



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 17 June 2014
(OR. en)**

10952/14

**Interinstitutional File:
2014/0172 (NLE)**

TRANS 323

"I/A" ITEM NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee (Part 1)/Council

No. Cion doc.: 10823/14 TRANS 316 + ADD 1

Subject: Proposal for a COUNCIL DECISION on the position to be adopted by the Union at the 25th session of the OTIF Revision Committee as regards certain amendments to the Convention concerning International Carriage by Rail (COTIF) and to its Appendices

- Adoption

1. In view of the 25th session of the OTIF Revision Committee, the Commission services submitted on 5 June 2014 the above-mentioned proposal for a Council Decision and its Annex establishing the position to be adopted by the Union as regards certain amendments to the Convention concerning International Carriage by Rail (COTIF) and to its Appendices.
2. On 26 May, 10 and 16 June 2014, the Land Transport Working Party examined the Commission proposal and its Annex. In order to reflect the discussions at Working Party level, the Presidency prepared a compromise text which received an overall support from the delegations.

However, for items 5, 6, 7, 11, 12 and 13 of the Annex to the proposal, DE has a reservation related to the issue of respective competences between EU and Member States. For items 6, 7, 12 and 13 of the Annex to the proposal, AT also has a similar reservation linked to competences.

As regards the substance, AT and DE have a substantial reservation with regards to the definition of the keeper in the amendment to Article 12 under item 4. Under item 7, AT and DE have a substantial reservation with regards to the amendment to Articles 2 and 9. In addition, DE has a substantial reservation with regards to the amendment to Article 7. For items 10 and 11, respectively on the mandate for the consolidation of the explanatory report and the mandate for editorial amendments, DE has substantial reservations concerning their inclusion in the agenda.

During the last Working Party meeting on 16 June, the Presidency did its utmost to accommodate AT and DE concerns, namely as regards Recital 6 and item 7. The text as it stands can be endorsed by all the other delegations. The new text appears in **bold underlined** and ~~strikethrough~~.

At this stage, UK has a parliamentary scrutiny reservation.

3. In the light of the above, the Committee of the Permanent Representatives could invite the Council to adopt, as an "A" item, the revised version of this proposal as set out in the Annex to this note and to endorse the recommended EU position at its forthcoming meeting, so that it can be presented at the 25th session of the OTIF Revision Committee due to take place in Bern, on 25-27 June 2014.

Proposal for a

COUNCIL DECISION

establishing the position to be adopted by the Union at the 25th session of the OTIF Revision Committee as regards certain amendments to the Convention concerning International Carriage by Rail (COTIF) and to its Appendices

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91 in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Union acceded to the Convention concerning International Carriage by Rail of 9 May 1980 as amended by the Vilnius Protocol of 3 June 1999 (hereinafter referred to as the "COTIF Convention", by virtue of Council Decision 2013/103/EU of 16 June 2011 on the signing and conclusion of the Agreement between the European Union and the Intergovernmental Organisation for International Carriage by Rail (OTIF) on the accession of the European Union to the said Convention¹.
- (2) All Member States, with the exception of Cyprus and Malta, apply the COTIF Convention.

¹ OJ L 51 of 23.2.2013, p.1.

