COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.8.2009
COM(2009) 441 final

2009/0121 (CNS)

Proposal for a

# COUNCIL DECISION

**on the conclusion by the European Community of the Agreement on the Accession of the European Community 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)**

## EXPLANATORY MEMORANDUM

1. With this Communication the Commission submits to the Council a revised proposal for a Decision authorising the Community to conclude an Agreement defining the terms of its accession to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999.

2. The Community's accession is permitted under Article 38 of the COTIF as amended by the Vilnius Protocol, which makes provision for the accession of regional economic integration organisations.

3. On 28 March 2003, the Council authorised the Commission to enter into negotiations with the Contracting Parties to COTIF in order to reach agreement on the Community's accession to that Convention. The Council Decision included negotiating directives and instructions for the Community's accession to the COTIF.

4. Although a proposal for a Council Decision to accept the conditions of an agreement between the Community and the Intergovernmental Organisation for International Carriage by Rail (OTIF) was made in 2003[1], the accession of the Community to COTIF could not take place until the Vilnius Protocol had come into force and which was dependent on a number of ratifications being made by OTIF Member States. COTIF, as amended by the Vilnius Protocol, came into force in July 2006.

5. The Commission proposal of 2003 for the European Community's accession to COTIF was transmitted to the Council and European Parliament on 17 November 2003. On 10 March 2004, it received a favourable opinion of the European Parliament, who approved it without amendment after first reading. However, it was felt that Community should seek clarifications and assurances from OTIF on one particular question. There was a growing realisation that Article 3(2) of COTIF which purported to ensure compliance between the respective Community and OTIF legal regimes, in fact did not do this adequately. A legal review of the COTIF and its Appendices confirmed that a number of divergences existed between Community acquis and COTIF, relating both to the rules on jurisdiction in the COTIF (articles 12 and 28) and to the rules in some of the Appendices (E, F and G).

6. Member States were well aware of this conflict and following a formal suggestion from the Commission, made declarations against the above-mentioned COTIF Appendices under article 42 of COTIF. Through these declarations, the provisions in these Appendices became inapplicable in the countries concerned. This removed the possibility of any conflict with Community legislation on the matters covered by these Appendices, but also had the automatic effect of making rules which were not in conflict inapplicable as well.

7. In order to protect the European Community legal regime, the Community proposed that a suitable provision (a so-called disconnection clause) should be added into the agreement to avoid any legal incompatibilities between COTIF and the existing and developing Community acquis.

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[1] COM (2003) 696 of 17 November 2003

8. The Commission Inter-service Group on External Competencies of the Community examined the general issues regarding the Community's accession on 19 April 2007. It concluded the most appropriate way forward was that :

– The Commission should agree with OTIF on the inclusion of a standard disconnection clause in the Agreement on the Accession of the Community to COTIF.

– Member States should maintain their declarations against COTIF Appendices (E, F & G). Member States that have ratified the 1999 Vilnius Protocol but have not yet made a declaration against these Appendices should be obliged to do so.

– Upon accession of the Community to COTIF, the Community should declare against COTIF Appendices (E, F & G).

– The withdrawal of the above mentioned declarations (of the Member States and the Community) should take place when legal inconsistencies between the two legal systems are removed.

9. This approach was discussed at the Council during 2007 which allowed the reopening of the negotiations with OTIF, in particular on the question of an adequate disconnection clause. At the same time, the work on resolving the issue of the legal incompatibilities between the EC and OTIF legal regimes was undertaken. This work was concluded in 2008.

10. The negotiation sessions between the Commission and OTIF of May and June 2009 resulted in the joint draft agreement attached hereto in annex. The current situation is that COTIF is in force and the European Community may now accede to it. The compatibility issues between European Community law and COTIF have been resolved in principle with the necessary changes to COTIF having been submitted to and adopted by the appropriate OTIF Committee 23, 24 and 25 June 2009. These changes will take effect 12 months after OTIF gives notice of them to its Member States.

11. Therefore the attached agreement was made having considered all of these issues, represents fulfilment of the obligations given in the Council's mandate and provides a way forward for the European Community to pursue its objective of extending the Community rail area and provide more opportunities for the development of the railway market.

12. In the light of these considerations and in accordance with the established procedures, the Commission:

– withdraws the proposal for a Decision authorising the Community to conclude an Agreement defining the terms of its accession to the Convention concerning International Carriage by Rail (COTIF) which was adopted in 2003 (COM(2003) 696 final of 17 November 2003);

– proposes that the Council adopts the attached Decision;

– addresses this Communication to the Council.

