



Organisation intergouvernementale  
pour les transports internationaux  
ferroviaires (OTIF)

Zwischenstaatliche Organisation  
für den internationalen  
Eisenbahnverkehr (OTIF)

Intergovernmental Organisation  
for International Carriage  
by Rail (OTIF)

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# **Revision Committee**

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

## **Minutes**

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**Berne, 23 – 25.06.2009**



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## **AGENDA**

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3. Adoption of the agenda
4. Rules of Procedure of the Revision Committee
5. Amendments to Articles 9 and 27 of the Convention
6. Partial revision of Appendix E (CUI) of the Convention
7. Partial revision of Appendix F (APTU) of the Convention
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9. Editorial amendments
10. Next steps
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## **DISCUSSIONS**

### **Chair: Switzerland**

#### **1. Opening, check attendance and establish quorum**

The **SG** opened the session and welcomed the delegates from the Member States and the representatives of the international organisations and associations. He emphasised that it had taken a particularly long time to prepare this 24<sup>th</sup> session of the Revision Committee, which was the first session since the entry into force of COTIF 1999. Firstly, the preparations had taken a long time owing to the complexity of the matters to be dealt with in some very technical areas. Secondly, conducting discussions in the working groups that had prepared the amendments to Appendix E (CUI) as well as the amendments to Appendices F (APTU) and G (ATMF) had been complicated by the fact that numerous Member States had declared that they would not apply these Appendices. It would be the same at this session, as the Member States that had made declarations did not have the right to vote when deciding on proposals aimed at amending these Appendices. Moreover, these States would not be taken into account in establishing the quorum when the Revision Committee came to take decisions on such proposals, as they were not considered to be members of the Revision Committee for these matters. On the other hand, for all other matters, even the Member States that had made a declaration would have the right to vote and would be taken into account when establishing the quorum. As a result, the quorum would have to be established for each matter on which the Revision Committee was to take a vote. It would vary depending on the subjects on which the Revision Committee would be called upon to vote.

The **SG** noted that the quorum required to discuss items 2 to 5 was reached, as 21 of the 43 Member States of OTIF were present or represented (see list of participants).

#### **2. Election of chair and deputy chair**

At the proposal of **DE**, the **Revision Committee** elected Switzerland to chair this session, firstly in the shape of Mr Marcel Hepp for agenda items 3 to 6, which were of a more legal nature, and secondly in the shape of Mr Roland Bacher for agenda items 7 to 11, which were of a more technical nature.

**Mr Hepp (CH)** took the chair.

#### **3. Adoption of the agenda**

- Doc. CR 24/1

The **Revision Committee** tacitly adopted the provisional agenda.

#### 4. Rules of Procedure of the Revision Committee

- Doc. CR 24/2 of 29.05.2009
- Meeting room doc. 1, section 2.2
- Meeting room doc. 2 – Article 21 § 3 (new)

The **Secretariat** gave a brief introduction to the draft Rules of Procedure (RP) of the Revision Committee, which were based largely on the Rules of Procedure adopted for the Committee of Technical Experts (CTE), although they took account of the specific features of the Revision Committee.

The representative of the European Commission (**COM**) welcomed the organisation of this session of the Revision Committee, as some of the Appendices to COTIF did need to be amended to align them with Community law. He thought that on the whole, the documents sent out by the Secretariat achieved this objective. The EC had studied these documents in depth and had prepared a document (meeting room doc. 1)<sup>1</sup>, which set out its position on certain points. As the subjects dealt with fell under the Community's competence, it had been agreed with the EU Presidency that the representative of the COM would present this position on behalf of the EC.

Getting down to the details, the representative of the **EC** pointed out that the reference in § 2 of Article 5 (Observers) should be to Article 11 § 1 (instead of 11 § 3), which the **Secretariat** confirmed, as the second sentence of Article 11 § 1 said that suggestions that observers could submit in accordance with Article 5 § 2 were to be considered as proposals for a vote provided they were supported by a member of the Revision Committee.

With regard to Article 6 (Secretariat), the representative of the **EC** suggested replacing the word “*included*” in § 2 b) with “*referred to*”.

The **Secretariat** explained that the word “*included*” had been taken over from Article 7 of the RP in force. However, the wording of b) could be misleading, as the documents did not have to be placed on the agenda. The Secretariat therefore suggested amending the wording of b) as follows: “*to prepare the documents relating to items included in the Revision Committee's agenda*”. This amendment would make it clear that there must be a link between the documents the Secretary General is responsible for preparing and the items included on the Revision Committee's agenda.

The representative of the **EC** said the Secretariat's alternative suggestion was completely acceptable.

The **Revision Committee** approved the amendment to Article 6 § 2 b) proposed by the Secretariat.

The **Secretariat** suggested deleting § 5 of Article 9 (Agenda), as the Revision Committee always dealt with proposals aimed at amending the Convention. As a result, all the matters on the Revision Committee's agenda should in principle be followed by a vote.

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1 Meeting room document 1 was only available in English. All the proposals for amendments were based on the English version of the Secretariat's documents, so the proposals to amend the wording of certain provisions in the RP had only been submitted in English.

The **Revision Committee** approved the deletion of § 5 of Article 9.

The **Secretariat** pointed out that in the current wording, Article 10 (Chair, Vice-Chairs and conducting proceedings), § 1 a), did not cover the case of this session of the Revision Committee for which two chairmen had been elected. It therefore suggested amending a) as follows: “*for each meeting or a part of it .....*”.

The **Revision Committee** approved this addition to Article 10 § 1 a).

The **Secretariat** also drew delegates’ attention to the fact that § 1 of Article 10 began with the phrase “*The Revision Committee shall elect, from among the representatives of its members*”, which meant that the chairman was preferably to be elected from among the representatives of States that had not made a declaration or entered a reservation in accordance with Article 42 of COTIF. As this provision was more stringent than that in the Convention (Article 16 § 6 of COTIF: “*The Committees shall elect ... a Chairman ...*”), the Secretariat wished to know whether it was necessary to keep this restriction. As the chairman was, by definition, neutral, and must not accept any instructions from his State, the chairman could also just as well be somebody who was not a representative of a member of the Revision Committee.

As OTIF was an intergovernmental organisation, the representative of the **EC** was of the view that the Revision Committee should elect the representative of a government to chair it. However, he admitted that he did not really understand whether the aim of the Secretariat’s suggestion was to broaden the provision to enable observers to be elected to the chair or whether the question asked related only to the Member States, which, depending on the case, were members of the Revision Committee or not, if they had made declarations in accordance with Article 42 of COTIF.

To illustrate the specific effect of its suggestion, the **Secretariat** quoted the example of the 23<sup>rd</sup> session of the Revision Committee. The then Director General of OCTI had chaired that session, which the wording of § 1 would no longer allow if the Revision Committee had to elect the chairman from among the representatives of its members.

Bearing in mind this explanation, the representative of the **EC** repeated his view that as this was an intergovernmental organisation, the chairman should be a representative of a government. If the Secretary General wanted to play a more active role, he could always make arrangements with the chair.

**FR** supported the position of the EC representative. FR had also wanted to be assured that deleting § 5 of Article 9 would not prevent a Member State that had declared that it would not apply certain Appendices, which was the case for France, from having observer status.

In reply to the question from FR, the **Secretariat** explained that the status of observer was dealt with in Article 5. According to this Article, observers were in particular: representatives of associated members and representatives of States which are not members of the Revision Committee because they have made declarations in accordance with Article 42 of COTIF. At the moment, France was a member of the Revision Committee. However, when the Revision Committee discussed partial amendments to Appendices E, F and G, France would have observer status.

With regard to Article 11 (Proposals), the representative of the **EC** wished above all to submit a question to the Revision Committee which had arisen when rereading the provisions of this

Article. Article 11 dealt with the planning of the session and the deadlines for submitting documents. The question that arose in this case was what would happen if members of the Revision Committee wished to submit comments, amendments or additional proposals in relation to the documents the Secretary General sent to the Revision Committee members and observers according to the rules, i.e. at least two months before the opening of the session. The deadlines specified in §§ 2 and 3 only seemed to apply to documents to be prepared two months before a session and would not affect documents that would be sent to the Secretary General much later, e.g. the EC's position paper of 19 June or the CIT's position paper and suggestion dated 8 June. Would these documents instead be covered by § 4 of Article 11, which allowed other items to be submitted when a session is opened? If this were not the case, a sentence should be added which could be included in § 4 or a § 3 bis.

In the **SG's** view, the question was not so much one of procedure as of deadlines. The English term "*submissions*" already encompassed all the types of documents mentioned by the EC in its position paper, whether they were comments, amendments or additional proposals. All these documents were therefore covered by § 3 and all the "*submissions*" the Secretary General received outside the deadlines referred to in § 3 would come under § 4. If the time available between the deadline for the Secretary General to send documents out and the deadline by which the Secretary General had to receive "*submissions*" was too short, the various deadlines would have to be amended to give members and observers a bit more time to examine the documents sent by the Secretary General and to prepare their "*submissions*".

A discussion started between the representatives of the **EC, Germany, France, the United Kingdom, the Chairman, the Secretary General** and the **Secretariat**. This discussion enabled the meeting:

- to note that there was a discrepancy between the deadlines laid down in Article 8 (sending the invitation and the provisional agenda 3 months before the session and sending the documents relating to the meeting 2 months before the session), the deadline laid down in Article 9 (6 weeks to request that an item be placed on the agenda) and the deadlines laid down in Article 11 (depending on the length of the document, sending the documents to the Secretary General 10 or 12 weeks before the session). The deadlines laid down in these various Articles should be harmonised. Some of these deadlines should be amended to give members of the Committee the necessary time to give their opinion on the documents sent by the Secretary General, while giving the Secretariat the necessary time to prepare the session efficiently;
- to clarify that the term "*submissions*" used in the English version of Article 11 included both the comments on the documents sent by the Secretary General and the amendments to proposals by the Secretary General or additional proposals. The terminology used in the French and German versions would have to be adapted as a result, as would the title of this Article in the three languages ("*Submissions*" instead of "*Proposals*").

During this discussion, the **SG** and the **Secretariat** proposed:

- to amend the deadline in Article 9 § 1 b) and to replace “*six weeks*” with “*ten weeks*”;
- to amend the title of Article 11 by replacing “*Proposals*” with “*Submissions*”;
- to amend the wording of Article 11 § 3 as follows:

*“Submissions shall be made in accordance with the following deadlines:*

*The document must reach the Secretary General not less than 10 weeks before the meeting.*

*In cases where the document*

- a) comprises not more than 200 lines of text in total and*
- b) contains no drawings or illustrations; and*
- c) is established in more than one working language*

*it must be submitted four weeks before the meeting.”;*

- to replace the word “*items*” in Article 11 § 4 with “*submissions*” and consequently to amend § 4 to read as follows:

*“Representatives may, when a session is opened, make further submissions, provided that such submissions deal with questions included on the agenda and are translated and distributed at the meeting in all the working languages. However, such a submission shall not be discussed unless it is supported by at least two members of the Revision Committee.”*

The **Revision Committee** adopted these amendments.

Apart from one purely editorial amendment to be made to the English version only (§ 1), the representative of the **EC** proposed that following the example of the procedure laid down in the RP of the CTE, Article 21 (Voting rules) should offer the possibility of using a written procedure to avoid having to convene a Revision Committee for minor amendments, for example.

The **SG** thought this was a very valid proposal. However, the tasks and working method of the Revision Committee differed considerably from the tasks and working method of the CTE. Consequently, the text in Article 21 § 3 of the RP of the CTE would have to be modified somewhat for the Revision Committee. Letter h) of Article 21 § 3 should be deleted. To quote one example, if the Chairman carried out a vote by correspondence after a session merely because the quorum had not been reached, three members of the Revision Committee could block the written procedure, which would not make any sense. In addition, three members did not seem to be very many, bearing in mind the consequences for the budget of convening the Revision Committee. In meeting room document 2, the SG submitted a proposal to delegates for a new § 3 of Article 21 of the RP of the Revision Committee, specifying that letter e) was maintained and the following paragraphs were renumbered accordingly. How-

ever, in letter e), the words “*in writing*” should be deleted, as the Secretariat intended to use all the modern means of communication available. Also, in letter c), the SG did not want to rule out the possibility of separate issues being the subject of the same written procedure, even if they had to be voted on separately. Lastly, in letter f), the SG suggested that in addition to convening the Revision Committee, the possibility of conducting a new written procedure should be considered if the first one was rejected owing to the lack of a quorum.

**FR** proposed replacing “*members*” with “*Member States*” in the first sentence of § 3 and in § 3 b).

The **SG** and the **Secretariat** stressed that it was also necessary to take account of Article 16 of COTIF for the written procedure. Depending on the subject being dealt with, some of the Member States would sometimes be members of the Revision Committee and sometimes not, if they had made a declaration in accordance with Article 42 for the matter subject to the written procedure.

