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CUV UR

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Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic (CUV)

Explanatory Report [1]

General Points

Background

1. In its circular letter of 22 January 1993 concerning the consequences of Council Directive 91/440/EEC of 29 July 1991 for international rail transport law, the Secretariat[2] drew attention to the fact that:

   - in rail traffic there will be a new type of relationship, concerning the co-operation of the owners of private wagons (P wagons) with the rail transport companies (No. 7) and the infrastructure managers (No. 8)

   - the rail operation monopoly as it existed will be reduced to a monopoly of infrastructure managers (No. 9), and

   - the notion of "railway" will assume a different meaning (Nos. 11, 19 and 28).

2. In Annex 3 of the circular letter of 3 January 1994, the Secretariat asked the Member States and the interested international organisations and associations whether more detailed provisions regarding the registration and admission of P wagons and containers to international rail traffic were necessary within the framework of COTIF or the CIM Uniform Rules and their Annexes.

3. This question had been posed in consideration of the fact that the Regulations concerning the International Haulage of Private Owner's Wagons by Rail (RIP – which was Annex II to the CIM UR 1980) presupposed that P wagons are registered with a railway which is subject - through registration of the lines - to the CIM Uniform Rules (Article 2, RIP), but it does not regulate the conditions of registration. According to Article 2 of RIP, registration by way of a "CIM railway" implies approval for international traffic on other railways whose lines are also subject to the CIM Uniform Rules. In the system of integrated ("monolithic") railways, it was not necessary to make a clear distinction between, on the one hand, approval for traffic and, on the other hand, registration in the stock of railway wagons. These two functions were performed by a state railway or a railway operating as a state concession. The European Community (EC) (now the EU) law on competition prohibits the granting to a company or association of companies the right to approve equipment and thus to decide upon access to the market by other companies with which it is in competition (see Explanatory Report on the draft CIM of 5 May 1995, published in the 1995 Bulletin, pp. 118-146).

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1 The articles, paragraphs, etc. which are not specifically designated are those of the CUV Uniform Rules. Unless otherwise evident from the context, the references to the reports on sessions not specifically identified relate to the sessions of the Revision Committee.

2 At that time the "Central office"

4. The majority of the States which responded to the above-mentioned enquiry considered, contrary to the International Union of Private Wagons (UIP) and other users § associations, that more detailed provisions regarding the registration and admission of P wagons and containers to international rail traffic were not initially necessary (see summary of the responses to the list of questions concerning the revision of COTIF, 1994 Bulletin, p. 130/131).

5. In a circular of 8 June 1995, the Secretariat forwarded to the Member States and the interested international organisations and associations a communication from the UIP, accompanied by the draft of a regulation concerning the use of private wagons in rail traffic. The response to these UIP proposals for the revision of the law on private wagons, although weak, was nevertheless favourable in the majority of cases.

6. The 2nd meeting of the Committee of Experts of the International Rail Transport Committee (CIT) (21 - 23.11.1995) also dealt with this problem and came to the following conclusions:

   - RIP must be replaced by a general law on wagons. Where this is to be placed can only be determined in the course of the work.

   - A clear distinction must be made between the technical admission and the registration of wagons.

   - The railways need legal rules both for the carriage and the technical admission of wagons.

   - The transport rules which are judged to be necessary must allow the contracting parties as broad an autonomy as possible. To this end, Article 2 of RIP, for example, should not be reincluded in a future law on wagons.

   - The railways are aware that, in the interest of all parties to the general law on wagons, it is necessary to create legal bases which are durable and reliable so as to achieve a successful commercial policy.

The Central Office drafts of 4 April 1996

7. The Secretariat undertook its preparatory work on the basis of the viewpoints mentioned in Nos. 5 and 6. To this end, a number of experts were consulted. The Secretariat came to the conclusion that a new law on wagons should be limited to international traffic. Each State, however, would be free to decide on the degree to which it wished to align its regulations for internal traffic to the future international Uniform Rules to be applicable in international traffic.

