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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the 9th session of the Ad Hoc Committee on Legal Affairs and International Cooperation of the Intergovernmental Organisation for International Carriage by Rail (OTIF) with regard to the amendment of its Rules of Procedure

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf at the 9th session of the Ad Hoc Committee on Legal Affairs and International Cooperation (hereafter, "the ad hoc Committee") of the Intergovernmental Organisation for International Carriage by Rail (OTIF) in connection with the envisaged adoption of a decision to amend the Rules of Procedure of the ad hoc Committee.

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 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 EU-COTIF Accession Agreement entered into force on 1 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.

COTIF 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 eight Appendices to the Convention 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)**

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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).

– 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)**

2.2. The OTIF Ad Hoc Committee on Legal Affairs and International Cooperation

At its 15th session in September 2021, the General Assembly decided to set up an Ad Hoc Committee on Legal Affairs and International Cooperation, in accordance with Article 13 §2 of COTIF, for a period of three years (September 2021 – September 2024). At its 16th session, in September 2024, the General Assembly decided to renew the Ad Hoc Committee's mandate for a period of six years, up to 1 October 2030.

Without prejudice to the competence of the organs referred to in Article 13 §1 of COTIF, the General Assembly gave the Ad Hoc Committee the following mandate, laid down in Article 2 of its Rules of Procedure:

– To prepare draft amendments or supplements to the Convention;

– To provide legal advice on its own initiative or at the request of the organs referred to in Article 13§1 and 2 of COTF or at the request of the organs established by them;

– To promote and facilitate the functioning and implementation of COTIF;

– To monitor and assess legal instruments;

– To take decisions on cooperation with other international organisations and associations, including establishing and dissolving consultative contact groups with other international organisations and associations and monitoring the functioning of contact groups.

The General Assembly decided that, whenever applicable, the Ad Hoc Committee shall submit its conclusions and proposals to the competent organs referred to in Article 13 §1 of COTIF for consideration and decision.

2.3. The envisaged act of the Ad Hoc Committee

On 24 June 2026, during its 9th session, the Ad Hoc Committee is to adopt a decision amending its Rules of Procedure ('the envisaged act').

The purpose of the envisaged act is to align the practices of all OTIF organs, based on the recommendations of the Ad Hoc Committee at its 8th session, held on 4 December 2025. The Ad Hoc Committee recommended provisions aimed at harmonising the rules of procedures across all OTIF organs, with regard to the rights of members, associate members and observers, so as to ensure consistency. Furthermore, the proposal includes some additional alignments with practices of other organs and some editorial corrections.

The envisaged act will become binding on the parties in accordance with Article 16 §10 of COTIF, according to which the OTIF Committees are to establish their rules of procedure, and with Article 30 of the Rules of Procedure of the Ad Hoc Committee, according to which these Rules may be amended, in whole or in part, by a decision of this body.

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

Pursuant to Article 6 of the EU-COTIF Accession Agreement:

"*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 decision is to amend the Rules of Procedure of the Ad Hoc Committee, in order to align it with the rules of procedure of other OTIF organs.

The amendment of the Rules of Procedure of the Ad Hoc Committee is a horizontal matter, as it is auxiliary to legal instruments and policy areas for which the Union is exclusively competent. The Union has therefore exclusive competence in respect of amendments to the Rules of Procedure of the Ad Hoc Committee, pursuant to Article 3(2) TFEU. The Union, represented by the Commission, should exercise the voting rights with respect to the adoption of this decision, pursuant to point 3.3 of Annex III of Council Decision 2013/103/EU.

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*.'

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*'[3].

4.1.2. Application to the present case

The Ad Hoc Committee is a body set up by an agreement, namely COTIF, in accordance with its Article 13§2.

The act which the Ad Hoc Committee is called upon to adopt constitutes an act having legal effects. As the Union is a full contracting party to COTIF, the envisaged act will be binding upon the Union under international law, in accordance with Article 16 §10 of COTIF, according to which the OTIF Committees are to establish their rules of procedure, and with Article 30 of the Rules of Procedure of the Ad Hoc Committee, according to which these Rules may be amended, in whole or in part, by a decision of this body..

The envisaged act does not supplement or amend the institutional framework of the Agreement.

[3] 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.

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

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

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

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

4.3. Conclusion

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

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

(1) 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 concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius protocol of 3 June 1999[1] ('EU-COTIF Accession Agreement') was concluded on 16 June 2011 by the Union by means of Council Decision 2013/103/EU[2].

(2) Pursuant to Article 13 §2 of COTIF, the Ad Hoc Committee on Legal Affairs and International Cooperation (the "ad hoc Committee") of OTIF was set up.

(3) Pursuant to Article 16 §10 of COTIF and to Article 30 of the Rules of Procedure of the ad hoc Committee, the ad hoc Committee is competent to amend its Rules of Procedure.

(4) The ad hoc Committee, during its 9th session on 23-24 June 2026, is scheduled to adopt a decision to amend its Rules of Procedure.

(5) The decision by the ad hoc Committee to amend its Rules of Procedure will, if adopted, produce legal effects for the Union.

(6) The objective of this decision is to amend the Rules of Procedure of the ad hoc Committee in order to align them with the rules of procedure of other OTIF organs.

(7) The envisaged amendments to the Rules of Procedure of the ad hoc Committee are based on the recommendations of the 8th session of the OTIF ad hoc Committee to ensure further alignment and consistency between the practices of this and other OTIF organs. The amendments to the Rules of Procedure should therefore be supported.

(8) It is therefore appropriate to establish the position to be taken on the Union's behalf within the ad hoc Committee with regard to amending its Rules of Procedure,

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1 OJ L 51, 23.2.2013, p. 8.

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).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf at the 9th session of the ad hoc Committee on Legal Affairs and International Cooperation of the Convention concerning International Carriage by Rail of 9 May 1980, on the amendments to its Rules of Procedure, shall be to vote in favour of the proposed amendments to the Rules of Procedure, as set out in document INST-24046-JUR9/8.

Article 2

Minor technical changes to the position set out in Article 1 may be agreed upon by the representatives of the Union at the meeting of the ad hoc Committee on Legal Affairs and International Cooperation without further decision of the Council.

Article 3

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

Done at Brussels,

For the Council
The President