



EUROPEAN
COMMISSION

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Proposal for a

COUNCIL DECISION

**establishing the position to be adopted by the 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 its Appendices**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The proposed Council Decision has the objective to establish the position of the European Union at the OTIF Revision Committee due to take place from 25 to 27 June 2014 as regards certain amendments to the Convention concerning International Carriage by Rail (COTIF) as well as to its Appendices B (Uniform Rules concerning the Contract of International Carriage of Goods by Rail – CIM), D (Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic – CUV), E (Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic – CUI), F (Uniform Rules concerning the Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic – APTU) and G (Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic – ATMF) which are due to be decided upon by the said committee.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The amendments to Appendix G (ATMF) and to Appendix D (CUV) have been discussed at several meetings of dedicated working groups within the Intergovernmental Organisation for International Carriage by Rail (OTIF). Both the European Commission and the European Railway Agency (ERA) have taken part actively in all these meetings, together with a number of Member States. However, other proposals have not been discussed at preparatory meeting within OTIF before presenting them to the Revision Committee.

3. LEGAL ELEMENTS OF THE PROPOSAL

The Union acceded to COTIF in July 2011 by virtue of Council Decision 2013/103/EU¹. COTIF is a mixed agreement where both the Union and all Member States having a railway network are contracting parties. Annex III to the Decision establishes the internal arrangements for the Council, the Member States and the Commission in proceedings under OTIF. In matters of exclusive EU competence, the EU votes with the number of votes of all Member States which are parties to COTIF. There are 26 EU Member States that are also Member States of OTIF. However, 3 EU Member States have not ratified COTIF 1999 while 3 EU Member States have not withdrawn their declarations concerning the non-application of Appendices E (CUI) and F (APTU) and 4 EU Member States have not withdrawn their declarations concerning the non-application of Appendix G (ATMF) made when these Appendices were still incompatible with EU law. As a result, these EU Member States cannot vote on amendments which concern provisions they do not apply. OTIF has 46 active Member States (membership of 2 other members has been suspended until international rail traffic is restored).

¹ Council Decision 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 of 23.2.2013, p. 1.

In accordance with Article 35 of Title VI of COTIF, once decided upon by the Revision Committee, the amendments shall enter into force for all contracting parties on the first day of the twelfth month following that during which the Secretary General of OTIF has given notice of them to the contracting parties. A contracting party may formulate an objection within the period of four months from the day of the notification. In the case of objection by one-quarter of the Contracting Parties, the modification shall not enter into force.

In the contracting parties which have formulated objections against a decision within the foreseen period, the application of the Appendix in question shall be suspended, in its entirety, from the moment the decisions take effect, in so far as it concerns traffic with and between those parties. However, in the case of objection to the validation of a technical standard or to the adoption of a uniform technical prescription, only that standard or prescription shall be suspended in respect of traffic with and between the Member States from the time the decisions take effect; the same shall apply in the case of a partial objection.

Unless a sufficient number of objections are raised by the parties, the amendments concerned under this proposal are expected to enter into force on the twelfth month following that during which the Secretary General of OTIF has given notice of them to the contracting parties. As from that date, they will become binding on the Union and the Member States, forming an integral part of the Union *acquis*.

Article 38 of Title VII of COTIF establishes that for the purposes of the exercise of the right to vote and the right to object provided for in Article 35§2 and 35§4, the regional organisation, in particular the European Union shall enjoy the number of votes equal to those of its members which are also Member States of the Organisation.

The proposal has been developed based on the provisions of the Council Decision on EU accession to COTIF (Decision 2013/103/EU). The legal basis of the proposed Council Decision is Article 91 TFEU in conjunction with Article 218(9) TFEU.

