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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. prev. doc.:	ST 12791/21
Subject:	Position of the Union in the ad hoc Committee on Legal Affairs and International Cooperation of the Intergovernmental Organisation for International Carriage by Rail (OTIF) as regards the issue of the “ECM certificates” – Approval

I. INTRODUCTION

1. On 13 October 2021 the Commission services submitted to the Council a non-paper in which they outlined a proposed line to take for the above item on the agenda of the first meeting of the *ad hoc* Committee on Legal Affairs and International Cooperation, scheduled for 9 to 11 November 2021.
2. The OTIF’s Working Group Technology in 2020 had asked the predecessor body of that *ad hoc* Committee to provide legal assistance, concerning the interaction of OTIF rules and EU law, in relation to certificates issued by Entities in Charge of Maintenance (ECM) for the technical admission of railway vehicles.

3. In order to prepare for a meeting of the predecessor body, the OTIF Secretariat had organised an expert meeting on 21 September 2021. To its preparation, the Union on 12 July 2021 had contributed in the form of a legal analysis,¹ after preliminary discussions in the Working Party on Land Transport.
4. The main question of the request for legal assistance concerns the legal room and scope for recognising an ECM certificate issued in a non-EU member of OTIF in accordance with the OTIF rules, in view of the wagon's use in traffic between two EU Member States.
5. The technical admission of railway material is regulated, *inter alia*, by Directive (EU) 2016/798 and Commission Implementing Regulation (EU) 2019/779. The subject is of exclusive Union competence.

II. WORK AT THE PREPARATORY BODY

6. The Working Party on Land Transport dealt with the subject in the informal meetings of its members on 18 and 25 October 2021, supported by delegations' written comments. The outline of a Union position presented by the Commission was in principle supported. However, some delegations emphasised the need to have a perspective on the underlying practical problem to be addressed by the OTIF's Working Group Technology, for which different options could be discussed. Some other delegations suggested referring in the position more explicitly to the scope and purpose of the assistance to be provided by the *ad hoc* Committee. One delegation insisted on the fact that while the interpretation provided in the line to take was acceptable in the context of an issue falling into exclusive Union competence, it reserved the right to intervene individually on matters discussed in OTIF when issues outside of the Union's exclusive competence are concerned.
7. The draft Union position as adjusted by the Presidency to reflect the discussion in the working party was circulated on 26 October 2021.²

¹ See WK 9296/2021.

² See ST 13198/21.

III. CONCLUSIONS

8. In light of the above, the Council is invited, subject to confirmation by the Permanent Representatives Committee, to approve the EU position as set out in the addendum to this note.
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