



Brussels, 9.7.2019
COM(2019) 298 final

2019/0143 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the written procedure to be launched by the Committee of Technical Experts of the Intergovernmental Organisation for International Carriage by Rail (OTIF) for the adoption of modifications to NVR and UTP TAF

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

The 12th session of the Committee of Technical Experts (CTE) of the Intergovernmental Organisation for International Carriage by Rail (OTIF) will take place in Bern on 12 – 13 June 2019. The agenda of the meeting includes:

- A proposal for a decision to modify the OTIF Register system – Rolling Stock National Vehicle Registers (NVR); and
 - A proposal for a decision to modify Annex 1 to the OTIF Uniform Technical Prescriptions - Telematics applications for freight services (UTP TAF).
- (a) The current NVR specifications applicable under OTIF rules are equivalent to those provided for in Commission Decision 2007/756/EC¹.

In the framework of the fourth railway package, the Commission adopted the Commission Implementing Decision (EU) 2018/1614² that provides for updated specifications of EU national vehicle registers and specifications of the European Vehicle Register (EVR), which will replace EU national vehicle registers from 2021, and repeals Commission Decision 2007/756/EC.

The purpose of the CTE decision is to modify the NVR and to maintain its equivalence with Commission Implementing Decision (EU) 2018/1614.

- (b) The OTIF Uniform Technical Prescriptions (UTPs) are a set of technical specifications deriving from the principles, objectives and procedures of COTIF for the construction and operation of railway material, with the overriding objective of achieving maximum interoperability. In this way, the UTPs in OTIF are equivalent to the EU technical specifications for interoperability (TSIs).

The UTP TAF lays down basic and additional requirements with regard to the communication process between railway undertakings and infrastructure managers, databases intended to be used to track trains and wagon movements and information to be delivered to freight customers, without which the TAF subsystem cannot function. They are currently equivalent to the TAF TSI specified in Commission Regulation (EU) No 1305/2014³ and Commission Implementing Regulation (EU) 2018/278⁴.

The Commission has adopted a modification of Commission Regulation (EU) No 1305/2014 on 27 May 2019⁵.

¹ Commission Decision 2007/756/EC of 9 November 2007 adopting a common specification of the national vehicle register provided for under Articles 14(4) and (5) of Directives 96/48/EC and 2001/16/EC (OJ L 305, 23.11.2007, p. 30).

² Commission Implementing Decision (EU) 2018/1614 of 25 October 2018, amending and repealing Commission Decision 2007/756/EC (OJ L 268, 26.10.2018, p. 53).

³ Commission 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 (OJ L356, 12.12.2014, p. 438).

⁴ Commission Implementing Regulation (EU) 2018/278 of 23 February 2018 amending the Annex to Regulation (EU) No 1305/2014 as regards the structure of the messages, data and message model, Wagon and Intermodal Unit Operating Database, and to adopt an IT standard for the communication layer of the Common Interface (OJ L 54, 24.2.2018)

⁵ Commission Implementing Regulation (EU) 2019/778 of 16 May 2019 amending the Annex to Regulation (EU) No 1305/2014 as regards Change Control Management (OJ L 139I, 27.5.2019, p. 356–359)

The purpose of the decision to modify the UTP TAF is to maintain its equivalence with the Commission Regulation (EU) No 1305/2014 as recently modified.

The position to be taken on the Union's behalf on the abovementioned decisions to be adopted by CTE has to be established by a Council Decision on the basis of Article 218 (9) TFEU.

2. CONTEXT OF THE PROPOSAL

2.1. The Convention concerning International Carriage by Rail (COTIF)

The COTIF Convention is OTIF's founding legal text. Under Article 2(1) of the COTIF, its aim is to promote, improve and facilitate, in all respects, international traffic by rail, in particular by establishing systems of uniform law in various fields of law relating to international traffic by rail. The COTIF also governs the running of the Organisation, its objectives, attributions, relations with the Contracting States and its activities in general.

COTIF therefore deals with rail legislation on a number of different legal and technical rail matters which are divided in two parts: the Convention itself, which governs the running of OTIF and the eight Appendices (including a new appendix H to be adopted during the upcoming 13th General Assembly of OTIF) that establish uniform railway law.

