



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 29 May 2013

10205/13

TRANS 278

“I/A” ITEM NOTE

From: Council General Secretariat
To: Coreper

Subject: Preparation of the 6th session of the COTIF Committee of Technical Experts
(Geneva, 12-13 June 2013)
- Coordination of the EU position

1. The 6th session of the COTIF Committee of Technical Experts will take place on 12-13 June 2013 in Geneva.
2. The Working Party on Land Transport of 28 May 2013 examined a Commission working document with a view to establishing a coordinated EU position on the relevant agenda items of the meeting of the COTIF Committee of Technical Experts. All delegations agreed with the approach suggested by the Commission but DE maintains a (positive) scrutiny reservation until the documents relevant for each agenda item of the meeting are made available by OTIF.
3. In the light of the above, the Committee is invited to endorse the position recommended for each agenda item of the 6th session of the COTIF Committee of Technical Experts in the Annex to this note.

Coordination of the EU position regarding the 6th session of the COTIF Committee of Technical Experts (Geneva, 12-13 June 2013)

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INTRODUCTION

OTIF Secretariat General (SG) has convened the sixth session of the Committee of Technical Experts (CTE) of COTIF 99 in Geneva on 12-13 June 2013.

The objective of this working document is to develop the EU coordinated position to be presented at the CTE meeting. The document was prepared by DG MOVE with the help of ERA. It was circulated for comments to RISC members from 6 to 14 May 2013.

REFERENCED DOCUMENTS

Documents concerning the agenda items can be downloaded from the OTIF website, see Technology / Committee of Technical Experts / Working documents, address <http://www.otif.org/en/technology/committee-of-technical-experts/working-documents.html>. The provisional agenda is included in document A 92-03/503.2013 dated 12.04.2013.

COMMENTS ON EACH AGENDA ITEM

Item 1. Approval of the agenda

Competence: shared.

Exercising voting rights: EU Member States.

Recommended coordinated position:

Concerning item 6.1 the amendment of the WAG TSI:2013 will have been given the opinion of the RISC at the meeting of 5-6 June 2013 (RISC67). It is proposed that the Commission present the results. If the opinion of the RISC was positive the version of WAG UTP to be voted under item 6.1 should be v6, if it was negative the version to be voted should v5.

Item 2. Presence and quorum

The quorum will be reached, according to the rules of procedure, when at least one-half of the members enjoying the right to vote are present at the time of the vote.

As Member States having made a declaration against Appendices F and G are not Contracting States, the quorum will be reached if one-half of the following 33 Contracting States are present: Albania, Algeria, Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, Finland, Germany, Greece, Hungary, Iran, Latvia, Liechtenstein, Lithuania, Luxembourg, FYROM, Monaco¹, Montenegro, Morocco, Poland, Romania, Serbia, Slovenia, Switzerland, Syria, The Netherlands, Tunisia, Turkey, Ukraine.

As 14 are EU MS, the quorum will be reached if the EU representative and 3 non EU MS are represented. If this is contested by OTIF then the EU representative will make the same declaration as agreed in 2012 for the Rail Facilitation Committee and the CTE (see Annex 4).

Item 3. Election of chairman

Competence: shared.

Exercising voting rights: EU Member States.

EU position: none

Item 4. Amendment of Article 20 § 3 of the Convention (for adoption)

Document: A 92-03/8.2012 v02 - Amendment of Article 20 § 3 of the Convention (05.03.2013)

Competence: shared.

Exercising voting rights: EU Member States.

Recommended coordinated position:

The amendment is proposed in order to make it possible to introduce minor changes in the draft UTPs at the CTE sessions just before the vote.

To be voted positively.

Item 5. Report from the Committee of Technical Experts' working group TECH and ad-hoc safety subgroup (for information)

Documents: A 92-03/1.2013 Report of the Committee of Technical Experts' standing working group TECH (14.03.2013) and A92-04/2.2012 Analysis and conclusions of the ad-hoc safety subgroup (18.02.2013)

Competence: shared.

