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#### 'I/A' ITEM NOTE

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| From:          | General Secretariat of the Council                                                                                                                                                                                                                                                        |
| To:            | Permanent Representatives Committee/Council                                                                                                                                                                                                                                               |
| No. Cion doc.: | 7140/25                                                                                                                                                                                                                                                                                   |
| Subject:       | Intergovernmental Organisation for International Carriage by Rail (OTIF):<br>position to be taken on behalf of the European Union at the 7th session of<br>the OTIF Ad Hoc Committee on Legal Affairs and International<br>Cooperation, 8-10 April 2025, Berne, Switzerland<br>– Approval |

#### I. INTRODUCTION

1. The 7<sup>th</sup> session of the OTIF Ad Hoc Committee on Legal Affairs and International Cooperation is scheduled to be held on 8-10 April 2025 in Berne, Switzerland.
2. The ad hoc Committee will consider issues that: (i) have an impact on the functioning of OTIF, including membership and stakeholders' involvement, (ii) concern the development of the strategy of the organisation, (iii) promote and facilitate the functioning and the implementation of the Convention concerning International Carriage by Rail (COTIF). While at this stage those agenda items do not entail the adaption of acts having legal effects, they fall in the scope of EU competence, therefore it is appropriate to establish the position to be taken on behalf of the European Union.

3. Consequently, on 14 March 2025, the European Commission submitted to the Council a non-paper on the position to be taken on behalf of the European Union at that meeting.

## **II. WORK AT THE PREPARATORY BODY**

4. The non-paper was presented in the Land Transport Working Party on 20 March 2025.
5. Based on the comments made by the delegations during and after the meeting, the Presidency prepared a compromise text which was subsequently discussed and, subject to final modifications, agreed in the Working Party meeting on 26 March.
6. The main changes concern the issue of competences and exercise of voting rights, as well as the positions on:
  - a) agenda item 2 (Sanctions to ensure compliance with the obligations under COTIF), where it has been articulated that in order to ensure long-term viability for the assessment of sanctions proposals, the ad hoc Committee could be transformed into a permanent body under COTIF, and that no new body should be created within OTIF for that purpose;
  - b) agenda item 3 (China's application for accession as an associate member of OTIF), where the position suggests the OTIF Secretariat to look at the rights of observers when reviewing the rights and obligations of associate members; and
  - c) agenda item 5 (Digitalisation under the CIM Uniform Rules), where synergies, rather than full alignment, between electronic transport documents under TAF TSI and CIM UR should be promoted.
7. Moreover, minor changes with regard to priority levels were introduced in agenda item 4 (OTIF's long-term strategy and 2025-2027 Work Programme).

### III. CONCLUSION

8. 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 7<sup>th</sup> session of the OTIF Ad Hoc Committee on Legal Affairs and International**  
**Cooperation, 8-10 April 2025, Berne, Switzerland**

**Introduction**

The OTIF ad hoc Committee on Legal Affairs and International Cooperation (‘the ad hoc Committee’) was established by the 15<sup>th</sup> General Assembly of the Organisation for International Carriage by Rail (OTIF). Its mandate was renewed for an additional six-year period by the 16<sup>th</sup> General Assembly. It held its 6<sup>th</sup> session on 16-18 April 2024.

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, to be expressed during the 7<sup>th</sup> session of the ad hoc Committee, except for those that are just information points and where a Union position is not necessary. The text of the annotated agenda is reproduced under each relevant agenda item, at the beginning (frame, *italic*). The comments sections are EU internal only.

## 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(1), (2) and (3) 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<sup>1</sup>:

*“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, 8, 9 and 13, 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<sup>2</sup>) should be followed. According to point 3.3, “the decision on who will be voting is made in the light of where the preponderance of the competence lies (e.g. mainly national or mainly Union competence)”.

Consequently, on agenda items 2 (Sanctions to ensure compliance with the obligations under COTIF), 3 (China’s application for accession as an associate member of OTIF), 4 (OTIF’s long-term strategy and 2025-2027 Work Programme) and 9 (OTIF’s copyright and open access policy), the Commission and the Presidency will express the common position, and the Commission will vote.

On the other items, the Presidency and the Commission will express the common position, and Member States will vote. Member States may intervene to support or develop the common position.

Agenda items 10, 11, 12 and 14 are information points only, and thus do not require the establishment of a Union position.

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<sup>1</sup> OJ L 51, 23.2.2013, p. 8.

<sup>2</sup> Council Decision 2013/103/EU of 16 June 2011 on the signing and conclusion of the Agreement between the European Union and the Intergovernmental Organisation for International Carriage by Rail on the Accession of the European Union to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 (OJ L 51, 23.2.2013, p. 1).

## Agenda Item 1 – Adoption of the agenda

*Annotated 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-25009-JUR 7/1

### Proposed EU position

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

## Agenda Item 2 – Sanctions to ensure compliance with the obligations under COTIF

*Annotated agenda: With the aim of introducing an obligation for Member States to respect [not to undermine] the physical and functional integrity of the rail infrastructure of other Member States, as well as substantive and procedural provisions on sanctions to ensure compliance with the obligations under COTIF that are essential to achieve OTIF's aim, at its 16th session, the General Assembly approved certain basic regulatory principles to guide the ad hoc Committee and the Revision Committee in preparing modifications to COTIF and corresponding notes in the Explanatory Report to COTIF.*

*Those principles were the work of the 1st ad hoc working group set up to deal with this topic (that working group is now known as the ad hoc working group on sanctions to ensure compliance with the obligations under COTIF) and were carefully considered and approved by the ad hoc Committee at its 6th session.*

*It was the intention to hold the 2nd session of the ad hoc working group before this 7th session of the ad hoc Committee, but the availability of Member States' delegations to attend this 7th session meant that it has to take place in early April. As such, it was not feasible to have a 2nd session of the ad hoc working group beforehand.*

*The aim of this agenda item is therefore to consider the Secretariat's proposals on how to implement those basic regulatory principles in COTIF and to consider proposals to modify COTIF and corresponding notes in the Explanatory Report to COTIF.*

### Comments

Documents of the session: LAW-25010-JUR 7/2, LAW-25011-JUR 7/2

At its 16<sup>th</sup> session in September 2024, in line with the EU position<sup>3</sup>, the OTIF General Assembly approved the following basic regulatory principles to guide the ad hoc Committee and the Revision Committee in preparing modifications to COTIF and corresponding notes in the Explanatory Report to COTIF, with the aim of introducing an obligation for Member States to respect [not to undermine] the physical and functional integrity of the rail infrastructure of other Member States, as well as substantive and procedural provisions on sanctions to ensure compliance with the obligations under COTIF that are essential to achieve OTIF's aim:

[1] sanctions for the breach of OTIF rules should only be imposed if expressly provided for by COTIF,

[2] the Convention should oblige Member States to respect [not to undermine] the physical and functional integrity of the rail infrastructure of other Member States,

[3] COTIF should not set out sanctions for a breach of international law in general,

[4] the General Assembly should be responsible for deciding whether the relevant rules have been breached,

[5] the General Assembly should decide on the application of sanctions, the restoration of rights and the readmission of expelled Member States by a qualified two-thirds majority of Member States represented at the time of the vote,

[6] a non-exhaustive list of circumstances precluding the wrongfulness of an act should be expressly included in COTIF,

[7] the readmission of expelled members should only be considered and accepted by the General Assembly under specific conditions, possibly only after a certain period of time (e.g. one year), and in any case only if the breach of OTIF rules that gave rise to the sanction is effectively rectified [...]’.

As specified in document LAW-25010-JUR 7/2, the members of the ad hoc Committee are invited to consider and provide preliminary guidance on the implementation of those basic regulatory principles via new/amended Articles to COTIF and corresponding explanatory notes, on the basis of the detailed discussion paper prepared by the OTIF Secretariat (LAW-25011-JUR 7/2). As the next stage, the first draft Articles should be prepared. The ad hoc Committee may also wish to consider whether it prefers to continue work between sessions in an ad hoc working group or to limit discussions to the sessions of the ad hoc Committee. Document LAW-25010-JUR 7/2 comprises substantiated **suggestions from the OTIF Secretariat for possible amendments to COTIF (new provisions or revised existing provisions) and possible next steps**, on which the ad hoc Committee is expected to provide guidance at its 7<sup>th</sup> session, **as summarised below**.

