



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"**

**LAW-16004-CUI 4/4
29.04.2016**

Original: FR

4TH SESSION

Draft texts from the Secretary General following the 3rd session

I. CONCLUSIONS OF THE 3RD SESSION OF THE WORKING GROUP ON THE CUI UR

The conclusions reached by the 3rd session of the working group on the CUI UR (Berne, 24.11.2015) can be summarised as follows:

Consensus with regard to Article 1 § 1 (see the text in part III below):

- Wording as simple as possible
- Reference to international railway traffic, which will be defined in Article 3, but the words “for which it is agreed...” were deleted and the new alternative “which according to common understanding of the parties is designated for international railway traffic” was rejected¹
- Editorial amendments to the version available at the end of the 2nd session (“railway infrastructure in a Member State” instead of “railway infrastructure of a Member State”²; “between States, at least one of which is a Member State” instead of “between two States, at least one of which is a Member State”).

Further work and pending questions:

- Prepare a draft definition of “international railway traffic” based on France’s proposal for the Explanatory Report on this subject
- Draft a better definition of “carrier” in light of the discussions
- Describe and study two scenarios concerning the carrier’s right of recourse against the infrastructure manager, i.e.
 - leave the rules in Article 8 § 1 c) and explain in the Explanatory Report that recourse will only be available to carriers in respect of international trains, i.e. for international traffic, as per the new definition in Article 3;
 - transfer the carrier’s right of recourse to the CIV and CIM UR, in other words a solution which would allow the carrier to exercise his right of recourse in each instance of a contract of international carriage, whether the train being used is international or national.

Input from the sector (associations of infrastructure managers - **EIM, RNE, CER**) was requested, in particular information on how

- test runs of new vehicles/trains and
- maintenance vehicles/trains

are organised (operational feedback), whether train paths are allocated in such cases. The information provided will be used to assess whether or not such trains would fall under

¹ It was assumed that it is in the carriers’ own interest to inform each IM from which they request a train path that it is for an international train. It would be up to the associations representing infrastructure managers to inform the SG whether this Article should specifically prescribe that the IM must be informed of the international nature of a train.

² “in” only in the EN and DE versions; in **FR**: “l’infrastructure ferroviaire d’un État membre”, see Art. 10 of the various language versions of the Directive 2012/34/EU (FR-EN-DE).

“international railway traffic” as it will be defined (provided they cross a border). It will then be checked at the next meeting whether it would be useful to amend the Explanatory Report to clarify this.

Calendar

SG’s revised draft	29.01.2016
Consultation of Member States and stakeholders deadline for comments	14.03.2016
Calling notice for next session	29.04.2016
Next session of the working group	31.05.2016

II. CARRIER’S RECOURSE AGAINST THE INFRASTRUCTURE MANAGER – TWO ALTERNATIVES

As the carrier is also liable to his customers for damage which has its origins in the railway infrastructure (see Article 51 CIV and Article 40 CIM), he should have the right of recourse. This right is currently to be found in Article 8 § 1 c) CUI.

In the Secretary General’s working group, which is dealing primarily with the clarification and review of the scope of application, the question arose from the start as to whether a new criterion for the CUI scope of application will have any repercussions for the carrier’s right of recourse, and what these repercussions might be.

As the work stands at the moment, “**a train for international railway traffic**” (hereinafter shortened to “international train”) is emerging as a criterion for the scope of application, with the addition of a new definition of “international railway traffic”. This term should cover the use of international train paths (Article 15 of Directive 2001/14/EC and Article 40, para. 5 of Directive 2012/34/EU), as well as the international use of successive national train paths, the allocation of which is coordinated by the competent infrastructure managers (Article 40 § 1 of Directive 2012/34/EU).

With regard to the carrier’s recourse against the infrastructure manager, two alternatives presented at the 3rd session of the CUI working group should be investigated further.

1. Maintain the existing rules – in the context of the newly defined scope of application – in Article 8 § 1 c) CUI
2. Deal with the carrier’s recourse (new) in the CIV/CIM UR

1st alternative: Maintain the existing rules – in the context of the newly defined scope of application – in Article 8 § 1 c) CUI

The scope of application according to Article 1 § 1 applies to the whole Appendix, including Article 8. The modified scope of application is no longer linked to the performance of transport in accordance with the CIV or CIM UR. Now the reference to the CIV and CIM UR has been deleted from Article 1 § 1 and 3 c), it must also be deleted from Article 8 § 1 c). Nevertheless, recourse for carriers who have paid compensation in accordance with the CIV or CIM UR is still covered.

