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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. Cion doc.:	ST 8122/24
Subject:	Intergovernmental Organisation for International Carriage by Rail (OTIF): position to be taken on behalf of the European Union at the 6 th session of the OTIF Ad Hoc Committee on Legal Affairs and International Cooperation – Approval

1. On 25 March 2024 the Commission services submitted to the Council a non-paper on the position to be taken on behalf of the European Union at the 6th session of the OTIF Ad Hoc Committee on Legal Affairs and International Cooperation, to be held on 16-18 April 2024 in Vienna, Austria.
2. The non-paper was presented in the Land Transport Working Party on 26 March 2024.
3. Based on the comments made by the delegations during and after the meeting, the Presidency has amended the draft position and decided to submit it to the approval of the Council. The main changes concern the issue of competences and exercise of voting rights, as well as agenda item 15 (Future working arrangements and revision of the Rules of Procedure), where the preferred option for extending the deadlines for sending meeting documents has been amended in line with Member States' requests. Moreover, minor changes were made to agenda items 5 (Authentic text of the Convention), 7 (Monitor and support cooperation with international organisations and associations), 11 (Liability for loss or damage caused by a vehicle) and 13 (Open discussion on possible 2025-2027 Work Programme).

4. The changes introduced to agenda item 15 imply a technical adjustment in the comments to agenda item 16 (Report and proposals to the General Assembly). In paragraph 3 of the comments to that agenda item, the reference to EU's support for Alternative A under agenda item 15 is no longer valid, given the shift towards Alternative C, and has been therefore deleted.
 5. The amended draft position was shared with delegations for a written consultation and no further comments were received. Therefore, on 9 April 2024 the Union position for the 6th Ad Hoc Committee was considered agreed at the working party level.
 6. In light of the above, the Permanent Representatives Committee is invited to approve the draft Union position as outlined in the annex to this note and to agree to forward it to the Council for approval.
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**Position to be taken on behalf of the European Union at the 6th session of the OTIF Ad Hoc
Committee on Legal Affairs and International Cooperation,
16-18 April 2024, Vienna, Austria**

Introduction

The OTIF ad hoc Committee on Legal Affairs and International Cooperation (‘the ad hoc Committee’) was established by the 15th General Assembly of OTIF. It held its fifth session on 7-9 November 2023.

Its mandate is set out in Article 2 of its Rules of Procedure: a) to prepare draft amendments or supplements to the Convention; b) to provide legal advice on its own initiative or at the request of the organs referred to in Article 13 §§ 1 and 2 of the Convention or at the request of organs established by them; c) to promote and facilitate the functioning and implementation of the Convention; d) to monitor and assess legal instruments; e) to take decisions on cooperation with other international organisations and associations, including establishing and dissolving consultative contact groups with other international organisations and associations and monitoring the functioning of contact groups.

Whenever applicable, the Committee shall submit its conclusions and proposals to the competent organs referred to in Article 13 § 1 of COTIF for consideration or decision.

This document aims at establishing the European Union position (*italic*) on the agenda items, except for those that are just information points and Union position is not necessary. The text of the annotated agenda is reproduced under each relevant agenda item (frame, *italic*).

Union competence and exercise of voting rights

The European Union is a contracting party to the Convention concerning International Carriage by Rail (COTIF).

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."

In respect of this meeting's agenda items 1, 2, 3, 4, 5, 6, 7, 11, 12, 13, 14, 15 and 16, considered to deal with matters containing elements of both shared and exclusive competence of the Union, point 3.3 of the "Internal Arrangements" (Annex III of Council Decision 2013/103/EU) should be followed.

On agenda items 2 (OTIF long-term strategy) and 3 (suspension and termination of COTIF), the Commission and the Presidency will speak, and the Commission will vote. On the other items, the Presidency and the Commission will speak, and Member States will vote. Member States may intervene to support or develop the common position.

Agenda items 8, 9, 10 and 17 are information points only, and thus do not require the establishment of a Union position.

Agenda Item 1 – Adoption of the agenda

The agenda prepared by the Secretariat, completed and adapted if necessary, depending on proposals received from the Member States and the regional organisation, will be submitted for approval.

Comments

Documents of the session: LAW-24014-JUR 6/1

Proposed EU position

- *In favour of the adoption of the draft agenda*

Agenda Item 2 – Development of a long-term strategy for OTIF

In accordance with its 2022-2024 Work Programme (LAW-23134-JUR 5, updated at the 5th session, 9 November 2023), the ad hoc Committee should:

‘[a]ssist the Secretary General in the preparation of a long-term strategy based on the decision of the General Assembly at its 15th session’.

‘instruct the Secretary General to prepare, as a basis for further discussion, a revised draft proposal for a long-term strategy, which should be based on the draft sent with circular letter SG-21001 and updated in accordance with the Secretary General’s reaction to the feedback received in the consultation (part D of document SG-21017-AG 15/7) and with the results of the discussions at the 15th General Assembly;

instruct the Secretary General, in consultation with the organs of OTIF, in particular the ad hoc Committee on Legal Affairs and International Cooperation, to prepare a long-term strategy for OTIF and submit it for adoption to the next ordinary session of the General Assembly which is scheduled for autumn 2024 [...].’

At the 4th session, the ad hoc Committee:

‘advised the Secretary General that OTIF’s long-term strategy should incorporate relevant elements of the background analysis and be restructured into a single draft strategy document showing the links between the analysis of the relevant issues and challenges and the strategic goals;

advised the Secretary General that OTIF’s long-term strategy should be structured as follows:

– Vision: as an international forum, OTIF should play a central role to make rail transport the backbone of a sustainable and seamless international transport system.

– Mission: promote, improve and facilitate international traffic by rail in all respects (cf. COTIF Article 2).

– Strategic objectives:

1. Ensure the effective and uniform application of OTIF law.
2. Expand the application of OTIF law over the widest possible geographical area.
3. Ensure that OTIF law remains relevant over time.
4. Enhance OTIF's leading role in international rail transport and contribute to finding synergies with other relevant international organisations and associations.
5. Contribute to the harmonisation and unification of international railway law systems.'

At its 2nd session, the ad hoc Committee adopted an action plan for the development of OTIF's long-term strategy. The action plan was revised at the 4th session. In accordance with the revised action plan, the ad hoc Committee should consider step five at its 6th session following the completion of step four by the Secretary General. Steps four and five read as follows:

'4) Consulting the OTIF organs, international organisations and the sector:

Objective: to obtain support for the long-term strategy; consistent and coordinated approach.

Period: until February 2024.

5) Finalisation of the proposal for a long-term strategy:

Objective: provide the Secretary General with final advice on the draft long-term strategy to be submitted to the General Assembly for consideration and decision at its ordinary session in September 2024.

Date: 6th session of the ad hoc Committee, April 2024.'

On 29 January 2024, the Secretary General launched a consultation of the members of OTIF's organs (Article 13 § 1 of COTIF) and the associate members of OTIF (circular letter SG-24002) and the international organisations and associations interested in the work of OTIF (circular SG-24003) on the development of a long-term strategy for OTIF. On the basis of the comments received, the Secretary General will revise the draft long-term strategy and submit it to the ad hoc Committee for final advice at the 6th session.

Comments

Documents of the session: LAW-24035-JUR 6/2, LAW-24036-JUR 6/2

Reference is made to the position of the European Union on this issue adopted for the 15th OTIF General Assembly in September 2021¹ and for the 3rd², 4th³ and 5th sessions⁴ of the ad hoc Committee. In particular, at the 5th session of the ad hoc Committee, the European Union position was to: *“Welcome the submission by the Secretary General of a revised, consolidated version of the ‘draft single strategy document’; Support in general the current draft structure and substance of the long-term strategy, subject to the following comments: regarding the strategic objective 1, it would be useful to outline concrete generic proposals, e.g. the organisation of regional workshops to promote the application and the uptake of all COTIF appendices by the OTIF members; regarding the strategic objective 4, it would be useful to outline concrete generic proposals for enhancing OTIF’s leading role in international rail transport; regarding the strategic objective 5, the narrative should refer to the cooperation with the European Agency for Railways ‘ERA’ and include a paragraph on the Luxembourg Protocol (to the Cape Town Convention) and the role of OTIF in supporting its implementation.”*

On 29 January 2024, the OTIF Secretary General consulted the members of OTIF’s organs on a revised (expanded) draft version of the long-term strategy prepared for OTIF, following discussions held at the 5th session of the ad hoc Committee (ref. Circular letter SG-24002 29.01.2024). On 29 February 2024, the European Commission services sent their comments to OTIF, after due coordination with the Member States. These comments built on the above-mentioned Union position at the 5th session, supplementing it to take into account the new details added in the meantime to the draft strategy by the OTIF Secretariat.

It was expected that the OTIF Secretary General would further revise the draft long-term strategy based on the comments received and submit the newly revised version to the ad hoc Committee for final advice at its 6th session, before a final proposal is submitted to the OTIF’s 16th General Assembly in September 2024.

However, the draft long-term strategy submitted by the OTIF Secretariat to the 6th session of the ad hoc Committee (document LAW-24036-JUR 6/2) is identical to the earlier version circulated by the Secretariat on 29 January 2024. The OTIF Secretariat plans to discuss the points submitted by the European Commission services at the 6th session of the ad hoc Committee. Therefore, it is proposed to base the Union position on the comments made by the European Commission services on 29 February 2024, as reproduced below.

