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TRANS 131

## PROPOSAL

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| From:            | Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director |
| date of receipt: | 31 March 2023   |
| To:              | Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union         |

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| No. Cion doc.: | COM(2023) 179 final |
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| Subject: | Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union at the 15th meeting of the Committee of Technical Experts of the Intergovernmental Organisation for International Carriage by Rail (OTIF) as regards the modifications to the uniform technical prescriptions concerning the qualifications and independence of assessing entities and concerning a common safety method on risk evaluation and assessment, the modification of the rules of procedure of the Committee of Technical Experts, and the upgrade of the references to the Technical Documents of TAF TSI listed in Appendix I of UTP TAF |
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Delegations will find attached document COM(2023) 179 final.

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Encl.: COM(2023) 179 final



Brussels, 31.3.2023  
COM(2023) 179 final

2023/0091 (NLE)

Proposal for a

## **COUNCIL DECISION**

**on the position to be taken on behalf of the European Union at the 15th meeting of the Committee of Technical Experts of the Intergovernmental Organisation for International Carriage by Rail (OTIF) as regards the modifications to the uniform technical prescriptions concerning the qualifications and independence of assessing entities and concerning a common safety method on risk evaluation and assessment, the modification of the rules of procedure of the Committee of Technical Experts, and the upgrade of the references to the Technical Documents of TAF TSI listed in Appendix I of UTP TAF**

## EXPLANATORY MEMORANDUM

### 1. SUBJECT MATTER OF THE PROPOSAL

The 15<sup>th</sup> session of the Committee of Technical Experts (CTE) of the Intergovernmental Organisation for International Carriage by Rail (OTIF) will take place in Bern on 13 and 14 June 2023. The agenda of the meeting includes:

- A proposal for revision of the Uniform Technical Prescriptions (UTP) concerning the qualifications and independence of assessing entities;
- A proposal for modification of the UTP concerning a Common Safety Method on risk evaluation and assessment;
- A proposal for modification of the rules of procedure of the Committee of Technical Experts;
- A proposal to update the references to the Technical Documents of TAF TSI listed in Appendix I of UTP TAF.

OTIF develops uniform legal regimes for international rail transport in three major areas of activity: technical interoperability, dangerous goods and railway contract law.

The above-mentioned decisions to be adopted by CTE are acts having legal effects and the position to be taken on the Union's behalf has to be established by a Council Decision on the basis of Article 218(9) TFEU.

### 2. CONTEXT OF THE PROPOSAL

#### 2.1. The Convention concerning International Carriage by Rail (COTIF)

The Convention concerning International Carriage by Rail of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 ('COTIF'), is an international agreement where both the Union and 25 Member States<sup>1</sup> are Contracting Parties.

On 16 June 2011, the Council adopted a Council Decision 2013/103/EU on the signing and conclusion of the Agreement between the European Union and the OTIF 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 ('EU-COTIF Accession Agreement').

The Agreement entered into force on 1st July 2011.

According to Article 2(1) of the COTIF, OTIF aims at promoting, improving and facilitating, in all respects, international traffic by rail, in particular by establishing systems of uniform law in various fields of law relating to international traffic by rail. The COTIF also governs the running of the Organisation, its objectives, attributions, relations with the Contracting States and its activities in general.

COTIF therefore deals with rail legislation on a number of different legal and technical rail matters that are divided into two parts: the Convention itself, which governs the running of OTIF, and the eight Appendices that establish uniform railway law:

- Appendix A – Contract of International Carriage of Passengers by Rail (CIV)
- Appendix B – Contract of International Carriage of Goods by Rail (CIM)

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<sup>1</sup> Only Cyprus and Malta are not Contracting Parties.

- Appendix C – International Carriage of Dangerous Goods by Rail (**RID**)
- Appendix D – Contract of use of vehicles in international rail traffic (**CUV**)
- Appendix E – Contract of use of infrastructure in international rail traffic (**CUI**)
- Appendix 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 UR**)
- Appendix G – Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (**ATMF UR**)
- Appendix H – Uniform Rules concerning the safe operation of trains in international traffic (**EST UR**)

Based on Appendix F and G to COTIF, there are 12 UTPs for technical interoperability. The UTPs in the framework of COTIF have the same purpose as the EU technical specifications for interoperability (TSIs) for admission to international traffic, as defined in Chapter II of Directive (EU) 2016/797.

42 out of the 47 States that are Party to the COTIF, including the already mentioned 25 EU Member States, apply Appendix F and G.

## **2.2. The OTIF Committee of Technical Experts (CTE)**

The CTE is set up by Article 13 (1) (f) of the COTIF. It is made up of the OTIF Member States that apply Appendices F and G (APTU, ATMF) to COTIF.