- Appendix A – Contract of International Carriage of Passengers by Rail (**CIV**)
- Appendix B – Contract of International Carriage of Goods by Rail (**CIM**)
- Appendix C – International Carriage of Dangerous Goods by Rail (**RID**)
- Appendix D – Contract of use of vehicles in international rail traffic (**CUV**)
- Appendix E – Contract of use of infrastructure in international rail traffic (**CUI**)
- Appendix 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 UR**)
- Appendix G – Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (**ATMF UR**)
- Appendix H – Uniform Rules concerning the safe operation of trains in international traffic (**EST UR**)

Based on Appendix F and G to COTIF there are 12 UTPs for technical interoperability.

The COTIF applies to 46 states, including 26 EU Member States (all except Malta and Cyprus).

2.2. The agreement between the European Union and the Intergovernmental Organisation Convention for International Carriage by Rail (OTIF)

On 16 June 2011, the Council adopted Council Decision 2013/103/EU⁶ signing and concluding the Agreement between the European Union and OTIF on the Accession of the European Union to the Convention concerning International Carriage by Rail (COTIF) of

⁶ 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).

9 May 1980, as amended by the Vilnius Protocol of 3 June 1999. The Agreement entered into force on 1st July 2011.

The Union is a party to the Agreement as well as all Member States except Cyprus and Malta. Council Decision 2013/103/EU specifies that the Commission shall represent the Union at OTIF meetings. It also contains a Declaration by the Union concerning the exercise of competence (Annex I) and provides for internal arrangements for the Council, the Member States and the Commission in proceedings under OTIF (Annex III).

2.3. The OTIF Committee of Technical Experts

The CTE is an organ of OTIF set up by Article 8 of the COTIF. It is made up of the OTIF Member States that apply Appendices F and G (APTU, ATMF) to COTIF.

The CTE has competence in matters of interoperability and technical harmonisation in the railway field and technical approval procedures. It develops the APTU and ATMF Appendices and its Uniform Rules, which apply to railway material intended for use in international traffic, which concern in particular:

- the adoption of technical prescriptions for vehicles and infrastructure and the validation of standards;
- procedures concerning the assessment of conformity of vehicles;
- provisions concerning the maintenance of vehicles;
- responsibilities for train composition and the safe use of vehicles;
- provisions concerning risk evaluation and assessment;
- specifications for registers.

The CTE currently has a standing working group (WG TECH) which is responsible for preparing the former's decisions.

2.4. The adoption of acts by the CTE

The usual adoption process for UTPs is prescribed in Articles 6 and 8 of APTU and may take about one and a half years.

2.5. The envisaged acts to be adopted by written procedure by the CTE of OTIF

The CTE put the following modifications up for decision to be adopted by written procedure:

- A proposal for a decision to modify the NVR; and
- A proposal for a decision to modify Annex 1 to the UTP TAF.

2.5.1. Modification of the NVR specifications

The purpose of the decision to modify the NVR specifications is to maintain its equivalence with Commission implementing Decision (EU) 2018/1614.

To this purpose, the modifications concern the procedures related to the registers and the registrations. They do not concern the NVR software or functioning.

In summary, the modifications include the following:

- Introduction of the new requirement according to which the non-EU Contracting States shall inform the Secretary General of OTIF about the contact details of the Registration Entities, which would then be published by the Secretary General of OTIF (a newly added point 2.3);
- Introduction of a deadline (20 working days) to register the changes in the NVR (in point 3.2.3);
- Further clarification of the process of additional registration for those vehicles that have not been registered in the NVR and connected to the European Centralised Virtual Vehicle Register (ECVVR) (3.2.5);
- Further clarification of how to transfer the registration between the NVRs and how to change European vehicle number (EVN) (3.2.6);
- Updating the tables with access rights (3.3) and the list of harmonised restriction codes (Appendix 1 – Restriction coding);
- Updating the structure and content of the European Identification Number (EIN) [Appendix 2: country code (field 1) and type of document (field 2)];
- Editorial modifications throughout the text.

In accordance with Article 20 § 1 e) of COTIF and Article 13 §§ 1, 4 and 5 of the ATMF Uniform Rules, the CTE is competent to take decisions concerning these amendments.

2.5.2. Modification of the UTP TAF

The purpose of the decision to modify the UTP TAF is to maintain its equivalence with the TAF TSI included in Commission Regulation (EU) No 1305/2014 as recently modified.

Like the TAF TSI, the UTP TAF makes reference to technical documents that are published and regularly updated on the website of the European Union Agency for Railways (usually at least once a year). The latest updates to these technical documents are minor adaptations related specifically to the data and message format for exchange of information between railway undertakings and infrastructure managers.

As modification of these references formally constitutes a modification of the UTP TAF, it must be subject to a decision by the CTE in accordance with Article 20 § 1 b) COTIF and Article 6 APTU.

