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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the 14th meeting of the Committee of Technical Experts of the Intergovernmental Organisation for International Carriage by Rail as regards the modifications to the uniform technical prescriptions concerning telematics applications for freight and the modification of Annex B to the ATMF Uniform Rules on derogations, and in the written procedure of the Revision Committee of OTIF as regards the modification to Appendix G to COTIF

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a decision establishing the position to be taken on the Union's behalf at:

- a. The written procedure of the Revision Committee of the Intergovernmental Organisation Convention for International Carriage by Rail (OTIF) as regards certain amendments to the Convention concerning International Carriage by Rail (COTIF) and to its Appendixes. At its 13th session, the Committee of Technical Experts requested the Revision Committee to take decisions within its competence provided for in Article 17 § 1, letter a) of COTIF and Article 33 § 4, letter g) of COTIF to amend Article 3a § 5 and Article 15 § 2 of the Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (ATMF - Appendix G to COTIF Convention) and to modify the Consolidated Explanatory Report accordingly; the vote will take place by OTIF written procedure.
- b. The 14th session of the Committee of Technical Experts (CTE) of the Intergovernmental Organisation for International Carriage by Rail (OTIF) that will take place in Bern on 14 and 15 June 2022. The agenda of the meeting includes:
 - A proposal for modification of the Uniform Technical Prescriptions (UTP) concerning Telematics applications for freight services (TAF)
 - Proposal for modification of Annex B to the ATMF Uniform Rules with regards to Derogations.

OTIF develops uniform legal regimes for international rail transport in three major areas of activity: technical interoperability, dangerous goods and railway contract law.

The abovementioned decisions to be adopted by CTE and by the Revision Committee are acts having legal effects and the position to be taken on the Union's behalf 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 Convention concerning International Carriage by Rail of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 ('COTIF'), is an international agreement where both the Union and 25 Member States¹ are Contracting Parties.

On 16 June 2011, the Council adopted a Council Decision 2013/103/EU on the signing and conclusion of the Agreement between the European Union and the Intergovernmental Organisation Convention for International Carriage by Rail (OTIF) 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 1999² ("EU-COTIF Accession Agreement").

¹ Only Cyprus and Malta are not Contracting Parties.

² 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. 8–10*

The Agreement entered into force on 1st July 2011.

According to Article 2(1) of the COTIF, OTIF aims at promoting, improving and facilitating, 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 Parties and its activities in general.

COTIF therefore deals with rail legislation on a number of different legal and technical rail matters that are divided in two parts: the Convention itself, which governs the running of OTIF, and the eight Appendices 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 UTPs in the framework of COTIF have the same purpose as the EU technical specifications for interoperability (TSIs) for admission to international traffic, as defined in Chapter II of Directive (EU) 2016/797.

42 out of the 47 States that are Party to the COTIF, including the already mentioned 25 EU Member States, apply Appendix F and G.

2.2. The OTIF Revision Committee

The Revision Committee has the competence to take decisions to amend COTIF, the CIV, CIM, CUV and CUI Uniform Rules, and the APTU and ATMF Uniform Rules in certain cases. According to Article 33 § 4 of COTIF, the Revision Committee can approve amendments itself or submit adopted amendments to the OTIF Member States for approval at the General Assembly.

The last Revision Committee, 26th session, was held from 27 February to 1 March 2018.

The Union and/or its Member States participate in that process in accordance with their respective competences, the Rules of Procedure of the Revision Committee and the provisions of the Agreement on the Accession of the Union to the COTIF Convention.

2.3. Quorum and voting rights in the Revision Committee

There is a quorum in the Revision Committee 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 to them 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 accordance with Article 6 (1) of the EU-COTIF Accession Agreement, for decisions in matters where the Union has exclusive competence, the Union exercises the voting rights of its Member States. As explained below, the matter is exclusive EU competence and it will thus be the Union voting.

3. THE ENVISAGED ACTS OF THE WRITTEN PROCEDURE OF THE REVISION COMMITTEE

3.1. Amendment of the ATMF Uniform Rules (Appendix G to COTIF) and modification of the Consolidated Explanatory Report

The modifications are necessary in order to harmonise the application of the Certification of Entity in Charge of Maintenance to all types of vehicles as already stated by the OTIF regulation. Article 14 of Directive (EU) 2016/798 sets out the relevant EU provisions for the Entity in Charge of Maintenance.

