



Organisation intergouvernementale pour les transports internationaux ferroviaires
Zwischenstaatliche Organisation für den internationalen Eisenbahnverkehr
Intergovernmental Organisation for International Carriage by Rail

Working group "CUI UR"

**3rd Session
(Bern, 24.11.2015)**

Report

AGENDA

1. Opening of the session and election of Chair
2. Adoption of the agenda
3. Partial revision of the CUI UR: new criterion for the scope of application of the CUI – discussion on the Secretary General’s new draft text of 14 August 2015 and comments and proposals received on the text
4. Partial revision of the CUI UR: other questions and proposals received from the Member States
5. Any other business
6. Subsequent procedure, date and venue of the next session

DISCUSSIONS

1. Opening of the session and election of Chair

The Secretary General, **Mr Davenne**, opened the session and welcomed all the experts attending from the Member States, the European Commission and the interested associations.

The **working group** elected **Mrs Clio Liégeois (BE) to chair** this session. Mrs Liégeois thanked the meeting for electing her. She reminded the participants that at this meeting, they could speak any one of OTIF's three working languages, but that there would only be interpretation into English.

2. Adoption of the agenda

Provisional agenda (doc. CUI 3/2) was adopted by consensus.

3. Partial revision of the CUI UR: new criterion for the scope of application of the CUI – discussion on the Secretary General's new draft text of 14 August 2015 and comments and proposals received on the text

- Doc. CUI 3/3 – New draft texts by the Secretary General
- Doc. CUI 3/3 Add. 1 – Position of Belgium
- Doc. CUI 3/3 Add. 2 – Position of the Netherlands
- Doc. CUI 3/3 Add. 3 – Position of CIT
- Doc. CUI 3/3 Add. 4 – Comments submitted by Prof. Freise
- Doc. CUI 3/3 Add. 5 – Position of the European Rail Infrastructure Managers (EIM)
- Doc. CUI 3/3 Add. 6 – Position of France¹

At the request of the **Chair**, the **Secretariat** gave a presentation summarising the comments received, the open points and possible solutions (see Annex 2).

The following questions were discussed on the basis of slide 11 of the presentation:

Would the adapted scope (“international train”), as proposed, cover all cases of use of infrastructure relating to CIV/CIM contracts of carriage? If not, is an additional paragraph in Article 1 necessary?

The **Chair** pointed out that the revised scope of application would be broader than at present. Against this background, she asked CIT why it considered it necessary to include an additional paragraph in Article 1 (see doc. CUI 3/3 Add. 3).

CIT explained that its main concern was that the scope of application, and hence the carrier's right of recourse against the infrastructure manager for damage having its origins in the infrastructure, should not be restricted. If the general scope of application were to be broadened, CIT would not insist on its suggestion concerning a special scope of application for the carrier's right of recourse.

¹ All the documents are available on OTIF's website:
<http://www.otif.org/en/law/working-group-revision-of-the-cui-ur/working-documents.html>.

Will the adapted scope also cover or expressly rule out use of infrastructure for domestic trains crossing a border only for a very short run (e.g. Enschede-Münster, Venlo-Hamm)?

According to **Professor Freise**, the answer to the question as to whether or not the CUI UR apply in such cases depended on whether there were any special agreements between the States concerned, and what these agreements were. For example, there was an agreement for trains between Germany and Basel Badischer Bahnhof according to which such trains perform German domestic transport. Insofar as such agreements were applicable, the CUI UR would not be applicable. In the absence of such an agreement, the CUI UR would have to be applied.

The **Chair** recalled that it was still possible for the Member States to apply the CUI UR to national transport as well. **Professor Freise** added that Member States in which the rules of the CUI UR were not taken over for national traffic might consider special agreements a better solution.

Should the adapted scope also cover stationary use of railway infrastructure?

In reply to a question from the **Chair**, **NL** explained what it meant by the term “stationary use” (see doc. CUI 3/3 Add. 2). It could mean, for example, an empty passenger train waiting to be cleaned or prepared outside a station before it moves to the platform to pick up passengers. This example, which was contained in the Secretariat’s written reply to its questions, did in fact refer to a situation the **NL** had in mind.

CIT was of the view that at the moment, it was still open as to how far the term “infrastructure” extended with regard to such services. **CIT** wished to examine this issue later.

As the representative of **BE**, the **Chair** made clear that in Belgium, no train path would be allocated for stationary use. Train paths were only allocated for commercial use.

The **SG** pointed out that this question was linked to the definition of “carrier” and therefore recommended returning to this later when this definition was discussed.

Is it necessary to refer specifically to “international railway traffic” in the scope of application?

CIT did not think the term “international railway traffic” was absolutely necessary for the definition of the scope of application. If it were to be dispensed with, the wording of Article 1 § 1 could be simplified. However, **CIT** was open to any other solution.

EIM thought the concept of “international rail traffic” should be more clearly defined in the scope of application and distinguished from national railway traffic. A reference to Article 6 of COTIF in the Explanatory Report would not resolve the problem. A clear definition would be better. Deleting this term from Article 1 would be unacceptable to infrastructure managers.

