

**GENERAL CONTRACT OF USE FOR FREIGHT WAGONS (GCU)  
GCU 2019 PRACTICAL GUIDELINES**

***“KNOW THE GCU BETTER TO USE IT BETTER”***

**(Version from 9 August 2019)**

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<sup>1</sup> AFWP: *Association Française des détenteurs de wagons* – French Association of Freight Wagon Keepers

## **Warning**

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## **Objectives of this brochure**

The GCU Practical Guidelines are directed at members of AFWP and VPI who make use of the GCU.

The objective is to cast light on the fundamental principles of the GCU that are required for correct interpretation and use of the GCU.

This commented GCU does not overlap with either of the following:

- The brochure “The GCU Environment”, which describes the positioning of the GCU within the context of the freight wagon environment (main actors and applicable texts)
- The AFWP “Good Practice Guidelines”, which are intended to provide detailed information to operational actors in the area of freight wagons, keepers and RUs concerning conduct in specific situations and upon specific events.

This brochure “AFWP/VPI GCU 2018 PRACTICAL GUIDELINES” supports and assists in training in connection with the GCU of the associations. It also forms the basis for the AFWP training: “GCU Training with Legal Focus” (*Formation CUU à dominante juridique*).

In addition to the “GCU Training with Legal Focus”, AFWP offers a two-day “GCU Training with Technical Focus” (*Formation CUU à dominante technique*), which is held at Ateliers de Joigny. VPI offers corresponding trainings on the GCU, which are based on the UIP GCU Schooling Programme.

Naturally, these documents cannot cover all case examples. For this reason, members seeking additional information on unclear issues should not hesitate to ask their questions on the AFWP website in the section “**L’AFWP à votre écoute**” or to contact the legal advisor of VPI directly by telephone or email.

## **PART I – THE FREIGHT WAGON ENVIRONMENT**

### **Historical background: 1 July 2006: An important date**

Until 1 July 2006, the “freight wagon environment” largely looked as follows:

- Coexistence of two freight wagon types: railway-owned wagons (R-wagons) and private freight wagons (P-wagons).
- Railway-owned wagons were subject to the RIV and P-wagons to UIC leaflet 433 (V) (V = binding) by means of the hiring contracts concluded between the “hiring” railway undertaking and the keepers.
- At the time, the historical railway undertakings were “national agencies” and the first new development was established by the European directives, above all Directive 91/440, and subsequently in particular by the directives on safety in rail transport and interoperability.
- UIC leaflet 433(V) and the RIV were binding. The great advantages of this legal situation was its pronounced transparency:
  - For the UIC railway undertakings with regard to the manner of handling all freight wagons (P-wagons or railway-owned freight wagons)
  - For wagon operators of P-wagons and of railway-owned freight wagons with regard to the type of handling their wagons were subjected to, independent of the location and the UIC railway undertaking in whose custody the wagons were found
- The RIV and UIC leaflet 433 (V) were managed by UIC, even though UIP had a say in the revision of UIC leaflet 433 (V).
- Over time, new railway undertakings entered the freight wagon market who were not UIC members and either did not recognise the voluntary UIC membership or it was not relevant to them.
- In this time prior to 1 July 2006, RUs and keepers had to live up to two partially overlapping “standards”: on one hand RIV/UIC leaflet 433 (V) and, on the other, the European regulations that gradually entered into force and replaced many provisions from RIV/UIC leaflet 433 (V), particularly with regard to safety in rail transport.
- In the case of overlapping rules and as a result of the hierarchy of legal standards, the EU rules take precedence over the provisions of the RIV and the UIC leaflets.

It should be noted that, as a result of the activities carried out in this environment, well functioning working conventions and management systems established themselves over time in the industry (at RUs, P-wagon keepers, wagon manufacturers or – to put it more generally – within the “railway sector”); these conventions and systems then had to be completely reinvented as of 1 July 2006.

**On 1 July 2006, COTIF entered into force**

## **COTIF 1999**

### **Convention Concerning International Carriage by Rail in the Vilnius Protocol version from 3 June 1999**

#### **APPENDICES**

|          |                               |  |
|----------|-------------------------------|--|
| <b>A</b> | <b>UR CIV</b>                 | Uniform Rules concerning the Contract of International Carriage of Passengers by Rail  |
| <b>B</b> | <b>UR CIM</b>                 | Uniform Rules concerning the Contract of International Carriage of Goods by Rail   |
| <b>C</b> | <b>RID 01/01/2019</b>         | Regulation concerning the International Carriage of Dangerous Goods by Rail  |
| <b>D</b> | <b>UR CUV 01/07/2015</b>      | Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic  |
| <b>E</b> | <b>UR CUI</b>                 | Uniform Rules concerning Contracts of Use of Infrastructure in International Rail Traffic  |
| <b>F</b> | <b>UR APTU<br/>01/07/2015</b> | 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 |
| <b>G</b> | <b>UR ATMF<br/>01/07/2015</b> | Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic   |

The industry is particularly impacted by Appendix D of this agreement, the UR CUV, as well as Appendix C, the RID.

The **UR CUV** or “**Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic**” brings with it the following fundamental changes for the “freight wagon environment”:

- No more double status for “freight wagons”
- Introduction of a single status for “freight wagons”
- Elimination of the RIV for railway-owned wagons and UIC leaflet 433 (V) for P-wagons
- The term “hirer of a wagon” is replaced by the term “keeper of a wagon”.
- The UR CUV is fundamentally optional law (\*).
- The binding provisions of the UR CUV represent an exception.
- The absence of contracts between the parties is the rule.
- The freight wagon industry must therefore absolutely introduce new contractual relationships and working methods.

(\*) **“Optional law”**: This means that, within the framework of a contract concluded between natural or legal persons, it is possible to deviate from the provisions of a national law or an international agreement.

If, on the other hand, a national law or an international agreement is classified as **“imperative law”**, its provisions must be applied without any option of deviating from or modifying them.

**As of 1 July 2006, the “freight wagon environment” can be largely characterised as follows:**

At the international level, RUs and wagon keepers have only the UR CUV, in other words a legal framework that the contract parties (RUs and keepers) can structure in various ways.

This is because, as mentioned above, the UR CUV is largely optional law. This is a principle that must be adopted and constantly taken into account.

To explain the concept of optional law, here is an example from the UR CUV: Article 4 of the UR CUV *“Liability in case of loss of or damage to a vehicle”* sets out basic principles in § 1, 2, 3 and 4 but states in § 5: *“The contracting parties may agree provisions derogating from §§ 1 to 4.”*

This is also the case in Article 6, 7 and even 9.2.

It is nevertheless useful to note that many provisions of the UR CUV that offer no opportunities for deviation, such as Article 9.1 (*“Liability for servants and other persons”*), are not negotiable and must be applied in full.

It is therefore clear that the UR CUV – in particular due to the imposed hierarchy of legal standards – represents a legally indispensable framework and foundation for the industry although it does not offer a clear contractual framework for simplification of the management and transport of freight wagons nor does it provide transparency or legal certainty for freight wagon investors.

In all deliberations concerning the GCU, it must always be remembered that a railway freight wagon is depreciated fiscally in 10 to 15 years and economically in 15 to 20 years. The unpredictability resulting from these long time periods make a certain degree of legal certainty indispensable as, otherwise, no investments in wagons would be made. As a consequence, it must be stated that a paucity of investments in modern freight wagons would impede the entire activity of railway freight traffic and disrupt its proper functioning as a market.

Moreover, the respective rules at the national level could differ from one country to another, even if these national regulations are based on the UR CUV.

## Creation of the GCU

### Why?

The GCU supplements the provisions of the UR CUV.

The GCU must be harmonised with European law.

The above explanations concerning the concept of optional law with respect to the UR CUV clearly illustrate the need for a shared approach by the entire industry, within the framework of which clear, shared rules can be developed

- for the carriage and handling of freight wagons in both national and international traffic and
- for investment security in the freight wagon industry.

In other respects, this procedure was endorsed and called for at the time by the European instances responsible for transportation, who preferred that the actors in railway freight traffic agree on a framework agreement amongst each other rather than having to themselves pass legal regulations on topics other than safety and interoperability.

### How?

After discerning the need for the joint development of clear rules, the relevant economic actors then had to establish a framework and working methods.

#### Who are the economic actors?

Primarily, these are the historical partners of UIP and UIC.

Furthermore, it made sense to include ERFA as representative of the “newly arrived” RUs.

#### Creating a new working framework

Up until 30 June 2006, UIC managed UIC leaflet 433 (V), the hiring contracts (inherited from the **RIP**) (1) together with UIP and the historical RUs within the framework of joint annual or biannual sessions.

From now on, all partners (UIP, UIC and ERFA) are on par with each other in the negotiations.

#### Also establishing new working methods

As of 2003/2004, UIP, UIC and ERFA met regularly to draft the GCU.

For its part, UIP established two internal working groups:

- One working group for deliberations (“Réflexion”), for making proposals and evaluating UIC and ERFA proposals
- One working group for negotiations (“Négociations”), for negotiating with UIC and ERFA.

It can be logically imagined that UIC and ERFA did the same on their side.

**(1) RIP: Regulations concerning the International Haulage of Private Owners' Wagons (Annex II to CIM – COTIF from 9 May 1980)**

Conclusion of the GCU drafting process

Only shortly before the deadline of 1 July 2006 were UIP, UIC and ERFA able to agree on a final version of the GCU after a long, hard process and a final round of negotiations.

**Thanks to this comprehensive work, achieved in long negotiations, the industry had clear and usable rules at its disposal as of 1 July 2006.**

In principle, the GCU and its appendices adopt the content of former UIC leaflets, some provisions of the old UIC leaflet 433 (V), some provisions of the UR CUV and the UR CIM as well as new provisions, particularly in Appendix 8, to enable the development and internal operation of the GCU.

Furthermore, it is essential to remember that the GCU must be viewed in connection with the UR CUV because – as already mentioned – the EUR CUV provides the foundation and framework for the GCU.

In the event of gaps or unclear aspects in the GCU, it is therefore always useful to refer to the UR CUV to determine whether some provisions could potentially be applied.

For example, this is the case with respect to Article 9.2 of the UR CUV (liability of the infrastructure manager), which is to be applied in connection with Article 28 of the GCU (liability for staff and other persons).

It is therefore helpful for the interpretation or explication of the purpose of a provision of the UR CUV to consult reports concerning negotiations that took place between the OTIF states prior to the creation of COTIF.

The same applies to the work initiated by OTIF after the introduction of COTIF for the further development of COTIF, especially for the UR CUV, the UR ATMF and the UR APTU (revised on 1 July 2015).

It must be noted that the work for further development of the UR ATMF and the UR APTU is overseen jointly by OTIF, ERA and the EU (DG MOVE) in order that it agrees with and remains compatible with the European regulations.

Since 1 July 2015, the equivalence and agreement between the EU and OTIF regulations in the area of interoperability and technical wagon registration can be considered fully achieved.

OTIF and the EU (with majority representation in OTIF) strive to continuously maintain this equivalence and compatibility.

In conclusion, it must always be taken into consideration in any analysis that interactions exist between the UR CUV, the **UR CUI (1)**, the **UR CIM (2)** and the **EGTC (3)**, particularly in the area of liability.

**(1) UR CUI: Uniform Rules concerning Contracts of Use of Infrastructure**

**(2) UR CIM: Uniform Rules concerning the Contract of International Carriage of Goods by Rail**

**(3) EGTC (European General Terms and Conditions)**

Mutual concessions were necessary to achieve this agreement between the negotiating parties.

It is important to state that UIP negotiated as well as possible in the interests of the wagon keepers but that concessions to achieve a compromise were unavoidable. It is also important to state that UIP's negotiation partners also did their job and it is now incumbent on the keepers and the RUs to strive – in the spirit of partnership – for the best possible interpretation of the GCU and thereby its optimal application.

In this regard, it is important to always consider that the keepers and RUs are partners, that the partnership should instinctively remain in the foreground in the event of problems and that solutions are fundamentally and primarily to be arrived at through negotiation and circumspection.

Nevertheless, keepers should remain alert since some RUs could tend to bypass the GCU rules at the national level, even if these RUs gave the GCU decision-making bodies their agreement to comply with these rules.

In this regard, the keepers must be able to rely on their respective national association.

The AFWP members can contact the working groups “GT AFWP CUU” and S/GT “Questions juridiques” (legal issues) and “Questions techniques” (technical issues) for a correct interpretation and application of the GCU.

In this respect, AFWP and VPI hope that this brochure will serve as a useful and effective tool.

It should be noted that both keepers and RUs are active in these GCU working groups according to the principle of fair play.

This composition of the working groups and the associated attitude enable a considerate exchange of ideas and support the arrival at a balanced solution for cases addressed within the framework of the sessions.



## The development of the GCU

### Why?

As already mentioned, the GCU is the result of a compromise between RUs and keepers on 1 July 2006. The GCU should definitely not remain a rigid framework; rather, it should continuously evolve based on the experiences of the actors, developments in the legal environment with regard to freight wagons, especially at the European level, the introduction of various railway regulations by the European Union and the market developments in railway freight traffic.

### How?

To support its further development, the GCU contains appropriate structures and a defined modification process.

These are explained in Appendix 8.

From today's perspective, it should be emphasised that AFWP and VPI are working diligently to improve the GCU with their "GCU" working groups.

These AFWP and VPI GCU working groups play an important role as the first link in the chain at the national level where problems and suggestions are posed to the working group "UIP GCU WG" (**UIP** General **C**ontract of **U**se **W**orking **G**roup).

It is therefore absolutely necessary for the keepers to participate and to make the working group a living forum by contributing their experience, questions and suggestions.

The GCU can only develop in a positive direction if the keepers also participate actively in this development.

## PART II

### Comments on the GCU, article by article

(Version from 1 January 2019)

**Please be sure to consult the section “Amendments in process” on the website**

**[www.GCUBureau.org](http://www.GCUBureau.org)**

To view the GCU in force as of 1 January, please click on the following link:

<http://www.gcubureau.org/contract2019> (2019)

To view the history of amendments, please click on the following link:

<http://www.gcubureau.org/amendment-history>

Currently, it is worth giving particular attention to three important changes to the GCU that enter into force in 2019. These changes are adaptations to developments in European and international law (COTIF). The changes consist of modifications to Article 7.4 and Article 19 GCU as well as the newly created Appendices 15 and 16 to the GCU. While Article 7.4 simplifies and introduces new regulations concerning data exchange between the contract partners in connection with the new Appendix 16, the new Appendix 15 regulates the now mandatory provision of mileage data, which must be provided to the keepers by the RUs.