Exercising voting rights: not applicable

Recommended coordinated position: none

¹ not clear due to suspension of application of ATMF Appendix

Item 6. Uniform Technical Prescriptions (UTP)

Item 6.1. UTP WAG: ROLLING STOCK - FREIGHT WAGONS (for adoption)

Competence: EU

Exercising voting rights: EU

Document: A 92-04/2.2012_v05 (Background and explanation for the revision of the UTP WAG:2012) (18.02.2013)

EU position: *No comment*

Document: A 94-02/2.2012_v05 UTP WAG: ROLLING STOCK - FREIGHT WAGONS revised (09.04.2013)

EU position:

This version of draft UTP corresponds to the WAG TSI:2013 (Commission Regulation (EU) No 321/2013 of 13 March 2013). This draft UTP should be submitted for the CTE vote if the opinion of the RISC on the amendment of the WAG TSI:2013 (RISC67) has been negative or substantial changes have been introduced to the draft at the RISC meeting.

The amendments to be introduced in the draft are editorial and related to the adoption of the WAG TSI:2013. They are listed in Annex 1.

To be voted positively, with these changes.

Document: A 94-02/2.2012_v06 UTP WAG: ROLLING STOCK - FREIGHT WAGONS revised (09.04.2013)

EU position:

This version of draft UTP corresponds to the WAG TSI:2013 (Commission Regulation (EU) No 321/2013 of 13 March 2013) plus the amendments that will be submitted for the opinion of the RISC at the meeting of 5-6 June 2013. This draft UTP should be submitted for the CTE vote if the opinion of the RISC on the amendment of the WAG TSI:2013 (RISC67) has been positive and no substantial changes have been introduced to the draft at the RISC meeting.

The amendments to be introduced in the draft are editorial and related to the adoption of the WAG TSI:2013. They are listed in Annex 2.

To be voted positively, with these changes.

Item 6.2. UTP GEN-G Amendment (for adoption)

Document: A 94-01G/1.2012_v02 UTP GEN-G amendment (03.04.2013)

Competence: EU

Exercising voting rights: EU

EU position:

This version of draft UTP amendment corresponds to Commission Regulation (EU) N° 402/2013 of 30.04.13 on the revised CSM on risk assessment, further to a positive opinion by the RISC at the meeting of 23-24 January 2013 (RISC66).

The amendments to be introduced in the draft are editorial. They are listed in Annex 3.

To be voted positively, with these changes.

Item 7. Derogation rules (APTU Article 7a) (for adoption)

Document: A 94-40/3.2012_v04 ATMF Annex B - Derogation rules (21.11.2012)

Competence: EU

Exercising voting rights: EU

EU position:

EU comments have been appropriately taken into account.

To be voted positively.

Item 8. Mandate for establishing a joint OTIF-EU register for ECM certification bodies and certified ECMs (for adoption)

Document: A 95-00/2.2013 ECM registers [Document not yet available]

Competence: EU

Exercising voting rights: EU

EU position:

As the document is not yet available coordination will be done on the spot. However a vote is not expected as in accordance with rules of procedure, documents should be submitted two months before the meeting

Item 9. Mandate for amendment to the rules for registration of a Vehicle Keeper Marking code (VKM) (for adoption)

Document: A 95-00/1.2013 Amendment to the Rules for VKM registration [Document not yet available]

Competence: EU

Exercising voting rights: EU

EU position:

As the document is not yet available coordination will be done on the spot, if necessary. However a vote is not expected as in accordance with rules of procedure, documents should be submitted two months before the meeting

Item 10. Process for dealing with deficiencies in UTPs (for information)

Document: A 94-00/1.2012_v03 Process for dealing with deficiencies in UTPs (14.02.2013)

Competence: EU

Exercising voting rights: not applicable

EU position:

The key is that, if a potential deficiency is detected in TSI/UTP, ERA and OTIF Secretariat should exchange information and collaborate. The first such potential deficiency could be taken as a pilot project.

Item 11. Notification of the national technical requirements according to Article 12 APTU (for information)

Document: A 92-01/1.2013 Status of the notification of the national technical requirements (10.04.2013)

Competence: EU

Exercising voting rights: not applicable

EU position:

No comment on the document. The Commission, ERA and OTIF Secretariat are cooperating in order to develop a common architecture for publishing national rules.

