



# **General Contract for the Use of wagons (GCU) (edition 1 July 2006) in the future wagon environment**

UIP

# General Contract for the Use of Wagons (GCU)

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# **General Contract for the Use of Wagons (GCU)**

**From UIC Leaflet 433 and registration contracts to the general contract for the use of wagons (GCU)**

**What changes for P wagon owners ?**

# **General Contract for the Use of Wagons (GCU)**

## **Explanation of the choice of the process**

**There are various approaches to this problem :**

**From the essentially legal angle**

**From the essentially wagon and rail operation safety angle**

**From the practical and operational angle**

# **General Contract for the Use of Wagons (GCU)**

## **Choice of the method of presentation**

**The choice was to compare each phase of the life of a P wagon in the context of the future situation with each phase of the life of the wagon in the present situation.**

**In this way, for each scenario discussed, what will change will be indicated, together with the most important stakes while giving the UIP position, if any.**

**This work, prepared by the UIP, is intended to be a teaching aid for keepers, allowing an explanation which is both practical and theoretical of the new rules of the game.**

# General Contract for the Use of Wagons (GCU)

## The former context

### The rules of international public law

#### THE 1980 COTIF

#### AGREEMENT RELATING TO INTERNATIONAL RAIL TRANSPORT

- **The CIM** (Appendix B) : is rarely used for the circulation of wagons which are by nature means of transport and not goods on wheels
- **The RIP** (Appendix CIM) : states the principle of the obligation of registration with a railway to enable private wagons to be admitted to international service
- **The RID** (Appendix CIM) : concerns the rules to be applied with regard to the transport of dangerous goods

# General Contract for the Use of Wagons (GCU)

## The former context

### The rules of international private law

- **RIV 2000** : was an agreement between the RUs members of the RIV and organised the handover and use of « railway company » wagons between RUs
- **UIC Leaflet 433 (O)** :
  - was an agreement of an (o)bligatory nature between RUs / UIC and constituted the **General Uniform Conditions (CGU)** for putting into service and operating P wagons
  - constituted the basis for the registration contracts and relations between owners of P wagons and the « registering » RU / UIC
- **UIC Leaflet 992 (O)**:
  - was an agreement of an (o)bligatory nature between RUs / UIC and governed the Division between RUs / UIC of the damage caused by P wagons

# **General Contract for the Use of Wagons (GCU)**

## **The new environment**

### **Warning**

**To date, certain instruments (TSI ...) and certain organisations concerned are not yet : either defined or operational. This is why certain items cannot be considered final.**

**However, pending the definitive texts, certain transitory provisions to which the UIP has made a contribution have been foreseen.**

**Finally, it is indispensable to bear in mind that events and disputes occurring before the date of entry into force of the new legal framework are subject to the (former) rules of law applicable at the time of the events.**

# General Contract for the Use of Wagons (GCU)

## The new environment

## The rules of international public law (OTIF)

### **The COTIF**

### **AGREEMENT RELATING TO INTERNATIONAL RAIL TRANSPORT**

Is managed by OTIF (Intergovernmental Organisation for International Transport)

OTIF comprises 42 member states, including all the states of Europe, and is applied on some 240 000 km of track

### **THE MODERNISED COTIF**

**The Vilnius protocol of 3 June 1999**

**Which comes into force on 1 July 2006**

# General Contract for the Use of Wagons (GCU)

## The rules of international public law (OTIF)

### MAIN WAGON APPENDICES :

- **The CIM** : (Appendix B of the 1999 COTIF) provides that the wagon may be put into transport as goods on its own wheels
- **The RID** : (Appendix C) becomes an international agreement in its own right and no longer an annex of the CIM
- **The CUV** : (Appendix D) « apply to contracts concerning the use of rail vehicles as means of transport to effect transport according to the CIM general rules »



Comments CIM



Comments CUV

# General Contract for the Use of Wagons (GCU)

## The international public law rules (OTIF)

### MAIN WAGON APPENDICES:

**APTU** (Appendix F) : « General rules concerning the validation of technical standards and the adoption of technical prescriptions applicable to rolling stock for use in international traffic »

**ATMF** : (Appendix G) : « General rules concerning the technical admission of rolling stock used in international traffic »

It should be noted that these two agreements are still not applicable and are at present the subject of draft adjustments under negotiation to which the UIP makes its contribution.

# General Contract for the Use of Wagons (GCU)

## The new environment

### The rules of international public law (EC)

#### EC, 2<sup>nd</sup> RAIL PACKAGE :

Interoperability directive (2001.16 as amended by 2004.50)

Safety directive (2004.49)



Directive 2004-49

The European Railway Agency (EC regulation 881.2004)



ERA

# General Contract for the Use of Wagons (GCU)

## The new environment

### The rules of international private law

These are bi- or multilateral agreements concluded for the use of wagons as means of transport

Explanation : The CUV (contract for the use of vehicles) being fundamentally a legal device allowing a very wide contractual freedom between the parties to the contract for the use of wagons (see explanation and examples on the following pages)

The GCU (general contract for the use of wagons) is a multilateral agreement entered into between the UIP, the UIC and ERFA.

To date, there is no other known bi- or multilateral agreement

→ *In comparison with Leaflet 433, the GCU does not deal with the conditions to be fulfilled prior to registration or the registration of wagons*

# General Contract for the Use of Wagons (GCU)

## Examples of RU law mechanism - CUV

CUV – Article 7: Liability for damage caused by a vehicle:

- para. 1 indicates a principle for liability
- para. 2 provides that « *the parties to the contract may agree provisions contracting out of para.1* »

### **CUV – Article 9: Liability for staff and other persons**

Para. 2 provides that « failing agreement to the contrary between the parties to the contract, the managers of the infrastructure on which rail transport enterprises use the vehicle as a means of transport are considered as persons to whose services the transport enterprise has recourse. »

# General Contract for the Use of Wagons (GCU)

## Examples of RU law mechanism (ctd)

### Comments:

The UIC would like an exception to the principle of Article 9 of the RU CUV, that is, that the infrastructure managers are not considered as persons to whose services the RU have recourse.