8. It appeared necessary to regulate the following four areas:

   - technical admission of rail vehicles

   - reciprocal use of wagons

   - registration of wagons

- special transport law provisions concerning the carriage of wagons and large containers

9. The area "technical admission" and also the areas "reciprocal use of wagons" and "registration of wagons" do not depend on the conclusion of a contract of carriage in accordance with the CIM Uniform Rules. Consequently, they were to constitute separate Appendices to COTIF. The special provisions of transport law were to be directly incorporated into the CIM Uniform Rules as Chapter IVa.

10. Whilst safeguarding the autonomy of the parties to the contract, the Secretariat's draft concerning "the reciprocal use of vehicles" and "the registration of wagons" (1996 Bulletin, p. 106), had provided for uniform rules for:

- the use of vehicles of other rail transport companies, namely, vehicles known until that time as network wagons, the reciprocal use of which was then regulated by the Regulations on the Reciprocal use of Wagons (RIV) and of Carriages and Vans (RIC) in International Traffic

- the tried and tested institution of the "registration contracts", i.e., wagons known hitherto as private wagons

The Secretariat's draft did not regulate, at international level, other contracts concerning the right to have disposal of rail wagons (e.g., hiring, leasing, contract of use in individual cases), which were to remain subject to the national law.

11. The draft of a new Chapter IVa of the CIM Uniform Rules (Special Provisions for Carriage) regulated the case in which "special" goods, namely, vehicles running on their own wheels, were remitted for carriage. The draft also made provision for special transport provisions when large containers were remitted for carriage and their nature as *means* of transport justified such special provisions (cf. the Regulations concerning the International Carriage of Containers by Rail – RICo, which was Annex III to the CIM UR 1980).

The result of the work of the 1999 revision

12. The Revision Committee (8th session, 11 - 15.11.1996), examined the draft of 4 April 1996 of the "Uniform Rules for Contracts for the Reciprocal Use and the Registration of Vehicles (UIV)"

13. Since only 17 Member States were represented, the necessary quorum (20 of the 39 Member States) was not achieved and the Revision Committee was therefore not empowered to take decisions, in accordance with Article 8, § 2 of COTIF 1980.

14. Contrary to the provision made in the Secretariat's drafts, the majority of the Member States represented followed the suggestion of the International Union of Railways (UIC) and of the CIT, that the "registration contract" should not be regulated a special type of contract. Instead, the contract of use was to be regulated in such a general manner that the same provisions would be applicable to all contracts concerning the use of wagons (= contract of use in the broad sense). i.e., they were to be applicable to the use of:

- vehicles which were incorporated as "network wagons" into the vehicle stock of a rail transport company

- wagons which are not network wagons and which are incorporated into the wagon stock of a rail transport company (at that time P wagons)

- other wagons/coaches

The Uniform Rules to be created were to be limited, essentially, to the questions of liability, debarment by limitation and place of jurisdiction.

15. The represented Member States were unable to agree on the point of whether it was necessary to seek a solution based exclusively on a contractual liability or whether it was preferable to create directly by law, on the one hand, claims for compensatory damages by the "keeper" ("rightful owner of the wagon") against the rail transport undertaking using the wagon at the time of the prejudicial event and, on the other hand, claims for compensatory damages against the "holder" by the rail transport undertaking using the wagon/vehicle at the time of the prejudicial event.

16. The opinion of a large majority of the delegates present was that there was a need for "time for reflection". Consequently, the deliberations were not resumed until the 12th session of the Revision Committee (5 - 7.5.1997).

17. In consideration of the results of the eighth session of the Revision Committee, the Secretariat had prepared new draft texts, to which graphical representations had been appended in order to render more comprehensible the legal problems which were to be resolved (see the Explanatory Report, 1997 Bulletin, p. 98).

18. Since only 19 Member States were represented, the necessary quorum (20 of the 39 member States) was once again not achieved at the 12th session. Consequently, the Revision Committee was again not empowered to take decisions. It nevertheless decided to complete the 1st reading of the texts for indicative purposes (see also No. 29).

