

# OTIF



ORGANISATION INTERGOUVERNEMENTALE POUR  
LES TRANSPORTS INTERNATIONAUX FERROVIAIRES

ZWISCHENSTAATLICHE ORGANISATION FÜR DEN  
INTERNATIONALEN EISENBAHNVERKEHR

INTERGOVERNMENTAL ORGANISATION FOR INTER-  
NATIONAL CARRIAGE BY RAIL

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**Reasons for the proposed amendments to the CUV UR  
and to the Explanatory Report on the CIM UR**

1. The aim of these amendments to the CUV Uniform Rules is to integrate into the Uniform Rules concerning the Contracts of Use of Vehicles in International Rail Traffic (CUV UR) the amendments to the liability regime of railway undertakings (RU) and keepers brought about by the creation of the role of the Entity in Charge of Maintenance (ECM) in OTIF law by Article 15 of the Uniform Rules concerning the Technical Admission of Railway Material (ATMF UR).

The CUV UR are one of the main legal bases of the General Contract of Use of Wagons (GCU). The purpose of the amendments to the CUV UR is therefore to help support the sector in implementing more detailed provisions, as the amendments proposed only provide a general framework.

In addition, in contrast to the scope of application of the CUV UR, which is much broader, the provisions proposed only apply to States Parties to COTIF Appendices F and G, within the meaning of Article 2 e) of the ATMF UR (hereinafter States Parties), as the obligation to use an ECM is only specified in Article 15 of the ATMF UR.

As a result, this amendment takes the form of a new Article 11, with a double limitation in the scope of application of the CUV UR:

- it only applies to wagons;
- it only applies to keepers and rail transport undertakings of the States Parties.

2. Implementation of the role of ECM in OTIF law is based on Annex A to the ATMF UR on the certification of entities in charge of maintenance<sup>1</sup>, which transposes the ECM Regulation<sup>2</sup> into OTIF law.

The particular feature in the carriage of goods is that the wagons support significant international traffic in which a keeper (who, among others, may be a rail transport undertaking or its subsidiary) entrusts a rail transport operation with the operation of his wagons. Therefore, the keeper's specific responsibilities must be particularly clear in OTIF law, as it is the keeper who must provide the direct link to the ECM, whether he decides to be an ECM himself or whether he chooses to sub-contract.

3. Article 11 sets out the following provisions:
  - a) Paragraph 1 establishes the contract of use of vehicles as the basis for defining the responsibilities. It stipulates that the contract binds a wagon keeper – who may himself be a rail transport undertaking – to one or more rail transport undertakings. It also aligns the definition of keeper with the definition in the

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1 Annex A (A 94-30/1.2012) to the ATMF UR dated 1er May 2012 on the certification and audit of ECM

2 Commission Regulation (EU) No 445/2011 of 10 May 2011 on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007

ATMF UR, because in the case of this Article, the ATMF UR apply in full and are mandatory.

- b) Paragraph 2 sets out the principle of the keeper's responsibility for maintaining the wagon under the contract of use in international traffic. It enables identification of both the person responsible and the legal instrument which underpins this responsibility.

It also establishes the link to the concept of the ECM by making explicit the obligation the keeper has in terms of maintenance, i.e. the fact that each wagon must be assigned a certified ECM. The keeper can meet this obligation either because he is his own ECM or by making use of an external ECM. The contract of use of the vehicle therefore imposes the obligation on the keeper of specifying the ECM and of ensuring that the ECM is certified in accordance with the regulations in force.

- c) Paragraph 3 requires the contract of use (in effect the GCU) to include the organisation of the exchange of information required by Article 5 of Annex A to the ATMF UR. Indeed it is essential that the GCU make it possible clearly to identify the actors' reciprocal role and obligations.

In this respect, the contract is the best way to ensure that each actor is actually involved in the maintenance process.

- d) Paragraph 4 requires the contract between the keeper and the rail transport undertaking(s) to include the obligation to provide reliable information on the ECM assigned to the wagon. This assumes that the contract of use defines both the obligation and the ways and means for the keeper to guarantee the rail transport undertaking access to reliable information on the certification of the ECM assigned to the wagon. It is in fact up to the entity that exploits a wagon economically to ensure that this information, which is mandatory for a rail transport undertaking to be able to take over the wagon, is both available and reliable.

The rail transport undertaking must of course use the wagon within the scope of the certificate and is not relieved of this responsibility.

4. During the discussions on the revised version of the UTP WAG at the 6th session of the Committee of Technical Experts (Geneva, 12 June 2013), a question was raised on Appendix I, 6th bullet point, which says that "The rail transport undertaking operating the train must make sure that freight vehicles are safely and securely loaded and remain so throughout the journey."

