

Expert opinion on the question:

**“Is the General Contract of Use for wagons (GCU)
with its amendments as of 1 January 2026 in line with current European Union legislation,
in particular Regulation (EU) 779/2019?”**

For the Joint Committee of the GCU, following the mandate of 24 October 2025

Structure of the expert opinion

| | Page |
|--|------|
| A. Contracting parties, purpose and aim of the GCU | 3 |
| I. Contracting parties to the GCU | |
| II. Purpose of the GCU | |
| III. Aim of the GCU | |
| B. Criticism of the current GCU from safety authorities | 4 |
| I. ERA findings | |
| II. Criticism from the FOT | |
| III. Criticism from other national safety authorities | 5 |
| IV. Summary of criticism from safety authorities | 6 |
| C. Requirements of applicable EU law, in particular the ECM Regulation, for the stakeholders concerned: RU, wagon keeper, ECM | 7 |
| I. Basic provisions of the EU Safety Directive 2016/798 | |
| II. Concrete legal provisions | 8 |
| 1. On the responsibility of the RU | |
| 2. On the responsibility of the ECM | 9 |
| III. Comprehensive and intensive communication between those involved in railway operations | 9 |
| IV. Explanatory note: Tasks of the European Union Agency for Railways (ERA) | 10 |
| D. Conclusions regarding the relationship between RU and ECM | 11 |
| I. Conclusions regarding the competence and responsibilities of the RU | |
| 1. Train inspection | |
| a) <i>Definition</i> | |
| b) <i>Performance of the train inspection</i> | 12 |
| c) <i>Execution of tasks by the RU</i> | |
| d) <i>General information on the commissioning of subcontractors</i> | 13 |
| 2. Corrective measures during operation | |
| a) <i>Definition</i> | |
| b) <i>Implementation of corrective measures during operation</i> | 14 |
| II. Conclusions regarding the competence and responsibilities of the ECM | 14 |
| III. Summary: Conclusions regarding the delineation of competence and responsibility between EVU and ECM | 16 |

| | |
|---|----|
| E. Changes to the GCU as of 1 January 2026:do they fulfil the requirements of EU law? | 18 |
| I. Principles | |
| II. Details | 19 |
| 1. Regarding Article 7 | |
| 2. Regarding Article 12 | 20 |
| 3. Regarding Article 15 | 21 |
| 4. Regarding Article 19 | 21 |
| 5. Regarding Appendix 2: Definitions | 23 |
| III. Suggestions for additional clarifications/changes to the GCU for future further development of the GCU | 24 |
| F. Summarised assessment | 25 |
| <u>Appendix 1</u> | 26 |
| General Contract of Use for wagons – GCU (extract) | |
| <u>Appendix 2</u> | |
| Schematic representation of the restoration of a wagon’s fitness to run | 31 |

A. Contracting parties, purpose and aim of the GCU

I. Contracting parties to the GCU

The GCU (latest valid edition of 1 January 2025) is a contract governed by private law between the keepers of railway freight wagons (“**keeper**”) and the railway undertakings using these freight wagons as a means of transport (“**RU**”). The GCU is a multilateral contract: hundreds of keepers and RUs have signed it.

The entity in charge of maintenance of a wagon (“**ECM**”) is not a contracting party to the GCU. Rather, the keeper answers for the ECM to the other contracting parties and has its responsibilities (Art. 7.2, para. 3 GCU).

II. Purpose of the GCU

The GCU sets out the conditions for the provision of wagons for use as means of transport by RUs in national and international rail freight transport operations within the scope of application of the current Convention concerning International Carriage by Rail (COTIF) (Art. 1.1 GCU).

Chapters II and III of the GCU on the rights and obligations of the keeper and the RU, Chapter IV on the ascertainment and handling of damage to wagons in the custody of an RU and, in connection with this, the principles of **Appendix 9** to the GCU with the “Conditions for the technical transfer inspection of wagons” and **Appendix 10** on the “Minimum condition and measures to restore fitness to run of wagons” are relevant to this expert opinion.

Chapter I on mainly administrative provisions, Chapters V-VII on reciprocal liability between keepers and RUs, and Chapter VIII on “Other provisions” are only dealt with in passing in this expert opinion.

III. Aim of the GCU

According to its **preamble**, the GCU is intended to define the rights and obligations of the contracting parties in the use of freight wagons as a means of transport by RUs and, in this context, to contribute to ensuring safety and increasing the efficiency and competitiveness of rail freight transport.

B. Criticism of the current GCU from safety authorities

This section summarises the criticism of the GCU voiced by safety authorities, without going into the extent to which this criticism is justified. That subject is dealt with in the following sections (in particular Section D).

The European Agency for Railways (ERA) has expressed its opinion on the GCU, and several national supervisory authorities, in particular the Swiss Federal Office of Transport (FOT), have criticised the current version of the GCU. This criticism is detailed below.

I. ERA findings

In a legally non-binding **Clarification note** of 20 November 2023, ERA addressed the role that the GCU plays in the safety certification process for RUs and for their safety management system (Art. 10 of the **EU Safety Directive 2016/798** and **Commission Regulation 2018/762** on common safety methods with regard to the requirements for safety management systems, **CSM/SMS Regulation**).

ERA determined the following:

- The GCU contains several regulations on the maintenance of freight wagons which cause confusion between the parties involved and national safety authorities.
- In particular, the responsibilities for the application of Article 12 GCU on the handling of wagons and Article 19 GCU on the handling of damage are not always clear between RUs, keepers, ECMs and national safety authorities.
- It is also not clear what specific information the RUs applying the GCU should provide in their application for a safety certificate.

Based on these findings, ERA has provided clarifications and recommendations on how the GCU should be understood and handled when designing safety management systems in accordance with Regulation 2018/762 and with regard to **Commission Regulation 2019/779** [on the] certification of entities in charge of maintenance of vehicles (**ECM Regulation**).

ERA specifically recommends that the parties to the GCU clarify the certification of commissioned workshops in accordance with Art. 10 of the ECM Regulation.

II. Criticism from the FOT

The FOT's criticism of the GCU is harsher than ERA's Clarification note. In a letter to ERA dated 29 February 2024, the FOT lists the following points of criticism (some of which are also directed against the Clarification note) and refers, among other things, to the four maintenance levels in accordance with the ERA's **ECM Regulation certification scheme**:

- The exchange of information between keepers, ECM functions, RUs and IMs [infrastructure managers] is inadequate.
- The responsibility [of the ECM] for safe maintenance in accordance with the ECM Regulation is not fully guaranteed by Appendix 9 GCU because safety-related decisions are delegated to the RU's inspection staff. There is therefore a **safety-related shortfall**.

- The GCU does not contain any provisions on operational maintenance and on further technical inspections that would be necessary in addition to the inspections to be carried out in accordance with Appendix 9, but which cannot be carried out, in part or in full [by the respective RU]. There is therefore a **responsibility-related shortfall**.
- It is up to the ECM to determine which further inspections are to be carried out (beyond the rectification of the defects listed in the wagon damage report). Otherwise, it is quite possible that a wagon with persistent defects will be taken over by a railway undertaking.
- It remains unclear how, in the event of return to operation with operating restrictions, subsequent RUs in the transport chain will receive information on defects that have already been identified.
- As the ECMs are not contractual partners of the GCU, the keeper and RU are not permitted to agree anything in the GCU that impairs the ECMs in the fulfilment of their responsibilities and tasks.

The FOT summarises its criticism in a **conclusion** as follows:

- The GCU’s technical appendices do not comply with the legal requirements.
- The responsibilities between the keeper, ECM (1-3), workshops (ECM 4) and RU are inadmissibly intermingled.
- Functioning, digital, transparent communication, as required by the ECM Regulation, has not been established. All previous sector-specific measures in this regard, such as the “RSRD²” [Rolling Stock Reference Database] or the “GCU Broker”, have not yet achieved the necessary acceptance and utilisation.

