



International Rail Transport Committee
Comité international des transports ferroviaires
Internationales Eisenbahntransportkomitee



**Implementation guide on the
European Standard Contract of use of railway
infrastructure
“E-SCU-I”**

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0. Intent and considerations of the E-SCU-I

RailNetEurope (RNE) and the International Rail Transport Committee (CIT) joined forces in an effort to harmonise the contracts of use of railway infrastructure and thus to decrease administration, simplify international rail transport and to increase rail competitiveness.

This European Standard Contract of use of railway infrastructure (“E-SCU-I”) can be applied to all transports by rail, i.e. freight, passenger or otherwise. The scope of application is intended to be international or international and domestic transports by rail.

The E-SCU-I suggests different clauses in form of a “toolbox” but the parties (railway undertakings and infrastructure managers) are free to add other specific provisions to the E-SCU-I or adjust provisions to enable necessary national adaptations. The provisions of the E-SCU-I have been drawn up without prejudice to prevailing mandatory international, European or national law.

The E-SCU-I is intended to apply to all railway undertakings (or international groupings of railway undertakings¹) and infrastructure managers. Infrastructure managers should apply the E-SCU-I to all the railway undertakings using their railway infrastructure without discrimination.

This document has been drawn up to explain the contractual relationship between the infrastructure manager and a railway undertaking. The contractual relationship between the infrastructure manager and an “applicant” (i.e. a person who is not a railway undertaking or an international grouping of railway undertakings - Directive 2012/34/EU) has not been taken into account at this stage.

How to use the E-SCU-I?

The contractual framework governing the use of infrastructure between railway undertakings and infrastructure managers currently varies widely from one European country to another and infrastructure managers have designed their contractual clauses in different ways. Most infrastructure managers at the moment have not implemented the E-GTC-I² or have implemented them only in parts, while in some countries there are no separate General Terms & Conditions (GTC), just the Contract of Use and the Network Statement (NS).

Therefore, this E-SCU-I, albeit voluntary, can be used in different ways in order to reach in a first step a common structure and then also a common content of the contract of use of railway infrastructure all over Europe:

1. For those IMs applying the E-GTC-I, the E-SCU-I is used together with the E-GTC-I and the IM’s Network Statement (according to the NS Common Structure of RNE) → see option 1
2. For those IMs using their own GTC, the E-SCU-I is used together with the IM’s Network Statement (according to the NS Common Structure of RNE) and the national GTC in as far as these do not contradict the E-SCU-I. → Those parties have to refer to the respective points of their national GTC and make sure that their content is aligned with the content of the E-SCU-I.
3. For those IMs having no separate (E-)GTC(-I) document, the E-SCU-I provides additional text clauses that should be used instead of referring to the (E-)GTC(-I) in the E-SCU-I. In this case the E-SCU-I is used only together with the IM’s Network Statement (according to the NS Common Structure of RNE → see option 2.
4. For those IMs not using a separate GTC document and having included all typical GTC rules in their Network Statement, it is recommended to check in which points of the E-SCU-I the references to the E-GTC-I (or a similar set of national GTCs) can be substituted by a reference to the corresponding rules of their Network Statement

1 “International grouping of railway undertakings” means any association of at least two railway undertakings established in different countries for the purpose of providing international transport services between those countries.

2 The RNE/CIT European General Terms and Conditions of use of railway Infrastructure.

(similar to category 2). Where no corresponding rules exist in the Network Statement, the suggested text proposals included in the E-SCU-I according to option 2 (similar to category 3) should be used.

1.1 Purpose and scope of the contract

Legal basis

Article 28 of Directive 2012/34/EU provides that RUs shall conclude the necessary agreements under public or private law with the infrastructure managers of the railway infrastructure used and that the conditions governing such agreements shall be non-discriminatory and transparent, in accordance with Directive 2012/34/EU. Therefore, when using the IM's railway infrastructure, a contract of use between the parties is necessary.

The conclusion of such a contract is also necessary if requests for infrastructure capacity are made by a non-RU-applicant. The RU appointed by the applicant then also has to conclude an agreement (see article 41.1 of Directive 2012/34/EU).

In addition, Articles 5 § 1 and § 2 of the CUI foresee that the relations between the IM and the RU are regulated in a contract of use that regulates the necessary details of the administrative, technical and financial conditions of use.

