

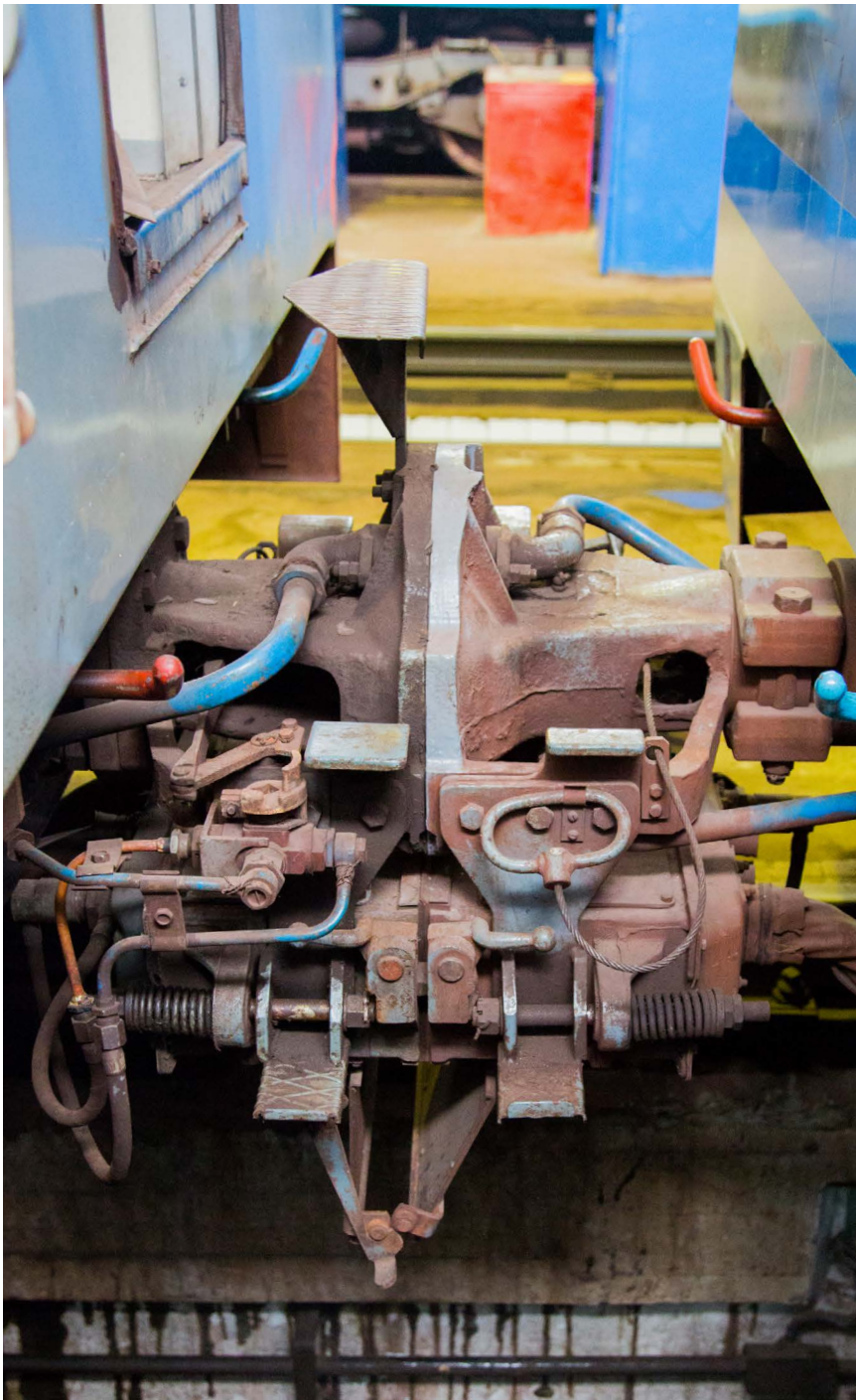


Bulletin

OTIF

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

Unified railway law to connect Europe, Asia and Africa



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Photos
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Aleksandr Kuzmenko OTIF



As expected, the first few months I have spent in the OTIF secretariat have been full of listening, learning and discussion. OTIF is integrated into an extensive network of state and business organisations in the rail sector that enables the important aims of OTIF to be promoted.

First and foremost, there have been visits to the European Union (DG MOVE, ERA), our sister organisation in the East (OSJD) and to the authorities of our host state (Federal Office for Transport, Canton and City of Bern) and to CIT. During these visits, the issues have partly been of a political nature (e.g. opportunities and risks of the new Silk Route), but they have also been determined by OTIF's other specialist core tasks (dangerous goods law, technical harmonisation). Smooth cooperation with our supervisory body, the Administrative Committee, also plays an important role in all this.

The staff of the OTIF secretariat support me in all these tasks with a great deal of professionalism and commitment. I am particularly pleased that in the shape of Ms Lunesterline Andriamahatahity, it has been possi-

ble to recruit a staff member with a lot of international experience to head the department of administration and finance.