Item 12. Consultation of non-EU OTIF Member States on draft TSIs: (for information)

1.LOC & PASS

2.SRT

3.PRM

4.ENE

5.INF

6.NOI

Document: A 94-00/1.2013 Consultation of non-EU OTIF Member States on the TSIs: LOC & PASS, SRT, PRM, ENE, INF and NOI [Document not yet available]

Competence: EU

Exercising voting rights: not applicable

EU position:

As the document is not yet available coordination will be done on the spot, if necessary.

Item 13. Vehicle Registers

Item 13.1 Status of the development of the NVRs in the Contracting States (for information)

Document: A 94-20/1.2013 Status of the development of the NVRs in the Contracting States (11.04.2013)

Competence: EU

Exercising voting rights: not applicable

EU position:

The document includes in page 5 the situation of the connection of NVRs of EU MS to the VVR of ERA. It appears, for example, that Serbia and Switzerland are connected to the VVR, but that Bulgaria, Germany, Greece, Hungary, Ireland and Spain are not connected, neither for testing nor in production.

Item 14. Strategy and work programme of the Committee of Technical Experts for 2013 and 2014 (for discussion)

Document: A 92-03/3.2013 Strategy and work programme of the Committee of Technical Experts [Document not yet available]

Competence: EU

Exercising voting rights: not applicable

Recommended position:

As the document is not yet available coordination will be done on the spot, if necessary.

Item 14. Any other business

Coordination will be done on the spot, if necessary.

Item 16. Next session

Not applicable.

ANNEX 1 Changes to be introduced in draft WAG UTP (A 94-02/2.2012, version 05)

Point as it is now (section and page)	Amendment proposal	Justification/comment
0 (Page 1)	The TSI for freight wagons Commission Regulation (EU) No 321/2013 of 13 March 2013) which...	According to the adopted regulation
0 (Page 2)	"shall be valid until the end of a transitional period of three years from 13 April 2013."	According to the adopted regulation. It entered into force the day following that of its publication (Art 12)
4.2.3.3, indent a) (Page 13)	The last bullet point should read: "The electrical resistance between the running surfaces of the opposite wheels of a wheelset."	For consistency with the EU text. See also comment on Appendix H NB As any other parameter, this one needs to be assessed for the design operating state of the wagon, that is, the stricken through text is not needed.
7.1 (Page 47)	The text should be modified so that <ul style="list-style-type: none"> • the part across to columns reads "...which are placed in service after the date of"; • the left column reads "entry into force of this UTP"; • the right column reads "application of this TSI" 	No date of application is defined in the UTP.
7.1.2 (Page 47)	In the left column, after the first paragraph the following text should be added: "Without prejudice to specific cases, vehicles which are authorised for placing in service in a Contracting State which is also an EU Member State according to Article 22 of Directive 2008/57/EC and which fully meet the conditions set out in section 7.1.2 of TSI WAG:2013 shall not be subject to any additional admission to operation in OTIF Contracting States"	Reciprocity principle was missing. This was probably unintended as it correctly expressed in other parts of the document (Appendix PP).
Appendix H (Page 79)	The text should read "The electrical resistance between the running surfaces of the opposite wheels of a wheelset shall not exceed 0.05 Ohm, measured at a voltage of between 1.8 VDC and 2.0 VDC (open circuit)."	For consistency with the EU text. See also comment on Appendix 4.2.2.3, indent a) NB As any other parameter, this one needs to be assessed for the design operating state of the wagon, that is, the stricken through text is not needed.