¹ Council Decision (EU) 2021/1744 of 28 September 2021 establishing the position to be adopted on behalf of the European Union at the 15th General Assembly of the Intergovernmental Organisation for International Carriage by Rail (OTIF) (OJ L 351, 4.10.2021, p. 1).

² ST 12637/22

³ ST 7918/23

⁴ Council Decision (EU) 2023/2582 of 8 November 2023 on the position to be taken on behalf of the European Union at the 5th session of the OTIF ad hoc Committee on Legal Affairs and International Cooperation (OJ L, 2023/2582, 16.11.2023, p. 1).

Proposed EU position

- Take note of the information presented by the OTIF Secretariat.
- Note that, further to the consultation on the version circulated on 29 January 2024, the draft text of the long-term strategy has not been further revised by the OTIF General Secretary and that the comments submitted by the European Commission services to the OTIF Secretariat still need to be addressed.
- Provide the following comments, which reflect the ones made by the European Commission services on 29 January 2024:
 - On page 6, under strategic objective (1) “Ensure the effective and uniform application of OTIF law”, the European Union welcomes the emphasis put on the need to apply COTIF Appendices, as well as the organisation of regional workshops as part of the measures to achieve that objective. However, it seems that a prerequisite to ensure the effective and uniform application of OTIF law would also be to dissuade OTIF members from opting for limited application of COTIF and its annexes (see OTIF map on COTIF application⁵).
 - On page 7, under strategic objective (2) “Expand the application of OTIF law over the widest possible geographical area”, the European Union would like to ask for further explanations on: the relevance to mention some specific countries while others are covered by reference to generic regions; the new reference made to existing and future new Memorandums of Understanding; and on the reasons why the use of OTIF’s new role as Secretariat of the Supervisory Authority of the Luxembourg Protocol to highlight OTIF’s core competences has been added to strategic objective (2) instead of strategic objective (4) or (5), which would seem more appropriate in that context.
 - On page 9, under strategic objective (4) “Enhance OTIF’s leading role in international rail transport and contribute to finding synergies with other relevant international organisations and associations”, the European Union would consider that strengthening the cooperation between OTIF and OSJD should not be a priority in the present time. We would therefore like to ask for further explanations on the relevance of the measure “strengthen cooperation and improve the distribution of tasks and roles with OSJD” and on its possible implications.
 - On page 10, under strategic objective (5) “Contribute to the harmonisation and unification of international railway law systems”, the European Union welcomes the explicit reference to the European Agency for Railways (ERA). We would however like to ask for further explanations on the measures relating to the development of an international railway strategy with the actors involved. In particular, as mentioned above, we would consider that strengthening the cooperation between OTIF and OSJD should not be a priority in the present time, without prejudice to future developments, and would therefore like to ask further explanations on the envisaged close cooperation with OSJD.

⁵ <https://otif.org/fileadmin/new/1-About/1C-Convention/Geographical%20scope%20of%20COTIF%20and%20its%20appendices.pdf>

- Recall that the above comments are without prejudice to the European Union position to be established on the final proposal for a draft long-term strategy, which is to be submitted by the OTIF General Secretary at the next ordinary session of the OTIF General Assembly after the discussion in the 6th session of the ad hoc Committee.

Agenda Item 3 – Suspension and termination of COTIF and/or membership of OTIF with regard to a particular Member State

In accordance with its 2022-2024 Work Programme (LAW-23134-JUR 5, updated at the 5th session, 9 November 2023), the ad hoc Committee should '[r]eview OTIF and international law rules and relevant practice on suspension and termination of treaties and membership (including limitation of some rights).'

At its 3rd session, the ad hoc Committee:

'1) took note of document LAW-22082 JUR 3/5 'Suspension and termination of COTIF and/or membership of OTIF with regard to a particular Member State. Inception Paper';

2) adjourned discussions on the suspension and termination of COTIF and/or membership of OTIF with regard to a particular Member State to the 4th session.'

At its 4th session, the ad hoc Committee further 'adjourned discussions on the suspension and termination of COTIF and/or membership of OTIF with regard to a particular Member State to the 5th session.' At its 5th session, the ad hoc Committee commenced substantive discussions on this issue and:

'1) decided to continue the work on whether COTIF should be modified to include additional provisions on the suspension and termination of COTIF and/or membership of OTIF with regard to a particular Member State;

2) decided to set up an ad hoc working group to prepare a proposal to provide basic regulatory principles or draft modifications to COTIF with regard to the work under point 1);

3) decided that the working language of the ad hoc working group will be English only;

4) decided that the ad hoc working group shall be composed of Belgium, France, Germany, Latvia, Poland, Portugal, Russia, Türkiye, Ukraine, the United Kingdom and the European Union. Other members of the ad hoc Committee may join the ad hoc working group by submitting a request to the Secretariat;

5) decided to nominate the United Kingdom to chair the ad hoc working group;

6) instructed the ad hoc working group to report to the next session of the ad hoc Committee on its progress in carrying out the task set out in point 2).'

The 1st session of the ad hoc working group on the suspension and termination of COTIF and/or membership of OTIF with regard to a particular member state was held on 13 February 2024. Only one item was on the agenda of the ad hoc working group: "preparation of basic regulatory principles or draft modifications to COTIF with regard to suspension and termination of COTIF

and/or membership of OTIF with regard to a particular Member State”. A report on the outcomes of the 1st session of the ad hoc working group will be submitted for consideration at the 6th session of the ad hoc Committee.

Comments

Documents of the session: LAW-24037-JUR 6/3, LAW-24022-JUR WGSTC 1

Reference is made to the position of the European Union on this issue at the 4th⁶ and 5th session⁷ of the ad hoc Committee.

The report of the 1st session of the ad hoc working group on the suspension and termination of COTIF and/or membership of OTIF, submitted as document LAW-24022-JUR WGSTC 1, accurately reflects the content of the discussions that took place on 13 February 2024 and incorporates the comments made on behalf of the European Union, which in their turn were based on the position of the European Union adopted in preparation of the 5th session of the ad hoc Committee. The proposal for a decision included in document LAW-24037-JUR 6/3, instructing the ad hoc working group to prepare proposals to modify COTIF and corresponding notes in the Explanatory Report to COTIF on the basis of certain regulatory principles, is based on those discussions, and can therefore be supported by the European Union.

For the sake of legal clarity, it is however advised to add, under point 4 of the proposed decision, an explicit reference to the aim of introducing “*an obligation for Member States to respect [not to undermine] the physical and functional integrity of the rail infrastructure of one or more Member States*”. The reference to such an obligation is currently only included under point 5, second indent, of the proposed decision, which concerns the basic regulatory principles to be approved by the ad hoc Committee.

It is also advised to amend points 4 and 5 of the proposed decision, where “restrictive measures” should be replaced by “measures”. Indeed, the reference to “restrictive measures” may be misleading as it could be confused with restrictive measures taken based on Article 215 TFEU.

Proposed EU position

- *Take note of the information presented by the OTIF Secretariat.*
- *Support the adoption by the ad hoc Committee of the proposal for decision as set in document LAW-24037-JUR 6/3, provided that the following amendments are made under points 3 and 4, for the sake of legal clarity and in order to avoid confusions with Article 215 TFEU:*

“3) renames [renamed] the ad hoc working group established under point 2 of agenda item 7 of the decisions of the 5th session (OTIF-23005-JUR 5) of the ad hoc Committee to ‘ad hoc working group on ~~restrictive~~ measures to ensure compliance with the obligations under COTIF’;

4) instructs [instructed] the ad hoc working group, on the basis of point 5, to prepare proposals to modify COTIF and corresponding notes in the Explanatory Report to COTIF, with the aim of

⁶ ST 7918/23

⁷ Council Decision (EU) 2023/2582 of 8 November 2023 on the position to be taken on behalf of the European Union at the 5th session of the OTIF ad hoc Committee on Legal Affairs and International Cooperation (OJ L, 2023/2582, 16.11.2023, p. 1).

introducing an obligation for Member States to respect [not to undermine] the physical and functional integrity of the rail infrastructure of one or more Member States, as well as substantive and procedural provisions on ~~restrictive~~ measures to ensure compliance with the obligations under COTIF that are essential to achieve OTIF's aim; (...)”.

Agenda Item 4 – Use of electronic signatures in official communications between OTIF and its members

In accordance with its 2022-2024 Work Programme (LAW-23134-JUR 5, updated at the 5th session, 9 November 2023), the ad hoc Committee should ‘[e]xamine the legal requirements for the use and acceptance of electronically signed documents (credentials, letters, approvals, reservations, depositary notifications etc.) in official communications between OTIF and its members.’ As a result of the above examination, it should ‘issue a recommendation on the use and acceptance of electronic signatures in official communications between OTIF and its members’.

