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Participants / Participants / Teilnehmer  CER (observer) Elizabeth Bragina DB Claus Leitzke DB Cargo Michael Müller NS Adriaan Hagdorn (Chair) OTIF (observer) Aleksandr Kuzmenko PKP Cargo Edyta Zaręba SNCF Maria Skarżyńska SNCB/NMBS Nicolas Desle SNCF Cécile Delprat-Mazeran Thalys Claire Piessevaux Trenitalia Alberto Gallo (Vice-Chair) CIT GS Nina Scherf Sandra Dobler  Excused: --	Circulation / Distributeur / Verteiler  Participants  Other members of the CUI Committee  Other members of the CIT  CER UIC OTIF	

Subject / Thème / Thema  <b>30th meeting of the CUI Committee</b>	
Narrative / Texte / Text	Action by / Traité par / Bearbeitet durch
<b>Opening and welcome</b>	
<p>The Chair of the CUI Committee, Adriaan Hagdorn (NS), welcomed participants to this session, being held by web-conference due to the ongoing travel restrictions brought about by the outbreak of the Coronavirus pandemic. He thanked everybody for taking part in the meeting. In addition, the Chair welcomed Claire Piessevaux from Thalys who was attending the CUI Committee for the first time.</p> <p>Because of the special timeframe for this meeting, the agenda was shortened and only topics 2. ("Redesign of the International Timetabling Process" (TTR)); 3. (Follow up regarding the "Questions from CIT members"); 4. (E-SCU-I), 5. (European GTC for the use of railway infrastructure in connection with the new RNE project), 7.1 (TIS), 7.3 (Discussion on the organisation of a workshop in 2021) and 7.4 (election of the Vice-Chair) would be discussed in detail during the meeting.</p>	
<b>Working documents and quorum</b>	
Working document and appendices sent on 1 October 2020. Presentation given at the meeting ( <b>Appendix 1</b> to these minutes). Participants confirmed that they had taken note of and would accept the CIT Competition Law Guidelines during the entire web-conference meeting.	These documents are available on the CIT website.
The CUI Committee was quorate and thus authorised to take decisions.	

## 1. General Information

### General Information from OTIF Legal Department

The Head of OTIF's Legal Department, Aleksandr Kuzmenko, reported on developments concerning the ratification of the amendments to COTIF and its Appendices as adopted by the 12<sup>th</sup> and 13<sup>th</sup> General Assembly.

The amendments to COTIF and its Appendices D (CUV), F (APTU) and G (ATMF), as adopted by the [12th General Assembly](#), had now been ratified by fifteen Member States. The amendments to COTIF including the new Appendix H (EST) and Appendices E (CUI) and G (ATMF), as adopted by the [13th General Assembly](#) in September 2018, had now been ratified by five Member States.

The amendments to COTIF would enter into force twelve months after they were approved by two thirds of the Member States (i.e. once 32 Member States had approved them) and the amendments to the Appendices to COTIF would enter into force twelve months after they were approved by half the Member States (once 22 Member States had approved them).

In addition, Mr Kuzmenko pointed out that they expected a new country to join OTIF in the near future.

He also reported on the new ad hoc Committee on Cooperation set up by the 13<sup>th</sup> General Assembly. The Committee was made up of representatives of OTIF's Member States and the regional economic integration organisations that have acceded to COTIF. The task of the ad hoc Committee on Cooperation was to take decisions concerning cooperation with other international organisations and associations (such as the Organisation for Cooperation between Railways – "[OSJD](#)" especially).

Due to the COVID-19 pandemic, the OTIF working group of legal experts had had to postpone its work slightly in 2020. They were positive that they would hold their next meeting in March 2021 (23-25 March) at which topics of interest for associations such as CIT could probably be discussed also. In that case, CIT would be invited to the meeting.

### European Commission proposal establishing measures for a sustainable rail market in view of the COVID-19 pandemic

The CIT General Secretariat (CIT GS) briefly reported that the Regulation establishing measures for a sustainable rail market in view of the COVID-19 pandemic had now entered into force. It was formally adopted by EU Ministers end of September and published on 12 October (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52020PC0260>).