19. The majority of the Member States present pronounced themselves in favour of a solution based on a contractual liability, providing for the possibility of a subrogation, but only on condition that the contract concerning the use of the vehicle expressly provides that the rail transport company is *authorised* to entrust the vehicle to other rail transport companies for its use as a means of transport. Subrogation means that the parties to the contract of use may agree that another person is substituted for them in respect of the rights and obligations arising from the contract (see the remarks relating to Article 8).

20. With regard to the new Chapter IVa of the CIM Uniform Rules concerning special provisions for the carriage of wagons and large containers, none of the Member States represented considered it necessary, initially, to create such provisions (Report on the 12th session, pp. 38-40).

21. As in the case of the CIM Uniform Rules 1999, the CIM Uniform Rules 1980 do not exclude vehicles running on their own wheels, whether empty or loaded, from consti-

tuting the subject-matter of a contract of carriage (cf. also Article 5, § 1, letter b) CIM 1980). Since the CIM Uniform Rules 1999 no longer provide for an obligation to carry, each rail transport company is free to conclude such a contract or not. The transfer of passenger carriages or goods wagons leaving the factory is not in any case a matter of a contract of use since, in these cases, the wagons are not a means of transport, but the object of the carriage. This also applies to all transfers of empty wagons, irrespective of whether such carriage is performed within the framework of a contract of carriage or not.

22. However, liability according to the CIM Uniform Rules is more severe than that according to the Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic (CUV Uniform Rules). According to Article 23 of the CIM Uniform Rules - as also according to Article 36 of the CIM Uniform Rules 1980 - liability is a matter of strict, causal liability with provision for grounds for exoneration. Article 4 of the CUV Uniform Rules, on the other hand, provides for a liability for fault with reversal of the burden of proof.

23. It was for this reason that, at the 16th session (23 - 27.3.1998), the Revision Committee introduced into the CIM Uniform Rules special provisions concerning liability in the case of the carriage of railway vehicles running on their own wheels and having been consigned, as well as compensation in case of loss or damage of a railway vehicle, intermodal transport unit or their parts (see the remarks relating to Article 24, Article 30, § 3 and Article 32, § 3 CIM).

24. Furthermore, at the 16th session, the Revision Committee decided to introduce into the Basic Convention, as common provisions, the identical provisions of the Appendices (Report, pp 7, 12 and 15). Consequently, the provision relating to the applicable national law is included in Article 8 of COTIF (Report on the 19th session, p. 13/14).

25. Following the example of Article 3 of RIP, the Secretariat's draft of the UIV Uniform Rules of 4 April 1996 had initially made provision, in Article 4, for three conditions on the use of vehicles, namely:

- technical admission
- the vehicle's fitness for traffic
- the principle according to which a vehicle may only be used for the purpose for which it was approved

26. The technical admission itself is not to be regulated in the contracts of use or in the CUV Uniform Rules, but in other provisions, adopted by the Revision Committee on the second reading (cf. the Secretariat's first draft of 1.7.1997 concerning the Uniform Rules concerning the Technical admission of Railway Vehicles - ATV - and the explanatory remarks on it, Annexes 1 and 2 to the circular letter of 31 January 1997, as well as the Uniform Rules concerning the Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic – ATMF Uniform Rules). For this reason, following the example of Article 2 of RIP, the technical admission is presupposed

only.

27. The provisions of public law such as, for example, those relating to approval for traffic or traffic safety, are mandatory, irrespective of the agreements of the parties to the contract with regard to the use of the vehicle. The legal consequence of non-compliance with the conditions provided in Article 4 of the 1st text draft concerning the use of a vehicle cannot be regulated in a uniform manner in the CUV Uniform Rules. They are regulated by the national law, due to the fact that there is the possibility not only of consequences in respect of liability, but also of sanctions being issued by administrative authorities, or even of penal consequences. This was why, in an indicative vote, the majority of the Member States represented in the Revision Committee declared in favour of Article 4 being withdrawn from the draft (Report on the 12th session, p. 10).

28. Furthermore, the majority of the Member States represented in the Revision Committee considered that it would be unnecessary to make provision, after the example of Article 20 of the Uniform Rules concerning the contract of Use of Infrastructure in International Rail Traffic (CUI Uniform Rules), for the possibility of agreeing litigation agreements. The existing possibilities, particularly in accordance with Article 4, § 5, Article 6, § 4 and Article 7, § 2 were judged to be sufficient (Report on the Twelfth session, p. 34).

