DECISIONS

COUNCIL DECISION (EU) 2018/1296

of 18 September 2018

establishing the position to be adopted on behalf of the European Union at the 13th General Assembly of the Intergovernmental Organisation for International Carriage by Rail (OTIF) as regards certain amendments to the Convention concerning International Carriage by Rail (COTIF) and to the Appendices thereto

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 (the 'COTIF Convention'), pursuant to Council Decision 2013/103/EU ([1]).

(2) Decision 2013/103/EU specifies that the Commission is to represent the Union at the meetings of the Intergovernmental Organisation for International Carriage by Rail (OTIF).

(3) The Member States, with the exception of Cyprus and Malta, are contracting parties to and apply the COTIF Convention.

(4) The General Assembly of OTIF was set up in accordance with point (a) of Article 13(1) of the COTIF Convention (the 'General Assembly'). At its 13th session, due to take place from 25 to 26 September 2018, the General Assembly is expected to decide upon certain amendments to the COTIF Convention as well as to the Appendices E (Contract of Use of Infrastructure in International Rail Traffic — CUI) and G (Technical Admission of Railway Material used in International Traffic — ATMF) thereto. At this session, the General Assembly is also expected to decide upon the adoption of a new Appendix H to the COTIF Convention regarding the safe operation of trains in international traffic.

(5) It is appropriate to establish the position to be adopted on behalf of the Union at the 13th General Assembly OTIF, as the envisaged amendments to the COTIF Convention and the Appendices thereto will be binding on the Union and capable of decisively influencing the content of Union law, namely Directives (EU) 2016/797 ([2]) and (EU) 2016/798 ([3]) of the European Parliament and of the Council.

(6) The amendments to the Rules of Procedure of the General Assembly of OTIF aim to update certain provisions as a result of the accession of the Union to the COTIF Convention in 2011, in particular with regard to provisions governing the right to vote of the regional organisation and establishing the quorum.

(7) The amendments to the COTIF Convention aim to improve and facilitate the procedure for revising the COTIF Convention with a view to the consistent and rapid implementation of amendments to the Appendices thereto, and in order to prevent adverse effects of the current lengthy revision procedure, including the risk of internal misalignment between amendments adopted by the Revision Committee and those adopted by the General Assembly, as well as external misalignment, in particular with Union law.

([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 (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 (OJ L 138, 26.5.2016, p. 44).

([3]) Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (OJ L 138, 26.5.2016, p. 102).

(8) The amendments to Appendix E (CUI) to the COTIF Convention aim to clarify the scope of application of the CUI Uniform Rules to ensure that those rules are more systemically applied for their intended purpose, namely in international railway traffic such as in freight corridors or for international passenger trains.

(9) The amendments to Appendix G (ATMF) to the COTIF Convention aim to achieve harmonisation between the OTIF rules and the Union rules, in particular after the adoption of the fourth railway package by the Union in 2016.

(10) Most of the proposed amendments are in line with the law and the strategic objectives of the Union, and should therefore be supported by the Union.

(11) The position of the Union at the 13th General Assembly of OTIF should therefore be based on the Attachment,

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be adopted on behalf of the Union at the 13th General Assembly of the Intergovernmental Organisation for International Carriage by Rail (OTIF) is set out in the Attachment.

2. Minor changes to the positions set out in the Attachment may be agreed by the representatives of the Union at the General Assembly without further decision of the Council.

Article 2

The Decisions of the 13th General Assembly, 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 shall enter into force on the date of its adoption.

Done at Brussels, 18 September 2018.

For the Council
The President
G. BLÜMEL

ATTACHMENT

1. INTRODUCTION

The 13th session of the General Assembly of the Intergovernmental Organisation Convention for International Carriage by Rail (OTIF) will take place on 25 and 26 September 2018. The meeting documents are available on the website of OTIF at the following link: http://extranet.otif.org/en/?page_id=1071.

2. COMMENTS ON AGENDA ITEMS

Agenda Item 1 – Election of the Chair and Vice-Chair

Document(s): None

Competence: Union (shared)

Exercise of voting rights: Member States

Position: None

Agenda Item 2 – Adoption of the agenda

Document(s): SG-18028-AG 13/2.1; SG-18047-AG 13/2.2

Competence: Union (shared and exclusive), without prejudice to the competences of the Member States in respect of agenda item 9

Exercise of voting rights: Union, without prejudice to the competences of the Member States in respect of agenda item 9

Position: In favour of the adoption of the agenda

Agenda Item 3 – Formation of the Credentials Committee

Document(s): None

Competence: Union (shared)

Exercise of voting rights: Member States

Position: None

Agenda Item 4 – Organisation of the work and designation of any Committees considered necessary

Document(s): None

Competence: Union (shared)

Exercise of voting rights: Member States

Position: None

Agenda Item 5 – Modification of the Rules of Procedure

Document(s): SG-18030-AG 13/5

Competence: Union (shared and exclusive)

Exercise of voting rights: Union

Position: Support the amendments to the Rules of Procedure of the General Assembly.