We have a lot of tasks ahead of us in connection with law, technology, dangerous goods and taking on the role of secretariat of the Supervisory Authority under the Luxembourg Protocol. In terms of internal matters, the focus will be on the essential revision of internal guidelines and the upcoming renovation of the building.

I should like to draw your attention to the original purpose of the Bulletin. According to COTIF (Article 23), the Bulletin should contain official communications as well as others necessary or useful with respect to the application of the Convention. As a result, it now contains a new page entitled "Depositary Notifications". In future, the Bulletin will reflect this purpose more clearly, while maintaining its readability and attraction.

I hope you enjoy reading the Bulletin and wish you all the best!

Wolfgang Küpper
Secretary General

A NEW MANAGER IN THE OTIF SECRETARIAT

Ms Lunesterline Andriamahatahity joined the Secretariat of OTIF on 1 May 2019 as the head of the administration and finance department. She is the first female head of department within the Secretariat and succeeds Mr Ghousébash Gaffar.

Ms Andriamahatahity has occupied some high profile strategic posts at international level in the aviation and public transport sectors and in the defence sector. In particular, she has worked for the North Atlantic Treaty

Organization (NATO).

With 15 years experience in the fields of law, finance and human resources, Ms Andriamahatahity is responsible for managing the Organisation's budget and finance and for ensuring that OTIF is properly administered. She also manages and coordinates OTIF's activities in connection with the Luxembourg Rail Protocol.

The Secretariat of OTIF wishes her a warm welcome.



OTIF AT THE "RU DIALOGUE"

On 14 May 2019, OTIF's Secretary General, Wolfgang Küpper, was invited to take part in the 8th plenary session of the Dialogue for Railway Undertakings held in Brussels (Belgium).

The RU Dialogue was set up by the European Commission to provide a platform for discussion for railway undertakings in the European Union. The aim is to find common solutions in various areas.

The main focus of the discussions at the 8th plenary session was digitalisation. Mr Küpper therefore gave representatives of the railway undertakings a presentation on those provisions of the Convention concerning Inter-

national Carriage by Rail (COTIF) and the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID) that refer to electronic documents. More specifically, he explained the substance of the following provisions:

- Article 6 § 9 of COTIF Appendix B – Uniform Rules concerning the Contract of International Carriage of Goods by Rail (CIM UR). This Article refers to the possibility of using an electronic consignment note.
- The Uniform Technical Prescription (UTP) on "telematics applications for freight services" (TAF), which is a data exchange protocol that authorises the communication of electron-

ic documents and the preservation of data, particularly those concerning vehicles.

- The provision in RID 5.4.0.2, which authorises the use of electronic transport documents for dangerous goods.

Mr Küpper concluded his presentation by saying that COTIF is a modern convention which is suitable for and adaptable to the challenges of digitalisation.

The Secretary General of OTIF would like to thank the organisers and participants for their invitation and the welcome he received.

MORE COOPERATION TO HARMONISE RAILWAY LAW

On 6 June 2019 in Tashkent (Uzbekistan), the Secretary General of OTIF, Wolfgang Küpper, gave a presentation on the Convention concerning International Carriage by Rail (COTIF) to the Ministers' Conference of the Organisation for Cooperation between Railways (OSJD).

Following an overview of the structure and composition of OTIF – OTIF and OSJD have 16 Member States in common – Mr Küpper presented COTIF and its Appendices.

Thanks to constant efforts on the part of OTIF, OSJD and CIT, some of the provisions of COTIF's CIM and OSJD's SMGS have been brought closer together. In addition, the provisions of RID and SMGS Annex 2 are harmonised. Based on these positive results, the Secretary General, Mr Küpper, said he would like to see

closer cooperation with OSJD in order to move towards further harmonisation of international rail transport law. He highlighted the importance of an effective, optimal legal framework for the railways and for international transport.

The Secretary General of OTIF would like to thank the Chairman of the OSJD Committee, Mr Szozda, for inviting him to take part in the Conference.



RATIFICATION AND ENTRY INTO FORCE OF THE LUXEMBOURG RAIL PROTOCOL: UPDATE

The working group on ratification (RTF) set up by the Preparatory Commission on establishing an International Registry in accordance with the Luxembourg Protocol met on 16 July in Berne at the headquarters of the Intergovernmental Organisation for International Carriage by Rail (OTIF).

Among those attending the meeting were Mr Peter Bloch, chairman of the working group on ratification and co-chairman of the Preparatory Commission, Mr Howard Rosen, chairman of the Rail Working Group, Ms Anna Veneziano, deputy Secretary General of UNIDROIT, the depositary of the Luxembourg Protocol, Mr Wolfgang Küpper, Secretary General of OTIF, Ms Lunesterline Andriamahatahitry, head of OTIF's administration and finance department, and Mr Bas Leermakers,

head of OTIF's technical interoperability department.

One of the aims of the meeting was to examine progress on ratification of the Protocol and to discuss the planning for the Protocol's entry into force after the fourth ratification.