III. Criticism from other national safety authorities

In 2024, the FOT conducted a survey on the subject of the “GCU and the ECM Regulation” among numerous national supervisory authorities, asking questions in particular about the relationship between Appendix 9 GCU and the maintenance levels of the ERA’s ECM Regulation certification scheme. The survey essentially revealed the following (FOT document: State-of-play of replies 9.7.2024), whereby individual questions received differing responses:

- The GCU does not comply with the ECM Regulation, at least in substantial parts.
- Appendix 9 GCU is not exhaustive and goes beyond what is done during a pre-departure check. There is a catalogue of irregularities, but each RU must decide whether it wishes to use it and whether the catalogue is sufficient to ensure safe operation.
- The ECM remains responsible for maintenance. The provisions in Appendix 9 relate only to the pre-departure check of wagons. The ECM cannot assume that an RU will discover certain defects in a timely manner.
- A workshop does not have all of the necessary information to issue a return to operation certificate. Therefore, the legal requirement that the ECM 3 [fleet maintenance management function] issues this certificate is not just a formality.

- The GCU as a contract between keeper and RU cannot affect the rights and obligations of the ECM.
- The exchange of information between RU, workshop, ECM and keeper does not function adequately [Voting result: 5 (yes): 4 (no): 7 (other opinions)].

IV. Summary of the criticism from safety authorities

The criticism from safety authorities relates in part to articles of the main GCU contract, but predominantly to Appendix 9 with its technical conditions for the exchange of freight wagons between RUs. The division of tasks between RU and ECM was criticised several times, as was the lack of communication between the parties involved.

The criticism is dealt with under Sections D and E, insofar as it is relevant for assessing the legal compliance of the GCU.

C. Requirements of applicable EU law, in particular the ECM Regulation, for the stakeholders concerned: RU, wagon keeper, ECM

This section deals with the requirements for the various stakeholders from the applicable laws and the scope and options for action that it grants them. *How* the stakeholders have implemented the legal requirements in the GCU, or will implement them from 1 January 2026, and to what extent they actually *use* or do not use the freedom granted is not the subject of this section.

The GCU must comply with the requirements of the applicable public railway law, which can, in particular, be found in EU regulations, but also in the COTIF ATMF Appendix with its legal provisions for the technical admission of railway material used in international traffic. COTIF/ATMF is particularly important for countries outside the EU if they are not bound by EU law.

This section deals exclusively with **legal provisions** including their definitions, consequences and contexts, without taking a look at the GCU. How the GCU takes the legal provisions into account is the subject of Section E.

I. Principle provisions in the EU Safety Directive 2016/798

1. The RU is responsible for the safe operation of its trains (Art. 4, para. 1 and Art. 14, para. 2).
2. The ECM is responsible for ensuring that the vehicles, for whose maintenance it is responsible, are in a safe operating condition (Art. 14, para. 2).
3. All actors in railway operations who identify or are informed of a safety risk relating to defects and construction non-conformities or malfunctions of technical equipment, including those of structural subsystems, shall, within the limits of their respective competence:
 - a) Take any necessary corrective measure
 - b) Report those risks to the relevant parties involved(Art. 4, para. 5)
4. For the exchange of vehicles between RUs, any stakeholder involved shall provide each other with all information relevant for safe operation; this includes, among other things, information on the condition and history of the vehicle concerned, parts of the maintenance records for traceability purposes, information on the traceability of loading operations and the freight documents (Art. 4, para. 6).
5. The safety management system shall contain, inter alia, the basic elements:
 - Procedures to meet existing, new and altered technical and operational standards or other prescriptive conditions as laid down in TSIs, national rules referred to in Article 8 and Annex II, other relevant rules or authority decisions
 - Procedures and methods for identifying risks, carrying out risk evaluation and implementing risk-control measures whenever a change of operating conditions or the introduction of new material imposes new risks on the infrastructure or the man-machine-organisation interface(Art. 9, para. 3 letters c and e).
6. In addition to a management function [ECM 1] and a maintenance development function [ECM 2], the maintenance system of an ECM shall be composed of:

- A fleet-maintenance management function [ECM 3] to manage the vehicle’s removal for maintenance and its return to operation after maintenance
- A maintenance delivery function [ECM 4] to deliver the required technical maintenance of a vehicle or parts of it, including the release to service documentation

The entity in charge of maintenance shall carry out the management function itself, but may out-source the maintenance functions, or parts thereof, to other contracting parties such as maintenance workshops.

(Art. 14, para. 3).

II. Concrete legal provisions

1. On the responsibility of the RU

1.1 To control risks where relevant for the safety of operational activities, an RU’s SMS shall at least take the following into account:

- Preparation of trains or vehicles before movement, including pre-departure checks and train composition
- Adaptation of the operation to requests for removal from operation and notification of return to operation issued by entities in charge of maintenance

(Commission Delegated Regulation 2018/762 of the EU Commission, “CSM/SMS”, Annex I 5.1.3 letters c and e).

The intended use, guarantee of safe operating condition, and maintenance of the expected performance level of an RU’s own wagons is dealt with in **Regulation 2018/762, Annex I 5.2** .

1.2 All vehicles on the train shall remain within their specified maintenance interval for the duration (in terms of both time and distance) of the journey being undertaken.

The RU is responsible for ensuring that all vehicles composing the train including their load are technically fit for the journey to be undertaken and remains so throughout the journey.

The RU shall define the process to ensure that all safety-related on-train equipment is in a fully functional state and that the train is safe to run.

The railway undertaking shall define the checks and tests to ensure that any departure is undertaken safely (e.g. doors, load, brakes).

(EU Commission Implementing Regulation 2019/773, OPE TSI, Annex, Nos. 4.2.2.5.2, 4.2.2.7.1 and 4.2.3.3.1).

1.3 The RU shall control the risks associated with ... those related to the operation of trains. To that end it shall ensure that these trains comply with the essential requirements and shall in particular:

- a) Ensure correct and safe train composition and preparation, including pre-departure checks
- b) Take into account information necessary for the safe operation of each vehicle, including possible operating restrictions

- c) Only use vehicles within their limit and conditions of use
- e) Ensure vehicle carried has an ECM assigned ...

(COTIF Appendix ATMF Art. 15a, Train composition and operation, § 1).

2. On the responsibility of the ECM

2.1 If the ECM management function outsources maintenance functions [ECM 2-4], it shall remain responsible for the outcome of the outsourced maintenance activities and shall establish a system to monitor their performance.

(ECM Regulation 2019/779 of the EU Commission, Art. 9, para. 3).

2.2 The ECM 3 shall have a procedure:

- To check the competence, availability and capability of the ECM 4 before placing maintenance orders
- To send vehicles for maintenance in due time
- To manage the removal of vehicles from operation for maintenance or when safe operation is impaired or when needs of maintenance affect the normal operation
- To define the necessary verification measures applied to the maintenance delivered and the release to service of the vehicles
- to issue a notice of return to operation, including the definition of restrictions of use to ensure the safe running by taking into account the release to service documentation

(ECM Regulation 2019/779 of the EU Commission, Annex II, Sect. III, No. 1, 3-6).

2.3 The ECM 4 shall, inter alia, have procedures:

- to check that performed tasks are in accordance with the maintenance orders and to issue the notice of release to service. The notice of release to service shall include all information that is useful to define restrictions of use.

(ECM Regulation 2019/779 of the EU Commission, Annex II, Sect. IV, No. 6).

III. Comprehensive and intensive communication between the stakeholders involved in railway operations

COTIF/ATMF Art. 15, §§ 3 and 4 and Art. 15a, § 3

COTIF/CUV Art. 9 § 3, para. 2 (not yet in force)

EU Safety Directive Art. 4, para. 5 letter b and para. 6

ECM Regulation Art. 5 and Annex II, Sect. I, No. 7

Commission regulation 1078/2012 Art. 4.

