



Brussels, 12.10.2018  
COM(2018) 684 final

2018/0352 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the written procedure to be launched by the Committee of Technical Experts of the Intergovernmental Organisation for International Carriage by Rail (OTIF) for the adoption of modifications to the Uniform Technical Prescriptions UTP GEN-B and UTP TAF**

## EXPLANATORY MEMORANDUM

### **1. SUBJECT MATTER OF THE PROPOSAL**

In its 11<sup>th</sup> session that took place in Bern on 12 - 13 June 2018, the Committee of Technical Experts (CTE) of the Intergovernmental Organisation for International Carriage by Rail (OTIF) decided to adopt through written procedure certain modifications to the Uniform Technical Prescriptions (UTPs): UTP GEN-B concerning the definition of subsystems and UTP TAF on telematics applications for freight service.

The OTIF UTPs are a set of technical specifications deriving from the principles, objectives and procedures of COTIF for the construction and operation of railway material, with the overriding objective of achieving maximum interoperability. In this way, the UTPs in OTIF are equivalent to the EU technical specifications for interoperability (TSIs).

The UTP GEN B defines the subsystems of the rail system, within the scope of APTU and ATMF; Appendices F and G to the Convention. It is equivalent to the corresponding EU provisions in Annex II to Directive (EU) 2016/797 of 11 May 2016 on the interoperability of the rail system within the European Union<sup>1</sup>.

The UTP TAF lays down basic and additional requirements with regard to the communication process between railway undertakings and infrastructure managers, databases intended to be used to track trains and wagon movements and information to be delivered to freight customers, without which the TAF subsystem cannot function. It is equivalent to the TAF TSI<sup>2</sup>.

The current proposal to be launched through written procedure for modification of the above mentioned UTPs requires a Council Decision establishing the position to be taken on the Union's behalf. The proposed amendments are as follows:

- Modifications to points 2.1, 2.2 and 2.3 of the UTP GEN-B, as set out in the Annex to this decision and in the CTE Working Document TECH-18010-CTE11-5<sup>3</sup>
- Update of TAF UTP to include the revised List of Technical Documents (Appendix I) of the TAF TSI

with the overall objective of ensuring equivalence between TSIs and UTPs.

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. The Convention concerning International Carriage by Rail (COTIF)**

The COTIF Convention is OTIF's founding legal text. Under Article 2(1) of the COTIF, its aim is to promote, improve and facilitate, 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.

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<sup>1</sup> Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union, OJ L 138, 26.5.2016, p. 44.

<sup>2</sup> Commission Regulation (EU) No 1305/2014 of 11 December 2014 on the technical specification for interoperability relating to the telematics applications for freight subsystem of the rail system in the European Union, OJ L356, 12.12.2014, p. 438.

<sup>3</sup> <https://otif.org/fileadmin/new/2-Activities/2E-Technical-Interoperability/2Ea-CTE/2Ea2-Working-Documents/2018/TECH-18010-CTE11-5-e-UTP-GEN-B-amendments.pdf>

COTIF therefore deals with rail legislation on a number of different legal and technical rail matters which are divided in two parts: the Convention itself, which governs the running of OTIF and the eight Appendices (including a new appendix H to be adopted during the upcoming 13<sup>th</sup> General Assembly of OTIF) 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**)
- 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**)

Based on Appendix F and G to COTIF there are 12 UTPs for technical interoperability.

The COTIF applies to 46 states, including 26 EU Member States (all except Malta and Cyprus).

## **2.2. The agreement between the European Union and the Intergovernmental Organisation Convention for International Carriage by Rail (OTIF)**

On 16 June 2011, the Council adopted Council Decision 2013/103/EU<sup>4</sup> signing and concluding the Agreement between the European Union and 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. The Agreement entered into force on 1st July 2011.

The Union is a party to the Agreement as well as all Member States except Cyprus and Malta. Council Decision 2013/103/EU specifies that the Commission shall represent the Union at OTIF meetings. It also contains a Declaration by the Union concerning the exercise of competence (Annex I) and provides for internal arrangements for the Council, the Member States and the Commission in proceedings under OTIF (Annex III).

## **2.3. The OTIF Committee of Technical Experts**

The CTE is an organ of OTIF set up by Article 8 of the COTIF. It is made up of the OTIF Member States that apply Appendices F and G (APTU, ATMF) to COTIF.