The CTE has competence in matters of interoperability and technical harmonisation in the railway field and technical approval procedures. It develops the APTU and ATMF Appendices and its Uniform Rules, which apply to railway material intended for use in international traffic, which concern in particular:

- the adoption of technical prescriptions for vehicles and infrastructure and the validation of standards;
- procedures concerning the assessment of conformity of vehicles;
- provisions concerning the maintenance of vehicles;
- responsibilities for train composition and the safe use of vehicles;
- provisions concerning risk evaluation and assessment;
- specifications for registers.

The CTE currently has a standing working group (WG TECH) which is responsible for preparing the former's decisions.

Pursuant to Article 20(1) (b) of the COTIF, and in accordance with Article 6 of Appendix F (APTU), the CTE is competent to adopt or to amend the UTPs. In accordance with Article 16 (10) of COTIF, the CTE is competent to propose a revision of its rules of procedure.

## **2.3. The adoption of acts by the CTE**

According to Article 6 of APTU, the CTE shall decide whether to adopt a UTP or a provision amending it in accordance with the procedure laid down in Articles 16, 20 and 33 § 6 of the Convention. The usual adoption process for UTPs may take about one and a half years.

## **2.4. The envisaged acts to be adopted by the CTE during the session on 13 and 14 June 2023**

### *2.4.1. Revision of the UTP concerning the qualifications and independence of assessing entities (UTP GEN-E)*

UTP GEN-E describes the qualifications and independence of assessing entities. The current version entered into force on 1 December 2011. It was based on Annex VIII to Directive 2008/57/EC of the European Parliament and of the Council on the interoperability of the rail system within the Community<sup>2</sup>.

The full revision of UTP GEN-E proposed by the CTE is justified by several developments since their entry into force.

Firstly, Directive 2008/57/EC of the European Parliament and of the Council has been replaced by Directive (EU) 2016/797 of the European Parliament and of the Council<sup>3</sup>. The more recent Directive has more detailed provisions concerning the qualification and independence of assessing entities than the previous Directive.

The proposed full revision of UTP GEN-E aims to:

- Structure the provisions more clearly;
- Clarify its scope, in particular in relation to EU law;
- Align the provisions with the latest provisions applicable in the EU.

Conclusion: the European Union can vote in favour of the revision of UTP GEN-E as proposed by OTIF.

### *2.4.2. Modification of the UTP concerning a common safety method on risk evaluation and assessment (UTP GEN-G)*

The UTP GEN-G establishes a harmonised procedure to manage risks relating to significant changes to the rail system or, if the UTP so require, structural subsystems. The UTP GEN-G also governs requirements applicable to the independent common safety method assessment bodies. They are currently equivalent to Commission Implementing Regulation (EU) No 402/2013 as amended by Commission Implementing Regulation (EU) No 2015/1136<sup>4</sup>.

The proposed revision widens the scope of UTP GEN-G, so that it will cover risk evaluation and assessments relating to the safety management system (SMS) in the scope of the EST UR.

The proposal does not alter the risk evaluation and acceptance provisions for applications within the scope of the APTU and ATMF UR. These applications are primarily related to the assessment of new products, such as rolling stock, the maintenance of vehicles or changes to the design, construction, or maintenance of products, provided these applications fall within the scope of the APTU and ATMF UR.

The amendments will add applications within the scope of the EST UR. These applications mainly relate to operational and organisational changes, including changes to the SMS, provided they fall within the scope of the EST UR.

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<sup>2</sup> Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (Text with EEA relevance) (OJ L 191, 18.07.2008, p. 1)

<sup>3</sup> Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (OJ L 138, 26.5.2016, p. 44)

<sup>4</sup> Commission Implementing Regulation (EU) 2015/1136 of 13 July 2015 amending Implementing Regulation (EU) No 402/2013 on the common safety method for risk evaluation and assessment (OJ L 185, 14.07.2015, p.6)

Conclusion: the European Union can vote in favour of the modification of UTP GEN-G as proposed by OTIF.

#### 2.4.3. *Modification of the rules of procedure of the Committee of Technical Experts (CTE)*

Article 16 § 10 of COTIF requires the CTE to establish its rules of procedure. The latter aim to ensure that the discussions take place in an orderly manner and that the rights and obligations of all participants are clear.

The proposed modification of the rules of procedure aims to:

- take into account the practices established since the COVID-19 pandemic, and in particular the fact that hybrid meetings have become the norm;
- take into account a recommendation adopted by OTIF's ad hoc Committee on Legal Affairs and International Cooperation on 5 April 2022 concerning the involvement of stakeholders in OTIF's work;
- reflect the new practice of the CTE to issue a list of decisions shortly after its meeting;
- reflect the decision taken by the CTE at its 14<sup>th</sup> session following which contracting States and regional organisations should designate focal points.

Conclusion: the European Union can vote in favour of the modification of the rules of procedure of the CTE as proposed by OTIF.

