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Use of wagons in international rail transport under CIM/SMGS: Current status and outlook

Prepared by the International Union of Railways (UIC)

I. Introduction

In late 2009, a two-day international seminar attended by around fifty railway representatives from ten European and Asian countries was held in Sochi at the invitation of the Russian Railways (RZD). The International Union of Railways (UIC), the Organisation for Cooperation between Railways (OSJD) and the International Rail Transport Committee (CIT) supported the organisation and running of this conference on international wagon management. The European Railway Agency (ERA) also participated in the event.

With increasingly internationalised rail freight services, the need for seamless cross-border use of wagons in Eurasia is growing in importance. Cross-border rail freight operating under the CIM and SMGS regimes and using the joint CIM/SMGS consignment note requires the exchange of wagons between those networks using a 1435mm track gauge and those with the 1520/24 mm gauge to be optimised.¹ In the first six months of 2009 alone, over 500 block trains, each comprising forty wagons, operated using the joint CIM/SMGS consignment note to convey goods between Mlada Boleslav in the Czech Republic and Velika Ida in the Slovak Republic in the CIM area, and Kaluga 1 and Perspektivnaya (south of Moscow) in the SMGS area.² The relevant legal bases for the optimisation of wagon management exist and will be subject to a thorough review by OSJD during the course of 2010.

To this end, this document presents the new wagon law in the context of the *Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic* (CUV – Appendix D to the 1999 COTIF) and takes account of UIC's experience in connection with the relevant implementation rules for the *General Contract of Use for wagons* (GCU).

¹ The technical interface for the use of wagons depends on the various track gauges – 1435 mm mainly in Europe and 1520/1524 mm in the Baltic countries, the Russian Federation, Central Asia and Finland.

² For more detail, see Henri Trollet/Erik Evtimov, Simplification of cross-border rail traffic in the context of the joint CIT/OSJD project “Interoperability of CIM/SMGS transport law” – outcomes and outlook, OSJD Journal, p. 23 et seq.

II. New wagon law in the context of the CUV UR...

The Vilnius Protocol, signed by OTIF Member States on 3 June 1999, contains seven Appendices to the basic Convention. It is important to note that the CUV Uniform Rules are no longer Appendices to the Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM) as was the case in the 1980 COTIF. The separation of the rules on the use of wagons and the rules on contracts concerning the international carriage of freight indicates clearly that the 1999 COTIF seeks to provide legal solutions to the new legal relationships arising between carriers/railways on the one hand and wagon keepers on the other in an increasingly liberalised railway contracting environment.

Before the entry into force of the new COTIF, international wagon law under the RIV (Regolamento Internazionale Veicoli) was dealt with on an intergovernmental basis and that under the RIP (Regulations concerning the International Haulage of Private Owners' Wagons by Rail) on the basis of association law applicable at company level. In the course of liberalisation of international transport services by European Union, wagon law required reform. This reform took the shape of Appendix D to the 1999 COTIF, the Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic. Of key importance here is CUV, Article 2, which introduces the notion of the "wagon keeper". A wagon keeper is someone that, being the owner of a wagon or having the right to use it, exploits the wagon economically as a means of transport on a long-term basis.

In order to ensure coherency and consistency in international rail freight transport, the European Commission also used COTIF law as a guideline when defining wagon keepers in its proposed modifications to the Safety and Interoperability Directives. Railway organisations supported this development, consisting in the main of the following three core elements:

- - EU law (in this instance the Safety and Interoperability Directives – Directive 2004/49/EC and Directive 2008/57/EC) reprises the COTIF definition of the wagon keeper exactly (the English version thus speaks of "wagon keepers" and no longer "wagon operators").
- - the Safety Directive 2004/49/EC places a binding obligation on the keeper to ensure its wagons are maintained.
- - the Commission will, where necessary, introduce a system of certification for workshops entitled to perform maintenance as per the Interoperability Directive 2008/57/EC.