Summarised evaluation of the communication requirements:

In view of the numerous parties involved in railway operations, comprehensive, effective communication between them is of great importance, especially for safety reasons. Accordingly,

international and European railway law sets out requirements in a number of locations for communication between the parties involved and specifies reciprocal duties to provide information so that everyone has the same level of knowledge and can fulfil their respective (partial) responsibilities in order to ensure safe railway operations.

IV. Explanatory note: Tasks of the European Union Agency for Railways (ERA)

ERA has the following tasks and responsibilities:

1. – Develop a common approach to safety on the Union rail system.
 - Follow the development of national railway rules in order to support the performance of national authorities acting in the fields of railway safety and interoperability and to promote the optimisation of procedures.

(EU Regulation 2016/796 on the Railway Agency, Art. 2).

2. ERA may, in application of certain articles of the Agency Regulation
 - issue recommendations and opinions to the Commission, the Member States, and the national safety authorities
 - issue technical documents and audit reports as well as guidelines and other non-binding documents facilitating application of railway safety and interoperability legislation

(EU Regulation 2016/796 on the Agency for Railways, Art. 4).

3. ERA is responsible for:
 - Issuing standardised safety certificates
 - Authorisations for the placing on the market of railway vehicles in cooperation with the national safety authorities
 - Authorisations for the placing on the market of vehicle types

(EU Regulation 2016/796 on the Agency for Railways, Art. 4, 14, 20, 21).

4. **Result:** ERA only has decision-making authority in certain specified cases.

D. Conclusions regarding the relationship between RU and ECM

The following section sets out the implications of the above legislation for the relationship between RUs and ECMs/keepers, in particular for the delimitation of their competences, tasks and responsibilities when using freight wagons. In doing so, emphasis is placed on the consistent use of standardised terms, as otherwise there is a risk of having different interpretations of the competence and responsibility of those involved.

The effects of these conclusions on the examination of the GCU's legal compliance are not dealt with in this section, but instead in Section E.

I. Conclusions regarding the competence and responsibilities of the RU

1. Train inspection

a) Definition

In accordance with the aforementioned legislation, the RU must carry out **checks, inspections and tests**, in particular before the departure of its train, in order to ensure that it can operate its train safely with the wagons – its own or those of third parties – being used. This activity is summarised here as **train inspection**, even if it does not take place directly on the train. The decisive factor is that the RU is responsible for this inspection.

In its ruling of 23 October 2025, the **FOT** also refers to the *train inspection* by RUs under II.B.8 and – in contrast to this – to the *technical wagon inspection* by the ECM (II.B.5 and III.4 and 5).

Under the term “*technical transfer inspection*”, the **GCU**, in 2.1.1 of the version of Appendix 9 still valid until 31 December 2025, summarises the activities to be carried out by RUs as “*inspection upon handover*”, “*inspection upon acceptance*” and “*technical inspection conducted at a different location from the handover point*”. It also stipulates under 2.2 that during the inspection, authorised personnel shall walk along both sides of the train and carefully inspect each wagon. – As the technical transfer inspection is only relevant to the relationship between RUs, Section 2 will be removed from the GCU and, from 2026, assigned to the “Agreement on freight Train Transfer Inspection (ATTI)” concluded between RUs.

A train inspection usually takes place **on the train**, but, if necessary, can also take place on a **service track** or in a **railway depot** of the RU after the **detachment** of a wagon from the train – **without removing the wagon from operation**. As the name ‘railway depot’ suggests, **railway operations** take place in it under the responsibility of the RU.

A distinction must be made between a **railway depot** and a **repair workshop**, in which **maintenance**, rather than railway operations, takes place under the responsibility of the ECM.

The distinction between railway depots and repair workshops can also be found in Annex I of the main EU Directive 2012/34 on the creation of a single European railway area (‘Recast’ Directive), i.e. within a legal provision.

The fact that repair workshops fulfil maintenance functions is a result of the EU Safety Directive (Art. 14, paras. 3 and 8) and the ECM Regulation (Annex II, Section III.1). Repair workshops are therefore to be understood as **maintenance workshops**.

b) Performance of the train inspection

How a train inspection is to be carried out in detail is not specified in any legal provisions. The following explanations result to a certain extent from the “nature of the matter” (the RU is by the train – the ECM is not. And a train should operate – not stand and wait for distant forces). In addition, in rail transport, the principle that safety, ease of operation and competitiveness must go hand in hand is generally accepted, and therefore must be taken into consideration by all parties involved.

EU law states: “The RU shall define the checks and tests to ensure that any departure is undertaken safely (e.g. doors, load, brakes)” (p. 8 above).

The COTIF ATMF Appendix states: “The RU shall [...] ensure correct and safe train composition and preparation, including pre-departure checks” (p. 8 above).

This defines the **RU’s primacy** for the definition and implementation of the train inspection.

It is generally recognised that an inspection by an RU is limited to the detection of externally visible defects of vehicles by visual inspection on both sides of the train and using manageable tools (e.g. hammer to carry out a sound test). If the suspected presence of a defect cannot be eliminated by an intensified visual inspection, the wagon is to undergo an in-depth inspection and, if necessary, be handed over to the ECM for maintenance.

However, how a *more in-depth inspection* by the RU – still as part of the train inspection – and *maintenance* by the ECM – outside of railway operations – are to be delineated cannot be determined within this expert opinion. For this delineation, it is useful to work with a uniform **catalogue** across the entire sector, as is often the case within the railways, in order to clearly assign tasks to a specific party and thus avoid gaps in the performance of tasks and any associated safety-related shortfalls.

ERA’s ECM Regulation certification scheme refers to the TSI OPE and the CSM-SMS Regulation 5.1 (p. 8 above) with regard to the train inspection and in the German translation only speaks generally of “visueller Kontrolle” [visual inspection] and “einfachen Messungen (im Verdachtsfall)” [simple measurements (when in doubt)]. The certification scheme only distinguishes between “corrective measures during operation” by the RU and “maintenance/repair” by the ECM with regard to the measures to be taken in the event of defects being identified (see 2. below).

c) Execution of tasks by the RU

The RU must use **qualified personnel** for the train inspection who have **appropriate equipment** to carry out the inspection reliably. Its actions must be **covered by its SMS**.

The RU may also use **subcontractors**, e.g. self-employed wagon inspectors (judgement of the Arnsberg District Court of 15 November 2023, Transport Law (Recht der Transportwirtschaft) 2023, 206). In accordance with general legal principles, subcontractors must be carefully selected by the client with regard to their personal and professional suitability and monitored from time to time on a random basis. As the client, the RU is liable for any misconduct on the part of the subcontractor.

Individual RUs have to bear this in mind, especially those that no longer have their own wagons, but only use third-party wagons and therefore no longer have the full know-how for handling wagons. Their legal obligation to ensure the safe operation of their trains and, accordingly, to carry out

train inspections remains the same. It is possible to use specialised subcontractors for this, but responsibility for their activities remains with the RU.

d) General information on the commissioning of subcontractors

In modern economic activities based on the division of tasks, assigning tasks to subcontractors is generally permitted and widespread. Exceptions apply if a “highly personal” execution is contractually agreed upon (e.g. a specific artist is commissioned to create a portrait) or is ordered by law. The latter occurs in Article 14, para. 3 of the Safety Directive with regard to the ECM management function. In terms of the permissible subcontracting of other maintenance functions, Art. 9, para. 3 of the ECM Regulation confirms the legal principle that a contracting party remains responsible for the result of the activities it subcontracts and must monitor the contractor in a certain way (“establishment of a system to monitor their performance”).

2. Corrective measures during operation

a) Definition

In the interests of **serviceable, economical and competitive rail freight transport**, the RU may also rectify certain ‘**irregularities**’ on a wagon that it recognises ‘on the spot’ during the train inspection and that can be rectified by simple means within the train, on a service track or in a railway depot **under its own responsibility (without removing the wagon from operation)**. This is taken from Art. 4, para. 5 of the EU Safety Directive (p. 4 above).

The term “**corrective measures during operation**” is used here for this activity – as opposed to the **maintenance** of a wagon by the ECM (or on its behalf) after the wagon has been removed from operation.

