

# DECISIONS

## COUNCIL DECISION

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**

(2014/699/EU)

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 Convention') in accordance with Council Decision 2013/103/EU <sup>(1)</sup>.
- (2) All Member States, with the exception of Cyprus and Malta, apply the COTIF Convention.
- (3) The Revision Committee set up in accordance with point (c) of Article 13(1) 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 certain Appendices thereto, namely 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 of updating the tasks of the Committee of Technical Experts and the definition of 'keeper' in line with Union law; and of modifying certain rules concerning the financing of the Intergovernmental Organisation for International Carriage by Rail (OTIF), its auditing and reporting as well as minor administrative changes.
- (5) The amendments to Appendix B (CIM) aim to give preference to the electronic form of the consignment note and its accompanying documents and to clarify certain provisions of the contract of carriage.
- (6) The amendments to Appendix D (CUV) presented by the Secretary-General of OTIF have the objective of clarifying the roles of the keeper and the entity in charge of 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. Germany has also presented a separate proposal concerning the scope of the CUV Uniform rules.

<sup>(1)</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).

- (7) The amendments to Appendix G (ATMF) aim to update the provisions concerning the technical admission of railway material used in international traffic, clarify the functions of and relations between the contracting State as defined in that Appendix, the competent authority and the assessing entity as well as harmonise terms in line with Union law.
- (8) The amendments to Appendix F (APTU) aim to maintain consistency with the revised Appendix G (ATMF).
- (9) The amendments to Appendix E (CUI) suggested by the International Rail Transport Committee (CIT) aim to extend the scope of the uniform rules concerning the contract of use of infrastructure to domestic rail transport, to create a legal basis for general terms and conditions of use of railway infrastructure and to extend the liability of the infrastructure manager for damage or losses caused by the infrastructure.
- (10) The Secretary-General of OTIF has also proposed editorial changes to replace the term 'European Communities' by 'European Union' throughout the COTIF Convention and the Appendices thereto.
- (11) Most of the proposed amendments are in line with the law and the strategic objectives of the Union, and should therefore be supported by the Union. Certain amendments have no impact on EU law and do not need a position to be agreed at Union level. Finally, some amendments need more discussion within the Union and should be rejected at this meeting of the Revision Committee; should the latter amendments be approved without modification that is 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*

1. The position to be taken on the Union's behalf at the 25th session of the Revision Committee set up by 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*

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

Done at Luxembourg, 24 June 2014.

*For the Council*  
*The President*  
E. VENIZELOS

## ANNEX

**1. INTRODUCTION**

The Secretary-General of OTIF has convened the 25th session of the Revision Committee (RC) of COTIF Convention in Berne on 25-27 June 2014.

**2. REFERENCED DOCUMENTS**

Documents concerning the agenda items were circulated to OTIF Member States and are available on the website of OTIF at the following link: <http://otif.org/en/law/revision-committee/working-documents.html>

**3. COMMENTS ON EACH AGENDA ITEM**

## ITEM 1. OPENING THE MEETING AND ESTABLISHING THE QUORUM

Document: none.

Competence: shared.

Exercising voting rights: not applicable.

Recommended coordinated position: none.

There is a quorum in the RC when the majority of the OTIF Member States enjoying the right to vote are represented there at the time of the vote. However, Article 13(3) of the COTIF Convention provides that OTIF Member States having made a declaration concerning the non-application of one or more Appendices do not have the right to vote concerning amendments to the given Appendix.

The following OTIF Member States have not withdrawn their declarations on the non-application of certain Appendices:

Pakistan, Russia (concerning Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV), the International Carriage of Dangerous Goods by Rail (RID), CUV, CUI, APTU and ATMF), Georgia (concerning CUV, CUI, APTU and ATMF), the Czech Republic, Norway, Slovakia, the United Kingdom (concerning CUI, APTU and ATMF), France (concerning ATMF).

When discussing amendments to the relevant Appendices, the number of OTIF Member States having made a declaration on the non-application of the Appendix in question has to be deducted from the number of active members of OTIF (46) to establish the quorum concerning the vote on the Appendix in question.

In the case of Union competence, the Union may vote for all of its members having the right to vote, without regard to the physical presence of those members at the vote; thus, the quorum may be different in the case of the Union representing its Member States and in the case of Union Member States voting for themselves.