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<sup>3</sup> Council Decision (EU) 2024/2586 of 23 September 2024 on the position to be taken on behalf of the European Union at the 16<sup>th</sup> General Assembly of the Intergovernmental Organisation for International Carriage by Rail (OTIF) (OJ L, 2024/2586, 1.10.2024, p.1)

### *Regarding the general considerations*

- Purpose and objective of OTIF and COTIF: consider extending the aim of OTIF in Article 2 COTIF, by adding that OTIF seeks not only to ‘promote, improve and facilitate (...) international traffic by rail’ but also to ‘ensure the security and functional integrity of international rail infrastructure.’
- Efficiency and effectiveness of new obligations: consider strengthening the obligations under Article 3 § 1 COTIF to eliminate the possibility of bypassing the new obligations and sanctions. In this context, the discussion paper refers to international railway carriage with OTIF Member States being effectively organised under parallel international agreements.
- Accession conditions: consider revising the accession procedure, be it for full OTIF Member States (under Article 37 COTIF) or for Associate Members (under article 39 COTIF), to align with the new obligations, i.e. explicitly linking the new obligations to membership status and asking for compliance with those core obligations from the outset. Regarding the accession of regional economic integration organisations (under Article 38 COTIF), as their membership is tied to that of their Member States, the OTIF Secretariat raises the question of whether special obligations should be directly imposed on them or whether these obligations should be implemented through their Member States that are parties to COTIF.
- Disputes: as currently, under Article 28 COTIF, dispute resolution through arbitration between OTIF and its Member States is limited to cases related to the Protocol on Privileges and Immunities, consider extending this dispute resolution system to cover other disputes, such as in the context of the application of sanctions for the breach of COTIF rules. Alternatively, it could be decided that General Assembly decisions should not be subject to any review.
- Non-implementation of COTIF, e.g., of a particular Appendix: consider introducing a system of compliance checks, with less severe consequences than the suspension of voting rights or termination of membership, possibly with prior examination by the ad hoc Committee before referral to the General Assembly, if substantiated.
- Revision procedure: consider whether the modifications to COTIF introducing new obligations and sanctions should be effectively applied to all Member States, and whether those Member States that do not approve these modifications should cease to be parties to the Convention. Currently, based on Articles 14 § 6 and 34 §§ 2 and 6 COTIF, when adopting modifications to COTIF, the General Assembly may decide by a two-thirds majority that Member States which make a declaration of non-approval of the modifications cease to be a party to the Convention and a Member State. In other words, the General Assembly may decide whether or not to allow the application of different versions of the Convention itself in case of the non-approval of modifications. If a two-thirds majority is required to exclude from OTIF those Member States which made a declaration of non-approval of the modifications, a large coalition is needed to secure such a vote.

### *Regarding the specific basic regulatory principles*

- Basic regulatory principles 1 and 3: consider including a provision on sanctions limiting them to expressly provided cases, which would not include breaches of international law in general, (in this context, the OTIF Secretariat would however like to also consider whether the UN Security Council may also impose sanctions on a particular state that could have an impact on COTIF and OTIF).
- Basic regulatory principle 2:
  - o Consider adding two specific obligations to Article 5 COTIF, as below, for OTIF Member States, Associate Members, and possibly regional economic integration organisations, and possibly link these specific obligations to the accession procedure:
    - (i) to respect [not to undermine] the physical and functional, including digital, integrity of the rail infrastructure of other Member States;
    - (ii) not to undermine unreasonably the ability of other Member States to meet their obligations under COTIF, particularly in facilitating international traffic under COTIF.
  - o Consider including a non-exhaustive list of acts that would be regarded as violations of the above principles, e.g. any act of aggression against the physical or digital railway infrastructure.
  - o Consider consolidating into a single Article of COTIF all sanctions for the violation of new obligations, as well as existing sanctions for the non-payment of contributions.
  - o Consider whether the application of sanctions should always follow a staged approach (suspension of voting rights, suspension of the application of COTIF, and expulsion from OTIF) or whether, in cases of severe violations, the most severe sanction, such as expulsion, may be applied directly.
  - o Consider amending the title of Article 40 of COTIF, from 'Suspension of Membership' to 'Temporary Exemption from Membership Rights and Obligations' to better reflect its purpose, and to adapt that Article further.
- Basic regulatory principles 4, 5 and 7:
  - o Consider defining what sources OTIF should rely on when assessing violations. Those sources could include: international judicial decisions, such as those from the International Court of Justice (ICJ); national judicial decisions; resolutions of other international organisations, such as the United Nations; or submissions from affected Member States.
  - o Consider drawing on the experience of OTIF Member States, particularly regarding the assessment of attacks on critical infrastructure, including railway networks, and other relevant cases.
  - o Consider establishing a clear process for submitting and assessing sanction proposals before they reach the General Assembly, and in particular determine which existing or newly created OTIF organ should be responsible for this task.
  - o Consider whether the conditions for rectifying violations and the type of restitution for any damage caused should be clearly determined at the time sanctions are adopted (establishing a general principle of restitution).

- Basic regulatory principle 6: consider the following non-exhaustive list of circumstances precluding wrongfulness of an act, based on the United Nations ‘Draft Articles on Responsibility of States for Internationally Wrongful Acts’: the valid consent of a Member State to the commission of a specific act by another Member State; a lawful measure of self-defence taken in conformity with the Charter of the United Nations; an act constituting a countermeasure taken by a Member State against another Member State in accordance with international law; an act due to force majeure.
- Concluding observations: the OTIF Secretariat concludes that the introduction of new obligations and sanctions into COTIF is a measure of some urgency, and suggests that a proposal should be prepared for the 8<sup>th</sup> session of the ad hoc Committee, scheduled for 2-4 December 2025. The OTIF Secretariat also asks whether that proposal should first be considered by the ad hoc working group on sanctions to ensure compliance with the obligations under COTIF.

### Proposed EU position

- *Take note of the information presented by the OTIF Secretariat, and in particular thank the OTIF Secretariat for the detailed analysis and proposals contained in the discussion paper, which represents a solid basis for future discussions on those matters.*
- *Recall that the comments and guidance provided during the 7<sup>th</sup> session of the ad hoc Committee are without prejudice to the European Union position on any subsequent proposals to modify COTIF, in particular when it comes to decisions to be taken in OTIF Revision Committee and General Assembly meetings.*
- *Vote to instruct the OTIF Secretariat to prepare proposals for Articles to COTIF and corresponding explanatory notes on an obligation for Member States to respect [and not undermine] the physical and functional integrity of the rail infrastructure of other Member States, as well as substantive and procedural provisions on sanctions to ensure compliance with the obligations under COTIF that are essential to achieving OTIF’s aim, **taking into account the following preliminary comments:***

### *Regarding the general considerations:*

- *Purpose and objective of OTIF and COTIF: The suggested added text seems too broad and would shift the purpose of OTIF to a completely new area, railway security. The legal necessity and practical consequences of amending Article 2 need to be further assessed. At most, a clarification to the notes to the Explanatory Report to COTIF could be considered, in order to explain that the existing objective of OTIF (‘to promote (...) international traffic by rail’) is understood to encompass a mutual respect for the physical and functional integrity of members’ rail infrastructure.*

- *Efficiency and effectiveness of new obligations: The suggested amendment to Article 3 §1 COTIF seems too broad, and would cast doubts on core principles of the convention, which coexists with other multilateral conventions and agreements. To allow the European Union to form a definitive opinion on strengthening the obligations under Article 3 §1 COTIF, the OTIF Secretariat should further clarify what is meant by “eliminating the possibility of bypassing” the new obligations and sanctions through “parallel international agreements”, in particular in relation to Article 3 §2 COTIF, which states that ‘the obligations resulting from § 1 for the Member States, which are at the same time Members of the European Communities or States parties to the European Economic Area Agreement, shall not prevail over their obligations as members of the European Communities or States parties to the European Economic Area Agreement.’*
  
- *Accession conditions: The relevance of the suggested amendments to the accession conditions is unclear. The possibility for OTIF Member States not to apply some obligations is laid down in Article 42 COTIF, and this provision already expressly lays down that reservations and declarations not to apply certain provisions of the Convention itself are only to be allowed if such reservations and declarations are expressly provided for by the provisions themselves. The OTIF Secretariat should further explain (i) which “new obligations” would be covered in this context, (ii) when/how/by whom compliance with the new obligations would be assessed even before accession, and (iii) from which date the revised procedure would apply to new applications. As to regional economic integration organisations, the OTIF Secretariat should further elaborate on the issue of whether/which special obligations would be imposed on those organisations and confirm whether this question concerns only new applications since it has been raised in the context of the accession procedure.*
  
- *Disputes: Based on the considerations concerning basic regulatory principles 4, 5 and 7, it is understood that the General Assembly would ultimately decide on the breach of COTIF rules, on the application of sanctions to ensure compliance with COTIF rules, the restoration of rights and the readmission of expelled Member States. In this context, the OTIF Secretariat should provide further insights on the pros and cons of introducing dispute resolution through arbitration between OTIF and its Member States in the context of applying sanctions, and share its experience of arbitration under COTIF so far, if any. Moreover, the OTIF Secretariat should further clarify why disputes between OTIF and its Member States related to COTIF provisions would not fall under Article 28 § 2 COTIF, which covers ‘other disputes arising from the interpretation or application of the Convention’ and which provides for arbitration mechanisms. Pending those clarifications, the European Union is not in a position to comment on the related questions raised by the OTIF Secretariat, including on whether General Assembly decisions should not be subject to any review.*

