



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

**Groupe de travail «Modification de la
procédure de révision de la COTIF»
Arbeitsgruppe „Änderung
Revisionsverfahren COTIF“
Working group to amend the
procedure for revising COTIF**

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WORKING GROUP TO AMEND THE PROCEDURE FOR REVISING COTIF

Feasibility of amending the procedure for revising COTIF

Comments from France

MINISTRY OF THE ENVIRONMENT, ENERGY AND MARITIME AFFAIRS
DIRECTORATE-GENERAL OF INFRASTRUCTURE, TRANSPORT AND MARITIME
AFFAIRS

TRANSPORT SERVICES DIRECTORATE

**FIRST SESSION OF THE WORKING GROUP TO AMEND THE PROCEDURE FOR
REVISING COTIF SCHEDULED FOR 3 AND 4 MAY 2017 IN BERNE**

COMMENTS FROM THE FRENCH AUTHORITIES

I/ Preliminary comments

1. In order to make matters more precise, France suggests changing the name of the working group so as to include all aspects of the objectives it has been set. There should be a distinction between amending the COTIF revision procedure, which concerns the competences of the various organs of OTIF with regard to the adoption of amendments to existing or new rules, and the entry into force procedure, which involves approval by the Member States and the periods prescribed for the entry into force of amendments adopted by the GA. Therefore, instead of “working group to amend the procedure for revising COTIF”, France proposes “working group to amend the procedure for revising COTIF and the entry into force of its new provisions”. The “entry into force” aspect is important because a large part of the proposed project in fact deals with the entry into force procedure, which concerns the role of the Member States, which should be distinguished from amendment of the revision procedure which, strictly speaking, involves rearranging the competences of OTIF’s various organs with regard to the amendment of existing provisions or the adoption of new ones.

2. The authorities in France would point out that, bearing in mind the complex nature of the question raised by this revision project, the Member States were given a very short deadline for comments. The Member States were sent the working documents on 3 April with a request for responses by 24 April. This made it difficult to examine the issue in depth with a view to making proposals or comments on the substance of the matter.

II / General comments from France on the project to amend the revision procedure

In view of the complexity of the issue and the deadline Member States were given to submit their comments, it would be premature at this stage of the procedure to give an opinion on the technical aspects and the legal implications of the amendment project. As a result, the French authorities would like to offer some general comments on the legal questions that might be raised.

A distinction must be made between approval by a Member State prescribed by the international agreement for the entry into force of new provisions and the approval a Member State requires in order to integrate internationally agreed provisions into its domestic legislation. Consequently:

- the French authorities would emphasise that caution must be exercised in terms of provisions which are subject to tacit approval. In this case, provisions that are newly adopted in the framework of an international agreement could enter into force without being subject to scrutiny by the competent internal institutions. This

is the case where Parliament has to be consulted under Article 53¹ of the French Constitution or when the opinion of the Conseil d'Etat (French Council of State) has to be obtained if a ratification decree is required. This leads to the question of what might happen to provisions that have newly entered into force tacitly if they are not given assent by the competent institutions in the approval procedure. The tacit approval procedure does of course include a mechanism for objections, but the period for lodging an objection can be significantly shorter than the period normally required for the internal institutions to give their approval.

The questions raised by this project to amend the revision procedure must be examined in depth by all the competent services, particularly those of the Ministry of Foreign Affairs, so that all the consequences in terms of domestic law can be assessed beforehand. The French authorities will await further clarification at future sessions of the working group and will make their position clear as a result.

¹ “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. They shall not take effect until such ratification or approval has been secured” (Article 53 of the Constitution of 4 October 1958).