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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	3 March 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2021) 56 final
Subject:	COMMISSION STAFF WORKING DOCUMENT Union contribution to the consultation organised by the Secretary General of OTIF on a proposal for a draft OTIF's long term strategy

Delegations will find attached document SWD(2021) 56 final.

Encl.: SWD(2021) 56 final



Brussels, 3.3.2021
SWD(2021) 56 final

COMMISSION STAFF WORKING DOCUMENT

**Union contribution to the consultation organised by the Secretary General of OTIF on a
proposal for a draft OTIF's long term strategy**

1. Subject

EU contribution to the consultation organised by the Secretary General of OTIF on a proposal for a draft “OTIF’s long term strategy”, in view of the 15th General Assembly of OTIF scheduled to take place on 28-29 September 2021. The deadline for the consultation is set on 15 March 2021.

2. Introduction

The Commission services have prepared this non-paper to inform the Council about the consultation organised by the Secretary General of OTIF on OTIF’s long term strategy (Circular letter SG-21001 25.01.2021 – enclosed, see section 6) and of the envisaged reply on behalf of the Union to that consultation.

The Annex to this circular contains a “Draft proposal for a long term OTIF strategy”, including:

- A short statement describing the vision of the organisation
- A short statement describing the mission of the organisation
- Nine specific strategic objectives for the organisation

The consultation is addressed to all OTIF members, including the EU, around four questions:

- What period of time should the long term strategy cover (e.g. up to 2030) and at what intervals should the strategy be reviewed (3, 6 or 9 years in line with the ordinary sessions of the General Assembly)?
- Do you agree with the structure (vision, mission/purpose, strategic objectives) of the proposed OTIF long term strategy? If not, could you please explain your reasons further.
- Are the strategic objectives exhaustively defined? Are there any further objectives?
- Do you have any further comments on the proposed draft?

3. EU competence

The EU is a contracting party to COTIF and a member of OTIF¹. The long term strategy of OTIF concerns the full spectrum of OTIF activities, including legal instruments and policy areas, for which the EU is exclusively competent (e.g. rail safety and technical standards, transport of dangerous goods).

4. OTIF Process

¹ Council Decision 2013/103/EU of 16 June 2011 on the signing and conclusion of the Agreement between the European Union and the Intergovernmental Organisation for International Carriage by Rail on the Accession of the European Union to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 (OJ L 51, 23.2.2013, p. 1).

The “Draft proposal for a long term OTIF strategy” enclosed to the OTIF Secretary General’s letter is an informal document circulated for review and possible comments.

Taking into account the outcome of this consultation process, the draft proposal for a long term OTIF strategy could be adjusted and then possibly submitted as a formal proposal for decision (adoption) by the 15th General Assembly.

At this juncture, the EU is invited to respond to this informal consultation. The EU’s reply will be submitted by the Commission on behalf of the Union.

5. Draft contribution of the Union to the consultation on the proposal for a draft “OTIF’s long term strategy”

This section contains a draft contribution (in *italic bold*) to the consultation to be submitted on behalf of the EU, for discussion in the Council.

General comments

The European Union (EU) welcomes the initiative of the OTIF’s Secretary General to develop a long term strategy for OTIF. Such a strategy is in line with the logic of the EU Strategy for Connecting Europe and Asia and should be adequately devised on the basis of a full understanding of on-going and future developments in the rail sector under the influence of economic and societal changes (e.g. green and digital transition, globalisation).

The starting point should be the analysis of the existing situation in international rail, including the mapping of emerging challenges and the medium and longer-term market trends. At present, the proposed “draft strategy” does not include such background analysis, which makes it difficult to assess the scope and relevance of the strategic objectives listed in the proposed draft.

The EU would advocate the elaboration of a comprehensive long-term strategic document for OTIF, based on the consideration of relevant evidence (legal, economic, technical), and following in-depth discussion at expert level within the relevant organs and bodies of OTIF. It should indicate a direction for future achievements both in relation to other international organisations, the future membership of OTIF and the evolution of (legal) tools.

Thus, the EU in principle supports the idea of elaboration of a comprehensive long-term strategy for OTIF, but it does not consider the current draft text annexed to the circular letter sufficiently developed to serve as an adequate basis for such an exercise.