The modifications to Article 19 GCU serve to provide a clearer definition of the term “approved workshop”.

The start page of the GCU: [www.gcubureau.org](http://www.gcubureau.org)

The GCU start page created by trustee Floris Foqué offers an excellent presentation of the homepage and explains what the GCU stands for.

## The GCU bears the following preamble:

### Preamble

*The use of wagons by railway undertakings (RU) as a means of transport necessitates the adoption of contractual provisions setting out the rights and obligations of each party. In order to ensure the safety and to improve the efficiency and competitiveness of railway freight traffic, the wagon keepers and RUs listed in Appendix 1 hereby agree to apply the provisions of this*

### GENERAL CONTRACT OF USE FOR FREIGHT WAGONS (GCU)

### COMMENTS

The preamble spells out the absolute necessity for the freight wagon actors to adopt clear and efficient provisions for the management and exchange of freight wagons within the framework of the contracts of use between the RUs and the keepers.

From a legal perspective, the GCU is not exactly a contract of use; rather, it should be viewed as an “*international agreement under private law*” in which the signatories agree to mutually apply the provisions of this agreement known as the GCU.

To convince oneself of this, it is only necessary to compare the EU CUV with the GCU to identify the similarities in the conditions, the presentation and the manner of formulation between most articles of the EU CUV and the sections of the GCU.

It is quite clear that the UR CUV is not a contract but rather a set of uniform legal principles for the application of contracts of use.

In fact, the most pertinent designation would be “*General uniform conditions (GUC) or uniform regulations (UR) for the application of contracts for the use of freight wagons as means of transport*”, which was initially proposed by UIP but rejected by UIC.

It should be noted here that the UIC leaflet 433 (V) was called “GUC” (because this leaflet served as the framework for all hiring contracts between a historical RUs and a keeper).

**GUC**: “General uniform conditions for the commissioning and use of P-wagons”.

This reference to the principles is indispensable because it can influence the interpretation and application of the GCU.

In the event of court proceedings, a judge always has the option of reinterpreting a contract if this reinterpretation is considered useful for making a judgement in the proceedings.

## CHAPTER I

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

#### **Article 1: OBJECT**

- 1.1** *This contract, including its appendices, sets out the conditions for the provision of wagons for use 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.*

#### **COMMENTS**

Article 1.1 establishes that the GCU applies only to freight wagons as a means of transport. Freight wagons as transported goods are covered for international traffic by the UR CIM and for national traffic by the applicable national regulations and the general business conditions of the RU.

Nevertheless, the following must be stated: "If a wagon is subject to customs formalities, it must be consigned as goods. [...] Except where they conflict with the CIM Uniform Rules, the provisions of the GCU continue to apply to the wagon."

(See GLW-CUV version from 1 January 2018): <http://www.cit-rail.org/de/wagenverwendung>

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

**COMMENTS**

Even though Article 1.2 does not specify this, the parties in question are clearly the keepers and RUs who have signed the GCU.

Freight wagons of keepers who are not GCU signatories that are accepted by a signatory RU are addressed in Article 17.

**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 of a signatory RU.*

**COMMENTS**

Article 1.3 does not address in more detail the cases “in which the wagon is in the custody of a *signatory* RU”, but one can mention in particular the case in which “*the RU [arranges] ... for the wagon to be put back in running order ... to make the wagon fit for use again*” (see Article 19 and prospectively as of 1 January 2018: Appendix 9, Annex 1, Code 3.2.5. and 3.2.6). In this case, the repair workshop can be viewed as an auxiliary of the RU, i.e. as a party for which the user RU is liable (see Article 28).

**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.**

**COMMENTS**

The concept of custody of the wagon is fundamental in the GCU, in particular with regard to the liability, both for the keeper of the freight wagon and for the RU, because the customer of the freight wagon (1) establishes who carries the burden of proof in questions of liability (lawyers use [in France – FR-DE translator’s note] the concept *fardeau* [in German “Last” – FR-DE translator’s note] [in English “burden” – DE-EN translator’s note])

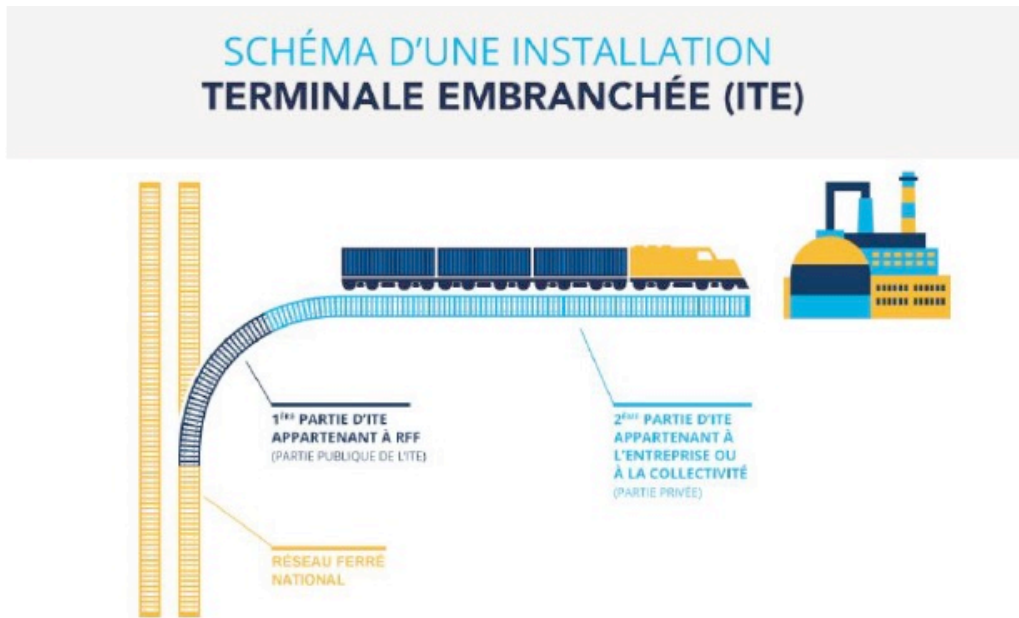
Example: If the freight wagon is in the custody of the RU, the RU is obligated to prove that it bears no fault; however, if the freight wagon is no longer in the custody of the RU, this results in a reversal of the burden of proof (in the language used by lawyers), meaning that the keeper is no obligated to prove the fault of the RU.

In practice, the recipient must declare reservations before accepting the freight wagon if defects are ascertained on the freight wagon.

Concerning custody of the wagon, see comments on Articles 24 and 28.

**(1) The legal concept of custody corresponds to the right to oversee and control the object. The case law interprets and explains the right to oversee and control the object as the right for the “custodian” to make determinations concerning the use of the object, “to be in a position to give instructions concerning its use, either personally or through a third party subordinate to him”<sup>2</sup>.**

**Practical example of a private siding (French: ITE)**



**(Source of the figure: SNCF-RESEAU) (ask DB Netz concerning the graphic)**

<sup>2</sup> French wording in the original text: “d’être à même et personnellement, ou par d’un tiers lui-même soumis à ses ordres, de donner des instructions concernant son emploi.”

Question concerning custody of the freight wagon by a user RU (using railway undertaking) and thereby concerning the application of the GCU upon handover or acceptance of the freight wagon by an RU at a siding (French: “ITE – **I**nstallation **T**erminale **E**mbranchée”).

### **ANSWER**

**Legal basis:** Article 1.4 of the GCU states the following: “*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.*”

#### **This gives rise to the following with respect to the siding:**

**The custody** of the freight wagon by the RU **begins** with the acceptance of the freight wagon after the preliminary inspection by the RU within the framework of a contract of carriage (the wagon is loaded) or a contract of use (the wagon is empty) at the location agreed upon by the contract parties in advance.

**The custody** of the freight wagon by an RU **ends** with the handover of the freight wagon by the RU to a siding owner authorised to accept the wagon within the framework of a contract of carriage (the wagon is loaded) or a contract of use (the wagon is empty) at the location agreed upon by the contract parties in advance.

Two cumulative prerequisites must absolutely be met: The handover or acceptance of the freight wagon by the RU must take place within the framework of a contract of carriage or a contract of use and at a location agreed upon by the contract parties in advance, referred to as the “*service point*”.

The agreement on the utilisation of a siding by the RU specifies the delivery location (end of custody by the RU) or the return location (start of custody by the RU) of the freight wagon.

After the handover or before the acceptance of the freight wagon by an RU, the various line sections within the siding (loading, unloading, repair of the wagon or even storage) are not regulated by the GCU.

These internal trips take place under the **responsibility of the “siding owner”** and are either carried out by the siding owner itself or a contracted service provider, which can be the RU.

In the latter case, the services are provided and regulated within the framework of service contracts between the owner of the siding and the service provider.

#### **For the recipient of the shipment, it is also very important to inspect the condition of the freight wagon before acceptance of the delivery.**

If a reservation is declared by the recipient before delivery of the freight wagon, the RU (in whose custody the wagon still remains) is liable for the defect and this RU should then prove that the damage was not caused by a fault on its part (Art. 22.1 of the GCU).

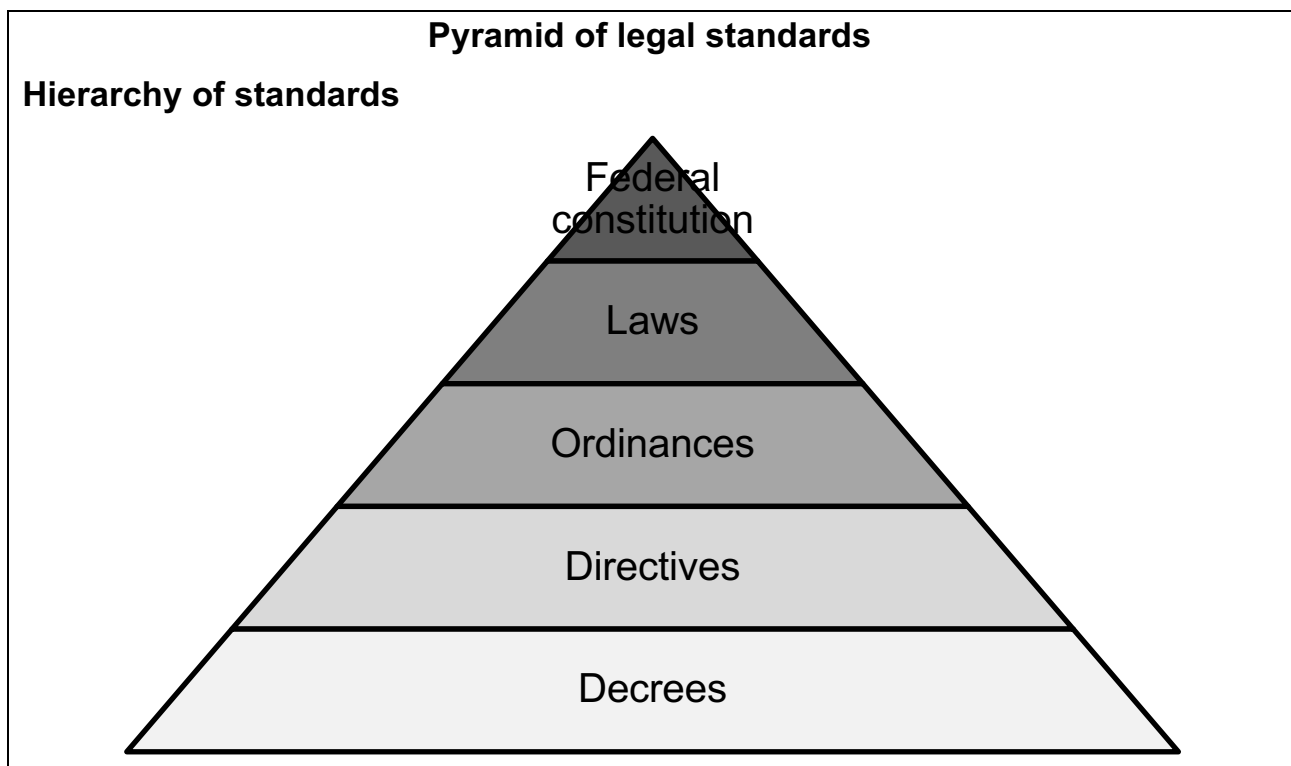
If, however, the freight wagon is accepted by the recipient without reservation, it is assumed that the wagon was in good condition upon delivery.

**Article 2 SCOPE OF APPLICATION**

**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.*

**Comment**

This means that the rules of the GCU are fundamentally always applicable unless they violate higher order rules, such as laws or ordinances. This hardly ever occurs in the written documents of the GCU because the GCU is continuously adapted to the existing legal framework. As with any legal text, the GCU can also be interpreted in various ways. An interpretation is always to be chosen that is in agreement with the higher order laws.



**Additional comments by AFWP / VPI:**

**OTHER DOCUMENTS WITH LEGAL EFFECT, CONTRACTS**

In particular contracts: Such as the GCU, for example

In France: Article 1134 of the “Code civil” “Contractual agreements legally entered into are as binding for the contract parties as laws.”

In Germany, the Civil Code (Bürgerliches Gesetzbuch, BGB) applies the principle of “pacta sunt servanda”, meaning that effectively concluded contracts must be complied with.



## **OTHER SUBORDINATE LEGAL SOURCES**

Business practices / codes and rules of conduct

Acceptable means of compliance

Case law, theory

**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.*

### **COMMENTS**

Article 2.2 is addressed together with Article 2.4.

**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.*

### **COMMENTS**

The provisions of this article require more extensive consideration.

The purpose is as follows: The GCU should offer a clear, efficient and ideally uniform framework for the management of freight wagons, but the GCU should also enable a certain degree of flexibility between the partners in order to adapt to specific requirements or issues.

For this reason, the contract parties have the opportunity to agree on other bilateral provisions between themselves.