ERA’s ECM Regulation certification scheme refers in this context to Level 1 as “**corrective measures during operation**”, for which no additional exchange of information is required between RU and ECM. In its correspondence dated 29 February 2024 to ERA, the **FOT** uses the term “**simple corrective measures**” which the railway undertaking can execute without having to carry out technical maintenance measures.

On the other hand, the **FOT** in its ruling of 23 October 2025 under II.B.5 in connection with technical wagon inspections refers to “**operational maintenance activities**”, which are to be carried out under the responsibility of the ECM. – These activities do not take place ‘in operation’ but are only ‘near to operations’. They therefore require the *removal from operation* of the wagon and, accordingly, a formal *return to operation* after the work has been completed.

ERA’s ECM Regulation certification scheme specifies certain measures for Level 2 that are described as “**simple operational maintenance**” or “**repair**” and are to be carried out on the train wherever possible – whether by the RU itself, or by third parties on behalf of the RU or ECM 3, whereby the ECM remains responsible in all cases. – This choice of terminology and description of activity is misleading and unhelpful.

The terms “simple corrective measure” and “maintenance” are not defined in European railway law (nor in German railway law). **DIN EN 13306:2018-0 2** can be cited as a non-legislative regulation. It distinguishes between “maintenance” and “operation” and defines them as follows:

- **Maintenance:** Combination of all technical, administrative and managerial actions during the life cycle of an item intended to retain it in, or restore it to, a state in which it can perform the required function.
- **Operation:** Combination of all technical, administrative and managerial actions, other than maintenance measures, that results in the item being used.

Maintenance actions are, according to the DIN standard, to be understood as measures during the (entire) life cycle of an object; they are intended to ensure the (continued) functionality of the object.

Operational measures should in specific cases lead to the continuation of the use of the object in operation; further maintenance measures are not part of operation.

In view of unclear terminology in the individual sources mentioned, this expert opinion – based on the DIN standard mentioned – distinguishes throughout between “**corrective measures during operation**” by RUs and “**maintenance outside of operation**” under the responsibility of the ECM.

b) Implementation of corrective measures during operation

As with train inspections, the RU must use **qualified personnel** with **appropriate equipment** to carry out the repair reliably. The RU’s action must in turn be **covered by its SMS** (p. 4 above).

As with train inspections, the RU may also hire suitable **subcontractors** to carry out operational repairs. These may also be maintenance workshops (p. 11 above) if an RU does not have its own depots. To carry out its activities, the maintenance workshop (repair workshop) must then distinguish between operational repair for an RU and maintenance outside of operation for an ECM function and comply with the different technicalities (in the case of maintenance measures, in particular, an official release to service in accordance with the ECM Regulation).

It is both necessary and advantageous to use a **generally recognised standard catalogue of corrective measures**, which is drawn up by the RUs or their organisations and applies throughout the sector – after consultation with keepers/ECMs and with the approval of safety authorities and covered by the SMS of the respective RU. – Such a catalogue is being prepared by the Appendix 9 GCU working group.

The comprehensive legal **communication obligations** of the stakeholders in railway operations (p. 9 above) are unlikely to play a role during operational repairs. Accordingly, ERA’s ECM Regulation certification scheme does not consider an additional exchange of information between the RU and the ECM to be necessary for Level 1 corrective measures during operation.

II. Conclusions regarding the competence and responsibilities of the ECM

1. The ECM is responsible for ensuring that the wagons, for whose maintenance it is responsible, are in a safe operating condition.

The ECM must ensure this when it returns a wagon to an RU for operation after maintenance. However, the ECM cannot guarantee safe operating conditions for the period during which the wagons it maintains are operated by RUs. This is because the ECM does not accompany the wagons while the RUs are operating them.

The ECM shall take action if a wagon is handed over to it by an RU for repair because a defect has been detected (**corrective maintenance**) or because **preventive maintenance** is to be carried out because a maintenance period has expired or a wagon has reached a certain operating condition.

In order for the ECM to perform its tasks in accordance with its duties, it is necessary,

- taking **into account the physical laws and real experience**,
- to **define time limits, kilometre distance run and limit values for wagon components**. Once these have been reached a wagon must be removed from operation and sent to a **maintenance workshop** (Art. 14, para. 3 of the Safety Directive) so that the ECM can check and take appropriate measures to ensure that the wagon is **(again) safe to operate**.
- Such specifications exist already today as an industry standard.

2. When determining **maintenance intervals**, it must be taken into account that wagons **no longer offer sufficient guarantee** of operational safety once a certain period of operation or a certain operating condition has been reached. They must be taken for maintenance in good time.

Different wagon types or technical equipment can lead to different maintenance intervals being specified.

Components which at no time provide sufficient guarantee for the safe operating condition of a wagon must not be fitted in the first place.

Maintenance intervals must be defined in a standardised manner **for all parties involved**, taking into account existing guidelines and standards as well as the current state of the art. **Safety-relevant insights** from railway operations must also be taken into account to adjust maintenance intervals.

Usage bans can be issued by **safety authorities**.

3. **New safety-relevant insights** (such as the derailment in the Gotthard Base Tunnel) may require extensive/large-scale additional safety measures. Whether the measures ordered by the FOT on 23 October 2025 represent an appropriate and proportionate response to this experience will not be assessed in this expert opinion.

The general rule for the rail sector is that radical, costly new safety measures with a far reach may be introduced as part of a reasonable, phased **implementation programme** in order to minimise rail traffic disruptions. As I recall, the German Federal Court of Justice ruled that a programme to remove 18,000 unrestricted level crossings over a period of years was an obligation.

4. **RU and ECM must work together** to ensure that maintenance intervals are complied with:

- The **RU** must ensure that all vehicles in the train remain within their specific maintenance interval (in terms of time and kilometre distance run) for the entire duration of the journey (**TSI OPE, Annex, No. 4.2.2.5.2**).
- The **ECM function 3** must have procedures in place to:
 - Send vehicles for maintenance in good time
 - Manage the removal of vehicles from operation for maintenance or if safe operation is compromised or if the need for maintenance affects normal operation (**ECM Regulation, Annex II, Section III, Nos. 3 and 4**).

5. As a legal distinction is made between the **functions** “**RU**” (operation of trains) and “**ECM**” (maintenance of wagons), after a **maintenance measure**, the **formalities of a “release to service”**

and a “**return to operation**” must be complied with (**Safety Directive Art. 14, para. 3, ECM Regulation Art. 2 and Annex II, Section III, Nos. 5 and 6, Section IV, No. 6**). This also applies if the RU has performed maintenance tasks on behalf of the ECM.

The **notice of return to operation** (ECM Regulation Annex II, Section III.6) **documents** the point where the **ECM’s maintenance responsibility** ends and the **RU’s operating responsibility** resumes.

This documentation requirement does not apply if an **RU** does not **remove a wagon from operation**, but “**repairs**” it as part of the train or on a service track or in a railway depot **under its own responsibility** or has it repaired by a suitable service provider in order to be able to continue operating it afterwards.

III. Summary: Conclusions regarding the delineation of competence and responsibility between EVU and ECM

1. The **RU** is responsible for the safe operation of its train and must therefore carry out pre-departure checks to ensure that the vehicles in the train can be operated safely. If it detects defects on wagons, either a corrective measure during operation shall be carried out under the responsibility of the RU or maintenance outside of operation shall be carried out under the responsibility of the ECM.

2. The **ECM** is responsible for ensuring that the vehicles, for whose maintenance it is responsible, are in a safe operating condition after leaving the maintenance workshop. To this end, it must set up a maintenance system, which must also specify when a vehicle is to be removed from and returned to operation so that it can check whether the vehicle is still safe to operate or what measures are to be taken to return the vehicle to a “safe operating condition”.

3. The applicable law does not specify in detail what measures during operation can be executed on a wagon by an RU and what maintenance by the ECM includes. The four maintenance levels according to ERA’s ECM Regulation certification scheme are not binding and are not uniformly understood by the national safety authorities.

