



**COUNCIL OF
THE EUROPEAN UNION**

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TRANS 285

“I/A” ITEM NOTE

From : General Secretariat
To : Coreper

Subject : Preparation of the 11th meeting of the OTIF General Assembly (Geneva, 19-20
September 2012)

- Coordination of the EU position

1. The 11th OTIF General Assembly will take place on 19-20 September 2012 in Geneva.

2. The Working Party on Land Transport of 7 and 12 September 2012 examined a Commission working document with a view to establishing a coordinated EU position on the relevant agenda items of the OTIF General Assembly. A solution acceptable for all delegations was found on all agenda items. The Commission entered a scrutiny reservation and announced its intention to issue two unilateral statements.

3. In the light of the above, the Committee is invited to endorse the position recommended for each agenda item of the OTIF General Assembly in the Annex to this note.

**Coordination of the EU position regarding the 11th meeting of the General Assembly of OTIF
(Geneva, 19-20 September 2012)**

I. OTIF and its organs

1. The Intergovernmental Organisation for International Carriage by Rail (OTIF) was established on 1 May 1985. The Organisation's basis under international law is the Convention of 9 May 1980 (COTIF). On 3 June 1999, the Vilnius Protocol was signed for the modification of COTIF.
2. 47 States (of which 25 EU Member States) are Members of OTIF at the present time (Europe, Middle East and North Africa) and one State is an Associate Member (Jordan). At present, international carriage by rail on railway infrastructure of around 250,000 km and the complementary carriage of freight and passengers on several thousand kilometres of shipping routes, inland waterways and (in domestic carriage) roads are concerned by the uniform law created by OTIF. The European Union acceded to this uniform law, COTIF, with effect from 1 July 2011.
3. The organs of this organisation are the General Assembly (GA), the Administrative Committee (AC) as the financial and administrative supervisory body, the Revision Committee, the Committee of Experts on the Transport of Dangerous Goods, the Committee of Technical Experts and the Rail Facilitation Committee. The Secretary General (SG) provides the secretariat services.

II. The 11th General Assembly of OTIF (Geneva, 19-20.09.2012)

1. The 11th General Assembly of OTIF will be held in Geneva on 19 and 20 September 2012.
2. According to Article 10 § 2 of the Rules of Procedure of the General Assembly, documents to be discussed by the GA shall be sent to Member States and regional organisations "no later than two months before the session opens". The documents were sent to the Commission as representative of the European Union on 20 July 2012 that is, in our opinion, not fully in line with the Rules of Procedure. The set of documents was not complete either: there was no document for agenda item 10 (Unified Railway Law) while the cover letter A 53-11/505.2012 stated: "A meeting room document for agenda item 10 (Unified Railway Law) might be available."

This meeting document and another meeting document prepared by the SG on the election of a new Secretary General were sent to delegations in the second half of August.

On the specific agenda items, the EU position proposed by the Commission is the following:

Agenda item 1. Election of the Chairman and Vice-Chairman

No document available.

Competence: shared.

Exercising voting rights: EU Member States.

EU coordination will be organised on the spot if necessary.

Agenda item 2. Adoption of the agenda.

Document: AG 11/1.

Competence: shared.

Exercising voting rights: EU Member States.

Line to take: To delete agenda item 5 on EU voting rights (see justification under agenda item 5).

Agenda item 3. Formation of the Credentials Committee

No document available.

Competence: shared.

Exercising voting rights: EU Member States.

No EU coordination expected.

Agenda item 4. Organisation of the work and designation of the Editorial Committee and other Committees considered necessary

No document available.

Competence: shared.

Exercising voting rights: EU Member States.

EU coordination will be organised on the spot if necessary.

Agenda item 5. Voting rights of the European Union in accordance with the accession agreement (item for information only)

Document: AG 11/2.

Exercising voting rights (if this item is not removed from the agenda): EU.

