

**30th meeting of the CUI Committee
Online meeting 15th October 2020**

Working document

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Item 1 General information

1.1 Developments in EU legislation relating to the use of infrastructure, service facilities, timetabling, etc.

Concerning the use of infrastructure there have been the following developments at EU level since the CUI Committee's last meeting in May 2020:

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

In mid-June 2020, the European Commission put forward a proposal establishing measures for a sustainable rail market in view of the COVID-19 pandemic. The purpose of the proposed regulation, if and when it enters into force, is to reduce track access charges such as to support the rail sector in mitigating the impact of the COVID-19 pandemic.

The reference period covered by the present draft, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52020PC0260>, runs from 1 March 2020 to 31 December 2020, during which track access charges for the use of railway infrastructure and the path reservation fees would be lowered, waived or deferred.

To achieve this, following its entry into force the proposed regulation would amend some of the provisions governing track access charges laid down in Directive 2012/34/EU on the basis of Article 91 TFEU. Specifically, the changes concern:

- Article 31(3) of Directive 2012/34/EU currently requires that the charges for the minimum access package be set at the cost directly incurred as a result of operating the train service. The Commission's draft regulation proposes permitting Member States to allow Infrastructure Managers to reduce the charges payable for the minimum package and access to infrastructure connecting service facilities, waive them altogether, or defer them (see Art. 2(1) of the proposal).
- Article 36 of Directive 2012/34/EU deals with reservation charges. The third sentence of the article provides that the levy of such charges is mandatory should a railway undertaking "regularly" fail to use allocated paths or part of them. The Commission's proposal would allow Member States to give Infrastructure Managers the discretion not to levy reservation charges for railway infrastructure capacity allocated but not used during the reference period, i.e. 1 March to 31 December 2020 (see Art. 2(3) of the proposal).

Article 5.2 of the draft provides for the possible extension of the reference period beyond the end of 2020 by means of a delegated act from the Commission.

The Commission's proposal was adopted almost unanimously by the European Parliament on 17 September. It is expected to be formally adopted by EU Ministers responsible for Competition on 29 September.

The train path charges discounts granted by the Member States must be notified to the EU Commission and published by it.

1.1.2 Revision of Regulation (EC) 1371/2007 on rail passengers' rights and obligations (PRR)

In September 2017, the European Commission published the [proposal for a revision](#) of Regulation (EC) 1371/2007 on rail passengers' rights and obligations (PRR). This was followed in November 2018 by the [European Parliament's](#) position, and on 2 December 2019 the Council agreed a [general stance on the proposed PRR revision](#).

Negotiations between the European Council, Parliament and Commission began at the start of 2020 under the Croatian presidency. The aim was to hold one trilogue meeting per month and complete the process before the Croatian presidency concluded.

The institutions met in January and February, but the meetings scheduled during the COVID-19 pandemic had to be postponed. A few compromises were nonetheless reached by the three institutions, on through ticketing, bicycles, and advance notification of PRM assistance needs. On through tickets, the provisions now apply to “through tickets and equivalent”. This means that ticket vendors can sell this type of ticket and would be liable if an agreement is in place with the carrier. The compromise does give railway undertakings some commercial latitude compared to the Commission’s proposed version or the Parliament’s position, however. On bicycles, the institutions agreed on an entitlement to carriage, with a dedicated area to be available onboard trains. It is up to railway undertakings to determine the appropriate number of bicycles they can carry (the revision does not stipulate a specific number of bicycle spaces). The notice period for requesting PRM assistance can be between 48 and 30 hours. Some issues remain outstanding, such as acts of god (force majeure) and delayed compensation (on this the Parliament is prepared not to insist on changes if the other parts of the compromise are agreed to).

Croatia had hoped to conclude negotiations during its presidency, but the representatives of the European Parliament, Council and Commission were unable to reach a political agreement at their third trilogue on 23 June 2020.

Consequently, it will fall to the German presidency during the second half of 2020 to broker an agreement. Both co-legislators now need to examine their positions and prepare to make the necessary compromises.

1.2 Status and implementation of EU Regulation 913/2010 (the “RFC Regulation”) and the TEN-T guidelines

1.2.1 Status of the RFC Regulation

The basis for the European freight corridors is EU Regulation [913/2010](#) (the RFC Regulation). Following on from the 2015 version, on 28 February 2019 the European Commission presented an updated roadmap for Regulation 913/2010 concerning an European rail network for competitive freight. The roadmap foresees an evaluation process for the Regulation, the results of which will form the basis for a decision on whether to review the Regulation again and to what extent a revision of the legal provisions is necessary. It is also foreseen that the Commission’s evaluation process incorporate the results of the “[Sector Statement on Rail Freight Corridors - Boosting International Rail Freight](#)”, which was signed by 10 rail sector associations at the TEN-T Days in Rotterdam in 2016 and is intended to ensure the practical implementation of the RFC Regulation.

The Commission has initiated a new evaluation process for Regulation 913/2010 (European Rail Freight Corridors) with the aim of assessing the implementation and impact of the Regulation on rail freight. The evaluation covers all the provisions of the Regulation, plus activities beyond the scope of the Regulation proper but which nonetheless impact on the Rail Freight Corridors, e.g. implementation of the technical pillar of the Fourth Railway Package and the progress made at sector level.

The consultations began in 2019, and involved a 12-week online public consultation, a targeted consultation of interest groups, discussions within the meetings of the Corridor Management Boards, etc. In April 2020, the Commission asked the interest groups to reply to a series of wide-ranging questionnaires asking about their experience with the Rail Freight Corridors. Based on the answers supplied, interviews are being conducted with representatives of all the interest groups involved in international rail freight and case studies are being evaluated. CER and EIM have prepared a joint position paper on the revision of the Rail Freight Corridor Regulation, which can be found at https://www.cer.be/sites/default/files/publication/200717_CER_EIM_position_paper RFC_final.pdf.

1.2.2 Work to create a trans-European transport network (TEN-T)

As well as working on the RFC Regulation, DG MOVE has commissioned a team of independent experts to comprehensively assess [Regulation \(EU\) 1315/2013 on Union guidelines for the development of the trans-European transport network \(TEN-T\)](#)¹.

The study will give the Commission an independent appraisal of the implementation of the TEN-T guidelines. Depending on the outcomes and findings of the appraisal, the Commission could take tangible steps towards a revision of the guidelines during the second half of 2020.

To this end, in February 2020 the Commission began a general public consultation on the guidelines. There was also a series of targeted consultations of interested parties via thematic case studies, such as [Case study 3 on rail](#).

The TEN-T and RFC Regulations are being revised in parallel since any revision has to be seen in the round.

1.3 Revision of CUI: Current status of implementation

In 2018, the OTIF General Assembly endorsed the revision of the CUI Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic, specifically [Articles 1, 3 and 8](#) thereof.

