

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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Partial revision of Appendix E (CUI) - Suggestions of the CIT

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Suggestions of the CIT for changes to the CUI Uniform Rules

received on 16 April 2014

1. Extension of the scope of the CUI Uniform Rules to include domestic carriage

Title I - General Provisions

Article 1

Scope

§ 1 These Uniform Rules shall apply to any contract of use of railway infrastructure for the purposes of international carriage within the meaning of the CIV Uniform Rules, ~~and the CIM Uniform Rules~~ **and for the purposes of domestic carriage**. They shall apply regardless of the place of business and the nationality of the contracting parties. These Uniform Rules shall apply even when the railway infrastructure is managed or used by States or by governmental institutions or organisations.

Justification:

The essential purpose of the CUI Uniform Rules is to standardise the rules for liability between infrastructure managers and carriers for international traffic. The current limitation of the scope of the CUI Uniform Rules leads to the legal relationship between the carrier and the manager depending on whether a passenger in a train has an international ticket or freight is consigned with an international consignment note (something which is also possible in domestic trains). In fact, however, contracts of use are still always concluded on a national basis; on that basis it is irrelevant from the viewpoint of national law whether the infrastructure is being used for domestic or for international movements. An 'international train' therefore is subject to several different (national) contracts of use and that makes it more difficult for carriers to move international traffic.

Article 5 § 2 CUI Uniform Rules defines the content of the contract of use of railway infrastructure for international traffic. Making movements under national law subject to the CUI Uniform Rules would extend the scope of the uniform rules to issues which are subject to national law so as to permit the content of the contracts to be standardised for international train movements. Where national law does not provide a unified legal basis, the CUI Uniform Rules can provide a basis for carriers to be able to agree standardised relationships with the infrastructure managers in question for international train movements (for example, general rules for delay and disruption to operations in the form of general contractual conditions).

During an informal exchange of views, the OTIF Secretary General expressed his doubts on whether extending the scope of the CUI Uniform Rules to domestic carriage is compatible with the nature of COTIF as an international convention.

2. Creation of a legal basis for general terms and conditions for contracts of use of railway infrastructure (for example, the European General Terms and Conditions of use of railway infrastructure (EGTC))

Article 3 **Definitions**

new:

h) “general terms and conditions of use of railway infrastructure“ means the common rules for the administrative, technical and financial conditions of use of railway infrastructure which become by the conclusion of the contract of use an integral part of it.

Justification:

Defining common rules for the conditions of use of railway infrastructure by means of general terms and conditions reinforces standardised and discrimination-free specification of conditions of use. International general terms and conditions reduce legal complexity and administrative effort for the carrier, independently of whether an individual contract of use is concluded for each infrastructure within a state or whether a single contract of use can be concluded for railway infrastructure in several states.

Title II- Contract of use

Article 5 **Contents and form**

§ 2 The contract shall regulate the ~~details necessary for the determination of the~~ administrative, technical and financial conditions of use **of the infrastructure. The international associations of carriers in agreement with the managers’ international associations shall establish general terms and conditions as defined in Article 3h in which the common rules for the conditions of use may be specified without discrimination and the use of railway infrastructure facilities may be harmonised across several states.**

Justification:

The majority of managers offer carriers contracts of use with their own general terms and conditions. This additional text will provide a basis for harmonised conditions for contracts of use in order to reduce legal complexity for international movements.

An example which already exists is the ‘European General Terms and Conditions of the use of railway infrastructure (EGTC)’ which was developed by RailNetEurope and the CIT. It has been available since the end of 2010 and, where it is offered, it applies to all the infrastructure managers’ contracts of use.

In addition, it is suggested that the contract of use should govern the conditions of use but not the details.

3. Extension of the infrastructure manager's liability to cover pecuniary losses arising from damages paid out for events having their origin in the infrastructure

Title III - Liability

Article 8

Liability of the manager

§ 1 The manager shall be liable **for**

- a) ~~for~~ bodily loss or damage (death, injury or any other physical or mental harm),
- b) ~~for~~ loss of or damage to property (destruction of, or damage to, movable or immovable property),
- c) ~~for~~ pecuniary loss resulting from damages payable by the carrier under
 - the CIV Uniform Rules, ~~and~~
 - the CIM Uniform Rules **and**
 - **national law,**

caused to the carrier or to his auxiliaries during the use of the infrastructure and having its origin in the infrastructure.

§4 The parties to the contract may agree whether and to what extent the manager shall be liable for **other** loss or damage caused to the carrier ~~by delay or disruption to his operations~~ **or to his auxiliaries during the use of the infrastructure and having its origin in the infrastructure.**

Justification:

The 'law remaining unaffected' (as defined in Article 5bis § 2 of the CUI Uniform Rules) can give rise to obligations to pay compensation. In this way, carriers have to pay compensation for delays to passengers under Regulation (EC) No 1371/2007. Carriers are even liable to their contractual partners when the cause of the delay is related to the infrastructure since those obligations are placed on them on the basis of the statutory fiction that the infrastructure manager is an auxiliary of the carrier (Article 51 CIV Uniform Rules and Article 41 CIM Uniform Rules). This one-sided allocation of liability for pecuniary losses which have their origin in the infrastructure is to be corrected by providing the opportunity for recourse against the infrastructure manager for compensation paid out on the basis of mandatory law.

In accordance with Article 8 point 4 of the explanatory report to COTIF, the term 'national law' within the meaning of COTIF also includes the European Union law applicable in an EU Member State. As an alternative, European Union law could be mentioned explicitly in addition to national law.

Even where compensation has been triggered by circumstances which have their origin in the infrastructure, infrastructure managers should not be liable for compensation which carriers pay in case of delay or disruption over and above the statutory amounts, subject to contractual agreements to the contrary in accordance with Article 8 § 4.

In addition, the option of having contractual agreements for liability for other losses should be explicitly mentioned (including moral prejudice, loss of profit and damage to reputation).