



Organisation intergouvernementale pour les transports internationaux ferroviaires  
Zwischenstaatliche Organisation für den internationalen Eisenbahnverkehr  
Intergovernmental Organisation for International Carriage by Rail

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# **CUI UR Working Group**

## **4<sup>th</sup> session**

### **(Berne, 31.05.2016)**

## **Report**

## **AGENDA**

1. Opening of the session and election of Chair
2. Adoption of the agenda
3. International train path ordering process and other information from associations of stakeholders
4. Partial revision of the CUI UR – discussion on the draft texts from the Secretary General following the 3<sup>rd</sup> session, regarding
  - scope of application of the CUI UR,
  - definitions, and
  - carrier's recourse against the infrastructure manager
5. Other questions and proposals/suggestions received from Member States/stakeholders
6. Subsequent procedure
7. Any other business

## DISCUSSIONS

### 1. Opening of the session and election of Chair

The Secretary General, **Mr Davenne**, opened the session and welcomed all the experts attending from the Member States and the interested associations. He thanked them for the comments and proposals received, the number and quality of which demonstrated the keen interest there was in the work of the working group.

The **working group** elected **Mr Kristof Schockaert (BE) to chair** this session. The chairman thanked the meeting for electing him.

### 2. Adoption of the agenda

Doc. LAW-16002-CUI 4/2 – Provisional agenda

The provisional agenda was adopted by consensus.

### 3. International train path ordering process and other information from associations of stakeholders

Doc. LAW-16003-CUI 4/3 – Information provided by EIM

**EIM** explained that the overview in this document had been produced in cooperation with RNE. The document provided a summary of information from individual infrastructure managers who had expressed an opinion on the questions raised by OTIF in a survey.

With reference to this interesting document, the **SG** pointed out that according to his proposal for the scope of application of the CUI, only the use of railway infrastructure by commercial trains should be covered. Accordingly, non-commercial use was outside the scope of application.

At the invitation of the **chairman, Mr Peter Jäggy**, the Secretary General of **Forum Train Europe (FTE)** provided an overview of the FTE's activities, particularly the coordination processes within FTE and RNE for the production of international timetables, the time frame and procedure for ordering train paths, including paths for transport on international rail freight corridors (RFC).

The **chairman** thanked him for this very interesting presentation, which had given participants a better understanding of this very complex issue (Annex 2).

### 4. Partial revision of the CUI UR – discussion on the draft texts from the Secretary General following the 3<sup>rd</sup> session, regarding

- scope of application of the CUI UR,
- definitions, and
- carrier's recourse against the infrastructure manager.

Documents:

LAW-16004-CUI 4/4	Draft texts from the Secretary General following the 3 <sup>rd</sup> session
LAW-16005-CUI 4/4 Add. 1	Comments submitted by Prof. Freise
LAW-16007-CUI 4/4 Add. 2	Position of the European Rail Infrastructure Managers (EIM)

LAW-16008-CUI 4/4 Add. 3	Comments from the International Rail Transport Committee (CIT)
LAW-16009-CUI 4/4 Add. 4	Position of the Netherlands
LAW-16011-CUI 4/4 Add. 5	Comments from Switzerland
LAW-16012-CUI 4/4 Add. 6	Position of France
LAW-16013-CUI 4/4 Add. 7	Comments from Serbia
LAW-16014-CUI 4/4 Add. 8	Position of Poland
LAW-16015-CUI 4/4 Add. 9	Position of the United Kingdom
LAW-16016-CUI 4/4 Add. 10	Comments from the European Commission
LAW-16017-CUI 4/4 Add. 11	Position of Sweden
LAW-16018-CUI 4/4 Add. 12	Position of Germany
LAW-16019-CUI 4/4 Add. 13	Comments from Luxembourg/CFL

In a presentation, the **Secretary General (SG)** summarised his draft texts, which had been amended following the 3<sup>rd</sup> session of the working group, and the comments on them that had been received. The Member States agreed that the scope of application of the CUI should only cover international traffic. A lot of the comments would concern the question of the extent to which it was necessary to dissociate the scope from the CIV and CIM UR. He said he would come back to this question.

Some of the slides in this presentation were used as the basis for the subsequent discussion.

#### **I. Scope of application and definitions of “international railway traffic” and “carrier”** Basis: Proposals from Germany and the United Kingdom (slide 22)

The **SG** thought one advantage of Germany’s proposal for **Article 1 § 1** (slide 14) was that the text was simply worded; further clarification was provided via the definitions. Also, the expression “use... **in** international railway traffic” was clearer than “use... **for** international railway traffic”. The use of the word “for” was indeed unclear.

For the term “**international railway traffic**”, he proposed to keep the definition drafted at the 3<sup>rd</sup> session. Following another examination and bearing in mind the opinion expressed in the majority of the comments, he supported keeping the term “**carrier**”, including the reference to the CIV and CIM UR, as proposed by **GB** in its comments.

The **chairman** put forward these proposals for discussion. The discussion focussed on the following questions:

- In which provisions was a reference to the CIV and CIM UR necessary? (see **GB**, **NL**, **EIM** proposals)
- Is it suitable to define “international railway traffic” by means of the actual coordination of successive national train paths? (see position of **CIT**)

**EIM** welcomed these new proposals by the **SG**, but added that the definition “international railway traffic” should also relate to the CIV and CIM UR.

**NL** also supported keeping the term “carrier”, including the reference to the CIV and CIM UR, in order to make absolutely clear that only commercial trains were concerned. **NL** also supported the proposal by **EIM**.

**FR** was of the view that if one wished to establish a link to the CIV/CIM UR, this should be done directly in Article 1 § 1, rather than in the definition of “international railway traffic”. What should certainly be avoided was anything that might be interpreted as meaning that successive national train paths intended for domestic transport were also included.

**DE** expressed concern about including “licensing” as part of the definition of “carrier”, as the issuing of licenses was governed by public law. **DE** also thought the term “user” was more suitable, as the CUI UR really dealt with the relationship between the user and the infrastructure manager.

In contrast, **FR** and **NL** were convinced that the license and safety certificate were necessary prerequisites for a carrier to be able to conclude a contract of use with an infrastructure manager. An applicant in the sense of Directive 2012/34/EU could not conclude a contract of use. This would have to be reflected in the definition of “carrier”.

The **SG** thought it was tricky to introduce the new term “user” into the CUI UR, especially as there was a connection between the legal relationships in accordance with CIV and CIM on the one hand and the legal relationships in accordance with CUI on the other (slide 21).

**Prof. Freise** supported **FR**’s view: If the reference to the CIV and CIM UR were to be maintained, this should be done in Article 1 § 1. If not, Article 1 could give the impression that the CUI UR were referring to every user of the railway infrastructure.

**CH** pointed out the difference in the definition of “carrier” between the CIV/CIM UR and the CUI UR. Only the CUI UR required this person to be in possession of a license.

**Prof. Freise** explained that in terms of CUI, a carrier was a transport undertaking; without the requirement for a license, “carrier” could also be a forwarder here (as in the CIM). In terms of this definition, it should be remembered that a forwarder could neither suffer direct damage (caused by the infrastructure), nor could it cause direct damage (to the infrastructure).

**GB** reminded the meeting of its proposals on all three provisions (Art. 1 § 1, Art. 3 aa) and c)) (slides 13, 15 and 17). With regard to Article 1 § 1, it was important to point out that this would have to concern traffic between two Member States; the CIV and CIM UR could be referred to in the definitions.

The **SG** said he agreed that it was necessary to refer to the CIV and CIM UR, but not in all three provisions.

**Prof. Freise** concluded that the revised scope of application of the CUI UR should not cover every international use of the railway infrastructure. In that case, there were two ways of establishing the link to the CIV and CIM UR, i.e. directly in Article 1 § 1 or by naming the parties to the contract of use in Article 1 § 1 and referring to the CIV and CIM UR in the definitions.

**EIM, FR, NL, BE** and **GB** preferred the first option.

**CIT** was very surprised by this development and asked what the point of the revision was. The currently applicable text already referred to the CIV and CIM UR. First the reference had been dropped and now it was being included as an additional element, so that both “international railway traffic” in the sense of the new definition, and a CIV/CIM transport operation as the purpose were being made two conditions to be met at the same time.

**Prof. Freise** confirmed that the original approach, namely the disconnection of CUI from transport in accordance with CIV/CIM, would have led to a certain extension of the scope of application. However, it appeared that the majority of Member States did not support this. Under these circumstances, he also thought the first option to refer to the CIV and CIM UR directly in Article 1 § 1 was the better

solution. The words “under the CIV or CIM Uniform Rules” could be deleted from Article 3 c) (in the version shown on slide 22) and could again be included in Article 1 § 1 (same slide).

Following a proposal from **GB** and **CH**, this part of the sentence in Article 1 § 1 was amended as follows: “... in international railway traffic for the purpose of the CIV or the CIM Uniform Rules.”

The **working group** thus provisionally agreed on the following wording:

### “Article 1 Scope

§ 1 These Uniform Rules shall apply to any contract of use of railway infrastructure **in a Member State in international railway traffic** for the purposes of ~~international carriage within the meaning of~~ the CIV Uniform Rules and the CIM Uniform Rules.

