



Council of the  
European Union

Brussels, 27 October 2023  
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**PROPOSAL**

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From: Secretary-General of the European Commission, signed by Ms Martine  
DEPREZ, Director

date of receipt: 27 October 2023

To: Ms Thérèse BLANCHET, Secretary-General of the Council of the  
European Union

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Subject: Proposal for a COUNCIL DECISION 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

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Delegations will find attached document COM(2023) 687 final.

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Brussels, 27.10.2023  
COM(2023) 687 final

2023/0388 (NLE)

Proposal for a

**COUNCIL DECISION**

**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**

(Text with EEA relevance)

## 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 5<sup>th</sup> session of the ad hoc Committee on Legal Affairs and International Cooperation ('the Committee') of the Intergovernmental Organisation for International Carriage by Rail (OTIF), in connection with the adoption of an advisory legal opinion on the interpretation of OTIF rules with regard to service facilities, and of decisions concerning the digitalisation of international rail freight transport documents, the development of a long-term strategy for OTIF, the suspension and termination of COTIF and/or membership of OTIF with regard to a particular OTIF Member State, the use of electronic signatures in official communications between OTIF and its members, the legal protection of OTIF's name, abbreviations, logo and works, and the clarification of the term 'expert' for the purpose of stakeholder involvement in the activities of the Committee.

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. The Convention concerning International Carriage by Rail**

The Convention concerning International Carriage by Rail (COTIF) governs the functioning of OTIF and its activities in general. There are 51 countries party to COTIF, including 25 European Union's Member States (all except Cyprus and Malta). Since 1 July 2011, the European Union (EU) is also a contracting party to COTIF.

COTIF consists of the main Convention and seven Appendices that form an integral part of the Convention and establish Uniform Rules (UR) for the international carriage of passengers and goods by rail (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; 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**

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<sup>1</sup>. The Agreement entered into force on 1st 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).

#### **2.3. The ad hoc Committee on Legal Affairs and International Cooperation**

The OTIF ad hoc Committee on Legal Affairs and International Cooperation ('the Committee') was established by the 15<sup>th</sup> General Assembly of OTIF in September 2021, and held its first session in November 2021.

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<sup>1</sup> OJ L 51, 23.2.2013, p. 1.

Its mandate is set out in Article 2 of its Rules of Procedure: a) to prepare draft amendments or supplements to the Convention; b) to provide legal advice on its own initiative or at the request of the organs referred to in Article 13 §§ 1 and 2 of the Convention or at the request of organs established by them; c) to promote and facilitate the functioning and implementation of the Convention; d) to monitor and assess legal instruments; e) to take decisions on cooperation with other international organisations and associations, including establishing and dissolving consultative contact groups with other international organisations and associations and monitoring the functioning of contact groups.

Whenever applicable, the Committee shall submit its conclusions and proposals to the competent organs referred to in Article 13 § 1 of COTIF for consideration or decision.

The work programme of the Committee was last updated in April 2023 (LAW-23079-JUR 4).

#### **2.4. The envisaged acts of the Committee**

During its 5<sup>th</sup> session, the Committee is expected to adopt an advisory legal opinion and other relevant decisions, which would have an impact on the activities of OTIF.

