



# GCU Training Program

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# Part 1:

## Legal framework

- 1. Situation up to 30 June 2006 (COTIF 1980):**  
Registration contracts
- 2. Situation as of 1 July 2006 (COTIF 1999):**  
Transitional phase; shifting of key responsibilities from the railways to the wagon keepers

# 1) Situation up to 30 June 2006 – COTIF 1980

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- COTIF 1980

COTIF – Convention relative aux transports internationaux ferroviaires /  
Convention concerning International Carriage by Rail from 9 May 1980  
in the version effective as of 1 November 1996

- COTIF –

international law agreement

- Appendix B COTIF 1980: CIM

CIM - Règles uniformes concernant le Contrat de transport international ferroviaire  
des marchandises / Uniform Rules concerning the Contract of International  
Carriage of Goods by Rail

- Annex II to CIM: RIP

RIP - Règlement concernant le transport international ferroviaire des wagons  
de particuliers /  
Regulations concerning the International Haulage of Private Owners' Wagons by Rail

# 1) Situation up to 30 June 2006 – COTIF 1980

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- UIC leaflet 433 (v) including the Standard General Conditions (SGC)  
=> Forms the basis for the registration contracts
- Liability agreement  
Comprehensive coverage of the liability risk by the railways
- RIV Regolamento Internazionale dei Veicoli  
Agreement initially concluded on 1922 between European railways concerning freight wagons suitable for international use

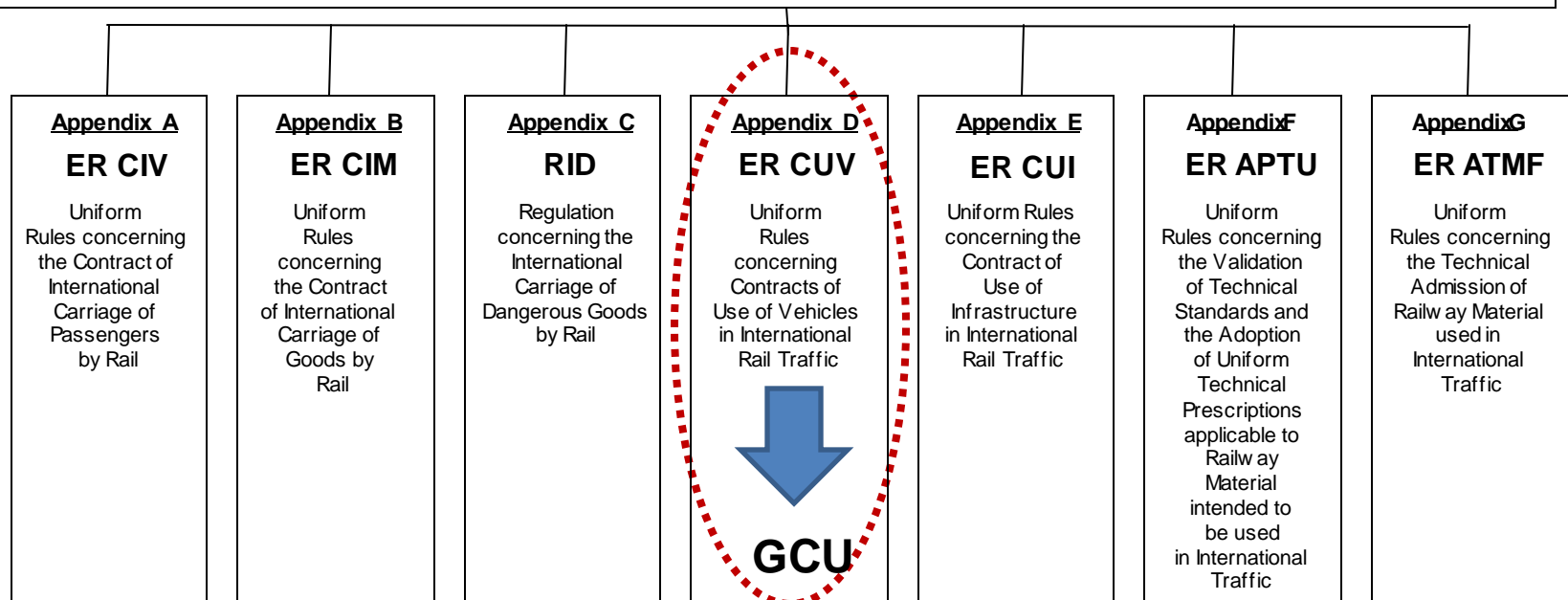
=> Result:

- The responsibility for safety was largely borne by the railways
- The wagon keepers / “registering parties” had hardly any relevant safety responsibility

## 2) Situation as of 1 July 2006 – COTIF 1999

### Entering into force of COTIF 1999 on 1 July 2006

- New provisions of use for wagons – Appendix D, CUV
- Requires contract between RUs and wagon keepers for wagon use; Art. 1 CUV
- Allows broad scope for contract design for wagon use, in particular broad derogations => “Unless the contracting parties otherwise agree, ...” (e.g. Art 4 § 5, Art 6 § 4, Art 7 § 2, Art. 9 § 2 CUV)

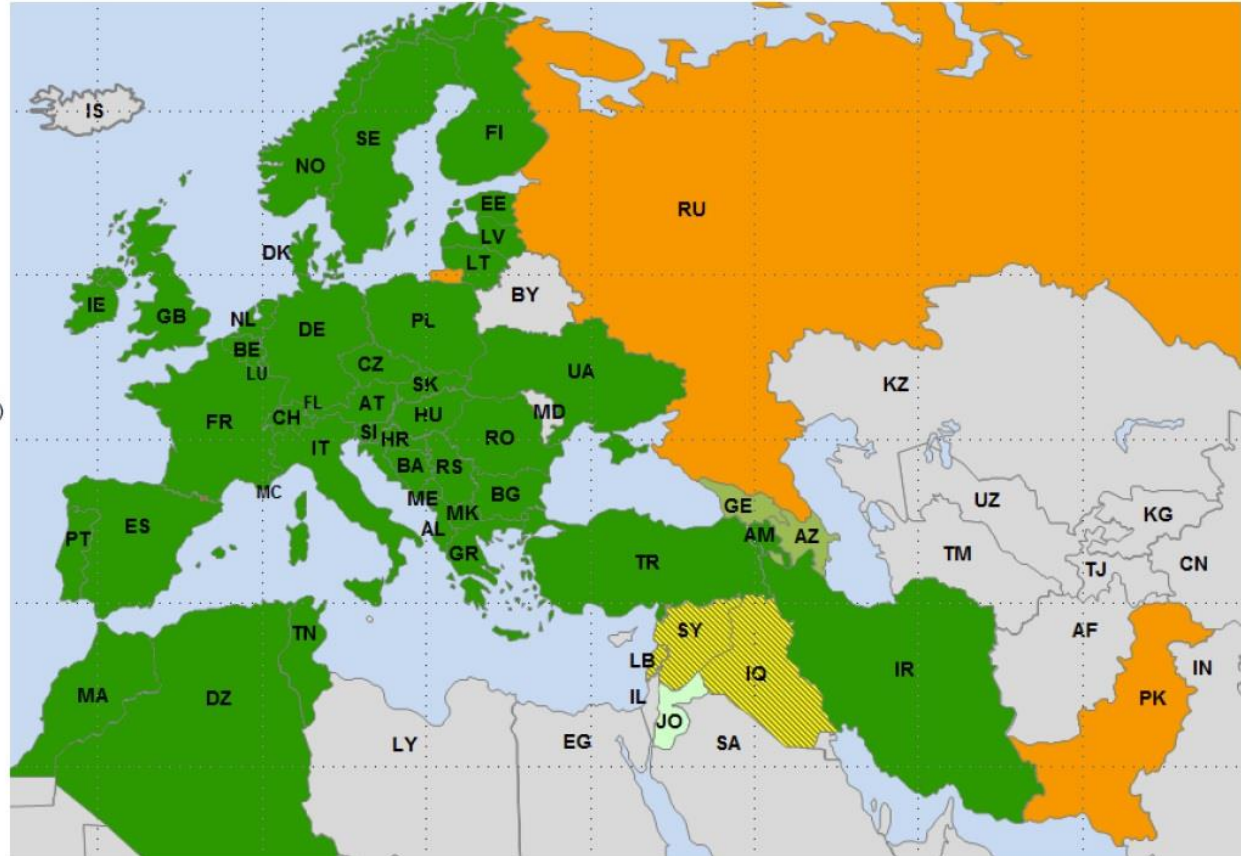


## 2) Situation as of 1 July 2006 – COTIF 1999

### COTIF 1999: Scope of application

Etat au 25 juillet 2017  
 Stand 25. Juli 2017  
 Situation 25 July 2017

-  Tous les appendices de la COTIF (42)  
 Alle Anhänge des COTIF (42)  
 All COTIF appendices (42)
-  Sans CUV/CUI/APTU/ATMF (2)  
 Ohne CUV/CUI/APTU/ATMF (2)  
 Without CUV/CUI/APTU/ATMF (2)
-  Sans CIV/RID/CUV/CUI/APTU/ATMF (2)  
 Ohne CIV/RID/CUV/CUI/APTU/ATMF (2)  
 Without CIV/RID/CUV/CUI/APTU/ATMF (2)
-  Suspension de la qualité de membre (3)  
 Ruhen der Mitgliedschaft (3)  
 Membership suspended (3)
-  Membres associés (1)  
 Assoziierte Mitglieder (1)  
 Associate Members (1)



## 2) Situation as of 1 July 2006 – COTIF 1999

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### **Main result of COTIF 1999:**

Expiration of all wagon registration contracts (e.g. with Deutsche Bahn (formerly: “Railion”) on 30 June 2007)

**1. Consequence:**

Henceforth wagon keepers /ECM are themselves responsible for maintenance  
=> e.g. VPI maintenance manual

