



Organisation intergouvernementale pour les transports internationaux ferroviaires  
Zwischenstaatliche Organisation für den internationalen Eisenbahnverkehr  
Intergovernmental Organisation for International Carriage by Rail

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**Commission de révision  
Revisionsausschuss  
Revision Committee**

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## **26<sup>TH</sup> SESSION**

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### **Partial revision of the base Convention**

Draft texts from the Secretary General  
(Amendment of the procedure for revising COTIF)

## I. EXISTING PROCEDURES FOR REVISING COTIF

1. The Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Modification Protocol of 3 June 1999, establishes two principal procedures for revising COTIF.

*Amendments by the General Assembly.* The General Assembly is competent in respect of amendments to the base Convention and its Appendices, unless possible amendments come expressly within the scope of competence of particular Committees as defined in Article 33 (Competence).

Amendments adopted by the General Assembly have to be approved by Member States. The arrangements for providing “approval” are determined by the constitutional law of each Member State. “Approval” as an international legal act expresses a state’s consent to amendments to a treaty.

Amendments enter into force for all Member States twelve months after a specified number of Member States has approved them: two-thirds with regard to amendments to the base Convention and half with regard to amendments to the appendices.

Before amendments enter into force, Member States may make a declaration in terms that they do not approve such amendments. Such a declaration may have the effect of terminating a state’s membership. As soon as amendments to an appendix enter into force, application of the appendix concerned is suspended with and between the Member States that have made a declaration of non-approval of amendments to that appendix.

*Amendments by the Revision Committee.* Amendments enter into force for all Member States on the first day of the twelfth month following that during which the Secretary General has given notice of them to the Member States.

Explicit approval by Member States of amendments adopted by the Revision Committee is not required at international level (tacit approval).

Member States may formulate an objection during the four month period from the day of the notification of modifications by the Secretary General. In case of objection by one-quarter of the Member States, the amendments do not enter into force. As soon as amendments to an appendix enter into force, application of the appendix concerned is suspended with and between the Member States that have made an objection against the amendments to that appendix.

2. The current COTIF revision system was discussed and adopted at the 5<sup>th</sup> General Assembly (Vilnius, 26 May – 3 June 1999). It is worth mentioning certain important considerations made at that time:

- a) important amendments or amendments dealing with provisions of civil law, particularly principles in matters of liability, are matters which, in certain Member States, have to be dealt with by being adopted by the parliament, such as provisions concerning the scope of application, the basis of liability or the burden of proof. It is not possible to adopt a law transposing these provisions into national law within one year;
- b) a period of time that is too short might constrain a Member State either to accept an amendment that it does not want, or to oppose an amendment because of imperatives imposed by constitutional law, or to withdraw from OTIF;
- c) amendments to a Convention which has been subject to ratification require another ratification;
- d) a Member State’s approval of amendments should always be explicit and it should not be possible to interpret its silence as agreement.

3. Experience shows that national approval procedures for amendments adopted by the General Assembly take around six years<sup>1</sup>. Recent amendments adopted by the 12<sup>th</sup> General Assembly (Berne, 29 and 30 September 2015), will not enter into force before the 13<sup>th</sup> General Assembly in September 2018, i.e. 3 years after their adoption, when further amendments to COTIF will be considered.

The adverse effects of the current lengthy revision procedure of COTIF by the General Assembly presented in the “Legal assessment of the COTIF revision procedure and of possibilities for its amendment” by Dr. Catherine Brölmann are the following:

- a) The extended time period that passes before important modifications to the Convention actually enter into force can have a negative impact on the further amendments needed, as the latter may be linked to the amendments whose entry into force is still pending.
- b) The fact that COTIF envisages two different procedures for modification of the Convention and its Appendices may give rise to inconsistencies between Appendices or even within one single Appendix.
- c) Long time periods before the entry into force of COTIF amendments have a direct effect on the railway market of the Member States. The regulatory framework will not meet the market’s needs for speed and adaptability - ultimately this may have a negative impact on the Member States’ market share in rail transport.
- d) What is said about the length of time before entry into force of COTIF amendments and its effect on the market can also be said about the unpredictability of the precise period of time until entry into force. Domestic approval is dependent on legal and sometimes political aspects of the various national legal orders of the Member States.
- e) Because of the parallel development of national and regional (notably EU, but also EEA) law, inconsistencies with and discrepancies in COTIF regulations may arise. As a consequence, Member States may feel obliged to make a declaration of non-application of certain COTIF Appendices.