Do we need a definition of “international railway traffic” in the CUI UR?

The **Chair** noted that the discussion had just shown that there were different positions on this. **BE** was certainly of the view that a definition of this term would be useful. The definition could be based on the proposal from France, which had really been made for the Explanatory Report (see slide 13). The proposal was as follows:

“International traffic implies the use of several national train paths. The CUI UR also cover two or more successive national contracts of use used to carry out international traffic.”

A definition such as this could be included in Article 3.

FR agreed; the beginning of the sentence would then read: “International railway traffic”.

EIM welcomed this proposal. However, they pointed out that it was mainly the term “train” that caused them problems.

The **Chair** closed the discussion on this issue by saying that the definition of “international railway traffic” should be included in Article 3. This did not rule out defining “train” as well. This question would be examined later.

Does a definition of the term “carrier” make sense if the scope is dissociated from contracts of carriage?

This question raised in the comments from CIT was discussed at length. In principle, subject to various editorial amendments, the majority of speakers supported maintaining this term. This term was preferred to the more general term of “user” proposed by Professor Freise.

Is it necessary to include additional elements in the definition “train” or to define “international train”?

EIM reported its members’ view that a train could not simply be defined as an operating unit. This would only cover rolling stock; the essential element of action in the context of the CUI UR, i.e. the movement of a train on a railway infrastructure, a link to the use of a train path, was missing.

The **Chair** reminded the meeting that the link to the use of a train path had already been given expression in the new definition of “international railway traffic”.

The **SG, FR** and **CER** asked whether it was now really necessary to define “train”. The SG pointed out that this term was used in Directive 2012/34/EU without being defined.

The **Chair** noted that the discussion concerning this definition could only be continued after new proposals for Articles 1 and 3 had been received from the SG.

How should mixed trains be dealt with?

This question raised in the comments from **FR** was directly connected to the previous question. Was an international train to be dealt with differently if some of its wagons were not intended to cross a border?

BE and **FR** were of the view that wagons not intended for international traffic should not be covered by the CUI UR.

EIM informed the meeting that there were differing views among its members in this regard and that they were prepared to obtain information on how mixed trains were dealt with in different European States and would look into this question further on this basis.

The **Chair** drew attention to the Secretary General’s draft text for Article 1 § 1 (slide 18), which had been amended compared with the version in document CUI 3/3, taking into account the comments received. The proposal was as follows:

“Article 1 - Scope

§1 These Uniform Rules shall apply to any contract of use of railway infrastructure ~~of~~ in a Member State by a train [for which it is agreed that it ~~will perform~~ is designated for] [which according to common understanding of the parties is designated for] international railway traffic between ~~two~~ States, at least one of which is a Member State.

§1 Les présentes Règles uniformes s’appliquent à tout contrat relatif à l’utilisation de l’infrastructure ferroviaire ~~d’un~~ dans un État membre, par un train [dont il est convenu qu’il] ~~réalise~~

~~un~~ *[qui de l'avis commun des parties] est destiné au trafic ferroviaire international entre deux des États, dont au moins un est un État membre.*

§1 *Diese Einheitlichen Rechtsvorschriften gelten für jeden Vertrag über die Nutzung der Eisenbahninfrastruktur eines Mitgliedstaates in einem Mitgliedstaat durch einen Zug, der [vereinbarungsgemäß] [nach gemeinsamem Verständnis der Parteien] für den internationalen Eisenbahnverkehr zwischen zwei Staaten bestimmt ist durchgeführt, von denen mindestens einer ein Mitgliedstaat ist."*

The **Chair** began by saying that in the English version, “railway infrastructure of a Member State” should be replaced by “railway infrastructure in a Member State” (proposal from NL).² The Chair also proposed two alternative types of wording for discussion, i.e. an agreement or a common understanding of the parties with regard to the fact that the infrastructure is to be used for international traffic.

CIT supported the second alternative, the common understanding of the parties. Apart from a few exceptions in the freight transport corridors (pre-allocated paths), there were no agreements on the cross-border use of railway infrastructure.

FR, **NL** and **EIM** preferred the stronger first alternative; they did not consider “common understanding” to be sufficient. **FR** added that an agreement only came into being when the infrastructure manager has replied to the carrier’s application.

The **SG** explained that he would also prefer the first alternative; however, he wished to put the second alternative forward for discussion in order to reflect the actual situation whereby only national contracts of use are in fact concluded.

The **European Commission’s** view was that a contract in any case presupposed the “common understanding” of the parties, so the same thing was unnecessarily being said twice.

CER asked whether this part of the sentence was required at all. Both alternatives could be deleted.

The **SG** thought this was an interesting proposal, especially as it had been decided to introduce a definition of “international railway traffic”.

Subject to its members’ views, which had not yet been sought on this, **EIM** also thought **CER’s** proposal was interesting.