29. In its 20th session (1.9.1998), on the 2nd reading, the Revision Committee essentially confirmed the texts adopted indicatively at the 8th and 12th sessions and adopted the CUV Uniform Rules, with the necessary quorum.

30. The 5th General Assembly unanimously adopted, without amendment, the texts decided by the Revision Committee (Report, p. 183).

Partial revision of the CUV UR

31. In July 2013, the Secretariat of OTIF started considering the need to deal at legislative level, in the CUV UR, with the rights and obligations of the parties to the contract of use of wagons as regards wagon maintenance. The Secretariat's main aim was to clarify the liability regime to be applied between railway undertakings and keepers on this sensitive issue.

32. To this end, the Secretariat set up a working group on the revision of the CUV UR made up of experts from the States, national safety authorities and stakeholders, which met three times in Berne (17 October 2013, 28 January 2014 and 9 April 2014).

    In particular, the Secretariat proposed to the working group that the definition of keeper (Art. 2 c) should be amended to align it as much as possible with the definition in Directive 2008/110/EC which has been taken over into the ATMF UR.

33. At its 25th session, the Revision Committee adopted the amendment to Article 2 c) of the CUV UR.

In particular

Article 1
Scope

1. This provision defines the scope of application in a sufficiently broad manner to include all contracts which have as their subject-matter the use of railway wagons (all the types mentioned in No. 14 of the General Points) as a means of transport.

2. The fact that no distinction is made according to the usual contract categories entails a lack of precision. The conventional "registration contract" is no longer defined as a special contract due to the fact that, in particular, use as means of transport, in accordance with the *instructions of the owner*, and the carriage of empty or loaded wagons, in accordance with the *instructions of the owner*, are no longer provided for as constituent elements. The parties may agree rights and obligations in this area in the "contract of use".

3. The assignment of the vehicle, i.e., its use as a *means* of transport and not its status a goods to be carried, is a typical element of the contract of use. It is essential to differentiate it from the contract of carriage.

4. Originally, the CUV Uniform Rules were not intended to regulate other types of contract such as, for example, the hire, leasing or charter contract. In view of the very general wording of Article 1, other contracts such as, for example, that concerning the hiring or leasing of a vehicle, can be subject to the CUV Uniform Rules, unless at the time of conclusion of a hire or leasing contract the parties clearly express their wish to conclude such a contract and not a contract of use within the meaning of the CUV Uniform Rules.

5. Article 1 furthermore states that contracts of use can be concluded not just between two parties, but also between several parties, as is the case with the general contract of use of wagons (GCU) prepared by ERFA, UIC and UIP (see Bulletin 2005, p. 63 et seq.). On the other hand, no mention is made of the criterion of reciprocal use, which is generally a typical element of these contracts, in order that the scope of the CUV Uniform Rules is not excessively limited (Report on the 8th session, p. 12).

6. Article 1 does not include contracts of use whose sole purpose is use as means of transport for *internal* traffic. However, the Member States remain free to align their national rules to the CUV Uniform Rules or to include them in their national law.

Article 2
Definitions

1. In view of the separation of infrastructure and transport activity, the term "rail transport undertaking" has been defined. The authorisation to carry goods or/and persons and the fact of having means of traction are essential characteristics of a rail transport undertaking which differentiate it from the infrastructure manager and also from the wagon hire undertakings.

2. Unlike the German generic term "Wagen" ["wagon"], the French and English generic terms "véhicule" and "vehicle" are broader, in that they include goods wagons, passenger carriages and luggage vans, and even vehicles provided with means of traction. This is why the definition expressly *excludes vehicles provided with means of traction* from the generic French term "véhicule" and from the generic English term "vehicle".