At its 5th session, the ad hoc Committee considered the use of electronic signatures in official communications between OTIF and its members on the basis of an inception paper prepared by the Legal Department, and took the following decision. It:

‘1) noted LAW-23019-JUR 4/4 ‘Use of electronic signatures in official communications between OTIF and its members. Inception paper’;

2) instructed the Secretariat to prepare a draft recommendation for adoption at its 6th session, taking into account the following general principles:

- official communications between OTIF and its members should be divided into two categories:

o ‘qualified’ communications, which currently require original paper documents (instruments) that are signed by a pre-determined state authority attesting the intention of the state to be bound or expressing its official position;

o ‘simple’ communications, where scanned copies, e-mails and documents signed with electronic images of signatures are accepted;

- electronic signatures should be accepted for ‘simple’ communications only.’

At its 6th session, the ad hoc Committee will be invited to consider and adopt a recommendation prepared on the basis of the inception paper and the general principles set out above.

Comments

Documents of the session: LAW-24017-JUR 6/4; LAW-24018-JUR 6/4

Reference is made to the position of the European Union on this issue at the 4th⁸ and 5th sessions⁹ of the ad hoc Committee.

⁸ ST 7918/23

⁹ Council Decision (EU) 2023/2582 of 8 November 2023 on the position to be taken on behalf of the European Union at the 5th session of the OTIF ad hoc Committee on Legal Affairs and International Cooperation (OJ L, 2023/2582, 16.11.2023, p. 1).

In particular, at the 5th session of the ad hoc Committee, the European Union recalled that, for the EU, the matter is covered by Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market¹⁰; supported the preparation of a draft recommendation, preferably by the OTIF Secretariat, on the use of electronic signatures in official communications between OTIF and its members, for consideration and possible adoption at the next session of the ad hoc Committee; stressed that, as regards general principles, the different level of experience of OTIF members with electronic signatures should be considered, and that it therefore appears appropriate that the recommendation, in a first phase, covers ‘simple’ communications only.

At its 6th session, the ad hoc Committee is asked to adopt the recommendation prepared by the OTIF Secretariat (document LAW-24018-JUR 6/4), which would then be submitted for consideration and follow-up to the next ordinary session of the General Assembly, to be held in September 2024.

In particular, the recommendation proposed by the OTIF Secretariat:

- Categorises official communications between OTIF and its members as ‘simple’ or ‘qualified’ on the basis of formal requirements, as follows (see section 4, in particular point 4.3):
 - o ‘simple’ official communications, which are not subject to strict requirements of form, where scanned copies, emails and documents signed with electronic images of signatures are accepted;
 - o ‘qualified’ official communications, which currently require original paper documents (instruments) that are signed by a pre-determined State authority attesting the intention of the State to be bound or expressing its official position;
- Recommends that electronic documents and electronic signatures continue to be used and accepted for ‘simple’ official communications, provided that it is reasonably possible to identify the person and their official capacity and to read the content (see point 7.2);
- Recommends not to change the existing rules on ‘qualified’ official communications and to accept only original paper documents signed by hand. However, in order to ensure clarity, it also recommends that, accordingly, the OTIF Secretary General adds appropriate clarifications to the ‘Guidelines on Treaty acts under COTIF’, and that the General Assembly adds appropriate paragraphs to the ‘Explanatory Notes on the Rules of Procedure of the General Assembly’, to the ‘Explanatory Notes on the regulation on the election and conditions of service of the Secretary General’, and to the ‘Draft explanatory notes on the decision on permanent representatives’ (see point 7.3).

It is to be noted that the subject-matter of this item is regulated at Union level by Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market. In particular, Article 3(10) of that Regulation defines ‘electronic signature’ as ‘data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign’. This definition could encompass what is accepted under

¹⁰ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

‘simple’ official communications in the recommendation proposed by the OTIF Secretariat, i.e., scanned copies, emails and documents signed with electronic images of signatures.

Proposed EU position

- *Take note of the information presented by the OTIF Secretariat; note in particular that the draft recommendation on the use of electronic signature in official communications between OTIF and its members as presented by the OTIF Secretariat provides that electronic signatures should be accepted for ‘simple’ communications only.*
- *Support the adoption by the ad hoc Committee of the draft recommendation as presented by the OTIF Secretariat, to be submitted for consideration and follow-up at the next ordinary session of the General Assembly, without prejudice to the European Union position to be established for the respective ordinary session of the General Assembly.*

Agenda Item 5 – Authentic text of the Convention

As part of its activities to monitor and assess legal instruments, the ad hoc Committee carried out an evaluation of the adoption, authentication, certified copies and publication of COTIF. Following discussions on the basis of LAW-22027 JUR 2/7 ‘Adoption, authentication, certified copies and publication of COTIF. Inception Paper’, at its 2nd session the ad hoc Committee ‘[i]nstructed the Secretariat to prepare a proposal to modify COTIF to make the three language versions of the Convention equally authentic.’

At its 6th session, the ad hoc Committee will be invited to consider proposals to modify Article 45 § 1 and the corresponding Explanatory Report to COTIF. It should be emphasised that, if agreed, the modifications to Article 45 § 1 of COTIF will not be submitted for adoption by the General Assembly at its 16th session in September this year, as they will first have to be examined by the Revision Committee. It should be noted that the next session of the Revision Committee has not yet been scheduled.

Comments

Documents of the session: LAW-24019-JUR 6/5; LAW-24020-JUR 6/5; LAW-24021-JUR 6/5

Reference is made to the position of the European Union on this issue at the 2nd session of the ad hoc Committee, under agenda item 7: “Adoption, authentication, certified copies and publication of COTIF”¹¹. In particular, the European Union considered that it would be appropriate to attribute equal authority to the three language versions of COTIF 1999. It is to be noted, however, that the issues discussed at the 2nd session of the ad hoc Committee extended to other related topics, whereas the issue to be discussed at the 6th session only concerns modifications directly related to making the three language versions of the Convention equally authentic. As the OTIF Secretariat acknowledges that the proposed amendments to COTIF are not of an urgent nature, it is advisable to ask the OTIF Secretariat to make progress on those related topics as well.

Proposed EU position

¹¹ ST 07549/22

- Take note of the information presented by the Secretariat.
- Note that at its 2nd session, under agenda item 7. “adoption, authentication, certified copies and publication of COTIF”, the ad hoc Committee instructed the OTIF Secretariat to prepare a proposal to modify COTIF to make the three language versions of the Convention equally authentic, but also to prepare guidelines on the procedures to be followed by the General Assembly and the Revision Committee for the modification of COTIF, with a list of specific elements to be covered by those guidelines, such as editorial checks of the adopted text to ensure that the three language versions are consistent with each other. The ad hoc Committee also made some recommendations on related issues.
- Note that at the 6th session, the ad hoc Committee is asked to approve modifications only aimed at making the three language versions of the Convention equally authentic.
- Support, in principle, the adoption by the ad hoc Committee of the proposal to modify the COTIF (document LAW-24020-JUR 6/5) and of the related proposal to modify the consolidated Explanatory Report to the COTIF (document LAW-24021-JUR 6/5), without prejudice to the European Union position on those proposals to be established on that item for the respective ordinary session of the General Assembly.
- Ask the OTIF Secretariat to prepare the above-mentioned guidelines on the other related issues agreed under agenda item 7 of the 2nd session, and to present them to the ad hoc Committee, should its mandate be extended at the 16th session of the General Assembly, before the two above proposals to modify the COTIF and the consolidated Explanatory Report to the COTIF are submitted to the Revision Committee for consideration.

Agenda Item 6 – Legal protection of OTIF’s name, abbreviation, logo and works

In accordance with its 2022-2024 Work Programme (LAW-23134-JUR 5, updated at the 5th session, 9 November 2023), the ad hoc Committee should examine ‘the legal requirements to ensure legal protection of OTIF’s name, abbreviation, logo and works and determination of measures to this effect.’

At its 5th session, the ad hoc Committee monitored and assessed the legal protection of OTIF’s works, name, abbreviation and logo on the basis of an inception paper and took the following decisions. It:

- ‘1) noted LAW-23120-JUR 5/9 “Legal protection of OTIF’s works, name, abbreviation and logo. Inception paper”;*
- 2) instructed the Secretariat to prepare a copyright policy including open access publishing where appropriate, taking into account the different types of documents published by OTIF;*
- 3) considered that the General Assembly should approve the logo and flag of OTIF and adopt guidelines on the use of OTIF’s name, abbreviation, logo and flag;*
- 4) instructed the Secretariat to prepare draft guidelines on the use of OTIF’s name, abbreviation, logo and flag to be discussed at the next session of the ad hoc Committee;*

5) instructed the Secretariat to proceed with the registration of OTIF's "armorial bearings" in accordance with Article 6ter of the Paris Convention for the Protection of Industrial Property.'

At its 6th session, the ad hoc Committee will be informed of the registration of OTIF's 'armorial bearings' in accordance with Article 6ter of the Paris Convention for the Protection of Industrial Property and be requested to consider a proposal for a decision of the General Assembly on the symbols, name and abbreviation of the Intergovernmental Organisation for International Carriage by Rail. Moreover, the Secretariat will inform the ad hoc Committee of the preparation of a copyright policy.