Under this alternative however, a CIV or CIM carrier can **only** have recourse under OTIF’s international regulations against the infrastructure manager **for the international use of**

infrastructure, as described in Article 1 § 1 (in conjunction with the new definition of “international traffic”). Insofar as the conditions of Article 8 § 1 are met, the right of recourse is beyond all question if it concerns **CIV/CIM compensation resulting from carriage in international trains**. The infrastructure manager would therefore be liable to the carrier for pecuniary loss resulting from the fact that the carrier has to compensate passengers in an international train or customers whose goods were carried in an international train.³

France proposed another modification for Article 8 § 1 c). At the 3rd session of the CUI working group, it was decided to make clear in the Explanatory Report that this provision only related to loss or damage which arises as a result of compensation for loss or damage caused in an international train.

Advantage: The advantage of the new scope of application, a solution which makes matters clearer and certainly reflects reality better than the current wording, also applies to the carrier’s recourse. An infrastructure manager can only be informed of the international nature (of the transport operation) for international trains; the application of an international rule is then only justified if both parties to the contract are aware of the international nature.

Disadvantage: This alternative might be a disadvantage if part of an international journey is performed by a national train. This gives rise to a situation where, although the compensation regime is internationally harmonised, the regime for the assertion of the carrier’s right of recourse would be subject to national law. If the national law were to vouchsafe the carrier a more limited right of recourse than the CUI, the question that might arise for the carrier is how he can be compensated if he has had to pay compensation in accordance with the stricter rules because of loss or damage that had its origins in the infrastructure.

2nd alternative: Deal with the carrier’s recourse (new) in the CIV/CIM UR

In this alternative, a new provision along the lines of Article 62 CIV and Article 50 CIM (Recourse between carriers) would have to be incorporated into the CIV and CIM UR (see draft texts in part III below). The infrastructure manager would be liable for the carrier’s pecuniary loss in exactly the same way as the carrier is liable to his customers. Based on this logic, Article 8 § 1 c) and Article 23 CUI would have to be deleted. The CUI UR would be applicable in the event of other loss or damage, at any rate for direct loss or damage suffered by one or another party to the contract of use (Article 8 § 1 a) and b) and Article 9 § 1 a) and b) CUI). The question of other pecuniary loss (irrespective of CIV/CIM compensation) would have to be examined separately (at a later stage) and dealt with if need be.

³ In terms of passenger transport, the principle of “one ticket – one contract” in the CIV/PRR General Conditions of Carriage (GCC-CIV/PRR) (see section 3 of the GCC-CIV/PRR) restricts the possibility of through CIV contracts of carriage for journeys in which one or more domestic trains are taken in addition to an international train; however, there are examples of CIV contracts of carriage with through tickets which also cover journeys by national trains. **Examples:** a passenger may, for example, conclude a CIV contract of carriage for the entire journey from Berne to Frankfurt, even though the journey only takes place in an international train (ICE) on the section between Basel SBB and Frankfurt; on the section between Berne and Basel SBB, transport is performed by a train that only operates domestically (IC). A through CIV ticket can also be purchased for a journey from Mainz to Maastricht, for example, using the “Europa-Spezial Niederlande” offer. Passengers can also combine national and international trains for this journey, as they wish; the entire journey is covered by a CIV contract of carriage.

Advantages:

- “closed liability chain”, i.e. the same benchmark for the carrier’s liability to his customers as for the infrastructure manager’s liability to the carrier for pecuniary loss resulting from compensation;
- the carrier’s recourse would not then depend on whether the scope of application of the CIV and CUI UR on the one hand, and of the CIM and CUI UR on the other, are identical from the geographical point of view;
- symmetry between Articles 8 and 9 CUI.

