



**GCU IN DAILY USE :**  
**QUESTIONS & ANSWERS**



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### OBJECTIVE

This document is designed to give practical advice for the best possible use of the GCU. Thus it should allow UIP wagon keepers to react in a flexible and adequate manner to the problems often encountered in Europe for the application of the GCU. For all that, it does not claim to give a specific legal interpretation of the articles of the GCU.

This practical advice is the outcome of cases or questions submitted to the UIP GCU Forum by its members in 2008.

The explanations and comments follow the chapters of the GCU and its appendices.

To facilitate understanding, this practical advice is given succinctly. This is why it is recommended to consult the GCU Forum regularly in which more developed submissions are often presented.

This document will be permanently updated on the basis of new questions and problems raised in the forum as well as the evolution of the contractual provisions.

Users of the UIP document are accordingly invited to communicate the new challenges and problems which they encounter in their day-to-day practice of the GCU regularly in the UIP GCU forum so that in this way they participate in the continuous development of the document and, finally, participate in the reinforcement of the wagon keeper's position with regard to his contractual partners.

## **Chapter I : Object, scope of application, termination, further development of the contract, discontinuance of being a signatory**

The GCU is designed to unify contracts for the use of wagons as means of transport at the European level and must apply between railway undertakings (RUs) and keepers having signed the GCU for both international and domestic traffic.

### **Article 1 - Object**

*Does the GCU apply without restriction to domestic transport?*

#### **Yes**

Only in the context of Article 28 (liability for servants and other people) do RUs contest the fact that for domestic transport, infrastructure managers<sup>1</sup> are considered as assistants of RUs (“whose services they make use of for the performance of the contract”).

### **Article 2 – Scope of application**

*Can an RU signatory of the GCU unilaterally impose provisions waiving the GCU?*

#### **No**

Article 2.3 of the GCU stipulates very clearly “*The provisions of this multilateral contract shall apply between the signatories to the extent that they have not concluded other provisions between themselves.*”

This wording means that agreements to the contrary can only be subscribed between GCU signatories in an **explicit** manner.

The keeper’s silence accordingly does not signify his acceptance. However, it is necessary to be watchful if there is a reference to CCS (commercial conditions of sale) (in a transport contract), since possible exceptions to the GCU could be included in these.

Amendments to the GCU are only possible under the formal procedure prescribed in Appendix 8.

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<sup>1</sup> This problem is developed in Chapter VII, Article 28

## Chapter II : Obligations and rights of the wagon keeper

Chapter II poses the principle that the keeper's wagon must comply technically with current regulations and that the keeper has the obligation to maintain it at all times in compliance with such regulations.

The European directives on rail safety and interoperability have now introduced the keeper and in addition an entity in charge of maintenance – ECM into European rail legislation.

**However, in the context of the private law GCU contract, the keeper remains liable for maintenance according to current prescriptions and such liability is maintained even if the work is entrusted to third parties.**

In its declaration on interoperability of April 2008, the German Federal Government also considers this solution as the best adapted to usage.

In the context of European law, the separation between the keeper and the ECM can be avoided to the extent that the keeper registers himself as “ECM” upon admission of the wagon.

The new definition of the keeper in European law will be taken into account during the current revision of the GCU.

## Chapter III : Obligations and rights of the RUs

### Article 10 – Acceptance of wagons – Article 11 – Refusal of wagons

*What are the criteria for acceptance and refusal of a wagon by an RU?*

Since the new COTIF 99 came into force, an RU no longer has the obligation of carriage.

However, in the context of the GCU, for both domestic and international transport, the RUs must route any wagon of a keeper signatory of the GCU. Exceptions are only permitted under Article 11, which establishes a limitative list of exceptions.

Equality between all “RU wagons” and “non-RU wagons” must be strictly respected.

The refusal to route considered to be contentious must immediately be signalled to the GCU forum or the UIP secretariat. The UIP experts will analyse the case and, if necessary, inform the Joint GCU Committee.