The definition of the keeper in Directive 2008/110/EC,³ Article 3, amending the Safety Directive 2004/49/EC, is thus based on the definition of the keeper contained in CUV, Article 2 and is formulated as follows:

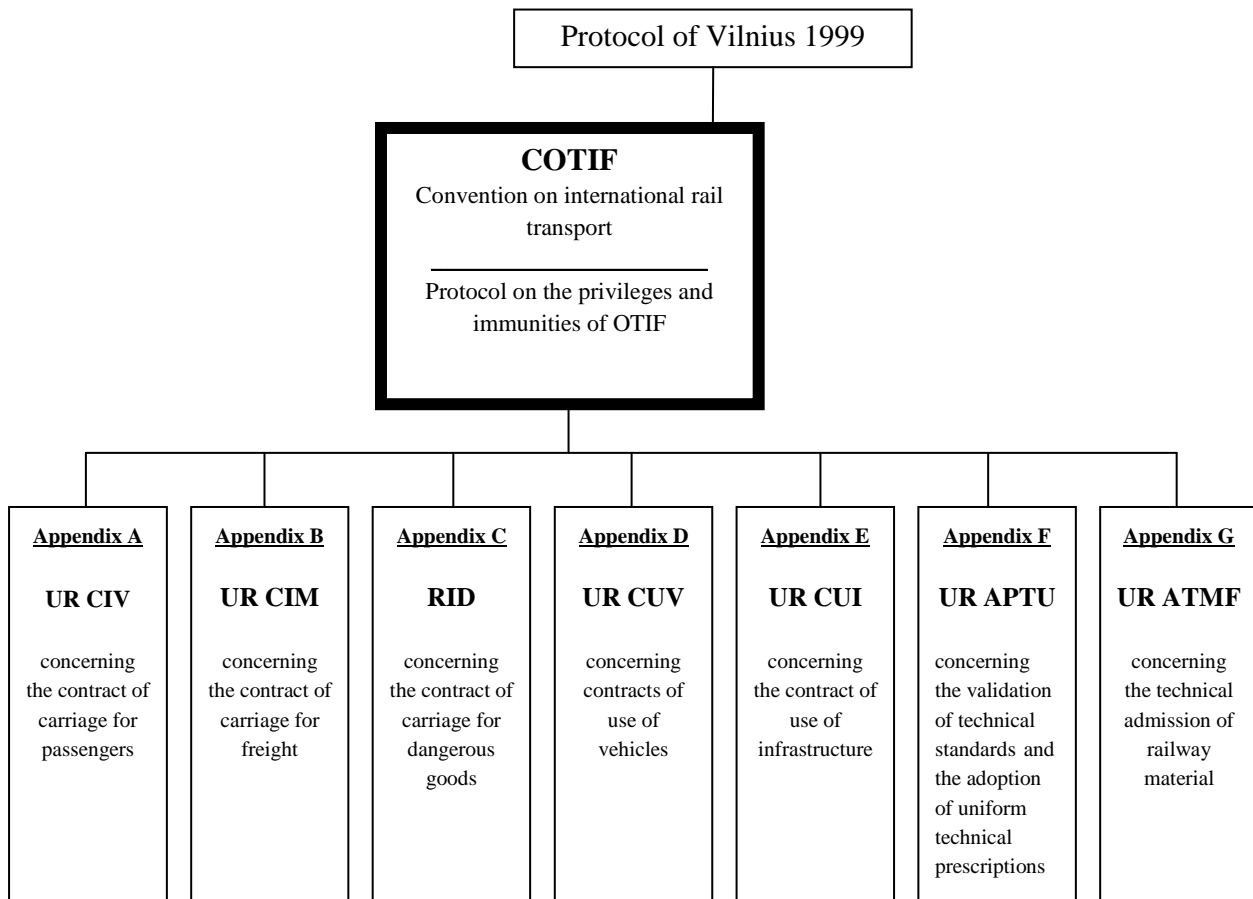
"Keeper" means the person or entity that, being the owner of a vehicle or having the right to use it, exploits the vehicle as a means of transport and is registered as such in the National Vehicle Register (NVR) provided for in Article 33 of Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community"

³ Directive 2008/110/EC of the European Parliament and of the Council of 16 December 2008 amending Directive 2004/49/EC on Safety on the Community's Railways, OJEU L 345 of 23.12.2008, p. 62 et seq.