4. It makes sense to use a **catalogue** that is applicable sector wide and defines the scope of the train inspection to be carried out by the RU and also specifies the measures that constitute RU corrective measures during operation. Such a catalogue determining corrective measures during operation is to be drawn up by the RUs or their organisations, with the involvement of the keepers/ECMs or their organisations. Reference must be made to such a catalogue in the **SMS** of the individual RUs.

5. With regard to the maintenance of freight wagons, it also makes sense to use a **catalogue** that is applicable sector wide and specifies how and when corrective and how and when preventive maintenance is to be carried out.

6. With regard to the **division of labour** generally permitted in economic activity, the RU may assign corrective measures during operation to a maintenance workshop, and the ECM may assign maintenance measures to the RU. In such cases, the respective contracting party remains ultimately responsible for the work contracted out and must ensure that the contractor is and remains suitable and capable of reliably carrying out the tasks assigned. Accordingly, it is not permitted by law for an ECM to subcontract the higher-level management function (ECM 1) for supervising and coordinating the other maintenance functions and ensuring the safe condition of maintained vehicles.

7. Despite the division of labour, those responsible for individual subtasks must keep an eye on the operation and maintenance of vehicles as a whole to ensure that safe train operation is not jeopardised. The law therefore stipulates **comprehensive reciprocal duties to provide information** between the parties involved at various points, which apply in particular when one party transfers tasks in its purview to another party.

E. Changes to the GCU as of 1 January 2026: Do they fulfil the requirements of EU law?

The expert opinion is based on the German version of the revised GCU (version dated 24 September 2025). The amended Art. 7, 12, 15, 19 and Appendix 2: Definitions will be assessed.

I. Principles

The GCU is a contract under private law between more than 800 RUs and wagon keepers (pooling agreement). The German Higher Regional Court of Brandenburg has described the GCU as a **quasi-legal system** due to its widespread use (Recht der Transportwirtschaft 2016, 435 margin number 21). However, the GCU is **not generally binding** sector-wide; there are external keepers and external RUs (see Art. 16 and 17 GCU) that are not governed by the GCU.

The GCU is a contract negotiated by the organisations of both parties (keeper and RU). It is **not a unilateral** set of **general terms and conditions (T&Cs)** issued by a party and is therefore not subject to strict German judicial T&C control.

As a contract, the GCU can **supplement current law and specify its content**; specifically, if the legal provisions – as given in public railway law – contain predominantly institutional and formal regulations, but their content remains general. The GCU must of course comply with the formal provisions of current law.

There is **no competing agreement** to the GCU; conversely, the **ATTI agreement**, for example, on the transfer inspection of freight trains, which is only concluded between RUs, refers to the GCU in a number of locations. Outside its scope of application, the GCU is also treated by other parties as **best practice** and used to **replace** any missing details in regulations.

Within the GCU, RUs and keepers manage their contractual relationships with each other, including in terms of maintenance. **ECMs are not party to the GCU**. However, their legal position under public railway law with regard to the maintenance of wagons must be taken into account by the GCU parties. While non-keeper ECMs are not per se bound by the GCU, they can be to the extent that the keeper contracting them requires them to comply with the GCU and its maintenance regulations in accordance with the ECM Regulation.

It would not make sense to integrate ECMs into the GCU as a party, as contracts with three different parties, who also have different interests, are almost impossible to manage. Moreover, ECMs would only be affected by the GCU's maintenance provisions, not by all the other regulations, such as the handling of wagons in operation, the keeper's right of deployment, cost allocation between keeper and RU, and liability between the two.

Preventive maintenance is not regulated within the GCU. The definition of maintenance intervals and deadlines and the monitoring of their compliance (p. 15 above) must be regulated outside the GCU. Here, the user RU and ECM must work together.

In contrast to this expert opinion, the GCU also uses the term “repair” for physical action taken to restore the fitness to run or fitness for use of a damaged wagon (see Appendix 2: Definitions). Such measures can be either corrective measures during operation or maintenance measures. The objective of the physical repair is decisive for the contracting parties: “*Restore the fitness to run*” of freight wagons after a defect has been identified. For this purpose, modules (packages of work/measures to be carried out) are listed in Appendix 10.

Where the GCU and its appendices use the term “repair”, it must be clarified in cases of doubt whether these are corrective measures during operation taken by the RU or maintenance measures under the responsibility of the ECM. This will be discussed further when individual articles and definitions are considered.

The **objective explanatory content** and **systematic context** of the GCU provisions amended as of 1 January 2026 (see **Appendix 1**) form the basis of the following examination. In the event of ambiguities, **common intentions** of the contracting parties will be taken into account, insofar as they do not contradict the wording and systematic context of the provisions. Any reference to previous practice is irrelevant for this expert opinion, as the changes as of 1 January 2026 are intended, where necessary, to further develop existing practice with regard to current legislation and criticism from safety authorities.

II. Details

1. Regarding Article 7: Technical admission and maintenance of wagons

Art. 7 confirms that ECMs are not and will not be party to the GCU (**7.3**). The keeper represents the ECM and has its responsibilities for the purposes of the GCU and vis-à-vis the other contracting parties – and not otherwise.

More clearly than before, **7.2** stipulates that the keeper must ensure vis-à-vis the RU that its ECM integrates the maintenance provisions of the GCU, in particular Appendix 10, into its maintenance system. – If individual provisions of Appendix 10 are not consistent with, in particular, the formal requirements of the ECM Regulation, the ECM Regulation shall take precedence, and the ECM shall inform the keeper accordingly. This is not to be examined in detail here.

Art. 7.2 GCU shows that Appendix 10 concerns maintenance under the responsibility of the ECM. Insofar as Appendix 10 also contains corrective measures during operation to be taken by the RU – which cannot be assessed here – the ECM is not affected. Specific corrective measures during operation to be taken by the RU are also listed in Appendix 9 Annex 1 (“Catalogue of irregularities”): e.g. “tie up” a part that is rubbing on the wheelset axle, “rectify” if a link pin is missing, displaced or not secured, “replace” a missing brake block, or “remove” a plate that is hanging loose. The detachment of a wagon is not a corrective measure.

Art. 7.4 extends the keeper’s obligation to provide information necessary for safe railway operation to include the obligation to provide information that contributes to the **clarification of incidents**.

Art. 7.5 is a **central provision** of the GCU amendments as of 1 January 2026: On behalf of its ECM, the keeper authorises the user RU to carry out repairs in accordance with the provisions given in Appendix 10. This provision makes use of the option to **subcontract maintenance functions**, which is permitted in the ECM Regulation (Art. 9). At the same time, it is noted that the ECM remains responsible for the outcome of the subcontracted maintenance functions and for monitoring performance. This takes account of Art. 9, para. 3 of the ECM Regulation.

For the keeper’s action on behalf of its ECM to be effective, this action must have been **agreed upon** with the ECM. This must be done outside the GCU. – The RU shall respect the ECM’s **performance monitoring** and provide the ECM with the information required for this purpose.

Where Art. 7.5 mentions “**repair**” in the context of subcontracted maintenance functions, this shows that maintenance here means “**maintenance within the meaning of the law**”. The RU does

not require authorisation from the ECM for the “**corrective measures [during operation]**” referred to in Article 7.6.

The content of the **first part of Art. 7.6** is self-evident: If a keeper were not to allow a user RU to carry out all the necessary checks on its wagons, the RU could not use these wagons. Deleting the reference to Appendix 9 is due to the section on technical transfer inspections being removed from Appendix 9 and is also a **practical necessity**: The checks to be carried out by RUs are not to be agreed upon between RUs and keepers.

Regarding the **second part of Art. 7.6**: If a keeper did not authorise the RUs to take the necessary corrective measures during operation in accordance with Appendix 9, its wagons would have to be removed from operation and sent for maintenance. – It is debatable whether corrective measures during operation are only permitted if they are authorised in Appendix 9.

