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TRANS 230

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	15 May 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2024) 210 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union at the 16th meeting of the Committee of Technical Experts of the Intergovernmental Organisation for International Carriage by Rail (OTIF) with regards to the revision of the Uniform Technical Prescription applicable to the subsystem “rolling stock – freight wagons” (UTP WAG), to the subsystem “rolling stock – noise” (UTP Noise), to train composition and route compatibility checks (UTP TCRC), and to the subsystem Telematics applications for freight services (UTP TAF)

Delegations will find attached document COM(2024) 210 final.

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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the 16th meeting of the Committee of Technical Experts of the Intergovernmental Organisation for International Carriage by Rail (OTIF) with regards to the revision of the Uniform Technical Prescription applicable to the subsystem "rolling stock – freight wagons" (UTP WAG), to the subsystem "rolling stock – noise" (UTP Noise), to train composition and route compatibility checks (UTP TCRC), and to the subsystem Telematics applications for freight services (UTP TAF)

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

The 16th session of the Committee of Technical Experts (CTE) of the Intergovernmental Organisation for International Carriage by Rail (OTIF) will take place in Bern on 11 and 12 June 2024. The agenda of the meeting includes proposals for adoption:

– Revision of the Uniform Technical Prescription applicable to the subsystem "rolling stock – freight wagons" (UTP WAG);

– Revision of the Uniform Technical Prescription applicable to the subsystem "rolling stock – noise" (UTP Noise);

– Revision of the Uniform Technical Prescription applicable to train composition and route compatibility checks (UTP TCRC);

– Modification of Appendix I (references to the technical documents) to the Uniform Technical Prescription applicable to the subsystem Telematics applications for freight services (UTP TAF)

The agenda of the meeting and documents related to the proposals for adoption are available on the OTIF website https://otif.org/en/?page_id=590.

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

2. CONTEXT OF THE PROPOSAL

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

The Convention concerning International Carriage by Rail of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 ('COTIF'), is an international agreement where both the Union and 25 Member States[1] are Contracting Parties.

On 16 June 2011, the Council adopted a Council Decision 2013/103/EU on the signing and conclusion of the Agreement between the European Union and the 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 ("EU-COTIF Accession Agreement")[2].

The Agreement entered into force on 1st July 2011.

According to Article 2(1) of the COTIF, OTIF aims at promoting, improving and facilitating, in all respects, international traffic by rail, in particular by establishing systems of uniform law in various fields of law relating to international traffic by rail. The COTIF also governs the running of the Organisation, its objectives, attributions, relations with the Contracting States and its activities in general.

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1 Only Cyprus and Malta are not Contracting Parties.

2 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, ELI: http://data.europa.eu/eli/dec/2013/103(1)/oj).

COTIF therefore deals with rail legislation on a number of different legal and technical rail matters that are divided into two parts: the Convention itself, which governs the running of OTIF, and the eight Appendices that establish uniform railway law:

– Appendix A – Contract of International Carriage of Passengers by Rail **(CIV**)

– Appendix B – Contract of International Carriage of Goods by Rail (**CIM)**

– Appendix C – International Carriage of Dangerous Goods by Rail **(RID**)

– Appendix D – Contract of use of vehicles in international rail traffic (**CUV)**

– Appendix E – Contract of use of infrastructure in international rail traffic (**CUI)**

– Appendix F – Uniform Rules concerning the Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic **(APTU UR)**

– Appendix G – Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic **(ATMF UR)**

– Appendix H – Uniform Rules concerning the safe operation of trains in international traffic (**EST UR**)

Based on Appendix F and G to COTIF, there are 18 Uniform Technical Prescriptions (UTPs) for technical interoperability. The UTPs in the framework of COTIF have the same purpose as the EU technical specifications for interoperability (TSIs) for admission to international traffic, as defined in Chapter II of Directive (EU) 2016/797[3].