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## on the conclusion by the European Community of the Agreement on the Accession of the European Community 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)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 71 and 300(2) and (3) thereof,

Having regard to the proposal from the Commission,[2]

Having regard to the Opinion of the European Parliament,[3]

Whereas:

(1) The development of rail interoperability, both within the Community and between the Community and neighbouring countries, is a key component of the transport policy, targeted in particular at establishing a better balance between the various modes of transport.

(2) The European Community has exclusive competence or shared competence with its Member States in the areas covered by the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999, hereinafter referred to as "COTIF".

(3) The European Community's accession to COTIF for the purpose of exercising its competence is permitted by virtue of Article 38 of the COTIF as amended by the Vilnius Protocol.

(4) On behalf of the Community, the Commission has negotiated an Agreement on the Accession of the European Community to COTIF with the Contracting Parties to COTIF.

(5) The resolution of a number of conflicts between the provisions of certain Appendices of COTIF and Community law still pending, the European Community should, in connection with its accession to COTIF, make a declaration according to Article 42 of COTIF regarding the non-application of Appendices E, F and G of COTIF.

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[2] OJ C [...], [...], p. [...].
[3] OJ C [...], [...], p. [...].

HAS ADOPTED THIS DECISION:

*Article 1*

1. The Agreement on the Accession of the European Community to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999, is hereby approved on behalf of the Community, subject to the following conditions:

– upon accession a declaration shall be made by the Community concerning the exercise of its competence,

– upon accession a declaration shall be made by the Community concerning the non-application of Appendices E, F and G of COTIF.

2. The text of the Agreement and the declarations referred to in paragraph 1 are attached as Annexes to this Decision.

*Article 2*

The President of the Council is hereby authorised to designate the person empowered to sign the Agreement in order to express the Community's consent to be bound thereby, to make the related declarations and to deposit the instrument of approval on the Community's behalf.

Done at Brussels,

*For the Council*
*The President*

# ANNEX 1

# AGREEMENT

## ON THE ACCESSION OF THE EUROPEAN COMMUNITY TO THE CONVENTION CONCERNING INTERNATIONAL CARRIAGE BY RAIL (COTIF) OF 9 MAY 1980, AS AMENDED BY THE VILNIUS PROTOCOL OF 3 JUNE 1999

THE INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL CARRIAGE BY RAIL

AND

THE EUROPEAN COMMUNITY,

Having regard to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999, hereinafter referred to as "the Convention", and in particular Article 38 of the said Convention,

Having regard to the responsibilities which the Treaty establishing the European Community confers on the European Community in certain areas covered by the Convention,

Whereas the Convention establishes an Intergovernmental Organisation for International Carriage by Rail (OTIF), the headquarters of which are at Bern;

Whereas the purpose of the European Community's accession to the Convention is to assist OTIF in pursuing its objective of promoting, improving and facilitating international rail transport in both technical and legal respects;

Whereas by virtue of Article 3 of the Convention, the obligations arising out of the Convention with regard to international cooperation do not take precedence, for Member States which are also Members of the European Communities or States party to the Agreement on the European Economic Area, over their obligations as Members of the European Communities or States party to the Agreement on the European Economic Area;

Whereas a disconnection clause is necessary for those parts of the Convention which fall within the competence of the European Community, in order to indicate that European Community Member States cannot invoke and apply the rights and obligations deriving from the Convention directly among themselves;

Whereas the Convention applies fully between the European Community and its Member States on the one hand, and the other Parties to the Convention, on the other;

Whereas the European Community's accession to the Convention requires the rules for applying the provisions of the Convention to the European Community and its Member States to be clearly established;

Whereas the conditions of the European Community's accession to the Convention must allow the Community to exercise within the Convention the competences conferred on it by its Member States,

HAVE AGREED AS FOLLOWS:

*Article 1*

The European Community hereby accedes to the Convention under the terms and conditions laid down in this Agreement, in accordance with Article 38 of the Convention.

*Article 2*

Contracting Parties to the Convention which are Members of the European Community will, in their mutual relations, apply Community rules in so far as there are Community rules governing the particular subject concerned and applicable to the specific case, without prejudice to the object and purpose of the Convention and without prejudice to its full application with other Contracting Parties to the Convention.

*Article 3*

Subject to the provisions of this Agreement, provisions in the Convention shall be so interpreted as also to include the European Community, within the framework of its competence, and the various terms used to designate the Contracting Parties to the Convention and their representatives are to be understood accordingly.

*Article 4*

The European Community shall not contribute to the budget of OTIF and shall not take part in decisions concerning that budget.

