

**Amendments and additions to the GCU
Proposal sheet – modifications to Preamble Art. 7-27**

<p>1. Present the problem (with examples and, if possible, figures giving a measure of the scope of the problem):</p> <p>The apparently simple wording of Article 27.1 in fact poses many problems of principle and implementation, especially as regards damage caused by wagons to the infrastructure.</p>	<p>2. Show why and where the GCU is lacking in this respect:</p> <p>The current Article 27 is incomplete as regards the determination of fault. The basis of keeper liability is not explicitly stated.</p>
<p>3. Explain why the described problem can only be solved through the GCU:</p> <p>The clarification offered by the GCU avoids the legal uncertainty of Article 27 being interpreted differently from one country to another.</p>	<p>4. Outline why the problem should be solved as it is envisaged in the proposed amendment / addition:</p> <p>Keeper fault must be clearly defined as non-execution of his obligations.</p>
<p>5. Describe how the proposed amendment or addition will help to solve the problem:</p> <p>The keeper's obligations clearly relate to the wagon being maintained in good condition, maintenance being one of the obligations defined in Article 7.</p> <p>There therefore needs to be a clear, direct link between Articles 7 and 27.</p>	<p>6. Evaluate the possible positive and negative impacts (operational, costs, administrative, interoperability, safety, competitiveness, etc.), using a scale from 1 (very low) to 5 (very high):</p> <p>The proposed text is more balanced, and offers the sector as a whole greater clarity as regards damage caused by wagons.</p>

7. Proposed text (modifications in blue)

Preamble (second paragraph):

In order to ensure the safety and to improve the efficiency and competitiveness of railway freight traffic, the wagon keepers and RUs listed in Appendix 1 hereby agree to apply the provisions of this

Article 7: Technical admission and maintenance of wagons

7.1 The keeper shall ensure that his wagons are technically admitted * in accordance with the European legislation in force and that they remain so throughout the period of their use. with the national and international laws and regulations in force at the time of admission and that they remain technically admitted throughout the period of their use.

7.2 The keeper shall ensure that his wagons are maintained in accordance with the laws, regulations and mandatory standards in force. In particular, he shall appoint a certified Entity in Charge of Maintenance (ECM) and ensure that the latter performs all of its assigned tasks. must furnish proof to user RUs on request that the maintenance of his wagons is compliant with the legislation in force. For the purposes of this contract and vis-à-vis the other signatories, the keeper is considered to be, and have the responsibilities of, the entity in charge of maintenance for the wagon.

Upon request, the keeper shall make available to any user RU without delay reliable information about maintenance (including Maintenance File and Maintenance Record File) and restrictions affecting operations, necessary and sufficient to support safe operations.

For the purposes of this contract and vis-à-vis the other signatories, the keeper is considered to be, and have the responsibilities of, the ECM for his wagons.

7.3 unchanged

7.4 unchanged

Article 27: Principle of liability

27.1 The keeper or a previous user subject to this contract shall be liable for damage caused by the wagon when they can be shown to be at fault. The keeper shall be presumed to be at fault if he has not correctly fulfilled his duties as these arise from Article 7, unless this breach of duty did not cause or contribute to the damage.

27.2 ~~27.4~~ The liable party shall indemnify the user RU against any third party claims if the user RU is not at fault

27.3 ~~27.2~~ Where the user RU is partly responsible, the compensation shall be borne by each party in proportion to its respective share of responsibility.

27.4 ~~27.3~~ When a third party is responsible or partly responsible for the damage, the parties to the contract shall claim compensation for the damage primarily from this third party. In particular the signatory which has a contract with the third party shall pursue the claim vis-à-vis the third party as a matter of priority.

~~To simplify and speed up the procedure in cases of less significant damage, the user RU may, in its general conditions of sale, specify an amount¹ per occurrence of damage up to which it will waive its rights vis-à-vis the keeper or the previous user even when they are at fault. This shall not apply in cases of wrongful intent or gross negligence on the part of the keeper or previous user.~~

27.5—An RU may propose to co-insure a keeper under its own civil liability insurance.

Upon request, the keeper shall be required to provide proof of his civil liability insurance in accordance with applicable laws.

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~~27.6 Where the liability of the keeper is not covered under Articles 27.4 and 27.5, the keeper shall be required to provide proof of civil liability insurance in accordance with national legislations.~~

~~⁴ It is recommended that RUs set this amount at 17 000 EUR.~~