The proposed draft amendments to the Rules of Procedure of the General Assembly of OTIF relate to the deadlines for submitting and dispatching documents, the participation of independent experts and clarification of the provisions relating to the exercising of rights by regional organisations. The current version of the Rules of Procedure predates the Union's accession to the COTIF Convention; certain provisions need therefore to be updated, in particular the provisions establishing the quorum and governing the rights to vote of the Union (Articles 20 and 21), which have to be modified in order to comply with Article 38 of the COTIF Convention and with the EU-OTIF Agreement. The other modifications proposed aim to ensuring orderly proceedings of the General Assembly on the basis of the best available international practice and OTIF's practice; they should also be supported.

Agenda Item 6 – Election of a Secretary-General for the period from 1 January 2019 to 31 December 2021

Document(s): Restricted distribution

Competence: Union (shared)

Exercise of voting rights: Member States

Position: None

Agenda Item 7 – Membership of OTIF – general situation

Document(s): SG-18032-AG 13/7

Competence: Union (shared)

Exercise of voting rights: not applicable

Position: None

Agenda Item 8 – Cooperation with international organisations and associations

Document(s): SG-18048-AG 13/8

Competence: Union (shared and exclusive)

Exercise of voting rights: Union

Position:

Oppose the proposal from the OTIF Secretariat that the General Assembly should authorise the Administrative Committee to establish and dissolve consultative contact groups with other international organisations and associations, and supervise the functioning of contact groups.

Propose that, in accordance with Article 13 § 2 of the COTIF Convention, the General Assembly decides to establish temporarily, i.e. for a period of four years, an *ad hoc* committee entrusted with the task to establish and dissolve consultative contact groups with other international organisations and associations, and supervise the functioning of contact groups. The Union should be entitled to participate in the work of the *ad hoc* Committee in accordance with 5(1) of the Accession agreement. The activities of the Committee should be guided by and in line with OTIF's work programme.

The proposal from the OTIF Secretariat consists in a decision of the General Assembly authorising the Administrative Committee to be empowered to establish and dissolve consultative contact groups with other international organisations and associations, and to supervise the functioning of such groups. At this stage, the Union shares the objective, namely to allow for a degree of flexibility in the matters concerned. However, it cannot accept the proposal as such, since it amounts to conferring a new task upon the Administrative Committee, beyond those set out in Article 15 § 2 of the COTIF Convention, without formal amendment of the latter, operated in accordance with the applicable procedures.

Since the Union shares the general objective, however, it suggests the General Assembly to establish temporarily an *ad hoc* committee, in accordance with Article 13 § 2 of the Convention, with the task to establish and dissolve consultative contact groups with other international organisations and associations, and to supervise the functioning of such groups. In this respect, is important to bear in mind that such tasks have practical implications for the development of policies at OTIF level in all areas. It is thus necessary to guarantee that the Union is fully involved in these activities, in accordance with Article 5(1) of the Accession Agreement.

A period of four years should be appropriate, so as to judge, prior to its expiration, whether the experience gained is satisfactory. In the affirmative, and following due preparation, an amendment of the Convention could be envisaged for a structural solution, in compliance with the guarantees for the Union established by Article 5(1) of the Accession Agreement.

Agenda Item 9 – Budget framework

Document(s): Restricted distribution

Competence: Member States

Exercise of voting rights: Member States

Position: None

Pursuant to Article 4 of the EU-OTIF Agreement, *'The Union shall not contribute to the budget of OTIF and shall not take part in decisions concerning that budget.'*

Agenda Item 10 – Partial revision of the base Convention: amendment of the procedure for revising COTIF

Document(s): SG-18035-AG 13/10

Competence: Union (shared)

Exercise of voting rights: Member States

Position: Support the amendment to Article 34 §§ 3 to 6 of the COTIF Convention and approve the modifications to the Explanatory Report.

In line with the outcome of the discussion on this topic at the 26th session of the Revision Committee, it is necessary and appropriate to support the proposed amendment to the COTIF Convention, in order to provide for a fixed time period (36 months) for the entry into force of amendments to the Appendices adopted by the General Assembly, including the clause of flexibility to extend such a deadline on a case-by-case basis, where so decided by the General Assembly by the majority provided for under Article 14 § 6 of COTIF Convention.

The proposal aims at improving and facilitating the procedure for revising the COTIF Convention with a view to the consistent and rapid implementation of amendments to the Convention and its Appendices, and in order to prevent adverse effects of the current lengthy revision procedure, including the risk of internal misalignment between amendments adopted by the Revision Committee and those adopted by the General Assembly, as well as external misalignment, particularly with Union law.