This E-SCU-I can be used as the template for such a contract.

General remark on the text

This contract can be used for all freight and/or passenger rail transport services, whether exclusively international or international and domestic. In order to simplify and harmonise procedures, it is recommended to use this contract in both international and domestic transports.

The expression "in order to operate freight and or passenger transport services" shall be understood in the way that the scope of the contract does not necessarily have to be limited to "the performance" of freight and/or passenger transport services as such. It can also cover the preparations before the train is made ready and dispatched (i.e. before the first passenger gets into the train or the goods are loaded) and the work carried out once the pure transport has been completed (e.g. empty returns) as long as these actions are linked to subsequent or preceding transportation of freight and/ or passengers.

Different options

The E-SCU-I may be used to cover services encompassed EITHER (1) by the minimum access package (as defined in point 1 of Annex II to Directive 2012/34/EU), i.e.

- handling of requests for railway infrastructure capacity;
- the right to utilise capacity which is granted;
- use of the railway infrastructure, including track points and junctions;
- train control including signalling, regulation, dispatching and the communication and provision of information on train movement;
- use of electrical supply equipment for traction current, where available;
- all other information required to implement or operate the service for which capacity has been granted,

OR (2) by the minimum access package AND rail-related services provided by the infrastructure manager in service facilities.

The time at which the contracts of infrastructure use are concluded between the parties varies in practice and according to the operational circumstances in each country, and can be at a very early stage before the train run or at a very late stage (a day before) the train run starts. However, in most countries the contract must be signed before any use may be made of the infrastructure of the national rail network for operation of a transport service. Taking the different practices into account at which time the contracts are signed in Europe, §2 provides the parties with two different options to be chosen:

The text of **option A** is suggested to be applied when the contract of use of the infrastructure is concluded after or simultaneous with the allocation of the train paths. Therefore, option A refers to appendices to the contract in which the services and train paths agreed between the parties are set out.

If train paths are ordered between the parties of the contract after this contract (the E-SCU-I) was concluded (e.g. ad hoc paths) these paths are usually agreed separately between the parties (see also point 1.2 of the E-SCU-I). In some countries the parties simply agree on these paths through their IT system without any change to the respective Annex of this contract.

The text of **option B** is suggested to be applied when the contract is concluded before the allocation of train paths. Therefore, option B only refers generally to services and paths the parties have to agree upon in future.

However, independently of these considerations, the parties remain free to decide which option best fits their needs and to adjust the options depending on national requirements (e.g. if a plan of train paths is not in use in a country, where otherwise Option A would be applicable, the relevant Appendix could be skipped).

1.2 Services covered and not covered

Legal basis

Article 13 (1) of Directive 2012/34/EU provides the conditions of access to the minimum access package (detailed in Annex II number 1 to the Directive). Article 13 (2-9) provides the conditions of access to rail-related services (detailed in Annex II number 2 -4 to the Directive).

General remark on the text

The contract stipulates that other services (that have to be specified) than the ones covered by the scope of the contract shall be arranged by the parties separately. In practice these “other services” could be services that are not yet known when the contract is concluded, or services not covered by the minimum access package where the E-SCU-I only covers the minimum access package (see point 1.1. of the E-SCU-I text and implementation guide).

2.1 Constituent parts of the contract

Legal basis

No relevant common rules exist in either international law or EU law. Hence, general contractual law principles and practice (incl. requirements resulting from regulatory bodies’ and court decisions) are applicable in the different countries.

General remark on the text

The aim of this provision is to list all documents that form part of the contractual relationship between the infrastructure manager and the railway undertaking. It should be noted that currently there is no common standard combination of documents constituting the contractual framework for use of the railway infrastructure; while in some countries this framework is composed of a contract of use (plus possible Annexes) + a set of GTC + (selected parts of) the network statement (+ any other document), in other countries it can simply be made up of e.g. the contract and the (entire) network statement.

It also needs to be mentioned that there is so far no common understanding as to whether the network statement is a statutory or contractual legally binding document or not.

Different options

The proposed text offers two different options:

Option A is mainly meant to accommodate contexts where the network statement constitutes or contains the GTC and is considered a legally binding document, even without specific references to the network statement being included in the E-SCU-I. The proposed reference to the E-GTC-I is optional and only relevant for IMs that have chosen to apply the E-GTC-I.