As well as Finland and Switzerland, Germany, France and Hungary have recently ratified the CUI revision. Another 17 Member States have yet to ratify the new CUI rules. It will therefore take several years before the revised CUI enters into force.

1.4 Relevant cases before the courts (ECJ and domestic courts) and decisions by national regulators

1.4.1 [Case before the Austrian railway regulator concerning ticket sales in stations \(case number: GKZ-SCK 18-019, German only\)](#)

This case concerns a decision taken by Austria's railway regulator Schienen-Control Kommission concerning the sale of tickets in stations served by passenger trains. A railway undertaking's right of access to stations open to passenger traffic encompasses, inter alia, a suitable location for ticketing services (see Article 13, paragraph 2 and Annex II, section 2 (a) of Directive 2012/34/EU). In the present instance, the access concerned a location in Vienna Central Station.

The applicant that had appealed to the regulator was an RU headquartered in a different EU Member State (Czech Republic).

Said RU was authorised to provide rail transport services as defined in Directive 2012/34/EU, chapter III (Article 17 and following), but did not have a Part B Safety Certificate for Austria.² In

¹ **History of the trans-European networks:** The trans-European networks are a European Union contribution to the implementation and development of the internal market. The programme of priority projects aims to create better linkage within the EU's internal market and bring about a degree of harmonisation of transport systems. The legal basis for this is the "Trans-European networks" chapter (Articles 170 - 172) of the Treaty on the Functioning of the European Union.

The guidelines set out the framework for the development of transport infrastructure by 2030 (core network) and 2050 (comprehensive network), and define a long-term strategy for the creation of a comprehensive trans-European transport network encompassing infrastructure for carriage by rail, sea, air and road, as well as inland waterways and rail-road terminals.

The network will comprise a core network and a comprehensive network. The core network is to be complete by 2030, with the comprehensive network to be concluded by 2050. The comprehensive network (chapter II) will prioritise ensuring accessibility and connectivity for all regions of the EU ("full coverage"), for instance by enhancing/maintaining the quality of transport infrastructure with regard to safety and disaster resilience, as well as accessibility for all users, including elderly people, persons with reduced mobility and disabled passengers. The core network (chapter III) comprises those parts of the comprehensive network which are of strategic importance and connect the most important nodes (e.g. rail-road terminals) with other nodes. The concept is similar to that underpinning the rail freight corridors, only that it applies to all transport modes.

Each mode has a dedicated section of the regulation; rail transport is dealt with by Article 11 and following.

² **Comments by the CIT GS:** To be issued with a Safety Certificate, under Article 10 of Directive 2004/49/EC (the "Railway Safety Directive") an RU must demonstrate that it has put in place a certified safety management system and can meet the requirements defined in the Technical Specifications for Interoperability (TSIs) and other relevant legislation, meaning it is able to control risk and ensure safe operation of traffic on the network.

According to the rules in force in the EU, Safety Certificates comprise:

Part A – General part

Part B – Specific part (authorisation to access the rail network of a specific infrastructure manager)

Austria, therefore, its trains were run in cooperation with an Austrian RU, which ordered train paths in Austria and had a contract with the Austrian Infrastructure Manager. The service was operated using the Czech RU's train for the entirety of the route; on the Austrian section, however, it ran under the responsibility of the Austrian RU.

The Czech RU appealed to Schienen-Control Kommission, saying that it wished to use ticket sales facilities in Vienna Central Station but the station operator (a wholly-owned subsidiary of the Austrian Infrastructure Manager) refused to conclude a contract to this end, on the grounds that applying for access to service facilities was conditional on having first applied for network access.

Schienen-Control Kommission took a different view and granted the Czech RU access to a ticket sales location in Vienna Central Station. In holding that the RU had a right of access to the station for ticket sales purposes, the regulator based its view on the non-discrimination provisions of Article 13, paragraph 2 of Directive 2012/34/EU (as transposed into Austrian railway legislation). It considered that this right was not affected by the fact that the Czech RU did not order its own train paths in Austria and did not have a safety certificate for Austria, where its trains were operated by an Austrian RU. A safety certificate was not necessary to sell tickets.

The European Commission also interceded, issuing a statement whereby the Czech RU's right of access stemmed from the fact that it concluded the contracts of carriage and bore the economic risk.

In the same case, the regulator decreed invalid a provision in the station manager's document on "Service facilities and services" whereby only those RUs whose trains were timetabled to stop in a station were entitled to operate a ticket sales facility there. In the regulator's view, this provision was overly restrictive of access rights.

The station manager (i.e. the Austrian IM) has appealed to Austria's federal administrative court, the Bundesverwaltungsgericht, against the ruling.

What will be the impact of the case?

The Commission and the Austrian regulator seem to take a very broad view of the RUs to which access to services and facilities must be granted. Taking this line of reasoning to its logical conclusion, all operating RUs must be granted the right to install ticket sales areas in stations in which trains are operated in cooperation with local RUs, whether or not the trains even stop in said stations.

1.4.2 Referral from the Higher Administrative Court of North Rhine-Westphalia (Germany) to the ECJ on the interpretation of EU Regulation 913/2010 in connection with the provisions of Directive 2012/34/EU as concerns applications for the allocation of infrastructure capacity (case number: [13 A 2224/18](#), German only)

The case before the Higher Administrative Court of North Rhine-Westphalia (OVG NRW) turned on the extent to which the reservation of railway capacity on the basis of [EU Regulation 913/2010](#), specifically the *one-stop-shop for application for infrastructure capacity* (aka the Corridor One-Stop-Shop or "C-OSS") provided for by Article 13 para 1, was compatible with the requirements of Directive 2012/34/EU whereby the allocation of network capacity was to be set out in the Network Statement.

The appellant before the OVG NRW was DB Netz AG, which as an infrastructure manager is involved in freight corridors and thus bound by the provisions of Regulation 913/2010 on the one hand, whilst also having to observe the provisions of Directive 2012/34/EU as concerns the Network Statement, above all the allocation of network capacity in accordance with Annex 2, section 3 ("*Details of the procedure for the request of train paths*"), on the other hand.

The context of DB Netz's appeal was that the Executive Boards responsible for the Rail Freight Corridors (*bodies established by the Member States and tasked with defining the general objectives of the freight corridor*) had agreed on common framework conditions, as permitted by

As well as a safety certificate issued in their home country, RUs headquartered outside Austria also require a safety certificate Part B for Austria in order to access the ÖBB-Infrastruktur AG network on their own account.

Article 14 paragraph 1 of the Regulation (*Capacity allocated to freight trains*), and planned to create an international system for corridor capacity requests and allocation.

Furthermore, the Corridor Management Boards had decided that RailNetEurope's PCS tool would be mandatory for all reservations of previously-agreed international paths ("PaPs"). Following this logic, DB Netz had thus stipulated in its Network Statement that sub-sections of PaPs also had to be ordered via PCS (rather than requested from the individual IM concerned), but had not foreseen a fall-back solution in the event that the PCS tool malfunctioned.

