



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

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

**CUI 3/3 Add. 5
06.11.2015**

Original: EN

3RD SESSION

Position of the European Rail Infrastructure Managers (EIM)

Introduction

OTIF – The Intergovernmental Organisation for International Carriage by Rail – is continuing the revision of the Convention on International Carriage by Rail (COTIF) and its Appendices, including Appendix E (“CUI”¹) which specifically governs the contract for the use of the railway infrastructure between the infrastructure manager and the carrier.

Following the second Working Group (WG) session on 8th July 2015, OTIF has issued a new draft text of Article 1 on the scope of application of CUI, and has proposed new definitions in Article 3 for “carriers” and “train”.

The new draft text and definitions will be discussed at the 3rd OTIF WG on 24th November 2015 in Bern (Switzerland).

EIM – the Association representing the European rail infrastructure managers – has been closely following the revision procedure, providing input throughout the whole process. This new Paper covers the following issues brought forward by the latest of OTIF’s draft proposals:

1. The scope of application: to which notions and concept of service should the legal definition of the scope of application be linked.
2. Definitions of “carrier”, “train” and “International train”.

1. The scope of application

The first point concerns Article 1 of the CUI setting the definition of the scope of application of the UR. OTIF’s new draft text links the scope of application to a “train” performing “International railways traffic” between two States – at least one of which is a Member State.

According to the OTIF’s revision committee, linking the scope of application to “International railway traffic” will make sure that the CUI – as well as the CIM and CIV – has not been created for domestic traffic. This would comply with the decision previously endorsed during the negotiations not to extend the scope of application to national traffic.

Furthermore, the wording “International railway traffic” should be considered within the meaning of Article 6 of COTIF.

Eventually, it has been proposed that International railway traffic would be performed between “two States”, as this would ensure consistency with Article 1(2)² of the CIM UR.

¹ Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI – Appendix E to the COTIF)

² *These Uniform Rules shall apply also to contracts of carriage of goods by rail for reward, when the place of taking over of the goods and the place designated for delivery are situated in two different States, of which at least one is a Member State and the parties to the contract*

Recommendation

- **The concept of “International railway traffic” in the scope should be defined in a clearer way³. The reference to Article 6 of COTIF, made in the Explanatory Report, should be removed.**

Justification

The main objective with regard to the scope of application should be a clarification of the scope. In this regard, EIM welcomes the fact that the new draft text of Article 1 of CUI – by referring to “International rail traffic” – seems to exclude the possibility of an extension of the UR to domestic traffic.

The main argument supporting a connection between the scope of application and “International railway traffic” is the reference to Article 6 of the COTIF⁴. Accordingly, this link would provide the consistency necessary to avoid the need of seeking new definitions.

However, it should be pointed out that Article 6 of the COTIF merely mentions the wording “International rail traffic”. It does not provide for any conceptualisation of the term and simply refers back to the different Appendixes, including the CUI. Therefore, there is no added value in the link with Article 6 of COTIF, and a definition for “International rail traffic” would still have to be identified and clarified.

2. Definitions

Two new proposals for the definitions of the terms “carrier” and “train”, both in Article 3 of the CUI UR, have been drafted.

Furthermore, the OTIF revision committee is exploring the possibility to identify a definition for “International train” by taking into account the following elements: 1) any operating unit – one or more wagon; 2) border crossing – intended/agreed by both parties to the contract of use (the actual border cross would not be necessary); 3) the use of rail infrastructure on the territory of at least either: two States or alternatively two Member States.

A prospective definition could be included either in Article 1 (scope) or Article 3 (definitions).

Recommendation

- **The definition of “train” shall not be linked to the scope of application and shall be carefully modified⁵.**

agree that the contract is subject to these Uniform Rules” – Article 1(2) Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM).

³ This is also expressed in the [RNE’s Legal Matter Working Group’s Statement](#) included below as an Annex.

⁴ Article 6 Convention concerning International Carriage by Rail (COTIF) “Uniform Rules”.

⁵ The same request is made by the [RNE’s Legal Matter Working Group’s Statement](#) included below as an Annex

Justification

In EIM's view, the proposed definition of "train" is too broad and ambiguous. Notably the text defines a train as "operating unit", which may refer to rolling stock. However, it should be pointed out that "train" is not merely a "thing", but an "action" – namely the action of running the rolling stock on the infrastructure according to a pre-determined schedule.

Moreover, the new draft Article 1 links the scope of application of the UR to such large definition. This may lead to an extension of the scope, potentially jeopardising the efforts of seeking clarity and certainty in the revision of CUI.

The definition of the term "train" shall thus be modified and clarified. In this regard, a solution could be that of linking the definition of train to the use of a "train path". This would notably provide a reference to infrastructure capacity, which is the object of a contract between an infrastructure manager and a carrier.