Progress on ratification of the Protocol

As a reminder, two conditions must be met before the Luxembourg Protocol to the Cape Town Convention on International Interests in Mobile Equipment can enter into force:



- The fourth instrument of a state's ratification, acceptance, approval or accession must be deposited,
- The Secretariat (OTIF) has to deposit a certificate with the depositary (UNIDROIT) confirming that the International Registry is fully operational.

So far, three states have ratified the Protocol: Luxembourg, Gabon and Sweden, and six others have signed it: Italy, Switzerland, Germany, France, Mozambique and the United Kingdom.

Other countries in Europe, Africa and Asia have signalled their interest, bearing in mind that the time it takes

to sign and ratify varies from one country to another.

The working group was therefore able to discuss the strategy to adopt in order to support those countries that are interested and those whose ratification might be imminent.

It is likely that there will be a fourth ratification before the end of 2019.

Planning following the fourth ratification

The various parties exchanged information on progress in terms of preparing the documents with a view to the

Protocol's entry into force.

At its 131st session, OTIF's Administrative Committee approved the draft statutes and draft rules of procedure of the Supervisory Authority, which will supervise the running of the International Registry of international interests in railway rolling stock.

Other documents, such as the future regulation of the Registry, and the plan of action following the fourth ratification of the Protocol, were briefly touched upon and can be reviewed at a future meeting of the working group on ratification.

Lunesterline Andriamahatahitry

AMENDMENTS TO COTIF: UPDATE ON APPROVALS

At its 12th session (Berne, 29 and 30 September 2015), the General Assembly adopted amendments to the Convention and to its Appendices D (CUV), F (APTU) and G (ATMF). The associated depositary notifications were published on OTIF's website.

In accordance with Article 34 § 2 of

COTIF, amendments to the Convention only enter into force twelve months after they have been approved by two thirds of the Member States in accordance with their national law. In accordance with Article 34 § 3 of COTIF, amendments to the Appendices enter into force twelve months after their approval by half of the Member States which have not made a declaration of











non-application of the Appendix concerned pursuant to Article 42 § 1, first sentence.

With regard to the amendments adopted by the 12th General Assembly, the depositary (Secretary General) has so far received instruments of approval from 13 states.

INSTRUMENTS DEPOSITED AS AT 31 AUGUST 2019

MEMBER STATE	INSTRUMENT	DATE
SWITZERLAND	<i>Approval</i>	21 October 2016
SWEDEN	<i>Approval</i>	13 March 2017
FINLAND	<i>Acceptance</i>	10 April 2017
NETHERLANDS	<i>Acceptance</i>	1 May 2017
HUNGARY	<i>Ratification</i>	1 June 2017
SPAIN	<i>Acceptance</i>	23 August 2017
GERMANY	<i>Approval</i>	12 October 2017
ESTONIA	<i>Acceptance</i>	15 January 2018
BELGIUM	<i>Approval</i>	19 January 2018
SLOVAKIA	<i>Approval</i>	30 April 2018
NORTH MACEDONIA	<i>Approval</i>	1 May 2018
FRANCE	<i>Approval</i>	31 July 2018
AUSTRIA	<i>Acceptance</i>	21 August 2019

DEPOSITORY NOTIFICATIONS FROM 1 JANUARY 2019

NOT-19025  23.08.2019	Austria – Acceptance of the amendments to COTIF and Appendices D, F and G adopted by the 12 th General Assembly
NOT-19019  06.08.2019	Corrections to the Ukraine’s list of CIM railway lines
NOT-19017  06.08.2019	Corrections to the CIM list of maritime and inland waterway services “Sassnitz-Baltijsk”
NOT-19016  31.07.2019	Corrections to modifications to Appendices F (APTU) and G (ATMF) to the Convention adopted by the Revision Committee at its 26 th session
NOT-19007  21.06.2019	Proposal for corrections to modifications to Appendices F (APTU) and G (ATMF) to the Convention adopted by the Revision Committee at its 26 th session
NOT-19013  19.06.2019	CIM list of maritime and inland waterway services
NOT-19008  27.05.2019	Entry into force of the modifications to the UTP GEN-B and UTP TAF adopted by the Committee of Technical Experts using the written procedure
NOT-19004  08.03.2019	Corrections to the edition of RID in force since 1 January 2019
NOT-19003  11.02.2019	CIV list of maritime and inland waterway services
NOT-19001  18.02.2019	Afghanistan – Accession to COTIF from 1 May 2019

ECO MEETING IN DUSHANBE

The railway authorities of the Member States of the Economic Cooperation Organization (ECO) met in Dushanbe (Tajikistan) on 20 and 21 June on the occasion of the 14th Meeting of Heads of Railway Authorities and the 8th Railway Committee Meeting of the Transit Transport Coordination Council (TTCC).

OTIF was invited to take part in this biennial meeting. The official representatives of other international organisations, such as UNESCAP, UNECE and the IDB, were also present.

Aleksandr Kuzmenko, the head of OTIF's legal department, presented recent developments in the Convention concerning International Carriage by Rail (COTIF). He also highlighted the application of COTIF as a means to improve railway connectivity and safety, particularly as some of ECO's Member States are also members of OTIF, i.e. Iran, Afghanistan, Azerbaijan, Iran, Pakistan and Turkey.

