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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

DECISIONS

COUNCIL DECISION (EU) 2021/1744

of 28 September 2021

establishing the position to be adopted on behalf of the European Union at the 15th 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 acceded to the Convention concerning International Carriage by Rail of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 ('COTIF'), pursuant to Council Decision 2013/103/EU ⁽¹⁾.
- (2) The General Assembly of OTIF was set up in accordance with Article 13 § 1, letter a), of COTIF (the 'General Assembly').
- (3) The Union participates in the General Assembly in accordance with COTIF, the Rules of Procedure of the General Assembly, and the Agreement on the Accession of the Union to COTIF.
- (4) At its 15th session due to take place from 28 to 29 September 2021, the General Assembly is expected to decide upon: the preparation of a long-term strategy for OTIF; a proposal for a Regulation on the election and conditions of service of the Secretary-General; a proposal to merge the activities of the *ad hoc* Committee on Cooperation and of the Working Group of Legal Experts into a single *ad hoc* Committee on Legal Affairs and International Cooperation; a proposal for a decision on the monitoring and assessment of OTIF legal instruments; and, proposals for modification of the Rules of Procedure of the General Assembly.
- (5) At that session, the General Assembly is also expected to formulate OTIF's views on the United Nations Economic Commission for Europe (UNECE) initiative on Unified Railway Law, in particular as regards two alternative approaches on the unification of railway law at global level.
- (6) It is appropriate to establish the position to be adopted on behalf of the Union at the 15th General Assembly of OTIF, as the Union is a member of OTIF and the decisions to be taken by the General Assembly have an impact on the functioning and on the development strategy of the organisation.

⁽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) The 15th General Assembly will consider the adoption of a legally binding instrument that would regulate the election and conditions of service of the Secretary-General, one of the organs of OTIF set out in Article 13 of COTIF. The new instrument would provide a comprehensive framework covering all main aspects of the subject matter (election principles, qualification criteria, call for application, submission and examination of applications, transparency, voting, conditions of service, etc.).
- (8) As regards the strategic development of OTIF, the Secretary-General proposes to continue and intensify the discussion on a draft proposal for a long-term strategy for OTIF, following the consultation organised at the beginning of 2021. A revised draft proposal would then be submitted for consideration and adoption by the General Assembly at its next ordinary session. The General Assembly will be expected to instruct the Secretary-General to undertake the necessary actions for this purpose.
- (9) The General Assembly will consider the opportunity to merge the activities of the *ad hoc* Committee on Cooperation and of the Working Group of Legal Experts into a single *ad hoc* Committee on Legal Affairs and International Cooperation. It is noted that the institutional framework of OTIF is defined in Title III of COTIF. Pursuant to Article 13 § 2 of COTIF, the General Assembly may decide to establish temporarily other committees for specific tasks. Thus, the proposal of the Secretary-General to establish temporarily an *ad hoc* Committee on Legal Affairs and International Cooperation is to be considered within the OTIF's existing institutional framework.
- (10) In order to better monitor and improve the application of COTIF, the General Assembly is expected to adopt an internal decision on the monitoring and assessment of COTIF's legal framework. The proposed decision operationalises the task of OTIF set out in Article 2 § 1, letter e) of COTIF to keep a watch on the application of all the rules and recommendations (legal instruments) established within the organisation. To that end, the draft decision establishes specific requirements for the Secretary-General of OTIF and for the OTIF members, in particular: the Secretary-General will systematically perform monitoring and assessment of the implementation of COTIF; the OTIF organs will be entitled to initiate monitoring and assessment of the application of a particular legal instrument within the sphere of their competence or the specific provisions thereof; the Secretary-General will be able to initiate monitoring and assessment of any legal instrument; OTIF members will cooperate with the Secretary-General and provide all relevant information for the purpose of monitoring and assessing legal instruments.
- (11) The General Assembly will also consider and adopt a position on the latest developments of UNECE's initiative on Unified Railway Law. In particular, the General Assembly may express its support for the formation and adoption of an interface law to facilitate international rail freight transport between Europe and Asia, provided that such interface law does not conflict with the rules of COTIF. That position would be conveyed to the 74th session of the UNECE Working Party on Rail Transport in November 2021, which is the standing body competent to decide on the next steps of the Unified Railway Law initiative.
- (12) At its 15th session, the General Assembly will also decide on the modification of its rules of procedure. A consolidated version of the rules of procedure will be adopted and should enter into force on the first day after the session.
- (13) The proposed decisions are in line with the law and the strategic objectives of the Union, and should therefore be supported by the Union.
- (14) 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

The position to be adopted on behalf of the Union at the 15th General Assembly of the Intergovernmental Organisation for International Carriage by Rail (OTIF) is set out in the Annex.

