

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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Revision Committee**

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Partial revision of Appendix D (CUV UR)

Explanatory document and suggestions for additions to the Explanatory Report

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

Introduction

The aim of this document is to explain the proposals to amend the CUV Uniform Rules submitted to the 25th session of the Revision Committee, either for decision (Article 2 of the CUV UR) or for examination before being submitted to the General Assembly for decision.

It also sets out the modifications to the Explanatory Report that should be made as a result of the amendments to these provisions.

In accordance with Article 33 § 4 (d) of COTIF, the Revision Committee has the competence to amend the CUV UR, except Articles 1, 4, 5 and 7 to 12. The General Assembly has the competence to amend all the other Articles of the CUV UR.

General remarks

1. 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.
2. 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). This working group also worked closely with the WG TECH working group, which met in Bonn on 5 February 2014.
3. Bearing in mind the discussions in the working group on the revision of the CUV UR and at WG TECH, the Secretariat is submitting this amendment to the CUV Uniform Rules, which aims to integrate the amendments to the obligations of rail transport 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). In effect, the CUV UR can be qualified as a suppletory type contract, i.e. their provisions apply to contracts between the parties except if they decide otherwise. A few provisions are mandatory, but they are rare.

The purpose of the amendments to the CUV UR concerning ECMs is therefore to help support the sector in implementing more detailed provisions, as the amendments proposed only provide a general framework.

Therefore, these amendments take the form of an amendment to Article 9 (new §§ 3 and 4), which will apply to all vehicles, as well as to keepers and the rail transport undertakings of the States Parties.

4. 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 maintenance¹, which transposes the ECM Regulation² into OTIF law.

The particular feature in the carriage of goods is that the wagons support significant international traffic in which a keeper (who 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.

5. The discussions at the meeting of the working group on the revision of the CUV UR held on 28 January 2014 resulted in a request to WG TECH for its opinion on the possible inclusion in the ATMF UR of all the provisions proposed by the Secretariat.

WG TECH met on 5 February 2014 in Bonn and concluded that the provision concerning the keeper's general responsibility for designating an ECM was based on Article 15 § 1 of the ATMF UR. The following wording was decided:

"Railway vehicles must be in a good state of maintenance in such a way that they comply with the provisions as defined in Article 7. Their condition shall not in any way compromise operational safety or harm the infrastructure, environment and public health by their circulation or their use in international traffic. To that end, railway vehicles shall be made available for and undergo the service, inspections and maintenance as prescribed in the Maintenance File and updated under the responsibility of the entity in charge of maintenance (ECM). **It shall be the responsibility of the keeper to designate an ECM for this purpose**".

It should be noted that the European Commission has entered a reservation on this text, as this wording is not identical to the provisions of EU law, particularly the Safety Directive³ and at its 7th session (Bern, 4 and 5 June 2014), the Committee of Technical Experts will have to approve the wording of Article 15 § 1 of the ATMF UR in the three working languages.

Nevertheless, the Secretariat considers that this wording of Article 15 § 1 of the ATMF UR could be kept, as the other provisions proposed come under Article 9 of the CUV UR.

1 Annex A (A 94-30/1.2012) to the ATMF UR dated 1 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

3 Directive 2004/49/EC of 29 April 2004 on safety on the Community's railways.

Article by Article justification for the amendments

Article 2 Definitions

Reasons for the proposed amendment:

The proposed amendment to Article 2 c) aims to align it as much as possible with the definition in Directive 2008/110/EC⁴, which has been taken over in ATMF, bearing in mind the particular features of the CUV UR.

While the definition of the term "keeper" proposed in Article 2 c) of the CUV UR does reflect the discussions at the working group on the revision of the CUV UR, it should nevertheless be noted that there was no consensus on this definition, and that Germany entered a reservation on deleting the words "in a permanent manner".

Proposed amendment to the Explanatory Report:

The Explanatory Report makes it easier to understand the differences in terminology between the French and German with regard to the generic terms of "véhicule" and "Wagen", which only has this meaning in this language. The Secretariat proposes 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.

It is proposed to amend paragraph 2 as follows:

- "2. Unlike the German generic term "Wagen" ["wagon"], the generic French term "véhicule" and the generic **English term "vehicle"** are broader, in that they include goods wagons, passenger coaches 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"**.

It is proposed to amend paragraph 3 as follows:

- "3. At its 20th session, the Revision Committee introduced a definition of the term "keeper". This term is based on the law institute that is well-known and familiar in road transport. The keeper is not necessarily the owner in the civil law sense. This definition corresponds to the definition in Article 2 c) of the ATMF UR. **At its 25th session (Bern, 25-27.6.2014), the Revision Committee amended the definition of the term "keeper" to align it as much as possible with the definition in Directive 2008/110/EC⁵, which was taken over into ATMF at the 24th session of the Revision Committee (Bern, 23-25.6.2009), bearing in mind the particular features of the CUV UR.**"

4 Directive 2008/110/EC of 16 December 2008 amending Directive 2004/49/EC on safety on the Community's railways.

5 Directive 2008/110/EC of 16 December 2008 amending Directive 2004/49/EC on safety on the Community's railways.

Article 9

Liability for servants and other persons

Reasons for the proposed amendment:

The new proposed paragraph 3 would ensure that:

- a) In § 1, 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 Article 9 § 2, which deals with the infrastructure manager. It enables identification of both the person responsible and the legal instrument which underpins this responsibility. The working group on the revision of the CUV UR decided not to define the concept of "ECM" in Article 2. In contrast, the majority of delegations present were in favour of referring to Article 15 § 2 of the ATMF UR, as this provision describes precisely the role and functions of the ECM.
- b) In § 2, the contract of use organises the exchanges of information required by Article 15 § 3 of the ATMF UR and by Article 5 of Annex A to the ATMF UR. It is essential that the CUV UR can enable clear identification of the role and mutual obligations of the actors, either within the framework of bilateral contracts, or in the framework of multilateral contracts, such as the GCU for wagons.

While the wording of the new paragraph 3 proposed in Article 9 of the CUV UR does reflect the discussions at the working group on the revision of the CUV UR, it should nevertheless be noted that there was no consensus on this provision, and that Germany entered a reservation on this new provision.

Proposed amendment to the Explanatory Report:

It is proposed to add a new paragraph 8 as follows:

- "8 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.

In fact, 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 maintenance⁶, which transposes the ECM Regulation⁷ into OTIF law.

The purpose of the amendments to the CUV UR concerning ECMs is therefore to help support the sector in implementing more detailed provisions, as the amendments proposed only provide a general framework.

The new paragraph 3 of Article 9 therefore aims to ensure that:

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

7 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

- a) In § 1, 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 Article 9 § 2, which deals with the infrastructure manager. It enables identification of both the person responsible and the legal instrument which underpins this responsibility. The working group on the revision of the CUV UR decided not to define the concept of "ECM" in Article 2. In contrast, the majority of delegations present were in favour of referring to Article 15 § 2 of the ATMF UR, as this provision describes precisely the role and functions of the ECM.

- b) In § 2, the contract of use organises the exchanges of information required by Article 15 § 3 of the ATMF UR and by Article 5 of Annex A to the ATMF UR. It is essential that the CUV UR can enable clear identification of the role and mutual obligations of the actors, either within the framework of bilateral contracts, or in the framework of multilateral contracts, such as the GCU for wagons."