The German railway regulator, the Bundesnetzagentur, had objected to this passage in the Network Statement. Since the submission of applications for capacity was of major significance, it reasoned, an alternative means of making requests therefore had to be available to applicants should the PCS tool fail.

It was this ruling which DB Netz AG sought to have overturned in the present case.

DB Netz AG's opinion was that the capacity-request procedures for the RFCs were subject to Regulation 913/2010, meaning that the Executive Boards had sole competence in the matter. The Regulation also took precedence over national rules; as such, it was not subject to oversight by national regulators. The capacity-request procedure for the RFCs was not a mandatory component of the Network Statement under Article 27 of Directive 2012/34/EU; the Bundesnetzagentur therefore did not have jurisdiction to contest such changes to the Network Statement. If the information was included in the Network Statement, then it was merely for informative purposes. Moreover, there was no need for a fallback solution since PCS offered 98.5% reliability.

For its part, the Bundesnetzagentur argued that the parts of the railway infrastructure concerned (the PaPs) still formed a de facto part of the appellant's infrastructure capacity; therefore, the Bundesnetzagentur had jurisdiction to oversee them. Also, even if the risk of failure was only 1.5%, a fallback solution still had to be offered.

At this juncture in the appeal, the OVG NRW chose to suspend proceedings and request a preliminary ruling from the Court of Justice of the European Union, in accordance with [Art. 267 TFEU](#). In short, the fundamental question to which the court wants an answer is whether Regulation 913/2010, with particular regard to the tasks of the RFC Management Boards set out therein, is to be interpreted such that the Management Board is empowered to determine the procedure for requesting the allocation of infrastructure capacity itself - and to this end may stipulate, for instance, the exclusive use of an electronic booking tool - or whether this procedure falls under the general provisions of Article 27 and Annex IV of Directive 2012/34/EU, meaning that it may be managed by the infrastructure managers involved in the corridor in their respective Network Statements?

The referring court suggested that recital 7 of Regulation 913/2010/EU clarified that the rights and obligations of infrastructure managers under Directive 2012/34/EU remained unaffected, and that the Regulation at no point expressly permitted the Management Boards to determine the procedures for capacity requests/allocation. There is thus a slight leaning in favour of the Bundesnetzagentur's view. However, the ECJ has yet to rule.

1.4.3 Follow-up on previously-discussed cases: Ruling by Supreme Administrative Court of Austria (Verwaltungsgerichtshof) on 11 July 2019 (case number: [ZI Ro 2019/03/0015](#), German only)

At the CUI Committee's 27th meeting, the CIT GS informed members that Schienen-Control Kommission had examined the charges for infrastructure use to be levied for 2018 (see the Working Document for the [27th meeting of the CUI Committee, Item 1.5.4](#)). Under § 67 para 1 of the Austrian Railway Act, charges for use should be set at the cost that is directly incurred as a result of operating the train service. The European Court of Justice (ECJ) has interpreted the expression used in Directive 2001/14/EC ("the cost that is directly incurred as a result of operating the train service") in several infringement proceedings. In its rulings on these cases, the ECJ has held, inter alia, that Member States have a certain measure of discretion when transposing this term into national law and enacting it there. Furthermore, under § 67d of the Austrian Railway Act, mark-ups can be levied in order to obtain full cost recovery. Such mark-ups are to be set on the basis of efficient, transparent and non-discriminatory principles³.

³ **Comment by the CIT GS:** Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification has been superseded by Directive 2012/34/EU (see Article 31 para. 3)

In this case, ÖBB-Infrastruktur had included stand-by costs and costs of employment in the costs directly incurred as a result of operating the train service. Schienen-Control Kommission considered these costs to be justified: they would be directly incurred as a result of operating the train service, since they were costs for maintenance, repair and inspection, as well as costs of train control (operations management).

Schienen-Control Kommission subsequently rejected the claim by an RU to annul the infrastructure use charges, and closed the proceedings. The RU appealed against the ruling to the courts, which initially found partially in favour of Schienen-Control Kommission.

The Supreme Administrative Court of Austria has now issued a revised ruling in the RU's favour, referring therein to the case law of the ECJ. In its ruling, the court explains that for the ECJ, the expression "costs directly incurred as a result of operating the train service" encompasses only those costs varying as a function of the train movement, and excludes the fixed costs which the operator has to bear whether the train is in motion or not. Furthermore, for cost lines made up partly of fixed costs and partly of variable costs, only the variable component is to be included in any calculation. The cost of upkeep (day-to-day infrastructure maintenance), traffic management, and repair and maintenance, might well vary depending on traffic intensity; consequently, part of this cost can be seen as "directly incurred as a result of operating the train service". Consequently, only some of the costs contested by the appellant may be considered to have been directly incurred as a result of operating the train service.

In this context, Schienen-Control Kommission is currently continuing to investigate to establish the facts of the case.

1.4.4 Follow-up on previously-discussed cases: Appeal judgement issued by Swiss Federal Supreme Court (Bundesgericht) following Swiss Federal Administrative Court ruling of 21 May 2019

At the CUI Committee's 28th meeting, the CIT GS informed members of a ruling issued by the Swiss Federal Administrative Court (see the [Working Document for the 28th meeting of the CUI Committee, Item 1.5.1](#)). Since then, an appeal has been lodged against the ruling, and the Swiss Federal Supreme Court recently handed down an appeal judgement.

Background to the case:

Starting in January 2017, the existing Swiss system of network usage and capacity allocation was comprehensively reformed: the previous rule of giving priority to passenger traffic was replaced with the goal of developing rail infrastructure equitably for freight and passenger traffic. On the basis of this new system, in 2017 the Swiss Federal Council ratified a "network usage concept" to accompany a programme of railway infrastructure upgrades lasting until 2025.

The network usage concept enshrined a number of core principles, including:

- The availability of paths for one transport mode should not be reduced to favour another mode;
- A minimum number of freight paths had to be provided;
- (...)

On the basis of the network usage concept, Swiss infrastructure managers were asked to develop specific network usage plans containing details of path allocation by timetable year.

Facts of the matter:

In December 2018, the Swiss Federal Office of Transport (FOT) approved the network usage plans for the timetable years 2019 to 2024. These plans provided, among other things, for a minimum capacity of train paths to be secured for freight traffic on a regional route around Zurich during peak hours. Consequently, the half-hourly intervals for a particular regional train service – which are usual in Switzerland – could not be guaranteed. The canton of Zurich subsequently lodged an appeal against the FOT's approval with the Federal Administrative Court. During the case, the FOT argued that a minimum capacity should be secured for freight traffic, even at peak travel times.

In May 2019, the Federal Administrative Court took a different view ([Case A-1216/2018](#)), concluding that the criterion of minimum capacity for freight traffic should not be understood as absolute.

and [Implementing Regulation 2015/909](#), which infrastructure managers had to implement by July 2019. Although the interpretation given by the ECJ of the "costs directly incurred as a result of operating the train service" will continue to hold true, the modalities for calculating the cost that is directly incurred as a result of operating the train service have now been dealt with in the Implementing Regulation.

