



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

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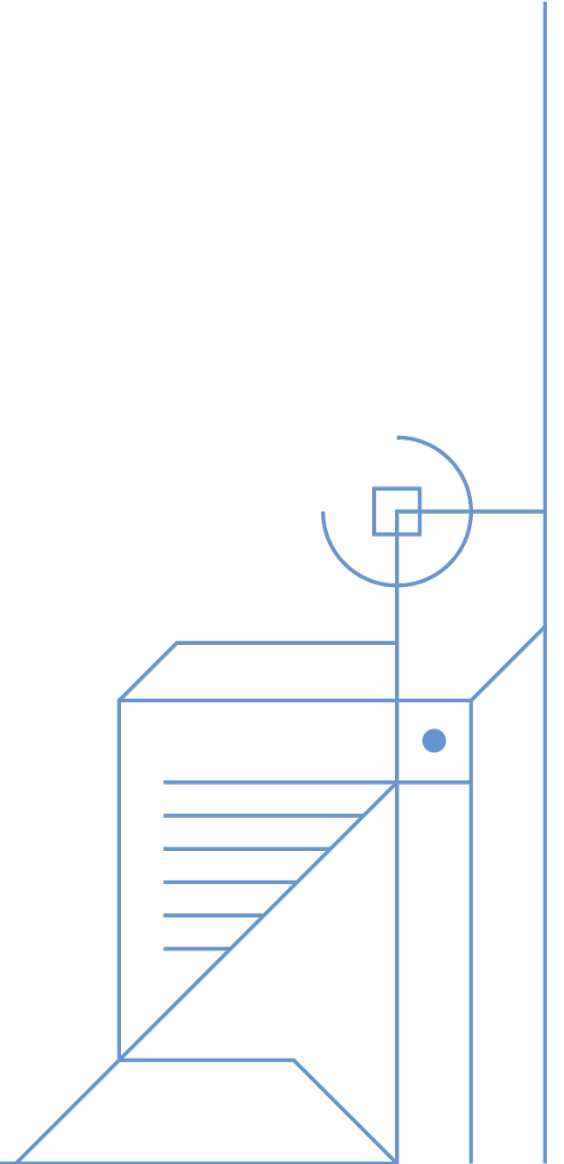
Subject: Monitoring and Assessment of OTIF's Legal Instruments

Information from the Secretariat of OTIF



Monitoring and Assessment of OTIF's Legal Instruments

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Monitoring and Assessment

Legal basis and OTIF's legislative cycle

COTIF Article 2 § 1, letter e)

OTIF shall keep a watch on the application of all the rules and recommendations established within the Organisation



COTIF Article 2 § 1

The general aim of the Organisation is to promote, improve and facilitate, in all respects, international traffic by rail [...]



Monitoring and Assessment

Draft Decision and accompanying Explanatory Notes

- The Working Group of Legal Experts was **tasked with developing** the monitoring and assessment policy for OTIF's legal system.
- At its 2nd session (October 2019), the Working Group **endorsed**:
 - The Draft Decision on the Monitoring and Assessment of Legal Instruments
 - The accompanying “Explanatory Notes”
- The Working Group will **finalise** the Draft Decision at its 4th session (March 2021) and will submit it to the General Assembly for adoption (September 2021).



Monitoring and Assessment

General presentation of the Draft Decision: monitoring and assessment

- “**Monitoring**” means a continuous and systematic process of data collection
- “**Assessment**” means an evaluation of the actual effects of a legal instrument or certain provisions thereof



Monitoring and Assessment

General presentation of the Draft Decision: implementation and application

- **“Implementation”** means an international obligation of Member States and regional organisations to ensure full application of legal instruments, firstly through incorporation into their respective legal orders
- **“Application”** means putting the requirements of legal instruments into daily practice



Monitoring and Assessment

General presentation of the Draft Decision: role of OTIF's organs

- The **Secretary General** shall systematically perform monitoring and assessment of the **implementation** of the Convention
- The OTIF organs referred to in **COTIF Article 13 §§ 1 and 2** or organs established by them shall be entitled to initiate monitoring and assessment of the **application** of a particular legal instrument within the sphere of their competence or specific provisions thereof. The **Secretary General** may initiate monitoring and assessment of any legal instrument.

Notes on the presentation ‘Monitoring and Assessment of OTIF’s Legal Instruments’

Slide 1

Distinguished delegates,

I am pleased to inform you about a draft monitoring and assessment policy, in particular the legal basis, what has been done so far and what the next steps are.

Slide 2

The general aim of the Organisation is to promote, improve and facilitate, in all respects, international traffic by rail. In order to achieve this general aim and based on an examination of current requirements, OTIF legal instruments are being prepared and adopted.

In order to meet the general aim effectively, legal instruments must be implemented into national legal orders, uniformly applied and kept relevant over time. Therefore, COTIF explicitly provides a legal basis for establishing a monitoring and assessment policy.

Slide 3

The **Working Group of Legal Experts** was tasked with developing the monitoring and assessment policy for OTIF’s legal system. At its 2nd session in October 2019, the Working Group endorsed:

- A Draft Decision on the Monitoring and Assessment of Legal Instruments
- The accompanying “Explanatory Notes”.

Following the decision of the Working Group at its 2nd session, OTIF’s organs and the international associations were informed about the draft monitoring and assessment policy. Moreover, it was made publicly available on OTIF’s website. The organs were kindly requested to apply the Draft Decision provisionally and to share their experience. However, due to the negative impact of the pandemic, there has not been much expectation with regard to provisional application.

In March 2021, at its 4th session the Working Group will **finalise** the Draft Decision, among other things, taking into account any possible feedback from OTIF’s organs. Afterwards, the Draft Decision will be submitted to the General Assembly in September 2021 for adoption.

Slide 4

In accordance with the Draft Decision, two core activities are being distinguished: monitoring and assessment. The former refers to a process of data collection and the latter to an evaluation of the actual effects of a legal instrument or certain provisions thereof.

Completed monitoring and assessment should provide clear information on the effectiveness, efficiency and relevance of the legal instruments, revealing weaknesses and other shortcomings, as well as strengths and best practices. Consequently, appropriate follow-up actions have to be identified, such as disseminating best practices, launching a formal revision procedure, etc.

Slide 5

Monitoring and assessment have to be carried out with regard to the implementation and application of OTIF’s legal instruments.

With regard to implementation, it should be noted that in accordance with international public law, the conclusion of a treaty in general primarily results in international obligations for contracting States and organisations. Therefore, contracting parties to COTIF have to ensure that the convention is implemented and applied in their legal orders.

With regard to application, it should be noted that this refers to putting the requirements of legal instruments into daily practice. Application involves many different actors: national authorities, passengers, carriers, railway undertakings, vehicle keepers, infrastructure managers, etc.

Slide 6

The Secretary General has the general obligation to monitor and assess implementation of the Convention, i.e. whether it has legal status in national law and can thus be effectively applied. The Legal Department has already started this activity. Based on the available information, we concluded that not all Member States have implemented subsequent modifications to the Vilnius Protocol adopted in 1999. The degree of non-implementation of subsequent modifications varies from one Member State to another.

All organs of the Organisation may initiate monitoring and assessment of the application of the legal instruments within their sphere of competence. The Secretary General is the only organ functioning permanently, has the broadest right to make proposals to adopt or modify legal instruments and is the Depositary of the Convention. Therefore, his right to initiate monitoring and assessment is a general one with regard to all legal instruments.