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COUNCIL DECISION (EU) 2024/2586

of 23 September 2024

on the position to be taken on behalf of the European Union at the 16th General Assembly of the Intergovernmental Organisation for International Carriage by Rail (OTIF)

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

(2) The General Assembly of OTIF was set up in accordance with Article 13 paragraph 1, letter a) of COTIF (the 'General Assembly'). Pursuant to Article 14, paragraph 2, of COTIF, the General Assembly, among others, establishes its rules of procedure, elects the Secretary-General, decides, if necessary, on the temporary establishment of other committees for specific tasks, and takes decisions about proposals aiming to modify COTIF.

(3) The Union participates in the General Assembly in accordance with COTIF, the Rules of Procedure of the General Assembly, and the Agreement on Accession to the Convention.

(4) At its 16th session due to take place from 25 to 26 September 2024, the General Assembly is expected to take a number of decisions. It is appropriate to establish the position to be taken on behalf of the Union, as those decisions will either have an impact on the functioning of OTIF and on the development of the strategy of the organisation, or will lead to the adoption of acts which are binding under international law and capable of decisively influencing the content of Union legislation, and thus constitute an 'act having legal effects' for the purposes of Article 218(9) TFEU.

(5) In particular, under agenda item 5, the 16th session of the General Assembly is expected to decide upon the application of the People's Republic of China (hereafter 'China') to become an Associate Member of OTIF. Indeed, in line with Article 37, paragraphs 2 to 5 of COTIF, the Commission lodged an objection to that application on behalf of the Union, with the number of votes equal to those of its Members which are also Member States of OTIF. Consequently, as announced by OTIF's Secretary-General in his proposal of 28 August 2024, China's application will be submitted to the 16th General Assembly for decision, in accordance with Article 37, paragraph 4 of COTIF. On 19 August 2024, in response to an objection lodged by the Commission on behalf of the Union and its Member States which are members of OTIF, the external relations department of the National Railway Administration of China provided additional explanations and justification for its request for associate membership of OTIF. However, further elements of information would still be necessary in order to formulate the position of the Union. Therefore, at the 16th General Assembly, the position of the Union should be to defer the decision on China's application for accession as an Associate Member of OTIF to a subsequent session of the General Assembly of OTIF, and to instruct the Secretary-General of OTIF to organise consultations with interested parties on China's application.

(6) Under agenda item 7, the adoption of the long-term strategy for OTIF is capable of influencing the policy and substantive work of OTIF, and the decision-making within OTIF. The proposed revised long-term strategy as submitted to the General Assembly has been discussed and agreed in the relevant sessions of the ad hoc Committee on Legal Affairs and International Cooperation (hereafter the 'ad hoc Committee'), in line with the Union positions that were established regarding these matters. Therefore, the position of the Union should be to support the adoption of that revised long-term strategy.

[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).

(7) Under agenda item 13, the General Assembly will be asked to endorse the 'Guidelines on the application of procedures for the modification of COTIF', to recommend that they be followed in the preparation of modifications to COTIF within the competence of the General Assembly, and to instruct the ad hoc Committee to monitor and assess the application of the guidelines and to revise them as necessary. While those Guidelines are not in themselves binding, they are capable of decisively influencing the procedures for the modification of COTIF. The Guidelines as submitted to the General Assembly have been discussed and agreed in the relevant sessions of the ad hoc Committee, in line with the Union positions that were established regarding these matters. Therefore, the position of the Union should be to endorse those Guidelines.

(8) Under agenda item 13, the General Assembly will be asked to approve the basic regulatory principles, as laid out in the report of the ad hoc Committee and as reflecting the Union position set out in Council Decision (EU) 2023/2582 ([2]), to guide the ad hoc Committee and the Revision Committee in preparing modifications to modify COTIF and corresponding notes in the Explanatory Report to COTIF, with the aim of introducing an obligation for OTIF Member States to respect (not to undermine) the physical and functional integrity of the rail infrastructure of other OTIF Member States, as well as substantive and procedural provisions on sanctions to ensure compliance with the obligations under COTIF that are essential to achieve OTIF's aim. These basic regulatory principles concern the organisation and functioning of the organisation, to which the Union 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 Union is exclusively competent as regards the Member States of the Union. The related proposals to modify COTIF will be binding under international law and will be capable of decisively influencing both the content of Union legislation and the interpretation and application of COTIF. The basic regulatory principles as submitted to the General Assembly have been discussed and agreed in the relevant sessions of the ad hoc Committee, in line with the Union positions that were established regarding these matters. The position of the Union should therefore be to approve these basic regulatory principles.