2. Regarding Article 12: Handling of wagons

That the RU is obliged in **Art. 12.1, sentence 1** to carry out the legally required checks, is once again **self-evident**. The term “legally required” should be understood in broad terms: The RU must also carry out inspections required by regulations and binding official orders or recognised technical practices. Ultimately, the “legally required inspections” mentioned in Art. 12 are to be equated with the “necessary inspections” mentioned in Art. 7.6.

Deleting the reference to Appendix 9 in connection with required checks is an objectively sound decision. The checks required by the user RUs are not subject to agreement between the contracting parties.

The content of **Art. 12.1, sentence 3** is also self-evident: The RU must carry out **safety-related inspections** equally on all wagons in its train, regardless of their keeper. Where **Art. 12.1, sentence 4** stipulates that the costs of “these routine inspections” shall not be separately invoiced to the keeper, this refers to the “safety-related inspections” mentioned in sentence 3.

The new **sentence 2** in **Art. 12.1** obliges the RU to handle **detected damage** in accordance with Appendix 9. This contractual provision makes it clear that Appendix 9 does not regulate **when** and **how** which checks are to be carried out. Appendix 9 does **not contain an inspection catalogue** for the check to be carried out but is only applied **when a defect or damage is detected during a check**. – Logically, this second sentence belongs at the end of Art. 12.1, as it no longer concerns the checks to be carried out, but what is to be done if damage has been detected during a check.

Art. 12 refers to the treatment of “damage” identified, while Appendix 9, to which reference is made, consistently refers to “irregularities”. Objectively, there is no difference; Art. 12 also refers to “irregularities”. However, it is recommended that the terms used in the main text and in the appendices be used consistently in future. – This also applies to the relationship between Article 19 and the appendices to the GCU.

The criticism levelled by **individual safety authorities** (pp. 5/6 above): that on the one hand, the GCU does not contain any provisions on necessary further technical inspections to supplement the checks to be carried out in accordance with Appendix 9 and, on the other hand, that it goes beyond what is done and can be done during a pre-departure check, is unfounded. – However, Appendix 9 does not regulate the inspections to be carried out by RUs and their scope, but only how to proceed if a defect or damage (irregularity) is discovered during an inspection. Appendix 9 therefore also correctly covers defects and damage that are discovered *accidentally* during a mandatory check.

If there is no relevant catalogue, the user RU and the keeper must agree on a case-by-case basis when an in-depth technical inspection is to be carried out as part of a wagon inspection (p. 12 above) and when an RU's operational inspection responsibility ceases and a maintenance measure is instead to be carried out. The alleged safety and responsibility shortfall (pp. 4/5 above) cannot arise: If a safety-relevant defect or damage that requires an in-depth inspection is suspected and the user RU and keeper cannot agree on who is responsible, the wagon must be detached and remain stationary until this has been clarified. A detached wagon remains in the service of the RU.

The new **Art. 12.2** also contains an **essential provision** in that it obliges user RUs to integrate the procedures and provisions for restoring fitness to run set out in the GCU into its **safety management system**. This is intended to ensure that all RUs subject to EU law apply **standardised procedures**.

3. Regarding Article 15: Information to be supplied to the keeper

The addition to this provision is also **of fundamental importance**. By specifying the exchange of information via the communication platform **GCU Broker** and referring to Appendices 4 and 15, it addresses the criticism from safety authorities that the exchange of information between keepers, ECM functions and RUs is inadequate (pp. 6 above). The numerous legal requirements for comprehensive and intensive communication between the parties involved in railway operations (p. 9 above) should also be taken into account.

However, Art. 15 does **not contain any sanctions** in the event of non-compliance by individual user RUs. Art. 31 GCU nevertheless stipulates an obligation to pay damages in the event that a signatory (contracting party) fails through its own fault to meet an obligation which is due under this contract. However, the proof of "direct damage" to the insufficiently informed contractual partner required by this provision is likely to be difficult to provide.

The extension of the duty to provide information in Art. 15 is likely to be the first step towards further clarification of reciprocal duties to provide information and possibly also the introduction of sanctions.

4. Regarding Article 19: Handling of damage

This provision contains the core of the changes as of 1 January 2026. It is open to interpretation in various respects. This applies in particular to the distinction between corrective measures during operation and maintenance.

Art. 19.1, sentence 1 first of all clarifies that this article deals with the handling of *detected* (defects and) damage, not with the RU's procedure for *detecting* defects and damage during train inspections (for the differences in the use of terms in the main text of the GCU and its appendices, see Art. 12.1 above).

Furthermore, the provision only concerns cases in which the affected wagon has been *detached*. If the user RU carries out simple corrective measures during operation on a wagon that has not been detached but remains in the train, Article 19 does not apply. The fact that such corrective measures are also listed in Appendix 9 is not a cause for objection and is more likely to increase the safety of railway operations than not.

Compared with the previous version, the first sentence of Article 19.1 specifies the obligation of the user RU to ensure that a wagon's fitness to run is restored in accordance with the requirements

of Appendices 9 and 10 and to then release the wagon back into service. If the restoration of fitness to run is carried out using Appendix 10, this is **maintenance** according to **Art. 19.1, sentence 2** in accordance with the **ECM Regulation** and the RU acts accordingly based on an authorisation by the ECM. In this case, the release of the wagon to service referred to in the first sentence is a formal **release to service** in accordance with the **ECM Regulation** (Annex II Section IV No. 6).

As the RU is only authorised to ensure that the wagon's fitness to run is restored according to the provisions of Appendices 9 and 10, its authorisation is limited. For the rectification of a specific defect or damage identified, a specific service package must be completed in accordance with Appendix 10. There is no further room for manoeuvre for the RU. The requirements that the RU must impose on workshops that are charged to carry out the work are set out in Article 19.5.

The new **Art. 19.2** adopts the previous "**850-EUR rule**" – now in a separate paragraph due to the importance of this provision. It does not change the procedure described in Art. 19.1, but merely specifies the cases covered by Art. 19.1 in which the RU must obtain the keeper's consent before restoring a detached wagon's fitness to run. The new **sentence 3** in Art. 19.2, that the keeper is responsible for repairing the damage if the RU's cost estimate is rejected, merely serves to clarify how to proceed in such a case.

Art. 19.3, para. 1 clarifies that work to restore the **fitness for use** of a wagon that is still fit to run must also be carried out in accordance with the provisions given in Appendix 10. This means that if these are maintenance measures, the ECM Regulation must be observed.

Art. 19.3, para. 2 also simply contains a clarification compared to the previous regulation: If the keeper authorises the RU to carry out **additional work**, this is done in a **separate agreement, alongside the GCU**. As far as maintenance work is concerned, the ECM Regulation must again be observed.

In **Art. 19.4**, only the term "**compensation**", which is not appropriate for determining the economic total loss, is replaced by the correct term "**residual value**".

Art. 19.5 distinguishes more clearly than before between **corrective measures during operation** in application of the provisions of Appendix 9 and **maintenance measures** (= "repair work in application of the provisions of Appendix 10"). The deletion (in the German version) of the previously used word "**selbst**" [**itself**] in connection with the execution of corrective measures by the RU does not change the fact that these measures are also carried out under the responsibility of the RU if it uses subcontractors.

The provision would be easier to understand if the term "maintenance work" were used instead of "repair work" in accordance with Appendix 10.

As before, **corrective measures** by the RU must be carried out by **qualified staff** who have certain competences and authorisations.

For **maintenance work**, this remains to be undertaken solely by **authorised workshops** with an ECM certification for maintenance functions. These workshops must be listed in the ERADIS database and instructed in the provisions of Appendices 7, 9 and 10 of the GCU, and instruct their employees on changes to the GCU on a regular basis.

According to Art. 19.6, the RU that has arranged the repair in accordance with Appendix 10 shall ensure that the **workshop** it has appointed certifies the **release to service** after completion of the work, using the codes according to Appendix 10, Annex 6. – If the workshop has carried out a corrective measure during operation for the RU, it does not need to declare a formal release to

service within the meaning of the ECM Regulation; instead, a declaration by the workshop that it has completed the work commissioned is sufficient.