### Update of the Working Document and point 1.1.2: Revision of Regulation (EC) 1371/2007 on rail passengers' rights and obligations (PRR)

On 1 October 2020, the representatives of the Council and the European Parliament reached a preliminary agreement on the revision of the PRR in their fourth trilogue. Passengers would in principle have the right to take their bicycles on board. To make this possible, railway undertakings would have to provide an adequate number of bicycle stands on board their trains. Under the new rules, through-tickets would be compulsory when connecting trains were operated by a single railway company (or a wholly-owned subsidiary), for example when a journey included a connection between a regional and a long-distance train. Passengers with reduced mobility would have to notify their travel plans to the railway company 24 hours in advance (48 hours today).

According to the European Commission, these changes would clarify the rules for enforcement and complaints handling, provide better access to information and improve the rights of passengers with reduced mobility. The scope of passengers' legal rights would also be extended to existing long-distance services.

<p>The institutions now had to adopt this provisional agreement. The agreed rules would then enter into force after their publication in the EU's Official Journal and would be applicable 24 months later.</p>	
<p><b>Resolution:</b> The CUI Committee took note of the report in the working document.</p>	
<p><b>2. “Redesign of the International Timetabling Process” (TTR)</b></p>	
<p>The CIT GS briefed the members of the CUI Committee on the TTR project, the project set up by ForumTrainEurope in cooperation with RailNetEurope.</p> <p>The goal of the project was to redesign the rail timetabling system across Europe and to increase the use of infrastructure capacity. Therefore, the capacity/path ordering and allocation process should be harmonised across Europe.</p> <p>Here, the CIT GS pointed out especially the legal challenges the project has to face.</p> <p>Some CUI Committee members raised concerns on how the capacity model should be set up and how it would be possible to know the capacity available for annual timetable requests, the capacity needed for capacity restrictions (e.g. infrastructure work), and the capacity to be safeguarded for the new Rolling Planning requests (see slide 9 of the presentation in <b>Appendix 1</b>). Here, the main principle of Article 26 of Directive 2012/34/EU “effective use of capacity” had to be respected.</p> <p>It was explained that in October 2018 the TTR Legal Task Force, which comprised various Infrastructure Managers and Railway Undertakings as well as CER and CIT and was led by RNE, had drafted a preliminary legal analysis of the project, entitled <a href="#">TTR Legal Challenges and possible solutions</a>, in which it was observed that TTR could not be fully implemented across Europe under the present European legal framework, since some aspects remained “grey areas” legally speaking, so implementation would create a high degree of legal uncertainty.</p> <p>This analysis was to be revised soon; the representative of CER, Elizabeth Bragina, informed participants that the need for revision was based on the opinion of the Commission’s Legal Services that the TTR project could not be implemented based on the current existing legal framework as it was not fully in line with Directive 2012/34/EU.</p> <p>The Chair of the CUI Committee, Adriaan Hagdorn, concluded that the CUI Committee should monitor developments in connection with the project more closely and that it should be included in the work programme.</p> <p>RUs were asked to monitor the project within their companies in order to avoid it becoming a purely RNE/infrastructure manager project and ensure that RUs’ interests were catered for.</p> <p>Further information on the TTR project can be found under slides 5-19 of the presentation in <b>Appendix 1</b>.</p>	<p>CUI Committee/ CIT GS</p> <p>CUI Committee/ CIT GS</p>
<p><b>Resolutions:</b> The CUI Committee</p> <ul style="list-style-type: none"> <li>- took note of the report in the Working Document;</li> <li>- asked the CIT GS to remain involved in the TTR Legal Task Force;</li> <li>- decided that the CUI Committee should monitor the developments of the project more closely and include it in the work programme (see point 7 of these minutes);</li> <li>- asked its members to monitor the project within their companies.</li> </ul>	<p>CIT GS CUI Committee/ CIT GS</p> <p>CUI Committee</p>
<p><b>3. Follow-up on questions from CIT members</b></p>	
<p><u>3.1 Follow-up: Reimbursement of cancellation costs for train paths in the event of “force majeure” or “exceptional circumstances”</u></p>	

The CIT GS reminded participants that this topic was still under discussion in the PRIME Charging Subgroup (the platform for dialogue between European Infrastructure Managers and DG MOVE).

In order to better understand the financial impact for RUs of cancellation costs due to force majeure, the European Commission on the Rhine-Alpine Rail Freight Corridor had set up a pilot where specific data was collected with the aim of identifying the overall amount paid in cancellation costs by RUs for international path cancellations along the corridor due to cases of "force majeure" affecting the infrastructure. The EC was still analysing the outcome of the pilot.