A balance of interests was necessary, which the FOT had failed to strike: In the case at issue, the interests of passenger traffic ought to prevail, since investments had already been made in the infrastructure and rolling stock. Furthermore, the data for freight traffic showed that the disputed routes were not being used regularly or frequently. The court therefore provisionally restored the half-hourly intervals of passenger services.

Appeal lodged with Swiss Federal Supreme Court and judgement of 25 June 2020 ([Cases 2C_614/2019 and 2C_623/2019](#), German only):

The appeal against the Federal Administrative Court's ruling was lodged by, inter alia, the responsible Ministry of Transport (represented by the FOT) and the freight RUs affected. The Swiss Federal Supreme Court upheld the Federal Administrative Court's ruling, explaining that the network usage concept did not require all the capacity-assurance principles to be applied in the network usage plans, and that the concept did not preclude a weighting of the principles in the plans. The lower instance court, it ruled, had correctly applied this weighting.

Thus, half-hourly intervals for regional passenger services can (at least provisionally) be restored with the upcoming timetable change.

The Swiss Federal Supreme Court's judgement remains provisional, however, until the Federal Administrative Court issues its definitive ruling.

1.4.5 Idea of developing a CIT-hosted case-law compendium for infrastructure use

Members of the CUI Committee regularly discuss recent cases before the courts or national regulatory authorities with a bearing on infrastructure use. As of next year, therefore, it is planned to develop an electronic compendium of case-law in this field, to be accessible to members via the CIT website.

The CIT GS presently holds the compendium in the shape of an Excel list (see [Appendix 1](#)). The overview is divided by topic into: Access procedures, Contract of use, Commercial conditions, Financial systems, Service facilities, and Other.

The CIT GS wishes to learn from CUI members whether they agree with this breakdown by topic, and whether they agree to the list appearing in the password-protected area of the CIT website.

Proposed decisions:

The CUI Committee:

- took note of the report in the Working Document;
- decided on the following next steps in respect of the publication of the case-law compendium as proposed under item 1.4.5: ...

Item 2**RNE/FTE project, “Redesign of the International Timetabling Process” (TTR)****2.1. Introduction to the TTR project**

The CIT GS takes part in the “TTR Legal Task Force” providing legal support to the RNE/FTE-initiated project “[Redesign of the International Timetabling Process](#)”. The TTR project aims to redesign the planning and allocation process for capacities and train paths; the new process will be supported by common IT systems which will be used across Europe.

A thorough overhaul of timetabling processes is necessary since they vary hugely between European countries, making international cooperation more difficult. Cross-border traffic is more important than ever for the rail sector, but the current system creates unnecessary delays due to poorly-coordinated track works and timetable clashes. New planning processes should also enable infrastructure managers to offer more flexible, higher-quality capacity, in particular to freight traffic, while passenger operators will benefit from planning stability at an early stage, enabling them to start selling tickets earlier. The TTR project is being trialled via a number of pilots, the aim of which is to assess whether the aforementioned goals can be achieved.

2.2 Legal challenges**2.2.1 Current status**

To implement this process fully, compliance with the regulatory framework must be ensured. The current regulatory framework (European and national legislation) reflects the existing capacity management processes (annual timetable and ad hoc orders); it was thus necessary to examine whether the new process is compatible with the existing regulatory framework. To do so, a “Legal Task Force” has been set up composed of infrastructure managers, RUs and representatives of the organisations RNE (which chairs the Task Force), CER, EIM and CIT. It has latterly been agreed that the European Commission (DG MOVE) will be invited to participate on selected topics.

In an analysis, [TTR Legal Challenges and possible solutions](#), it is observed that TTR cannot be fully implemented across Europe under the present European legal framework, since some aspects remain “grey areas” legally speaking, so implementation would create a high degree of legal uncertainty.

The CIT GS will provide the CUI Committee meeting with an overview of the legal issues arising at European level.

2.2.2 Next steps

The analysis, [TTR Legal Challenges and possible solutions](#), is set to be revised again during the second half of 2020 since there may be new insights to be factored in following discussion with various parties (national regulators, DG MOVE, etc.).

In May this year, the RNE General Assembly endorsed a TTR migration strategy. Participants in the TTR Legal Task Force were informed by the chair, Elisabeth Hochhold (RNE), that this could speed up the implementation of TTR. Decision-makers at various levels (DG MOVE, transport ministries, etc.) are showing increased interest in understanding to what extent the current legal framework (EU law and domestic laws) would support TTR implementation or to what extent it would need amendment in order to enable it.

In this context, RNE has been asked to draw up a “Barrier timetable” listing the potential (legal) hurdles to TTR implementation. Since the TTR Legal Task Force already conducted an initial analysis of the challenges to TTR implementation posed by EU legislation in 2018 (see above), this “timetable” will initially focus on identifying legal barriers to TTR at national level, i.e. those stemming from domestic laws, rulings by national authorities, etc.

The “Barrier timetable” survey is primarily directed at RNE’s members, infrastructure managers. Initial findings are set to be presented to a TTR workshop being held by DG MOVE in September 2020 (at which RNE has been asked to present the TTR project).

The CIT GS will present the results of the "Barrier timetable" survey at national level to the CUI Committee meeting.

The discussion of the extent to which operative elements of TTR can be usefully adapted or whether the existing legal framework needs to be/can be amended, is not yet concluded. Nevertheless, the CIT GS thinks it wise for RUs to monitor the project within their companies in order to avoid it becoming a purely RNE/infrastructure manager project and ensure that RUs' interests are catered for. RUs' contact partner for the project is FTE.

Proposed decision:

The CUI Committee took note of the report in the Working Document.

Item 3 Questions from CIT members
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3.1 Follow-up: Reimbursement of cancellation costs for train paths in the event of “*force majeure*” or “*exceptional circumstances*”

3.1.1 Introduction

Recent meetings of the CUI Committee have examined the varying practices across Europe as regards whether and how Infrastructure Managers (IMs) compensate RUs for the cancellation costs of train paths in the event of “*force majeure*”. Cancellation costs are the sum of the reservation cost plus the cancellation charge payable for a path.

For RUs operating an international path, the issue is as follows:

When an IM cancels an international path section due to “*force majeure*”, other IMs then bill the RU for the reservation or cancellation costs of their respective national sections of the international path. On the Rhine-Alpine Corridor, for example, should PRORAIL cancel the Dutch section of an international path from Rotterdam to Genoa (due to a *force majeure* event affecting the PRORAIL network), this would typically be the reservation/cancellation fees charged to the RU by DB Netz, SBB Infrastruktur and FSI for unused national sections of the international path running over their networks.

