



2023/2582

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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**

(Text with EEA relevance)

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 (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 (the 'Convention'), in accordance with Council Decision 2013/103/EU ⁽¹⁾ and with 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 ⁽²⁾ ('the Agreement on Accession to the Convention').
- (2) Pursuant to Article 2 of its Rules of Procedure, the OTIF ad hoc Committee on Legal Affairs and International Cooperation ('the Committee') is mandated to prepare draft amendments or supplements to the Convention, provide legal advice on its own initiative or at the request of the organs referred to in Article 13 §§ 1 and 2 of the Convention or at the request of organs established by them, promote and facilitate the functioning and implementation of the Convention, monitor and assess legal instruments, and 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.
- (3) The Union participates in the Committee in accordance with the Convention, the Rules of Procedure of the Committee and the Agreement on Accession to the Convention.
- (4) At its 5th session, on 7–9 November 2023, the Committee is expected to decide upon an advisory legal opinion on the application to rail service facilities of Appendix E to the Convention; possible options to amend Appendix B to the Convention in order to facilitate the uptake of the electronic consignment note; certain aspects of the preparation of a long-term strategy for OTIF; possible options to amend the Convention with regard to the suspension and termination of the Convention or of membership of OTIF with regard to a particular OTIF member; the preparation of a recommendation on the use of electronic signatures in official communications between OTIF and its members; the development of a copyright policy and the preparation of guidelines on the protection of OTIF's name, abbreviation and logo; and the clarification of the term 'expert' for the purpose of stakeholder involvement in OTIF's work.
- (5) The Committee is expected to decide on an advisory legal opinion on the application to rail service facilities of the Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI) set out in Appendix E to the Convention. It is necessary to ensure a harmonised and complementary interpretation with

⁽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⁾ OJ L 51, 23.2.2013, p. 8.

regard to rail service facilities of those rules, on the one hand, and the legislation applied by OTIF members, on the other, in particular as far as the Union is concerned, Directive 2012/34/EU of the European Parliament and of the Council ⁽³⁾.

- (6) The existing provisions of Appendix B to the Convention allow the use of the electronic consignment note based on the principle of functional equivalence with the paper version. In view of the continuing digitalisation of transport, it is necessary to review the appropriateness of the OTIF legal framework and to consider possible options to amend the Convention with a view to facilitating the uptake of the electronic consignment note, taking into account the rules adopted by the Union under Regulation (EU) 2020/1056 of the European Parliament and of the Council ⁽⁴⁾.
- (7) As regards the strategic development of OTIF, it is important to ensure that further advice and guidance is provided to the Secretary-General of OTIF on the elaboration of a long-term strategy for OTIF, which is to be presented for consideration and adoption to the General Assembly of OTIF at its next ordinary session.
- (8) Considering recent geopolitical tensions in the pan-European region, the Committee is expected to resume discussions on the suspension and termination of the Convention or of membership of OTIF with regard to a particular OTIF member. It is necessary to make sure that the rules of the Convention on its suspension or termination, or on the suspension or termination of membership of OTIF, including the limitation of some rights, are properly reviewed and to decide whether the Convention should be amended to better protect the integrity of OTIF and of the network of its members, as well as to better support the achievement of OTIF's aim to promote, improve and facilitate international traffic by rail in all respects.
- (9) The development of electronic communications requires certain administrative updates and modernisation 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 different level 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 ⁽⁵⁾.
- (10) As regards the legal protection of OTIF's name, abbreviation, logo and intellectual property, the Committee may decide to develop an intellectual property document management policy for OTIF. Such a policy should be designed to facilitate the reuse of information and documents owned by OTIF in line with the rules set out in Directive (EU) 2019/1024 of the European Parliament and of the Council ⁽⁶⁾ and Commission Decision 2011/833/EU ⁽⁷⁾.
- (11) The Committee may decide to clarify the term 'expert' in the context of the Recommendation on involving stakeholders in OTIF's work adopted by the Committee on 5 April 2022. It is necessary to ensure a harmonised interpretation of that term, given the importance of ensuring appropriate stakeholder involvement in the activities of the Committee.
- (12) It is appropriate to establish the position to be taken on the Union's behalf at the 5th session of the Committee as the Union is a member of OTIF and the decisions taken by the Committee may lead to the adoption of acts which will be binding under international law and capable of decisively influencing the content of Union legislation, in particular Directive 2012/34/EU, Regulation (EU) No 910/2014 and Regulation (EU) 2020/1056.

⁽³⁾ Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ L 343, 14.12.2012, p. 32).