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

Based on Appendix H to COTIF, there are 4 Annexes for common safety methods. The Annexes to EST UR in the framework of COTIF have the same purpose as the EU common safety methods (CSMs) for admission to international traffic, as defined in Chapter II of Directive (EU) 2016/798[4].

Entry into force of the Appendix H is still pending approval by two-thirds of the states that are party to OTIF.

2.2. The OTIF Committee of Technical Experts (CTE)

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

The CTE has competence in matters of interoperability and technical harmonisation in the railway field and technical approval procedures. It develops the APTU and ATMF Appendices and its Uniform Rules, which apply to railway material intended for use in international traffic, which concern in particular:

– the adoption of technical prescriptions for vehicles and infrastructure and the validation of standards;

– procedures concerning the assessment of conformity of vehicles;

[3] Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (recast) (OJ L 138, 26.5.2016, p. 44, ELI: http://data.europa.eu/eli/dir/2016/797/oj)

[4] Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (recast) (OJ L 138, 26.5.2016, p. 102, ELI: http://data.europa.eu/eli/dir/2016/798/oj)

– provisions concerning the maintenance of vehicles;

– responsibilities for train composition and the safe use of vehicles;

– provisions concerning risk evaluation and assessment;

– specifications for registers.

The CTE currently has a standing working group (WG TECH) which is responsible for preparing the former's decisions.

Pursuant to Article 20(1)(b) of the COTIF, and in accordance with Article 6 of Appendix F (APTU), the CTE is competent to adopt or to amend the UTPs.

2.3. The adoption of acts by the CTE

According to Article 6 of APTU, the CTE shall decide whether to adopt a UTP or a provision amending it in accordance with the procedure laid down in Articles 16, 20 and 33 § 6 of the COTIF. These decisions enter into force in accordance with Article 35 §§ 3 and 4 of the Convention.

2.4. The envisaged acts to be adopted by the CTE during the session on 11 and 12 June 2024

2.4.1. Revision of the UTP concerning the subsystem "Rolling stock – Freight Wagons" (UTP WAG)

UTP WAG lays down functional and technical requirements for admitting freight wagons to international traffic within the territories of all COTIF Contracting States, in line with the ATMF UR. It covers technical design and production requirements and verification procedures.

The aim of this proposal to revise the UTP WAG is to keep it aligned with legal developments in the European Union and to update specific cases and particular implementing rules. Furthermore, the proposal includes clarification concerning the application of the UTP WAG to vehicles suitable for free circulation and for use in general operation.

The proposed modifications include:

– Editorial modifications to align editorial practices and use of terminology with the latest practice;

– An update of the references to EU legislation;

– The addition of references to the UTP TCRC on train composition and route compatibility checks;

– New provisions relating to the facilitation of combined transport;

– New provisions relating to derailment detection and prevention functions;

– Additional provisions relating to the mutual recognition of the first admission, applicable to wagons that have electrical or electronic equipment on board;

– Update of the implementation rules, in particular by removing validity deadlines (phases A and B) for vehicles and types of vehicles that comply with previous versions of the UTP;

– Addition of specific cases and particular implementing rules for Norway and the United Kingdom.

2.4.2. Revision of the UTP concerning the subsystem "Rolling stock – Noise" (UTP Noise)

UTP Noise lays down the optimal level of harmonised specifications on the rolling stock subsystem intended to limit the noise emission of vehicles used in international traffic in the scope of the ATMF UR.

The aim of this proposal to revise the UTP Noise is to keep it aligned with legal developments in the European Union and to update the specific cases and particular implementing rules.

The proposed modifications include:

– The addition of a method to assess the conformity of friction elements for wheel tread brakes (i.e. brake blocks) as interoperability constituents;

– Alignment with the latest editorial practices for UTPs;

– Updates of the references to EU legislation;

– The addition of references to the UTP TCRC on train composition and route compatibility checks;

– Update of the implementation rules, in particular by removing validity deadlines (phases A and B) for vehicles and types of vehicles that comply with previous versions of the UTP;

– Addition of specific cases and particular implementing rules for Norway and for the Channel Tunnel.