Disadvantages:

- from a procedural point of view, the three COTIF Appendices would have to be revised at the same time, including Appendix A, the CIV UR, the majority of which has been carried over in the EU as an Annex to the Passengers’ Rights Regulation (PRR). As we are trying to achieve a coordinated procedure for the revision of the CIV UR and the revision of the PRR initiated by the European Commission, this disadvantage is relative. The parallel revision of the PRR and CIV provides an opportunity to disconnect the regulation of private law matters of contract law (Annex I PRR) from the PRR, thus enabling the proper development of the CIV UR.
- from the point of view of the right of recourse in the event of indirect damage, this would undeniably be an extension of the scope of application of the CUI, as it would then be clearly established that whatever the actual journey performed by the train (national or international), a right of recourse exists if the infrastructure manager is liable, including liability without fault. For indirect damage, this leads to the right of recourse being applied on the Member States’ entire national networks.

III. AMENDED DRAFT TEXTS

CONCERNING THE SCOPE OF APPLICATION

(text drafted and adopted at the 3rd session of the CUI working group)

Article 1 Scope

§ 1 These Uniform Rules shall apply to any contract of use of railway infrastructure **in a Member State by a train for international railway traffic between States, at least one of which is a Member State.**

FR: § 1 Les présentes Règles uniformes s'appliquent à tout contrat relatif à l'utilisation de l'infrastructure ferroviaire **d'un État membre par un train pour un trafic international ferroviaire entre des États, dont au moins un est un État membre.**

DE: § 1 Diese Einheitlichen Rechtsvorschriften gelten für jeden Vertrag über die Nutzung der Eisenbahninfrastruktur **in einem Mitgliedstaat durch einen Zug für einen internationalen Eisenbahnverkehr zwischen Staaten, von denen mindestens einer ein Mitgliedstaat ist.**

§ 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.

REGARDING THE DEFINITIONS

Article 3 Definitions

For the purposes of these Uniform Rules the term

aa) **“international railway traffic” means traffic which implies the use of an international train path or several successive national train paths situated in at least two States and coordinated by the infrastructure managers concerned;**⁴

FR : aa) « trafic international ferroviaire » désigne un trafic qui implique l'utilisation d'un sillon international, ou de plusieurs sillons nationaux successifs situés dans au moins deux États et coordonnés par les gestionnaires d'infrastructure concernés;⁴

⁴ Based on the proposal from France

- DE: aa)** „internationaler Eisenbahnverkehr“ einen Verkehr, der die Nutzung einer internationalen Trasse oder mehrerer aufeinanderfolgender nationaler Trassen umfasst, die sich in mindestens zwei Staaten befinden und von den betroffenen Infrastrukturbetreibern koordiniert sind;⁴
- c) “carrier” means the ~~person who carries~~ **natural or legal person the principal business of which is to carry persons and/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;
- FR: c)** « transporteur » désigne ~~eelui qui transporte par rail~~ **la personne ou entité la personne physique ou morale dont l’activité principale est le transport** des personnes et/ou des marchandises en trafic international **par rail** ~~sous le régime des Règles uniformes CIV ou des Règles uniformes CIM~~ et qui détient une licence conformément aux lois et prescriptions relatives à l’octroi et à la reconnaissance des licences en vigueur dans l’État dans lequel la personne exerce cette activité ;
- DE: c)** „Beförderer“ ~~denjenigen, der~~ **die natürliche oder juristische Person**, deren Haupttätigkeit es ist, Personen oder Güter im internationalen Verkehr ~~nach den Einheitlichen Rechtsvorschriften CIV oder Einheitlichen Rechtsvorschriften CIM~~ auf der Schiene ~~befördert zu befördern~~ und ~~der die~~ nach den Gesetzen und Vorschriften betreffend die Erteilung und Anerkennung von Betriebsgenehmigungen, die in dem Staat gelten, in dem die Person diese Tätigkeit ausübt, eine Betriebsgenehmigung erhalten hat;
- 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].~~

CONCERNING THE CARRIER’S RECOURSE – TWO ALTERNATIVES

- I. Maintain the existing rules – in the context of the newly defined scope of application – in Article 8 § 1 c) CUI**

Article 8 Liability of the manager

- § 1 The manager shall be liable
- a) for bodily loss or damage (death, injury or any other physical or mental harm),
 - b) for loss of or damage to property (destruction of, or damage to, movable or immovable property),
 - c) for pecuniary loss resulting from damages payable by the carrier ~~under the CIV Uniform Rules and the CIM Uniform Rules~~ **[in transport by a train performing international railway traffic⁵]**,

⁵ Proposal from France

caused to the carrier or to his auxiliaries during the use of the infrastructure and having its origin in the infrastructure.