## ITEM 2. ELECTION OF CHAIR AND VICE CHAIR

Document: none.

Competence: shared.

Exercising voting rights: Member States.

Recommended coordinated position: none.

## ITEM 3. ADOPTION OF THE AGENDA

Document: CR 25/3.

Competence: shared.

Exercising voting rights: Member States.

Recommended coordinated position: none.

## ITEM 4. PARTIAL REVISION OF COTIF — BASIC CONVENTION

Documents: CR 25/4, CR 25/4 Add. 1.

Competence: shared.

Exercising voting rights: Member States.

Recommended coordinated position:

Amendments to Article 3 (International cooperation) to be supported (editorial change to replace the reference to the 'European Communities' with a reference to the 'European Union').

Amendments to Article 12 (Execution of judgments. Attachment) to be supported as it amends the definition of 'keeper' in line with Union law.

Amendments to Article 20 (Committee of Technical Experts) to be supported as they are necessary to update the APTU Uniform Rules and ATMF Uniform Rules in order to keep them in line with Union law.

Other amendments: no Union position necessary as these amendments relate to the financing of the organisation, auditing or include administrative changes regarding the work programme, the annual report and the lists of lines or services which have no impact on Union law.

## ITEM 5. PARTIAL REVISION OF APPENDIX B (CIM)

Documents: CR 25/5, CR 25/5 Add. 1, CR 25/5 Add. 2, CR 25/5.1.

Competence: shared.

Exercising voting rights: Union for Articles 6 and 6a; Member States for other Articles.

Recommended coordinated position:

Amendments to Article 6 and new Article 6a concern Union law because of the use of the consignment note and its accompanying documents for customs and sanitary and phytosanitary (SPS) procedures. The Union agrees with the intention of OTIF to give priority to the electronic form of consignment notes. However, at present the adoption of these amendments may lead to unintended consequences. The current simplified procedure for customs transit by rail is only possible with paper documents. Therefore, if railways opt for the electronic consignment note, they will have to use the standard transit procedure and the New Computerised Transit System (NCTS).

The Commission has started preparations for a working group to discuss the use of electronic transport documents for transit under Regulation (EU) No 952/2013 of the European Parliament and the Council <sup>(1)</sup>. That working group will have its kick-off meeting on 4-5 June 2014. The Union agrees also with the intention to provide the accompanying documents in electronic format. However, under current Union law there is no legal basis to provide the documents (e.g. Common Veterinary Entry Document, Common Entry Document) which have to accompany SPS-related goods in electronic format and therefore they need to be provided on paper. The Commission has prepared a draft Regulation, which will cater for electronic certification and the draft is currently under discussion in the European Parliament and the Council. That Regulation (Official Control Regulation) is envisaged to be adopted by end of 2015/beginning of 2016, however, there will be a transitional period for the enforcement.

Therefore, the Union suggests that no decision should be taken on these items at the present session of the RC and that OTIF continue cooperation with the Union on this issue in order to have a well-prepared solution for an upcoming revision of CIM which should ideally be synchronised with the Regulation (EU) No 952/2013 and its implementing provisions which are to be in force from 1 May 2016. Certain electronic procedures may be phased in between 2016 and 2020 in accordance with Article 278 of Regulation (EU) No 952/2013.

Other amendments: no Union position necessary as these provisions do not interfere with Union law.

<sup>(1)</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

ITEM 6. ELECTRONIC DOCUMENTS CONCERNING THE CARRIAGE OF DANGEROUS GOODS — INFORMATION ON THE WORK OF THE RID COMMITTEE OF EXPERTS

Document: CR 25/6.

Competence: Union.

Exercising voting rights: not applicable.

Recommended coordinated position: to take note of the information.

ITEM 7. PARTIAL REVISION OF APPENDIX D (CUV)

Documents: CR 25/7, CR 25/7 Add. 1, CR 25/7 Add. 2, CR 25/7 Add. 3.

Competence: shared.

Exercising voting rights: Union.