## II. PREPARATORY WORK

4. The work programme for 2016 – 2017 adopted by the 124<sup>th</sup> Administrative Committee (Berne, 29 and 30 January 2016) provided that “With a view to the consistent and rapid implementation of amendments to COTIF and its Appendices, the legal department will carry out a study on the feasibility of adapting Article 34 of COTIF to enable amendments adopted at the General Assembly to be applied by a fixed deadline.”

The Secretariat of OTIF prepared and submitted to the 126<sup>th</sup> Administrative Committee (Berne, 6 and 7 December 2016) a study entitled “Feasibility of amending the procedure for revising COTIF”. The Administrative Committee noted the study and the Secretary General’s proposal to convene a working group to deal with the issue, with the help of a recognised expert in international public law. Afterwards, the slightly modified study was submitted to the working group to amend the procedure for revising COTIF (hereafter – working group).<sup>2</sup>

5. Following a call for tenders, the task of preparing a legal opinion on the procedure for revising COTIF and possible solutions to change it was entrusted to Dr. Catherine Brölmann, an associate professor of international law at the University of Amsterdam. This legal opinion entitled “Legal assessment of the COTIF revision procedure and of possibilities for its amendment” (hereafter – legal

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<sup>1</sup> It took five years for the entry into force of COTIF 1980, six years for the Protocol of 20 December 1990 and seven years for the Vilnius Protocol of 3 June 1999.

<sup>2</sup> The study entitled “Feasibility of amending the procedure for revising COTIF” is available on OTIF’s website <http://otif.org>, see Activities > Railway Contract Law > Working group to amend the procedure for revising COTIF > Working Documents

assessment)<sup>3</sup> was submitted to the Secretary General's working group to examine the feasibility of amending the procedure for revising COTIF.

The legal assessment examines, from a legal perspective, the need and the possibilities for an amendment to the COTIF revision procedure. It includes legal analysis of the current legal framework, the complexities and adverse effects of the current COTIF revision procedure, and of international law and practice on the enactment of treaty amendments in the context of international organisations.

The overview of international practice covers the International Civil Aviation Organization (ICAO), International Labour Organisation (ILO), International Maritime Organization (IMO), United Nations Educational, Scientific and Cultural Organization (UNESCO), World Health Organization (WHO), Universal Postal Union (UPU) and certain treaty regimes. International legal practice thus shows a variety of mechanisms employed in international organisations and treaty regimes for the enactment of new rules or the amendment of existing ones, while at the same time safeguarding state consent as a legal basis. These range from definite state consent given in advance, with the organisation or organ proceeding without further consultation of the Member States, to the states (re)confirming their explicit consent for each individual decision. Such approval may be required in an explicit form or it may be arranged for states to become bound after they have not objected within a specified period of time. This mechanism is sometimes construed as "tacit approval" (or "tacit consent"), and sometimes as "opting-out" (or "contracting out", or "negative ratification"). In the light of present day demands on the flexibility of treaty regimes and the effectiveness of process management by international organisations and treaty bodies, tacit approval and opting-out are widely used in international practice.

The legal assessment concluded by presenting eight possible amendments to the procedures for revising the base Convention and its appendices moving in the direction of further improvement of the revision procedure.

6. The working group to amend the procedure for revising COTIF<sup>4</sup> met on 3 May 2017 in Berne. The deliberations were based on the recommendations and proposals made by Dr. Catherine Brölmann in her legal assessment.

The very productive discussions at the working group helped clarify that international public law is flexible and enabled a number of solutions to be envisaged to speed up the entry into force of amendments to COTIF adopted by the General Assembly. However, the discussions also highlighted the difficulties Member States encounter in their national procedures. Alongside the international law rules on treaty-making, an equally important body of law exists at the national level, which governs the conduct of each state in relation to treaty-making; among other things national procedures include consultation, prior consent and the place of a treaty within the national legal order.

Participants at the working group nevertheless considered that the Secretariat was justified in trying to find solutions to avoid the risk of internal misalignment between amendments adopted by the Revision Committee and those adopted by the General Assembly, as well as external misalignment, particularly with EU law, as OTIF's task, among other things, is to act as a bridge between its Member States that are EU members and those which are not.

Some Member States supported one particular solution at the working group. This solution was for amendments to COTIF adopted by the General Assembly to enter into force on a specified date. Moreover, it was considered that this solution could be combined with a reporting procedure, which would enable states that are not in a position to approve the amendments by the deadline to explain

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<sup>3</sup> "Legal assessment of the COTIF revision procedure and of possibilities for its amendment" by Dr. Catherine Brölmann is available on OTIF's website <http://otif.org>, see Activities > Railway Contract Law > Working group to amend the procedure for revising COTIF > Working Documents

<sup>4</sup> The minutes of the working group are available on OTIF's website <http://otif.org>, see Activities > Railway Contract Law > Working group to amend the procedure for revising COTIF > Reports

why, so that the Organisation can try to identify these obstacles and propose solutions to overcome them.