**FR** replied that Article 16 § 2 of COTIF also used the term “*Member States*” (“*The Secretary General shall convene the Committees either on his own initiative or at the request of five Member States...*”). Five Member States could request that the Revision Committee be convened; five Member States should be able to request that a written procedure be used. In addition, with regard to letter b), all the Member States should be informed of the subject of and reason for a written procedure. This information should not be limited to the Member States that had not made a declaration on the subject concerned.

The **SG** said the amendment to letter b) proposed by **FR** did not cause him a problem, i.e. that only the members of the Revision Committee would take part in the vote, but that all the Member States would be informed of the subject of and reason for such a vote.

The **Revision Committee** adopted the amendment to letter b) as proposed by **FR**.

Bearing in mind the explanations given by the **SG** and the **Secretariat** on the concept of “*members*” and in order to remove any ambiguity with regard to this term, **FR** proposed replacing “*members*” with “*five Member States that have not made a declaration in accordance with Article 42 of the Convention on the question asked ...*” in the introductory part of § 3.

**DE** did not think the proposal by **FR** would achieve the desired aim. The fact that a Member State was a member of the Revision Committee or not was determined on the basis of each question and each Appendix. It was essential to keep the current wording of “*members*” of the Revision Committee.

The representative of the **EC** drew attention to the fact that Article 2 of the **RP** gave the composition of the Revision Committee and that this Article referred to Article 16 of COTIF. Therefore, the wording of the introductory part of § 3 did not cause any problem.

**DE** commented that the proposed addition to letter f), the aim of which was to allow a question that might have been rejected to be the subject of a new written procedure, could give rise to a certain misgiving, in that it might give the impression that as many written procedures as necessary would be carried out in order to achieve the desired result. In addition, as far as **DE** understood the mechanism of a written procedure, the only reply to the questions asked was either “*yes*” or “*no*”. **DE** wished to know what happened if some members of the

Revision Committee replied “yes” or “no”, subject to amendments to the text which was the subject of the written procedure. Would these amendments then be up for discussion in the context of a new written procedure?

According to the **SG**, the question raised by DE would only arise for more complex questions. In this case, care would have to be taken to split the questions up as often as necessary so that the responses led to a result. If some members were to accompany their votes with comments, the SG would have no other choice but to draft a new proposal on the basis of these comments, which he would probably submit to a new written procedure.

The **Secretariat** pointed out that § 3 referred to a vote by written procedure. However, the response to a vote might not just be “yes”, “no” or “*abstention*”. It sometimes happened in meetings that a delegate took the floor after a vote to explain this vote. In no event should this possibility be excluded in the context of a written procedure. This was also the reason why letter f) prescribed that all the responses received must be recorded.

**DE** thought it must be clearly explained that the only response to the written procedure could be “yes” or “no”. A response accompanied by reservations or comments indicated that a question should be discussed more beforehand, and if necessary, a Revision Committee should be convened. Starting a cascade of written procedures would certainly have to be avoided.

Following this discussion, the **SG** suggested adding “yes”/“no”/“*abstention*” in brackets after the word “votes” in letter d).

The representative of the **EC** thought the solution to this problem could perhaps be found in letter h) of the RP of the CTE, which had been deleted in meeting room doc. 2. This provision had been discussed at length at the last session of the CTE before a consensus had been found. For a written procedure, the difficulty was in finding a happy medium between the flexibility provided by a meeting and the rigidity of not being able to have an e-mail discussion on different versions of texts. The solution was in fact to have a “yes” or “no” vote and if there were any problems, the procedure would have to be interrupted and a meeting convened to discuss them.

Following these discussions, the **Chairman** summarised as follows the proposals for amendments to the new § 3 of Article 21, as proposed in meeting room doc. 2:

- in letter b), the term “members” was replaced by “*Member States*”,
- in letter d), “(yes/no/*abstention*)” was inserted after the word “votes”,
- letter e) was maintained, but the words “*in writing*” were deleted,
- in letter g) (new numbering), the last part of the sentence (“*or in a new written procedure*”) was deleted.

The **Revision Committee** approved the new § 3 of Article 21 as amended during the discussion.

With regard to Article 22 (“Ad hoc” working groups) § 2 of the RP, the representative of the **EC** pointed out that experience with the CTE had shown that the Rules of Procedure did not

necessarily apply by analogy to the ad hoc working groups. He proposed adding “*unless specified otherwise by the Revision Committee*” to the end of § 2. It was up to the Revision Committee to set up ad hoc working groups. Therefore, it was also up to the Revision Committee to say whether the ad hoc working groups had to apply the Rules of Procedure with a certain degree of flexibility.

The **Secretariat** recognised that every ad hoc working group was given a mandate from the organ that set it up and that the mandate in question could specify the rules according to which the working group would operate. The addition proposed by the representative of the EC was of general interest.

The **Revision Committee** approved the addition to § 2 of Article 22 as proposed by the representative of the EC.

To conclude, the **Revision Committee** adopted its Rules of Procedure as amended during the discussion.

## 5. Amendments to Articles 9 and 27 of the Convention

- Doc. CR 24/3 of 29.05.2009

The **Secretariat** gave comments on the proposals for amendments to Articles 9 and 27 of the Convention, and particularly drew delegates’ attention to the fact that the amendment to Article 27 had been recommended by the Auditor. The Auditor had recommended that the provisions of Article 27 of the Convention be amended to take account of the requirements of the International Federation of Accountants (IFAC) and be transferred to the Finance and Accounts Rules as an Annex. The details on auditing would therefore be dealt with in an instrument which came under the organ that controls the Secretary General’s administrative and financial management, i.e. the Administrative Committee. Transferring these provisions to the Finance and Accounts Rules would make it possible to react with more flexibility to amendments to the auditing requirements.

The **Revision Committee** adopted the amendment to Article 9 of the Convention as proposed in doc. CR 24/3.

**NL** did not think it would be wise to delete §§ 3 to 10 of Article 27 of the Convention and to transfer them to a legal instrument that was inferior to the Convention, as some of the provisions of this Article were fundamental.

**FR** shared **NL**’s concerns. Some of the paragraphs of Article 27 were indeed very detailed. Other paragraphs described the Auditor’s indisputable powers, such as his access to the accounting documents (§ 4) or the possibility the Auditor had of informing the Administrative Committee and the Secretary General of the findings of the audit (§ 9). These paragraphs were fundamental and should be kept in the Convention.

In reply to a question from **FR**, the **Secretariat** explained that the Auditor had asked that the word “*certificate*” used in § 6 of Article 27 be replaced with the word “*opinion*”. The **Secretariat** was certainly not opposed to keeping certain paragraphs of Article 27 in the Convention. However, an amendment to the details of the audit, which would be entailed by an amendment to the national or international accounting rules, should not require that a Revision Committee be convened.

**GB** supported the views of NL and FR. Keeping these paragraphs in the Convention would ensure that these provisions were better safeguarded. Transferring them to the Finance and Accounts Rules would mean that these provisions could be amended by the Administrative Committee. But not all the Member States were represented on the Administrative Committee.

The **Secretariat** emphasised the fact that firstly, the composition of the Administrative Committee changed on a regular basis and secondly, because of this organ's tasks, States tended to delegate representatives to the Administrative Committee who were familiar with budget issues. §§ 6 and 7 for example contained an abundance of detail which should not be placed on the same level as the other provisions of the Convention. Even if one word of these very detailed provisions had to be amended, the Revision Committee would have to be convened to take a decision.

**DE** shared the Secretariat's view with regard to §§ 6 and 7 of Article 27. These paragraphs could be transferred to a lower ranking legal instrument than the Convention, whereas the more fundamental paragraphs could be kept in the Convention.

Following this discussion, the **SG** proposed that § 4, § 7 c) and § 9 be kept in the Convention. § 4 was of fundamental, almost constitutional importance. The Convention had to tell the Administrative Committee who had to carry out the audit and what the rights were in connection with this audit. § 7 c) explained that in his report on the financial transactions, the Auditor had to mention matters of importance to which the attention of the Administrative Committee should be drawn, for example cases of fraud or presumption of fraud, wastage or irregular use of funds or other assets of the Organisation. Instructions for the Auditor concerning such serious matters should emanate from the Convention. § 9 dealt rather with the relationship between the Auditor and the Administrative Committee or the Secretary General. Relationships between the various organs had to be dealt with in the Convention.

**FR** thought the SG's proposal was a good compromise solution. Nevertheless, § 7 described the extent of the audit to be carried out by the Auditor and should be kept in the Convention in its entirety.

The **Chairman** put the deletion of §§ 3, 5, 6, 8 and 10 from Article 27 to the vote, adding that the remaining paragraphs of Article 27 would be renumbered accordingly.

The **Revision Committee** approved the deletion of §§ 3, 5, 6, 8 and 10 from Article 27 of the Convention.

Following this vote, the **Secretariat** explained that an addition had to be made to the Explanatory Report and that paragraph 2 of the "General Points" would say that the Revision Committee had decided firstly, to keep §§ 4, 7 and 9 of Article 27 in the Convention owing to their fundamental importance and secondly, to delete §§ 3, 5, 6, 8 and 10 from this Article in the Convention.

Bearing in mind this further detail, the **Revision Committee** approved the Explanatory Report of the amendments to Articles 9 and 27 of the Convention.

## **6. Partial revision of Appendix E (CUI) of the Convention**

- Doc. CR 24/4 of 24.04.2009, doc. CR 24/4 Add. 1 of 26.05.2009 and doc. CR 24/4 Add. 2 of 08.06.2009
- Meeting room doc. 1, section 2.3, meeting room docs. 4 to 9

For the decision on this item of the agenda, the quorum was reached: nine Member States which were members of the Revision Committee with regard to Appendix E in accordance with Article 16 § 1 of COTIF were present or represented. Member States which had made a declaration on Appendix E in accordance with the first sentence of Article 42 § 1 were not members of the Revision Committee when it dealt with Appendix E.

**The Secretariat** explained that this partial revision had no other purpose than to achieve compatibility with EC law and to indicate to the Contracting Parties to the contract on the use of infrastructure, particularly those from the Member States of OTIF that are not members of the EC, which provisions of EC law are applicable to the use of infrastructure in the Member States of the EC. The authors of the CUI had certainly also attempted to create regulations that were compatible with EC law. However, since the adoption of COTIF 1999, other provisions had been enacted in the EC. The Secretariat introduced doc. CR 24/4, which described the results of an ad hoc working group.

### **Article 3 f)**

The representative of the **EC** referred to section 2.3 of meeting room doc. 1. The EC Member States had proposed a new definition of the term “*licence*” to make it clearer that it was a Member State that issued this licence to a rail transport undertaking.

**BA** asked for clarification to the effect that in this definition, it was not only the Member States of the EC that were meant, but also the Member States of OTIF that were not members of the EC.

The **Revision Committee** agreed tacitly with the **Secretariat’s** proposal to delete the word “*Member*” and also agreed with the amended definition.

The **Chairman** noted that the new definition with this adaptation made clear that the licence had to be a licence issued by a State. It concerned Member States that are also members of the EC as well as the other Member States of OTIF.

### **Article 5 and 5bis**

The **CIT** drew the meeting’s attention to the fact that in Article 5 (doc. CR 24/4), the group of people who may conclude a contract of use had on the one hand been extended to include “*authorised applicants*” in accordance with EC law, and that on the other, CUI did not contain a definition of “*authorised applicant*”. This raised the question of whether the “*authorised applicant*” would have to meet the same conditions as the carrier to be able to use a railway infrastructure.

According to the **Secretariat**, it was not necessary either to include an additional definition or to specify the conditions under which the infrastructure may be used in the case of an “*authorised applicant*”. The sole purpose of Article 5 was to stipulate that the existence of a contract of use was the prerequisite for applying the rules of CUI governing liability. The

Secretariat explained that a typical example of other legal persons who are entitled to conclude such a contract could be transport associations.

The representative of the **EC** added that the laws of the State in which the infrastructure is located would form the basis for deciding whether an “*authorised applicant*” was permitted to conclude a contract of use with the infrastructure manager. This additional possibility must continue to exist in those EC States where it had been introduced. In contrast, the extended wording of Article 5 would not force anything upon the other Member States of OTIF.

The **Chairman** summarised that there was no reason to introduce a new definition. The question of who constituted an “*authorised applicant*” was to be decided in accordance with the national law of the State in which the infrastructure was located.

**BA** expressed concern that this extension to Article 5 would mean that the concept of the CUI, with its rules on liability, would be abandoned, particularly as according to Article 5bis, other provisions of EC law should also apply with regard to Articles 8 and 9. BA was definitely not in favour of the proposals concerning Articles 5 and 5bis in doc. CR 24/4 and 24/4 Add.1, but supported the CIT’s suggestion in doc. CR 24/4 Add. 2.

The **Chairman** asked the representative of the EC to provide more justification for the European Community’s (EC) position on Article 5bis.