**2. Consequence:**

Need to establish a contractual relationship between RUs and wagon keepers  
=> GCU

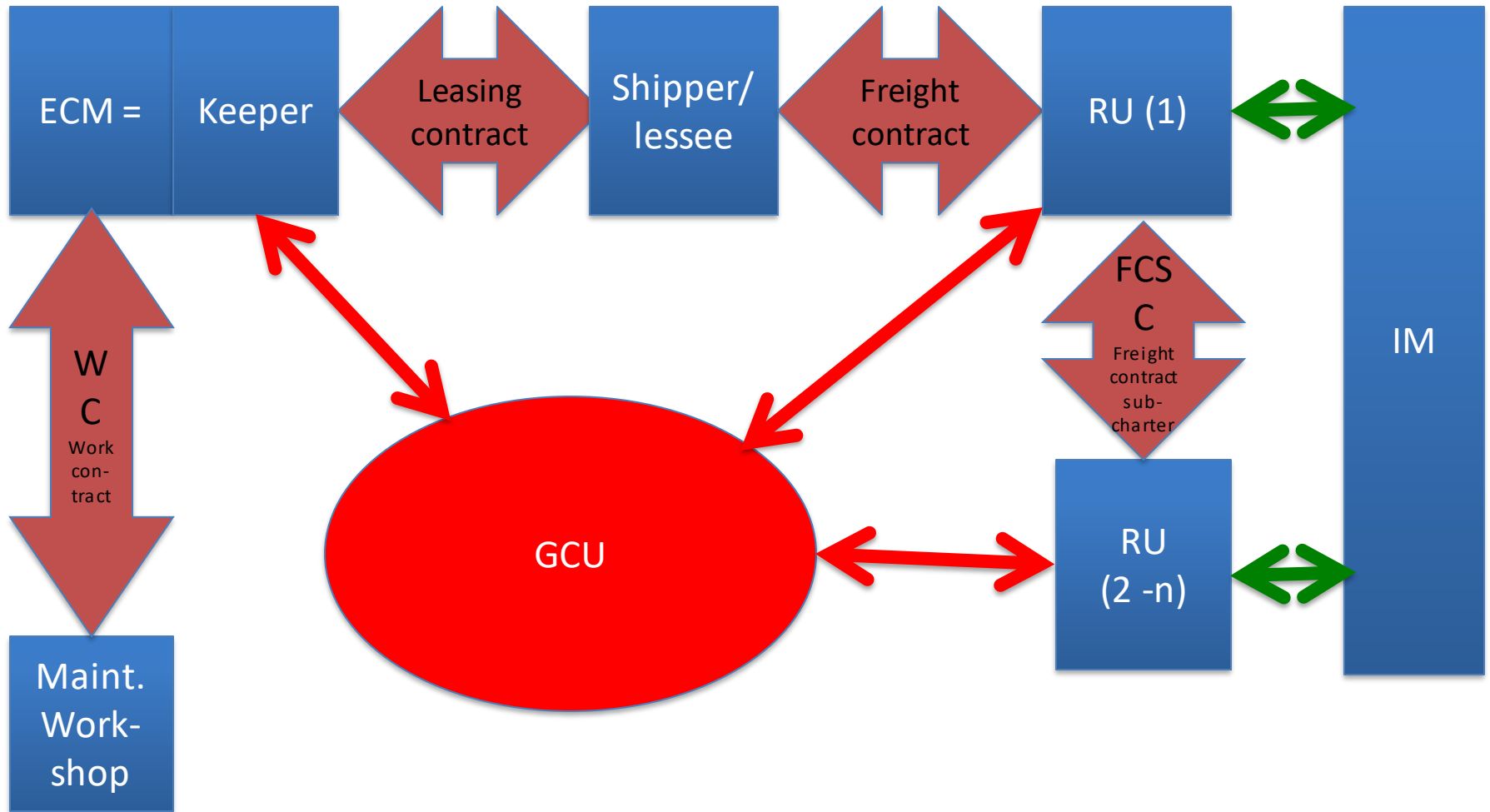
### Responsibility of the wagon keeper in cooperation with the RUs

- After the elimination of the registration contracts, a succeeding agreement had to be established concerning the legal relationship between wagon keepers and RUs.
- Problem: Wagon lessors do not regularly maintain any explicit contractual relationships with RUs
- Nevertheless, there was a need to regulate specific rights and obligations

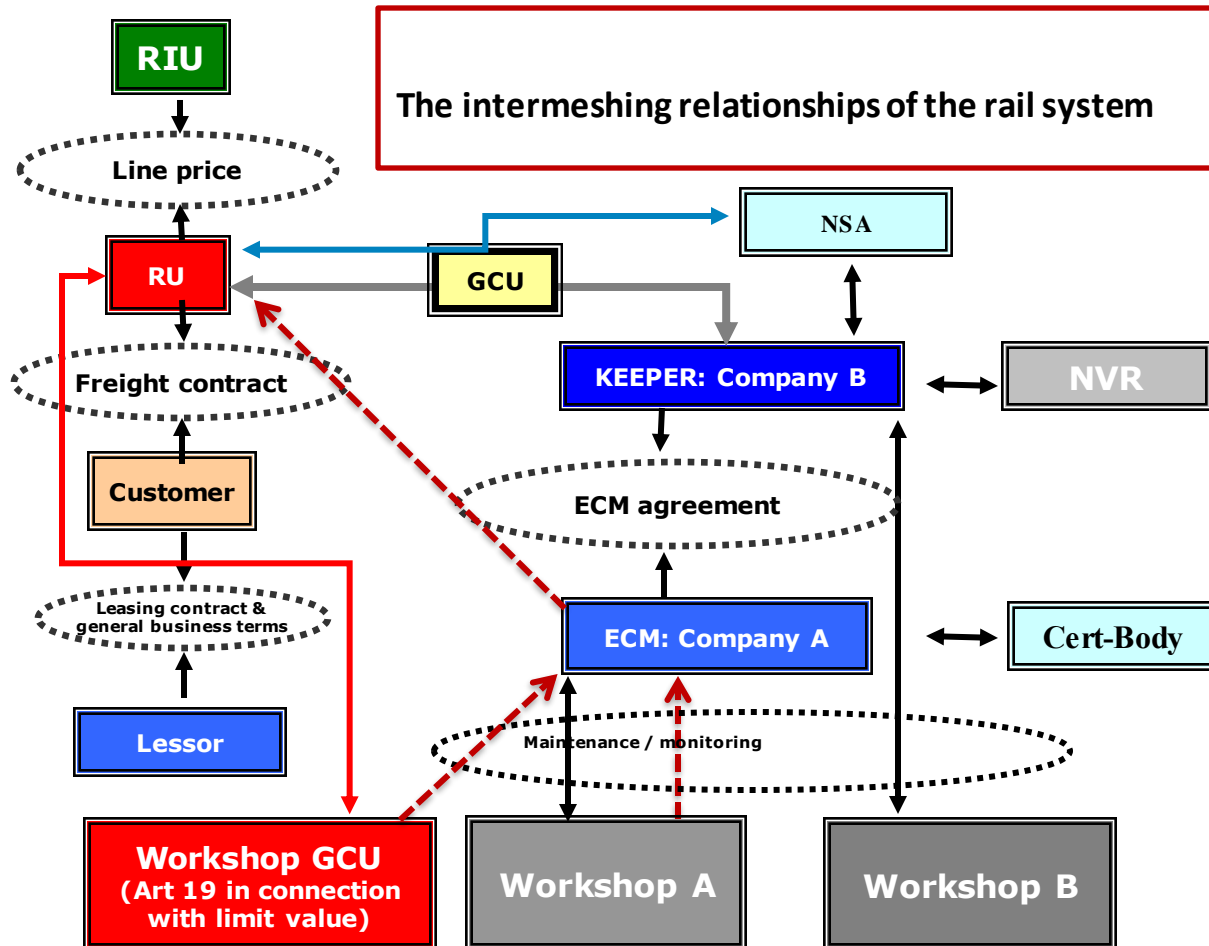


## 2) Situation as of 1 July 2006 – COTIF 1999

Important legal relationships in rail freight traffic



## 2) Situation as of 1 July 2006 – COTIF 1999



### Roles and duties

- The “entity in charge of maintenance” (ECM) is responsible for the operationally safe condition in terms of maintenance of the vehicles it takes on; it has obligations to provide information to the keeper (intermediary) / RU.
- The **workshop** is responsible for the proper performance of the maintenance on the basis of the instructions provided by the ECM and within the framework of its own QM system.
- The **keeper** is responsible that the vehicles it provides to the RU comply with the specified requirements and conditions for use (including registration and assignment to an ECM).
- The **RU** is responsible for the safe transport; it has obligations to provide information to the ECM (Art 5 (4) ECM Regulation).