Comments

Documents of the session: LAW-24023-JUR 6/6; LAW-24024-JUR 6/6; LAW-24025-JUR 6/6; LAW-24026-JUR 6/6; LAW-24027-JUR 6/6

Reference is made to the position of the European Union on this issue at the 4th¹² and 5th¹³ sessions of the ad hoc Committee. In particular, at the 5th session, the European Union position was to: "Support the development of a copyright policy and instructs the Secretariat to prepare such policy including licensing under open access licensing models where appropriate and taking into account the rights of ownership especially the rights of third parties in the different types of documents published by OTIF; Express the view that the General Assembly should approve the logo and guidelines on use of the organisation's name, logo, flag and abbreviation; Agree to instruct the OTIF Secretariat to prepare draft guidelines on the use of OTIF's name, abbreviation and logo to be discussed at the next session of the Committee and to proceed with the communication of OTIF's 'name, abbreviation, emblem or armorial bearings' to WIPO (World Intellectual Property Organisation) in accordance with Article 6ter of the Paris Convention for the Protection of Industrial Property."

The proposed decision on the symbols, name and abbreviation of the OTIF and the related explanatory notes does not seem to be problematic from the Union law perspective. In particular, Article 7 §4 of the proposed decision provides that "the public authorities of OTIF members may use the official emblem (logo), special emblems (logos) and the official flag without prior authorisation". One assumes that these items are in common ownership of OTIF members and there are no third-party rights, especially of third-party designers of any relevant logo. One also assumes that OTIF has ensured that all such rights have been assigned to OTIF, hence it can allow public authorities to use them freely. OTIF members have to obtain this warranty as the European Union should not be drawn into litigation by third parties. Provided that the OTIF Secretariat can give this assurance, the proposed decision on the symbols, name and abbreviation of the OTIF and the related explanatory notes can be supported by the European Union.

Regarding the proposal for a decision on copyright and open access and the related explanatory notes, it is noted in particular that Article 2 of the decision provides that the scope of the general principles of copyright and open access applies to the works of OTIF, and that this decision shall be without prejudice to any established practice or rule concerning restricted access to certain OTIF documents. Article 3 specifies the general principles. In particular, Article 3 §1 provides that the copyright restrictions on works of OTIF shall not undermine the right of OTIF members to make

¹² ST 07549/22

¹³ Council Decision (EU) 2023/2582 of 8 November 2023 on the position to be taken on behalf of the European Union at the 5th session of the OTIF ad hoc Committee on Legal Affairs and International Cooperation (OJ L, 2023/2582, 16.11.2023, p. 1).

fair and full use of them. Articles 3 §2 and 3 §3 further specify that, as a general rule, the Convention shall be in the public domain and shall be excluded from the copyright protection and that, with a few exceptions, all works of OTIF are protected by copyright with open access, subject to appropriate attribution indicating the title, OTIF as the owner and the source where a particular work can be found. Article 4 empowers the OTIF Secretary General to adopt an OTIF copyright and open access policy based on the general principles set out in Article 3.

It remains to be clarified whether the proposed policy includes licensing under open access licensing models where appropriate and takes into account the rights of ownership especially the rights of third parties in the different types of documents published by OTIF.

With respect to copyright, OTIF is free to determine how to deal with the documents that it owns. It should be noted however that, should the OTIF Secretariat consider having an internal intellectual property document management policy, it should not go further than the rules that the Commission itself is bound to apply to its own documents (the Reuse Decision¹⁴), or the rules that have been imposed on Member States under Directive (EU) 2019/1024 on open data and the re-use of public sector information¹⁵.

In legal terms, there is a difference between legislative acts and other documents¹⁶. It should be clarified in particular which documents, other than legislative acts, fall under the scope of a proposed open access policy. The notion of “works of OTIF” in Article 2 of the proposed decision in theory excludes third party works such as “working documents”. One assumes that for the purposes of open licensing, OTIF has ensured that all relevant rights have been assigned to OTIF even in the case of “works of OTIF” and other documents of third parties are entirely outside the scope. OTIF members have to obtain this warranty before they can even support an open access policy, as the European Union should not be drawn into litigation by third parties.

Moreover, the draft decision on a copyright policy refers to further detailed rules and refers to restricted access. However, the question of who is entitled to have access to OTIF documents, and how, is also subject to the established practice and rules concerning restricted access to certain OTIF documents. Access to documents is a transparency issue and also a fundamental right and not a copyright issue. It gives rise to different considerations¹⁷. The European Union should not be seen as being part of a restrictive access regime where the documents in question are legislative in nature.

Proposed EU position

- *Take note of the information presented by the OTIF Secretariat.*

¹⁴ Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU) (OJ L 330, 14.12.2011, p. 39).

¹⁵ Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (recast) (OJ L 172, 26.6.2019, p. 56).

¹⁶ See ECJ judgement of 29 July 2019, Funke Medien NRW GmbH v Bundesrepublik Deutschland, C-469/17.

¹⁷ See ECJ judgement of 5 March 2024, Public.Resource.Org and Right to Know v Commission and Others, C-588/21.

- *Ask the OTIF Secretariat for updates on whether OTIF's 'name, abbreviation, emblem or armorial bearings' have been communicated to WIPO (World Intellectual Property Organisation).*
- *Ask the OTIF Secretariat to confirm (1) whether the symbols, name and abbreviation of the OTIF are in common ownership of OTIF members and there are no third-party rights, especially of third-party designers of any relevant logo, and (2) whether OTIF has ensured that all such rights have been assigned to OTIF, hence it can allow public authorities to use them freely.*
- *Support, in principle, that the ad hoc Committee approves the proposal for a decision on the symbols, name and abbreviation of the OTIF and the related explanatory notes, provided that OTIF has obtained all necessary rights of third parties, where relevant in the symbols, logo, abbreviations, as detailed above. This is without prejudice to the European Union position on those proposals at the next ordinary session of the General Assembly*
- *With respect to copyright, OTIF is free to determine how to deal with the documents that it owns. It should be noted however that, should the OTIF Secretariat consider having an internal intellectual property document management policy, it should not go further than the rules that the Commission itself is bound to apply to its own documents (the Reuse Decision), or the rules that have been imposed on Member States under Directive (EU) 2019/1024 on open data and the re-use of public sector information .*
- *Ask the OTIF Secretariat to confirm (1) whether the notion of "works of OTIF" in Article 2 of the proposed decision on copyright and open access excludes third party works such as "working documents", and (2) whether, for the purposes of open licensing, OTIF has ensured that all relevant rights have been assigned to OTIF even in the case of "works of OTIF" and other documents of third parties are entirely outside the scope.*
- *Recall that, under Union law, access to documents is a transparency issue and also a fundamental right and not a copyright issue.*
- *Note the proposal for a decision on copyright and open access and the related explanatory notes, and reserve the European Union position on the approval and adoption of any proposals in the field of copyright and open access until such time as detailed copyright and open access policy, including terms and conditions for using works of OTIF, as well as the restricted access policy, are established by the OTIF Secretariat, in order the allow informed discussions and decisions on those matters.*

Agenda Item 7 – Monitor and support cooperation with international organisations and associations

As a result of the discussion at the 5th session of the ad hoc Committee, following the consideration of a Memorandum of Understanding between OTIF and UNESCAP, a new standing agenda item has been introduced to keep the ad hoc Committee regularly informed about cooperation with international organisations and associations. In particular, the ad hoc Committee will be informed of the revised MoU signed with UNESCAP, the ongoing negotiations with TRACECA on an inter-secretariat Memorandum of Understanding (MoU) and the ongoing negotiations on a revised MoU with the UPU (interorganisational level) as a result of the expiry of the Memorandum of

Understanding of 2018. It should be noted that the Secretariats of OTIF and UPU consider that the current text of the MoU should be used as the basis for the new MoU and that only a few, mostly non-substantive, changes should be made. Therefore, the Secretariat plans to submit a draft MoU, based on the 2018 MoU, for approval and to request authorisation for the Secretary General to sign it. The ad hoc Committee will also be invited to consider cooperation with the Organisation for Cooperation between Railways (OSJD) and to recall the draft Agreement on cooperation between OTIF and OSJD, which was discussed at the second session of the ad hoc Committee.

Comments

Documents of the session: LAW-24028-JUR 6/7; LAW-24029-JUR 6/7; LAW-24030-JUR 6/7; LAW-24031-JUR 6/7; LAW-22024-JUR 2/4

At the 5th session of the ad hoc Committee, the European Union asked the OTIF Secretariat to devote a specific agenda item on renewing or concluding Memorandums of Understanding (MoU) with other international organisations¹⁸.

In the annotated agenda, the OTIF Secretariat announced that information will be provided at the 6th session on the ongoing negotiations with TRACECA (Transport Corridor Europe-Caucasus-Asia)¹⁹ on an inter-secretariat MoU, but this issue was not mentioned any more in the meeting documents available under the present agenda item.

The MoU with the United Nations Economic and Social Commission for Asia and the Pacific (**ESCAP**), as in document LAW-24029-JUR 6/7, has already been signed following the presentation of its draft at the 5th session, and is presented to the 6th session for information only. As provided in its Article III.4, it “*imposes no legal obligation upon any party hereto*”.