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, 28 September 2021.

For the Council
The President
S. KUSTEC

ANNEX

1. Introduction

The 15th General Assembly of the Intergovernmental Organisation for International Carriage by Rail (OTIF) is due to take place from 28 to 29 September 2021. The meeting documents are available on the website of OTIF at the following link:

http://extranet.otif.org/fr/?page_id=140

2. Position of the Union on certain agenda items**Agenda Item 1 – Election of the Chair and Vice-Chair**

Document(s):	None
Competence:	Union (shared)
Exercise of voting rights:	Member States
Position:	None

Agenda Item 2 – Adoption of the agenda

Document(s):	SG-21009-AG 15/2
Competence:	Union (shared and exclusive), without prejudice to the competences of the Member States in respect of agenda item 11
Exercise of voting rights:	Union, without prejudice to the competences of the Member States in respect of agenda item 11
Position:	In favour of the adoption of the draft agenda

Agenda Item 3 – Formation of the Credentials Committee

Document(s):	None
Competence:	Union (shared)
Exercise of voting rights:	Member States
Position:	None

Agenda Item 4 – Organisation of the work and designation of any Committees considered necessary

Document(s):	None
Competence:	Union (shared)
Exercise of voting rights:	Member States
Position:	None

Agenda Item 5 – Status of the Convention and OTIF membership

Document(s):	SG-21010-AG15/5
Competence:	Union (shared)
Exercise of voting rights:	Not applicable
Position:	None

Agenda Item 6 – Election of a Secretary-General for the period from 1 January 2022 to 31 December 2024

Document(s):	Restricted distribution
Competence:	Union (shared)
Exercise of voting rights:	Member States
Position:	None

Agenda Item 7 – OTIF long-term strategy

Document(s):	SG-21017-AG 15/7
Competence:	Union (shared and exclusive)
Exercise of voting rights:	Union
Position:	Support the initiative of the Secretary-General to develop a long-term strategy for OTIF. Take note of the Secretary-General's report and appreciate that the comments provided by the Union during the consultation process have been effectively taken into account. Support the proposal for a decision by the General Assembly to: — instruct the Secretary-General to prepare a revised draft proposal for a long-term strategy for OTIF, which should be based on the draft sent with circular letter SG-21001 (see Annex 1 to document SG-21017-AG 15/7) and updated in accordance with the Secretary-General's reaction to the feedback received in the consultation (part D of document SG-21017-AG 15/7) and with the results of the discussions at the 15th General Assembly, and — instruct the Secretary-General in consultation with OTIF organs to prepare a long-term strategy for OTIF and submit it for adoption to the next ordinary session of the General Assembly, which is scheduled for autumn 2024. In view of further discussions within OTIF on this matter, the Union intends to pay attention to ensuring that the long-term strategy for OTIF is consistent with the EU Strategy for Connecting Europe and Asia, and relevant EU rail transport policy objectives, that the formulation of long-term strategic objectives for OTIF covers adequately the aims of the organisation and does not lead to adding new objectives to OTIF or to formulating an interpretation of existing objectives implying an extension of OTIF competences, that the potential impact of the long-term strategy on OTIF's organisation and

	resources is assessed and documented as part of the proposal for a revised draft proposal, that the strategy, once adopted, is primarily implemented with the use of existing tools and procedures, as established in COTIF (work programme, budget, management reports, activities of the organs, etc.).
Comments:	The Union contribution to the consultation organised on the draft proposal for a long-term strategy for OTIF was submitted to the OTIF Secretariat on 17.3.2021 and is reproduced in Annex of SG-21017-AG 15/7. The Union welcomed the initiative but suggested that the draft strategy is not sufficiently developed. More background analysis and discussion at expert level is needed. The starting point should be the analysis of the existing situation in international rail transport, including the mapping of current and emerging challenges, and the consideration of relevant legal, economic, environmental and technological evidence.