- *Non-implementation of COTIF, e.g. of a particular Appendix: Strengthening enforcement of COTIF rules is a key issue, which has consistently been highlighted by the European Union, in particular when defining the long-term strategy for OTIF. The European Union would welcome any concrete proposals in this respect from the OTIF Secretariat, if possible at the next 8<sup>th</sup> session of the ad hoc Committee. The European Union would also welcome, in particular, any clarifications on what would be the role of the OTIF Secretariat in carrying out such compliance checks.*
- *Revision procedure: In the view of the European Union, considering whether the modifications to COTIF introducing new obligations and related sanctions should be effectively applied to all Member States and whether those Member States that do not approve these modifications should cease to be parties to the Convention is a fundamental issue that deserves further reflection. In particular, further consideration needs to be given to whether allowing non-application of the new rules would defeat their objective. The European Union notes however that this question is not yet part of any specific proposal for the revision of Articles 14 § 6 and 34 §§ 2 and 6 COTIF, and that the application of these provisions in case an OTIF Member State does not approve the modifications concerning new obligations and related sanctions here under consideration will merit further reflection.*

*Regarding specific basic regulatory principles:*

- *Basic regulatory principles 1 and 3: While limiting the sanctions to expressly provided cases (subject to the content of the said cases) is in line with the agreed basic principles, the OTIF Secretariat should provide further insights on the reference to the UN Security Council sanctions and their possible impact on COTIF and OTIF.*
- *Basic regulatory principle 2:*
  - o *As to the proposed two specific obligations to Article 5 COTIF, namely (i) to respect [not to undermine] the physical and functional, including digital, integrity of the rail infrastructure of other Member States; and (ii) not to undermine unreasonably the ability of other Member States to meet their obligations under COTIF, particularly in facilitating international traffic under COTIF: The first specific obligation mirrors the wording of basic regulatory principle 2, with one addition (“including digital”), which is considered useful given the growing digitalisation of rail. The second specific obligation does not stem directly from the above-mentioned basic regulatory principles; it rather seems to relate to the OTIF Secretariat’s assessment of the current Article 5 COTIF, which prescribes neither precise means nor the precise results to facilitate and accelerate international traffic. The OTIF Secretariat should further explain the rationale and possible consequences of introducing this second specific obligation. Moreover, the OTIF Secretariat should further explain how those two specific obligations would apply to regional economic integration organisations (i.e. the European Union). Finally, the OTIF Secretariat should clarify the added value of the adverb ‘unreasonably’ in this context.*

- o *As to including a non-exhaustive list of acts that would be regarded as violations of the above principles: To allow the European Union to form an opinion on the idea of a non-exhaustive list should, the OTIF Secretariat should be asked to draw up such a list to illustrate further what such a list would look like.*
  - o *As to consolidating into a single Article of COTIF all sanctions for the violation of new obligations, as well as existing sanctions for the non-payment of contributions, the European Union can preliminarily support this consolidation into a single Article, subject to the assessment and approval by the European Union of its final wording.*
  - o *As to considering whether the application of sanctions should always follow a staged approach (suspension of voting rights, suspension of the application of COTIF, and expulsion from OTIF) or whether, in cases of severe violations, the most severe sanction, such as expulsion, may be applied directly: the OTIF Secretariat should provide further insights on this possibility, in particular on what is meant by “severe violation”.*
  - o *As to amending the title of Article 40 of COTIF, from ‘Suspension of Membership’ to ‘Temporary Exemption from Membership Rights and Obligations’ to better reflect its purpose, and to adapt that Article further: the European Union has doubts as to the added value of this amendment, taking into account the fact that the purpose of Article 40 would still be the ‘Suspension of Membership’ of the OTIF Member State, which is a well-defined concept under international law. The OTIF Secretariat should therefore be invited to provide further insights on the proposed change.*
- *Basic regulatory principles 4, 5 and 7:*
- o *As to defining what sources OTIF should rely on when assessing violations: Based on basic regulatory principles 4, 5 and 7, it is understood that the General Assembly would ultimately decide on the breach of COTIF rules, on the application of sanctions, the restoration of rights and the readmission of expelled Member States. However, such a decision should be preceded by a clear process to submit and assess sanction proposals. The non-exhaustive list of sources as suggested by the OTIF Secretariat does not raise objections; it may however need to be complemented in the coming discussions.*
  - o *On the process for submitting and assessing sanction proposals before they reach the General Assembly, in particular regarding possible existing or newly created OTIF organs that could be responsible for this task, several options could be considered. The OTIF Secretariat could provide further insights in this respect. In particular, as a preliminary comment, it could be pointed that the ad hoc Committee on legal affairs and international cooperation has been tasked since the very beginning with looking into the issue of sanctions to ensure compliance with the obligations under COTIF, it is open to all OTIF Member States (including regional economic integration organisations) and the nature of its tasks seems suited to dealing with the issues at stake; it could therefore potentially have a reinforced role in preliminarily assessing sanction proposals. However, the ad hoc Committee is, by definition, not an organ permanently established under*

COTIF, and this could jeopardise its long-term viability for the assessment of sanctions proposals. It could therefore be envisaged to make the ad hoc Committee a permanent organ under COTIF. To create a new OTIF organ for this purpose is not the preferred option. Besides, the deadlines to receive the working documents from the OTIF Secretariat are tight under the Rules of Procedures of the ad hoc Committee, as opposed to other existing OTIF organs (such as the Revision Committee). This may limit the ability of the European Union to analyse those documents and coordinate a position on potentially sensitive and complex issues.

- o As to considering whether the conditions for rectifying violations and the type of restitution for any damage caused should be clearly determined at the time sanctions are adopted: This issue would deserve further reflection, on the basis of a concrete proposal.
- o The European Union is also of the view that, in order to give effect to basic regulatory principles 4, 5 and 7, COTIF will need to expressly define the powers of the General Assembly to decide whether the relevant rules have been breached, to decide on the application of sanctions, the restoration of rights and the readmission of expelled Member States by a qualified two-thirds majority of Member States represented at the time of the vote, and to decide on the readmission of expelled members. The convention will also need to specify that the readmission of expelled members may only be considered and accepted by the General Assembly under specific conditions (establishing such conditions), only after a certain period of time (e.g. one year), and in any case only if the breach of OTIF rules that gave rise to the sanction is effectively rectified.
- Basic regulatory principle 6: While the non-exhaustive list of circumstances precluding wrongfulness of an act suggested by the OTIF Secretariat does not raise any specific objections at first sight, some of the listed circumstances precluding wrongfulness should be nuanced as per the last sentence of Article 22 and paragraph 2 of Article 23 of the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA). Moreover, the OTIF Secretariat should explain the suggested circumstances in more detail, possibly by providing examples of what such circumstances might involve in the context of rail transport. In next stages, the European Union could assess the list also taking into account these additional explanations.
- Ask that the proposal for new and/or revised Articles to COTIF and corresponding explanatory notes is prepared for the 8<sup>th</sup> session of the ad hoc Committee, with prior consideration by the ad hoc working group on sanctions that was set up by the ad hoc Committee, to ensure compliance with the obligations under COTIF. Indeed, it would be useful that the draft proposal from the OTIF Secretariat is first discussed within the ad hoc working group on sanctions, before being submitted (possibly in a revised form) to the ad hoc Committee. It is noted that the European Union has also asked the OTIF Secretariat to provide complementary information on a number of points, as detailed above. Moreover, given the many complex, sensitive and interconnected issues highlighted in the OTIF discussion paper, sufficient time should be devoted to the analysis of that proposal, including for proper EU coordination.



### Agenda Item 3 – China’s application for accession as an associate member of OTIF

*Annotated agenda: In April 2024, China deposited an application for accession to OTIF as an associate member and the Depositary initiated the accession procedure.*

*In July 2024, the European Commission lodged an objection to this application on behalf of the European Union with the number of votes equal to those of its members, which are also Member States of OTIF, stating that the EU was lodging the objection “[...] in order to obtain more time to consult, assess and reflect on the merits of the application from the People’s Republic of China. More specifically, in order to ensure an open and constructive dialogue in the General Assembly of OTIF, the European Union and its Member States would like to receive more information through the OTIF Secretariat on the motivation and objectives for the People’s Republic of China’s request for an associate membership of OTIF.”*

*In August 2024, in response to the objection, the external relations department of the National Railway Administration of China provided additional explanations and justification for its request for associate membership of OTIF.*

*In accordance with Article 37 § 4 of COTIF, China’s application for accession was submitted to the General Assembly at its 16th session for decision. The General Assembly discussed this item with China present and deferred its decision on China’s application to an extraordinary session to be convened in the first half of 2026. Further, the General Assembly instructed the Secretary General, together with the ad hoc Committee, to organise consultations with interested parties on China’s application before convening the extraordinary session of the General Assembly.*

*In order to progress this consultation with interested parties, a paper will be presented under this agenda item setting out the current situation, along with some questions for discussion and proposals for decision. Member States will be asked to engage and to present their views.*

#### Comments

Documents of the session: LAW-25012-JUR 7/3, LAW-25013-JUR 7/3

Reference is made to the position of the European Union on this issue adopted for the 16<sup>th</sup> OTIF General Assembly in September 2024<sup>4</sup>, and to the letter sent by the European Commission, after appropriate coordination with the Member States, to the OTIF Secretary-General on 20 February 2025, which is annexed to document LAW-25013-JUR 7/3 and which contains both (i) questions addressed to China regarding their application and (ii) questions addressed to the OTIF Secretariat regarding the rights of Associate Members.