Following the full revision of Annex A of ATMF UR, which sets out the rules for the certification of Entities in Charge of Maintenance in line with ECM Regulation (EU) 2019/779³, it was noted that Articles 3a and 15 of the ATMF UR would need to be modified to reflect the changes in the Annex. Furthermore, references to newly revised EU legislation would also need to be updated. Changes to the ATMF UR falls in the competence of the Revision Committee.

In 2021, the CTE proposed the Revision Committee to amend Appendix G to COTIF (CTE Working Document TECH-20045-CTE13-7). Following that proposal, questions arose concerning the reference to mutual recognition of ECMs contained in the text to be included in the Consolidated Explanatory Report concerning the ATMF UR. Those questions have been settled and the amendments to the Consolidated Explanatory Report should be reviewed by removing any reference to mutual recognition, in accordance with the advisory opinion issued by the ad hoc Committee on Legal Affairs and International Cooperation during its first session in November 2021 (OTIF-21008-JUR 1).

The proposed modifications to Appendix G to COTIF are a matter falling under Union's exclusive competence and the Union will exercise its voting rights.

³ Commission Implementing Regulation (EU) 2019/779 of 16 May 2019 laying down detailed provisions on a system of certification of entities in charge of maintenance of vehicles pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulation (EU) No 445/2011 (OJ L 139I, 27.5.2019, p. 360).

4. THE OTIF COMMITTEE OF TECHNICAL EXPERTS (CTE)

The CTE is set up by Article 13(1)(f) of the COTIF. It is made up of the OTIF Member States that apply Appendices F (APTU UR) and G (ATMF UR) 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.

Pursuant to Article 20(1) (b) of the COTIF, and in accordance with Article 6 of its Appendix F (APTU), the CTE is competent to adopt or to amend the UTPs. In accordance with Article 7a of the ATMF UR (Appendix G to COTIF), "*The Committee of Technical Experts is competent to adopt guidelines or mandatory provisions for derogations from structural and functional UTPs.*"

4.1. The adoption of acts by the CTE

According to Article 6 of APTU, the CTE shall decide whether to adopt a UTP or a provision amending it in accordance with the procedure laid down in Articles 16, 20 and 33 § 6 of the Convention. The usual adoption process for UTPs may take about one and a half years.

4.2. The envisaged acts to be adopted by the CTE during the session on 14 and 15 June 2022

4.2.1. Modification of UTP concerning Telematics Applications for Freight. The proposed modifications include:

- Updated provisions concerning equivalence with the provisions of the European Union;
- Updates to the structure of the document;
- The requirement that the non-EU Contracting Parties should inform the OTIF Secretariat of their National Contact Point;
- Addition of provisions related to Path Allocation and Train Running Information;
- Replacement of provisions regarding train composition, with a reference to the UTP TCRC;
- Update of Appendix II Glossary and deletion of abbreviations no longer used in the legal text;

- Update to latest legal references under COTIF and EU law throughout the document;
- Editorial modifications;
- An update of the references to Technical Documents issued by the European Union Agency for Railways, which set out the harmonised IT specifications for implementing TAF.

The proposed modifications will align the UTP TAF with the latest version of the TSI and will ensure continued full equivalence in the meaning of ATMF UR of the TAF rules for vehicles used in international traffic by rail. The EU TSI has been last amended by Commission Implementing Regulation (EU) 2021/541⁴ of 26 March 2021.

The matter falls under EU exclusive competence and the Union will exercise the voting rights for the adoption of the modifications to UTP TAF.

4.2.2. *Modification of Annex B to the ATMF Uniform Rules (Derogations)*

The aim of this proposal for the complete revision of Annex B to ATMF UR is to formulate more simply and clearly the rules and guidelines concerning the non-application of entire UTPs or particular provisions thereof. The proposed provisions would be applicable to the non-EU Contracting Parties only⁵. Derogations from TSIs is regulated under EU law by Article 7 of Directive (EU) 2016/797.