It is also worth noting that the meeting decided to cooperate in the field of rail passenger transport. The delegations present also noted the considerable

progress in the following rail projects: Qazvin-Rasht-Astara (Azerbaijan) - Astara (Iran) and Islamabad-Tehran-Istanbul.

For OTIF, this was a very useful meeting from all perspectives. The Secretariat of OTIF is grateful for the organisation of the meeting and the welcome ECO afforded the teams from the Secretariat.

THE VILNIUS PROTOCOL: 20 YEARS!

20 years after the Vilnius Protocol was adopted on 28 and 29 October 2019, the Ministry of Transport and Communications and the Ministry of Foreign Affairs of the Republic of Lithuania, together with OTIF, are organising a seminar in Vilnius with the support of Lithuanian Railways. The ministerial delegations and representatives of the partner organisations (CIT, OECD, OSJD, UIC, UNIDROIT, etc.) are invited to take the floor and exchange views on OTIF's achievements and prospects in terms of promoting, improving and facilitating international rail transport.

[REGISTRATION FORM](#)

[FINAL PROGRAMME](#)

SAVE THE DATE

28-29
OCTOBER | 2019

Vilnius, LITHUANIA

SYMPOSIUM

20th ANNIVERSARY OF THE VILNIUS PROTOCOL:
OTIF'S ACHIEVEMENTS AND PROSPECTS

JOIN US TO CELEBRATE, REFLECT AND SHARE!

SYMPOSIUM, DISCUSSIONS, VISIT TO KENA RAILWAY BORDER
CROSSING STATION, OFFICIAL DINNER HOSTED
BY LITHUANIAN AUTHORITIES

COMMITTEE OF TECHNICAL EXPERTS: RESULTS AND WORK PROGRAMME

This year's session of the Committee of Technical Experts set new challenges and tasks for its standing group of technical experts, along with an ambitious work programme and a new time plan to revise and update the COTIF APTU Uniform Technical Provisions and ATMF appendices covering international transport by rail. The objective is to have a stable and up-to-date legal framework for mutual acceptance among the 43 Member States that apply APTU and ATMF, and to facilitate the exchange of information between them.

The Committee of Technical Experts (CTE) held its 12th session on 12 and 13 June 2019 in Berne. 29 OTIF Contracting States were represented. There were delegations representing the European Union, UIC, OSJD, NB Rail, CER and UNIFE. The Committee elected Switzerland, in the shape of Mr. Christophe Le Borgne, as chair of the session.

Two proposals for modifications pending adoption

Within its area of responsibilities, CTE discussed the adoption of two proposals for modifications: one concerning the National Vehicle Register (NVR) specifications and one concerning the Uniform Technical Provisions for Telematic Applications for Freight (UTP TAF). For procedural reasons, the European Union was not in a position to vote at the session, so voting on both proposals will take place using the written procedure in the second half of 2019.

Principles for the development of technical provisions of COTIF

1 The provisions of COTIF should make sense when the harmonisation of technical and operational rules is achieved over the widest possible geographical area and between states which may have different legal systems. COTIF should build a bridge between these differences.

With regard to the establishment of vehicle registers, CTE reminded those Contracting States that have not yet established their electronic NVR according to the common specification to do so as soon as possible.

2 The technical provisions should cater to requirements at all levels and should therefore be appropriately flexible. States that wish to facilitate the cross-border operation of complete trains can choose the level of interoperability suitable for them.

They should also ensure that connectivity between the different NVRs is established (or maintained). The Committee discussed the consequences of the development within the European Union of a centralised vehicle register (EVR), particularly with regard to access, connectivity and data exchange with other NVRs. It mandated its standing working group TECH (WG TECH) to carry out further analyses and to make proposals for the future of vehicle registers.

Notification of National Technical Requirements (NTRs) – New explanatory document

Article 12 of the APTU stipulates that Contracting States have an obligation to notify their National Technical Requirements (NTRs). CTE reviewed the analysis carried out by WG TECH on how to deal with and notify national technical requirements in relation to UTPs and on the need for further action. The conclusions showed that

NTRs and specific cases continue to be necessary and should be made more transparent. CTE approved the analytical report and recommended that it be published as an explanatory document on the OTIF website.

CTE work programme

CTE discussed and agreed the priorities for the next two years and the need to revise the UTPs and other provisions under the scope of APTU, ATMF and the EST Uniform Rules.

3 Compatibility between the technical provisions of COTIF and provisions of EU law is important to ensure mutual acceptance of vehicles authorised or admitted under the respective legal frameworks.

From their inception, all the technical provisions of COTIF had been based upon provisions developed in the EU. This was partly explained by the fact that 26 of the 43 states that apply the APTU and ATMF are also members of the EU.

4 Elements from European Union legislation linked only to market opening, either for services or products are outside the scope of COTIF.

The adoption of the fourth railway package at EU level has led to changes in the legal framework of the EU on interoperability and safety, includ-

5 Carry out analyses to consider the potential for simplifying some of the existing and new provisions of COTIF to ensure wider application, without compromising compatibility and interoperability.

drafted UTP Infrastructure have to be newly examined and, where necessary, modified.