The CTE has competence in matters of interoperability and technical harmonisation in the railway field and technical approval procedures. It develops the APTU and ATMF

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<sup>4</sup> 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).

Appendices and its Uniform Rules, which apply to railway material intended for use in international traffic, which concern in particular:

- the adoption of technical prescriptions for vehicles and infrastructure and the validation of standards;
- procedures concerning the assessment of conformity of vehicles;
- provisions concerning the maintenance of vehicles;
- responsibilities for train composition and the safe use of vehicles;
- provisions concerning risk evaluation and assessment;
- specifications for registers.

The CTE currently has a standing working group (WG TECH) which is responsible for preparing the former's decisions.

#### **2.4. The adoption of acts by Written Procedure in CTE**

The usual adoption process for UTPs is prescribed in Articles 6 and 8 of APTU and may take about one and a half years. The CTE may adopt also modifications to UTPs in written procedure in accordance with Article 21§3 of CTE's Rules of Procedure<sup>5</sup>, which is faster and may take 6 months. At the 11th session of the CTE, in accordance with Article 21§3 of CTE's Rules of Procedure it was agreed by the members, on a proposal from the chair, to have the modifications adopted through written procedure.

In accordance with Article 21 § 3 of its rules of procedure, the Committee will take a decision by written procedure in accordance with the following rules:

- all members of the Technical Committee shall be informed in writing about the subject of and reason for such a vote;
- independent issues are to be voted upon separately;
- the members shall be invited to send the OTIF Secretary General their written votes within a specific deadline (date and time), which must allow them no less than twenty one calendar days;
- receipt of each vote shall be confirmed in writing by the OTIF Secretary General;
- all responses received within the deadline shall be recorded;
- the quorum shall be the same as for a meeting of the CTE. If the number of responses received before the deadline does not reach the required quorum, the proposal shall be considered to be rejected. It may, however, be resubmitted at the next meeting of the Technical Committee;
- if at least three Committee members request that the proposed measures be examined at a Committee meeting, the written procedure shall be terminated without result; a new Committee meeting shall be convened as soon as possible and
- all members shall be notified of the result of the voting procedure.

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<sup>5</sup> [http://otif.org/fileadmin/user\\_upload/otif\\_verlinkte\\_files/02\\_organe/06\\_fachaus\\_tech/RI-CTE\\_11\\_02\\_2009\\_e.pdf](http://otif.org/fileadmin/user_upload/otif_verlinkte_files/02_organe/06_fachaus_tech/RI-CTE_11_02_2009_e.pdf)

## **2.5. The envisaged acts of the CTE to be adopted by Written Procedure**

The CTE in its 11th session put the following modifications up for decision to be adopted through written procedure:

- Amendments to points 2.1, 2.2 and 2.3 of UTP GEN-B concerning subsystems;
- Update of UTP TAF to align it with the revised version of the TAF TSI.

The proposed amendments to UTP GEN-B follow the request from CTE 10 that UTP GEN-B point 2.1 be modified to include bridges, in addition to the track and points that were already included. The reasoning was that if interfaces between bridges and vehicles are not managed correctly this may lead to harmful vibrations.

Based on CTE 10's request, WG TECH discussed this issue and agreed that point 2.1 of UTP GEN-B could be amended in a more generic way by stating that COTIF includes infrastructure to the extent related to interfaces with the vehicles, without entering into further detail. This generic principle would also apply to other subsystems concerning fixed installations, i.e. energy and trackside control-command and signalling.

After such a modification, the Committee of Technical Experts would be competent to decide for each (future) UTP concerning infrastructure, energy or trackside control-command and signalling exactly which interfaces need to be covered.

This is in line with the OTIF strategy paper on the development of provisions covering infrastructure that was discussed during CTE 11 (document "TECH-18012-CTE11-6.2") and based on which the CTE mandated WG TECH to develop proposals for suitable and feasible provisions concerning infrastructure.