(9) Under agenda item 13, the General Assembly will be asked to endorse the 'Recommendation on the use of electronic signatures in official communications between OTIF and its members'. As specified in the Union position pursuant to Decision (EU) 2023/2582, the development of electronic communications requires certain administrative updates 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 varying levels of experience of OTIF members and is in line with the rules laid down at Union level, in particular Regulation (EU) No 910/2014 of the European Parliament and of the Council ([3]). While this Recommendation is not in itself binding, it will have implications for the 'Guidelines on treaty acts under COTIF' as well as for the explanatory notes of 'Rules of Procedure of the General Assembly', for the 'Regulation on the election and conditions of service of the Secretary-General' and for the 'Decision on permanent representatives', which will all need to be amended accordingly. The Recommendation is thus capable of decisively influencing the procedures for the modification of COTIF. The proposals for decision submitted to the General Assembly have been discussed and agreed in the relevant sessions of the ad hoc Committee, in line with the Union positions that were established regarding these matters. Therefore, the position of the Union should be to endorse the recommendation.

(10) Under agenda item 13, the General Assembly will be asked to adopt the 'Decision on the symbols, name and abbreviation of the Intergovernmental Organisation for International Carriage by Rail' and the 'Decision on copyright and open access', and to approve for each decision the related 'Explanatory Notes'. As specified in the Union position pursuant to Decision (EU) 2023/2582, a policy designed to facilitate the reuse of information and documents owned by OTIF should be designed in line with the rules set out in Directive (EU) 2019/1024 of the European Parliament and of the Council ([4]) and Commission Decision 2011/833/EU ([5]). The envisaged acts in this area are therefore capable of decisively influencing the content of Union legislation. The proposals for decision submitted to the General Assembly have been discussed and agreed in the relevant sessions of the ad hoc Committee, in line with the Union positions that were established regarding these matters. Therefore, the position of the Union should be to adopt those Decisions and to approve the related Explanatory Notes.

([2]) Council Decision (EU) 2023/2582 of 8 November 2023 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 (OJ L, 2023/2582, 16.11.2023, ELI: http://data.europa.eu/eli/dec/2023/2582/oj).

([3]) 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).

([4]) 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 (OJ L 172, 26.6.2019, p. 56).

([5]) Commission Decision 2011/833/EU of 12 December 2011 on the reuse of Commission documents (OJ L 330, 14.12.2011, p. 39).

(11) Under agenda items 14 and 15, the envisaged decisions of the General Assembly concern the adoption of revised versions, respectively, of its Rules of Procedure and of the Regulation on the election and conditions of service of the Secretary-General, as well as on the approval of the Explanatory Notes related to those acts, all of them adapted in accordance with the new guidelines on the use of gender-neutral language. The respective explanatory notes will also incorporate the proposal of the ad hoc Committee in the 'Recommendation on the use of electronic signatures in official communications between OTIF and its members'. The General Assembly's Rules of Procedure and the Regulation on the election and conditions of service of the Secretary-General are legally binding acts under COTIF, with their respective explanatory notes being capable of decisively influencing the interpretation and application of COTIF. The revised versions of the General Assembly's Rules of Procedure and the Regulation on the election and conditions of service of the Secretary-General, and the related Explanatory Notes, have been discussed and agreed in the relevant sessions of the ad hoc Committee, in line with the Union positions that were established regarding these matters. The Union should therefore support the adoption of these amendments.

(12) The proposed decisions are in line with the law and the strategic objectives of the Union, and should therefore be supported by the Union.

(13) In accordance with Annex III to Decision 2013/103/EU, the preparation of OTIF meetings extends to on-the-spot coordination. Therefore, minor changes to this Union position may be agreed during on-the-spot coordination without requiring further decision of the Council, in particular in order to be able to react to proposals and developments not taken into account at the time of this Decision,

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on the Union's behalf at the 16th session of the General Assembly of the Intergovernmental Organisation for International Carriage by Rail (OTIF) is set out in the Annex.

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

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 23 September 2024.

For the Council

The President

FELDMAN Z.

ANNEX

1. **INTRODUCTION**

The 16th session of the General Assembly of the Intergovernmental Organisation for International Carriage by Rail (OTIF) will take place on 25 and 26 September 2024. The meeting documents are available on the website of OTIF (with credentials) at the following link: https://extranet.otif.org/en/?page_id=256

2. **POSITION OF THE UNION ON CERTAIN AGENDA ITEMS**

Agenda item 5 – Status if the Convention and OTIF membership

Document(s):	SG-24055-AG16/5
Exercise of voting rights:	Union
Position:	Regarding China's application to become an Associate Member of OTIF: — The European Commission lodged an objection to China's application, on behalf of the Union, with the number of votes equal to those of its Members which are also Member States of OTIF. — On 19 August 2024, in response to an objection lodged by the European Commission on behalf of the Union and its Member States which are members of OTIF, the external relations department of the National Railway Administration of China provided additional explanations and justification for its request for associate membership of OTIF. However, the Union would need further elements of information in order to formulate its position. The Union's position at the 16th General Assembly is therefore to defer a vote on China's application to become an Associate Member of OTIF to a subsequent session of the General Assembly of OTIF, and to instruct the Secretary-General of OTIF to organise consultations with interested parties on China's application.
Comments:	In line with Article 37 paragraphs 2 to 5 of COTIF, by the deadline of 26 July 2024, the European Commission lodged an objection to China's application to become an Associate Member of OTIF, on behalf of the Union, with the number of votes equal to those of its Members which are also Member States of OTIF. On 28 August 2024, OTIF's Secretary-General submitted to the General Assembly a proposal regarding China's application for accession as an Associate Member for decision, according to Article 37 paragraph 4 of COTIF.