6 The technical provisions of COTIF should be attuned to the possible accession of additional regional economic integration organisations which meet the conditions of Article 38 of COTIF.

7 The technical provisions should consist of:

- a) Prescriptive rules to ensure interoperability, but limited within the aim and scope of the Convention
- b) Where relevant, complemented by recommended practices for efficient and harmonised solutions whose application is voluntary.

ing a new process for vehicle authorisation and the safety certification of railway undertakings, including modifications to the technical specifications for interoperability (TSIs).

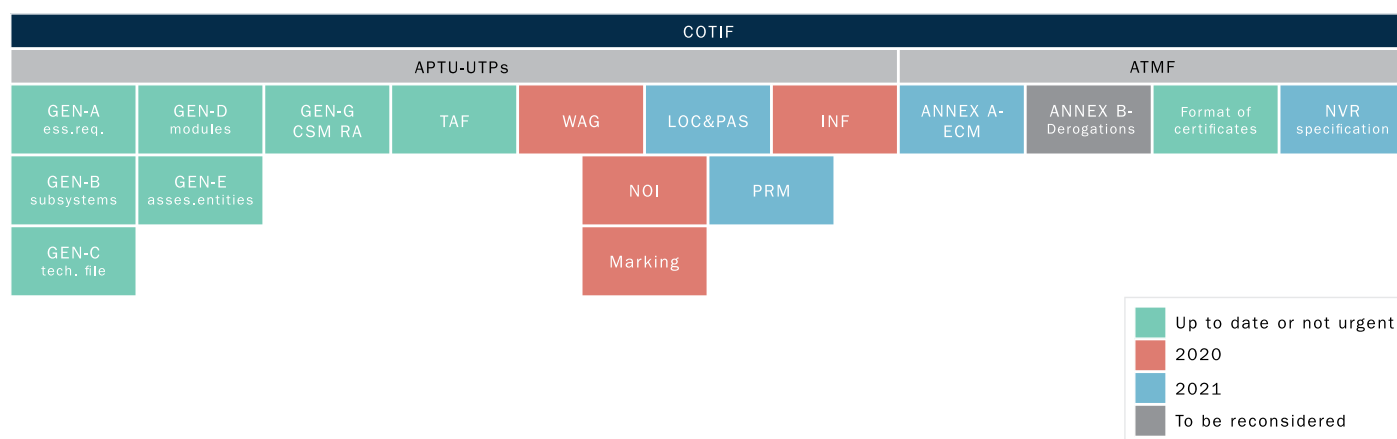
Some UTPs have recently been updated to be aligned with the latest provisions applicable in the EU.

CTE discussed the issue and agreed that other UTPs, including a recently

With regard to the provisions concerning the certification of entities in charge of maintenance (ECM), CTE decided that ATMF Annex A should also be reviewed as a priority in order to ensure continued cross-acceptance of ECM certificates in accordance with COTIF or EU provisions.

Taking into account the resources and number of meetings of the OTIF Secretariat, the meeting concluded that it was not feasible to propose amendments to all UTPs in question at once. The Committee agreed to categorise and prioritise the work in the work programme:

Strategy concerning the alignment of the UTPs with the TSIs revised in 2019



PRIORITY 1:

Priority in the revision process of the UTPs should be given to provisions relevant to freight wagons and their use in international traffic

1) ATMF ANNEX A CERTIFICATION OF ENTITIES IN CHARGE OF MAINTENANCE

The objective will be to ensure the continued mutual recognition of ECM certificates in the EU and non-EU CS, and the possible limitation of this mutual recognition if the ECM certificates are issued in accordance with the ATMF – Annex A, i.e. for international traffic.

2) VEHICLE REGISTER SPECIFICATIONS

The OTIF Secretariat has been actively engaged in an open dialogue with OTIF Member States and the EU on developments concerning the National Vehicle Registers and the future European Vehicle Register (EVR). From 2021, the latter will become the centralised register, replacing all NVRs for the EU Member States. From 2024, the NVRs outside the EU and the EVR will be disconnected and non-EU States must find their own solution to ensure connectivity. For this reason, CTE has mandated the WG TECH to work with the OTIF Member States on a solution and to make a proposal for adoption by CTE 13 in 2020.

3) UTP FOR FREIGHT WAGONS

The revision of this UTP will include thresholds to identify whether modification of a vehicle should be considered as a renewal or upgrade within the meaning of ATMF and if so, whether a new vehicle admission must be applied for. It will also consider parameters of the vehicles and infrastructure (within the meaning of ATMF) to be checked by the RU and the harmonised procedures to be applied to check these parameters to ensure compatibility between vehicles and the routes on which they are to be operated.

4) UTP NOISE

The objective is to include provisions addressing pass-by noise from noisy, older freight wagons which have not (yet) been equipped with modern silent brake blocks, in particular by allowing states to ban the use of such wagons on routes where they deem it necessary.

5) UTP MARKING

The aim is to ensure consistency with the revised TSI concerning Operation and Traffic Management, mainly by means of editorial modifications, such as updated references.