In no case, however, can Article 2.3 be interpreted as allowing individual contract parties to unilaterally force deviations from the GCU on other signatories. Rather, deviations from the GCU always require mutual agreement in order to be effective.

Let us consider a signatory RU that makes use of provisions deviating from the GCU for contracts for freight wagon use within the context of such general or specific application conditions.

From a legal standpoint, a signatory RU can have general and special conditions for the use of freight wagons that deviate from the GCU. However, these are not applicable in the relationship between the keeper and the RU as long as no individual contract relationship exists between them.

What would be the consequences in this case?

The varying application of the general business conditions depending on the keeper would depend on whether or not the wagon keeper had signed the GCU.

The signing of the GCU by a keeper or an RU does not in any case constitute agreement with general business conditions.

It is clear from a legal standpoint that a keeper that is party to the GCU cannot be unilaterally subjected to such deviations, in particular if it has never itself signed such deviations with respect to the GCU or if the keeper and its national association have gone so far as to object to them.

Legally, a keeper that is not party to the GCU cannot demand of an RU that is party to the GCU that the GCU be applied.

The same argumentation applies to a keeper that is party to the GCU who works with an RU that is not party to the GCU.

In this regard, it is important to consider that the GCU is the result of a global negotiation between UIP, UIC and ERFA and, as such, is the result of mutual compromises.

What would be the value of high-level negotiations between the decision-making bodies of the GCU if contract signatories were able to bypass this at the national level without further ado? The credibility and the future of the GCU would be completely called into question.

The GCU is based on an application of its provisions by its signatories in the interests of mutual fair play. This would be subverted if a signatory could unilaterally force deviations from the GCU onto another signatory.

### **Special aspect in France**

This understanding corresponds to Article 1134 of the French “Code civil”.

*“Contractual agreements legally entered into are as binding for the contract parties as laws. They can only be revoked through mutual agreement or for reasons permitted by law. They must be fulfilled in good faith.”*

*Situation in Germany:*

*In Germany, the Civil Code (Bürgerliches Gesetzbuch, BGB) applies the principle of “pacta sunt servanda”, meaning that effectively concluded contracts must be complied with. The principle of good faith is anchored in § 242 of the Civil Code.*

**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.*

### **Article 2.2 and 2.4 - COMMENTS**

Deadline for acceptance and publication of the contract signatories

Originally, Articles 2.2 and 2.4 established the acceptance and publication of the contract signatories once per quarter. This formality was not satisfactory since this period of time was much too long. For better readability and ease of response, the time period was reduced to one month as of 1 January 2013.

Admission to the GCU is voluntary.

In the course of the completion of the GCU in June 2006, two variants for admission to the GCU were considered:

- “**Opting-out**”, whereby all members of UIP, UIC and ERFA would automatically be contract parties to the GCU unless they explicitly expressed their desire not to sign the contract.
- “**opting-in**”, whereby only those keepers and RUs who explicitly expressed their desire to sign the contract become parties to the GCU.

The “opting-in” variant was preferred.

This is the more legally satisfactory solution as the “opting-out” could have been viewed by European and national instances as an obstacle to free competition and an abuse of the market-dominant position of UIP, UIC and ERFA because only members of these three associations could have become parties to the GCU.

In fact, it is now unnecessary to be a UIP, UIC or EFTA member to become a party to the GCU.

Nevertheless, it is recommended for the freight wagon keepers to be members of a national association that is itself a member of UIP because this is the only possibility for exerting an influence on the GCU or being advised or defended in the event of a dispute.

The same recommendation also applies to the RUs.

### **Article 3 TERMINATION**

**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.*

#### **COMMENTS**

This process corresponds to contract law and contractual freedom.

Every keeper should be in the position to freely join the contract and must also have the ability to withdraw from the contract in accordance with the applicable procedures and the contractually established termination times. Any clause stipulating otherwise would be a violation of competition law.

**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.*

#### **COMMENTS**

The original provisions of the GCU passed on 1 July 2006 are the result of a compromise amongst the partners.

This also applies to the subsequent modifications to the GCU.

For this reason, the GCU offers a contract party that voted against a modification the option and opportunity to withdraw from the GCU before this modification enters into force.

In this case, the contract party has two options:

- Either it remains a contract party if it is of the opinion that the advantages of participation in the GCU outweigh the disadvantage from this modification.
- Or it withdraws if it is of the opinion that the disadvantages from this modification outweigh the value of continued participation.

**It must be clearly stated that the termination applies only to the future. The GCU continues to apply to all events that occurred prior to the date of withdrawal.**

#### **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.***

#### **COMMENTS**

As already mentioned, further development of the GCU should be possible in accordance with European legislation, the transportation market and daily business incidents / operational feedback from the wagon operators.

Article 4 contains a reference to Appendix 8 of the GCU, which regulates the further development process for the 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<sup>3</sup> 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.***

#### **COMMENTS**

##### 1st Comment

The last sentence “From then on it shall be considered to be a third party according to articles 16 and 17” applies only to events that occur after the publication date of the discontinuance.

The provisions of the GCU continue to apply with respect to the discontinued contract party for events that occurred prior to the publication date.

In other words, this termination is not retroactive from a legal standpoint.

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<sup>3</sup> The text “prepayments and costs of the GCU Bureau attributable to it” is not present in the official French version [or in the English version – DE-EN translator’s note] of the GCU. For reasons of consistency with the original wording of the German GCU contract, however, this passage was kept (FR-DE translator’s note).

## 2nd Comment

The failure to pay contributions is a failure to comply with the contractual obligations and, as such, can justify exclusion from the contract.

However, there are other forms of failure to comply with contractual obligations that could also justify exclusion from the contract.

For example, Article 31 establishes an “*obligation to pay damages*” if a signatory fails by its own fault to meet an obligation due under the contract. Article 5 could potentially be applied in the event that a signatory repeatedly fails by its own fault to meet its obligations.

### **Article 6: IN ABEYANCE**

#### **CHAPTER II**

#### **OBLIGATIONS AND RIGHTS OF WAGON KEEPER**

### **Article 7 TECHNICAL ADMISSION AND MAINTENANCE OF WAGONS**

#### **Comments**

**The comments given below concerning the obligations of the keeper, in particular with regard to the technical admission and the maintenance of the wagon, do not in any way replace the fundamental documents (EU regulations, COTIF (ATMF and APTU) or national regulations).**

Article 7 was completely revised on 1 January 2017. It is therefore important to view the information published on the GCU website that explains these fundamental modifications.

<http://www.gcubureau.org/documents/10184/64597/A2016-02->

[DE+Art\\_7\\_27\\_GCU\\_SG\\_WU\\_2452016\\_JC\\_1662016\\_de.pdf/903f4b53-f30a-47fb-9a99-76379e655887](http://www.gcubureau.org/documents/10184/64597/A2016-02-DE+Art_7_27_GCU_SG_WU_2452016_JC_1662016_de.pdf/903f4b53-f30a-47fb-9a99-76379e655887)

**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.***

#### **Comments**

The freight wagons registered in an EU member state must comply with the European as well as the respective national regulations in order to be put into operation; however, they must also meet the technical requirements of COTIF if they are intended for use in a non-EU state.

Until recently, the European legislation was stricter than COTIF, for which reason a freight wagon that met the technical regulations of the EU was generally capable of being used within all EU member states as well as those that were not EU member states but had ratified COTIF.

As mentioned further above, the UR APTU and ATMF (Appendix F and G of COTIF) were amended as of 1 July 2015 to ensure complete equivalence between COTIF and the further developments of the TSI-WAG of the EU. See the OTIF press release

[http://otif.org/fileadmin/user\\_upload/otif\\_verlinkte\\_files/08\\_Presse/Com\\_Presse/CP\\_2015/2015\\_07\\_Inkrafttreten\\_AEnderungen\\_1.\\_Juli\\_2015\\_-\\_D.pdf](http://otif.org/fileadmin/user_upload/otif_verlinkte_files/08_Presse/Com_Presse/CP_2015/2015_07_Inkrafttreten_AEnderungen_1._Juli_2015_-_D.pdf)

It is therefore assumed that freight wagons that meet the requirements of UR ATMF and UR APTU in principle also comply with TSI-WAG and vice versa, except in rare and unlikely cases. In case of doubt, the respective NSA<sup>4</sup> should be consulted.

**(NSA) National Safety Agency<sup>5</sup>. The NSA in France is the EPSF (Etablissement Public de Sécurité Ferroviaire); in Germany, it is the EBA (Eisenbahn-Bundesamt [Federal Railway Authority])**

**Excerpt from the UR ATMF “Article 3a Interaction with other international agreements: *Railway vehicles which have been placed in service or on the market according to applicable European Union (EU) and corresponding national legislation shall be deemed as admitted to operation by all Contracting States according to these Uniform Rules.”***

In addition, some non-EU states, such as Norway and Switzerland, have recognised the EU legislation.

**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.***

### Comments

From a legal standpoint, if the keeper is not the ECM, Article 7.2 states: *“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.”*

This in no way relieves the ECM of its obligations according to EU Regulation No. 445/2011.

Likewise, pursuant to Article 9 § 1 of the UR CUV and Article 28 of the GCU, the ECM is considered a person whose services the keeper makes use of. Every freight wagon should have an ECM that ensures its conformity. The assumption of conformity for the freight wagon arises from the certification of the ECM. This certification is legally mandatory and further establishes trust amongst the users and the competent authorities as it is issued by a qualified certification body.

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<sup>4</sup> Rail supervision

<sup>5</sup> Presumably, “National Safety Authority” is meant here and not “National Safety Agency”. For reasons of consistency with the French text, however, “National Safety Agency” has been retained (FR-DE translator’s note).

However, this assumption of conformity does not prevent the user RU from demanding from the keepers, in case of doubt, proof of the conformity of the freight wagon with the requirements of the maintenance file, which must itself be in compliance with the rules.

The user RU is namely responsible with respect to the infrastructure manager (IM) and the NSA/(National Safety Agency) that the freight wagons used in its trains are capable of travelling without technical safety issues in accordance with the safety certification.

The new terms used in the GCU “*maintenance file*” and “*updated maintenance record file*”<sup>6</sup> encompass the entire maintenance of the freight wagon. This means the maintenance plan, the traceability of this maintenance, its oversight and the exchange of experiences after this maintenance.

The obligations of the RU with respect to the infrastructure operator are regulated in Appendix E of COTIF – CUI (Contract of Use of Infrastructure).

#### Obligations of the RU – UR CUI Art. 6 §1:

*“The vehicles to be used by the RU must satisfy the safety requirements. The infrastructure manager may require the RU to prove that these conditions are fulfilled”.*<sup>7</sup>

The E-GTC-I (European General Terms and Conditions of Use of Railway Infrastructure) further specifies the obligations of the RU; Art. 2.3.1: “The railway undertaking shall ensure that safety rules are complied with regarding the maintenance of its rolling stock.”

**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.***

#### Comments

See comments on Article 7.2.

The basic principle is that conformity of the wagon with the European regulations is assumed but this trust does not preclude inspections by the user RU since only this way can the user RU guarantee that it can safely transport the wagons it places in its train. This is an obligation of the RUs with respect to the NSA and the infrastructure manager.

Furthermore, it is worth noting that inspections are mandatory in connection with preliminary inspections. In addition, this is a regulation by which the RU declares its agreement with the acceptance of the freight wagon into its custody (see Article 11).

**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.***

<sup>6</sup> The new version of the GCU uses the term “*registre d’entretien exécuté*” (maintenance record file) and not “*registre d’entretien actualisé*” (updated maintenance record file), but for reasons of consistency, the French term from the original text was translated into German (FR-DE translator’s note).

<sup>7</sup> The wording of this article in the original version of the GCU 2017: “*The personnel to be employed and the vehicles to be used must satisfy the safety requirements. The manager may require the carrier to prove, by the presentation of a valid licence and safety certificate or certified copies, or in any other manner, that these conditions are fulfilled.*” (FR-DE translator’s note)

### Comments

Article 7.4 entered into force in this version on 1 January 2019.

The newly amended Art. 7.4 in force as of 1 January 2019 should also be viewed in the context of the newly created Appendix 16 (see below) and the likewise amended Appendix 1 GCU.

The technical vehicle data to be provided form the basis for the railway operations and must be provided by the respective keeper.

The ATMF – Appendix G of COTIF 1999 (version 1/5/2015) – states in Article 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.”*

Supplying such information is an obligation of the keeper. It should be noted that the TSI TAF has obligated freight wagon keepers since 1 January 2016 to feed the technical data of their vehicles into a database. To be able to meet this obligation, the UIP developed RSRD<sup>2</sup> (**R**olling **S**tock **R**eference **D**ata **B**ase). This has since been transitioned to a company under Belgian law (ASBL), which is open to all sector participants.

However, the previous Article 7.4 specified no modalities concerning the execution. To efficiently organise the exchange of information between more than 600 contract parties to the GCU, harmonised conditions take precedence over individual solutions.

### **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.***

### Comments

The first two items of information are important because they allow the user RU to quickly identify the keeper in order to inform it in the case of damage or to request additional instructions or documents.

It is therefore in the interests of the freight wagon keeper to keep the information carried on the freight wagon and in the freight wagon database of the GCU Bureau constantly up to date.

Regarding the third point listed, it may be said that the indication of the home station or region is in the process of disappearing since in most cases the home stations or regions are no longer accurate in reality.

This article adopts some provisions from Article 3 of the UR CUV “*Signs and inscriptions on the vehicles*”.

For additional comments, see Appendix 11.



## **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.*

Within the framework of the contract of use, this Article adopts provisions from Article 3.2.2.1 of the UIC leaflet 433 (last version), according to which “*the hiring grants the keeper right of access to the wagon within the framework of the limits established in the hiring contract*”.<sup>8</sup>

In principle, the keeper always exercises the right of disposal within the framework established in the contract of use.

### **Comment 1: Danger of a conflict between freight wagon law and transport law**

In the event of an incident, such as damaging of the goods due to damage to a freight wagon during its carriage, uncertainties could arise between the operational actors regarding whether the right of disposal over the goods within the framework of the contract of carriage or the right of disposal of the keeper over the freight wagon within the framework of the contract of use should take precedence. In this case, the transporting RU is obligated to place a priority on securing the transported goods and to transport them as quickly as possible to their intended destination. This takes place in agreement with the sender. At the same time, but of lower priority, the RU must establish contact with the keeper concerning the further handling of the wagon. The final decision-making authority concerning the handling of the wagon is held by the keeper according to Art. 19 GCU.