## **Article 12 – Handling of wagons**

### ***What are the wagon inspections to be effected by an RU?***

An RU must effect all inspections provided for in paragraph 2.2 of Appendix 9 at the time of the technical inspection for the exchange of wagons.

#### ***Appendix 9, Article 2.2 (Procedure)***

*The technical transfer inspection shall be carried out by inspectors at a place agreed upon by the RUs involved.*

*The inspection shall involve assessing the operating safety and railworthiness of wagons, identifying any of the irregularities listed in Annex 1 (Catalogue of irregularities) and taking appropriate steps. To identify any irregularities, the inspector(s) shall walk the full length of the train on both sides and carefully examine each wagon.*

### ***During an inspection, is an RU authorised to “isolate” the brakes of a wagon?***

Yes, the visitor in charge of the inspection is authorised to isolate the brakes of a wagon (cf. Appendix 9 – Annex 1 – code 3.1).

## **Article 13 – Wagon periods for carriage and liability**

### ***What periods must be taken into consideration for the carriage of empty or loaded wagons?***

Article 13.1 of the GCU poses the following principle:

- *The periods for carriage for loaded wagons shall depend on the transit period for the goods being conveyed. Periods for carriage for empty wagons shall be determined by agreement. In the absence of such an agreement, the periods set out in Article 16 of the CIM<sup>2</sup> for wagon-load consignment shall apply.*

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#### <sup>2</sup> ***CIM Article 16 – Transit periods***

§1 *The consignor and the carrier shall agree the transit period. In the absence of an agreement, the transit period must not exceed that which would result from the application of §§ 2 to 4.*

§2 *Subject to §§ 3 and 4, the maximum transit periods shall be as follows:*

- a) *for wagon-load consignments*
  - *period for consignment : 12 hours*
  - *period for carriage, for each 400 km or fraction thereof : 24 hours*
- b) *for less than wagon-load consignment*
  - *period for consignments : 24 hours*
  - *period for carriage, for each 200 km of fraction thereof : 24 hours*

*The distances shall relate to the agreed route or, in the absence thereof, to the shortest possible route.*

§3 *The carrier may fix additional transit periods of specified duration in the following cases :*

- a) *consignments to be carried*

This means that *for loaded wagons* the conditions of transport agreed contractually are applicable (as a general rule: the general conditions of sale of the user RU).

Unless there is a different contractual agreement, for *loaded wagons* (in international transport) and for empty wagons (in domestic and international transport), it is the periods of Article 16 CIM which are applicable (despatch period of 12 hours + transport period of 24 hours per indivisible fraction of 400 km). For loaded wagons in domestic transport, the national rules may be applicable.

***In the case of a transport chain, can the CIM delivery periods be extended?***

In compliance with Article 26 CIM<sup>3</sup>, the extension of the above transport periods is excluded since each RU in the transport chain is bound with regard to the transport period by the single transport contract.

***Can an RU unilaterally impose on keepers an amount of compensation for loss of use lower than that provided in Appendix 6?***

**No**

Chapter I deals with the exceptions unilaterally imposed by the RUs.

This is of course also valid in the case of a transport chain:

***In the context of a Belgium/France traffic, and under a transport contract concluded with B-Cargo, is the SNCF entitled to refuse to apply the GCU rates for compensation for loss of use and impose the compensation for loss of use rates in the general conditions of sale, when the customer has no knowledge of the SNCF general conditions of sale?***

To the extent that the keeper (or another party authorized by him) has not accepted the SNCF general conditions of sale, only the B-Cargo general conditions of sale may be applied. The only contract binding the keeper and the SNCF is the GCU.

**Important:** The provisions of the **transport contract (including the general conditions of sale)** must not be confused with those of the **contract of use**.