-----> **Release to Service: Workshop to ECM**  
-----> **Release to operation: ECM (keeper) to RU**

## 2) Situation as of 1 July 2006 – COTIF 1999

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### Conclusion:

- GCU closes the gap in the contractual relationships between keepers and RUs
- GCU is generally the sole contractual relationship between keepers and RUs
- GCU establishes uniform rules for the entire rail freight traffic

## Part 2 – Explanatory notes

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- The following slides (**13 to 76 inclusive**) contain the text of Chapters I to VIII of the GCU in the English version from **1 January 2019**.
- These texts have a grey background.
- Emphasis in these texts (**bold** and/or **red**) originates from the authors at UIP.
- Example: 1.1 - This contract, including its appendices, sets out the **conditions for the provision of wagons as a means of transport** by RUs in **national** and **international** traffic within the **scope of application of the COTIF in force**.
- Texts in a blue box and red font represent notes and explanations concerning the individual articles; they originate from the authors at UIP.
- Example: ➔ **Only the CIM applies to “wagons as goods on their own wheels”; they are NOT means of transport as defined by the GCU.**
- Slides **77 to 83 (inclusive)** contain an excursion on the topic **“Basic principles of the GCU: Custody and regulating the burden of proof”**

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## **Part 2a:**

# **Overview of the content of the GCU – Articles 1 - 17**

## CHAPTER I

- OBJECT, SCOPE OF APPLICATION, TERMINATION, FURTHER DEVELOPMENT OF THE CONTRACT, DISCONTINUANCE OF BEING A SIGNATORY

Article 1 Object

Article 2 Scope of application

Article 3 Termination

Article 4 Further development of the contract

Article 5 Discontinuance of being a signatory

Article 6 In abeyance

## CHAPTER II

- OBLIGATIONS AND RIGHTS OF THE WAGON KEEPER

Article 7 Technical admission and maintenance of wagons

Article 8 Inscriptions and signs on the wagon.  
Identification of wagons

Article 9 Keeper's right of deployment

## CHAPTER III

- OBLIGATIONS AND RIGHTS OF THE RUS

Article 10 Acceptance of wagons

Article 11 Refusal of wagons

Article 12 Handling of wagons

Article 13 Wagon periods for carriage and liability

Article 14 Deployment of empty wagons

Article 15 Information to be supplied to the keeper

Article 16 Handover of a wagon to third parties

Article 17 Acceptance of a wagon from third party keepers

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# **CHAPTER I - OBJECT, SCOPE OF APPLICATION, TERMINATION, FURTHER DEVELOPMENT OF THE CONTRACT, DISCONTINUANCE OF BEING A SIGNATORY**

1.1 - This contract, including its appendices, sets out the **conditions for the provision of wagons as a means of transport** by RUs in **national** and **international** traffic within the **scope of application of the COTIF in force**.

**Commercial conditions** for the use of wagons are **outside the scope of this contract**.

➔ **Only the CIM applies to “wagons as goods on their own wheels”; they are NOT means of transport as defined by the GCU.**

1.2 - The provisions of this contract shall apply to **wagon keepers** and **RUs** as users of wagons.





1.3 - Use of a wagon includes the **loaded run** and the **empty run**, as well as cases in which the wagon is in the **custody** (*for detailed explanation, see corresponding excursion*) of a signatory RU.

1.4 - Use and custody begin when the **wagon is accepted** by the RU and end with the **handover of the wagon** to

- the keeper or to
- some other authorised party, for example another signatory RU,
- the contractual consignee of the goods carried or
- the operator of private sidings authorised to take delivery of the wagon.

➔ **Refer to Part 3 of this document for:**

**“Basic principles of the GCU: Custody and regulating the burden of proof”**

2.1 - This contract shall take precedence in international rail traffic over the CUV Uniform Rules (**Annex D to the 1999 COTIF**) and in domestic rail traffic over any national regulations that may be applicable, to the extent that this is admissible.

2.2 - **Admission** shall be effective from the first day of the following month, provided that the application has been received by the GCU Bureau at least fifteen days before.

➔ **Procedure for “opting-in”; admission is NOT linked to membership in one of the associations (ERFA, UIC, UIP).**

2.3 - The provisions of this multilateral contract shall apply between the signatories to the extent that they have not concluded other provisions between themselves.

➔ **Examples:**

**Leasing contract between wagon keeper C / RU A**

**General terms and conditions of RU B (if wagon keeper C has agreed to these)**

2.4 - The GCU Bureau shall publish an updated **list of signatories** (Appendix 1, available on the website at [www.gcubureau.org](http://www.gcubureau.org)) every month, on the first day of the calendar month in question.

➔ **Each signatory is responsible for his data in terms of correctness and being actual**

3.1 - Any signatory may withdraw from this contract **at the end of each calendar year subject to notice of at least six months** in a written declaration to be sent to the GCU Bureau. Termination and the date from which it becomes effective shall be published monthly by the GCU Bureau together with the list referred to in article 2.4.

3.2 - In addition, any signatory having **voted against a proposed modification of the contract** may withdraw from the contract as of the entering into force of such modification by a written declaration to be sent to the GCU Bureau **within six weeks after adoption of the modification** by the majority of the signatories.

➤ **Excursion, Appendix 8, item 11, paragraph 3:**

***“Amendments of the GCU adopted without unanimity shall enter into force the first day of the month following a period of six months after adoption.”***

**Purpose of this provision: A signatory that has voted against a modification adopted by the majority should have sufficient time to withdraw from the GCU.**

# GCU – Article 4: Further development of the contract

The parties to the GCU shall adopt an Internal Regulation (**Appendix 8**) for the further development of the contract. The GCU Bureau shall be responsible for editing and coordinating any such modifications of the GCU.

## Appendix 8

### Part I – GCU Bureau

I., items 1 – 6: Tasks of the GCU Bureau / Trustee

I., items 7 – 11: Amendment proposals

I., items 12 & 13: Costs of the GCU Bureau and auditing of accounts

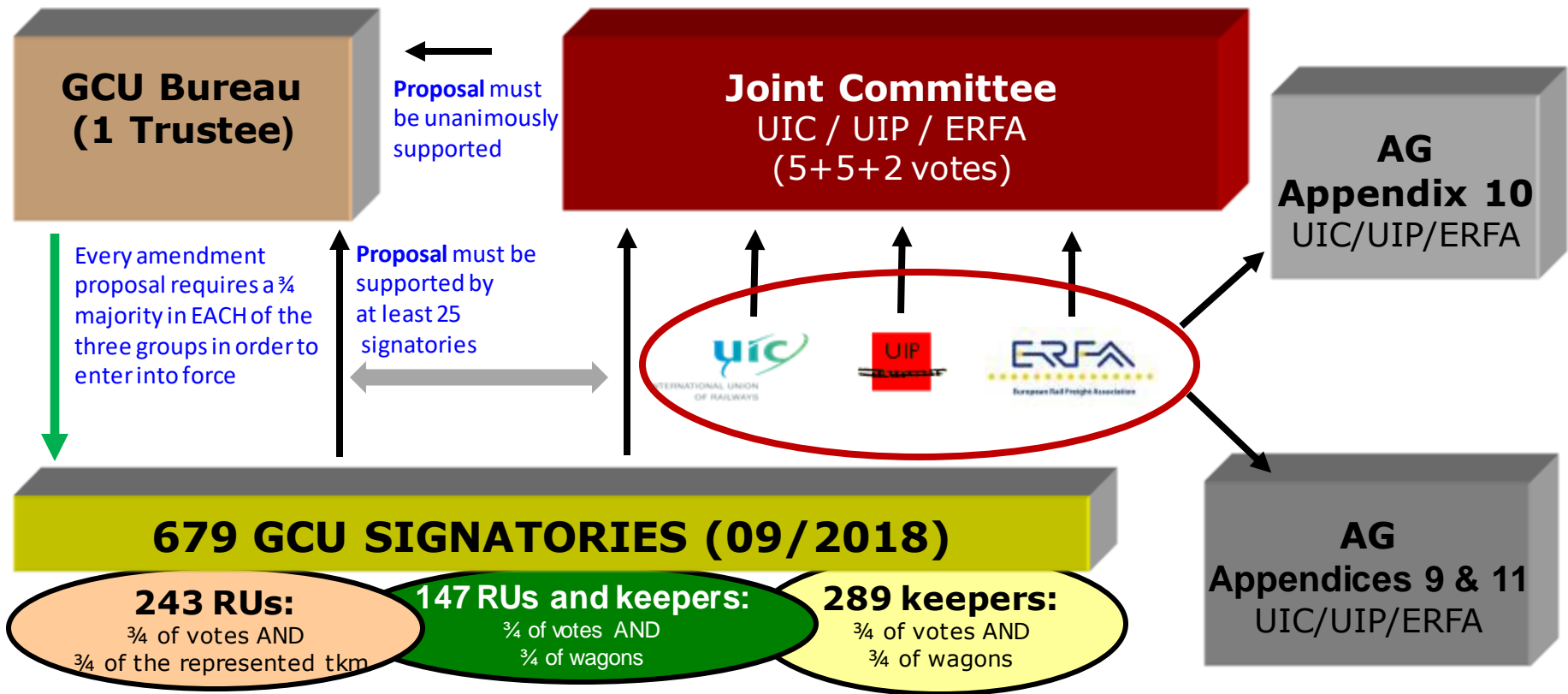
### Part II – Joint Committee

**Appendix 8 is currently under revision**

- Editorial revision
- Clarifications
- Rules of Procedure for „Joint Committee“

Objective: „new“ appendix 8 by 01.01.2020

# Excursion: Structure and bodies of the GCU



## Unanimous adoption by the signatories:

Enters into force according the date of adoption or 3 months after adoption

## Adoption by majority:

Enters into force 6 months after adoption

## 679 GCU SIGNATORIES & approx. 580,000 wagons (09/2018)

Country	KEEPER	RU	RU & KEEPER	Total
Austria	16	16	4	36
Belgium	1	3	3	7
Bosnia and Herzegovina			2	2
Bulgaria		3	5	8
Croatia	1	3	1	5
Czech Republic	34	11	18	63
Denmark		2		2
Finland		1		1
France	43	12	4	59
Germany	64	98	44	206
Greece		1		1
Hungary	7	7	9	23
Italy	9	18	2	29
Lithuania			1	1
Luxembourg	1		1	2
Macedonia			1	1
Montenegro			1	1
Netherlands	5	14	1	20
Norway	1		2	3
Poland	16	17	19	52
Romania	4	6	9	19
Serbia	1	1	2	4
Slovakia	24	11	5	40
Slovenia	2	1	1	4
Spain	6	2	1	9
Sweden	15	5	4	24
Switzerland	35	8	5	48
Turkey	2		1	3
United Kingdom	2	3	1	6
<b>Total</b>	<b>289</b>	<b>243</b>	<b>147</b>	<b>679</b>

# GCU – Article 5: Discontinuance of being a signatory

If **due amounts of more than 100 EUR** owed by a signatory according to section I point 12 of Appendix 8 have been **outstanding for more than six months and after an additional request for payment are not paid** by the signatory within two months after the request has been sent, the **discontinuance of its being a signatory shall be published** in the monthly list according to article 2.4. From then on it shall be considered to be a third party according to articles 16 and 17.