There was general agreement that empty trains (non-load runs) used in such international traffic should also be covered. The **working group** therefore tacitly adopted FR’s proposal for the Explanatory Report on Article 1, para. 6 (slide 20). The proposal was as follows:

“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.**”

The proposal to amend the definition of “carrier” was adapted as follows:

### “Article 3 Definitions

For the purposes of these Uniform Rules the term

...

c) “carrier” means **the natural or legal person who which** carries persons **and/or** goods [by rail] in international **railway traffic** ~~under the CIV Uniform Rules or the CIM Uniform Rules~~ and ~~who which~~ **which** 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;”

**CIT** did not support the last half sentence in the definition of “**international railway traffic**” (“... and coordinated by the infrastructure managers concerned”). **CIT** pointed out that there were cases in which coordination was required, but did not actually take place. According to **CIT**, relevant information provided by the carrier should be the focus, rather than actual coordination: “... provided the managers are informed”. This position and suggestion were the result of the railway undertakings’ experience in practice. An example of this was the train from Brussels to Amsterdam, for which waiting times at the border had to be accepted because the train paths had not been coordinated.

**CER** confirmed that this was a problem in practice. Against this background, the question arose as to what happened if the required coordination did not take place.

The **SG** said the question of what happened if the required coordination did not take place was not relevant to the revision of CUI. At the moment at least, this was a question of EU law. However, OTIF’s future strategy also included the issue of operational interoperability beyond the EU. This

would mean trying to achieve a certain amount of harmonisation with EU law. So a discussion on such issues within OTIF could only take place at a later stage.

**CH** welcomed this view.

**EIM** did not dispute that there were problems with coordination in practice. The infrastructure managers would work on this.

**FR** emphasised that Directive 2012/34/EU did not prescribe the result of the coordination, merely an obligation to coordinate. Information from a carrier would not be sufficient. This would be a completely different concept. In addition, it could not be assumed when drafting legislation that the rules (prescribing coordination) would not be complied with. If Directive 2012/34/EU were not correctly implemented in all the EU Member States, trying to correct this by revising the CUI would not be the right approach.

The **SG, GB** and **NL** shared this view.

**CIT** emphasised that in practice, it was the nature of the transport service that made coordination necessary. In addition, the Directive only imposed an obligation on the Member States, not directly on the infrastructure managers.

The majority rejected an idea resulting from a discussion between **CH** and **FR** to establish a link to the (infrastructure managers') obligation to coordinate. In addition, the majority of Member States shared the view expressed by **Prof. Freise** that it was not sufficient to deal with the issue of coordination only in the Explanatory Report. In the outcome of this discussion, the coordination of successive train paths was recognised as an important feature for the definition.

Following a brief discussion on the wording of this definition ("traffic which implies/requires/concerns"), the **working group** agreed provisionally on the following wording:

"For the purposes of these Uniform Rules the term

**aa) "international railway traffic" means traffic which requires 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".**

## **II. Liability and carrier's recourse**

Basis: current wording of Article 8 § 1, but taking into account an editorial proposal by Prof. Freise (slide 32)

With reference to the opinion expressed in the majority of the comments received in writing, the **SG** was in favour of maintaining the current concept concerning the carrier's right of recourse against the infrastructure manager. The majority did not support the second option (slide 8) as proposed by Prof. Freise, according to which the carrier's recourse for CIV and CIM compensation (i.e. the infrastructure manager's liability for pecuniary damage suffered by the carrier) would be dealt with in the CIV and CIM UR in such a way that the scope of the infrastructure manager's liability would correspond exactly to the scope of the carrier's liability to its customers.

The **SG** acknowledged **DE**'s logically thought out approach of consistently contractual, symmetrically constructed liability. However, this was linked to the term "user" and would also mean a fundamental change to the current system. From the comments received, he concluded that the majority of Member States and stakeholders did not wish to see a fundamental change to the current system, just clarifica-

tion (slide 31). He was certain that by clarifying the scope, the current system of liability could function well.

Based on the critical comments from DE and Prof. Freise, he nevertheless conceded that the current Article 8 § 1 was worded somewhat unfortunately. In relation to indirect damages (Art. 8 § 1 c)), the part of the sentence “caused to the carrier or to his auxiliaries during the use of the infrastructure” was inappropriate, as pecuniary damage was not incurred during use, but only once compensation had been paid; in addition, this could only be caused to the carrier, not to his auxiliaries, unlike direct damages. This editorial flaw could be corrected by including a new paragraph better adapted to pecuniary loss in place of paragraph c):

“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),
- e) ~~for pecuniary loss resulting from damages payable by the carrier under the CIV Uniform Rules and the CIM Uniform Rules,~~

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

**The manager shall also be liable for pecuniary loss resulting from damages payable by the carrier under the CIV Uniform Rules and the CIM Uniform Rules when such loss has its origin in the infrastructure.”**

NL agreed to keep the reference to the CIV and CIM UR in Article 8 § 1. With regard to excluding the auxiliaries from the new paragraph, NL reserved the right to examine this more closely.

**Prof. Freise** explained that a substitute carrier that might be liable was covered by the definition in Art. 3 c). Other “auxiliaries” could not suffer this type of pecuniary loss.

**CH** thought the proposal to amend Article 8 § 1 was reasonable.

**DE** remained to be convinced of the proposed editorial amendment. From DE’s point of view, consistent use of the term “user” would be a better solution. DE also reserved the right to examine this further.

In contrast, **GB** and **FR** supported the proposed amendment.

**CIT** called on the Member States to avoid an unbalanced system of liability. There was a major financial burden on railway undertakings as a result of various types of compensation. In addition to compensation under the CIV UR, the compensation of passengers under the EU passengers’ rights regulation (PRR) also had to be paid for. In order to make railway undertakings competitive, they would also have to have a right of recourse for compensation paid under the PRR.

**CH** emphasised that Article 8 CUI could only govern pecuniary loss caused as a result of compensation paid under COTIF. Consequently, rights of recourse in connection with the PRR could only be covered if the PRR were part of COTIF.

The **SG** added that there was nothing to stop railway undertakings including other rights of recourse in their contracts.



According to **CIT**, equality of the contracting parties was an illusion; it was a fact that the infrastructure manager had the upper hand.

**EIM** pointed out that any change to the liability regime as such, particularly with regard to the carrier's pecuniary loss, was a delicate matter for infrastructure managers.

The **chairman** closed the discussion, noting that in principle, the Member States agreed with the amendment proposal presented by the SG. Two Member States entered a scrutiny reservation (NL and DE). **BE** said it would also have to examine the proposal.

The **working group** tacitly adopted FR's proposal for the Explanatory Report on Article 8, para. 6 with the sentence added by the Secretariat (slide 33). The proposal was as follows:

**“6. 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. And the same goes for carrier's recourse.”**

## **5. Other questions and proposals/suggestions received from Member States/stakeholders**

Under this agenda item, the **chairman** explained that it was primarily the proposals from DE that could be discussed.

The **SG** said that in its comments, DE had considered the text of CUI as a whole and had included all the consequential amendments for each amendment. However, there were some issues the working group had not yet dealt with.

The **chairman** led the discussion on these issues (slides 34 to 44).

The **Secretariat** presented some of the proposals. Among other things, they concerned Article 4 (Mandatory law) and Article 5 (Contents and form [of the contract of use]).

**NL** said it could not support going beyond the working group's mandate.

The **SG** explained that the Secretariat had also included DE's proposals on Article 9 (Liability of the carrier) in this part of the presentation (“Proposals regarding other issues”) because they did in fact concern issues other than those mentioned under agenda item 4. But this issue was not outside the working group's mandate.

The **SG** and the **Secretariat** again pointed out that the consistently contractually arranged liability according to DE's proposal (deletion of auxiliaries in Art. 8 and 9) would mean a fundamental change to the existing concept of the CUI liability regime.

According to DE's proposal on Article 9 § 4, it should specifically be prescribed that the parties may also agree “whether and to what extent the manager has a right of recourse against the user”. In this respect, the Secretariat noted that according to the existing legal situation, the parties to the contract of use may conclude agreements on the manager's right of recourse in the event of disruptions to service (slides 40, 41, 44).

**Prof. Freise** recalled his editorial proposals (slide 45). He withdrew his proposal for a new title for the CUI UR.

The **working group** tacitly adopted the other two editorial proposals, i.e. the consistent use of the term “railway infrastructure” (instead of “infrastructure”) and “contract of use” (instead of “contract of use of infrastructure”).

## **6. Subsequent procedure**

The **SG** noted that subject to further examination in some Member States, there was a consensus concerning the amendment proposals to be submitted to the Revision Committee next year. He said he would send participants at this session of the working group the proposed texts by **8 June 2016** so that they could examine them and the working group could conclude its work. Another session of the working group would not be necessary. At the request of EIM, the period for examining the texts was extended from one to three months so that members of the stakeholder associations could be consulted again. This period expires on **8 September 2016**.

## **7. Any other business**

This item was not discussed.

The **chairman** closed the meeting by thanking all participants for their contributions to the discussion and he thanked the interpreter. The **SG** joined the chairman in thanking the participants and praised the chairman’s excellent work in leading the discussions.

## **ANNEXES:**

1. List of participants
2. Presentation by the Secretary General of FTE – International train path ordering process and other information
3. Presentation by the Secretary General of OTIF – Summary of proposals



Organisation intergouvernementale pour les transports internationaux ferroviaires  
Zwischenstaatliche Organisation für den internationalen Eisenbahnverkehr  
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**4<sup>e</sup> session Groupe de travail « RU CUI »**  
**4. Tagung der Arbeitsgruppe “ER CUI”**  
**4<sup>th</sup> session of the Working group “CUI UR”**  
**Berne / Bern, 31.05.2016**


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S'est excusée.  
Hat sich entschuldigt.  
Sent apologies.

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Sent apologies.


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S'est excusée.  
Hat sich entschuldigt.  
Sent apologies.

