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COVER NOTE

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, 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 57th session of the Committee of Experts for the Carriage of Dangerous Goods of the Intergovernmental Organisation for International Carriage by Rail as regards certain amendments to Appendix C to the Convention concerning International Carriage by rail

Delegations will find attached document COM(2022) 59 final.

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EUROPEAN
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Brussels, 23.2.2022
COM(2022) 59 final

2022/0041 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the 57th session of the Committee of Experts for the Carriage of Dangerous Goods of the Intergovernmental Organisation for International Carriage by Rail as regards certain amendments to Appendix C to the Convention concerning International Carriage by rail

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Organisation for International Carriage by Rail (OTIF) Committee of Experts for the Carriage of Dangerous Goods (RID Expert Committee). It relates to the envisaged adoption of certain amendments to the technical and administrative provisions contained in the Annex to Appendix C to the Convention concerning International Carriage by Rail (COTIF). These amendments are due to be decided by the said committee.

2. CONTEXT OF THE PROPOSAL

2.1. Convention concerning International Carriage by Rail (COTIF)

The Convention concerning International Carriage by Rail of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999, is an international agreement where both the Union and 25 Member States are Contracting Parties (only Cyprus and Malta are not).

The European Union acceded to the COTIF by means of Council Decision 2013/103/EU of 16 June 2011[1].

2.2. The Regulation concerning the International Carriage of Dangerous Goods by Rail (RID)

Under its Article 7, the COTIF also covers, *inter alia*, the Appendices referred to in its Article 6. This includes the 'Regulation concerning the International Carriage of Dangerous Goods by Rail (RID)', forming Appendix C to the Convention. RID applies insofar as declarations are not made in accordance with the relevant provisions of the COTIF[2].

RID aims to regulate the international transport of dangerous goods by rail between the OTIF Member States that apply RID rules (RID Contracting States)[3].

Directive 2008/68/EC on inland transport of dangerous goods[4] stipulates that RID also applies to carriage performed within EU Member States.

2.3. The RID Expert Committee

The RID Expert Committee is a body set up under Article 13(1)(d) of the COTIF. In accordance with Article 18 of the COTIF, the RID Expert Committee takes decisions about proposals aiming to amend the Convention. It is made up of representatives of OTIF Member States that apply RID and of the European Union.

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1 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.

2 Article 42(1) of the COTIF.

3 Currently, there are 50 OTIF Member States and 45 RID Contracting States.

4 Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods, OJ L 260, 30.9.2008, p. 13.

2.4. The envisaged act of the RID Expert Committee

On 25 May 2022, during its 57th session, the RID Expert Committee is expected to adopt a set of amendments updating the Annex to RID ('the envisaged act') in light of technical and scientific progress.

The purpose of the envisaged act is to ensure safe and secure transport of dangerous goods by rail, by updating certain provisions. These would include among others the list of dangerous goods admitted for carriage, the packing instructions, the list of applicable standards, and other technical requirements applicable for various means of containment.

It could be noted that the international provisions on the transport of dangerous goods are established in various international organisations, such as OTIF. These include the United Nations Economic Commission for Europe (UNECE) and various specialised bodies of the United Nations, such as the Economic and Social Council's (ECOSOC) Sub-Committee of Experts on the Transport of Dangerous Goods. Since rules need to be compatible, a complex international system for coordination and harmonisation has been developed among the organisations involved in this work. The provisions are adapted following a 2-year cycle.

A wide range of public and private sector experts has been consulted during the preparation of these amendments. The following technical meetings took place during the preparation of these amendments:

– UN ECOSOC Sub-Committee of Experts on Transport of Dangerous Goods in its:

(1) 55th session in Geneva, 1-5 July 2019;

(2) 56th session in Geneva, 4-10 December 2019;

(3) 57th session in Geneva, 27 November to 8 December 2020;

– UNECE-OTIF Joint meeting of the RID Expert Committee and the Working Party on the Transport of Dangerous Goods:

(1) autumn 2020 session in Geneva, 10-18 September 2020;

(2) spring 2021 session in Bern, 15-19 March 2021;

(3) autumn 2021 session in Geneva, 21 September to 1st October 2021;

(4) another session of the Joint Meeting will take place in Bern, on 14-18 March 2022;

– Standing Working Group of the RID Committee of Experts in its:

(1) 12th session in Bern (video-conference), 24-26 November 2020;

(2) 13th session in Geneva, 15-19 November 2021.

In these meetings, the individual proposals for amendments have been analysed and processed by the experts of the above-mentionned committees. In most cases, the recommended action has been supported unanimously. For certain proposals, the recommendations are supported by a majority of the experts.

In accordance with Article 35 of the COTIF, once decided upon by the RID Expert Committee, the amendments enter into force for all Contracting Parties on the first day of the sixth month following that during which the Secretary General has given notice of them to the Contracting Parties. A Contracting Party may formulate an objection within the period of four months from the day of the notification. In the case of objection by one quarter of the Contracting Parties, the amendment does not enter into force.

Article 38 of COTIF lays down that, for the purposes of exercising the right to vote and the right to object provided for under Article 35(4), a regional economic integration organisation such as the European Union 'shall enjoy the number of votes equal to those of its members which are also Member States of the Organisation'.