It was also agreed to send out a questionnaire concerning national procedures applicable to amendments to COTIF, with particular focus on the availability and possibility of applying a simplified (i.e. different from conclusion of a new treaty/accession to COTIF) procedure for approval of any or certain amendments to COTIF and the time needed for national procedures.

### **III. OVERVIEW OF NATIONAL PROCEDURES APPLICABLE TO AMENDMENTS TO THE COTIF**

7. 26 Member States responded to the questionnaire concerning national procedures applicable to amendments to COTIF: Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, FYR Macedonia, Georgia, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom. The Secretariat prepared an overview of the national procedures based on information gathered from the questionnaire. In addition, this information has been supplemented by further research on the law and practice of the Member States.

The national procedures proved to be very divergent and do not usually reflect the international procedures required under COTIF. The involvement of executive or legislative authorities varies from state to state. Even though it is not possible to strictly categorise all the Member States, certain general groups may be distinguished:

- a) Parliament is involved in domestic approval/incorporation of all modifications to COTIF irrespective of the procedure prescribed by COTIF itself.
- b) Parliamentary involvement is clearly necessary if provisions of COTIF require the amendment of domestic law or if it is considered of fundamental importance or is an important financial matter. On the other hand, where conclusion of a treaty at international level does not have any effect in domestic law, it might legitimately be treated primarily as an executive function.
- c) With regard to amendments to COTIF in some Member States the national procedure and competent organs are defined in advance; in others the decision is taken on a case by case basis following an assessment of the substance of the provisions in question. It is important to note that the same provisions may be considered as important or not in accordance with national legal practice. For instance, the executive or legislature approved the amendments adopted by the 12<sup>th</sup> General Assembly after national assessment of the relevant provisions.

Some legal systems foresee a simplified procedure for the adoption/incorporation of amendments to an international treaty. However, these procedures are quite different. A number of Member States also indicated that in case of the competence of the EU, EU law and procedures have to be taken into account.

Nevertheless, it is worth recalling that irrespective of national procedures - even if parliamentary involvement is necessary - Member States were able to agree on and apply the current simplified revision procedure of the Committees (Article 35). The detailed results of the consultation are to be found at annex.

### **IV. PROPOSAL FOR MODIFICATION OF COTIF**

8. The working group considered eight different proposals aimed at improving the revision procedure. However, certain proposals have not received any or very limited support. Therefore, the OTIF Secretariat proposes to consider only the proposals having sufficient preliminary support.

The simplification of the procedure for revising COTIF means finding the right balance between the need for international law to be efficient and effective and allowing sufficient national control of the treaty-making process. A number of Member States support the need to provide certainty as to when amendments to a treaty are to take effect, i.e. to enhance the predictability of the COTIF revision process. However, at least some Member States do not support modification of the existing revision procedure and consider that legal uniformity and legal clarity are more important.

### **1 -Fixed time period for the entry into force of adopted amendments (recommended solution)**

9. This solution would fix with certainty the date of entry into force of amendments to the appendices adopted by the General Assembly. Member States would no longer have to approve amendments on the international level, but this would not rule out national procedures that are necessary for approval and/or the incorporation of such amendments into national legal orders. This solution ensures that both the Member States and the private sector would be aware of a precise and reasonable timeframe for the national approval/incorporation of amendments and for adapting contracts. The Secretariat considers that this option is the most feasible (broadest support by the Member States) and the clearest.

10. A number of Member States do not support this solution mainly because of the unpredictable time frame required to complete domestic procedures due to legal and/or political reasons. Consequently, those Member States have indicated that the proposed change may force them to lodge an objection and this could lead to the fragmentation of international law.

Nevertheless, under the current legislative framework, the modifications enter into force with regard to all Member States twelve months after their approval by a required number of Member States. Consequently, Member States are not aware of the entry into force date of modifications until the required number of approvals is reached. Therefore, under the current legislative framework, the risk already exists that not all Member States would complete their national procedures before the entry into force of modifications. If modifications enter into force after a reasonable time, the risk of objections should not be considerably higher than at present. Moreover, a clearly defined time frame should contribute to better planning of national procedures and completion of them on time. Last but not least, in case of disagreement with modifications under the existing and proposed procedures, Member States have only one option – to lodge an objection.