⁽⁴⁾ Regulation (EU) 2020/1056 of the European Parliament and of the Council of 15 July 2020 on electronic freight transport information (OJ L 249, 31.7.2020, p. 33).

⁽⁵⁾ 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).

⁽⁶⁾ 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).

⁽⁷⁾ Commission Decision 2011/833/EU of 12 December 2011 on the reuse of Commission documents (OJ L 330, 14.12.2011, p. 39).

- (13) The proposed decisions to be taken at the 5th session of the Committee are in line with the law and strategic objectives of the Union and should therefore be supported,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf at the 5th session of the ad hoc Committee on Legal Affairs and International Cooperation of the Intergovernmental Organisation for International Carriage by Rail is set out in the Annex.

Minor changes to the position referred to in the first paragraph may be agreed by the representatives of the Union without a further decision of the Council.

Article 2

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

Done at Brussels, 8 November 2023.

For the Council
The President
P. NAVARRO RÍOS

ANNEX

1. Introduction

The 5th session of the ad hoc Committee on Legal Affairs and International Cooperation of the Intergovernmental Organisation Convention for International Carriage by Rail (OTIF) will take place on 8–9 November 2023. The meeting documents are available on the website of OTIF at the following link: http://extranet.otif.org/jur/?page_id=6227

2. EU competence

The EU is a contracting party to the Convention.

In respect of this meeting's agenda items 3, 4, 6, 7, 8, 9 and 10, considered to deal with matters containing elements of both national and Union competence, point 3.3 of the 'Internal Arrangements' (Annex III of Council decision 2013/103/EU) should be followed. On items 6 (long-term strategy) and 7 (suspension and termination of COTIF and/or membership), the Commission and the Presidency will speak, and the Commission will vote. On the other items, the Presidency and the Commission will speak, and Member States will vote. Member States may intervene to support and/or develop the common position.

3. Comments on agenda items

Agenda Item 3 – Application of the CUI UR to service facilities

<i>Document(s):</i>	LAW-23108-JUR 5/3; LAW-23109-JUR 5/3; LAW-23085-JUR 5
<i>Exercise of voting rights:</i>	Member States
<i>Position:</i>	Support the adoption of the advisory legal opinion on the interpretation of the CUI UR as set out in LAW-23109-JUR 5/3. Recall that only Union courts can authoritatively interpret Union law.

Agenda Item 4 – The digitalisation of international transport, particularly freight transport documents

<i>Document(s):</i>	LAW-23102-JUR 5/4; LAW-23024-JUR 4/9; LAW-22084-JUR 3/9-Corr.1; LAW-22031-JUR 2/11
<i>Exercise of voting rights:</i>	Member States
<i>Position:</i>	Note the inception paper prepared by the Secretariat (LAW-23024-JUR 4/9); Consider that, while there is no urgency to amend CIM, it is worth examining further whether certain provisions should be clarified (cf. paras 123–125 of the inception paper); Invite the Secretariat to prepare for the 6th session an analytical non-paper presenting possible modifications to the CIM UR with the view to facilitating the uptake of the CIM electronic consignment note.

Agenda Item 6 – Development of a long-term strategy for OTIF

Document(s):	LAW-23115-JUR 5/6; LAW-23116-JUR 5/6
Exercise of voting rights:	Union
Position:	Welcome the submission by the Secretary General of a revised, consolidated version of the 'draft single strategy document'; Support in general the current draft structure and substance of the long-term strategy, subject to the following comments: regarding the strategic objective 1, it would be useful to outline concrete generic proposals, e.g. the organisation of regional workshops to promote the application and the uptake of all COTIF appendices by the OTIF members; regarding the strategic objective 4, it would be useful to outline concrete generic proposals for enhancing OTIF's leading role in international rail transport; regarding the strategic objective 5, the narrative should refer to the cooperation with the European Agency for Railways 'ERA' and include a paragraph on the Luxembourg Protocol (to the Cape Town Convention) and the role of OTIF in supporting its implementation.