The representative of the **EC** explained that to begin with, the international associations working in the rail sector had advised the EC that the application of Article 5bis, as proposed in doc. CR 24/4, went too far. The EC had therefore suggested tighter wording for this provision (see doc. CR 24/4 Add. 1). This suggestion had indeed been drafted by the EC, but had also been discussed with the Member States in the meantime. This was now therefore a coordinated position and a proposal by the Member States of the EC.

**CIT** explained its position (doc. CR 24/4 Add. 2) to the effect that the wording proposed for Article 5bis was not just a disconnection clause in favour of EC law, but also the national law of the Member States, including in relation to liability. This meant that carriers did not have sufficient right of recourse for damage caused by the infrastructure. CIT proposed to delete Article 5bis. If the Revision Committee retained this Article, a compromise might be to delete the words “*in particular*” and Articles 8 and 9 in the list of the CUI provisions concerned. This last deletion could be replaced by a comment in the Explanatory Report. A note to the effect that the public law of the Member States applies in addition to the liability provisions of CUI should be sufficient.

The representative of the **EC** stressed that the words “*in particular*” must be kept, as one could never be sure if something had been left out.

The **Secretariat** reminded the meeting that at six meetings of the ad hoc CUI group, the members of this group had been informed quite clearly that with regard to the use of the railway infrastructure, there was no distinction in EC law between the areas of public and private law, so it was not possible to take this as a basis on which to build.

The **SG** asked about the legal justification for a contradiction between Articles 8 and 9 of CUI on the one hand and EC law on the other. He asked the representatives of the EC and CIT what the legal consequences of each of these two versions would be.

**CIT** referred to the difficult legal position of carriers who would also be liable to their customers for the infrastructure and for whom no uniform right of recourse was available owing to the declarations many Member States of the EC had made in accordance with Article 42 of COTIF. CIT feared the effects of Article 5bis on the CUI liability regime in accordance with Articles 8 and 9. CIT added that it had sought comparable liability provisions in EC law, but to no avail. If new liability provisions were to be introduced for the EC only, this would put the brakes on the liberalisation of rail traffic and would be an obstacle to rail transport between the EC Member States and the other Member States of OTIF. The carrier could not engage in international transport if he did not know the relevant liability rules.

The **Secretariat** asked if the way to a compromise should not be sought in the documents that had been produced at the start of the ad hoc group's work. According to those documents, the problem lay more in the freedom of contract available to the Contracting Parties under Articles 8 § 4 and 9 § 4 than in the mandatory liability provisions. If Article 5bis were limited to Articles 8 § 4 and 9 § 4, this would not affect mandatory liability provisions. The Secretariat also pointed to the Explanatory Report on Articles 8 and 9.

In reply to a question from the **SG, FR** confirmed that with regard to the use of infrastructure, there was currently only liability in accordance with national law.

**CER** emphasised that Articles 8 and 9 of CUI contained harmonised provisions on liability. CER raised the question of the relationship between these liability provisions and the performance scheme described in EC law (Directive 2001/14/EC).

The representative of the **EC** admitted that there were a lot of matters in Article 5bis that had nothing to do with liability. This meant that the concerns with regard to the effects on the uniform liability regime were unfounded.

The **Chairman** suggested to the EC that it should check whether it was the Community or the Member States that have competence for liability. If it was the Member States, it should be possible to delete Articles 8 and 9 from the list.

**HU** pointed out that EC law dealt in any case with numerous rights and obligations of carriers and infrastructure managers.

The **Chairman** broke off the discussions on this item of the agenda.

At the start of the following day's discussions, the Revision Committee had before it meeting room doc. 4 with a new proposal by the Member States of the EC.

The representative of the **EC** highlighted the new elements of this proposal. Firstly, the new wording proposed for Article 5bis made it clear that what was meant were the obligations of the parties to the contract of use (and not, for example, those of the Contracting Parties to the Convention). Secondly, the new wording took account of the requirements of those Member States that have separate agreements with the EC. In addition to this version, which was clearer as compared with the wording in doc. CR 24/4 Add.1, the proposal contained clarification to be included in the Explanatory Report, saying that it was not the purpose of this provision to prevent the full application of Articles 5, 6, 7, 8, 9 and 22, in so far as there were no EC regulations on the matter in question. Rather, the purpose was to preserve the integrity of Community law.

**NO** and **FL** indicated that they were satisfied with this new proposal.

On behalf of **MK**, **RS** supported the original version of Article 5bis as in doc. CR 24/4, which mentioned laws and provisions of the State in which the infrastructure is located, irrespective of membership of the EC.

According to **CIT**, there was a lack of consistency in referring in the definition of licence in Article 3 f) to the national law of any State, while in Article 5bis, reference was made to EC law. **CIT** also suggested clarifying the relationship between the performance scheme (Art. 11 of Dir. 2001/14/EC) and the liability provisions of CUI in the Explanatory Report. **CIT** set out its last suggestion more precisely in meeting room doc. 5.

The representative of the **EC** explained why there should not be a general reference to national law in Article 5bis: it was not the intention to replace an internationally unified liability regime with different national laws.

According to **CIT**, a reference to national law would be correct if Articles 8 and 9 were deleted from the list.

On behalf of **MK**, **BA** and **RS** supported this suggestion from **CIT**. In reply to a question from the representative of the EC, they explained that the issue for them was that for the same areas of law, e.g. the licence or the safety certificate, national law was also the point of reference in those Member States of OTIF that are not members of the EC, and remained unaffected by the provisions of CUI listed.

Firstly, the representative of the **EC** reminded the meeting that the aim of the revision work was to arrive at solutions that would enable the Member States of the EC to withdraw their declarations in accordance with Article 42 of COTIF. On the other hand, he understood the call for both groups of States to be treated equally – those that are also Member States of the EC and those that are not Member States of the EC. He outlined the features of a new solution: Article 5bis could be split into two provisions. One of them – without Article 8 and 9 – (for the Member States outside the EC), would refer to any national law. The other one – Articles 8 and 9 – would refer to EC law.

After a short break, the alternative proposal by the Member States of the EC was presented as meeting doc. 6 (option B).

The **Chairman** noted that there were three paragraphs in the new version, the first and third of which would relate to all Member States and the second of which would only concern the Member States of the EC. There were two lists of the CUI provisions concerned; however, the list of matters to which other provisions apply (national law/EC law) remained unchanged, i.e. they were the same for both groups of States.

In a discussion between **RS/MK**, the representative of the **EC**, **SG**, the **Secretariat**, **DE** and **FR**, it emerged that the geographical scope of application is not laid down in paragraph 2 and that the Member States that apply EC law on the basis of separate agreements with the EC were still not taken into account.

In order to rectify this, the Member States of the **EC** subsequently submitted an accordingly adapted variation of their proposal in meeting room doc. 7 (option B bis).

The **Chairman** established that this version took all interests into account.

**CIT** said that in principle, it was satisfied with the compromise solution submitted, but still wished to have a clear distinction between liability in accordance with CUI and the performance scheme in accordance with EC law, at least in the Explanatory Report. **CIT** set out its new suggestion on this in meeting room doc. 8.

**CER** supported this suggestion. Both associations feared that Articles 8 and 9 could be misinterpreted if the relationship between these provisions and the performance scheme was not made clear. According to **CER**, it should be made clear in the Explanatory Report that the performance scheme does not replace liability in accordance with Articles 8 and 9 or that the performance scheme must be applied in addition to the liability provisions.

The representative of the **EC** was against any addition to this question now that a compromise solution concerning Article 5bis had been found. Otherwise, the EC Member States would have to re-coordinate. He also referred to the EC's proposal concerning the Explanatory Report in meeting room doc. 4, from which it could be seen that the associations' concerns were unfounded.

The **Chairman** noted that no Member State had taken on **CIT**'s suggestion.

At a later stage, the **EC** submitted a refined version of its proposal on Article 5bis in a new meeting room doc. 9 (option B tris). **DE** explained that this did not seek to amend the content, but to try to express more clearly the intention behind the proposal.

**NO** and **FL** doubted whether the new wording in paragraph 2 would better express what had been agreed. It might give the false impression that EC law was directly applicable in the EEA States, but this was specifically not the case.

In a discussion, the representative of the **EC**, the **Secretariat**, **NO**, **FL** and **DE** agreed some further amendments that were necessary in relation to the text in meeting room doc. 9. The **Chairman** read out the text of para. 2 of Article 5bis as resulting from this discussion:

*“The provisions of Articles 8 and 9 shall not affect the obligations which the parties to the contract on the use of infrastructure have to meet in an EC Member State or in a State where the Community legislation applies as a result of international agreements with the European Community.”*

## **Article 6**

The **Chairman** noted that the aim of the proposal submitted to the Revision Committee was to make an editorial amendment to the English version only and that there were no objections.

## Article 7

The **Secretariat** explained why it had been proposed to delete § 1. The duration of the contract was one of the details of the contract of use. A provision saying that a contract may be concluded for a limited or unlimited period was superfluous, as there was no other possibility.

The **Chairman** noted that there were no objections to this deletion.

### Explanatory Report on Article 1

The representative of the **EC** proposed deleting the last two sentences of the Explanatory Report on Article 1, para. 1 b). It was obvious that carriage between two EC Member States was international carriage within the meaning of CIV and CIM.

The **Secretariat** added that not only the last two sentences, but the whole text of paragraph b) could be left out. There was no need to explain the term “*international carriage*”. Instead, it would be useful to refer to the existing comprehensive explanations on Article 1 of CIV and Article 1 of CIM, especially as Article 1 of CUI dealt with international carriage by rail within the meaning of the CIV UR and the CIM UR.

Further proposals by the EC introduced by the representative of the **EC** with reference to meeting room doc. 1 concerned para. 2 of the Explanatory Report on Article 1 (last sentence).

The **Secretariat** agreed to cite “*empty returns*” as a further significant example of an action linked to the performance of the contract of carriage. As such, they are also included in the scope of the contract of use.

The **Secretariat** also reacted to the doubts expressed by the EC Member States in meeting room doc. 1 as to whether expressions such as “*the group agreed*” or “*the group held different views*” were acceptable in a text supposed to become a “supplementary means of interpretation” in the sense of Article 32 of the Vienna Convention on the Law of Treaties of 1969. The purpose of such expressions was only to describe the background that led to the texts and to present the ad hoc group’s discussions correctly. The Secretariat agreed with the EC only to present the background to how the texts came about under “*General Points*”. Expressions such as these could be avoided in parts of the Explanatory Report dealing with specific provisions.

**NO** proposed to include a further note in the “*General Points*” (new paragraph 6) to say that in each instance where the Explanatory Report concerns the Member States of the EC, this applies *mutatis mutandis* to States that apply EC law on the basis of special agreements with the EC.

The **Chairman** summarised that the Secretariat should be given a corresponding mandate concerning the final version of the Explanatory Report to be submitted to the General Assembly.

**FR** said it agreed both with the amendments to CUI and with the Explanatory Report. However, it pointed out that the French version required editorial improvements and offered its support in making them. If an editorial group were to be set up, FR would be pleased to take part.

In consultation with the **Secretariat**, the **Chairman** made clear that it was open to all interested Member States to take part in the editorial work.

The representative of the **EC** announced that he had some further minor editorial proposals which should be dealt with in an editorial group rather than in the Revision Committee, as the Revision Committee would not have enough time to deal with them.

The **Secretariat** said it was prepared to include the proposals for editorial improvements that had been announced. It said that for various reasons, it would not be possible to carry out the editorial work in parallel with the Revision Committee meeting and to conclude it before the end of the meeting.

In the knowledge that the quorum had not yet been reached for a decision, the **Chairman** put Appendix E to an initial vote so that the Member State that was not present at this moment could vote subsequently.

7 Members of the Revision Committee voted in favour of the amendments to Appendix E as resulting from the discussions. One member abstained.

As **ES** expressed concern at this course of action, the entire vote was repeated once the temporarily absent member had returned.

The **Revision Committee** adopted the partial revision of Appendix E, together with the corresponding adaptations to the Explanatory Report:

8 in favour, none against, one abstention.

#### **7. Partial revision of Appendix F (APTU) of the Convention**

- Doc. CR 24/5 dated 28.05.2009
- Meeting room doc. 1 dated 22.06.2009

The **Chair** was handed over to **Mr Bacher (CH)**, who was elected on the first day (23.06.2009) of the session to chair the Revision Committee starting from item 7 until the end of the session.

The **Chair** reminded the meeting that the amendments to the APTU and ATMF Appendices aimed at ensuring compatibility between EC law and OTIF law had already been discussed at the 3<sup>rd</sup> session of the Committee of Technical Experts (Berne, 11/12.02.2009) and recommended for adoption by the Revision Committee.

With regard to the language versions, the **Chair** commented that the most developed text and the text that was ready for adoption was the English one. The French and German versions had not yet been translated. The Chair suggested carrying out the final review of the English version with the aim of improving the text and adopting it. The French and German versions would be adopted using the written procedure. The Revision Committee adopted the Chair's suggestion.