<sup>4</sup> Council Decision (EU) 2024/2586 of 23 September 2024 on the position to be taken on behalf of the European Union at the 16<sup>th</sup> General Assembly of the Intergovernmental Organisation for International Carriage by Rail (OTIF) (OJ L, 2024/2586, 1.10.2024, p.1)

During the 7<sup>th</sup> session of the ad hoc Committee, interested OTIF Member States and the European Commission, on behalf of the European Union, are expected (i) to confirm that they are ready to raise and discuss concerns, to progress discussions and further consider China's application during 2025; and (ii) to consider the road map, including the proposed timescales, set out in LAW-25013-JUR 7/3, and adopt it, with any necessary modifications.

Regarding the questions addressed to China (point II), at this stage, the European Commission does not have any additional questions, and will assess possible questions raised by other non-EU members of the ad hoc Committee on the spot, in coordination with the Member States.

Regarding the questions addressed to the OTIF Secretariat (point III), detailed replies were provided in the OTIF position paper, evidencing in particular that OTIF organs operate according to different sets of rules and that rules applying to Associate Members are not always clear, explicit and consistent. For instance, Associate Members may be invited to the meetings of some OTIF organs with the agreement of a majority of the OTIF Member States, or may submit proposals on the agenda items if they are supported by a member of that organ, while there are no such limitations to Associate Members' rights in the case of other organs. In some cases, Associate Members may be excluded from taking part in the discussions of particular agenda items. Moreover, holding a nationality of a full OTIF Member State is not a requirement for recruitment according to OTIF Staff Regulations.

Regarding the road map (point IV), the European Union can agree to the proposed timeline for progressing matters in 2025. However, some clarifications and commitments should be sought from the OTIF Secretariat on the following aspects, and the road map amended accordingly.

#### Proposed EU position

- *Take note of the information presented by the OTIF Secretariat, and in particular thank the OTIF Secretariat for the comprehensive overview of the rights of Associate Members in OTIF organs.*
- *Recall that the comments made during the 7<sup>th</sup> session of the ad hoc Committee are without prejudice to the future European Union position on the decision concerning China's accession as an Associate Member, which is to be taken at the extraordinary session of the OTIF General Assembly in the first half of 2026.*
- *Stress that the questions sent in February 2025 to the OTIF Secretary-General by the European Commission, after appropriate coordination with the EU Member States, clearly show the willingness of the European Union to pursue constructive exchanges within OTIF on cooperating with China in the field of international rail transport, in the framework of the consultation process agreed by the 16<sup>th</sup> General Assembly.*
- *Consequently, agree that the ad hoc Committee should continue consultations regarding China's application.*

- Agree to adopt the road map contained in Annex LAW-25013-JUR 7/3, provided that the following issues are clarified and the road map is amended accordingly:
  - The OTIF Secretariat should commit to table proposals, within a reasonable timeframe, to review the rules applying to the rights and obligations of Associate Members, in particular with a view to making the rules applying to Associate Members consistent across the various OTIF organs. Those aspects should be clarified and the Rules of Procedures of the various OTIF organs amended accordingly before a decision is taken on China's accession as an Associate Member. In particular, the right for an Associate Member to submit proposals on the agenda items should be systematically subject to the support of at least one OTIF Member State. At the same time, due attention should be paid to the rights of Observers, in order to avoid situation where Observers have broader rights than Associate Members.
  - Consultations between the OTIF Secretariat and China are to take place before 31 July 2025. It is indicated that the OTIF Secretariat is supported, if relevant, by representatives of the ad hoc Committee. The OTIF Secretariat should further clarify this process, in particular under which conditions those representatives should take part in those consultations (namely which/how many representatives, when and how). The European Union may support the Secretariat in that task.
  - By 31 August 2025, the OTIF Secretary General is to update all OTIF members and China on progress, on the current positions of OTIF members and China, and on the potential dates and venues for the extraordinary session. As the position of the European Union will first have to be coordinated internally, it is not clear how the Secretary-General can update all OTIF members and China on that position, all the more so as it will be scheduled during a short timeframe in the middle of the summer recess.
  - Further consultations between all interested parties are to take place before 31 October 2025. The OTIF Secretariat should clarify (i) whether it intends to start those further consultations as of September only, or earlier, which would allow to incorporate their questions/concerns in the Secretariat's contacts with China before summer, (ii) which interested parties it intends to consult and how (e.g. in writing or through bilateral/multilateral meetings), and (iii) how the Secretariat intends to report back to the OTIF members on those further consultations.
  - Overall, it should be further clarified in which form China should reply to the OTIF members' detailed questions (in writing and/or in meetings?), whether this will be a dynamic process, and whether is it intended to invite China as an observer to the dedicated discussion at the 8th session of the ad hoc Committee on 2-4 December 2025.

## Agenda Item 4 – OTIF’s long-term strategy and 2025-2027 Work Programme

*Annotated agenda: Following the development of and consultation on OTIF’s long-term strategy with the assistance of the ad hoc Committee, at its 16th session, the General Assembly adopted the long-term strategy submitted to it by the Secretary General.*

*In order to bring the long-term strategy to life, the ad hoc Committee must discuss the activities needed to implement it. The ad hoc Committee is invited to do this in the context of its work programme for 2025-2027.*

*The 2025-2027 Work Programme will therefore be presented for discussion. It will pick up from the 2022-2024 Work Programme and include an initial consideration of the responses received to the consultation on potential revisions to COTIF and its contractual appendices that closed in January 2025.*

*OTIF Member States and registered stakeholders may also propose additional topics for inclusion in the work programme.*

### Comments

Documents of the session: LAW-25014-JUR 7/4, LAW-25015-JUR 7/4, LAW-25016-JUR 7/4, LAW-25017-JUR 7/4, LAW-24043-JUR 6/13, SG-24061-AG 16

Reference is made to the positions of the European Union on those issues adopted for the 6<sup>th</sup> session of the ad hoc Committee<sup>5</sup> and for the 16<sup>th</sup> session of the OTIF General Assembly<sup>6</sup>.

The proposed overall structure of the Work Programme, which focuses on the two areas of activity for the ad hoc Committee (legal affairs and international cooperation) and which are aligned with the Committee’s mandate and with OTIF’s long-term strategy, brings further clarity. However, some of the topics merit certain comments and modifications, in order for them to be supported.

Given the length and density of the proposed 2025-2027 work programme, which includes some new and high priority topics that will be resource-intensive, it is advisable not to propose any additional topics. Any additional topic that may be proposed by non-EU OTIF members during the ad hoc Committee meeting will need to be assessed and coordinated on the spot within the EU delegation.

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<sup>5</sup> ST 8572/24.

<sup>6</sup> Council Decision (EU) 2024/2586 of 23 September 2024 on the position to be taken on behalf of the European Union at the 16th General Assembly of the Intergovernmental Organisation for International Carriage by Rail (OTIF) (OJ L, 2024/2586, 1.10.2024, p.1)

## Proposed EU position

- Take note of the information presented by the OTIF Secretariat,
- Note in particular the ‘Consultation report on the potential revision of COTIF and its contractual appendices’ (LAW-25016-JUR 7/4) which includes quotes of the contribution of the European Union and its Member States of January 2025 to that consultation. Recall, as this was not explicitly quoted in the report, that the Union and its Member States have made the following general comments in their contribution: (i) at such an early stage, they do not intend to proactively advocate for major revisions of the above-mentioned Appendices; (ii) the modifications to COTIF and its Appendices which were adopted at the 12<sup>th</sup> and 13<sup>th</sup> General Assemblies (in 2015 and 2018 respectively) have not yet entered into force, and (iii) they stressed the importance of the strategic objective to “ensure the effective and uniform application of OTIF law”.
- With regard to the proposed 2025-2027 Work Programme as annexed in LAW-25017-JUR 7/4, and the related explanatory report, the European Union would like to make the following comments:
  - The proposed overall structure of the Work Programme, which focuses on the two areas of activity for the ad hoc Committee (legal affairs and international cooperation) and which is aligned with the Committee’s mandate and OTIF’s long-term strategy, brings further clarity and can be supported.
  - In line with the position it expressed at the 6<sup>th</sup> session of the ad hoc Committee when considering a possible 2025-2027 Work Programme, the European Union is of the view that the ad hoc Committee should explore ways of strengthening the effective and uniform application of OTIF law, for example by dissuading OTIF members from opting for the 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. In particular in a scenario where OTIF is expected to expand and welcome new members, it is important that cooperation remains meaningful, and that all parties are committed. The above-mentioned enforcement work could be carried out as part of point ‘1. Monitoring and assessment of the implementation of COTIF’ (under Part I. Legal affairs, A. Overarching matters and the Convention itself). To this end, point 1 should be supplemented with additional wording to explicitly reflect the related objective/scope of work/activity. Moreover, this point should be given a ‘high priority’ instead of ‘medium priority’.
  - The European Union supports point ‘2. Sanctions to ensure compliance with the obligations under COTIF’ (under I. Legal affairs, A. Overarching matters and the Convention itself) and the high priority given to it, including the proposal to reconvene the ad hoc working group on sanctions for the purpose of preparing modifications to COTIF and to the Explanatory Report.