The issue was originally taken up by the Railway Advisory Group of the Rhine-Alpine Rail Freight Corridor, and then presented by the European Commission to the PRIME Charging Subgroup (the platform for dialogue between European IMs and DG MOVE).

In support of this work, the CIT GS drew up a document setting out the different legal definitions of *force majeure*/exceptional circumstances in transport law as defined by various international sources (including the E-GTC-I), as well as a list of events that, based on these international statutes, count as *force majeure*. The two documents are attached in **Appendices 2 and 3**.

The documents have been forwarded to the DG MOVE representative, Christiane Trampisch, who is represented in the PRIME Charging Subgroup. Along with the documents, CIT included a statement to the effect that it would be helpful if IMs agreed on a definition of *force majeure* events which, if one occurred on an international path and prevented an RU from continuing the train run, would exempt said RU from paying the cancellation costs for all of the path sections involved.

The solution most recently discussed in the PRIME Charging Subgroup was not to aim for a uniform definition of *force majeure*, but rather for IMs to conclude an agreement whereby for international traffic they would accept the other IMs’ decisions that an event was considered *force majeure*. Under this system, should one IM decide that a network disruption was attributable to *force majeure*, this would be considered authoritative and would be accepted by the other IMs involved in the train run.

3.1.2 Current status

In order to better understand the significance and financial impact of cancellation costs due to *force majeure* for RUs, the European Commission announced that it intended to examine the scale of the problem for RUs. To this end, the Commission agreed with the Rhine-Alpine Rail Freight Corridor that between 1 January and 31 March 2020, specific data would be collected along the corridor (which covers railway infrastructure in the Netherlands, Belgium, Germany, Switzerland and Italy) 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, and what share of RUs’ EBIT⁴ such cancellation costs represent.

3.1.3 Further steps

To date, no results from the Rhine-Alpine Corridor project have been published.

From the CIT GS’s point of view, one problem is that RUs and IMs alike need to be able to ascertain with certainty that the path in question is a cross-border path, one of the national component sections of which is affected by a *force majeure* event preventing the RU from continuing the journey. This information must be communicated transparently.

⁴ Note: the EBIT (operating result) encompasses a company’s earnings before interest and taxes.

This certainty can probably be assumed if a path on a corridor has been ordered via the one-stop-shop. However, there are also numerous cross-border paths that are agreed as a series of consecutive paths between the RU and each IM concerned. The following questions arise:

- 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 CIT GS proposes that members of the CUI Committee contact the relevant departments of their companies to clarify these questions.

The matter is set to be discussed again between IMs and DG MOVE in the PRIME Charging Subgroup.

The CIT GS suggests that the CUI Committee meeting discuss whether the CUI Committee can also provide input into the process with its expertise and proposals. The CUI Committee could develop its own opinion based on previous experience and insights.

3.2 "Framework Contracts FAQ" document

3.2.1 Introduction

At the last meeting of the CUI Committee, the CIT GS reported on the various issues raised by CIT members in connection with framework contracts in accordance with Article 42 of Directive 2012/34/EU. Firstly, in January this year, SNCF contacted the CIT GS asking for information on the level of penalties for path days unused by the RU that an IM can levy from an RU via a framework contract under Article 42 of Directive 2012/34/EU. The Vice-Chairman of the CUI Committee, Alberto Gallo (Trenitalia), subsequently informed the CIT GS that the Italian regulator had asked Italian infrastructure manager RFI to consult with RUs before defining an "appropriate penalty system" for inclusion in its network statement, to apply in cases where the IM failed to supply capacity agreed in advance via a framework contract. Trenitalia has communicated its stance on penalties to RFI, and the consultation process remains ongoing (as of mid-August 2020).

In addition, further questions were raised concerning the legal nature of framework contracts and whether an RU reserving a set amount of capacity under a framework contract could be certain it would still keep this capacity even if there were competing applications.

In the light of all these questions, the CUI Committee tasked the CIT GS with summarising the key findings on framework contracts and making these available to members.

3.2.2 Current status

The CIT GS drew up a document during summer 2020 entitled "Framework Contracts FAQ", which it circulated to members of the CUI Committee for their feedback and any additions. Feedback on framework contracts was received, in particular, from DB, NS, SNCF and Trenitalia. The CIT GS is very grateful to all who responded for their feedback.

The consolidated document (in English) is attached as **Appendix 4**. Assuming there are no objections, the CIT GS suggests posting the summarised findings in the "Infrastructure" section of the CIT website, in the password-protected area accessible only to CIT members. The document can be updated at any time to incorporate new information. The CIT GS therefore asks members of the CUI Committee to share news of the latest developments or any further questions, should they have any.

In addition, an article on framework contracts based on the document will appear in a forthcoming edition of CIT-Info in the near future.

Proposed decisions:

The CUI Committee:

- took note of the report in the Working Document;
- agreed to establish its own position on the matter dealt with in Item 3.1, specifically...;
- agreed to publish the “Framework Contracts FAQ” document - which will be updated whenever necessary - in the “Infrastructure” section of the CIT website, in the password-protected area accessible only to CIT members;
- ...

Item 4**European Standard Contract of Use for railway Infrastructure (E-SCU-I)****4.1 Introduction**

In 2017, the CUI Committee began work on a European Standard Contract of Use for railway Infrastructure (E-SCU-I), on the basis of various existing such contracts of use (in particular those in force at DB Netz, SBB, RFI and Trafikverket, and the RNE standard contract of 2004). The CUI Committee produced a first draft containing a range of agreed clauses in late 2018. The idea was that the draft contract would mainly be used on the basis of the [E-GTC-I](#), but could also be used even if the E-GTC-I were not applied in full. Many points in the draft thus referred to clauses in the E-GTC-I.

The E-SCU-I was communicated to RNE, and in May 2019 the RNE General Assembly agreed to initiate talks on the contract with CIT.

Meetings were held between the RNE Joint Office and the CIT GS, also attended by members of both organisations, in August 2019 and February 2020. In particular, the meetings served to discuss RNE's queries concerning the CUI Committee's draft contract.

RNE's questions and counter-proposals concerning the E-SCU-I were addressed at the last meeting of the CUI Committee, which reached the following key resolutions:

- Originally, the scope of the CIT draft encompassed all rail-related services offered by an infrastructure manager, including those extending beyond the minimum access package as foreseen by [Article 13 paragraph 1 and Annex II section 1 of Directive 2912/34/EU](#). RNE suggests that the initial scope be limited to the minimum access package, before discussing the inclusion of rail-related services in a second step. This is because it is politically easier for RNE to obtain infrastructure managers' assent to the draft contract if it is limited to the minimum access package.
 - ➔ On this matter, the CUI Committee agreed that it would make sense for the contract to cover all rail-related services. The minimum access package could be a useful starting-point, but a timescale for the subsequent inclusion of further services was also needed. It seems that most IMs bundle together the minimum access package and rail-related services in their contracts of use. This is also the principle behind the [Network Statement Common Structure](#) developed by RNE.
- CIT's proposed draft E-SCU-I refers to the E-GTC-I. According to RNE, this is a problem for those IMs that do not apply the E-GTC-I (or only apply them in part), and which have their own specific national GTC. As well as this, there are IMs whose GTC are not available as a separate document, but which have instead included clauses in their Contract of Use or Network Statement governing matters which would normally be covered by the GTC e.g. liability.
 - ➔ On this issue, the CUI Committee at its last meeting in May 2020 considered that the references to the E-GTC-I should remain as an option (at a minimum). For those IMs which do not use the E-GTC-I, a reference to their national GTC could be included. If possible, we could also discuss the option of reusing provisions from the E-GTC-I directly in the E-SCU-I.

