

**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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**Commission de révision  
Revisionsausschuss  
Revision Committee**

**CR 25/5 Add. 1  
17.04.2014**

Original : FR

## **25<sup>th</sup> Session**

Partial revision of Appendix B (CIM UR)

Explanatory document and suggestions for additions to the Explanatory Report

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## **Uniform Rules concerning the Contract of International Carriage of Goods by Rail (CIM - Appendix B to the Convention)**

### **Introduction**

The aim of this document is to explain the proposals to amend the CIM UR submitted to the 25<sup>th</sup> session of the Revision Committee, either for decision, or for consideration prior to a decision by the General Assembly.

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 (c) of COTIF, The Revision Committee has the competence to amend the CIM Uniform Rules, except Articles 1, 5, 6 §§ 1 and 2, Articles 8, 12, 13 § 2, Articles 14, 15 §§ 2 and 3, Article 19 §§ 6 and 7 and Articles 23 to 27, 30 to 33, 36 to 41 and 44 to 48. The General Assembly has the competence to amend these Articles.

### **Justification for the amendments to the CIM UR Article by Article**

#### **Article 6 Contract of carriage**

##### **Reasons for the proposed amendment**

An editorial amendment is required in paragraph 7 of Article 6, as the European Community is now called the **European Union**. This would take account of the entry into force of the Lisbon Treaty.

#### **Article 6a (*new*) Form of the consignment note**

##### **Reasons for the proposed amendment**

This amendment is intended to replace paragraph 9 of CIM Article 6 by material provisions and to give priority to the electronic consignment note by creating a new Article 6a referring to the form of the consignment note.

This new Article 6a has 5 new paragraphs, namely:

§ 1: “The consignment note and accompanying documents shall be established in the form of electronic data registration.”

§ 2: “The procedure agreed between the parties to the contract of carriage for establishing the electronic consignment note and the accompanying electronic documents shall ensure the integrity and reliability of the information they contain from the time they are established.”

§ 3 “The procedure agreed between the parties to the contract of carriage for filling out or amending the electronic consignment note shall enable identification of the amendments made. It shall also enable the original information contained in the electronic consignment note to be kept.”

§ 4: “The electronic consignment note shall be authenticated.”

Authentication may be carried out by means of an electronic signature or another appropriate method.

§ 5: “The parties to the contract of carriage may agree to establish the consignment note card and the accompanying documents in paper form.”

Work on the e-RailFreight project has demonstrated that at the time, in practice, the principle of functional equivalence according to Art. 6 § 9 CIM made it possible to ensure legal certainty in relation to national laws. However, this principle makes the system complex and onerous, as paper processes can only be transposed into electronic processes with difficulty.

The possibility in future of being able to exchange the consignment note and the accompanying documents by electronic means only is one of the major advantages of this amendment to the CIM Uniform Rules.

The use of the electronic consignment note for the world of rail transport has many advantages, such as, for example, savings in terms of time and money for the parties to the contract of carriage and better legal security against errors and forged signatures. With the electronic consignment note, the consignor immediately knows when the goods have arrived at the destination station and when they have been delivered to the customer. In addition, the parties can at all times closely monitor dispatch, changes to the contract, reservations, the execution of subsequent orders, etc. The various participants also have an advantage in terms of the cost of transport, because of the enormous quantity of documents, particularly administrative documents, that are attached to the consignment note every day and for each consignment. Lastly, the electronic consignment note is environmentally friendly and will help to improve and reduce the use of paper.

The major issue which arises at this time is that this exchange of documents must provide the same legal security as the exchange of paper documents between all the participants in the contract of carriage and with the customs, since the consignment note is used as a transit declaration for customs.

This proposed amendment also ensures that the consignment note and accompanying documents are accepted as evidential documents, which is extremely important in the world of transport.

Furthermore, the various paragraphs of the new Article 6a lay down the requirements of the various participants in the consignment note, so that the process agreed for the use of the electronic consignment note and accompanying documents attached to it establish the mode of data transmission and dispatch and all the necessary safeguards, such as the integrity and reliability of the particulars in the electronic consignment note.

In addition, the new wording of Article 6a does not rule out the possibility of preparing the consignment note in paper form.