Recommended Union position: Amendments to Articles 2 and 9 to be supported as they clarify the roles of the keeper and of the entity in charge of maintenance in line with Union law (Directive 2008/110/EC of the European Parliament and of the Council <sup>(1)</sup>). However, the proposed amendment to Article 7 submitted by France concerning the liability of the person who has provided a vehicle for use as a means of transport in case of damage resulting from a defect of the vehicle needs further analysis within the Union before taking a decision in OTIF. Therefore, the Union is not in a position to support this amendment proposal at this RC and proposes to postpone the decision until the next General Assembly in order to further assess this issue. The Union takes the same position, i.e. to postpone the decision until the next General Assembly in order to further assess the issue, on the proposal of Germany for a new Article 1a presented to OTIF during Union coordination.

Additional recommended Union position: In document CR 25/7 ADD 1, page 6, at the end of paragraph 8a, add: 'The amendment to Article 9, paragraph 3, first indent, does not affect the existing allocation of liabilities between ECM and the keeper of the vehicles.'

ITEM 8. REVISION OF APPENDIX G (ATMF)

Documents: CR 25/8, CR 25/8 Add. 1, CR 25/8 Add. 2.

Competence: Union.

Exercising voting rights: Union.

Recommended coordinated position:

(1) On Ref. CR 25/8 Revision of Appendix G (ATMF)

To vote in favour with the following comments:

— add the following sentence to Article 3a(3):

'When operating in the EU, railway undertakings and infrastructure managers shall only be subject to European legislation.'

The Union could accept the following alternatives:

'For railway undertakings and infrastructure managers, when operating within the EU, EU legislation takes precedence over the provisions in these Uniform Rules.');

or

'When operating within the European Union, railway undertakings and infrastructure managers are solely subject to European Union rules and shall therefore not apply these Uniform Rules except in so far as there is no EU rule governing the particular subject concerned.'

<sup>(1)</sup> Directive 2008/110/EC of the European Parliament and of the Council of 16 December 2008 amending Directive 2004/49/EC on safety on the Community's railways (Railway Safety Directive) (OJ L 345, 23.12.2008, p. 62).

- Article 4(1): add the following sentence at the end (after point (b)):

‘If the vehicle is admitted in a single stage, the type of construction of the vehicle is admitted at the same time.’

- Article 5(5): Correct the reference; replace ‘Article 2w1’ with ‘Article 2wa(1)’,

- Article 19: Combine Article 19(2) and (2a) by deleting (2a) and replacing (2) by the following modified text:

‘These Uniform Rules do not affect admissions issued before 1.1.2011 for vehicles which exist as at 1.1.2011 and which are marked RIV or RIC as proof of current compliance with the technical provisions of the RIV 2000 agreement (revised edition of 1 January 2004) or the RIC agreement respectively, and for existing vehicles not marked RIV or RIC but admitted and marked according to bilateral or multilateral agreements between Contracting States notified to the Organisation.’

(2) On 25/8 Add. 1. Justification document for the Revision of Appendix G (ATMF)

- General justifications (end of page 2): modify the sentence as follows: ‘The changes which are not covered by these general justifications are explained in the rest of this document.’

- point (t) of Article 2: add a new paragraph ‘When infrastructure managers operate vehicles, e.g. freight wagons to transport materials for construction or for infrastructure maintenance activities, the infrastructure managers do so in the capacity of a railway undertaking.’

- point (b) of Article 4(1): Add module SH1 since the design type certificate issued in the design phase of this module also provides the possibility to use the procedure described. The new sentence would read:

‘According to Article 10 § 8, the appropriate manner to demonstrate that the vehicle corresponds to the admitted type of construction is a certificate of verification, it is not really a simplified procedure. The certificate of verification is issued according to the appropriate module defined in the UTP(s) concerned which may be module SD or module SF for type examination certificate or module SH1 for design examination certificate.’

- Article 7(1a): to align the interpretation of this provision with that of the Union (Article 8(7) of Commission Recommendation 2011/217/EU <sup>(1)</sup>), add the following sentence:

‘Due to the fact that the admission procedures can take several months, it is recommended that the rules to be applied by the competent authority for a specific admission process are those that were in force at the date of the application and that no new rule is imposed during the subsequent process.’

