



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

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**Groupe de travail « CUI UR »  
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Position of the United Kingdom

## Scope

### The options proposed

The paper proposes two options:

- One would be for the CUI Uniform Rules (UR) to apply to “international train services”, defined as services where the train crosses the border of an OTIF Member State at least once, and where the principal purpose of the service is carriage within the meaning of the CIV or CIM UR. The paper also offers, as an option, the possibility of adding a criterion that all wagons and coaches cross at least one border, but still allowing the train to be joined or split, and the different sections of the train to have different origins and destinations;
- The other would be for the CUI UR to apply to an international train, defined as a train in respect of which the train path order provides for the crossing of a Member State border at least once.

Thus, the first option is, in fact, a refined version of the second one. In both cases, the service must be due to cross a border of a Member State, but, in the first option, this is not enough: the main purpose of the service must be to convey international passengers or international freight.

We consider that both those options would be an improvement on the current wording: at present, the reference to the individual contracts for the carriage of passengers or freight creates, at best uncertainty, at worst illogical or onerous results. We therefore support the general approach taken by the draft.

We wonder, nonetheless, whether the CUI UR should be of application where the journey involves only one Member State on the one hand, and one or more third countries on the other. COTIF is intended to regulate the relations between its members, and both CIV and CIM refer to transport between two Member States, as opposed to the crossing of Member State borders.

Turning to the choice between the two options, whilst appreciating that the second option creates greater legal certainty, the UK would prefer the first option. In our view, the crossing of a border does not necessarily change the character of a train journey in such a way as to make a difference to the legal regime that should apply. If a train service crosses a border, but not its passengers or the goods it carries, there is no need, in our view, for the contracts to be subject to uniform rules.

In our view, if what we call above the “first option” was followed, a requirement for all carriages or wagons to cross at least one border would probably not be desirable: insignificant alterations to the train could then have disproportionate consequences on the legal arrangements applicable.

### Points of wording

We would like to take the liberty of making a number of comments on minor points of wording. We hope they are of use, but anticipate that they themselves will be further discussed and refined. I would like to stress that, in this section, we are only commenting on the wording, not the substance of what is proposed.

In paragraph 1, we would not suggest creating a defined concept of “international transport service/train”: that phrase would be used only once, so the drafting device of creating a new,

defined concept would not shorten the drafting. We would propose saying, with respect to the first option: “The Uniform Rules shall apply to the contract of use of railway infrastructure for a transport service where [etc]”. In respect of the second option, the text could say “These Uniform Rules shall apply to the contracts of use of railway infrastructure by a transport service foreseen [etc]”.

In the proposed paragraph 1(b), we would not use the phrase “transport within the meaning of the CIV or CIM uniform rules”: as far as we can tell, those rules do not define a concept of “transport”, but just say they apply to contract of carriages where there is a cross-border element. We would suggest either saying “carriage under contracts to which the CIV and CIM Uniform Rules apply”, or repeat the scope criteria in CIV and CIM.

Concerning the drafting propose to implement Option 2, we have not been able to examine its drafting in detail. In particular, we do not know if, in the English version, the phrase “train path order” is the recognised wording for an application for infrastructure capacity. But we wonder if the English provision should not be wording as follows “[...] an international train is a transport service in respect of which the train path order provides for the crossing of [etc]”. (In our experience, the English equivalent of the French “prévoit” is, more often than not, “provides”, as opposed to “foresees”.)

### **Standard contracts**

The Note asks about the desirability of inserting a paragraph allowing associations of IMs and RUs to agree standard access contracts.

We sympathise with the objective of facilitating discussions between infrastructure managers and carriers at an international level to create optional model contract terms. We also agree that the OTIF has a role in facilitating such discussions. However, we do not think that a provision in a legally binding instrument is the right way of achieving this objective: even without such a provision, international associations of infrastructure managers and carriers have the right to agree optional model contract terms. The provision would therefore, in law, have no useful effect; at best, its existence could create confusion.

### **Participation in the working group**

In his letter, the Secretary General asks Member States to inform him whether they are interested in taking part in the CUI working group. I can confirm that the UK continues to wish to be part of it.

### **Conclusion**

We hope the above will be of use to the OTIF and its Member States, and hope we have not overlooked anything. We stand ready to clarify any point or discuss anything arising from the above.