Appendix PP, clause 6, indent 2 (Page 102)	The text should read "...according to Articles 22 of EU Directive 2008/57/EC..."	To this effect it is irrelevant whether a vehicle has been authorised according to Art 22(1) or 22(2). In either case it falls under the application of Art 23(1) in the EU and does not need an additional APS.
Appendix PP, clause 11, footnote (a) (Page 111)	The text should read "Wagons permitted to carry the TEN marking, see Appendix PP clause 6..."	Editorial correction

ANNEX 2 Changes to be introduced in draft WAG UTP (A 94-02/2.2012, version 06)

Point as it is now (section and page)	Amendment proposal	Justification/comment
0 (Page 1)	The TSI for freight wagons Commission Regulation (EU) No 321/2013 of 13 March 2013) which...	According to the adopted regulation
0 (Page 2)	"shall be valid until the end of a transitional period of three years from 13 April 2013."	According to the adopted regulation. It entered into force the day following that of its publication (Art 12)
4.2.3.3, indent a) (Page 13)	The last bullet point should read: "The electrical resistance between the running surfaces of the opposite wheels of a wheelset."	For consistency with the EU text. See also comment on Appendix H NB As any other parameter, this one needs to be assessed for the design operating state of the wagon, that is, the stricken through text is not needed.
7.1 (Page 49)	The text should be modified so that <ul style="list-style-type: none"> • the part across to columns reads "...which are placed in service after the date of"; • the left column reads "entry into force of this UTP"; • the right column reads "application of this TSI" 	No date of application is defined in the UTP.

7.1.2 (Page 49)	<p>In the left column, after the first paragraph the following text should be added:</p> <p>“Without prejudice to specific cases, vehicles which are authorised for placing in service in a Contracting State which is also an EU Member State according to Article 22 of Directive 2008/57/EC and which fully meet the conditions set out in section 7.1.2 of TSI WAG:2013 shall not be subject to any additional admission to operation in OTIF Contracting States”</p>	<p>Reciprocity principle was missing. This was probably unintended as it correctly expressed in other parts of the document (Appendix PP).</p>
Appendix H (Page 79)	<p>The text should read “The electrical resistance between the running surfaces of the opposite wheels of a wheelset shall not exceed 0.05 Ohm, measured at a voltage of between 1.8 VDC and 2.0 VDC (open circuit).”.</p>	<p>For consistency with the EU text. See also comment on Appendix 4.2.2.3, indent a) NB As any other parameter, this one needs to be assessed for the design operating state of the wagon, that is, the stricken through text is not needed.</p>
Appendix PP, clause 6, indent 2 (Page 113)	<p>The text should read “...according to Articles 22(1) of EU Directive 2008/57/EC...”</p>	<p>To this effect it is irrelevant whether a vehicle has been authorised according to Art 22(1) or 22(2). In either case it falls under the application of Art 23(1) in the EU and does not need an additional APS.</p>
Appendix PP, clause 11, footnote (a) (Page 122)	<p>The text should read “Wagons permitted to carry the TEN marking, see Appendix P part 6 Appendix PP clause 6...”</p>	<p>Editorial correction</p>

ANNEX 3 Changes to be introduced in draft UTP (A 94-01G/1.2012, version 02)

Point as it is now (section and page)	Amendment proposal	Justification/comment
Footnote 1 (page 1)	It should be "Commission Implementing Regulation (EU) 402/2013 of 30 April 2013, published in the Official Journal of the European Union on 3.5.2013 L 121/8"	Correction of reference
1.2 (page 1)	Three items on the list should be numbered as follows: “(a) the risk management processes used to assess impact of changes on the safety levels and compliance with safety requirements; (b) the exchange of safety-relevant information between different actors within the rail sector in order to manage safety across the different interfaces which may exist within this sector; (c) the evidence resulting from the application of a risk management process”	For consistency with the amendment of the CSM RA as adopted by the Commission
6.4 (page 10)	In the right column the text should read: “an authorisation for placing in service, as referred to in Articles 22(2) and 24(2) of Directive 2008/57/EC”;	Editorial correction for avoiding repetition.
8.1, footnote 3 (page 12)	The footnote should read “In OTIF a railway undertaking or an infrastructure manager cannot be recognised as an assessment body through the assessment and supervision of their SMS. For acting as an assessment body a railway undertaking or an infrastructure manager need to be accredited according to clause 7.1 indent a)”. The words "recognition by the" should be aligned with the rest of the text.	Correction for clarity (the role of proposer is not relevant in this clause).
9.1(c) (page 13)		Minor editorial
13.1 (page 15)	The text should read “Where applicable, by no later than 21 May 2015”	For synchronisation of the application in the EU and OTIF. If the amendment is not included, the text should be in two columns with “21 May 2015” for the EU.
13.2 (page 15)	The text should read “By no later than 21 May 2015 ”	As above.
13.3 (page 15)	The text should read “By no later than 21 May 2015 ”	As above.