Termination and the **date from which it becomes effective** shall be published monthly by the GCU Bureau together with the list referred to in article 2.4.

- **The GCU does NOT sanction a partial and/or incorrect application of the contract; necessary (legal) actions in this regard can only be taken individually against such a signatory.**
- Article 31 – *Obligation to pay damages: “When a signatory fails by its own fault to meet an obligation which is due under this contract, he shall compensate the affected signatory for the direct damages suffered.”*
- Article 9.4 → **A Keeper may prohibit the use of its wagons by a RU being signatory of the GCU**
  - **In this case not only this RU but in addition all other RUs which potentially may exchange wagons with this RU must be informed**

# Article 6: (in abeyance)

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Article 6 - in abeyance



## **CHAPTER II – OBLIGATIONS OF THE WAGON KEEPER**

# GCU – Article 7: Technical admission and maintenance of wagons

7.1 - The keeper shall ensure that his wagons are technically admitted in accordance with the national and international laws and regulations in force **at the time of admission** and that they remain technically admitted throughout the period of their use.

RIV

**COMMISSION DECISION 2006/861/EC** of 28 July 2006 concerning the technical specification of interoperability relating to the subsystem “rolling stock – freight wagons” of the trans-European conventional rail system  
**COMMISSION DECISION 2009/107/EC** of 23 January 2009 amending Decisions **2006/861/EC** and **2006/920/EC** concerning technical specifications of interoperability relating to the subsystem “rolling stock – freight wagons” of the trans-European conventional rail system  
**COMMISSION DECISION 2012/464/EC** of 23 July 2012 amending Decisions **2006/861/EC**, **2008/163/EC**, **2008/164/EC**, **2008/217/EC**, **2008/231/EC**, **2008/232/EC**, **2008/284/EC**, **2011/229/EU**, **2011/274/EU**, **2011/275/EU**, **2011/291/EU** and **2011/314/EU** concerning technical specifications for interoperability  
**Article 3c** of the **COMMISSION REGULATION (EU) 2015/924** of 8 June 2015 amending **Regulation (EU) No 321/2013** concerning the technical specification for interoperability relating to the “rolling stock – freight wagons” subsystem of the rail system in the European Union

**Appendix F. COTIF 1999:**  
**APTU - Uniform Rules**  
 concerning the Validation of  
 Technical Standards and the  
 Adoption of Uniform  
 Technical Prescriptions  
 applicable to Railway  
 Material intended to be used  
 in International Traffic.

## Article 4 Safety Directive (EU) 2016/798

Without prejudice to the responsibilities of railway undertakings and infrastructure managers (...), entities in charge of maintenance and all other actors having a potential impact on the safe operation of the Union rail system, including manufacturers, maintenance suppliers, **keepers**, service providers, contracting entities, carriers, consignors, consignees, loaders, unloaders, fillers and unfillers, shall:

- (a) (...)
- (b) ensure that subsystems, accessories, equipment and services supplied by them comply with specified requirements and conditions for use so that they **can be safely operated by the railway undertaking** and/or the infrastructure manager concerned.

# GCU – Article 7: Technical admission and maintenance of wagons

7.2 - The keeper shall ensure that his wagons are **maintained** in accordance with the laws, regulations and mandatory standards in force. In particular, he shall **appoint** a certified Entity in Charge of Maintenance (**ECM**) and **ensure that the latter performs all of its assigned tasks**.

Upon request, the keeper shall make available to any user RU **without delay reliable information about maintenance (including Maintenance File and Maintenance Record File) and restrictions affecting operations**, necessary and sufficient to support safe operations.

For the purposes of this contract and vis-à-vis the other signatories, **the keeper is considered to be**, and have the responsibilities of, **the ECM for his wagons**.

## **COTIF 1999, Appendix G, ATMF , Article 15, § 3, Para 2:**

The ECM must ensure, either directly or via the keeper, that reliable information about maintenance and restrictions affecting operations, necessary and sufficient to support safe operations are available for the operating railway undertaking.

## **Article 4 (6) Safety Directive (EU) 2016/798:**

In the case of exchange of vehicles between railway undertakings, any involved actor shall exchange all information relevant to safe operation including, but not limited to, the status and history of the vehicle concerned, elements of the maintenance files for the purpose of traceability, traceability of loading operations and consignment notes.

# GCU – Article 7: Technical admission and maintenance of wagons

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7.3 - The keeper must allow the RUs to conduct **any inspections on wagons that may be necessary**, in particular those referred to in **Appendix 9**.

⇒ **The RU should not charge any costs to the keeper for these inspections (→ Article 12).**

7.4 - The keeper must provide the impacted user railway undertakings with the information on its wagons required for safe railway operations **in electronic format as soon as possible**. The provision of this information and additional data - where relevant - is provided for in **Appendix 16**.

# GCU – Appendix 16, Guidelines for the use of technical vehicle data

Description of elements of technical vehicle data

Element	Status	Definition
WagonNumber-Freight	Mandatory	Identifies uniquely the freight wagon by its number
PreviousWagon-Number-Freight	Optional	For identification of a wagon after renumbering
Registration-Country	Mandatory	ISO country code of registration country
DatePutIntoService	Mandatory	Date of first operation
AuthorisationValidUntil	Conditional	End date for restricted authorisation (applicable only in special cases)
SuspensionOfAuthorisation	Conditional	Information if authorisation has been suspended by the authority
DateSuspensionOfAuthorisation	Conditional	Date of the suspension of authorisation (not provided in case of suspension)
Multilateral-Authorisation-Countries	Conditional	List of countries/railway administrations for a wagon with a limited interoperable authorisation issued (derogation plate); first entry is the authorising country, following entries are the accepting countries/railway administrations
ChannelTunnel-Permitted	Optional	Indication if the wagon is permitted to pass the Channel Tunnel - if the transport is planned between the UK, France and should use Eurotunnel infrastructure
KeeperShortNameVKM	Mandatory	Identification marking of the wagon keeper as listed in VKM register (http://www.euroopa.eu/Document-Register/Pages/list-VKM.aspx, col-lective without special characters)
ECM	Mandatory	Short name of the assigned Entity in Charge of Maintenance
PlannedChangeOfECM	Conditional	Date until the current Entity in Charge of Maintenance is assigned to the wagon and full name of the following Entity in Charge of Maintenance
ECMCertificate	Mandatory	ECM certificate information
InteropCapability	Mandatory	Identification of the general interoperability capability of the wagon. The following values/codes are proposed for the usage (defined in the InteropCapabilityCode): 01 = National 02 = Bi-/Multilateral (with agreement or authorisation grid) 03 = RIV 05 = TEN 06 = TEN-GE 07 = TEN-CW 08 = TEN RIV
GCUWagon	Mandatory	Indication if wagon is operated under the GCU contract
LetterMarking	Mandatory	Complete wagon category letter code. The identification marking for freight rolling stock (wagon type) is defined in UIC Leaflet 438-2
TankCode	Conditional	Tank code (applies only for tank wagons). The codes are defined in the RID regulation, chapter 4.3.3 and 4.3.4.1.1
WagonNumberOf-Axles	Mandatory	Number of Axles for a wagon
WheelSetType	Optional	Type name of the wheel sets, and the name of the type depends on the manufacturer.
WheelDiameter	Optional	Diameter of wheels measured in mm. Reference wheel diameter at maximum.


**Extract Appendix 16**

- **Appendix 16 describes in more detail the information-related requirements laid out in article 7.4.**
- **Data fields are identical with provisions of TAF TSI, RSRD (Rolling Stock Reference Database)**
- **Categories:**
  - **Mandatory**
  - **Optional (voluntary)**
  - **Conditional (mandatory if applicable for wagon, e.g. date of next tank inspection)**
- **Additional information – e.g. brief description of any instructions destined for technical inspectors and operational staff - must be made available bilaterally. Information is always required if vehicle-related technical matters are not provided for in Appendix 9 to the GCU**

# GCU – Article 8: Inscriptions and signs on the wagon. Identification of the wagon


Without prejudice to the regulations in force, wagons shall carry the following inscriptions:

- indication of the keeper
- inscriptions and signs on the wagons as shown in **Appendix 11**
- where appropriate, the **home station or region**.