In Art. 19.6, “**workshop**” is also to be understood as nothing other than one of the “**authorised workshops**” mentioned in Art. 19.5.

For the term “**release to service**”, Art. 19.6 refers to the **definition in Appendix 2**. Thereafter, “release to service” means the assurance given to the fleet-maintenance manager by the maintenance provider [= workshop] that the maintenance has been delivered in accordance with the maintenance orders. Reference is also made to the ECM Regulation. – For this reason, it can be assumed that the RU to which the notice of release to service is given acts as fleet-maintenance manager on the basis of the authorisation according to Art. 7.5 GCU.

Art. 19.6, **sentence 2** stipulates that “a copy of the (notice of) release to service [...] shall be sent to the keeper without delay either by the RU or by the workshop, **if so** provided for in the contractual relationship between the RU and the workshop” (emphasis added). – In view of the non-delegable maintenance management function and the information prescription in the ECM Regulation (Annex II, Section I.7.4 letter g), it seems appropriate that a copy of the notice of release to service should always be sent to the keeper. The term “**if so**” should therefore be read as follows: “**depending on how this is ...**”.

Art. 19.7 stipulates that if a defect or damage is detected, the wagon is deemed to have been **removed from operation** and a **notice of return to operation** is required from the keeper **in four cases** (only).

It therefore follows that in all other cases a detached wagon remains in operation and the responsibility of the RU. In these cases, according to the distinction made in this expert opinion, it is not “maintenance” but a “corrective measure during operation” that is carried out. The “release to service” given by the workshop is then not a release to service within the meaning of the ECM Regulation, but a declaration by the workshop that the repair work ordered has been completed and any further measures deemed necessary during the workshop visit have been carried out so that the vehicle is once again safe to operate.

Even when the terms “maintenance” and “repair” are used side by side, in particular in Art. 19.6 and Art. 19.7, as well as in Appendix 10, this does not change the fact that “maintenance” is a legal term that concerns measures under the responsibility of the ECM, while “repair” means a purely physical measure that corresponds to neither corrective measures during operation nor maintenance. This is important for understanding the GCU and should be emphasised more clearly. – It could also be helpful in future to distinguish more clearly between “detaching” a wagon and its “removal from operation”.

Art. 19.8 to Art. 19.10 comprise unchanged the provisions previously contained in Art. 19.4, para. 3 and Art. 19.6 and 19.7.

5. Regarding Appendix 2: Definitions

The terms that are new or have been reworded are:

- Entity in Charge of Maintenance (ECM)
- Fitness for use
- Fitness to run
- GCU Broker

- Maintenance
- Railway undertaking
- Release to service
- Repair
- Return to operation

Comments are provided on individual definitions:

5.1 For the term “**release to service**”, the definition from the ECM Regulation (Art. 2, letter c) is adopted verbatim. The term therefore refers to the assurance that **maintenance** within the meaning of the ECM Regulation has been provided, which is followed by a formal **return to operation**. Article 19, §§ 1, 6 and 7, must be aligned more precisely with this.

5.2 The term “**maintenance**” is based on the corresponding definition in DIN EN 13306:2018-02 (page 13 above). If the definition of “operation” in the DIN standard is used to distinguish between “maintenance” and “corrective measures during operation”, this means that maintenance measures **take place outside of operation**. – It is recommended that “maintenance” should always be understood as a measure outside of operation, even within the framework of the GCU.

5.3 The term “**repair**” means *actual measures* to restore the fitness to run or fitness for use of a defective wagon. These measures can be corrective measures during operation or maintenance measures.

5.4 As in Article 2, letter d of the ECM Regulation, the term “**return to operation**” also refers to a notification by the ECM or a subcontractor, based on the release to service, that all relevant *maintenance work* (in the GCU: *repair work*) has been completed and the vehicle that was previously *removed from operation* is in a condition in which it can be used safely, subject to any restrictions on use.

In order to avoid misunderstandings, it is advisable to speak of maintenance work related to a return to operation in the same way as the ECM Regulation.

III. Suggestions for additional clarifications/amendments to the GCU in connection with future developments to the GCU

There is the impression that in the final stage of considering amendments to the GCU, individual terms, in particular “maintenance” and “repair”, were not differentiated clearly enough. This should be rectified in further reforms.

The same applies to the standardised use of the new term “Mängel und Schäden” in German [“defects and damage” in English, with “irregularities” also currently being used] in the main text of the GCU and in Appendix 9.

The reciprocal duties to provide information using the GCU Broker should be expanded, and non-compliance by individual contracting parties should be sanctioned.

The name of Appendix 9 has apparently been changed again at short notice to “Conditions for the technical transfer inspection of wagons”. In view of the removal of Section 2 in Appendix 9 on the technical transfer inspections, Appendix 9 should in future be better titled: “Conditions for the handling of defects and damage [irregularities] found during a technical inspection of freight wagons”. In addition, Articles 12 and 19 should no longer refer only to “damage”, but also to “defects [or irregularities] and damage”.

F. Summarised assessment

The amendments to the GCU as of 1 January 2026 ensure significant further development and individual clarification of Articles 7, 12, 15 and 19 as well as the definitions in Appendix 2.

- It is clarified that ECMs are not a party to the GCU.
- The option whereby the ECM is authorised to subcontract individual maintenance functions, in particular to RUs, is made use of.
- Provisions relating to the technical transfer inspection between RUs and the checks to be carried out will be removed from the GCU because they do not belong in a contract between RUs and wagon keepers.
- It is stipulated that the ECM must integrate Appendix 10 GCU and its maintenance provisions into its maintenance system. It also states that the RU must include the procedures and regulations for restoring fitness to run in its SMS. This ensures that the provisions of the GCU are applied as uniformly as possible.
- The role of the GCU Broker for the exchange of information between RU and keeper is strengthened.
- The definitions in Appendix 2 for the terms “release to service” and “return to operation” clearly refer to the ECM Regulation and thus to the maintenance of wagons outside of operation. This can be understood even more clearly in the main text of the GCU and in individual appendices.

Overall, the amendments to the GCU as of 1 January 2026 will meet the legal requirements for the activities of RUs, keepers and ECMs much more clearly than the current version of the GCU. The safety authorities’ serious concerns have been taken into account.

Signed: Dr Rainer Freise

Appendix 1: Extract from the GCU (Art. 7, 12, 15, 19 and individual definitions from Appendix 2)

Appendix 2: Schematic representation of the restoration of the fitness to run of a wagon

Appendix 1

General Contract of Use for wagons – GCU

Extract:

Articles 7, 12, 15 and 19, as well as amendments to Appendix 2, in the version scheduled to come into force on 1 January 2026

Note: Deleted passages are written (in brackets) and *red*, new wording is marked in **yellow**; purely editorial changes and mere shifts of paragraphs to other places are not highlighted.

Article 7: Technical approval and maintenance of wagons

7.1 (unchanged)

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*) integrates the maintenance provisions of the GCU, in particular of Appendix 10, into its maintenance system*.

7.3

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 (*ECM*) for the wagon, even if it has designated a legally separate ECM. ECMs are not parties to this agreement.

7.4

The keeper must provide the impacted user railway undertakings with the information on its wagons required for safe railway operations in electronic format as soon as possible. The provision of (*this information*) technical wagon data and additional data – where relevant – is provided for in Appendix 16.

Upon request, the keeper, without delay, shall make reliable maintenance information available to any user RU as well as restrictions affecting operations (including the Maintenance File and Maintenance Record File) and, if required, further information, which may be necessary and sufficient to support safe operations or clarify incidents.

7.5

On behalf of its ECM, the keeper authorises the RU – on the basis of the public law applicable to the ECM that governs the subcontracting of maintenance functions – to carry out repairs in accordance with the requirements of Appendix 10. The ECM's responsibility for the outcome of the subcontracted maintenance functions and for performance monitoring remains unaffected.