### **Comment 2: Question on the term authorised third party**

An authorised third party can be defined as a natural or legal person who has been formally authorised by the keeper to make use of the freight wagon. Generally this is a lessee within the framework of a leasing agreement.

This term was precisely defined in UIC leaflet 433: “*Lessee: Designates any natural person or other legal entity that is designated as such by the keeper*”<sup>9</sup>

Keepers often have questions concerning this term and it is unclear to them why the term “authorised third party” was not adopted in the definitions in Appendix 2.

Many articles of the UR CUV make use of the expression “*ayant-droit*” (“*der Berechtigte*” in German or “*the person entitled*” in English).

The expression “*der Berechtigte*” is also used in [the German version of] Article 1.4 of the GCU [in the English version, “authorised party” is used – DE-EN translator’s note].

It would be desirable for the GCU (in its Appendix 2) to explain and standardise the terms “authorised third party” and “*Berechtigte*” and for the terms to be harmonised with the ones used in the UR CUV. A uniform definition of the terms is also important because the GCU does not recognise any language version as taking precedence to be applied in case of doubt; rather, the three contract versions in French, English and German are of equal status.

<sup>8</sup> No reference work could be found on the internet for the exact wording. The English wording here may therefore deviate from the original wording of the English text (FR-DE / DE-EN translator’s note).

<sup>9</sup> See footnote 10.

### **Comment 3 – Conflict between a keeper and an authorised party**

This article is of great interest both to the user RU and the keeper. It does the following:

- It allows the keeper to "retrieve" its freight wagons in the event of disputes with the lessee, such as in cases in which the lessee does not wish to return the freight wagons after the termination or end of the contract, for whatever reasons.
- It eliminates the need for the user RU to give any thought to the soundness of the argument of the "*third party claiming to be authorized*", allowing it to remain outside of disputes between the keeper and "*third parties claiming to be authorized*". On the basis of this article, the RU must comply with the request of the keeper. If the RU does not obey the request of the keeper, it would risk the payment of damages according to 31 "Obligation to pay damages".

**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.*

#### **Comments**

This article represents one of the limits set by the contract of use on the right of disposal of the keeper.

This limit is based on the fact that the user RU is responsible for the freight wagons that it places in its trains and with respect to the infrastructure manager and the NSA for the safety of the railway operations.

In this regard, the keeper must also follow the instructions of its ECM if it is not itself ECM.

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

#### **Comments**

Comments on this article are given within the framework of Article 14 "Deployment of empty wagons".

**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.*

#### **Comments**

This article arises from the right of disposal.

This request must be formulated upon the conclusion of every transport contract. The keeper must ensure that every possible user RU is informed of its request. For this purpose, the keeper can, insofar as it is not itself the sender, forbid the lessee from making use of specific RUs and also note this restriction in any freight contract.

The wagon note manual (GLW) published by CIT ([www.cit-rail.org](http://www.cit-rail.org)) contains all important information for filling out the wagon note.

### CHAPTER III

#### OBLIGATIONS AND RIGHTS OF RUS<sup>10</sup>

#### Article 10 ACCEPTANCE OF WAGONS

***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.***

#### Comments

The guiding principle of the authors of the GCU is that the expression “*within the scope of their commercial services*” means that an RU can only accept the traffic that is permitted to it by its safety certificate. For example, some RUs are not approved for RID transports.

The asterisk (\*) indicates that the term “commercial services” is defined in Appendix 2 GCU. The expression “*within the scope of their commercial services*” **in no way** means that the RUs can use Article 10 to impose upon keepers party to the GCU their own general business conditions that deviate from or are less favourable than the GCU.

Any failure to comply with this basic principle should be reported to the respective national association.

In accordance with this clarification, the term “*commercial services*” may not be confused with the “*general business conditions*” according to Article 1.1. of the GCU.

The term “*business conditions*” according to Article 1.1 refers, inter alia, to the compensation for the services offered by the RU [the German text of the comment uses here the terms “*allgemeinen Geschäftsbedingungen*” and “*Geschäftsbedingungen*”, although these terms are not found in Article 1.1 GCU in the version from 1 January 2019. The actual term used is “*kommerzielle Bedingungen*”, in English: “commercial conditions” – DE-EN translator’s note].

#### Article 11 REFUSAL OF WAGONS

***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 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.***

<sup>10</sup> In the French original text, “RUs” is plural (“entreprises ferroviaires”) while the official German version speaks of the obligations and rights of **the** RU in the singular. This is therefore not an error in this translation (FR-DE translator’s note) [The English text uses the plural form – DE-EN translator’s note].

### Comments

Since 1 July 2006, the date on which the new COTIF 99 entered into force, the RU no longer has a statutory carriage obligation.

Nevertheless, the RUs who are party to the GCU are obligated within the scope of Article 11 to transport in national and international traffic any freight wagon of a keeper that is party to the GCU except for the exceptions delineated in Article 11.

In this regard, the RUs are fundamentally not obligated by their safety certificate to accept a freight wagon for which the technical data and/or ECM are unknown to the RU.

It should be noted that the term “force majeure” applies according to case law only in the case of “unforeseeable and insurmountable” circumstances.

In conclusion, one can justifiably speculate on the following provision: “*An RU may not refuse its own wagons when they are empty and in running order.*”

For one thing, it is important to clarify that this provision only applies to RUs that are themselves keepers of freight wagons.

This provision has a historical background. Because parking locations gradually became increasingly rare, the RUs who were themselves owners tended to refuse their own freight wagons at the border crossing for reasons of insufficient parking space, thereby leaving it to the delivering RU to park the wagons.

### **Article 12 HANDLING OF WAGONS**

***Each RU shall handle wagons with care<sup>11</sup> 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.***

#### **French peculiarity concerning the expression “due diligence” or “as a prudent father of the family”**

The Gender Equality Act published on 4 August 2014 replaces the expression “en bon père de famille” (in English: as a prudent father of the family – DE-EN translator’s note) with the terms “raisonnable” or “raisonnablement” (in English: “reasonable” or “in a reasonable way” – DE-EN translator’s note).

Already in 1982, the Act on the Rights and Obligations of Lessors and Lessees replaced this term with the use of “*without disturbance*”. The lessee is here obligated “to use the leased property without disturbance” in accordance with the objective specified in the leasing agreement.

Even if the French National Assembly has stricken the expression “*bon père de famille*” from French legislation, it nevertheless retains its full legal meaning.

It should be emphasised that the GCU is applied internationally and that a request by the French contract parties to their contract partners from other states to remove the expression “*bon père de famille*”<sup>12</sup> would be inappropriate.

<sup>11</sup> The English term due diligence [German: “pflegerisch”] stands here for the French expression “en bon père de famille”, in English roughly “as a prudent father of the family”. In a following paragraph, this French expression is analysed in greater detail. (FR-DE / DE-EN translator’s note)

<sup>12</sup> Because the expression “en bon père de famille” is rendered in the official English [and German] GCU in a gender-neutral fashion

### Comments

The term “*due diligence*” means that the RU must handle the freight wagons it takes into its custody with the same care and the same diligence as its own wagons.

The wording of the article indicates that all inspections carried out by the RU on the freight wagons are to be performed according to Appendix 9 **without exception**.

The expression “*due diligence*” has consequences for the RU since it imposes on this RU, which has the freight wagon in its custody, a very great responsibility.

It can further be said that the costs of the inspections laid down in Appendix 9 are determined within the scope of the calculation of the overall service.

### **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.*

### Comments

For ***loaded freight wagons*** (in international traffic) and for ***empty freight wagons*** (in national and international traffic), the following applies: Unless otherwise explicitly agreed by contract, the periods according to Article 16 of the UR CIM apply (period for consignment of 12 hours + period for carriage of 24 per 400 km or fraction thereof). The correct location for such agreements would be field number 13 in the [CUV consignment or wagon note](#). For loaded wagons in national traffic, national regulations may apply.

It is further stated that, in the event of successive carriers as a “carriage chain” according to 26 of the UR CIM, no extension of the above periods is permitted because each following RU of the carriage chain is bound to the periods of carriage by an individual contract of carriage.

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

- *he 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,*
- *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.*

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with “due diligence” [German: “pflöglich”], this paragraph is irrelevant for the English and German versions (FR-DE / DE-EN translator’s note)

### Comments

The case law and theory define a defect on the goods as:

- *Any disposition of the goods to worsen in the course of the contract of carriage.* Examples: Evaporation of some liquids, drying out of goods that were handed over in a moist condition, advanced ripening of fruit and vegetables,
- *“absent or insufficient packaging”*

See LexisNexis SA 2009 - Volume 636.

The German case law follows the same principles.

Force majeure as an unforeseeable and insurmountable event is always a justification for relief from 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.*

### Comments

This article unmistakably states that the RU does not pay the compensation if the keeper does not claim it. In other words, the keeper must actively claim the compensation owed to it.

Then, as long as nothing to the contrary has been contractually agreed between the RU and the keeper, the compensation according to Appendix 6 applies.

## **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.*

### Comments

See comments on Article 10.

**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).*

#### Comments

Article 14.2 has been further developed in two stages.

The first stage took place on 1 January 2013, to integrate the “subsequent orders”, the “notification of circumstances preventing carriage” and the “notification of circumstances preventing delivery” into the wagon note after special events or at the request of the keeper or an authorised third party.

The second stage took place on 1 January 2016. The purpose of this addition was to enable the use of the contract of use in electronic form and thereby to retain the original contractual information and any subsequent modifications as evidence.

**As special events that justify a temporary interruption of transport, the legal publication LexisNexis lists “*flood, natural catastrophe, major operational accident in which rail traffic suffers a prolonged interruption, overloading of a train station, a route section or a port due to an inflow of goods arising from the general economic conditions...*”**

The German case law resorts in this regard to the principles of *force majeure*. This applies, when the event causing the damage acts from the outside and the event also cannot be averted or made non-damaging even with the most extreme level of reasonable care.

**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.*

### Comments

The terms “home station” and “region” have their origin in the former system of hiring contracts. They are currently on the process of slowly disappearing. Neither the GCU nor the UR CUV establishes an obligation to display this information on the wagon. The terms are simply defined in both legal sources (Appendix 2 GCU, Art. 2 d) UR CUV).

### **Article 15 INFORMATION TO BE SUPPLIED TO THE KEEPER**

***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.***

Appendix 15 of the GCU entered into force on 1 January 2019. This appendix specifies the details of Article 15 GCU, which is in force already since 1 January 2018 and contractually imposes on the RU the obligation to supply mileage data, amongst other data.

Independent of the contractual obligation via the GCU, a corresponding legal obligation applies since 1 May 2015. This arises from mandatory international railway law. Article 15 of the ATMF – Appendix G to COTIF 1999 (version 1/5/2015) – states in § 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 of the GCU, now in force, is a helpful further specification of both the legal obligation to supply mileage data effective since 2015 and the contractual obligation arising from Article 15 of the GCU.

For wagon keepers and their ECM, a reliable supply of data relevant to maintenance is of central importance in order to enable the fulfilment of the diverse ECM requirements. These data also include the mileage data. The latter are additionally important for the wagon keeper because they are a key prerequisite for the payment of the subsidisation from the federal government in Germany for the retrofitting of freight wagons with quiet brake blocks.



## **Article 16 HANDOVER OF A WAGON TO THIRD PARTIES**

***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.***

### **Comment 1**

Important: The third party in Article 16 is not the third party in Article 17. Article 16 can only refer to a third party with respect to the contract of carriage. Even if the term “third party” as meant in Article 16 appeared clear to the authors of the GCU, there is a risk that operational actors could be confronted with interpretation problems.

When a third party is mentioned in the context of the contract of freight or carriage, this refers to the RU or the person used by the RU for fulfilment of the contract handing the wagon over to a person other than the one named in the contract of use or carriage for the loaded wagon (see Article 1.4).

### **Comment 2**

“The liability of the third party remains [in fact] unaltered,” but in the event of damage to the wagon pursuant to Article 16, the responsible RU is obligated to assert legal claims against the third party because it is itself liable to the wagon keeper for any damaging arising in this way.

It is therefore in the interest of the responsible RU to make the third party liable on the basis of Article 16 because in the event of a problem this RU must compensate the wagon keeper – even if the third party is insolvent.

Even if the RU succeeds in proving the culpability of the third party, it will still be unable to achieve a relief from liability on the basis of Article 22.2.

Article 16 states very clearly: “the RU shall be liable for damage to the wagon” and must therefore compensate the keeper, even if this RU was unable to obtain compensation for damages from the third party.

Article 31 GCU “*Obligation to pay damages*” is applied here.

## **Article 17 ACCEPTANCE OF WAGONS 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.***

### **Comments**

Within the context of this article, the wagon also cannot be the reason for a relief from liability pursuant to Article 22.2. The RU that is party to the GCU and has accepted the wagon is namely considered the keeper of this wagon and is responsible for it.

In the event of a problem, the RU that is party to the GCU is then obligated to proceed against the keeper of the wagon (that is not party to the GCU).

Note that the 2nd section of this article entered into force on 1 January 2015 and makes the so-called “accepting” RU of a non-GCU wagon the keeper of this wagon up until its return.

## CHAPTER IV

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

#### Comments

This chapter describes when, how and by whom damage to a wagon in the custody of the RU is to be ascertained.

This chapter also regulates the handling of the damage, putting back into running order and the repair of the wagon.

### **Article 18 ASCERTAINMENT OF DAMAGE**

**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.*

#### Comments

Upon ascertainment or suspicion of damage, a wagon damage report must absolutely be created (see the template in Appendix 4 of the GCU – **New wagon damage report applicable as of 1 April 2016**).

This wagon damage report must be created by the RU without delay and also sent to the keeper without delay. Also note that according to Article 34 of the GCU, amended as of 1 January 2014 “[...] [t]he fields in the form in Appendix 4 [...] must thus be written in at least one of those three languages” (English, German or French).