Option B is mainly intended for contexts where the network statement and GTC only become legally binding if they are specifically referred to in the contract. It is thus proposed to also indicate the relevant Chapters of the network statement in this provision.

2.2 Hierarchy between the different documents

Legal basis

No relevant common rules can be found in international law or EU law. Hence, general contractual law principles and practice (incl. requirements resulting from regulatory bodies' and court decisions) are applicable in the different countries.

General remark on the text

This provision aims to clarify the hierarchy between the different constituent parts of the contractual framework (i.e. Contract of use vs. Appendices/GTC/NS/other documents).

Based on common practice identified, it is proposed that in case of conflict between the content of the different documents, the contract should take precedence over other documents (e.g. appendices, GTC, NS, etc.). However, there may be a need to adjust the proposed hierarchy to accommodate national specificities (e.g. in some countries the network statement is considered to have higher legal value than the contract). Parties should consider such an adjustment carefully.

3. Modifications to the contract

Legal basis

There is no procedure established either in Directive 2012/34/EU or in the CUI on how the contract of use **itself** should be modified.

Therefore, this contract may in principle be modified by agreement between the parties.

General remark on the text

In general, however, it is conceivable that the IM may be required to make unilateral modifications during the term of the contract of use in order to comply with laws, regulations or decisions of the national regulatory body, other competent authorities, or rulings adopted by a court of law or arbitration board, requiring e.g. an update of the network statement etc. and which entered into force after the contract's signature date. If these amendments are related to documents that are a constituent part of the contract of use, the IM has to have the possibility to unilaterally modify the network statement (or other related documents) without waiting for agreement from the RU to amend the contract.

Different options

Depending on the duration for which the contract is concluded and the constituent parts of the contract, different scenarios for modifications to the contract may arise and need to be addressed. Therefore, the E-SCU-I draft text provides the parties with three different options:

Option A:

This option is meant to address situations where the contract is concluded for a definite period of time and

(1) the network statement is made part of the contract by reference (see point 2.1, option B of the E-SCU-I text) or

(2) the contract is part of the network statement (e.g. an Annex to the NS)

This option stipulates that on the one hand, the contract may in principle be modified only by written agreement between the parties, but on the other hand also clarifies that infrastructure managers have a right to unilaterally modify the network statement during the timetable year if this is required to comply with the different situations as listed in the bullet points of the text under option A point 3 of the E-SCU-I. It should be noted that the list of bullet points of cases where unilateral modification is permitted may be adapted and completed if this is necessary to comply with specific national requirements.

Option B

This option is meant to address situations where the contract is concluded for an indefinite period of time and

(1) the network statement is made part of the contract by reference (see point 2.1, option B) or

(2) the contract is part of the network statement (e.g. an Annex to the network statement).

This option stipulates that on the one hand, the contract may in principle be modified only by written agreement between the parties but on the other hand also clarifies that infrastructure managers have a right to unilaterally modify the network statement during the timetable year if this is required to comply with the different situations as listed in the bullet points of the text under option B point 3 of the E-SCU-I.

In order to take into account the indefinite nature of the contract, in addition to the bullet points listed in option A of point 3, option B adds the bullet point that the IM is entitled to unilaterally modify the network statement in order to comply with the regulatory requirement to publish the network statement every year.

It should be noted that the list of bullet points of cases where unilateral modification is permitted may be adapted and completed if this is necessary to comply with specific national requirements.

Option C

This option is meant to address situations where the network statement is not part of the contract but considered a separate document and thus subject to separate modification rules (see point 2.1, Option A of the E-SCU-I text). In such cases, there seems to be no need to specify in the contract the possibilities to amend the network statement.

4. Exchange of information and confidentiality

Legal basis

The necessary exchange of information and confidentiality rules are not regulated in detail in European law. Article 39.2 of Directive 2012/34/EU (capacity allocation) only stipulates the obligation of infrastructure managers to respect the commercial confidentiality of information provided to them. The CUI Uniform Rules only mention the obligation to notify changes in licence or insurance coverage (Articles 6 § 2-3 CUI). Therefore, the parties have a certain contractual freedom in drafting the exchange of information and confidentiality rules.

