



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

Commission d'experts techniques
Fachausschuss für technische Fragen
Committee of Technical Experts

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Decision by the Committee of Technical Experts concerning the involvement of stakeholders in its work

1. INTRODUCTION

At its 2nd session on 5 April 2022, the ad hoc Committee on Legal Affairs and International Cooperation (JUR) adopted a recommendation on involving stakeholders in OTIF's work ([OTIF-22002-JUR 2](#), further referred to as the Recommendation). The Recommendation is annexed to this document.

The Recommendation defines a stakeholder in a broad sense, meaning a natural or legal person affected by OTIF's legal instruments or with a legitimate interest in them. For the purpose of the Recommendation, only legal instruments in the area of railway transport are relevant. Consequently, in practical terms, stakeholders are different actors affected by legal instruments (such as passengers, railway undertakings, infrastructure managers, etc.) or having a legitimate interest in them (such as national or international associations representing railway undertakings, infrastructure managers, etc.). Moreover, academic institutions, academics, researchers and experts in a broad sense may have a professional interest in relevant OTIF legal instruments.

It is worth noting that the concept of 'stakeholders' does not cover states or intergovernmental organisations, irrespective of whether or not these are members of OTIF.

The purpose of involving stakeholders is to include them actively in developing, applying, disseminating, promoting, monitoring, and assessing OTIF's legal instruments in the area of railway transport.

Each OTIF organ referred to in COTIF Article 13, which includes the Committee of Technical Experts (CTE), is responsible for establishing its rules for involving stakeholders under conditions laid down in COTIF and its respective Rules of Procedure. Each OTIF organ should decide whether and how it wishes to implement the Recommendation.

The Secretariat proposes that the CTE apply the Recommendation in accordance with this document, which was reviewed at the 48th session of WG TECH (Paris, 15-16 November 2022). Furthermore, the Rules of Procedure of the CTE should be revised for this purpose.

2. RELEVANT LEGAL BASIS FOR THE COMMITTEE OF TECHNICAL EXPERTS

Below are excerpts from the relevant applicable provisions concerning the involvement of parties other than members of the Organisation. Article 16 § 5 of COTIF lays down the general rule for the involvement of observers in Committees:

On the invitation of the Secretary General, issued with the agreement of a majority of the Member States,

- a) States which are not members of the Organisation,*
- b) Member States which, however, are not members of the Committee concerned,*
- c) international organisations and associations having competence for questions concerning the Organisation's activities or dealing with problems which have been placed on the agenda,*

may attend meetings of the Committees in an advisory capacity.

Article 5 § 2 of the APTU UR lays down that:

An application for validation of a technical standard may be made by:

- a) any Contracting State;*
- b) any regional organisation as defined in Article 2 x) of ATMF;*

- c) *any national or international standardisation body having the task of standardisation in the railway field; Article 3 § 2 shall be taken into account;*
- d) *any representative international association for whose members the existence of technical standards relating to railway material is indispensable for reasons of safety and economy in the exercise of their activity.*

Article 6 § 2 of the APTU UR lays down that:

An application for adoption of a UTP or a provision amending it according to § 1 may be made by:

- a) *any Contracting State;*
- b) *any regional organisation as defined in Article 2 x) of ATMF;*
- c) *any representative international association for whose members the existence of UTP relating to railway material is indispensable for reasons of safety and economy in the exercise of their activity.*

In order to make the applications referred to in Article 5 § 2 and Article 6 § 2 of the APTU UR, the association must also be involved in discussions concerning the application. Therefore, these associations must in any case be invited to meetings where their application is considered. This is reflected in Article 5 § 2 of the Rules of Procedure of the Committee of Technical Experts.

Article 5 of the Committee of Technical Experts' Rules of Procedure of 22 June 2021¹:

- § 1 *Representatives of associated members of OTIF, representatives of States which are not members of the Committee and representatives of international organisations and associations invited in accordance with Article 16 § 5 of the Convention as well as persons invited to a session of the Committee by the Secretary General on account of their specialist competencies in connection with the discussion of particular matters may take part in the meetings of the Committee in an advisory capacity (observers).*
- § 2 *Institutions which have made a request for validation of a technical standard or adoption of a uniform technical prescription in accordance with Article 5 § 1 c) and d) or in accordance with Article 6 § 1 c) of APTU shall be invited to the session of the Committee at which this request is to be discussed. Such institutions may take part in an advisory capacity.*
- § 3 *The Committee may draw up a list of international associations and organisations that shall be invited to the sessions of the Committee in any case (permanently invited observers).*
- § 4 *Observers may submit suggestions in accordance with the conditions defined in Article 11 § 2.*

3. CURRENT PRACTICE

In the following description of current practice, the term 'observers' is used together with the term 'stakeholders'. 'Observers' include all parties that are not OTIF members (i.e. that are not *Member States, associate members or regional organisations that have acceded to COTIF*). This means that 'observers' may also include states that are not a member of OTIF, while, 'stakeholders' are limited to *natural or legal persons affected by OTIF's legal instruments or with a legitimate interest in them*. Stakeholders, therefore, are e.g. associations, standardisation organisations, academics, etc., but not states. 'Stakeholders' are therefore a specific subgroup of 'observers'.