2.4.3. Revision of the UTP concerning train composition and route compatibility checks (UTP TCRC)

UTP TCRC lays down provisions concerning the responsibilities of railway undertakings and infrastructure managers for the purpose of the composition of trains for use in international traffic and for the purpose of checking compatibility between trains and the routes on which they are intended to be used.

The aim of this proposal to revise the UTP TCRC is to keep it aligned with legal developments in the European Union.

The proposed modifications include:

– Added definitions and requirements related to combined transport;

– Updated requirements related to checks for compatibility between vehicles and train detection systems;

– Editorial improvements;

– Updated references to EU rules.

2.4.4. Modification of the UTP Telematics applications for freight services (UTP TAF)

UTP TAF lays down requirements about the communication process between railway undertakings and infrastructure managers, databases intended to be used to track trains and wagon movements and information to be delivered to freight customers.

The aim of this proposal is to align the references to the ERA's Technical Documents of TAF TSI listed in Appendix I of UTP TAF.

Modifications to the technical documents referred to in Appendix I of the UTP TAF are necessary in order to correct errors, take feedback into account, keep up with technical progress and maintain equivalence with the specifications applied in the EU:

– Correction of errors detected in technical document ERA-TD-105: TAF TSI — Annex D.2: Appendix F — TAF TSI Data and Message Model.

– Addition of new elements or modification of optional elements in technical document ERA-TD105: TAF TSI — Annex D.2: Appendix F — TAF TSI Data and Message Model.

– Introduction of changed code lists and documentation in technical document ERA-TD-105: TAF TSI — Annex D.2: Appendix F — TAF TSI Data and Message Model

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

3.1. 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 the 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."

Pursuant to Article 3(2) TFEU,, the Union has exclusive competence in relation to international commitments to be undertaken in the context of COTIF, including legal instruments adopted pursuant to it, when such commitments risk affecting existing Union rules or altering their scope.

The objective of the proposed decisions is to:

– align the UTP WAG, UTP Noise, and UTP TCRC with Commission Implementing Regulation (EU) 2023/1694[5],

– align the references to the ERA's Technical Documents of TAF TSI listed in Appendix I of UTP TAF.

These decisions fall in the area of rail transport. The area of rail transport is largely covered by Union rules which therefore risk to be affected or altered by the adoption of these decisions. The Union, represented by the Commission, shall therefore exercise the voting rights with respect to the adoption of these decisions.

[5] Commission Implementing Regulation (EU) 2023/1694 of 10 August 2023 amending Regulations (EU) No 321/2013, (EU) No 1299/2014, (EU) No 1300/2014, (EU) No 1301/2014, (EU) No 1302/2014, (EU) No 1304/2014 and Implementing Regulation (EU) 2019/777 (OJ L 222, 8.9.2023, p. 88, ELI: http://data.europa.eu/eli/reg_impl/2023/1694/oj)

3.2. Proposed conclusions

For all the reasons detailed in paragraphs 2.4.1 to 2.4.4 respectively, the Union should vote as proposed below in paragraphs 3.2.1 to 3.2.4 respectively.

3.2.1. Revision of the UTP concerning the subsystem "Rolling stock – Freight Wagons" (UTP WAG)

The European Union should vote in favour of the revision of UTP WAG as proposed by OTIF subject to the following amendments:

– In point 0.3,
  – replace the title by "Vehicles suitable for free circulation and interchangeable vehicles";
  – in third paragraph, second indent, replace the text by

    ""Interchangeable vehicle" means a vehicle which meets the requirements for free circulation and which, in addition, is equipped with standardised inter-vehicle interfaces, enabling the vehicle to be integrated into a train composition alongside other interchangeable vehicles. Wagons meeting these criteria may be marked "GE" or "CW", in addition to the "TEN" marking."
  – in fourth paragraph, point 3, replace "general operation" by "interchangeable vehicles";
– In point 4.2.1 'General', oppose to proposed deletion of the following text:

  "When the functional and technical specifications that are necessary in order to achieve interoperability and to meet the essential requirements, have not been developed concerning a particular technical aspect, this aspect is identified as an open point in the relevant point. As required in

Article 8 § 7 of APTU	Article 4(6) of Directive (EU) 2016/797

  All open points are listed in Appendix A";
– In point 4.2.3.5.3.4 'Derailment detection and actuation function (DDAF)', third paragraph, replace "Implementing Regulation (EU) No 402/2013" by "UTP GEN-G";
– In point 6.1.2.1 'Running gear', fourth paragraph, replace "If the vehicle does not reach its minimum axle load in tare condition, the conditions for use of the vehicle shall require" by "If the vehicle's mass does not enable it to reach its minimum axle load in tare condition, the conditions for use of the vehicle may require".

3.2.2. Revision of the UTP concerning the subsystem "Rolling stock – Noise" (UTP Noise)

The European Union should vote in favour of the revision of UTP Noise as proposed by OTIF.

3.2.3. Revision of the UTP concerning train composition and route compatibility checks (UTP TCRC)

The European Union should vote in favour of the revision of UTP TCRC as proposed by OTIF.

3.2.4. Modification of the UTP Telematics applications for freight services (UTP TAF)

The European Union should vote in favour of the modification of the UTP TAF as proposed by OTIF.

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*.'

Article 218(9) TFEU applies regardless of whether the Union is a member of the body or a party to the agreement[6].

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*'[7].

4.1.2. Application to the present case

The CTE is a body set up by an agreement, namely the COTIF, in particular Article 13(1) (c) and (f).

The acts which the CTE is called upon to adopt during its 16th session constitute acts having legal effects.

The envisaged acts modify the OTIF legal framework. As the Union is a full contracting party to COTIF[8], the envisaged acts will be binding upon the Union under international law in accordance with Article 6(1) APTU and Article 35(3) and (4) COTIF.

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

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6 Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraph 64

7 Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64

8 See Council Decision 103/2013 on 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 Text with EEA relevance, OJ L 51, 23.2.2013, p. 1–7.

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 adopted on behalf of the Union.

4.2.2. Application to the present case

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

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

4.3. Conclusion

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

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on the position to be taken on behalf of the European Union at the 16th meeting of the Committee of Technical Experts of the Intergovernmental Organisation for International Carriage by Rail (OTIF) with regards to the revision of the Uniform Technical Prescription applicable to the subsystem "rolling stock – freight wagons" (UTP WAG), to the subsystem "rolling stock – noise" (UTP Noise), to train composition and route compatibility checks (UTP TCRC), and to the subsystem Telematics applications for freight services (UTP TAF)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

(1) The Union acceded to the Convention concerning International Carriage by Rail of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 (the 'COTIF'), in accordance with Council Decision 2013/103/EU[9] and the Agreement between the European Union and the Intergovernmental Organisation for International Carriage by Rail (OTIF) on the Accession of the European Union to the COTIF Convention (the 'Agreement')[10].

(2) Pursuant to Article 13(1)(f) of the COTIF, the Committee of Technical Experts ('CTE') of the OTIF was set up.

(3) Pursuant to Article 20(1)(b) of the COTIF, and in accordance with Article 6(1) of the Uniform Rules concerning the Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic (APTU) - Appendix F to COTIF, the CTE is competent to adopt or to amend, inter alia, the Uniform Technical Prescriptions (UTP) concerning the subsystem "Rolling stock – Freight Wagons" (UTP WAG), concerning the subsystem "Rolling stock – Noise" (UTP Noise), concerning train composition and route compatibility checks (UTP TCRC), and concerning telematics applications for freight services (UTP TAF).

(4) The CTE has included in the agenda of its 16th session that will take place on 11 and 12 June 2024, a proposal for decisions to revise the UTP WAG, the UTP Noise, and the UTP TCRC, and to modify the Appendix I to the UTP TAF.