Different options

Point 4 of the contract provides two options on how the contract may be used.

Option 1

For parties using the E-GTC-I, please choose option 1, which refers to chapter 5 (Administrative requirements), chapter 8 (Confidentiality) and chapter 2.6.3 (Flow of information) of the E-GTC-I. Infrastructure managers not using the E-GTC-I but having comparable provisions in their national GTC should refer to the relevant provisions of their national GTC.

Option 2

For parties not using the E-GTC-I and without a comparable provision in their national GTC, please choose option 2. Option 2 provides a concrete text proposal equivalent to those (chapter 5, 8 and 2.6.3) of the E-GTC-I.

5.1. Authorisations and approvals

Legal basis

The necessary documents needed to provide rail transport services are mentioned in Article 17(4) of Directive 2012/34/EU, Article 10 of Directive 2016/798/EU as well as Article 6 § 1 CUI (licence and safety certificates). Articles 18-22 of Directive 2012/34/EU set the conditions for obtaining a licence. In addition, Article 6 § 2 CUI stipulates that the Railway Undertaking must notify the infrastructure manager of any event which might affect the validity of his licence, his safety certificates or other elements of proof.

General remark on the text

Point 5.1 of the E-SCU-I refers to the IM's national network statement. It should be noted that the RNE network statement Common Structure mentions the Conditions for Access to the Railway Infrastructure (Licence and Safety Certificate or other elements of proof) and allocation body in points 3.2.3 and 3.2.4. It should be checked by the parties using the E-SCU-I whether the national network statement uses another numbering; if so, this should be included when referring to the respective points of the network statement under point 5.1 E-SCU-I.

5.2. Insurance

Legal basis

Article 22 of Directive 2012/34/EU sets the requirements relating to cover for civil liability which are specified by national law.

Article 6 § 3 of the CUI stipulates that the IM may require the RU to prove that he has taken out a sufficient liability insurance to cover claims in accordance with CUI and that the RU must prove that the liability insurance still exists, and it must inform the IM of any modifications of the insurance.

General remark on the text

Point 5.1 of the E-SCU-I refers to the IM's national network statement. This reference is an optional one as not all IMs stipulate the need for insurance in their network statement.

It should be noted that the RNE Network Statement Common Structure mentions the Conditions for Access to the Railway Infrastructure/ allocation body (Insurance) in point 3.2.5. It should be checked by the parties using the E-SCU-I whether the national network statement uses another numbering; if so, this should be included when referring to the respective points of the network statement under point 5.2 E-SCU-I.

In addition, the point in time when the RU has to prove to the IM that it (still) has insurance remains to be indicated in the E-SCU-I.

5.3. Financial guarantees

Legal basis

Article 41(2) of Directive 2012/34/EU entitles IMs to levy financial guarantees to ensure that its legitimate expectations about future revenues and utilisation of the infrastructure are safeguarded. Such financial guarantees have to be appropriate, transparent and non-discriminatory and specified in the network statement. Commission Implementing Regulation 2015/10 (IR 2015/10) defines further details in this regard.

General remark on the text

The text is designed in a way to ensure alignment with relevant EU law.

As there is no legal obligation to apply financial guarantees, this provision is optional and should only be included in the contract of use if such financial guarantees are applied in practice. IMs that apply financial guarantees need to include information on financial guarantees in their network statements.

According to EU law (Commission Implementing Regulation 2015/10 (IR 2015/10)), a financial guarantee can be provided by means of either advance payment or a bank guarantee and the sum of financial guarantees must not exceed the estimated amount of charges incurred during two months of train operations requested.

According to article 4 (2) of IR 2015/10 regarding the timing for providing a bank guarantee, the payment of a financial guarantee should not be required more than 10 days before the first of the month in which the railway undertaking starts the train operations on the relevant infrastructure.

Article 3 (3) of [Regulation No 1182/71 determining the rules applicable to periods, dates and time limits](#) stipulates that the periods concerned shall usually include public holidays, Sundays and Saturdays, save where these are expressly excepted or where the periods are expressed in working days. Therefore the 10 days mentioned in IR 2015/10 and point 5.3 of the E-SCU-I (option B) are to be understood as 10 calendar days.

Different options

The contracting parties can choose between two options:

Option A should be chosen where financial guarantees are levied as a general rule before the start of train operations.