The need to ensure conformity with Article 13 of the CIM UR was acknowledged. This Article reads as follows:

*§ 1 The consignor and the carrier shall agree who is responsible for the loading and unloading of the goods. In the absence of such an agreement, for packages the loading and unloading shall be the responsibility of the carrier whereas for full wagon loads loading shall be the responsibility of the consignor and unloading, after delivery, the responsibility of the consignee.*

§ 2 *The consignor shall be liable for all the consequences of defective loading carried out by him and must in particular compensate the carrier for the loss or damage sustained in consequence by him. The burden of proof of defective loading shall lie on the carrier.*

These provisions provide a clear framework of responsibility between the consignor and the carrier, which enables 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 is not made explicit.

This link is best explained in the Explanatory Report on Article 13 of the CIM UR. It is therefore proposed to add a new paragraph 6 to the latter, as follows:

"6. In § 2, the consignor's responsibility in terms of loading is to guarantee that operating safety is ensured in normal conditions of transport. Based on its safety management system, the railway undertaking, for its part, must be capable of ensuring that it is able to detect any obvious anomalies in the principles of the loading guidelines."

**Amendments to the  
Uniform Rules concerning the Contracts of Use of Vehicles  
in International Rail Traffic  
(CUV - Appendix D to the Convention)**

**NB:** amendments are shown in bold text.

**Article 1  
Scope**

These Uniform Rules shall apply to bi- or multilateral contracts 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.

**Article 2  
Definitions**

For the purposes of these Uniform Rules the term

- a) "rail transport undertaking" means a private or public undertaking which is authorised to carry persons or goods and which ensures traction;
- b) "vehicle" means a vehicle, suitable to circulate on its own wheels on railway lines, not provided with a means of traction;
- c) "keeper" means the person who, being the owner or having the right to dispose of it, exploits a vehicle economically in a permanent manner as a means of transport;
- d) **"entity in charge of maintenance" (ECM) means the entity that is in charge of the maintenance of a vehicle defined in Article 2 of the ATMF Uniform Rules;**
- e) „home station“ means the place mentioned on the vehicle and to which the vehicle may or must be sent back in accordance with the conditions of the contract of use.

**Article 3  
Signs and inscriptions on the vehicles**

§ 1 Notwithstanding the prescriptions relating to the technical admission of vehicles to circulate in international traffic, the person who provides a vehicle, pursuant to a contract referred to in Article 1, must ensure that there appears on the vehicle:

- a) a statement of the keeper;
- b) when applicable, a statement of the rail transport undertaking to whose vehicle park the vehicle belongs;

- c) when applicable, a statement of the home station;
- d) other signs and inscriptions agreed in the contract of use.

§ 2 The signs and inscriptions provided for in § 1 may be completed by means of electronic identification.

#### **Article 4**

##### **Liability in case of loss of or damage to a vehicle**

§ 1 The rail transport undertaking to which the vehicle has been provided for use as a means of transport shall be liable for the loss or damage resulting from loss of or damage to the vehicle or its accessories, unless it proves that the loss or damage was not caused by fault on its part.

§ 2 The rail transport undertaking shall not be liable for loss or damage resulting from loss of accessories which are not mentioned on both sides of the vehicle or in the inventory which accompanies it.

§ 3 In case of loss of the vehicle or its accessories, the compensation shall be limited, to the exclusion of all other damages, to the usual value of the vehicle or of its accessories at the place and time of loss. When it is impossible to ascertain the day or the place of loss, the compensation shall be limited to the usual value on the day and at the place where the vehicle has been provided for use.

§ 4 In case of damage to the vehicle or its accessories, the compensation shall be limited, to the exclusion of all other damages, to the cost of repair. The compensation shall not exceed the amount due in case of loss.

§ 5 The contracting parties may agree provisions derogating from §§ 1 to 4.

#### **Article 5**

##### **Loss of right to invoke the limits of liability**

The limits of liability provided for in Article 4 §§ 3 and 4 shall not apply, if it is proved that the loss or damage results from an act or omission, which the rail transport undertaking has committed either with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

#### **Article 6**

##### **Presumption of loss of a vehicle**

§ 1 The person entitled may, without being required to furnish other proof, consider a vehicle as lost when he has asked the rail transport undertaking to which he provided the vehicle for use as a means of transport, to have a search for the vehicle carried out and if the vehicle has not been put at his disposal within three months following the day of receipt of his request or else when he has not received any indication of the place where the vehicle is situated. This period shall be increased by the time the vehicle is immobilised for any reason not attributable to the rail transport undertaking or owing to damage.