Line to take: To delete this item from the agenda. If this attempt fails (which should not be the case if EU Member States follow the coordinated position): to reject document AG 11/2 without taking any decision. If a new situation appears in the General Assembly, the EU position could be determined on the spot.

Justification: We see no need to enter into discussion with non-EU Member States on an issue that relates to exclusive EU competence. Indeed, in the Commission's letter of 16 July 2012 to the SG (that has been circulated to participants of the GA as document A 53-11/505.2012 Add.1), the Commission suggested that this item be removed from the agenda, "since unless this item provides for an explanation of our rights, we do not see the usefulness of an OTIF secretariat interpretation which risks to be one-sided". That is exactly what has happened. Moreover, although in the provisional agenda (doc. AG 11/1) this item is mentioned as "for information only", document AG 11/2 prepared by the SG proposes that the GA "should note and agree the content of the document", "should form an opinion on the various legal positions" and "should take the decisions that arise as a result of this opinion (...) at the 11th session". This certainly goes far beyond an information item.

In his document, the SG describes in detail what he believes the negative consequences of the EU opinion on voting rights are for non-EU Member States. While doing so, he consistently mixes up the notion of voting rights with the possibility to exercise voting rights linked to physical presence. In fact, voting rights of the EU derive from the EU and its Member States being parties of COTIF and, in case of exclusive EU competence, Member States have transferred their national competence to the EU which means they no longer have the right to vote and it is the EU that has the right to vote for all its Member States that are parties of the Convention. The possibility to exercise these voting rights cannot depend on an external factor: the physical presence of EU Member States who no longer have national competence for the issue being discussed. The practical consequence of such an interpretation could be that OTIF adopts common rules that are contrary to EU law which would force EU Member States not to apply them and, if these conflicts remain unsolved, to withdraw from the organisation. This cannot be the interest of any member of OTIF. The situation is similar for matters that are of shared competence with EU Member States, when the EU has been entitled to exercise the voting rights in conformity with internal EU arrangements.

Agenda item 6. Amendments to the General Assembly's Rules of Procedure

Document: AG 11/3.

Competence: shared.

Exercising voting rights: EU.

Line to take: To accept the proposals except for Article 4 § 3 and Article 20 § 1 linked to EU voting rights.

Justification: Most of the proposals of the SG aim at an improved wording without changing the substance and are acceptable for the EU. However, in Article 4 § 3 of the Rules of Procedure (RoP), the SG wants the GA to adopt its own interpretation of the voting rights of a regional organisation: "Each regional organisation (...) shall enjoy, in those matters under discussion that come within its exclusive competence, the number of votes equal to those of its members which are entitled to vote at the time of the vote in accordance with § 1." This is not acceptable. The present wording of Article 4 § 3 of the RoP is clearly preferable: "a regional organisation (...) shall enjoy in those matters under discussion that come within its competence the number of votes equal to those of its members which are also Member States of OTIF". The proposal of the SG for Article 20 § 1 – "There shall be a quorum in the Assembly (...) when a majority of the Member States enjoying the right to vote in accordance with Article 4 are represented." – is equally unacceptable and the present wording of the article¹ has to be maintained for paragraph 1.

Finally, the proposal of the SG for Article 10 § 6 regulates how a Member State or a regional organisation can request to place other business on the agenda and when the documents necessary to deal with this business shall be sent to members. This proposal is acceptable for the EU.

¹ "There shall be a quorum in the Assembly when a majority of the Member States entitled to take part in decision making are represented either by its own delegation, the delegation of another Member State or by the delegation of a regional organisation. In deciding whether there is a quorum, account shall not be taken of Member States that do not have a right to vote in accordance with Article 14 § 5 of the Convention or whose right to vote in accordance with Article 26 § 7 or 40 § 4 (b) has been suspended."

Agenda item 7. Membership of OTIF

General situation; Accession of new States to COTIF;

Interpretation of the provisions of Article 1 § 6 CIV and 1 § 6 CIM

Documents: AG 11/4.1, AG 11/4.2.