Option B should be chosen where a financial guarantee only becomes applicable when during the validity of the contract an applicant's credit rating deteriorates towards a situation suggesting that it might have difficulties in paying its infrastructure charges. However, IMs are free to define additional cases in which RUs are exempted from providing a guarantee.

6.1 Prices and other price-related schemes

Legal basis

EU law (see Section 2 of Chapter IV of Directive 2012/34/EU plus Commission Implementing Regulation 2015/909) contains a comprehensive set of provisions concerning the determination of prices/charges for use of the railway infrastructure and related services and price-related schemes (e.g. performance schemes, etc.) plus a requirement to publish related information in the network statement.

General remark to the text

Section 5 of the RNE Network Statement Common Structure describes in detail the information on charges and charging-related aspects, such as billing arrangements, etc. to be published in the network statement. The information published in the network statement shall thus constitute the basis for the E-SCU-I provisions on prices and other price-related schemes. The invoicing aspects are addressed in Article 6.2. of the E-SCU-I.

6.2. Payment and accountancy

Legal basis

According to the CUI, the financial conditions of use should be regulated in the contract of use (Article 5(2)). EU law (Section 2 of Chapter IV of Directive 2012/34/EU plus Implementing Regulation 909/2015) contains detailed rules on the determination of track access charges based on the principle of direct cost + mark-ups as well as certain rules on cancellation charges (e.g. Article 36 of the Directive). According to EU law, charges have to be transparent and applied in a non-discriminatory manner. With the (potential) exception of Article 5(4) of Implementing Regulation 2015/909, EU law does not define rules on payment and accountancy, though. Chapter 5.9 of the RNE Network Statement Common Structure requires IMs to include in the network statement a dedicated chapter describing billing arrangements (including e.g. terms and conditions for non-payment, etc).

General remark on the text

Article 6.2 of the E-SCU-I proposal addresses the following range of topics:

1. term of payment and billing arrangements (as defined in Chapter 3 of the E-GTC-I and relevant provisions of the network statement);
2. invoicing of services that have been ordered but not provided due to restrictions/cancellations of paths (in accordance with point 2.9 of the E-GTC-I and relevant provisions of the network statement³);
3. Invoicing of services which have not been ordered but provided as essential services to the operations (such as indispensable shunting services at border stations with a change in electricity system or services offered and billed by the IM in case of emergencies /for security reasons);
4. Handling of mistakes or overcharges (according to national law);
5. Invoicing address;
6. Interest for late payments (in accordance with point 3.3 of the E-GTC-I).

Different options

Option 1 makes reference to Chapters 2.9 and 3 of the E-GTC-I and is to be chosen by parties using the E-GTC-I. Article 2.9 of the E-GTC-I defines the financial consequences of restrictions to and cancellations of allocated train paths (e.g. no cancellation fees to be paid by RU in case of a cancellation due to reasons within the sphere of the IM; no additional cost for RU in case of a diversion caused by IM; other financial consequences as defined in Art. 2(9) point 5). Chapter 3 of the E-GTC-I defines charging principles, billing arrangements (e.g. currency, discharge in case of payment by transfer), basic rules for late payments (e.g. right to charge an interest rate, right to suspend contract in case of repeated late payment) and financial guarantees; the provisions on financial guarantees of point 3.4 of the E-GTC-I are covered by point 5.3 of the E-SCU-I, though.

Option 2 provides parties not using the E-GTC-I, and without a comparable provision in their national GTC, with some text proposals instead of the references to chapters 2.9 and 3 of the E-GTC-I, which in principle aim at reflecting the relevant content of the E-GTC-I. As the replacement of references to the E-GTC-I by

³ Chapters 4.8 and 5.6 of the RNE Network Statement Common Structure require IMs to publish information on procedures & deadlines for path alteration/modification/cancellation and criteria for the levying of penalty fees as well as fees (to be) applied in the network statement.

corresponding stipulations in some parts leads to longer and rather complex text, the Article is divided into 6 subchapters (i.e. §§ 1 to 6) addressing the six topics listed above.