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9 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, ELI: http://data.europa.eu/eli/dec/2013/103(1)/oj)

10 OJ L 51, 23.2.2013, p. 8–10.

(5) It is appropriate to establish the position to be taken on the Union's behalf in the CTE, as the proposed decisions will be binding on the Union pursuant to Article 6(1) APTU and Article 35 (3) and (4) COTIF.

(6) The objectives of those decisions are to align the UTP WAG, UTP Noise, and UTP TCRC with Commission Implementing Regulation (EU) 2023/1694[11], and to align the references to the ERA's Technical Documents of TAF TSI listed in Appendix I of UTP TAF.

(7) The envisaged OTIF decisions are in line with the law and the strategic objectives of the Union by contributing to the alignment of OTIF legislation with the equivalent provisions of Union law, and should therefore be supported by the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf during the 16th session of the CTE of the Convention concerning International Carriage by Rail of 9 May 1980 on the revision of the UTP WAG concerning the subsystem "Rolling stock – Freight Wagons", the revision of the UTP Noise concerning the subsystem "Rolling stock – Noise", the revision of the UTP TCRC concerning train composition and route compatibility checks, and on the update of the references to the Technical Documents of TAF TSI listed in Appendix I of UTP TAF shall be the following:

(1) to vote in favour of the CTE proposed revision of UTP WAG concerning the subsystem "Rolling stock – Freight Wagons", as found in the CTE Working Document TECH-24003 UTP WAG, and subject to the following amendments:

(a) In point 0.3,

– replace the title by "Vehicles suitable for free circulation and interchangeable vehicles";

– in third paragraph, second indent, replace the text by

"Interchangeable vehicle" means a vehicle which meets the requirements for free circulation and which, in addition, is equipped with standardised inter-vehicle interfaces, enabling the vehicle to be integrated into a train composition alongside other interchangeable vehicles. Wagons meeting these criteria may be marked "GE" or "CW", in addition to the "TEN" marking."

– in fourth paragraph, point 3, replace "general operation" by "interchangeable vehicles";

(b) In point 4.2.1 'General', oppose to proposed deletion of the following text:

"When the functional and technical specifications that are necessary in order to achieve interoperability and to meet the essential requirements, have not been developed concerning a particular technical aspect, this aspect is identified as an open point in the relevant point. As required in

Article 8 § 7 of APTU	Article 4(6) of Directive (EU) 2016/797

[11] Commission Implementing Regulation (EU) 2023/1694 of 10 August 2023 amending Regulations (EU) No 321/2013, (EU) No 1299/2014, (EU) No 1300/2014, (EU) No 1301/2014, (EU) No 1302/2014, (EU) No 1304/2014 and Implementing Regulation (EU) 2019/777 (OJ L 222, 8.9.2023, p. 88, ELI: http://data.europa.eu/eli/reg_impl/2023/1694/oj)

All open points are listed in Appendix A";

(c) In point 4.2.3.5.3.4 'Derailment detection and actuation function (DDAF)', third paragraph, replace "Implementing Regulation (EU) No 402/2013" by "UTP GEN-G";

(d) In point 6.1.2.1 'Running gear', fourth paragraph, replace "If the vehicle does not reach its minimum axle load in tare condition, the conditions for use of the vehicle shall require" by "If the vehicle's mass does not enable it to reach its minimum axle load in tare condition, the conditions for use of the vehicle may require";

(2) to vote in favour of the CTE proposed amendments to UTP Noise concerning the subsystem "Rolling stock – Noise", as found in the CTE Working Document TECH-24004 UTP Noise;

(3) to vote in favour of the CTE proposed amendments to UTP TCRC concerning train composition and route compatibility checks, as found in the CTE Working Document TECH-24005 UTP TCRC;

(4) to vote in favour of the CTE proposal to update the references to the Technical Documents of TAF TSI listed in Appendix I of UTP TAF, as found in the CTE Working Document TECH-24005 UTP TAF.

(5) Minor changes may be agreed to the acts set out in this Article by the Commission, without a further decision of the Council.

Article 2

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

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President