The draft MoU with the Universal Postal Union (**UPU**), as in document LAW-24031-JUR 6/7, is presented to the ad hoc Committee for approval before signature. As provided in its Article L.1, the MoU “*does not create any legally binding or financial obligations, express or implied, on either Organisation*”. The draft MoU does not seem to contain any contentious issue from the European Union perspective. However, it contains certain changes as compared to the previous MoU with UPU that expired in January 2023 (document LAW-24030-JUR 6/7), such as additional provisions on financial conditions under its Article C or on intellectual property under its Article F, which would deserve further explanations by the OTIF Secretariat to ensure consistency with other horizontal policies of OTIF, such as the copyright policy discussed under agenda item 6.

Regarding the proposal for an Agreement on cooperation between OTIF and the Organisation for Cooperation between Railways (**OSJD**) (document LAW-22024-JUR 2/4), reference is made to the European Union position on this issue at the 2nd session of the ad hoc Committee in April 2022. The proposal for an Agreement was discussed at that 2nd session and its presented again at the 6th session in the same terms, with the request for the ad hoc Committee to authorise the OTIF Secretary general to sign it and to provide general guidance on cooperation with OSJD and on the implementation of the Agreement, should it be signed.

¹⁸ ST 14667/23

¹⁹ The Intergovernmental Commission TRACECA (Transport Corridor Europe-Caucasus-Asia) is an international transport programme involving the European Union and 12 member states of the Eastern European, Caucasus, and Central Asian region (including two EU Member States: Bulgaria and Romania). <https://traceca-org.org/en/about-traceca/>

Before the 2nd session of the ad hoc Committee, the European Union commented²⁰ as follows: “[the proposed Agreement contains] generic provisions establishing the principles and basic structure of the cooperation between the two organisations. The scope of the cooperation covers “all aspects of international transport by rail within the respective competencies of the Parties”. In general, cooperation between OTIF and OSJD should be encouraged. The draft agreement will be instrumental to engage effectively with OSJD, in particular as regards the long-term goal to harmonise or unify relevant areas of international railway law between the two jurisdictions. It should be noted that both Ukraine and Russia are members of OTIF; they are also both members of OSJD. In the current circumstances, and taking into account the significant role and influence of Russia within OSJD, it is recommended to act carefully in this area, as OTIF-OSJD cooperation should not provide any facilitation to Russia on the international and diplomatic stage. Therefore, EU position should be positive in principle but with the necessary caveats”.

In light of the above, the European Union position agreed and expressed during the 2nd session was to: “Support the development of a structured cooperation between OTIF and OSJD; Support in principle the finalisation of an Agreement on cooperation between OTIF and OSJD on the basis of the draft presented; take the view that, under the current geopolitical circumstances, OTIF should not actively engage with OSJD at this point in time and should delay the implementation of the above-mentioned agreement until the return of a peaceful situation in Ukraine”.

More generally, the issue of cooperation with international organisations and associations is closely related to the development of the long-term strategy for OTIF, which is dealt with under item 2 of the agenda for the 6th session of the ad hoc Committee, in particular strategic objectives 2, 4 and 5. In their comments sent to OTIF on 29 February 2024, the European Commission services, after coordination with Member States, considered that strengthening the cooperation between OTIF and OSJD should not be a priority in the present time, without prejudice to future developments, and asked for further explanations on the envisaged close cooperation with OSJD.

In light of the above, and as the geopolitical context has not improved as compared to the situation prevailing during the 2nd session of the ad hoc Committee, it is proposed not to authorise OTIF to proceed with the signature of this agreement for the time being.

Proposed EU position

- Take note of the information presented by the Secretariat, in particular the Memorandum of Understanding (MoU) signed with ESCAP.
- On the draft MoU with UPU, ask the OTIF Secretariat to explain the main changes introduced in the draft MoU as compared to the expired version of the MoU with UPU, as well as their possible implications and consistency with other OTIF policies.
- Agree that the ad hoc Committee authorises the OTIF Secretary General to sign the MoU with UPU as presented, provided that no changes of a substantive nature are made to the draft Agreement; also agree to instruct the OTIF Secretary General as described under point 5) of the proposal for a decision (see LAW-24028-JUR 6/7, page 4), for what concerns specifically the MoU with UPU.
- Note the proposal for an Agreement on cooperation between OTIF and OSJD.

²⁰ ST 07549/22 (see comments part under item 4)

- *Recall the European Union position on the development of a long-term strategy for OTIF under item 2 on the agenda of the 6th session, whereby it is considered that strengthening the cooperation between OTIF and OSJD should not be a priority in the present time, without prejudice to future developments.*
- *Consequently, ask to adjourn discussions on the proposal for an Agreement on cooperation between OTIF and OSJD to a later session of the ad hoc Committee, should its mandate be extended at the 16th session of the General Assembly. This implies that, at the 6th session of the ad hoc Committee, the European Union does not approve the proposal for an Agreement on cooperation between OTIF and OSJD, as presented by the OTIF Secretariat, and does not authorise the OTIF General Secretary to sign that Agreement on behalf of OTIF.*

Agenda Item 8 – Information from the Secretariat

The Secretary General and the Secretariat's Legal Department will inform the ad hoc Committee about relevant developments, in particular:

- *the status of the Convention and OTIF membership (including the approval of modifications to COTIF adopted by the 12th and 13th General Assemblies);*
- *progress on the nomination of focal points and registered stakeholders;*
- *next update of the Guidelines on treaty acts under COTIF;*
- *revision and restructuring of the CIV and CIM lists of maritime and inland waterway services and the CIV and CIM lists of railway lines;*
- *Luxembourg Protocol;*
- *etc.*

Comments

No document available.

Proposed EU position

- *Take note of the information provided by the OTIF Secretariat.*

Agenda Item 9 – Information from members of the ad hoc Committee

OTIF members may wish to inform the ad hoc Committee about relevant developments and activities in the field of international railway transport.

Comments

No document available.

Proposed EU position

- *Take note of the information provided, if any.*

Agenda Item 10 – Information from the registered stakeholders and intergovernmental organisations

Registered stakeholders and intergovernmental organisations may wish to inform the ad hoc Committee about relevant developments and activities in the field of international railway transport.

UNCITRAL²¹ has already offered to provide an update on its work on negotiable cargo documents, see ‘Fact sheet: UNCITRAL project on negotiable cargo’ (FR and EN). It should be recalled that the above work of UNCITRAL relates to Part I, Section A, item 4 ‘Bill of Lading’ of the 2022-2024 Work Programme of the ad hoc Committee. Moreover, it should be recalled that at its 3rd session the ad hoc Committee, among other matters, took the following decisions. It:

‘3) instructed the Secretariat to participate in UNCITRAL’s work on negotiable multimodal transport documents and to report back to the ad hoc Committee on this matter;

4) adjourned its decision on the need to regulate the use of a negotiable transport document for the carriage of goods under the CIM UR and on the feasibility of cooperation with OSJD on the subject.’

Comments

No document available.

Proposed EU position

- Take note of the information provided by the registered stakeholders and intergovernmental organisations.

Agenda Item 11 – Liability for loss or damage caused by a vehicle

At the 5th session of the ad hoc Committee, Switzerland submitted a request from its Parliament to initiate, with the assistance of the Secretariat, a survey among the members of OTIF on the rules applicable in their internal law with regard to liability and insurance in the event of damage caused by a vehicle. The request stems from the rail accident that occurred in the Gotthard base tunnel on 10 August 2023. The members of the ad hoc Committee welcomed this request from Switzerland, and the Secretariat has prepared the attached survey in close cooperation with the Swiss Federal Office of Transport (FOT).

In circular letter LAW-23131-JUR 5 of 1 December 2023, the Secretariat launched a survey on the rules applicable to liability and insurance in the event of damage caused by a vehicle. The deadline for replies was 12 January 2024. It should be noted that the survey relates directly to the following item in the 2022-2024 Work Programme (LAW-23134-JUR 5) of the ad hoc Committee:

‘Liability for loss or damage caused by a vehicle (Article 7 of the CUV UR). Objective and scope of work. Monitor and assess application of provisions on liability for loss or damage caused by a vehicle (Article 7 of the CUV UR).

²¹ United Nations Commission on International Trade Law (UNCITRAL)

The 26th Revision Committee mandated the Working Group of Legal Experts to consider feedback from the sector on the application of Article 7 of the CUV UR and, if necessary, to examine a possible modification to this Article.

Activities:

- identify relevant stakeholders;*
- monitor (carry out legal survey of) the application of Article 7 of the CUV UR. The relevant regulatory practice of other international organisations should be considered as well;*
- assess the application and relevance of Article 7 of the CUV UR and, if necessary, propose follow-up actions (e.g. amendment of relevant provisions).*

Priority: medium’.

At the 6th session, the ad hoc Committee will be invited to consider a report on the survey and the history of the consideration of a possible revision of Article 7 of the CUV UR and to decide on possible follow-up actions.

Comments

Documents of the session: LAW-24038-JUR 6/11, LAW-24039-JUR 6/11, LAW-24040-JUR 6/11.

Although the annotated agenda mentioned that “at the 6th session, the ad hoc Committee will be invited to (...) decide on possible follow-up actions”, according to meeting document LAW-24038-JUR 6/11, the ad hoc Committee will only be asked to note the background to the proposals to modify Article 7 of the CUV UR and the report of the consultation on the rules applicable to liability and insurance in the event of damage caused by a vehicle. Therefore, it is understood that no decision is expected on that item at the 6th session of the ad hoc Committee and that the decision would be adjourned to the future meeting of the ad hoc Committee.

