



Organisation intergouvernementale pour les transports internationaux ferroviaires  
Zwischenstaatliche Organisation für den internationalen Eisenbahnverkehr  
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**Groupe de travail « RU CUI »  
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Comments from the International Rail Transport Committee (CIT)



Comité international  
des transports ferroviaires

Internationales  
Eisenbahntransportkomitee

International Rail  
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## **CIT Response to the OTIF General Secretary's Amended Draft Texts following the Third Session of the Working Group on the CUI Uniform Rules (A 91-01/501.2016)**

Dear Secretary General

On behalf of the CIT, I would like to thank you for the opportunity to comment on your amended draft texts for the CUI Uniform Rules. My comments refer to the scope, the definitions and the carrier's recourse.

### **1. The scope**

The CIT believes that the draft for the scope (Article 1 § 1 CUI) taken in conjunction with the new definition for international railway traffic (Article 3 aa) as notified in the letter dated 29 January 2016 from the OTIF Secretary General represents a step in the right direction. The text for the scope is formulated clearly and precisely and extends to the use of both international train paths and the use of successive national train paths so that the substance of the rules for contracts between infrastructure managers and railway undertakings for the use of railway infrastructure reflects current practice.

### **2. The definitions, Article 3**

#### **a) The definition of 'international railway traffic'**

Article 1 § 1 of the CUI Uniform Rules (Scope) makes reference to the term 'international railway traffic'. For that reason its definition needs to be formulated very carefully and precisely.

The CIT believes that the new draft text for the definition of 'international railway traffic' meets this requirement since the new formulation includes the use of several successive national train paths in addition to the use of international train paths for an international train. Furthermore, the definition correctly includes those cases in which a train provided for International railway traffic nevertheless (for whatever reason) has not crossed the frontier of the Member State in question.

In any event with reference to the last half sentence of the definition ('... and coordinated by the infrastructure managers concerned'), the question arises of whether the CUI Uniform Rules also apply if the infrastructure managers have omitted to coordinate successive train paths. The CIT's view is that a

solution which makes the application of the CUI Uniform Rules depend only on the infrastructure managers concerned (coordinating train paths) would be unsatisfactory.

### **b) The definition of ‘carrier’**

The third session of the OTIF Working Group on the CUI Uniform Rules held on 24 November 2015 decided by a majority to retain a definition for carrier in the CUI Uniform Rules and simply to make editorial changes as a function of the revision of the scope. We would like to emphasise that this definition of carrier is not the same as the concept of carrier in the CIV and CIM Uniform Rules. For the CIT, this again raises the question of whether the term ‘carrier’ is really needed in the CUI Uniform Rules and if it wouldn’t be more accurate to replace it by the more general term ‘user’ as the party contracting with the infrastructure manager.

### **3. The carriers right of recourse**

#### **a) The first variant: retention of the current rule-within the framework of the newly defined scope in Article 8 § 1 c) CUI**

Under the current rule in the CIV and CIM Uniform Rules, the right of recourse under Article 8 § 1 c) CUI also applies when a part of the international carriage takes place on a train making a national journey. The CIT is not able to support a worsening of the current rules but rather regards that as a step backwards from unified law.

It seems to us that there are two approaches to ensure legal equivalence with the current law.

- To provide additional clarification, a new paragraph (in Article 1 or 8 of the CUI Uniform Rules) could point out that the carrier’s (or user’s) right to recourse against the infrastructure manager for pecuniary losses refers to all compensation under the CIM and CIV (and therefore does not only refer to those arising from movements in international trains).
- It would also be possible to combine both variants proposed by the OTIF Secretary General for the right of recourse. The formulation for Article 8 § 1 c) CUI as set out in the proposed text sent out on 29 January 2016 may be adopted if, in addition, the new Articles 62bis and 63 CIV and 50bis and 51 CIM (the second variant) are supplemented in the CIV and CIM Uniform Rules.  
In addition, the last sentence in brackets in Articles 62bis CIV and 50bis CIM may be incorporated (if slightly amended editorially) into Article 23 (recourse) (which remains in the CUI statutory provisions) so that it then reads: ‘In the event of the carrier taking recourse, the infrastructure manager who caused the loss or damage shall be treated as if he were directly liable to the person entitled for compensating the carrier in accordance with the CIV and CIM Uniform Rules.’

This formulation ensures legal coherence and clarity.

#### **b) The second variant: deal with the carrier’s recourse (new) in the CIV and CIM Uniform Rules**

The CIT considers likewise that the adoption of rules for recourse in the CIV and CIM Uniform Rules represents a feasible route to a fair and balanced liability regime, since the infrastructure manager is liable to the carrier (user) for pecuniary losses in the same way as the carrier to his customers.

In any event, we would like to point out that hitherto the infrastructure manager has not been mentioned in the CIV and CIM Uniform Rules (up to Article 40 CIM and Article 50 CIV) and that the CIV and CIM Uniform Rules make no direct reference to the CUI Uniform Rules. In our view the OTIF Secretary General’s CUI Uniform Rules Working Group should therefore consider to what extent a direct reference to the CUI Uniform Rules is to be made and if, when dealing with the carrier’s recourse, provisions in the CUI Uniform Rules which are linked should be transferred into the CIV and CIM Uniform Rules or if a reference is to be made to them (for example, Articles 18 CUI and 21-25 CUI). In addition, rules in the various different provisions of the CUI on the one hand and the CIM and CIV on the other hand which then become applicable should not contradict each other.

Finally, once again we would like to take the opportunity to raise the issue of other pecuniary losses (independent of compensation arising from the CIV and CIM Uniform Rules, such as compensation arising under Regulation (EC) No 1371/2007 on rail passengers' rights and obligations). We note that the OTIF Secretary General has planned for this to be discussed in a subsequent phase.

We expressly reserve the right to make further written suggestions and adopt positions at a later date or make them orally at the next session of the OTIF Secretary General's Working Group on the CUI Uniform Rules (to be held on 31 May 2016). In addition, once views on the revision of the CUI Uniform Rules have stabilised, we will input further remarks on the Explanatory Report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'C. Brand', with a stylized flourish at the end.

Cesare Brand  
Secretary General