PRIORITY 2:

As the next priority, CTE gave WG TECH the task of working on UTPs not relating to freight wagons (locomotives and passenger rolling stock, accessibility for persons with disabilities and persons with reduced mobility) and a new UTP relating to infrastructure.

OVERVIEW

The overview of UTPs, prioritisation of revision processes and the provisional timetable for modifying the UTPs are illustrated in the following diagram. The preparatory work for each priority group should be carried out at the meetings of WG TECH 38, 39 and 40 for adoption at the 13th session of CTE in 2020, and at the meetings of WG TECH 41, 42 and 43 for adoption at the 14th session of CTE in 2021. CTE agreed that there should be some flexibility in the planning in case some proposals require further time to be finalised.

Strategy concerning the alignment of the UTPs with the TSIs revised in 2019

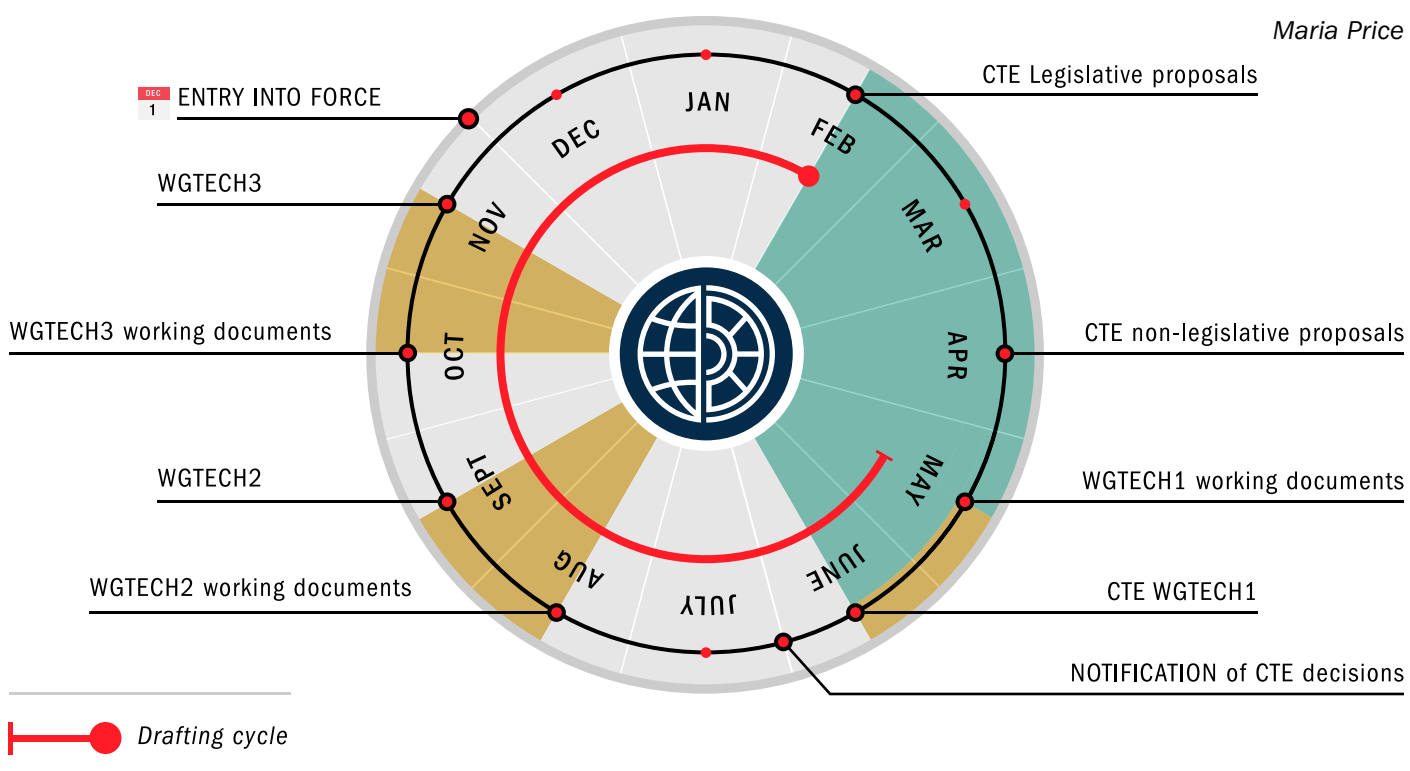
	2019	2020	2021		
		WG TECH 38, 39, 40	CTE 13	WG TECH 41, 42, 43	CTE 14
FIRST PRIORITY	UTP WAG UTP NOI UTP Marking Annex A-ECM NVR Specification				
SECOND PRIORITY			UTP INF UTP LOC&PAS UTP PRM		

THE PROVISIONAL TIMETABLE FOR MODIFYING THE UTPS

Revised meeting calendar

To accommodate the time the European Union will need to analyse proposals for legislation in COTIF which require a vote, CTE agreed to make such proposals available four months prior to sessions of CTE, instead of the current two months. CTE will update its Rules of Procedure to reflect the new deadlines.