- *The European Union supports point ‘3. Accession to COTIF and Associate Membership’ (under I. Legal affairs, A. Overarching matters and the Convention itself) and the high priority given to it, provided that the following is added: instruct the Secretariat to table proposals, within a reasonable timeframe, to review the rules applying to the rights and obligations of Associate Members, in particular with a view to making the rules applying to Associate Members consistent across the various OTIF organs. Those aspects should be clarified and the Rules of Procedures of the various OTIF organs amended accordingly before a decision is taken on China’s accession as an Associate Member. In particular, the right for an Associate Member to submit proposals on the agenda items should be systematically subject to the support of at least one OTIF Member State.*
- *The European Union considers that point ‘2. Liability for loss or damage caused by a vehicle (Article 7 of the CUV UR)’ (under I. Legal affairs, D. APPENDIX D: CUV UR) should be given a ‘high priority’ instead of ‘medium priority’.*
- *The European Union supports point ‘2. Involvement of states in the work of OTIF and the accession of states to COTIF’ (under II. International cooperation), provided that the following is taken on board: while this point relates to the 2<sup>nd</sup> strategic objective in OTIF’s long-term strategy (‘expand the application of OTIF law over the widest possible geographical area), it is important not to lose sight of the 1<sup>st</sup> strategic objective (‘ensure the effective and uniform application of OTIF’), and to highlight links with to the above-mentioned points concerning ‘Monitoring and assessment of the implementation of COTIF’ and ‘Accession to COTIF and Associate Membership’. These links should be made more explicit, to stress that the ultimate goal is to geographically expand the effective application of the entire OTIF law.*
- *The slight adaptations to other points in the proposed 2025-2027 work programme reflect the latest developments, in particular the responses to the OTIF consultation on potential revisions to COTIF and its contractual appendices that closed in January 2025, and can be accepted.*
- *Agree to adopt 2025-2027 Work Programme provided that the above-mentioned proposed amendments and remarks are taken on board.*

## Agenda Item 5 – Digitalisation under the CIM Uniform Rules

*Annotated agenda: Digitalisation of international transport, particularly freight transport documents, was a topic included in the 2022-2024 Work Programme, where the ad hoc Committee was instructed to ‘monitor and assess how digitalisation, and which specific aspects, should be supported and/or regulated by OTIF’.*

*At its 2nd session, the ad hoc Committee considered a preliminary inception paper on the digitalisation of international transport, particularly freight transport documents, and after consulting the Focal Points of the ad hoc Committee, the Secretariat initiated a survey on rules concerning electronic railway transport documents. The results of the survey were submitted to the 3rd session of the ad hoc Committee for consideration.*

*After discussing the results of the survey, the ad hoc Committee noted that there was at that time no immediate need to modify the CIM UR with regard to electronic railway transport documents and it instructed the Secretariat to submit to its next session a proposal for possible follow-up actions on the electronic railway transport documents under the CIM UR, taking into account the discussions that had taken place.*

*The OTIF Secretariat’s Legal Department then prepared an inception paper for the 4th session of the ad hoc Committee. The purpose of that inception paper was to provide the necessary background information and analysis to assess the suitability of the regulation of the international contract of carriage of goods under the CIM UR for paperless transport. At its 4th session, the ad hoc Committee adjourned discussions on the digitalisation of international transport, particularly freight transport documents, until its 5th session.*

*The question tackled by the ad hoc Committee at its 5th session was whether or not to revise the CIM UR. Reiterating its conclusion from the 3rd session that there was no immediate need at that stage to modify the CIM UR with regard to electronic railway transport documents, but at the same time being clear that it did want to continue discussions and potentially prepare possible modifications to the CIM UR, at its 5th session, the ad hoc Committee instructed the Secretariat to prepare an analytical working document for either the 6th or 7th session setting out possible modifications to the CIM UR to facilitate the use of electronic railway transport documents.*

*The analytical working document forms the basis for discussion at this session.*

### Comments

Documents of the session: LAW-25018-JUR 7/5, LAW-25019-JUR 7/5

Document LAW-25016-JUR 7/4 “Consultation report on the potential revision of COTIF and its contractual appendices” under agenda item 4 is also of relevance as it presents the respondents’ replies concerning digitalisation under CIM UR (see pages 7-9).

Reference is made to the recent contribution of the European Union and its Member States to the consultation on potential revisions to COTIF itself and its appendices on railway contract law, submitted to OTIF on 15 January 2025<sup>7</sup>, as well as to earlier positions of the European Union on this issue at the 5<sup>th</sup> session of the OTIF ad hoc Committee<sup>8</sup> and at the 26<sup>th</sup><sup>9</sup> and 25<sup>th</sup><sup>10</sup> sessions of the OTIF Revision Committee.

Based on the analytical working document LAW-25019-JUR 7/5, the ad hoc Committee is invited to consider the following questions:

- Should the CIM UR expressly encourage the development and use of electronic transport documents in the sector?
- If so, to what extent? Is it to make no immediate changes (**option A**), to make minor changes (**option B**) or to carry out a more comprehensive revision (**option C**)? All three options are described in detail, including the potential changes to CIM UR to be considered, advantages and disadvantages under each option.

In this context, it is worth recalling that, although all OTIF Member States do apply Appendix B (CIM UR)<sup>11</sup>, some of them apply it only on part of their railway network. Moreover, the modifications to COTIF and some of its Appendices adopted by the 12<sup>th</sup> and 13<sup>th</sup> General Assemblies, respectively in 2015 and 2018, have not yet entered into force due to an insufficient number of OTIF Member States having approved them to date.

Also, as pointed out in the contribution of the European Union and its Member States to the OTIF consultation, any future proposal to revise CIM UR will have to be analysed in light of the existing EU acquis in those fields. Indeed, CIM UR defines a consignment note, a document used for the performance of a contract of carriage, which has to be signed by the consignor and the carrier (Articles 6 to 8 CIM). Relevant Union legislation exists in relation to freight transport documents, notably:

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<sup>7</sup> Ref. Ares(2025)302344.

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

<sup>9</sup> Council Decision (EU) 2018/319 of 27 February 2018 establishing the position to be adopted on behalf of the European Union at the 26<sup>th</sup> session of the Revision Committee of the Intergovernmental Organisation for International Carriage by Rail as regards certain amendments to the Convention concerning International Carriage by Rail and to the Appendices thereto (OJ L 62, 5.3.2018, p. 10)

<sup>10</sup> Council Decision 2014/699/EU of 24 June 2014 establishing the position to be adopted on behalf of the European Union at the 25<sup>th</sup> session of the OTIF Revision Committee as regards certain amendments to the Convention concerning International Carriage by Rail (COTIF) and to the Appendices thereto (OJ L 293, 9.10.2014, p. 26)

<sup>11</sup>

<https://otif.org/fileadmin/docs/AboutOTIF/Convention/Geographical%20scope%20of%20COTIF%20and%20its%20appendices.pdf>

- Commission Implementing Regulation (EU) No 1305/2014 of 11 December 2014 on the technical specification for interoperability relating to the telematics applications for freight subsystem of the rail system in the European Union (TAF TSI)<sup>12</sup>, which lays down the technical specifications on how to digitalise consignment note information, and is mirrored in the Uniform Technical Prescriptions Telematics applications for freight services (UTP TAF) under COTIF Appendix F (APTU). See in particular point 4.2.1 *Consignment note data* of UTP TAF providing for functional and technical requirements for the exchange of electronic consignment note information;
- Regulation No 11 concerning the abolition of discrimination in transport rates and conditions<sup>13</sup>, which sets minimum requirements for freight transport documents (see in particular Article 6 of that Regulation);
- Regulation (EU) 2020/1056 on electronic freight transport information (the eFTI Regulation)<sup>14</sup>, which although does not make mandatory the use of electronic information/documentation for freight transport, establishes an obligation for competent authorities in Member States to accept information shared electronically by operators, under certain conditions and in a specific format. The information concerned is that identified through regulatory information requirements in EU and national law which, in most cases, refer to commercial freight transport documents such as the consignment note, including as defined through international conventions such as OTIF, in the case of rail.