The proposal for a Council Decision provides for in its Annex a detailed list of the envisaged amendments, specifying which amendments can be accepted by the Union as presented by the Secretary General and which amendments should be rejected at this session of the Revision Committee as they require further consideration and/or further measures to bring them in line with EU law. A large number of the envisaged amendments are considered to be appropriate for safe and reliable international rail transport, taking into account technological progress, and can therefore be supported while some amendments (in particular the ones regarding financing of OTIF or contracts of carriage of goods) have no impact on EU law.

Where the amendments adopted by the Revision Committee are not in accordance with the Union's position established in the Annex to the draft Decision, the Union should formulate an objection following the procedure established in Article 35.4 of Title VI of COTIF in order to avoid such amendment to enter into force.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91 in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Union acceded to the Convention concerning International Carriage by Rail of 9 May 1980 as amended by the Vilnius Protocol of 3 June 1999 (hereinafter referred to as the "COTIF Convention", by virtue of 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 (OTIF) on the accession of the European Union to the said Convention².
- (2) All Member States, with the exception of Cyprus and Malta, apply the COTIF Convention.
- (3) The Revision Committee set up in accordance with Article 13.1(c) of the COTIF Convention, at its 25th session due to take place from 25 to 27 June 2014, is expected to decide upon certain amendments to the COTIF Convention as well as to its Appendices B (Uniform Rules concerning the Contract of International Carriage of Goods by Rail – CIM), D (Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic – CUV), E (Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic – CUI), F (Uniform Rules concerning the Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic – APTU) and G (Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic – ATMF).
- (4) The amendments to the COTIF Convention have the objective (a) to update the tasks of the Committee of Technical Experts and a reference to the definition of “keeper” in line with EU law and (b) to modify certain rules concerning the financing of OTIF, its auditing and reporting as well as minor administrative changes.
- (5) The amendments to Appendix B (CIM) aim at giving preference to the electronic form of the consignment note and its accompanying documents and at clarifying certain provisions of the contract of carriage.
- (6) The amendments to Appendix D (CUV) presented by the Secretary General of OTIF have the objective to clarify the roles of the keeper and the entity in charge of

² OJ L 51 of 23.2.2013, p.1.

maintenance in the contracts of use of vehicles in international rail traffic. France has presented a separate proposal concerning the liability for damage caused by a vehicle.

- (7) The amendments to Appendix G (ATMF) aim at updating the provisions concerning the technical admission of railway material used in international traffic, clarifying the functions of and relations between the Contracting State, the competent authority and the assessing entity as well as harmonising terms in line with EU law.
- (8) The amendments to Appendix F (APTU) aim at maintaining consistency with the revised Appendix G.
- (9) The amendments to Appendix E (CUI) suggested by the CIT aim at extending the scope of the uniform rules concerning the contract of use of infrastructure to domestic rail transport, at creating a legal basis for general terms and conditions of use of railway infrastructure and at extending the liability of the infrastructure manager for damage or losses caused by the infrastructure.
- (10) The Secretary General of OTIF also proposes editorial changes to replace the term “European Communities” by “European Union” throughout the COTIF Convention and its Appendices.
- (11) Most of the proposed amendments are in line with the law and with the strategic objectives of the European Union, and should therefore be supported by the Union. Certain amendments have no impact on EU law and don’t need a position to be agreed at EU level. Finally, some amendments need more discussion within the European Union and should be rejected at this meeting of the Revision Committee. Should the latter amendments be approved without modification acceptable for the Union, the Union should formulate an objection following the procedure established in Article 35.4 of the COTIF Convention.

HAS ADOPTED THIS DECISION:

Article 1

Position of the European Union

1. The position to be taken by the European Union at the 25th session of the Revision Committee in the framework of the Convention concerning International Carriage by Rail shall be in accordance with the Annex to this Decision.
2. Minor changes to the documents mentioned in the Annex to this Decision may be agreed by the representatives of the Union in the Revision Committee without further Decision of the Council.

Article 2

After its adoption, the Decision of the Revision Committee shall be published in the Official Journal of the European Union.

Article 3
Entry into force

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council
The President