Issue/Nummer/Edition/Выпуск: **103/2018**    Date/Datum/Date/Дата: **03.10.2018**

**Vehicle Keeper Marking Register - VKM**  
**Fahrzeughaltercode Register - VKM**  
**Registre des codes de détenteur de véhicule – VKM**  
**Регистр маркировки владельцев транспортных средств**



	VKM	UNIQUE	Status
Explanation:	Code shown on vehicles	Combination for uniqueness check	<span style="color: green;">in use</span> / <span style="color: red;">blocked</span> / <span style="color: purple;">revoked</span>
Erklärung:	Code an den Fahrzeugen	Kombination für Kontrolle der Einmaligkeit	<span style="color: green;">verwendet</span> / <span style="color: red;">blockiert</span> / <span style="color: purple;">Storniert</span>
Explication:	Code marqué sur les véhicules	Combinaison pour vérification du caractère unique	<span style="color: green;">Utilisé</span> / <span style="color: red;">bloqué</span> / <span style="color: purple;">annulé</span>
Пояснения:	Код как он указан на транспортном средстве	Комбинация для проверки однозначности	<span style="color: green;">Применен</span> / <span style="color: red;">блокирован</span> / <span style="color: purple;">стornирован</span>

[Link to VKM in country order – Reihenfolge nach Staaten – par ordre des Etats - Порядок по странам](#)

**VKM in alphabetical order – alphabetischer Reihenfolge – par ordre alphabétique – Альфавитный порядок**

VKM	UNIQUE	Keeper Name / Halter Name / Nom du détenteur / Название владельца	Country Страна	Status Статус	www.	OTIF
AACH	AACH	Zakłady Azotowe Chorzów S.A.	PL	Revoked	<a href="http://azoty-adipol.pl">azoty-adipol.pl</a>	
AAE	AAE	AAE GmbH	DE	in use	<a href="http://aae.ch">aae.ch</a>	
AAEC	AAEC	VTG Schweiz GmbH	CH	in use	<a href="http://aae.ch">aae.ch</a>	OTIF
AAPSL	AAPSL	Amicale des Agents de Paris St Lazare	FR	in use		
AB	AB	Appenzeller Bahnen	CH	in use	<a href="http://appenzellerbahnen.ch">appenzellerbahnen.ch</a>	OTIF
ABB	ABB	ABB AB	SE	in use	<a href="http://abb.se">abb.se</a>	
ABCAR	ABCAR	AB Prijevoz d.o.o.	HR	in use		OTIF
ABE	ABE	Ankum-Bersenbrücker Eisenbahn GmbH	DE	in use	<a href="http://abe-gmbh.net">abe-gmbh.net</a>	
ABEG	ABEG	Anhaltinisch-Brandenburgische Eisenbahngesellschaft mbH	DE	in use	<a href="http://abeg-bahn.de">abeg-bahn.de</a>	
ABFC	ABFC	Autorails de Bourgogne Franche-Comté	FR	in use	<a href="http://x4039.free.fr">x4039.free.fr</a>	

[https://www.era.europa.eu/sites/default/files/registers/docs/iu\\_vkm\\_publiclist\\_103\\_en.pdf](https://www.era.europa.eu/sites/default/files/registers/docs/iu_vkm_publiclist_103_en.pdf)

**This list is updated on a monthly basis**

# GCU – Article 9: Keeper’s right of deployment

9.1 - **The keeper shall have control over his wagons.** The keeper may act under this contract through third parties authorized by him. **In case of doubt**, the instructions of the keeper shall overrule **any instruction of a third party** claiming to be authorized by the keeper.

9.2 - **Except when justified for reasons of safety**, only the keeper shall be authorised to issue instructions to RUs regarding the use of his wagons.

9.3 - The keeper shall provide the RUs with the instructions necessary for the **carriage of empty wagons** in good time.

## ➤ Artikel 14.3:

*If the keeper has failed to issue instructions by the time the RU takes the wagon back after unloading at the latest, the RU shall be obliged to send the wagon back to its home station or region or to any other previously agreed station.*

9.4 - Any request from a keeper for his wagons not to be handed over to certain RUs, whether signatory or third party, shall be met.

➤ See also Article 16, GCU

## **CHAPTER III**

# **OBLIGATIONS AND RIGHTS OF RUs**



COTIF 1999, Appendix G (ATMF), Article 15a, § 1:

The rail transport undertaking shall control the risks associated with its activities and especially those related to the operation of trains. To that end it shall ensure that these trains comply with the essential requirements and shall in particular:

a) ensure correct and safe train composition and preparation, including pre-departure checks,



e.g. Appendix 9, GCU see also Art. 7.3 GCU

b) take into account information necessary for the safe operation of each vehicle, including possible operating restrictions,



see also ATMF, Art. 15a, § 3: The keeper shall make available, as far as necessary for operation, to any rail transport undertaking operating the vehicle, the elements relating to the conditions and limits of use and concerning servicing and constant or routine monitoring.

c) only use vehicles within their limit and conditions of use,



see also Art. 7.4 GCU

d) (...)

e) ensure that each vehicle carried has an ECM assigned to it and when required that the ECM has a valid certificate.



see also Art. 7.2 GCU

Subject to compliance by the keeper with the obligations incumbent on him under the provisions of Chapter II, RUs shall accept wagons within the scope of their **commercial services** offered.

➤ **Note:**

**The conveyance obligation - applicable up until mid-2006 - NO LONGER EXISTS. Compliance with Chapter II AND commercial services offered by the RU are fundamental requirements for the acceptance of the wagon.**

An RU may **refuse** wagons if

- their acceptance is prohibited by a competent **authority**;
- it is temporarily impossible to accept them for **operating reasons** specific to the RU concerned;
- there are **exceptional circumstances** beyond the control of the RU (cases of force majeure in particular) that temporarily prevent the wagons being accepted;
- the **condition of the wagon** does not meet technical and maintenance regulations or conform to the current loading guidelines;
- there are other **substantial reasons** which might affect the safe operation of the wagon; such reasons must be notified to the keeper.

An RU may not refuse its own wagons when they are empty and in running order.

Each RU shall handle wagons with **care** and **due diligence** and shall carry out the **inspections** laid down in Appendix 9. Similarly, it shall carry out in particular all the safety-related inspections needed on wagons, irrespective of their keeper. The **costs** relating to these routine inspections **shall not be separately invoiced to the keeper**.

➔ **See also Article 7.3 - The keeper must allow the RUs to conduct any inspections on wagons that may be necessary, in particular those referred to in Appendix 9.**

# GCU – Article 13: Wagon periods for carriage and liability

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

## ➔ CIM, Article 16 (applies only to INTERNATIONAL transports)

*§ 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) (...)*

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

**These periods cannot be extended in the event of “successive carriers” (CIM, Article 26).**

**National requirements (which may deviate from these provisions applicable for international transports) apply to national traffic.**

# GCU – Article 13: Wagon periods for carriage and liability

13.2 - The user RU **shall not be held liable** for exceeding the periods of carriage when this is caused by:

- the fault of the keeper,
- an order placed by the keeper not resulting from a fault of the user RU,
- a **defect** on the wagon or **its load**,

## ➤ CIM, Article 13, § 2:

**The consignor shall be liable for all the consequences of defective loading carried out by him and must in particular compensate the carrier for the loss or damage sustained in consequence by him. The burden of proof of defective loading shall lie on the carrier.**

- circumstances that the user RU could not avoid and the consequences of which it could not prevent,
- justified refusal of the wagon or shipment as covered by **Article 11**.

# GCU – Article 13: Wagon periods for carriage and liability

13.3 - If these periods are exceeded for a reason ascribable to an RU, the keeper may claim **compensation for loss of use of the wagons**. Unless otherwise agreed, the amount of compensation for loss of use shall be calculated from **Appendix 6**.

This amount, added to the compensation for damage specified in Article 23.2, may not exceed the amount payable for loss of the wagon.

It shall be charged in addition to the compensation for loss granted under Articles 20.3 or 23.1.

## 2.1 Daily rate per wagon in euros

To calculate the daily rate (in euros):

Multiply the coefficient for the relevant wagon type by the wagon's length over buffers (in metres, unrounded).

Code letters of various wagon types	Coefficient
E – Open Wagon	1.1
F – Open Wagon	1.5
G – Covered Wagon	1.1
H – Covered Wagon	1.5
I – Temperature-controlled wagon	1.4
K – Two-axle flat wagon	1.1
L – Flat wagon	1.5
O – Mixed flat open wagon	1.4
R – Bogie flat wagon	1.1
S – Bogie flat wagon	1.5
T – Wagon with opening roof	1.5
U – Special wagon	1.8
Z – Tank wagon	1.8

# GCU – Article 14: Deployment of empty wagons

14.1 - The RU shall execute the instructions given by the keeper for the carriage of empty wagons within the scope of their **commercial services** offered.

14.2 - The **documents** listed below, included in **Appendix 3**, shall be used when forwarding empty wagons:

- wagon note,
- charges note,
- subsequent orders,
- notification of circumstances preventing carriage,
- notification of circumstances preventing delivery.

These documents may be issued in paper format or recorded electronically.

The procedure agreed on among parties to the contract of use for issuing these documents in electronic format must ensure the integrity and reliability of the information they contain as of the moment they are issued. The procedure agreed on among parties to the contract of use for completing or amending the electronic wagon note must ensure amendments are identifiable. It must also ensure that the original information contained in the electronic wagon note is preserved. The electronic wagon note must be authenticated. Authentication may take the form of an electronic signature or other suitable procedure. The arrangements for handling these documents in paper or electronic format are set out in the Wagon Note Guide of the CUV (GLW-CUV), published by the International Railway Transport Committee (CIT).



<https://www.cit-rail.org/en/use-wagons/>

14.3 - **If the keeper has failed to issue instructions by the time the RU takes the wagon back after unloading at the latest, the RU shall be obliged to send the wagon back to its home station or region or to any other previously agreed station.**



# GCU - Article 15: Information to be supplied to the keeper & App 15 (Wagon Performance Message)

User RUs shall supply the keeper with **information** on the use of his wagons in a **timely manner**, in accordance with the national and international laws and regulations in force.

➤ **COTIF 1999, Appendix G, ATMF (Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic), Article 15, § 3, paragraph 3:**

*“The operating railway undertaking must in due time, either directly or via the keeper, provide the ECM with information on operation of the vehicles (including mileage, type and extent of activities, incidents/accidents) for which the ECM is in charge.”*

- **Appendix 15 describes in more detail the information-related requirements laid out in article 15.**
- **The user RU must send the complete set of wagon performance data for the entire custody period of a wagon**
  - ➔ **Precondition: Wagon must be registered in GCU Wagon Data Base**
- **The GCU Bureau provides a communication platform (GCU Message Broker) to the signatories for transmission of the Wagon Performance Message.**

Description of wagon performance message (WPM) elements in CSV format

Element	Status	Definition
WagonNumber-Freight	Mandatory	Full 12-position wagon number, including check digit, without spaces or hyphens. Example: 338078605601
UserRU	Mandatory	4-position numerical company code of the user RU.
PeriodStart	Mandatory	Starting date and time of the wagon performance message (beginning of custody period). Format: dd.mm.yyyy hh:mm
PeriodEnd	Mandatory	End date and time of the wagon performance message (end of custody period). Format: dd.mm.yyyy hh:mm
Country	Conditional <sup>3</sup>	Identification of the country in which the wagon performance was executed using the 2-position ISO 3166-1 alpha-2 country code in accordance with ISO 3166-1. Example: DE
Kilometers	Mandatory	Net performance of the wagon for the period specified (start and end date and time). Kilometric performances within a station due to, for example, shunting movements for the purpose of loading/unloading or other operations can be disregarded. Net kilometers, estimations or timetabled kilometers are not sufficient to meet this requirement. Example: 423 (without decimal place)
TotalLoadWeight	Mandatory	Payload (net tonnage), including container, in kg. Empty = 0 kg Example: 55400 (without decimal place)

**Appendix 15**

# GCU – Article 16: Handover of a wagon to third parties

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An RU that hands over a wagon to a third party **without the authorization of the keeper** shall be liable to the latter in particular for any damage that may result. The liability of the third party remains unaffected.

