Council of the European Union

Brussels, 19 August 2024
(OR. en)

12788/24

Interinstitutional File: 2024/0210(NLE)

TRANS 367

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	19 August 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2024) 380 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union at the 16th General Assembly of the Intergovernmental Organisation for International Carriage by Rail (OTIF)

Delegations will find attached document COM(2024) 380 final.

Encl.: COM(2024) 380 final

EUROPEAN
COMMISSION

Brussels, 19.8.2024
COM(2024) 380 final

2024/0210 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the 16th General Assembly of the Intergovernmental Organisation for International Carriage by Rail (OTIF)

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf at the 16th session of the General Assembly of the Intergovernmental Organisation for International Carriage by Rail (OTIF), in connection with the envisaged adoption of OTIF's long-term strategy, the election of a Secretary General for the period from 1 January 2025 to 31 December 2027, the revised versions of the 'Rules of Procedure of the General Assembly' and of the 'Regulation on the election and conditions of service of the Secretary General', and other decisions concerning: China's application to become an Associate Member of OTIF, the 'Guidelines on the application of procedures for the modification of COTIF', the basic regulatory principles in preparing modifications when modifying COTIF, the 'Recommendation on the use of electronic signatures in official communications between OTIF and its members', the 'Decision on the symbols, name and abbreviation' of OTIF and the 'Decision on copyright and open access'. The meeting documents for the session are available (with credentials) on the website of OTIF at the following link: https://extranet.otif.org/en/?page_id=246.

2. CONTEXT OF THE PROPOSAL

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

The COTIF governs the functioning of OTIF, its objectives, attributions, relations with its members and its activities in general. There are 52 countries party to the COTIF, including 25 EU Member States (all except Cyprus and Malta). Since 1 July 2011, the European Union is also a contracting party to the COTIF. The COTIF consists of the main Convention and seven Appendices that form an integral part of the Convention and establish uniform railway law, i.e. technical functional requirements and model contracts for the carriage of passengers and goods (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: Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic – APTU; and Appendix G: Technical Admission of Railway Material used in International Traffic – ATMF).

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

On 16 June 2011, the Council adopted Council Decision 2013/103/EU 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 Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999[1]. The Agreement entered into force on 1 July 2011. Council Decision 2013/103/EU contains a declaration by the Union concerning the exercise of competence (Annex I) and internal arrangements for the Council, the Member States and the Commission in proceedings under OTIF (Annex III).

[1] OJ L 51, 23.2.2013, p. 1.

2.3. The General Assembly of OTIF

The General Assembly is OTIF's supreme decision-making body. It holds an ordinary session every three years. The last ordinary session of the General Assembly took place in September 2021. It can also hold extraordinary sessions.

By virtue of Article 14 § 2 of COTIF, the General Assembly, amongst others: establishes its rules of procedure; elects the Secretary General; decides, if necessary, on the temporary establishment of other committees for specific tasks; and takes decisions about proposals aiming to modify COTIF.

Depending on the case, the General Assembly takes its decisions by the majority or two-thirds of the OTIF Member States represented at the time of the vote (Article 14 § 6 of COTIF and Article 21 of the Rules of Procedure of the General Assembly[2]).

The Union and/or its Member States participate in those decisions in accordance with their respective competences and with the provisions of COTIF, of the Rules of Procedure of the General Assembly and of the Agreement on the Accession of the Union to COTIF[3].

2.4. The envisaged acts of the General Assembly of OTIF that are relevant under Article 218(9)TFEU

During its 16th session, the General Assembly is expected to adopt certain legal acts and administrative decisions, which would have an impact on the activities of OTIF.

The General Assembly is expected to decide, among others, on:

– adopting OTIF's long-term strategy (under agenda item 7);

– electing a Secretary General for the period from 1 January 2025 to 31 December 2027 (under agenda item 9);

– extending the mandate of the ad hoc Committee on Legal Affairs and International Cooperation (hereafter 'the ad hoc Committee') for a six-year period until 1 October 2030, and instructing the ad hoc Committee to report to the next ordinary session of the General Assembly on its activities in 2025-2027 (under agenda item 13);

– adopting the 'Decision on permanent representatives' and approving the related 'Explanatory Notes' (under agenda item 13);

– endorsing the 'Guidelines on the application of procedures for the modification of COTIF', recommending that they are followed in the preparation of modifications to COTIF within the competence of the General Assembly, and instructing the ad hoc Committee to monitor and assess the application of the guidelines and to revise them as necessary (under agenda item 13);

– approving the basic regulatory principles to guide the ad hoc Committee and the Revision Committee in preparing modifications to modify COTIF and corresponding notes in the Explanatory Report to COTIF, with the aim of introducing an obligation for Member States to respect [not to undermine] the physical and functional integrity

[2] The latest version of the General Assembly's Rules of Procedure is available at: https://otif.org/en/?page_id=65.

