



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-16019-CUI 4/4 Add. 13  
29.04.2016**

Original: FR

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

---

Comments from Luxembourg/CFL

The Government of the Grand Duchy of Luxembourg  
Ministry of Sustainable Development and Infrastructure

Transport Department

Luxembourg, 7 April 2016

Reference: RAIL/2016/13381

Ref: **Comments on the draft texts from the Secretary General amended following the 3<sup>rd</sup> session of the CUI UR working group**

For the attention of Mr François Davenne, Secretary General of OTIF.

For the Minister of Sustainable  
development and Infrastructure

*Sig.*

Jeannot POEKER  
Chief principal inspector

Annex(es):

Copy of letter from CFL dated 31 March

**CFL SOCIETE NATIONALE  
DES CHEMINS DE FER LUXEMBOURGEOIS**

---

Direction Générale

**Monsieur François BAUSCH  
Ministre du Développement durable  
et des Infrastructures  
L-2938 Luxembourg**

Luxembourg, 31 March 2016

Your reference : RAIL/2016/13381  
Your letter of : 9 February 2016  
Our reference : GI/RE 83035-92138  
119/03/2016

Ref: Draft texts from the General Secretariat of OTIF amended following the 3<sup>rd</sup> session of the CUI UR working group

Dear Minister,

Following your letter of 9 February concerning the draft texts from the General Secretariat of OTIF amended following the 3<sup>rd</sup> session of the CUI UR working group, I am honoured to send you CFL's position on this matter.

With regard to the scope, as the aim is to define more clearly which types of transport are concerned by the uniform rules in Appendix E to COTIF and not to modify their scope, the end of Article 1 § 1 should read "by a train for international railway traffic **between two Member States**."

In addition, the reference to transport in the sense of the CIV or CIM Uniform Rules as the principal purpose of the transport service should be maintained, whether in this Article or in the definition of international railway traffic in Art. 3. Article 3 should refer to Member States and not just to States. Art. 3 aa) could therefore be amended to read: "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 **Member States** and coordinated by the infrastructure managers concerned, **the principal purpose of which is carriage within the meaning of the CIV or CIM Uniform Rules**.

With regard to the definition of carrier in Art. 3 c), we see no need to introduce the term "principal business". On the other hand, the reference to the CIV or CIM Uniform Rules should be maintained. So if the definition really has to be changed, it could read: "carrier" means the natural or legal person **who carries** persons and/or goods by rail in international **railway traffic under the CIV Uniform Rules or the CIM Uniform Rules** and who is licensed ..." etc.

With regard to the two alternatives for the carrier's recourse, it would be better to keep the current provisions without amending them, i.e. by maintaining the reference to the CIV or CIM Uniform Rules. This is because the aim is not in fact to amend the scope of Appendix E to COTIF.

We would not advocate transferring the liability provisions into the CIV and CIM Uniform Rules. Issues concerning pecuniary loss should not be dealt with separately. The infrastructure manager is not aware of the contractual relations that link the carrier and its customers and, unlike the carrier, has no way of passing on the operational risks (particularly pecuniary loss) onto the amount of the fees for using the infrastructure.

In addition, if the liability provisions are transferred, the provisions of Art. 8 § 2 and Art. 5bis would also have to be included in the CIV and CIM Uniform Rules.

Lastly, it should be recalled that a lot of Member States entered reservations concerning the CUI Uniform Rules. It does not seem a good idea to transfer clauses from the CUI into documents which are not currently the subject of any reservations.

Yours faithfully,

The Director General, p.p.

*signed*

*stamped:*

*received: 4 April 2016*

*at the Ministry of Sustainable Development and Infrastructure of Luxembourg*