The UIP has firmly opposed this and requests the application of the RU CUV.

Result: Taking into account the fact that the GCU does not provide an exception to this principle, the IM are accordingly considered as persons to whom the RU have recourse.

# **General Contract for the Use of Wagons (GCU)**

## **Considerations of a general nature**

**The wagons (previously « railway company » wagons and previously « P wagons ») will henceforth be the subject of the same contract for use : the GCU**

**The GCU therefore allow :**

- Equality of treatment between wagons
- An end to the risks of discrimination between wagons

# General Contract for the Use of Wagons (GCU)

## Considerations of a general nature

**The provisions of the GCU do not completely satisfy the UIP since each partner has had to make concessions to arrive at a finalised text.**

**But this compromise has allowed agreement to be reached on a text which will evolve over the years in the framework of joint working groups to adapt itself and face future developments.**

# General Contract for the Use of Wagons (GCU)

## Date of application of the GCU

**The date of application is 1 July 2006**

**However, for logistics and organisational reasons, it is not obvious that all the actors will be operational to be fitted into this new environment.**

**→A transitory period is scheduled**

**→The UIP wanted a concerted European management of this transition period**

# **General Contract for the Use of Wagons (GCU)**

## **Global presentation of the GCU**

**The GCU comprises :**

**1 preamble**

**8 chapters**

**36 articles**

**12 appendices**

**+ an application manual to allow unified application**

# General Contract for the Use of Wagons (GCU)

## COMMENTS ON THE MANUAL FOR APPLICATION OF THE GCU

### This application manual:

- Has no contractual value since it is not instrumentalised in the GCU
- Was created by the UIC to allow harmonised application of the GCU by the RU

For the UIP, which was not invited to participate in the drafting, its position is the following:

- The manual does not create law, it is a subsequent text which cannot be contrary to the GCU
- In the event of doubt or contestation, the problem has to be pointed out to the UIP, which will forward the problem to the GCU bureau
- The manual must be completed or amended in the light of experience feedback, daily use and cases submitted for analysis by UIP experts

# General Contract for the Use of Wagons (GCU)

- **The preamble** : Increase the efficiency and competitiveness of rail freight.
- **The purpose of the GCU** : Determines the conditions of the transfer of wagons for use as means of transport by the RUs in national and international traffic in the scope of application of the COTIF.

It should be noted that the GCU, although legally an international agreement, also applies to domestic or national transport (see Article 1 of the GCU).

# General Contract for the Use of Wagons (GCU)

- Chapters :

- I Object, scope of application, termination, amendments to the contract**
- II Obligations and rights of the keeper**
- III Obligations and right of the RUs**
- IV Ascertainment and handling of damage to wagons in the custody of an RU**

# General Contract for the Use of Wagons (GCU)

- Chapters (ctd) :

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

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

**VII Liability for staff and other persons**

**VIII Other provisions**

# General Contract for the Use of Wagons (GCU)

- **The appendices :**
  1. **List of signatory keepers and railway undertakings**
  2. **Definitions**
  3. **Wagon note**
  4. **Wagon damage report**
  5. **Method for calculating the residual value of a wagon**
  6. **Compensation for loss of use**
  7. **Spare parts**

# General Contract for the Use of Wagons (GCU)

- **The appendices (ctd) :**
  - 8. Internal regulation for the application and further development of the GCU**
  - 9. Conditions for the technical inspection for wagon handover (based on Annex XII to the present RIV)**
  - 10. Corrective and preventive maintenance**
  - 11. Inscriptions and signs on the wagons**
  - 12. Catalogue of damage to wagons**

# **General Contract for the Use of Wagons (GCU)**

## **Global presentation of the GCU**

**The provisions of the GCU are derived from :**

**(a) Former texts :**

**UIC Leaflet 433**

**RIV 2000**

**COTIF (CUV and CIM)**

**(b) New provisions negotiated between UIC / UIP / ERFA**

# General Contract for the Use of Wagons (GCU)

## New wagon environment

### New terms used :

In order to understand the following explanations, it is indispensable to get to know the main new terms covering new concepts:

The term **owner** disappears and is replaced by **keeper** :

*(definition in Appendix 2 of the GCU) **keeper** : the person who exploits a wagon economically in a permanent manner as a mean of transport.*

*The keeper is the entity whose company name is mentioned as such on the wagon itself and/or in the official register. In this General Contract for Use, the term « keeper » refers to either to the keeper himself or another party authorised by him, if applicable.*

→ However, this definition must not lead to confusion of the individual roles in the life of the wagon.

The keeper is the entity which is a party to the GCU and has the responsibility for the maintenance of the wagons.

The customer is the entity which uses the wagon in the framework of the contract for transport or use.

# General Contract for the Use of Wagons (GCU)

## New wagon environment

### **New terms used :**

The term **registering RU** disappears. It is replaced by **User RU** (Appendix 2 GCU): any RU in whose trains or on whose installation the wagon is situated

Two new terms appear:



Annex 3 CUU

### **Wagon note:**

*Document for carriage and deployment accompanying a wagon making an empty run*

### **Previous user:**

*An RU that used a wagon of which it was not the keeper, having subsequently handed it over to another RU for use.*

# General Contract for the Use of Wagons (GCU)

## Explanations on the wagon consignment note

The wagon consignment note being a new transport document, it is accordingly necessary to refer to an explanatory document called « wagon consignment note guide » to which the UIP has been invited to make its contribution.