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FORUM TRAIN EUROPE

PLANNING TRAINS TO CONNECT EUROPE

**FTE meets working group «CUI UR» of OTIF  
International train path ordering process and other  
information from associations of stakeholders**

**Peter Jäggy, Secretary General**

Bern, 31 May 2016

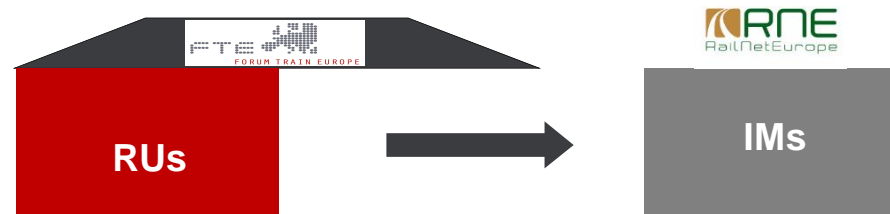
# Agenda

**1. Short overview of the FTE's missions and activities**

**2. Project «Redesign of the International Timetabling Process» (TTR): present status and challenges**

## History of the FTE

- 12.02.1872** **First meeting** of representatives of railway organisations for a timetable conference took place (France - Compagnie de l'Est - Austria, Belgium, the German Reich and Switzerland)
- 01.01.1923** **First Statutes** of the «European Timetable Conferences» were approved. In Nice (France), SBB was chosen to be the lead-managing railway
- 01.01.1997** **Merger** of «European Passenger Train Timetable Conferences CEH» and «European Freight Train Timetable Conference CEM» into today's Forum Train Europe FTE
- 21.04.1999** General Assembly FTE decided to **postpone the timetable change** from May/June, as it then was, to mid-December
- 01.01.2004** **RailNetEurope (RNE)** founded as the organisation of infrastructure managers (IMs) according to the EU regulations
- 01.01.2005** **Infrastructure managers (IMs) leave** the FTE, and **Path Coordination System (PCS)** transferred to RNE according to the EU regulations



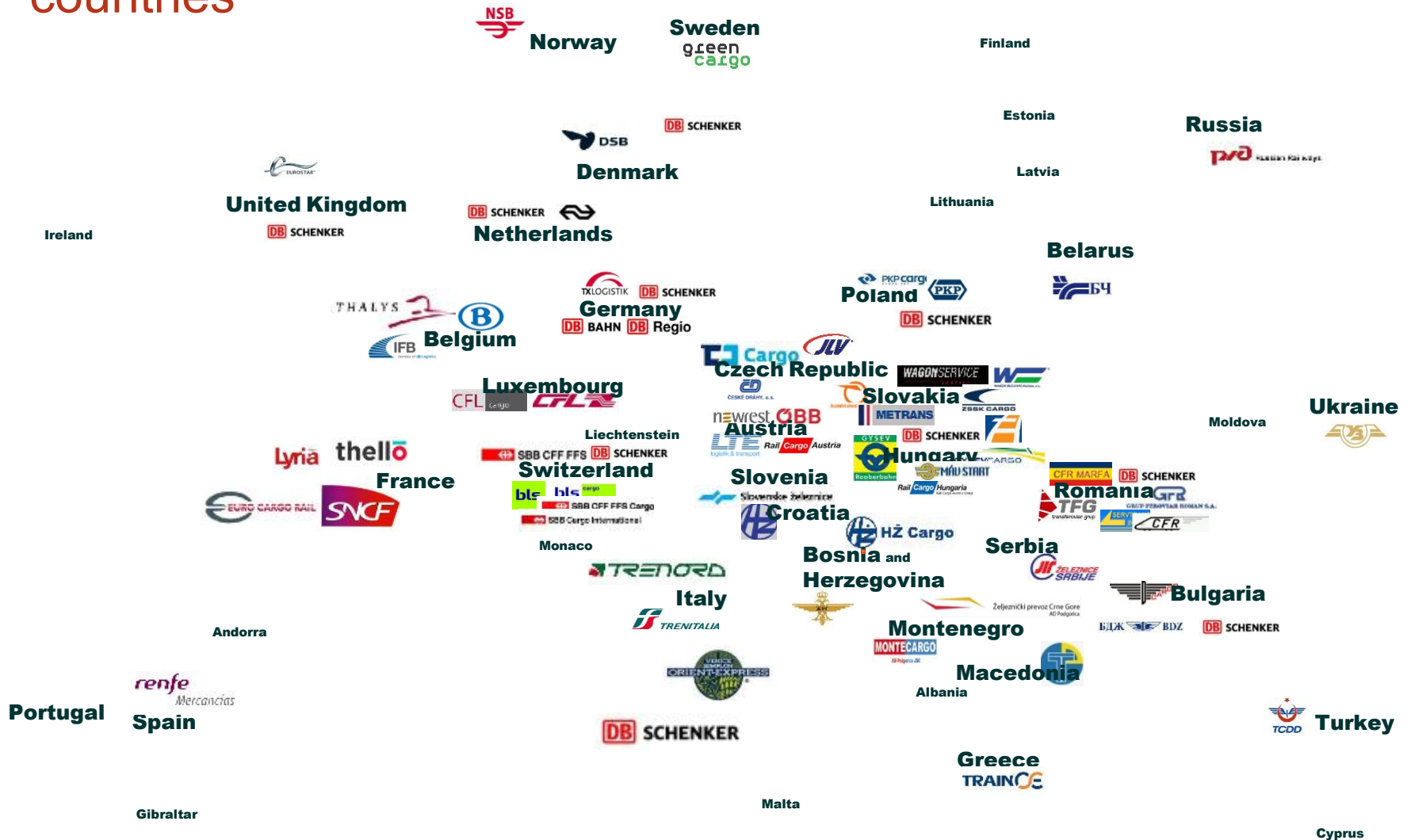
- 01.01.2005** **FTE** became an **organisation of railway undertakings (RUs)** and service providers.



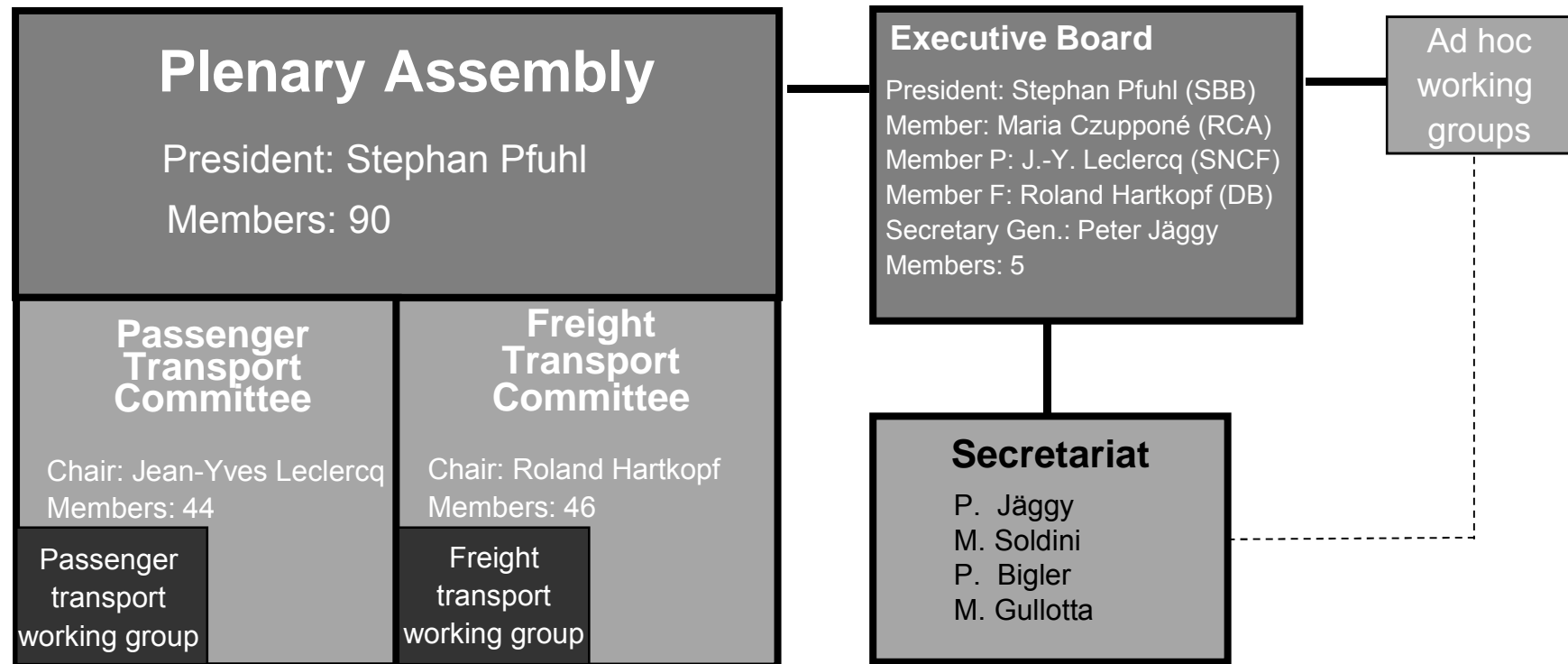
## The FTE

- is a **European association** of railway undertakings and service companies based in Berne that **promotes cross-border rail freight and passenger traffic** in Europe
- supports the cooperation of railway undertakings and **enables them to plan and implement existing and new traffic**
- is the **coordination platform** for the international harmonisation of production plans and path requests
- supports the work of its members through the FTE planning process, based on EU Directives and according to the planning process and deadlines of RNE
- **actively represents its operational and strategic interests towards infrastructure managers, European organisations and international authorities**
- provides a **platform for international contacts and production cooperation between the RUs**