Following the CUI Committee meeting in May 2020, a version of the E-SCU-I annotated with CUI Committee members' agreed comments and counter-proposals was sent to RNE's Head of Legal Matters, Elisabeth Hochhold.

4.2. Status of negotiations with RNE

A joint online meeting between RNE and CIT took place on 8 September to move the discussion forward. CIT was represented by CUI Committee Chairman Adriaan Hagdorn (NS), Vice-Chairman Alberto Gallo (Trenitalia), João Fialho (CP), Claus Leitzke (DB), as well as Cesare Brand, Sandra Dobler and Nina Scherf for the CIT GS.

RNE was represented by its Head of Legal Matters Elisabeth Hochhold and Vice-President Péter Rónai (who is also the board member for legal matters), as well as by infrastructure managers DB Netz (Germany), HŽ Infrastruktura (Croatia), Infrabel (Belgium) and SNCF Réseau (France); Elisabeth Bragina (CER) acted as an observer for both organisations. The documents were emailed to the CUI Committee ahead of the meeting. The CIT GS is happy to supply these documents to anyone requiring them.

The meeting was an opportunity to discuss the current E-SCU-I draft and each organisation's outstanding issues and proposals, and participants were able to agree on a number of specific outcomes as concerned the proposed text.

It is worth highlighting the following discussion items and points of consensus:

- The current E-SCU-I draft will refer only to the minimum access package. However, a second document containing CIT's proposed references to rail-related services will be retained for discussion in a second phase. Some of the IMs present at the meeting also said that including rail-related services was very important for them.
- They felt the E-SCU-I should continue to include references to the E-GTC-I (as in the original CIT draft), but that IMs should have the option of referring to national GTC if need be. For infrastructure managers whose GTC were not available as a separate document, proposed wordings were needed which could then be used instead of references to the E-GTC-I/GTC.
- The proposed text for point 3 of the contract ("Amending the contract") remained to be discussed between RNE and CIT. The counter-proposal tabled by RNE, whereby RUs were obliged to accept IMs' changes to their Network Statements and GTC with no consultation or possibility to object, otherwise the IM could simply terminate the contract, still required fine-tuning.

RNE is to check whether the CIT counter-proposal produced by the CUI Committee (15 May 2020) is workable for its members.

In addition, those parties/IMs whose GTC are not contained in a separate document seem to require specific text proposals, rather than references to E-GTC-I or GTCs. The points of the E-SCU-I concerned are points 4 (Information exchange and confidentiality), 6.2 (Payment and accountancy), 9 (Termination) and 10 (Disputes). To come up with specific text proposals in these areas, the CIT GS and RNE JO compared the mandatory statutory instruments (CUI, Directive 2012/34/EU plus secondary legislation based thereon) with the E-GTC-I texts and tried to draft wordings based on the E-GTC-I texts, amending them where necessary.

The text proposals for point 4 of the E-SCU-I were discussed and validated by participants at the joint meeting on 8 September.

The text proposals for point 6.2 (Payment and accountancy), on the other hand, still need further revision. The CIT GS and RNE JO also took as a basis [Implementing Regulation 2015/909](#) (calculation of the cost that is directly incurred as a result of operating the train service). At the meeting, it was nevertheless pointed out that the scope of this regulation concerned an earlier point in time than that of point 2.9 of the E-GTC-I. Point 2.9 of the E-GTC-I refers to charges levied during the timetable period, whereas Implementing Regulation 909/2015 refers to charges (unit costs) that must be levied by the IM well ahead of the next timetable change. For this reason, the proposal requires reformulation.

Due to a lack of time, the joint meeting had to stop with the discussion of point 6.2; it was agreed to hold a second online meeting.

4.3. Next steps

A follow-up meeting between the two organisations has been slated for 30 September, at which the other open points will be discussed, starting with point 6.2 of the E-SCU-I.

The CIT GS will provide the CUI Committee meeting of 15 October 2020 with a detailed report on the points of the E-SCU-I discussed and the amendments agreed with RNE at the joint meetings in September. The latest status of discussions (outcome of the September meetings) is shown in Appendix 5.

Proposed decisions:

The CUI Committee:

- took note of the report in the Working Document;
- desired a harmonised E-SCU-I, which it would negotiate with RNE;
- agreed the following next steps in respect of further work concerning RNE: ...;
- called on the CIT GS to circulate the draft E-SCU-I to all stakeholders concerned;
- ...

Item 5**European GTC for the use of railway Infrastructure (E-GTC-I)****5.1 RNE project: Harmonising the contractual framework for international rail transport**

RNE's Head of Legal Matters, Elisabeth Hochhold, has informed the CIT GS of a new RNE project on harmonising the contractual framework for international rail transport. The project was approved by the RNE General Assembly in December 2019. For more information, see the related page on the RNE website: <https://rne.eu/legal-matters/harmonisation-of-contractual-framework/>.

The purpose of the project is to establish a coherent structure amongst infrastructure managers' various contract documents so as to avoid duplication.

The contractual framework governing the use of infrastructure between RUs and IMs currently varies widely from one European country to another. There is no harmonised structure for the various documents: Contract of Use (aka track access agreement), General Terms & Conditions and Network Statement.

Other than what is mandatory under EU law (i.e. which provisions of Directive 2012/34/EU, Article 27 form part of the Network Statement), infrastructure managers have designed their contractual clauses in different ways, and in some cases spread them across different documents. Furthermore, in some countries there are no separate General Terms & Conditions (GTC), just the Contract of Use and the Network Statement which together contain the GTC.