**The wagon consignment note guide is available in three languages (French, German and English) on the CIT website ([www.cit-rail.org](http://www.cit-rail.org)).**

**It should be noted that there is also a CIM consignment note guide (GLV-CIM) and a combined transport CIM consignment note guide (GLV-TC).**

# General Contract for the Use of Wagons (GCU)

Explanations on the wagon consignment note (ctd)

Extracts from CIT INFO no. 5 / Nov. 2005 ([www.cit-rail.org](http://www.cit-rail.org))

***« In the context of the liberalisation of the railway industry, wagons, whether they are loaded or empty, may be consigned either as goods or means of transport. These two possibilities are to be shown on the consignment note:***

***With a few exceptions, the boxes on the wagon consignment note are to be filled out in the same way as those on the traffic consignment note. »***

# General Contract for the Use of Wagons (GCU)

## Reminder of the Preamble

States the principle of the intention of the UIC / UIP / ERFA to work together.

Poses the principle of unrestricted signature of the GCU.

Application of UIC Leaflet 433 (O) was obligatory, which allowed a certain visibility for the owners and a certain legal security for P wagons.

The UIP accordingly maintains its wish for GCU (General Conditions of Use) of a mandatory nature for the contracts for the use of wagons to maintain the same visibility and the same legal security, both factors which are indispensable to guarantee the long-term investment – the wagon.

# General Contract for the Use of Wagons (GCU)

## Chapter I

### « Object, scope of application, termination, amendment of the contract » - Articles 1 to 4

It must be remembered that :



Wagon Status in  
2006



Optin in

#### The GCU only apply :

between keepers and RUs having signed the GCU  
for wagons used as means of transport

#### **The RUs and keepers not having signed the GCU :**

May enter into contracts for use on the basis of the CUV between  
themselves

Can they use the «wagon consignment note » (Appendix 3 of the  
GCU) created by the CIT for GCU signatories?

→ **Keepers are accordingly recommended to check that the RU  
with which they are contracting is in fact a signatory of the  
GCU**

# General Contract for the Use of Wagons (GCU)

## Chapter I : (ctd)

Also to be borne in mind from Chapter I :

**The rules and provisions of the GCU concerning the use of wagons must continue, as in the past, to be negotiated with equal representation between:**

**The GCU partners, in order to have a suitable tool at their disposal permanently.**

**The GCU bureau is responsible for making the GCU and its appendices come alive and develop.**

**(see Appendix 8 : Internal regulation for the application and further development of the GCU)**

# General Contract for the Use of Wagons (GCU)

## Appendix 8

**Without entering into the details of this Appendix 8, it is necessary to stress four important points:**

### The GCU bodies:

- **1 decision-making body: the Joint Board, composed of 12 members (5 UIC, 5 UIP and 2 ERFA)**
- **1 administrative body: the bureau, with 1 trustee (Pierre REINHARDT), assisted by a secretariat**
- **1 consultative body in the form of a group of permanent UIC, UIP and ERFA experts**
- **The head office is located in Brussels**

# General Contract for the Use of Wagons (GCU)

## Appendix 8 (ctd)

### The composition of the signatories: 3 groups

- Group 1: Signatories with RU status with the indication of the number of tonnes per kilometre
- Group 2: Signatories not having RU status
- Group 3: Signatories with RU status with the indication of the numbers of wagons likely to be used by other signatories

# General Contract for the Use of Wagons (GCU)

## The growing role of the UIP in the negotiation and evolution of the GCU provisions

From the consultative role – to the decision-making role.

**In the context of the former wagon environment, the UIP was only consulted:**

➤ **« *The operating conditions are decided and modified by the UIC after discussion with the UIP* » (preamble to UIC Leaflet 433)**

**In the context of the new wagon environment, the UIP's role is reinforced:**

➤ **« *The Joint Committee's decisions shall be taken unanimously* » (Appendix 8 of the GCU): the UIP therefore becomes a full-time contractual partner.**

# General Contract for the Use of Wagons (GCU)

## The UIP's new responsibility in this new wagon environment

- **The UIP's vocation is to represent all the signatories and keepers not having RU status**
- **The UIP is a force for proposals in all the GCU bodies**
- **It is in the interests of all the non-RU keepers and signatories to make their contribution to a balanced evolution of the GCU**
- **The UIP invites the non-RU keepers who are not yet members of the UIP to reinforce the UIP's weight and to make their contribution to future negotiations.**

# General Contract for the Use of Wagons (GCU)

## Chapter II

### « Obligations and rights of the wagon keeper »

*These are three very important articles which merit being developed at length since they announce fundamental changes*

**Article 7 :**        **Technical admission and maintenance of wagons**

**Article 8 :**        **Inscriptions and signs on the wagons.  
Identification of wagons.**

**Article 9 :**        **Keeper's right of deployment**

# General Contract for the Use of Wagons (GCU)

## Chapter II (ctd)

### Article 7

## Technical admission and maintenance of wagons

The keeper must :

Ensure that his wagons are **technically admitted**.

Produce proof to the RUs which so request that the **maintenance** of its wagons **complies with current regulations**.

**Permit the RUs to conduct any necessary inspection operations.**

# General Contract for the Use of Wagons (GCU)

## Chapter II – Article 7 (ctd)

- 01 Technical admission
- 02 Maintenance
- 03 Appendix 9
- 04 Appendix 10

### Technical Admission :

**The technical admission must comply with European regulations and remain so.**

**Historically, in UIC Leaflet 433**

Wagons must be approved by an accredited organisation whose decisions are applicable to the RUs.

Registration by an RU was then proceeded with (registration contract).