Agenda Item 7 – Suspension and termination of COTIF and/or membership of OTIF with regard to a particular Member State

Document(s):	LAW-23103-JUR 5/7; LAW-23086-JUR 5; LAW-22082-JUR 3/5
Exercise of voting rights:	Union
Position:	Regarding the proposal for decision under this item, the European Union recalls that the aim of OTIF is technical and limited to international rail transport, and that COTIF does not set any general or universal objectives. The European Union sees merit in preserving the technical nature of OTIF. Nevertheless, it remains open to further discussing the option of expanding criteria related to which sanctions may apply. In that context, the European Union proposes to mandate the OTIF Secretariat to set up an ad hoc working group of OTIF members to outline and draft possible modifications to the Convention, including the relevance and implications of such modifications, to be discussed at the 6th session of the Ad Hoc Committee. As a contribution to the work of such a working group, the European Union would like to put forward the following elements and guiding principles. <i>Whether, as a general rule, sanctions for the breach of OTIF rules should only be imposed if expressly provided for by COTIF.</i> The inception paper prepared by the OTIF Secretariat shows that, in general, decisions on sanctions against a member of an international organisation follow formal procedures explicitly provided for in the relevant convention or agreement concerned. This was the case in the Council of Europe in 2022, where the decisions to suspend and exclude a member from the organisation were based on the breach of obligations undertaken within the Council of Europe. It is therefore the view of the European Union that any sanction for the breach of OTIF rules should only be imposed if expressly provided for by COTIF, including clearly defined rules and procedures with regard to the assessment of potential breaches and of the relevant circumstances and on the definition of the applicable sanction.

Whether COTIF should set out sanctions for a breach of international law in general when its own rules are not breached. If so, what potential breaches should be included?

The aim of OTIF is technical and limited to international rail transport: COTIF does not set any general or universal objectives, such as the maintenance of international peace or the promotion of the rule of law. In principle it could be envisaged to lay down provisions in COTIF that would require compliance with rules or principles contained in other international instruments (e.g. the UN Charter or international human rights treaties) or in customary international law, and to also provide sanctions in COTIF for the breach of those rules or principles. Such clauses, however, are not usually found in treaties establishing technical organisations like OTIF. This would affect the technical nature of the organisation.

Whether COTIF should set out sanctions for breaches other than non-payment of contributions. If so, what potential breaches should be included?

Article 1 §1 COTIF provides that the contracting parties constitute the organisation 'OTIF'. Hence, it may be considered that OTIF Members share collectively the responsibility – stemming from their membership of OTIF and their obligations under COTIF – to achieve the aim of OTIF (Article 2 §1 COTIF), which is to 'promote, improve and facilitate, in all respects, international traffic by rail (...)'. Following this rationale, it may be envisaged to amend COTIF to define sanctions for breaches of certain COTIF provisions other than for the non-payment of financial contributions to the budget, including: (1) breaches of OTIF rules that cause a potential or actual dysfunction of the international rail traffic regulated by COTIF; and/or (2) breaches of OTIF rules that seriously hamper the aim of OTIF to promote, facilitate and improve international rail traffic.

To elaborate further on this, it would be necessary to: (a) Identify certain OTIF rules which are particularly relevant for the achievement of the objectives of the organisation; (b) Identify certain OTIF rules in relation to which violations by OTIF Members are likely to disrupt the proper functioning of international rail traffic; (c) Identify certain OTIF rules in relation to which violations (be it of specific rules or of combinations thereof) by OTIF Members are likely to undermine the integrity or functioning of OTIF; (d) Define a methodology to determine whether a breach of OTIF rules could seriously hamper the aim of OTIF to promote, facilitate and improve international rail traffic.

The following types of sanctions could be envisaged with regard to a breach of OTIF provisions other than the non-payment of contributions: suspension of voting rights; suspension of membership; termination of membership (exclusion), eventually to be applied if no appropriate corrective actions are implemented after suspension.

Several cross-cutting principles should also be applied: any sanctions to be set out must be effective, proportionate, and dissuasive; different types of sanctions should be envisaged and calibrated to account for different levels of gravity of the breach and potential aggravating factors, which could also be applied if no appropriate corrective actions are implemented after the sanction; procedural aspects such as the right to be heard, right of appeal, requests for remedial actions, restoration of rights and the readmission of expelled OTIF Member should be considered.