#### **a) Proposed amendments to Article 34**

11. In view of the arguments set out above, the Secretariat proposes to amend Article 34 as follows:

#### **Article 34 Decisions of the General Assembly**

- § 1 Modifications of the Convention decided upon by the General Assembly shall be notified to the Member States by the Secretary General.
- § 2 Modifications of the Convention itself, decided upon by the General Assembly, shall enter into force for all Member States twelve months after their approval by two-thirds of the Member States with the exception of those which, before the entry into force, have made a declaration in terms that they do not approve such modifications.
- § 3 Modifications of the Appendices to the Convention, decided upon by the General Assembly, shall enter into force for all Member States ~~twelve~~ **thirty-six** months after their **notification** ~~approval by half of the Member States which have not made a declaration pursuant to Article 42 § 1, first sentence,~~ with the exception of those which, before the entry into force, have made a declaration in terms that they do not approve such modifications and with the

exception of those which have made a declaration pursuant to Article 42 § 1, first sentence. **The General Assembly may decide, by the majority provided for under Article 14 § 6 for taking decisions about proposals aiming to modify the Convention, to defer the entry into force of modifications.**

- § 4 The Member States shall address their notifications concerning the approval of modifications of the Convention **itself** decided upon by the General Assembly as well as their declarations in terms that they do not approve ~~such~~ modifications **of the Convention itself or its Appendices**, to the Secretary General. The Secretary General shall give notice of them to the other Member States.
- § 5 The period referred to in §§ 2 ~~and 3~~ shall run from the day of the notification by the Secretary General that the conditions for the entry into force of the modifications are fulfilled.
- § 6 The General Assembly may specify, at the time of adoption of a modification, that it is such that any Member State which will have made a declaration pursuant to § 2 or § 3 and which will not have approved the modification **and/or withdrawn its declaration** within the period of eighteen months running from its entry into force will cease, on the expiration of this period, to be a Member State of the Organisation.
- § 7 When decisions of the General Assembly concern Appendices to the Convention, the application of the Appendix in question shall be suspended, in its entirety, from the entry into force of the decisions, for traffic with and between the Member States which have, in accordance with § 3, opposed the decisions within the period allowed. The Secretary General shall notify the Member States of that suspension; it shall come to an end on the expiration of a month from the day on which the Secretary General notified the other Member States of the withdrawal of opposition.

#### **b) Justification for the amendments**

12. Different elements concerning this proposal have to be addressed separately.

#### **With regard to § 3: Time period and opting out**

*Time period.* The time between adoption of the modifications and their entry into force should be reasonable in order to allow national procedures to be completed and give the private sector time to prepare for the application of new rules. Many Member States expressed the view that the time frame should be three years or at least three years. It is important to note that the three year term also corresponds to the periodicity of the General Assembly. Moreover, some Member States consider that the General Assembly should be given some flexibility in taking a decision on the date of entry into force of modifications, but this date should not be less than three years from the date of adoption. The possibility of deferring entry into force may be used, particularly if an appendix is revised comprehensively. The decision to defer the entry into force of modifications should be taken by the same majority as the decision on modifications.

*Opting-out.* In order to respect national sovereignty, it should be ensured that the Member States may opt out. This right is already enshrined in the Convention, both in case of modifications adopted by the General Assembly and by the Revision Committee.

### **With regard to §§ 4 and 6**

Under the revised procedure, Member States would not make notifications concerning the approval of amendments to the Appendices but only declarations of non-approval or withdrawal of such declarations. The paragraphs have to be modified in order to reflect the revised procedure.

### **With regard to § 5**

Unlike the modifications to the base Convention, all the conditions for the entry into force of the modifications to the appendices are defined in the revised paragraph 3.

### **With regard to § 7**

One of the Member States asked whether the entire appendix would then be suspended for that Member State or whether only particular provisions would be suspended in case of a declaration of non-approval. It is a long established COTIF principle that only one version of COTIF, including the appendices, should be applicable at a given time. This approach ensures uniform railway law and precludes its fragmentation. The practice of other Conventions has proved that application of different versions of a treaty leads to fragmentation of the law and thus practical difficulties.

Voting rules should not be changed, so modifications may only be adopted if a majority of states are in favour.

## **2 – Rapportage (recommended as a supplementary measure)**

13. A “soft compliance mechanism” of compulsory rapportage, such as employed e.g. in the ILO, was considered in order to expedite the process. However, Member States’ opinions are divided with regard to this option in terms of whether it should be a supplementary measure to the existing revision procedure or whether it should be combined with the option of the fixed time frame for the entry into force of amendments. Moreover, there are different opinions as to whether it is necessary to foresee this option in the Convention itself or whether it can already be implemented without any modifications to the Convention.

