80
E-mail vaerst@cargorail.ch

CER

M./Hr./Mr. Bernard **Alibert**

Director Interoperability & Standardization
SNCF
Siège SNCF
Place aux Etoiles 2
FR-92633 La Plaine Saint-Denis

 +33 (1) 71 82 57 20
Mobile +33 (6) 27 29 68 91
Fax
E-mail bernard.alibert@sncf.fr

CER

M./Hr./Mr. Christian **Chavanel**


Interoperability & Standardization Director
SNCF
Campus Etoiles
2 place des étoiles
Bureau 5 C19
FR-93633 La Plaine Saint Denis

 Fax
E-mail christian.chavanel@sncf.fr

CIT

M./Hr./Mr. Erik **Evtimov**


Deputy Secretary General, Senior Legal Advisor
Comité international des transports ferroviaires
(CIT)
Secrétariat général
Weltpoststrasse 20
CH-3015 Bern

 +41 (31) 350 01 97
Fax +41 (31) 350 01 99
E-mail erik.evtimov@cit-rail.org

CIT


M./Hr./Mr. Dominic **Quiel**

Legal Adviser Traffic Freight
Comité international des transports ferroviaires
(CIT)
Weltpoststrasse 20
CH-3015 Bern

 +41 (31) 350 01 94
Fax +41 (31) 350 01 99
E-mail dominic.quiel@cit-rail.org


UICM./Hr./Mr. Nicolas **Czernecki**

Responsable Département Wagons FRET SNCF,
Co-président CUU, Président du groupe de travail
"Utilisateur wagons" UIC
SNCF
24 rue Villeneuve
FR-92583 Clichy la Garenne Cedex

 +33 (1) 804 624 52
Fax +33 (6) 264 021 94
E-mail nicolas.czernecki@sncf.fr

UICM./Hr./Mr. Bernard **Schmitt**


Freight Senior Advisor
Union internationale des chemins de fer (UIC)
15 Rue Jean Rey
FR-75015 Paris

 +33 (1) 444 920 33
Fax
E-mail schmitt@cit-rail.org

UIP

M./Hr./Mr. **Gilles Peterhans**

Secretary General
International Union of Wagon Keepers (UIP)
Av. Hermann-Debroux 15A
BE-1160 Bruxelles

 +32 (2) 672 88 47


Fax +41 (44) 491 28 80 /+32 (2) 672 81
14

E-mail gilles.peterhans@uiprail.org

UIP

M./Hr./Mr. **Stefan Lohmeyer**

Sekretär
VTG Aktiengesellschaft
Instandhaltungssysteme und
Sicherheitsmanagement
Nagelsweg 34
DE-20097 Hamburg

 +49 (40) 23 54 14 01


Fax

E-mail stefan.lohmeyer@vtg.com

II. Secrétariat Sekretariat Secretariat


M./Hr./Mr. François **Davenne**

Secrétaire général
Generalsekretär
Secretary General

 +41 (31) 359 10 10
E-mail francois.davenne@otif.org


M./Hr./Mr. Carlos **Del Olmo**

Conseiller
Rat
Counsellor

 +41 (31) 359 10 13
E-mail carlos.delolmo@otif.org


Mme/Fr./Ms Iris Petra **Gries**

Premier Secrétaire
Leitender Referent
Senior Officer

 +41 (31) 359 10 15
E-mail iris.gries@otif.org

M./Hr./Mr. David **Ashman**

Traducteur, Chef de division
Translator, Referatsleiter
Translator, Head of Section

 + 41 (0)31 359 10 33
E-mail david.ashman@otif.org