



Présidente de la Commission ad hoc sur les questions juridiques et la coopération internationale
Vorsitzende Ad-hoc-Ausschuss für Rechtsfragen und internationale Zusammenarbeit
Chair of the Ad hoc Committee on Legal Affairs and International Cooperation

Chair of the Working Group TECH

Votre référence
Ihr Zeichen
Your Reference

Notre référence
Unser Zeichen
Our Reference

LAW-22004-JUR1

Affaire suivie par
Sachbearbeiter
Being dealt with by

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ADVISORY OPINION ON REQUEST SUBMITTED BY WORKING GROUP TECH

Dear Chair,

At its 39th session, the working group Technology (WG TECH, Brussels, 19-20 November 2019) decided to consult the Working Group of Legal Experts on certain questions concerning the mutual recognition of Entity in Charge of Maintenance (ECM) certificates under the Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (ATMF - Appendix G to COTIF).

The Working Group of Legal Experts was dissolved on 1 October 2021. However, its functions were taken over by the ad hoc Committee on Legal Affairs and International Cooperation established by the General Assembly at its 15th session. In my capacity as Chair of the ad hoc Committee on Legal Affairs and International Cooperation, I am pleased to provide you with an advisory opinion issued by the ad hoc Committee at its 1st session (9-10 November 2021)¹:

“The ad hoc Committee examined the legal aspects involved in the request formulated by WG TECH, as set out in TECH-20019-GTEJ (27.02.2020), and formulated the following advisory opinion:

- 1) WG TECH had not precisely formulated the question to be analysed;
- 2) it was noted that point 1 of the introductory provisions of ATMF Annex A states: “*The equivalence between ECM certificates issued in accordance with these rules and in accordance with EU law shall be limited to the purpose and scope of ATMF*”;

¹ ‘1st session. Decisions, 10.11.2021’ (OTIF-21008-JUR1).

- 3) with regard to the interaction between the ATMF UR and EU law, point 11 of Article 3a of the ‘Consolidated Explanatory Report. ATMF UR’ (CR 26/9) dated 28 February 2018 states the following:

‘The following three points illustrate the interaction between COTIF rules and EU rules:

- a. For traffic between Member States of the EU, EU rules take precedence.*
 - b. For traffic between EU and non-EU OTIF Contracting States:*
 - i. For the part of such traffic which takes place on the territory of the EU Member States, EU rules apply, except insofar as there are equivalent rules arising from COTIF on the particular subject concerned.*
 - ii. For the part of such traffic which takes place outside the territory of the EU Member States, COTIF rules apply. The COTIF rules should be complemented by national rules, insofar as there is no COTIF rule governing the subject.*
 - c. For traffic between two or more non-EU OTIF Contracting States, COTIF rules apply. The COTIF rules may be complemented by national rules, insofar as there is no COTIF rule governing the subject.’*
- 4) it was noted that the above explanations apply to the whole ATMF UR, including the ECM certificates. For international traffic between an OTIF member that is also an EU Member State and an OTIF member that is not an EU Member State, the rules of COTIF (ATMF UR) concerning ECM may only apply to the entire traffic, i.e. also to that part of the traffic that takes place on EU territory, where EU rules normally apply, when the EU rules and the rules arising from COTIF on the particular subject concerned are fully equivalent;
- 5) it was noted that if WG TECH requires a more in-depth advisory opinion, the ad hoc Committee would need precisely formulated questions based on practical concerns, a summary of the subject matter (including information from the railway sector) and reasons for the request.”

I should like to take this opportunity to ensure you of my best wishes.

Yours faithfully,



(Kerstin Leuftink)
Chair of the ad hoc Committee on Legal
Affairs and International Cooperation