As a supplementary measure to the existing procedure, the opinion was that it would probably not improve matters significantly. In the case of fixed deadlines, certain Member States were of the view that this would only create unnecessary bureaucracy. However, it might be a useful instrument in assisting Member States to complete their national procedures on time.

In view of the above, the Secretariat considers that the rapportage mechanism may be implemented by a decision of the General Assembly without having to modify the Convention itself. However, it should be aimed at assisting Member States and must not create an unnecessary administrative burden:

*Member States should inform the Secretary General of any difficulties they experience in the accomplishment of national procedures with regard to modifications adopted by the General Assembly. The Secretary General should assist those Member States wherever possible.*

## **3 - Provisional application (not recommended)**

14. In this solution, amendments would be applied provisionally, pending their formal entry into force. The provisional application of amendments would accelerate their application and might encourage the Member States to approve them in due time.

There are only some national legal systems in which the decision to apply a treaty provisionally would not cause any particular difficulties. In many States, a treaty may be applied provisionally in so far as



it does not require a change in the national law or prior consent by the legislature. Moreover, provisional application may also be generally excluded in national legal systems.

Provisional application may cause legal uncertainty and fragment uniform railway law if certain Member States did not consider themselves to be legally bound. There is also a risk of the indefinite provisional application of COTIF. It was already considered at the working group that this option is not feasible, given the position of the parties; subsequently, some other states also shared this position. Nevertheless, two Member States indicated this option was the most feasible.

However, even where a treaty does not contain a clause providing for its provisional application, a State party may still undertake commitments to apply it provisionally.

In view of the above, the Secretariat considers that this solution should not be retained. However, it does not rule out that Member States may decide on the provisional application of concrete provisions on a case by case basis without the need to modify the Convention.

#### **4 - Appendices in their entirety within the competence of the Revision Committee (not recommended)**

15. This solution would mean transferring the current competence of the General Assembly with regard to amending certain provisions of the appendices to the Revision Committee. As a consequence, amendments to these provisions would enter into force on the first day of the twelfth month following that in which the Secretary General notifies them to the Member States.

This solution has the advantage of predictability and systemic clarity and considerably speeds up the process. However, this would require a change of approach vis-à-vis rules of a “private law character”. Thus, rules of a private law character (including on issues such as contractual liability) and rules of a technical character would be set apart from the basic treaty provisions. It may be recalled that in terms of public international law, all provisions in the appendices are of the same nature and status. General international law would therefore not pose any obstacle to the application of one single procedure to all appendices in their entirety.

However, it dispossesses the General Assembly of some of its competences, namely with regard to the provisions which are considered to be of particular importance (fundamental). Under the current COTIF there is a differentiation between fundamental/substantive provisions and implementing provisions according to the criterion of whether they are provisions concerning the basis of liability, the burden of proof, the scope of application, compensatory damages, the limitation and extinguishment of rights and the place of jurisdiction.

It was illustrated by the Member States that those provisions currently in the competence of the General Assembly are fundamental or at least potentially more important and require or may require involvement of the legislature in order to approve them. Moreover, as a general rule, one year was not considered a sufficient time frame in case of involvement of the Parliament, so this option could lead to widescale opting-out.

Even though there is no unanimity on this option, a clear majority of the Member States were against changing the division of competences between the General Assembly and the Revision Committee.

In view of the above, the Secretariat considers that this option should not be retained. The existing complex system of the division of competence should remain unchanged.

**V. PROPOSAL FOR MODIFICATION OF THE EXPLANATORY REPORT**

16. The Explanatory Report should be modified according to the decisions taken by the Revision Committee. The explanations and justifications contained in this document, as well as the summary of the discussions in the Revision Committee, will be incorporated into the Explanatory Report. The draft amendments to the Explanatory Report should be prepared for the 13<sup>th</sup> session of the General Assembly.

**Proposal for decision**

1. In accordance with Article 17 § 1 b) of COTIF, the Revision Committee considered the proposals to amend Article 34 as set out in this document and requests the Secretary General to submit them to the General Assembly for decision.
2. The Revision Committee supports the introduction of a “soft” rapportage mechanism by decision of the General Assembly, at the aim of which will be to assist Member States in accomplishing their national procedures with regard to modifications adopted by the General Assembly.
3. The Revision Committee considered the justification in support of the modifications to Article 34 and requests the Secretary General to amend the Explanatory Report accordingly and submit it to the General Assembly for approval.