3. At its 20th session, the Revision Committee introduced a definition of the term "keeper". This term is based on the legal institution which is well known and familiar in road transport. The keeper is not necessarily the owner in the sense of civil law. This definition initially corresponded to that of Article 2, letter e) of the ATMF Uniform Rules, which has since become Article 2, letter n) of the ATMF UR. At its 25th session (Berne, 25-26.6.2014), the Revision Committee amended the definition of the term "keeper" to align it as closely as possible with the definition in Directive 2008/110/CE[3], which was taken over 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. However, it should be noted that there was no consensus on this new definition, as Germany in particular criticised the deletion of the expression "in a permanent manner" (see Minutes of the 25th session).

4. The definition of the "contract of use" devised at the eighth session of the Revision Committee (Report, p. 24), included elements which finally defined the scope of application of the CUV Uniform Rules. These elements have been transferred to Article 1, so that a definition of the contract of use in Article 2 has been rendered superfluous.

Article 3
Signs and inscriptions on the vehicles

1. It is necessary to differentiate between inscriptions which are rendered mandatory by provisions of public law, e.g., by the provisions concerning technical admission, and inscriptions which are agreed between the parties to the contract of use. Within the framework of the CUV Uniform Rules, it is important to specify the person who is under obligation to guarantee that the necessary inscriptions are set on the vehicle. It is furthermore useful to state that the parties to the contract of use may agree other inscriptions, it being understood that these must comply, as applicable, with the limitations imposed by public law. With regard to the inscriptions and signs prescribed by public law, see Article 14 of the ATMF Uniform Rules.

2. The majority of the Member States represented in the Revision Committee considered it necessary that the keeper should be indicated by inscription on the vehicle (Report on the 20th session, 2nd meeting, p. 4/5). The keeper "exploits" the vehicle as a means of transport, whereas his contractual partners can change frequently.

3. The mandatory inscriptions provided for by the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID) are not mentioned in Article 3 because they are not based in the contract of use, but imposed by the provisions of RID.

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[3] Directive 2008/110/EC of 16 December 2008 amending Directive 2004/49/EC on Safety on the Community's railways

4. Inscription of the home station is not obligatory, since it is conceivable that, it will no longer necessarily be a requirement to agree such a station, particularly in the case of vehicles, which are not incorporated in the vehicle fleet of a rail transport undertaking.

5. § 2 serves to clarify that means of electronic identification can be used to facilitate the automatic identification of vehicles.

Article 4
Liability in case of loss or damage of a vehicle

1. Liability is conceived of as liability for presumed fault, leaving the possibility of contrary proof, and is based on the system of liability that is applicable in the case of loss or damage of a P wagon remitted for transport (Article 12, § 1 RIP). The RIV and RIC rules provided for a different system of liability.

2. Compensation is limited to the *usual value* of the vehicle or its accessories at the place and at the time of the loss. However, it is not possible to ascertain the date or place of loss in all cases. In its 22nd session (1 - 4.2.1999), the Revision Committee thus added a provision according to which, in a given case, the date and the place at which the vehicle has been provided for use are to be taken into consideration (Report, p. 69/70).

3. § 5 provides for the possibility whereby the parties to the contract may agree another system of liability. This would enable rail transport undertakings to retain their contractual regulations that are currently in force. For example, they could agree a separate liability of fault in case of grave damage, with obligation to surrender rights to compensatory damages in respect of third parties, as is currently provided for in No. 19 of RIV and in No. 20 of RIC.

4. Even the scope of application according to Article 1 indicates that liability is a contractual liability and, consequently, on the basis of the contract of use, the rail transport undertaking is answerable to its contractual partner, but not to third parties. To repeat this in the text is not only superfluous, but also inappropriate, in view of the wording of the CIM Uniform Rules. Consequently, a text has been chosen which retains the editorial parallelism with Article 36 of the CIM Uniform Rules 1980 and Article 23 of the CIM Uniform Rules 1999. See also the remarks relating to Article 10.

5. Whereas, in the case of loss of the vehicle or of its accessories, compensation is limited to the *usual* value, in the case of damage to the vehicle or its accessories, compensation is limited to *the cost of repair* (§§ 3 and 4). So-called pecuniary damages, particularly a loss of earnings (lucrum cessans) are not compensated. However, the parties to the contract may agree dispensatory provisions, in accordance with § 5, allowing continuation of the practice followed up to now of compensation for loss of used, as provided, for example, in No. 20.4 of the UIC leaflet 433 for P wagons.

