



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

**Groupe de travail « RU CUI »
Arbeitsgruppe „ER CUI“
Working group "CUI UR"**

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Position of Belgium



Service public fédéral
Mobilité et Transports

For the attention of the Secretary General of
OTIF

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Ref: Belgium's position on the revision of the Uniform Rules concerning Contracts of Use of Infrastructure in International Rail Traffic (CUI)

Dear Secretary General,

I am pleased to send you these comments in reply to your circular of 23 March 2015, in which you asked the Member States to send their comments on the proposed text concerning the scope of application of the CUI and to inform you whether they wish to take part in the session of the working group to be held on 8 July 2015.

I should firstly like to confirm that we intend to participate in the above-mentioned working group.

Below are the comments we can make at this stage on the issues relating to revision of the CUI UR:

1) With regard to the wording of the scope of application:

From our point of view, of the alternatives proposed, it is the concept of "**international train**" that must be accepted.

We do not think that the solution based on the concept of "**international transport service**", as defined in Directive 2012/34/EU, is suitable, as the only aim of this definition is to distinguish the international carriage of passengers, which is open to competition, from the national carriage of passengers, for which this is not yet the case. As this situation could change in the context of the 4th railway package, this solution does not seem

sustainable. In addition, the only function of the criterion of the "principal purpose" of the service is to ensure the prohibition of cabotage, which would enable an undertaking to claim that it was providing an international service, whereas the purpose of its service was in fact to provide national connections. This is where the role of the Rail Regulator comes in.

In addition, as you point out, "the element of the definition that **"all carriages" or "all wagons" must "cross at least one border"** may cause problems, as it cannot entirely be ruled out that for one reason or another, one or more wagons are uncoupled from a train, e.g. at the border station, before the train crosses the border. Would this then mean that the entire train ceases to be an "international transport service"? We fully share the analysis that the idea that all wagons must cross at least one border is impracticable. As a result, it seems to us that in the second paragraph of § 1 of your proposal, the words "provided all wagons and coaches cross at least one border.]" should be deleted.

With regard to the definition to be assigned to the concept of **"international train"**, the key element in our view is that which is reflected in the use of the term "foreseen". This is because the objective is in fact to refer to the intention of carrying out an international service: application of the CUI UR should be conditional on the fact that it is foreseen that a train will cross a border, even if, in fact, it does not do so, e.g. because of a problem on the railway infrastructure before the actual crossing of the border. Even in such a hypothesis, it would be correct and logical if the carrier were able to take advantage of the CUI UR.

This leads us to conclude that the sentence "a) The train crosses a Member State's border at least once and" should not be maintained, as it does not take account of cases in which a border crossing is foreseen, but does not actually take place.

With regard to the definition of "international train", we should like to submit to you the following position: "an "international train" is a train whose foreseen/scheduled points of departure and destination are situated in two different Member States.". This avoids the pitfall of referring to the crossing of a border, which you have raised.

So the amended text would read as follows:

Article 1	Scope
<p>§ 1 These Uniform Rules shall apply to any contract of use of railway infrastructure for an <u>international train</u>.</p>	
<p>Within the meaning of these Uniform Rules an "international train" is a train whose <u>foreseen/scheduled points of departure and destination are situated in two different Member States</u>. The train may be joined and/or split, and the different sections may have different origins and destinations.</p>	
<p>§ 2 These Uniform Rules shall apply regardless of whether, for an <u>international train</u>, one or several contracts of use of railway infrastructure have to be concluded, each one in accordance with the national law applicable on the territory of each State concerned.</p>	
<p>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.</p>	
<p>§ 3 Subject to Article 21, these Uniform Rules shall not apply to other legal relations, such as in particular:</p>	

- a) the liability of the carrier or the manager to their servants or other persons whose services they make use of to accomplish their tasks;
- b) the liability to each other of the carrier or the manager of the one part and third parties of the other part.

However, we still think there is a degree of uncertainty surrounding the concept of "foreseen/scheduled". We think there is a risk that these concepts only refer to the railway undertaking's **commercial intention**, the effect of which would be to make the criteria for applying the CUI UR a potestative condition, as it would be the railway undertaking alone that would decide on whether the schedule was international or not, and would hence decide on whether or not the CUI UR apply.

One possibility then would be to specify more the intention of carrying out international transport. From this point of view, we believe that **the existence of an international train path request** would be a good criterion, as it is the train path which is the subject of the contract between the railway undertaking and the infrastructure managers. This idea appears in the Technical Specifications for Interoperability - Telematic Applications for Freight and Passengers. We would therefore like to submit for discussion the idea of making reference to this concept.

- 2) With regard to the comment on the Explanatory Report on Article 8 of the CUI UR:

..... (see doc. CUI 2/4)

- 3) **With regard to introducing a new Article 5 § 4 into the CUI UR:**

We do not support adding a reference to the general conditions of use of infrastructure and a harmonised contract of use model. The aim of this paragraph seems to be to give these optional general conditions a legal basis. However, we do not see the point of specifying this in COTIF: the possibility of specifying general conditions exists in any case and the risk of including this reference is that the legal nature of these conditions will be obscured further.

- 4) With regard to the question of extending infrastructure managers' liability in Article 8 § 1 c) of the CUI UR:

..... (see doc. CUI 2/4)

Yours faithfully

Clio Liégeois,
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