Following a brainstorming session, a new meeting calendar was agreed for this purpose, with the result that the usual February meeting of WG TECH will in future take place in June, directly after the CTE session. This calendar will be used as a pilot test in the coming year.



Save the date

The following provisional meeting dates for the 13th session of CTE and its standing working group TECH should be noted:

11 AND 12 SEPTEMBER 2019

38th session of the WG TECH in Bern

19 AND 20 NOVEMBER 2019

39th session of the WG TECH in Brussels

16-17 JUNE 2020

CTE 13 in Bern

17-18 JUNE 2020

40th session of the WG TECH in Bern

HARMONISATION OF RID AND ANNEX 2 TO SMGS

In Europe, the Maghreb states and some states in Asia, the international carriage of dangerous goods by rail is performed in accordance with the provisions of the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID – Appendix C to COTIF, the Convention concerning International Carriage by Rail). In contrast, in many states in Asia (Afghanistan, China, Kazakhstan, Kyrgyzstan, Mongolia, North Korea, Russia, South Korea, Tajikistan, Turkmenistan, Uzbekistan, Vietnam), Europe (Belarus and Moldova), Annex 2 (Rules for the Transport of Dangerous Goods) to SMGS (Agreement concerning International Goods Traffic by Rail) applies to the international carriage of dangerous goods by rail. This Agreement has been concluded within the framework of the Organization for Cooperation between Railways (OSJD), and the depository for the Agreement is the OSJD Committee, headquartered in Warsaw. Various states in Europe and Asia are Member States of both OSJD and OTIF and apply both RID and Annex 2 to SMGS (Albania, Azerbaijan, Bulgaria, Czech Republic, Estonia, Georgia, Hungary, Iran, Latvia, Lithuania, Poland, Romania, Slovakia and Ukraine).

Since the restructuring of RID, which was prepared at the end of the 1990s, there has been close cooperation between OTIF and OSJD in order to ensure that the two sets of regulations are harmonised. This cooperation led to considerable simplification of dangerous goods transport between these two legal regimes. Harmonising the structure of Annex 2 to SMGS and the structure of RID made it much quicker to carry out the process of amending Annex 2 to SMGS and RID. Now, the updated provisions come into force only six months after each set of amendments to RID.

Harmonisation is also hampered by the different working languages. OTIF uses English, French and German, whereas OSJD uses Chinese and Russian. To facilitate this harmoni-

sation process, since 2015 OTIF has also published a Russian version of RID on its website.

However, after 2015, harmonisation stalled because some of the OSJD Member States were opposed to continuing to refer to EN standards in Annex 2 to SMGS, as most of the OSJD Member States have no understanding of or influence on how these standards are developed. Some OSJD Member States therefore insisted that before further EN standards could be included in the text of Annex 2 to SMGS, experts from OSJD would have to check whether these standards were suitable for use on the territory of the OSJD states. However, this turned out to be very difficult, as EN standards are only issued in English, French and German and in most cases, there is no Russian translation of these standards.

In recent years, various proposals have been submitted to resolve this unsatisfactory situation. All these compromise proposals encompassed the basic principle that the EN standards and EU Directives referred to only had to be applied if this

is required by national legislation. Hence EN standards would only apply in those SMGS Contracting States that are also RID Contracting States and EU Directives would only apply in the OSJD's EU Member States. A breakthrough was only achieved at a meeting of experts held last year in Beijing, with a compromise proposal that received support from all the OSJD experts. After the OSJD Commission for Transport Law dealing, inter alia, with the rules for the carriage of dangerous goods had adopted this compromise in October 2018, it was possible to harmonise Annex 2 to SMGS and the 2019 version of RID.

All references to EN standards that have been included in RID since 2015 will be segregated in a List of standardisation and technical documents, which will be referenced in section 1.1.6 of Annex 2 to SMGS. This List contains the number of each EN standard and the title of the standard in English, with a Russian translation of it. One column of the List indicates which OSJD Member States have to apply the particular standard. For the other Member States, the standard is only recommended.



In addition, GOST standards applied in the Russian Federation and a number of other OSJD Member States were included in this List.

In Annex 2 to SMGS, the relevant places in the regulations will only indicate a sequential number under which each applicable standard appears in the List of standardisation and technical documents. This List is to be revised on a regular basis in conjunction with Annex 2 to SMGS.

In the next biennium, those EN standards that had been included in Annex 2 to SMGS before 2015 will also be transferred to this new List. Globally applicable ISO standards are not affected by this new procedure.

It is hoped that timely harmonisation



of both sets of regulations can also be achieved in future so that the increasing amount of transport of dangerous goods between Europe and Asia can be organised as efficiently as possible.

The 2019 edition of Annex 2 to SMGS



harmonised with RID entered into force on 1 July 2019.

Jochen Conrad
Katarina Burkhard
Reza Lotfi
 (Specialist of OSJD Commission on
 Transport Law)

LUXEMBOURG PROTOCOL – OTIF’S ROLE AND TASKS

The Luxembourg Protocol¹ is the railway protocol to the Cape Town Convention² on International Interests in Mobile Equipment. It is a new global instrument which, when in force, will make it easier and cheaper for the private sector to finance railway rolling stock. The Luxembourg Protocol does not have its legal basis in COTIF, and UNIDROIT, not OTIF, is its depositary. Nevertheless, OTIF has some important tasks with regard to the Protocol and this article provides an overview of them.