#### 2.4.4. *Upgrade references to the Technical Documents of TAF TSI listed in Appendix I of the UTP Telematics applications for freight services (UTP TAF)*

The UTP TAF, in force since 1.12.2017, lays down requirements about the communication process between railway undertakings and infrastructure managers, databases intended to be used to track trains and wagon movements and information to be delivered to freight customers. It is equivalent to Commission Regulation (EU) No 1305/2014 of 11 December 2014 on the technical specification for interoperability relating to the telematics application for freight subsystem of the rail system in the European Union<sup>5</sup> (TAF TSI). The regulation has been amended on 26 March 2021 by the regulation (EU) 2021/541<sup>6</sup>.

The UTP TAF makes reference to the TSI TAF technical documents<sup>7</sup> that are published and regularly updated on the website of the EU Agency for Railways (ERA). Such a reference was included in the UTP so that the IT provisions are enshrined in COTIF but managed by ERA. As a modification of these references formally constitutes a modification of the UTP TAF, it must be subject to a decision by the Committee of Technical Experts in accordance with Article 20 § 1 b) COTIF and Articles 6 and 8a APTU.

As a consequence, modifications of the technical documents referred to in Appendix I of the UTP TAF are necessary in order to correct errors, take feedback into account, keep up with technical progress and maintain equivalence with the specifications applied in the EU.

Conclusion: the European Union can vote in favour of the proposal to update the references to the Technical Documents of TAF TSI made by OTIF.

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<sup>5</sup> Official Journal of the EU: OJ L 356, 12.12.2014, p. 438

<sup>6</sup> Official Journal of the EU: OJ L 108, 29.3.2021, p. 19

<sup>7</sup> Commission Implementing Regulation (EU) 2019/778 of 16 May 2019 amending Regulation (EU) No 1305/2014 as regards Change Control Management (OJ L 139I, 27.5.2019, p. 356)

## **2.5. Union competence and voting rights**

Pursuant to 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 COTIF approved by Council Decision of 16 June 2011:

"1. For decisions in matters where the Union has exclusive competence, the Union shall exercise the voting rights of its Member States under the Convention.

2. For decisions in matters where the Union shares competence with its Member States, either the Union or its Member States shall vote.

3. Subject to Article 26, paragraph 7, of the Convention, the Union shall have a number of votes equal to that of its Member States who are also Parties to the Convention. When the Union votes, its Member States shall not vote."

Under Union law, the Union has acquired exclusive competence in matters of rail transport where the COTIF or legal instruments adopted pursuant to it may affect or alter the scope of these existing Union rules.

The objective of the proposed decisions is to:

- align the UTP concerning the qualifications and independence of assessing entities with Directive (EU) 2016/797 of the European Parliament and of the Council<sup>8</sup>,
- align the UTP concerning a common safety method on risk evaluation and assessment with Commission Implementing Regulation (EU) No 402/2013 of 30 April 2013 on the common safety method for risk evaluation and assessment and repealing Regulation (EC) No 352/2009 Text with EEA relevance in relation to Safety Management Systems,
- update the CTE rules of procedure,
- align the references to the Technical Documents of TAF TSI listed in Appendix I of UTP TAF<sup>9</sup>.

Union rules will be clearly affected by the adoption of these decisions.

The Union, represented by the Commission, shall exercise the voting rights with respect to the adoption of these decisions.

## **3. POSITION TO BE TAKEN ON THE UNION'S BEHALF**

The Union should for all the above-mentioned reasons vote in favour.

## **4. LEGAL BASIS**

### **4.1. Procedural legal basis**

#### *4.1.1. Principles*

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.'*

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<sup>8</sup> Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (OJ L 138, 26.5.2016, p. 44)

<sup>9</sup> Commission Implementing Regulation (EU) 2019/778 of 16 May 2019 amending Regulation (EU) No 1305/2014 as regards Change Control Management (OJ L 139I, 27.5.2019, p. 356)



Article 218(9) TFEU applies regardless of whether the Union is a member of the body or a party to the agreement<sup>10</sup>.

The concept of ‘*acts having legal effects*’ includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are ‘*capable of decisively influencing the content of the legislation adopted by the EU legislature*’<sup>11</sup>.

#### 4.1.2. *Application to the present case*

The CTE is a body set up by an agreement, namely the COTIF, in particular Article 13(1) (c) and (f).

The acts which the CTE is called upon to adopt during its 15<sup>th</sup> session constitute acts having legal effects.

The envisaged acts modify the OTIF legal framework. As the Union is a full contracting party to COTIF, the envisaged acts will be binding upon the Union under international law in accordance with the EU-COTIF Accession Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

## 4.2. **Substantive legal basis**

### 4.2.1. *Principles*

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is adopted on behalf of the Union.

### 4.2.2. *Application to the present case*

The main objective and content of the envisaged act relate to international rail transport.