- (3) The Revision Committee set up in accordance with Article 13.1(c) of the COTIF Convention, at its 25th session due to take place from 25 to 27 June 2014, is expected to decide upon certain amendments to the COTIF Convention as well as to its Appendices B (Uniform Rules concerning the Contract of International Carriage of Goods by Rail – CIM), D (Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic – CUV), E (Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic – CUI), F (Uniform Rules concerning the Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic – APTU) and G (Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic – ATMF).
- (4) The amendments to the COTIF Convention have the objective (a) to update the tasks of the Committee of Technical Experts and a reference to the definition of “keeper” in line with EU law and (b) to modify certain rules concerning the financing of OTIF, its auditing and reporting as well as minor administrative changes.
- (5) The amendments to Appendix B (CIM) aim at giving preference to the electronic form of the consignment note and its accompanying documents and at clarifying certain provisions of the contract of carriage.
- (6) The amendments to Appendix D (CUV) presented by the Secretary General of OTIF have the objective to clarify the roles of the keeper and the entity in charge of maintenance in the contracts of use of vehicles in international rail traffic. France has presented a separate proposal concerning the liability for damage caused by a vehicle. **Germany has presented a separate proposal concerning the scope of the CUV Uniform rules.**
- (7) The amendments to Appendix G (ATMF) aim at updating the provisions concerning the technical admission of railway material used in international traffic, clarifying the functions of and relations between the Contracting State, the competent authority and the assessing entity as well as harmonising terms in line with EU law.
- (8) The amendments to Appendix F (APTU) aim at maintaining consistency with the revised Appendix G.
- (9) The amendments to Appendix E (CUI) suggested by the CIT aim at extending the scope of the uniform rules concerning the contract of use of infrastructure to domestic rail transport, at creating a legal basis for general terms and conditions of use of railway infrastructure and at extending the liability of the infrastructure manager for damage or losses caused by the infrastructure.
- (10) The Secretary General of OTIF also proposes editorial changes to replace the term “European Communities” by “European Union” throughout the COTIF Convention and its Appendices.

- (11) Most of the proposed amendments are in line with the law and with the strategic objectives of the European Union, and should therefore be supported by the Union. Certain amendments have no impact on EU law and don't need a position to be agreed at EU level. Finally, some amendments need more discussion within the European Union and should be rejected at this meeting of the Revision Committee. Should the latter amendments be approved without modification acceptable for the Union, the Union should formulate an objection following the procedure established in Article 35.4 of the COTIF Convention.

HAS ADOPTED THIS DECISION:

Article 1
Position of the European Union

1. The position to be taken by the European Union at the 25th session of the Revision Committee in the framework of the Convention concerning International Carriage by Rail shall be in accordance with the Annex to this Decision.
2. Minor changes to the documents mentioned in the Annex to this Decision may be agreed by the representatives of the Union in the Revision Committee without further Decision of the Council.

Article 2

After its adoption, the Decision of the Revision Committee shall be published in the Official Journal of the European Union.

Article 3
Entry into force

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council
The President

ANNEX
to the proposal of the
Council Decision

establishing the position to be adopted by the Union at the 25th session of the OTIF Revision Committee as regards certain amendments to the Convention concerning International Carriage by Rail (COTIF) and to its Appendices

1. INTRODUCTION

OTIF Secretariat General (SG) has convened the 25th session of the Revision Committee (RC) of COTIF 99 in Berne on 25-27 June 2014.

~~The objective of this working document is to develop the EU coordinated position to be presented at the RC meeting. The document was prepared by DG MOVE with the help of other Commission services involved (TAXUD, SANCO, SJ, SG).~~

2. REFERENCED DOCUMENTS

Documents concerning the agenda items were circulated to OTIF Member States ~~on 25 April 2014~~ and are available on the website of OTIF at the following link: <http://otif.org/en/law/revision-committee/working-documents.html>.

3. COMMENTS ON EACH AGENDA ITEM

ITEM 1. OPENING THE MEETING AND ESTABLISHING THE QUORUM

Document: none.

Competence: shared.

Exercising voting rights: not applicable.

Recommended coordinated position: none.

There shall be a quorum in the Revision Committee when the majority of the Member States enjoying the right to vote are represented there at the time of the vote. However, one has to take into account Article 13 § 3 of the Convention that provides that Member States having made a declaration concerning the non-application of one or more Appendices do not have the right to vote concerning amendments to the given Appendix.

The following **OTIF** Member States have not withdrawn their declarations on the non-application of certain Appendices:

Pakistan, Russia (concerning CIV, RID, CUV, CUI, APTU and ATMF), Georgia (concerning CUV, CUI, APTU and ATMF), the Czech Republic, Norway, Slovakia, the United Kingdom (concerning CUI, APTU and ATMF), France (concerning ATMF).

When discussing amendments to the relevant Appendices, the number of **OTIF** Member States having made a declaration on the non-application of the Appendix in question has to be deducted from the number of active members of OTIF (46) to establish the quorum concerning the vote on the Appendix in question.

In case of EU competence, the EU may vote for all of its members having the right to vote, without regard to the physical presence of those members at the vote; thus, the quorum may be different in case of the EU representing its Member States and in case of EU Member States voting for themselves.