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- by lines of a different gauge,
  - by sea or inland waterway,
  - by road if there is no rail link;
- b) exceptional circumstances causing an exceptional increase in traffic or exceptional operating difficulties.
- The duration of the additional transit periods must appear in the General Conditions of Carriage.
- §4 The transit period shall start to run after the taking over of the goods; it shall be extended by the duration of a stay caused without any fault of the carrier. The transit period shall be suspended on Sundays and statutory holidays.

<sup>3</sup> **Article 26 CIM : Subsequent carriers**

*If carriage governed by a single contract is performed by several successive carriers, each carrier, by the very act of taking over the goods with the consignment note, shall become a party to the contract of carriage in accordance with the terms of that document and shall assume the obligations arising therefrom. In such a case each carrier shall be responsible in respect of carriage over the entire route up to delivery.*

## **Article 14 – Deployment of empty wagons**

### ***How to fill in the “wagon note” correctly?***

The wagon note is the new transport document for empty runs. For a useful explanation, consultation of the wagon note guide is advised; this may be downloaded in German, French and English from the CIT website (<http://www.cit-rail.org/en/use-of-wagons/glw-cuv.html>).

It should be noted that on the same site there is a CIM wagon note guide (GLV-CIM) (<http://www.cit-rail.org/en/freight-traffic/glv-cim.html>) and a combined transport consignment note guide (<http://www.cit-rail.org/en/freight-traffic/glv-tc.html>).

### ***Can the wagon note be used for new wagons or those to be scrapped?***

#### **Yes**

### ***When are empty wagons subject to customs procedure on crossing a border?***

When the empty wagons are the subject of a cross-border transport, whether for cleaning, maintenance, rental, transformation, sale, delivery of a new wagon or scrapping, they are subject to customs procedure.

In this case, the transport must be effected with a CIM wagon note. The provisions of the GCU are also applicable to the extent that they are not in contradiction with the CIM.

On the initiative of the CIT (international rail transport committee), a simplified procedure has been proposed by which: if, on the occasion of a purchase or a sale, a transformation requiring a new technical admission, a long-term rental (for at least one year) or scrapping, a wagon crosses a border, customs formalities are applicable. As “self-propelled goods” it is subject to the CIM. However, the cleaning, maintenance and transformations not requiring a new technical admission are no longer subject to customs formalities or the application of the CIM.

The proposal will be submitted to the European Commission (DG TAXUD) for amendment of the customs formalities.

## **Article 15 – Information to be supplied to the keeper**

### ***Are the RUs obliged, and if so in what period of time, to communicate to the keeper the information on kilometres run?***

Information on the distances run by a wagon is indispensable for the maintenance of the wagon, this is why they are provided for in Article 15.2.

The RUs generally object that “in the context of their respective operation and recording systems” they are not yet able to supply this information correctly.

Under the European information system in compliance with the TAF TSI, it is mandatory for these obligations to supply this information to be effected in real time at the latest in 2014.

## **Article 16 – Handover of a wagon to third parties**

*What happens if a keeper signatory of the GCU hands over a wagon directly to an RU not a signatory of the GCU?*

In this case, the keeper cannot claim application of the GCU and is therefore subject to national law for domestic transport. The RU-CUV are applicable for international transport. In both cases, the general conditions of sale of the user RU or specific agreements between user RU and the keeper may also be applicable.

For legal security reasons and given that only the GCU fixes a uniform legal framework, it is in the keeper's interests only to work with RUs signatory of the GCU.

*What happens if an RU signatory of the GCU hands a GCU wagon over to another RU not signatory of the GCU, without authorisation of the keeper?*

In this case, in compliance with Article 16, the RU signatory of the GCU which hands the wagon over is liable for the wagons as regards its keeper.

This provision presents the advantage that in such a case, a GCU wagon may not be considered as a third-party wagon within the meaning of Article 22.2, and that the last RU user is therefore not allowed to escape its liability. Even if the wagon keeper in question had first been informed, his silence cannot take the place of acceptance.