- Item 3. Application of the CUI UR to service facilities: the Committee may adopt an advisory legal opinion; even though a distinction must be made between the contracts covered by CUI UR and the obligations that the parties to those contracts have to meet under Union law, in this specific case, the draft opinion also concerns the interaction between OTIF rules and the Union legislation on the matter of the definition of railway infrastructure (regulated under Directive 2012/34/EU of the European Parliament and of the Council establishing a single European rail area<sup>2</sup>); in fact, the opinion refers extensively to Directive 2012/34/EU in order to establish the interpretation of the application of the CUI UR to service facilities and specifically refers to the need to interpret public law applied in OTIF members in point 3 of its conclusions, therefore, the advisory opinion is capable of decisively influencing the content of EU legislation.
- Item 4. The digitalisation of international transport, particularly freight transport documents: the Committee may decide to instruct the OTIF Secretariat to prepare a proposal to modify COTIF with the view to facilitating the uptake of the electronic rail consignment note; this subject matter, the electronic exchange of information related to international rail freight transport, is regulated at EU level by Regulation (EU) 2020/1056 of the European Parliament and of the Council of 15 July 2020 on electronic freight transport information; Recital 6 provides inter alia that “(...) The obligation for competent authorities to accept information made available electronically by economic operators should also apply whenever provisions of Union legal acts or national law falling within the scope of this Regulation require information that is also referred to in relevant international conventions such as the conventions governing the international contracts of carriage in the different transport modes, for example (...) the Convention concerning International Carriage by Rail (COTIF)”; therefore, the amendment of COTIF which the Committee may decide to instruct the OTIF Secretariat to prepare will be binding under international law and will be capable of decisively influencing the content of EU legislation.
- Item 6. Development of a long-term strategy for OTIF: based on the decision of the 15th General Assembly, and in accordance with its work programme, the Committee will continue to assist the Secretary General of OTIF in the preparation of a long term strategy for OTIF; at this session, it will consider a revised version of the

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<sup>2</sup> OJ L 343 14.12.2012, p. 32.

strategy and will advise the Secretary General on possible modifications or improvements; the EU is a contracting party to COTIF and a member of OTIF, the long-term strategy of OTIF concerns the full spectrum of OTIF activities, including legal instruments and policy areas for which the EU is exclusively competent (e.g. rail safety and technical standards, transport of dangerous goods); furthermore, the long-term strategy, if adopted by the General Assembly at its next ordinary session, will have a decisive influence on the content of OTIF's work programme and potentially on various aspects of COTIF, to which the EU is a Contracting Party.

- Item 7. Suspension and termination of COTIF and/or membership of OTIF with regard to a particular Member State: the Committee will consider the opportunity to instruct the OTIF Secretariat to prepare a proposal to amend COTIF; the subject matter concerns the organisation and functioning of the organisation, to which the EU 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 EU is exclusively competent; therefore, the amendment of COTIF which the Committee may decide to instruct the OTIF Secretariat to prepare will be binding under international law and will be capable of decisively influencing the content of EU legislation.
- Item 8. Use of electronic signatures in official communications between OTIF and its members: the Committee may decide on general instructions for the Secretariat to prepare a recommendation on the use of electronic signatures in official communications between OTIF and its members; this area is regulated at EU level by Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market; therefore, the recommendation which the Committee may decide to instruct the OTIF Secretariat to prepare will be capable of decisively influencing the content of EU legislation
- Item 9. Legal protection of OTIF's name, abbreviation, logo and works: the Committee will examine the legal requirements and may decide on possible actions to enhance the legal protection of OTIF's name, abbreviation, logo and works; the issue of re-use of public sector information is regulated at EU level by 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<sup>3</sup> and by Commission decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU)<sup>4</sup>; therefore, the decisions to be taken by the Committee in this area are capable of decisively influencing the content of EU legislation.
- Item 10. Involvement of registered stakeholders in the ad hoc Committee on Legal Affairs and International Cooperation: the Committee may decide to clarify the term 'expert' for the purpose of stakeholder involvement in its activities; the objective is to allow the participation of experts as representatives of legal persons active in the international rail sector, such as carriers and infrastructure managers; the decision on the interpretation of the term 'expert' in the context of the 'Recommendation on involving stakeholders in OTIF's work' will have legal effects as it will influence the decision-making within COTIF to which the EU is a contracting party.

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<sup>3</sup> OJ L 172, 26.6.2019, p. 56–83

<sup>4</sup> OJ L 330, 14.12.2011, p. 39

## 2.5. Union competence and voting rights

Pursuant to Article 6 of the Agreement between the European Union and the Intergovernmental Organisation for International Carriage by Rail on the Accession of the European Union to COTIF approved by Council Decision of 16 June 2011:

"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."