# FTE currently consists of 90 members from 31 European countries

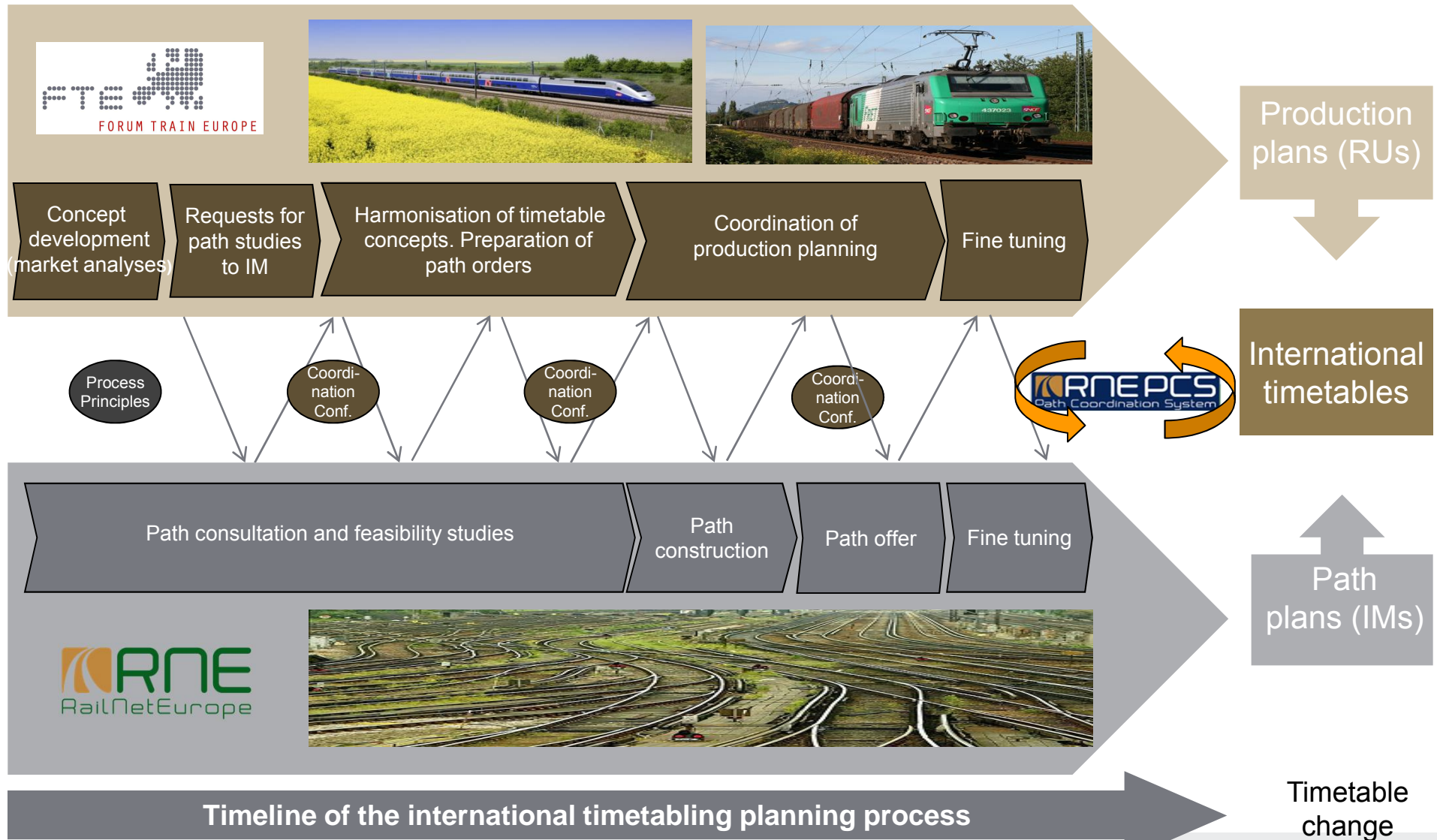


## Organisation of the FTE

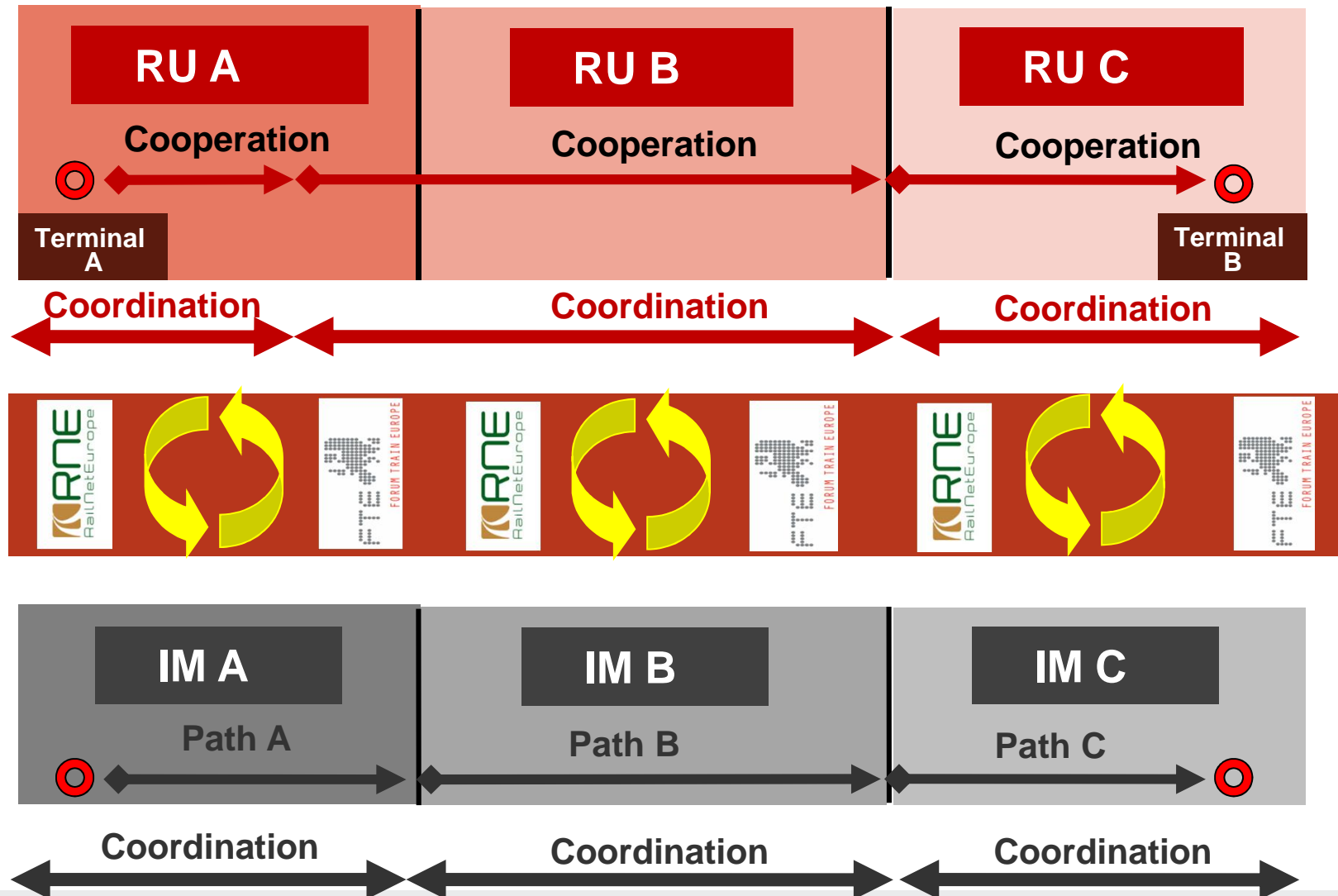




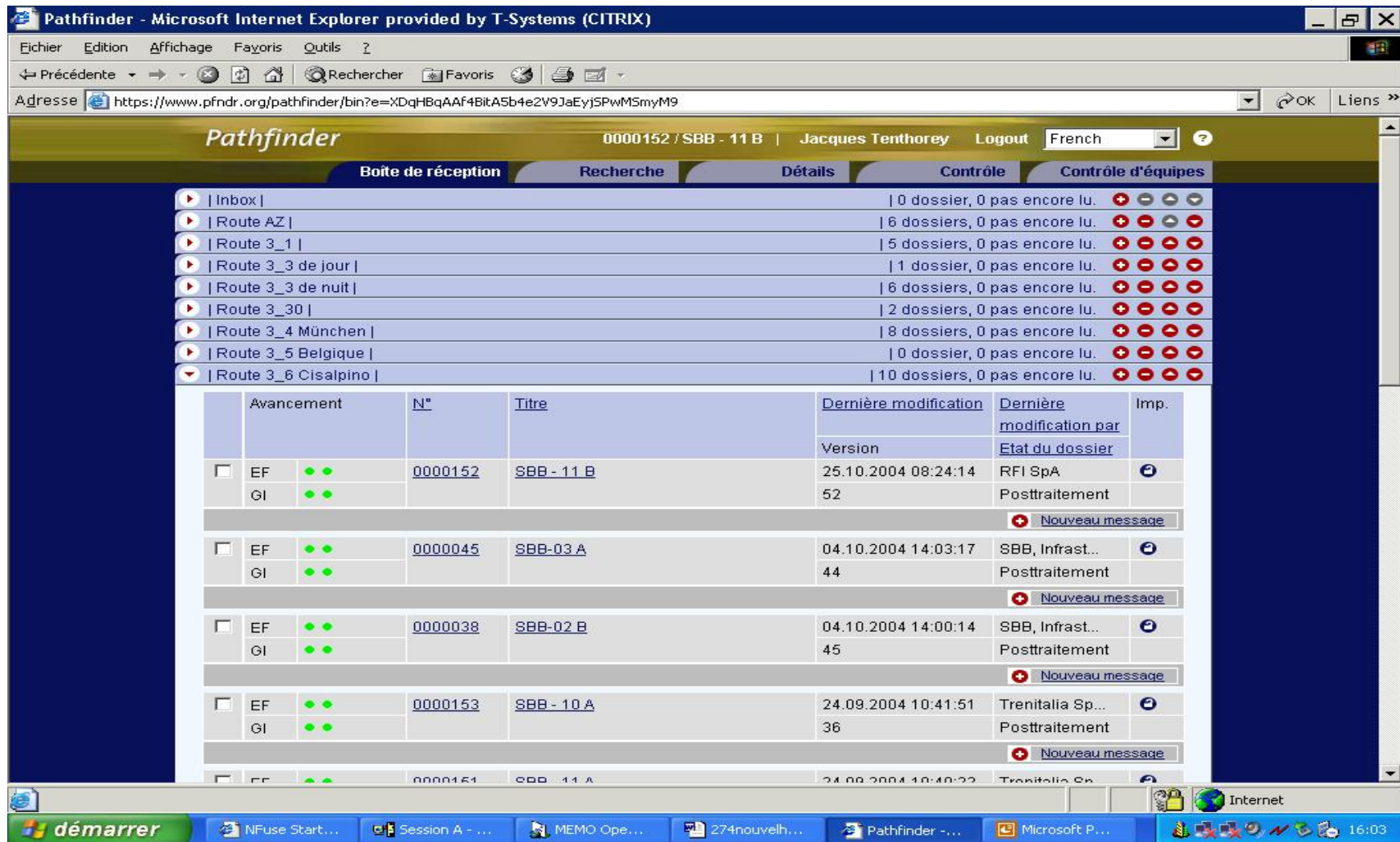
# FTE and RNE are the process leaders in the annual timetable



## Example of the coordination process of FTE and RNE



# Path Coordination System (PCS)



The screenshot shows the Pathfinder web application interface. The browser title is "Pathfinder - Microsoft Internet Explorer provided by T-Systems (CITRIX)". The address bar shows the URL: <https://www.pfndr.org/pathfinder/bin?e=XDqHBqAAf4BitA5b4e2Y9JaEyj5PwM5myM9>. The application header includes the name "Pathfinder", user information "0000152 / SBB - 11 B | Jacques Tenthorey", and a "Logout" button. A language dropdown menu is set to "French".

The main interface has several tabs: "Boîte de réception", "Recherche", "Détails", "Contrôle", and "Contrôle d'équipes". The "Boîte de réception" tab is active, showing a list of folders and a detailed view of a message.

**Folder List:**

Folder Name	Count	Status
Inbox	0 dossier, 0 pas encore lu.	
Route AZ	6 dossiers, 0 pas encore lu.	
Route 3_1	5 dossiers, 0 pas encore lu.	
Route 3_3 de jour	1 dossier, 0 pas encore lu.	
Route 3_3 de nuit	6 dossiers, 0 pas encore lu.	
Route 3_3D	2 dossiers, 0 pas encore lu.	
Route 3_4 München	8 dossiers, 0 pas encore lu.	
Route 3_5 Belgique	0 dossier, 0 pas encore lu.	
Route 3_6 Cisalpino	10 dossiers, 0 pas encore lu.	

**Message Details Table:**

Avancement	N°	Titre	Dernière modification	Dernière modification par	Imp.
EF: ●● GI: ●●	0000152	SBB - 11 B	25.10.2004 08:24:14	RFI SpA	📧
Version: 52   Posttraitement					
+ Nouveau message					
EF: ●● GI: ●●	0000045	SBB-03 A	04.10.2004 14:03:17	SBB, Infrast...	📧
Version: 44   Posttraitement					
+ Nouveau message					
EF: ●● GI: ●●	0000038	SBB-02 B	04.10.2004 14:00:14	SBB, Infrast...	📧
Version: 45   Posttraitement					
+ Nouveau message					
EF: ●● GI: ●●	0000153	SBB - 10 A	24.09.2004 10:41:51	Trenitalia Sp...	📧
Version: 36   Posttraitement					
+ Nouveau message					

The Windows taskbar at the bottom shows the Start button and several open applications: NFuse Start..., Session A..., MEMO Ope..., 274nouvel..., Pathfinder, and Microsoft P... The system clock shows 16:03 on 31 May 2016.

- **Quality in rail transport is among other duties the result of close collaboration between RUs (FTE) and IMs (RNE)**
- **Quality in international rail transport requires optimized and hand in hand planning and operation:**



# Agenda

1. Short overview of the FTE's missions and activities

**2. Project «Redesign of the International Timetabling Process» (TTR): present status and challenges**

## Initial Situation - What drivers and influences are behind this project?

- Since the opening up of the market (open access) in European rail traffic, the rail market needs in freight and passenger traffic and thus the requirements for RUs and IMs have changed greatly