With regard to the use of electronic consignment notes under CIM UR, it should be noted that their use would require an agreement on common functional and technical standards for the systems to be used for recording and exchanging the consignment notes between all the parties concerned. At the same time, any harmonised functional and technical requirements to digitally exchange consignment note information are already defined in the current Technical Specifications for Interoperability for Telematics Applications for Freight Service (TAF TSI), which are mirrored in the Uniform Technical Prescriptions Telematics applications for freight services (UTP TAF) under COTIF Appendix F (APTU). The possibility to use electronic consignment notes under CIM UR is however not referring to existing requirements.

Similarly, the eFTI Regulation establishes, through implementing EU legislation<sup>15</sup>, functional and technical requirements for the exchange of regulatory information – which constitutes in most cases,

<sup>12</sup> Commission Implementing Regulation (EU) No 1305/2014 of 11 December 2014 on the technical specification for interoperability relating to the telematics applications for freight subsystem of the rail system in the European Union and repealing the Regulation (EC) No 62/2006 (OJ L 356 12.12.2014, p. 438, ELI: <http://data.europa.eu/eli/reg/2014/1305>)

<sup>13</sup> Regulation No 11 concerning the abolition of discrimination in transport rates and conditions, in implementation of Article 79(3) of the Treaty establishing the European Economic Community (OJ 52, 16.8.1960, p. 1121).

<sup>14</sup> Regulation (EU) 2020/1056 of the European Parliament and of the Council of 15 July 2020 on electronic freight transport information (OJ L 249, 31.7.2020, p. 33–48)

<sup>15</sup> Commission Implementing Regulation (EU) 2024/1942 of 5 July 2024 laying down common procedures and detailed rules for accessing and processing electronic freight transport information by competent authorities in accordance with Regulation (EU) 2020/1056 of the European Parliament and of the Council (OJ L, 2024/1942, 20.12.2024,

as noted above, parts of or the entirety of transport documents/consignment notes – between operators and authorities.

While the background and users of TAF TSI and CIM UR are different, the regulations are complementary when it comes to the use of the consignment note. Synergies between the two should therefore be promoted, so that it is easy for the parties to a contract of carriage to use an electronic consignment note for their commercial purpose on one hand and use the relevant parts of the information contained in the electronic consignment note to comply with TAF TSI on the other hand. At the same time, unnecessary conversion of data should be avoided. Those elements should be taken into account in any future discussions on possible revisions of CIM UR.

When it comes to the use of the consignment note and its accompanying documents in the context of customs and sanitary and phytosanitary (SPS) procedures applying in the European Union, it is worth noting as a point of context that, since 20 January 2025, the standard transit declaration under NCTS<sup>16</sup> phase 5 will be applied, i.e. no electronic form of the CIM consignment note will be allowed as a transit declaration *per se*. An electronic consignment note can however be used as accompanying document.

Any future discussion on possible revisions of the CIM consignment note should take these aspects into account and assess their potential impacts.

The OTIF Secretariat's analytical paper is useful to assess the pros and cons of possible modifications to the CIM UR with a view to facilitating the use of electronic railway transport documents.

Having weighed the pros and cons of the three options, A (not to prepare possible modifications to the CIM UR and to close the discussions for the time being), B (to continue the discussions and prepare/consider possible minor modifications to the CIM UR ) and C (significantly amending and updating the CIM UR to provide fully and expressly for the use of electronic transport documents and electronic communications), as described in the analytical working document, it appears that **Option C** would be a pragmatic choice to balance the challenges of functional equivalence (i.e. interoperability) underlined in that document with the essential digitalisation of rail towards paperless transport. Indeed, option C would allow to ensure consistency with existing interoperability framework that could also allow to reasonably limit the resources invested in this exercise given existing common functional and technical standards to be used as models. In line with the EU reply to the earlier OTIF consultation, it will however be essential to ensure that any future proposal to

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ELI: [http://data.europa.eu/eli/reg\\_impl/2024/1942/oj](http://data.europa.eu/eli/reg_impl/2024/1942/oj); ; Commission Delegated Regulation (EU) 2024/2024 of 26 July 2024 supplementing Regulation (EU) 2020/1056 by establishing the eFTI common data set and eFTI data subsets (OJ L, 2024/2024, 20.12.2024, ELI: [http://data.europa.eu/eli/reg\\_del/2024/2024/oj](http://data.europa.eu/eli/reg_del/2024/2024/oj)). Four additional acts – two implementing regulations and two delegated regulations – containing further functional and technical specifications are currently under preparation and expected to be adopted by December 2025, see [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives\\_en?text=eFTI](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives_en?text=eFTI).

<sup>16</sup> The New Computerised Transit System (NCTS) involves all EU Member States and Common Transit Convention (CTC) contracting parties.

revise CIM UR is compatible with the European Union legislation covering those matters, as described above, and this aspect should be stressed in the EU position.

#### Proposed EU position

- *Take note of the information presented by the OTIF Secretariat, and in particular thank the Secretariat for the comprehensive analytical paper presenting the three options and the corresponding advantages and disadvantages, which paves the way for informed discussions on the possible digitisation of CIM UR.*
- *Recall that the comments provided during the 7th session of the ad hoc Committee are without prejudice to the European Union position on any subsequent proposals to modify COTIF or any of its Appendices, in particular when it comes to decisions to be taken in OTIF Revision Committee and General Assembly meetings.*
- *Agree that the ad hoc Committee should pursue **Option C** of its analytical working document, in order to amend and update the provisions of the CIM UR to provide fully and expressly for the use of electronic transport documents, ensuring, where relevant, synergies between CIM UR and functional and technical requirements part of TAF TSI point 4.2.1.*
- *Consequently instruct the Secretariat to prepare proposals to amend and update the provisions of the CIM UR to provide fully and expressly for the use of electronic transport documents, with a view to ensure, where relevant, synergies between CIM UR and functional and technical requirements part of TAF TSI point 4.2.1, and taking into account the following principles, as further detailed in document LAW-25018-JUR 7/5, with one specific addition concerning the EU legislation in the fifth bullet point:*
  - *minimal intervention;*
  - *non-discrimination of paper-based and paperless transport;*
  - *technological neutrality;*
  - *functional equivalence;*
  - *compatibility with international electronic commerce law and transport law, in particular with the European Union legislation covering those matters;*
  - *take into account current practices and solutions in the railway sector;*
  - *give due respect to the autonomy of the parties involved in the carriage of goods.*

## Agenda Item 6 – Wagon law

Annotated agenda: This agenda item tackles two topics under the heading of wagon law:

- the law on the movement of empty wagons;
- the law on liability under Article 7 of the CUV UR.

The 2022-2024 Work Programme of the ad hoc Committee included separate scope of work to monitor and assess the application of COTIF rules to the movement of empty freight wagons and to monitor and assess the application of provisions on liability for loss or damage caused by a vehicle (Article 7 of the CUV UR). Both items required relevant stakeholders to be identified, surveys to be carried out, the relevant regulatory practice of other international organisations to be considered and an assessment of the relevant application of each set of rules, proposing any follow-up actions.

Due to other priority items and resource constraints, the law on the movement of empty wagons was not considered at all as part of the 2022-2024 Work Programme. Noting the report on its activities (which included the status of the items included in the 2022-2024 Work Programme), at its 16th session, the General Assembly extended the mandate of the ad hoc Committee, so this topic is now included for this session and has been included as an item in the 2025-2027 Work Programme. A paper will be presented that provides details of the law in this area and proposes some questions to form the basis of a consultation with the sector.

In relation to the second topic, liability under Article 7 of the CUV UR, at its 5th session, Switzerland informed the Committee that it was discussing whether it was necessary to adapt the regulations on liability and insurance in the event of accidents in the rail sector. Switzerland submitted a request from its Parliament to the ad hoc Committee 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 loss or damage caused by a vehicle. This request stemmed 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 prepared a survey in close cooperation with the Federal Office of Transport.

The survey received responses from 23 OTIF Member States, demonstrating the high level of interest Member States have in this issue and a report of the consultation was prepared setting out member by member the detail of the responses received on the rules applicable in OTIF members' internal law on liability and insurance in the event of damage caused by a vehicle.

