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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the 55th session of the Organisation for International Carriage by Rail Committee of Experts for the Carriage of Dangerous Goods as regards certain amendments to Appendix C to the Convention concerning International Carriage by Rail as applicable from 1 January 2019

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Organisation for International Carriage by Rail (OTIF) Committee of Experts for the Carriage of Dangerous Goods ('RID Expert Committee') due to take place on 30 May 2018 in connection with the envisaged adoption of certain amendments to the technical and administrative provisions contained in the Annex to Appendix C to the Convention concerning International Carriage by Rail (COTIF), which are due to be decided by the said committee.

2. CONTEXT OF THE PROPOSAL

2.1. The Regulations concerning the International Carriage of Dangerous Goods by Rail (RID)

The Regulations concerning the International Carriage of Dangerous Goods by Rail aim to regulate the international transport of dangerous goods by rail between the OTIF Member States that apply RID rules (RID Contracting States). The European Union is a party to the Agreement¹, although two of its Member States, Cyprus and Malta, are not Contracting States to the Agreement.

2.2. The RID Expert Committee

The RID Expert Committee is set up under the COTIF in order to decide on the amendments to RID. It is made up by representatives of the OTIF Member States that apply RID and of the Union. Each OTIF Member State has a vote, and where an agenda item deals with matters of exclusive Union competence, the Commission will vote for the Union².

The international provisions relating to the transport of dangerous goods are established in various international organisations, such as OTIF, United Nations Economic Commission for Europe (UNECE) and various specialised bodies of the United Nations. Since the rules need to be compatible with one another, a complex international system for coordination and harmonisation has been developed between the organisations involved in this work. The provisions are adapted following a two-year cycle.

A large range of public and private sector experts has been consulted during the preparation of these amendments. The following technical meetings have been carried out during the development of these amendments:

- at the UN ECOSOC Sub-Committee of Experts on Transport of Dangerous Goods in its:
 - (1) 47th session in Geneva, 22-26 June 2015,
 - (2) 48th session in Geneva, 30 November - 9 December 2015,
 - (3) 49th session in Geneva, 27 June - 7 July 2016,

¹ Council Decision 2013/103/EU of 16 June 2011 on the signing and conclusion of the Agreement between the European Union and the Intergovernmental Organisation for International Carriage by Rail on the Accession of the European Union to the Convention concerning the 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).

² Point 3.1 of Annex III to Council Decision 2013/103/EU.

- (4) 50th session in Geneva, 28 November - 6 December 2016,
 - at the UNECE – OTIF Joint meeting of the RID Expert Committee and the Working Party on the Transport of Dangerous Goods in its:
 - (1) autumn 2016 session in Geneva, 19-23 September 2016,
 - (2) spring 2017 session in Bern, 13-17 March 2017,
 - (3) autumn 2017 session in Geneva, 19-29 September 2017,
 - (4) there will be still another Joint Meeting (spring session in Bern, 13-17 March 2018) which is expected to recommend further amendments applicable on 1 January 2019,
 - at the Standing Working Group of the RID Committee of Experts in its:
 - (1) 7th session in Prague, 22-24 November 2016,
 - (2) 8th session in Utrecht, 20-24 November 2017.

In these meetings, the individual proposals for amendments have been analysed and processed by the expert committees. In most cases, the recommended action has been agreed upon unanimously. Certain proposals have been recommended by a majority view of the experts.

The RID Expert Committee on the Transport of Dangerous Goods will take decisions on these proposals on 30 May 2018.

The Committee on the transport of dangerous goods, established under Directive 2008/68/EC³, carried out a preliminary discussion on the proposals in its meeting on 14 December 2017.

2.3. The Decision of the RID Expert Committee

On 30 May 2018, during its 55th session, the RID Expert Committee is to adopt a set of amendments to RID regarding adaptation to technical and scientific progress of its Annex ('the Decision'). The purpose of the Decision is to update the existing provisions concerning the safety obligations of the participants as regards the carriage of dangerous goods packed in limited quantities, checklist for filling and emptying of liquefied gas tank-wagons, placarding and protective distance, certain hazard identification numbers, carriage of dangerous goods as hand luggage or registered luggage, etc.

The envisaged act will be legally binding on the parties to the agreement from 1 January 2019.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The European Union acceded to COTIF in July 2011 by Council Decision 2013/103/EU⁴. COTIF is a mixed agreement where both the Union and most of the Member States are Contracting Parties. Annex III to that Decision establishes the internal arrangements for the Council, the Member States and the Commission in proceedings under OTIF. In matters of Union exclusive competence, the Union votes with the number of votes of all Member States which are members of COTIF.

³ Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on inland transport of dangerous goods (OJ L 260, 30.9.2008, p. 13).

⁴ OJ L 51, 23.2.2013, p. 1.

Furthermore, Article 38 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.

As mentioned above, there are 26 Union Member States which are members to COTIF. Currently, there are 45 RID Contracting States and 50 OTIF Member States.

Since 1 January 1997, the Union has applied the provisions of RID to all transport on the Union territory, initially pursuant to Council Directive 96/49/EC⁵. In 2008, Directive 96/49/EC was replaced by Directive 2008/68/EC which pursues the objectives of its predecessor.

