



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"**

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Comments from Switzerland

E-mail from Mr Marcel Hepp, Federal Department of the Environment, Energy and Communication, Federal Office for Transport, dated 23 March 2016

Switzerland has the following comments on the proposals dated 29.1.2016 resulting from the 3rd session of the CUI UR working group:

We are not yet convinced that the proposed amendments concerning the right of recourse provisions (currently Art. 8 § 1 c) CUI) are an improvement on what applies at present.

Justification:

As things stand, it is clear that when the carrier is liable under CIV or CIM, he always has a right of recourse against the infrastructure manager insofar as the damage has its origin in the infrastructure (Art. 8 § 1 c) CUI). In our view, this should continue to be the case. Such a right of recourse is always required if passengers with an international ticket (CIV) or goods in accordance with CIM are also carried in a train. If such a train is involved in an accident, international passengers will have a claim against the railway undertaking in accordance with CIV and national passengers in accordance with national law. This is irrespective of whether a contract of use of railway infrastructure in accordance with CUI has been concluded.

Consequently, the rules on recourse should be based on international law (COTIF CIM) for international passengers and on national law for national passengers. A corresponding addition to the scope of application could therefore be explored: For example, a new Article 1 § 1bis CUI could be included:

“They (the Uniform Rules) apply to the manager’s liability for pecuniary loss resulting from damages payable by the carrier under the CIV Uniform Rules or the CIM Uniform Rules.”