- § 2 If the vehicle considered as lost is recovered after the payment of the compensation, the person entitled may require the rail transport undertaking to which he provided the vehicle for its use as a means of transport, within a period of six months after receiving notice of it, that the vehicle be returned to him, without charge and against restitution of the compensation, at the home station or at another agreed place.
- § 3 In the absence of the request referred to in § 2, or alternatively if the vehicle is recovered more than a year after the payment of the compensation, the rail transport undertaking to which the person entitled provided the vehicle for use as a means of transport, shall dispose of the vehicle in accordance with the laws and prescriptions in force at the place where the vehicle is situated.
- § 4 The contracting parties may agree provisions derogating from §§ 1 to 3.

**Article 7**  
**Liability for loss or damage caused by a vehicle**

- § 1 The person who, pursuant to a contract referred to in Article 1, has provided the vehicle for use as a means of transport shall be liable for the loss or damage caused by the vehicle when he is at fault.
- § 2 The contracting parties may agree provisions derogating from § 1.

**Article 8**  
**Subrogation**

When the contract of use of vehicles provides that the rail transport undertaking may provide the vehicle to other rail transport undertakings for use as a means of transport, the rail transport undertaking may, with the agreement of the keeper, agree with the other rail transport undertakings

- a) that, subject to its right of recourse, it shall be subrogated to them, in respect of their liability to the keeper for loss of or damage to the vehicle or its accessories;
- b) that only the keeper shall be liable to the other rail transport undertakings, for loss or damage caused by the vehicle, but that only the rail transport undertaking which is the contractual partner of the keeper shall be authorised to assert the rights of the other rail transport undertakings.

**Article 9**  
**Liability for servants and other persons**

- § 1 The contracting parties shall be liable for their servants and other persons whose services they make use of for the performance of the contract, when these servants and other persons are acting within the scope of their functions.
- § 2 Unless the contracting parties otherwise agree, the managers of the infrastructure on which the rail transport undertakings use the vehicle as a means of transport, shall be regarded as persons whose services the rail transport undertaking makes use of.
- § 3 §§ 1 and 2 shall also apply in the case of subrogation in accordance with Article 8.



## **Article 10**

### **Other actions**

- § 1 In all cases where these Uniform Rules shall apply, an action in respect of liability, for loss of or damage to the vehicle or its accessories, on whatever grounds, may be brought against the rail transport undertaking to which the vehicle was provided for use as a means of transport only subject to the conditions and limitations laid down in these Uniform Rules and the contract of use.
- § 2 § 1 shall apply also in the case of subrogation in accordance with Article 8.
- § 3 The same shall apply to an action brought against the servants or other persons for whom the rail transport undertaking to which the vehicle was provided for use as a means of transport, is liable.

## **Article 11**

### **Provisions applicable to the wagons of the States Parties within the meaning of Article 2, letter e) of the ATMF UR**

- § 1 **The contract referred to in Article 1 shall bind a wagon keeper to one or more rail transport undertakings. This keeper shall be registered as such in the vehicle register prescribed in Article 13 of the ATMF UR.**
- § 2 **Under the contract referred to in Article 1, the keeper who ensures that the wagon is maintained in accordance with the regulations in force by the validly certified entity in charge of maintenance shall be responsible for the maintenance of the wagon, either by performing the role of ECM himself, or by concluding a contract with an external ECM.**
- § 3 **The contract referred to in Article 1 shall specify the ECM assigned to the wagon. It shall stipulate the obligations in connection with the exchange of information between the rail transport undertaking and the ECM in accordance with Article 5 of Annex A to the ATMF UR on the certification of entities in charge of maintenance. It shall also stipulate these obligations in the case of recourse to a subrogated rail transport undertaking.**
- § 4 **The contract referred to in Article 1 shall enable the rail transport undertaking to satisfy itself that the wagon used has a certified ECM which is capable of ensuring that all wagons for whose maintenance it is responsible are in a safe running condition. The rail transport undertaking shall satisfy itself that the wagon is used within the scope of application of the certificate.**

**Article 12**  
**Forum**

§ 1 Actions based on a contract concluded in accordance with these Uniform Rules may be brought before the courts or tribunals designated by agreement between the parties to the contract.

§ 2 Unless the parties otherwise agree, the competent courts or tribunals shall be those of the Member State where the defendant has his place of business. If the defendant has no place of business in a Member State, the competent courts or tribunals shall be those of the Member State where the loss or damage occurred.

**Article 13**  
**Limitation of actions**

§ 1 The period of limitation for actions based on Articles 4 and 7 shall be three years.

§ 2 The period of limitation shall run:

- a) for actions based on Article 4, from the day when the loss of or damage to the vehicle was discovered or the person entitled could consider the vehicle lost in accordance with Article 6 § 1 or § 4;
- b) for actions based on Article 7, from the day when the loss or damage occurred.