



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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4TH SESSION

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.

The working group was initially set up to revise Articles 1 and 3 of the CUI UR. Articles 8 and 23 were incidentally affected, thus requiring them to be revised.

I / Article 1 § 1: Scope

SG's draft following the third session of the working group:

“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.”

Comments from France

1) [For the French version], the new proposal takes over the wording previously proposed before the third session of the WG: *“use of railway infrastructure of a Member State”*. This could lead one to assume that the CUI UR would only apply in States where the State owns the infrastructure.

In addition, the English version “use of infrastructure in a Member State” is translated: « *utilisation de l'infrastructure dans un Etat membre* ». France supports the wording “**utilisation de l'infrastructure d'un dans un Etat membre**” (*use of infrastructure in a Member State*) in order to avoid any confusion, particularly in cases where the State is not the legal owner of the infrastructure.

2) This proposal excludes de facto carriers who perform part of an international journey with a domestic train. The link between these trains and the concept of “*international rail traffic*” is mainly circumstantial as a result of passengers who are undertaking part of their international journey on board. This certainly entails consequences in terms of exercising the carrier's right of recourse in case of an accident caused by an infrastructure defect. Indeed, the right of recourse regime applicable to the carrier against the infrastructure manager in this case cannot be dealt with in Article 8 of the CUI UR owing to the exclusion of domestic trains from the scope of the CUI UR. The right of recourse is then exercised in accordance with national law.

II / Article 3: Definitions of “international railway traffic” and “carrier”

SG's draft following the third session of the working group:

Article 3, paragraph aa) “international railway traffic”

“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”.

Article 3, paragraph c “Carrier”

“Carrier” means the natural or legal person the principal business of which is to carry persons and/or goods by rail in international traffic 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”.

Comments from France

1) “International railway traffic”

- Article 1 [of the French version] refers to “trafic international ferroviaire”, whereas Article 3 refers to “trafic ferroviaire international”: the two should be harmonised;

2) “Carrier”

In this definition, carrier is linked to freight and/or passenger traffic. It therefore excludes all trains that are not carrying freight or passengers, particularly trains performing empty runs.

The definition below can take account of freight and passenger trains, as well as trains performing empty runs.

Proposal transmitted by France

“Carrier” means the natural or legal person the principal business of which is to carry persons and/or goods, by rail in international traffic who uses an empty or full commercial train to perform a journey by international railway traffic, 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”.

III / Article 8: Liability of the manager

A / Article 8 § 1 c)

SG’s draft:

§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 **[in transport by a train performing international railway traffic]**

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

Comments from France

At the 3rd session of the CUI UR working group, it emerged that following the amendment of the scope of the CUI UR, Article 8 dealing with the exercising of the carrier's right of recourse against the infrastructure manager should be amended along the same lines. In connection with this, the Secretary General maintained two alternatives that were submitted at the 3rd session for the Member States and international organisations to consider.

1st Alternative: proposed by France

Carrier's recourse to remain under Article 8 § 1 c) of the CUI, the scope having been redefined

It was proposed to amend Article 8 § 1 c) in the same way as Article 1, i.e. to delete the reference to CIV and CIM and to restrict the scope to trains performing international railway traffic. As a result, domestic trains performing part of an international journey are excluded from the carrier's right of recourse against the infrastructure manager. In this case, the right of recourse is exercised in accordance with national law.

The Secretary General has pointed out the disadvantage of this alternative, i.e. "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".

The French authorities agree with the Secretary General's question and propose that it be put to the Member States and international organisations for consideration at the 4th session of the working group. In reality, the question is how the CUI UR are applied to these trains at present. It is certainly necessary to clarify the scope of the CUI UR, but the purpose of the working group is not to amend it. It is therefore important to know what the infrastructure managers' and carriers' current practices in the various Member States are before dealing with this question.

2nd Alternative: proposed by Mr Freise, expert of OTIF/Germany

Deal with the carrier's right of recourse (new) in the CIV and CIM UR

It is proposed to transfer the entire exercise of the carrier's right of recourse to the CIV/CIM UR.

Comments from France

This proposal is to include a new provision in the CIV and CIM UR worded along the lines of Articles 50 and 62 of CIV. As was pointed out in the conclusions of the 3rd session of the working group, this alternative has the advantage of establishing "a 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". It should therefore be emphasised that if the carrier's right of recourse against the infrastructure manager is dealt with in the CIV/CIM UR, it remains to be seen which Appendix will govern the case of international trains not carrying freight or passengers, because the CIV/CIM UR can only deal with the carriage of freight and passengers. In addition, this alternative does not make it possible to exclude from the exercise of the right of recourse those domestic trains that perform part of an international journey, because if the criterion of exercising the right of recourse is linked to the CIV/CIM, all trains can exercise this right of recourse, including domestic trains if they are carrying a CIM passenger.

Furthermore, it is also important to remember that:

- Article 50 CIM (carriers' right of recourse) governs the right of recourse between carriers that have taken part in a freight transport chain.
- Article 62 CIV (right of recourse) governs the right of recourse between carriers that have taken part in a passenger transport chain.

It would not therefore be in line with the spirit of COTIF (7 Appendices each dealing with a specific topic of international transport) to deal sequentially, in one Appendix, with the right of recourse between carriers and the right of recourse between carriers and infrastructure managers; the two issues come under different rules.

It should also be pointed out that the disadvantage of this alternative is that the CIM and CIV UR would have to be revised in parallel with the CUI UR.

V / Amendments to the Explanatory Report

a) Amendment to the Explanatory Report on Article 1

Proposal from the Secretary General

A new paragraph has been added to points 6 and 7.

Point 6) Use of the railway infrastructure usually concerns trains carrying passengers or freight. [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. "**

Point 7) "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.]"

Point 8) The same approach would apply *mutatis mutandis* to the right of recourse in case of damage to freight."

The Secretary General also proposes to transfer the newly inserted point 6 and points 7 and 8 to the explanations on Article 8 (right of recourse). This seems logical with a view to the overall consistency of the Explanatory Report.

Comments from France

The elements covered by point 6 mean that trains not carrying freight or passengers can be taken into account and also deal with the case of domestic passengers on board an international train or goods with an internal destination on board a mixed train. France proposes to add a paragraph specifying compensation arrangements in these two cases.

The proposed paragraphs 7 and 8 are important insofar as they clarify the problem of the right of recourse in the context of a domestic train performing part of an international journey or goods with a domestic destination in a mixed train.

b) Amendment to the Explanatory Report on Article 8

Proposal by France: transfer points 6, 7 and 8 (explanation on Article 1) to the explanations on Article 8 § 1 c)

Point 6) “Use of the railway infrastructure usually concerns trains carrying passengers or freight. 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.

Passengers to whom the CIV UR do not apply and consignments to which the CIM UR do not apply shall be compensated in accordance with national law, even if the damage suffered results from the use of infrastructure on an international railway journey.”

Point 7) “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. **On the other hand**, 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.”

Point 8) The same approach would apply *mutatis mutandis* to the right of recourse in case of damage to freight.”