## ANNEX

**Detailed results of the consultation of Member States on national procedures with regard to the feasibility of amending the procedure for revising COTIF**

1. The Secretariat would like to thank the Member States for their cooperation in providing information on approval or other national procedures that are applicable to amendments to an international treaty, in particular COTIF. The replies demonstrated that national procedures are very divergent, representing a complex distribution of functions between the executive and legislature, as well as ranging from predetermined procedures to decisions on a case-by-case basis. It was not therefore possible to summarise the replies in a table. Nevertheless, presented below is a brief overview of the national procedures. This provides useful and interesting information on the national legal frameworks that apply to amendments to COTIF.

2. A large group of states indicated that there is no simplified national approval procedure for amendments to an international treaty: **Bulgaria, Czech Republic, Estonia, FYR Macedonia, Georgia, Hungary, Latvia, Luxembourg, Poland, Romania, Slovakia and Turkey**. Most of them expressly confirmed that any amendment to COTIF has to be approved by the national Parliament, irrespective of which OTIF organ is the competent decision-making body.

3. **Austria**. The Federal Constitutional Law contains a general rule that the conclusion of political state treaties and state treaties the contents of which modify or complement existing laws require the approval of the National Council (one of the two chambers of the Austrian Parliament). At the time of approval of a state treaty, the National Council can decide to which extent the state treaty in question is to be implemented by the issuing of laws. If a state treaty provides for simplified modification, such modification does not require the approval of the National Council, unless it has reserved such approval. The Austrian Parliament may reserve the right to approve all modifications to state treaties and could therefore also specifically reject or approve simplified modifications (e.g. technical details).

At the moment in Austria, all the modification adopted by the General Assembly in accordance with Article 34 of COTIF must be approved by the Parliament in exactly the same way as the conclusion of a new treaty, whether the modifications are technical or editorial. The reference timeframe for the approval of modifications to COTIF under the ordinary procedure is around six months, but depends to some extent on external factors.

Modifications adopted by the Revision Committee in accordance with Article 35 § 2 to 4 of COTIF may enter into force without parliamentary ratification and may be applied once they have been published in Austria's official journal.

4. **Belgium**. The Belgian constitution stipulates that the king concludes treaties, with the exception of those concerning matters for which the communes and regions are competent. These treaties only take effect once they have received the assent of the Chamber of Representatives (one of two chambers of the Federal Parliament). The law of 15 February 2007 assenting to the Protocol for the modification of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, done in Vilnius on 3 June 1991, stipulates that: "The modifications to the Convention and its appendices and annexes made in accordance with Articles 34 and 35 of the Convention [...], shall take full effect. The king informs the parliament, by means of a written report, of any modification adopted in accordance with Articles 34 and 35 of the Convention before the modification in question enters into force". This procedure therefore means that modifications to COTIF, its appendices and annexes enter into force in Belgium automatically without the need for any assent procedure. However, if parliament notes upon receipt of the report from the king that some modifications are contrary to the constitution or Belgian law, this provision allows parliament either to revise the laws that are incompatible with these modifications or to ask the king to withdraw from COTIF, or to issue a declaration for the attention of

the Secretary General of OTIF to refuse application of the modifications that are causing the problem. This procedure is not dependent upon an analysis of the legal nature of the modifications.

5. **Finland.** The constitution of Finland provides that the acceptance of parliament is required for treaties and other international obligations that contain provisions of a legislative nature, are otherwise significant, or otherwise require approval by the parliament under the constitution. The provisions of treaties and other international obligations, in so far as they are of a legislative nature, are brought into force by an act of parliament, while other provisions are brought into force by a government decree. As most of the amendments to be made are of a procedural and technical nature, they can be accepted without parliamentary approval and enforced by a government decree in Finland. However, some of the amendments may concern aspects that need parliamentary approval and are thus regulated by the Railway Act (304/2011) or by the Railway Transport Act (1119/2000) or by any other/new act which is adopted by parliament. The procedure takes 1-3 years if the parliament is involved and 3-6 months if the government takes the decision. For instance, the modifications to COTIF adopted by the 12<sup>th</sup> General Assembly were approved by the government.

6. **France.** In France, competence for the ratification and approval of treaties and conventions lies with the executive power; either the President of the Republic (ratification) or the Minister of Foreign Affairs (approval). Depending on the legal nature of the convention, ratification or approval may or may not require prior authorisation from the parliament in accordance with Article 53 of the constitution, which lists the categories of treaties and conventions that have to be submitted to parliament. Under the terms of Article 53 of the constitution: "Peace treaties, Trade agreements, treaties or agreements relating to international organization, those committing the finances of the State, those modifying provisions which are the preserve of statute law, those relating to the status of persons, and those involving the ceding, exchanging or acquiring of territory, may be ratified or approved only by an Act of Parliament". In addition, parliament never ratifies a treaty and never approves a convention: in all cases, the law it votes on simply empowers the authorisation of this ratification or approval. The same applies with regard to amendments, but the Parliament involved in the process of conclusion of an original treaty would not necessarily be involved with regard to amendments. In other words, the amendments will be assessed in accordance with national law and then decided if an involvement of the Parliament is needed. It is important to precise, that if a single amendment requires parliamentary involvement it will be done for the all amendments.