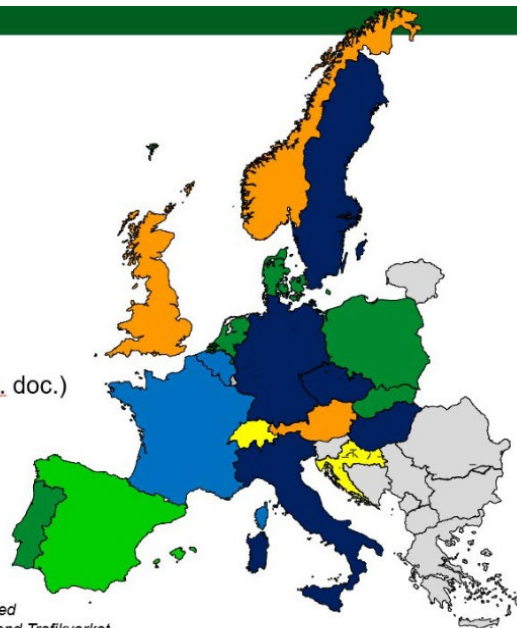
For instance: whereas in Switzerland issues of liability are dealt with in the GTC,⁵ at DB-Netz they are to be found in the Network Statement⁶ and at RFI (the Italian IM) also in the Contract of Use appended to the Network Statement.⁷

The overview hereafter drawn up by the RNE Legal Working Group shows the diverse state of affairs between legal frameworks at present⁸:

Status quo: different models

(based on results of a survey with RNE LM WG Members)

- Type A** Contract of use (incl. GTC) + NS
- Type B** Contract of use + NS (incl. GTC)
- Type C** Contract of use (incl. GTC) + NS (incl. GTC)
- Type D** Contract of use (incl. GTC) + NS + GTC (sep. doc.)
- Type E** Contract of use + NS + GTC (sep. doc.)
- Type F** NS only



Please note: this map does not include information about application of EGTC-I; based on feedback from LM WG Members it appears that EGTC-I are currently applied fully by ProRail and CH IMs and partly by Infrabel, HZ Infrastruktura, SNCF Réseau and Trafikverket.

RNE is now working to arrive at a coherent structure within Europe. The first phase of this work involves working with CIT on harmonising contracts of infrastructure use (see also Item 4). As well as that, however, coordination will also be needed for the other legal documents (Network Statement and GTC).

⁵ <https://company.sbb.ch/en/sbb-as-business-partner/services-rus/onestopshop/track-access.html> (as at 21 July 2020).

⁶ https://fahrweg.dbnetze.com/resource/blob/3589414/c174c76016714e0698d2511ff9b56f85/snb_2020-data.pdf, see point 2.9.8 (as at 21 July 2020).

⁷ https://www.rfi.it/content/dam/rfi/offerta/offertaaccessorete/prospetto-informativo-della-rete/pir-2020/PIR%202020_edizione%20dicembre%202019.pdf, see Appendix 1 and point 8 (as at 21 July 2020).

⁸ GTC=General Terms and Conditions; NS= Network Statement.

The CIT GS understands that RNE is currently working to compare its document “[Network Statement Common Structure](#)”, which defines the structure of network statements across Europe, with the E-GTC-I and identify any overlaps.

According to RNE, the “Network Statement Common Structure” document is used by over 90% of infrastructure managers; as such, it carries much more weight for RNE than the E-GTC-I.

The CIT GS thus assumes that infrastructure managers will probably be more inclined to delete duplicate provisions from the E-GTC-I and leave them in their network statements. However, the outcomes of the comparison are not yet known.

5.2 Discussion to determine the RU point of view

The significance of the RNE project is that infrastructure managers are weighing up what should be included in the structure of their general terms & conditions. This will logically impact, inter alia, on the extent to which RNE continues to recognise the E-GTC-I, developed jointly with CIT, as a “standard” in the sector. It remains to be seen whether general terms & conditions such as the E-GTC-I will continue as a standalone document once work concludes on the harmonised contractual framework, since some infrastructure managers do not provide their GTC as a separate document but instead include them in their network statement or contract of use (see the overview in point 5.1 above).

RNE says it wishes to involve the sector as a whole in this work, first and foremost (but not exclusively) CIT.

At the last meeting of the CUI Committee in May this year, the committee’s view of the RNE project was as follows:

1. The **Network Statement** should (in the main) contain only those elements set out in Directive 2012/34/EU (in particular Article 27 and Appendix IV);
2. The **Contract of Use of Infrastructure** should reflect the structure in accordance with the E-SCU-I discussed by RNE and CIT;
3. The **GTC** should generally be a separate document (to which infrastructure managers are free to refer either in the Network Statement or in the Contract of Use). The CUI Committee’s view is that the E-GTC-I should be retained as a basis and only amended if rendered necessary by the legal situation, or if the content has to be moved to a different document to avoid duplication.

As a starting-point for a detailed overview of the situation among RUs, the CIT GS has drawn up a synoptic table setting out which of the three documents (Contract of Use, GTC, Network Statement) contain which of the relevant provisions ([Appendix 6](#), English only). The legal sources of the overview are the structures of the E-SCU-I, E-GTC-I, and RNE’s “Network Statement Common Structure”. Any overlaps are marked in **red**.

The goal is to agree with CUI Committee members which provisions they consider belong in which document and identify any overlaps (to be eliminated). The CIT GS therefore asks members of the CUI Committee to check the parts in red as a priority and come to the meeting ready to discuss which document should contain these points in the long term.

Proposed decisions:

The CUI Committee:

- took note of the report in the Working Document;
- decided the following next steps in the light of the discussions under Item 5.2: ...
- ...

Item 6**CIT General Terms & Conditions for the use of Service Facilities (GTC-SF)****6.1 Introduction**

Back in 2015, CIT examined whether the provisions of CUI (primarily those governing liability) could be applied to service facilities. At the time, the conclusion we reached was that: *the CUI liability provisions mandatorily apply to fixed service facilities of infrastructure managers. CUI does not apply to RUs' service facilities or to services provided by IMs and RUs within service facilities.*

Following the ruling handed down by the European Court of Justice on 10 July 2019 ([C 210/18](#)), the CIT GS thought it would be helpful to look again at whether the provisions of CUI can encompass fixed service facilities as per Directive 2012/34/EU, Annexe II, sections 2 - 4. The aforementioned ECJ ruling makes it clear that passenger platforms form part of the "railway infrastructure" and that railway infrastructure is encompassed by the minimum access package. As such, passenger platforms cannot also fall under Annexe II, sections 2-4 of Directive 2012/34/EU (service facilities and rail-related services). Earlier practice in some EU countries differed, and passenger platforms were considered service facilities in some cases.

Since CUI in its scope of application also talks of "railway infrastructure", it could be considered (from an EU law point of view) that the CUI rules only encompass the "minimum access package" of Annex II, section 1, but not fixed service facilities.

In response to this, the CUI Committee drew up an analysis exploring the legal history of the term "service facility". The paper was circulated to CUI Committee members, who were asked for their feedback. The CIT GS received feedback from the SNCB representative, noting that with regard to the ECJ ruling of 10 July 2019 (C 210/18) to which our paper referred, it would be more accurate to state that the ECJ had taken no new decisions of principle but merely clarified that passenger platforms were listed as railway infrastructure in Annex I to the Directive. With regard to the applicability of CUI to service facilities, SNCB's position was that CUI did not apply to any of the service facilities listed in Annexe II, sections 2-4 of Directive 2012/34/EU, including passenger platforms or freight terminals operated by an infrastructure manager. Any assertion to the contrary would create major legal uncertainty.

