



ORGANISATION INTERGOUVERNEMENTALE POUR LES TRANSPORTS INTERNATIONAUX FERROVIAIRES
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INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL CARRIAGE BY RAIL

Groupe de travail "RU CIM"
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Working group "CIM UR"

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Preliminary considerations on adapting the maximum amounts of compensation

In the margins of the 25th session of the Revision Committee (Berne, 25-26.6.2014), several delegations and the Secretary General raised the question of "adjusting the limits of liability", which could be dealt with by the working group set up for Appendices A, B and E. Appendix D (CUV UR) does not prescribe any limits of liability. This question should in any event be dealt with in a coordinated manner for the Appendices concerned. However, work on this issue could start in the CIM working group, given that it will be probably be starting its work sooner than the CIV working group (coordinated revision of CIV-PRR). The amendments for which the General Assembly is competent will nevertheless have to be adopted simultaneously for the three Appendices.

In theory, the limits of liability prescribed in Appendices A, B and E could be adjusted in line with the depreciation of the unit of account, i.e. the special drawing right of the International Monetary Fund, as was the case in 1999 when the amount of 70,000 SDR (Art. 30 CIV 1980) was increased to 175,000 SDR (Art. 30 CIV 1999). A system of regular review and adjustment, as in the Montreal Convention or the Athens Convention, could also be considered.

Such a revision would concern the following Articles:

Appendix A – CIV

Article 30: Form and amount of damages in case of death and personal injury

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§ 2 The amount of damages to be awarded pursuant to § 1 shall be determined in accordance with national law. However, for the purposes of these Uniform Rules, the upper limit per passenger shall be set at **175,000 units of account** as a lump sum or as an annual annuity corresponding to that sum, where national law provides for an upper limit of less than that amount.

Article 34: Limit of damages in case of loss of or damage to articles

When the carrier is liable under Article 33 § 1, he must pay compensation up to a limit of **1,400 units of account** per passenger.

Article 41: Compensation for loss

§ 1 In case of total or partial loss of registered luggage, the carrier must pay, to the exclusion of all other damages:

- a) if the amount of the loss or damage suffered is proved, compensation equal to that amount but not exceeding **80 units of account** per kilogram of gross mass short or **1200 units of account** per item of luggage;
- b) if the amount of the loss or damage suffered is not established, liquidated damages of **20 units of account** per kilogram of gross mass short or **300 units of account** per item of luggage.

The method of compensation, by kilogram missing or by item of luggage, shall be determined by the General Conditions of Carriage.

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(The same amounts would apply if **Article 42 – Compensation for damage** were applied).

Article 43: Compensation for delay in delivery

§ 1 In case of delay in delivery of registered luggage, the carrier must pay in respect of each whole period of twenty-four hours after delivery has been requested, but subject to a maximum of fourteen days:

- a) if the person entitled proves that loss or damage has been suffered thereby, compensation equal to the amount of the loss or damage, up to a maximum of **0.80 units of account** per kilogram of gross mass of the luggage or **14 units of account** per item of luggage, delivered late;
- b) if the person entitled does not prove that loss or damage has been suffered thereby, liquidated damages of **0.14 units of account** per kilogram of gross mass of the luggage or **2.80 units of account** per item of luggage, delivered late.

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Article 45: Compensation for loss

In case of total or partial loss of a vehicle the compensation payable to the person entitled for the loss or damage proved shall be calculated on the basis of the usual value of the vehicle. It shall not exceed **8000 units of account**. A loaded or unloaded trailer shall be considered as a separate vehicle.

Article 46: Liability in respect of other articles

§ 1 In respect of articles left inside the vehicle or situated in boxes (e.g. luggage or ski boxes) fixed to the vehicle, the carrier shall be liable only for loss or damage caused by his fault. The total compensation payable shall not exceed **1400 units of account**.

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Article 49: Conversion and interest

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§ 4 In the case of luggage, interest shall only be payable if the compensation exceeds **16 units of account** per luggage registration voucher.

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Appendix B – CIM

Article 30: Compensation for loss

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§ 2 Compensation shall not exceed **17 units of account** per kilogramme of gross mass short.

(The same amounts would apply if **Article 32 – Compensation for damage** were applied).

Appendix E – CUI

Article 14: Form and amount of damages in case of death and personal injury

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§ 2 The amount of damages to be awarded pursuant to § 1 shall be determined in accordance with national law. However, for the purposes of these Uniform Rules, the upper limit per person shall be set at **175,000 units of account** as a lump sum or as an annuity corresponding to that sum, where national law provides for an upper limit of less than that amount.

The Conventions on other modes of transport (Montreal Convention¹, Athens Convention²) could provide the basis for this revision.

Example of the Montreal Convention:

The Montreal Convention provides for a regular review of the limits of liability and their adjustment if the inflation factor exceeds 10% (Art. 24 of the Convention). The measure of the rate of inflation to be used in determining the inflation factor is the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right.

In accordance with this Article, the limit of compensation in the case of destruction, loss, damage or delay to the goods **changed in 2009 from 17 to 19 special drawing rights** (Art. 22 of the Convention). In the event of death or injury to passengers, the limit of **100 000 special drawing rights** (threshold of compensation below which there is no relief from or limit of liability) **was increased to 113,100** (Art. 21 of the Convention).

Example of the Athens Convention:

In accordance with the 2002 Protocol to the Athens Convention, the limits of liability were increased. In addition, the 2002 Protocol introduces a tacit acceptance procedure for raising the limits of liability whereby a proposal to amend the limits would be circulated on the request of at least one-half of the Parties to the Protocol, and adopted by a two-thirds majority

¹ The EC became a Contracting Party to this Convention in 2001 (**Official Journal L 194, 18.07.2001**)

² In 2012, the Council of the EU decided to accede to the 2002 Protocol to the 1974 Athens Convention relating to the carriage of passengers and their luggage by sea, except Articles 10 and 11 of the Protocol (2012/22/EU)

of the States Parties. Amendments would then enter into force within 36 months unless not less than one fourth of the States Parties at the time of the adoption informed that they did not accept the amendment³.

Text which could, if necessary, serve as a basis:

Montreal Convention (Convention for the Unification of Certain Rules for International Carriage by Air)

Article 24: Review of limits

1. Without prejudice to the provisions of Article 25 of this Convention and subject to paragraph 2 below, the limits of liability prescribed in Articles 21, 22 and 23 shall be reviewed **by the Depositary at five-year intervals**, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, or if the Convention does not enter into force within five years of the date it is first open for signature, within the first year of its entry into force, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of Article 23.
2. If the review referred to in the preceding paragraph concludes that **the inflation factor has exceeded 10 percent**, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval, the revision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.
3. Notwithstanding paragraph 1 of this Article, the procedure referred to in paragraph 2 of this Article shall be applied at any time provided that one-third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 percent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described in paragraph 1 of this Article will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.

³ see IMO News 2/2014, p. 6-7

<http://www.imo.org/MediaCentre/NewsMagazine/Documents/2014/IMO%20News%2002-14-WEB.pdf>