The **Secretariat** explained that translation difficulties were temporary and asked the French and German speaking Member States to be patient, as the OTIF Secretariat would have a new translator for French and German from 1 July 2009.

#### **Article 4**

The **EC** representative explained that Articles 5 and 6 set out the procedure for adopting technical standards and Uniform Technical Prescriptions (UTPs) and Article 4 set out who had to do the work to prepare proposals for standards and UTPs. The wording of Article 4 could be misinterpreted and considered incompatible with Article 20 § 3 of the Convention, which provides that the Committee of Technical Experts (CTE) may not modify a UTP under any circumstance. This was written in 1999 in the assumption that the UTP would be prepared by an international body and that if a modification was required, the latter would be prepared by the author, and not by the CTE. In order to remain compatible with the Convention it was suggested to add at the end of article 4 § 2: “*on the basis of proposals made in accordance with Article 6*”.

The **Secretariat** commented that the conflict with the Convention was in Article 6 § 1 and proposed to delete from it the words “*or a provision amending it*”. If an amendment were necessary, the CTE had to adopt the amended UTP as a whole. The proposal from the EC concerning Article 4 § 2 would prevent the Secretariat from taking any initiative to draft UTP texts which it might find appropriate based on its expertise and knowledge. The Secretariat would then have to await a proposal or rather a request from a Contracting State, the EC or an international association. The Secretariat stressed that the draft UTPs adopted at the 3<sup>rd</sup> session of the CTE in February 2009 had all been produced by the Secretariat on its own initiative. The **EC** representative did not consider that there was any conflict with the Convention and maintained its proposal.

**DE** commented that this issue was not discussed at the “Schweinsberg” working group, but this proposal to add the proposed text at the end of Article 4 § 2 was the proposal made by the EC Member States (MS).

The **Chair** decided to vote on these two proposals.

The result of the vote on the EC proposal on Article 4 § 2: no votes in favour. The proposal was therefore rejected.

The result of the vote on the OTIF proposal on Article 6 § 1: 8 votes in favour, none against, 1 abstention. The proposal was therefore adopted.

The **EC** representative requested that the session be suspended in order to have a discussion with the **EC OTIF MS**, saying that the EC MS did not vote in accordance with the EC position set out in meeting room doc. 1 dated 22.06.2009.

Following this discussion, the **EC** representative thanked the Chair for suspending the meeting and asked that the meeting’s discussion on the two proposals be reopened.

The result of the vote to reopen the discussion: 19 votes in favour, 2 votes against, 1 abstention.

The **Secretariat** suggested replacing the word “*proposals*” with “*applications*” in the EC proposal on Article 4 § 2. It did not consider that there was any conflict with EC law in a proposal amended accordingly. The OTIF proposal on Article 6 § 1 was withdrawn. The **Secretariat** also suggested making the procedure clear in the Explanatory Report, especially for those MS that were not attending this session.

The result of the vote on the amended EC proposal on Article 4 § 2: 4 votes in favour, 2 votes against and 3 abstentions.

The EC proposal on Article 5 § 4 (replace “*have been*” with “*be*”) was tacitly adopted.

## Article 8

In order to clarify the impact of a newly adopted UTP on existing subsystems the **EC** representative proposed to add a new paragraph 2a to Article 8 as follows: “*UTPs shall apply to new subsystems. UTPs also apply to existing subsystems when they are renewed or upgraded and in accordance with the migration strategy referred to in paragraph 4(f) of this Article.*”

In reply to the question from the **Secretariat** whether the proposal was based on a certain text of EC law, **DE** explained that this reflected the basic migration principles of Article 5 § 2 of the Interoperability Directive 2008/57/EC.

The **Chair** pointed out that by building a new system or upgrading it, it is logical to apply future provisions to achieve a harmonised railway system, but he asked if compliance with the TSI would also be necessary when a vehicle is renewed. **DE** replied that in case of renewal, the MS had to decide whether to apply the TSI or not.

The **EC** representative added that the exact wording for OTIF MS to decide whether a new admission to operation in the event of renewal or upgrading was needed was in ATMF Article 10 § 11 (wording taken over from Article 20 of the Interoperability Directive 2008/57/EC).

The **Secretariat** suggested that these principles be explained in the Explanatory Report.

**RS** commented that the definition of “*renewal*” in ATMF (not changing the overall performance of the subsystem) did not make it clear to him that the application of UTP was mandatory.

The **EC** representative explained, particularly to the non-EC MS of OTIF which had not participated in the work of the “Schweinsberg” group and which might not know all the details about all the Articles in the EC regulations, that all the provisions of the directives were always discussed with the MS in the context of the Council and the European Parliament, and the consensus of the MS was generally taken into account. The intention of the proposal on Article 4 was to protect the rights of the MS (not to reduce them), because Article 6 allowed a MS to make a proposal. The situation in Article 8 was the same. According to Article 10 § 11 of ATMF, in the case of renewal, in which safety critical components could be replaced by others, although the overall performance would not be changed, each MS had the right to decide, taking into account the criteria given in the UTP, if it makes sense to apply UTP or not.

The result of the vote on the EC proposal to insert a new paragraph 2a in Article 8: 8 votes in favour, none against and 1 abstention.

The deletion of the square brackets (not the text) in Article 8 § 4(d) was tacitly adopted.

## Article 9

As Article 9 could only be amended by the General Assembly, the **EC** representative proposed to add supplementary information to the Explanatory Report concerning the application of validated technical standards made mandatory through UTPs.

The **Chair** commented that discussing the amendments to the Explanatory Report would be time-consuming and suggested that Mr Kafka, for example, from the Secretariat and probably other persons, should finalise the Explanatory Report concerning Article 9. There was no objection to this suggestion.

The **EC** representative welcomed the Chair's suggestion. The Secretariat was in charge of the final version of the Explanatory Report, which would subsequently be submitted to the General Assembly for final approval. The issue of participation in this work was not discussed with the EC MS but the European Commission declared its willingness to assist with the work.

Result of the vote on mandating Mr Kafka (Secretariat) and Mr Grillo (European Commission) to finalise the Explanatory Report in respect of Article 9 of APTU: 21 votes in favour, none against and 1 abstention.

## Articles 10 and 11

As Articles 10 and 11 could only be amended by the General Assembly, the **EC** representative proposed to clarify in the Explanatory Report the procedure of abrogation of Technical Unity when all relevant UTPs were in force, and the issue of validated technical standards.

The **Chair** suggested that Mr Kafka (Secretariat) and Mr Grillo (EC) should also be mandated to include information on Articles 10 and 11 in the Explanatory Report.

**DE** and **CH** asked to be involved in the drafting work as the abrogation of Technical Unity concerned national law in Germany and Switzerland. **FR** nominated Mr Godet from the Ministry of Ecology, Energy, Sustainable Development and Sea for this work.

Result of the vote on the mandate to Mr Kafka (Secretariat), Mr Grillo (European Commission), Mr Schweinsberg (DE), Mr Hepp (CH) and Mr Godet (FR) to finalise the Explanatory Report in respect of Articles 10 and 11 of APTU: 21 votes in favour, none against and 1 abstention.

**RS** asked for a correction to Article 11 § 2 a) and b), which referred to RIV and RIC as "*Regulations*". The correct name of RIC and RIV was an "*agreement*" between railways.

The **Chair** proposed that as this Article could not be amended by the Revision Committee, that Secretariat should deal with RS's comment. There was no opposition.

## Articles 13

The wrong use of the singular of the word "*organisation*" in §§ 1 and 4 was corrected ("*organisations*"). The correction was tacitly adopted.

Also tacitly adopted was the proposal from EC in § 2 to replace “*Annex I*” by “*Annex*” as there would only be one Annex to APTU.

The **Secretariat**'s proposal to use the plural in § 4 for Contracting States and to add the word “*Experts*” after “*Committee of Technical*” was tacitly adopted.

## **Annex**

In the Annex to the APTU Appendix, the **EC** representative proposed to replace the list of parameters used for granting approval to existing vehicles which, by its nature, was not compatible with future UTPs, by the list originally prepared by the ERA Working Party on the basis of the new Interoperability Directive 2008/57/EC. During the discussion on redrafting the Directive at Council level, the MS pointed out that several EC MS had not examined the list. As a compromise in the redrafted Directive 2008/57/EC, provision was made for this list to be updated within a period of one year following the adoption of the Directive. The ERA Working Party had recently proposed a new version of this list which received a favourable opinion from the Railway Interoperability and Safety Committee (RISC), the corresponding organ in the EC to the OTIF CTE. This list would only become official at the end of 2009. The EC representative nevertheless proposed to use this list. It would eliminate the need to convene the Revision Committee once more, as this list would be officially adopted in the EC by the end of 2009.

The **Chair** found this list more sophisticated. It should be used as a check list for cross-acceptance and mutual recognition in international railway traffic.

The **Secretariat** expressed satisfaction with the EC proposal to adopt the “*future*” list. This would save the work and costs related to convening the Revision Committee.

The **Chair** proposed to take a vote on replacing the list of parameters with the list proposed by the EC and to mandate Mr Kafka (Secretariat) and Mr Grillo (European Commission) to explain in the Explanatory Report why the list had been replaced.

Result of the vote: 8 votes in favour, none against, 1 abstention.

## **Explanatory Report**

**NO** requested a new point 17 explaining the EEA MS obligations to the EC according to the EEA agreement. It could be the same wording as used in the CUI Appendix (point 6 of the Explanatory Report).

The **EC** representative commented on the EC proposal on Article 12 aimed at avoiding the EC MS having to notify the same rules twice (once to the European Commission and again to the OTIF Secretary General).

The **Secretariat** agreed to this proposal and suggested that the Secretary General could simply be notified through publication by the EC of the rules.

The **Chair** proposed to take a vote on mandating Mr Kafka (Secretariat), Mr Grillo (European Commission) and Ms Classon (NO) to finalise the Explanatory Report by including a new point 17 concerning the obligations of the EEA countries.

Result of the vote: 20 votes in favour, none against, 2 abstentions.

The result of the vote on the APTU Appendix, with the individually adopted amendments above: 7 votes in favour, none against, 2 abstentions.

### **Conclusion:**

- 1) The APTU Appendix (doc. CR 24/5 dated 28.5.2009) with the amendments adopted during this session was adopted.
- 2) Mr Kafka (**Secretariat**) and Mr Grillo (**European Commission**) were mandated to finalise the Explanatory Report with respect to Article 9 § 1.
- 3) Mr Kafka (**Secretariat**), Mr Grillo (**European Commission**), Mr Schweinsberg (**DE**), Mr Hepp (**CH**) and Mr Godet (**FR**) were mandated to finalise the Explanatory Report in respect of Articles 10 and 11 (Abrogation of the Technical Unity).
- 4) Mr Kafka (**Secretariat**), Mr Grillo (**European Commission**) and Ms Classon (**NO**) were mandated to finalise the Explanatory Report concerning the now adopted EC proposal and a new point 17 concerning the obligations of the EEA countries.

## 8. Partial revision of Appendix G (ATMF) of the Convention

- Doc. CR 24/6 dated 28.05.2009
- Meeting room doc. 1 dated 22.06.2009
- Meeting room doc. 3 dated 23.06.2009
- Meeting room doc. 10 dated 25.06.2009

The **EC** representative proposed generally to use abbreviations in the text, for example “*UTP*” for Uniform Technical Prescriptions.

The **Secretariat** explained that it was not customary to use too many abbreviations in the Convention or in its Appendices.

### Article 2

The **EC** representative drew attention to the fact that there were differences between the definitions used in the various Appendices (for example: infrastructure manager, regional organisation, keeper, ...).

This was confirmed by the **Secretariat** and it proposed to add the following sentence at the beginning of Article 2: “*For the purposes of this Appendix and its (future) Annex(es), the APTU Uniform Rules and its Annex(es) and the APTU Uniform Technical Prescriptions (UTP) the following definitions shall apply:*”.

The **EC** representative proposed to refer in Article 2 eea) (definition of TSI) to Directives 96/48/EC and 2001/16/EC because some TSIs adopted under those directives would remain in force even after the abrogation of these Directives (after 19 July 2010).

**RS** asked for an explanation and specific examples of what exactly was meant by the definition of “*other railway material*”.

The **Secretariat** would deal with this request in the Explanatory Report by presenting some examples.

### Article 3a

The **EC** representative proposed to delete the words “*for international traffic*” in § 1 because this distinction was not defined in the relevant part of Directive 2008/57/EC and to replace “*shall be*” with “*are*” in § 3.

Result of the vote on the above-mentioned proposals: 8 votes in favour, none against, 1 abstention.

**NO** proposed to add in Article 3a § 2 first subsection and in Article 5 § 5 wording containing the EEA MS’ obligations to follow EC law.

