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Translation

O

Apportionment between railway undertakings (RU) of compensation for damage or injury resulting from the use or running of privately owned wagons

Répartition entre entreprises ferroviaires (EF) des frais des dommages résultant de l'utilisation ou de la circulation des wagons de particuliers

Verteilung der durch die Verwendung oder den Umlauf von Privatgüterwagen verursachten Schäden zwischen den Eisenbahnverkehrsunternehmen (EVU)



UNION INTERNATIONALE DES CHEMINS DE FER
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The person responsible for this leaflet is named in the UIC Code

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Summary

This leaflet is in two parts:

- damage caused by P-wagons;
- damage caused to P-wagons.

The 8th edition included the provisions set out in the blue pages of the RIV, which have been removed from the RIV 2000, which entered force on 1.7.2000. These provisions mainly cover damage caused to P-wagons.

The 9th edition takes into account the new direct invoicing procedure.

1 - Damage caused by privately-owned wagons

1.1 - Article 1

1.1.1 - For application of this point, the damage or injury to be taken into consideration is that caused to a railway ([see Glossary - page 20](#)) and/or to third parties is the consequence of the use or running of a privately-owned wagon (P-wagon) in domestic or international traffic, or which takes place when the wagon is not under a contract of carriage but in the custody of a RU (as defined in the Glossary of *UIC Leaflet 433*).

1.1.2 - This leaflet also applies to damage or injury caused by any goods transported, insofar as it results from damage to a P-wagon or an accident brought about by the use or running of a P-wagon.

1.1.3 - However, this point shall not apply in cases where a P-wagon, or the goods carried in it, cause damage or injury because the wagon has itself suffered the consequences of an event ascribable to the RU ([see Glossary - page 20](#)) or a third party.

1.1.4 - Damage or injury to be taken into consideration

Damage or injury shall be evaluated in compliance with the national legislation in force.

When calculating the amount of compensation for damage and injury, the following aspects in particular must be taken into account:

- physical injury,
- damage caused to installations belonging to a third party,
- damage caused to P-wagons other than those registered in the name of the owner of the wagon which caused the accident,
- damage caused to the rolling stock and installations of the railway ([see Glossary - page 20](#)),
- damage caused to the environment,
- re-railing and repair costs (including emergency train, work team),
- transshipment costs,
- cost of accident investigation, expert reports, and intervention by specialist teams,
- costs of transport and replacement,
- compensation paid by the RU in respect of goods transported: loss, damage, late delivery (only for international traffic with guaranteed transit times),
- costs of train diversions, speed restrictions and delays,

on the condition that the damage referred to above does not stem from the particular characteristics of nuclear substances carried.

1.1.5 - The apportionment methods stipulated in *UIC Leaflet 471-1, 471-2, 963 and 991* are not applicable to compensation for damage or injury as covered by this leaflet.

1.2 - Article 2

1.2.1 - Compensation for damage or injury covered by Article 1, points **1.1.1 - page 2** and **1.1.2 - page 2**, shall be apportioned between RUs in accordance with Article 3 (**see point 1.3 - page 3**):

- whether such damage or injury is ascribable to the railway (**see Glossary - page 20**) or to the owner by virtue of *UIC Leaflet 433, point 3.6.2*,
- whether or not such damage or injury results from neglect or another serious fault on the part of the owner,
- whether or not the owner has paid the amount stipulated in *UIC Leaflet 433, point 3.6.3*,
- whether or not the wagon is on hire to third parties.

1.2.2 - With regard to compensation for damage or injury to be apportioned in accordance with this point, the registering RU is not obliged to exercise any right of appeal on behalf of the operating RU against the owner.

The registering RU must appeal on behalf of the operating RU if the latter considers that the damage or injury results from neglect or another serious fault by the owner and asks for an appeal to be lodged.

If there is an appeal, all costs incurred in pursuing it, together with any amounts recouped, shall be apportioned between the RUs which participated in the apportionment of compensation, pro-rata to the damage or injury sustained by each of them, in accordance with Article 3 (**see point 1.3 - page 3**).

1.3 - Article 3

1.3.1 - Compensation in respect of the financial consequences which, on international services, derive from the non-compliance with transit times, damage and injury resulting from the total or partial loss of, or damage to coaches, vans, wagons, loading gear, containers, goods and baggage shall, depending on the case, be arranged in compliance with the provisions of the RIC, RIV, AIV, AIM and other international agreements of the same nature (**see List of abbreviations - page 21**).