All Member States, associate members and regional organisations that have acceded to COTIF, including those which do not apply² the APTU or ATMF UR, are by default invited to all sessions.

¹ There are two obvious editorial errors in Article 5 § 2 of the Rules of Procedure of the Committee of Technical Experts; the references should be to Article 5 § 2 (not § 1) and Article 6 § 2 (not § 1) of the APTU UR.

² Only those Member States that apply the APTU and ATMF UR have the right to vote.

With regard to inviting observers, the established practice is that invitation circulars to CTE and to its working group TECH contain the following text:

On the basis of Article 16 § 5 of COTIF, the Secretary General invites the states, organisations and associations listed in Annex I in an advisory capacity, subject to the agreement of a majority of the Member States. Member States are asked to send the Secretariat any objections they may have concerning this invitation by no later than [date]. The Secretary General will assume the tacit agreement of the Member States that do not object.

This means that the agreement of the majority of the Member States is obtained tacitly and on a case-by-case basis.

Annex I of the circular then contains two lists; one list with non-Member States and one list with organisations and associations. To illustrate this, below is a copy of Annex I of the invitation to the 47th session of WG TECH (TECH-22032-WGT 47):

The following states that are not members of the Organisation are invited to participate in the working group session in an advisory capacity (observer):

- People’s Republic of China*
- Republic of Moldova*

The following organisations and associations are invited to participate in the working group session in an advisory capacity (observers):

- Association of notified bodies (NB-Rail Association)*
- Community of European Railway and Infrastructure Companies (CER)*
- European Committee for Standardization (CEN)*
- European Rail Infrastructure Managers (EIM)*
- European Rail Freight Association (ERFA)*
- European Transport Workers’ Federation (ETF)*
- International Association of Private-Sidings Users (IVA)*
- International Association of Public Transport (UITP)*
- International Rail Transport Committee (CIT)*
- International Union of combined Road-Rail transport companies (UIRR)*
- International Union of Railways (UIC)*
- International Union of Wagon Keepers (UIP)*
- Organisation for Cooperation between Railways (OSJD)*
- The Gulf Cooperation Council (GCC)*
- Transport Community Permanent Secretariat (TCPS)*
- Union of European Railway Industries (UNIFE)*

The list of organisations and associations includes both (semi-)governmental organisations and non-governmental organisations and associations.

The list is amended from time to time in coordination with the Committee of Technical Experts. Since 2012, the NB-Rail Association and TCPS have been added to the list of organisations and associations (stakeholders). In the same period, only the European Union Agency for Railways (ERA) was removed from the list, as ERA is considered to represent the European Union and is therefore invited as a ‘regional organisation that has acceded to COTIF’.

The Secretariat contacted those stakeholders that have not participated in any meetings since 2012, asking them to inform the Secretariat if they wished to continue to receive invitations and other relevant information related to the CTE. Of these stakeholders, the following associations have not responded positively and may therefore be removed from the list of stakeholders:

- European Rail Infrastructure Managers (EIM)
- European Transport Workers' Federation (ETF)
- International Association of Private-Sidings Users (IVA).

The list of invited non-Member States changes more often. Current practice is that non-Member States are invited if there is a potential or expressed interest in becoming a member. The invitation to non-Member States is not usually renewed for every meeting, as attending meetings is in principle a privilege for states that are a member or associate member of OTIF.

States, associations and organisations may also be permanently invited on the basis of a memorandum of understanding or agreement they have with OTIF (this is for example the case for China, GCC, OSJD and UIC).

4. DIFFERENT PARTIES THAT MAY BE INVITED TO MEETINGS

In order to align the Committee of Technical Experts' practice with the Recommendation, future invitations could distinguish between:

1. States and intergovernmental organisations:
 - a) That are (associate) members of OTIF or have acceded to COTIF;
 - b) That are invited to all sessions on the basis of a cooperation agreement or MoU;
 - c) That are invited on an ad hoc basis by the Secretary General in accordance with Article 16 § 5 of COTIF, subject to the agreement of a majority of Member States;
2. Stakeholders:
 - a) That are permanently invited by the Committee of Technical Experts, or that are invited to all sessions on the basis of a cooperation agreement or MoU;
 - b) That are associations or bodies which have made a request for validation of a technical standard or adoption of a uniform technical prescription in accordance with Article 5 § 2 c) and d) or in accordance with Article 6 § 2 c) of the APTU UR (if not already covered under a);
 - c) That are invited on an ad-hoc basis by the Secretary General in accordance with Article 16 § 5 of COTIF, subject to the agreement of a majority of Member States.