Article 5
Loss of right to invoke the limits of liability

1. Since Article 4, §§ 3 and 4 provides for a legal limitation of liability, although only as optional law, provision has been made for withdrawal of this limitation of liability in case of qualified fault, following the example of Article 44 of the CIM Uniform Rules 1980 and Article 36 of the CIM Uniform Rules (Report on the 12th session, p. 15).

2. This provision is mandatory, in that dispensatory agreements between the parties to the contract are not permitted. Although it might be supposed that such cases almost never occur in practice, this protection of the contractual partner, in case of qualified fault, does appear to be indicated from a legal policy point of view.

Article 6
Presumption of loss of a vehicle

1. The period upon the expiry of which a vehicle could be considered as lost was regulated in three different ways (3 months for P wagons, according to Article 13 RIP, 12 months for network carriages according to No. 19 RIC and 18 months for network wagons according to No. 18 RIV). The provision concerning the uniform period of three months (§ 1) is optional in nature, thus permitting the retention of the regulation in force for so-called network wagons (§ 4). A subsidiary legal regulation providing for a short period for all vehicles appears expedient and justified at the present time.

2. The majority of the Member States wished to regulate the case in which a vehicle which is presumed lost is subsequently found. The provisions of Article 13 of RIP have been supplemented in respect of the case in which the restitution of the vehicle is not requested or the case in which the vehicle is found again more than one year after the payment of compensation. Article 29, § 4 of the CIM Uniform Rules was used as a model for § 3. This provision is also optional in nature (§ 4).

3. The "person entitled" in the sense of this article is the claimant who entrusted the vehicle for use as a means of transport on the basis of a contract in accordance with Article 1.

Article 7
Liability for loss or damage caused by a vehicle

1. At the 8th session of the Revision Committee, the majority of the States represented adopted the solution according to which the "keeper" of the vehicle is liable for damage caused by the vehicle, unless the keeper proves that the damage caused was not his fault (Report on the 8th session, p. 44).

2. When the contract of use makes provision whereby the rail transport undertaking may entrust the vehicle to other rail transport undertaking for use as a means of transport and such use is made of it, the rail transport undertaking which actually uses the vehicle is not necessarily the contractual partner of the keeper, i.e., of the contracting party to the first contract of use. A direct liability on the part of the

keeper towards such a rail transport undertaking would no longer be a liability on a purely contractual basis; rather, such a liability would have to be based directly on the legal provisions of the CUV Uniform Rules (Report on the 8th session, pp. 44 and 46/47). Otherwise, liability would be tortuous *(ex-delicto)* or quasi-tortious, according to national law.

3. At the 12th session of the Revision Committee, a majority of the States represented pronounced in favour of a liability based solely on the contract. By agreeing a subrogation, the parties to the contract of use can achieve the situation wherein the keeper is substituted for the rail transport undertaking which took the vehicle for use and which subsequently entrusted the vehicle to another rail transport undertaking for use. A situation can thus be achieved wherein this latter rail transport undertaking is considered to be the contractual partner of the keeper (see also the remarks relating to Article 9).

4. Even the scope of application according to Article 1 indicates that the liability is a contractual liability (see No. 3 of the remarks relating to Article 4). Liability towards third parties who have no commercial connection, with regard to the contract, with the parties to the contract of use, is regulated by the national law (see also No. 2 of the remarks relating to Article 10).

5. Since the damages caused by a vehicle can be significantly greater than the damages due to the loss of or damage to a vehicle or its accessories, this provision cannot simply be composed following the example of Article 4. In particular, it is not acceptable to limit the compensatory damages solely to material damage. Contrary to the situation in case of loss of or damage to the vehicle or its accessories, physical injury also has to be taken into consideration. Whereas, in the case of Article 4, the so-called (purely) pecuniary damages are limited essentially to a loss of use, the actual material damage caused by vehicles can be significantly greater, particularly in the case of damage to the infrastructure and to third parties, damages for which the user rail transport undertaking is liable (e.g. damage to the environment).