Unless a sufficient number of objections are raised by the parties, the amendments concerned under this proposal are expected to enter into force on 1 January 2023 and become binding on the Union and the Member States, forming an integral part of the Union *acquis*.

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

3.1. Exclusive competence of the Union

The Union is a full Contracting Party to COTIF.

In addition, Article 1 of Directive 2008/68/EC provides that the Annex to RID is to apply to the transport of dangerous goods by rail within or between Member States, with the exception of those Member States that do not have a railway system. Article 4 of Directive 2008/68/EC, on third countries, provides that 'the transport of dangerous goods between Member States and third countries shall be authorised in so far as it complies with the requirements of the ADR[5], RID or ADN[6], unless otherwise indicated in its Annexes'.

To this end, the Commission has been empowered to adapt Annex II, Section II.1 to Directive 2008/68/EC by means of a delegated act, pursuant to Article 8 of the Directive.

It could also be noted that Directive 2008/68/EC on the inland transport of dangerous goods[7] is on the list of Union instruments through which the Union has exercised its competence and that were in force at the time of the conclusion of the Agreeent between the EU and OTIF[8].

3.2. Position to be taken

Amendments to RID fall entirely within exclusive Union competence and it is necessary to establish a position of the Union.

The envisaged amendments are considered to be appropriate for the safe transport of dangerous goods in a cost-effective manner, taking into account technological progress, and can therefore be supported.

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

5 European Agreement concerning the International Carriage of Dangerous Goods by Road, concluded at Geneva on 30 September 1957.

6 European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways, concluded at Geneva on 26 May 2000.

7 Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods, OJ L 260, 30.9.2008, p. 13.

8 Appendix to Annex I to Council Decision 2013/103/EU of 16 June 2011.

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 which are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[9].

4.1.2. Application to the present case

The act that the RID Expert Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding upon the Union under international law in accordance with Article 6 of RID, according to which the Annex to be amended forms an integral part of the Regulation.

In addition, pursuant to Article 1 of Directive 2008/68/EC, the Annex to RID is to apply to the transport of dangerous goods by rail within or between Member States, with the exception of those Member States that do not have a railway system. Article 4 of Directive 2008/68/EC, on third countries, provides that 'the transport of dangerous goods between Member States and third countries shall be authorised in so far as it complies with the requirements of the ADR, RID or ADN, unless otherwise indicated in the Annexes'.

The envisaged act does 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

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf.

4.2.2. Application to the present case

The main objective and content of the proposed Decision relates to transport of dangerous goods by rail.

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, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

Since the proposed Decision of the RID Expert Committee will amend the annex to RID, it is appropriate after its adoption to publish information on the outcome of the meeting in the Official Journal of the European Union.

[9] 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.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Union acceded to the Convention concerning International Carriage by Rail of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 ('COTIF'), by means of Council Decision 2013/103/EU[1].

(2) According to Article 6 of the COTIF, international rail traffic and admission of railway material in international traffic shall be governed by rules which are listed within this Article, notably the "Regulation concerning the International Carriage of Dangerous Goods by Rail (RID)", forming Appendix C to the Convention.

(3) Directive 2008/68/EC of the European Parliament and of the Council[2] lays down requirements for the transport of dangerous goods by road, by rail or by inland waterway within or between Member States, by referring to RID.

(4) Pursuant to Article 13 (1) (d) of the COTIF, the Organisation for International Carriage by Rail ('OTIF') Committee of Experts for the Carriage of Dangerous Goods ('RID Expert Committee') may adopt amendments to the Annex to RID.

(5) The RID Expert Committee, during its 57th session on 25 May 2022, is to adopt amendments to adapt the Annex to RID to scientific and technical progress.

(6) It is appropriate to establish the position to be taken on the Union's behalf in the RID Expert Committee, as the amendments to RID will be binding on the Union.

(7) The envisaged amendments aim at ensuring safe and efficient transport of dangerous goods while taking into account scientific and technical progress in the sector and the development of new substances and articles that could pose danger while being transported.

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1 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.

2 Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods, OJ L 260, 30.9.2008, p. 13.

(8) The envisaged amendements are considered to be appropriate for the safe transport of dangerous goods in a cost effective manner and can therefore be supported.

(9) Minor changes to the documents referred to in the Annex may be agreed at technical level at the 14th session of the RID Commitee of Experts' standing working group of 23-24 May 2022, including on the basis of recommendations of the UNECE Joint Meeting of the RID Committee of Experts and the Working Party on the Transport of Dangerous Goods,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 57th session of the Organisation for International Carriage by Rail ('OTIF') Committee of Experts for the Carriage of Dangerous Goods ('RID Expert Committee') in the framework of the Convention concerning International Carriage by Rail of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999, is set out in the Annex to this Decision.

Minor changes to the documents referred to in the Annex may be agreed to by the representatives of the Union in the RID Expert Committee without further decision from the Council.

Article 2

The decisions of the RID Expert Committee, once adopted, shall be published in the Official Journal of the European Union, indicating the date of their entry into force.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President