With regard to the decisions to be taken by the Committee at its 5th session as explicated in section 2.4 above, it was assessed that all items on the agenda fall in full or in part under the Union's exclusive competence.

The above-mentioned acts to be adopted by the Committee concern specific areas for which the EU has exercised its competence and adopted internal rules that may be affected (items 3, 4, 8, 9), or with regard to cross-cutting or administrative matters auxiliary to the substantive matters regulated by COTIF, for which the centre of gravity falls predominantly under exclusive Union competence (items 6, 7, 10).

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

Agenda Item 3 – Application of the CUI UR to service facilities

In accordance with its work programme, the Committee should examine the issue of the application of the Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI – Appendix E to the Convention, hereafter 'CUI UR') to service facilities, and issue an advisory opinion on the matter.

At its 4th session, the Committee held a general discussion on the application of the CUI UR to service facilities based on an inception paper prepared by the OTIF Secretariat (LAW-23022-JUR 4/8). Following this discussion, the Committee instructed the Secretariat to prepare a draft legal opinion.

At its 5th session, the Committee will consider the draft advisory legal opinion prepared by the Secretariat (LAW-23109-JUR 5/3). Its purpose is to clarify the scope of the CUI UR, in particular whether the term 'infrastructure' should be interpreted as covering fixed service facilities within the meaning of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area<sup>5</sup>, taking into account the fact that COTIF and, in particular, the CUI UR do not define or refer to the notion of 'service facilities'.

Article 3(a) of the CUI UR defines railway infrastructure as follows:

*"railway infrastructure" means all the railway lines and fixed installations, so far as these are necessary for the circulation of railway vehicles and the safety of traffic.*

As underlined in the inception paper of the Secretariat, the literal interpretation of the term indicates that it covers both railway lines and fixed installations. Secondly, to fall under the

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<sup>5</sup> OJ L 343, 14.12.2012, p. 32.

definition, the objects must be necessary for two cumulative purposes: the circulation of railway vehicles and the safety of traffic.

From that starting point, and from other analytical elements relevant to the subject matter, the draft legal opinion prepared by the OTIF Secretariat concludes effectively that:

- The CUI Uniform Rules apply to any contract of use of railway infrastructure for the purposes of international carriage within the meaning of the CIV Uniform Rules (COTIF Appendix A) and the CIM Uniform Rules (COTIF Appendix B);
- The CUI Uniform Rules do not affect the public law applied in OTIF members concerning railway infrastructure and access to it and are complementary to that law;
- It is necessary to ensure a harmonised and complementary interpretation of the CUI UR and the public law applied in the OTIF members in order to avoid conflicts between two legal regimes and to enable application of the CUI UR;
- The determination of what constitutes ‘railway infrastructure’ for the purposes of the CUI Uniform Rules should be carried out in two stages. Firstly, the public law applied in the OTIF member determines what constitutes railway infrastructure and what the conditions of access to it are. Secondly, only railway infrastructure as defined by the applicable public law of an OTIF member and meeting the requirements of Article 3(a) of the CUI UR can be the subject of a contract of use under the CUI UR.

These conclusions are fully compatible and consistent with the EU’s legal framework regulating access rights to the rail network and the provision of rail transport services as laid down in Directive 2012/34/EU. Therefore, it is proposed to support the adoption of the advisory legal opinion in its current version.

Agenda Item 4 – The digitalisation of international transport, particularly freight transport documents

In 2022, the OTIF Secretariat organised a survey on rules concerning electronic railway transport documents. After discussing the results of the survey at its 3rd session, the Committee concluded that there was no immediate need to modify the Uniform Rules concerning the Contract of International Carriage of Goods by Rail (COTIF Appendix B, hereafter ‘CIM UR’) with regard to electronic railway transport documents and instructed the Secretariat to submit to its next session a proposal for possible follow-up actions.

In the Inception paper prepared by the Secretariat, it was noted that the case of the electronic consignment note developed jointly by the International Rail Transport Committee (CIT) and the Organization for Cooperation of Railways (OSJD) was not documented. This joint “OTIF-OSJD” consignment note already exists in an electronic format and is administered, for the OTIF part, by the CIT. There are several documents developed in this framework that effectively supplement the general provisions of COTIF on the functional equivalence of the electronic consignment note.