[3] 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.

of the rail infrastructure of other Member States, as well as substantive and procedural provisions on sanctions to ensure compliance with the obligations under COTIF that are essential to achieve OTIF's aim (under agenda item 13);

– endorsing the 'Recommendation on the use of electronic signatures in official communications between OTIF and its members' (under agenda item 13);

– adopting the 'Decision on the symbols, name and abbreviation of the Intergovernmental Organisation for International Carriage by Rail' and the 'Decision on copyright and open access', and approving the related 'Explanatory Notes' (under agenda item 13);

– amending the 'Rules of Procedure of the General Assembly' and the related 'Explanatory Notes, and adopting/approving the revised versions thereof (under agenda item 14);

– amending the 'Regulation on the election and conditions of service of the Secretary General' and the related 'Explanatory Notes', and adopting/approving their revised versions thereof (under agenda item 15).

The General Assembly will also be informed about the state of COTIF and OTIF membership (under agenda item 5). It is anticipated that the General Assembly will be asked, under that agenda item, to decide on China's application to become an Associate Member of OTIF.

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

Agenda item 5 – Status of the Convention and OTIF membership

The document available to date for the 16th General Assembly meeting under that agenda item (SG-24032-AG 16/5) includes the following proposal for decision: *"The General Assembly…. welcomes… the accession of China as an Associate Member of OTIF".* On 26 April 2024, in accordance with Article 39 of COTIF, the Secretary General of OTIF notified the OTIF members of China's application for accession as an Associate Member[4]. In accordance with Articles 39 § 1 and 37 § 3 of COTIF, unless five members lodge objections, the accession is deemed to be accepted and takes effect three months after OTIF members have been notified by the depositary of the absence of five or more objections. An Associate Member is not a Contracting Party to COTIF, but entitled to participate in the work of the organs of OTIF in an advisory capacity.

However, that meeting document does not refer to the latest developments concerning China's application and will probably be amended before the 16th session of the General Assembly. Indeed, as specified in the OTIF Depository Note of 31 July 2024[5], the Commission lodged an objection by the deadline of 26 July 2024 on behalf of the Union, with a number of votes equal to those of Member States which are also members of OTIF, in line with Article 37 §§ 2 to 5 of COTIF. In particular, the Commission asked to receive more information through the OTIF Secretariat on the motivation and objectives for China's request for an associate membership of OTIF. OTIF's Secretary General further informed that China's application for accession will therefore be submitted to the General Assembly for decision, according to Article 37 § 4 of COTIF. He also announced that he will request that China's application be considered at the forthcoming 16th session of the General Assembly and that he will issue a circular letter shortly.

[4] NOT-24006
[5] NOT-24015

In this context, it is necessary to anticipate the decisions that may be submitted to that General Assembly, despite the fact that precise proposals for decision are not known yet.

The accession of China to OTIF, even only as an Associate Member, will influence the policy and substantive work of OTIF, an organisation to which the Union is a Contracting Party. China's participation in OTIF's activities, although in an advisory capacity, will extend to the whole scope of those activities, including areas for which the Union is exclusively competent. Should the 16th General Assembly take a decision on China's accession as Associated Member, such a decision will be binding under international law, in particular in the context of OTIF legislation. China will have the right to participate in the work of the organisation, to receive documents and will be obliged to pay 0,25% of the budget. Moreover, such an associate membership would be capable of altering the legal relationship between the Union and China in the context of OTIF. Therefore, a decision of OTIF's General Assembly admitting China as Associate member would constitute an 'act having legal effects' for the purposes of Article 218(9) TFEU.

Given that, to date, China has not yet provided the additional information requested by the Commission as part of the above-mentioned objection, the Union's position should be to defer any vote on China's accession as Associate Member of OTIF to a subsequent session of the General Assembly of OTIF.

Should such a deferral not be possible, and should a vote thus take place already at the 16th session of the General Assembly, the Union's position should be to vote against China's accession to OTIF as an Associate Member, in particular given the absence of the above-mentioned additional information.

Agenda item 7 – OTIF long-term strategy

Reference is made to the position of the Union on this issue adopted for the 15th OTIF General Assembly in September 2021[6], and subsequently for the 3rd, 4th, 5th and 6th sessions of the ad hoc Committee[7].

On 29 January 2024, the OTIF Secretary General consulted the members of OTIF's organs on a revised (expanded) draft version of the long-term strategy for OTIF. On 29 February 2024, the European Commission services sent their comments to OTIF, after due coordination with the Member States. These comments built on the above-mentioned Union position at the 5th session, and were reiterated on behalf of the Union at the 6th session of the ad hoc Committee (Vienna, 16-18 April 2024), which decided by consensus to revise the draft long-term strategy accordingly, namely to:

– Add a new measure under strategic objective (1), as follows: 'Dissuade OTIF members from opting for limited application of COTIF and its Appendices';

– Change the first measure under strategic objective (2), as follows: 'Intensify ongoing efforts and negotiations in relation to accession';

[6] Council Decision (EU) 2021/1744 of 28 September 2021 establishing the position to be adopted on behalf of the European Union at the 15th General Assembly of the Intergovernmental Organisation for International Carriage by Rail (OTIF) (OJ L 351, 4.10.2021, p. 1).

[7] ST 12637/22, ST 7918/23, Council Decision (EU) 2023/2582 of 8 November 2023 on the position to be taken on behalf of the European Union at the 5th session of the OTIF ad hoc Committee on Legal Affairs and International Cooperation (OJ L, 2023/2582, 16.11.2023, p. 1) and ST 8572/24.