The **SG** explained his intention of following **CER’s** suggestion in the next text he would propose. The carriers would certainly have an interest in informing the infrastructure manager that the train path being requested was to be used for international traffic. It may be assumed that the infrastructure manager does not lack information. The associations of infrastructure managers were nevertheless free to prove otherwise. If it turned out that the required information concerning the carrier’s intended international traffic posed a problem for infrastructure managers, this question could be returned to later.

CIT and **CER** confirmed that it was in the carrier’s interest to inform the infrastructure manager.

² In the German version, “Eisenbahninfrastruktur eines Mitgliedstaates” was also replaced by “Eisenbahninfrastruktur in einem Mitgliedstaat”. **The French version retained the wording “l’infrastructure ferroviaire d’un État membre”**. This solution was based on a comparison of the texts of the various languages versions of Directive 2012/34/EU subsequently carried out by the Secretariat (see Art. 10).

EIM said they wished to find out from their members whether there were really no problems in terms of information concerning international trains.

Lastly, the **Chair** drew attention to a further editorial amendment that took into account the fact that traffic need not necessarily be between two States; several States might be concerned by international traffic.

The **working group** tacitly noted this amendment (deletion of the word “two”).

4. Partial revision of the CUI UR: other questions and proposals received from the Member States

The scope of application and the definition of “carrier”

As the representative of **BE**, the **Chair** emphasised that the scope of application and the definition of “carrier” had to be considered together. There was already a consensus that the contractual relationship between the carrier and his customers should play no role in the CUI UR area. In contrast, a link between the train path and its use had to be given expression. But the question as to whether the carrier can only be the entity which carries passengers or goods while he uses railway infrastructure still had to be discussed.

Further questions were raised in the subsequent discussion between **BE, FR, NL, the SG, Professor Freise, EIM** and **CIT**. If this term were taken to mean that passengers or goods had to be in a train using the infrastructure (“commercial use” of the infrastructure), how should empty trains, e.g. test trains or cross-border journeys by maintenance vehicles (“non-commercial use” of the infrastructure) be considered (**NL**)? There might also be trains that first travel somewhere empty to be loaded with goods (**FR**), or an empty train might be returning from somewhere once the goods it had been carrying had been unloaded.

Professor Freise explained that non-load runs by trains were also part of the load runs. In his view, non-load runs should be subject to the same regime as load runs. Any other solution would cause unnecessary problems.

As nobody contradicted this view, the **Chair** concluded that it would be a good idea to make clear in the Explanatory Report that it is understood that a non-load run that takes place prior to or after a load run is included. The situation with empty test trains was different. In this case, application of the CUI UR could not be the norm. The legal regime should be agreed bilaterally between the States concerned, although this did not rule out agreeing to apply the CUI UR.

Professor Freise did not think the working group had enough information concerning the legal basis on which cross-border trial runs were carried out in practice in different Member States. In Germany, the conclusion of a contract of use in accordance with the CUI UR would not be ruled out, for example if Siemens wished to test new locomotives on a cross-border line between Germany and Switzerland, as Siemens was in possession of a license as a railway undertaking, so it could apply for appropriate train paths itself.

EIM, RNE and **CER** said they were willing to ask their members about the issue of trial runs and to submit the information obtained to the working group for its next session.

RNE thought the legal regime for the use of infrastructure by maintenance vehicles should be the same as for trial runs, and said it was prepared to take this into account in its survey as well.

The **European Commission** would welcome an examination of these issues with the help of additional information.

The **Chair** asked the associations of infrastructure managers to submit their information to the SG by 7 March 2016.

Various editorial proposals concerning the definition of “carrier” (slide 19) were then examined:

- Maintaining the term “derjenige, der” (FR: “celui qui”)
- “legal person or entity”
- “natural or legal person”
- and the European Commission’s proposal to focus on the “carrier’s principal activity” in defining this term (see Art. 3 of Directive 2012/34/EU); in so doing, it should be taken into account that this principal activity might not be the carriage of passengers exclusively or the carriage of goods exclusively, but that the carrier might be active in both areas (“persons and/or goods”).

The **SG** agreed to prepare and send all the Member States and interested stakeholders an amended version of the definition of “carrier”, taking into account the outcome of this discussion. This would be sent out on 29 January 2016, together with the amended version of the draft text of Article 1 § 1.

The scope of application and liability provisions

CIT and **FR** emphasised their view that consistency between Article 1 and Article 8 was important. While **CIT** proposed in its comments to achieve consistency by adding another paragraph to Article 1 (doc. CUI 3/3 Add. 3), **FR** preferred a solution in Article 8 § 1 (doc. CUI 3/3 Add. 6, slide 17). However, both said they were open to each other’s solution.

CIT’s proposal for an additional paragraph 3 in Article 1 read as follows:

“§ 3 (new) Article 8 of these Uniform Rules shall apply to any contract of use of railway infrastructure needed to run an international train carrying out a contract of carriage according to the Uniform Rules CIV or CIM.”

In contrast, **FR** proposed to remove the reference to CIV and CIM from letter c) in Article 8 and to replace it with “a train performing international railway traffic”, so c) would read as follows:

“§ 1. The manager shall be liable

c) for pecuniary loss resulting from damages payable by the carrier in a journey performed by a train performing international railway traffic [...].”