5. PROPOSED UPDATED PRACTICE

The CTE has an established practice for involving stakeholders in its work. It should not therefore be necessary to create a new list of registered stakeholders, or to request stakeholders that already actively participate to fill out an application form. Nevertheless, for reasons explained in the Recommendation, a formal decision is required in order to invite stakeholders.

It is proposed that the CTE applies the general principles set out in the Recommendation, but with some adaptations to the detailed process as described below.

Point 4.3 of the Recommendation sets out a process for dealing with stakeholders' applications. The process involves a written procedure to obtain the agreement of the Member States. Applying this process would add an administrative burden compared to the long-standing practice of the Committee of Technical Experts. It is therefore proposed that the CTE adopts a simplified process as follows.

4.3 of the Recommendation	Proposed alternative process for CTE to deal with stakeholders' applications
<p>The Secretariat of the relevant OTIF organ should examine compliance with the formal requirements.</p> <p>The relevant OTIF organ should grant the status of registered stakeholder on the basis of the application, taking into account the opinion of the Secretariat. To the extent possible, such decisions should be taken by means of a written tacit procedure and by consensus.</p> <p>The members of the relevant OTIF organ must be given at least 14 days from the submission by the Secretariat of an application for decision to express their objections.</p> <p>If there is at least one objection, the relevant OTIF organ should consider the application in question at its next session.</p>	<p>The Secretariat examines compliance of the application with the formal requirements.</p> <p>If the Secretariat is satisfied that the formal requirements are met, the Secretary General will invite the applicant stakeholder to the next session by application of Article 16 § 5 of COTIF, subject to agreement of the majority of Member States.</p> <p>Member States will be asked to send the Secretariat any objections they may have concerning the invitation. The Secretary General may assume the tacit agreement of the Member States that do not object.</p> <p>At its next session, the CTE should consider adding the applicant stakeholder to the list of registered stakeholders.</p>

As mentioned above, some of the stakeholders currently invited to sessions do not in practice participate in the work. It would seem justified to stop inviting these stakeholders, bearing in mind that at any time they may apply to become a registered stakeholder (again).

Point 5 of the Recommendation describes the rights of registered stakeholders. For the Committee of Technical Experts, the rights of stakeholders are regulated by the APTU UR (Articles 5 and 6 concerning representative international associations) and by the Rules of Procedure of the CTE (Article 5 concerning observers). If the CTE wishes to assign additional rights to stakeholders, it could do so by modifying its Rules of Procedure. The CTE should not therefore apply point 5 of the Recommendation.

PROPOSALS FOR DECISION

- The Committee of Technical Experts takes note of the recommendation on involving stakeholders in OTIF's work (OTIF-22002-JUR 2) and decides to update its practice for inviting stakeholders and other observers to sessions of the Committee and to sessions of WG TECH.
- The Committee of Technical Experts decides that it will apply – mutatis mutandis – recommendation OTIF-22002-JUR 2, with the exception of point 5, which it will not apply.
- The Committee of Technical Experts decides that, instead of point 4.3 of recommendation OTIF-22002-JUR 2, it will apply the following procedure to deal with applicant stakeholders:

“The Secretariat examines compliance of the application with the formal requirements. If the Secretariat is satisfied that the formal requirements are met, the Secretary General will invite the applicant stakeholder to the next session by application of Article 16 § 5 of COTIF, subject to the agreement of the majority of Member States. Member States will be asked to send the Secretariat any objections they may have concerning the invitation. The Secretary General will assume the tacit agreement of the Member States that do not object. At its next session, the Committee of Technical Experts should consider adding the applicant stakeholder to the list of registered stakeholders.”

- The Committee of Technical Experts establishes the following list of registered stakeholders that are permanently invited to sessions of the Committee of Technical Experts and its WG TECH:
 - 1) Association of notified bodies (NB-Rail Association)
 - 2) Community of European Railway and Infrastructure Companies (CER)
 - 3) European Committee for Standardization (CEN)
 - 4) European Rail Freight Association (ERFA)
 - 5) International Association of Public Transport (UITP)
 - 6) International Rail Transport Committee (CIT)
 - 7) International Union of combined Road-Rail transport companies (UIRR)
 - 8) International Union of Railways (UIC)
 - 9) International Union of Wagon Keepers (UIP)
 - 10) Union of European Railway Industries (UNIFE)
- The Committee of Technical Experts establishes the following list of intergovernmental organisations that are permanently invited to sessions of the Committee of Technical Experts and its WG TECH:
 - 1) Organisation for Cooperation between Railways (OSJD)
 - 2) The Gulf Cooperation Council (GCC)
 - 3) Transport Community Permanent Secretariat (TCPS)
- The Committee of Technical Experts may review and amend the list of registered stakeholders and the list of intergovernmental organisations from time to time.
- The Committee of Technical Experts requests registered stakeholders to designate one or two focal points, which will act as contact points between the stakeholder and the OTIF Secretariat.
- The Committee of Technical Experts encourages the Secretariat to inform natural or legal persons that might be interested in becoming a registered stakeholder of the possibilities.