



Organisation intergouvernementale pour les
transports internationaux ferroviaires

Zwischenstaatliche Organisation für den
internationalen Eisenbahnverkehr

Intergovernmental Organisation for
International Carriage by Rail

COTIF 1999

Explanatory Report

Convention itself
(Base Convention)

version of 21.12.2009

Explanatory Report

NOTE: The general remarks and the remarks on individual provisions in this Explanatory Report contain a summary of the information in relation to the following points:

- a) Background to and justification for the amendments that were submitted to the Revision Committee and adopted by it, and
- b) Discussion on the provisions for which the General Assembly is responsible in accordance with Article 33 §§ 2 and 4 (a) of the Convention, including editorial amendments.

The information referred to in

- a) has been examined and approved by the Revision Committee, together with the approved amendments and the General Assembly has noted them;
- b) has been examined and approved by the General Assembly following the Revision Committee's considerations and recommendations in this respect.

General Points

1. According to Article 33 § 4 a) of the Convention, the Revision Committee is competent to take decisions about proposals aiming to modify Articles 9 and 27 §§ 2 to 10 of the Convention. In order to take account of developments in the use of the gold franc and in the role of the International Monetary Fund (IMF) and in order to follow requests from the Auditor, the Secretary General has for a while felt compelled to propose to the Revision Committee amendments to provisions of both Articles. However, for reasons of economy, such proposals were deferred until further important modifications justified convening a meeting of the Revision Committee. This is the case with the current revision process that needs to take place in order to resolve problems of incompatibility with the law of the EC, of provisions in Appendices E, F and G of the Convention for the modification of which the Revision Committee is competent to a large extent.
2. The Revision Committee adopted in its 24th session the amendments to Article 9 with the pertinent explanatory remarks as proposed by the Secretary General. With regard to Article 27 the Revision Committee decided not to delete §§ 3 to 10 of Article 27 and to integrate the entire content into the Finance and Accounts Rules as initially proposed by the Secretary General but to keep §§ 4, 7 and 9 of Article 27 in the Convention because of their fundamental importance. On the other hand it was decided to delete §§ 3, 5, 6, 8 and 10 of Article 27 and renumber accordingly.

3. The 9th General Assembly (Berne, 9/10.9.2009) noted the results of the 24th session of the Revision Committee concerning the amendments to Articles 9 and 27 of the Convention and the Explanatory Report and approved the editorial amendment to the references contained in Article 14 § 6 and Article 33 § 4 a) of the Convention to read “Article 27 §§ 2 to 5”. It noted that these amendments are not decisions to which Article 34 of the Convention applies and instructed the Secretary General with regard to bringing these amendments into force to proceed in accordance with Article 35 of COTIF. It also authorised the Secretary General to summarise its decisions on the results of the Revision Committee in the general part of the Explanatory Report.

In particular**Title II
Common Provisions****Article 9
Unit of account**

1. §§ 4 and 5 refer to Member States of OTIF which are not also members of the IMF.
2. Nowadays the IMF is a global organisation¹ with 185 members encompassing all OTIF Member States except Liechtenstein and Monaco.
3. However for Liechtenstein and Monaco, currencies of IMF members are valid. This means that § 4, which refers to an OTIF Member State not being a member of the IMF, whose legislation does not permit the application of § 2, i.e. to calculate the value of its national currency, in terms of the Special Drawing Right, in accordance with the method of valuation applied by the IMF, does not refer either to Liechtenstein or to Monaco.
4. Thus § 4 apparently does not refer to any current or future OTIF Member State and has in fact become irrelevant.
5. § 5, which will become § 4, can be editorially amended in order to eliminate the reference to the elapsed deadline mentioned at the beginning and the reference to the deleted former § 4.

**Title IV
Finances****Article 27
Auditing of accounts**

1. In the context of the provisions in § 1, which comes within the competence of the General Assembly, the audit must be carried out in accordance with
 - the rules in §§ 2 to 10, which, according to Article 33 § 4, come within the competence of the Revision Committee,
 - any special instructions from the Administrative Committee and
 - the Finance and Accounts Rules and
 - the statutory provisions of the host state that apply to the Auditor's activities.
2. As the Auditor must comply with all the provisions referred to in the same way, the provisions must not be contradictory.

1 see <http://www.imf.org/external/np/sec/memdir/members.htm>

3. § 2 deals fundamentally with the tasks and activities, but it is hardly to be expected that there will frequently be a need to align with the requirements of the Administrative Committee or the host state.
4. §§ 3, 5, 6, 8 and 10 are deleted because they contain provisions on the specialist carrying out of the audit, for which there may be a need to make changes, but without justifying the Revision Committee's extensive involvement. Instead, these provisions should be integrated into the Finance and Accounts Rules and hence be subject to direct control by the Administrative Committee, which, as a rule, meets twice a year, but in any case considerably more often than the Revision Committee. The period of around one year resulting from Article 35 § 2 of the Convention for the entry into force of the proposed deletion, and hence for the corresponding addition to the Finance and Accounts Rules, would seem sufficient.
5. The new §§ 3 to 5 contain the provisions of former §§ 4, 7 and 9 of Article 27 which, because of their fundamental importance, remain in the Convention.
6. Due to the deletions and the renumbering in Article 27 the Article will no longer contain §§ 6 to 10, which would make the references in Articles 14 § 6 and 33 § 4 a) of the Convention partly redundant. The General Assembly is responsible for these Articles.