At its 4th session the Committee was invited to decide on possible follow-up actions, if any. However, the Committee did not have time to consider this issue and deferred it to the 5th session. The proposed Union position is therefore identical to the one prepared for the 4th session of the Committee as laid down in Council document ST 7918/23, i.e., to consider that the existing provisions of the CIM UR are sufficient for paperless carriage and to invite the Secretariat to prepare for the next session an analytical non-paper on possible modification to CIM UR with the view to facilitate the uptake of the CIM electronic consignment note.

Agenda Item 6 – Development of a long-term strategy for OTIF

In accordance with its work programme, the Committee should ‘assist the Secretary General in the preparation of a long-term strategy based on the decision of the General Assembly at its 15th session’. At its 4th session, the Committee advised the Secretary General that OTIF’s long-term strategy ‘should incorporate relevant elements of the background analysis and be restructured into a single draft strategy document showing the links between the analysis of the relevant issues and challenges and the strategic goals’.

The Committee also advised the Secretary General that OTIF’s long-term strategy should be structured along the following main elements:

- ‘Vision: as an international forum, OTIF should play a central role to make rail transport the backbone of a sustainable and seamless international transport system.
- Mission: promote, improve and facilitate international traffic by rail in all respects (cf. COTIF Article 2).
- Strategic objectives: 1. Ensure the effective and uniform application of OTIF law; 2. Expand the application of OTIF law over the widest possible geographical area; 3. Ensure that OTIF law remains relevant over time; 4. Enhance OTIF’s leading role in international rail transport and contribute to finding synergies with other relevant international organisations and associations; 5. Contribute to the harmonisation and unification of international railway law systems’.

At its 5th session, the Committee will be expected to provide further advice and guidance to the Secretary-General based on a revised version of the draft strategy document, with the objective of achieving a general consensus on the structure and substance of the long-term strategy. After reviewing the revised draft strategy document, the position of the EU is to support the current version prepared by the Secretary General and to suggest a few possible improvements as explicated in the Annex of the Council decision.

Agenda Item 7 – Suspension and termination of COTIF and/or membership of OTIF with regard to a particular Member State

In 4 August 2022, the Committee decided to include the topic of ‘suspension and termination of COTIF and/or membership of OTIF with regard to a particular Member State’ in its work programme. The objective and scope of work were defined as follows: ‘review OTIF and international law rules and relevant practice on suspension and termination of treaties and membership (including limitation of some rights)’.

At its 3<sup>rd</sup> session, the Committee took note of the inception paper prepared by the Secretariat, and decided to adjourn discussions on this matter.

At its 4<sup>th</sup> session, the Committee was invited to resume the discussions and to consider, in particular, the following questions:

- Whether, as a general rule, sanctions for the breach of OTIF rules should only be imposed if expressly provided for by COTIF.
- Whether COTIF should set out sanctions for a breach of international law in general when its own rules are not breached. If so, what potential breaches should be included?
- Whether COTIF should set out sanctions for breaches other than non-payment of contributions. If so, what potential breaches should be included?
- Which OTIF organ should be responsible for deciding whether the relevant rules have been breached? – Which OTIF organ should decide on the application of

sanctions, the restoration of rights and the readmission of expelled Member States and by what majority?

- Should circumstances precluding the wrongfulness of an act be expressly included in COTIF?
- In case of expulsion, should the readmission of expelled members follow the same procedure as for the admission of new members or should the procedure be different? Should any specific conditions be imposed?

As these questions required further analysis, the discussions were adjourned to the 5<sup>th</sup> session of the Committee. During the discussions in the Council Working Party on Land Transport, several Member States requested to discuss this issue after the Committee's 4<sup>th</sup> session, in order to allow sufficient time for meaningful discussions and consultations with the view to reaching a well-defined position for the 5<sup>th</sup> session of the Committee. In this context, the Commission services prepared a comprehensive non-paper, which was circulated by the Council's General Secretariat on 12 July 2023 (reference ST 11781/23) and discussed in the Council Working Party on Land Transport on 4 and 18 September 2023.