1.3.2 - The financial consequence of damage not covered by the conventions and agreements mentioned in point **1.1.1 - page 2**, also those which the operating RU alone would be required to bear by virtue of the application of the same conventions or agreements, shall be apportioned as follows:

- up to 17 000 euro, the entire amount shall be borne by the operating RU,
- if the amount exceeds 17 000 euro, the difference shall be divided half-and-half between the operating RU and the registering RU.

1.4 - Article 4

When the damage or injury mentioned in Article 1 (see point 1.1 - page 2) occurs, the operating RU must:

- immediately advise the registering RU of its occurrence so that the latter, where applicable, can agree with the operating RU on steps to be taken,
- prepare a report (see specimen in Appendix B.1 - page 15) stating the nature of the damage or injury, the approximate amount involved, and the alleged or definitive causes.

1.5 - Article 5

1.5.1 - The operating RU shall send the report mentioned in Article 4 (see point 1.4 - page 4) to the registering RU within **90 days** of occurrence of the damage or injury, failing which the apportionment mentioned in Article 3 (see point 1.3.2 - page 3) may be refused by the registering RU. The above deadline may be extended if a substantiated request to this effect is submitted in due time.

1.5.2 - If the registering RU contests that the damage or injury was caused through the use or running of a P-wagon registered by it, it must so notify the operating RU, under penalty of preclusion, stating its reasons, within **45 days** after the date of receipt of the report.

1.6 - Article 6

1.6.1 - When the amount to be apportioned in accordance with Article 3, point 1.3.2 - page 3, exceeds euro 17 000, the operating RU shall send the statement to the registering RU with supporting documents. The amount of the said statement shall be expressed in the national currency of the operating RU and in euro, using the rate applicable on the day when the invoice is drawn up.

1.6.2 - If the registering RU wishes to contest the statement, it must so notify the operating RU, under penalty of preclusion, giving the reasons, within **45 days** after the day of receipt of the said statement.

1.7 - Article 7

Settlement of the proportion allocated to the registering RU must be effected, under penalty of 5% interest per year, within **90 days** following receipt of the statement, unless the matter is referred to the Court of Arbitration and it decides otherwise.

1.8 - Article 8

The various notifications contained in this leaflet must be sent to the addresses given in Appendix A - page 9.

1.9 - Article 9

Reserved.

2 - Damage caused to privately-owned wagons

2.1 - Article 10 - General

The costs and damage to be taken into consideration when implementing this point are those resulting from application of the provisions in *UIC Leaflet 433, points 3.4 (Damage - Losses) and 3.5 (Damage sustained by P-wagons - Liability of the RU)*.

2.2 - Article 11 - Invoicing and payment of repair costs for which the owner is liable

2.2.1 - If the operating RU carries out repair or cleaning work, it shall invoice directly to the wagon keeper the corresponding costs, except those costs:

- which are chargeable to the RUs and settled in accordance with Article 12 (see point 2.3 - page 6), or
- for which it has been agreed to invoice through the registering RU in accordance with *UIC Leaflet 433, points 3.5.3.3 and 3.5.4.3*.

If the accounting is carried out by the registering RU, liability shall be determined by the operating RU and the registering RU on the basis of the damage notification form (see specimen form, point B.1 - page 15) drawn up by the operating RU.

2.2.2 - For invoicing purposes, the operating RU shall complete for each wagon **Form Z¹** (see Appendix B.2 - page 16), which must be supplemented by a repair invoice issued in duplicate.

Form Z1 and the invoice shall be compiled with due care and accuracy so that the registering RU can readily determine liability for the damage and check the work carried out.

Forms Z1 complete with a checklist (see Appendix B.3 - page 17) shall be sent to the registering RU.

2.2.3 - Forms Z¹, complete with the repair invoices and checklists, must reach the registering RU at latest 35 months after the date on which the damage was reported. They must be despatched to the relevant department at the address shown in Appendix A - page 9.

2.2.4 - The registering RU must validate **Forms Z¹** and the accompanying repair invoices on the checklist which shall be despatched within two months following receipt. It shall state reasons for possible refusals on a checklist.

2.2.5 - The total of the amounts of **Forms Z¹** as accepted on the checklist shall be included for the 15th of month M+1 on Form E (see Appendix B.4 - page 18) and credited to the operating RU through the RIV statement of account.

2.2.6 - If the operating RU does not wish to use **Form Z¹**, it shall prepare an invoice in duplicate and reproduce the corresponding data on **Forms Z¹** as appropriate.