

RNE's vision for harmonising the contractual framework for international rail transport

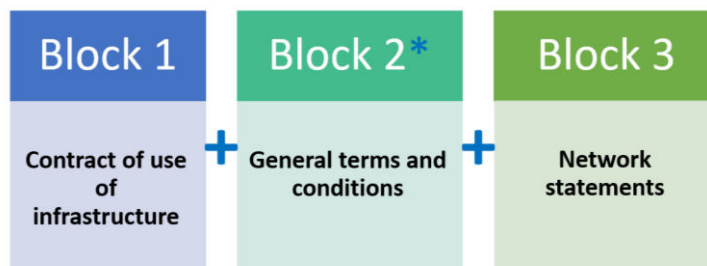
Introduction

Various recent initiatives call for a harmonization of the contractual framework for international rail transport. While infrastructure managers and their customers are bound to respect international law (in particular the CUI-Annex to COTIF) and the regulatory framework defined at EU and national level, their contractual relations remain subject to influences from different civil law systems and a varying degree of contractual freedom.

As a result, a large variety of different approaches is still being applied to define the contractual relationship between IMs and RUs. In an increasingly challenging competitive environment for international rail transport operations, RNE shares the vision of reducing the complexity resulting from these diverging approaches.

Overview of the status quo

Contractual relations between infrastructure managers and railway undertakings usually consist of a set of provisions spread over the following “building blocks”:



* EGTC-I/GTC are in some cases also included in the contract of use/track access contract or the NS

The content of these “building blocks” is partly defined by legislation:

- The contract of use has to be in line with the provisions of Appendix E (“CUI”) to the Convention concerning international carriage by Rail (COTIF) and Directive 2012/34/EU (in particular Article 28 and the principle of non-discrimination). In some countries, there are also national legal requirements concerning the content of the contracts of use. The contracts are agreed between IM and RU and can take account of national particularities.
- The network statement must meet the requirements of Directive 2012/34/EU (in particular Article 27 and Annex IV). Its content is mostly defined unilaterally by the IM, following consultation of applicants. Many IMs refer to (parts of) the network statement in their contracts of use, thereby making the relevant provisions of the network statement explicitly become part of the contractual relations.
- General terms and conditions (GTCs) – to the extent that they touch upon issues dealt with in the CUI (e.g. liability rules) or the Directive (e.g. conditions for access to the network) - also have to respect the relevant provisions of international law and EU law. They are usually defined unilaterally by IMs and may include national specificities. Some IMs integrate the GTCs in the network statement and/or the contract of use, while others use a separate document to which they refer in the contract.

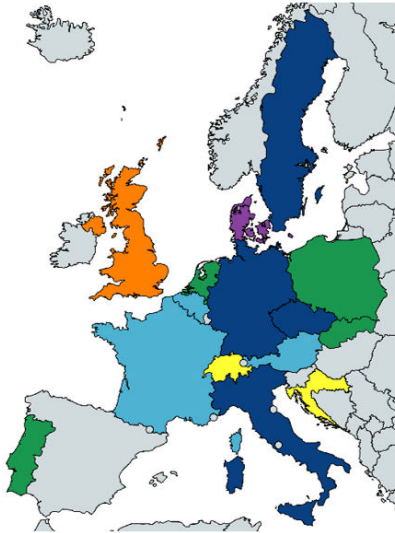
When aiming at harmonising contractual relations between infrastructure managers and railway undertakings, the intrinsic link and (hierarchical) relations between these documents need to be respected:



A first analysis of the contractual framework among RNE Members has shown, that infrastructure managers have chosen different patterns for combining the three key “building blocks”:

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** Contract of use (incl. GTC)



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 Reseau and Trafikverket.

Proposal for approaching the harmonization challenge

Due to the interplay between the “building blocks”, it seems key to treat contracts of use, general terms and conditions and network statements as a package when working on a harmonization of the contractual framework for international rail transport. Only in this way the risk of redundancies or even contradictions between the various documents, which could endanger the successful implementation of harmonized documents, can be mitigated.

Stepwise approach

Given the diverse approaches in combining the different elements of the contractual framework, RNE considers a stepwise approach as the most promising road towards harmonization of the contractual framework:

- 1) In a first step, there is a need to develop a common understanding of the scope/typical content of each “building block”, taking into account the relevant provisions of international law (COTIF CUI for the contracts of use/GTCs) and EU law (in particular Directive 2012/34 for the network statement).
- 2) Such common understanding can then be translated into common structures for contracts of use, general terms and conditions and the network statement. RNE has learnt that common structures such as the Network Statement Common Structure can already significantly facilitate the orientation of customers. The already existing common structure of the network statement and the European general terms and conditions can constitute valuable input to this work.
- 3) In a third step, the benefits and potential challenges of implementing one common model for assembling the “building blocks” (i.e. implementation of one of the types shown on the map above) should be assessed. In this context, the potential benefits of combination of some of the building blocks (e.g. merging of GTCs with network statement or contract of use) should also be considered. Based on the outcome of that assessment the sector should agree whether to pursue this objective.
- 4) In a fourth step, it should be assessed to what extent it is feasible and meaningful to develop common text for contracts of use and general terms and conditions, taking into account differences in national legal frameworks and current practices. In this context, the (potential) relevance of supporting international/EU legislation should also be discussed.

Sector driven

Experts in charge of designing and concluding contracts within their relevant organisations (IMs/RUs) seem best placed to identify solutions that can properly address current problems and at the same time be successfully implemented. Even if it cannot be excluded that the sector encounters obstacles, which it may not overcome without the support from lawmakers, the harmonization process should therefore be initiated and driven by the sector.

On the side of infrastructure managers, RNE has already launched a project that aims at harmonizing the contractual framework for international rail transport. First results, such as a proposal for a common structure for the three “building blocks” of the contractual framework are expected to become available in 2020. In parallel, RNE is closely following the planned trial of a standard contract of use on RFC Scan-Med.

RNE is prepared to take an active, leading role in the process of harmonizing the contractual framework for international rail transport and to pursue its vision in close exchange with other organisations at European and international level.