Competence: shared.

Exercising voting rights: EU Member States.

Line to take: As for document AG 11/4.1, section IV on Unified Railway Law is to be deleted. The General Assembly should take note of the document without expressing its agreement with the content of document (proposal of decision on page 4 to be modified). As for document AG 11/4.2, proposal for decision n°1 on page 4 should be rejected and proposal for decision n°2 should be modified as follows:

"The General Assembly instructs the Revision Committee to discuss and, where appropriate, propose modifications to CIV/CIM Uniform Rules related to the conditions enabling newly acceded States to apply that Appendix only to carriage performed on a part of the railway infrastructure situated on their territory."

Justification: Document AG 11/4.1 includes the following paragraph on Unified Railway Law: "The efforts to create uniform railway law, which the Secretary General will describe in full detail under agenda item 10, will show that OTIF is **the**² international railway organisation which, owing to its structure, the financial resources it receives from the Member States and the structure and performance of its Secretariat, is in a position to accept all the challenges necessary to develop, broaden and facilitate international rail transport, to provide constructive and practice-based solutions and, where necessary, to take effective initiatives." This conclusion (that reflects the view of the SG questioned by the EU and some Member States, for instance, in the case of some measures proposed in the Rail Facilitation Committee) cannot be adopted. The above-mentioned paragraph is proposed to be deleted. Besides, the request to the GA to "agree the content" of the document also has to be deleted from the proposal for decision. The GA should take note of the facts presented in the note but should not be requested to agree on the opinions of the Secretary General that go beyond the presentation of facts. In document AG 11/4.2, the SG advocates for interpreting "in the broadest sense" Article 1 § 6 of CIV/CIM that allows any State "which is a party to a convention concerning international through carriage of passengers/goods by rail comparable with these Uniform Rules" to declare, when it makes an application for accession to COTIF, that it will apply these Uniform Rules only to carriage performed on part of the railway infrastructure situated on its territory.

However, this provision was adopted to take into account the specific situation of States that are parties of similar international conventions (SMPS, SMGS). It needs to be examined carefully if there is a reason to provide for such an opportunity in the absence of such conventions. In addition, even the present regulation led to a situation where, for instance, Russia has become full member of OTIF declaring that it would apply CIM on 4.6 km of its network and excluding the application of all other appendices. There is a risk of losing the level playing field between members. Therefore, the proposals for decision on the basis of document AG 11/4.2 are to be partly rejected and partly modified.

² Bold text used by the SG.

Agenda item 8. Attitude of Member States towards the Organisation and cooperation in its organs

Document: AG 11/5.

Competence: shared.

Exercising voting rights: EU Member States.

Line to take: To delete paragraph 5 (on the lack of quorum at the 3rd meeting of the Rail Facilitation Committee which is linked to the SG's interpretation of EU voting rights) from the document. If this is done, Member States are free to decide on the proposals for decision.

Justification: Most of the document is national competence but there is a reference to the 3rd meeting of the Rail Facilitation Committee where "there was no quorum". It must be mentioned that this was because the SG objected to the EU exercising voting rights for all its Member States. Besides, although this document is addressed to Member States and the Commission does not insist on coordination for its elements that are not linked to EU voting rights, it is clear that EU as a member to COTIF may have a position on organisational matters. In this case the SG is criticising the behaviour of Member States. The Commission has a different view.

As clearly stated by the three candidates to the post of the SG, the current problems are due to the attitude of the SG who, at least in the case of questions related to the EU membership, instead of trying to solve the problems or divergence of opinions on a bilateral basis, always provokes debates in official meetings in the presence of non EU MS, and this clearly demotivates both EU and non EU Member States. A similar view was expressed by at least one EU Member State at the 10th General Assembly (22-23.06.2011) when a similar document was presented without proposals for decision. The Commission believes that the criticism expressed by the SG is based on wrong, one-sided assumptions.