ITEM 2. ELECTION OF CHAIR AND VICE CHAIR

Document: none.

Competence: shared.

Exercising voting rights: MS.

Recommended coordinated position: none.

ITEM 3. ADOPTION OF THE AGENDA

Document: CR 25/3.

Competence: shared.

Exercising voting rights: MS.

Recommended coordinated position: none.

ITEM 4. PARTIAL REVISION OF COTIF – BASIC CONVENTION

Documents: CR 25/4, CR 25/4 Add. 1.

Competence: shared.

Exercising voting rights: MS.

Recommended coordinated position:

Amendments for Article 3 (International cooperation) to be supported (editorial change to replace the reference to the "European Communities" with a reference to the "European Union).

Amendments for Article 12 (Execution of judgments. Attachment) to be supported as it amends the definition of "keeper" in line with EU law ².

Amendments for Article 20 (Committee of Technical Experts) to be supported as they are necessary to update the Uniform Rules APTU and ATMF in order to keep them in line with EU law.

² AT and DE have a substantial reservation with regards to the definition of the keeper in the amendment to Article 12.

Other amendments: no EU position necessary as these amendments relate to financing of the organisation, auditing or include administrative changes regarding the work programme, the annual report and the lists of lines or services which have no impact on EU law.

ITEM 5. PARTIAL REVISION OF APPENDIX B (CIM UR)

Documents: CR 25/5, CR 25/5 Add. 1, CR 25/5 Add. 2, CR 25/5.1.

Competence: shared.

Exercising voting rights: EU for Articles 6 and 6a; MS for other Articles.

Recommended coordinated position:

Amendments to Article 6 and new Article 6a concern EU law because of the use of the consignment note and its accompanying documents for customs and sanitary and phytosanitary (SPS) procedures. The EU agrees with the intention of OTIF to give priority to the electronic form of consignment notes. However, at present the adoption of these amendments may lead to unintended consequences. The current simplified procedure for customs transit by rail is only possible with paper documents. Therefore, if railways opt for the electronic consignment note, they will have to use the standard transit procedure and the New Computerised Transit System (NCTS).

The Commission has started preparations for a working group to discuss the use of electronic transport documents for transit under the Union Customs Code. This working group will have its kick-off meeting on 4-5 June 2014. The EU agrees also with the intention to provide the accompanying documents in electronic format. However, in the current EU law there is no legal basis to provide the documents (e.g. Common Veterinary Entry Document, Common Entry Document) which have to accompany SPS related goods in electronic format and therefore they need to be provided in paper. The Commission has prepared a draft Regulation, which will cater for electronic certification and the draft is currently under discussion in Council and Parliament. That Regulation (Official Control Regulation) is envisaged to be adopted by end of 2015/beginning of 2016, however, there will be a transitional period for the enforcement.

Therefore, the EU suggests that no decision is taken on these items at the present RC and that OTIF continue cooperation with the EU on this issue in order to have a well-prepared solution for an upcoming revision of CIM which should ideally be synchronised with the new UCC and its implementing provisions which are to be in force on 1 May 2016. Certain electronic procedures may be phased in between 2016 and 2020 in accordance with Article 278 of the UCC.

Other amendments: no EU position necessary as these provisions do not interfere with EU law.

ITEM 6. ELECTRONIC DOCUMENTS CONCERNING THE CARRIAGE OF DANGEROUS GOODS – INFORMATION ON THE WORK OF THE RID COMMITTEE OF EXPERTS

Document: CR 25/6.

Competence: EU.

Exercising voting rights: not applicable.

Recommended coordinated position: to take note of the information.

ITEM 7. PARTIAL REVISION OF APPENDIX D (CUV UR)

Documents: CR 25/7, CR 25/7 Add. 1, CR 25/7 Add. 2, **CR 25/7 Add. 3.**

Competence: shared.

Exercising voting rights: EU.