To follow-up on this initiative, the 15th OTIF General Assembly could have a debate on this matter and decide to task the Secretary General to develop a proposal for a long-term strategy. It could set out general terms of reference and provide specific guidelines to carry out this project, as appropriate.

As a preliminary input to the debate, the EU would underline that the international market for rail services is faced with the common challenge to make the transition to a more sustainable transport system. At the same time, it is characterised by diverse

regulatory frameworks and cultures, by bilateral and multilateral agreements, and, generally speaking, by a lack of open competition.

Feedback based on the experiences and other information from OTIF members and stakeholders in the rail transport sector are crucial, in order to identify challenges and define long term priorities and objectives. Against this backdrop, OTIF will have to use its range of (legal) tools available to drive changes in international rail transport, while acting in complementarity and synergy with its members, including the EU.

The 13th OTIF General Assembly endorsed setting up an advisory working group of legal experts, whose task – among other issues – includes promoting and facilitating the functioning and implementation of COTIF, and monitoring and assessing the application and implementation of COTIF. The working group has started working on two relevant tasks, which are on-going: (1) Monitoring and assessment of the implementation and application of OTIF's legal system, (2) Monitoring and assessment of the implementation of COTIF. The EU believes that it would be important to include the outcome of these activities in the evidence base for the development of OTIF's long-term strategy.

Replies to the questionnaire

In line with the comments submitted in the previous section (“General comments”), the EU wishes to submit the following preliminary observations, whereas more definitive and specific observations can only be given on the basis of a more developed draft proposal:

1. What period of time should the long term strategy cover (e.g. up to 2030) and at what intervals should the strategy be reviewed (3, 6 or 9 years in line with the ordinary sessions of the General Assembly)?

In principle, a long-term strategy should cover a sufficiently long period of time, e.g. up to 2030 or 2050. In any case it would be appropriate to review (and possibly adjust) the strategy at each ordinary session of the General Assembly of OTIF (every 3 years). It may be also useful to correlate OTIF's long term strategy with relevant strategic documents of OTIF members. This would ensure coherence and would enable synergies between OTIF objectives and actions that are already at planning or implementation stage at the level of OTIF members. In this case, strategic objectives for 2050 and milestones for 2030 may be envisaged.

2. Do you agree with the structure (vision, mission/purpose, strategic objectives) of the proposed OTIF long term strategy? If not, could you please explain your reasons further.

The proposed structure (vision, mission/purpose, strategic objectives) appears to be acceptable for a short one-page summary of the strategy. However, with reference to our previous general comments concerning the need for a comprehensive review of the challenges facing international rail transport, the EU is of the view that the strategy itself should have a different dedicated structure, which needs to be defined in due course.

3. Are the strategic objectives exhaustively defined? Are there any further objectives?

It is not clear what the Secretary General of the OTIF means by “strategic objectives”. The mission and objectives of OTIF are set out in Article 2 COTIF. Therefore, one should consider that “strategic” objectives are either operational ones (describing how OTIF can reach an objective set out in Article 2 COTIF) or a reflexion on how to implement the OTIF framework in line with new economic, environmental and societal changes. Either way, this cannot lead to adding new objectives and / or to formulating an interpretation of existing objectives implying an extension of the competences of OTIF and its bodies. The “strategic objectives” section of the draft document submitted by the SG OTIF should be redrafted accordingly. Notwithstanding these preliminary comments, the EU would like to share some additional remarks in the following paragraphs.

- (a) With reference to Article 2 of COTIF (Aim of the organisation), it appears that the strategic objectives of the proposed draft do not adequately cover certain important aims such as “contributing to the removal (...) of obstacles to the crossing of frontiers in international traffic” and to “contributing to interoperability and technical harmonisation in the railway field”.*
- (b) The proposed draft includes the following long-term strategic objective: “Ensure a level playing field for railway transport with regard to road, maritime and air transport”. It is not clear how OTIF would achieve this goal and what would be the type and scope of activities relevant for this purpose. The EU suggests to specify this point in relation to OTIF activities or otherwise to remove it from the draft strategy.*
- (c) The proposed draft includes the following long-term strategic objective: “Develop OTIF’s legal framework in respect of various railway policy approaches”. The explanatory note states: “The reform process in railways in recent decades has resulted in different railway structures. OTIF is open to all these models and respects each of them: open access/state monopoly, separated/vertically integrated”. The matter at hand concerns the structure and regulation of international rail transport markets, which is currently not covered by COTIF rules. It is not clear if, in view of this long-term strategy, all the elements of the proposed draft do actually fall within the scope of application of COTIF and the competence of OTIF.*
- (d) The next strategic objective presented in the draft strategy reads: “Ensure that OTIF’s legal framework remains relevant over time”. The explanatory note states: “The full and uniform implementation and application of OTIF’s legal framework is a permanent task. Therefore, a properly functioning secretariat providing an efficient service (e.g. by fostering OTIF’s linguistic and cultural diversity) is indispensable.” These statements may suggest the need for a possible evolution or reform of the OTIF Secretariat (organisation, resources...). However, the proposed draft should provide more specific information about what is intended on this issue.*