Compared with the version in force, the proposed complete revision of Annex B to the ATMF UR will:

- Simplify the provisions;
- Clarify the scope and rules concerning derogations;
- Remove all tasks and roles of the Secretary General of OTIF;
- Reinforce the competences of the competent authorities of the Contracting Parties;
- Ensure transparency.

The proposed modifications will align the derogation procedures for non-EU Contracting Parties to the provisions already applicable to the EU Member States, ensuring continued full equivalence in the meaning of ATMF UR of the derogation rules for vehicles used in international traffic by rail.

The Union has exclusive competence on the matter and will exercise the voting rights for the adoption of the proposal to modify Annex B of the ATMF Uniform Rules (Derogations).

⁴ Commission Implementing Regulation (EU) 2021/541 of 26 March 2021 amending Regulation (EU) No 1305/2014 as regard the simplification and improvement of data calculation and exchange and the update of the Change Control Management process (OJ L 108, 29.3.2021, p. 19).

⁵ Derogations from the application of the TSIs by the Contracting States that are also Member States of the European Union and Contracting States that apply the relevant European Union law in accordance with an agreement with the European Union would remain subject to EU law.

4.3. Union competence and voting rights

The existing Union rules covered by the act to be adopted during the CTE meeting are respectively Commission Implementing Regulation (EU) 2021/541 and Article 7 of Directive (EU) 2016/797.

According Article 3 (2) TFEU, the Union has exclusive competence where the COTIF or legal instruments adopted pursuant to it may affect or alter the scope of these existing Union rules.

The objective of the envisaged OTIF decisions is to:

- align UTP TAF to Commission Implementing Regulation (EU) 2021/541⁶ of 26 March 2021;
- simplify the rules for the derogation from the application of UTPs set out in Annex B to the ATMF UR for non-EU Contracting States and in light of Article 7 of Directive (EU) 2016/797 for non-application of TSIs.

The above-mentioned Union rules will be clearly affected by the adoption of these decisions.

Therefore, the subject matter of these decisions is subject to the EU exclusive competence.

Article 6 (1) – (3) of the EU-COTIF Accession Agreement provides the following:

"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."

The Union, represented by the Commission, will, thus, exercise the voting rights with respect to the adoption of these decisions.

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

The Union should support the envisaged OTIF acts and vote in favour for their adoption.

6. LEGAL BASIS

6.1. Procedural legal basis

6.1.1. 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 by virtue of the rules of international law governing the body in question. It also includes instruments that do

⁶ Commission Implementing Regulation (EU) 2021/541 of 26 March 2021 amending Regulation (EU) No 1305/2014 as regard the simplification and improvement of data calculation and exchange and the update of the Change Control Management process (OJ L 108, 29.3.2021, p. 19)

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*’⁷.

6.1.2. *Application to the present case*

The Revision Committee and the CTE are bodies set up by an agreement, namely the COTIF, in particular Article 13(1) (c) and (f).

The acts to be adopted by written procedure by the Revision Committee and the acts which the CTE is called upon to adopt during its 14th session constitute acts having legal effects.

The envisaged acts modify the OTIF legal framework. As the Union is a full contracting party to COTIF, the envisaged acts will be binding upon the Union under international law in accordance with the EU-COTIF Accession Agreement.

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

6.2. Substantive legal basis

6.2.1. *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 behalf of the Union.

6.2.2. *Application to the present case*

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

The substantive legal basis of the proposed decision, therefore, is Article 91 TFEU.

7. CONCLUSION

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

8. PUBLICATION OF THE ENVISAGED ACT

As the act of the OTIF Revision Committee will amend COTIF and some of its Appendices, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

⁷ 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

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the 14th meeting of the Committee of Technical Experts of the Intergovernmental Organisation for International Carriage by Rail as regards the modifications to the uniform technical prescriptions concerning telematics applications for freight and the modification of Annex B to the ATMF Uniform Rules on derogations, and in the written procedure of the Revision Committee of OTIF as regards the modification to Appendix G to COTIF