7.6

The keeper must allow the RUs to conduct any inspections on wagons that may be necessary on wagons, (*in particular those referred to in Appendix 9*) as well as the necessary corrective measures during operation in accordance with Appendix 9.

Article 12: Handling of wagons

12.1

Each RU shall handle wagons with care and due diligence and shall carry out the legally required inspections (*laid down in Appendix 9*). **Detected damages** shall be handled in accordance with **Appendix 9**. Similarly, it shall carry out in particular all the safety-related inspections needed on wagons, irrespective of their keeper. The costs relating to these routine inspections shall not be separately invoiced to the keeper.

12.2

Each RU shall ensure that the procedures and regulations set out in this contract for restoring fitness to run are integrated into its safety management system.

Article 15: Information to be supplied to the keeper

User RUs shall supply the keeper with information on the use of his wagons in a timely manner, via the communication platform (GCU Broker*), in accordance with the national and international laws and regulations in force. Details are set out in Appendices 4 (Wagon damage report) and 15 (Wagon Performance Message (WPM)).

Article 19: Handling of damage

19.1

The user RU which identifies the damage and detaches the wagon, shall arrange for the wagon to have its fitness to run restored in accordance with the (*provisions of Appendix 10*) provisions of Appendices 9 and 10 and put the wagon back into service. When Appendix 10 is used, the repair is carried out based on an authorisation by the ECM (Article 7.5).

19.2

If the cost of repairs is more than 850 euro, the agreement of the keeper must first be sought, except in the case of brake block replacements or if Appendix 13 is applied by the RU. If the keeper does not respond after 2 working days (not including Saturdays) the repair work shall go ahead. If the keeper refuses the cost estimate for the repair, the keeper is responsible for repairing the damage.

19.3

When the damage does not affect the wagon's fitness to run, but makes its use difficult, the RU may carry out work to restore the fitness for use* of the wagon without the keeper's agreement, up to an amount of 850 EUR in accordance with the specifications of Appendix 10.

By separate agreement with the keeper, the RU may be authorised to carry out additional work.

19.4

If the cost of repairing the damaged wagon is (*compensation*) exceeding the residual value calculated according to Appendix 5, the wagon shall be considered beyond repair from an economic point of view.

19.5

In cases where the RU carries out corrective measures in application of the provisions of Appendix 9, it shall do so with qualified staff and all due care. In the context of the preceding provision, "qualified staff" (operations staff) means staff possessing the competences and authorisations to take corrective measures, described in the RU's safety management system (SMS).

Repair work in application of the provisions of Appendix 10 may only be performed by approved workshops.

These approved workshops:

- hold a valid (*certificate for an entity in charge of maintenance (ECM certificate)*) ECM certification for maintenance functions in accordance with the ECM Regulation/in accordance with applicable public law, which includes at least the maintenance delivery function, and
- are listed in the European Railway Agency for Railways Database of Interoperability and Safety (ERADIS) and
- are conversant with Appendices 7, 9, and 10 to the GCU and instruct their employees on changes to the GCU on a regular basis.

19.6

The RU (*or his auxiliary must inform the keeper of the work performed, using the codes provided in Appendix 10, Annex 6*) that has arranged the repair in accordance with Appendix 10 shall ensure that the workshop provides the notice of release to service* to the RU after completion of the work to put the wagon back into service, using the codes according to Appendix 10, Annex 6.

19.7

If one of the following cases applies, the wagon is considered removed from operation and a notice of return to operation provided by the keeper is necessary:

- the RU has detached a wagon in accordance with Appendix 9, 3.2.5, Variation C
- the RU has detached a wagon in accordance with Appendix 9, 3.2.5, Variation A and the workshop has applied Appendix 10, Module M00.001 to request additional maintenance instructions from the keeper
- the RU has requested the delivery of parts using the form H^R (App. 7 GCU)
- in its notice of release to service, the workshop has indicated restrictions for use which are different from the actions to be taken according to Appendix 9

The keeper shall provide a notice of return to operation to the RU on the basis of the notice of release to service*.

19.8

Upon completion of the repairs and without any specific instructions from the keeper, the RU shall forward the wagon to the destination station for which it was initially bound.

19.9

Management of spare parts is covered in Appendix 7.

19.10

Coverage of the cost of repair work is dealt with in Chapter V.

Appendix 2 to the GCU: Definitions

(new: sorted in alphabetical order)¹

[Preliminary remarks:

In the GCU, different terms are used for different situations, in each case consistently. Changing designations for identical ideas are avoided.

If forms and electronic information systems still use outdated terms, this does not prevent their continued use, provided that it is clarified with which current definitions the earlier terms correspond. Existing forms can be used up in any case.

Definitions from legal regulations are only repeated here to the extent that they are concretised and summarised for the conditions in the use of freight wagons – without contradicting the legal definition – see e.g. ECM, RU, keeper, maintenance system.]

Entity in charge of maintenance (ECM)

An organisation responsible for the maintenance of a vehicle and entered as such in an official register designated for this purpose.

Fitness for use

Suitability of a wagon for use as a means of transport for the safe carriage of goods.

Fitness to run (*Operational term*)

Wagon that is fit to run on its own wheels in freight trains under normal operating conditions, where appropriate at the end of a train, without representing a hazard for operations.

GCU Broker

The website and IT interface provided by the GCU Bureau for the electronic communication and information system to be used by the contracting parties.

Maintenance

The combination of all technical and administrative actions during the life cycle of a wagon or its parts intended to retain it in, or restore it to, a state in which it can perform the required function.

Railway undertaking (RU)

Any **officially licensed** private or public **rail freight transport** undertaking (*licensed according to applicable Community legislation, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking must ensure*

¹ This will be maintained throughout the following text.

traction; this also includes undertakings which provide traction only) that uses freight wagons as a means of transport.

Release to service

The justified and recorded assurance, accompanied by documentation where appropriate, given by the entity delivering the maintenance to the fleet-maintenance manager, that maintenance has been delivered according to the maintenance orders.
(see ECM Regulation).

Repair

Physical action taken to restore the fitness to run or fitness for use of a defective wagon.

Return to operation

A notification from the entity in charge of maintenance (or other authorised parties through subcontracting) to the user, such as a railway undertaking or keeper, based on the release to service. Transmitted in written form (minimum requirements: wagon number, date, release to service number, and, if applicable, restrictions on use), or via an electronic communication system, with the assurance that all maintenance work arranged in accordance with the GCU has been completed, and that the vehicle previously taken out of service is in a condition in which it can be used safely, subject to any restrictions on use.

Appendix 2

Schematic representation of the restoration of the fitness to run of a wagon after the user RU (outside the scope of the GCU) has detected a defect or damage

1. **Determination of the action(s) to be taken**
(Appendix 9 GCU)

2. **Implementation of the measure(s) under the responsibility of**

| the RU (continued responsibility even if the execution is subcontracted) | the ECM |
|--|--|
| as a corrective measure during operation (in accordance with Appendix 9 and also 10, if the modules specified therein definitively stipulate the measures) | as <u>maintenance outside of operation</u> (in accordance with Appendix 10 GCU, if one of the cases provided for in Art. 19.7 comes to pass) |

via **corrective measures**
– on the **train** or
(after *detaching* the wagon)
– on the RU's **service track** or
– in the RU's **railway depot**

via **maintenance measures**
(after *removing the wagon from operation*)
– in the **repair/maintenance workshop**

3. **After implementation of the planned/assigned measures
as well as further measures that were recognised as being necessary/appropriate
during the execution of the order:**

4. **Determination that the defect/
damage has been rectified**
(= informal release to service)

4. **Formal release to service**
(in accordance with the ECM Regulation)

5. **Continuation of operation
of the wagon by the RU**

5. **Formal return to operation**
(in accordance with the ECM Regulation)
(RU again assumes responsibility for
the safe operating use of the wagon)