The report was presented to the 6th session of the Committee in April 2024 and its contents were noted. It was also noted that the topic of liability for loss or damage caused by a vehicle (Article 7 of the CUV UR) had been included in the 2022-2024 Work Programme, but that due to other priorities, the work that went with that had not yet been completed. As with the law on the movement of empty wagons, it was proposed that this topic would therefore be included in the 2025-2027 Work Programme. A paper will be presented that provides details of the law in this area and proposes some questions to form the basis of a consultation with the sector.

*It is noted that the responses received to the recent survey on potential revisions to COTIF itself and its appendices on railway contract law (CIV UR, CIM UR, CUV UR and CUI UR) will be taken into account, where relevant, when proposing additional consultations with the sector.*

## Comments

Documents of the session: LAW-25020-JUR 7/6, LAW-25021-JUR 7/6, LAW-25022-7/6, LAW-24039-JUR 6/11, LAW-24040-JUR 6/11

Reference is made to the positions of the European Union on this issue at the 25<sup>th</sup><sup>17</sup> and 26<sup>th</sup><sup>18</sup> sessions of the OTIF Revision Committee, at the 6<sup>th</sup> session of the ad hoc Committee<sup>19</sup>, and to the contribution of the European Union and its Member States to the consultation on potential revisions to COTIF itself and its appendices on railway contract law, submitted to OTIF on 15 January 2025<sup>20</sup>.

The ad hoc Committee will be invited to discuss documents LAW-25021-JUR 7/6 ‘Wagon Law. The movement of empty freight wagons’ and LAW-25022-JUR 7/6 ‘Wagon Law. Liability under Article 7 of the CUV UR’, which lists suggestions for questions to be included in dedicated surveys of OTIF members and the wider sector on those two topics. The former document addresses the movement of empty freight wagons and the liability for loss or damage caused to wagons, with references to relevant provisions Appendix B (CIM UR) and Appendix D (CUV UR) to COTIF. The latter document essentially refers to Appendix D (CUV UR).

The European Union should agree as to the principle of launching these two surveys, which are only a very preliminary stage before any concrete proposals for amending COTIF and/or its Appendixes is tabled.

## Proposed EU position

- *Note documents LAW-25021-JUR 7/6 and LAW-25022-JUR 7/6.*
- *Agree to instruct the Secretariat (i) to carry out surveys of the sector in relation, on the one hand, to the movement of empty freight wagons and, on the other hand, to liability for damage caused by a wagon under Article 7 of the CUV UR, and (ii) to report the results of the surveys and submit proposals for next steps to the ad hoc Committee at its 8th session.*

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<sup>17</sup> Council Decision 2014/699/EU of 24 June 2014 establishing the position to be adopted on behalf of the European Union at the 25th session of the OTIF Revision Committee as regards certain amendments to the Convention concerning International Carriage by Rail (COTIF) and to the Appendices thereto (OJ L 293, 09/10/2014, p. 26–33).

<sup>18</sup> Council Decision (EU) 2018/319 of 27 February 2018 establishing the position to be adopted on behalf of the European Union at the 26th session of the Revision Committee of the Intergovernmental Organisation for International Carriage by Rail as regards certain amendments to the Convention concerning International Carriage by Rail and to the Appendices thereto (OJ L 62, 5.3.2018, p. 10–17).

<sup>19</sup> ST 8572/24 (under item 11).

<sup>20</sup> Ref. Ares(2025)302344.

- Recall that the launch of such surveys is without prejudice to the European Union position to be established on any possible future proposals to revise COTIF and/or its Appendixes, in particular CIM and/or CUV UR, in relation to the above-mentioned issues.

## **Agenda Item 7 – Handbook on COTIF and its implementation and application by international associations: International passenger transport by rail (contract law and operational instruments and tools)**

*Annotated agenda: Following the ad hoc Committee's instructions, in cooperation with CIT, ERFA, RNE, UIC and UIP, the Secretariat's Legal Department prepared the 'Handbook on International Freight Transport by Rail (Contract Law and Operational Instruments and Tools)', which was published on 15 October 2024.*

*The handbook outlines the railway law established by COTIF and describes the different roles and responsibilities of international associations supporting the application of COTIF in the day-to-day business of international rail transport.*

*A second, similar handbook is being prepared by the Secretariat, this time to address international passenger transport by rail. The Secretariat will inform the ad hoc Committee of progress on the development of the 'Handbook on International Passenger Transport by Rail (Contract Law and Operational Instruments and Tools)'.*

### Comments

Documents of the session: LAW-25023-JUR 7/7, LAW-25024-JUR 7/7

Reference is made to the position of the EU on this issue at 5<sup>th</sup> <sup>21</sup> and 6<sup>th</sup> <sup>22</sup> sessions of the ad hoc Committee.

At its 7<sup>th</sup> session, the ad hoc Committee is invited to discuss the draft Handbook on the International Carriage of Passengers by Rail (Contract Law and Operational Instruments and Tools) (LAW-25024-JUR 7/7). Following those discussions, the OTIF Secretariat will finalise and publish this second part of the Handbook on passengers, as it has already been the case for the first part on freight<sup>23</sup>.

Similarly to the first part of the Handbook, it is important to recall that this second part is of an informative nature and as such, should not constitute any endorsement on behalf of OTIF of any

<sup>21</sup> ST 14667/23

<sup>22</sup> ST 8572/24

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[https://otif.org/fileadmin/docs/LegalTexts/COTIF/RailwayContractLaw/Handbook\\_on\\_COTIF\\_and\\_its\\_implementation\\_Freight-transport.pdf](https://otif.org/fileadmin/docs/LegalTexts/COTIF/RailwayContractLaw/Handbook_on_COTIF_and_its_implementation_Freight-transport.pdf)

particular tool or instrument developed by international associations, and it is not intended to replace or duplicate existing documents, in particular the Consolidated Explanatory Report to COTIF.

In light of the above, it is proposed to welcome the Handbook on the International Carriage of Passengers by Rail as presented and, if need be, to recall the earlier EU position as it comes to the other related issues.

#### Proposed EU position

- *Take note of the information presented by the OTIF Secretariat.*
- *Welcome the second part of the handbook, i.e. the draft Handbook on the International Carriage of Passengers by Rail (Contract Law and Operational Instruments and Tools) as presented (LAW-25024-JUR 7/7) and agree to its finalisation and publication by the OTIF Secretariat.*

#### **Agenda Item 8 – Stakeholder involvement and international cooperation**

*Annotated agenda: This is a standing agenda item to keep the ad hoc Committee regularly informed about issues relating both to stakeholder involvement in the activities of the ad hoc Committee and to international cooperation, particularly with international organisations and associations. In particular, the ad hoc Committee will be asked to consider the application received recently from an individual wishing to become a registered stakeholder, to which Russia has objected.*

#### Comments

Documents of the session: LAW-25025-JUR 7/8

Reference is made to the position of the European Union on this issue at the 2<sup>nd</sup> session<sup>24</sup> of the ad hoc Committee.

According to point 5.1 of the ‘Recommendation on involving stakeholders in OTIF’s work’ (OTIF-22002-JUR 2), which was adopted by the ad hoc Committee at its 2<sup>nd</sup> session, registered stakeholders should have the right ‘to be (a) invited to relevant OTIF meetings or parts of them as observers without any additional administrative procedures; (b) authorised to submit and present opinions with regard to subjects discussed by OTIF organs, provided that these discussions are not restricted to OTIF members; (c) given the opportunity to submit a written opinion before the relevant OTIF organ takes a decision by written procedure on proposals for or modification to COTIF or the Explanatory Report to it (...); (d) given the opportunity to suggest subjects for consideration for a work programme

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<sup>24</sup> ST 7518/22.

or particular meeting; (e) consulted and actively involved in relevant OTIF activities, such as written consultations, data collection for the monitoring and assessment of legal instruments'. Pursuant to point 5.2, these rights are 'without prejudice to COTIF and applicable Rules of Procedure, in particular, the fact that certain meetings or parts of them, as well as documents, may be restricted to OTIF members'.

In accordance with point 4.3 of that Recommendation, 'the relevant OTIF organ should grant the status of registered stakeholder on the basis of the application, taking into account the opinion of the Secretariat. To the extent possible, such decisions should be taken by means of a written tacit procedure and by consensus. The members of the relevant OTIF organ must be given at least 14 days from the submission by the Secretariat of an application for decision to express their objections. If there is at least one objection, the relevant OTIF organ should consider the application in question at its next session'. Interestingly, point 4.4 of the Recommendation provides that 'the relevant OTIF organ may suspend or revoke the status of registered stakeholder by applying - mutatis mutandis - the procedure set out in point 4.3 in case of non-compliance with the principles set out in point 3'.