The envisaged acts will be legally binding on the OTIF Member States and the regional economic integration organisations which have acceded to COTIF, in particular the European Union.

2.6. Union competence and voting rights

Pursuant to Article 6 of the EU-OTIF Agreement:

"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."*

Under Union law, the Union has acquired exclusive competence in matters of rail transport where the COTIF or legal instruments adopted pursuant to it may affect or alter the scope of these existing Union rules. Union rules will be clearly affected by the adoption of such modifications since the objective of the measure is to align the NVR and UTP TAF with respectively, Commission Implementing Decision (EU) 2018/1614 and Commission Regulation (EU) No 1305/2014 as recently modified.

Since the Union has exclusive competence on the matters covered by the two-abovementioned CTE decisions, the Union, represented by the Commission, shall exercise the voting rights with respect to the adoption of these two decisions.

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

The Union should for all the above mentioned reasons vote in favour.

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.'*

Article 218(9) TFEU applies regardless of whether the Union is a member of the body or a party to the agreement⁷.

The concept of *'acts having legal effects'* includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes 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'*⁸.

4.1.2. Application to the present case

The acts which the CTE is called upon to adopt constitute acts having legal effects. The envisaged acts have legal effects because they modify the OTIF legal framework by aligning the COTIF UTPs with the EU TSIs regarding Subsystems and are binding upon the Union.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is adopted on

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

⁸ 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.

behalf of the Union. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to rail transport.

The substantive legal basis of the proposed decision, therefore, 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.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the written procedure to be launched by the Committee of Technical Experts of the Intergovernmental Organisation for International Carriage by Rail (OTIF) for the adoption of modifications to NVR and UTP TAF

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 has acceded to the Convention concerning International Carriage by Rail of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 (the 'COTIF'), in accordance with Council Decision 2013/103/EU⁹.
- (2) All Member States, with the exception of Cyprus and Malta, are parties to the COTIF.
- (3) Pursuant to Article 8 of the COTIF, the Committee of Technical Experts ('CTE') of the Intergovernmental Organisation for International Carriage by Rail (OTIF) was set up. In accordance with Article 20(1)(e) of the COTIF and Articles 13(1), (4) and (5) of Appendix G (ATMF), the CTE is competent to take decisions on the adoption or modification of the OTIF Register system – Rolling Stock National Vehicle Registers (NVR). In accordance with Article 20(1)(b) of the COTIF and Article 6 of Appendix F (APTU), the CTE is competent to take decisions on the adoption of Uniform Technical Prescriptions Telematics applications for freight services (UTP TAF) or a provision amending a UTP based on Appendix F (APTU) and Appendix G (ATMF) to the COTIF Convention.
- (4) The CTE will adopt by written procedure, a proposal for a decision to modify the NVR specifications and a proposal for a decision to modify Annex 1 to the UTP TAF.
- (5) It is appropriate to establish the position to be taken on the Union's behalf in the CTE, as the proposed modifications will be binding on the Union.
- (6) The objective of these amendments is to align the NVR and UTP TAF with respectively Commission Implementing Decision (EU) 2018/1614¹⁰ and Commission Implementing Regulation (EU) No 2019/778¹¹.

⁹ 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).

¹⁰ Commission Implementing Decision (EU) 2018/1614 of 25 October 2018, amending and repealing Commission Decision 2007/756/EC (OJ L 268, 26.10.2018, p. 53).

- (7) The proposed amendments are in line with the law and the strategic objectives of the Union by contributing to the alignment of OTIF legislation with the Union equivalent provisions, and should therefore be supported by the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the written procedure to be launched by the Committee of Technical Experts of the Convention concerning International Carriage by Rail of 9 May 1980 on the modifications to the NVR and to the Annex 1 to the UTP TAF shall be the following:

1. To vote in favour of the CTE proposed amendments to NVR, as found in the CTE Working Document TECH-19001-CTE12-5.1.
2. To vote in favour on the CTE proposed amendment to UTP TAF, as found in the CTE Documents TECH-18037-CTE12-5.2.

Article 3

After its adoption, the act of the Committee of Technical Experts shall be published in the *Official Journal of the European Union*, indicating the date of their entry into force.

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*

¹¹ Commission Implementing Regulation (EU) No 2019/778 of 16 May 2019 amending the Annex to Regulation (EU) No 1305/2014 as regards Change Control Management OJ L 139I, 27.5.2019, p. 356–359.