The keeper can accept or refute the findings from the report (see comment on Art. 18.4), particularly as the keeper is in most cases not present during the documenting of the damage.

The wording of Art. 18.1 corresponds almost completely to that of the earlier regulations:

- . Article 42 of the UR CIM (COTIF 1999) and 52 CI M (COTIF 1980),
- . Article 10.1 of the RIP (COTIF 1980),
- . Article 3.4.2.1 of UIC leaflet 433 (V) (version from September 2003).

These references show again, assuming even necessary, that some GCU provisions have their origin in the former hiring contract.

These references also indicate a certain analogy and logical similarity between the Contract of Carriage of Goods (CIM) and the General Contract of Use for Freight Wagons (GCU).

**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.*

#### Comments

The goal is to reduce idle times of the wagon as far as possible.

This also corresponds to the spirit of Article 25 “Obligation to mitigate losses”.

The test of Art. 18.2 is the same as in the last paragraph of UIC leaflet 433 (V), section 3.4.2.1.

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

#### Comments

The term “*without delay*” means that the RU should send the wagon damage report to the keeper as quickly as possible, in other words without a culpable delay.

The creation and sending of the wagon damage report are namely the starting point of an extensive process (repair of the wagon, investigation of the question of liability, etc.).

In addition, a wagon damage report is essential for fulfilment of the ECM's documentation obligations for the wagon history.

It is therefore in the interests of the keeper to always keep the contact data according to Appendix 1 GCU up to date in the GCU database so that the RUs are able to contact the keeper or the competent departments of the keeper as quickly as possible and make use of the correct contact persons.

If a late sending of the wagon damage report results in another disadvantage for the keeper other than the actual late sending, the keeper can demand compensation from the user RU for the directly arising disadvantage on the basis of Article 31.

The wagon damage report serves only for the ascertainment and documentation as well as the provision of indications of damage and not as incontrovertible proof of the liability or non-liability of the RU, the keeper or a third party, except in the case of explicit recognition of liability by the RU or the third party in the wagon damage report.

Article 18.4 explicitly allows the keeper to dispute the wagon damage report.

Note that in the case of damage to the goods, the RU must create a wagon damage report according to 42 of the CIM.

It is important for the keeper that it has the fundamental right to refuse payment of the invoice for repair costs (Article 26: Settlement of damages) as long as it has not received the wagon damage report.

At the same time, the RU is liable only for the damages to the wagon in its custody if it fails to prove that the damage to the wagon was not caused through its own culpability (see Art. 22.1).

**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.*

#### Comments

The disputing keeper must contact the competent department of the user RU or the creator of the wagon damage report as quickly as possible.

If no agreement is reached between the keeper and the RU, the keeper must absolutely comply with the procedure according to Article 18.4, i.e. “ask for the nature, cause and extent of the damage to be recorded by an expert appointed by the parties to the contract or by judicial means.”

This procedure is the only contractually permitted procedure for disputing a wagon damage report.

In this case, a mutual agreement on a counter-assessment is the best solution, if possible.

#### Special aspect in France

According to French law, an assessment has no legal effect and cannot be used against a person who has not participated in the assessment. It is therefore absolutely necessary to include all persons in an assessment who could potentially be liable.

It would probably also be useful to apply this principle, which enables an objection, in the other countries as well.

This is also the case in Belgium, amongst other countries.

The German situation is comparable. Privately commissioned assessments can provide important information. Assessments generally only have a binding effect if they are either accepted by all parties, jointly commissioned or judicially ordered.

As a small anecdote, it may be noted that an initial version of this article proposed by UIC called for the keeper to bear the costs of the assessment if it objected to the report. UIP stated that Article 42 of the UR CIM, which is applicable in the event of damage to the goods, does not regulate who of the carrier or sender must bear the assessment costs and therefore Article 18.4 must be crafted in the same sense and according to the same process as in the UR CIM.

The goal of an assessment is generally to clarify the circumstances, the causes and the consequences of an accident for all parties and to evaluate the damage.

Typically, the costs of the assessment are born by the requester of this assessment, where reimbursement of the costs is demanded from the opposing party if the assessor upholds the objection to the wagon damage report.

**Requester:** Wagon keeper who objects to the wagon damage report and commissions the assessment.

**Opposing party:** The opposing party is the RU that created the wagon damage report.

**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).*

#### Comments

For better readability, the wagon damage report must (since 1 January 2014) be properly and legibly written in one of the GCU languages. In addition, the wagon damage report must be created according to Appendix 4 GCU.

Compliance with this form is mandatory since 2016.

Likewise, the specification of a damage code from Appendix 9 in the wagon damage report now also enables faster and more precise identification of the wagon damage.

The goal is to optimally inform the keeper of the condition of its wagon in order that it can assess the situation and make correct decisions.

Knowledge of the “details of the department to contact” enables faster and simpler exchange of information between the competent parties of the RU involved and the keeper, which is why it is again emphasised that the information in the files of the GCU Bureau always be kept up to date.

#### **Special aspect in France – concept of the work day (“jour ouvrable”)**

As defined by labour law in France, a work day is a day on which work can be performed. Work days are therefore all calendar days with the exception of holidays and days of rest from work stipulated by law.

The same principles apply in Germany; Saturdays are work days.

### **Article 19 HANDLING OF DAMAGE**

**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.*

#### Preliminary comment

In order to also implement the objectives of the ECM Regulation / Annex A to Appendix G COTIF 1999 within the framework of the GCU, several passages of the GCU must be adapted and new definitions must be incorporated.

The proposed changes establish clear GCU definitions for the fleet maintenance management function and maintenance delivery function.

The adaptations in Article 19 with the included definition of “approved” workshops increases the legal certainty between the GCU partners in the commissioning and performance of repair work within the framework of Appendix 10.

Both the RU and the keeper can in this way fulfil their statutory and contractual obligations.

### Comments

It is necessary to differentiation between putting back in running order according to Article 19.1 the making the wagon fit for use again according to 19.3.

Putting back into running order is an obligation of the RU in contrast to making the wagon fit for use again, which represents one option and must be agreed upon with the keeper.

For example, if an RU has carried out work to put the wagon back into running order that does not fall under the application of Appendix 13 and exceeds an amount of EUR 850, without consulting the keeper in advance, it can be said that the RU did not comply with its contractual obligation to obtain the approval of the keeper.

The response of the keeper will differ depending on the following points:

- Whether the repair was performed at the expense of the RU or the keeper
- Whether or not the repair was truly necessary
- Whether or not the costs for the work are reasonable
- Whether this culpability of the RU results in a reduction of the wagon idle time or whether or not a disadvantage has resulted for the keeper.

There is no generally valid answer to this question, meaning that the keeper must assess the situation itself.

The trust, dialogue and quality of relationship with the user RU in question all play a role in this assessment.

A constructive dialogue according to the principle of a gentleman’s agreement should always take preference over a confrontational debate. After all, the overriding principle of the GCU is that the RUs and keepers are partners.

**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.***

### Comments

It is economically logical that the compensation limit may never exceed the estimated fair value of the wagon according to Appendix 5.

Nevertheless, this article may not be without loopholes.

If one actually also takes into account the compensation for loss of use due to wagon idle times in addition to the wagon repair costs, the total could exceed the limit value from Appendix 5.

In Article 19.2, however, this possibility is not addressed.

If one applies Article 19.2 in the strict sense, only the fair value of the wagon and not the compensation for loss of use is taken into account. This would contradict the economic logic of Article 19.2.

Practice will show how this is interpreted.

In the case of a lost wagon, Article 20.3 is very clear because then the compensation is calculated according to Appendix 5.

**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.*

#### Comments

Making the wagon fit for use again is an option that is left open to the RU, while putting the wagon back into running order is a contractual obligation of the user RU.

The term "difficult use" is not clear and can be variously interpreted.

"Difficult use" does not mean impossible.

The term would have to be defined more precisely.

In addition to the explanations concerning Article 19.1, the approval of the keeper is indispensable for all work that exceeds the limit of EUR 850.

**19.4** *(valid before 01 July 2019)  
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.*

#### Comments

In the event that

- the wagon is forwarded "to the destination station for which it was initially bound",
- the keeper demands forwarding of the wagon to another destination,

the keeper need not pay the carriage costs a second time unless the distance travelled is larger than the originally intended distance.

Note that the work plan of the workshop and the stipulated traceability (as mandated by the certification) of the work performed by this workshop may make it possible for the keeper to provide information by email in real-time concerning both the expected or planned departure date and the work performed.

The keeper is therefore in a position to issue "specific instructions" to the repair workshop or the RU in good time.

**19.4** *Article 19.4 – (valid from 01 July 2019)  
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.*

### Comments

In the event that

- the wagon is forwarded “to the destination station for which it was initially bound”,
- the keeper demands forwarding of the wagon to another destination,

the keeper need not pay the carriage costs a second time unless the distance travelled is larger than the originally intended distance.

Note that the work plan of the workshop and the stipulated traceability (as mandated by the certification) of the work performed by this workshop may make it possible for the keeper to provide information by email in real-time concerning both the expected or planned departure date and the work performed.

The keeper is therefore in a position to issue “specific instructions” to the repair workshop or the RU in good time.

For further explanations of the newly formulated Art. 19.4 see the common explanations for Articles 19.4 and 19.5 below.

**19.5 (valid before 01 July 2019)**  
***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 information of the work carried out, using the codes supplied in Appendix 10, Annex 6.***

### Comments

This article contains two important terms:

First, this article recalls the expression “due diligence” (“en bon père de famille”) from Article 12, which means that the RU must act with the same care and diligence toward freight wagons of the keeper as toward its own wagons.

This article partially adopts the provisions of Article 15 on the obligation of the user RU to “supply the keeper with information necessary for the operation and maintenance of the wagon.”

To simplify the work of operational freight wagon managers, AFWP, BEWAG and six RUs have created a guideline of best practices “**Management of Freight Wagons Damaged During Carriage**”<sup>13</sup>.

To harmonise the provisions of Article 19.5 with the requirements of the ECM Regulation (Regulation EU 455/2011), the GCU Joint Committee has authored an interpretation note. This describes in detail and explains that the system of en route repairs under the responsibility of the RUs that is employed in practice satisfies the requirements of the ECM Regulation.

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<sup>13</sup> French title: “La gestion des wagons avariés en cours d’acheminement”



**19.5 (valid from 01 July 2019)**

***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 its auxiliary performing the work shall provide detailed information of the work carried out, using the codes supplied in Appendix 10, Annex 6.***

The list of approved workshops can be accessed via the ERADIS database at the following link:

[https://eradis.era.europa.eu/safety\\_docs/ecm/certificates/search\\_results.aspx?DocType=3](https://eradis.era.europa.eu/safety_docs/ecm/certificates/search_results.aspx?DocType=3)

**Common Explanations for Articles 19.4 and 19.5**

In the context of the GCU, maintenance based on Appendix 10 GCU must be commissioned by the user RU. In the contract text (Article 19.5), the GCU mentions "approved workshops", but these had not been further defined.

As the ECM Regulation has in the meantime been incorporated into the COTIF (ATMF Appendix G, Annex A), the GCU (Article 19) must describe such commissioning more clearly, and must define the term “approved workshops” in order to bring the GCU into conformity with both the ECM Regulation (Regulation 445/2011) and Annex A to Appendix G (ATMF) to the 1999 COTIF. This amendment has been integrated into GCU as of 1<sup>st</sup> of July 2019.

Article 8 of EU Regulation 445/2011 (the ECM Regulation) and Annex A to Appendix G (ATMF) to the 1999 COTIF both allow for outsourcing of ECM functions (or sub-functions). Under the certification system of the ECM Regulation or of Annex A to Appendix G of COTIF, voluntary certification of the contract or creates a presumption of conformity (this refers to the relevant requirements set out in Annex III) of the subcontracting entity or shall serve as evidence as to how these requirements are (otherwise) fulfilled. The amendment/clarification of the GCU comprises two functions from the ECM Regulation and/or Annex A to Appendix G, the content of which needed to be clarified in the GCU.

In accordance with Annex III, the fleet maintenance management function (ECM III function), specifically those parts of the function performed by the RU, includes the following:

- Competence of maintenance personnel
- Composition of work package for maintenance
- Procedure for removal of freight wagons from operation when defects are identified
- Inspection of maintenance work performed
- Rules for release to service and return to operation

Already before this change, Appendix 9 to the GCU covered some of the requirements listed above (e.g. removal of wagons). With the amendment of Article 19, the other functions are also sufficiently described. Competence of maintenance personnel is also covered by amending Article 19 (approved workshops). Appendix 10 to the GCU is already in force as a binding set of regulations to the extent that repairs are commissioned or performed by an RU in the GCU framework.

The keeper (GCU Article 7.2) can thus assume that an RU - as a GCU signatory - has sufficient competence to perform sub-functions in terms of subcontracting. The sub-function of subcontracting the commissioning of maintenance is assured through proof that the RU holds a safety certificate.

The GCU did indeed mention “approved workshops” that are covered by the RU's safety certificate; however, no certification had been demanded for maintenance.

In order for Appendix 10 of the GCU to continue to be used, clarification of the contract text has been needed.

**N.B:**

If the keeper and ECM are not identical, the keeper and his ECM must agree on a rule whereby, sub-contracting of the necessary measures to a GCU signatory RU is possible in a GCU context.

The RU and the workshops he employs must agree on a rule whereby the currently-valid version of the GCU is to be applied and that this must be demonstrated if requested.

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

**Comments**

This article contains only a reference to Appendix 7, so the relevant comments can be found under Appendix 7.

It should nevertheless be mentioned that the used spare parts must correspond to those defined in the maintenance documents of the ECM in whose responsibility the wagon lies.

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

**Comments**

This article contains only a reference to Chapter V, so the relevant comments can be found under this chapter.

## **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.*

### **Comments**

This article largely adopts the text from Article 6 § 1 of the UR CUV. However, another interesting aspect is also mentioned in the UR CUV, namely: *"the person entitled"* (the keeper) *"may, without being required to furnish other proof, consider a vehicle lost when he has asked the rail transport undertaking to which he provided the vehicle for use ..."*

It is worth noting that, within the framework of the GCU and the UR CUV, the keeper exclusively contacts the *"rail transport undertaking to which he provided the vehicle for use ..."*.