Proposed EU position

- *Take note of the information presented by the OTIF Secretariat.*
- *Request that the decision on the follow-up actions be adjourned to the future meeting of the ad hoc Committee, should its mandate be extended at the 16th session of the General Assembly.*

Agenda Item 12 – Handbook on COTIF and its implementation and application by international associations

The 2022-2024 Work Programme (LAW-23134-JUR 5, updated at the 5th session, 9 November 2023) set the following as an objective: ‘[c]larify the roles and responsibilities of international associations with regard to the implementation and application of COTIF, thus promoting and facilitating the uniform implementation and application of COTIF.’ This topic was accorded high priority in the Work Programme.

At its 5th session, the ad hoc Committee considered the concept of a handbook and took the following decisions. It:

'1) noted LAW-23118-JUR 5/5 'Handbook on COTIF and its implementation and application by international associations. General concept';

2) instructed the Secretariat, in cooperation with interested associations, to prepare and publish a handbook on COTIF (contract law) and its implementation and application by international associations. The handbook should be of an informative nature. The Secretariat of OTIF and the international associations should ensure that the handbook is kept up to date as a living instrument. The Secretariat should consult the focal points of the ad hoc Committee prior to publication of the first edition, the adoption of substantive changes to subsequent editions, and whenever it is considered useful. Updating the handbook or adding information on international associations and their instruments and tools does not constitute a substantive change to the handbook;

3) postponed consideration of OTIF's possible endorsement of certain instruments or tools developed by international associations (i.e. recognition that they are in conformity with OTIF law and recommendation that they be used) until the first edition of the handbook is published.'

At the 6th session, the ad hoc Committee will be informed of the progress made on the development of a handbook, in particular the draft on international freight transport by rail (contract law and operational instruments and tools).

Comments

Documents of the session: LAW-24041-JUR 6/12, LAW-24042-JUR 6/12

Reference is made to the position of the EU on this issue at 5th session²² of the ad hoc Committee.

At its 6th session, the ad hoc Committee is invited to discuss the draft Handbook on International Freight Transport by Rail (document LAW-24042-JUR 6/12). The purpose of this handbook is to promote international railway contract law for the international carriage of goods by rail established by the COTIF, in particular by presenting and clarifying the instruments and tools developed by the international associations. The handbook serves as a practical reference for OTIF members, States interested in acceding to COTIF and, primarily, their respective railway sectors. International railway contract law for the international carriage of goods is contained in Appendices B (CIM UR), D (CUV UR) and E (CUI UR) to COTIF. The handbook should be of an informative nature only. Following the finalisation and publication of the first part of the Handbook on Freight Transport, the OTIF Secretariat will start work on the second part of the Handbook on Passenger Transport. The ad hoc Committee is also invited to consider OTIF's possible endorsement of certain instruments or tools developed by international associations (i.e. recognition that they are in conformity with OTIF law and recommendation that they be used).

In light of the above, it is proposed to welcome the Handbook on International Freight Transport by Rail as presented and to recall the earlier EU position as it comes to the other related issues, in particular to postpone the decision on whether OTIF should endorse certain instruments or tools developed by international associations. In particular, to better understand the implications of a possible endorsement, it would be useful if the OTIF Secretariat could provide further reasons on how such an endorsement would relate to the scope of COTIF, what would be its purpose and added value, and possibly illustrate with some concrete examples.

²² ST 14667/23

Proposed EU position

- *Take note of the information presented by the OTIF Secretariat.*
- *Welcome the first part of the Handbook on International Freight Transport by Rail (Contract Law and Operational Instruments and Tools) as presented and agree to its finalisation and publication by the OTIF Secretariat.*
- *Instruct the OTIF Secretariat, in cooperation with interested associations, to prepare the second part of the Handbook on Passenger Transport, for what concerns international railway contract law, and to discuss it in a later session of the ad hoc Committee.*
- *In line with the previous EU position, ask to postpone the discussion and the decision on whether OTIF should endorse certain instruments or tools developed by international associations until the publication of the first edition of the Handbook (both for freight and passenger transport).*
- *In order to better understand the implications of a possible future endorsement by OTIF of certain instruments or tools developed by international associations, ask the OTIF Secretariat to further explain how such an endorsement would relate to the scope of COTIF, what would be its purpose and added value as compared to the present situation, and possibly illustrate with some concrete examples.*
- *In line with the previous EU position, recall that:*
 - *The Handbook should, as a first step, be limited to the part of COTIF relevant to international rail contract law; and that the OTIF Secretariat should consult the focal points of the Committee before the publication of the first edition and in the future whenever a substantial change is envisaged and whenever considered useful;*
 - *As regards possible developments of the Handbook to other appendices of COTIF such as the transport of dangerous goods or railway safety and interoperability, there exists a comprehensive legal framework at EU level, including a broad range of tools and implementing processes managed by the European Union Agency for Railways 'ERA'.*

Agenda Item 13 – Open discussion on possible 2025-2027 Work Programme

The 6th session of the ad hoc Committee is the last under the three-year mandate given by the General Assembly (15th session). The 2022-2024 Work Programme has only been partially implemented, so a number of subjects should be carried over to a new work programme if the General Assembly extends the mandate of the ad hoc Committee at its 16th session (September 2024). In addition, potential new subjects should be considered, particularly as a result of discussions at the anniversary event on 'The CIM UR and CIV UR: feedback and prospects', which took place during the 5th session of the ad hoc Committee.

The aim of the open discussion is to exchange views and identify potential subjects for a new work programme. However, the proposal for the new work programme will only be made for the 7th session of the ad hoc Committee, subject to the extension of its mandate by the General Assembly at its 16th session (September 2024).

Comments

Documents of the session: LAW-24043-JUR 6/13, LAW-24044-JUR 6/13

At its 6th session, the ad hoc Committee is invited to consider and discuss future topics for its work programme and, in particular, those topics on which it would like to make progress by the next session, which should take place in spring 2025, subject to the extension of the ad hoc Committee mandate by the next ordinary General Assembly in September 2024. This open and preliminary discussion at the 6th session does not prejudge the adoption of the new work programme for 2025-2027, which should be adopted at that next 7th session. In particular, the ad hoc Committee may consider initiating general consultation on the need to revise the Uniform Rules (UR) concerning the Contract of International Carriage of Passengers by Rail (CIV), the Contract of International Carriage of Goods by Rail (CIM), the Contract of use of vehicles in international rail traffic (CUV) and the Contract of use of infrastructure in international rail traffic (CUI) – which are respectively covered by Appendices A, B, D and E to COTIF – or relevant common provisions in COTIF. In addition, more specific consultation of stakeholders may be initiated on whether it is necessary to revise Article 7 of the CUV UR and on the movement of empty wagons. The OTIF Secretariat listed a number of specific issues that could be considered with regard to CIV UR and CIM UR, largely in line with suggestions submitted by the International Rail Transport Committee (CIT)²³ at the 5th and 6th sessions of the ad hoc Committee.

In principle, it should be advisable to pursue work in 2025-2027 on all the topics included under the 2022-2024 Work Programme and flagged by the OTIF Secretariat as not yet completed or not yet considered. This includes work on “*suspension and termination of COTIF and/or membership of OTIF with regard to a particular Member State*”, now with focus on “[~~restrictive~~] *measures to ensure compliance with the obligations under COTIF*”, within the dedicated ad hoc working group (renamed accordingly) that will report to the ad hoc Committee.

Regarding the question raised by the OTIF Secretariat on the need to revise CIV UR, CIM UR, CUV UR and CUI UR or relevant common provisions in COTIF, as well as to CIT suggestion to revise the CIM UR, including, to a certain extent, those dealing with digitalisation further discussions on those topics are needed until the next session of the ad hoc Committee planned in spring 2025, in particular to take into account the latest developments with regard to the issues at stake. This is without prejudice to a future European Union position on those matters.

In line with the European Union position under the draft long-term strategy for OTIF (see agenda item 2 above), the full application of COTIF Appendices should be encouraged. In particular in a scenario where OTIF is expected to expand and welcome new members, it is important that cooperation remains meaningful and all parties are committed. The ad hoc Committee could be requested to explore ways of strengthening the effective and uniform application of OTIF law, for example by dissuading OTIF members from opting for limited application of COTIF and its annexes²⁴, and by considering enforcement mechanisms to ensure that OTIF members comply in practice with the COTIF rules they have endorsed.