Agenda item 7 – OTIF long-term strategy

Document(s):	SG-24024-AG 16/7
Exercise of voting rights:	Union
Position:	Reiterate support for the Secretary-General's initiative to develop a long-term strategy for OTIF, and support the adoption of the long-term strategy as submitted by the Secretary-General in document SG-24024-AG 16/7.
Comments:	The revised long-term strategy for OTIF submitted to the 16th General Assembly adequately addresses the comments made by the European Union at the 6th session of the OTIF ad hoc Committee on Legal Affairs and International Cooperation (Vienna, 16-18 April 2024).

Agenda item 13 – Report of the ad hoc Committee on Legal Affairs and International Cooperation

Document(s):	SG-24028-AG 16/13 – Restricted distribution
Exercise of voting rights:	Member States
Position:	Support the adoption of the following proposals for decision annexed to document SG-24029-AG16/13: — endorsing the 'Guidelines on the application of procedures for the modification of COTIF', recommending that they are followed in the preparation of modifications to COTIF within the competence of the General Assembly, and instructing the ad hoc Committee to monitor and assess the application of the guidelines and to revise them as necessary; — approving the basic regulatory principles as laid out in the report of the ad hoc Committee and as reflecting the Union position set out in Council Decision (EU) 2023/2582 to guide the ad hoc Committee and the Revision Committee in preparing modifications to modify COTIF and corresponding notes in the Explanatory Report to COTIF, with the aim of introducing an obligation for OTIF Member States to respect [not to undermine] the physical and functional integrity of the rail infrastructure of other OTIF Member States, as well as substantive and procedural provisions on sanctions to ensure compliance with the obligations under COTIF that are essential to achieve OTIF's aim; — endorsing the 'Recommendation on the use of electronic signatures in official communications between OTIF and its members'; — adopting the 'Decision on the symbols, name and abbreviation of the Intergovernmental Organisation for International Carriage by Rail' and approving the related 'Explanatory Notes'; — adopting the 'Decision on copyright and open access' and approving the related 'Explanatory Notes'.
Comments:	The above proposals submitted to the 16th General Assembly for decision, as laid out in the report of the ad hoc Committee and annexed to document SG-24029-AG16/13, have been discussed, amended and agreed in the relevant sessions of the ad hoc Committee, in line with the Union positions that have been established on those occasions.

Agenda item 14 – Modification of the General Assembly's Rules of Procedure and accompanying notes

Document(s):	SG-24029-AG 16/14
Exercise of voting rights:	Member States
Position:	Support the adoption of the proposals for decision annexed to document SG-24029-AG16/14, namely: — amending the 'Rules of Procedure of the General Assembly' and adopting the revised version accordingly; — amending the 'Explanatory Notes on the Rules of Procedure of the General Assembly (Articles 4 to 7, 10 and 22)' and approving the revised version accordingly.
Comments:	The revised versions of the 'General Assembly's Rules of Procedure' and the 'Explanatory Notes on the Rules of Procedure of the General Assembly (Articles 4 to 7, 10 and 22)' are adapted in accordance with the 'Guidelines on the use of gender-neutral language'. The explanatory notes also incorporate the ad hoc Committee's proposal in the 'Recommendation on the use of electronic signatures in official communications between OTIF and its members'. The proposals also include some purely editorial corrections. The proposals submitted to the 16th General Assembly for decision have been discussed, amended and agreed in the relevant sessions of the ad hoc Committee, in line with the Union positions that have been established on those occasions.

Agenda item 15 – Revision of rules on the election and conditions of service of the Secretary-General

Document(s):	SG-24032-AG 16/15
Exercise of voting rights:	Member States
Position:	Support the adoption of the proposals for decision annexed to document SG-24029-AG16/15, namely: — amending the 'Regulation on the election and conditions of service of the Secretary-General' and adopting the revised version accordingly; — amending the 'Explanatory Notes on the regulation on the election and conditions of service of the Secretary-General' and approving the revised version accordingly.
Comments:	The revised versions of the 'Regulation on the election and conditions of service of the Secretary-General' and the 'Explanatory Notes on the regulation on the election and conditions of service of the Secretary-General' are adapted in accordance with the 'Guidelines on the use of gender-neutral language'. The explanatory notes also incorporate the ad hoc Committee's proposal in the 'Recommendation on the use of electronic signatures in official communications between OTIF and its members'. The proposals also include some purely editorial corrections. The proposals submitted to the 16th General Assembly for decision have been discussed, amended and agreed in the relevant sessions of the ad hoc Committee, in line with the Union positions that have been established on those occasions.

Agenda item 20 – Adoption of decisions, mandates, recommendations and other General Assembly documents (final document)

Document(s):	None
Exercise of voting rights:	Member States
Position:	As specified under the relevant agenda items.