



ORGANISATION INTERGOUVERNEMENTALE POUR LES TRANSPORTS INTERNATIONAUX FERROVIAIRES
ZWISCHENSTAATLICHE ORGANISATION FÜR DEN INTERNATIONALEN EISENBAHNVERKEHR
INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL CARRIAGE BY RAIL

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

**CUI 2/3 Add. 2
01.06.2015**

Original: FR

2nd SESSION

Position of France

**Comments from France concerning the proposal to revise Articles
1 and 5 of the CUI UR**

Following the 25th session of the Revision Committee, the OTIF Secretariat wished to set up a working group to consider the scope of application of the CUI UR. The first session of this working group was held on 10 December 2014 and a road map of the work was agreed.

By 23 March 2015, the Secretary General agreed to draft a preliminary proposal for the text of a new provision on the scope of application of the CUI UR concerning Articles 1 and 5.

Article 1

Text proposed by OTIF on 23 March 2015

Article 1	Scope
<p>§ 1 These Uniform Rules shall apply to any contract of use of railway infrastructure for an international [train]/[transport service]. Within the meaning of these Uniform Rules an “international transport service” is a transport service where:</p> <p>a) The train crosses a Member State’s border at least once and</p> <p>b) the principal purpose of the service is carriage within the meaning of the CIV or CIM Uniform Rules.</p> <p>[The train may be joined and/or split, and the different sections may have different origins and destinations, provided all wagons and coaches cross at least one border.]</p> <p>[Within the meaning of these Uniform Rules, an “international train” is a transport service foreseen in the train path order according to which the train will cross a Member State’s border at least once.]</p>	
<p>§ 2 These Uniform Rules shall apply regardless of whether, for an international [transport service] / [train], 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> <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;</p> <p>b) the liability to each other of the carrier or the manager of the one part and third parties of the other part.</p>	

Comments from France on the text proposed by OTIF

With regard to § 1:

The term "international train" is preferable to "international service", because:

- "international service" is terminology based on Directive 2012/34/EU (Article 3 § 5), which only applies to international passenger transport;
- the only reason this concept is employed in the Directive is to distinguish international traffic, which is open to competition, from domestic traffic, where this is not yet the case;
- with the adoption of the fourth railway package, the concept might disappear from the European regulations.

Paragraph a):

The substance of this paragraph must be kept, as it can cover the case of international trains running empty.

On the other hand, as it is currently worded, this paragraph does not cover the case of trains that were intended for international traffic and which, for some reason or another, did not cross the border. To take account of these situations, it is therefore necessary to introduce the concept of "intending" to carry out a journey from one State to another, rather than an actual border crossing.

It is not necessary to refer to "Member States", as the CIM UR also apply in cases where only one of the two States is a member of OTIF.

Paragraph a) could therefore read as follows:

"for the carriage of passengers, the anticipated point of departure and the anticipated destination are situated in two different Member States, and for the carriage of freight, in two States, at least one of which is a member of OTIF".

Paragraph b):

We would not advise using the term "principal purpose" in this context, because:

- this term is based on that of Directive 2012/34/EU and is difficult to use here insofar as determining the purpose is the subject of a complex decision-making procedure on the part of national regulators (the procedure is set out in implementing regulation (EU) No. 870/2014 of 11 August 2014); it would make no sense to use this procedure in the context of the CUI UR and in addition, it is not used in the same way in all the Member States (and is not used in some States where the national carriage of passengers is already open to competition);
- it might disappear when the fourth railway package is adopted.

This paragraph should therefore be worded as follows:

"b) the train is empty or loaded with a view to performing international transport within the meaning of the CIV or CIM Uniform Rules".

The first paragraph between square brackets raises the question of the definition of mixed trains in national trains or international trains. There can be two options. Either:

- if there is a wagon that crosses the border, the entire train is international: in this case, all the national legs included in an international journey will be covered by the CUI UR; or
- all the wagons have to cross the border in order for the entire train to qualify as an international train: in this case, the CUI UR only cover purely international journeys, but not all international journeys (because mixed trains are excluded).

The second paragraph between square brackets ("*Within the meaning of these Uniform Rules ...*"): the mere fact that an international train path request (as the sum of several national train paths) is established is not enough to prove actual allocation of all the train paths that make up the international train path. So the text would have to include the criterion of the infrastructure managers' response in order to cover possible cases of non-allocated train paths in a State, which would mean the journey would have to be redefined as (a) national journey(s).

This paragraph could therefore read as follows:

Within the meaning of a), an international train is a train for which, when a train path request or several train path requests are actually accepted by the infrastructure manager(s), it is anticipated that the train will cross the border of at least one Member States.

§ 2: this paragraph is of no use insofar as all the elements it contains are already mentioned in the preceding paragraphs.

Article 5

The revision of this Article consists of adding a paragraph 4 to the existing Article. The aim of this paragraph is to have optional recourse to a model international contract.

Text proposed by OTIF

New paragraph 4 for Article 5:

§ 4 The international associations of infrastructure managers and the international associations of carriers may agree general terms and conditions of use of infrastructure and provide a harmonized contract of use model in accordance with all relevant mandatory prescriptions in force in States in which the infrastructure to be used under these harmonized conditions is located.

France's position on the text proposed by OTIF

In view of the optional nature of this proposal, France will not make any comments on this Article.