The substantive legal basis of the proposed decision, therefore, is Article 91 TFEU.

## 4.3. **Conclusion**

The legal basis of the proposed decision should be Article 91 TFEU, in conjunction with Article 218(9) TFEU.

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<sup>10</sup> Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraph 64

<sup>11</sup> Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64



Proposal for a

## COUNCIL DECISION

**on the position to be taken on behalf of the European Union at the 15th meeting of the Committee of Technical Experts of the Intergovernmental Organisation for International Carriage by Rail (OTIF) as regards the modifications to the uniform technical prescriptions concerning the qualifications and independence of assessing entities and concerning a common safety method on risk evaluation and assessment, the modification of the rules of procedure of the Committee of Technical Experts, and the upgrade of the references to the Technical Documents of TAF TSI listed in Appendix I of UTP TAF**

### 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 (the 'COTIF'), in accordance with Council Decision 2013/103/EU<sup>12</sup> and 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 COTIF Convention (the 'Agreement').
- (2) Pursuant to Article 13(1) (f) of the COTIF, the Committee of Technical Experts ('CTE') of the OTIF was set up.
- (3) Pursuant to Article 20(1) (b) of the COTIF, and in accordance with Article 6 of the 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) - Appendix F to COTIF, the CTE is competent to adopt or to amend, inter alia, the Uniform Technical Prescriptions (UTP) concerning the qualifications and independence of assessing entities (UTP GEN-E), concerning a common safety method on risk evaluation and assessment (UTP GEN-G), and concerning telematics applications for freight (UTP TAF).
- (4) In accordance with Article 16(10) of COTIF, the CTE is competent to propose a revision of its rules of procedure.
- (5) The CTE has included in the agenda of its 15<sup>th</sup> session that will take place on 13 and 14 June 2023, a proposal for decisions to fully revise the UTP GEN-E concerning the qualifications and independence of assessing entities, to amend the UTP GEN-G

<sup>12</sup> 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 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 (OJ L 51, 23.2.2013, p. 1)

concerning a Common Safety Method on risk evaluation and assessment, to modify the rules of procedure of the Committee of Technical Experts and to upgrade the references to the Technical Documents of TAF TSI listed in Appendix I of UTP TAF.

- (6) It is appropriate to establish the position to be taken on the Union's behalf in the CTE, as the proposed decisions will be binding on the Union.
- (7) The objectives of those decisions are to align the UTP GEN-E concerning the qualifications and independence of assessing entities with Directive (EU) 2016/797 of the European Parliament and of the Council<sup>13</sup>, to revise the UTP GEN-G concerning a Common Safety Method on risk evaluation and assessment, to modify the rules of procedure of the Committee of Technical Experts and to align the UTP TAF with EU rules, namely Commission Implementing Regulation (EU) 2021/541<sup>14</sup>.
- (8) The envisaged OTIF decisions are in line with the law and the strategic objectives of the Union by contributing to the alignment of OTIF legislation with the equivalent provisions of Union law, and should therefore be supported by the Union,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The position to be taken on the Union's behalf during the 15<sup>th</sup> session of the CTE of the Convention concerning International Carriage by Rail of 9 May 1980 on the modifications to the UTP GEN-E concerning the qualifications and independence of assessing entities and UTP GEN-G concerning a Common Safety Method on risk evaluation and assessment, on the modification of the rules of procedure of the Committee of Technical Experts, and on the update of the references to the Technical Documents of TAF TSI listed in Appendix I of UTP TAF shall be the following:

- (1) to vote in favour of the CTE proposed revision of UTP GEN-E concerning the qualifications and independence of assessing entities, as found in the CTE Working Document TECH-23005 UTP GEN-E
- (2) to vote in favour of the CTE proposed amendments to UTP GEN-G concerning a Common Safety Method on risk evaluation and assessment, as found in the CTE Working Document TECH-23006 UTP GEN-G
- (3) to vote in favour of the CTE proposed modification of the rules of procedure of the Committee of Technical Experts, as found in the CTE Working Document TECH-23002 CTE
- (4) to vote in favour of the CTE proposal to upgrade the references to the Technical Documents of TAF TSI listed in Appendix I of UTP TAF, as found in the CTE Working Document TECH-21009-CTE UTP TAF decision.

#### *Article 2*

Once adopted, the decisions of the Committee of Technical Experts shall be published in the *Official Journal of the European Union*, indicating the date of their entry into force.

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<sup>13</sup> Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (OJ L 138, 26.5.2016, p. 44)

<sup>14</sup> Commission Implementing Regulation (EU) 2021/541 of 26 March 2021 amending Regulation (EU) No 1305/2014 as regard the simplification and improvement of data calculation and exchange and the update of the Change Control Management process (OJ L 108, 29.3.2021, p. 19)

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*