Present situation in  
France

# **General Contract for the Use of Wagons (GCU)**

## **Chapter II – Article 7 (ctd)**

### **Technical admission (ctd) :**

**In the new wagon status, the regulations :**

**The COTIF – APTU / ATMF resume the conditions for technical admission and determine the conditions of admission to operations.**

**Directive EC 2001/16, as amended by EC 2004/50, determines the conditions for putting a wagon into service, the « ROLLING STOCK – FREIGHT WAGONS» TSI gives details.**

**Directive EC 2004/49 on security does not exclude the liability of the wagon operator, of the supplier of services and of the manufacturer of the wagons**

**THE EC DIRECTIVE : THE PROCESS OF PUTTING WAGONS INTO SERVICE**

**The wagon constitutes a sub-system composed of interoperability components (see TSI / RST)**

# General Contract for the Use of Wagons (GCU)

## Chapter II – Article 7 (ctd)

### Technical admission (ctd) :

An **awarding entity** (or its representative) requests a **notified body** to check and certify that the wagon is in compliance with :

The provisions of the directive

The provisions of the other regulations applicable

And that it may be put into service

The **notified body** checks :

The overall design

The construction (monitoring)

The tests requested

The authorisation **to put a wagon into service** is given by the **national authority**, after the **notified body**, which is responsible for the « EC » verification declaration, has established a **certificate of conformity** which it delivers to the **awarding entity**.

# General Contract for the Use of Wagons (GCU)

## Chapter II – Article 7 (ctd)

### Technical admission (ctd) :

The **awarding entity** draws up the « **EC** » **verification declaration** which it forwards to the **parent authority of the member State** in which the sub-system is operated ;

This is accompanied by a **technical file** including in particular :

The drawings

The operation and maintenance notices

The list of interoperability components and copy of the « **EC** » declarations of conformity or aptitude for use, together with the associated documents

The certificate of conformity drawn up by the notified body

# General Contract for the Use of Wagons (GCU)

## Chapter II – Article 7 (ctd)

### Technical admission (ctd) :

The member State authorises the putting into service and makes sure that an alphanumeric code has been attributed to be put on each vehicle to allow its identification

the wagon has been registered in the **National Vehicle Register**, kept and updated by an independent organisation.

### **The National Vehicle Register**

This contains at least the following information :

References of the « EC » verification declaration and the entity having delivered it

References to the **Rolling Stock Register** referred to in Article 24

Identification of the owner of the vehicle or the entity renting it

Any restrictions concerning use of the vehicle

Safety-relevant data applicable to the vehicle's maintenance programme

# General Contract for the Use of Wagons (GCU)

## Chapter II – Article 7 (ctd)

### Technical admission (ctd) :

#### **The Rolling Stock Register**

The States ensure that the register is published and updated every year

The register presents the main characteristics of the wagon and their concordance with the prescriptions of the TSI.

For this purpose, the TSI specify the information which must be included.

A copy of the registers is transmitted to the member States concerned and to the

#### **Agency**

They may be consulted in particular by RUs and Infrastructure Managers

# General Contract for the Use of Wagons (GCU)

## Chapter II – Article 7 (ctd)

### Maintenance :

#### Historically, the question was dealt with by UIC Leaflet 433, Article 3.3

The P wagons and their accessories must be maintained in perfect condition by the owner.

The latter must effect the maintenance work, and in particular :

The periodical overhauls

Damage repairs

Current maintenance

The cleaning necessitated by maintenance work

The work must be performed in **accredited workshops**, in compliance with **current specifications**

# General Contract for the Use of Wagons (GCU)

## Chapter II – Article 7 (ctd)

### Maintenance (ctd) :

**The Registering RU** reserves the right to specify, in the registration contract, the conditions in which it will ensure respect of the rules fixed

The owner is responsible for the respect of the dates on which the maintenance operations must be effected

**In 2006, maintenance will be effected according to current regulations**

**These regulations are specified in the Rolling Stock – freight wagon TSI,** but concern rolling stock put into service after publication of the TSI

Every new wagon must have a maintenance file as part of the wagon file.

# General Contract for the Use of Wagons (GCU)

## Chapter II – Article 7 (ctd)

### Maintenance (ctd) :

This file should be structured by a standard.

**For existing wagons**, it must be possible for the existing rules before publication of the TSI to continue to apply to the extent that an entity checks their relevance and their updating, in compliance with the new provisions.

The present documents should also be able to serve as a basis for the drafting of new documents for the maintenance file, in the absence of standards.

**The GCU also deals with the subject in Appendices 9 and 10.**

# General Contract for the Use of Wagons (GCU)

## Chapter II – Article 7 (ctd)

### Maintenance (ctd) :

#### 4.8.2. MAINTENANCE : Maintenance file

Maintenance is carried out in accordance with the provisions of the TSI  
It must comply with the specific maintenance file for the wagon

A **SINGLE ENTITY** will assume the responsibility for the upkeep and management of the maintenance file, its name will appear in the Rolling Stock Register.

The maintenance file, validated by the notified body (6.2.2.3) comprises :

#### The Maintenance Design Justification File :

*The maintenance design justification file describes the methods used to design the maintenance, describes the tests, investigations and calculations carried out.*

*It gives the relevant data used for this purpose and justifies their origin.*

# General Contract for the Use of Wagons (GCU)

## Chapter II – Article 7 (ctd)

### Maintenance (ctd) :

The **Maintenance Design Justification File** shall contain :

Description of the organisation in charge of the design of the maintenance

Precedents, principles and methods used to design the maintenance of the vehicle

Utilisation profile (limits of the normal use of the vehicle, km / month, climatic limits, authorised types of loads ...) taken into account for the design of the maintenance

Tests, investigations and calculations carried out

Relevant data used to design the maintenance and origin of these data (return of experience, tests ...)