FR said the purpose of this proposal was to effect the same extension of the scope of application as in Article 1.

EIM said it would support any proposal that clarified matters.

As the representative of **BE**, the Chair preferred that the wording in Article 1 be as simple as possible. Anything that might not be clear enough to interpret could be clarified in the Explanatory Report. She raised the question of whether it was necessary to have such an extension for the liability regime if the general scope of application in Article 1 was broadened.

Professor Freise agreed with **FR** and **BE** that deleting the reference to the CIV and CIM UR in Article 1 § 1 and Article 8 § 1 c) certainly did not mean that the carrier’s right of recourse according to CIV/CIM should cease. It would still be covered and liability would even be further reaching.

However, he understood CIT's concern to achieve congruence between the CIV/CIM liability regime and the infrastructure manager's liability towards the carrier. In his view, the best way to achieve this was to do so directly in the CIV and CIM UR. He explained his proposal (doc. CUI 3/3 Add.4, slides 20-22). It was only logical and equitable that a manager who renders a carrier liable to its customers should be liable to a carrier in the same way as a carrier is liable to its customers. He wondered whether the recourse available to a CIV or CIM carrier should continue to be dealt with in the CUI. This would in fact cause problems if the CUI UR were only to apply to the use of infrastructure by international trains.

In his view, this problem could be resolved by transferring recourse against the manager to the CIV and CIM UR. Both the CIV UR and the CIM UR contained provisions governing recourse between carriers. Article 62 CIV and Article 50 CIM. The rule formulated on the basis of the provision could read as follows:

***“Article 62bis CIV/Article 50bis CIM
Right of recourse against infrastructure managers***

A carrier who has paid compensation pursuant to these Uniform Rules shall have a right of recourse against an infrastructure manager insofar as the infrastructure manager caused [the loss or damage/the incident resulting in the carrier's liability] and the carrier is liable for the infrastructure manager in accordance with Article 51 CIV/40 CIM. [In this case, the infrastructure manager shall be treated in the recourse as if it were also directly liable to the person entitled in accordance with these Uniform Rules.]”

The **SG** added that the solution proposed by Professor Freise would result in having to delete letter c) in Article 8 § 1. Hence only direct damage would be dealt with (slide 22). The question as to whether a further rule for indirect damage was necessary should not be factored in at this stage.

Professor Freise reminded the meeting that this did not resolve the problem of recourse for a carrier which has paid its passengers compensation in accordance with Regulation (EC) No. 1371/2007 (PRR). Perhaps a suitable solution could be envisaged in the forthcoming revision of the PRR.

NL said some time was needed to think about the various possible solutions and the consequences they would have, as well as any limitations that might be necessary in the framework of the new scope of application. At the moment, **NL** preferred the proposal from **FR**.

FR also thought it was too soon to give an opinion on Professor Freise's proposal. **FR** emphasised that it had not intended to extend liability, but to shape it more consistently.

Professor Freise clarified that his proposal did not change anything in terms of liability of the carrier or of the infrastructure manager. His aim was merely to transfer the desired recourse for CIV or CIM transport to the corresponding Appendices, CIV and CIM.

CIT again appealed for a fair system in the division of responsibilities. **CIT** thought the current system was balanced. It wished to consult its members about the new proposals. This was not just a legal, but also a commercial issue if one of the actors in railway traffic were to be burdened with a prohibitive financial burden. Ultimately, a solution limiting the carrier's right of recourse would be a disadvantage for the entire rail sector.

The **Chair** and the **SG** drew the conclusions from the discussions at this session.

- There was a consensus with regard to the wording of Article 1 § 1. This paragraph should read as follows:

§1 These Uniform Rules shall apply to any contract of use of railway infrastructure in a Member State by a train for international railway traffic between States, at least one of which is a Member State.

§1 Les présentes Règles uniformes s'appliquent à tout contrat relatif à l'utilisation de l'infrastructure ferroviaire d'un État membre par un train pour un trafic ferroviaire international entre des États, dont au moins un est un État membre.

§1 Diese Einheitlichen Rechtsvorschriften gelten für jeden Vertrag über die Nutzung der Eisenbahninfrastruktur in einem Mitgliedstaat durch einen Zug für einen internationalen Eisenbahnverkehr zwischen Staaten, von denen mindestens einer ein Mitgliedstaat ist.

- A definition of “international railway traffic” should be drafted on the basis of the proposal FR had originally submitted for the Explanatory Report;
- in light of the discussions at this session, an improved/adapted definition of “carrier” would be drafted;
- a definition of “train” did not seem to be necessary, especially as this term was also used in Directive 2012/34/EU without a definition.
- With regard to the carrier’s recourse against the infrastructure manager, the Secretariat would describe and analyse two possible scenarios:
 - leave this recourse in Article 8 § 1 c) and make clear in the Explanatory Report that this only applies to international trains;
 - transfer this recourse to the CIV and CIM UR, i.e. a solution which would give the carrier the right of recourse under any international contract of carriage, irrespective of whether an international or a national train was used to perform the contract of carriage.