7. **Germany.** In Germany the government can decide upon the conclusion of some agreements by virtue of its own authority. More important treaties must receive parliamentary consent. Amendments to rules of substance of a convention for which an act of approval (a federal law with which national approval to an international treaty is given) was required in accordance with Article 59, paragraph 2, first sentence of the constitution are also subject to the special reservation of statutory powers in accordance with Article 59, paragraph 2, first sentence of the constitution, and must therefore be implemented at national level by means of a legal act, i.e. with parliamentary approval. In the legislative process, the participatory rights of the Länder are sufficiently ensured via the Bundesrat. These requirements are therefore also a consequence of the federal state structure according to the constitution.

The division into substantial (competence of the General Assembly) and non-substantial rules (competence of the Committees) under COTIF has its equivalent in German law. Amendments to COTIF or the appendices adopted by the Revision Committee are brought into force at national level by means of an order issued by the Federal Minister of Transport (sometimes without the agreement of the Bundesrat (*Federal Council*)). In contrast, amendments that fall within the General Assembly's competence require a legal act, i.e. with the involvement of the parliament (Bundestag and Bundesrat). It is important that there is no assessment on a case by case basis of amendments to define competent national authority. Therefore, all amendments adopted by the General Assembly, even if they are only editorial, will have to be approved with the involvement of the parliament.

8. **Greece.** According to the constitution of the Hellenic Republic, international conventions and their amendments are ratified by the Greek Parliament. However, the simplified procedure of amending international conventions, i.e. by ministerial decisions or presidential decrees, may be applied when it is related to European Union legislation, for instance RID.

9. **Lithuania.** The Law on Treaties of the Republic of Lithuania states that a treaty may be amended or supplemented on the grounds of the norms of international law and according to the national procedure applied to the conclusion of treaties, unless the treaty otherwise provides. In other words, as a general rule the same national approval procedure is applied to the conclusion of a treaty and its amendment. If an international treaty lays down that its amendments enter into force without the expression of contracting parties' consent (tacit approval), no national approval is needed. However, in case of tacit approval, the procedure applicable to taking decisions on the expediency of the conclusion of treaties will be also applied to taking decisions on lodging objections to such amendments.

With regard to the current COTIF, national ratification by parliament is only required for amendments adopted by the General Assembly, because national approval is required by COTIF itself. Ratification normally takes about 6-9 months.

10. **Netherlands.** The Dutch Kingdom Act on the Approval and Publication of Treaties requires parliamentary approval of a treaty. Approval can be granted either explicitly or tacitly. Regarding COTIF, the procedure of tacit approval will usually be applied, unless parliament requires the explicit procedure to be applied.

The explicit approval procedure starts with the writing of an "Approval Act" and an explanatory note. Hereafter, the Act must follow the normal legislative procedure, which includes an advisory opinion of the Council of State and explicit approval by the parliament (both chambers). This explicit approval may include debates (both oral and in writing) in the parliament. If both chambers approve the Act, the treaty is considered to be approved. The explicit procedure requires on average approximately 1 to 2 years. This time frame might however be longer when a referendum has to be held.

The tacit approval procedure is a simplified procedure, which may be applied, if need be. If the tacit approval procedure is applied, an explanatory note has to be written and sent to the Council of State for an advisory opinion. This advisory opinion may include reasons to alter the explanatory note. After that, the explanatory note has to be sent to both chambers of parliament simultaneously for 30 days. If neither chamber requires an explicit approval procedure within this time frame, the treaty is considered to be approved. Subsequently, there is a term of two months in which it is established whether a referendum will be held. The tacit approval procedure may be applied no matter which OTIF organ adopts the modifications. The tacit approval procedure requires on average approximately 6 months to a year. This time frame might however be longer when a referendum has to be held.

Besides the distinction between the tacit and the explicit approval procedure, Article 7 of the Kingdom Act is of importance as well. According to Article 7, approval of a treaty is not required in certain situations. Regarding COTIF, Article 7(f) is most relevant. According to Article 7(f), parliamentary approval is not required if the purpose of the treaty is to amend an annex, which is an integral part of an approved treaty. This annex has to be of an executive nature with respect to the "main" treaty. This exception does not apply if parliament has made a reservation concerning the main treaty, regarding the matter. If Article 7(f) can be applied, the Kingdom of the Netherlands may ratify the amendments immediately after adoption.