6. From the historical perspective, actions by the railway against the owners in respect of damages caused by vehicles during forwarding were governed by the contract of registration in accordance with Article 12 § 6 of the RIP. According to No. 22 of the UIC leaflet 433, the owner's liability differed according to whether or not the damage was caused by an infrastructure element (vehicle element) related to operating safety. The owner/keeper was only liable for damages which were been caused by an infrastructure element related to operating safety if the rail undertaking proved that the damage did not result from a fault caused by the rail undertaking. In all other cases, in order to free himself from liability, the owner/keeper had to prove that the damage was attributable to a fault on the part of the railway. The Member States represented at the 12th session of the Revision Committee were in favour of a solution which provides, as a legal model, for a liability for fault, but without limitation of compensatory damages (Report on the 12th session, p. 20).

7. According to § 2, the provisions of § 1 have the nature of optional law. Consequently, the practice followed up to now of registration contracts, in accordance with UIC leaflet 433 and the so-called guarantee agreement, could continue to be applied

when this was agreed by the parties to the contract of use. The former regulation provided by No. 68 of RIV and by No. 21 of RIC, according to which the rail transport undertaking themselves bear damages caused by the vehicles of other rail transport undertaking, can also be retained by an agreement, in accordance with § 2. Such a regulation is appropriate if the parties to the contract take as a basis the idea that, taken as a whole, the damages suffered by them and the damages caused by their vehicles are more or less equal. The parties to the contract of use will thus spare themselves difficult and costly investigations into the causes of the damages, procedures for the safeguarding of means of proof, which can cause considerable disruption to the rail operation, and very costly litigation.

Article 8
Subrogation

1. "Subrogation" means that, in a legal relationship, one person is substituted for another for the purpose of enabling the first person to exercise, wholly or partly, the rights of the second person.

2. Subrogation is linked to the agreement of the keeper (see also No. 7).

3. As indicated in No. 1 of the remarks relating to Article 7, in the case of contracts allowing the rail transport undertaking to entrust the vehicle to other rail transport undertaking for use as a means of transport, this second or any other subsequent rail transport undertaking is not the contractual partner of the keeper. In the case of damage caused to the vehicle, subrogation allows, firstly, the contractual partner of the keeper to be legally substituted for the rail transport undertaking to which the vehicle was entrusted (letter a). Secondly, in the case of damages caused by the vehicle, subrogation allows the keeper to be substituted, in his relations with the other subsequent rail transport undertaking which have used the vehicle, for the rail transport undertaking to which the keeper himself actually entrusted the vehicle. Consequently, he is directly and contractually answerable to the user rail transport undertaking (letter b).

4. Although the subrogation must be agreed between the parties, the CUV Uniform Rules make express provision for this possibility, in order to guarantee that such agreements will be recognised in all the Member States and that the admissibility of such agreements will not be contested or limited, as the case may be, on the basis of the provisions of the national law (Report on the 12th session, p. 21).

5. The subrogation (letter a) by virtue of which the rail transport undertaking which is the contracting partner of the keeper agrees that it is to be substituted, in respect of the latter, for the rail transport undertaking which actually uses the vehicle, allows the liability in the event of loss of or damage to the vehicle to be "channelled" (provided for hitherto by article 12, § 5 RIP), by a legal convention, to the registering rail transport undertaking. The 2nd possibility for subrogation (letter b), namely, that the keeper is substituted, in respect of the user rail transport undertaking which is not the keeper's direct contractual partner, for the rail transport undertaking which remitted the vehicle, creates new possibilities which are those of a direct *contractual* liability on the part of the keeper towards the user transport undertaking. According to the

second part of the sentence of letter b), the right of action must nevertheless be exercised by the rail transport undertaking which is the contractual partner of the keeper. By this means, a "channelling" of rights is obtained which was guaranteed by Article 12, § 6 of RIP.

6. When the parties to the contract of use allowing the vehicle to be entrusted to other rail transport undertaking do not make use of the possibility of subrogation, any tortious proceedings against the user rail transport undertaking for damage to or loss of the wagon can only be exercised within the conditions and limitations of the CUV Uniform Rules and those of the contract of use (Article 10).