Agenda item 8, (a) – Report on the activities of the *ad hoc* Committee on Cooperation and the Working Group of Legal Experts

Document(s):	SG-21018-AG 15/8.1
Competence:	Union (shared and exclusive)
Exercise of voting rights:	Union
Position:	Take note of the report on the activities of the <i>ad hoc</i> Committee on Cooperation and the Working Group of Legal Experts and recognise the importance of continuing and streamlining the work of these two bodies. Support the decision of the General Assembly to establish an <i>ad hoc</i> Committee on Legal Affairs and International Cooperation, by merging the <i>ad hoc</i> Committee on Cooperation and the Working Group of Legal Experts. Approve the proposed mandate of the <i>ad hoc</i> Committee on Legal Affairs and International Cooperation, for a first period of three years, and instruct the Secretary-General to submit the conclusions and proposals of the <i>ad hoc</i> Committee on Legal Affairs and International Cooperation to the competent bodies referred to in Article 13 § 1 of COTIF for consideration or decision.
Comments:	The report presented by the Secretary-General indicates that the <i>ad hoc</i> Committee on Cooperation and the Working Group of Legal Experts have effectively fulfilled their mandates and demonstrated their value in the context of developing OTIF law and strengthening international cooperation. At their 4 th sessions in April 2021, those two bodies agreed on a joint proposal to reorganise their work in future and to reduce the administrative burden, through the establishment of a single <i>ad hoc</i> Committee.

Agenda item 8, (b) – Monitoring and assessment of legal instruments

Document(s):	SG-21019-AG 15/8.2
Competence:	Union (shared and exclusive)
Exercise of voting rights:	Union

Position:	Support the adoption of the draft Decision on the monitoring and assessment of legal instruments. Support the approval of the Explanatory Notes on the draft Decision on the monitoring and assessment of legal instruments.
Comments:	The proposed draft Decision sets out the necessary legal provisions for the organisation and implementation of the monitoring and assessment policy of OTIF legal instruments (scope, planning and prioritisation, cooperation, data collection, assessment and follow-up), in line with the objectives of OTIF's Work Programme.

Agenda item 8, (c) – Modification of the General Assembly's Rules of Procedure regarding participation and representation (credentials)

Document(s):	SG-21020-AG 15/8.3
Competence:	Union (shared and exclusive)
Exercise of voting rights:	Union
Position:	Support the adoption of the amendments to Articles 4 to 7 of the Rules of Procedure of the General Assembly. Support the approval of the Explanatory Notes on Articles 4 to 7 of Rules of Procedure of the General Assembly.
Comments:	The Working Group of Legal Experts prepared proposals to amend the provisions of the Rules of Procedure of the General Assembly concerning credentials, with a view to improving and clarifying them.

Agenda item 8, (d) – UNECE initiative on Unified Railway Law

Document(s):	SG-21021-AG 15/8.4
Competence:	Union (shared and exclusive)
Exercise of voting rights:	Member States
Position:	Take note of the Secretary-General's report and the conclusions of the Working Group of Legal Experts on the possible approaches to the unification of railway law; Agree with the proposal for a decision by the General Assembly to: — support the formation and adoption of an interface law between COTIF/CIM and SMGS to facilitate international rail freight transport between Europe and Asia, provided that this interface law must not conflict with the CIM UR and SMGS; — instruct the Secretary-General to continue to participate in the UNECE work on the project to unify railway law and instruct the <i>ad hoc</i> Committee on Legal Affairs and International Cooperation to monitor the UNECE project concerning the unification of railway law and, if necessary, provide advice.