For the next meeting, information would be expected from the associations of infrastructure managers (EIM, RNE, CER) concerning test trains/trial runs of new railway vehicles and cross-border journeys made by maintenance vehicles: How are these journeys organised? Are train paths allocated for this purpose? Would such trains come under the term “international railway traffic”?

The next meeting would look at whether it might be useful to include clarification of these cases in the Explanatory Report.

The following deadlines and dates were set for future work, comments and information:

New draft texts prepared by the SG ³	29.01.2016
Consultation of Member States and interested stakeholders:	
Deadline for comments and information	14.03.2016 ⁴
Calling notice for next session	29.04.2016

³ A draft text for Article 1 § 1 and another for the definitions on the one hand, including explanations, and two options for the carrier’s right of recourse on the other.

⁴ Modified deadline proposed by EIM

Next session of the working group

31.05.2016⁵

5. Any other business

This item was not discussed.

6. Subsequent procedure, date and venue of the next session

The next session will be convened on 31 May 2016 in Berne.

The **Chair** closed the meeting with thanks to all the participants for their contributions to the discussion, which had demonstrated a lively interest in the issues, and to the interpreters for their excellent work.

ANNEXES:

1. List of participants
2. Secretariat's introductory presentation

⁵ Instead of 30.05.2016 (date changed after the 3rd session)



Organisation intergouvernementale pour les transports internationaux ferroviaires
Zwischenstaatliche Organisation für den internationalen Eisenbahnverkehr
Intergovernmental Organisation for International Carriage by Rail

3^e session Groupe de travail RU CUI
3. Sitzung der Arbeitsgruppe ER CUI
3rd session of the Working group CUI UR
Berne / Bern, 24.11.2015

Liste des participants
Teilnehmerliste
List of participants

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S'est excusé.
Hat sich entschuldigt.
Sent apologies.


Autriche/Oesterreich/Austria

S'est excusé.
Hat sich entschuldigt.
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S'est excusé.
Hat sich entschuldigt.
Sent apologies.

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S'est excusée.
Hat sich entschuldigt.
Sent apologies.


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Mme/Fr./Ms Dominique **Baz**

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Revision of the CUI UR

3rd session of the “CUI UR” working group

24.11.2015



01

Texts resulting from
the 2nd session

02

Positions received

03

New general scope
and carrier's
recourse

04

Possible solutions

05

Next steps



Texts resulting from the 2nd session

Article 1

§ 1 These Uniform Rules shall apply to any contract of use of railway infrastructure of a Member State by a train for which it is agreed that it will perform international railway traffic between two States, at least one of which is a Member State.

Article 3

*c) “carrier” means the person who carries persons or goods by rail in international traffic ~~under the CIV Uniform Rules or the CIM Uniform Rules~~ and who is licensed in accordance with the laws and prescriptions relating to licensing and recognition of licenses in force in the State in which the person undertakes this activity;

x) “train” means the operating unit which the carrier utilises on the railway infrastructure[; the train may be joined and/or split, and the different sections may have different origins and destinations].

Article 1

§ 1 Les présentes Règles uniformes s’appliquent à tout contrat relatif à l’utilisation de l’infrastructure ferroviaire d’un État membre par un train dont il est convenu qu’il réalise un trafic ferroviaire international entre deux Etats, dont au moins un est un Etat membre.

Article 3

c) « transporteur » désigne celui qui transporte par rail des personnes ou des marchandises en trafic international ~~sous le régime des Règles uniformes CIV ou des Règles uniformes CIM~~ et qui détient une licence conformément aux lois et prescriptions relatives à l’octroi et à la reconnaissance des licences en vigueur dans l’Etat dans lequel la personne exerce cette activité ;

x) « train » désigne l’unité d’exploitation dont use le transporteur sur l’infrastructure ferroviaire ~~internationale~~[; le train peut être assemblé et/ou divisé, et les différentes parties le constituant peuvent avoir des provenances et des destinations différentes].

Artikel 1

§ 1 Diese Einheitlichen Rechtsvorschriften gelten für jeden Vertrag über die Nutzung der Eisenbahninfrastruktur eines Mitgliedstaates durch einen Zug, der vereinbarungsgemäß internationalen Eisenbahnverkehr zwischen zwei Staaten durchführt, von denen mindestens einer ein Mitgliedstaat ist.

Artikel 3

*c) „Beförderer“ denjenigen, der Personen oder Güter im internationalen Verkehr ~~nach den Einheitlichen Rechtsvorschriften CIV oder Einheitlichen Rechtsvorschriften CIM~~ auf der Schiene befördert und der nach den Gesetzen und Vorschriften betreffend die Erteilung und Anerkennung von Betriebsgenehmigungen, die in dem Staat gelten, in dem die Person diese Tätigkeit ausübt, eine Betriebsgenehmigung erhalten hat;

x) „Zug“ die Betriebseinheit, die der Beförderer auf der Eisenbahninfrastruktur einsetzt[; der Zug kann erweitert und/oder geteilt werden, und die verschiedenen Zugteile können unterschiedliche Abfahrts- und Bestimmungsorte haben].