Agenda item 9. Progress report of the Rail Facilitation Committee and, if necessary, measures with which it could be charged for 2013-2015

Documents: AG 11/6.1, AG 11/6.2, AG 11/6.3.

Competence: shared.

Exercising voting rights: EU.

Line to take: Adopt documents AG 11/6.1 and AG 11/6.2 with two amendments (see below). Reject document AG 11/6.3.

Justification: The contents of documents AG 11/6.1 and AG 11/6.2 are in line with the decisions of the Rail Facilitation Committee adopted at its 5th meeting (29/30.05.2012) with two exceptions:

- According to point 7. of the "Report on the direction and course of the work of the Rail Facilitation Committee" (AG 11/6.1), Article 3 § 1 of COTIF "even obliges the Member States «to adopt all measures necessary and useful in order that the international multilateral conventions and agreements in force to which they are contracting parties should be adapted, to the extent that these conventions and agreements concern international cooperation in the railway field and attribute competences to other intergovernmental or non-governmental organisations which cut across the tasks attributed to the Organisation»". At the 5th RFC meeting, as a result of "on the spot" coordination, the EU suggested that the report should stick to the wording of the provision of COTIF mentioned: "Article 3 § 1 states that «the Member States will adopt all measures necessary and useful (...)»".
- This proposal was included in a room document added to the Summary Report on the meeting (sent to Member States and to the EU on 27.07.2012 as an attachment to circular A 95-05/503.2012) which states that the RFC adopted all amendments set out in that room document. The text of document AG 11/6.1 has to be amended according to the decision of the RFC.

- At the same 5th meeting of RFC, the EU asked for an amendment of the title of the 2nd pillar of the "Measures with which the General Assembly may charge the Committee for 2012-2015" (AG 11/6.2) as follows: "Development of Model Memorandums of Understanding (for the whole OTIF area, multilateral/bilateral), which the Member States and, if appropriate, the European Union are recommended to sign in order to facilitate rail freight traffic on corridors" [see W.Doc. TRANS TER 2012/53 REV 2]. As a result of the debate, the RFC decided to delete altogether the part of the original draft sentence referring to the signature: "Development of Model Memorandums of Understanding (for the whole OTIF area, multilateral/bilateral), in order to facilitate rail freight traffic on corridors". This change was made on page 2 of the "Measures..." but the title of the 2nd pillar in the Annex (p. 3) has to be modified accordingly.

As for the "Draft Resolution of the 11th General Assembly of OTIF intended for certain Member States concerning the ratification of or accession to the World Customs Organization's amended Kyoto Convention and for the World Customs Organization concerning future collaboration between the two Organisations", the RFC, at its 5th meeting, accepting the EU position [W.Doc. TRANS TER 2012/53 REV 2] actually rejected the submission of such a proposal to the GA. This is also confirmed by the Summary Report on the 5th meeting of the RFC which also states that "the Secretary General considered himself obliged to enter a formal protest against this decision". The SG makes no reference to the rejection of the draft resolution by the RFC when submitting an updated proposal along the same lines as his initiative. The EU maintains its position according to which the draft resolution is not supported for the following reasons:

- Its timing: the proposals for decision linked to the "Measures with which the General Assembly may charge the Committee for 2012-2015" (AG 11/6.2) instruct the RFC (not the SG) to submit a resolution on the ratification of the revised Kyoto Convention to the GA by 2015.
- Its content: the resolution still includes instructions to the OTIF SG which should not be part of a resolution to be addressed to another international organisation.

It is unacceptable that the SG disregards previous decisions of a committee of the organisation when making his proposals to the GA. The draft resolution has to be rejected.

Agenda item 10. Unified Railway Law

Document: AG 11 Meeting room document 1 of 20.08.2012.

Competence: shared and exercising voting rights: EU.³

Line to take: To adopt a decision according to option a) presented by the SG in III.2. (noting the project on Unified Railway Law, the progress of work so far and its provisional outcome).