	Reiterate the decision taken at its 13th session, whereby it recognises that it must take a prior decision with regard to participating in the preparation of any new text on international railway law whose scope of application and objectives may conflict or partially coincide with the scope of application of COTIF and the objectives of OTIF.
Comments:	The subject matter concerns the harmonisation and unification of rail transport law for international traffic in Eurasia that is currently managed through two distinct legal regimes: (1) COTIF administered by OTIF, including its Appendix B “Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM UR)”; (2) the Agreement on International Traffic by Rail (SMGS) administered by the Organisation for Cooperation between Railways (OSJD). The objective of the UNECE Unified Railway Law (URL) initiative is to develop an approach for the unification of rail transport law with the view to improving the efficiency and competitiveness of Euro-Asia rail freight transport services. The experts from the Member States and the Commission, who participated in this activity in UNECE advocated a pragmatic and step-by-step approach, starting, as a first step, with the possible adoption of a “URL contract of carriage’s Convention”, which could co-exist with relevant rules of OTIF and OSJD. Such interface law between COTIF/CIM and SMGS would fill a gap in the international regulations for international carriage when neither the CIM UR nor SMGS can be applied over the entire journey (traffic between Europe and Asia).

Agenda item 9 – Rules on the election and conditions of service of the Secretary-General

Document(s):	SG-21022-AG 15/9
Competence:	Union (shared)
Exercise of voting rights:	Member States
Position:	Support the adoption of the draft Regulation on the election and conditions of service of the Secretary-General. In respect of Article 5(c) (Qualification criteria, languages): No Union position. Support the approval of the Explanatory Notes on the draft Regulation. However, there is no Union position in respect of those parts relating to Article 5(c) of the draft Regulation. Support the adoption of the amendments to Articles 10 and 22 of the Rules of Procedure of the General Assembly and the approval of the Explanatory Notes on Articles 10 and 22 of the Rules of Procedure of the General Assembly that relate to the election and conditions of service of the Secretary-General. However, there is no Union position on Article 5(c) of the draft Regulation.
Comments:	Unlike the qualification criteria previously applied for applicants to the post of OTIF Secretary-General (knowledge of all three working languages of OTIF, with the ability to draft easily and fluently in one of the working languages), the proposed regulation puts explicitly the emphasis on the knowledge of the English language. In addition, the knowledge of only two of the OTIF working languages would be required.

Agenda Item 10 – Modification of the Rules of Procedure of the General Assembly

Document(s):	SG-21024-AG 15/10
Competence:	Union (shared and exclusive)
Exercise of voting rights:	Union
Position:	Support the adoption of the amendments to Articles 4 to 7, 10, 22 and 28 of the Rules of Procedure of the General Assembly and the replacement of the Rules of Procedure with the consolidated version set out in Annex 1 of SG-21024-AG 15/10. Support the approval of the Explanatory Notes on Articles 4 to 7, 10 and 22 of the Rules of Procedure of the General Assembly and the replacement of the Explanatory Notes with the consolidated version set out in Annex 2 of SG-21024-AG 15/10.
Comments:	As indicated under agenda items 8, point (c), and 9, the General Assembly will decide on proposals for modification of its Rules of Procedure. A consolidated version of all amendments should be submitted for consideration and adoption by the General Assembly.

Agenda Item 11 – Budget framework

Document(s):	Restricted distribution
Competence:	Member States
Exercise of voting rights:	Member States
Position:	None
Comments:	Pursuant to Article 4 of the Agreement on the Accession of the Union to the COTIF, <i>"The Union shall not contribute to the budget of OTIF and shall not take part in decisions concerning that budget."</i>

Agenda Item 12 – Report on the activities of the Administrative Committee in the period between 1 October 2018 and 30 September 2021

Document(s):	Restricted distribution
Competence:	Union (shared)
Exercise of voting rights:	Member States
Position:	None

Agenda Item 13 – Election of the Administrative Committee for the period between 1 October 2021 and 30 September 2024 (composition and chair)

Document(s):	Restricted distribution
Competence:	Union (shared)
Exercise of voting rights:	Member States
Position:	None

**Agenda Item 18 – Adoption of decisions, mandates, recommendations and other General Assembly documents
(final document)**

Document(s):	Restricted distribution
Competence:	Union (shared and exclusive), without prejudice to the competences of the Member States in respect of agenda item 11
Exercise of voting rights:	Union, without prejudice to the competences of the Member States in respect of agenda item 11
Position:	As specified under relevant agenda items.

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