Responsibility and traceability of the design process (name, skills and position of the author and approver of each document).

# General Contract for the Use of Wagons (GCU)

## Chapter II – Article 7 (ctd)

### Maintenance (ctd) :

#### **The maintenance documentation**

All the documents necessary to effect the management and the maintenance of the vehicle.

Organic / functional description (breakdown of the structure)

List of parts (spare parts)

Safety / interoperability-relevant limits (this document gives the measurable limits)

Legal obligations (some components such a brake reservoirs, dangerous goods tanks ...)

Maintenance plan

List, schedule and criteria of preventive maintenance operations

# General Contract for the Use of Wagons (GCU)

## Chapter II – Article 7 (ctd)

### Maintenance (ctd) :

Organic / functional description (breakdown of the structure)

List and criteria of conditional preventive maintenance operations

List of corrective maintenance operations

Maintenance operations governed by specific conditions of use

The level of the maintenance operations shall be described as well as the maintenance tasks to be carried out by the RU (servicing, inspections, brake tests, ...)

Note :Some maintenance operations like overhauls (level 4) and refurbishment, transformation or very heavy repairs (level 5) may not be defined at the moment when the vehicle is put into service. In this case, the responsibility and the procedures to define such maintenance operations shall be described.

# General Contract for the Use of Wagons (GCU)

## Chapter II – Article 7 (ctd)

### Maintenance (ctd) :

#### Maintenance manuals and leaflets

For each maintenance operation listed in the maintenance plan, the manual explains the list of the tasks to be carried out.

Some maintenance tasks may be common to different operations or common to different vehicles. These tasks are explained in specific maintenance leaflets.

The manuals and leaflets contain information specified in the TSI :  
Traceability and records.

Troubleshooting (fault diagnosis) manual, including functional and schematic diagrams of systems.

# General Contract for the Use of Wagons (GCU)

## Chapter II – Article 7 (ctd)

### Maintenance (ctd) :

#### Management of the maintenance file

In the case where RUs carry out maintenance on the rolling stock they use, the RUs shall ensure that processes are in place to manage the maintenance and operational integrity of the rolling stock, including :

#### Information in the Rolling Stock Register

Asset management, including records of all maintenance undertaken and due on the rolling stock

Software where relevant

Procedures for the receipt and processing of specific information related to the operational integrity of rolling stock, arising as a result of any circumstance including, but not limited to, operational or maintenance incidents which have a potential to affect the safety integrity of rolling stock.

# General Contract for the Use of Wagons (GCU)

## Chapter II – Article 7 (ctd)

### Maintenance (ctd) :

Procedures for the identification, generation and dissemination of specific information related to the operational integrity of rolling stock, arising as a result of any circumstance including, but not limited to, operational or maintenance incidents, with a potential to affect the safety integrity of rolling stock, and which are identified during any maintenance activity.

Operational duty profiles of rolling stock (including, but not limited to, tk and total kilometres).

Processes for protection and validation of such systems.

In accordance with the provisions of Directive 2004/49, Appendix III, the safety management system of the **RUs** must demonstrate that suitable maintenance arrangements are in place, thereby ensuring on-going compliance with the essential requirements and the requirements of this TSI, including the requirements of the maintenance file.

# General Contract for the Use of Wagons (GCU)

## Chapter II – Article 7 (ctd)

### Maintenance (ctd) :

In the case of **entities** other than the RU using the rolling stock being responsible for the maintenance of the rolling stock used, the RU using the rolling stock must ascertain that all relevant maintenance processes are in place and are actually applied. This must also be suitably demonstrated within the safety management system of the RU.

The **entity** responsible for the maintenance of the wagon shall ensure that reliable information about maintenance processes and data specified to be made available in the TSIs are available for the operating RU, and demonstrate on request of the operating RU that these processes ensure compliance with the essential requirements of the directive.

# **General Contract for the Use of Wagons (GCU)**

## **Chapter II – Article 7 (ctd)**

### **Appendix 9 of the GCU:**

#### **CONDITIONS FOR TECHNICAL INSPECTION FOR WAGON HANDOVER**

This appendix corresponds to Annex XII of the RIV 2000.

It regulates and described the technical condition which it is compulsory for wagons to respect at technical inspections on handover.

In addition, it describes the operating method for quality assurance to be applied to increase the quality of this inspection.

This inspection is effected by visitors having received appropriate training.

# **General Contract for the Use of Wagons (GCU)**

## **Chapter II – Article 7 (ctd)**

### **Appendix 9 of the GCU (ctd) :**

**A catalogue of technical faults, Appendix 1, specifies :**

**The designation of the system to be checked**

**The code**

**The defects with the criteria and signs allowing them to be detected, if any**

**Follow-up action**

**The class of the defects**

# General Contract for the Use of Wagons (GCU)

## Chapter II – Article 7 (ctd)

### Appendix 10 of the GCU

#### **CORRECTIVE AND PREVENTIVE MAINTENANCE**

This document, prepared by the UIC RIV Group, should be the natural complement to Appendix XII of the RIV.

Appendix 10 recapitulates, for the benefit of any person working in a workshop, all the clauses relating to minimum conditions which any component must have when the wagon leaves workshops.

Appendices 9 and 10 must be able to constitute one of the bases for the maintenance plan.

# General Contract for the Use of Wagons (GCU)

## Chapter II (ctd)

### Article 8 :

#### **Inscriptions and signs on the wagon. Identification of wagons.**

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

The home station or region, if applicable.