– Move the third measure, 'Use OTIF's new role as Secretariat of the Supervisory Authority of the Luxembourg Protocol to highlight OTIF's core competences', from strategic objective (2) to strategic objective (4);

– Amend the fifth measure under strategic objective (2), as follows: 'Negotiations with interested states and associate members concerning full membership';

– Amend the second measure under strategic objective (4), as follows: 'Cooperate and improve the distribution of tasks and roles with OSJD';

– Amend the third measure under strategic objective (5), as follows: 'Cooperation with OSJD'.

The revised long-term strategy, which was submitted by the Secretary General to the 16th General Assembly (SG-24024-AG 16/7), encompasses the above changes and thus adequately addresses the earlier comments made by the Union.

As explained in the draft long-term strategy submitted to the General Assembly for adoption, OTIF's long-term strategy will be valid until 2040 and will be reviewed and assessed every six years. OTIF's two-year Work Programme should contain specific measures and actions to achieve the strategic objectives defined in the long-term strategy. The other work programmes of OTIF's individual organs should also be coordinated and linked to the long-term strategy. OTIF's members are invited to support the implementation of OTIF's long-term strategy by finding synergies with their respective rail strategies.

In light of the above, it is considered that the adoption of OTIF's long-term strategy will influence the policy and substantive work of OTIF, and the decision-making within OTIF. It therefore constitutes an 'act having legal effects' for the purposes of Article 218(9) TFEU.

The Union position on this item should be that the Union should support the long-term strategy for OTIF as submitted to the 16th General Assembly for adoption.

Agenda item 9 – Election of a Secretary General for the period from 1 January 2025 to 31 December 2027

(1) Contextual background

The term of office of the current Secretary General, who was elected at the 14th extraordinary session of the General Assembly in February 2019 and re-elected at the 15th ordinary session of the General Assembly in September 2021, expires on 31 December 2024. In accordance with Article 14 § 2, point c) of COTIF, the Secretary General for the period from 1 January 2025 to 31 December 2027 will be elected by the 16th General Assembly. At its 15th session, the General Assembly adopted the 'Regulation on the election and conditions of service of the Secretary General' which, among other things, specifies the procedure that applies to the submission of applications and the procedure leading up to the election of the Secretary General.

The call for applications for the election of the Secretary General of OTIF was published on 2 October 2023.[8]

(2) Qualification criteria for the post of Secretary General of OTIF

[8] Document SG-23024; the 2023 call for applications is available on the OTIF website at the following link.

The qualification criteria set out in Annex 3 to that call for applications reads as follows:

1. Nationality of an OTIF Member State; but not necessarily the nationality of the *proposing Member State.*
2. Many years' professional experience in different areas of activity and demonstrated ability in a position of major responsibility;
3. Knowledge of English and at least one of OTIF's other working languages (French or German). Knowledge at proficient user level is required for one language and knowledge at independent user level is required for the other language in accordance with the Common European Framework of Reference for Languages (CEFR) global scale;
4. A degree in a discipline relevant to the work of OTIF, preferably in law and political science; knowledge of international public law, rail transport law, the carriage of dangerous goods, rail transport in general and transport logistics would be an advantage;
5. Proven ability to head an administration such as that of the OTIF Secretariat, using modern information technology, several years' experience in personnel management on the basis of general principles and specific rules of personnel law and the ability to head the Organisation's financial affairs;
6. Knowledge of how international organisations function, diplomatic negotiations and professional experience in the international transport sector;
7. Ability to represent OTIF effectively in the Member States, at international level – particularly at conferences – and in public. Ability to speak at international conferences;
8. Comprehensive understanding of economic correlations and processes (including in the international context) and a proven interest in the transport sector and railways. Experience in legislative activities is necessary;
9. At least ten years professional experience, preferably in a State administration, an international organisation, an international association, an undertaking working in the international transport sector or from a teaching and research background. At least ten years' experience in the international field, during which they must be able to demonstrate that they have undertaken activities with major decision-making responsibilities;
10. Lengthy experience of international negotiations; candidates must also be able to deal with a very high workload and be willing to undertake numerous and demanding official journeys;
11. Dynamic team player, forward-looking, approachable and decisive, with a track record of working with other cultures;
12. Ability to develop political, legal, institutional and financial concepts.

(3) List of candidates as officially communicated by the OTIF Secretariat

On 10 April 2024, after formal examination of the applications, the OTIF Secretariat published the official list of the candidates, in alphabetical order of surnames, as follows[9]:

[9] The names of the candidates were published at https://otif.org/en/?page_id=7323.

– Mr Jochen CONRAD (application submitted by Germany)

– Mr Hinne Jaan Ype GROOT (application submitted by Netherlands)

– Mr Aleksandr KUZMENKO (application submitted by Lithuania)

– Mr Urban RUSNÁK (application submitted by Slovakia).

It is noted that all four applications were submitted by Member States of the European Union.

All four candidates were invited to the candidates' forum held on 20 June 2024, which was an informal meeting introduced by the above-mentioned 'Regulation on the election and conditions of service of the Secretary General', the aim being to present the candidates and put questions to them several weeks before the General Assembly.