Justification: The description of the progress so far in the meeting room document is correct. No specific endorsement of the OTIF position or “the line of argument the SG has pursued so far” is needed. In addition, the Commission does not think that in the absence of a document sent to members in time according to the RoP, any more ambitious decision should be taken on this item.

Agenda item 11. Maximum amount that the Organisation's expenditure may reach

Document: AG 11/7.

Competence: national. No EU coordination needed.

Agenda item 12. Election of a Secretary General for the period from 1 January 2013 to 31 December 2015

Document: AG 11/8, AG 11 Meeting room document 2 of 28.08.2012.

Exercising voting rights: EU Member States.

³ The above principles apply to the item as a whole. However, for specific issues, it is possible that Member States are competent to vote.

Line to take: It is extremely important that when the discussion of this item starts all candidates must leave the room, including the current SG and current deputy SG. The EU position is to disregard AG 11 Meeting room document 2 and to proceed with the election on the basis of the shortlist produced by the Administrative Committee. In this case, Member States are free to support the candidate whom they find the most appropriate. Recalling the principle of sincere cooperation under EU law, Member States should preferably support a candidate from an EU Member State. However, if the GA admits the present SG to participate in the election as a candidate, an additional EU coordination meeting is necessary before the election itself.

Justification: For the EU, all the three candidates on the shortlist are acceptable. However, the current Secretary General challenges the pre-selection of the Administrative Committee which brings some uncertainty into the process of the election.

Meeting room document 2 is to be disregarded for four important reasons:

- In his meeting room document as well as in his appeal on the basis of OTIF Staff Regulations, the current SG is abusing his position as SG and an OTIF staff member to question the procedure of the pre-selection while other candidates do not have such a possibility;
- the SG fails to justify his position with legal arguments: the only legal provision he is actually referring to (Article 48 § 2 of the Staff Regulations which explicitly allows the GA to extend the term of office of the SG after he has reached age 65) cannot be used as a basis for the exclusion of applicants who reach the age of 65 before 31 December 2015 in accordance with his claim;
- the document has been submitted on 28 August 2012 and has thus been submitted after the deadlines prescribed by the rules of procedure of the GA, as admitted by the author himself in section 16 of his document;

- the document proposes to re-launch the whole selection process and to organise an extraordinary General Assembly for the election of the SG for the next period. This proposal is not acceptable because of the damage that it would create to the reputation of the organisation and for the additional burden and costs that it would impose on its Member States and on the OTIF budget. It is up to the Administrative Committee of OTIF to deal with the appeal of the current SG. However, since according to Article 58 § 4 of the OTIF Staff Regulations such an appeal does not have the effect of suspending action, the General Assembly may proceed with the election on the basis of the shortlist produced by the Administrative Committee.

As for the 3 candidates on the shortlist, the EU position is explained in more detail in Annex 1.

Due to the uncertainty resulting from the appeal process and from the behaviour of and new arguments that may be raised by non EU Member States, there is high probability that a further EU coordination meeting is necessary. In the scenario (less probable but nevertheless possible) that the current SG might have the right to present himself in addition to the three candidates pre-selected by the AC, it is advised that EU Member States meet on the spot to re-discuss the new situation.

Agenda item 13. Report on the activities of the Administrative Committee in the period between 1 October 2009 and 30 September 2012

Document: AG 11/9.

Exercising voting rights: EU Member States.

Line to take: To delete the sentence “The EU refused any negotiation.” from paragraph 28. The report can be “noted and approved” only if this is done.

Justification: In paragraph 28, the SG presents the attitude of the EU during accession negotiations in a hostile manner. The AC report can only be approved if the sentence "the EU refused any negotiation" is deleted. The EU did not refuse the negotiation; it explained by phone and by letter why three small changes had to be done to the accession agreement and that the impact of such changes was so insignificant that official and costly negotiations could be avoided.

Agenda item 14. Administrative Committee for the period between 1 October 2012 and 30 September 2015 (composition and chair)

Document: AG 11/10.

Exercising voting rights: EU Member States.