➡ See also Articles 9.4 and 31

# GCU – Article 17: Acceptance of a wagon from third party keepers

The present contract shall apply to **wagons whose keepers are not GCU signatories** from the moment they are accepted by a signatory RU as part of a handover or exchange. In such cases, the **RU** which accepts the wagon is considered as its **keeper** vis-à-vis the other parties to the GCU for this run and for the empty return run following it. This is to be indicated in the CUV wagon note.

➔ **If damages are caused by the “non-GCU wagon” to a “GCU wagon”, the transporting RU is liable with respect to the “GCU keeper”; it CANNOT invoke Article 22.2, second bullet point:**

“The RU shall not be liable if it brings proof of one of the following:

- (...)
- **fault of a third party;**
- (...)”

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## **Part 2b: Overview of the content of the GCU – Articles 18 - 35**

## CHAPTER IV

- ASCERTAINMENT AND HANDLING OF DAMAGE TO WAGONS IN THE CUSTODY OF AN RU

Article 18 Ascertainment of damage

Article 19 Handling of damage

Article 20 Handling of lost wagons and removable accessories

Article 21 Handling of bogies

## CHAPTER V

- LIABILITY IN THE EVENT OF LOSS OR OF DAMAGE TO A WAGON

Article 22 Liability of the user RU

Article 23 Amount of compensation

Article 24 Liability of previous users

Article 25 Obligation to mitigate losses

Article 26 Settlement of damages

## CHAPTER VI

- LIABILITY IN THE EVENT OF DAMAGE CAUSED BY A WAGON

Article 27 Principle of liability

## CHAPTER VII

- LIABILITY FOR STAFF AND OTHER PERSONS

Article 28 Principle of liability

## CHAPTER VIII

- OTHER PROVISIONS

Article 29 Loading guidelines

Article 30 Accountancy and payment

Article 31 Obligation to pay damages

Article 32 Competent jurisdiction

Article 33 Limitation

Article 34 Languages

Article 35 Entry into force

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## **CHAPTER IV – ASCERTAINMENT AND HANDLING OF DAMAGE TO WAGONS IN THE CUSTODY OF AN RU**

18.1 When damage to a wagon or the loss or damage of the removable accessories mentioned on the wagon are discovered or presumed by an RU or the keeper claims they exist, the RU shall **without delay** and, if possible, in the keeper's presence, draw up a **wagon damage report** (as per **Appendix 4**) documenting the nature of the damage or loss and, insofar as possible, the cause and the time it took place.

18.2 When the damage or loss of parts does not prevent use of the wagon in traffic, the keeper does not need to be invited when the damage or loss is recorded.

18.3 **A copy of the wagon damage report shall be sent to the keeper without delay.**

18.4 If the keeper does not accept the contents of the wagon damage report, he may 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. This procedure shall be subject to the law of the country in which it takes place.

18.5 When a wagon sustains damage or loss of a part and is unable to run or be used as a result, the RU shall also inform the keeper immediately, providing the following information as a minimum:

- the wagon number
- the status of the wagon (loaded or empty)
- the date and place it was withdrawn from service
- reason for withdrawal from service
- details of the department to contact
- probable duration of wagon unavailability (up to 6 working days; more than 6 working days).





19.1 The RU shall arrange for the wagon to be **put back to running order** in accordance with the provisions of Appendix 10. If the cost of repairs is more than **850 EUR**, the agreement of the keeper must first be sought, except in the case of brake block replacements or if Appendix 13 is applied by the RU. If the keeper does not respond after 2 working days (not including Saturdays) the repair work shall go ahead.

- **Important difference between running order and fitness for use**
- **Obligation of the RU to put the wagon into running order**
- **How? → Reference to Appendix 10 GCU**
- **Without the agreement of the keeper as long as the cost of repairs does not exceed 850 €;**  
**Exception: Brake block replacements and**  
**(voluntary) application of Appendix 13**
- **If the cost of repairs exceeds 850 €, the agreement of the keeper is required**
- **The term “cost of repairs” is interpreted in different ways**  
**“What is included in the 850 €?” (Pure repair costs or also transport costs, etc.)?**
- **If the agreement of the keeper is not received within 2 working days, the RU carries out the repairs without agreement (= obligation!)**

19.2 If the cost of repairing the damaged wagon is greater than the compensation calculated according to Appendix 5, the wagon shall be considered **beyond repair from an economic point of view**.

- “Cost coverage” via reference to Appendix 5 GCU (see below regarding Art. 23.1)
  - ➔ If the cost of repairs exceed the residual value of the wagon, the wagon is considered beyond repair – comparable with a “total economic loss” for a road vehicle

19.3 When the damage does not affect the wagon's suitability to run, but makes its use difficult, the RU may carry out work to **make the wagon fit for use again** without the keeper's agreement, up to an amount of 850 EUR. By agreement with the keeper, the RU may be authorised to carry out additional work.

- RU can also carry out repairs that restore the fitness for use
- No obligation of the RU to make the wagon fit for use
- Without the agreement of the keeper as long as the cost of repairs does not exceed 850 €;  
**Exceptions: None**
- If the cost of repairs exceeds 850 €, the agreement of the keeper is required
- Additional work can be agreed upon with the keeper.

## Valid until 30.06.2019:

19.4 On completion of the repairs and failing any specific instructions from the keeper, the RU shall forward the wagon to the destination station for which it was initially bound.

## Valid from: 01.07.2019

19.4 - The RU that initiated the maintenance in accordance with Appendix 10 shall check whether and to what extent the work requested has been completed on the basis of information received from the workshop.

Any restrictions on use (e.g. fitness to run, fitness for service) that become apparent after the repairs must be documented by the RU.

On completion of the repairs and failing any specific instructions from the keeper, the RU shall forward the wagon to the destination station for which it was initially bound.

- First two paragraphs are in line with ECM-Regulation definition of “Release to Service” [➔ check completeness of work requested] and return to operation [➔ document all remaining restrictions of use]
- 3<sup>rd</sup> paragraph contains obligation of the RU to forward the wagon
  - ➔ Wagon remains in the custody of the RU during the “en route repair”!

## **Valid until 30.06.2019:**

19.5 - In all cases where the RU carries out - or arranges to have carried out - repair work in application of the provisions of Appendix 10 or Appendix 13, it shall do so with all due care, making use of approved workshops and/or staff and approved materials. Approved workshops and/or staff mean that an RU has requested repair work in accordance with Appendix 10 from workshops and/or staff covered by the “safety management system” of the RU. The RU or its auxiliary performing the work shall provide detailed

## **Valid from: 01.07.2019 (Subject to result of voting, 10<sup>th</sup> Novemebr 2018)**

19.5 - In cases where the RU carries out measures in application of the provisions of Appendix 9, it shall do so with qualified staff and all due care. In the context of the preceding provision, “qualified staff” (operations staff) means staff possessing the competences and authorisations to take corrective measures, described in the RU’s safety management system (SMS).

Repair work in application of the provisions of Appendix 10 may only be performed by approved workshops.

Approved workshops are:

- a) Workshops which have a valid certificate for an entity in charge of maintenance (ECM certificate) containing the maintenance delivery function as a minimum,
- and
- b) are listed in the European Railway Agency Database of Interoperability and Safety (ERADIS)
- and
- c) which are conversant with Appendices 7, 9, 10 and 13 to the GCU and instruct their employees on changes to the GCU on a regular basis.

The RU or his auxiliary must inform the keeper of the work performed, using the codes provided in Appendix 10, Annex 6.

- ➔ Problematic aspects concerning ECM and GCU
- ➔ New: Inclusion of the ECM in Art. 15 ATMF
- ➔ In consequence: Discussion of the need for further regulation of the ECM responsibilities in the GCU
- ➔ Today: Art. 7 para. 2 GCU: “For the purposes of this contract and vis-à-vis the other signatories, the keeper is considered to be, and have the responsibilities of, the entity in charge of maintenance for the wagon.”
- ➔ Critical view: The GCU regulates exclusively the legal relationships between the keeper and the RU
- ➔ Danger of creating “uncertainties” in the flow of information
- ➔ Trend: No additional ECM regulation in the GCU
- ➔ Considering the ECM as an auxiliary person of the keeper appears to be sufficient
- ➔ Interpretation note of the GCU Joint Committee on the GCU website regarding Art. 19.5 (<http://www.gcubureau.org/recommendations>)
- ➔ As per 1<sup>st</sup> July 2019:
  - ➔ Definition of “qualified staff”
  - ➔ introduction of mandatory ECM certification for workshops instructed by RUs based on Article 19 / Appendix 10

19.6 - Management of spare parts is covered in Appendix 7.

19.7 - Coverage of the cost of repair work is dealt with in Chapter V.

# GCU – Article 20: Handling of lost wagons and removable accessories

20.1 A wagon shall be considered lost if it is not placed at the keeper's disposal within three months following the day of receipt of his search request by the RU to which he provided the wagon, or if the keeper has received no indication on the whereabouts of the wagon. To this period shall be added the time during which the wagon is immobilised for any reason not ascribable to the RU or because of damage.