*Appendix 11 drafted by the UIC mainly includes the inscriptions in the present RIV. It has been noted that there would be a redundancy with the specific annex of the TSI – freight wagons, but this is at present incomplete and concerns wagons put into service when the TSI come into force.*

# General Contract for the Use of Wagons (GCU)

## Chapter II (ctd)

### Article 9 :

#### **The keeper's right of deployment**

- 9.1 The keeper has control over his wagons.
- 9.2 Except when justified for reasons of safety, only the keeper shall be authorised to issue instructions to RUs for the use of his wagons.
- 9.3 The keeper shall provide the RUs in good time with the instructions necessary for the carriage 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.

# General Contract for the Use of Wagons (GCU)

## Chapter II (ctd)

### Article 9 : (ctd)

#### Comments

Pour the « ex-railway company » wagons, this is a change which can be considered as fundamental since, traditionally:

- unless there was formal prohibition by the RU owner, the « railway company » wagons could be used by another RU in the framework of the return of the wagons to the RU owner,
- unless otherwise indicated by the RU owner, the empty wagon was systematically returned by the consignee RU to the RU owner.

# General Contract for the Use of Wagons (GCU)

## Chapter II (ctd)

### Article 9 : (ctd)

### Comments (ctd)

For the “ex-P” wagons : there is no change in the principle, since each wagon movement must be the subject of a consignment note.

However, Article 9.1 as drafted does not clearly allow the keeper to recover its wagon subject of wrongful use (for example, in the event of unpaid rental rates).

Except in the event of termination of the rental contract and information given to the RU using the wagon.

→ In the event of a problem encountered by a keeper, it is necessary to inform the UIP Secretariat in Brussels.

# General Contract for the Use of Wagons (GCU)

## Chapter III

### « Obligations and rights of the railway undertakings »

Article 10 : Acceptance of wagons

Article 11 : Refusal of wagons

Article 12 : Handling of wagons

Article 13 : Wagon periods for carriage and liability

Article 14 : Deployment of empty wagons

Article 15 : Information to be supplied to the keeper

Article 16 : Handover of a wagon to third parties

Article 17 : Acceptance of wagons from third party keepers.

# General Contract for the Use of Wagons (GCU)

## Chapter III (ctd)

### **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.

# General Contract for the Use of Wagons (GCU)

## Chapter III (ctd)

### Article 11 : Refusal of wagons

In principle, a wagon may only be refused for :

cases of force majeure

reasons connected with rail operational safety (condition of the wagon, and/or failure to respect the directives for maintenance and loading)

motives of public policy (decision by a public authority\*)

→ The UIP will make sure that equality of treatment between RU wagons and non-RU wagons is respected.

→ The cases considered as contentious will be systematically brought by the UIP before the GCU bureau

Comment : \* *With regard to the CE directives, the public authority is liable for wagons which it has authorised.*

# General Contract for the Use of Wagons (GCU)

## Chapter III (ctd)

### Article 12 : Handling of wagons

**« Each RU shall handle the wagons with care and due diligence and shall carry out the inspections laid down in Appendix 9\* »**

This article takes over the provisions of item 3.3.1.4 of the UIC leaflet. « During routing, wagons are inspected by the user RU in the same conditions as its own wagons ».

However, a nuance is to be pointed out :

in UIC Leaflet 433 it is stated that « The costs are not invoiced to the owner as such »

in the GCU it is stated that « The costs connected with these current inspections are not invoiced as such to the keeper »

→ the UIP Underframe Committee will follow the concrete application of this new formula closely

*\* (Appendix 9 : Conditions for the technical inspections for wagon handover, formerly Annex XII to the RIV.)*

# General Contract for the Use of Wagons (GCU)

## Chapter III (ctd)

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

This article poses the principle of compensation in the event of exceeding the time taken for the routing of wagons.

**In the present system** :The RIP (Article 14) fixes the principle and the rate of compensation, rate which has not been revalued since the application of the 1980 COTIF (RIP rate : less than €1 per day per wagon)

#### **In the future** :

- The rate will develop in concertation between UIC / UIP / ERFA,
- These rates are included in Appendix 6 and will be the same as for compensation for loss of use



Indemnity for loss  
of use

# General Contract for the Use of Wagons (GCU)

## Chapter III (suite)

### Article 14 : Deployment of empty wagons

This article :

is the application of the principle of the keeper's right of deployment.

stipulates that the wagon consignment note (Appendix 3) must be used.

provides that, as at present, in the absence of instructions, the empty wagon is sent back to its home station or region.

# General Contract for the Use of Wagons (GCU)

## Chapter III (ctd)

### Article 15 : Information to be supplied to the keeper

- 15.1 The user RU shall provide the **keeper** with all the information necessary for operation and maintenance of the wagons.
- 15.2 The RUs shall provide the **keepers** of the wagons they use with information from their operating and data-recording systems on the kilometric performance actually carried out by the wagons.
- *Certain items of information concern the keeper responsible for maintenance (for example, the rental company) and others the beneficiary (for example, the company renting the wagon)*
  - *The UIP will ensure that these time limits and methods of transmission allow maintenance management compatible with the keeper's obligations*

# General Contract for the Use of Wagons (GCU)

## Chapter III (ctd)

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

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

This is the application of the fundamental legal principle according to which :

Any person causing prejudice to anyone owes him compensation.

# General Contract for the Use of Wagons (GCU)

## Chapter III (ctd)

### **Article 17 : Acceptance of wagons from third party keepers**

This contract shall also apply to wagons belonging to keepers that are not signatories of the GCU but are accepted by a signatory RU.

In this case, the RU that has accepted the wagon is considered to be its keeper vis-à-vis the other parties to the contract.

→ This article does not concern the keepers having signed the GCU but only the RUs.