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 (the 'COTIF'), in accordance with Council Decision 2013/103/EU⁸ and 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 COTIF Convention (the 'Agreement').
- (2) The Revision Committee set up in accordance with point (c) of Article 13(1) of the COTIF, is expected to carry out a written procedure to decide upon the amendment of Article 3a § 5 and Article 15 § 2 of the Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (ATMF Uniform Rules) - Appendix G to COTIF.
- (3) Following the proposal of the CTE 2021 concerning the revision of Appendix G to COTIF Article 3a § 5 and Article 15 § 2, questions arose concerning the text to be included into the consolidated Explanatory Report concerning the ATMF Uniform Rules. The proposal laid down in the CTE Working Document TECH-20045-CTE13-7 should therefore be reviewed in accordance with the advisory opinion adopted by the ad hoc Committee on Legal Affairs and International Cooperation during its first session in November 2021 OTIF-21008-JUR 1 before being adopted by the Revision Committee.
- (4) The objective of the Revision Committee (RC) decision is to align ATMF Uniform Rules with Safety Directive (EU) 2016/798.
- (5) Pursuant to Article 13(1)(f) of the COTIF, the Committee of Technical Experts ('CTE') of the OTIF was set up.

⁸ 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)

- (6) Pursuant to Article 20(1) (b) of the COTIF, and in accordance with Article 6 of the 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) - Appendix F to COTIF, the CTE is competent to adopt or to amend, inter alia, the Uniform Technical Prescriptions (UTP) concerning telematics applications for freight (UTP TAF).
- (7) In accordance with Article 20 § 1 e) of COTIF and Articles 7a and 21 of the ATMF Uniform Rules, the Committee of Technical Experts is competent to adopt or to amend the Annex B to the ATMF Uniform Rules concerning derogations from the application of Uniform Technical Prescriptions.
- (8) The CTE has included in the agenda of its 14th session that will take place on 14 and 15 June 2022 a proposal for decisions to amend the UTP TAF - telematics applications for freight and the revision of the Annex B to the ATMF Uniform Rules concerning derogations from the application of Uniform Technical Prescriptions.
- (9) It is appropriate to establish the position to be taken on the Union's behalf in the CTE and, as regards the revision of AMTF, in the Revision Committee of OTIF, as the proposed decisions will be binding on the Union.
- (10) The objectives of the CTE decision are to align the UTP TAF with EU rules, namely Commission Implementing Regulation (EU) 2021/541⁹ and the Annex B to the ATMF Uniform Rules to Directive (EU) 2016/797.
- (11) The envisaged OTIF decisions are in line with the law and the strategic objectives of the Union as they contribute to the alignment of OTIF legislation with the equivalent provisions of Union law, 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 partial revision of the ATMF Uniform Rules – Appendix G to COTIF by written procedure of the Revision Committee set up by the Convention concerning International Carriage by Rail is to vote in favour of the CTE proposal to amend Article 3a § 5 and Article 15 § 2 of the ATMF Uniform Rules (Appendix G to COTIF) as laid down in the CTE Working Document TECH-20045-CTE13-7, provided that any reference to mutual recognition is removed from Annex II thereof, in accordance with the advisory opinion adopted by the ad hoc Committee on Legal Affairs and International Cooperation during its first session in November 2021 OTIF-21008-JUR 1. If the abovementioned reference is not removed, the Union shall vote against the CTE proposal.

Article 2

The position to be taken on the Union's behalf during the 14th session of the CTE of the COTIF on the modifications to the UTP TAF, and on the revision of the Annex B of the ATMF Uniform Rules with regard to derogations from the application of Uniform Technical Prescriptions shall be the following:

⁹ Commission Implementing Regulation (EU) 2021/541 of 26 March 2021 amending Regulation (EU) No 1305/2014 as regard the simplification and improvement of data calculation and exchange and the update of the Change Control Management process (OJ L 108, 29.3.2021, p. 19)

- (1) to vote in favour of the CTE proposal to update the UTP TAF, as found in the proposal of the CTE working document TECH-22004-CTE14;
- (2) to vote in favour of the CTE proposal to update the Annex B to the ATMF Uniform Rules concerning derogations from the application of Uniform Technical Prescriptions, as found in the CTE working document TECH-22005-CTE14.

Article 3

Once adopted, the decisions of the Revision Committee and the Committee of Technical Experts shall be published in the *Official Journal of the European Union*, indicating the date of their entry into force.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*