The analysis is being amended accordingly, and will be presented at the next meeting of the CUI Committee.

The CIT GS considers that it would be interesting to obtain OTIF's view on the extent to which service facilities fall under COTIF law.

6.2 Further steps

The CUI Committee previously decided to start by focusing on liability rules. At the October 2019 meeting, the CIT GS presented a variety of liability rules applied by service facility operators, in particular from France, Austria and Germany. It was clear that it made no difference in terms of liability rules whether the service facilities were operated by IMs or RUs. For example, SNCF Mobilités (as an RU) and SNCF Réseau (as an IM) applied essentially the same liability rules for the various services they provided at maintenance facilities, refuelling stations, and the use of freight terminals. Harmonisation thus seems possible.

A general examination of the [draft GTC-SF from 2014](#) will be needed under "next steps".

Proposed decision:

The CUI Committee took note of the report in the Working Document.

Item 7 Other business
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7.1 Update: Issues connected with the RNE Train Information System ("TIS")

Last year, the CUI Committee decided that Eurail Group GIE had a legitimate interest in acquiring TIS access rights.

The CIT GS has since learned that RNE has modified the TIS interface. The CIT GS has enquired about this with RNE, and been informed that this will have no impact on TIS access rights.

The CIT GS has also learned from RNE that TIS access via the CIT agreement offers access to archived and real-time data for international trains. The CUI Committee and the CIV WG were informed of this during their most recent meetings.

The CIV WG agreed that this new circumstance should alter nothing in the CUI Committee's decision to grant Eurail access to TIS and sign an agreement with Eurail to this end.

Nevertheless, the CIV WG considered that, in the light of the new information, CIT needed a further-reaching discussion on the scope of TIS access. The CIV WG thus agreed that its members would liaise with their competition law and TIS experts to ascertain whether or not the expanded scope was problematic for them, and that they would report to the CIT GS on the outcomes of these discussions at the next CIV WG meeting in November 2020. On the basis of these discussions, thought would need to be given as to whether the AIV-TIS agreement also required amendment. If it did, such an amendment would have to be put to the CIV Committee for approval and endorsement.

Based on this information, the CUI Committee upheld its decision from last year, conditional on the outcome of the discussions to take place at the CIV WG in November 2020. The CIT GS thus suggests proceeding as originally planned.

The CIV WG and Eurail have agreed on the draft of the agreement. Eurail signed in July 2020 (see Appendix 7), and the other contracting parties are in the process of signing. The agreement is set to become a new appendix to the AIV which will refer to the current Appendix 5 AIV on TIS. This will provide transparency for all TIS users and CIT members and enable parallel development of the two agreements under the oversight of the CIV Committee. The CIT GS remains RNE's single contact partner.

Once all the contracting parties have signed the agreement, the next step for the CIT GS will be contact RNE so they can grant Eurail access to TIS.

7.2 Discussion on holding a workshop on "Infrastructure use" during 2021

At its last meeting in May this year, the CUI Committee supported the idea of holding a workshop on "Infrastructure use" during 2021.

A workshop could help raise awareness amongst RUs of the topic of infrastructure use and advertise the work of the CUI Committee. Not only that, it would be a good strategic fit for 2021, which has been declared ["European Year of Rail"](#) by the European Commission.

At the last meeting, the CIT GS suggested holding the workshop during the second half of 2021. Currently, all physical meetings are planned subject to the proviso that the situation in 2021 has stabilised with regard to the COVID-19 pandemic, and that unrestricted international travel across Europe is once again possible. The situation will doubtless be clearer by the start of 2021, but event planning needs to start straight away.

The following points require discussion:

- Concerning participants: do we invite only CIT members or should the event also be open to other like-minded organisations (e.g. CER, FTE, RNE, etc.)?
 - ➔ The advantage of involving other interested parties would be to enable an informed, healthy debate amongst sector specialists.
 - ➔ One disadvantage would be that it would prevent a completely open discussion.
- Concerning the date, duration, and venue: the CIT GS sees mid-October in Bern as a possibility. A one-day conference would seem an appropriate duration.
- Topics and speakers: The CUI Committee already discussed a few topics at its last meeting. Other suggestions are very welcome. Another task will be to assemble a range of suitable speakers.
 - ➔ Currently-proposed topics:
 - Developments in international and European law in the field of infrastructure use (OTIF and EU level)
 - Relevant case-law in the field of infrastructure use
 - Discussions of how to classify contracts of infrastructure use from a legal perspective (public law, private law, sui generis?)
 - CIT workstreams in the field of infrastructure use
 - Work with RNE on standardised documents in the sector
 - Service facilities and rail-related services
 - The TTR project and the associated legal challenges
 - Operational topics (still open)

CUI Committee members are asked to share their views on the suggested topics with the CIT GS and/or propose any others they wish to see addressed. The CIT GS would be grateful for any suggested speakers.

7.3 Priority foci for work in 2021

In the light of ongoing developments, the CIT GS suggests the following core foci for work in 2021:

- **Development of harmonised contractual bases with RNE (E-SCU-I)**
 - Discuss the E-SCU-I with RNE, starting with a uniform structure
 - Draft proposed wordings for the E-SCU-I step by step
 - Mention the E-SCU-I in other groups wherever possible
- **Seek to collaborate with RNE on their project to “Harmonise the contractual framework for international traffic”**
- If need be: follow-up work on implementation of the **revised CUI Uniform Rules**
- Monitor work by **OTIF in the field of infrastructure use** and participate in the work of the OTIF Working Group of Legal Experts
- With CER, monitor the work on “**Access to service facilities**”
- Participate in RNE/FTE’s **Legal Group on the TTR project**
- Discuss and advise on work to develop a set of **CIT contractual documents for the use of service facilities (GTC-SF)**
- Develop a “**Case-law competence centre**” collecting legal rulings relating to infrastructure use
- Prepare a **workshop on infrastructure use to be held in 2021**

7.4 Election of CUI Committee Vice-Chair

Alberto Gallo (Trenitalia S.p.A.) has informed the CIT GS that he is happy to serve a further term as CUI Committee Vice-Chair. Both the CUI Committee Chairman, Adriaan Hagdorn, and the CIT GS support Mr Gallo's candidacy.

The committee is thus asked to express its views on Alberto Gallo's candidacy for Vice-Chairman so that it can be submitted to the next CIT General Assembly in November 2020.

Proposed decisions:

The CUI Committee:

- took note of the report in the Working Document;
- concerning Eurail Group GIE's access to TIS, decided the following next steps: ...;
- approved the programme of work proposed under item 7.3;
- agreed to submit the candidacy of Alberto Gallo (Trenitalia S.p.A.) for CUI Committee Vice-Chairman to the next CIT General Assembly on 19 November 2020;
- agreed to hold its next meeting in Bern on ... May 2021.