For the topic “term of payment & billing arrangements” (§ 1), it is not required to copy all the content of Chapter 3 of the E-GTC-I (which is partly also covered by EU legislation and network statements); rather, it is proposed to only reiterate the content of Chapter 3 of the E-GTC-I specifically relevant to this topic, i.e. the obligation to pay charges as described in the network statement and the rule on discharging in case of payment by transfer. For the topic “invoicing of services that have been ordered but not provided” (§ 2) two different solutions are proposed for parties having opted for Option 2, i.e. an E-SCU-I text without references to the E-GTC-I.

Option A: this option can be used where the rules, procedures and penalties for cancellations, alterations or modifications of train paths (as referred to in point 2.9 of the E-GTC-I) are described in the network statement and thus do not need to be specified in detail in the contract. The text proposal thus mainly refers to the relevant provisions of the network statement.

Option B: this option provides more detailed stipulations on invoicing in case of cancelled or modified train paths, reiterating the basic principles defined in point 2.9 of the E-GTC-I (some of which can implicitly also be deducted from the charging principles of EU law), including in particular the prohibition to invoice track access charges exceeding the amount due for the initial train path in case of diversion attributable to reasons within the sphere of the IM (with exceptions e.g. for force majeure) and the prohibition to invoice track access charges for services cancelled by the IM.

For both options (A and B), it is proposed to clarify that the stipulations of the E-SCU-I are without prejudice to any right of recourse for pecuniary losses resulting from damages incurred under any obligation stemming from a separate agreement between the contracting parties or from the mandatory applicable law, which is not at the disposition of the parties. This should clarify that the provisions contained in the E-SCU-I text (point 6.2. option 2) concerning financial aspects such as the payment of charges have no influence on any statutory right of recourse for financial losses where such is stipulated in international law (e.g. CUI) or national law, or in case of an agreement between the parties (e.g. in the GTC or network statement or directly in the contract). However, if a right of recourse is based on an agreement, this agreement has to be concluded between the parties (e.g. + reference to optional text/Chapter 4 E-GTC-I in case the parties decide to refund each other by agreement for damages payable to their contractual partners in the event of delay or disruptions).

It should be noted that the term “damages” may be interpreted and translated differently in different countries. However, the meaning is strictly related to what is meant by the respective mandatory law, related documents (such as interpretative guidelines), or agreement between the parties (e.g. in the sense of loss, compensations etc.) regardless of how it is translated.

For the topic “interest for late payments” (§ 6), the proposed text is based on the relevant content of the E-GTC-I (i.e. mainly points 4 and 5 of Chapter 3.3 of the E-GTC-I concerning the starting date for charging an interest rate and the right to suspend the contract in case of repeated late payment), combined with a reference to relevant provisions in the network statement. Regarding the starting date for charging the interest rate, the E-GTC-I offer two options for the parties to choose from (depending on their national law). These options are reflected in the text proposal of the E-SCU-I. As a general rule, Option A should be chosen, whereby the interest becomes payable from the day following the date or the end of the period laid down in the contract. However, where national law provides that the interest rate should only become applicable following notification, Option B should be chosen.

7 Language(s)

Legal basis

There are no regulations in European law (especially Directive 2012/34/EU) or international law (especially the CUI Uniform Rules) specifying the languages in which the contract of use has to be drawn up.

General remark on the text

Nevertheless, an English version besides the national languages would be desirable for RUs running international transports.

Different options

The E-SCU-I provides two options the parties can choose from, i.e.

option A with equality of all languages and

option B with one authoritative language only.

Both options can also be used if the contract is drawn up in only one language (“if the contract is drawn up in different languages...”).

8 Duration

Legal basis

Article 38.2 of Directive 2012/34/EU stipulates that the right to use specific infrastructure capacity in the form of a train path may be granted to applicants (RUs) for a maximum duration of one working timetable period only. The CUI do not stipulate any specific rule regarding the duration of the contract of use.

General remark on the text

According to European Law, it is only allowed to use specific infrastructure capacity in the form of a train path for a maximum duration of one working timetable period (see Article 38.2 of the Directive). Therefore, in Member States of the European Union the contract usually has to be renewed after one working timetable period.

Different options

Option A has to be chosen if the E-SCU-I is valid for one working timetable period only. In some countries, there is a possibility for a tacit renewal of the contract by ordering paths for the next timetable period. Therefore, please adapt the E-SCU-I text accordingly to specify whether the contract can or cannot be renewed by tacit agreement.