The election of the Secretary General of OTIF is a decision of the General Assembly adopted by way of a voting procedure, in accordance with Article 14 § 6 of COTIF (majority of the OTIF Member States represented at the time of the vote). It will become effective as from the date on which the new elected Secretary General takes up their post, normally on 1 January 2025. The Secretary General is elected by the General Assembly for a period of 3 years, renewable twice at most, in accordance with Article 21 § 2 of COTIF. The decision of the General Assembly produces legal effects on the contracting parties to COTIF, as further explicate in the next point below.

(4) The tasks of OTIF's Secretary General

The tasks of OTIF's Secretary General go beyond those related to the management, application and functioning of COTIF. Specifically, the Secretary General has the following functions:

– Article 21 § 4 of COTIF provides that 'The Secretary General may, on his own initiative, present proposals aiming to modify the Convention';

– The Secretary General represents OTIF externally, draws up the work programme, drafts budget and management reports and manages the financial affairs of the Organisation (Article 21 § 3, points b), h), and i) of COTIF). These tasks give the Secretary General a certain room for manoeuvre;

– Importantly, the Secretary General also plays a discrete and independent role in settling disputes among contracting parties. They *"endeavour, at the request of one of the parties concerned, by using his good offices, to settle disputes between them arising from the interpretation or application of the Convention"* (Article 21 § 3, point j) of COTIF);

– The Secretary General also "*give[s], at the request of all parties concerned, an opinion on disputes arising from the interpretation or application of the Convention*" (Article 21 § 3, point k) of COTIF).

Hence, the functions of the Secretary General go beyond mere administrative powers in the management of OTIF and extends to have influence on the policy and substantive work of that organisation. Thanks, notably, to his prerogative to present proposals aiming to modify COTIF and to intervene in disputes between OTIF members, the Secretary General is capable of providing political and legal orientation to the works of OTIF. The action by the Secretary General is liable to influence the way decisions are taken and affect the operation of OTIF in areas directly related to the development and application of the Union's rail policy. Indeed, OTIF's activities fall under Union competence and, at least to a large extent, under Union's exclusive competence. Similarly, it is also liable to affect the Union in its capacity as OTIF Member.

Therefore, the election of one person rather than another as Secretary General constitutes an 'act having legal effects' for the purposes of Article 218(9) TFEU.

(5) On the applications

On the basis of the documents communicated by the OTIF Secretariat, it appears that all four candidates fulfil the requirements set out in the qualification criteria annexed to the call for applications.

Moreover, all four candidates have been proposed by Member States and are EU nationals.

The considerations conducting the choice to be made by Member States should be developed against this background:

First of all, it should be clear that votes should only be cast for candidates that are citizens of the Union, have been proposed by a Member State and meet all the requirements in the qualification criteria. Even though the time limit for applications has passed, this first set of criteria should guard against last minute surprises. Secondly, having regard to the Union's specific interest in the election, the vote should go to the candidate who best meets a number of criteria relevant to that interest. Some of those criteria are already set out in the call for applications, while another criterion is linked to a requirement in the call for applications, but is more specific, having regard to the Union interest in the election.

Overall, the following list of selection criteria is proposed:

Possible selection criteria	Requirements of the call for applications
EU competences	Criterion not explicitly mentioned in Annex 3 to the call for applications: *Knowledge of the European Union institutional framework and of the Union's rail acquis and policies* (linked to the requirement referred to in point 4 of Annex 3 to the call for applications[10])
Technical competences	Criteria referred to in points 4, 5 and 6 of Annex 3 to the call for applications
General competences	Criteria referred to in points 8, 9, 11 and 12 of Annex 3 to the call for applications.

The Union position on this agenda item should be to cast votes for the candidate who:

– **is a citizen of the Union, has been proposed by a Member State, meets all requirements set out in Annex 3 to the call for applications, and**

– **best meets the following criteria: knowledge of the Union institutional framework and of the Union's rail acquis and policies; and the criteria referred to in points 4, 5, 6, 8, 9, 11 and 12 of Annex 3 to the call for applications.**

[10] Point 4 of Annex 3 to the call for applications reads as follows: *"A degree in a discipline relevant to the work of OTIF, preferably in law and political science; knowledge of international public law, rail transport law, the carriage of dangerous goods, rail transport in general and transport logistics would be an advantage"*.

Agenda item 13 – Report of the ad hoc Committee on Legal Affairs and International Cooperation

The General Assembly will be informed about the activities of the ad hoc Committee on Legal Affairs and International Cooperation during the period 2021-2024 (SG-24028-AG16/13).

At its 15th session in September 2021, the General Assembly decided to set up the ad hoc Committee in accordance with Article 13 § 2 of COTIF for a period of 3 years (September 2021 – September 2024). Since its creation, the ad hoc Committee has held six sessions. At its 6th and last session, the ad hoc Committee adopted a report on its activities during the period of its three-year mandate. The report not only presents the work of the ad hoc Committee, but also contains proposals for decision by the 16th General Assembly, including the adoption or approval of a number of legal instruments.