In the case of a carriage chain, the keeper need not then discover within the sequence of subsequent user RUs which has lost the wagon.

This corresponds to the letter and the spirit of the UR CUV, in particular Article 9. § 1 CUV and Article 28 GCU.

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

### **Comments**

This article speaks for itself and requires no further commentary.

In turn, Article 4 § 2 of the ER CUV states: *"The rail transport undertaking shall not be liable for loss or damage resulting from loss of accessories which are not mentioned on both sides of the vehicle or in the inventory which accompanies it."*

**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.*

### **Comments**

This article largely adopts the text from Article 4 § 3 of the UR CUV. However, the UR CUV mentions another interesting aspect, namely: *"When it is impossible to ascertain the day or place of loss, the compensation shall be limited to the usual value on the day and at the place where the vehicle was provided for use."* This is an interesting aspect because it could have an impact on the calculation of the loss of value of the wagon or its accessories.

**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.*

#### Comments

This article largely adopts the text from Article 6 § 2 of the UR CUV. However, the UR CUV also mentioned another interesting aspect, namely: *“the person entitled” (the keeper) “may require the rail transport undertaking to which he provided the vehicle for use [...] within a period of six months [...] that the vehicle be returned to him, without charge and against restitution of the compensation, at the home station or at another agreed place.”*<sup>14</sup>

This is an interesting aspect that is not mentioned in the GCU which makes it possible to define the conditions for the return of the wagon to the keeper.

### Article 21 HANDLING OF BOGIES

The provisions of this chapter shall apply in the same way to the handling of bogies.

#### Comments

This article is clear and requires no commentary.

## CHAPTER V

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

#### Article 22 LIABILITY OF THE USER RU

**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.*

#### Comments

On the topic of loss, Article 6 § 1 of the UR CUV is very clear: The keeper must contact exclusively the RU to which it “provided the vehicle for use”. He is therefore not required to engage in any research or to search within the carriage chain to learn which RU lost the wagon (see comments for Article 20.1).

On the topic of damage, the keeper would also have to contact the RU to which it “provided the vehicle for use”.

Article 4 § 1 very clearly states: *“The rail transport undertaking to which the vehicle has been provided [...] shall be liable for the loss or damage resulting from the loss of or damage to the vehicle [...], unless it proves that the loss or damage was not caused by fault on its part.”*

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

<sup>14</sup> The gaps in the quote were not noted in the original French text, but were added to the German [and English] translation (FR-DE / DE-EN translator’s note).

- *circumstances that the RU was not able to 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.***

### Comments

On the topic of “*fault of a third party*”: see comments on Articles 16 and 17

It should be noted that, contrary to Article 22, Article 27 – whether intentionally or not – does not establish a hidden defect in a wagon as a reason for exclusion of liability on the part of the RU.

In addition, the formulation of the clause “*circumstances that the RU was not able to avoid and the consequences of which it could not prevent*” leaves something to be desired.

If force majeure is in fact meant in this article, then this is incorrect since in order to claim force majeure it must be proven that there were not only insurmountable but also unforeseeable circumstances. In addition, one must know that the party invoking force majeure may not itself have been the origin or the cause of this main fault<sup>15</sup>.

It is important to consider that Article 22.2 states that the RU must present to the keeper proof that would hold up in court.

For this reason, an RU cannot invoke Article 22.2 when it can only make an assertion against the keeper without firm proof.

### **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.***

### Comments

This article partially adopts the provisions of Article 4 § 2 of the UR CUV. It is clear enough and requires no commentary.

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<sup>15</sup> Here it is possible that in the French text “force majeure” was confused with “faute majeure”. The expression “faute majeure” (main fault) was translated here because it was used in the original French text (FR-DE translator’s note).

- 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.*

#### Comments

The objective is to avoid discussions between the partners as far as possible.

This article is clear enough and requires no commentary.

It should be noted that the limit of EUR 850 was originally EUR 750. Whether this will be increased further remains to be seen.

### Article 23 AMOUNT OF COMPENSATION

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

#### Comments

This article partially adopts the provisions of Article 4 § 3 of the UR CUV. It is clear enough and requires no commentary.

- 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.*

#### Comments

This article partially adopts the provisions of Article 4 § 4 of the UR CUV, which further states that “*the compensation shall be limited, to the exclusion of all other damages, to the cost of repair.*”

Because according to Article 4 § 5 of the UR CUV “[t]he contracting parties may agree provisions derogating from §§1 to 4”, compensation for loss of use can be added to the cost of repairs of the wagon within the framework of the GCU. It should be noted that the amount of the compensation for loss of use has so far not been updated since the GCU entered into force, in other words since 1 July 2006. However, the negotiations, which were conducted on the initiative of UIP, led to the result that on 1 January 2018

- an adaptation of the compensation enters into force and
- a flat rate compensation for the loss of operational value as a consequence of the reprofiling of wheelsets can be demanded.

The details are regulated in the also amended Appendix 6 GCU.

### **Article 24 LIABILITY OF PREVIOUS USERS**

**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.*

#### **Comments**

This article may not have any direct impact on wagon keepers and applies only between the RUs (contract RU and subsequent RU).

This means, it is the obligation of the RUs to search the carriage chain amongst themselves as to which user RU was responsible for the damage.

Article 4 § 1 states very clearly, in fact: “The rail transport undertaking to which the vehicle has been provided [...] shall be liable for the loss or damage resulting from the loss of or damage to the vehicle [...], unless it proves that the loss or damage was not caused by fault on its part.”

Within the framework of the contract for use, the keeper recognises exclusively the contractual RU to whom the wagon was provided.

The comments on Article 28 should be considered alongside the explanations given here.

**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.*

#### **Comments**

This is mandatory logic that arises from Article 1.4 of the GCU.

Specifically, as long as the wagon remains in the custody of a user RU, the RU must prove in the event of damage to the wagon or its accessories that it is not liable for this according to Article 22.

If the recipient did not state a reservation regarding the condition of the wagon before delivery of the wagon, while the wagon was still in the custody of an RU, it is assumed that the wagon was handed over to the recipient in good condition.

In this case, Article 1.4 therefore does not apply and the burden of proof is reversed. The keeper is obligated to prove the fault of the RU.

### **Article 25 OBLIGATION TO MITIGATE LOSSES**

***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.***

#### **Comments**

The mitigation of losses is a principle of good business practice and cooperation, a principle that is to be generally respected amongst partners. The objective is to optimise the operation of the wagon fleet and minimise the costs where possible in consideration of the competitiveness of the freight wagon offering.

### **Article 26 SETTLEMENT OF DAMAGES**

***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.***

#### **Comments**

This article appears to deviate from the principles of Article 4 § 1 of the UR CUV, which clearly states that only the contractual RU to whom the wagon was provided is responsible for the damage to the wagon (see also the comments on Article 28 Liability for staff and other persons). Upon closer examination, however, Article 26 GCU only regulates the processing of the settlement of damages and not its contents.

This means that the cost of repairs is to be invoiced to the contractual RU to whom the wagon was provided for use and who is then free to proceed against the RU of the carriage chain that caused the damage.



## Chapter VI

### LIABILITY IN THE EVENT OF DAMAGE CAUSED BY A WAGON

#### Article 27 PRINCIPLE OF LIABILITY

**Article 27 was modified as of 1 January 2017 and only applies to events occurring after 1 January 2017.**

**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.*

#### Comments

**It must first be considered that Article 27 adopts the liability principles from Article 7 of the UR CUV.**

In previous hiring contracts, there was no question of fault to be clarified because damages caused by P-wagons were covered by the so-called “*Accord en garantie Chemins de fer Titulaires*” (“Liability Agreement of Rail Keepers”).

Since 1 July 2006, Article 27 establishes new liability principles.

What are these?

#### General liability principles of the user RU

As an introduction to this central material, it is worth referring to the profound knowledge of one of the most renowned experts in railway law, Prof. Dr. Rainer Freise.

Prof. Freise was the chairperson of the legal UIC working group, legal director at DB, worked on the CIT and participated as a railway expert in the OTIF sessions for drafting of COTIF (in particular UR CUV).

Below, you will find excerpts from the article by Prof. Rainer Freise published in the Journal of International Rail Transport 3/2000.

*The restricted formulation “when they can be shown to be at fault” results, according to general principles of the reversal of the burden of proof, in the need to prove that the provider of the wagon is at fault; it is not for the provider of the wagon to prove that it bears no fault. This result is supported by the history of the origination of the text and the circumstance that at the time the damage event occurs, the wagon is within the sphere of influence of the user railway, which is best situated to clarify the issue.*

The wagon provider is, depending on the circumstances, either the wagon keeper or a previous wagon user, which provided the wagon to the user railway [...]. (Journal of International Rail Transport 3/2000 – pages 268 and 269)

“If a fault on the part of the wagon provider cannot be proved, then the liability remains with the user railway, which must as a railway undertaking already be responsible for its railway operations by virtue of law even absent fault. As a result, the liability principle of the UR CUV therefore amounts to liability of the user (operationally managing) railway, which is replaced by a contractual liability of the wagon provider if it can be proved to be at fault. (Journal of International Rail Transport 3/2000 – page 269)

“Today, the user railway generally covers this liability risk with business liability insurance.

If there are insufficient indications of fault on the part of the wagon provider, the user railway will typically decline for time and cost reasons to take on the role of litigator to assert fault on the part of the wagon provider. Similar considerations arise for the liability insurer as for the user railway (Journal of International Rail Transport 3/2000 – pages 269, 270 and 271).

The explanations by Prof. Freise quoted above form the basis for the original version of Art. 27 GCU. After long discussions between UIC and UIP regarding a motion by UIC, a new version of Article 27 GCU was agreed upon, which entered into force on 1 January 2017. However, the new version of Art. 27 GCU also takes into account the fundamental principles of his argument. Only in the event of a proven violation of the ECM obligations or maintenance obligations by the keeper is it subject to a presumed fault.

**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.*

### Principle of liability Article 27.1

Step 1: Burden of proof of the user RU: Provision of proof of a violation of the maintenance obligation for the wagon

According to the general liability principles outlined above, what fault could specifically apply to the keeper?

Article 7.1. of the GCU states: “The keeper shall ensure that his wagons are technically admitted in accordance applicable European regulations and that they remain technically admitted throughout the period of their use.”

If the user RU wishes to hold the keeper liable, it must prove that the keeper did not comply with its obligations according to Article 7 GCU. In practice, this may be quite difficult because the RU must prove neglect within the organisational structures of the keeper/ECM. Regarding the individual obligations of the keeper according to Article 7, see the comments under that Article.

If one follows the wording of Article 7.1 of the UR CUV as well as Article 27.1 GCU, one arrives at the result that a hidden defect of the wagon cannot justify fault on the part of the keeper or the previous user.

~~If one applies Article 7.1 of the UR CUV and Article 27.1 of the GCU in the narrower sense, it even looks as if the hidden defect in the wagon is not taken into account as the fault of the keeper or the previous user.~~

Note that Article 7 § 2 of the UR CUV clearly states that “[t]he contracting parties may agree to provisions derogating from §§1 [...]”. However, the authors of the GCU in no way mentioned hidden defects as a clause relieving the user RU of liability as is the case with damage to the wagon (see: Article 22.2 of the GCU).

To date, no case law is known, but it could go in the same direction.

Last but not least, no fault can be attributed to the keeper in connection with the “operational responsibility” *monitoring the behaviour* of the wagon since the wagon is in the custody of the user RU and is therefore outside the keeper’s ability to access.

Step 2 – Possibility of relief - burden of proof of the keeper: Provision of proof that the violation of the maintenance obligation for the wagon did was not the cause or a contributing cause of the damage.

If the RU succeeds in proving faulty maintenance of the wagon on the part of the keeper – and thereby a violation of its obligations from Article 7 –, the fault of the keeper is initially presumed. However, it is possible for the keeper to exonerate itself. It must prove that the violation of the maintenance obligation for the wagon was not the cause or a contributing cause of the damage. The burden of proof for this is now borne by the keeper.

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

Regarding the sentence “***The liable party shall indemnify the user RU against any third party claims if the user RU is not at fault***”, the following is to be noted:

- It is only possible to speak of a “liable party” if the user RU has already entirely proven the fault of the keeper or the fault of the previous RU.
- If the user RU proves either the fault of the keeper or the fault of the previous RU and if no fault is to be attributed to the RU, it is logical and contractually permissible for the liable party to indemnify the user RU against claims of third parties.

**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.***

**Comments**

It is logical that each bears its own share of the compensation without the need for further comment. This also reflects the legal situation in French and German civil law.

**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.***

**Comments**

This article is not very clear. Firstly, the principle according to Article 27.1 applies:

- obligates the user RU to prove the fault of a third party,
- obligates neither the previous RU nor the keeper to conduct investigations into the fault of a third party,
- if a third party is liable that is not party to the GCU, neither the previous RU nor the keeper participates.

Given this and because Article 27.4 contractually calls for joint investigations into the fault, it is important to establish the extent to which this is possible.

In other words, one assumes that the user RU does not consider itself at fault and that a third party is entirely or partially liable for the damage.

Based on the RU/keeper partnership, it is logical and desirable to search for fault primarily in a third party in order that a third party rather than the partners must pay.

If, however, a third party is only at fault with respect to the contract of use or considers itself as such, the concerted measure is limited to a collaboration between the partners in the joint search for the fault of a third party.

In fact, only the user RU at the time of occurrence of the event can take legal action against a third party.

The reports on experiences and the case law will show us how this article is to be applied.

|  |
|--|
| <p><b>27.5</b> <i>Upon request, the keeper shall be required to provide proof of his civil liability insurance in accordance with applicable laws.</i></p> |
|--|

#### Comments

The obligation of the keeper to provide proof of civil liability insurance would be better listed under Chapter II "Obligations of the keeper".

The right of the RU to demand that the keeper provide proof of civil liability insurance would be better listed under Chapter III "Rights of the RU".

The RU should namely not ask the keeper whether or not it has civil liability insurance only after the occurrence of damage.

## Chapter VII

### LIABILITY FOR STAFF AND OTHER PERSONS

#### **Article 28 PRINCIPLE OF LIABILITY**

***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.***

This article adopts the complete wording of Article 9 § 1 of the UR CUV.