14.2 (Page 16)	In the right column, the text should be as follows: "The Agency shall organise, in collaboration with the European cooperation for Accreditation (EA), training..."	For consistency with the amendment of the CSM RA as adopted by the Commission
15.5 (Page 17)	The text should be as follows: "Mutual recognition shall be conditional upon demonstration..."	For consistency with the amendment of the CSM RA as adopted by the Commission
17.3 (Page 18)	In the right column "...Regulation by railway undertakings, infrastructure managers..."	Minor editorial
18 (Pages 18-19)	Paragraphs in the first column of the document should be numbered as 18.1, 18.2, etc. (not 1, 2, etc.)	For consistency with the amendment of the CSM RA as adopted by the Commission
18.6 (page 20)	The text in the right column should read "Before 21 May 2015"	For consistency with the amendment of the CSM RA as adopted by the Commission.
19 (page 20)	The text in both left and right columns should read "...is repealed with effect from 21 May 2015"	For synchronisation of the application in the EU and OTIF. If the amendment is not included for OTIF, in the right column the change should be made for consistency with adopted the EU text.
20 (Page 21)	The title of the right column should be "ENTRY INTO FORCE AND APPLICATION" The first two paragraphs in the right column should be "This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union. This Regulation shall apply from 21 May 2015"	For consistency with the amendment of the CSM RA as adopted by the Commission
20 (Page 21)	In the left column the text should be: "APPLICATION This UTP shall apply from 21 May 2015"	For synchronisation of the application in the EU and OTIF. Otherwise, it would start applying in non-EU OTIF at the moment of entry into force (probably more than one year before it applies in the EU)
Annex III, point 3 (Page 31)	The elements of the list should be numbered a), b) and c) (not d), e) and f).	For consistency with the amendment of the CSM RA as adopted by the Commission

ANNEX 4
**DECLARATION OF THE EUROPEAN UNION REGARDING QUORUM AND VOTING
RIGHTS IN THE OTIF**

The European Commission as the representative of the European Union in the Committee of Technical Experts hereby declares:

Article 38 of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 and Article 6 of the Agreement between the European Union and the Intergovernmental organisation for International Carriage by rail on the accession of the European Union to the Convention concerning international Carriage by rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 (Accession agreement) have established the rules for exercising the voting rights of the Regional Economic Integration Organisations that have acceded to the COTIF and in particular the European Union.

Under these provisions, for matters that fall under the exclusive competence of the European Union or for matters that are of shared competence with its Member States, and when the Union has been entitled to exercise the voting rights in conformity with the internal EU arrangements, the European Union exercises the voting rights of its Member States. Alternatively, in matters of shared competence, the Member States of the EU vote if the internal EU arrangements have so concluded. In any case, the OTIF Secretariat is informed in due time on who will be legally empowered to exercise the voting rights in the different items of the agenda of each committee.

For the purpose of establishing the quorum in order to adopt legally binding positions, the physical presence of the EU Member States is not necessary when the European Union exercises the voting rights. This follows clearly from the COTIF and the EU Accession Agreement. Indeed, to request such a physical presence of the EU Member States must be considered as a restriction to the exercise of those voting rights which has support neither in the provisions of the Accession Agreement nor in the provisions of COTIF. Any other position, which would require the EU Member States to be present in order that the EU may exercise voting rights, would be contrary in particular to the last recital of the Accession Agreement following which "*the conditions of the European Union's accession to the Convention must allow the Union to exercise within the Convention the competences conferred on it by its Member States*".

For the purpose of establishing the quorum it is enough, as a good governance principle, to check who is legally entitled to exercise the voting rights. In fact it is the presence of the voting rights, and not the physical presence as such, that makes the quorum.