The OTIF Secretariat specified that, in addition to the documents submitted with the ad hoc Committee's report, revised versions of the 'Explanatory Notes on the Rules of Procedure of the General Assembly (Articles 4 to 7, 10 and 22)' and the 'Explanatory Notes on the regulation on the election and conditions of service of the Secretary General' must also be prepared. These incorporate the ad hoc Committee's proposals made in the 'Recommendation on the use of electronic signatures in official communications between OTIF and its members'. Moreover, the Regulation on the election and conditions of service of the Secretary General and the General Assembly's Rules of Procedure and their accompanying explanatory notes should also be adapted in accordance with the 'Guidelines on the use of gender-neutral language'.

Under agenda item 13, the General Assembly will in particular be asked to take the following decisions, as listed in the report under the proposal for decision (SG 24028-AG16/13):

– Endorsing the 'Guidelines on the application of procedures for the modification of COTIF', as annexed to the report, recommending that they are followed in the preparation of modifications to COTIF within the competence of the General Assembly, and instructing the ad hoc Committee to monitor and assess the application of the guidelines and to revise them as necessary. While those Guidelines are not in themselves binding, they are capable of decisively influencing the procedures for the modification of COTIF. Therefore, they constitute an 'act having legal effects' for the purposes of Article 218(9) TFEU.

– Approving the basic regulatory principles as laid out in the proposal for decision in the report of the ad hoc Committee and as reflecting the Union position in Council Decision (EU) 2023/2582, to guide the ad hoc Committee and the Revision Committee in preparing modifications to modify COTIF and corresponding notes in the Explanatory Report to COTIF, with the aim of introducing an obligation for Member States to respect [not to undermine] the physical and functional integrity of the rail infrastructure of other Member States, as well as substantive and procedural provisions on sanctions to ensure compliance with the obligations under COTIF that are essential to achieve OTIF's aim. The subject matter concerns the organisation and functioning of the organisation, to with the Union is a Contracting Party, and may lead to the elaboration of proposals to amend COTIF; this topical issue concerns the whole scope of activities of OTIF, including areas for which the Union is exclusively competent. Therefore, the related proposals to modify COTIF will be binding under international law and will be capable of decisively influencing the

content of EU legislation. Moreover, these basic regulatory principles are capable of decisively influencing the interpretation and application of COTIF. Therefore, they constitute an 'act having legal effects' for the purposes of Article 218(9) TFEU.

– Endorsing the 'Recommendation on the use of electronic signatures in official communications between OTIF and its members', as annexed to the report. As specified in the Union position in Council Decision (EU) 2023/2582, the development of electronic communications requires certain administrative updates to ensure the safe and reliable use of electronic signatures in official communications between OTIF and its members. It is important to support a recommendation in that regard, which takes into account the different level of experience of OTIF members and is in line with the rules laid down at Union level, in particular Regulation (EU) No 910/2014 of the European Parliament and of the Council.[11] While this Recommendation is not in itself binding, it will have implications on the 'Guidelines on treaty acts under COTIF' as well as on the explanatory notes of 'Rules of Procedure of the General Assembly' of the 'Regulation on the election and conditions of service of the Secretary General' and of the 'Decision on permanent representatives', which will need to be amended accordingly. This Recommendation is thus capable of decisively influencing the procedures for the modification of COTIF. Therefore, it constitutes an 'act having legal effects' for the purposes of Article 218(9) TFEU.

– Adopting the 'Decision on the symbols, name and abbreviation of the Intergovernmental Organisation for International Carriage by Rail' and the 'Decision on copyright and open access' and approving for each decision the related 'Explanatory Notes'. As specified in the Union position in Council Decision (EU) 2023/2582, a policy designed to facilitate the reuse of information and documents owned by OTIF should be designed in line with the rules set out in Directive (EU) 2019/1024 of the European Parliament and of the Council[12] and Commission Decision 2011/833/EU[13]. The envisaged acts in this area are capable of decisively influencing the content of EU legislation, and therefore constitute 'acts having legal effects' for the purposes of Article 218(9) TFEU.

The proposals on which the 16th General Assembly is asked to decide have been discussed and agreed in the relevant sessions of the ad hoc Committee, as explained in detail in the ad hoc Committee's report, and were amended, as appropriate, and approved by the ad hoc Committee in line with the Union positions that have been established on those occasions. These are set out below.:

– The Union position on the 'Guidelines on the application of procedures for the modification of COTIF' was established for the 3rd session of the ad hoc Committee[14];

– The Union positions on: (i) the basic regulatory principles to guide the ad hoc Committee and the Revision Committee in preparing modifications to modify COTIF and corresponding notes in the Explanatory Report to COTIF, (ii) the

11 Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

12 Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (OJ L 172, 26.6.2019, p. 56).

13 Commission Decision 2011/833/EU of 12 December 2011 on the reuse of Commission documents (OJ L 330, 14.12.2011, p. 39).

14 ST 12637/22.

'Recommendation on the use of electronic signatures in official communications between OTIF and its members', (iii) the 'Decision on the symbols, name and abbreviation of OTIF, and (iv) the 'Decision on copyright and open access' were established for the 6th session of the ad hoc Committee[15], following the positions established for the 4th [16] and 5th sessions[17] of the ad hoc Committee.