- New European Union legislation has been implemented and are interpreted by rail industry actors on their own, often with divergent results
- Incomplete harmonisation of timetabling procedures between European countries makes it uneasy or impossible to cooperate at the international level
  - **poor quality of offered train paths, different deadlines, high coordination effort**
- The maintenance and construction of infrastructure is not enough coordinated between IMs on the planning of those works on international routes, leading to repeated disruptions and waste of capacity
  - **unstable customer service, increased production costs**
- The planning workload must be reduced for all stakeholders
  - **reducing peak workloads (40%), using suitable IT tools**
- In particular, both freight and passenger traffic customers are demanding more flexible offers.

## Today's planning process does not meet the market needs

**Transport market needs  
Passenger Traffic**

- Earlier Ticket sales
- Stable offer
- Quicker path allocation
- Efficient paths / travel time

**Transport market needs  
Freight Traffic**

- Path request anytime
- Safeguarding of capacity
- Reduction of planning resources
- Flexible handling of changes

**General  
requirements  
towards  
timetabling**

Competitiveness

Reliability

Flexibility

Innovation

Efficiency

Cost optimization

Harmonization

**Need for redesigned  
international  
timetabling process  
(including coordination  
of works)**

## Conclusion

RNE and FTE felt the need for change and share a common interest to improve the timetable planning process and thus a joint FTE-RNE project «Redesign of the International Timetabling Process )» (TTR) was launched.



## Project objectives

- Clear **market orientation**, possibly leading to different deadlines for path application in passenger and freight traffic
- **Greater reliability**, incl. the planning of possessions and execution of works
- **Improved commitment** of all parties to international timetabling process
- Avoidance of work duplication through **greater efficiency** in the use of resources and rail track capacity
- Making **best use** of existing track capacity
- **Joint effort** by all stakeholders (RUs and IMs)
- A **common solution approach** on the timetabling process is a condition of success for the project



Trying to develop a next generation timetabling process

## Market requirements in passenger and freight traffic

### Preconditions

- Safeguarding capacity & innovative path products (PaP)
- Harmonised rules (e.g. cancellation, priority)
- Leading role of IM

### Advanced Planning

- Capacity needs of market
- Iterative dialogue between IM and RU/other applicants
- Earlier feasibility studies

### Coordination of Works & Possessions (W&P)

- Regular information cycles
- Path offers including W&P impacts
- Common information on capacity constraints

