



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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## **4<sup>TH</sup> SESSION**

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Position of the Netherlands

**E-mail received from Ms. Monique van Wortel, Ministry of Infrastructure and the Environment, Directorate-General for Mobility, dated 15 March 2016**

With reference to the proposal of the OTIF secretariat in the Annex to the circular A 91-01-501.2016 I would like to inform you as follows.

- Article 3 CUI: definition of carrier

The proposed definition of carrier differs with the definitions of carrier used in CIM and CIV. It has some elements of the definition in the Recast 2012/34/EU, article 3.1, but not in the same words. This does not improve the consistency of the legal system. We suggest to improve the consistency. Furthermore we doubt what the impact is of a deletion of a reference to CIM/CIV on the one hand, and on the other hand referring to carrying persons and/or goods. Why not keeping the reference to CIM/CIV UR?

- Article 8 dealing with carrier's recourse:

Alternative 1 (French proposal): our concern is the broadening of the scope of application and liability, furthermore we think that "*in transport by a train performing*" does not add much value. When deleting the link with CIV/CIM UR in article 8 lid 1 sub c the RU has a broader right of recourse than at the moment in CUI. This has financial consequences for the IM and for the state. In the NL view we should keep the right of recourse as it currently is in CUI, and not broaden/restrict this right.

Alternative 2 (prof. Freise, dealing with carrier's recourse in CIM/CIV): same concern, it would be an extension of the scope of application of the CUI. Furthermore, we feel that the relation carrier-infrastructure manager should be dealt with in CUI.

We therefore developed an alternative proposal for article 8 CUI to deal with the carrier's recourse. As explained, in the NL view the link with CIV/CIM should be kept in article 8 para. 1 sub c. Furthermore, we linked "international railway traffic" with "the use of infrastructure" and came to the following text:

Article 8 CUI

*§ 1. The manager shall be liable:*

...

*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**, caused to the carrier or to his auxiliaries during the use of the infrastructure **for international railway traffic** and having its origin in the infrastructure.*