Recommendation

- **"Carrier" should be read within the meaning of "entity" rather than "person".**

Justification

Replacing the word "person" with "entity" would ensure a better legal clarity to the definition of "carrier". As a matter of fact, not everyone may understand that "person" refers in fact to "legal person".

Suggestion

- **A definition for "International train" could be investigated, and the possibility of linking the scope of application to such definition may be explored.**

Justification

EIM is open to the possibility of looking for a definition of "International train". There would be an additional fourth element – beyond those mentioned by the OTIF – to prospectively include in the definition: an International train would be "performing International transport, which would imply the use of several train paths".

Following this further, EIM would like to propose to link the scope of application of the CUI UR with a newly defined concept of International train. In this regard, it should be recalled that during the negotiations "International train" has already been chosen over other options – e.g. "International transport service" – to be connected with the scope of application of the UR for ensuring greater legal certainty.

For information please contact:**Tommaso Spanevello**

EU Policy Analyst

Phone +32 2 234 37 73

E-mail Tommaso.Spanevello@eimrail.org

EIM, the association of European Rail Infrastructure Managers, was established in 2002 to promote the interests and views of the independent infrastructure managers in Europe, following the liberalisation of the EU railway market. It also provides technical expertise to the appropriate European bodies such as the European Railway Agency. EIM's primary goal is promoting growth of rail traffic and the development of an open sustainable, efficient, customer orientated rail network in Europe.



**RNE Legal Matters Working Group Statement
on the new draft text sent by the OTIF Secretary General on the Revision of the
Uniform Rules concerning the Contract of Use of Infrastructure in International
Rail Traffic (CUI – Appendix E to the COTIF) dated 14 August 2015 - Annex to
circular 91-01/506.2015**

New draft text for Art. 1 CUI:

Article 1
Scope

§ 1 These Uniform Rules shall apply to any contract of use of railway infrastructure of a Member State by a train for which it is agreed that it will perform international railway traffic between two States, at least one of which is a Member State.

§ 2 These Uniform Rules shall apply irrespective of the place of business or the nationality of the contracting parties and even when the railway infrastructure is managed or used by States or by governmental institutions or organisations.

§ 3 Subject to Article 21, these Uniform Rules shall not apply to other legal relations, such as in particular

- 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;
- b) the liability to each other of the carrier or the manager of the one part and third parties of the other part.

The RNE LM WG comments as follows:

Art. 1 § 1

In principle, the new definition of the scope can be supported because both parties – infrastructure manager and carrier – have to agree that international railway traffic is performed within the scope of the contract.

Nevertheless, from the point of view of infrastructure managers, the reference point “train path” for the scope of international railway traffic would still be clearer.

The term “international railway traffic” ought to be defined more clearly in general.

New draft text for Art. 3 CUI:

Article 3
Definitions

For the purposes of these Uniform Rules the term

- c) “carrier” means the person who carries persons or goods by rail in international traffic ~~under the CIV Uniform Rules or the CIM Uniform Rules~~ and who is licensed in accordance with the laws and prescriptions relating to licensing and recognition of licenses in force in the State in which the person undertakes this activity;
- x) “train” means the operating unit which the carrier utilises on the railway infrastructure[; the train may be joined and/or split, and the different sections may have different origins and destinations].

The RNE LM WG comments as follows:

Art. 3 x)

We suggest to amend the definition of “train” (if used above) “...destinations, provided that all wagons cross at least one border.”

This would be a clearer definition and would also harmonize the stipulation with Art. 3 pts. 4 and 5 of Directive 2012/34.

Extract from the explanatory report in connection with the new draft text:

Article 3
Definitions

1.-3. ...

4. ... the definition of the term “**carrier**” in letter c) to make clear that where the law of the EU or corresponding domestic law applies, a person falling under the definition has to be aware of all licensing obligations. In particular, non-EU carriers have to note that, when contracting with infrastructure managers of EU Member States as “railway undertakings” under the law of the EU, they are subject to EU obligations, in particular licensing and safety certification requirements. **The term "international transport" used in the definition of "carrier" is to be understood in connection with Article 6 of COTIF.**

... (Continuation depends on further discussions in the working group)

The RNE LM WG comments as follows:

We would suggest deleting the reference to Art. 6 COTIF in pt. 4 of Art. 3 (definitions).

Firstly, there is a contradiction between terms used in the draft and in the explanatory note:

The term “international railway traffic” is used once in the draft whereas the term “international transport” is mainly used in the explanatory note on Art. 1 and 3 (definitions).

Secondly, this part of the note does not help to explain the term “international transport” (or traffic) for the term is not defined in Art. 6 COTIF either.

30.09.2015

Budapest