11. **Norway.** Depending on the importance of the amendments in each case, approval has to be given by parliament or the government. Parliamentary approval is necessary when amendments are of particular importance or have an impact on legislation (adoption or amendment of legal acts). The latest modifications adopted by the 12<sup>th</sup> General Assembly of OTIF will be approved by the government.

12. **Sweden.** Agreements with other states or with international organisations are concluded by the government. However, the parliament is guaranteed influence in important international agreements. All agreements that require a parliamentary decision in order to be implemented must be approved by the parliament. The government must also obtain the approval of the parliament in regard to other important agreements. These rules apply in a similar manner to the commitment of the realm to an international obligation in a form other than an agreement. For Sweden the provisions of international agreements are limited in validity to Sweden as a state until incorporation in Swedish law by the decision of a competent Swedish body. Parliament can decide that future amendments to an international agreement that have been incorporated into Swedish law may automatically apply in Sweden. One requirement is that the future amendment must be of limited extent. However, it does not apply if implementation is done through transposition. For the application of the simplified procedure (i.e. without the involvement of parliament) the substance of the question is decisive. The modifications adopted by the last 12<sup>th</sup> General Assembly were approved by parliament. The simplified procedure takes up to 8 months, or up to three years when legislation is required.

13. **Spain.** Law 25/2014 of 27 November 2014 concerning treaties and other international agreements sets out a simplified procedure that could be applied to the approval of all modifications to the Convention concerning International Carriage by Rail (COTIF). This procedure is arranged as follows: the Minister of Foreign Affairs and Cooperation submits to the Council of Ministers a proposal for decision on whether to reject or accept the modification concerned. Beforehand, the Minister of Foreign Affairs and Cooperation asks his legal service (Asesoría Jurídica Internacional) to prepare a report defining the procedure to be following for each modification. Reports are also requested from the ministries with responsibility in this area. In this case, it is the Ministry of Equipment ((Ministerio de Fomento). The text is submitted to the Council of Ministers and once the date of entry into force of the modifications is known, the text of the modifications and the said date of entry into force are published in the Spanish state's official journal (Boletín oficial del Estado). The procedure takes about three months from the time the complete file is ready (texts translated, relevant reports, possible opinions).

14. **Switzerland** Foreign affairs fall within the competence of the Confederation. The Federal Assembly is responsible for approving treaties, except those whose conclusion falls within the sole competence of the Federal Council by virtue of a law or treaty. The same is true of amendments, but depending on the legal basis, the modification may not be submitted to the authority which approved the treaty. In contrast, in order to extend a treaty, it is always the approving authority that is competent. The national procedure, including the parliament, takes about two years.

The executive has a number of legal bases that grant it the competence to conclude treaties itself. This competence is provided for in several special laws or in some treaties that have already been approved by parliament and in the law on the organisation of the government and administration (LOGA), whose Article 7a, paragraph 2 explains that the Federal Council may itself conclude treaties of limited scope. Treaties that are considered to be of limited scope within the meaning of Article 7a, paragraph 3 of LOGA are, in particular, treaties which (a) do not create any new obligations for Switzerland or entail the renunciation of existing rights, (b) have the purpose of executing previous treaties approved by the Federal Assembly and are restricted to clarifying rights and obligations or organisational principles that are already contained in the base treaty, or (c) are addressed to the authorities and deal with administrative and technical matters. The procedure without the involvement of the parliament takes about four to six months.

15. **United Kingdom.** The Railways (Convention on International Carriage by Rail) Regulations 2005 which provide that COTIF and its appendices have the force of law in the United Kingdom, contain provisions that amendments to the Convention or to the appendices are automatically picked up where any such amendments are made by a decision of either the Revision Committee, the RID Expert Committee or the Committee of Technical Experts. Decisions of the General Assembly are not therefore caught under this provision and such decisions consequently necessitate amendment to the

domestic Regulations, which involves the approval of both Houses of Parliament. However, it is worth mentioning that certain amendments<sup>5</sup> adopted by the 12<sup>th</sup> General Assembly do not require any national action.

However, under national law (Railways and Transport Safety Act 2003), it is legally possible for amendments made to the Convention by the General Assembly to be picked up domestically through amendment to the UK's domestic regulations and therefore to broaden the scope of present domestic implementation of the Convention. However any amendment to the UK's domestic regulations in relation to General Assembly amendments would need to include provision that such amendments are subject to a UK declaration not to approve the amendments – and as provided for in the Convention itself.

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<sup>5</sup> For instance, “European Communities” replaced by “European Union”.