Recommended EU position: Amendments to Articles 2 and 9 to be supported as they clarify the roles of the keeper and of the entity in charge of maintenance in line with EU law (Directive 2008/110/EC amending Directive 2004/49/EC on railway safety)³. However, the proposed amendment to Article 7 submitted by France concerning the liability of the person who has provided the vehicle for use as a means of transport in case of damage resulting from a defect of the vehicle needs further analysis within the EU before taking a decision in OTIF. Therefore, the EU is not in a position to support this amendment proposal at this Revision Committee and proposes to postpone the decision to the next General Assembly **in order to further assess this issue**⁴. **The EU takes the same position, i.e. to postpone the decision to the next General Assembly in order to further assess the issue, on the proposal of Germany for a new Article 1a presented to OTIF during EU coordination.**

Additional recommended EU position: In document CR 25/7 ADD 1, page 6, paragraph 8a, in the end, add: "The amendment to Article 9, paragraph 3, first indent, does not affect the existing allocation of liabilities between ECM and the keeper of the vehicles."

ITEM 8. REVISION OF APPENDIX G (ATMF UR)

Documents: CR 25/8, CR 25/8 Add. 1, CR 25/8 Add. 2.

Competence: EU.

Exercising voting rights: EU.

³ **AT and DE have a substantial reservation with regards to the amendment to Articles 2 and 9.**

⁴ **DE has a reservation.**

Recommended coordinated position:

1) On Ref. CR 25/8 Revision of Appendix G (ATMF UR)

To be voted positively with the following comments:

- add the following sentence to Art. 3a(3): "When operating in the EU, railway undertakings and infrastructure managers shall only be subject to European legislation."

The EU can eventually accept the following alternatives:

- *"For railway undertakings and infrastructure managers, when operating within the EU, EU legislation takes precedence over the provisions in these Uniform Rules".*

or

- **"When operating ~~only~~ within the European Union, railway undertakings and infrastructure managers are solely subject to European Union rules and shall therefore not apply these Uniform Rules except in so far as there is no EU rule governing the particular subject concerned".**

- Art. 4(1): add the following sentence at the end [after point b)]: *"If the vehicle is admitted in a single stage, the type of construction of the vehicle is admitted at the same time."*
- Art. 5(5): Correct the reference; replace 'Article 2w1)' with 'Article 2wa(1)'.

- Article 19: Combine Art. 19(2) and (2a) by deleting (2a) and replacing (2) by the following modified text:

"These Uniform Rules do not affect admissions issued before 1.1.2011 for vehicles which exist as at 1.1.2011 and which are marked RIV or RIC as proof of current compliance with the technical provisions of the RIV 2000 agreement (revised edition of 1 January 2004) or the RIC agreement respectively, and for existing vehicles not marked RIV or RIC but admitted and marked according to bilateral or multilateral agreements between Contracting States notified to the Organisation."

2) On 25/8 Add. 1. Justification document for the Revision of Appendix G (ATMF UR)

- General justifications (bottom of page 2): modify the sentence as follows: *"The changes which are not covered by these general justifications are explained in the rest of this document."*
- Article 2(t): add a new paragraph *'When infrastructure managers operate vehicles, e.g. freight wagons to transport materials for construction or for infrastructure maintenance activities, the infrastructure managers do so in the capacity of a railway undertaking.'*
- Art. 4(1)(b): Add module SH1 since the design type certificate issued in the design phase of this module also gives possibility to use the procedure described. The new sentence would read:

"According to Article 10 § 8, the appropriate manner to demonstrate that the vehicle corresponds to the admitted type of construction is a certificate of verification, it is not really a simplified procedure. The certificate of verification is issued according to the appropriate module defined in the UTP(s) concerned which may be module SD or module SF for type examination certificate or module SH1 for design examination certificate."

- Art. 7(1a): to align the interpretation of this provision with the EU one (Art. 8(7) of Commission Recommendation 2011/217), add the following sentence:

‘Due to the fact that the admission procedures can take several months, it is recommended that the rules to be applied by the competent authority for a specific admission process are those that were in force at the date of the application and that no new rule is imposed during the subsequent process.’