New draft proposal for Article 1

- § 1 These Uniform Rules shall apply to any contract of use of railway infrastructure of a Member State by a train for which it is agreed that it will perform international railway traffic between two States, at least one of which is a Member State.
- § 1 Les présentes Règles uniformes s'appliquent à tout contrat relatif à l'utilisation de l'infrastructure ferroviaire d'un État membre par un train dont il est convenu qu'il réalise un trafic ferroviaire international entre deux États, dont au moins un est un État membre.
- § 1 Diese Einheitlichen Rechtsvorschriften gelten für jeden Vertrag über die Nutzung der Eisenbahninfrastruktur eines Mitgliedstaates durch einen Zug, der vereinbarungsgemäß internationalen Eisenbahnverkehr zwischen zwei Staaten durchführt, von denen mindestens einer ein Mitgliedstaat ist.

Adapted definition of “carrier”

- c) “carrier” means the person who carries persons or goods by rail in international traffic ~~under the CIV Uniform Rules or the CIM Uniform Rules~~ and who is licensed in accordance with the laws and prescriptions relating to licensing and recognition of licenses in force in the State in which the person undertakes this activity;
- c) « transporteur » désigne celui qui transporte par rail des personnes ou des marchandises en trafic international ~~sous le régime des Règles uniformes CIV ou des Règles uniformes CIM~~ et qui détient une licence conformément aux lois et prescriptions relatives à l’octroi et à la reconnaissance des licences en vigueur dans l’État dans lequel la personne exerce cette activité ;
- c) „Beförderer” denjenigen, der Personen oder Güter im internationalen Verkehr ~~nach den Einheitlichen Rechtsvorschriften CIV oder Einheitlichen Rechtsvorschriften CIM~~ auf der Schiene befördert und der nach den Gesetzen und Vorschriften betreffend die Erteilung und Anerkennung von Betriebsgenehmigungen, die in dem Staat gelten, in dem die Person diese Tätigkeit ausübt, eine Betriebsgenehmigung erhalten hat;

New definition of “train”

- x) **“train” means the operating unit which the carrier utilises on the railway infrastructure[; the train may be joined and/or split, and the different sections may have different origins and destinations].**
- x) **« train » désigne l’unité d’exploitation dont use le transporteur sur l’infrastructure ferroviaire international[; le train peut être assemblé et/ou divisé, et les différentes parties le constituant peuvent avoir des provenances et des destinations différentes].**
- x) **„Zug“ die Betriebseinheit, die der Beförderer auf der Eisenbahninfrastruktur einsetzt[; der Zug kann erweitert und/oder geteilt werden, und die verschiedenen Zugteile können unterschiedliche Abfahrts- und Bestimmungsorte haben].**

An aerial view of a large railway station with multiple tracks and high-speed trains. The station has a complex network of tracks and a large, modern roof structure. Several high-speed trains are visible on the tracks. The image is overlaid with a blue tint and a white text box.

Positions received



Positions received from

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Belgium – doc. CUI 3/3 Add. 1

Netherlands – doc. CUI 3/3 Add. 2

CIT - doc. CUI 3/3 Add. 3

EIM – doc. CUI 3/3 Add. 5

FR – doc. CUI 3/3 Add. 6

plus comments received from Prof. Freise –
doc. CUI 3/3 Add. 4

Principles pointed out by Member States and stakeholders

- “**intended**” border crossing (« prévu ») is what makes a train an “international train” – this term should be preferred over the term “agreed” border crossing (« convenu » / “vereinbarungsgemäß“) (BE);
actual border crossing is not relevant
- “**agreed**” border crossing (« convenu ») should be understood in the sense that the request for a train path alone is not sufficient; the infrastructure manager actually has to accept the request (FR)
- The key issue is the **contractual relation between the carrier and the IM** (NL) and NOT the contractual relation between the carrier and his clients
- Article 8 § 1 c) (**recourse of carriers**) should not contradict Article 1 (BE, FR, NL, CIT)

Questions to be discussed and input from Prof. Freise as consultant of OTIF Secretariat

- Would the adapted scope (“international train”), as proposed, cover [all cases of use of infrastructure relating to] CIV/CIM contracts of carriage? If not, is an additional § in Article 1 necessary?
- Will the adapted scope also cover or expressly rule out [use of infrastructure for] domestic trains crossing a border only for a very short run (e.g. Enschede-Münster, Venlo-Hamm)?
- Should the adapted scope also cover stationary use of railway infrastructure ?
- Is it necessary to refer to “international railway traffic” ?
- Do we need a definition of “international railway traffic” in the CUI UR?
- Does a definition of the term “carrier” make sense if the scope is dissociated from the CIV/CIM contracts of carriage?
- Is it necessary to include additional elements in the definition “train” or to define “international train”?
- How to deal with mixed trains?