§ 2 The manager shall be relieved of this liability

- a) in case of bodily loss or damage and pecuniary loss resulting from damages payable by the carrier ~~under the CIV Uniform Rules~~
 - 1) if the incident giving rise to the loss or damage has been caused by circumstances not connected with the management of the infrastructure which the manager, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent,
 - 2) to the extent that the incident giving rise to the loss or damage is due to the fault of the person suffering the loss or damage,
 - 3) if the incident giving rise to the loss or damage is due to the behaviour of a third party which the manager, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent;
- b) in case of loss of or damage to property and pecuniary loss resulting from damages payable by the carrier ~~under the CIM Uniform Rules~~, when the loss or damage was caused by the fault of the carrier or by an order given by the carrier which is not attributable to the manager or by circumstances which the manager could not avoid and the consequences of which he was unable to prevent.

...

Article 23 Recourse

The validity of the payment **of damages to third parties** made by the carrier ~~on the basis of the CIV Uniform Rules or the CIM Uniform Rules~~ may not be disputed when compensation has been determined by a court or tribunal and when the manager, duly served with notice of the proceedings, has been afforded the opportunity to intervene in the proceedings.

II. Deal with the carrier's recourse (new) in the CIV/CIM UR

Amendments to be made in the CUI UR:

Article 8 Liability of the manager

§ 1 The manager shall be liable

- a) for bodily loss or damage (death, injury or any other physical or mental harm),
- b) for loss of or damage to property (destruction of, or damage to, movable or immovable property),
- e) ~~for pecuniary loss resulting from damages payable by the carrier under the CIV Uniform Rules and the CIM Uniform Rules,~~

caused to the carrier or to his auxiliaries during the use of the infrastructure and having its origin in the infrastructure.

§ 2 The manager shall be relieved of this liability

- a) ~~in case of bodily loss or damage and pecuniary loss resulting from damages payable by the carrier under the CIV Uniform Rules~~
1. if the incident giving rise to the loss or damage has been caused by circumstances not connected with the management of the infrastructure which the manager, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent,
 2. to the extent that the incident giving rise to the loss or damage is due to the fault of the person suffering the loss or damage,
 3. if the incident giving rise to the loss or damage is due to the behaviour of a third party which the manager, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent;
- b) ~~in case of loss of or damage to property and pecuniary loss resulting from damages payable by the carrier under the CIM Uniform Rules, when the loss or damage was caused by the fault of the carrier or by an order given by the carrier which is not attributable to the manager or by circumstances which the manager could not avoid and the consequences of which he was unable to prevent.~~

...

§ 5 (new) Articles 62bis and 63 CIV and Articles 50bis and 51 CIM shall remain unaffected.

Article 23 Recourse

~~The validity of the payment made by the carrier on the basis of the CIV Uniform Rules or the CIM Uniform Rules may not be disputed when compensation has been determined by a court or tribunal and when the manager, duly served with notice of the proceedings, has been afforded the opportunity to intervene in the proceedings.~~

Amendments to be made in the CIV/CIM UR⁶:

CIV Title VII/CIM Title V
 Relations between Carriers **and between Carriers and Infrastructure Managers**

Article 62bis CIV/Article 50bis CIM
Right of recourse against infrastructure managers

A carrier who has paid compensation pursuant to these Uniform Rules shall have a right of recourse against an infrastructure manager insofar as the infrastructure manager caused [the loss or damage/the incident resulting in the carrier's liability] and the carrier is liable for the infrastructure manager in accordance with Article 51 CIV/40 CIM. [In this case, the infrastructure manager shall be treated in the recourse as if it were also directly liable to the person entitled in accordance with these Uniform Rules.]

Article 63 CIV/Article 51 CIM
Procedure for recourse

§1 The validity of the payment made by the carrier exercising a right of recourse pursuant to Article 62 **or 62bis** (CIV)/50 **or 50bis** (CIM) may not be disputed by the carrier **or the infrastructure manager** against whom the right to recourse is exercised, when compensation has been determined by a court or tribunal and when the latter carrier **or infrastructure manager**, duly served with notice of the proceedings, has been afforded an opportunity to intervene in the proceedings. ...