*Article 5*

1. Without prejudice to the exercise of its voting rights under Article 6, the European Community shall be entitled to be represented and involved in the work of all OTIF bodies in which any of its Member States is entitled to be represented as a Contracting Party, and where matters falling within its competence may be dealt with.
   The European Community may not be a member of the Administrative Committee. It may be invited to participate in meetings of this Committee when the Committee wishes to consult it on matters of common interest that have been placed on the agenda.

2. The European Community will be represented by the European Commission. The European Commission may mandate one or more of the Member States of the Community to represent it.

*Article 6*

1. For decisions in matters where the European Community has exclusive competence, the European Community will exercise the voting rights of its Member States under the Convention.

2. For decisions in matters where the European Community shares competence with its Member States, either the European Community or its Member States shall vote.

3. Subject to Article 26 paragraph 7 of the Convention, the European Community shall have a number of votes equal to that of its Members who are also Member States of OTIF. When the European Community votes, its Member States shall not vote.

4. The European Community shall, on a case-by-case basis, inform the other Contracting Parties to the Convention of the cases where, with regard to the various items on the agendas of the General Assembly and the other deliberating bodies, it will exercise the voting rights provided for in paragraphs 1 to 3 above. This obligation shall also apply when decisions are taken by correspondence. This information is to be provided early enough to the OTIF Secretary-General in order to allow its circulation together with meeting documents or a decision to be taken by correspondence.

*Article 7*

The scope of the competence of the Community shall be indicated in general terms in a written declaration made by the European Community at the time of the conclusion of this Agreement. This declaration may be modified as appropriate by notification from the European Community to OTIF. It shall not replace or in any way limit the matters that may be covered by the notifications of Community competence to be made prior to OTIF decision-making by means of formal voting or otherwise.

*Article 8*

Title V of the Convention shall apply to any dispute arising between the Contracting Parties to the present Accession Agreement in respect of the interpretation, application or implementation of this Agreement, including its existence, validity and termination.

*Article 9*

This Agreement shall enter into force on the first day of the first month following the signature of the agreement by the Contracting Parties. Article 34 paragraph 2 of the Convention shall not apply in this case.

*Article 10*

This Agreement shall remain in force for an indefinite period.

If all OTIF Member States which are Members of the European Community denounce the Convention, the notification of that denunciation, as well as of the denunciation of this Agreement, shall be considered to have been given by the European Community at the same time as the last Member State of the European Community to denounce the Convention notifies its denunciation under Article 41 of the Convention.

*Article 11*

Contracting Parties to the Convention other than Member States of the European Community which apply relevant European Community legislation as a result of their international agreements with the European Community may, with the acknowledgement of the Depositary of the Convention, enter individual declarations with regard to the preservation of their rights and obligations under their agreements with the European Community, COTIF and related regulations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having presented their Full Powers, found to be in due and proper form, have signed this Agreement.

DONE at ..., this ... day of ... (month) ... (year), in English, in two originals, one to be kept by OTIF and the other by the European Community. The translation and the distribution of the final Agreement are matters for the respective institutions of the Contracting Parties.

For the Intergovernmental Organisation for International Carriage by Rail (OTIF)

For the European Community

## ANNEX 2

## DECLARATION BY THE EUROPEAN COMMUNITY CONCERNING THE EXERCISE OF COMPETENCE

In the rail sector, the European Community shares the competence with the Member States pursuant to Articles 70, 71, 80(1) and 156 of the EC Treaty.

Title V of the EC Treaty establishes the European Community's common transport policy, and Title XV provides for the European Community's contribution to the establishment of and development of trans-European networks in the areas of transport.

More specifically, Article 71 of Title V of the EC Treaty provides that the European Community may adopt:

– common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;

– the conditions under which non-resident carriers may operate transport services within a Member State;

– measures to improve transport safety;

– any other appropriate provisions

With regard to Trans-European Networks, Article 155 of Title XV of the EC Treaty provides, more specifically, that the European Community:

– shall establish a series of guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks; these guidelines shall identify projects of common interest;

– shall implement any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical standardisation;

– may support projects of common interest supported by Member States, which are identified the framework of the guidelines referred to in the first indent, particularly through feasibility studies, loan guarantees or interest-rate subsidies; the Community may also contribute, through the Cohesion Fund, to the financing of specific projects in Member States in the area of transport infrastructure.

On the basis of these two provisions the European Community has adopted a substantial number of legal instruments applicable to rail transport.

Under European Community law, the European Community has acquired exclusive competence in matters of rail transport where the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999, hereinafter referred to as "the Convention", or legal instruments adopted pursuant to it affect these existing Community rules.