**CH** asked to add the obligations resulting from bilateral agreements concerning the application of EC law.

The **Secretariat** proposed for example the wording: “*MS which apply EC legislation as a result of international agreements*”.

It was concluded that the Secretariat should carry out the corrections using the list of Articles submitted by NO and CH. These corrections were considered to be editorial and would be carried out without voting.

**HU** asked the European Commission to clarify the legal instrument for the mutual recognition of the authorisation of placing a vehicle into service with regard to Article 21 of the Interoperability Directive 2008/57/EC. The question was whether a wagon or carriage complying with TSI/UTP approved in a non-EC OTIF MS would need additional approval when entering the territory of an EC OTIF MS.

The **EC** representative admitted that the wording of Article 21 in the Directive could be misleading as it required that the authorisation had to be carried out at least once in an EC MS. ATMF Article 3a §§ 1 and 2 ensured the mutual recognition of authorisations. That meant that a vehicle authorised in a non-EC OTIF MS which fulfilled conditions a) to d) would not need an approval in the European Community. The result of consultation with the legal service of the European Commission was that since the European Community was going to apply COTIF law by acceding to OTIF, COTIF law would take precedence over the EC law in relations with third countries.

The **Chair** drew the meeting’s attention to the EC proposal on Article 3a in doc. CR 24/meeting room doc. 3 dated 23.06.2009.

The **EC** representative asked to postpone the discussion on this proposal and proposed to discuss and decide upon it together with the proposals on Article 15.

## Article 6

The **EC** representative explained the EC comment on Article 6 § 1 from the European Commission’s legal service requesting an addition to the Explanatory Report to say that for a railway undertaking or infrastructure manager, when operating on the infrastructure of the European Community Member States, in addition to the COTIF “*Admission to operation*”, there are other regulations that must be met (mainly: licence, safety certificate, path contract, ...).

**RS** noted that other conditions such as the licence and safety certificate were not in the scope of ATMF. This issue was regulated by Article 5bis of CUI.

The **Secretariat** supported the comment from **RS** and therefore proposed to refer to the CUI Appendix in the Explanatory Report. The remark could be general (not only concerning the infrastructure in EC or EEA MS) and could refer to the Explanatory Report on CUI.

In replying to the comment from **RS**, the **EC** representative stressed the need to explain the issue of certificates for operating on the EC-MS territories. Many stakeholders had asked for clarification in order to have legal certainty. It was obvious that all the directives were applicable on the territories of the EC MS, but in this case different terms were used in the EC and in OTIF for the same document, for example “*Admission to Operation*” (COTIF regulation) and “*authorisation of placing into service*” (EC regulation). The name of the “*Certificate to Operation*” seemed to indicate that the operator can operate the vehicle, but there were other conditions for the operator under EC law.

The **Chair** proposed to mandate Mr Kafka (Secretariat), Mr Grillo (European Commission) and Mr Popovic (RS) to finalise the Explanatory Report in respect of Article 6 § 1.

Result of the vote: 20 votes in favour, none against, 2 abstentions.

The EC proposals on Article 6 § 2 (move the word “*only*” to come after the word “*operate*”, renumber subparagraphs of the second bullet point in Article 6 § 3 and renumber the subparagraphs in Article 6 § 4) were tacitly adopted.

The **EC** representative explained that Article 6 § 4 dealt with specific vehicles which were not in conformity with all UTPs. That excluded automatic recognition of approval between OTIF MS. The proposal which had the aim of creating more clarity was to replace “*The competent authorities have to accept verifications that have been made by other competent authorities according to the Uniform Technical Prescriptions. However the competent authorities shall take full account of the equivalence table referred to in Article 13 of the APTU Uniform Rules*” in Article 6 § 4 with the following: “*For the part of the vehicle which is compliant with a UTP or part of it, the competent authorities have to accept verifications that have been made by other competent authorities according to the Uniform Technical Prescriptions. For the other part of the vehicle the competent authorities shall take full account of the equivalence table referred to in Article 13 of the APTU Uniform Rules.*”

Result of the vote: 7 votes in favour, none against, 2 abstentions.

## **Article 10**

In the last two subparagraphs of Article 10 § 11, the **EC** representative proposed to replace “*Committee of Technical Experts*” with “*Secretary General*” as the Secretary General should be notified, not the Committee of Technical Experts.

Result of the vote: 7 votes in favour, none against, 2 abstentions.

## **Article 15**

The **EC** representative drew the attention of the Revision Committee to the fact that proposals on Article 15 were set out in two different documents (meeting room doc. 1 dated 22.6. 2009 and meeting room doc. 3 dated 23.06.2009). He apologised to the non-EC OTIF MS for the very late distribution of these documents. The reason for this was that the issue of Article 15 had been discussed in the “Schweinsberg” group and later in the Council of Ministers and the European Parliament when the Safety Directive 2008/110/EC had been prepared. The Safety Directive 2008/110/EC had been in force since 16 December 2008 and that had led to the present EC proposals for amendments to Article 15. A simple additional amendment to Article 3a was proposed (meeting room doc. 3 dated 23.06.2009) taking into account a general agreement that the Entity in Charge of Maintenance (ECM) ought to be certified. The aim was to ensure the mutual recognition of the certificates issued to ECMs between EC MS and OTIF non-EC MS on condition that the two systems of ECM certification (EC and OTIF) were equivalent. The criteria for the mutual recognition would be available in the EC in about two years time (end of 2010) as a result of the work of ERA. As at May 2009, ten EC MS had signed the Memorandum of Understanding establishing the basic principles of a common system of certification of ECM for freight wagons and some non-EC OTIF MS have also indicated an interest in signing it.

The EC certification system should be set up according to the framework of the Safety Directive 2008/110/EC and in the OTIF area through adoption by the CTE. It was proposed to describe the procedure for adopting these rules in Article 15.

The proposal (available in English only) for a new paragraph in Article 3a was as follows: *“An Entity in charge of maintenance (ECM) for a freight wagon, certified according to Article 15(2) shall be deemed as certified according to applicable European Community and corresponding national legislation and vice versa in the case of full equivalence between the certification system to be adopted under Article 14a(5) of Directive 2004/49/EC<sup>2</sup> and the rules to be set up and decided upon by the Committee of Technical Experts according to Article 15(2).”*

This new paragraph was worded in the same manner as §§ 1 and 2 concerning the placing into service/admission to operation of the vehicles.

The EC MS thought Article 15 was too detailed. Its wording was justified one year ago, but as the CTE has to completely define the certification system it would be possible slightly to simplify the Article.

The proposals for amendments to Article 15 were contained in two meeting documents. In meeting room doc. 1 dated 22.06.2009, new wording for Article 15 § 2 was proposed: *“Each vehicle, before it is admitted to operation or used on the network, shall have an entity in charge of maintenance (ECM) assigned to it and this entity shall be registered in the data bank referred to in Article 13. A railway undertaking, an infrastructure manager or a keeper may be an entity in charge of maintenance. The ECM shall ensure that the vehicles for which it is in charge of maintenance are in a safe state of running by means of a system of maintenance. The entity in charge of maintenance shall carry out the maintenance itself or make use of contracted maintenance workshops”*; whilst the sentence: *“The maintenance of a railway vehicle and other movable railway material shall be organised by an Entity in Charge of Maintenance (ECM) to be registered as such in the data bank before the vehicle is admitted for operation or used on the network. A keeper, a railway undertaking or an infrastructure manager may be an ECM”* should be deleted. The sentence: *“The ECM for a freight wagon must hold a valid certificate issued by an external auditor accredited/recognised in one of the Contracting States”* should remain. Furthermore, the EC representative proposed to delete the sentence *“Article 5 §§ 3 and 5 to 7 shall apply mutatis mutandis to accredited/recognised auditors”* because this sentence was not correct, as the CTE would define the criteria. The rest of Article 5 § 2 would remain unchanged, but with the following addition before the last sentence: *“These rules shall indicate the degree of equivalence with the criteria related to the ECM certification system adopted in the European Community.”* (proposal from meeting room doc. 3 dated 23.06.2009).

Before starting the discussion the **Chair** recommended that the Revision Committee should take note of the fact that at the time the “Schweinsberg” group had discussed this issue, legal developments in the EC was going on and had not yet been completed, which had resulted in this difference. He supported the EC representative in not dealing with too many details at the ATMF level.

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2 Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on railway safety – EUOJ L220 of 21.6.2004

The **Secretariat** proposed to clarify the wording in the proposal on Article 3a by replacing “*to be adopted*” with “*adopted*” and by replacing “*to be set up*” with “*set up*”. It suggested moving the references to specific paragraphs or Articles to the Explanatory Report rather than including them as footnotes.

In addition, the **Secretariat** agreed with the intention of the proposal on Article 3a but taking account of future developments, it proposed to include certificates for maintenance workshops, as Article 15 § 4 says that the CTE may set up a similar certification system for maintenance workshops.

During the lunch break an ad hoc group (OTIF **Secretariat**: Mr Raff, **European Commission**: Mr Grillo, **DE**: Mr Schweinsberg, **FR**: Mr Davenne and Mr Borsu) prepared a compromise proposal for amendments to Article 3a and 15, which was tabled as meeting doc. 10 dated 25.06.2009. There was agreement on the fundamental aspects of this proposal.

Result of the vote: 8 votes in favour, none against, 1 abstention.

### Article 18

The incorrect reference in the French version of Article 18 § 1 was noted and tacitly adopted for subsequent correction by the Secretariat.

### Article 19

Reacting to the **EC** representative’s remark that a reference to RIC was missing from Article 19 § 2, the **Secretariat** prepared the following proposal: to add after the words “*technical provisions of the RIV 2000 agreement (revised edition of 01.01.2004)*” the following wording “*or the RIC agreement respectively*”.

Result of the vote: 8 votes in favour, none against, 1 abstention.

Replacing the incorrect reference to § 1 in Article 19 §§ 3 and 6 with references to §§ 2 and 2a was tacitly adopted.

The **Chair** suggested mandating Mr Kafka (Secretariat), Mr Grillo (European Commission) and Mr Hepp (CH) to finalise the Explanatory Report and to ensure that it was consistent.

Result of the vote: 21 votes in favour, none against, 1 abstention.

The result of the vote of the complete ATMF Appendix, with the individually adopted amendments above: 8 votes in favour, none against, 1 abstention.

The **Chair** indicated that a major objective had now been achieved, namely to enhance the technical performance of the railway in the entire OTIF area. The Revision Committee had chosen the correct procedure and had shown courage in not trying to settle final details but to leave that to the CTE. In particular, he thanked the persons who had done the hard drafting work on the two Appendices, APTU and ATMF, under the chairmanship of Mr Schweinsberg.

### Conclusion:

- 1) The ATMF Appendix (doc. CR 24/6 of 28.05.2009) was adopted with the amendments adopted during this session.
- 2) The **Secretariat** was mandated to detail in the Explanatory Report the definition of “other railway material” in Article 2 s) by giving some examples.
- 3) The **Secretariat** should make the corrections concerning the reference to the obligations of EEA MS and CH using the list of Articles submitted by NO and CH.
- 4) Mr Kafka (**Secretariat**), Mr Grillo (**European Commission**) and Mr Popovic (**RS**) were mandated to finalise the Explanatory Report with respect to Article 6 § 1 (conditions using infrastructure) by referring to the Explanatory Report on Appendix E (CUI).
- 5) Mr Kafka (**Secretariat**), Mr Grillo (**European Commission**) and Mr Hepp (**CH**) were mandated to produce a final revised version of the Explanatory Report.

## 9. Editorial amendments

- Doc. CR 24/7 of 24.04.2009

The **Secretariat** explained that the document only concerned two editorial amendments to the English version of the CIM UR. The first concerned the definition of “*carrier*” in Article 3 a) of CIM, in which the same expression as in Articles 26 and 49 § 2 should be used, i.e. “*successive carrier*”. So the word “*subsequent*” should be replaced with “*successive*”.

The **Secretariat** then justified the second amendment relating to Article 6 § 7. This had been suggested by CIT directly after the entry into force of COTIF 1999, but could only now be adopted at this meeting of the Revision Committee. It had emerged that the English text “*In the case of carriage which enters the customs territory of the European Community...*” did not say the same as the German and French texts, according to which the consignment must “*use*” (“*berühren/emprunter*”) the customs territory of the European Community. The **Secretariat** proposed to adapt the text so that there could be no doubt that the provision applied not just to carriage into the customs territory of the EC, but also to all CIM transport operations carried out (whether wholly or partly) on the territory of the EC, irrespective of their direction. In order to express this and to rule out misinterpretation of the English text, the word “*enters*” should be replaced with the words “*takes place on*”.

The **Chairman** noted that 22 members of the Revision Committee were present or represented for this question, so the quorum for amendments to Appendix B (19 Member States) was reached. He put the editorial amendments in doc. CR 24/7 to the vote.

