



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"**

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Belgium's position

For the attention of the Secretary General of
OTIF

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Annexes: Brussels
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Subject: 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 be able to send you the following reply to your circular of 14 August 2015 in which you requested the Member States to send their comments on the new proposed text for the revision of Articles 1 and 3 of the CUI UR.

1. Article 1 § 1: Definition of international train

With regard to how an “**international train**” is referred to, as we pointed out in our position of 30/04/2015, it seems to us that the central element should be that which is reflected by the term “**intended**”, **not the term “agreed” currently being proposed**. 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 intended 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. One should avoid giving the impression that the international aspect of the train is the subject of an agreement between the operator and infrastructure managers of the countries being transited. In most cases, the contractual agreement between the operator and infrastructure managers has nothing to do with the international aspect of the train; in most cases, it is the carrier who decides, and the infrastructure manager only deals with the movement of the train in his State.

In addition, in order to make the language accurate, a comma should be added between the words “d’un État membre” (of a Member State) and the words “par un train dont il est convenu (...) (by a train for which it is agreed...)”. This would make it clearer that the text deals with

“l'utilisation de l'infrastructure ferroviaire (...) (use of railway infrastructure...) “par un train dont il est convenu (...)” (“by a train for which it is agreed...”).

2. Article 1 § 2: Scope

Having read CIT's comments on the new Article 1 § 2,¹ Belgium wonders about the interpretation of the question of whether the new scope of application proposed does in fact cover contracts of carriage within the meaning of the CIM and CIV UR. Belgium's interpretation was in fact that the new Article 1 § 1 of the CUI UR should in no case exclude these contracts from the scope of application of the CUI UR, as Article 8 § 1 c) refers to them. In Belgium's view, it is therefore advisable to ensure that the current scope of application of Art. 8 § 1 c) of the CUI UR continues to be covered by the new scope of application of Article 1, so that there is no contradiction between Article 8 § 1 c) of the CUI UR and the new Article 1 of the CUI UR.

However, one must also avoid reducing Article 8 § 1 a) and b) simply to cases where there is a contract of carriage within the meaning of the CIM and CIV UR. For this reason, Belgium cannot support the CIT's proposal concerning Article 1 § 2.

3. Explanatory Report

The Explanatory Report, as amended, seems to us to raise some problems:

- The phrase “International transport implies the use of several national train paths” seems to be too categorical, as there are currently international train paths (the predetermined rail freight corridor train paths). It would therefore be advisable to be less categorical by adopting wording such as “International transport may imply the use of several national train paths”
In addition, while it is correct, at least in Belgium, that the agreement between the infrastructure manager and the railway undertaking is always based on a **train path**, and not on a train, it appears that there are some OTIF Member States that are not members of the European Union in which the concept of a “train path” does not exist. For these States, would it not be appropriate to refer to the concept of “scheduled international train”?
- The expression “international transport” at the end of the commentary on Article 1 is likely to cause confusion compared with the expression “international traffic”. It would therefore be more appropriate to refer to “international traffic”.
- We think the **reference to Article 6 of COTIF** in the Explanatory Report on the definition of carrier is appropriate. However, it might perhaps be useful to specify the scope of this reference, the aim of which was to restrict application to international transport, as opposed to national transport.

Yours sincerely,

Clio Liégeois,
Representative of Belgium at the working group on the revision of the CUI UR

¹ Note by the OTIF Secretariat: see doc. CUI 2/3 Add.8, point 2.3, which was submitted to the second session of the working group