## **Article 17 – Acceptance of a wagon from third-party keepers**

A non-GCU wagon which has been accepted by a GCU RU and which has caused damage to a GCU wagon may not be considered as a third-party wagon within the meaning of Articles 22 and 27. This would in particular give the RU the possibility of releasing itself from its liability. The RU which accepted the non-GCU wagon is liable for the damage caused.

## **Chapter IV: Ascertainment and handling of damage to wagons in the custody of an RU**

This chapter describes when, how and by whom damage reports on a wagon in the custody of the RU must be effected.

This chapter also settles the handling of damage, the restoration to running order and the repair of the wagon.

### **Article 18 – Ascertainment of damage**

#### ***What is the procedure for damage reporting?***

It is mandatory for any discovery or presumption of damage to be the subject of a wagon damage report (see model in Appendix 4 to the GCU).

This wagon damage report must be established without delay by the RU and also sent without delay to the keeper.

The keeper may accept or reject the conclusions of the wagon damage report.

#### ***What should be done in the event of absence of a wagon damage report?***

The keeper is entitled to refuse to pay the invoice (Article 26 of the damage regulations) for as long as the wagon damage report has not been sent to him.

#### ***Must the keeper prove that he has not received the wagon damage report from the RU?***

**No**

It is the RU which must prove that the wagon damage report has been sent.

#### ***What is understood by “without delay” in sending the wagon damage report to the keeper?***

The notion of “without delay” means that the RU must send the keeper the wagon damage report as quickly as possible. Given the fact that the sending of the wagon damage report is the point of departure for a whole procedure (search for liability, repair of the wagon), if the delay in sending the wagon damage report brings about a prolongation of the wagon being out of use, the payment of compensation for loss of use may be requested on the basis of Article 31.

***What is the value of the wagon damage report as proof of non-liability of the user RU or the liability of the keeper?***

The wagon damage report must only be used to record and document damage, and not as proof of the non-liability of the RU or the liability of the keeper of a third party. Article 18.4 expressly allows the keeper to contest the damage report.

***How to contest a wagon damage report and what procedure to use?***

The contesting keeper may use the user RU contact (whom he can find on the GCU website <http://www/gcubureau.org> in the list of members) or the person having drafted the damage report.

If it has not been possible to come to an agreement between the keeper and the RU, the keeper must imperatively respect the procedure provided in Article 18.4, that is “ask for the nature, cause and extent of damage to be recorded by an expert appointed by the parties to the contract or by judicial means”.

Only this procedure gives the legal possibility concerning the damage report.

***Recommendation to keepers or another party authorized by him***

It is strongly recommended that keepers or another party authorized by him (those hiring the wagon included) to check the wagons, according to the appropriate form, at the close of each contract of use or transport so as, if necessary, to be able to make reservations on the damage report before taking delivery of the wagons. In this case, the presumption of liability and the burden of proof are with the RU.

If no reservation is made at the time of delivery, and if the damage to the wagon appears subsequently, the keeper must bring proof of the RU's liability (Article 24.2).

## **Article 19 – Handling of damage**

Article 19.1 provides that the RU must arrange for the wagon to be put back into running order. If the cost of repairs exceeds EUR 750, the keeper's prior agreement must be requested.

***What period of time does the RU have to ask the keeper if the cost of repair exceeds EUR 750?***

A period of two working days is provided for the keeper's reply to the RU. No period is provided for the question by the RU to the keeper.

***What happens if the keeper's prior agreement has not been requested for an excess of costs (EUR 750)?***

In this case, the RU has failed its obligation to question the keeper. As the case may be, the keeper may assert his rights in accordance with Article 31 (for example, excess costs, repairs of no interest, ...)

***Do the EUR 750 necessitating the keeper's agreement include the costs of replacing brake blocks?***

According to Article 19.1 of the GCU, brake blocks are explicitly excluded from the EUR 750 rule.