The **Revision Committee** adopted these amendments to the CIM UR with 21 votes in favour and one abstention.

The representative of the **EC** referred to meeting room doc. 1, section 2.6 (p. 9), according to which during the work of the EC working group on the role of the keeper, the United Kingdom had pointed out that the definition of the term “*keeper*” in Article 2 c) of CUV was not correct from a linguistic point of view. He proposed to align the definition of this term in

CUV with the definition adopted by the Revision Committee for the purposes of the ATMF UR (Article 2 n).

**CH** said it would support the EC's proposal.

The **Secretariat** drew attention to the fact that aligning the definition in this way would not just be an editorial amendment and would have consequences for the German and French versions. In contrast to the existing definition, as contained in CUV, the new text proposed would not contain the element of "*economic*" use and the capacity of keeper would be dependent upon the keeper's being registered. The Secretariat stressed that each of the definitions would only be valid for the purposes of each specific Appendix. In so far as the purposes were different, the definitions could also be different.

**CIT** asked whether the new definition of keeper that was proposed corresponded to the definition in the Interoperability Directive (2008/57/EC).

The representative of the **EC** confirmed that this was the case, although the reference to the register would have to be aligned accordingly.

Bearing in mind the fact that the proposal apparently went above and beyond an editorial proposal and as there was insufficient time to examine the issue in detail, the representative of the EC withdrew the proposal.

## 10. Next steps

The **Chairman** considered the results of the Revision Committee, particularly in relation to Appendices F and G, to be a major step in support of the railway system in the whole COTIF area. He reminded the meeting that the results of the Revision Committee would be submitted to the General Assembly of OTIF. This would be held in Berne on 9 and 10 September 2009.

**CIT** asked whether another meeting of the Revision Committee was planned, and if so, when.

The **Chairman** acknowledged that owing to its very efficient work, the Revision Committee had left itself open to a certain risk. If it turned out subsequently that a mistake had crept in, this would have to be put right in another meeting of the Revision Committee. Otherwise though, no further session of the Revision Committee was planned in the near future.

The representative of the **EC** thanked both Chairmen for their excellent chairing of the discussions, which had made it possible for the Revision Committee to work very efficiently. The Revision Committee had been able to vote on all the Articles in which amendments had been required. However, the work could only be considered to be concluded once the results had been processed by an editorial group in all the working languages of OTIF. He asked how the editorial work that was required would be carried out.

**DE** pointed out that only the English text had been adopted at this session of the Revision Committee. The other two language versions could be adopted in a written procedure.

The **Secretariat** explained that directly after this session of the Revision Committee, the three language versions of the amended legal texts would first be consolidated. The Explanatory Report would be adapted in parallel. The first review of the legal texts and the Explanatory

Report could be carried out in an exchange of e-mails. If necessary, a small editorial group could then be convened.

The representative of the **EC** proposed that first of all, the English version of the texts adopted by the Revision Committee should be finalised from the editorial point of view before the other language versions were dealt with.

In reply to an objection from **CIT**, the **SG** said that Article 45 of COTIF, according to which, *“in case of divergence, the French text shall prevail”*, did not stand in the way of such a procedure. If there were differences between each of the language versions after the editorial work, these could be clarified at the General Assembly, if necessary. However, this was unlikely.

## **11. Any other business**

This provisional agenda item was not discussed.

The **Chairman** thanked the interpreters and all those – including the Secretariat – who had contributed before and during the meeting to ensuring that the Revision Committee was able to achieve its objectives. As the representative of a State that was not a Member State of the EC, he emphasised that the EC had shown a lot of goodwill and had worked in a spirit of co-operation.

The **SG** added that the interpreters' contribution was all the more valuable in that the participants had not had all the texts in all three language versions. He specifically thanked the Member States for their courage and determination. He also noted that the success of the Revision Committee had been favoured by the coming together of various circumstances: the result of the ad hoc working group on CUI, the breakthrough at the 3<sup>rd</sup> session of the Committee of Technical Experts and a positive reaction by the EC. His appreciation of the Member States also included the EC, especially as it was becoming apparent that the EC's accession to COTIF could soon be finalised.

The **SG** thanked both Chairmen, who had shown a real mixture of patience and decisiveness. Their names would be linked to the success of this meeting.



**OTIF**



**ORGANISATION INTERGOUVERNEMENTALE POUR  
LES TRANSPORTS INTERNATIONAUX FERROVIAIRES**

**ZWISCHENSTAATLICHE ORGANISATION FÜR DEN  
INTERNATIONALEN EISENBAHNVERKEHR**

**INTERGOVERNMENTAL ORGANISATION FOR INTER-  
NATIONAL CARRIAGE BY RAIL**

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**Commission de révision  
Revisionsausschuss  
Revision Committee**

**CR 24  
Berne/Bern, 23.-25.06.2009**

**PV – Annex I**

**Liste des participants  
Teilnehmerliste  
List of participants**

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23.06.2009

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Du 23.06. après-midi au 25.06. jusqu'à  
midi.  
Vom 23.06. nachmittags bis 25.06.  
vormittags  
From 23.06. afternoon until 25.06. morning

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noon) by Belgium.

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Adjoint au Sous-Directeur de la sécurité et  
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23.-24.06.2009

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 Hat sich entschuldigt.  
 Sent apologies.

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Durch die Slowakei vertreten.  
Represented by Slovakia.

**Liechtenstein** **FL**

S.Exz. Herr Hubert Ferdinand **Büchel**

Partiellement (25.06.) représenté  
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23.06.2009  
(uniquement/nur/only)

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24.-25.06.2009

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S'est excusé.  
 Hat sich entschuldigt.  
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24.-25.06.2009

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Teilweise 24. und 25.06.) durch  
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Represented partially (24. and 25.06.)  
by Germany

**Ukraine****UA**

S'est excusé.

Hat sich entschuldigt.

Sent apologies.

## II. Organisations supranationales Supranationale Organisationen Supranational organisation

**Communautés européennes (CE)/  
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European Communities (EC)**

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Administrateur principal / Chef d'unité adjoint  
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Working document prepared by EC - DG TREN - E2

24th session of the COTIF Revision Committee scheduled on 23-25 June 2009 in Berne

Summary of the Community position

(19-06-09)

**1. REFERENCED DOCUMENTS**

This working document is referring to OTIF documents

**Agenda item Document**

4. Rules of Procedure of the Revision Committee CR 24/2
5. Amendments to Articles 9 and 27 of the Convention CR 24/3
6. Partial revision of Appendix E (CUI) of the Convention CR 24/4 and Add.1
7. Partial revision of Appendix F (APTU) of the Convention CR 24/5
8. Partial revision of Appendix G (ATMF) of the Convention CR 24/6
9. Editorial amendments CR 24/7

**2. POSITIONS**

**2.1. In general**

The Community welcomes the organisation of the 24<sup>th</sup> session of the Revision Committee and, in general, supports the revision of the CUI, APTU and ATMF Appendices as prepared by OTIF Secretariat. This document includes some comments and suggestions for improvement to the rules of procedures, the revised Appendices and the explanatory reports.

**2.2. Item 4. Rules of Procedure of the Revision Committee**

**Requests for modification:**

- article 5(2): refer to article 11(1) instead of article 11(3)
- Article 6(2)(b): replace "included" with "referred to"

- Article 11: the deadlines specified in §§2 and 3 seem to refer to documents for which a decision is expected. However it is not clear which deadlines apply in the case of comments, amendments or additional proposals that the members would like to make. Are the latter included in the "item" referred to in §4 ?
- Article 21: numbering in §1 is not correct: c) and d) are bullets under b), and e) and f) should be renumbered accordingly (this comment is only applicable to the EN version)
- Article 21: It is advised to add a written procedure in order to avoid convening a Revision Committee for small changes. The text agreed for the Committee of Technical Experts can be used.
- Article 22 (2): the experience of the CTE has shown that the rules are not applied *mutatis mutandis*. It is advised to add at the end of §2: "unless specified otherwise by the Revision Committee".

### **2.3. Item 6. Partial revision of Appendix E (CUI) of the Convention**

#### **Requests for modification to the Articles**

- Article 3(f): the proposed definition of licence (*"licence" means the authorisation, in accordance with the laws and prescriptions relating to licensing and recognition of licenses in force in the State in which the carrier undertakes the activity of carrier by rail*) is not sufficient to clearly identify the licence as understood in the EC. It is advised to use the following wording, base on Directive 95/18: *"licence" means the authorization issued by a Member State to a railway undertaking, in accordance with the laws and prescriptions in force in that State, by which its capacity as a carrier is recognized.*
- Article 5bis: modification included in CR24/4Add1 dated 26.05.2009 is supported by the Community. The OTIF Secretariat distributed on 18 June 2009 a position by CIT CR 24/4 Add.2 08.06.2009, which suggests deletion of Article 5bis. The deletion of Article 5bis, which is the core of the solution to the inconsistencies between the current CUI version and the EC legislation, is opposed by the Community.

#### **Requests for modification to the Explanatory Report**

- Article 1(1)(b): the last two sentences should be deleted because they state the obvious and do not bring any added value
- Article 1(2): it is suggested to include another significant example in the parenthesis of the 6<sup>th</sup> line (eg cleaning and empty returns). In addition it is suggested to clarify the word "included" in the 6<sup>th</sup> line, by adding to it "in the scope of the contract".

- Article 1(4) and 1(6): there is a doubt if expressions such as "the group agreed" or "the group held different views" are acceptable in a text supposed to become a "supplementary means of interpretation" in the sense of Article 32 of the Vienna Convention the Law of Treaties of 1969.

## **2.4. Item 7. Partial revision of Appendix F (APTU) of the Convention**

### **General comment**

- Abbreviations should be used, as for example UTP, ...

### **Requests for modification to the Articles**

- Article 4 was modified by the Secretariat after the CTE meeting of February 2009. The new wording could be misinterpreted and considered as not compatible with Article 20(3) of the Convention which provides that the CTE *may not under any circumstance modify a UTP*. This was written in 1999 under the assumption that the UTP would be prepared by an international body (UIC, EC, ...) and that if a modification was required, the latter would be prepared by the author, and not by the CTE. In order to remain compatible with the Convention it is suggested to add at the end of article 4(2): *on the basis of proposals made in accordance with Article 6*.
- Article 5(4): replace "have been" with "be". Problem of alignment with the FR version (EN to be considered as original, in this case)
- Article 8: a new paragraph 2a should be inserted as follows: *UTPs shall apply to new subsystems. UTPs also apply to existing subsystems when they are renewed or upgraded and in accordance with the migration strategy referred to in paragraph 4(f) of this Article*. This additional provision is needed in order to clarify the impact of a newly adopted UTP on existing subsystems.
- Article 8(4)(d): there is a text in brackets
- Article 9(1): as the application of validated technical standards is voluntary (article 5§4), a declaration against validated technical standards does not seem appropriate. However, in cases where technical standards are made mandatory through a UTP, it should still be possible for a non EC Member State to ask for national non-application, for specific reasons. As article 9 can not be modified by the Revision Committee, a clarification could be useful in the explanatory report;
- Articles 10 and 11: as these articles can not be modified by the RC, it should be clarified in the Explanatory Report that the abrogation of the Technical Unity Convention will only take place when all relevant UTPs are adopted (hence footnote 1

should be deleted). In addition there is an issue with the validated technical standards (that are voluntary) and this should also be mentioned in the Explanatory report. Finally the Explanatory report should also clarify that the UTPs will take precedence over the GCU which has replaced the RIV since 1<sup>st</sup> July 2006.

- Article 13(1) and 13(4): regional organizations
- Article 13(2): Annex 1 or the Annex ? (there seems to be only one Annex)
- Annex: section 1 (list of parameters) should be replaced with the following text (in order to align the APTU with the new version of annex I to Directive 2008/57/EC which is expected to be adopted before the end of 2009):

#### "1.1. General documentation

*General documentation (including description of new, renewed or upgraded vehicle and its intended use, design, repair, operation and maintenance information, technical file, etc.)*

#### 1.2. Structure and mechanical parts

*Mechanical integrity and interface between vehicles (including draw and buffer gear, gangways), strength of vehicle structure and fittings (e.g. seats), loading capability, passive safety (including interior and exterior crashworthiness)*

#### 1.3. Track interaction and gauging

*Mechanical interfaces to the infrastructure (including static and dynamic behaviour, clearances and fits, gauge, running gear, etc.)*

#### 1.4. Braking equipment

*Braking-related items (including wheel-slide protection, braking control, and braking performance in service, emergency and parking modes)*

#### 1.5. Passenger-related items

*Passenger facilities and passenger environment (including passenger windows and doors, requirements for persons with reduced mobility, etc.)*

#### 1.6. Environmental conditions and aerodynamic effects

*Impact of the environment on the vehicle and impact of the vehicle on the environment (including aerodynamic conditions and both the interface between the vehicle and the trackside part of the railway system and the interface with the external environment)*

#### 1.7. External warning, marking, functions and software integrity requirements

*External warnings, markings, functions and integrity of software, e.g. safety-related functions with an impact on train behaviour including train bus*

#### 1.8. Onboard power supply and control systems

*Onboard propulsion, power and control systems, plus the interface of the vehicle with the power supply infrastructure and all aspects of electromagnetic compatibility*

#### 1.9. Staff facilities, interfaces and environment

*On-board facilities, interfaces, working conditions and environment for staff (including drivers' cabs, driver machine interface)*

#### 1.10. Fire safety and evacuation

#### 1.11. Servicing

*Onboard facilities and interfaces for servicing*

#### 1.12. Onboard control, command and signalling

*All the on-board equipment necessary to ensure safety and to command and control movements of trains authorised to travel on the network and its effects on the trackside part of the railway system*

#### 1.13. Specific operational requirements

*Specific operational requirements for vehicles (including degraded mode, vehicle recovery etc.)*

#### 1.14. Freight related items

*Freight-specific requirements and environment (including facilities specifically required for dangerous goods)*

Explanations and examples *in italics* above are for information only and are not definitions of the parameters."