²³ The International Rail Transport Committee (CIT) is an association of over 130 railway undertakings and shipping companies that operate international passenger and/or freight transport services. <https://www.cit-rail.org/en/>

²⁴ See OTIF map on COTIF application: <https://otif.org/fileadmin/new/1-About/1C-Convention/Geographical%20scope%20of%20COTIF%20and%20its%20appendices.pdf>

Proposed EU position

- *Take note of the information presented by the OTIF Secretariat.*
- *Without prejudging a future European Union position on those matters and bearing in mind the further developments that may take place until the next session of the ad hoc Committee, make the following preliminary and non-exhaustive comments on a possible 2025-2027 Work Programme of the ad hoc Committee, should its mandate be extended at the next ordinary General Assembly:*
 - *Support, in principle, that the ad hoc Committee pursues its work in 2025-2027 on all the topics included under the 2022-2024 Work Programme and flagged by the OTIF Secretariat as not yet completed or not yet considered.*
 - *With respect to the OTIF Secretariat questions on the need to revise CIV UR, CIM UR, CUV UR and CUI UR or relevant common provisions in COTIF, as well as to CIT suggestion to revise the CIM UR, including, to a certain extent, those dealing with digitalisation: further discussions on those topics are needed. It should therefore be included in the future work programme.*
 - *In line with the European Union position under the draft long-term strategy for OTIF, the full application of COTIF Appendices should be encouraged. The ad hoc Committee could be requested to explore ways of strengthening the effective and uniform application of OTIF law, for example by dissuading OTIF members from opting for limited application of COTIF and its annexes, and by considering enforcement mechanisms to ensure that OTIF members comply in practice with the COTIF rules they have endorsed.*

Agenda Item 14 – Final update and closure of the 2022-2024 Work Programme

The ad hoc Committee will be invited to consider the final update of the 2022-2024 Work Programme as a result of the discussion at the 6th session, i.e. to consider which additional items should be considered as completed. In particular, as a result of the adoption of the ‘Convention on the contract for international carriage of goods by rail as a first Convention of a system of Unified Railway Law Conventions’, Part I, Section B, item 1 ‘UNECE initiative on Unified Railway Law’ should be considered as completed.

No new items will be added to the work programme, and it will be considered closed as the mandate of the ad hoc Committee expires in September this year.

Comments

Documents of the session: LAW-24045-JUR 6/14.

The OTIF Secretariat lists the five items in the 2022-2024 Work Programme on the completion of which the ad hoc Committee is asked to decide, depending on the decisions and discussions at its 6th session. The following comments are based on the European Union position established in the present non-paper for the other topics that are to be discussed at the 6th session of the ad hoc Committee.

The following items can be considered as having been completed under the 2022-2024 Work Programme at the level of the ad hoc Committee, under the conditions set out below:

- ‘United Nations Economic Commission for Europe (UNECE) initiative on Unified Railway Law’: at its session on 20-23 February 2024, the UNECE Inland Transport Committee (ITC) took note of the adoption by a vote by member States present at the Working Party on Rail Transport of the new Convention on the contract for international carriage of goods by rail as a first Convention of a system of Unified Railway Law Conventions, and acknowledged its opening for signature by member States.
- ‘Use of electronic signatures in official communications between OTIF and its members’: it is likely that at its 6th session, the ad hoc Committee will adopt the draft recommendation as presented by the OTIF Secretariat, to be then submitted for consideration and follow-up at the next ordinary session of the General Assembly.
- ‘Development of a long-term strategy’: the draft text of the long-term strategy, as presented at the 6th session of the ad hoc Committee, still needs to be revised to address the European Union position. It will probably not be possible to finalise and agree upon a revised text during that 6th session. In view of the time available, it is expected that following the 6th session, the OTIF General Secretary will submit a revised text directly to the next ordinary session of the General Assembly in September 2024, without consulting the ad hoc Committee for final advice. It can however be concluded that the ad hoc Committee has completed this item as, given its very purpose, it will not be relevant to discuss it in a next session of the ad hoc Committee once it has been agreed at the next General Assembly.

It may be assumed that the following remaining items have not yet been completed:

- ‘Legal protection of OTIF’s name, abbreviation, logo and works’: the 2022-2024 work programme sets the objective to examine the legal requirements to ensure such a legal protection. The OTIF Secretariat prepared proposals for a “*decision on the symbols, name and abbreviation of the OTIF*” and for a “*decision on copyright and open access*”, as well as for the related explanatory notes. It is likely that the proposals on symbols, name and abbreviation of the OTIF will be approved by the ad hoc Committee at its 6th session, provided that OTIF Secretariat gives appropriate warranties regarding rights of third parties, as requested by the European Union, and thus submitted for consideration and follow-up at the next ordinary session of the General Assembly. However, from the point of view of the European Union, the related proposals on copyright and open access policy leave a number of questions open and do not yet seem mature enough to be adopted by the ad hoc Committee.
- ‘Handbook on COTIF and its implementation and application by international associations’: it is likely that the first part of the Handbook (contract law), which concerns international freight transport by rail, will be agreed during the 6th session; however, the second part of the Handbook that concerns passenger transport still needs to be prepared by the OTIF Secretariat.

Proposed EU position

- *Consider the items ‘UNECE initiative on Unified Railway Law’, ‘use of electronic signatures in official communications between OTIF and its members’, and ‘development of a long-term strategy’ as completed under the 2022-2024 Work Programme.*

- Consider the items ‘legal protection of OTIF’s name, abbreviation, logo and works’ and ‘handbook on COTIF and its implementation and application by international associations’ as not yet completed under the 2022-2024 Work Programme.

Agenda Item 15 – Future working arrangements and revision of the Rules of Procedure

The European Commission informed the Secretariat that the current procedural deadlines set out in the Rules of Procedures of the ad hoc Committee on Legal Affairs and International Cooperation (8 weeks for the invitation and draft agenda; 4 weeks for the working documents) are too short for the EU to organise proper internal coordination. It was requested that working documents should be sent at least 8 weeks (ideally) or 6 weeks before a session of the ad hoc Committee. If the working documents were circulated 6 weeks before the session, this would be of great help to the European Commission.

In the light of the above request, the ad hoc Committee will be invited to consider future working arrangements, such as deadlines for the submission of working documents, the establishment of a standing working group, etc. The Secretariat will propose different possible scenarios and implications of the work within the Secretariat and the ad hoc Committee. It goes without saying that other changes may be proposed. Consequently, the Rules of Procedure may be modified at the session.

Comments

Documents of the session: LAW-24032-JUR 6/15; LAW-24033-JUR 6/15.

With respect to the request to alter the deadlines for sending documents, the OTIF Secretariat proposes three scenarios, copied below from document LAW-24032-JUR 6/15:

- “Alternative A. The ad hoc Committee will meet only once a year. The deadline for invitations, working documents and related provisions is extended by four weeks.
- Alternative B. This alternative is based on Alternative A with some additional measures. The ad hoc Committee will meet only once a year for one or two days to decide on issues prepared and discussed by a standing working group. In this case, the deadline for invitations, working documents and related provisions may be extended by two to four weeks. In the case of urgent decisions, a written procedure could be organised after informal consultations. At the same time, a standing working group would be organised twice a year; a spring session back-to-back with the ad hoc Committee for one or two days and an autumn session for three days. The standing working group would work in English only, but legislative proposals and explanatory notes would always be drafted in the three working languages. The latter element of the proposal is very important, as it is mandatory that the legal drafting is done from the outset in the three working languages and not at the very last stage. In any case, it might be useful to clarify some of the rules that should apply to ad hoc working groups.
- Alternative C. Working documents in English must be sent six weeks before the meeting, i.e. two weeks earlier than other language versions. In fact, all working documents in English are already usually available at least six weeks in advance. In such a case, there will be no major impact on the planning and organisation of the ad hoc Committee compared to current practice and procedures. This option creates a degree of inequality between the working languages.

However, it would also resolve the problem of the more complex internal procedure in the case of regional economic integration organisations. However, this option would also require the Secretariat to prepare and circulate legislative proposals and accompanying explanatory notes simultaneously, as is currently the case with the trilingual versions.”

Over the past years, the European Union internal coordination process before the ad hoc Committee meetings has proved unsustainable due to the very short deadlines for receiving the meeting documents. More time is needed to allow for appropriate analysis of the documents provided by OTIF and for the coordination of the European Union position. In particular, circulating the working documents 8 weeks (or at the very least 6 weeks) before the session is essential to ensure that both the Commission and the Council exercise their institutional prerogatives appropriately, and that the OTIF-related decision-making procedures are carried out in an effective, comprehensive and rigorous manner. The current rules of procedure do not allow for this to happen, and have already originated instances where the European Union had to request points of the agenda to be adjourned as internal coordination was not possible.

Since all proposed scenarios would extend the period to study the documents (at least in their English version), all these scenarios would improve the situation. However, Alternative A appears the simplest to implement as it does not imply any creation of new bodies or procedures (as would be the case under Alternative B), and as it entails no language issue (as may be the case under Alternatives B and C). Alternative A also allows the most extended deadlines for receiving all the documents prior to the meeting (8 weeks, instead of 6 to 8 weeks under Alternative B and 6 weeks under Alternative C, bearing in mind however that legislative proposals and explanatory notes would always be drafted in the three working languages and would in any event have to be sent out simultaneously, so it is unclear whether Alternatives B and C would actually extend the deadlines for those documents). Although Alternative A would imply to reduce the frequency of ad hoc Committee meetings from two to one per year, it is therefore proposed to support that scenario.

The OTIF Secretariat also proposes to change the current practice of drawing up detailed minutes of the ad hoc Committee meetings, and to replace them by a reduced report summarising the discussion in a general way (in principle, with no references to individual interventions), reflecting the results of voting and including brief separate opinions of OTIF members, if these are submitted in writing. Since the detailed minutes are an important and useful way of tracing back the discussions on each agenda item, in particular in the context of the European Union coordination process, it is proposed to object to that change.