For subject matters governed by the Convention in relation to which the European Community has exclusive competence, Member States of the European Community have no competence.

Where Community rules exist but are not affected by the Convention or legal instruments adopted pursuant to it, the European Community shares the competence on matters in relation to the Convention with Member States.

A list of the relevant Community instruments at the time of this agreement is contained in the Appendix. The scope of the Community competence arising out of these texts has to be assessed in relation to the specific provisions of each text, especially the extent to which these provisions establish common rules. Community competence is subject to continuous development. In the framework of the Treaty, the competent institutions may take decisions which determine the extent of the competence of the European Community. The European Community therefore reserves the right to amend this declaration accordingly, without this constituting a prerequisite for the exercise of its competence in matters covered by the Convention.

## APPENDIX TO ANNEX 2

## COMMUNITY INSTRUMENTS RELATING TO SUBJECTS DEALT WITH BY THE CONVENTION

To date, the Community has exercised its competence inter alia through the following Community instruments:

ECONOMIC / MARKET ACCESS LEGISLATION

- Regulation No 11, concerning the abolition of discrimination in transport rates and conditions, in implementation of Article 79 (3) of the Treaty establishing the European Economic Community. (OJ L 532, 16.8.1960, p1121)

- Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ L 237, 24.8.1991, p. 25);

- Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (OJ L 143, 27.6.1995, p. 70);

- Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 on the development of the Community's railways (OJ L 75, 15.3.2001, p. 1);

- Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 on the licensing of railway undertakings (OJ L 75, 15.3.2001, p. 26);

- Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ L 75, 15.3.2001, p. 29);

- Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways (OJ L 164, 30.4.2004, p. 164-172 and OJ L 220, 21.6.2004, p. 58-60);

- Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14);

- Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure (OJ L 315, 3.12.2007, p. 44);

- INTEROPERABILITY AND SAFETY LEGISLATION

- Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ L 235, 17.9.1996, p. 6);

– Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system (OJ L 110, 20.4.2001, p. 1);

– Council Directive 96/49/EC of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail (OJ L 235, 17.9.1996, p. 25);

– Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ L 164, 30.4.2004, p. 44-113 and OJ L 220, 21.6.2004, p. 16 -39);

– Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system (OJ L 164, 30.4.2004, p. 114-163 and OJ L 220, 21.6.2004, p. 40 - 57.);

– Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (OJ L 164, 30.4.2004, p. 1-43 and OJ L 220, 21.6.2006, p.3-14);

– Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community (OJ L 315, 3.12.2007, p. 51);

– Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (Recast) (OJ L 191, 18.07.2008, p. 1);

– 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);

– Directive 2008/110/EC of the European Parliament and of the Council of 16 December 2008 amending Directive 2004/49/EC on safety on the Community's railways (Railway Safety Directive) (OJ L 345, 23.12.2008, p. 62);

– Regulation (EC) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation (EC) No 881/2004 establishing a European Railway Agency (Agency Regulation) (OJ L 354, 31.12.2008, p. 51).

PUBLIC SERVICE OBLIGATIONS

– Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1);

## ANNEX 3

## DECLARATION BY THE EUROPEAN COMMUNITY IN ACCORDANCE WITH ARTICLE 42 OF COTIF

Pending the resolution of certain legal inconsistencies between Community legislation and certain rules of COTIF, the following appendices of COTIF will not be applied in their entirety by the European Community:

1. The Uniform Rules concerning the Contract of Use of infrastructure in International Rail Traffic (CUI – Appendix E to the Convention).

2. 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 the Convention).

3. The Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (ATMF – Appendix G to the Convention).

**INTERNAL ARRANGEMENTS BETWEEN THE COUNCIL, THE MEMBER STATES AND THE COMMISSION FOR THE PARTICIPATION OF THE COMMUNITY AND ITS MEMBER STATES IN MEETINGS HELD UNDER CONVENTION CONCERNING INTERNATIONAL CARRIAGE BY RAIL 1999**

Bearing in mind the requirement of unity of the international representation of the European Community and its Member States in accordance with the EC Treaty and the case law of the European Court of Justice also at the stage of implementation of international obligations;

The Council, the Member States and the Commission agree on the following internal arrangements :

**1. NATURE AND SCOPE**

**1.1. This document sets out the internal arrangements between the Council, the Member States and the Commission in preparation for the meetings held under the Convention concerning international carriage by rail 1999, (hereinafter "the Convention").These internal arrangements will apply to all meetings organised by the Intergovernmental Organisation for International Carriage by Rail (OTIF) in respect of the application of the Convention.**