## **Proposed amendment to the Explanatory Report**

It is proposed to add a new paragraph on Article 6 § 2, as follows:

"The consignment note may be drawn up in electronic or paper form (see Art. 6a CIM). Messages exchanged in the framework of the electronic system are equivalent to operations relating to the paper consignment note (handing over of the consignment note and accompanying documents attached, handing over of the duplicate of the consignment note, withdrawal of the consignment note, etc.). "

### **Reasons for the proposed addition**

The proposed addition is again a consequence of the establishment of Article 6a of the CIM UR. In order to provide participants in the contract of carriage and the customs with legal security, it is absolutely essential that all the operations which derive from the electronic consignment note are exactly the same as previously with the paper consignment note. Similarly, such a comment in connection with Article 6 § 2 CIM avoids having to make it in relation to many other Articles.

## **Article 16 Transit periods**

### **Reasons for the proposed amendment**

The reason for deleting this sentence is partly due to the fact that in some Member States, Sundays are not public holidays and, on the other hand, statutory public holidays vary considerably from one Member State to another, which is confusing in terms of applying such a sentence. Furthermore, the maritime conventions do not contain provisions regarding transit periods.

## **Proposed amendment to the Explanatory Report**

The international users' associations wished ~~to delete the suspension of the transit period on Sundays and statutory holidays; they also wished~~ to shorten the transit periods that are specified at present. The Revision Committee did not take account of these wishes (minutes of the 4<sup>th</sup> session, p. 21).

### **Reasons for the proposed deletion**

As indicated in Article 16, paragraph 3 of the Explanatory Report, deleting suspension of the transit period on Sundays and statutory public holidays was something the international associations representing the users wished to see. In 1990, the Revision Committee did not take account of these wishes.

## **Article 18**

### **Right to dispose of the goods**

#### **Reasons for the proposed amendment**

In this case, the proposed amendment has two elements:

- Firstly, a change to the terminology, to replace the "right to dispose of the goods" with the "right to amend the contract of carriage", which seems more appropriate. The right to dispose of the goods is a term which is used more in the context of a contract of sale.

According to the current § 3, the right to modify the contract of carriage is transferred from the consignor to the consignee from the time when the consignment note is drawn up, unless the consignor indicates to the contrary on the consignment note. The solution adopted in the latest revision of the CIM UR is based on the CMR. However, it should be noted that the CMR only offers this solution if the consignor indicates this in the consignment note.

- Secondly, according to railway transport undertakings, practice shows that this transfer of the right to modify the contract of carriage takes place much too early. It is therefore appropriate to propose that the consignor's right be transferred to the consignee later: unless the consignor indicates the place or time of the transfer in the consignment note (see Art. 12 § 3 CMR) or unless it is stated that the consignee is not authorised to give subsequent orders, this transfer should take place when the goods arrive in the country of destination (see Art. 31 CIM 1980).

The aim of this proposal is to align the time at which the consignee's right to modify the contract of carriage takes place with CIM 1980, i.e. at the time the goods enter the territory of the country of destination, as it seems that this delivers better results for rail transport undertakings in terms of dealing with subsequent orders from the consignee or the consignor.

#### **Proposed amendment to the Explanatory Report**

Add the following sentence to paragraph 2:

"Since the entry into force of the 1999 CIM UR, practice has shown that the solution adopted in the 1980 CIM UR for deciding the time at which the consignor could modify the contract of carriage, i.e. "when the consignment entered the territory of the country of destination", was easier to manage, both for the consignor and for the carrier, than the time at which the consignment note was drawn up. This is why the Revision Committee adopted this amendment to the title of Article 18 and to paragraph 3 of this Article, and returned to the wording of Art. 31 of the 1980 CIM UR."

#### **Reasons for the proposed addition**

If the 25<sup>th</sup> session of the Revision Committee approves this amendment, which replaces the words "right to dispose" by "right to amend", and which aims to define the time at which the consignor can change the contract of carriage as when the consignment enters the territory of the country of destination, it will be necessary to add the result of the discussions, as well as the sentence specified, to the Explanatory Report.