Agenda Item 11 – Partial revision of the CIM UR – Secretary General's report

Document(s): SG-18036-AG 13/11

Competence: Union (shared and exclusive)

Exercise of voting rights: Union (in case a vote takes place)

Position: Take note of the Secretary General's report and instruct the Secretary-General to submit to the 14th General Assembly a report on the progress of work on customs issues and the digitalisation of freight transport documents and, if necessary, to submit proposals to amend the CIM UR.

Agenda Item 12 – Partial revision of the CUI UR

Document(s): SG-18037-AG 13/12

Competence: Union (shared)

Exercise of voting rights: Member States

Position:

Support the amendments to the Title and Articles 1, 3, 5 (§ 1), 5 bis (§§ 1 and 2), 7 (§ 2), 8, 9 (§1) and 10 (§3) of the CUI UR, and approve the modifications to the Explanatory Report.

Support, for the purpose of the modifications to the CUI UR, the amendments to Articles 2 (§ 1, letter a), No 3) and 6 (§ 1, letter e)) of the COTIF Convention.

In line with the amendments approved during the 26th session of the Revision Committee in February 2018, the proposed modifications aim essentially at clarifying the scope of the CUI UR by introducing a definition in Article 3 of 'international railway traffic' to mean 'traffic which requires the use of an international train path or several successive national train paths situated in at least two States and coordinated by the infrastructure managers concerned', and by amending Article 1 (Scope) accordingly, while keeping the link with CIV and CIM UR. The objective is to ensure that the CUI UR are more systemically applied for their intended purpose, i.e. in international railway traffic.

The draft amendments are consistent with the definitions and provisions of the Union *acquis* regarding the management of rail infrastructure and the coordination between infrastructure managers (e.g. Articles 40, 43 and 46 of Directive 2012/34/EU (recast)). As regards the draft amendment proposed to Article 8 (Liability of the manager), this is essentially editorial and does not affect the scope or substance of the provision. The draft amendments proposed to Article 9 as well as to Articles 3, 5, 5bis, 7 and 10 are strictly editorial.

Agenda Item 13 – Partial revision of the ATMF UR

Document(s): SG-18038-AG 13/13

Competence: Union (exclusive)

Exercise of voting rights: Union

Position: Support the partial revision of the ATMF UR as proposed by the OTIF Secretariat.

A partial revision of the ATMF UR was adopted at the 26th session of the Revision Committee for the reasons described in the following paragraph. This revision however also implied some minor changes of editorial or linguistic nature to Articles 1, 3 and 9 of ATMF UR, which are outside the competence of the Revision Committee. They should thus be adopted by the General Assembly.

The provisions of the ATMF UR are compatible with the provisions of the European Union's Interoperability Directive 2008/57/EC and with part of the Safety Directive 2009/49/EC. With the adoption of the fourth railway package, the Union changed several provisions of this *acquis*. On the basis of an analysis by the Commission, the OTIF Secretariat and the relevant working group prepared modifications concerning Articles 2, 3a, 5, 6, 7, 10, 10b, 11 and 13 of the ATMF UR. These modifications are necessary in order to harmonise some terminology with the new EU provisions and to take into account some procedural changes in the EU, in particular the fact that the EU Agency for Railways will be competent to issue vehicle authorisations. The basic concept of ATMF is not affected by the proposed changes.

Agenda Item 14 – New Appendix H regarding the safe operation of trains in international traffic

Document(s): SG-18039-AG 13/14.1; SG-18040-AG 13/14.2

Competence: Union (exclusive)

Exercise of voting rights: Union

Position:

Support (SG-18039-AG 13/14.1) the inclusion of a new Appendix H to the COTIF Convention regarding the safe operation of trains in international traffic and approve the modifications to the Explanatory Report.

Support (SG-18040-AG 13/14.2), for the purpose of the inclusion of a new Appendix H, the modifications to Articles 2 (§ 1), 6 (§ 1), 20 (§§ 1 and 2), 33 (§§ 4 and 6) and 35 (§§4 and 6) of the COTIF Convention and approve the modifications to the Explanatory Report.

The draft new Appendix H sets out provisions to regulate the safe operation of trains in international traffic with the objective to harmonise the COTIF Convention with the Union's *acquis* and support interoperability beyond the European Union. The proposed text is in line with the provisions of the new safety Directive (EU) 2016/798 and the related secondary legislation. As indicated, it is also necessary to modify certain provisions of the COTIF Convention for the purpose of the inclusion of this new Appendix H.

The proposed texts are submitted to the General Assembly pursuant to a decision of the 26th session of the Revision Committee and are fully in line with the Union position that was defined ahead of the Revision Committee.