FR:

Titre VII des CIV / Titre V des CIM
 Rapports des transporteurs entre eux **et avec les gestionnaires d'infrastructure**

Article 62 bis CIV / Article 50 bis CIM
Droit de recours contre le gestionnaire d'infrastructure

Le transporteur qui a payé une indemnité en vertu des présentes Règles uniformes a un droit de recours contre le gestionnaire d'infrastructure ayant causé [le dommage / l'événement engageant la responsabilité], s'il répond de ce gestionnaire d'infrastructure en vertu de l'article 51 CIV / 40 CIM. [Dans ce cas, le gestionnaire d'infrastructure est considéré dans le cadre du recours comme lui aussi directement responsable vis-à-vis de l'ayant droit en vertu des présentes Règles uniformes.]

Article 63 CIV / Article 51 CIM
Procédure de recours

§1 Le bien-fondé du paiement effectué par le transporteur exerçant un recours en vertu de l'article 62 **ou 62 bis** (CIV) / 50 **ou 50 bis** (CIM) ne peut être contesté par le transporteur **ou le gestionnaire d'infrastructure** contre lequel le recours est exercé, lorsque l'indemnité a été fixée judiciairement et que ce dernier transporteur **ou gestionnaire d'infrastructure**, dûment assigné, a été mis à même d'intervenir au procès. [...]

⁶ Draft text proposed by Prof. Freise

DE:

CIV Titel VII/CIM Titel V
Beziehungen der Beförderer untereinander **und zwischen Beförderern und
Infrastrukturbetreibern**

**Artikel 62a CIV/Artikel 50a CIM
Rückgriffsrecht gegen Infrastrukturbetreiber**

Hat ein Beförderer gemäß diesen Einheitlichen Rechtsvorschriften eine Entschädigung gezahlt, so steht ihm ein Rückgriffsrecht gegen einen Infrastrukturbetreiber insoweit zu, als der Infrastrukturbetreiber [den Schaden / das die Haftung des Beförderers auslösende Ereignis] verursacht hat und der Beförderer gemäß Artikel 51 CIV / 40 CIM für den Infrastrukturbetreiber haftet. [Der Infrastrukturbetreiber muss sich in diesem Fall im Regress so behandeln lassen, als würde auch er dem Ersatzberechtigten unmittelbar gemäß diesen Einheitlichen Rechtsvorschriften haften.]

Artikel 63 CIV/Artikel 51 CIM
Rückgriffsverfahren

§1 Ein Beförderer **oder ein Infrastrukturbetreiber**, gegen den gemäß Artikel 62 **oder 62bis** (CIV) / 50 **oder 50bis** (CIM) Rückgriff genommen wird, kann die Rechtmäßigkeit der durch den Rückgriff nehmenden Beförderer geleisteten Zahlung nicht bestreiten, wenn die Entschädigung gerichtlich festgesetzt worden ist, nachdem dem erstgenannten Beförderer **beziehungsweise dem Infrastrukturbetreiber** durch gehörige Streitverkündung die Möglichkeit gegeben war, dem Rechtsstreit beizutreten. ...