In accordance with this definition, various bodies may be identified as vehicle keepers, for example: the owner, a company making business out of a fleet of wagons, a company leasing vehicles to a railway undertaking, a railway undertaking or an infrastructure manager using vehicles for maintaining its infrastructure, etc. These entities have the control over the vehicle with a view to its use as a means of transport by the railway undertakings and the infrastructure managers. In order to avoid any doubt, the keeper should (in addition to the definition in the UR CUV) be clearly identified in the EU Member States' National Vehicle Register (NVR) provided for in Article 33 of the Railway Interoperability Directive 2008/57.

These new rules are a good example of the COTIF and EU legal regimes acting in complementarity and synergy in the interests of the rail sector. In the European Union, railway undertakings are either owned by the state or part thereof, or they act as private companies on the market. On the territory of a given state or part thereof, however, infrastructure managers continue to enjoy a monopoly. To date, the borders of EU Member States have constituted the natural interfaces between the various infrastructure managers. As the area covered by European law has expanded, competition between railway undertakings has now led to new legal situations.

Under these circumstances, different legal relationships and modes of cooperation are being sought for the various contractual relationships applied in cross-border freight services, and thereby also for the related issue of the use of wagons, although the conventional method of joint operations between railway undertakings remains technically possible. During the work to implement the new COTIF, CIT produced various sets of General Terms and Conditions for use in cross-border freight services, namely: for successive carriage (GTC Joint Contracting), substitute carriage (GTC Sub-contracting), leasing contracts for motive power units (GTC Hire) and traction contracts (GTC Traction).



Structure and breakdown of the COTIF as set out in the Vilnius Protocol of 3 June 1999

For freight transport, the international contract of carriage is materialised via the CIM consignment note, which must accompany every wagon, including private wagons. Wagons may be operated by any railway undertaking either as goods travelling on their own wheels and thus subject to the UR CIM, or as a means of transport in the context of a contract of carriage subject to the UR CUV. One of the immediate consequences of this recent legal development has been to extend the scope of application of international wagon law and to remove the obligation to carry and the obligation for contracts of registration for P wagons to be concluded with railway undertakings. Wagons can thus themselves be the subject of a contract of carriage as “Goods travelling on their own wheels” and thereby subject to the UR CIM. The UR CUV for their part apply to bilateral and multilateral contracts on the use of wagons as a “Means of transport” for the purposes of executing transport services as per the UR CIV and UR CIM.

Whereas the RIP prescribes no rules for technical approval by a responsible body, the ATMF Uniform Rules present the major advantage of defining a precise legal framework for such approval. Approval for use in international traffic serves to verify that vehicles comply firstly with the design requirements laid down in the Appendices to the APTU Uniform Rules and secondly with the prescriptions of the RID.