The proposed update of UTP TAF follows the recent revision of TAF TSI updating the structure of the TAF TSI messages, data and message model, Wagon and Intermodal Unit Operating Database (WIMO), and adopting an IT standard for the communication layer of the Common Interface. These changes have been introduced in order to overcome the former proprietary logic, and to allow a quicker and less costly implementation of this tool in the TAF TSI users' community. The reference files have been revised accordingly from which the result was an update of the List of Technical Documents (Appendix I) of the TAF TSI. This requires an update of corresponding List in the UTP TAF.

The envisaged acts will be legally binding on the OTIF Member States and the regional economic integration organisations which have acceded to COTIF, in particular the Union. The purpose of the envisaged acts is to further align COTIF Uniform Technical Prescriptions (UTPs) with the EU Technical Specifications for Interoperability (TSIs).

## **2.6. Union competence and voting rights**

Pursuant to Article 6 of the EU-OTIF 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.*"

As established in Annex I of the Council Decision 2013/103/EU, in the rail sector, the European Union shares competence with the Member States pursuant to Article 91 of the Treaty on the Functioning of the European Union (TFEU).

Under Union law, the Union has acquired exclusive competence in matters of rail transport where the COTIF or legal instruments adopted pursuant to it may affect or alter the scope of these existing Union rules. Union rules will be clearly affected by the adoption of such modifications since the objective of the measure is to align COTIF UTPs with the EU provisions in Annex II to Directive (EU) 2016/797 and with the TAF TSI.

Therefore the Union, represented by the Commission, shall exercise the voting right in present case.

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

The Union should for all the above mentioned reasons vote positively in the written procedure.

### **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.'*

Article 218(9) TFEU applies regardless of whether the Union is a member of the body or a party to the agreement<sup>6</sup>.

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'*<sup>7</sup>.

##### *4.1.2. Application to the present case*

The acts which the CTE is called upon to adopt constitute acts having legal effects. The envisaged acts have legal effects because they modify the OTIF legal framework by aligning the COTIF UTPs with the EU TSIs regarding Subsystems.

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

#### **4.2. Conclusion**

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

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<sup>6</sup> Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraph 64.

<sup>7</sup> 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.

## **5. PUBLICATION OF THE ENVISAGED ACT**

As the act of the CTE will amend UTP GEN-B based on Appendix F of COTIF, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

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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, 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'), in accordance with Council Decision 2013/103/EU<sup>8</sup>.
- (2) All Member States, with the exception of Cyprus and Malta, apply the COTIF.
- (3) Pursuant to Article 8 of the COTIF, the Committee of Technical Experts ('CTE') of the Intergovernmental Organisation for International Carriage by Rail (OTIF) was set up. In accordance with Article 20(1)(b) of the COTIF and Articles 6 and 8a of Appendix F (APTU), the CTE is competent to take decisions on the adoption of Uniform Technical Prescriptions ('UTPs') or a provision amending a UTP based on Appendix F (APTU) and Appendix G (ATMF) to the COTIF Convention.
- (4) Following its 11<sup>th</sup> session that took place on 12 and 13 June 2018, the CTE decided to adopt, through written procedure, amendments to points 2.1, 2.2 and 2.3 of the UTPs concerning subsystems (UTP GEN-B) to include level crossings and other engineering structures such as bridges as part of the infrastructure subsystem definition, as set out in the attachment to this Decision.
- (5) It is appropriate to establish the position to be taken on the Union's behalf in the CTE, as the amendments to points 2.1, 2.2 and 2.3 to UTP GEN-B based on Appendix F (APTU) of the COTIF Convention will be binding on the Union.
- (6) The objective of these amendments is to align the definition of subsystems in COTIF UTP GEN B to the Union's in Annex II to Directive (EU) 2016/797<sup>9</sup> by introducing level crossings and other engineering structures such as bridges as part of the infrastructure subsystem definition.

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<sup>8</sup> 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).

<sup>9</sup> Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (OJ L 138, 26.5.2016, p. 44).



- (7) The proposed amendments are in line with the law and the strategic objectives of the Union by contributing to the alignment of OTIF legislation with the Union equivalent provisions, and should therefore be supported by the Union,

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf in the written procedure to be launched by the Committee of Technical Experts of the Convention concerning International Carriage by Rail of 9 May 1980 on the amendments to points 2.1, 2.2 and 2.3 of the Uniform Technical Prescriptions UTP GEN B shall be based on the draft act of the Committee of Technical Experts of OTIF, attached to this Decision.

*Article 2*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*