***In the event of damage putting the wagon out of running order (Article 19.1), does the last user RU have the obligation to send the wagon to workshops?***

Article 19.1 of the GCU stipulates that the RU must arrange for the wagon to be returned to running order in compliance with the provisions of Appendix 10.

If it is possible for the wagon to be temporarily returned to running order but the repair has not been completely effected, the RU is obliged, in compliance with Article 19.4, to send the wagon to workshops.

***Article 19.4 provides that at the end of the repair work, and failing special instructions given by the keeper, the RU routes the wagon to the destination station for which it was initially bound.***

***What are the concrete consequences for the keeper?***

Except for safety imperatives (Article 9.2), only the keeper may give the RU instructions for the use of his wagon.

In this context, the keeper may himself fill in the wagon note or ask the RU or the workshops to fill it in on his behalf.

The RU is not entitled to refuse to fill in the wagon note.

Likewise, in the event of the wagon being routed “to the destination station for which it was initially bound”, the keeper does not have to pay the routing costs a second time except in the case of the distance being greater than initially planned.

***In what period does the RU have to give prior notice to the keeper of the end of the work and must the keeper give any “special instructions” to the RU?***

No clear rule is mentioned in the GCU text. The periods must nevertheless remain within a reasonable limit.

## **Article 20 – Handling of lost wagons and removable accessories**

***On the basis of Article 20, can compensation for loss of use be requested for wagons lost or not contractually used by an RU without the keeper having knowledge of this?***

Article 20.1 defines the notion of a wagon considered as lost:

In such a case, Article 23.1, taken in conjunction with Appendix 5, fixes the amount of compensation in the event of loss of the wagon.

The GCU does not explicitly provide for payment of compensation for loss of use for wagons considered as lost. However, on the basis of Article 13.3, compensation for loss of use may be claimed from the user RU for the period of search for the wagon.

This being said, account must be taken of the fact that according to Article 23.3 of the GCU, the amount of compensation can in no event exceed that which should be paid in the event of loss. Compensation for loss of use paid to the keeper will be deducted from the compensation provided for in Appendix 5 of the GCU.

Compensation for loss of use can also be claimed in the event of non-contractual use or use without the keeper having knowledge of this.

## **Chapter V: Liability in the event of loss of or damage to a wagon**

### **Article 22 – Liability of the user RU**

***In the event of several RUs routing the wagon (transport chain), how to determine which RU is liable for either the damage or the loss?***

In the case of damage, it is the RU which drew up the damage report to prove that it is not liable for damages. The same applies for the previous RU in the transport chain in the event of the subsequent EF being able to withdraw from liability.

In the case of loss, it is the reverse. It is the RU to which the keeper or another party authorized by him has handed over the wagon which must prove that it did indeed hand the wagon over to another RU signatory of the GCU. The same is valid for the successive RUs in the transport chain.

***In the context of a transport chain, if the RU having drawn up the damage report can prove that it is not liable for the damage, can the keeper himself contact the previous user RUs?***

#### **Yes**

In compliance with Article 21, the previous user RU is liable to the extent that on its side it cannot offload its liability.

In view of the meaning and the purpose of the presumption of liability, it is for the RUs in a chain of use to offload their liability.

***How to determine the amount of compensation in the event of wheel flat?***

The amount of compensation for loss of use and the value of renewal is defined in Appendices 5 and 6.

With regard to compensation for damage, Article 23.2 stipulates that “*compensation shall be limited to the cost of repairs*”.

In this respect, Article 31 stipulates that “*When a signatory fails through his own fault to meet an obligation which is due under this contract, he shall compensate the affected signatory for the direct damages suffered.*” As a result, the possible loss of the value of the wagon, for example because of a reduction in diameter of the wheel following a reprofiling or an indispensable exchange of wheelsets, must be taken into consideration.

A concrete basis for calculation is not provided in the GCU.

### **Article 23 – Amount of compensation**

***Can an RU unilaterally impose on keepers an amount of compensation for loss of use lower than that provided in Appendix 6?***

Compare with the comments on Chapter I.