### **Requests for modification to the Explanatory Report**

- Page 12, general remark 2: the references to Directives 2008/57/EC and 2008/110/EC should be deleted because that directives were taken into account later (see remark 13);

- Page 13, general remark 4: the swap of remarks 3 and 4 is acceptable
- Page 14, general remark 6: the word "requirement" is missing on the left-side column
- Article 12: the explanation is not totally coherent with article 12 which says that *the Contracting States shall ensure that the SG is informed...* The idea is that in order to avoid that EC Member States have to notify twice the same rules (once to the European Commission, once to the SG), the Commission would make sure that the SG has access to the data base being set up by DG TREN and ERA.

## **2.5. Item 8. Partial revision of Appendix G (ATMF) of the Convention**

### **General comment**

- Abbreviations should be used, as for example UTP, ...

### **Requests for modification to the Articles**

- Article 2: we note that some definitions differ from the definitions of other Appendices (for example: infrastructure manager, regional organisation, ...)
- Article 2(eea): the definition of TSI should refer also to directives 96/48/EC and 2001/16/EC because some TSIs adopted under that directives will remain in force even after their abrogation (after 19 July 2010)
- Article 3a(1): the words "for international use" should be deleted because this distinction is not defined in the relevant procedure of directive 2008/57/EC.
- Article 3a(3): "shall be" should be replaced with "will" or "are". Although this provision is more explanatory than mandatory, it is advised to maintain it because it provides more legal certainty to users that are not familiar with Community legislation.
- Article 6(1): it should be made clear, in the Explanatory Report, that although a vehicle has been granted an "admission to operation" under COTIF, the railway undertaking or the infrastructure manager intending to use that vehicle needs to comply with other conditions when operating in the European Community Member States (mainly: licence, safety certificate, path contract, ...).
- Article 6(2): the word "only" should be moved after "to operate". The DE and FR versions seem to be correct.
- Article 6(3): subparagraphs of the second bullet point to be renumbered.

- Article 6(4): subparagraphs to be renumbered. In addition, the provision the text from "the competent authorities have to accept" to "the APTU Uniform rules" should be clarified as follows: "For the part of the vehicle which is compliant to a UTP or part of it, the competent authorities have to accept verifications that have been made by other competent authorities according to the Uniform Technical Prescriptions. For the other part of the vehicle the competent authorities shall take full account of the equivalence table referred to in Article 13 of the APTU Uniform Rules."
- Article 10(11): in the last two subparagraphs, the "Committee of Technical Experts" should be replaced with the "Secretary General" in order to be coherent with article 12 of the APTU rules on notification of national rules.
- Article 15(2): in order to be coherent with Directive 2008/110/EC, the text should be modified as follows. The reference to article 5 is problematic because "accreditation" only works with specific accreditation standards adopted by international standardization bodies. In addition it is redundant with the request to further specify rules to be adopted by the CTE. Footnote number 4 should be removed because not relevant in the COTIF system.

Each vehicle, before it is admitted to operation or used on the network, shall have an entity in charge of maintenance (ECM) assigned to it and this entity shall be registered in the data bank referred to in Article 13. A railway undertaking, an infrastructure manager or a keeper may be an entity in charge of maintenance. The ECM shall ensure that the vehicles for which it is in charge of maintenance are in a safe state of running by means of a system of maintenance. The entity in charge of maintenance shall carry out the maintenance itself or make use of contracted maintenance workshops. The maintenance of a railway vehicle and other movable railway material shall be organised by an Entity in Charge of Maintenance (ECM) to be registered as such in the data bank before the vehicle is admitted for operation or used on the network. A keeper, a railway undertaking or an infrastructure manager may be an ECM. The ECM for a freight wagon must hold a valid certificate issued by an external auditor accredited/recognised in one of the Contracting States. Article 5 §§ 3 and 5 to 7 shall apply mutatis mutandis to accredited/recognised auditors. The Committee of Technical Experts shall set up and decide upon further detailed rules for certification and auditing of ECMs, for accredited/recognised auditors, their accreditation/recognition, the audits and audit certificates. These rules, which also shall include rules for withdrawal and suspension of certificates and accreditations, shall be defined in an Annex to these Uniform Rules and shall form an integral part thereof.

- Article 15(3) and 15(4): these provisions overlap partially with the future UTPs on freight wagons and other vehicles, with the rules to be adopted by the CTE under article 15(2) and with the GCU. This text was never discussed in detail due to the fact that Directive 2008/110/EC was adopted end of 2008, after the end of the works of the "Schweinsberg" group of 2008. It is suggested to delete it, or to simplify it as follows:

*3. An operating Railway Undertaking is responsible for the safe operation of the train vehicles and other movable railway material carried and shall ascertain that maintenance is properly carried out. Therefore, there must be an exchange of data between the Railway undertakings and the ECMs: the ECM must ensure that reliable information about maintenance processes and data are available for the operating Railway Undertakings, ~~and demonstrate upon request that these processes ensure the compliance with the maintenance provisions, including the Maintenance File.~~ and the operating Railway Undertaking must without delay provide the ECM with information and data concerning its operation of the vehicles and other movable railway material. In both cases the information and data in question shall be specified in the Annex indicated in § 2.*

*4. The ECM of an admitted vehicle shall keep and update a Maintenance Record File for that vehicle. ~~The file shall be available for inspection by the competent national authority and to Railway Undertakings operating the vehicle. Information on next inspections and tests due and other information concerning other maintenance data must be made available to the Organisation for inclusion in the data bank if so decided by the Committee of Technical Experts.~~*

- Article 18(1): the references to other articles is not correct in the FR version
- Article 19(2): a reference to RIC seems missing
- Article 19(3) and 19(6): reference to § 1a is wrong

### **Requests for modification to the Explanatory Report**

- Article 1(4): the last sentence should be replaced with the following:

*In the case of States in which EC law applies, this particularly concerns aspects covered by the directives on interoperability (placing interoperability constituents on the market, conformity assessment and verification by notified bodies, ecc.), safety (safety certification, safety authorisation, compliance with Common Safety Methods and Common Safety Targets, obligation to report on Common Safety Indicators, accident investigation procedures, ecc.) and market access (directives 95/18 on licensing of railway undertakings, Directive 2001/12/EC on the development of the Community's railways, Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, ecc.).*

- Article 3a(3): "Member States" should be replaced with "EC Member States"
- Article 8: it should be added that "The application of the UTP on infrastructure to existing infrastructure is subject to a decision of the Contracting States to renew or upgrade the infrastructure. Further conditions should be detailed in the migration

strategy of the future UTP on infrastructure.". This addition is necessary because article 10(11) is limited to vehicles.

## **2.6. Item 9. Editorial amendments**

During the works of the EC Working Group on "the role of the keeper", UK declared that the definition of the "keeper" in the CUV Appendix (article 2c) is not correct from a linguistic point-of-view.

The Revision Committee could seize this opportunity to align CUV with the definition adopted under the ATMF Appendix (article 2n):

*"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 vehicle register referred to in Article 13 of the ATMF Uniform Rules.*

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**OTIF**



**ORGANISATION INTERGOUVERNEMENTALE POUR  
LES TRANSPORTS INTERNATIONAUX FERROVIAIRES**

**ZWISCHENSTAATLICHE ORGANISATION FÜR DEN  
INTERNATIONALEN EISENBAHNVERKEHR**

**INTERGOVERNMENTAL ORGANISATION FOR INTER-  
NATIONAL CARRIAGE BY RAIL**

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**Commission de révision  
Revisionsausschuss  
Revision Committee**

**CR 24  
Doc. de séance 2  
Sitzungsdok. 2  
Meeting room doc. 2  
23.06.2009**

Original : FR/DE/EN

**24<sup>ème</sup> session**

Projet du règlement intérieur provisoire de la Commission de révision

Article 21 § 3 (nouveau)

Secrétariat

**24. Tagung**

Entwurf der Geschäftsordnung des Revisionsausschusses

Artikel 21, § 3 (neu)

Sekretariat

**24th Session**

Draft Rules of Procedure of the Revision Committee

Article 21, § 3 (new)

Secretariat

## § 3

Lorsqu'une affaire apparaît en dehors d'une session et si la Présidence, le Secrétaire général ou au moins cinq membres de la Commission ~~d'experts de révision~~ considèrent qu'une décision doit être prise sans que celle-ci soit reportée jusqu'à la prochaine session de la Commission ~~d'experts de révision~~, la Présidence procède à un vote par voie de procédure écrite conformément aux règles suivantes :

- a) si aucune Présidence permanente n'est élue, la Présidence sera considérée comme étant celle de la dernière session ;
- b) tous les membres de la Commission ~~d'experts de révision~~ sont informés, par écrit, du sujet et du motif d'un tel vote ;
- c) les questions indépendantes les unes des autres feront l'objet d'un vote séparé, le cas échéant dans la même procédure ;
- d) les membres ~~seront~~ invités à transmettre au Secrétaire général leurs votes écrits au cours d'un délai (date et heure) qui devra comporter au moins vingt et un jours civils pleins ;

~~e) la réception de chaque vote sera confirmée par écrit par le Secrétaire général ;~~

~~f) toutes les réponses reçues avant l'expiration du délai seront consignées ;~~

~~g) le quorum sera-est~~ identique à celui des sessions de la Commission ~~d'experts de révision~~. Si le nombre de réponses reçues avant l'expiration du délai n'atteint pas le quorum requis, la proposition ~~sera-est~~ considérée comme étant rejetée. Elle peut toutefois être soumise de nouveau lors de la- session suivante de la Commission ~~d'experts de révision~~ ou faire l'objet d'une nouvelle procédure écrite ;

~~h) si au moins trois membres de la Commission d'experts demandent que les mesures proposées soient examinées lors d'une session de la Commission, la procédure écrite doit être terminée sans résultat ; une nouvelle session de la Commission d'experts doit être convoquée dans les meilleurs délais ; et~~

~~i) tous les membres seront notifiés du résultat de la procédure de vote.~~

§ 3 Wenn eine Angelegenheit außerhalb einer Tagung aufkommt und der Vorsitz, der Generalsekretär oder mindestens fünf Mitglieder des RevisionsFachausschusses der Meinung sind, dass ein Beschluss noch vor der nächsten Tagung des RevisionsFachausschusses gefasst werden muss, führt der Vorsitz eine Abstimmung im schriftlichen Verfahren gemäss folgenden Regeln durch:

- a) wenn kein ständiger Vorsitz gewählt ist, gilt als Vorsitz jener der letzten Sitzung;
- b) alle Mitglieder werden schriftlich über das Thema und den Grund einer solchen Abstimmung informiert;
- c) über voneinander unabhängige Fragen wird getrennt aber falls möglich in demselben Verfahren abgestimmt;
- d) die Mitglieder werden aufgefordert, dem Generalsekretär ihre Stimme schriftlich innerhalb einer bestimmten Frist (Datum und Uhrzeit) zu übermitteln, die mindestens einundzwanzig Kalendertage betragen muss;

~~e) der Eingang jeder Stimme wird vom Generalsekretär schriftlich bestätigt;~~

~~f) die innerhalb der Frist erhaltenen Antworten werden aufgezeichnet;~~

~~g) das Quorum ist das gleiche wie bei den Tagungen des RevisionsFachausschusses. Erreicht die Anzahl der vor Ablauf der Frist eingegangenen Antworten nicht das erforderliche Quorum, so gilt der Antrag als abgelehnt. Er kann jedoch bei der nächsten Sitzung des RevisionsFachausschusses oder einem neuen schriftlichen Verfahren erneut unterbreitet werden;~~

~~h) falls mindestens drei Mitglieder des Fachausschusses beantragen, dass die vorgeschlagenen Maßnahmen an einer Sitzung des Fachausschusses beraten werden sollen, ist das schriftliche Verfahren ohne Ergebnis abzubrechen; eine neue Sitzung des Fachausschusses muss dann so rasch wie möglich einberufen werden und~~

~~i) das Ergebnis des Abstimmungsverfahrens wird allen Mitgliedern mitgeteilt.~~

## § 3

Where a matter arises outwith a meeting, and, if the Chair, the Secretary General or at least five members of the ~~Technical-Revision~~ Committee believe a decision needs to be taken which should not be postponed until the next meeting of the ~~Revision Technical~~ Committee, then the Chair shall conduct a vote by written procedure in accordance with the following rules:

- a) if no permanent Chair is elected, the Chair shall be defined as that of the most recent session;
- b) all members of the ~~RevisionTechnical~~ Committee shall be informed in writing about the subject of and reason for such a vote;
- c) independent issues are to be voted upon separately, but if appropriate, during the same procedure;
- d) the members shall be invited to send the Secretary General their written votes within a specific deadline (date and time), which must allow them no less than twenty-one calendar days;

~~e) receipt of each vote shall be confirmed in writing by the Secretary General;~~

~~f)e)~~ all responses received within the deadline shall be recorded;

~~g)f)~~ the quorum shall be the same as for a meeting of the ~~RevisionTechnical~~ Committee. If the number of responses received before the deadline does not reach the required quorum, the proposal shall be considered to be rejected. It may, however, be resubmitted at the next meeting of the ~~Revision Technical~~ Committee or in a new written procedure;

~~h) if at least three Committee members request that the proposed measures be examined at a Committee meeting, the written procedure shall be terminated without result; a new Committee meeting shall be convened as soon as possible and~~

~~i)g)~~ all members shall be notified of the result of the voting procedure.