Based on the outcome of this informal discussion, the proposed Union position hinges on the following key principles:

- Any sanction for the breach of OTIF rules should only be imposed if expressly provided for by COTIF.
- Amendments to COTIF may be envisaged to define sanctions for breaches of certain COTIF provisions other than the non-payment of financial contributions to the budget, such as in the case of (1) breaches of OTIF rules that cause a potential or actual dysfunction of the international rail traffic regulated by COTIF and/or (2) breaches of OTIF rules that seriously hamper the aim of OTIF to promote, facilitate and improve international rail traffic.
- The option of setting out under COTIF sanctions for a breach of international law in general would be innovative and requires paying attention to, and careful analysis of, the implications that such decision may entail.
- The General Assembly should be formally responsible for deciding whether relevant OTIF rules have been breached and for deciding on the application of sanctions, the restoration of rights and the readmission of expelled Member States.
- Circumstances precluding the wrongfulness of an act should be expressly included in COTIF and formulated in a consistent manner with the international law regime of States' responsibility for internationally wrongful acts.
- In case of expulsion, the readmission of expelled members should only be considered and accepted under specific conditions, and in any case only if the breach of OTIF rules that gave rise to the sanction is effectively corrected.

In addition, in view of the geopolitical situation and the prominent role of OTIF in the railway sector at international level, the Union and its Member States will suggest considering the possible inclusion in COTIF of provisions requesting members to respect the physical and functional integrity of the rail infrastructure of other members. This could be for example inserted in Article 5 of COTIF (Special obligations of the Member States). The breach of such new provision could be sanctionable.

It is proposed that the Committee decides to instruct the OTIF Secretariat to prepare a proposal to modify COTIF, taking into account the above-mentioned guiding principles.

## Agenda Item 8 – Use of electronic signatures in official communications between OTIF and its members

In accordance with its work programme, the Committee should ‘examine the legal requirements for the use and acceptance of electronically signed documents (credentials, letters, approvals, reservations, depositary notifications etc.) in official communications between OTIF and its members.’ As a result of the above examination, it should ‘issue a recommendation on the use and acceptance of electronic signatures in official communications between OTIF and its members’.

At its 5<sup>th</sup> session, the Committee is invited to discuss this topic based on an inception paper prepared by the Secretariat and to decide on general instructions for the preparation of the recommendation. It should be noted that this issue was submitted to the 4<sup>th</sup> session of the ad hoc Committee but was postponed to the 5<sup>th</sup> session.

The proposed Union position is therefore identical to the one prepared for the 4<sup>th</sup> session of the Committee as laid down in Council document ST 7918/23, i.e., to support the preparation of a recommendation, preferably by the OTIF Secretariat, for consideration and possible adoption at the next session of the Committee.

As regards general principles, the different level of experience of OTIF members should be considered, and therefore it appears appropriate that the recommendation, in a first phase, covers “simple” communications only, similar to those covered by Article 3(10) of Regulation (EU) 910/2014<sup>6</sup>. According to that provision, an electronic signature for “simple” communications means data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign.

## Agenda item 9 – Legal protection of OTIF’s name, abbreviation, logo and works

At its previous session, the Committee updated its work programme by adding the following item: “legal protection of OTIF’s name, abbreviation, logo and works”. At the 5<sup>th</sup> session, the Committee will consider an inception paper prepared by the OTIF Secretariat, including background information and analysis on possible actions to enhance the legal protection of OTIF’s name, abbreviation, logo and works and may decide to develop an intellectual property document management policy for OTIF.