Prof. Freise’s ideas:

- Use the term “(infrastructure) user” instead of the term “carrier” in the CUI UR
- Restructure the carrier’s right of recourse resulting from the contract of carriage, i.e. include a new provision regarding this recourse directly in the CIV/CIM UR

Editorial comments and questions

Regarding Article 1:

- Replace “railway infrastructure of a Member State” by “railway infrastructure in a Member State”
- In the DE version, replace “vereinbarungsgemäß ... durchführt” by another expression
- Replace the word “perform” by another term
- Replace “agreed that it will perform ...” by “agreed that it is designated for ...”

Regarding Article 3, letter c) – definition of “carrier”:

- Replace “person” by “entity” («entité» ou «organisme»)

Comments and proposals regarding the Explanatory Report

- consequent use of the term “international railway traffic” instead of “international railway transport”
- underline that infrastructure managers providing national train paths must be established in at least two different States
- the existence of international train paths should be taken into account (RFC train paths)

Proposal for amendment:

“International traffic implies the use of an international train path or several successive national train paths situated in at least two States, used to carry out international carriage”.

A person is standing on a wet street at night, looking towards a train. The scene is illuminated by streetlights, creating a warm, orange glow. The train is moving, and its lights are blurred, suggesting motion. The person is in the foreground, and the train is in the middle ground. The overall atmosphere is quiet and contemplative.

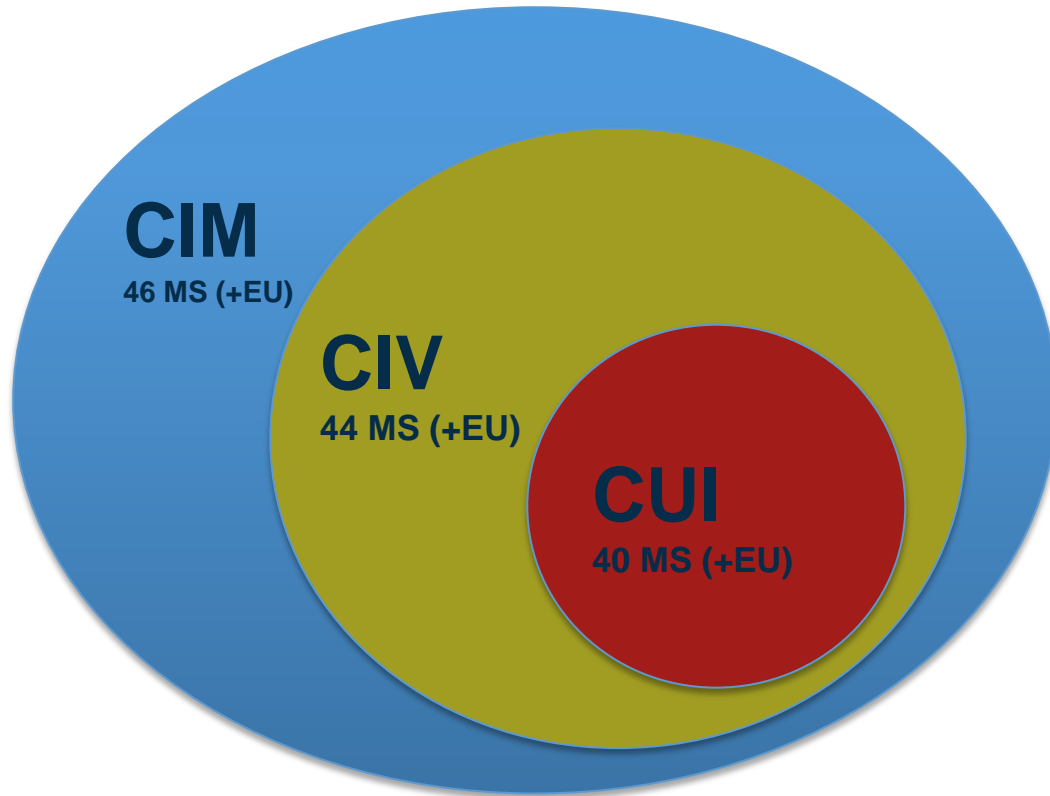
New general scope and carrier's recourse



Summary of principles to base on the new scope

- Extension of the scope of the CUI UR to the use of infrastructure **not connected with international carriage** of passengers/goods in accordance with CIV/CIM UR
- The adapted scope **cannot cover all cases of use of infrastructure related to CIV/CIM contracts** of carriage, including the parts of a journey where national trains carry the passenger/the goods
- The scope regarding direct damages should not be linked to CIV/CIM contracts of carriage (Art. 8 § 1 letters a and b),
- **but for the carrier's recourse a link to CIV/CIM contracts of carriage in CUI could make sense** (Art. 8 § 1 letter c) unless the two areas are dissociated.
- **These two areas should be dissociated**

CIM, CIV, CUI scope of application by OTIF Member States



Possible solutions

Add in Article 1:

- "Article 8 of these Uniform Rules shall apply to any contract of use of railway infrastructure needed to run an international train carrying out a contract of carriage according to the CIV or CIM Uniform Rules." (NL and CIT)
- Foresee a new provision regarding the carrier's recourse directly in the CIV and CIM UR (Prof. Freise)
- Delete the reference to CIV and CIM from Article 8 § 1 letter c and replace it by "a train performing international rail traffic" (FR):

“ § 1 The manager shall be liable

c) for pecuniary loss resulting from damages payable by the carrier in a journey performed by a train performing international rail traffic [...]"