**2. DIVISION OF TASKS BASED ON COMPETENCE**

**2.1. On rail transport matters falling within the competence of Member States, the Presidency will convene on its own initiative or at the request of the Commission or a Member State coordination meetings of EU Member States' delegations before, during and after each meeting referred to in paragraph 1, aiming at elaborating coordinated positions. The Presidency will express these coordinated positions.**

**2.2. The Commission will express, on behalf of the Community, Community positions on matters falling within Community competence, in particular in relation to:**

- Article 71 of Title V of the EC Treaty
- Article 155 of Title XV of the EC Treaty
- Any other matters falling exclusively or primarily within Community competence under Title V or XV of the EC Treaty,
- And in particular the Community instruments relating to subject matters dealt with by the Convention and detailed in the Appendix to Annex 2 of the Agreement on accession of the European Community to the Convention.

**2.3. The Presidency and the Commission will agree on which of them will deliver any statement to be made on behalf of the Community and its Member States in cases where the respective competencies are inextricably linked. The Commission will present the common position when the preponderance of the**

**matter concerned lies within the competence of the Community, and the Presidency will present the common position when the preponderance of the matter concerned lies within the competence of the Member States.**

## 3. ESTABLISHMENT OF POSITIONS AND COORDINATION PROCEDURE

### 3.1. All positions of the Community and its Member States in OTIF meetings will be duly coordinated.

In matters falling under their competence Member States will aim at elaborating coordinated positions. Draft Statements on positions will be circulated among Member States beforehand.

Commission proposals for Community positions and for common positions between the Community and its Member States will be discussed in the appropriate Committee created by the relevant Community rail directives, namely,

– the Committee on the transport of dangerous goods for items covered by Appendix RID to the Convention; if these items affect rail interoperability, or the common safety approach developed under Directive 2004/49/EC, the Community position to be taken should be made in coordination with the Committee on rail interoperability and safety.

– the Committee on the development of the Community's railways for items covered by Appendices CIV, CIM, CUV, CUI to the Convention and for other systems of uniform law elaborated by the OTIF ;

– the Committee on rail interoperability and safety for items covered by Appendices APTU and ATMF to the Convention;

The Commission and Member States will use their best endeavours in on the spot coordination meetings to establish an agreed position.

**3.2. As far as work on the transport of dangerous goods is concerned, the European Community shall be represented on the RID Expert Committee by the European Commission, assisted for reasons of technical expertise, by experts from the Member States and / or the European Rail Agency or as the case may be, shall mandate Member States to represent it.**

**3.3. The Commission will notify the relevant committee of the items on each OTIF meeting agenda it deems requiring representations on behalf of the Community or the Community and its Member States.**

**3.4. If a vote is to be held on items on the agenda, the Commission will give its opinion as to whether the Community or the individual Member States should vote.**

**3.5. The exercise of responsibilities and arrangements in respect of representations and voting in relation to each item on the agenda that falls under exclusive Community competence will be decided in coordination meetings held by the committees detailed in paragraph 3.1.**

**3.6. If necessary, coordination meetings may also be held at the meeting venue.**

**4. SPEAKING**

**4.1. In cases where the Presidency is not represented in meetings referred to in paragraph 1, the position of the Community and its Member States reached in the coordination process on matters covered by paragraph 2.1 and, as appropriate, in paragraph 2.3, is presented by the delegate of the Member State represented which comes first in the list of rotation for the EU Presidency.**

**5. VOTING**

**5.1. The Commission, on behalf of the European Community, will exercise the Community's voting rights on the basis of Community or common positions reached in the coordination process on matters referred to in paragraph 2.2, and, as appropriate, in paragraph 2.3.**

It may be agreed that in cases where the Community is not represented by the Commission, the Presidency will exercise voting rights of the Community on those matters, on the basis of common positions.

**5.2. The Member States will exercise their voting rights only on matters referred to in paragraph 2.1, and, as appropriate, in paragraph 2.3 on the basis of coordinated or common positions reached in the coordination process.**

**6. SPEAKING AND VOTING IN CASES OF DISAGREEMENT**

**6.1. Where matters being discussed in any of the three committees detailed in paragraph 3.1 to above remain outstanding, those matters will be referred to the Permanent Representatives' Committee, without undue delay. In cases**

**where the Commission and the Member States do not find an agreement on the matters, the Member States and the Commission will refrain from taking any position or casting any vote in a way that could damage the Community acquis.**

**6.2. The decisions referred to in the paragraph 6.1 do not affect the respective competence of the Community and its Member States.**