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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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Subject:	Coordinated position of the Union and its Member States at the 76 th meeting of the Working Party on Rail Transport of the United Nations Economic Commission for Europe (UNECE) as regards the “Unified Railway Law” initiative - Approval

This addendum contains the lines to take of the coordinated position of the Union and its Member State at the 76th session of the UNECE Working Party on Rail Transport (16-18.11.2022), as regards the Unified Railway Law (URL) initiative. This topic will be discussed under item 2 “Towards Unified Railway Law in the Pan-European Region and on Euro-Asian Transport Corridors”.

Documentation : ECE/TRANS/SC.2/2022/3

https://unece.org/sites/default/files/2022-09/ECE-TRANS-SC.2-2022-3e_0.pdf

1. Background

Reference is made to:

- Council document ST 13284/21 ADD, 29.10.2021 (Coordinated position of the Union and its Member States in the Working Party on Rail Transport of the United Nations Economic Commission for Europe (UNECE) as regards the ‘Unified Railway Law’ initiative)
- The presentation of the Commission at the meeting of the Council Working Party on Land Transport on 18 October 2021.
- Council document WK 11256/2022, 31.8.2022 (Special session of the UNECE Working Party on Rail Transport (SC.2) regarding the consultation on the Unified Railway Law (URL) initiative – 7 September 2022 (hybrid) - Non paper of the Commission services)

The Unified Railway Law (URL) initiative is based on the 2013 “Joint Declaration on the promotion of Euro-Asian rail transport and activities towards unified railway law”.

In November 2021 at its 75th session, SC.2 did not reach consensus on the orientation of the initiative i.e. whether “Approach A” (“interface law approach”, supported by the EU Member States and other like-minded countries) or “Approach B” (“single set of rules approach”, supported by the Russian Federation) should be selected to develop a legally-binding instrument on URL.

SC.2 therefore agreed to hold additional consultations until its 76th session in November 2022, and requested its Chair (NL) to manage these consultations. The consultations were initiated in May 2022 in the form of a questionnaire.

The results were presented and discussed during a special session on 7 September 2022. The outcome of this special session is reported in the a.m. meeting document for the 76th session, in section III “Conclusions”, where the following information is stated:

“46. The Chair also noted that the large majority of the respondents to the consultation had expressed support to the development of URL through Approach A.

47. The Chair asked that this document is shared with the Working Party on Rail Transport at its seventy-sixth session, where, if appropriate, a decision on the way forward for URL may be considered.”

2. State-of-play and general considerations

Compared to the situation one year ago, the only development on the URL initiative has been the consultation organised by the Chair of SC.2. The outcome of the consultation was however predictable as a large majority of SC.2 members have been supporting the so-called “Approach A” for several years, including within the Group of Experts towards Unified Railway Law, which had its mandate completed in January 2021.

At this point in time, it should be acknowledged that no further “consultation” or “technical discussions” are necessary with regard to the selected approach for the development of URL, and in fact, a decision on this issue is long overdue – because of the lack of consensus.

It is therefore critical that SC.2 adopts a clear decision on this issue at the 76th session, and the EU Member States should be prepared to cast a vote in order to unlock the situation and continue the preparatory works on this subject.

With reference to the analysis of the Union’s competence on this subject matter¹, and taking into account the fact that no development took place on substance since the 75th session of SC.2, it appears that the coordinated position established last year for the 75th session of SC.2 remains largely valid and relevant today, in particular as regards the fundamental principles of the so-called Approach A for the development of URL (interface law, opt-in principle).

At the 76th session of SC.2, it is therefore suggested that the Union and its Member States support the following coordinated position:

3. Proposed line to take

- a) Welcome the outcome of the written consultation organised by the Chair, which confirmed a large support in favour of developing URL according to approach A;
- b) Support the development of URL along the lines set under “Approach A” as reflected in document ECE/TRANS/SC.2/GEURL/2021/3 and signal preparedness to vote in favour of this approach, if a request to vote is put forward;

¹ Competence of the Union and of the Member States, ST 12792/21, p. 3

- c) Explain that this approach (A) is based on a pragmatic and step-by-step approach, including, as a first step, the formation of an interface law for contract for international carriage of goods by rail between COTIF/CIM and SMGS, as an opt-in solution, to fill a gap in the international regulations for international rail freight carriage when neither the COTIF/CIM nor SMGS apply over the entire journey (traffic between Europe and Asia);
- d) Explain that this approach is pragmatic because it intends to address actual problems identified by the industry, in a reasonable and proportionate manner².
- e) Comment that the existence of two functioning well-established regional legal regimes for international railway traffic (OTIF, OSJD) means that the unification of international railway law must be incremental (step-by-step) and coordinated with OTIF and OSJD;
- f) Note that OTIF adopted an official position on the URL initiative at its 15th General Assembly last year, which is to support the development of URL according to the so-called Approach A;
- g) Oppose the development of URL according to “Approach B” promoted by Russia and “Approach C” promoted by Belarus;
- h) Note that Approach B (all areas of international railway regulation) and Approach C (limited to the contract of carriage) are incompatible with the interface-law principle, as both approaches are based on the adoption of a single set of rules applicable to the entire Eurasian geographical area (OTIF+OSJD regions), for any type of international freight traffic, including within the OTIF region where such traffic is currently regulated by COTIF. These new binding rules would replace COTIF’s rules on the contract of carriage (Approach C) or replace the entire COTIF convention (and its appendixes) as well as the EU rail acquis (Approach B). This is neither pragmatic nor incremental, and denies the official position of OTIF adopted during its 15th General Assembly.

A coordination on the spot will be organised, in particular to assess preparedness for a possible vote in case such a vote will be requested.

² ECE/TRANS/SC.2/GEURL/2019/5 - Options available for converting URL into a legally binding instrument – URL as contract of carriage’s convention (submitted by the Commission)