Article 1 (improved draft) taking into account the proposals received

- § 1 These Uniform Rules shall apply to any contract of use of railway infrastructure of in a Member State by a train [for which it is agreed that it will perform is designated for] [which according to common understanding of the parties is designated for] international railway traffic between two States, at least one of which is a Member State.
- § 1 Les présentes Règles uniformes s'appliquent à tout contrat relatif à l'utilisation de l'infrastructure ferroviaire d'un dans un État membre, par un train [dont il est convenu qu'il] réalise un [qui de l'avis commun des parties] est destiné au trafic ferroviaire international entre deux des États, dont au moins un est un État membre.
- § 1 Diese Einheitlichen Rechtsvorschriften gelten für jeden Vertrag über die Nutzung der Eisenbahninfrastruktur eines ~~Mitgliedstaates~~ in einem Mitgliedstaat durch einen Zug, der [vereinbarungsgemäß] [nach gemeinsamem Verständnis der Parteien] für den internationalen Eisenbahnverkehr zwischen zwei Staaten bestimmt ist durchgeführt, von denen mindestens einer ein Mitgliedstaat ist.

Adapted definition of “carrier”

- c) “carrier” means the person **or entity** who carries persons or goods by rail in international traffic ~~under the CIV Uniform Rules or the CIM Uniform Rules~~ and who is licensed in accordance with the laws and prescriptions relating to licensing and recognition of licenses in force in the State in which the person **or entity** undertakes this activity;
- c) « transporteur » désigne ~~celui~~ **la personne ou entité** qui transporte par rail des personnes ou des marchandises en trafic international ~~sous le régime des Règles uniformes CIV ou des Règles uniformes CIM~~ et qui détient une licence conformément aux lois et prescriptions relatives à l’octroi et à la reconnaissance des licences en vigueur dans l’État dans lequel la personne exerce cette activité ;
- c) „Beförderer” denjenigen **die natürliche oder juristische Person**, der **die** Personen oder Güter im internationalen Verkehr ~~nach den Einheitlichen Rechtsvorschriften CIV oder Einheitlichen Rechtsvorschriften CIM~~ auf der Schiene befördert und der **die** nach den Gesetzen und Vorschriften betreffend die Erteilung und Anerkennung von Betriebsgenehmigungen, die in dem Staat gelten, in dem die Person diese Tätigkeit ausübt, eine Betriebsgenehmigung erhalten hat;

Regime for carrier's recourse (CIV/CIM)

CIV Title VII/CIM Title V

Relations between Carriers **and between Carriers and Infrastructure Managers**

Article 62bis CIV/Article 50bis CIM

Right of recourse against infrastructure managers

A carrier who has paid compensation pursuant to these Uniform Rules shall have a right of recourse against an infrastructure manager insofar as the infrastructure manager caused [the loss or damage/the incident resulting in the carrier's liability] and the carrier is liable for the infrastructure manager in accordance with Article 51 CIV/40 CIM. [In this case, the infrastructure manager shall be treated in the recourse as if it were also directly liable to the person entitled in accordance with these Uniform Rules.]

Regime for carrier's recourse (CIV/CIM)

Article 63 CIV/Article 51 CIM

Procedure for recourse

§ 1 The validity of the payment made by the carrier exercising a right of recourse pursuant to Article 62 **or 62bis** (CIV)/50 **or 50bis** (CIM) may not be disputed by the carrier **or the infrastructure manager** against whom the right to recourse is exercised, when compensation has been determined by a court or tribunal and when the latter carrier **or infrastructure manager**, duly served with notice of the proceedings, has been afforded an opportunity to intervene in the proceedings. ...

Liability of the manager - carrier's recourse (CUI)

Article 8 Liability of the manager

§ 1 The manager shall be liable

- 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,~~

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

...

§ 5 (new) Articles 62bis and 63 CIV and Articles 50bis and 51 CIM shall remain unaffected.

Article 23 Recourse

~~The validity of the payment made by the carrier on the basis of the CIV Uniform Rules or the CIM Uniform Rules may not be disputed when compensation has been determined by a court or tribunal and when the manager, duly served with notice of the proceedings, has been afforded the opportunity to intervene in the proceedings.~~



Next steps

Steps and dates to be discussed

Secretary General's revised draft, consultation of Member States and stakeholders	29.1.2016
Deadline for positions	7.3.2016
Invitation to the next session of the working group	29.4.2016
Next session of the working group	30.5.2016



Organisation Intergouvernementale pour les transports internationaux ferroviaires
Zwischenstaatliche Organisation für den internationalen Eisenbahnverkehr
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