The guidelines on the use of gender-neutral language were agreed upon at the 4th session of the ad hoc Committee. The amendments proposed by the OTIF Secretariat to align the Rules of Procedure with those guidelines do not raise any particular issues and can therefore be agreed upon. Such amendments concern only the French and German versions.

Proposed EU position

- *Thank the OTIF Secretariat for having put this item on the agenda and take note of the information presented.*
- *Ask the OTIF Secretariat: (1) under Alternative A, to confirm that all meeting documents would be circulated eight weeks prior to the ad hoc Committee meetings; (2) under Alternatives B and C, to clarify the practical implications of legislative proposals and explanatory notes having to be sent out simultaneously in all three languages, in particular whether those documents would*

also be sent out six to eight weeks before the meetings of the ad hoc Committee and, if relevant, before the meetings of the standing working group.

- With respect to the scenarios proposed by the OTIF Secretariat aiming at extending the deadlines for sending meeting documents, support Alternative C, according to which “[w]orking documents in English must be sent six weeks before the meeting, i.e. two weeks earlier than other language versions.”, and thus accept the proposed amendments to implement Alternative C in the Rules of Procedures.
- With respect to the minutes of the ad hoc Committee, propose to maintain the current practice of drawing up detailed minutes, and thus reject the proposed amendments on that matter.
- Support the amendments proposed by the OTIF Secretariat to align the Rules of Procedure with the guidelines on the use of gender-neutral language.
- Instruct the OTIF Secretariat to present a new proposal for the amendment of the Rules of Procedures accordingly, based on the proposals set out in document LAW-24033-JUR 6/15 and on the above considerations.

Agenda Item 16 – Report and proposals to the General Assembly

At its 15th session, the General Assembly:

‘noted the report on the activities of the ad hoc Committee on Cooperation and the Working Group of Legal Experts in 2019-2021;

recognised the importance of continuing the work of the ad hoc Committee on Cooperation and the Working Group of Legal Experts in the legal field and in the field of international cooperation;

in accordance with Article 13 § 2 of COTIF, established, for a three-year period, an ad hoc Committee on Legal Affairs and International Cooperation;’

without prejudice to the competence of the organs referred to in Article 13 § 1 of COTIF, mandated the ad hoc Committee on Legal Affairs and International Cooperation to:

- *prepare draft amendments or supplements to the Convention,*
- *provide legal advice on its own initiative or at the request of the organs referred to in Article 13 §§ 1 and 2 of COTIF or at the request of organs established by them,*
- *promote and facilitate the functioning and implementation of COTIF,*
- *monitor and assess legal instruments,*
- *take decisions on cooperation with other international organisations and associations, including establishing and dissolving consultative contact groups with other international organisations and associations and monitoring the functioning of contact groups;*

decided that, whenever applicable, the ad hoc Committee on Legal Affairs and International Cooperation shall submit its conclusions and proposals to the competent organs referred to in Article 13 § 1 of COTIF for consideration or decision;

decided that the ad hoc Committee on Legal Affairs and International Cooperation is subject to Article 16 of COTIF and the following rules:

- there shall be a quorum when a quarter of the Member States are represented*
- for the purpose of taking decisions on matters within the competence of a regional economic integration organisation which has acceded to COTIF, that organisation shall enjoy the number of votes equal to those of its members which are also Member States of OTIF,*
- for the purpose of determining a quorum on matters within the competence of a regional economic integration organisation which has acceded to COTIF, that organisation shall be counted to the extent of the number of votes it is entitled to cast;*

in order to ensure that the ad hoc Committee on Legal Affairs and International Cooperation functions efficiently, decided that the Member States and regional economic integration organisations should designate and communicate to the Secretariat one or several representatives as a focal point;'

The ad hoc Committee will be invited to consider a draft report on its activities to the General Assembly. In line with past practice, the Bureau, with the assistance of the Secretariat, should be mandated to finalise the report as a result of the 6th session, after consultation with the Focal Points. In addition, the ad hoc Committee will prepare a list of proposals for decision by the General Assembly, including a proposal on the extension of the mandate of the ad hoc Committee. It will also suggest how the recommendation on involving stakeholders in OTIF's work (OTIF-22002-JUR 2) adopted by the ad hoc Committee on Legal Affairs and International Cooperation at its 2nd session on 5 April 2022 could be implemented by the General Assembly.

Comments

Documents of the session: LAW-24046-JUR 6/16, LAW-24047-JUR 6/16, LAW-24048-JUR 6/16, LAW-24049-JUR 6/16.

The revised proposals for a decision on permanent representatives and for the related explanatory notes essentially implement the guidelines on the use of gender-neutral language (French and German version) and correct terminological issues (in the English version, “credentials” instead of “powers” under Article 3). These revised proposals can therefore be approved and submitted to the next ordinary session of the General Assembly.

The OTIF Secretariat proposal to extend the mandate of the ad hoc Committee includes two options: an extension for a three-year period until 1 October 2027 or an extension for a six-year period until 1 October 2030. It is advisable to extend the mandate for six years instead of three years to help planning the work of the ad hoc Committee.

Regarding the draft report on the activities of the ad hoc Committee on Legal Affairs and International Cooperation in 2021-2024 (document LAW-21049-JUR 6/16), the following comments should be made:

- In line with the European Union position under the draft long-term strategy for OTIF (see agenda item 2 above), which considers that strengthening the cooperation between OTIF and OSJD should not be a priority in the present time, without prejudice to future developments, the part of the draft report devoted to OSJD on pages 23-24 (points 80 to 82) appears as too descriptive. It should avoid detailed explanations or background and be limited to the decisions made during the ad hoc Committee sessions. It is therefore proposed to shorten it by deleting the whole point 81 and the first paragraph of point 82 on page 23 of the draft report.
- The OTIF Secretariat should clarify, and adjust if need be, the following points of the draft report:
 - o Point 121 on the proposed extension of the mandate of the ad hoc Committee and the related point 1) of the proposal for decision, on page 33 of the draft report: the number of years should be specified in accordance with the decision to be taken at the 6th session (see above).
 - o Points 6), 7) and 9) of the proposal for decision, on pages 33-34 of the draft report: it should be clearly acknowledged that these points depend on discussions and decisions which will be made at the 6th session on the corresponding items, and thus also be adapted accordingly, if need be.
- It does not seem feasible indeed to finalise and approve that report at the 6th session of the ad hoc Committee given that several parts (highlighted in grey) in the submitted draft will have to be completed following discussions and decisions made at the 6th session. It is therefore advisable to support the alternative decision proposed by the OTIF Secretariat, i.e. instructing the Bureau to finalise the report, with the assistance of the Secretariat and after consulting the focal points of the ad hoc Committee. However, at least two weeks should be allowed for consultation of the focal points, instead of one week as proposed by the Secretariat, to ensure the focal points have enough time to respond.

Proposed EU position

- *Take note of the information presented by the OTIF Secretariat.*
- *Agree that the ad hoc Committee approves the revised proposals for a decision on permanent representatives and for the related explanatory notes, as presented by the OTIF Secretariat, and instruct the OTIF Secretariat to submit them to the next ordinary session of the General Assembly for adoption and approval, without prejudice to the European Union position to be established on those proposals for the respective ordinary session of the General Assembly.*
- *Agree that the ad hoc Committee decides to request the General Assembly to extend the mandate of the ad hoc Committee for a six-year period until 1 October 2030 on the same terms and conditions as set out in point 7.5 of Final Document (29.09.2021) OTIF-21001-AG 15, without prejudice to the European Union position to be established on that item for the respective ordinary session of the General Assembly.*
- *In line with the European Union position under the draft long-term strategy for OTIF, ask the OTIF Secretariat to make the part of the draft report devoted to OSJD on pages 23-24 (points 80 to 82) less detailed and descriptive by amending it as follows: delete the whole point 81 and the first paragraph of point 82 on page 23 of the draft report (from “Since OSJD as established (...)” to “(...) and harmonisation in the transport of dangerous goods”).*

- *Comment the following points of the draft report and ask the OTIF Secretariat to clarify them, and to adjust them if need be:*
- *Point 121 on the proposed extension of the mandate of the ad hoc Committee and the related point 1) of the proposal for decision, on page 33 of the draft report: the number of years should be specified in accordance with the decision to be taken at the 6th session.*
- *Points 6), 7) and 9) of the proposal for decision, on pages 33-34 of the draft report: it should be clearly acknowledged that these points depend on discussions and decisions, which will be made at the 6th session, and thus also be adapted accordingly, if need be.*
- *As per the alternative decision proposed by the OTIF Secretariat, agree to consider the draft report on the activities of the ad hoc Committee on Legal Affairs and International Cooperation in 2021-2024 and to instruct the Bureau, with the assistance of the Secretariat, to finalise the report on the basis of the decisions to be taken at the 6th session and to approve it. The draft report should however be revised to include the above amendments requested by the European Union. The Bureau should consult the focal points of the ad hoc Committee before approving the report. However, at least two weeks should be allowed for consultation of the focal points, instead of one week as proposed by the Secretariat.*

Agenda Item 17 – Any other business

N/A

Comments

No document available