Option B provides a clause for those parties (mainly outside the EU) that are able to conclude an indefinite contract.

9 Termination

Legal basis

The CUI stipulate in Article 7 the right of infrastructure managers and railway undertakings to terminate the contract. Article 7 CUI is in general mandatory law, allowing in § 5 to derogate from some of the stipulations. Article 52 § 2 of Directive 2012/34/EU only provides the possibility for the infrastructure manager to require the surrender of a train path which has been used less than a specific threshold quota. Other than this, European law provides no termination clauses.

Different options

Point 9 of the contract gives two options on how the contract may be used.

Option 1

For parties using the E-GTC-I, please choose option 1, which refers to chapter 7 (Duration and termination of the contract of use) of the E-GTC-I. Optionally, the parties may choose to refer to points of the network statement and national law in case provisions are defined there.

Chapter 7 E-GTC-I mainly carries over the termination rules as stipulated under Article 7 CUI (mandatory regulations to terminate the contract forthwith, including some possibilities of derogation).

Since Article 7 § 5 CUI allows the parties to the contract to derogate from Article 7 § 1 letters c) and d) as well as § 4, the E-GTC-I makes use of some permitted adaptations to the CUI, such as the additional termination case in number 1.c E-GTC-I for the event that the RU is declared bankrupt. The non-mandatory case of § 1d CUI is not carried over into the E-GTC-I. § 3 CUI allows the parties to modify the exercise of the right to terminate the contract in case of a clear breach of essential obligations of the parties. The E-GTC-I here clarifies the essential obligations as well as the notice period to exercise the right.

Option 2

For parties not using the E-GTC-I and without a comparable provision in their national GTC, option 2 provides a text proposal instead of the reference to chapter 7 E-GTC-I. The text proposal is mainly equivalent to chapter 7 of the E-GTC-I (see explanations under option 1); moreover, it is clarified that termination requirements set out in national law/the network statement can be taken into account.

In addition to chapter 7 E-GTC-I, in case the RU is in arrears with payment and the IM wants to terminate the contract, §1b of option 2 adds the exception to the IM's right to terminate the contract if the RU's debt is secured by financial guarantee. Furthermore, it is added that the parties may include the IM's obligation to send the RU a formal notice for payment of the amounts missing.

For parties having the possibility to conclude indefinite contracts (see point 8 of this implementation guide and E-SCU-I text), § 3 d) includes a possibility to terminate the contract with minimum two months' notice before the change of the working timetable. This aforementioned ordinary termination clause which can be invoked by either party should be only chosen if the contract is valid for more than one timetable period as in all other cases the contract automatically ends or has to be renewed by the change of the working timetable.

10 Disputes and Competent Courts

Legal basis

Directive 2012/34/EU contains some specific provisions on dispute settlement and appeal procedures (Article 46(6) and point 3(d) of Annex IV regarding dispute resolution systems for the path allocation phase, Article 56 on Regulatory Bodies' competence, point 5 of Annex IV on publication of information on procedures for dispute resolution and appeals relating to matters of access to rail infrastructure and services in the network statement, point 2(g) of Annex VI on dispute resolution relating to the performance scheme). While the Directive sets out rather detailed rules for the appeal procedure to regulatory bodies (including composition and powers of regulatory bodies, rights to turn to the regulatory bodies, some procedural aspects, judicial review, etc.), other dispute resolution systems referred to in the Directive are not defined in a lot of detail. Thus, the EU Legal Framework leaves some room for manoeuvre regarding the specific set-up of such dispute resolution systems.

According to Article 22 of the CUI the parties can foresee a conciliation procedure. The CUI do not set out detailed rules for the conciliation procedure, which can thus be determined by the parties. The CUI in Article 22 also mention the possibility to agree to refer the matter to an arbitration tribunal established by OTIF (see Chapter V of COTIF).

Article 25 CUI contains a regulation regarding time limits under which legal actions can be taken.