The Union position at the 16th General Assembly should therefore be to support the adoption of the above-mentioned proposals for decision.

Agenda item 14 – Modification of the General Assembly's Rules of Procedure and accompanying explanatory notes

The General Assembly is invited to consider revised versions of the 'General Assembly's Rules of Procedure' and the 'Explanatory Notes on the Rules of Procedure of the General Assembly (Articles 4 to 7, 10 and 22)' adapted in accordance with the 'Guidelines on the use of gender-neutral language'. The explanatory notes also incorporate the ad hoc Committee's proposal in the 'Recommendation on the use of electronic signatures in official communications between OTIF and its members' (OTIF-24001-JUR 6). The proposals also include some purely editorial corrections.

The 16th General Assembly will be asked to decide on:

– amending the 'Rules of Procedure of the General Assembly' and adopting the revised version accordingly;

– amending the 'Explanatory Notes on the Rules of Procedure of the General Assembly (Articles 4 to 7, 10 and 22)' and approving the revised version accordingly.

The proposals on which the General Assembly is asked to decide are annexed to SG-24029-AG16/14[18]. These proposals have been discussed and agreed in the relevant sessions of the ad hoc Committee, as explained in detail in the ad hoc Committee's report under agenda item 13 (SG 24028-AG16/13). These proposals were amended, as appropriate, and approved by the ad hoc Committee in line with the Union positions that have been established as regards the use of gender-neutral language and the use of electronic signatures in official communications between OTIF and its members, in particular for the 2nd, 4th and 5th and 6th sessions of the ad hoc Committee.

The General Assembly's Rules of Procedure are legally binding acts under COTIF, with their explanatory notes being capable of decisively influencing their interpretation and application. Therefore, those Rules of Procedure constitute an 'act having legal effects' for the purposes of Article 218(9) TFEU.

The Union position should therefore be to support the adoption of the above-mentioned proposals for decision.

15 ST 8572/24.

16 ST 7918/23.

17 Council Decision (EU) 2023/2582 of 8 November 2023 on the position to be taken on behalf of the European Union at the 5th session of the OTIF ad hoc Committee on Legal Affairs and International Cooperation (OJ L, 2023/2582, 16.11.2023, p. 1).

18 The proposed amendments are highlighted in track changes.

Agenda item 15 – Revision of rules on the election and conditions of service of the Secretary General

The 16th General Assembly is invited to consider revised versions of the 'Regulation on the election and conditions of service of the Secretary General' and the 'Explanatory Notes on the regulation on the election and conditions of service of the Secretary General', which were adapted in accordance with the 'Guidelines on the use of gender-neutral language'. The explanatory notes also incorporate the ad hoc Committee's proposal in the 'Recommendation on the use of electronic signatures in official communications between OTIF and its members' (OTIF-24001-JUR 6). The proposals also include some purely editorial corrections.

The General Assembly will be asked to decide on:

– amending the 'Regulation on the election and conditions of service of the Secretary General' and adopting the revised version accordingly;

– amending the 'Explanatory Notes on the regulation on the election and conditions of service of the Secretary General' and approving the revised version accordingly.

The proposals on which the General Assembly is asked to decide are annexed to SG-24032-AG16/15[19]. These proposals have been discussed and agreed in the relevant sessions of the ad hoc Committee, as explained in detail in the ad hoc Committee's report under agenda item 13 (SG 24028-AG16/13). These proposals were amended, as appropriate, and approved by the ad hoc Committee in line with the Union positions that have been established as regards the use of gender-neutral language and the use of electronic signatures in official communications between OTIF and its members, in particular for the 2nd, 4th and 5th and 6th sessions of the ad hoc Committee.

The Regulation on the election and conditions of service of the Secretary General is a legally binding act under COTIF, with its explanatory notes being capable of decisively influencing its interpretation and application. Therefore, that Regulation constitutes an 'act having legal effects' for the purposes of Article 218(9) TFEU.

The Union position should therefore be to support the adoption of the above-mentioned proposals for decision.

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 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*'[20].

[19] The proposed amendments are highlighted in track changes.

[20] 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.

4.1.2. Application to the present case

The General Assembly of OTIF is a body set up by an agreement, namely the Convention concerning International Carriage by Rail (COTIF). The above-mentioned decisions, which the 16th General Assembly of OTIF is called upon to decide upon constitute acts having legal effects, as further explicated under section 3 above for each of these decisions.

The envisaged acts do 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

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 taken on the Union's behalf. 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.

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

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 ACTS

As the envisaged acts of the 16th General Assembly of OTIF will not amend COTIF or its Appendices, it is not necessary to publish them in the Official Journal of the European Union after their adoption.

2024/0210 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the 16th General Assembly of the Intergovernmental Organisation for International Carriage by Rail (OTIF)

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/EU[21] and with the Agreement between the European Union and the Intergovernmental Organisation for International Carriage by Rail (OTIF) on the Accession of the European Union to COTIF of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999[22].