It should be noted that Article 9 § 1 of the UR CUV is one of the rare legally binding articles of the UR CUV and cannot be disposed of contractually.

If one considers the subsequent RU in the carriage chain as the servant made use of by the first RU of the carriage chain (the contractual RU, who was provided the wagon by the keeper or the authorised party), this first RU would have to be liable for the subsequent RU of the carriage chain.

In Article 9 § 2 of the UR CUV, the infrastructure manager must be considered as a servant made use of by the RU within the framework of the contract of use and carriage (see analysis below).

#### ***Article 9 § 2 of the UR 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.***

#### **Comments**

Article 9 § 2 of the UR CUV is a useful supplement to Article 28 of the GCU.

Article 9 § 2 is optional law and allows the contract parties to agree on exceptions.

This aspect was long discussed during the negotiations between UIP, UIC and ERFA.

**In the end and because no agreement could be reached between UIP, UIC and ERFA concerning a possible contractual exception, the infrastructure manager is viewed within the framework of the GCU as a person whose services the RU makes use of.**

Specifically, the user RU is liable for the fault of the infrastructure operator in international and in national traffic.

This was also seen in this way in a decision by the Austrian Supreme Court from 20 June 2017 (2 Ob 76/17s).

## **Chapter VIII**

### **OTHER PROVISIONS**

#### **Article 29 LOADING GUIDELINES**

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

##### **Comments**

The loading guidelines are published by UIC. At the request of UIP, the UIC loading guidelines have been made available on the GCU website at no charge for some time. The official UIC website can be reached via the link (<http://www.gcubureau.org/recommendations>), where the guidelines can be obtained at no charge after registration.

This article goes in the same direction as Article 11, according to which an RU can refuse to accept a wagon if the loading guidelines in force are not complied with.

This corresponds to Article 12, according to which “[e]ach RU [...] shall carry out the inspections laid down in Appendix 9”, in particular item 2.2 and 2.3 of Appendix 9. (See comment on Appendix 9).

#### **Article 30 ACCOUNTANCY AND PAYMENT**

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

##### **Comments**

Article 30 unambiguously regulates that all settlements between GCU signatories must take place in EURO. To date, however, the problem of default interest in the event of late payments has not been regulated. The former UIC leaflet 433 (V) and the RIV 2000 called for the payment of default interest in the event of a late payment or compensation. This GCU has not established this possibility.

However, the Directive 2011/7/EU from 16 February 2011 “on combating late payment in commercial transactions”, which was to be implemented by all Member States by 13 March 2013 explicitly calls for the payment of default interest and a flat compensation fee for the operating costs.

On the basis of this directive, AFWP proposed to the working group “UIP GCU WG” to add default interest and a flat compensation fee for operating costs in this Article 30. The proposal was accepted by the UIP GCU WG and presented to the partner associations UIC and ERFA for acceptance. During 2019, an agreement has finally been reached. This amendment will enter into force as of 1<sup>st</sup> of January 2020. Till the entry into force, the GCU signatories at least in France and Germany can demand default interest on the basis of the directive (2011/7/EU), which has now been implemented in the legal systems of Germany and France (deadline: 13 March 2013).

As a reminder, it should be noted that Article 37 § 2 of the UR CIM calls for the payment of default interest in the amount of 5%.

### **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.***

#### **Comments**

This article appears to be fairly unknown, not to mention applied in practice.

What is the concrete purpose of the article?

It avails itself of a legal principle of most civil law frameworks in Europe, according to which a contract party that has suffered damages due to a failure of its contract partner to comply with a contractual obligation may claim compensation for damages.

Above all, it must always be considered that the GCU is intended to regulate a relationship in the spirit of partnership, meaning that this article should only be applied with restraint.

### **Article 32 COMPETENT JURISDICTION**

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

#### **Comments**

Except for one word, this Article corresponds to the first part of Article 11 § 2 (French version) of the UR CUV: “*Sauf convention contraire entre les parties la juridiction compétente est celle de l'Etat où le défendeur a son siège.*”<sup>16</sup>

Nevertheless, Article 11 § 2 of the UR CUV continues as follows: “*If the defendant has no place of business in a Member State, the competent courts or tribunals shall be those of the Member State where the loss or damage occurred.*”

Accordingly, the index of COTIF parties should be consulted in the event of a legal process to determine the place of competent jurisdiction.

In practice, however, this case appears unlikely.

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<sup>16</sup> In the German version, both instances use the same wording “Haben die Parteien nichts anderes vereinbart”. No differentiation is made between “convention” (agreement) and “accord” (agreement). (FR-DE translator’s note)

### **Article 33 LIMITATION**

**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.*

#### **Comments**

According to the GCU, “limitation” means that as of a specific period after the occurrence of the damage, the harmed person loses the ability to assert its rights against the party causing the damage. The limitation is an “objection” to a claim. In other words, it must be actively raised by the party liable. Only then does the limitation prevent the ability to assert a claim.

The limitation of claims according to Chapter III occurs after one year.

The limitation of claims according to Chapters V and VI occurs after 3 years.

**Caution with respect to periods of limitation!** It is a loaded weapon for defence and exclusion that is often lost sight of in practice.

For this reason, it is extremely important to carefully consider the period of limitation in the pursuit of disputes.

Generally, the legal assertion of the claim before the competent court is sufficient to interrupt the period of limitation.

In principle and even if further amicable negotiations take place, one should not hesitate to file an action 3 months before the end of the period of limitation.

Filing an action does not necessarily lead to a full legal process since even after filing of an action, further amicable negotiations can still take place that lead to a settlement of the dispute. This is possible in any stage of the legal action.

Such an action has a number of advantages: It does not prevent the continuation of amicable negotiations and protects against the period of limitation.

It can also serve as a means of added pressure to make clear to the other party that, if necessary and if no agreement is reached, a court proceeding is still possible.

To avoid a mandatory filing of an action exclusively for the purpose of interrupting the period of limitation, UIP and UIC have proposed expanding this article to achieve a contractual interruption or cancellation of the period of limitation, especially in cases in which one contract party to the GCU recognises its responsibility.

Already today, it is possible for the contract parties to agree amongst themselves on an interruption of the period of limitation on the basis of an individual contractual agreement in order to avoid the need for filing an action to comply with the period of limitation.



**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.*

#### Comments

This article is clear enough and requires no commentary.

### **Article 34 LANGUAGES**

***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.***

#### Comments

Each version in each of the three contract languages has the same value as the others.

In principle, the translation is accurate; each version says the same things with the same nuances. If a keeper/RU dispute escalates, however, an inspection of all versions would be useful to determine which version may best support one's own argumentation.

In cases of doubt regarding the interpretation of a provision of the GCU, it is also often useful to read all three versions.

As of 1 April 2017, the following sentence was added to this article: *"The provisions of Annex 6 of Appendix 10 (coding of interventions) remain unaffected."*

The coding of the invoices issued by the workshops makes it easier for the keepers to understand the invoice and also simplifies the tracking of measures on the wagon for the ECM.

It should be noted that this coding obligation was already contained in Annex 6 of Appendix 10. All GCU signatories, in particular the keepers, are urgently recommended to insist on the application of Annex 6 of Appendix 10 and, if necessary, to make payment of the invoice contingent on the application of Annex 6.

## **Article 35 ENTRY INTO FORCE**

***This contract shall enter into force on 1.7.2006.***

### **Comments**

On 1. July 2006, COTIF 1999 entered into force, replacing the old hiring regime and laying the new legal framework for the GCU. Consequently, the GCU entered into force on the same date. The principles of the GCU and the key structures of the relationships between the contract parties have remained unchanged to this day. Nevertheless, the GCU must adapt to the constantly changing rules of European and international law.

It is therefore necessary to note that each new edition of the GCU only applies to those events that take place during the respective period of application, generally from 1 January to 31 December of the respective year.

In other words, an event that occurred between 1 January and 31 December 2015 must be analysed and handled on the basis of the GCU version that was valid between 1 January and 31 December 2015, even if the negotiations between the contract parties or a court process only take place in 2016 or 2017.

It is therefore useful to keep a copy of each version of the GCU in order to carry out amicable negotiations amongst the contract parties on one hand and, on the other, to be able to present to courts and the opposing party the GCU version that was valid at the time the event under dispute occurred should the issue end up in court.

If no old GCU versions are available, all amendments to the GCU ever implemented can be reconstructed via the website of the GCU Bureau since the GCU Bureau maintains a history of the amendments, making it possible to compile the version of the GCU valid upon occurrence of an event, if necessary.

## APPENDICES

### *Appendix 1 - List of Signatory keepers and RU's*

#### Comments

As already stated in the title, this Appendix, whose content is maintained by the GCU Bureau, contains the list of the keepers and RUs that are party to the GCU. <http://www.gcubureau.org/signatories>

For every wagon keeper that is party to the GCU, the telephone and electronic contact data of the departments entrusted with management of the wagon fleet are listed so they can be contacted, if necessary.

How else would an RU be able to send a copy of the wagon damage report to the correct department or contact person "without delay" (Article 18.3), unless the contact data of the keeper is correct?

Appendix 1 GCU was modified on 1 January 2019 to be in line with Appendix 15, which also entered into force on 1 January 2019. In the course of this modification, the information on contact persons for the provision and receipt of mileage was added and the format was standardised.

For an optimised management of their respective vehicle fleets, it is therefore in the interests of the contract parties of the GCU to ensure that this list is always correct and up to date.

Also with regard to the responsibilities of the ECM, it is of central importance that the data be kept up to date since the necessary communication channels would not function otherwise.

### *Appendix 2 - Definitions*

#### Comments

The definitions in Appendix 2 GCU are not conclusive. Only those terms are defined that are necessary for the application of the GCU. At the same time, the term definitions of COTIF and European as well as national railway law apply. As a result, all terms should be subject to a uniform understanding.

In addition, there are several term definitions that are not given in Appendix 2 GCU but are useful for the interpretation and application of the contract of use. This applies in particular with regard to the liability for servants and other persons (Article 28 of the GCU and Article 9 of the UR CUV).

As mentioned a number of times, the UR CUV forms the basis of the GCU. In addition, the UR CUV expands on the GCU from a legal standpoint if provisions of the UR CUV were not adopted in the GCU but are necessary for a legally correct application of the contract of use.

**Contractual carrier** (see GLW-CUV - field no. 58: User RU that accepts the empty wagon for carriage (field no. 58 – wagon note/freight note)

**Other carriers** (see GLW-CUV – field no. 57) RUs that are not the user RU that accepts the wagon (field no. 57 – wagon note/freight note)

**In addition, the UR CIM contains other information.**

**Carrier:** (UR CIM – Art. 3)a) – [The expression designates] “the contractual carrier with whom the consignor has concluded the contract of carriage pursuant to these Uniform Rules, or a successive carrier who is liable on the basis of this contract.”

It should be noted that multiple carriers can be involved in a transport chain.

**Substitute carrier** (UR CIM – Article 3)b): [The expression designates] “a carrier who has not concluded the contract of carriage with the consignor, but to whom the carrier referred to in letter a) has entrusted, in whole or in part, the performance of the carriage by rail.”

**Successive carriers** (UR CIM – Art. 26): “[...] [a] carriage governed by a single contract is performed by several successive carriers...”.

***Appendix 3 - Wagon note***

**Comments**

This appendix contains only samples of documents concerning empty wagons as means of transport.

For other useful explanations of the content of the wagon note, it is useful to consult the manual on the wagon note, which can be downloaded in German, French and English from the website of the CIT: [https://www.cit-rail.org/secure-media/files/documentation\\_de/freight/glw-cuv/glw-cuv\\_de\\_2017-01-01\\_c.pdf?cid=69467](https://www.cit-rail.org/secure-media/files/documentation_de/freight/glw-cuv/glw-cuv_de_2017-01-01_c.pdf?cid=69467)

On the same website, there is also a manual for the CIM freight note (GLV-CIM) for loaded wagons. [https://www.cit-rail.org/media/files/documentation/freight/glv-cim/glv-cim\\_de\\_2019-01-01\\_c.pdf?cid=68204](https://www.cit-rail.org/media/files/documentation/freight/glv-cim/glv-cim_de_2019-01-01_c.pdf?cid=68204)

As a reminder: For loaded wagons, the contract of carriage (UR CIM in international traffic) applies to the goods and the GCU for the freight wagon (as means of transport).

***Appendix 4 - Wagon damage report***

**Comments**

In the event of damage, the wagon damage report provides the initial useful information to inform the keeper of the situation and the first findings concerning the condition of the wagon.

In order for it to fulfil this purpose, the wagon damage report must be written legibly, properly and in detail in one of the GCU languages. It must also be sent to the wagon keeper without delay.

Since 1 April 2016, a new, mandatory wagon damage report is in force, which must **absolutely** be written in one of the 3 GCU languages. There are still two versions of the wagon damage report on the GCU – a pure paper form and a form that permits electronic processing.

In the course of the year 2019, the GCU Bureau will make the “GCU Message Broker” available to the signatories, which will also allow an automated exchange of the wagon damage report.

To simplify filling out of the wagon damage report for the RUs and to help the keepers understand the report, an ad-hoc working group of the UIP, UIC and ERFA has developed a guide.

## **Appendix 5 - Method for calculating the residual value of a wagon**

### **Comments**

As of 1 January 2014, the old Appendix 5, which in large parts adopted the text of the former UIC leaflet 433 (V), was replaced by a new Appendix 5.

This new appendix entered into force on 1 January 2014.

To simplify and standardise the calculation of the fair value of a wagon, there is now a calculation tool for the flat value according to the GCU. <http://www.gcubureau.org/calculations>

In this regard, it is worth referring to a document published by the AFWP on 1 January 2016 with the title "Wagon Prices". This non-contractual document was accepted by the most important French and Belgian RUs.

The following criticism must also be stated at this time:

- The depreciation rate of 4% per year appears no longer up to date: A depreciation rate of 3% appears to correspond better to the economic situation.
- The amount of EUR 2,000 for the damage ascertainment costs should be subject to further development on the basis of a yet to be created updating index.

## **Appendix 6 - Compensation for loss of use**

### **Comments**

The expression "*loss of use*" describes compensation of the wagon keeper or its authorised person due to wagon idle times that resulted from damage or from late carriage and are attributable to an RU.