General remark on the text

The text of the E-SCU-I makes clear that the parties may in any case refer their issue to the competent courts or to the relevant regulatory body. This right should not be excluded by a conciliation/arbitration procedure. While the composition of the conciliation procedure is detailed under the E-SCU-I/ in the E-GTC-I (equal number of members appointed by each party), the arbitration procedure as such is not described. In general, different arbitration tribunals exist that may be used by the parties to the contract: The OTIF arbitration tribunal according to title V of COTIF (http://otif.org/en/?page_id=61). In addition, the leading arbitral institution, the one under the seat of the International Chamber of Commerce (<https://iccwbo.org/dispute-resolution-services/arbitration/>), may be chosen as well.

The E-SCU-I text also mentions the exclusive court which the parties have to appeal to. According to Point 9.1.3 E-GTC-I as well as under the general rule of Article 24 § 2 CUI, this court would be the court where the Infrastructure Manager has its registered seat.

Different options

Point 10 of the contract gives two options on how the contract may be used.

Option 1

For parties using the E-GTC-I, please choose option 1, which refers to chapter 9.1 (Disputes) and 9.3 (Limitation) of the E-GTC-I. The Dispute settlement provision under the E-GTC-I foresees a conciliation procedure before referring disputes to an arbitration procedure (optional) or to the court. Time limits stipulated under the E-GTC-I mainly carry over the rules of the CUI (Article 25), while adding that the mandatory national law prevails over the time limits stipulated under the E-GTC-I (see 9.3.6).

Option 2

For parties not using the E-GTC-I and without a comparable provision in their national GTC, option 2 provides two different text proposals (A and B) instead of the reference to chapter 9.1 and 9.3 E-GTC-I.

The text proposal in option A, replacing the reference to 9.1 E-GTC-I (Disputes), differs from the E-GTC-I solution in one point: the parties to the contract are not obliged to undergo a conciliation procedure before referring the matter to an arbitration tribunal or the court, i.e. conciliation procedures are not obligatory according to this option.

The text proposal in option B expresses the wish of the parties to solve all disputes arising from this contract amicably in the first instance.

In case option A or B (according to what was chosen by the parties) fail, the parties can decide whether their dispute is to be settled through an arbitration procedure or if they refer the issue directly to the court.

11 Law applicable

Legal basis

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General remark on the text

Point 11 of the E-SCU-I refers to the IM's national law to be applied, as the transport is carried out in its country. It is important to note that Article 8 § 3 COTIF explains that "national law" means the law of the State in which the person entitled asserts his rights, including the rules relating to conflict of laws.

12 Saving clauses

Legal basis

There are no regulations in European law (especially Directive 2012/34/EU) or international law (especially the CUI Uniform Rules) specifying any saving clauses. Therefore, parties have a certain contractual freedom to agree upon such clauses when necessary in their opinion.

General remark on the text

Like most contracts, also the E-SCU-I contains so-called "saving clauses" to protect the validity and enforceability of the rest of the contract if any clause therein is found to be unenforceable.

13 Contact details

Legal basis

EU Regulation 2016/679 (GDPR) and respective national Data Protection Rules.

General remark on the text

The parties should list the contact details of each representative in an Appendix to the contract. This Appendix should also set out the procedures of the respective privacy policy of each Infrastructure Manager (whose national law applies) according to the General Data Protection Regulation (GDPR) and the national Data Protection Rules.

14 Copies of the contract

Legal basis

Concerning the form of the contract, Article 5 CUI stipulates that the contract must be concluded in writing or in an equivalent form, but that the absence or irregularity of a written form or equivalent form of the contract shall not affect the validity of the contract. Questions concerning a valid signature of this contract are governed by national law. EU Regulation 910/2014 "eIDAS" determines the validity of electronic signatures.

General remark on the text

Each party should receive a signed contract. If parties use paper contracts, the signature is usually handwritten.

The contract may be issued also in a digital (equivalent) format. In this case, the contract may be signed by electronic signature. It is recommended to use the Qualified Electronic Signature (Article 3 (12) of EU-Regulation [No 910/2014](#) “eIDAS”) as this kind of electronic signature would have the same legal value as a handwritten signature.

The authorised representative – authorised according to the internal procedure of each Party (Infrastructure Manager and Railway Undertaking) – should sign the contract, including the date and place of signature.

15 Miscellaneous provisions

This point can, in accordance with the interested parties, be developed further as required and placed where appropriate according to the content. It can cover items not yet addressed in other constituent parts of the contractual relations between the RU and IM.

Additional remark

At the end of the contract please indicate a list of all Appendices to which the contract refers.