Line to take: The proposals for the composition and chair of the Administrative Committee for the next 3 years are acceptable for the EU.

Agenda item 15. AOB – Provisional date of the 12th General Assembly

No document available.

Competence: shared.

Exercising voting rights: EU Member States. No EU coordination needed.

Agenda item 16. Any General Assembly mandates

No document available.

Competence: depending on the contents of eventual proposals. EU coordination on the spot might be needed.

Agenda item 17. Committee reports, if necessary

No document available.

Competence: depending on the contents of eventual proposals. EU coordination on the spot might be needed.

Agenda item 18. Adoption of decisions, mandates, recommendations and other General Assembly documents (final document)

No document available.

Competence: shared. EU coordination needed on the spot.

ANNEX 1

Election of the OTIF Secretary General

I. Election Procedure

1. Following an initial 5 year term of office, the present Secretary General was re-elected for three years by the 9th General Assembly (Berne, 9/10 September 2009). His mandate ends on 31 December 2012. The election of the Secretary General will take place on 19-20 September 2012, during the 11th General Assembly. Decisions of the GA shall be taken by a majority vote of the Member States represented at the time of the vote. The GA decided in September 2006 that in the event that more than three applications were received, the AC would do a pre-selection of three candidates by assessing the applications.
2. Five applications were received by 17 February 2012 by the Chair of the AC: Mr François Davenne (FR), Mr Gustav Kafka – current deputy SG (AT), Mr Pierre-André Meyrat (CH), Mr Stefan Schimming – current SG (DE), Mr Peter Sorger – current OTIF technical expert (SK).
3. The 117th session of the Administrative Committee on 23-24 May 2012 took the necessary decisions to prepare the election of the SG in September, including the pre-selection of the three candidates that will be submitted to a final vote at the GA, as requested by the GA. The AC listened to all candidates (20 minutes for presentation, 10 minutes for questions and answers for each candidate). Then, by secret ballot, each of the 12 members of the AC present at the vote (BE, CZ, DE, ES, FR, LT, SI, SE + Croatia, Liechtenstein, Tunisia, Ukraine) voted for a shortlist of 3 candidates. The outcome of the pre-selection is the following: Mr Davenne (FR) 11 votes, Mr Kafka (AT) 10 votes, Mr Meyrat (CH) 8 votes, Mr Sorger (SK) 3 votes, Mr Schimming (DE) 2 votes.

4. The current Secretary General challenged the application of the two other OTIF "insiders" (Mr Kafka and Mr Sorger) referring to the retirement age fixed in the internal rules of OTIF for its staff. According to those rules, the retirement age is 65 and it could be even lower if so stipulated in the national law of the country of origin (which seems to be a discriminatory practice in an international administration). Mr Sorger is 67 and Mr Kafka will reach 65 on 23.04.2013. This means that if elected by the GA, Mr Kafka who is on the shortlist will at least need a derogation from the General Assembly upon a proposal from the Administrative Committee in order to be able to exercise a full mandate.

5. Although the current Secretary General sent a complaint to the Chair of the Administrative Committee claiming that the vote was illegal, the AC confirmed the results of the pre-selection at its extraordinary session of 20 June 2012. Thus, the 3 candidates to be presented to the General Assembly are: Mr Davenne (FR), Mr Kafka (AT) and Mr Meyrat (CH). A further appeal was lodged by the current SG on the basis of article 58 of the OTIF Staff regulations.

II. Work within Council bodies

1. The Working Party on Land Transport discussed at several meetings the most viable procedure to ensure the EU coordination as regards the election of the OTIF Secretary General. The Commission presented proposals for both the procedure of pre-selection and the three candidates to be supported by EU members of the Administrative Committee.

2. The vast majority of EU MS supported the coordination. DE was against the coordination of an EU position and considered that the vote for the election of the SG is an issue of the exclusive competence of Member States.