Article 4 of Directive 2008/68/EC, concerning third countries provides that 'the transport of dangerous goods between Member States and third countries shall be authorised in so far as it complies with the requirements of the ADR, RID or ADN, unless otherwise indicated in the Annexes'. In addition, in accordance with Recital 12 of that Directive, 'the use of means of transport registered in third countries should be allowed for the international transport of dangerous goods within the territories of the Member States, subject to compliance with the relevant provisions of the ADR, RID or ADN and of this Directive'. Therefore, the matter of the amendments to RID falls entirely within exclusive Union competence.

Thus, in accordance with Article 35 of COTIF, once decided upon by the RID Expert Committee, the amendments shall enter into force for all Contracting Parties on the first day of the sixth month following that during which the Secretary General 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 amendment shall not enter into force.

Unless a sufficient number of objections are raised by the parties, the amendments concerned under this proposal are expected to enter into force on 1 January 2019 and become binding on the Union and the Member States, forming an integral part of the Union *acquis*.

The draft proposal provides for in Article 1 a detailed list of the envisaged amendments, specifying which amendments can be accepted by the Union. The envisaged amendments are considered to be appropriate for the safe transport of dangerous goods in a cost effective manner, taking into account technological progress, and can therefore be supported.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing '*the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.*'

The concept of '*acts having legal effects*' includes acts that have legal effects through the application of the rules of international law governing the body in question. It also includes

⁵ Council Directive 96/49/EC of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail (OJ L 235, 17.9.1996, p. 25).

instruments that do not have a binding effect under international law, but that are ‘*capable of decisively influencing the content of the legislation adopted by the EU legislature*’⁶.

4.1.2. Application to the present case

The RID Expert Committee is a body set up by an agreement, namely the Convention concerning International Carriage by Rail (COTIF).

The Decision which the RID Expert Committee is called upon to adopt constitutes an act having legal effects. The Decision will be binding under international law in accordance with Article 6 of the Regulations concerning the International Carriage of Dangerous Goods by Rail (RID). In addition, Article 1 of Directive 2008/68/EC provides that the Annex to RID shall apply to the transport of dangerous goods by rail within or between Member States, with the exception of those Member States that do not have a railway system. Finally, Article 4 of Directive 2008/68/EC concerning third countries provides that ‘the transport of dangerous goods between Member States and third countries shall be authorised in so far as it complies with the requirements of the ADR, RID or ADN, unless otherwise indicated in the Annexes’.

The Decision does not supplement or amend the institutional framework of the Agreement. Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The main objective and content of the Decision relate to transport of dangerous goods by rail. Therefore, the substantive legal basis of the proposed decision is Article 91 TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 91 TFEU, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

Since the Decision of the RID Expert Committee will amend the annex to RID, it is appropriate to publish information on the outcome of the meeting in the *Official Journal of the European Union* after its adoption.

The amendments to RID, to the extent that they become binding on the Union, will need to be incorporated into Directive 2008/68/EC on the inland transport of dangerous goods, which applies uniform rules under COTIF and UNECE to the transport of dangerous goods by road, by rail and by inland waterway within or between Member States. To this end, the Commission has been empowered to adapt Annex II, Section II.1, to Directive 2008/68/EC to scientific and technical progress.

⁶ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

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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 ('COTIF'), by means of Council Decision 2013/103/EU⁷.
- (2) All Member States, with the exception of Cyprus and Malta, are Member States to and apply the COTIF.
- (3) Pursuant to Article 13(1)(d) and Article 33(5) of the COTIF, the Organisation for International Carriage by Rail ('OTIF') Committee of Experts for the Carriage of Dangerous Goods ('RID Expert Committee') can amend the Annex to Appendix C of the COTIF, the Regulations concerning the International Carriage of Dangerous Goods by Rail ('RID').
- (4) Directive 2008/68/EC of the European Parliament and of the Council⁸ lays down requirements for the transport of dangerous goods by road, by rail or by inland waterway within or between Member States, by referring to RID.
- (5) In order to adapt the RID Annex to technical and scientific progress, it is essential for the RID Expert Committee to adopt amendments concerning technical standards or uniform technical prescriptions. Namely, to ensure safe and efficient transport of dangerous goods while taking into account scientific and technical progress in the sector and the development of new substances and articles that could pose danger while being transported.
- (6) The RID Expert Committee, during its 55th session on 30 May 2018, is to adopt a decision on the amendments to RID.

⁷ 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, 23.2.2013, p. 1).

⁸ Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (OJ L 260, 30.9.2008, p. 13).

- (7) It is appropriate to establish the position to be taken on the Union's behalf in the RID Expert Committee, as the decision adopted by that Committee will be binding on the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 55th session of the RID Expert Committee in the framework of the Convention concerning International Carriage by Rail of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999, is set out in the Annex to this Decision.

Minor changes to the documents referred to in the Annex may be agreed to by the representatives of the Union in the RID Expert Committee without further decision from the Council.

Article 2

After its adoption, a reference to the decision of the RID Expert Committee shall be published in the *Official Journal of the European Union*.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President