***Can costs for the transfer of goods be required?***

The rules concerning goods are governed not by the contract of use but by the transport contract.

***What happens in the event of insolvability of a liable third party?***

If the user RU can prove the fault of a third party, according to Article 22, it does not have to reply for the third party.

On the other hand, if the insolvent liable third party to which the user RU has handed over the wagon is not a signatory of the GCU, the RU is liable in compliance with Articles 16 and 17.

Up to what point an infrastructure manager can be considered as a third party will be discussed in Chapter VII.

## **Chapter VI: Liability in the event of damage caused by a wagon**

In the context of the former contract between the wagon owner and the registering RU, an indemnity agreement offered the possibility of avoiding the search for liability. Since 1 July 2006, with the end of the registration contract (and with it the indemnity agreement), new rules concerning liability are applicable. According to them, a keeper is no longer liable, only if his fault can be proved which, according to present knowledge, is obviously rarely the case. On the other hand, the keeper must now bear his civil liability himself.

## **Article 27 – Principle of liability**

***What attitude to adopt when an RU informs a keeper that his wagon is said to be involved in or at the origin of a railway accident?***

In principle, the presumption of liability for the accident lies with the RU. The keeper only replies for damage caused by the wagon if a fault is imputable to him.

The RUs' interest will push them to opt out of this presumption of liability and prove fault by the keeper.

This is why the keeper must ask this RU for a maximum of information and inform his insurance company immediately.

The investigations relating to the accident must be left to the insurance company.

***What is the value of an internal report of an RU concluding the liability of the keeper and the amount of damages?***

It is not the RU but the authorities enquiring into the accident or, as the case may be, the legal expert who must establish the origin of the accident and thus determine liability.

## **Chapter VII: Liability for staff and other persons**

## **Article 28 – Principle of liability**

***In the GCU, is the infrastructure manager (IM) considered as being an agent of the RU?***

1 – In international transport

**Yes!**

This derives from Article 9, paragraph 2, of the RU-CUV

*“Unless the contracting parties otherwise agree, the managers of the infrastructure on which the rail transport undertakings use the vehicle as a means of transport, shall be regarded as persons whose services the rail transport undertaking makes use of “*

The GCU does not contain any provision which sets Article 9, paragraph 2, of the RU-CUV aside.

## II – In domestic transport

The UIC alleges that when a wagon is used for domestic transport, the infrastructure manager (IM) must not be considered as an assistant of the user RU (URU) within the meaning of Article 28 of the GCU, because Article 9, paragraph 2, of the RU-CUV is only applicable for international rail transport. On the other hand, it can be contended that:

1. The meaning and the purpose of the GCU are to create uniform conditions of use for national *and* international transport (see Article 1.1 of the GCU). To consider the IM as an assistant of the RU in international transport but not in domestic transport would contradict this purpose.
2. The OTIF member states unanimously accepted the CUV rules concerning IMs (Article 9, paragraph 2, of the RU-CUV) They would certainly not have done so if they contradicted *national* rail law rules.
3. Article 40 of the CIM prescribes that it is *mandatory* that in a CIM freight contract, the IM is considered as an agent of the user RU. This prescription includes a legal decision of principle concerning the role of the IM, which should reasonably also be valid for the contract for use. However, in the contract of use, a different agreement may be concluded.

## III – Result

Given that the GCU does not contain any regulations which depart from the legal model, the IM must be considered as the assistant of the user RU, both in international and domestic transport, and not as a “third party” within the meaning of Articles 22.2 and 27.3 of the GCU. It ensues that in compliance with Article 28 of the GCU, when damage occurs to a wagon caused by the IM, the keeper has contractually the right to claim compensation from the user RU.

## **Chapter VIII: Other provisions**

There is no knowledge of any particular problems concerning this chapter. Likewise, to date, no case of a problem on the interpretation of Article 31 has been reported.