At the 7<sup>th</sup> session of the ad hoc Committee, there are essentially two issues to be considered under agenda item 8:

- (i) Whether to grant registered stakeholder status to railway law expert Mr Peter Pázmány (Head of the International and EU Law Division at České dráhy, a.s.), after the Russian Federation has lodged an objection to that individual application.
- (ii) Whether to modify the procedure for granting that status, by increasing the threshold from the objection by one member only to one third of the members of the ad hoc Committee, in order to require that the application is considered by the ad hoc Committee at its next session. This proposed change would apply specifically to the ad hoc Committee, thus derogating from the general rule set in the above-mentioned OTIF Recommendation. The OTIF Secretariat justifies these proposed amendments by the need to ensure a fairer and more balanced approach to stakeholder inclusion, and to simplify the administrative process.

Regarding the first issue, from the European Union perspective, the present application of Mr Peter Pázmány is considered legitimate, in particular given his professional background in rail, and should be supported. This is also the recommendation of the OTIF Secretariat.

The second issue raises a number of questions, also given that an objection to an application as a registered stakeholder is unprecedented.

- The OTIF Secretariat proposes only to derogate from point 4.3 of the Recommendation (without amending the Recommendation as such). It is questionable why the ad hoc Committee should deviate from the general rule. Besides, such a derogation may leave room for interpretation when it comes to the application of point 4.4 to the ad hoc Committee, where the procedure set in point 4.3 applies mutatis mutandis. In case changes to the procedure would be considered necessary, it would be preferable to amend the Recommendation, for the sake of clarity and consistency.

- It is not excluded that in the future, the European Union and its Member States may want to object to an application to be granted registered stakeholder status. Should the ad hoc Committee deviate from the general rule, or the Recommendation be amended in the future, it may be advisable to extend from the current 14 days deadline to lodge an objection to two months, to anticipate cases where coordination at EU level would be needed.
- Pursuant to point 6 of the Recommendation, ‘if several OTIF organs decide to apply this Recommendation, the Secretariat of OTIF should consider harmonising its implementation and consolidating the lists of registered observers, if this would be useful’. Given the issues at stake, the OTIF Secretariat should inform the ad hoc Committee whether this Recommendation has been applied by other organs so far.

### Proposed EU position

- *Grant registered stakeholder status to Mr Peter Pázmány (České dráhy, a.s.).*
- *Ask the OTIF Secretariat to inform the ad hoc Committee whether the ‘Recommendation on involving stakeholders in OTIF’s work’ (OTIF-22002-JUR 2) has been applied by other OTIF organs so far.*
- *Ask the OTIF Secretariat to further explain its proposal to modify point 3 of agenda item 3 ‘Enhancing stakeholder involvement’ of OTIF-22001-JUR 2 ‘Décisions 07.04.2022/Beschlüsse 07.04.2022/Decisions 07.04.2022’ and in particular to clarify (i) why it was not instead considered to amend the ‘Recommendation on involving stakeholders in OTIF’s work’, and (ii) how the proposed derogation from point 4.3 of that Recommendation, in the particular case of the ad hoc Committee, would impact the application of point 4.4 of the Recommendation.*
- *Not approve the proposed modification of the above-mentioned point 3 of agenda item 3<sup>25</sup> at this 7th session of the ad hoc Committee, pending further clarifications.*
- *Invite the OTIF Secretariat to consider proposing amendments to the ‘Recommendation on involving stakeholders in OTIF’s work’ in order for it to require an objection of at least one third of the members of the committee for that objection to be considered at the next session of the ad hoc Committee, and also to consider extending the current 14-day deadline to lodge such an objection to two months.*

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<sup>25</sup> The proposal from the OTIF Secretariat is to modify point 3 of agenda item 3 ‘Enhancing stakeholder involvement’ of OTIF-22001-JUR 2 ‘Décisions 07.04.2022/Beschlüsse 07.04.2022/Decisions 07.04.2022’ to read as follows:

*‘by derogation from point 4.3 of the Recommendation (OTIF-22002-JUR 2), decided that the status of “registered stakeholder” should be granted by means of a written procedure. The members of the ad hoc Committee shall be given at least 14 days from the Secretariat’s submission of an application for decision to express objections. If fewer than one third of the members object, the application shall be deemed to be accepted; otherwise, the ad hoc Committee shall consider the application in question at its next session;’*

## Agenda Item 9 – OTIF’s copyright and open access policy

*Annotated agenda: At its 4th session, the ad hoc Committee updated its 2022-2024 Work Programme to include the legal protection of OTIF’s name, abbreviation, logo and works.*

*The aim of this new item in the work programme was to examine the legal requirements to ensure legal protection of OTIF’s name, abbreviation, logo and works and to determine measures to this effect.*

*The Secretariat’s Legal Department prepared an inception paper to provide the necessary background information and analysis on possible actions to enhance the legal protection of OTIF’s name, abbreviation, logo and works. Based on that paper, 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, and 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.*

*The 6th session of the ad hoc Committee approved the proposal for a decision on copyright and open access and the proposal for explanatory notes on the decision on copyright and open access put to it and instructed the Secretariat to submit the approved proposals to the next ordinary session of the General Assembly for adoption.*

*At its 16th session, the General Assembly adopted the decision on copyright and open access and approved the supporting explanatory notes. Article 4 of that decision requires, with the approval of the ad hoc Committee, that the Secretary General adopts an OTIF copyright and open access policy based on the general principles set out in Article 3 of that decision.*

*A draft copyright and open access policy will be presented to the 7th session and the ad hoc Committee will be asked to discuss the policy and consider the proposals for decision.*

### Comments

Documents of the session: LAW-25026-JUR 7/9, LAW-25027-JUR 7/9

Reference is made to the position of the European Union on this issue at the 4<sup>th</sup> <sup>26</sup>, 5<sup>th</sup> <sup>27</sup> and 6<sup>th</sup> <sup>28</sup> sessions of the ad hoc Committee.

The proposed OTIF copyright and open access policy establishes the principle of OTIF works being openly accessible under the Creative Commons (CC) ‘Attribution only’ licence (CC BY) (point 3.3. of the policy). This licence allows re-users to distribute, remix, adapt, and build upon the material in

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<sup>26</sup> ST 07549/22.

<sup>27</sup> Council Decision (EU) 2023/2582 of 8 November 2023 on the position to be taken on behalf of the European Union at the 5<sup>th</sup> session of the OTIF ad hoc Committee on Legal Affairs and International Cooperation (OJ L, 2023/2582, 16.11.2023, p. 1).

<sup>28</sup> ST 8572/24.

any medium or format, so long as attribution is given to the creator, and allows for commercial use. By making OTIF works available under the CC BY licence by default, anyone referencing or making use thereof is free to re-use the material, even commercially, as is usually the case in legal publications, and freely choose how to protect their work.

The possibility of imposing certain copyright restrictions (points 3.1. and 3.2. of the policy) was introduced to account for the resources spent on developing certain OTIF works, most notably RID. This provision allows for OTIF to recover its expenses, without infringing on OTIF members' rights to make full and fair use of OTIF works.

This policy was drafted to implement the General Assembly's decision on copyright and open access, taking into account the provisions on the re-use of administrative documents in the European Union under Directive (EU) 2019/1024 on open data and the re-use of public-sector information<sup>29</sup>, as further detailed in document LAW-25026-JUR 7/9.

It is considered that the proposed OTIF copyright and open access policy is indeed in line with Directive (EU) 2019/1024 and can therefore be supported.

#### Proposed EU position

- *Take note of the information presented by the OTIF Secretariat, and thank the Secretariat for having taken into account compliance with Directive (EU) 2019/1024 on open data and the re-use of public-sector information OTIF's copyright and access policy when designing OTIF's copyright and access policy.*
- *Approve OTIF's copyright and access policy as annexed (LAW 25027-JUR 7/9), with a view to having it adopted by the Secretary General according to Article 4 of the decision on copyright and open access policy (OTIF-24009-AG16).*

#### **Agenda Item 10 – Information from members of the ad hoc Committee**

Annotated agenda: 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.

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<sup>29</sup> 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).

## **Agenda Item 11 – Information from the registered stakeholders and intergovernmental organisations**

*Annotated agenda: 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.*

### Comments

No document available.

## **Agenda Item 12 – Information from the Secretariat**

*Annotated agenda: The Secretariat will inform the ad hoc Committee about relevant developments, in particular:*

- Monitoring and assessing the implementation of COTIF: 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 continued call for identification of registered stakeholders;*
- UNCITRAL work on a negotiable multimodal transport document;*
- Etc.*

### Comments

No document available.

### **Agenda Item 13 – Adoption of decisions**

*Annotated agenda: This is a new standing agenda item intended to give the ad hoc Committee the opportunity to adopt the decisions from the session as a whole (noting that it will not replace the editorial work that will take place after the session) and to deal with items that have been postponed during the session and should only be discussed with Member States that are present.*

#### Comments

No document available

#### Proposed EU position

- *As specified under the relevant agenda items.*

### **Agenda Item 14 – Any other business**

*Annotated agenda: An opportunity for Member States and the Secretariat of OTIF to raise any additional issues.*

#### Comments

No document available