	The United-Kingdom (LAW-23086-JUR 5, point 5.2) proposes a specific way forward by considering circumstances that would impact the performance of OTIF and which are linked to differing behaviours, such as an act of war by one OTIF Member which unreasonably undermines the ability of another OTIF Member to meet its obligations under COTIF, or if an OTIF Member attacks another Member's rail infrastructure, unreasonably undermining that Member's ability to meet their COTIF obligations. The EU remains open towards the possibility of discussing the introduction of sanctions for breaches other than non-payment of contributions in OTIF. However, at this juncture, the works should concentrate on proposals that take due account of the technical nature of OTIF. The European Union appreciates the views presented by the UK and suggests considering the possible inclusion in COTIF of provisions requesting members to respect the physical and functional integrity of the rail infrastructure of other members. This could be for example inserted in Article 5 of COTIF (Special obligations of the Member States). The breach of such new provision could be sanctionable. <i>Which OTIF organ should be responsible for deciding whether the relevant rules have been breached?</i> The General Assembly is OTIF's supreme decision-making body and should be formally responsible for deciding whether relevant OTIF rules have been breached. Based on the institutional set up of OTIF, it would be the role of the Secretary-General to examine any alleged breach of OTIF rules. This may involve consultations of other OTIF organs and require external expertise with the view to preparing the necessary proposals for decision, where appropriate, for consideration by the General Assembly. <i>Which OTIF organ should decide on the application of sanctions, the restoration of rights and the readmission of expelled Member States and by what majority?</i> The General Assembly is OTIF's supreme decision-making body and should be formally responsible for deciding on the application of sanctions, the restoration of rights and the readmission of expelled Member States. Given the importance and impact of the application of sanctions, the qualified two-third majority of the OTIF Member States present referred to in Article 14 §6 COTIF would likely be appropriate in this case. <i>Should circumstances precluding the wrongfulness of an act be expressly included in COTIF?</i> The European Union is of the view that a non-exhaustive description of circumstances precluding the wrongfulness of an act should indeed be expressly included in COTIF. As an example, a force majeure clause in COTIF could set out clear conditions that would be outside of the control of an OTIF Member, consistent with the general framework of States' responsibility for internationally wrongful acts as developed in paragraphs 24 to 35 of the OTIF Secretariat's inception paper. <i>In case of expulsion, should the readmission of expelled members follow the same procedure as for the admission of new members or should the procedure be different? Should any specific conditions be imposed?</i>
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	On the assumption that sanctions are indeed implemented, as a matter of principle, the readmission of expelled members should only be considered and accepted under specific conditions, and in any case only if the breach of OTIF rules that gave rise to the sanction is effectively corrected. Conditions for sanctions to be revoked and membership's rights to be restored would need to be clearly identified and formulated.
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Agenda Item 8 – Use of electronic signatures in official communications between OTIF and its members

<i>Document(s):</i>	LAW-23104-JUR-5/8; LAW-23019-JUR 4/4
<i>Exercise of voting rights:</i>	Member States
<i>Position:</i>	Take note of the information presented by the Secretariat (inception paper) and recall that, for the EU, the matter is covered by the Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market; Support the preparation of a draft recommendation, preferably by the OTIF Secretariat, on the use of electronic signature in official communications between OTIF and its members, for consideration and possible adoption at the next session of the ad hoc Committee; As regards general principles, the different level of experience of OTIF members with electronic signatures should be considered, and therefore it appears appropriate that the recommendation, in a first phase, covers 'simple' communications only.

Agenda Item 9 – Legal protection of OTIF's name, abbreviation, logo and works

<i>Document(s):</i>	LAW-23119-JUR 5/9; LAW-23120-JUR 5/9
<i>Exercise of voting rights:</i>	Member States
<i>Position:</i>	Support the development of a copyright policy and instructs the Secretariat to prepare such policy including licensing under open access licensing models where appropriate and taking into account the rights of ownership especially the rights of third parties in the different types of documents published by OTIF; Express the view that the General Assembly should approve the logo and guidelines on use of the organisation's name, logo, flag and abbreviation; Agree to instruct the OTIF Secretariat to prepare draft guidelines on the use of OTIF's name, abbreviation and logo to be discussed at the next session of the Committee and to proceed with the communication of OTIF's 'name, abbreviation, emblem or armorial bearings' to WIPO (World Intellectual Property Organisation) in accordance with Article 6ter of the Paris Convention for the Protection of Industrial Property.

Agenda Item 10 – Involvement of registered stakeholders in the ad hoc Committee on Legal Affairs and International Cooperation

<i>Document(s):</i>	LAW-23105-JUR 5/10
<i>Exercise of voting rights:</i>	Member States
<i>Position:</i>	Support the proposal of the OTIF Secretariat to clarify that, for the purpose of involving stakeholders in the activities of the Committee, the term 'expert' means experts in their independent professional capacity and experts as representatives of legal persons active in the international rail sector, such as carriers and infrastructure managers; Note the decision of the Bureau of the Committee that requests from experts, academics and researchers to give a presentation at a session of the ad hoc Committee must be approved by the Bureau before the relevant session in order to ensure that the session is managed efficiently.