(3) Result of the verification of the German version of the Revision of Annex G (ATMF):

- Point (ab) of Article 2 Align the definition of accreditation with the wording of Article 2(10) of Regulation (EC) No 765/2008 of the European Parliament and of the Council <sup>(2)</sup>

‘Akkreditierung: die Bestätigung durch eine nationale Akkreditierungsstelle, dass eine Konformitätsbewertungsstelle die in europäischen harmonisierten Normen oder anwendbaren internationalen Normen festgelegten Anforderungen und, gegebenenfalls, zusätzliche Anforderungen, einschließlich solcher in relevanten sektoralen Akkreditierungssystemen, erfüllt, um eine spezielle Konformitätsbewertungstätigkeit durchzuführen.’

- Article 5(2): ‘assessing entities’ is translated as ‘Bewertungsstelle’. According to the ETV GEN-E ‘the assessing entity’ is translated as ‘Prüforgan’. In the Union the term ‘Bewertungsstelle’ is especially assigned to assessment bodies according to the common safety method for risk assessment (CSM RA). Therefore, the OTIF term according to Article 5(2) could be misleading. The proposal is to use the word ‘Prüforgan’ in ATMF. See also point (cb) of Article 2, Article 5(3)–(7), Article 6(4), Article 10(3a), (4), (6)–(8),

- Article 5(4): change the wording ‘Die Anforderungen in § 3 gelten sinngemäß für die zuständige Behörde, in Bezug auf die in § 2 genannten Aufgaben, die nicht an eine Bewertungsstelle übertragen wurden.’

<sup>(1)</sup> Commission Recommendation 2011/217/EU of 29 March 2011 on the authorisation for the placing in service of structural subsystems and vehicles under Directive 2008/57/EC of the European Parliament and of the Council (OJ L 95, 8.4.2011, p. 1).

<sup>(2)</sup> Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

- Article 10(8): delete the brackets,
- Article 5(3): after the wording ‘Voraussetzungen’, replace ‘erfüllen’ by ‘erfüllt’,
- point (b) of Article 11(3): the word ‘Identifizierungscode(se)’ should be replaced by ‘Identifizierungscode(s)’,
- second sentence of Article 15(1): delete ‘nicht’,
- second sentence of Article 15a(1): put a full stop after ‘entsprechen’ and start a third sentence with ‘Es hat insbesondere:’.

(4) In the French version the definition in point (n) of Article 2 should read:

“détenteur” désigne la personne ou l’entité propriétaire du véhicule ou disposant d’un droit de disposition sur celui-ci, qui exploite ledit véhicule à titre de moyen de transport et est inscrite en tant que telle dans le registre des véhicules prévu à l’article 13.’.

#### ITEM 9. PARTIAL REVISION OF APPENDIX F (APTU)

Documents: Ref.: CR 25/9, CR 25/9 Add. 1.

Competence: Union.

Exercising voting rights: Union.

Recommended coordinated position: editorial amendments to be supported.

#### ITEM 10. MANDATE FOR THE CONSOLIDATION OF THE EXPLANATORY REPORT

Document: CR 25/10.

Competence: shared.

Exercising voting rights: Member States.

Recommended Union position: to be supported.

#### ITEM 11. EDITORIAL AMENDMENTS

Document: CR 25/11.

Competence: shared.

Exercising voting rights: Member States.

Recommended coordinated position: to be supported with the addition of the following new second indent:

‘— to provide for a period of 3 weeks open for Member States for a check of those editorial amendments before their notification.’.

#### ITEM 12. PARTIAL REVISION OF APPENDIX E (CUI)

Document: CR 25/12.

Competence: shared.

Exercising voting rights: Union.

Recommended coordinated position: amendments to be rejected. These amendments suggested by CIT include the extension of the scope of CUI to domestic operations, the introduction of contractually binding General Terms and Conditions and the extension of the infrastructure manager’s liability for damage. They may deserve further consideration but as they have not been discussed in any internal forum of OTIF before the Revision Committee, their impact could not have been assessed in sufficient detail. It seems to be premature to amend CUI (which is at present in line with Union law) at this RC without proper preparation.

ITEM 13. RULES OF PROCEDURE FOR THE WORKING GROUPS OF THE REVISION COMMITTEE CONCERNING APPENDICES A, B, D AND E

Document: CR 25/13.

Competence: shared.

Exercising voting rights: Member States.

Recommended coordinated position: none.

ITEM 14. INFORMATION ON FUTURE WORK

Document: CR 25/14 (not available yet).

Competence: shared.

Exercising voting rights: not applicable.

Recommended coordinated position: to be determined on the spot.

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