# **General Contract for the Use of Wagons (GCU)**

## **Chapter IV**

### **« Ascertainment and handling of damage to wagons in the custody of an RU**

**Article 18 : Ascertainment of damage**

**Article 19 : Handling of damage**

**Article 20 : Handling of lost wagons and removable accessories**

**Article 21 : Handling of bogies**

# General Contract for the Use of Wagons (GCU)

## Chapter IV

### Article 18 Ascertainment of damage

18.1 When damage to a wagon or the loss or damage of 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 documenting the nature of the damage or loss and, insofar as possible, the cause and the time it took place.

- ***See model, Appendix 4 of the GCU; this document is communicated in particular to the keeper.***

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 to attend when the damage or loss is recorded.

# General Contract for the Use of Wagons (GCU)

## Chapter IV

### Article 18 Ascertainment of damage

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

18.4 If the keeper does not accept the contents of the wagon damage report, he may ask for the nature, cause and extent of the 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.

# General Contract for the Use of Wagons (GCU)

## Chapter IV

### Article 18 Ascertainment of damage

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 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 be contacted

- probable duration of wagon unavailability (up to 6 working days ; more than 6 working days).

# General Contract for the Use of Wagons (GCU)

## Chapter IV

### Article 19 Handling of damage

19.1 The RU shall arrange for the wagon to be put back to running condition, in accordance with the provisions of Appendix 10. If the cost of repairs is more than €750 the agreement of the keeper must first be sought, except in the case of brake block replacement. If the keeper does not respond after two working days (not including Saturday), the repair work shall go ahead.

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.

# General Contract for the Use of Wagons (GCU)

## Chapter IV

### Article 19 Handling of damage

19.3 When the damage does not affect the wagon's suitability to run but makes its use difficult, the RU up to an amount of €750 may carry out work to make the wagon fit for use again without the **keeper's** agreement. By agreement with the keeper, the RU may be authorised to carry out additional work.

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

# General Contract for the Use of Wagons (GCU)

## Chapter IV

### Article 19 Handling of damage

19.5 In all cases where the RU carries out – or arranges to have carried out - the repair work in application of the **provisions of Appendix 10**, it shall do so with all due care making use of **approved workshops** and **approved materials**. The RU shall provide **information on the work carried out to the keeper**.

*Approved workshops : according to the arrangements to be put in place by ERA (cf : page 11))*

*Approved materials : according to the current system of reference, in particular EC-approved components ?*

# General Contract for the Use of Wagons (GCU)

## Chapter IV

### Article 19 Handling of damage

19.6 Management of spare parts is covered in Appendix 7

#### **Main provisions of Appendix 7 of the GCU**

#### **The keeper shall :**

Designate a logistics centre whose address is included in the GCU address book.

Ensure that the parts are delivered at the latest within 20 calendar days, otherwise the cost of track occupation will be invoiced to it

# **General Contract for the Use of Wagons (GCU)**

## **Chapter IV**

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

#### **WHEELSETS**

**The user RU sends the keeper a request, model HR**

**The keeper has the choice, when this is possible,  
between :**

**Repair**

**Exchange with a user RU wheelset**

**Rental, if the RU is liable, the first four months are free  
of charge**

# General Contract for the Use of Wagons (GCU)

## Chapter IV

### Article 19 Handling of damage

#### **« U » (unified) PARTS)**

The user RU assembles the replacement parts, certain may be returned on request

#### **Other non-unified spare parts**

The user RU sends a request according to model H

#### **Assembly of spare parts from the same keeper's vehicles**

With the keeper's agreement, so as not to delay routing

# General Contract for the Use of Wagons (GCU)

## Chapter IV

### 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 time during which the wagon is immobilised for a reason that cannot be attributed to the RU or as a result of damage.

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

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

For a lost wagon, compensation calculated in accordance with Appendix 5

For lost accessory, compensation amounting to the value of the part in question.

# General Contract for the Use of Wagons (GCU)

## Chapter IV

### Article 20

#### Handling of lost wagons and removable 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..

→ Globally **it can be considered** that there are few changes as compared to the existing situation.

### Article 21: Handling of bogies

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

# **General Contract for the Use of Wagons (GCU)**

## **Chapter V**

### **« Liability in the event of loss of and damage to a wagon »**

**Article 22 : Liability of the user railway undertaking**

**Article 23 : Amount of compensation**

**Article 24 : Liability of previous users**

**Article 25 : Obligation to mitigate losses**

**Article 26 : Settlement of damages**

# General Contract for the Use of Wagons (GCU)

## Chapter V (ctd)

### Article 22 : Liability of the user railway undertaking

#### Three fundamental comments :

A/ The principle of the presumption of the RU's liability is maintained :

« The user EF in whose keeping the wagon is situated is liable to the keeper ... to the extent that it does not prove that the damage was not caused by its fault »

B/ The change is that the RU whose liability is presumed is the user RU and no longer the registering RU.

This fundamental change results from the disappearance of the legal basis of the registration contracts (RIP) replaced by the new concept of the contract for use (RU CUV).

C/ In the event of off hire, the wagon is no longer considered in the custody of an RU (1.4 of the GCU). The insurance policies must be revised to reflect this.

# General Contract for the Use of Wagons (GCU)

## Chapter V: (ctd)

### Article 22 : (ctd)

#### Another change : the damage catalogue

Article 22.4 of the GCU « To facilitate the handling of damage and to 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 ». This is a concerted division between UIC / UIP / ERFA on who will bear the cost of the damage.

This out-of-court agreement should settle a large part of the cases of damage to wagons.

In the event of doubt as to the application of this catalogue, it is desirable to ask for the opinion of the UIP experts.

# General Contract for the Use of Wagons (GCU)

## Chapter V: (ctd)

### **Article 23 : Amount of compensation**

No change as compared to UIC Leaflet 433

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

Art. 23.2 of the GCU also provides for compensation for loss of use in accordance with Appendix 6.