IV. AMENDMENTS TO THE EXPLANATORY REPORT PROPOSED IN CONNECTION WITH THE AMENDED DRAFT TEXTS

Title I

General Provisions

Article 1

Scope

1. According to Article 1, the CUI Uniform Rules (UR) are applicable to every contract of use of railway infrastructure ~~is international carriage by rail within the meaning of the CIV UR and the CIM UR.~~ **of in a Member State by a train for international railway traffic between States, at least one of which is a Member State.**
 - a) ~~In this context the term “carriage” has the same meaning as in other transport law conventions, such as CMR, Warsaw and Montreal Convention, Hamburg Rules and Athens Convention. The term “international transport” is to be understood in connection with Article 6 of COTIF.~~ **The new criterion for the scope of application of the CUI – following its disconnection from the performance of CIV and CIM contracts of carriage – is a train intended for international traffic. The term “international railway traffic” requires a specific new definition geared towards the train paths used for such traffic (see also paragraph 1 of the comments on Article 3). This need not necessarily be an international train path (i.e. one established by agreement between two or more infrastructure managers); international traffic can also be performed on two or more successive national train paths located in at least two States. Both cases can be referred to as international use of infrastructure.**
 - b) ~~The expression “for the purposes of” (CIV/CIM international carriage) in § 1, makes it clear that the purpose of use is a crucial point. So it does not mean, for example, “during the performance” of international carriage by rail. Therefore, use for the purpose of preparations before the train is made ready and dispatched (before the first passenger gets into the train or the goods are loaded) and for the purpose of the work carried on once carriage has been completed (e.g. cleaning and empty returns) are also included in the scope of the contract of use as long as these actions are linked to subsequent or preceding carriage under CIV or CIM.~~ **On the other hand, a definition of “train” is not necessary, especially as this term is also used in Directive 2012/34/EU without a definition. [To be examined further]**
 - c) ~~The question of whether a “national” or a “foreign” railway undertaking/carrier is using the infrastructure is irrelevant with regard to the application of CUI.~~
 - d) ~~CUI also applies to the use of the railway infrastructure in those States where there has been no separation of infrastructure management from the provision of transport services and hence where an integrated undertaking is working in both areas of railway operation, in so far as foreign railway undertakings are allowed access to the infrastructure in these States.~~
2. ...
3. ~~The CUI Uniform Rules are applicable only insofar as the purpose of the contract of use is international carriage by rail within the meaning of the CIM Uniform Rules and the CIV Uniform Rules.~~ **The CUI UR only apply to the international use of infrastructure. They do not apply to the use of railway infrastructure for domestic traffic. The**

Member States are nevertheless free to provide the same legal system for **domestic internal** traffic.

4. The final sentence of § 1 2 states that the CUI Uniform Rules are also applicable to a railway infrastructure managed by a State or by governmental institutions. In the case of a “state” infrastructure, contracts of use are not necessarily contracts under civil law; it is also possible for them to be contracts under public law. The latter, however, are also subject to the CUI Uniform Rules, particularly with regard to liability.
5. § 2 3 emphasises the fact that these Uniform Rules are concerned only with regulating the relationships of the parties to the contract with one another. As already stated in Nos. 8 to 10 of the General Points, a “parallelism” of competing actions against the auxiliaries of the parties to the contract is intended to exclude any possibility of circumventing the application of the CUI Uniform Rules. As one of the most important examples of the legal relationships which remain subject to the national law, § 2, letter a) states that the liability of employers or principals of auxiliaries towards the latter is not regulated by the CUI Uniform Rules, but by the national law.
6. ~~Whilst the CIV/CIM UR refer to the performance of carriage on the basis of a contract of carriage which concerns each single passenger and each single consignment of goods, the use of infrastructure usually concerns carriage of trains containing a number of passengers and consignments. Among these, there might be passengers carried under a contract of carriage according to the CIV UR as well as other passengers to whom the CIV UR do not apply. The same goes for a train in which there might be consignments carried under a contract of carriage pursuant to the CIM UR as well as other consignments to which the CIM UR do not apply. Use of the railway infrastructure usually concerns trains carrying passengers or freight. [Among these, There might be passengers carried under a contract of carriage according to the CIV UR as well as other passengers to whom the CIV UR do not apply. The same goes for a train in which there might be consignments carried under a contract of carriage pursuant to the CIM UR as well as other consignments to which the CIM UR do not apply.]~~ **The revised scope of application of the CUI UR also covers the international use of infrastructure by trains or individual railway vehicles not carrying any passengers or freight.**
7. *[If need be, move paras. 7 and 8 and the introduction from para. 6 – include under explanations on Article 8]* ~~When it comes to liability for indirect damages, in the event of personal injury, the carrier has~~ **For trains carrying both international passengers and passengers in domestic transport, the following applies in relation to liability for indirect loss or damage:**
 - a) as regards passengers with national tickets (carriage in accordance with national law) who receive compensation from the carrier under national law, **the carrier has** a right of recourse against the infrastructure manager under national law ~~and~~
 - b) as regards passengers with CIV tickets (international contract of carriage) who receive compensation from the carrier under CIV, **the carrier’s right of recourse against the infrastructure manager under CUI (Article 8 § 1 (e) of CUI) depends on the alternative chosen:**
 - i. **Under alternative 1 (“international trains”), the carrier has a right of recourse in accordance with the CUI UR (Article 8 § 1 letter c)) if transport is performed exclusively with one or more international trains (trains for international traffic in accordance with the definition) or, for mixed trains, in the passenger coach intended for international traffic. [If part of the transport of a passenger in possession of a CIV ticket is performed in a train**

or passenger coach operating in domestic traffic only, this does not affect the compensation to be paid to the passenger in the event of an accident; however, the carrier's recourse would be based on national law.]