One differentiates between two types of compensation:

- Flat rate compensation
- Compensation on the basis of the actually occurred damage.

#### **Flat rate compensation**

This compensation is calculated by calendar days based on the length of the wagon in meters multiplied by the corresponding factor for the wagon class. The corresponding values are listed in the table under item 2.1.

Then the number of days to be compensated must be ascertained.

Within the framework of the former UIC leaflet 433 (V), the rate of the compensation for loss of use was raised every 5 years at the European level jointly by UIC and UIP on the basis of an adaptation clause representative of the industry.

It should be noted that the amount of the compensation for loss of use has so far not been updated since the GCU entered into force, in other words since 1 July 2006. However, the negotiations, which were conducted on the initiative of UIP, led to the result that on 1 January 2018

- an adaptation of the compensation enters into force and
- a flat rate compensation for the loss of operational value as a consequence of the reprofiling of wheelsets can be demanded.

Note that prior to 1 July 2006, the compensation for loss of use for late carriage of the wagon was calculated on the basis of Article 14 of the RIP (appendix to CIM – COTIF 1980), in other words approximately EUR 5.40 or EUR 3.60 depending on the wagon class.

This is an error that was corrected by the GCU. The unavailability of the wagon due to damage or exceeding of the carriage time has the same consequences for the keeper.

Regrettably, some RUs have allowed the values from the RIP for compensation upon exceedance of the carriage times to be retained. AFWP and VPI clearly object to this practice and recommend that keepers insist on application of the values in the current Appendix 6 GCU.

#### Compensation on the basis of the specific damage

This compensation is based on specific damage with proof. For reasons of confidentiality, the requirements placed on the proof should not be too high. Generally, a plausible depiction of the damage should suffice.

This compensation is similar to that from Article 31, which is based on indirect damage.

It is worth questioning whether there is a difference in the GCU between actual damage (Appendix 6, Part I, item 1) and indirect damage (Article 31) and whether the sufficiency of the compensation differs greatly.

It would be logical to use the same expressions, and it would therefore be desirable for the authors of the GCU to focus on this aspect during a revision of the GCU. A substantive reason for different handling is not apparent.

It should be observed that some RUs increasingly tend to limit the maximum amount of the compensation for loss of use or to reduce the number of attributable days. This generally takes place by means of the general business conditions (GBC) of the RUs. However, the contractual relationships between RUs and keepers are based in most cases exclusively on the GCU. The GBCs of the RUs, which regulate the transport contracts between RUs and shippers are not applicable in the relationship between RUs and keepers.

In conclusion, it should be noted that a compensation for loss of use cannot in any way be viewed as “*unjustified enrichment*” from a legal standpoint.

## Appendix 7 - Spare parts

### Comments

The guiding idea behind this appendix can be summarised as follows: *“The management of spare parts must be organised in a cost-effective and rational manner to cut down on the time damaged wagons spend out of service and keep transport of the parts themselves to a minimum.”*

It is not the place here for a detailed examination of the requesting and approval process for spare parts or the return shipment process for damaged parts; rather, the focus should be placed on specific individual aspects.

Firstly, it is important with respect to item 1.2 concerning the track occupation to act circumspectly both on the part of the RU, which should send the documents H and Hr without delay, and on the part of the keeper, which should also provide the spare parts as quickly as possible.

The goal is that a wagon does not stand on the track for a year because the part was not sent as has happened in a number of reported cases.

If the RU has neglected to send the keeper the documents H and Hr, compensation for loss of use is due for the idle time of the wagon.

If the keeper has forgotten to send the spare parts to the RU or its auxiliary, the track occupation costs must be covered by the keeper.

In order to resolve this problem, it must be ascertained with corresponding evidence who (RU or keeper) breached its duty of care.

Moreover, this appendix is to be viewed in connection with Article 23.2 of the GCU: “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.”

In addition to these comments, it should be remembered that the management of spare parts must be organised according to the requirements specified in the maintenance documents of every wagon managed by the ECM.

The new version of Appendix 7, which is applicable as of 1 January 2018, contains a list of standardised parts. This list has been warmly welcomed by the operational personnel.

## **Appendix 8 - Internal Regulation for the Application and Further Development of the GCU**

### **Comments**

As already mentioned in the introductory comments, Appendix 8 could also be viewed as “the vital organ” for ensuring the implementation and function of the GCU. It regulates the organisational structures of the GCU.

To this end, the following have been established:

- The “**GCU Bureau**”, which is managed by a trustee and is entrusted with the administrative activities
- The “**Joint Committee**”, which can be considered the policymaking and leadership body of the GCU.

#### **The GCU Bureau**

Floris FOQUE is the current trustee of the GCU Bureau.

This trustee manages the GCU Bureau. His role is purely administrative, and he must remain absolutely neutral.

His duties include, in particular:

- Translation and publishing of the GCU and its modifications
- Maintaining and publishing the list of contract parties on the website

The operating costs of the GCU Bureau are borne by the contract parties.

#### **The Joint Committee**

The Joint Committee consists of representatives of the three founding associations of the GCU, namely UIP (five representatives), UIC (five representatives) and ERFA (2 representatives). Each association has one rapporteur. <http://www.gcubureau.org/fr/web/portal/who>

Karl-Heinz FEHR is the rapporteur for UIP.

To maintain the balance is the strict neutrality, there is neither a sole chairperson nor a rotating chair, rather two co-chairpersons:

- 1 co-chairperson from UIP (Stephan LOHMEYER (VTG))
- 1 co-chairperson from UIC/ERFA (Nicolas CZERNECKI (SNCF))

The Joint Committee

- recommends the trustee and the auditor and can also dismiss them
- makes petitions for changes and additions to the GCU
- jointly evaluates questions of interest and establishes any necessary ad hoc groups
- votes on requests for the admission of additional associations that represent the RUs or the wagon keepers

The Joint Committee is the highest policy body of the GCU and can establish all initiatives in support of the GCU contract parties. However, it may in no event independently make changes to the GCU; this authority is held exclusively by the signatories.



## Appendix 9 - Conditions for the technical transfer inspection of wagons

### Comments

As indicated in the title, Appendix 9 lists the conditions for the wagon transfer amongst RUs.

It is important, however, to consider the content of Article 12: *“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.”*

In its current version, Article 12 does not limit the inspections according to Appendix 9 solely to the transfer inspection between RUs; rather, it also prescribes inspections upon every acceptance of a wagon by an RU.

Item 2.2: *“To identify any irregularities, the qualified staff shall walk the full length of the train on both sides and carefully examine each wagon.”*

Item 2.3: *“This staff must have the following minimum qualifications: ...*

- *Ability to appraise technical damage and irregularities occurring on wagons and loads and their impact on operations,*
- *Knowledge of the UIC Loading Guidelines”*

Article 2.3 lists the minimum qualifications of the inspecting staff.

It should be noted that the term “wagon master” has vanished from the GCU since 1 January 2016. The wagon inspection and the safety responsibility for the railway operations are situated primarily with the RU. For this purpose, the RUs in Germany and France continue to make use of wagon masters, who complete training at an educational institute that is recognised by the EPSF or EBA.

Considered in general: [It - the technical transfer inspection] *“shall involve assessing the operating safety and railworthiness of wagons, identifying any irregularities listed in Annex 1 (Catalogue of irregularities) and taking appropriate steps”* (Appendix 9, Part 1, item 2.2).

Appendix 9 is to be viewed in connection with Article 11 of the GCU (Refusal of wagons), which states: *“An RU may refuse wagons if [...] the condition of the wagon does not meet technical and maintenance regulations or conform to current loading guidelines.”*

This supports the following conclusion:

- If the RU accepts the wagon without reservation, the wagon is considered to be once again in good condition, its goods to be properly loaded and its carriage to be safe.
- In the event of damage due to the goods, the sender or its shipper would be liable only for the hidden fault because any visible fault of the goods or the loading with respect to the loading guidelines would have to have been ascertained during the technical transfer inspection by the inspecting staff.

On this basis, special attention is required in the application of Article 13.2, according to which the RU is relieved of its liability if the exceeding of the period is attributable to a *“defect on the wagon or its load”*.

Article 22.2 depicts the logical consequence of the application of Appendix 9 because it

- establishes relief from liability on the part of the RU if it can prove the following situation: “insufficient maintenance by the keeper when the RU can prove that the wagon was properly used and inspected”;
- clearly differentiates between the obvious and hidden defect since it concludes as follows: “The keeper cannot cite the existence of a hidden defect on his wagon as proof that there was no fault of his part.”

## ***Appendix 10 - Corrective and Preventive maintenance***

### **Comments**

The objective of Appendix 10 is to enable optimal use of the freight wagon and to achieve the highest possible availability. The minimum possible lost time due to repair measures is a central criterion for customers with regard to the attractiveness of railway freight traffic in general.

Modified or newly added pages generally bear the date of 1 January 2019 in the footer; changes or additions are marked by a vertical blue dash.

In other words, it is recommended to consult the section “Amendment history” on the GCU website to view these changes. <http://www.gcubureau.org/amendment-history>

One differentiates between two types of maintenance on freight wagons: preventive maintenance and corrective maintenance. Preventive maintenance serves, in accordance with Article 7 GCU and the European regulations, to maintain the operational condition of the wagon over its entire lifespan. This maintenance takes place under the responsibility of the ECM within the context of a body of maintenance regulations.

Corrective maintenance serves to restore the operational condition after an unplanned event. The purpose of the corrective maintenance is that the freight wagons do not exhibit any defects after leaving a workshop that could result in another removal of the wagon from service.

Further practical information concerning the mentioned maintenance types is provided within the framework of the practical GCU trainings at a maintenance workshop.

## ***Appendix 11 - Inscriptions and signs on wagons***

### **Comments**

Although the process of digitalisation is also gradually progressing in railway operations, and data are available via databases, the qualified marking of wagons is still essential today for smooth and safe railway operations. Markings on freight wagon still serve to ensure practical and reliable identification of the wagons by the operators. The ECM is responsible for these markings.

Previously, the marking was regulated by UIC, which united all national railways (RUs and infrastructure managers), which in turn exercised oversight over the rail traffic on behalf of the respective national ministries.

Currently, marking obligations arise from the TSI WAG in connection with the standard EN 15877-1 from August 2012.

Nevertheless, some markings from previous UIC leaflets (e.g. 438.2) are added in order to simplify the management and replacement of the wagons insofar as they correspond to the pertinent rule.

This option of additional markings is given in Article 3§1 d of the UR CUV, according to which “*other signs and inscriptions agreed in the contract of use*” may be placed on the wagon.

The purpose of this Appendix 11 is to list all markings that can be placed on the wagon.

## **Appendix 12 - Catalogue of damage to wagons**

### **Comments**

This catalogue of damage is a helpful addition to Chapter V; in particular, it provides more concrete specification of Article 22.4 GCU.

It was authored jointly by keepers and RUs as a kind of practical guide and makes it easier to ascertain whether the keeper or the RU must bear responsibility for the damage.

It is a dependable arrangement and simplifies the relationships between RUs and keepers in processing damage to wagons.

It serves as a positive example of agreement between the RUs and keepers arrived at in a spirit of partnership. In this way, it acts as a model for other similar solutions, wherever these are possible.

## **Appendix 13 - List of repairs which may be carried out by the RU on the place of immobilization of the wagon or in the nearby vicinity**

### **Comments**

In addition to Article 19, this appendix is intended for restoration of the wagons to running order “*on the spot where the wagon has been immobilized or in the very nearby vicinity by the operating staff, inspectors, mobile units, etc.*”.

This new procedure is at once flexible, clear and efficient.

The procedure is flexible because its application is not binding for the RU and cannot be demanded by the keeper.

The procedure is clear because the appendix clearly lists the work that may be performed “without the prior agreement of the keeper”.

The procedure is efficient but also lives up to the obligations of the ECM.

**Appendix 14 - Additional conditions for the use of wagons on ferries and in exchange with railways operating on standard or broad gauge lines**

**Comments**

This new appendix entered into force on 1 January 2013.

Originally, these conditions were contained in a UIC leaflet, but for better readability and easier availability, they were adopted in the GCU by the contract parties to the GCU.

**Appendix 15 - Wagon Performance Message (WPM)**

**Comments**

The obligation contained in Article 15, § 3 ATMF is taken into account in the GCU as follows:

- in Article 18 and in its supplementing Appendix 4 with regard to incidents/accidents;
- in Article 15 with regard to the use.

However, Article 15 does not define any modalities for execution and therefore requires a more concrete specification, which is provided by the new Appendix 15.

To efficiently organise the exchange of information between more than 600 contract parties to the GCU, harmonised conditions take precedence over individual solutions.

To implement the objectives desired by legislators as well as to enable and optimise the required exchange of information, a standard must be developed for the exchange of information as called for in the GCU.

It will then be possible for the RUs to implement automation solutions and for the keepers to define efficient processing procedures and integrate data from various sources without manual processing.

This standard further enables the digitalisation of the information exchange, which opens up potential for greater productivity and thereby competitiveness for railway operations. The advantages of the new Appendix 15 are therefore clarity, precision and simplification.

### **Appendix 16 - Wagon Vehicle Data**

**Appendix 16 describes in more detail the information-related requirements laid out in article 7.4.**

**In accordance with pages 2-5, the keeper must provide the administrative and technical vehicle data for all wagons registered in the GCU database as soon as possible prior to the use of a wagon. The RU has access to this data at all times and may use it for its own operational purposes only.**

**The GCC Bureau provides a communication platform (GCU Message Broker) to the signatories for transmission of technical vehicle data.**

**Additional information - for example, a 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.**

### **Comments**

To implement the objectives desired by legislators as well as to enable and optimise the required exchange of information, a standard had to be developed for the exchange of information as called for in the GCU.

It remains possible for the keepers to implement automation solutions and for the RUs to define efficient processing procedures and integrate data from various sources without manual processing.

This standard further enables the digitalisation of the information exchange, which opens up potential for greater productivity and thereby competitiveness for railway operations.

The requirements on the exchange of information contained in the new Appendix 16 can be implemented by both the RUs and the keepers at short notice and at reasonable financial expense.

Both the RU and the keeper can in this way fulfil their statutory and contractual obligations.