3. The Council Legal Service confirmed that EU coordination is based on the principle of sincere cooperation pursuant to Article 4, paragraph 3 TEU. For proceedings in OTIF, it is also underlined in the Internal Arrangements for the Council, the Member States and the Commission, as attached to the Council decision concerning the accession of the EU to OTIF, *"if the Commission and the Member States in coordination meetings cannot agree a common position, including for reasons of disagreement on the repartition of competence, the matter will be referred to the Committee of Permanent Representatives and/or the Council"* (point 2.6 of the above mentioned *Internal Arrangements*).

4. As DE challenged the repartition of competences in this matter, the Presidency decided to submit this issue to the Committee of Permanent Representatives which discussed it on 23 May 2012. Since DE maintained its position, no consensus was reached and no common position of the EU was adopted. However the Presidency encouraged the Commission to continue the coordination. The final result of the pre-selection by the OTIF AC held on 23-24 May 2012 was identical with the recommendation of the Commission.

5. On 20 July 2012, the Presidency organised a hearing of the three candidates on the shortlist at the level of the Council Working Party. Each candidate was given 20 minutes maximum to present himself and his programme and 40 minutes to answer questions related to (1) the role of OTIF, its cooperation with other international organisations (in particular, OSJD) and its attitude towards non-EU MSs (with special regard to Eastern Europe); (2) the relations between EU and OTIF; (3) staff management and budget issues.

6. At the hearing, Mr Meyrat's presentation and answers were rather brief and general (he did not use half of his time). Although his positions were acceptable for the EU, the two EU candidates seemed to be more up to the task. The present Deputy SG Mr Kafka demonstrated impressive knowledge of all tasks of OTIF but sometimes got lost in details. He said he wanted to solve the problem of EU voting rights by preparing decisions with a vast majority or by consensus.⁴ He presented the most convincing analysis of additional tasks and external relations of OTIF. While Mr Kafka believed Member States' contributions can be reduced in the long term as a result of attracting new members to OTIF, Mr Davenne focused on reducing the OTIF budget (by 25% in 5 years) mainly as a result of more intensive cooperation with the EU and ERA but also with sound management of the reserve fund of OTIF (the harmful financial decisions of the present SG were mentioned by the other candidates as well). No candidate gave a concrete answer to the question of the number of EU votes. All candidates declared their willingness to avoid duplication of work with other international organisations (e.g. in the field of cross-border rail facilitation).

III. Further steps

1. The Commission believes the shortlist that has been prepared by the Administrative Committee in accordance with the decision of the previous General Assembly has to be respected. On that shortlist, there are 2 candidates from EU Member States. While the Commission believes Mr Meyrat (CH) also fulfils the criteria for the post, it notes that Mr Meyrat got less support at the AC level than the EU candidates and that his presentation at the EU hearing was less convincing. This means that when electing a new SG, the EU should focus on the applications of Mr Davenne and Mr Kafka.

⁴ It should be noted, however, that in fact, there are several votes taken at the meetings of OTIF organs and it is unclear how the goal of consensus-driven decision-making could be reached.

2. The Commission's assessment of the five candidates was already discussed by Member States (as a Meeting Room Document at the meeting of the Working Party on Land Transport on 14 May 2012 and as Annex 5 to the Annex of Doc. 10021/12 RESTRICTED for COREPER). According to that assessment, both candidates comply with the profile of qualifications. The competences of Mr Davenne are well known from his participation in the EU Railway Interoperability and Safety Committee and in several OTIF Committees (Administrative Committee, Revision Committee). The competences of Mr Kafka are also well known due to his current role as Deputy SG of OTIF and to his previous role in the field of transport of dangerous goods by rail (RID) over a large number of years. Both candidates presented a credible programme at the hearing of 20 July 2012 organised by the Presidency. Therefore, if there is no risk at the GA that the present SG could be re-elected, EU Member States should be free to support the candidate whom they find the most appropriate. Recalling the principle of sincere cooperation under EU law, Member States should preferably support a candidate from an EU Member State.