The issue of re-use of public sector information is regulated at EU level by the Open Data Directive (2019/1024) and by Commission decision on the reuse of Commission documents (2011/833/EU). The Directive establishes a set of minimum rules governing the re-use and the practical arrangements for facilitating the re-use of documents held by public sector bodies of the Member States and by certain public undertakings. The Commission’s re-use policy, is carried out inter alia, by using open access policies including under Creative Commons (but not only) and only where appropriate. There are several exceptions which exclude open access licensing models altogether. With respect to documents protected by copyright, the Commission is bound to make these available for reuse. OTIF owns its documents and can assert rights of ownership such as copyright and any other relevant intellectual property right in those documents. It is therefore suggested to support the development of an internal intellectual property document management policy for OTIF. As a general principle, such policy should not go further than the rules that the Commission is bound to apply to its own documents, or the rules set out in Directive (EU) 2019/1024.

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<sup>6</sup> 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).

Concerning the protection of OTIF's name, abbreviation and logo under Article 6ter of the Paris Convention for the Protection of Industrial Property, the EU is competent via the World Trade Organisation's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). It has also adopted legislation in this area e.g. Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark<sup>7</sup>.

Agenda Item 10 – Involvement of registered stakeholders in the ad hoc Committee on Legal Affairs and International Cooperation

At its 2<sup>nd</sup> session, the Committee adopted a 'Recommendation on involving stakeholders in OTIF's work', (Annex OTIF-22002-JUR 2). It also decided that the status of "registered stakeholder" should be granted by means of a written tacit procedure and by consensus.

Although the recommendation has been successfully implemented, the categories of experts require some clarification considering the withdrawal of one expert and enquiries from interested railway undertakings about the possibility to nominate an expert to represent their interests.

At its 5<sup>th</sup> session, the Committee is expected to consider taking a decision for clarifying the term 'expert' to mean experts in their independent professional capacity and experts as representatives of legal persons active in the international rail sector, such as carriers and infrastructure managers. It is proposed to support this proposal for the purpose of stakeholder involvement in the activities of the Committee.

## **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'*<sup>8</sup>.

#### *4.1.2. Application to the present case*

The OTIF ad hoc Committee on Legal Affairs and International Cooperation is a body set up by an agreement, namely the Convention concerning International Carriage by Rail (COTIF), in accordance with its Article 13 § 2.

The acts which the Committee is called upon to adopt constitute acts having legal effects. The envisaged acts will lead to the adoption of acts which are binding under the rules of international law governing the body in question and which will be capable of decisively influencing the content of EU legislation, namely: Directive 2012/34/EU, Regulation (EU) 2020/1056 and Regulation (EU) No 910/2014.

The envisaged acts do not supplement or amend the institutional framework of the agreement.

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<sup>7</sup> OJ L 154, 16.6.2017, p. 1–99

<sup>8</sup> 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.

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.

Proposal for a

## **COUNCIL DECISION**

### **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**

(Text with EEA relevance)

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 ('COTIF'), in accordance with Council Decision 2013/103/EU<sup>9</sup> 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 the COTIF Convention.
- (2) Pursuant to Article 2 of its Rules of Procedure, the OTIF ad hoc Committee on Legal Affairs and International Cooperation ('the Committee') is mandated to: a) prepare draft amendments or supplements to the Convention; b) provide legal advice on its own initiative or at the request of the organs referred to in Article 13 §§ 1 and 2 of the Convention or at the request of organs established by them; c) promote and facilitate the functioning and implementation of the Convention; d) monitor and assess legal instruments; e) take decisions on cooperation with other international organisations and associations, including establishing and dissolving consultative contact groups with other international organisations and associations and monitoring the functioning of contact groups.
- (3) The Union participates in the Committee in accordance with the provisions of COTIF, of the Rules of Procedure of the Committee, and of the Agreement on the Accession of the Union to COTIF.
- (4) At its 5th session, planned to take place on 7-9 November 2023, the Committee is expected to decide upon an advisory legal opinion on the application of COTIF Appendix E to service facilities; possible options to amend COTIF Appendix B to facilitate the uptake of the electronic rail consignment note; certain aspects on the preparation of a long-term strategy for OTIF; possible options to amend COTIF with regard to the suspension and termination of COTIF and/or membership of OTIF with regard to a particular OTIF member; the preparation of a recommendation on the use

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<sup>9</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).

of electronic signatures in official communications between OTIF and its members; the development of a copyright policy and the preparation of guidelines on the protection of OTIF's name, abbreviation and logo; and the clarification of the term 'expert' for the purpose of stakeholder involvement in its activities.