20.2 A piece of removable accessory mentioned in the wagon shall be considered lost if it is not returned with the vehicle.

20.3 If an RU is liable, it shall pay the keeper:

- for a lost wagon, compensation calculated in accordance with Appendix 5
- for lost accessory, compensation amounting to the value of the part in question.

20.4 The keeper, on receiving the compensation, may request in writing to be notified when the wagon (or removable accessory) is found. In this case, the keeper may require that within six months of receiving the notification, the wagon (or removable tackle) be returned to him against repayment of the compensation received. The period between payment of compensation for loss of the wagon and repayment thereof by the keeper shall not qualify him for any compensation for loss of use.

**- Wagon (or parts) can become lost!  
Regulation of the procedure in the event of loss  
as in the event of a total loss  
Corresponding application of the provisions of Article 20  
to bogies => Article 21**

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## **CHAPTER V – LIABILITY IN THE EVENT OF LOSS OR OF DAMAGE TO A WAGON**



22.1 **The RU** which has custody of a wagon **shall be liable** to the keeper for any loss of or damage to the wagon or accessories **unless it proves that the damage was not caused by fault on its parts.**

22.2 The RU shall not be liable if it brings proof of one of the following:

- Circumstances that the RU could not avoid and the consequences of which it could not prevent;
- fault of a third party;
- insufficient maintenance by the keeper when the RU can prove that the wagon was properly used and inspected;
- fault of the keeper.

If the RU is found to be partly responsible, the damage shall be borne by the responsible parties in proportion to their respective share of responsibility. The keeper cannot cite the existence of a hidden defect on his wagon as proof that there was no fault of his part.

22.3 The RU shall not be liable for:

- loss of or damage to **removable accessories** that is not listed on both sides of the wagon;
- loss of and damage to **removable tackles** (filling hoses, tools, etc.),  
provided that it cannot be shown to be at fault.

22.4 To facilitate the handling of damage and take account of the normal wear and tear of the wagon, the quality of its maintenance and its use by third parties, the damage catalogue in **Appendix 12** shall be applied as follows:

- damage assigned to the keeper shall be borne by the keeper; independently of this, the keeper may, for damage in excess of 850 EUR, seek recourse against an RU, **if he can bring proof that the RU in question was at fault,**
- damage assigned to the RU shall be borne by the user RU up to a maximum of 850 EUR,
- damage assigned to the RU in excess of 850 EUR shall be handled in accordance with the provisions of Article 22.1.

➤ **Excerpt from Appendix 12, GCU:**

Category	Part	Type of damage	Additional information	Responsibility of	
				Keeper	User RU
Running gear	Tyred wheel	Tyre lose, laterally displaces, cracked	No sign of thermal overloading	X	
			Visible signs of thermal overloading (brake equipment faulty) Visible signs of thermal overloading (brake equip. operational)	X	X
	Tyre / wheel centre / solid wheel / wheel tread	Thermal overloading	No sign of thermal overloading Braking equipment operational	X	X
			Cracks in the disc	No sign of thermal overloading Visible signs of thermal overloading (brake equipment faulty) Visible signs of thermal overloading (brake equipment operational)	X X
		Clamping notches		X	
		Measuring circle not visible	Excessive wear of wheel centre (diameter too small)	X	
		Damage from track brakes	Notches with sharp-angled apex in the tyre and the rim or the lower rim of the tyre		X
		Traces of abrasion, flanges damaged	Accidental damage <sup>1)</sup>		X
		Cavity, shelling or flaking	Not including thermal overloading	X	
		Metal inclusions, flats	Brake equipment faulty	X	
			Brake equipment operational		X
		Occasional dents in wheel tread	Accidental damage <sup>1)</sup>		X
		Out-of-roundness		X	
			If the damage can be clearly attributed to the RU		X

➤ **Art. 22:**

- **Central provision for regulating the liability of the RU for damage to the wagon**
- **Addressed in detail in a separate lecture and workshop**

23.1 In case of loss of the wagon or its accessories, the amount of compensation shall be calculated in accordance with Appendix 5.

23.2 In case of damage to the wagon or its accessories, compensation shall be limited to the cost of repairs. Compensation for loss of use shall be granted in accordance with Article 13.3 and compensation for the change in operational value for damaged wheelsets in accordance with Appendix 6, Part II.

When a request is sent to the keeper for spare parts to carry out repair work, the period of loss of use shall be suspended between the date of the request and the date on which the parts are received.

The total amount of compensation (for loss of use and for reprofiling wheelsets) may not exceed the amount that would be payable for loss of the wagon.

➔ **The provision “... and compensation for the change in operational value for damaged wheelsets in accordance with Appendix 6, Part II” applies since 1<sup>st</sup> January 2018**

➔ **Excerpt from Appendix 6:**

II. COMPENSATION FOR REPROFILING OF WHEELSETS

The RU responsible for damaging the wheelsets to be reprofiled shall pay the keeper upon presentation of an invoice with supporting documents a flat rate of **350 EUR** for the loss of value arising as a result of reprofiling (reduction in the running-circle diameter).

## Art. 23.1:

- ➔ In case of loss: Reference to Appendix 5 GCU, here:
- ➔ Regulation of the procedure for determining the amount of compensation
- ➔ In case of damage: The keeper is solely entitled to decide whether he would like to retain ownership of the (scrap) wagon or whether it is transferred to the RU (see Article 19.2 “If the cost of repairing the damaged wagon is greater than the compensation calculated according to Appendix 5, the wagon shall be considered beyond repair from an economic point of view”).
- ➔ In case of retention: Monetary offsetting of the scrap price against the compensation total => Reduction of the compensation total by 10%
- ➔ Service of the GCU Bureau: Calculation tool on the GCU website

<http://www.gcubureau.org/calculations>

### Calculation of flat-rate residual value 28.01.2018 18:10

According GCU, appendix 5, I.B

Transfer of ownership	YES
Replacement value EUR	€100000
Year of damage or loss	2013
Year of built	1990
Realized transport cost	€ 5000

'=> years to be taken into account (year of damage / loss and year of built count as one year)	23
B) 2.2: Deduction (4% per year (maximum 80% = 20 years)	4 %
Impairment (%)	80 %
'=> Impairment €	80,000 €
'=> Compensation € (subtotal I)	20,000€
B) 2.3, para 1: 10% deduction (based on subtotal I) if the Keeper decided NOT to transfer ownership of the wagon	0€
'=> Compensation € (subtotal II)	20,000€
B) 2.3, para 2: Compensation of proven transport cost if Keeper decided NOT to transfer ownership of the wagon (limited to 10% of subtotal II)	0 €
'=> Compensation € (subtotal III)	20,000 €
B) 2.4: Compensation of cost for determination damage / loss incurred by the Keeper (flat rate = 2'000 €)	2,000 €
'=> Compensation € (Total)	22,000 €

24.1 When the RU which has custody of a wagon is not liable, each previous user in the current chain of use (loaded or empty run) shall be liable to the keeper for any damage to the wagon and for the loss of or damage to its accessories in accordance with Article 22, if the subsequent RUs in the chain of use could exonerate themselves under the terms of Article 22.

24.2 Outside of the current chain of use, previous user shall only be liable to the keeper if the keeper can prove that this user caused the damage and if this user cannot exonerate himself under Article 22.

## ⇒ Art. 24.1:

- If the RU with custody can prove its lack of liability according to Art. 22.1 and 22.2, the previous user RU is liable
- If the latter can also prove its lack of liability, the previous user RU before it is liable; however, only within a chain of use (loaded or empty run) that has not yet been completed
- In case of longer chains of use with multiple participants, tracking the liability becomes increasingly difficult in practice

## ⇒ Art. 24.2:

If all RUs participating in a chain of use are able to prove a lack of liability, the keeper bears the full burden of proof for compensation for damages occurring prior to the last chain of use

When payment is made for damage caused to wagons, the parties to the contract shall abide by the general principles associated with the obligation to limit the resulting losses.

⇒ **General principle of the obligation to mitigate losses**  
**Intended as clarification since this must be taken into account in any case according to most legal frameworks**

The user RU or workshop acting as its auxiliary shall invoice the cost of repairing the wagon to the keeper, with the exception of costs for which the user RU is liable under the terms of Article 22. When the previous user is liable for the damage, the keeper shall send that user an invoice for the cost of the repairs for which he was himself invoiced by the user RU or workshop. The keeper may claim compensation for loss of use, in accordance with Article 13.

⇒ **General regulation of the formal process for settlement of damages**

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## **CHAPTER VI – LIABILITY IN THE EVENT OF DAMAGE CAUSED BY A WAGON**



27.1 The **keeper** or a **previous user** subject to this contract **shall be liable** for damage caused by the wagon **when they can be shown to be at fault**. The keeper shall be **presumed** to be at fault if he has not correctly fulfilled his duties as these arise from **Article 7**, unless this breach of duty did not cause or contribute to the damage.

- **Fault-based liability of the keeper for damage caused by a wagon.**
- **New: Burden of proof rule for the fault of the keeper in Art. 27.1, sentence 2. The keeper is presumed to be at fault if a violation of the obligations from Art. 7 can be shown. However, this violation of obligations must be proven by the RU.**
- **Opportunity for the keeper to exonerate himself: If he can prove that his violation of the obligations did not cause or contribute to the damage, the presumption of fault does not apply.**
- **The following must be proven by the RU:**

**The damage and the causality between fault and damage**

27.2 The liable party shall indemnify the user RU against any third party claims if the user RU is not at fault.

- **Prerequisite for application is the complete proof that**  
**The “party at fault” has been clearly identified (e.g. according to Art. 27.1)**  
**no fault applies to the RU – including no contributory fault**

27.3 Where the user RU is partly responsible, the compensation shall be borne by each party in proportion to its respective share of responsibility.