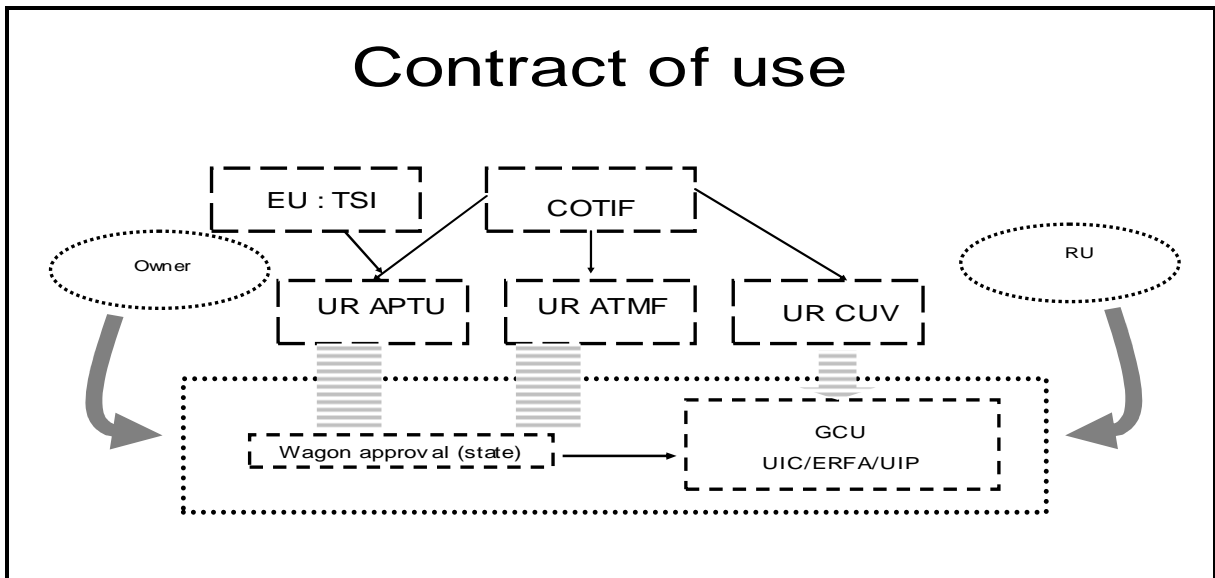
Amongst other requirements, the keeper and the railway undertaking in whose fleet the wagon is included must be indicated on any wagon put forward for approval for use in international traffic. Should the parties to the contract of use so wish, the existing P wagon marking may be retained.

Concerning liability for the loss of or damage to a wagon, for damage caused by a wagon, for the presumed loss of a wagon or for errors committed by persons to whose services the railway undertakings have recourse for the execution of the contract of use, it must be ascertained whether the UR CUV are to be considered optional law, since the parties to the contract may in various scenarios agree further provisions deviating from those of the UR CUV. The legal flexibility this seeks to achieve enables both railway undertakings and wagon keepers to arrive at those contractual solutions best serving their interests.

III. ... and its implementation via the General Contract of Use for wagons (GCU)

The CUV is implemented via the *General Contract of Use for wagons* (GCU), which builds on the earlier RIP and governs relationships between wagon keepers and railway undertakings. The GCU was developed by the international organisations representing carriers and wagon keepers, namely the European Rail Freight Association (ERFA), UIC and the International Union of Private Wagon Owners (UIP) as a multilateral contract.

The GCU does not distinguish between P wagons and railway-owned wagons, ensuring equal treatment of all players on the market. Since the GCU's entry into force – simultaneous with that of the UR CUV on 1 July 2006 – more than 700 000 wagons have been placed under the GCU regime. This is a major success, and shows that a combination of the UR CUV and the GCU offers all players market-oriented solutions.



The diagram shows the legal instruments which enabled the contract of use to be developed and drafted

The GCU and its Appendices define the conditions for the handover of wagons for use as a means of transport by railway undertakings in domestic and international traffic in the area covered by the COTIF and the UR CUV. In order to avoid any conflict arising under competition law, the commercial conditions of the use of wagons do not form part of the contract.

It should be noted here that according to the GCU, Article 1.4 “Use and custody begin when the wagon is accepted by the RU and end with the handover of the wagon to the keeper or to some other authorised party, for example another signatory RU, the contractual consignee of the goods carried or the operator of private sidings authorised to take delivery of the wagon”. The contracting parties are thus the railway undertakings and wagon keepers who have applied to the GCU Bureau to be admitted to the list of signatories to the contract (“opting in”). In particular, the GCU Bureau is responsible for managing the list of signatories and updating the GCU.

In line with the GCU, Article 7.1 “The keeper shall ensure that his wagons are technically admitted in accordance with the European legislation in force and that they remain so throughout the period of their use”. The keeper retains his economic and operative rights concerning its wagons whilst they are being used by the railway undertakings. Provided that the keeper observes the duties incumbent upon him by virtue of this Article, the user railway undertakings must accept the wagons within the scope of their commercial service and must handle them “with due diligence”.

The periods for carriage for loaded wagons “shall depend on the transit period for the goods being conveyed. Periods for carriage for empty wagons shall be determined by agreement. In the absence of such an agreement, the periods set out in Article 16 of the CIM for wagon-load consignment shall apply”. If these periods are exceeded for a reason ascribable to an RU, the keeper may claim compensation for loss of use of the wagons (see GCU, Article 13).