3) Result of the verification of the German version of the Revision of Annex G:

Art. 2ab) Align the definition of accreditation with the wording of Art. 2(10) of Regulation 765/2008

‘Akkreditierung: die Bestätigung durch eine nationale Akkreditierungsstelle, dass eine Konformitätsbewertungsstelle die in europäischen harmonisierten Normen oder anwendbaren internationalen Normen festgelegten Anforderungen und, gegebenenfalls, zusätzliche Anforderungen, einschließlich solcher in relevanten sektoralen Akkreditierungssystemen, erfüllt, um eine spezielle Konformitätsbewertungstätigkeit durchzuführen.’

Art. 5 § 2: “assessing entities” is translated with “Bewertungsstelle”. According to the ETV GEN-E “the assessing entity” is translated by “Prüforgan”. In the EU the term “Bewertungsstelle” is especially assigned to assessment bodies according to the CSM RA. Due to this the OTIF – term according to Art. 5 § 2 could be misleading. Due to this the proposal is to use also in ATMF the word “Prüforgan”. See also Art 2 cb, Art. 5 §§ 3 – 7, Art. 6 § 4, Art. 10 §§ 3a, 4 6 – 8.

Art. 5 § 4 change the wording: "~~Die Anforderungen in § 3 gelten sinngemäß für die die technische Zulassung erteilenden zuständige Behörde, in **Bezug auf die in § 2 genannten Pflichten Aufgaben, die nicht an eine Bewertungsstelle übergeben** übertragen werden müssen wurden.~~"

Art. 10 § 8: delete the brackets.

Art. 5 § 3: nach dem Wort „Voraussetzungen“ ändern „erfüllen“ in „erfüllt“.

Art. 11 § 3 b) ist das Wort „Identifizierungscode(se)“ durch „Identifizierungscode(s)“ zu ersetzen.

Art. 15 § 1 S. 2: „nicht“ ist zu streichen.

Art. 15 a § 1 S. 2: nach „entsprechen“ Punkt setzen und dann einen dritten Satz beginnen mit „Es hat insbesondere:“

4) In the French version the definition in Art. 2 n) should read:

"détenteur" désigne la personne ou l'entité propriétaire du véhicule ou disposant d'un droit de disposition sur celui-ci, qui exploite ledit véhicule à titre de moyen de transport et est inscrite en tant que telle dans le registre des véhicules prévu à l'article 13.

ITEM 9. PARTIAL REVISION OF APPENDIX F (APTU UR)

Documents: Ref.: CR 25/9, CR 25/9 Add. 1.

Competence: EU.

Exercising voting rights: EU.

Recommended coordinated position: editorial amendments to be supported.

ITEM 10. MANDATE FOR THE CONSOLIDATION OF THE EXPLANATORY REPORT⁵

Document: CR 25/10.

Competence: shared.

Exercising voting rights: MS.

Recommended EU position: to be supported.

ITEM 11. EDITORIAL AMENDMENTS⁶

Document: CR 25/11.

Competence: shared.

Exercising voting rights: MS.

Recommended coordinated position: to be supported with the addition of the following new second indent: "to provide for a period of 3 weeks open for Member States for a check of those editorial amendments before their notification".

ITEM 12. PARTIAL REVISION OF APPENDIX E (CUI UR)

Document: CR 25/12.

Competence: shared.

Exercising voting rights: EU.

⁵ DE has a substantial reservation on the mandate for the consolidation of the explanatory report.

⁶ DE has a substantial reservation on the mandate for editorial amendments.

Recommended coordinated position: amendments to be rejected. These amendments suggested by CIT include the extension of the scope of CUI to domestic operations, the introduction of contractually binding General Terms and Conditions and the extension of the infrastructure manager's liability for damage. They may deserve further consideration but as they have not been discussed in any internal forum of OTIF before the Revision Committee, their impact could not have been assessed in sufficient detail. It seems to be immature to amend CUI (that is at present in line with EU law) at this RC without proper preparation.

ITEM 13. RULES OF PROCEDURE FOR THE WORKING GROUPS OF THE REVISION COMMITTEE CONCERNING APPENDICES A, B, D AND E

Document: CR 25/13.

Competence: shared.

Exercising voting rights: MS.

Recommended coordinated position: none.

ITEM 14. INFORMATION ON FUTURE WORK.

Document: CR 25/14 (not available yet).

Competence: shared.

Exercising voting rights: not applicable.

Recommended coordinated position: tbd on the spot.