7. Furthermore, the parties to the contract of use may agree that the vehicle may be entrusted to other rail transport undertaking for use as a means of transport but that, in such a case, it is not permitted to agree a subrogation (see also the remark in No. 2).

8. Subrogation is not the only permitted agreement. Other agreements may also be provided for in the contract of use.

Article 9
Liability for servants and other persons

1. § 1 corresponds to Article 40 of the CIM Uniform Rules, Article 51 of the CIV Uniform Rules and Article 18 of the CUI Uniform Rules.

2. The notion that the CUV Uniform Rules also give infrastructure managers the *ex lege* status of persons whose service is used by the user of the vehicle was not initially taken up by the Member States represented in the Revision Committee (Report on the 12th session, p. 25), but was unanimously adopted at the 20th session, with the proviso that the parties to the contract are able to agree other rules (§ 2) (Report on the 20th session, 2nd meeting, p. 9/10).

3. § 3 specifies that not only are the parties to the contract of use liable for their servants and for other persons, but so also is the rail transport undertaking or the keeper substituted for them by subrogation. In view of § 1, § 3 is not indispensable, since Article 8 is intended to have precisely the effect that the rights can only be exercised by the parties/against the parties to the first contract of use. However, it excludes a differing interpretation, eliminates all doubts and thus serves the purpose of legal clarity.

Article 10
Other actions

1. The wording "in all cases where these Uniform Rules shall apply" is also intended to include third parties not participating in the contract of use, insofar as these parties have commercial links with one of the parties to the contract of use, these being links which have a definite connection with the contract of use. For example, they could be parties to subsequent contracts of use or the owner, according to civil law, of the vehicle.

2. This provision corresponds to Article 41 of the CIM Uniform Rules, Article 52 of the CIV Uniform Rules and Article 19 of the CUI Uniform Rules (cf. also the jurisprudence concerning Article 28, paragraph 1 CMR, particularly the judgement of the German Bundesgerichtshof [Federal Court] of 12.12.1991). It is intended to guarantee that the conditions and limitations provided for in these Uniform Rules and in the contract of use will not be circumvented by the fact that other proceedings, particularly actions in tort, can be brought either by parties to the contract of use or by third parties who have commercial links with them.

3. Article 10 applies only to actions for compensatory damages for loss of or damage to the vehicle or its accessories, since the CUV Uniform Rules do only provide for limitation of liability in that case. For damage caused by vehicles, however, Article 7 provides for an unlimited liability for fault, rendering similar provisions superfluous. On the other hand, when the parties to the contract of use have availed themselves of the possibilities introduced by Article 7, § 2 and have agreed dispensatory provisions, and in this dispensation have provided for limitations of liability, then these contractual limitations can only be of effect amongst those parties, and not in respect of third parties. In the case of several subsequent contracts of use, it would be necessary to guarantee, by contractual clauses which the parties to each subsequent contract will not be able to enforce, as a third party in relation to the first contract of use, rights in respect of the keeper of the vehicle which go beyond that which was provided for by contract.

4. § 2 is for the purpose of clarification, following the example of Article 9, § 3.

Article 11
Forum

§ 1 allows the parties to the contract of use to agree the competent jurisdiction. The parties can also agree on a court in a non-member State (Report on the 20th session, 2nd meeting, p. 13), provided that the courts of the Non-Member State recognise such a clause for the assignment of jurisdiction. The courts of the Member States in which damage occurs have only subsidiary competence (§ 2).

Article 12
Limitation of actions

1. The three-year period of limitation corresponds to the provisions of Article 12, § 7 of RIP. A proposal seeking to reduce this period to two years, i.e., to the longest period of limitation provided for in the CIM Uniform Rules, was rejected by a clear

majority by the Member States represented, on the grounds that the situation concerning the rights resulting from the contract of use is not comparable to that concerning the rights resulting from the contract of carriage (Report on the 8th session, p. 48).

2. § 2, letter a) was supplemented by specifying the time from which period starts, in the case of the date on which the vehicle was lost being unknown, but the loss being presumed.