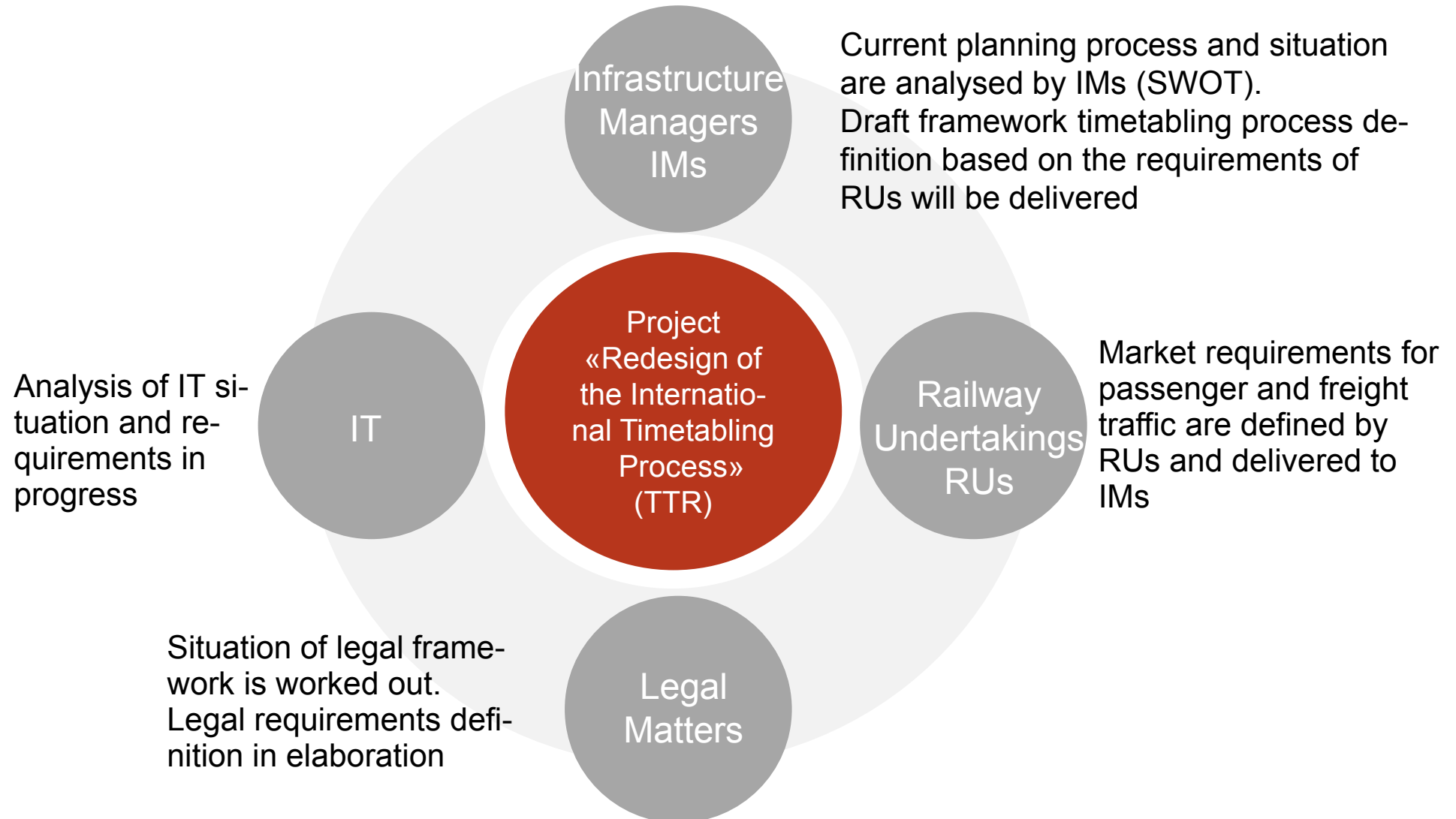
### Timetable Production

- Harmonised and stable train path offers
- Quick allocation procedure (passengers)
- Fine-tuning before allocation (freight)

### Change Processing

- Post-annual requests
- Flexibility in handling of changes
- No 'frozen zone' before allocation

## Short overview about present status and results



- ... optimising international trains is a very intensive and iterative process ...
- ... railway undertakings cannot do it on their own; infrastructure managers must support them in their work!





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A photograph of railway tracks stretching into the distance under a sunset sky. The tracks are illuminated by a warm orange glow. Overlaid on the image are several bright, glowing lines: a red line on the left, a white line on the right, and a white line crossing the tracks from the top right. The text 'Thank you for your attention!' is overlaid in white.

Thank you  
for your attention!

[www.forumtraineurope.eu](http://www.forumtraineurope.eu)





OTIF

Revision of the CUI UR  
4<sup>th</sup> session of the “CUI UR”  
working group 31.05.2016

## Items 4 and 5 of the agenda

**01**

Texts resulting  
from the 3<sup>rd</sup>  
session

**02**

Positions  
regarding scope  
and definitions

**03**

Proposals  
regarding liability  
/carrier's recourse

**04**

Proposals  
regarding other  
issues





Texts resulting from the 3<sup>rd</sup> session

## Adapted draft proposal for Article 1

- § 1 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.
- § 1 Les présentes Règles uniformes s'appliquent à tout contrat relatif à l'utilisation de l'infrastructure ferroviaire **d'un** État membre par un train **pour** un trafic international ferroviaire entre des États, dont au moins un est un État membre.
- § 1 Diese Einheitlichen Rechtsvorschriften gelten für jeden Vertrag über die Nutzung der Eisenbahninfrastruktur **in** einem Mitgliedstaat durch einen Zug für **einen** internationalen Eisenbahnverkehr zwischen Staaten, von denen mindestens einer ein Mitgliedstaat ist.

## New definition of “international railway traffic”

- aa) **“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;**
  
- aa) **« trafic international ferroviaire » désigne un trafic qui implique l’utilisation d’un sillon international, ou de plusieurs sillons nationaux successifs situés dans au moins deux Etats et coordonnés par les gestionnaires d’infrastructure concernés;**
  
- aa) **„internationaler Eisenbahnverkehr“ einen Verkehr, der die Nutzung einer internationalen Trasse oder mehrerer aufeinanderfolgender nationaler Trassen umfasst, die sich in mindestens zwei Staaten befinden und von den betroffenen Infrastrukturbetreibern koordiniert sind;**

## Adapted definition “carrier”

- c) “carrier” means the ~~person who carries~~ **natural or legal person the principal business of which is to carry** persons **and/or** goods by rail in international traffic ~~under the CIV Uniform Rules or the CIM Uniform Rules~~ 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;
- c) « transporteur » désigne ~~celui qui transporte par rail~~ **la personne ou entité la personne physique ou morale dont l'activité principale est le transport** des personnes et/ou des marchandises en trafic international **par rail** ~~sous le régime des Règles uniformes CIV ou des Règles uniformes CIM~~ et qui détient une licence conformément aux lois et prescriptions relatives à l'octroi et à la reconnaissance des licences en vigueur dans l'État dans lequel la personne exerce cette activité ;
- c) „Beförderer” ~~denjenigen, der~~ **die natürliche oder juristische Person, deren Haupttätigkeit es ist,** Personen oder Güter im internationalen Verkehr ~~nach den Einheitlichen Rechtsvorschriften CIV oder Einheitlichen Rechtsvorschriften CIM~~ auf der Schiene **befördert zu befördern** und ~~der die~~ nach den Gesetzen und Vorschriften betreffend die Erteilung und Anerkennung von Betriebsgenehmigungen, die in dem Staat gelten, in dem die Person diese Tätigkeit ausübt, eine Betriebsgenehmigung erhalten hat;

## Two options regarding carrier's recourse - Article 8

§ 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 ~~under the CIV Uniform Rules and the CIM Uniform Rules~~ **[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.

~~[delete “under the CIV Uniform Rules and the CIM Uniform Rules” in § 2 as well]~~

§ 1 The manager shall be liable

- a) .....
- b) .....
- ~~c) — for pecuniary loss resulting from damages payable by the carrier under the CIV Uniform Rules and the CIM Uniform Rules,~~

.....

**§ 5 (new) Articles 62bis and 63 CIV and Articles 50bis and 51 CIM shall remain unaffected.**

## New Articles in CIV/CIM (2<sup>nd</sup> option)

### Article 62bis CIV/Article 50bis CIM

#### Right of recourse against infrastructure managers

**A carrier who has paid compensation pursuant to these Uniform Rules shall have a right of recourse against an infrastructure manager insofar as the infrastructure manager caused [the loss or damage/the incident resulting in the carrier's liability] and the carrier is liable for the infrastructure manager in accordance with Article 51 CIV/40 CIM. [In this case, the infrastructure manager shall be treated in the recourse as if it were also directly liable to the person entitled in accordance with these Uniform Rules.]**

### Article 63 CIV/Article 51 CIM

#### Procedure for recourse

§ 1 The validity of the payment made by the carrier exercising a right of recourse pursuant to Article 62 **or 62bis** (CIV)/50 **or 50bis** (CIM) may not be disputed by the carrier **or the infrastructure manager** against whom the right to recourse is exercised, when compensation has been determined by a court or tribunal and when the latter carrier **or infrastructure manager**, duly served with notice of the proceedings, has been afforded an opportunity to intervene in the proceedings. ...

## Two options regarding carrier's recourse – Article 23

### Article 23 Recourse

The validity of the payment **of damages to third parties** made by the carrier ~~on the basis of the CIV Uniform Rules or the CIM Uniform Rules~~ may not be disputed when compensation has been determined by a court or tribunal and when the manager, duly served with notice of the proceedings, has been afforded the opportunity to intervene in the proceedings.

### Article 23 Recourse

delete



## Positions/comments received from

10

- France
- Germany
- Luxembourg
- Netherlands
- Poland
- Serbia
- Sweden
- Switzerland
- United Kingdom
- Europ. Commission
  
- EIM
- CIT
- plus comments received from Prof. Freise



An aerial view of a large railway station with multiple tracks and high-speed trains. The station has a large, arched roof structure. The image is overlaid with a blue tint. The text "Positions concerning the scope and definition" is centered on the image.

# Positions concerning the scope and definition



## Summary of the positions on the scope and definitions – relation to CIV/CIM?

### **Dissociate the scope of CUI from CIV/CIM contract of carriage**

- Secretary General's draft
- France (empty trains)
- Poland
- Prof. Freise (any international use of infrastructure)
- CIT (if carrier's full recourse – incl. CIV/CIM damages in national trains - is guaranteed in another way)
- Serbia? (was not against, see report of the 2<sup>nd</sup> session, p. 4)

### **Without a link to CIV/CIM** Germany

Switzerland: proposal for a specific scope for the recourse, i.e. a **link to CIV/CIM for carrier's recourse**

### **Keep the link with CIV/CIM** (for the scope and/or at least for the definitions “carrier“ & “internat. railway traffic“), but **no extension of the scope (criterion [train for] “international railway traffic“ in addition)**

- Netherlands (for the definition of “carrier“ only)
- Luxembourg/CFL
- United Kingdom
- EIM

## Proposals regarding Article 1 (1)

In favour of the text resulting from the 3rd session: **Poland, CIT**

**France:** in favour of the text resulting from the 3rd session, but adapt the FR version:

§ 1 Les présentes Règles uniformes s'appliquent à tout contrat relatif à l'utilisation de l'infrastructure ferroviaire **dans un** État membre par un train pour un trafic international ferroviaire entre des États, dont au moins un est un État membre.