The members of the CUI Committee discussed how and whether they could provide their input and support to the EC on this topic. It was concluded that the CIT GS should elaborate the topic more in detail and prepare a paper including also the work done previously in the CUI Committee. The CIT GS would circulate this paper ahead of the next meeting.

In order to proceed, there were still some operational questions to be solved:

- How do systems ensure that it is clear to both IM and RU that the train crosses multiple borders?
- How are RUs informed that cancellation costs have been waived (or not) due to a case of force majeure?
- Directive 2012/34/EU, Article 35 and Annex VI foresee the setting-up of a performance scheme. Annex VI, section 2 states that delays shall be attributable to one of the delay classes listed in the annex. Point 8 provides for "External causes attributable to neither infrastructure manager nor railway undertaking" as one of these classes. Could performance schemes offer a way of identifying whether a train has been unable to continue its journey due to these external causes and to what extent fees/charges have been waived (or not)?

The members of the CUI Committee decided to contact the relevant departments of their companies to clarify these questions. The answers were to be forwarded to the CIT GS by 13 December at the latest. The Vice-Chair of the CUI Committee (Alberto Gallo) mentioned that perhaps the Train Information System ("TIS") could be used to receive some of this information. In addition, he explained that for Trenitalia one of the main hurdles was not so much the acceptance of force majeure on cross-border/international paths, but that RUs often had to pay penalties for delays on a national path section even if the delay was caused by the Infrastructure Manager on one of the preceding national sections.

### 3.2 "Framework Agreement FAQ" document

As a result of previous discussions, during summer 2020 the CIT GS had drawn up a document entitled "Framework Agreement FAQ", which it had circulated to members of the CUI Committee for their feedback and any additions.

The Vice-Chair of the CUI Committee, Alberto Gallo, reported on the outcome of a consultation with the Italian Infrastructure Manager RFI on penalties applied in the event that RFI did not make available the capacity agreed in the framework agreement.

Trenitalia asked RFI that:

- (i) the Framework Agreement penalty scheme also be foreseen in the event of a "change" in the agreed framework capacity (i.e. change of time frame, route, stops, frequency, limitation/extension of the route, speed, etc), not just in the event of the RU having to "hand it back";
- (ii) the penalty scheme applied in the event that RFI did not make available the capacity agreed in a framework agreement should compensate all lost profits (subtracting the RU's avoidable costs).

At the beginning of October 2020, RFI rejected Trenitalia's proposals and replied that:

- (i) according to the European and national law the possibility to "change" the framework capacity was implicit in the first/second round of the coordination procedure, while its "handing back" (as a last resort) was meant to guarantee new entrants access to the market. Thus, the actual system would be already fully compliant with the legislation in force;
- (ii) based on the provisions of art. 9.6 of [Implementing Regulation 545/2016](#), RFI could refuse new framework agreements when the income generated by them was less than the penalties to be paid to the RUs for requiring them to "hand back" framework capacity.