(2) The General Assembly of OTIF was set up in accordance with Article 13 § 1, point a) of COTIF (the 'General Assembly'). Pursuant to Article 14 § 2 of COTIF, the General Assembly, among others, establishes its rules of procedure, elects the Secretary General, decides, if necessary, on the temporary establishment of other committees for specific tasks, and takes decisions about proposals aiming to modify COTIF.

(3) The Union participates in the General Assembly in accordance with COTIF, the Rules of Procedure of the General Assembly, and the Agreement on the Accession of the European Union to COTIF[23].

(4) At its 16th session planned for 25 and 26 September 2024, the General Assembly is expected to take a number of decisions. It is appropriate to establish the position to be taken on the Union's behalf, as those decisions will either have an impact on the functioning of OTIF and on the development of the strategy of the organisation, or will lead to the adoption of acts which are binding under international law and capable of decisively influencing the content of EU legislation, and thus constitute an 'act having legal effects' for the purposes of Article 218(9) TFEU.

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21 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).

22 OJ L 51, 23.2.2013, p. 8.

23 Agreement between the European Union and the Intergovernmental Organisation 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 1999 (OJ L 51, 23.2.2013).

(5) In particular, under agenda item 5, it is expected that the 16th session of the General Assembly will be asked to take a position on application of the People's Republic of China (hereafter 'China') to become an Associate Member of OTIF. Indeed, in line with Article 37 §§ 2 to 5 of COTIF, the European Commission lodged an objection to that application on behalf of the Union, with the number of votes equal to those of its Members which are also Member States of OTIF. As announced by OTIF's Secretary General in the Depository Note of 31 July 2024, China's application will be submitted to the General Assembly for decision, according to Article 37 § 4 of COTIF. It is necessary to anticipate the decisions that may be submitted to the 16th General Assembly. The accession of China to OTIF, even if only as an Associate Member, will influence the policy and substantive work of OTIF, an organisation to which the Union is a Contracting Party. China's participation in OTIF's activities, although in an advisory capacity, will extend to the whole scope of those activities, including areas for which the Union is exclusively competent. Therefore, should the 16th General Assembly take a decision on China's accession, such a decision will be binding under international law, in particular in the context of OTIF legislation. China will have the right to participate in the works of the organisation, to receive documents and will be obliged to pay 0,25% of the budget. Moreover, such an associate membership would be capable of altering the legal relationship between the Union and China in the context of OTIF. To date, China has not yet provided the additional information on the motivation and objectives for their application for associated membership, which was requested as part of the above-mentioned objection. In this context, the position of the Union should therefore be to defer any vote on China's accession as an Associate Member of OTIF to a subsequent session of the General Assembly of OTIF. Should such a deferral not be possible, the Union's position should be to vote against that accession to OTIF at the 16th session of the General Assembly.

(6) Under agenda item 7, the adoption of the long-term strategy for OTIF is capable of influencing the policy and substantive work of OTIF, and the decision-making within OTIF. The proposed revised long-term strategy as submitted to the General Assembly has been discussed and agreed in the relevant sessions of the ad hoc Committee on Legal Affairs and International Cooperation (hereafter 'the ad hoc Committee'), in line with the Union positions that were established regarding these matters. Therefore, the position of the Union should be to support the adoption of that revised long-term strategy.

(7) Under agenda item 9, the election of OTIF's Secretary General for the period from 1 January 2025 to 31 December 2027 is capable of having an influence on the policy and the substantive work of OTIF, an area which falls under the competence of the Union. The Secretary General is conferred important margins of manoeuvre in several areas, notably as regards the submission of proposals aiming to modify COTIF and the settlement of disputes. Therefore, the Secretary General's action is liable to affect the operation of OTIF in areas directly related to the development and application of the Union's rail policy. Similarly, it is also liable to affect the Union in its capacity as OTIF Member. The Union position should be that, in the context of the election of the Secretary General, votes should be cast for a candidate who is a citizen of the Union, has been proposed by a Member State, meets all requirements established in the call for applications issued by OTIF, and best meets the relevant set of criteria related to the specific Union interest in the election.

(8) Under agenda item 13, the General Assembly will be asked to endorse the 'Guidelines on the application of procedures for the modification of COTIF', to recommend that

they are followed in the preparation of modifications to COTIF within the competence of the General Assembly, and to instruct the ad hoc Committee to monitor and assess the application of the guidelines and to revise them as necessary. While those Guidelines are not in themselves binding, they are capable of decisively influencing the procedures for the modification of COTIF. The Guidelines as submitted to the General Assembly have been discussed and agreed in the relevant sessions of the ad hoc Committee, in line with the Union positions that were established regarding these matters. Therefore, the position of the Union should be to endorse those Guidelines.

(9) Under agenda item 13, the General Assembly will be asked to approve the basic regulatory principles, as laid out in the report of the ad hoc Committee and as reflecting the Union position in Council Decision (EU) 2023/2582[24], to guide the ad hoc Committee and the Revision Committee in preparing modifications to modify COTIF and corresponding notes in the Explanatory Report to COTIF, with the aim of introducing an obligation for Member States to respect [not to undermine] the physical and functional integrity of the rail infrastructure of other Member States, as well as substantive and procedural provisions on sanctions to ensure compliance with the obligations under COTIF that are essential to achieve OTIF's aim. These basic regulatory principles concern the organisation and functioning of the organisation, to with the Union is a Contracting Party, and may lead to the elaboration of proposals to amend COTIF; this topical issue concerns the whole scope of activities of OTIF, including areas for which the Union is exclusively competent. The related proposals to modify COTIF will be binding under international law and will be capable of decisively influencing both the content of EU legislation and the interpretation and application of COTIF. The basic regulatory principles as submitted to the General Assembly have been discussed and agreed in the relevant sessions of the ad hoc Committee, in line with the Union positions that were established regarding these matters. The position of the Union should therefore be to approve these basic regulatory principles.