**Europ. Commission:** same editorial proposal, otherwise there would be an inconsistency between FR (« d'un ÉM») and EN (“in a MS“)

**United Kingdom and EIM:**

§ 1 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 **at least two Member States. States, at least one of which is a Member State.**

**LU/CFL:** ... between **two Member States.** + keep the reference to CIV/CIM carriage

## Proposals regarding Article 1 (2)

### Germany:

§ 1 These Uniform Rules shall apply to any contract of use of railway infrastructure **in a Member State in international railway traffic.**

(avoid a dual link to a Member State)

# Proposals regarding the new definition “international railway traffic”

In favour of the text resulting from the 3rd session: **Poland, CIT**. However, in CIT’s view, the application of CUI should not depend only on the IM concerned (coordinating train paths)

## **France:**

Harmonise the terminology in FR: « trafic international ferroviaire » (Art. 1) and « trafic ferroviaire international » (Art. 3)

## **United Kingdom and EIM:**

aa) “international railway traffic” means traffic which **requires** the use of an international train path or several successive national train paths situated in at least two **Member** States and coordinated by the managers concerned **in order to allow carriage of persons or goods within the meaning of the CIV Uniform Rules or the CIM Uniform Rules.**

**Europ. Commission:** in favour of a clarified definition of **“international train”**.

## Proposals regarding the new definition “international railway traffic“

### Germany:

aa) “international railway traffic” means traffic which **involves** the use of an international train path or **of a national train path which follows one or** more national train paths, at least one of which is situated in another State and **is** coordinated by the infrastructure managers concerned;

### Luxembourg/CFL:

aa) “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.**

## Proposals regarding the adapted definition “carrier“ (1)

In favour of the text resulting from the 3rd session: **Poland**

### **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”.

### **United Kingdom and EIM:**

“Carrier ” means the natural or legal person **which carries** persons and/or goods by rail in international traffic **under the CIV or CIM Uniform Rules** 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.”

## Proposals regarding the adapted definition “carrier“ (2)

### Netherlands:

Improve consistency. Why not keep the reference to CIV/CIM UR?

**Luxembourg/CFL:** ... **which carries** + keep reference to CIV/CIM carriage

### CIT:

Is the term “carrier” really needed in the CUI UR? Would it not be more accurate to replace it by a more general term “user”?

### Prof. Freise:

The term “carrier” is a special term of international rail transport law in CIV and CIM. More appropriate (with regard to the CUI title “contract of use of infrastructure in international rail traffic”) would be:

**“(Infrastructure) user” means a railway undertaking or any other person who, under the laws and prescriptions in force in the State in which the infrastructure is located, has concluded a contract of international use of railway infrastructure [with the infrastructure manager]”**

Advantage: it would also cover maintenance and track construction trains.



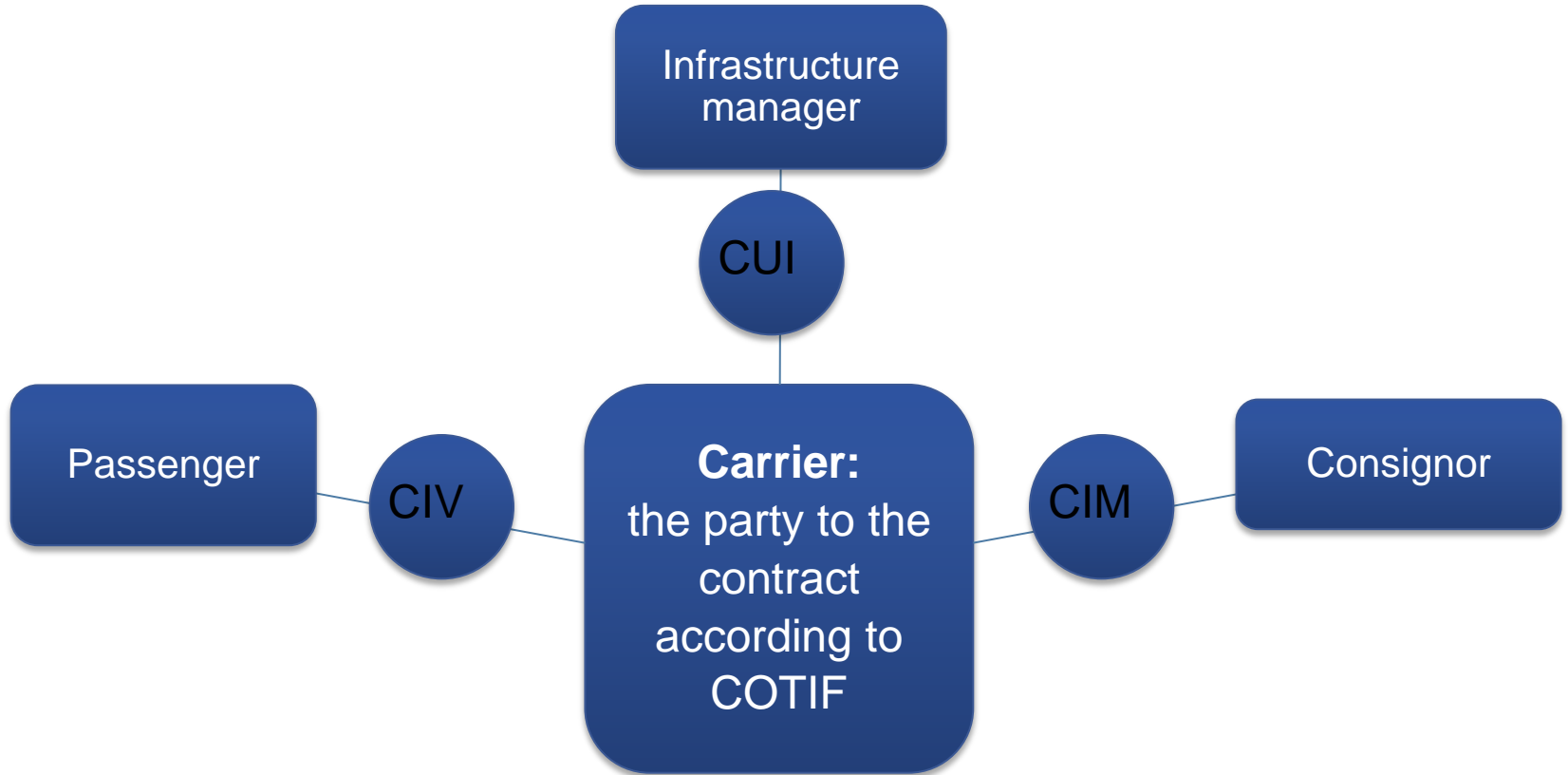
## Proposals from Germany – “carrier/user“ and other definitions

- c) **“user” means the person who has concluded a contract of use with the manager;**
- d) “auxiliary” means the servants or other persons whose services the manager **or user** makes use of for the performance of the contract when these servants or other persons are acting within the scope of their functions;
- e) “third party” means any person other than the manager, the **user** and their auxiliaries;
- g) “safety certificate” means the document attesting, in accordance with the laws and prescriptions in force in the State in which the **railway** infrastructure is located, that so far as concerns the **user**,
  - the internal organisation of the undertaking as well as
  - the personnel to be employed and the vehicles to be used on the **railway** infrastructure,meet the requirements imposed in respect of safety in order to ensure a service without danger on that **railway** infrastructure.

## Analysis by the Secretariat

- The term **“carrier”** provides better consistency with the other Appendices to COTIF
- ✓ Usage of destination can be misleading for the definition of international train. **“In international railway traffic”** is better than **“for international traffic”** .
- It is better to deal with the question of empty trains in the Explanatory Report than in the definition, according to the French proposal to add the following to para. 6 of the Explanatory note on Article 1:  
*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 ....] **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.***

# CUI vs CIV/CIM: keep the party to the contract consistent



## Analysis by the Secretariat: proposals from Germany and the United Kingdom could be taken as basis for discussion

### SCOPE :

§ 1 These Uniform Rules shall apply to any contract of use of railway infrastructure **in a Member State in international railway traffic.**

### DEFINITIONS :

- aa) “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;
- c) “carrier” means the natural or legal person **which carries** persons and/or goods by rail in international traffic **under the CIV or CIM Uniform Rules** 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.”



# Proposals regarding liability/carrier's recourse

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## Summary of positions regarding carrier's recourse – 2 options

**1<sup>st</sup> option – Proposal of France:** no reference to CIV/CIM, but to international railway traffic

**2<sup>nd</sup> option – Prof. Freise:** transfer the provisions regarding carrier's recourse into the CIV/CIM UR

**In favour of the 1<sup>st</sup> option** – Sweden (= incl. damages payable under PRR)

**In favour of 2<sup>nd</sup> option** – Poland; Europ. Com.: 2<sup>nd</sup> option offers more symmetry

**Against 2<sup>nd</sup> option** and against linking recourse with the contract of use of infrastructure – Serbia (see also the position of Switzerland); France – this option would not be in line with the spirit (system) of COTIF

**Combine both options** – Prof. Freise's new proposal; CIT (or a new clarifying provision either in Art. 1 or in Art. 8 to cover all cases of carrier's recourse, not only international trains)

**None of them** – Luxembourg (keep the current provisions); EIM

## Positions regarding carrier's recourse – other proposals

**Netherlands** – do not change the extent of the right of recourse, but change the wording of Art. 8 § 1 c): insert “[use of the infrastructure] ... for international railway traffic”, i.e. reference to both “international railway traffic “ and to CIV/CIM, delete “in transport by a train performing”

**United Kingdom** – reference to both “international railway traffic “ and to CIV/CIM, keep “in transport by a train performing”

**Switzerland** – add a specific provision regarding carrier's recourse in Art. 1 (scope) to clarify: international passengers/goods = international rules for recourse (irrespective of the contract of use of infrastructure)

**Germany** – delete Art. 8 § 1 c) and leave it up to the contracting parties to agree on recourse; delete the reference to auxiliaries

# Proposals from the Netherlands and the United Kingdom

## Article 8 § 1 letter c)

### Netherlands

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.