- (5) It is appropriate to establish the position to be taken on the Union's behalf in the 5<sup>th</sup> session of the Committee, as the Union is a member of OTIF and the decisions to be taken by the Committee may lead to the adoption of acts which are binding under international law and capable of decisively influencing the content of EU legislation, namely: Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area<sup>10</sup>, Regulation (EU) 2020/1056 of the European Parliament and of the Council of 15 July 2020 on electronic freight transport information<sup>11</sup> and 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<sup>12</sup>.
- (6) The Committee is expected to decide on an advisory legal opinion on the application of the Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI UR, COTIF Appendix E) to rail service facilities. It is necessary to ensure a harmonised and complementary interpretation between those rules and the legislation applicable in the OTIF members with regard those rail service facilities, in particular, as far as the Union is concerned, Directive 2012/34/EU.
- (7) The existing provisions of COTIF allow the use of the electronic consignment note based on the principle of functional equivalence with the paper-version. In view of continuing digitalisation of transport, it is necessary to review the appropriateness of the OTIF legal framework and consider possible options to amend COTIF with the view to facilitating the uptake of the electronic rail consignment note, taking into account the rules adopted at EU as set out in Regulation (EU) 2020/1056.
- (8) As regards the strategic development of OTIF, it is important to ensure that further advice and guidance is provided to the Secretary-General on the elaboration of a long-term strategy for OTIF, which should be presented for consideration and adoption by the OTIF General Assembly at its next ordinary session.
- (9) Considering recent geopolitical tensions in the pan-European region, the Committee is expected to resume discussions on the suspension and termination of COTIF and/or membership of OTIF with regard to a particular Member State. It is necessary to make sure that COTIF rules on suspension and termination of treaties and membership including limitation of some rights are properly reviewed, and to decide whether COTIF should be amended to better protect the integrity of the organisation and of the network of the OTIF members as well as to better support the achievement of OTIF's aim to promote, improve and facilitate international traffic by rail in all respects.
- (10) The development of electronic communications requires certain administrative updates and modernisation 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

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<sup>10</sup> OJ L 343, 14.12.2012, p. 32.

<sup>11</sup> OJ L 249, 31.7.2020, p. 33.

<sup>12</sup> OJ L 257, 28.8.2014, p. 73.

level of experience of OTIF members and in line with the rules laid down at EU level in this regard, notably Regulation (EU) No 910/2014.

- (11) As regards the legal protection of OTIF's name, abbreviation, logo and intellectual property, the Committee may decide to develop an intellectual property document management policy for OTIF. Such policy should be designed to facilitate the re-use of information and documents owned by OTIF in line with the rules set out in 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<sup>13</sup> and Commission decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU)<sup>14</sup>.
- (12) The Committee may decide to clarify the term 'expert' in the context of the 'Recommendation on involving stakeholders in OTIF's work'. It is necessary to ensure a harmonised interpretation of this concept, given the importance of ensuring appropriate stakeholder involvement in the activities of the Committee.
- (13) The proposed decisions to be taken at the 5<sup>th</sup> session of the Committee are in line with the law and the strategic objectives of the Union and should therefore be supported.

HAS ADOPTED THIS DECISION:

#### *Article 1*

The position to be taken on the Union's behalf at the 5<sup>th</sup> session of the ad hoc Committee on Legal Affairs and International Cooperation of the Intergovernmental Organisation for International Carriage by Rail (OTIF) is set out in the Annex.

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

#### *Article 2*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*

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<sup>13</sup> OJ L 172, 26.6.2019, p. 56–83

<sup>14</sup> OJ L 330, 14.12.2011, p. 39