



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"**

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Position of France

**Revision of Articles 1 and 3 of the Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI UR, Appendix E to COTIF) and the Explanatory Report on the CUI UR.**

**Third session of the CUI UR working group (Berne, 24 November 2015)**

Following the draft revision of the scope of application of the CUI UR and subsequently of the Explanatory Report on the CUI UR at the second session of the CUI UR working group on 8 July 2015, the Secretary General asked the Member States and international organisations to submit comments and remarks with a view to the third meeting of the CUI UR working group on 24 November 2015.

**I / The new proposal to amend Article 1**

New paragraph 1 of Article 1 proposed by the Secretary General following the second session of the CUI UR working group on 8 July 2015:

**“§ 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.”**

a) The International Rail Transport Committee (CIT) and Belgium have requested that the term “agreed” be deleted, as this could give the impression that a consensus between the infrastructure manager and the railway undertaking concerning an international route is the starting point for application of the CUI UR. France would argue that the term “agreed” should be understood in the sense that the request for a train path alone is not sufficient; the infrastructure manager actually has to accept the request. The mere fact that an international train path (as the sum of several national train paths or as a request for an international RFC (rail freight corridor) train path) has been requested is not enough to demonstrate that all the train paths that make up the international train path have in fact been allocated. So the text would have to include the criterion of the infrastructure managers' response in order to cover possible cases of non-allocated train paths in a State, which would mean the journey would have to be redefined as (a) national journey(s).

In addition, the term “agreed” is more appropriate than the term “intended” proposed by Belgium, because if it is understood that a request is not sufficient to ensure that the train path is allocated and that the final response from the IM has to be taken into account, then accepting the request implies that there is agreement between the two parties, hence the term “agreed”.

In addition, allocating a national train path with a view to international transport has an impact on the rail network of the neighbouring country's IM. In this case, it should be noted that allocating a national train path for an international journey renders an IM liable for the network of a neighbouring IM, hence the importance of emphasising his involvement in the intention of using the train path for international traffic.

Finally, using the term “agreed” makes it possible to take account of trains which have departed to perform international transport but which ultimately, for whatever reason (accident, bad weather, strikes, etc.), have not been able to cross a border.

b) France supports the proposal by CIT and the Netherlands to replace “railway infrastructure of a Member States” by “railway infrastructure in a Member State”. The current proposal implies that the State owns the railway infrastructure, which, in some Member States, is inaccurate from the legal point of view.

c) France opposes CIT’s proposal to add a new paragraph 3 to Article 1 to explain that the new wording does not limit the current rights of recourse.

In fact, with the new wording of Article 1, the scope of application of the CUI UR is no longer linked to CIM and CIV contracts, as the objective of the working group was to take account of international trains that are not carrying goods or passengers. The new scope of application therefore goes beyond the CIM and CIV and still includes the latter. On balance, this new wording does not seem to imply that the right of recourse referred to in Article 8 is limited. France nevertheless emphasises that Articles 1 and 8 need to be made consistent. To this end, France proposes to delete the reference to CIV and CIM from paragraph c of Article 8 and to replace it by “a train performing international rail traffic”. So the liability regime set out in Article 8, which reads as follows:

**“§ 1 The manager shall be liable**

**for pecuniary loss resulting from damages payable by the carrier under the CIV Uniform Rules and the CIM Uniform Rules [...]”**

could be reworded as follows:

**“§ 1 The manager shall be liable**

**for pecuniary loss resulting from damages payable by the carrier in a journey performed by a train performing international rail traffic [...]”**

This new wording maintains consistency with paragraph 1 of Article 1, from which the reference to CIV and CIM has been deleted, to be replaced by “a train for which it is agreed that it will perform international railway traffic”.

The Explanatory Report on Article 8 should be amended accordingly.

## **II / The definitions in Article 3**

a) Definition of “carrier”: France supports the deletion of the reference to CIV and CIM as mentioned in the text proposed. France also supports the Netherlands with regard to the use of the expression **“the person” in “carrier means the person who carries persons or goods by rail [...]”**. It would be more appropriate to use the term “entity” or “body” instead of “person”. The definition proposed would therefore be:

**“Carrier means the entity/body that carries persons or goods [...]”**.

b) Definition of “train”:

The draft amendment proposes the following definition:

**“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 part in square brackets enables mixed trains to be included in the scope of application of the CUI UR (trains in which the destination of certain wagons is situated somewhere before the border is crossed and other wagons which will be crossing a border). In this case, France would like to ask whether wagons with a destination before the border is crossed are covered by the CUI UR. If this is the case, there would be different treatment for a passenger with a ticket for a domestic journey in a train performing international rail traffic and goods loaded in a wagon for domestic delivery in a train performing international rail transport.

As a reminder, one of the objectives of the revision of Article 1 was also to exclude from the scope of application of the CUI UR those passengers with tickets for domestic transport travelling in a train performing international rail traffic. France proposes that the Secretary General should ask the working group to consider how to deal with the question of wagons intended for domestic carriage in an international train and with passengers holding tickets for domestic carriage in a train performing international rail traffic.

### **III / The draft amendments to the Explanatory Report**

Following the draft text proposed at the second session of the CUI UR, some draft amendments have also been proposed to the Explanatory Report. Among the amendments proposed, France's attention was drawn to the following paragraph:

**“International transport implies the use of several national train paths. The CUI UR also cover two or more successive national contracts of use used to carry out international transport.”**

In the draft amendment to the Explanatory Report, it would be important to underline that infrastructure managers providing national train paths must be established in at least two different States. This is because the wording “several requests for national train paths” can be interpreted as meaning several train paths within the same State. From this point of view, the proposal to amend the Explanatory Report must be reviewed and corrected along these lines.

On the same paragraph, France supports Belgium's remark concerning the existence of international train paths (the RFC (rail freight corridor) train paths already established). The draft amendment to the Explanatory Report says that “international transport implies the use of several national train paths”. This being the case, the existence of international train paths should be taken into account and the draft Explanatory Report should be amended accordingly.

With these two comments in mind, the following proposal:

**“International transport implies the use of several national train paths. The CUI UR also cover two or more successive national contracts of use used to carry out international transport.”**

could be redrafted in these terms:

**“International transport implies the use of an international train path or several successive national train paths situated in at least two States, used to carry out international transport”.**

This proposal takes into account the existence of international train paths and the possibility of combining several national train paths on different networks to create an international train path (“several successive train paths situated in at least two different States”).

France has no comments on the proposals and remarks submitted by the Member States and international organisations that are not dealt with in this contribution.