The implementation of the GCU in the context of the UR CUV brings an end to railway undertakings’ previous monopoly with the contract of registration. The GCU provides a flexible and practice-oriented legal basis, whose principal objective is to ensure that wagons may be used and exchanged across Europe under a secure and transparent legal framework. This flexibility and practical orientation may also serve as a legal basis and a starting-point for rules on the exchange of wagons between networks of different track gauges and as an example in CIM/SMGS traffic.

IV. Outlook

The new rules on the use of wagons in international rail traffic offer all concerned parties, whether keepers or user railway undertakings, greater legal security and room for manoeuvre with the requisite contractual freedom.

In this context, it would be very beneficial if, in the near future, thought were given to conducting relevant work in the OSJD Committee on the international exchange of wagons (PGW) and to the revision of the joint UIC/OSJD leaflets. This work is significant in creating technical interoperability and is also of strategic importance, particularly in the light of the Baltic states’ accession to the European Union and thereby also to the European Railway Agency. ERA is currently making active efforts, in close collaboration with OSJD, to ensure seamless technical interoperability between EU/OSJD Member States and the rest of the “1520” area.

Following the international seminar in Sochi, participants signed a concluding declaration in favour of work beginning to facilitate international wagon management, strongly advocating, *inter alia*, that the liability provisions in CIM/SMGS traffic be harmonised (see appendix).

**Declaration
of participants of international seminar
„Usage of Freight Wagons in international Transport“
(27-28 October 2009, Sochi)**

The representatives of the railways (railway companies) of the states of the Eurasian area – Finland, India, Islamic Republic of Iran, Republic of Kazakhstan, Slovak Republic, Russian Federation, Spain, South Korea, Ukraine – the representatives of international organizations – International Union of Railways (UIC), Organization for Cooperation of Railways (OSJD), International Rail Transport Committee (CIT), of railway undertakings, factories – producers of freight wagons who took part in the international seminar on the topic “Usage of Freight Wagons in international Transport“ in the presence of the European Railway Agency (ERA),

Conscious of the important role of rail transport for the lasting economic and social development of Asia and Europe in the context of the geostrategic importance of the Eurasian Continent in the twenty-first century,

Noting the growing demand for reliable, effective, safe and environmentally friendly transport by rail between Europe and Asia to facilitate international trade,

Believing that it is necessary to improve provisions of legal basis which regulate usage and transfer of freight wagons in international transport, to update technical parameters of rolling stock of 1435 / 1520 mm and 1668 mm gauge systems as well as issues of its interoperability,

Recognising that cooperation of international organizations and railways (railway companies) will lead to the creation of a unified normative legal basis which could regulate all aspects of usage of freight wagons in international transport.

The participants of the seminar noted the progress made in joint projects of:

- railway companies and producers of freight wagons;
- international organizations on working out UIC / OSJD leaflets;
- contact group ERA / OSJD;
- the use of common consignment note CIM / SMGS

The participants of the seminar noted several factors which affect free international freight transport, in particular the:

- lack of common principal terms;
- different technical requirements for rolling stock of 1435 / 1520 mm gauge systems;
- existence of two legal systems (SMGS / CIM) with different legal responsibility rules;
- difference in transport safety systems of rolling stock in different gauge systems;
- difference of requirements to infrastructure;
- difference in economic approach using wagon fleet;
- difference in coding of rolling stock.

The participants of the seminar expressed the intention to:

- harmonize legal basis of usage of freight wagons in international transport;
- strengthen cooperation of railway companies and international organizations on development, manufacture, and operation of new generation wagons;
- exchange experience on all aspects of railway transport including creation of new rolling stock and using of research and testing basis of different systems;
- harmonize legal responsibility rules CIM / SMGS in general;
- work out common economic approaches on usage of wagon fleet;
- work out common economic approaches on coding of rolling stock;
- seek creation of unified requirements for infrastructure;
- seek for optimization of border crossing procedures in railway transport.

Sochi, Russian Federation

28 October 2009

Original: RU