<p>Therefore, RFI believed that compensating all lost profits (as requested by Trenitalia) would be a barrier towards new entrants. In any case, if a penalty had to be paid, such a penalty should be "neutral" for the IM's balance sheet, and the maximum amount of such a penalty should be the level of additional profits generated by the new framework agreement.</p> <p>The Italian Regulatory Body was expected to define its position on the above issue in mid-November 2020.</p> <p>The CUI Committee meeting concluded that all members of the CUI Committee should check the "Framework Agreement FAQ" document again and provide their feedback (if any) to the CIT GS by 13 December at the latest.</p> <p>The consolidated "Framework Agreement FAQ" document is attached as <b>Appendix 2</b> (in English).</p> <p>After the consultation round, the document will be available on the CIT homepage under <a href="https://cit-rail.org/en/use-of-infrastructure/">https://cit-rail.org/en/use-of-infrastructure/</a> (in the members-only section).</p>	<p>CUI Committee/ CIT GS</p>
<p><b>Resolutions:</b></p> <p>The CUI Committee</p> <ul style="list-style-type: none"> <li>- took note of the report in the Working Document;</li> <li>- asked its members to clarify the operational questions regarding "force majeure" raised under point 3.1 and to submit their answers to the CIT GS by <b>13 December</b>;</li> <li>- asked the CIT GS to draft a paper that could be forwarded to PRIME in order to find a solution on the problem of "reimbursement of cancellation costs for train paths in the event of force majeure". The paper would be circulated to the CUI Committee for their feedback ahead of submitting it to PRIME;</li> <li>- decided to check again the document "Framework Agreement FAQ" and to forward any feedback to the CIT GS by <b>13 December</b>.</li> </ul>	<p>CIT GS/ CUI Committee</p> <p>CIT GS/ CUI Committee</p> <p>CIT GS/ CUI Committee</p>
<p><b>4. European Standard Contract of Use for railway Infrastructure (E-SCU-I)</b></p>	
<p>The CUI Committee's members were briefed on the background of work regarding the European Standard Contract of Use for railway Infrastructure. The CIT GS updated the CUI Committee on the current state of play of discussions with RNE. After the joint RNE/CIT meetings in September this year, in which most of the CUI Committee members took part, the RNE Legal Task force on E-SCU-I and CIT had discussed several text proposals for the E-SCU-I clauses. There remained some open points, e.g. point 3 "Modification to the contract", 6.2. "Payment and accountancy" as well as point 10 "Disputes and competent courts".</p> <p>The CUI Committee discussed the current E-SCU-I draft text and decided that they would coordinate a CIT counterproposal on point 3, to be submitted to the RNE Legal Matters Working Group taking place on 21 October. The CUI Committee was of the opinion that the RNE proposal regarding point 3 would not be appropriate for RUs.</p> <p>The CIT GS explained that whereas within CIT the CUI Committee was the decision-making body for the E-SCU-I (informing the CIT Executive Committee and General Assembly on new documents developed), for RNE the RNE Legal Matters WG would have to submit the E-SCU-I to the RNE General Assembly in December or May for a decision.</p>	<p>CUI Committee/ CIT GS</p>
<p><i>Update from the CIT GS: after the CUI Committee meeting on 15 October, the CUI Committee drafted a counterproposal of point 3 E-SCU-I that was submitted to the RNE Legal Matters Working Group on 21 October.</i></p> <p><i>The RNE Joint Office (Elisabeth Hochhold) informed the CIT GS on the discussions regarding the E-SCU-I during their Legal Matters WG:</i></p> <p><i>RNE's Legal Matters Working Group decided to internally check the whole E-SCU-I text in their companies again and that it would not be forwarded to the RNE General Assembly for decision in December 2020 but in spring 2021.</i></p> <p><i>Therefore, CUI Committee members are also asked to check the E-SCU-I text again by <b>4 December</b> in order to forward any critical points to the CIT GS for subsequent discussion with RNE (see the latest state of play of E-SCU-I in <b>Appendix 3</b> to these minutes).</i></p> <p><i>In the meantime, the time should be used to draft explanatory guidelines for the E-SCU-I. The next joint RNE/CIT meeting is envisaged for late 2020 or very early in 2021.</i></p>	<p>CUI Committee/ CIT GS</p> <p>CIT GS/ RNE CUI Committee/ CIT GS/ RNE</p>