### United Kingdom

The manager shall be liable ... for pecuniary loss resulting from damages payable by the carrier **under the CIV and CIM Uniform Rules, 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.



# Proposals from Luxembourg, Serbia and Switzerland

## Article 8 § 1 letter c)

**Luxembourg** and **Serbia**: do not amend the current text

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

**Switzerland**: in addition, include a **new Article 1 § 1bis**:

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.

# Proposals from Germany

## Article 8 § 1

### Article 8

#### Liability of the manager **to the user**

§ 1 The manager shall be liable **to the user in accordance with the contract of use** for

- a) bodily loss or damage (death, injury or any other physical or mental harm) **and**
- b) loss of or damage to property (destruction of, or damage to, movable or immovable property), caused to the ~~carrier or to his auxiliaries~~ **user** during the use of the **railway** infrastructure and having its origins in the infrastructure.
- ~~c) — for pecuniary loss resulting from damages payable by the carrier under the CIV Uniform Rules and the CIM Uniform Rules~~

... [adapt the terminology: “user“ instead of “carrier”]

# Proposals from Germany

## Article 8 § 4

### Article 8

#### Liability of the manager **to the user**

...

§ 4 The parties to the contract may agree whether and to what extent

- a) the manager shall be liable for the loss or damage caused to the **user** by delay or disruption to his operations, **and**
  
- b) **the user has a right of recourse against the manager.**

# Explanatory Report

## Articles 1 and 8 – Proposal from France

### Article 1

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 ....] **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.**

...

### Article 8

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.**

## Analysis by the Secretariat: minimal changes to the liability framework

- ✓ For the majority of MS, the liability regime seems well suited, provided the scope is clarified
  - ✓ The other option advocated by Prof. Freise and Germany would change the nature of the liability regime.
  - ✓ The Secretariat recognises the consistency of the approach, and would welcome symmetry in the new liability regime for pecuniary loss between Articles 8 and 9.
- ⇒ The Secretariat would welcome a conservative approach for the liability regime.
- ⇒ If the framework had to be completely reviewed the Secretariat would then welcome the consistent approach for recourse advocated by Prof. Freise, with symmetrical provisions in Articles 8 and 9

## Analysis by the Secretariat: minimal changes to the liability framework

- ✓ Rewording of Article 8 § 1 according to discussion with Professor Freise:

§ 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 under the CIV Uniform Rules and the CIM Uniform Rules,~~
- caused to the carrier or to his auxiliaries during the use of the infrastructure and having its origin in the infrastructure.

**The manager shall also be liable for pecuniary loss resulting from damages payable by the carrier under the CIV Uniform Rules and the CIM Uniform Rules when such loss has its origin in the infrastructure.**

## Analysis by the Secretariat: minimal changes to the liability framework

- ✓ Exclusion should be made clearer as proposed by France for para. 6 of the explanatory note on Article 8:

*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. [...]*

***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.***

Add: And the same goes for carrier's recourse.

# Proposals regarding other issues

A photograph of a high-speed train, possibly a Shinkansen, stopped at a station platform. The train is white with a red stripe. The platform has a roof and overhead power lines. The entire image is overlaid with a semi-transparent purple color. At the bottom of the image, there is a horizontal bar with several colored segments: blue, teal, orange, yellow, and purple.



## Other proposals from Germany: Articles 4 – 5bis

### Article 4

Is mandatory law in the CUI UR necessary?

### Article 5

Proposal: **delete**

### Article 5bis

- § 1 The provisions ~~of Article 5 as well as those~~ of Articles 6, 7 and 22 shall not affect the obligations which the parties to the contract of use have to meet under the laws and prescriptions in force in the State in which the **railway** infrastructure is located including, where appropriate, the law of the European Union.
  
- § 2 The provisions of Articles 8 and 9 shall not affect the obligations which the parties to the contract of use of **railway** infrastructure have to meet in an EU Member State or in a State where European Union legislation applies as a result of international agreements with the European Union.

# Analysis/proposal from the Secretariat - Articles 4 and 5

## Article 4

### Mandatory law

No change.

Mandatory liability provisions mean more legal certainty and consistency with CIM/CIV.

## Article 5

### Contents and form

do not delete

(= basis for contractual liability)

## Other proposals from Germany: Article 6

### Article 6

#### Special obligations of the **user** and the ~~manager~~

Delete § 1 ( § 2 will then become § 1)

- § 1 The **user** must notify the manager of any event which might affect the validity of his licence, his safety certificates or other elements of proof.
- § 2 The manager may require the **user** to prove that he has taken out sufficient liability insurance or taken equivalent measures to cover any claims, on whatever grounds, referred to in Articles 9 to 21. Each year, the **user** must prove, by an attestation in due form, that the liability insurance or the equivalent provisions still exist; he must notify the manager of any modification relating to them before it takes effect.
- § 3 The parties to the contract must inform each other of any event which might impede the execution of the contract they have concluded.
- § 4 **The manager may refuse to allow the user to use the railway infrastructure if he fails to meet his obligations in accordance with § § 1 to 3.**

## Other proposals from Germany: Article 7

§ 1 The manager may rescind the contract forthwith when

- a) the **user** no longer **meets his obligations in accordance with the laws and prescriptions in force in the State in which the railway infrastructure is located**;
- b) the **user** is in arrears with payment, that is to say
  1. for two successive payment periods and for an amount in excess of the equivalent of one month's use, or
  2. for a period covering more than two payment periods and for an amount equal to the value of two months' use;
- c) the **user** is in clear breach of one of the special obligations specified in Article 6 § § **1** and **2**.

§ 2 The **user** may rescind the contract of use forthwith when the manager loses his right to manage the infrastructure.

# Analysis by the Secretariat - Articles 6 and 7

## Article 6

Special obligations of the **user** and the manager

## Article 7

### Termination of the contract

There are rights and obligations on both sides. The manager also has the obligation to inform the user.

New Art. 6 § 4 as proposed by DE: is there really a need, since this results from public law?

Current Art. 7 § 5 is not superfluous (e.g. other time periods regarding carrier's arrears can be agreed).

Deletion of Art. 6 § 1 and adaptation of Art. 7 § 1 a): is there really a need for a change as long as only an RU can conclude the contract of use, i.e. become the user? See Art. 28 of Dir. 2012/34/EU

# Proposals from Germany: Article 9

## Article 9 § 1

### Article 9

#### Liability of the **user to the manager**

§ 1 The **user** shall be liable **to the manager under the contract of use** for

- a) bodily loss or damage (death, injury or any other physical or mental harm) **and**
- b) for loss of or damage to property (destruction of or damage to movable or immovable property),

caused ~~to the manager or to his auxiliaries~~, during the use of the **railway** infrastructure, by **the user**, **a** means of transport used by him **or** by the persons or goods carried

... [adapt the terminology: “user” instead of “carrier”]

# Proposals from Germany: Article 9

## Article 9 § 4

### Article 9

#### Liability of the **user to the manager**

...

§ 4 The parties to the contract may agree whether and to what extent

- a) the **user** shall be liable for the loss or damage, caused to the manager by disruptions to his operations, **and**
- b) **the manager has a right of recourse against the user.**

## Other proposals from Germany

### Articles 10, 13 and 15

Delete Article 10 § § 2 and 3

#### Article 13

##### Compensation for other bodily harm

National law shall determine whether and to what extent the manager or the **user** must pay damages for bodily harm **above and beyond what is stipulated in Article 8 or 9** and other than that provided for in Articles 11 and 12.

#### Article 15

##### Loss of right to invoke the limits of liability

The limits of liability provided for **in the contract of use and** in these Uniform Rules as well as the provisions of national law, which limit the compensation to a certain amount, shall not apply if it is proved that ...



# Other proposals from Germany

## Articles 18, 19, 21 and 23

### Article 3

#### Definitions

...

- d) “auxiliary” means the servants or other persons whose services the manager **or user** makes use of for the performance of the contract when these servants or other persons are acting within the scope of their functions;

### Article 18

#### Liability for auxiliaries

The manager and the **user** shall be liable for their auxiliaries **when these persons are acting within the scope of their functions.**

Delete Articles 19, 21 and 23

# Analysis by the Secretariat - other proposals from Germany - liability

## Articles 18, 13, 15, 18, 19, 21 and 23

Art. 9 (as well as Art. 8) – strictly contractual liability, delete auxiliaries?

Change to the current concept? There would first have to be a general discussion on this (positions of other MS, consequences, ...)

Art. 9 § 4: the current text already includes manager's recourse (if caused by disruptions) – what gap should be covered by the proposed text under letter b)?

The same goes for Art. 10, 19, 21 and 23

Art. 13: insert “damages for bodily harm above and beyond what is stipulated in Articles 8 and 9”?

Leave parallel with the CIV UR?

Which damages for bodily harm would not be covered without this inserted part of the sentence?

Art. 15: could be discussed (positions of other MS?) – further time would be needed

Art. 18: wording along the lines of Article 40 CIM?

Under the current wording the principle is the same in Art. 40 CIM (51 CIV) and 18 CUI. Art. 18 CUI has to be read and interpreted in the light of the definition in Art. 3 d)

## Editorial proposals

### Prof. Freise:

Improve the **title** of the CUI UR:

“Uniform Rules concerning the Contract of **International Use of Railway Infrastructure**”

Use the term “**railway infrastructure**” (as in the Recast Directive) rather than just “infrastructure”

Use the term “**contract of use**” throughout the text (instead of “contract of use of infrastructure”)



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