# General Contract for the Use of Wagons (GCU)

## Chapter V: (ctd)

### **Article 24 : Liability of previous users**

This article, although not entirely satisfactory for the non-RU keeper, was the subject of long and stormy negotiations between the UIP and UIC / ERFA

The UIP in no event wanted to accept contractual clauses which would require keepers to search for who, in the transport chain, was liable for damage to the wagon.

A compromise was found on the following basis :

Art. 24.1 :In the context of the current chain for use, if an RU can exonerate itself from its liability, the presumption of liability goes back to the previous user EF.

Art. 24.2 :« Outside of the current chain of use, the 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 22.1 »

# General Contract for the Use of Wagons (GCU)

## Chapter V: (ctd)

### **Article 25 : Obligation to mitigate losses**

The obligation to mitigate losses is a common-sense rule which is included in the present RIV.

### **Article 26 : Settlement of damages**

The only new item in the event of the RUs liability :

If the repairing RU is different from the liable RU the keeper must first pay the repairing RU and request reimbursement from the liable RU.

- During the negotiations, the UIP had asked that the repairing RU request payment of the repair costs directly from the liable RU.
- The UIP will follow the application of this article very carefully and will, if necessary, make proposals for the adjustment of the GCU and/or the application guide.

# General Contract for the Use of Wagons (GCU)

## Chapter VI:

## Liability in the event of damage caused by a wagon

### Article 27 : Principle of liability

This article also was the subject of long and laborious negotiations between the UIP and UIC / ERFA

The principle of liability remains the same for the keeper in the new contractual framework.

On the other hand, the indemnity agreement which has proved its worth for some fifty years disappears.

# General Contract for the Use of Wagons (GCU)

## Article 27 (ctd)

As from now :

The keeper's contact is no longer the registering RU but the user RU.

The keeper's liability can only be brought into play in the event of a proven fault.

The burden of proof passes to the user RU.

To avoid expensive procedures for the search for liability for « minor » damage or « small items », the GCU recommends providing clauses for non-recourse against the keeper for damage less than €17 000 in the RUs' General Conditions of Sale

→ In practice and for obvious operational reasons, it will be impossible for the RUs to open a recourse file for cases lower than €20 000 or even more..

# General Contract for the Use of Wagons (GCU)

## Article 27 (ctd)

The user RU may propose co-insurance to the keeper, that is, to cover it with its own civil liability operations insurance

In the event of the absence of co-insurance, the keeper must justify its own civil liability insurance in compliance with national legislation.

The UIP « insurance » Working Group is permanently looking for the most operational and less costly solutions.

To succeed, the solution must include a number of constraints, such as in particular :

- Find insurance covering the wagon right across Europe.

- The amount of the insurance premium (civil liability) must remain within acceptable limits.

- Have a harmonised level of insurance cover accepted by the EC.

# General Contract for the Use of Wagons (GCU)

## Chapter VII:

### Liability for staff and other persons

#### **Article 28 :Principle of liability**

28.1 :« The contracting parties are 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 »

→ These are very exactly the provisions of Article 9.1 of the CUV.

#### With regard to the Infrastructure Manager

→ nothing has changed as compared to UIC Leaflet 433

After long negotiations, the UIC / ERFA agreed to withdraw its initial text according to which the Infrastructure Manager was not considered as a person whose services the RU used.

→ Back therefore to application of the COTIF : On the basis of Article 9.2 of the CUV, the Infrastructure Manager is considered as a person whose services are used by the RU.

# General Contract for the Use of Wagons (GCU)

## Chapter VIII: Other provisions

### **Article 29 : Loading guidelines**

« The RU shall ensure that shippers comply with the UIC loading guidelines in force ».

→ These provisions, now in force, concern the RU.

### **Article 30 : Invoicing and payments**

- «The euro shall be used as the sole monetary unit for all invoices and payments ».

# General Contract for the Use of Wagons (GCU)

## Chapter VIII (ctd)

### Article 31 : Obligation to pay damages

«When a signatory fails through his own fault to meet an obligation which is due under this contract, he shall compensate the affected signatory for the direct damages suffered »

→ Here again, this is the application of a fundamental legal principle according to which he who causes prejudice to someone is bound to repair it.

# General Contract for the Use of Wagons (GCU)

## Chapter VIII (ctd)

### **Article 32 : Competent jurisdiction**

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

→ This very exactly reflects the provisions of part of Article 11, paragraph 2 of the CUV .

# General Contract for the Use of Wagons (GCU)

## Chapter VIII (ctd)

### Article 33 : Limitations

33.1 : « The period of limitation for actions based on Chapter III shall be one year. The period of limitation for actions based on Chapters V and VI shall be three years »

33.2 : Point of departure for the limitation

→ The three-year term for limitation for actions based on Chapters V and VI and the point of departure of the limitation are those at present in force in UIC Leaflet 433, provided for by Article 12 of the CUV .

→ The one-year term of limitation for actions based on Chapter III is :  
formerly practised (Article 14 of the RIP) for requests for compensation on exceeding routing time.  
new for actions related to handing over a wagon to a third party.

# General Contract for the Use of Wagons (GCU)

## Chapter VIII (ctd)

### **Article 34 : Languages**

« This contract is drawn up in French, German and English, each of the three versions being equally binding ».

→ In the event of there being a difference in translation between two versions, arbitration will have to be made by the GCU bureau and the group of experts

### **Article 35 : Entry into force**

« This contract shall enter into force at the same time as the new COTIF, that is on 01/07/06 ».

# General Contract for the Use of Wagons (GCU)

Thank you.

- for your attention
- to the GCU negotiators
- to those who have worked on the preparation of this presentation

