

OTIF Ad Hoc Committee on Legal Affairs discusses question of CUI and Service Facilities

In November this year, the 5th session of the OTIF Ad Hoc Committee on Legal Affairs took place. Among other topics discussed was the question of whether the CUI Uniform Rules¹ also cover Service Facilities; which is crucial for CIT members as well.

Introduction

The CUI Uniform Rules (CUI) harmonise liability between railway undertakings (RU) and infrastructure managers (IM) in cases where infrastructure is used in international rail traffic and, in particular, enable the RU to have recourse against the IM if the RU has to pay compensation to its customers in the event that the IM is responsible for the damage².

The question of whether and to what extent the CUI also cover service facilities operated by IMs is therefore relevant for RUs.

Discussions on how the CUI could be interpreted in this respect started within CIT a number of years ago.

This question is closely linked to how the term “railway infrastructure” is to be understood under the CUI. The difficulty regarding this term was especially that the legal definition of “railway infrastructure” under the CUI differs from that known under European legislation for example³.

The question of whether service facilities are covered by the CUI was included in the work programme of the OTIF Ad Hoc Committee on Legal Affairs and International Cooperation.

Different stakeholders contributed to the discussion at OTIF level from different perspectives: To summarise, whereas CIT and the responsible CUI Committee shared the opinion that CUI and EU law (especially Directive 2012/34/EU) have to be interpreted separately and that therefore some service facilities listed in Directive 2012/34/EU could be covered by the CUI (such as freight terminals and passenger stations, in particular), RailNetEurope (RNE) had a restrictive understanding and opposed the applicability of the CUI to service facilities.

Professor Rainer Freise, who contributed to the question as an academic and researcher, argued that the CUI apply to service facilities, provided that the use of these facilities is covered by the associated contract that is subject to the scope of the CUI. In addition, he also mentioned that the definition of “railway infrastructure” as included in the CUI is unclear.

Decision of the OTIF Ad Hoc Committee on Legal Affairs and International Cooperation

During the 5th session of the OTIF Ad Hoc Committee, a legal opinion was adopted by OTIF Member States regarding the question of whether the CUI cover service facilities as well. The legal opinion comes – in short - to the conclusion that the public law applied in the OTIF Member States must determine what constitutes “railway infrastructure” and what the conditions of access to it are. This would also determine whether service facilities fall under this term and thus within the scope of the CUI.

Comment of the CIT General Secretariat

¹ The CUI are available here: https://www.cit-rail.org/secure-media/files/documentation_de/infrastructure/cui/cui_1999_2015-07-01_fr-en-de.pdf?cid=221174.

² To better understand the advantage of an interpretation whereby (some) service facilities are covered by the CUI in the RU-IM relationship, the following practical example might be useful: for example, if the RU's property is damaged during use of an IM's terminal and the IM is the same IM that constructed the international path used by the carrier, the application of the CUI seems appropriate in the event that the damage happened during the use of the terminal and had its origin in it.

In addition, if the RU's customer's goods are damaged during loading at a terminal, the customer might claim damage from the RU under the CIM Uniform Rules. Under the CUI, the RU can claim damages from the manager of the terminal if such damages are based on a constructed international train path on which the container was or should have been transported.

³ Under the CUI Uniform Rules, “railway infrastructure” means “all the railway lines and fixed installations, so far as these are necessary for the circulation of railway vehicles and the safety of traffic”.

The CIT General Secretariat thanks the OTIF Ad Hoc Committee for having taken the time to discuss this difficult issue and all the stakeholders that contributed to the discussions.

However, the CIT General Secretariat would have favoured a more harmonised and broader understanding regarding the question of whether service facilities fall within the scope of the CUI. This is because it would make the situation between RUs and IMs transparent and clarify how RUs and IMs are liable towards each other. As an example, if an international freight train derails on entering a terminal where part of the train is still on the open track and the other part is already in the terminal, it would be beneficial to have the CUI as one legal regime that applies to the whole incident and train and not only to the part on open track; which is the situation if service facilities such as terminals are excluded from the scope of the CUI.

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Useful information:

- The CUI Uniform Rules are available on the OTIF website: https://otif.org/en/?page_id=172
- CIT-website with information on the topic "use of infrastructure": <https://cit-rail.org/en/use-of-infrastructure/>