Agenda Item 15 – General discussion regarding the need to harmonise access conditions

Document(s): SG-18041-AG 13/15

Competence: Union (exclusive)

Exercise of voting rights: Union

Position: Support the proposal from the OTIF Secretariat to mandate the Secretary-General to continue the work on the development of a non-binding legal framework on international railway network access conditions, in accordance with the guidelines set out section VI of document SG-18041-AG 13/15, within the framework of the working group of legal experts and in cooperation with competent international organisations and associations.

The subject matter – railway network access conditions – is regulated at EU level by Directive 2012/34/EC (recast) of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area. In line with the discussion that took place on this topic during the 26th session of the Revision Committee in February 2018, it is appropriate to continue supporting the initiative on the development by OTIF of a non-binding legal framework on railway network access conditions, as a means to facilitate and improve international railway traffic beyond the EU.

Agenda Item 16 – Unified Railway Law – Secretary General's report

Document(s): SG-18042-AG 13/16

Competence: Union (shared)

Exercise of voting rights: Member States

Position:

Take note of the Secretary General's report and instruct the Secretary-General to continue cooperation with UNECE on the Unified Railway Law initiative.

Mandate the Administrative Committee to follow up the UNECE initiative on Unified Railway Law and issue its advisory opinion on general policy issues, where feasible, and mandate the Working Group of Legal experts to follow up the UNECE initiative on Unified Railway Law and issue its advisory opinion on legal matters, where feasible.

Instruct the Secretary-General and the Working Group of Legal Experts, in consultation with the Administrative Committee, to consider and propose solutions for appropriate OTIF involvement in the management of binding legal instruments which could take over the Draft Legal Regime on the contract of carriage of goods as developed within the framework of the UNECE initiative on Unified Railway Law, and instruct the Secretary-General to submit a report to the 14th General Assembly.

While a single international legal regime may provide benefits for rail transport across the Eurasian continent in comparison to the two legal systems that exist at present, such a single regime could be developed only with the clear commitment and participation of OSJD and OTIF and their members – otherwise a third international legal regime will be developed and international railway regulation will be further fragmented. Consequently, a prior political decision by the existing organisations to coordinate this aim is necessary before any comprehensive legal system can be put in place. It is therefore necessary and appropriate to ensure that OTIF continues to be involved in this process, notably through the activities of its Administrative Committee and its Working Group of Legal Experts, and reports on the progress of the work at UNECE at the next meeting of the General Assembly.

Agenda Item 17 – Working group of legal experts

Document(s): SG-18046-AG 13/17

Competence: Union (shared)

Exercise of voting rights: Member States

Position:

Endorse the setting up of an advisory working group of legal experts to: prepare draft amendments or supplements to the Convention; provide legal advice and assistance, promote and facilitate the functioning and implementation of the COTIF Convention, monitor and assess the application and implementation of the COTIF Convention, act as a forum for OTIF's members to raise and discuss relevant legal issues.

Mandate the Secretary-General to submit conclusions and proposals made by the working group to the competent organs of OTIF for consideration and/or decision.

Instruct the Secretary-General to submit a report on the working group's activities at the 14th meeting of the General Assembly.

In line with the outcome of the discussion on this topic at the 26th session of the Revision Committee in February 2018, it is appropriate to endorse the creation of a standing group of legal experts within OTIF to assist and facilitate the functioning of the existing organs in the legal field and to ensure the effective management of the COTIF Convention.

Agenda Item 18 – Report on the activities of the Administrative Committee in the period between 1 October 2015 and 30 September 2018

Document(s): Restricted distribution

Competence: Union (shared)

Exercise of voting rights: Member States

Position: Take note of the report

Agenda Item 19 – Election of the Administrative Committee for the period between 1 October 2018 and 30 September 2021 (composition and chair)

Document(s): Restricted distribution

Competence: Union (shared)

Exercise of voting rights: Member States

Position: None

Agenda Item 20 – Provisional date of the 14th General Assembly

Document(s): None

Competence: not applicable

Exercise of voting rights: not applicable

Position: None

Agenda Item 21 – Any other business

Document(s): Not available

Competence: Not applicable

Exercise of voting rights: Not applicable

Position: None

Agenda Item 22 – Any General Assembly mandates

Document(s): None

Competence: Union (shared and exclusive)

Exercise of voting rights: Union

Position: Mandates in accordance with agenda item 8

Agenda Item 23 – Committee reports, if necessary

Document(s): Not available

Competence: Not applicable

Exercise of voting rights: Not applicable

Position: None

Agenda Item 24 – Adoption of decisions, mandates, recommendations and other General Assembly documents (final document)

Document(s): Not available

Competence: Union (shared and exclusive)

Exercise of voting rights: Union

Position: As specified under relevant agenda items.