## **Article 19**

### **Exercise of the right to dispose of the goods**

#### **Reasons for the proposed amendment**

Only the title of the Article is amended, by replacing "Exercise of the right to dispose" by "Execution of subsequent orders", in accordance with the amendment proposed to the previous Article. This is simply an adaptation to the new terminology according to the suggestion above concerning Article 18 CIM.

#### **Proposed amendment to the Explanatory Report**

Add a new paragraph 9 as follows:

"The main aim of presenting the original or the duplicate consignment note is to protect the consignor's interests (for example, to prevent an unauthorised person from giving orders or submitting a claim in place of the consignor) and the consignee's interests (for example, if the consignee has asked the consignor to provide the duplicate consignment note to prevent any subsequent modification of the contract of carriage, particularly when a consignment is subject to a documentary letter of credit. If an electronic consignment note is used, a printout corresponding to the original or to the duplicate of the consignment note must be presented in place of these sheets from the consignment note. The consignment note guides issued by CIT clarify this situation."

#### **Reasons for the proposed addition**

It is obvious that an amendment to the CIM UR which is aimed primarily at modernising them by allowing new technologies, as is the case by giving priority to the electronic consignment note as opposed to paper documents, must also ensure that the other documents previously used in paper form will also be sent in electronic form in future, as well as the sheets of the consignment note. The most important issue to bear in mind is that the data must be equivalent. To use an electronic consignment note, it should be sufficient for the persons entitled to hand the carrier a printout. In the context of these Articles, such a comment seems appropriate, in addition to the comment proposed above for Article 6 § 2 CIM.

## **Article 22**

### **Consequences of circumstances preventing carriage and delivery**

#### **Reasons for the proposed amendment**

The aim of this proposed amendment is to replace the term "consignor" with the term "person entitled" in Article 22, paragraph 6 of the CIM UR, which deals with the consequences of circumstances preventing carriage and delivery.

This provision is intended to protect the carrier in relation to problem goods (hazardous waste, etc.). It applies only if the circumstances cannot be avoided in accordance with §§ 2 and 3.

It must also apply when the consignee has modified the contract of carriage, and in this case the goods must be returned to the person from whom instructions have been requested, i.e. to the consignee who has modified the contract of carriage. In the latter case, a second contract of carriage, in the framework of which the consignee of the first contract would appear as the consignor, is not concluded; the original contract of carriage is simply modified.

### **Proposed amendment to the Explanatory Report**

Add the following text to paragraph 3:

"At its 25<sup>th</sup> session, the Revision Committee decided to replace the term "consignor" by having "person entitled". In practice, even though this provision only applies if the circumstances cannot not be avoided in accordance with §§ 2 and 3, the terms had to be harmonised in order to designate the carrier's final contact point and to speak in this sense of the person entitled (§§ 2 and 3) and not the consignor, who is difficult to find in the case of problem goods. "

### **Reasons for the proposed addition**

As a result of the proposal to replace the term consignor by person entitled, the proposed text must be added.

Moreover, the term "person entitled" already appears in the CIM UR several times in connection with liability, and in Article 22 itself.

## **Article 42**

### **Ascertainment of partial loss or damage**

#### **Reasons for the proposed amendment**

In view of the comments on Article 6a, it is also necessary to adapt those Articles of the CIM UR which refer to the paper consignment note. In this case, it is planned to draw up the report in electronic form, which is an important element of the contract of carriage when partial loss or damage is discovered. The second paragraph of § 2 also provides for the possibility, in exceptional cases, of drawing it up in paper form, after the parties have so agreed.

### **Proposed amendment to the Explanatory Report**

Add a new paragraph 3 as follows:

“At its 25<sup>th</sup> session, the Revision Committee decided, in line with the amendment to Article 6a, to do the same not only with the consignment note itself, but also with all the documents that are linked to it, as is the case for the loss or damage report, which in future will be prepared in electronic form. Messages exchanged in the framework of the electronic system must be equivalent to operations relating to the paper consignment note. As for Article 6a § 5, in exceptional cases the report may be prepared in paper form (§ 2, 2)”.

**Reasons for the proposed addition**

In line with the new wording of Article 6a, which gives priority to the electronic consignment note.