<p><b>Resolutions:</b></p> <p>The CUI Committee</p> <ul style="list-style-type: none"> <li>- took note of the report in the Working Document;</li> <li>- desired a harmonised E-SCU-I, which it would negotiate with RNE;</li> <li>- agreed the following next steps in respect of further work concerning RNE: a counterproposal regarding point 3 of the E-SCU-I would be submitted to the RNE Legal Matters Working Group taking place on 21 October;</li> <li>- asked its members to review again the E-SCU-I text by <b>4 December</b> in order to forward any critical points to the CIT GS for subsequent discussion with RNE</li> <li>- asked the CIT GS to stay in touch with the RNE Joint Office to coordinate the discussions and next steps in negotiating the E-SCU-I;</li> <li>- called on the CIT GS to circulate the draft E-SCU-I to all stakeholders concerned.</li> </ul>	<p>CUI Committee/RNE CUI Committee/ GS CIT</p> <p>CUI Committee/ GS CIT</p> <p>GS CIT</p> <p>CUI Committee/ CIT GS</p>
<p><b>5. The E-GTC-I and the new RNE project on “harmonising the contractual framework”</b></p>	
<p>It was decided during the CUI Committee meeting that this topic and the RNE project “harmonising the contractual framework” would be discussed at a later stage when the project was more developed. In the meantime, the CIT GS would contact the RNE Joint Office in order to receive information on the current state of play and next steps.</p>	<p>CIT GS</p>
<p><b>Resolutions:</b></p> <p>The CUI Committee</p> <ul style="list-style-type: none"> <li>- took note of the report in the Working Document;</li> <li>- decided to take up the topic again at the next CUI Committee meeting in 2021;</li> <li>- asked the CIT GS to keep in touch with RNE in order to remain involved in the project.</li> </ul>	<p>CUI Committee CIT GS</p>
<p><b>7. Any other business</b></p>	
<p><u>7.1 Update: issues related to the RNE Train Information System (TIS)</u></p> <p>The CUI Committee Chairman Adriaan Hagdorn from NS informed members that they had carried out an internal review to determine whether or not it was likely to raise competition concerns that the CIT TIS account would have access to data on all trains (international and national for real-time and archived data).</p> <p>The CIT GS thanked NS and asked NS and all other members of the CUI Committee to contact their colleagues from the CIV Working Group if they had any input on the compliance of the CIT TIS access with competition law. Indeed, this issue would be discussed in detail during the next CIV WG, i.e. on 17-18 November 2020.</p> <p><u>7.2 Discussion on the organisation of a workshop in 2021</u></p> <p>The CUI Committee concluded that holding a workshop in late 2021 would be a good idea. The workshop could be open also for a broader audience such as other participants from RNE, FTE etc. Due to the current situation brought about by the Coronavirus pandemic, it was concluded that decisions on how and whether the workshop should be organised would be taken at the beginning of 2021.</p> <p><u>7.3 Priority foci for work in 2021</u></p> <p>In the light of ongoing developments, the CUI Committee concluded the following core foci for work in 2021:</p> <ul style="list-style-type: none"> <li>• <b>Development of harmonised contractual bases with RNE (E-SCU-I)</b> <ul style="list-style-type: none"> <li>○ Discuss the E-SCU-I with RNE, starting with a uniform structure</li> <li>○ Draft proposed wordings for the E-SCU-I step by step</li> <li>○ Mention the E-SCU-I in other groups wherever possible</li> </ul> </li> <li>• <b>Seek to collaborate with RNE on their project to “Harmonise the contractual framework for international traffic”</b></li> <li>• <b>If need be, follow-up work on implementation of the revised CUI Uniform Rules</b></li> </ul>	<p>CUI Committee/ CIV Working Group</p> <p>CUI Committee</p>



<ul style="list-style-type: none"> <li>• Monitor work by <b>OTIF in the field of infrastructure use</b> and participate in the work of the OTIF Working Group of Legal Experts</li> <li>• With CER, monitor the work on “<b>Access to service facilities</b>”</li> <li>• Work on the legal analysis paper “<b>Application of the CUI to Service Facilities</b>”</li> <li>• Follow the work of the RNE/FTE <b>Legal Group on the TTR project</b> and discuss the legal issues raised by the project;</li> <li>• Discuss and advise on work to develop a set of <b>CIT contractual documents for the use of service facilities (GTC-SF)</b></li> <li>• Develop a “<b>Case-law competence centre</b>” collecting legal rulings relating to infrastructure use</li> <li>• Prepare a <b>workshop on infrastructure use to be held in 2021</b></li> </ul> <p><u>7.4 Election of the Vice-chairman</u></p> <p>The CIT GS informed the CUI Committee that Alberto Gallo would be happy to serve a further term as CUI Committee Vice-Chair. The CUI Committee Chairman, Adriaan Hagdorn, and the CIT GS as well as the CIT Executive Committee supported Mr Gallo's candidacy. The CUI Committee strongly supported and appreciated Alberto Gallo's candidacy for Vice-Chairman to be submitted to the next CIT General Assembly in November 2020.</p>	<p>CUI Committee CIT General Assembly</p>
<p><b>Resolutions:</b></p> <p>The CUI Committee</p> <ul style="list-style-type: none"> <li>- took note of the report in the Working Document;</li> <li>- concerning Eurail Group GIE's access to TIS, asked its members to contact their colleagues from the CIV Working Group if they had any input on the compliance of CIT's TIS access with competition law for further discussion in the CIV WG on 17-18 November 2020;</li> <li>- approved the programme of work proposed under item 7.3 of these minutes;</li> <li>- agreed to submit the candidacy of Alberto Gallo (Trenitalia S.p.A.) as CUI Committee Vice-Chairman to the next CIT General Assembly on 19 November 2020;</li> <li>- agreed to hold its next meeting in Bern or virtually on <b>11 March 2021</b>.</li> </ul>	<p>CUI Committee/ CIV Working Group</p> <p>CUI Committee CUI Committee</p> <p>CUI Committee</p>

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#### Appendices:

1. Presentation of the meeting
2. “Framework Agreement FAQ”
3. E-SCU-I draft text of 15 October