(e) *Notwithstanding the above comments (c) and (d), the EU suggests to replace the eighth and ninth strategic objectives of the proposed draft, with the following alternative formulation: “Ensure that OTIF legal framework remains fit for purpose over time and adaptable to national/regional policy developments”.*

(f) *The proposed draft strategy includes the following long-term strategic objective: “Be actively engaged in international cooperation in the rail transport field and contribute to finding synergies.” The EU suggests a minor editorial change, so that the text would read: “Be actively engaged in international cooperation in the rail transport field and contribute to finding synergies, including with other relevant international organisation and industry associations”.*

(g) *The proposed draft strategy includes the following long-term strategic objectives: “Promote the application of COTIF over the widest possible geographic scope” and “Contribute to harmonisation and unification of existing international railway law systems”. The EU welcomes inclusion of these topical issues in the strategy, especially when it comes to attracting new Member States (e.g. in Asia and Africa) and complementarity with other areas of transport law (e.g. OSJD), which contribute to achieving the goals of the EU Strategy for Connecting Europe and Asia.*

4. Do you have any further comments on the proposed draft?

The text of the proposed draft contains two different typographical fonts: (1) plain text in regular, non-italic format; (2) additional text in italic and smaller font size. Is the understanding of the EU correct that the draft strategy is only contained in the elements in plain text, and that the additional texts were added as explanatory notes?

Apart from the text of the proposed draft itself, the nature/status of OTIF’s long-term strategy should be clarified. Several provisions of COTIF would be relevant for this purpose: Article 2 (Aim of the Organisation), Article 3 (international cooperation), Article 13 (Organs) and Article 14 (General Assembly). We ask OTIF’s confirmation of the understanding of the EU that the “OTIF’s long-term strategy” would be a formal but non-binding document.

In the circular letter, it is mentioned that, in addition to the strategy itself, “implementing measures could also be laid down (milestones, roadmap), as well as measures to review or adjust them”. The EU would like to comment that the strategy should be primarily implemented with the use of existing tools and procedures, as established in COTIF (work programme, budget, management reports, activities of the organs, etc.).

6. OTIF Circular letter SG-21001



Organisation intergouvernementale pour les transports internationaux ferroviaires
Zwischenstaatliche Organisation für den internationalen Eisenbahnverkehr
Intergovernmental Organisation for International Carriage by Rail

**Secrétaire
général
Generalsekretär
Secretary
General**

**SG-21001
25.01.2021**

Original : DE

**TO THE MEMBER STATES AND ASSOCIATED MEMBERS OF OTIF AND
TO REGIONAL ORGANISATIONS WHICH HAVE ACCEDED TO COTIF**

Consultation on OTIF's Long Term Strategy

A. Background and work so far

To achieve OTIF's goals, the two-year work programme exists, but there is no long term strategy. The last sessions of the Administrative Committee (132nd and 133rd sessions) held in-depth discussions on the need for such a separate long term strategy for OTIF. The main focus of the discussion was that in addition to the Organisation's work programme, a long term strategy covering multiple years should be produced, without changing the character of the Organisation or even calling it into question.

There was consensus that an international organisation should not just be dealing with ongoing (daily) business, but should follow a long term strategic direction that should be reviewed and, if necessary, adjusted at certain intervals.

It was also agreed that existing work should be made use of, e.g. the OTIF flyer, which explains OTIF's key task very clearly, with the leitmotiv: "unified railway law to connect Europe, Asia and Africa".