**FOR THE CIM UR EXPLANATORY REPORT ONLY****Proposed amendment to the Explanatory Report****With regard to Article 6 § 2 CIM**

Add a paragraph as follows:

"The consignment note may be drawn up in electronic or paper form (see Art. 6a CIM). Messages exchanged in the framework of the electronic system are equivalent to operations relating to the paper consignment note (handing over of the consignment note and accompanying documents attached, handing over of the duplicate of the consignment note, withdrawal of the consignment note, etc.)."

**Reasons for the proposed addition**

The proposed addition is a consequence of including Article 6a in the CIM UR. In order to provide participants in the contract of carriage and the customs with legal security, it is absolutely essential that all the operations which derive from the electronic consignment note remain exactly the same as previously with the paper consignment note.

Such a comment in connection with Article 6 § 2 CIM avoids having to make it in relation to many other Articles.

**Proposed amendment to the Explanatory Report****With regard to Article 6a § 5 CIM**

Add a paragraph as follows:

"The parties to the contract of carriage should only agree to draw up the consignment note in paper form as an exception and to the extent that this is necessary (e.g. simplified procedure for rail transit, absence of appropriate electronic system)."

**Reasons for the proposed addition**

The electronic consignment note should be given priority in order to avoid the use of paper consignment notes. However, it is essential to establish a few exceptions to the general rule, mainly as a result of the need to observe the provisions of customs law and the difficulty transport undertakings have in implementing an electronic system capable of satisfying the requirements of participants in the contract of carriage of goods by rail.



Such a comment in connection with Article 6a § 5 CIM is intended to give a few examples of exceptional cases in which the parties to the contract of carriage might agree to draw up the consignment note in paper form.

### **Proposed amendment to the Explanatory Report**

#### **With regard to Articles 21, 43 and 44 CIM**

Add a paragraph as follows:

"The main aim of presenting the original or the duplicate consignment note is to protect the consignor's interests (for example, to prevent an unauthorised person from giving orders or submitting a claim in place of the consignor) and the consignee's interests (for example, if the consignee has asked the consignor to provide the duplicate consignment note to prevent any subsequent modification of the contract of carriage, particularly when a consignment is subject to a documentary letter of credit. If an electronic consignment note is used, a printout corresponding to the original or to the duplicate of the consignment note must be presented in place of these sheets from the consignment note. The consignment note guides issued by CIT clarify this situation."

#### **Reasons for the proposed addition**

It is obvious that an amendment to the CIM UR which is aimed primarily at modernising them by allowing new technologies, as is the case by giving priority to the electronic consignment note as opposed to paper documents, must also ensure that the other documents now used in paper form will also be sent in electronic form in future, as well as the sheets of the consignment note. The most important issue to bear in mind is that the data must be equivalent. To use an electronic consignment note, it should be sufficient for the persons entitled to hand the carrier a printout.

In addition, in the context of these Articles, such a comment seems appropriate, in addition to the comment proposed above for Article 6 § 2 CIM.

### **Proposed amendment to the Explanatory Report**

#### **With regard to Article 13 CIM**

Add a new paragraph 6 as follows:

"6. In § 2, the consignor's responsibility in terms of loading is to ensure that his activities do not compromise rail safety in normal conditions of transport. When complying with its safety obligations in accordance with Articles 6 § 2 and 15 § 3 of the current version of ATMF or the safety management system in EU law, the railway undertaking must ensure that it is able to detect any obvious loading anomalies."

## Reasons for the proposed addition

A new paragraph 6 should be added to the comments on Article 13 of the CIM UR in the Explanatory Report.

During the discussions on the revised version of the UTP WAG at the 6<sup>th</sup> session of the Committee of Technical Experts (Geneva, 12 June 2013), a question was raised on Appendix I, 6<sup>th</sup> 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 CIM 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 loader, 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.

To make it clear, at the 3<sup>rd</sup> and final meeting of the working group on the CUV UR held in Bern on 9 April 2013, in paragraph 8 of document CUV 3/3 dated 10 March 2014, the Secretariat of OTIF proposed this addition and proposed to include this obligation in the part of the Explanatory Report which refers to Article 13 of the CIM UR.

After a presentation of this issue by OTIF and after a discussion, the delegates at that meeting agreed that it was appropriate to include this paragraph 6 in the comments in the Explanatory Report on Article 13 of the CIM UR.