- ii. Under alternative 2 (“new rule on recourse in the CIV/CIM UR”), both compensation for the passenger and the carrier's recourse would be governed by the CIV UR (new Article 62bis).
8. The same approach would apply *mutatis mutandis* to the right of recourse in case of damage to freight.
 9. ~~However, in the then CUI group, there were differing views on the scope of application of CUI in the case of direct damage. The scope of application of CUI to the case of direct damage may need further clarification in each specific case.~~

Article 3 Definitions

1. These definitions serve to specify the material scope of application and to simplify drafting of the texts. **Following the revision of the scope of application, a new definition of “international railway traffic” became necessary. It is geared towards train paths used for international traffic. International traffic may either be performed on an international train path, i.e. on a train path established by agreement between two or more infrastructure managers, or on two or more successive national train paths if the railway infrastructure is situated in different States. The CUI do not apply to the use of railway infrastructure for domestic traffic. In principle, the Member States are nevertheless free to provide the same legal system for domestic traffic.**
2. ...
3. At its 24th session (23-25.6.2009), the Revision Committee decided to ~~broaden~~ **specify** the definition of the term “**manager**” in letter b) 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 respective obligations.
4. ~~The Revision Committee also decided to broaden~~ The same applies to the definition of the term “**carrier**” in letter c): **The aim of the revision in 2009 was 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.~~ The last revision of the scope of application of the CUI, the aim of which was to disconnect it from CIV/CIM contracts of carriage, resulted in a further amendment to the definition of “carrier”: The reference to the performance of international transport in accordance with the CIV or CIM UR has been deleted. In addition, the wording was aligned with similar definitions in the legal system of COTIF (Art. 2 letter c) CUV) or in EU law (Art. 3 of Directive 2012/34/EU). The improved wording makes it clear that both legal and natural persons may be carriers.**

...

Article 8
Liability of the manager

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 (**damage caused by management failure or infrastructure fault**). **and the amount of the damage**. 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 5th General Assembly indicates even more clearly that the version adopted by the Revision Committee stipulates the principle of objective liability.~~

2. **For personal injury, liability, including the grounds for relief from liability, is based on the relevant provision of the CIV UR and for material damage on the relevant provisions of the CIM UR.** ~~The text of § 1, letter b) states that liability for loss or damage to property does not include liability for (purely) pecuniary loss. An exception to these, according to § 1, letter c), is pecuniary loss resulting from damages payable by the carrier in accordance with the CIV Uniform Rules or CIM Uniform Rules. Damages suffered by means of transport are damages to property suffered directly by the carrier, even if these means of transport are not the carrier's property according to civil law, but are at the carrier's disposal by virtue of a contract in accordance with the CUV Uniform Rules (Report on the 5th General Assembly, p. 126/127).~~ **In contrast, purely pecuniary loss (loss of use) is not covered.**

3. *Explanations concerning pecuniary loss – depends on the alternative that is chosen for the carrier's recourse [if need be, move paragraphs 7 and 8 of the explanations on Article 1, together with the introduction in paragraph 6, to here].*

Alternative 1:

Bearing in mind the revised scope of application, § 1 letter c) is to be interpreted to the effect that it only applies to pecuniary damage in trains (or wagons) for international railway traffic, see para. 1 of the explanations on Articles 1 and 3.

Alternative 2:

§ 1 letter c) was deleted, as the carrier's recourse in the event of compensation to be paid in accordance with the CIV or CIM UR, which it previously covered, is now dealt with directly in the CIV UR (Art. 62bis) and the CIM UR (Art. 50bis) (reference to corresponding explanations on the CIV and CIM UR).