



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
30.04.2015**

Original: EN

2ND SESSION

Preliminary draft text by the Secretary General

CUI SCOPE OF APPLICATION DERIVED FROM DIRECTIVE 2012/34/EU

1. The question of the scope of application of CUI should take into account the notion of international service or international train as a trigger for application of the uniform rules, in order to overcome the difficulty arising from the obligation of having to rely on multiple national contracts to grant the use of the infrastructure for international carriage. In other words, there are two possible solutions:
 - a) a solution based on the term “international service” as defined in Directive 2012/34/EU (in particular Article 3 (5) relating to “international passenger service”) or
 - b) a solution based on the term “international train”.

As far as the first of these solutions is concerned, it must be admitted firstly that the Directive referred to contains two different definitions of an international service for the carriage of passengers on the one hand and for the carriage of goods on the other.

As far as the second solution is concerned, it must be admitted that there is no appropriate definition of “international train”. It is clear that the technical definition of the term “train” (Art. 2 letter ee1) ATMF) would not be suitable. A pragmatic approach could be examined, based on the fact that paths for international transport services must be coordinated so that international trains can be operated. An international train can be identified on the basis of the train path order.

If the first solution is chosen, the question arises as to how the transport service can be qualified as “international” and which criteria would be applied. Both CUI and the EU directive use the term “purpose” (CUI: “purpose of use”, directive “purpose of the service”), in order to assess whether the scope of a service is international traffic. The EU directive uses the term “**principal purpose**”, which is clearly defined in recital 18 of Directive 2012/34/EU: “The principal purpose of the new services should be to carry passengers travelling on an international journey. When assessing whether that is the service's principal purpose, criteria such as the proportion of turnover, and of volume, derived from transport of domestic or international passengers, and the length of the service should be taken into account. The assessment of the service's principal purpose should be carried out by the respective national regulatory body at the request of an interested party.” The element of the definition that “all carriages” or “all wagons” must “cross at least one border” may cause problems, since it is not entirely ruled out that one or more of the carriages or wagons may be disconnected from a train, for whatever reasons, e.g. at the border station before the train crosses the border. The question arises as to whether the consequence for the whole train would then be that it would lose its quality as an “international transport service”.

International service as the principal purpose is either evident or can be determined by the competent regulatory body in accordance with Art. 10 § 3 of EU Directive 2012/34. On this basis, a Member State can make use of the possibility offered by Article 11 of the same directive to limit the right to access and the right to pick up and set down passengers.

There will indeed be situations where a domestic carrier (whether or not it provides public service) carries, as the case may be, passengers with CIV contracts. Nevertheless, it can be assumed that for this carrier the main purpose will be domestic carriage. The scope of application of CUI should be adapted in such a way that the domestic carrier providing mainly - but not exclusively - domestic services would not be concerned by CUI.

The other solution might be to refer to the train path order which, in the regulations, includes information concerning the international nature of the service envisaged.

2. Following this analysis, there are three elements which the new scope of CUI should include:
- one or several national contracts (succession of contracts)
 - actual border crossing as part of the definition, and
 - CIV or CIM carriage (contract for international carriage of passengers or goods, i.e. border crossing as the purpose agreed between the parties) as the main purpose. If the main purpose of use is domestic carriage, the transport service would not be concerned by CUI.

The Secretary General's proposal for an adapted version of Article 1 of CUI would then be the following, based on Article 3 (5) of Directive 2012/34/EU (the changes are shown in bold text):

Article 1: Scope
<p>§ 1 These Uniform Rules shall apply to the contract(s) of use of railway infrastructure for an international [transport service] / [train]. 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 on one hand and third parties on the other.</p>

This amended scope, linked to an international train or service, – read and interpreted together with Article 8 CUI – will restrict the application of CUI to indirect damage to railway undertakings based on CIV/CIM compensations. In these circumstances, indirect damage with regard to compensating a CIV passenger in the Lyria train between Berne and Paris will be covered, but if his ticket also includes Paris-Blois, the recourse of the carrier will not be covered by CUI. This issue can be discussed in the next meeting of the working group “CUI UR”.

3. From the Secretary General's point of view, since there is no single contract, which would make it possible to use the infrastructure on the territory of several States, a model contract would be useful in order to avoid administrative burdens. This could be based on Article 6 § 8 CIM:

“The international associations of carriers shall establish uniform model consignment notes in agreement with the customers' international associations and the bodies having competence for customs matters in the Member States as well as any intergovernmental regional economic integration organisation having competence to adopt its own customs legislation.”

With regard to CUI, given the sensitivity of national law issues, we should emphasise:

- the optional nature of the model contract;
- the need to observe national/EU law in the State where the infrastructure is located;
- the involvement of infrastructure managers' associations.

The Secretary General would then propose a new § 4 in Article 5:

New § 4 in 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.