



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

**CUI 2/4  
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**2<sup>ND</sup> SESSION**

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Position of Belgium – other questions



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For the attention of the Secretary General of  
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## Ref: Belgium's position on the revision of the CUI UR

... (see doc. CUI 2/3 Add. 1)

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

As we underlined when we voted on the consolidated Explanatory Report, we would consider it regrettable if the Explanatory Report were to be amended while these Uniform Rules are currently undergoing more global amendment.

We therefore drew attention to the fact that the Explanatory Report should again be amended once a decision had been taken on amending the articles that are being revised. In order to be constructive, we nevertheless wished to vote in favour of the amendment to the Explanatory Report on the CUI UR, but we suggested that any amendments to the Articles that might be agreed following the working group in July should, if possible, be accompanied directly by the adoption of a new, updated Explanatory Report.

In this respect, we should like to return to the comment on Article 8 of the CUI UR. Paragraph 1 of the commentary reads as follows:

"1. § 1 stipulates the principle of the (strict) objective liability of the infrastructure manager. The person having suffered the damage (the carrier or his auxiliary) must prove the cause of the damage (management failure or infrastructure fault). In addition, that person must furnish proof that the damage was caused during the period of use of the infrastructure. The text adopted by the 5<sup>th</sup> General Assembly indicates even more clearly that the version adopted by the Revision Committee stipulates the principle of objective liability."

As mentioned at the beginning of this commentary, it seems to us that Article 8 of the CUI UR refers to the principle of the strict objective liability of the infrastructure manager. It

therefore seems paradoxical that the commentary on this Article indicates that "(...) the person having suffered the damage (the carrier or his auxiliary) must prove the cause of the damage (management failure or infrastructure fault) (...)". Such a sentence leads to the belief that the burden of proof of the causal link between the damage and the infrastructure is on the carrier or his auxiliary, which is entirely the opposite of objective liability, which applies without it being necessary to prove this causal link. In our view, Article 8 only requires that the damage caused to the carrier or to his auxiliaries was caused "(...) during the period of use of the infrastructure and has its origins in the infrastructure" in order for the IM's liability to be maintained. Objective liability therefore certainly implies that the victim of the damage does not need to furnish proof of the causal link between the damage he has suffered and management failure or infrastructure fault. In our view therefore, the commentary on Article 8 § 1 should be adapted to reflect more closely what Article 8 of the CUI UR actually says.

... (see doc. CUI 2/3 Add. 1)

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

For the time being, Belgium will have to enter a scrutiny reservation on the question of extending the scope of application of Article 8 § 1 c) of the CUI UR to pecuniary loss resulting from compensation due from the carrier by virtue of Regulation 1371/2007/EC. At the moment, it is not possible for us to take a position on this sensitive discussion, whose possible financial consequences should primarily be assessed at national level.

Whatever the case may be, if the decision were taken to extend infrastructure managers' liability in this way (quod non), two comments must be made:

- a) We are of the view that a reference to a European Regulation that does not bind all the Member States of OTIF is not a good solution. It would certainly be more appropriate to refer to "pecuniary loss resulting from compensation due from the carrier" without specifying its source.
- b) If Article 8 § 1 c) were amended so as not to make reference just to compensation due from the carrier by virtue of the CIV Uniform Rules and the CIM Uniform Rules, it seems to us that, of necessity and in the interest of achieving a fair balance in the relationship between railway undertakings and infrastructure managers, Article 8 § 2 a) and b) should also reflect this amendment, in order that infrastructure managers can be relieved from liability and can at all times have a right of recourse against any liable third parties.