(10) Under agenda item 13, the General Assembly will be asked to endorse the 'Recommendation on the use of electronic signatures in official communications between OTIF and its members'. As specified in the Union position in Council Decision (EU) 2023/2582, the development of electronic communications requires certain administrative updates to ensure the safe and reliable use of electronic signatures in official communications between OTIF and its members. It is important to support the preparation of a recommendation in that regard, which takes into account the different level of experience of OTIF members and is in line with the rules laid down at Union level, in particular Regulation (EU) No 910/2014 of the European Parliament and of the Council.[25] While this Recommendation is not in itself binding, it will have implications on the 'Guidelines on treaty acts under COTIF' as well as on the explanatory notes of 'Rules of Procedure of the General Assembly' of the 'Regulation on the election and conditions of service of the Secretary General' and of the 'Decision on permanent representatives', which will need to be amended accordingly. This Recommendation is thus capable of decisively influencing the procedures for the modification of COTIF. The proposals for decision submitted to the

[24] Council Decision (EU) 2023/2582 of 8 November 2023 on the position to be taken on behalf of the European Union at the 5th session of the OTIF ad hoc Committee on Legal Affairs and International Cooperation (OJ L, 2023/2582, 16.11.2023, p. 1).

[25] Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

General Assembly have been discussed and agreed in the relevant sessions of the ad hoc Committee, in line with the Union positions that were established regarding these matters. Therefore, the position of the Union should be to endorse this recommendation.

(11) Under agenda item 13, the General Assembly will be asked to adopt the 'Decision on the symbols, name and abbreviation of the Intergovernmental Organisation for International Carriage by Rail' and the 'Decision on copyright and open access', and to approve for each decision the related 'Explanatory Notes'. As specified in the Union position in Council Decision (EU) 2023/2582, a policy designed to facilitate the reuse of information and documents owned by OTIF should be designed in line with the rules set out in Directive (EU) 2019/1024 of the European Parliament and of the Council[26] and Commission Decision 2011/833/EU[27]. The envisaged acts in this area are therefore capable of decisively influencing the content of EU legislation. The proposals for decision submitted to the General Assembly have been discussed and agreed in the relevant sessions of the ad hoc Committee, in line with the Union positions that were established regarding these matters. Therefore, the position of the Union should be to adopt those Decisions and to approve the related Explanatory Notes.

(12) Under agenda item 14 and 15, the envisaged decisions of the General Assembly concern the adoption of revised versions, respectively, of its Rules of Procedure and of the Regulation on the election and conditions of service of the Secretary General, as well as on the approval of the Explanatory Notes related to those acts, all of them adapted in accordance with the new guidelines on the use of gender-neutral language. The respective explanatory notes will also incorporate the proposal of the ad hoc Committee in the 'Recommendation on the use of electronic signatures in official communications between OTIF and its members'. The General Assembly's Rules of Procedure and the Regulation on the election and conditions of service of the Secretary General are legally binding acts under COTIF, with their respective explanatory notes being capable of decisively influencing the interpretation and application of COTIF. The revised versions of the General Assembly's Rules of Procedure and the Regulation on the election and conditions of service of the Secretary General, and the related Explanatory Notes, have been discussed and agreed in the relevant sessions of the ad hoc Committee, in line with the Union positions that were established regarding these matters. The Union should therefore support the adoption of these amendments.

(13) The envisaged decisions are in line with the law and the strategic objectives of the Union, and should therefore be supported by the Union.

(14) In accordance with point 2.1 of Annex III to Decision 2013/103/EU, the preparation of OTIF meetings extends to on-the-spot coordination. Therefore, minor changes to this Union position may be agreed during on-the-spot coordination without requiring further decision of the Council, in particular in order to be able to react to proposals and developments not taken into account at the time of this Decision,

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[26] Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (OJ L 172, 26.6.2019, p. 56).

[27] Commission Decision 2011/833/EU of 12 December 2011 on the reuse of Commission documents (OJ L 330, 14.12.2011, p. 39).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf at the 16th session of the General Assembly of the Intergovernmental Organisation for International Carriage by Rail (OTIF) is set out in the Annex.

Minor changes to the position expressed in the Annex of this Decision may be agreed by the representatives of the Union at the General Assembly without further decision of the Council.

The position to be taken on the Union's behalf in any other meetings of the General Assembly, of OTIF organs or of other OTIF Committees in relation to the topics covered by this Council Decision shall also be in line with the position set out in the Annex, provided that the factual elements on which the present position is based have not fundamentally changed and/or that no other Decision has been adopted on the same subject matters in the meantime.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President