Working document prepared by EC - DG TREN - E2

24th session of the COTIF Revision Committee scheduled on 23-25 June 2009 in Berne

Additional comments  
(23-06-09)

**1. ATMF APPENDIX**

- Article 3a: in order to avoid double certification of ECMs under EC law and under COTIF law, it is proposed to add in Article 3a a new paragraph 2a as follows:

*An Entity in charge of maintenance (ECM) for a freight wagon, certified according to Article 15(2) shall be deemed as certified according to applicable European Community and corresponding national legislation and vice versa in the case of full equivalence between the certification system to be adopted under Article 14a(5) of Directive 2004/49/EC<sup>1</sup> and the rules to be set up and decided by the Committee of Technical Experts according to Article 15(2).*

- Art. 15(2): it is proposed to insert the following sentence before the last sentence:

*These rules shall indicate the degree of equivalence with the criteria related to the ECM certification system adopted in the European Community.*

- Article 15(3): it is proposed to re-insert at the end of the first sentence, a reference to vehicles as follows:

*3. An operating Railway Undertaking is responsible for the safe operation of the train vehicles and other movable railway material carried and shall ascertain that maintenance is properly carried out.*

*and shall ascertain that vehicles are properly maintained.*

- Art. 15(4): Keep the second sentence with the following amendments:

*The file shall be available for inspection by the competent national authority ~~and to Railway Undertakings operating the vehicle.~~*

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<sup>1</sup> Directive 2004/49/EC of the European Parliament and the Council of 29 April 2004 on railway safety – OJUE L220 of 21.6.2004



24th session of the COTIF Revision Committee - 23-25 June 2009 in Berne

Item 6 - Revision of CUI

Suggestions from the EC on Article 5bis

Tabled on 24-06-09

**In Article 5bis**

Modify article5bis as follows:

“The provisions of Article 5 as well as those of Articles 6, 7, 8, 9 and 22 shall not affect the obligations which the parties to the contract have to meet under ~~the laws and prescriptions in force in the State in which the infrastructure is located including, where appropriate,~~ the law of the European Community, including where Community legislation applies as a result of international agreements with the European Community, as concerns in particular:

...”

**In the explanatory note to Article 5bis**

Add at the end the following sentence:

“It is not the intention of this article to prevent the full application of Articles 5, 6, 7, 8, 9 and 22 by the parties to the contract in so far as there are no Community rules governing the subject. The intention is rather to preserve the integrity of Community rules.”

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a) Suggestion relative à l'article 5 bis CUI

- biffer les mots « en particulier »
- biffer la mention des articles 8 et 9 CUI,
- biffer les 5<sup>ème</sup> et 6<sup>ème</sup> tirets et les remplacer par un commentaire relatif aux articles 8 et 9 CUI dans le rapport explicatif [voir lettre b) ci-dessous]

b) Suggestion relative au rapport explicatif

Ad article 5bis CUI : biffer la lettre d).

Ad articles 8 et 9 CUI : Remplacer le commentaire par le texte ci-après :

*« Il convient de distinguer clairement entre la responsabilité selon les RU CUI et les systèmes d'amélioration des performances selon l'article 11 de la Directive CE 2001/14. Conformément aux principes généraux du droit, les montants dus dans le cadre de ces systèmes seront déduits le cas échéant des dédommagements selon les RU CUI. »*

a) Anregung zu Art 5 bis CUI

- das Wort „insbesondere“ ist zu streichen,
- die Erwähnung von Art. 8 und 9 CUI ist zu streichen,
- die 5. und 6. Gedankenstriche sind zu streichen und durch ein Kommentar in den Erläuternden Bemerkungen zu Art. 8 und 9 CUI zu ersetzen (siehe unten Buchstabe b).

b) Anregung zu den Erklärenden Bemerkungen

Zu Art. 5bis CUI: die Buschstabe d) ist zu streichen.

Zu Art. 8 und 9 CUI: das Kommentar wird durch folgenden Text ersetzt:

*„Zwischen der Haftung gemäss ER CUI und den leistungsabhängigen Entgelten gemäss Artikel 11 EG-Richtlinie 2001/14 ist klar zu unterscheiden. Gegebenenfalls werden die im Rahmen letzteren zu zahlenden Beträge im Sinne eines allgemeinen Rechtsgrundsatzes auf Schadenersatzleistungen gemäss ER CUI angerechnet.“*

a) Suggestions to article 5bis CUI

- deleting the words “in particular”,
- deleting the mention of articles 8 and 9 CUI,
- deleting dashes 5 and 6 and replacing them by a commentary to the articles 8 and 9 CUI in the Explanatory Report (see lit. b).

b) Suggestions for the Explanatory Remarks

- article 5bis CUI: deleting lit. d,
- articles 8 and 9 CUI: replace the commentary as follow:

*“It should be clear distinguished between the responsibility in the UR CUI and the performance scheme based on article 11 of Directive 2001/14/EC. If necessary respecting the basic principles the payments can be charge additionaly to the CUI compensations.”*



24th session of the COTIF Revision Committee - 23-25 June 2009 in Berne

Item 6 - Revision of CUI

Suggestions from the EC on Article 5bis

Tabled on 24-06-09

OPTION B

**In Article 5bis**

Modify article5bis as follows:

“

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 have to meet under the laws and prescriptions in force in the State in which the infrastructure is located including, where appropriate, the law of the European Community. ~~as concerns in particular:~~

...”

~~“2. The provisions of Articles 5 as well as those of Articles 6, 7, 8, and 9 and 22 shall not affect the obligations which the parties to the contract have to meet under the laws and prescriptions in force in the State in which the infrastructure is located including, where appropriate, the law of the European Community, including where Community legislation applies as a result of international agreements with the European Community. as concerns in particular:~~

3. The provisions of §§ 1 and 2 concerns in particular:

- Agreements ...
- Licensing
- Safety certification
- Insurance
- Charging involving performance schemes ...
- Compensation arrangements
- Dispute resolution

...”“



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Item 6 - Revision of CUI

Suggestions from the EC on Article 5bis

Tabled on 24-06-09

OPTION B bis

**In Article 5bis**

Modify article5bis as follows:

“

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 have to meet under the laws and prescriptions in force in the State in which the infrastructure is located including, where appropriate, the law of the European Community. ~~as concerns in particular:~~

...”

~~2.~~ 2. The provisions of ~~Articles 5 as well as those of Articles 6, 7, 8, and 9 and 22~~ shall not affect the obligations which the parties to the contract on the use of infrastructure located in one of the EC Member States have to meet under ~~the laws and prescriptions in force in the State in which the infrastructure is located including, where appropriate,~~ the law of the European Community, including in the MemberStates where Community legislation applies as a result of international agreements with the European Community. ~~as concerns in particular:~~

3. The provisions of §§ 1 and 2 concerns in particular:

- Agreements ...
- Licensing
- Safety certification
- Insurance
- Charging involving performance schemes ...
- Compensation arrangements
- Dispute resolution

“





CR 24  
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Réf. E 121  
Bern, 2009-06-24

Suggestion relative au rapport explicatif – complément aux commentaires aux articles 5bis, 8 et 9 CUI :

*« Il convient toutefois de distinguer clairement entre la responsabilité selon les RU CUI et les systèmes d'amélioration des performances selon l'article 11 de la Directive CE 2001/14. Les systèmes d'amélioration des performances n'ont pas pour vocation à couvrir les droits et obligations découlant des règles de responsabilité selon les RU CUI. »*



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Item 6 - Revision of CUI

Suggestions from the EC on Article 5bis

Tabled on 24-06-09

OPTION B tris

**In Article 5bis**

Modify article5bis as follows:

“

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 have to meet under the laws and prescriptions in force in the State in which the infrastructure is located including, where appropriate, the law of the European Community. ~~as concerns in particular:~~

~~...~~”

~~“2. The provisions of Articles 5 as well as those of Articles 6, 7, 8, and 9 and 22 shall not affect the obligations which the parties to the contract on the use of infrastructure have to meet ~~under the laws and prescriptions in force in the State in which the infrastructure is located including, where appropriate, in a State where~~ the law of the European Community applies. ~~as concerns in particular:~~~~

3. The provisions of §§ 1 and 2 concern in particular:

- Agreements ...
- Licensing
- Safety certification
- Insurance
- Charging involving performance schemes ...
- Compensation arrangements
- Dispute resolution

“



24th session of the COTIF Revision Committee - 23-25 June 2009 in Berne

Revision of ATMF  
Suggestions from the EC/Secretariat on Article 3a and 15  
Tabled on 25-06-09

Article 3a :

“An ECM for a freight wagon certified according to article 15 (2) shall be deemed as certified according to applicable EC and corresponding national legislation and vice versa in the case of full equivalence between the certification system **adopted** under article 14a(5) of directive 2004/49/EC and the rules **adopted** by the committee of technical expert according to article 15 (2).”

Article 15

*2. Each vehicle, before it is admitted to operation or used on the network, shall have an entity in charge of maintenance (ECM) assigned to it and this entity shall be registered in the data bank referred to in Article 13. A railway undertaking, an infrastructure manager or a keeper may be an entity in charge of maintenance. The ECM shall ensure that the vehicles for which it is in charge of maintenance are in a safe state of running by means of a system of maintenance. The entity in charge of maintenance shall carry out the maintenance itself or make use of contracted maintenance workshops. ~~The maintenance of a railway vehicle and other movable railway material shall be organised by an Entity in Charge of Maintenance (ECM) to be registered as such in the data bank before the vehicle is admitted for operation or used on the network. A keeper, a railway undertaking or an infrastructure manager may be an ECM. The ECM for a freight wagon must hold a valid certificate issued by an external auditor accredited/recognised in one of the Contracting States<sup>4</sup>. Article 5 §§ 3 and 5 to 7 shall apply mutatis mutandis to accredited/recognised auditors.~~ The Committee of Technical Experts shall **adopt** further detailed rules for certification and auditing of ECMs, for accredited/recognised auditors, their accreditation/recognition, the audits and audit certificates. These rules shall indicate **whether they are equivalent** to the criteria related to the ECM certification system adopted in the EC. These rules, which also shall include rules for withdrawal and suspension of certificates and accreditations, shall be defined in an Annex to these Uniform Rules and shall form an integral part thereof.*

*3. An operating Railway Undertaking is responsible for the safe operation of the train ~~vehicles and other movable railway material carried~~ and shall ascertain that vehicles are properly maintained ~~and maintenance is properly carried out~~. Therefore, there must be an exchange of data between the Railway undertakings and the ECMs: the ECM must ensure that reliable information about maintenance processes and data are available for the operating Railway Undertakings, ~~and demonstrate upon request that these processes ensure the compliance with the maintenance provisions, including the Maintenance File.~~ and the operating Railway Undertaking must **without delay in due time** provide **in due time** the ECM with information and data concerning its operation of the vehicles and other movable railway material for which the ECM is in charge. In both cases the information and data in question shall be specified in the Annex indicated in § 2.*

4. The ECM of an admitted vehicle shall keep and update a Maintenance Record File for that vehicle. The file shall be available for inspection by the competent national authority ~~and to Railway Undertakings operating the vehicle. Information on next inspections and tests due and other information concerning other maintenance data must be made available to the Organisation for inclusion in the data bank if so decided by the Committee of Technical Experts.~~