➤ **Proportional responsibility for shared fault**

➔ **This provision reflects a standard principle under civil law that exists in most European legal systems**

27.4 When a third party is responsible or partly responsible for the damage, the parties to the contract shall claim compensation for the damage primarily from this third party. In particular the signatory which has a contract with the third party shall pursue the claim vis-à-vis the third party as a matter of priority.

➤ **Mutual support in enforcement of the claim; arises from the obligation to mitigate losses**

➔ **This provision also reflects a standard principle under civil law that exists in most European legal systems**

27.5 Upon request, the keeper shall be required to provide proof of his civil liability insurance in accordance with applicable laws.

➤ **Obligation of the keeper to present proof of his insurance upon request by the RU**

➤ **The provision is incorrectly located; it should actually be contained in Chapter II “Obligations of the keeper”.**

➤ **Can be viewed as a “remnant” of the previous, hardly ever applied “Small damages provision” of the old Art. 27.4 and Art. 27.5.**

# **CHAPTER VII – LIABILITY FOR STAFF AND OTHER PERSONS**

The contracting parties shall be liable for their servants and other persons whose services they make use of for the performance of the contract, when these servants and other persons are acting within the scope of their functions.

## The concept of servants in the GCU

- ⇒ **Art 28 GCU:** “The contracting parties shall be liable for ... other persons whose services they make use of for the performance of the contract when these ... are acting within the scope of their functions.”
- ⇒ **§ 278 Civil Code Germany:** “The party liable must take responsibility for a fault ... by the persons they make use of for fulfilment of an obligation to the same extent as if it were itself at fault.”
- ⇒ **Infrastructure operators as agents of the RU?**
- ⇒ **Art. 9 § 2 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.”
- ⇒ **Problem: Application of the CUV is only mandatory in international law, e.g. international traffic**
- ⇒ **However: No substantive reason is apparent for handling national and international traffic differently**
- ⇒ **Parallels: ECM = Unanimously viewed as auxilliary person [servant] of the keeper**

## **CHAPTER VIII - OTHER PROVISIONS**

The RUs shall ensure that shippers comply with the **UIC loading guidelines** in force.

➤ **Primarily concerns the operational requirements of the RU**

**Link to UIC loading guidelines on the GCU website:**

<http://www.gcubureau.org/recommendations>

30.1

The EURO (ISO code: EUR) shall be used as the sole monetary unit for all accounts and payments.

- **Existing content is self-explanatory**
- **Currently: Initiative of the UIP to expand Art. 30 and entitlement to interest in the event of late payment (proposal for payment term: 45 or 60 days)**
- **This is based on EU Directive 2011/7 EU on combating late payment in commercial transactions.**

30.2

Payment must be made within 60 days following the date of receipt of the invoice, accompanied by the appropriate supporting documentation. An invoice is considered to be paid once the full amount due is credited on the account specified by the creditor.

30.3

If the payment period is exceeded, the creditor may charge interest for late payment from the sixty-first (61st) day for the unpaid amount.

30.4

The yearly interest rate is calculated as follows: the interest rate applied by the European Central Bank to its most recent main refinancing operations (MRO) plus 800 basis points. Basis for the calculation is the interest rate in force on the 1st of January of the calendar year in which the invoice was established.

➤ **New Articles 30.2 – 30.4 as of January 1<sup>st</sup> 2019**

➤ **Initiative of the UIP to expand Art. 30 and entitlement to interest in the event of late payment (60 days)**

➤ **This is based on EU Directive 2011/7 EU on combating late payment in commercial transactions.**



When a signatory fails by its own fault to meet an obligation which is due under this contract, he shall compensate the affected signatory for the direct damages suffered.

- ⇒ **Not a very well known provision**
- ⇒ **Reflects generally established principle under civil law**

Unless otherwise agreed between the parties, the competent jurisdiction shall be that in which the defendant is established.

- ⇒ **Permissible contractual agreement on place of jurisdiction**
- ⇒ **Reflects the general place of jurisdiction established in the German Code of Civil Procedure (ZPO)**
- ⇒ **Optional; in other words, the parties can agree to other places of jurisdiction**

33.1 The period of limitation for actions based on **chapter III** shall be **one year**. The period of limitation for actions based on **chapters V and VI** shall be **three years**.

33.2 The period of limitation shall run as follows:

- a) for claims brought under chapter III, from the day when the agreed period or the periods specified in the CIM expire;
- b) for claims brought under chapter V, from the day when the loss of or damage to the wagon was recorded or the day when the keeper could consider the wagon or the accessories lost in accordance with Article 20;
- c) for claims brought under chapter VI, from the day on which the damage occurred.

⇒ **Contractual regulation of the period of limitation**

⇒ **Deviation from the standard period of limitation in German law, which fundamentally calls for 3 years**

The present contract exists in English, German and French; each language version has the same contractual value.

Two GCU members with different national languages must carry out their **correspondence in one of the official GCU languages**. The fields in the form in Appendix 4 must thus be written in at least one of those three languages. Invoices may be issued in the national language of the place of issue. The provisions of Annex 6 of Appendix 10 (coding of interventions) remain unaffected.

➡ **New provision from the year 2014 to simplify communication**

This contract shall enter into force on 01.07.2006.

**The valid version of the GCU (incl. Appendices) is available for download in all three official language versions (english, french, german) :**

**→ [www.gcubureau.org](http://www.gcubureau.org)**

**Note: Regarding handling of damages etc. the version valid upon the date of the incident shall be used. Old versions of the GCU are available on the above mentioned website of the GCU Bureau.**

### 3. Excursion:

**Basic principles of the GCU:**

**Custody and regulating the burden of proof**

# I. Custody as defined by Article 1.4 GCU

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The **definition** (“time from acceptance (...) to handover (...)”) consists of:

- Provisioning for loading and unloading at facilities of the RU within the framework of the commercial agreement
- Duration of loading and unloading
- Transferring of loads due to an obstacle to transport or delivery
- Repairs between acceptance and handover without dissolution of the contract of use (commercial agreement)
- Further dispatching, if the user has been directed so
- Damage incidents (independent of the liability of the RU)
- Use of wagons outside of a contract of use (load/empty run), e.g. by the RU based on a contractual agreement
- Acceptance of NON-GCU wagons by a GCU RU

# I. Custody as defined by Article 1.4 GCU

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- Custody is an important point of reference in the GCU, particularly for liability issues, e.g. Article 22.1
- Custody must be determined based on objective criteria (see below)
- The concept is closely linked to the actual power of disposal
- Legally related to possession ( ≠ ownership!)

## => Central concept in the application of the GCU

- Problems that arise: Contracting of another RU (as subcontractor) by the RU with custody
- Decisive criterion here: Is the accepting RU a GCU signatory?
  - Yes: Custody lies with the accepting RU
  - No: Custody lies with the RU handing over the wagon (contracting RU)



## II. Regulating the burden of proof

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- Who must prove what?
- **Principles in civil law: The claimant must prove all material elements justifying the claim!**
- But: Special provisions in the GCU regarding proper distribution of the burden of proof:
  - *Art. 22.1 GCU:*  
*The RU which has **custody** of a wagon shall be liable to the keeper for any loss of or damage to the wagon or accessories **unless it proves** that the damage was not caused by fault on its parts.*
- To make enforce this claim, the keeper must (only) prove,
  - that he suffered damage to his wagon,
  - that the RU against whom he makes the claim had custody of the wagon
- The keeper need not prove that the RU is at fault
- => Contractual reversal of the burden of proof in favour of the keeper (without this provision, the keeper would have to prove to the RU that the RU is at fault, see above)

## II. Regulating the burden of proof

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- Chance for the RU to exonerate itself:

Art. 22.1 last half sentence: “...**unless it proves** that the damage was not caused by fault on its parts.”

- The absence of fault must be proven by the RU (= relatively difficult to achieve negative proof)
- Examples of absence of fault in Art. 22.2 (to be proven by the RU):

Art. 22.2: “The RU shall not be liable if it brings proof of one of the following:

- Circumstances that the RU could not avoid and the consequences of which it could not prevent  
(=> force majeure)
- Fault of a third party  
(third party is not agent / servant / auxiliary person!)
- Insufficient maintenance by the keeper when the RU can prove that the wagon was properly used and inspected  
(two things must be proven by the RU in this case!)
- Fault of the keeper.  
(This fault must have a causal relationship with the damage!)

## II. Regulating the burden of proof

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- Exclusion of liability on the part of the RU in the special cases in Art. 22.3:

Art. 22.3 :

“The RU shall not be liable for

- loss of or damage to removable accessories that is not listed on both sides of the wagon,
- loss of and damage to removable tackles (filling hoses, tools, etc.)

**provided that it cannot be shown to be at fault.”**

- Behind Art. 22.3 lies the “exception of the exception”, in other words the return to the principle that the claimant must prove everything that justifies the claim – including the fault of the party against whom the claim is made.
- => In other words, the keeper must bear the entire burden of proof in these (exceptional) cases.

## II. Regulating the burden of proof

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- Article 22.4 in connection with Appendix 12 GCU:

Art. 22.4:

“To facilitate the handling of damage and take account of the normal wear and tear of the wagon, the quality of its maintenance and its use by third parties, the damage catalogue in Appendix 12 shall be applied as follows:

- damage assigned to the keeper shall be borne by the keeper; independently of this, the keeper may, for damage in excess of 850 EUR, seek recourse against an RU, if he can bring proof that the RU in question was at fault,
  - damage assigned to the RU shall be borne by the user RU up to a maximum of 850 EUR,
  - damage assigned to the RU in excess of 850 EUR shall be handled in accordance with the provisions of Article 22.1 [Note: and 22.2].”
- Appendix 12: Catalogue of damage to wagons
    - Clear assignment of the cost responsibility based on (relatively) clear criteria
    - Burden of proof for the existence of the criteria: as described above
    - No separate rules concerning burden of proof in Appendix 12