At the 133rd session of the Administrative Committee, the following decision was therefore taken:

"The Administrative Committee endorsed the information presented concerning OTIF's long term strategy. The Administrative Committee invited the Secretary General to discuss the proposal with the various members of OTIF and to prepare it, together with details on the key steps, for decision by the General Assembly."

B. Next steps

The competent organ for deciding OTIF's long term strategy is the General Assembly. Consequently, according to the decision of the Administrative Committee, the strategy should be adopted at the 15th General Assembly (Berne, 28-29 September 2021). At the same time, implementing measures could also be laid down (milestones, roadmap), as well as measures to review or adjust them.

The draft long term strategy is provided in the Annex.

In order to structure the discussion and prepare the decision at the General Assembly, I should be grateful if you could respond to the following questions:

1. What period of time should the long term strategy cover (e.g. up to 2030) and at what intervals should the strategy be reviewed (3, 6 or 9 years in line with the ordinary sessions of the General Assembly)?
2. Do you agree with the structure (vision, mission/purpose, strategic objectives) of the proposed OTIF long term strategy? If not, could you please explain your reasons further.
3. Are the strategic objectives exhaustively defined? Are there any further objectives?
4. Do you have any further comments on the proposed draft?

I should be most grateful if you could let us have your replies by **15 March 2021**. This would enable the Secretariat to prepare a formal document for the 15th General Assembly.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'W. Küpper', with a large, sweeping initial 'W'.

(Wolfgang Küpper)
Secretary General

Annex

Draft proposal for a long term OTIF strategy

OTIF's long term strategy: unified railway law to connect Europe, Asia and Africa

Vision

OTIF playing a central role to make rail transport the backbone of sustainable and seamless international transport.

International rail transport is still not using its full potential. As an international intergovernmental organisation, OTIF is an important player in terms of improving the situation.

Mission

Promote, improve and facilitate international traffic by rail in all respects (cf. COTIF Article 2). By doing so, OTIF contributes significantly to resolving existing challenges regarding international transport.

COTIF defines OTIF's legal attribution for international rail transport in the broadest sense. Being an intergovernmental organisation with a specific role, OTIF's contribution to the sustainable development of transport is indispensable, e.g. by reducing the negative impact of transport on climate change, facilitating trade and allowing economic growth.

Strategic Objectives

- Facilitate international railway transport.
OTIF provides a comprehensive and open framework for legal and technical railway interoperability and for safety to increase cross-border carriage by rail.
- Promote the application of COTIF over the widest possible geographical scope.
Enlarging the scope of application of COTIF by attracting new Member States (e.g. in Asia and Africa) is a general aim of the Organisation. It is very important that the Organisation is fit for this task.
- Contribute to harmonisation and unification of existing international railway law systems.
The enlargement of OTIF outside of Europe and the need for complementarity with other areas of transport law (e.g. OSJD) shows that it is essential to harmonise the rules as much as possible.
- Promote multimodal transport of goods and passengers.
COTIF provides multimodal solutions by allowing international and national transport chains. RID is developed in a harmonised way with the provisions for road transport (ADR) and for transport by inland waterways (ADN) to facilitate multimodal transport.

- Be actively engaged in international cooperation in the rail transport field and contribute to finding synergies.

OTIF cooperates with a large number of international organisations and associations in the transport and rail transport business and actively supports common goals, e.g. the UN's Sustainable Development Goals and the EU's green transport and connectivity policy.

- Ensure a level playing field for railway transport with regard to road, maritime and air transport.

A level playing field between transport modes is a precondition for a functioning international transport market. OTIF is following this approach, as this is already explicitly the case for RID.

- Develop COTIF by taking into account innovation, technical progress and digitalisation.

COTIF is open to following or even proactively anticipating technical developments and challenges, such as digitalisation of the railway system.

- Develop OTIF's legal framework in respect of various railway policy approaches.

The reform process in railways in recent decades has resulted in different railway structures. OTIF is open to all these models and respects each of them: open access/state monopoly, separated/vertically integrated.

- Ensure that OTIF's legal framework remains relevant over time.

The full and uniform implementation and application of OTIF's legal framework is a permanent task. Therefore, a properly functioning secretariat providing an efficient service (e.g. by fostering OTIF's linguistic and cultural diversity) is indispensable.