Legal background

The Cape Town Convention was adopted, together with the protocol applying it to aircraft equipment, at a diplomatic conference in Cape Town in 2001. It has been in force since 2006 and has been ratified by 71 states as of April 2018. The Luxembourg Protocol was adopted at a separate diplomatic conference in Luxembourg in 2007.

The Protocol needs to be ratified³ by four states before it can enter into force. Until the Protocol comes into force, efforts to implement the Protocol are being led by a Preparatory Commission established under the Final Act of the Luxembourg diplomatic conference in 2007. The Preparatory Commission includes UNIDROIT and OTIF, countries that have ratified the Convention and the industry.

The Luxembourg Protocol creates a new global legal system for the recognition and prioritisation of three types of security interests held by creditors in railway equipment. The Protocol secures a lessor under a lease, a creditor under a secured loan and a vendor’s rights under a conditional sale (where title is retained).

These security interests will be registered in a new international registry, located in Luxembourg, which will be searchable by the public 24/7. This makes it possible, for the first time, for all interested parties to learn easily of a creditor’s security interest in an item of rolling stock, and for that

creditor to be able to enforce its security in cases of debtor default or insolvency. Filing in this registry will also serve to establish the priority of that creditor’s interest. The Protocol will also introduce a new unique and permanent 20-digit global identification system (URVIS) for all railway rolling stock. The ID will be issued by the international registry.

All vehicles running on tracks or above, on, or under a permanent guideway, from high-speed to light rail trains, from freight locomotives and wagons to trams and subways, and from people movers at airports to gantries and cranes running on rails at ports are covered by the Luxembourg Protocol. It applies where the debtor is located in a ratifying state - regardless of the location of the railway equipment.

Once it comes into force, the Luxembourg Protocol will facilitate more and cheaper finance from the private sector in rolling stock procurement as well as in the financing of existing fleets.

Howard Rosen, Chairman of the Rail Working Group, wrote an in-depth article about the purpose and functioning of the Protocol in OTIF Bulletin 2/2018. This article will look specifically at the tasks attributed to OTIF.

Tasks for OTIF

The following tasks for OTIF stem either directly from the Protocol, or from agreements concluded on the basis thereof:

- Certifying that the International Registry of the Luxembourg Protocol is fully operational
- Designating states for the Supervisory Authority
- Providing the secretariat for the Supervisory Authority
- Providing statutes and draft rules of procedure of the Supervisory Authority.

Certifying that the International Registry of the Luxembourg Protocol is fully operational

In accordance with Article XXIII (1), the Protocol enters into force between the States which have deposited the instruments referred to in sub-paragraph (a) on the later of:

- a) the first day of the month following the expiration of three months after the date of the deposit of the fourth instrument of ratification, acceptance, approval or accession, and
- b) the date of the deposit by the Secretariat [OTIF] with the Depositary [UNIDROIT] of a certificate confirming that the International Registry is fully operational.

Currently (status January 2019), Gabon, Luxembourg and Sweden have already ratified the Protocol. France, Germany, Italy, Mozambique, Switzerland and the United Kingdom have signed the Protocol but have not yet ratified it. The European Union has signed the Protocol in its capacity as

1 <http://www.unidroit.org/english/conventions/mobile-equipment/railprotocol.pdf>

2 <http://www.unidroit.org/english/conventions/mobile-equipment/mobile-equipment.pdf>

3 Ratification, acceptance, approval or accession

a regional economic integration organisation. If one more state ratifies the Protocol the first condition (a) for its entry into force is fulfilled. It is therefore relevant for OTIF to consider the arrangements for the second condition (b).

At its 13th session in September 2018, OTIF's General Assembly instructed the Administrative Committee to define the arrangements for certifying the Registry. At its 131st session in June 2019, these arrangements were discussed by the Administrative Committee.

In this context it is relevant to note that on 12 November 2014, a contract was concluded for the Establishment and Operation of the International Registry for International Interests in Mobile Equipment (Railway Rolling Stock) between the Preparatory Commission (acting in its capacity as provisional Supervisory Authority) and Regulis S.A., which is the registrar. The contract sets out a detailed programme of actions, including detailed obligations, the aim of which is to ensure the correct functioning of the International Registry.

In the light of the detailed contractual arrangements for the functioning of the register, the Administrative Committee was of the view that issuing the certificate should not become an obstacle to the Protocol's entering into force. The Administrative Committee therefore decided that once Regulis S.A. has demonstrated to the satisfaction of the Preparatory Commission that the International Registry is operating correctly in accordance with the contract, OTIF could issue its certificate to UNIDROIT in accordance with Article XII (8) of the Luxembourg Protocol without delay. In addition, it decided that OTIF will not be held liable for any claims arising from the issuing of the certificate. In practice, the best moment for issuing the certificate will be coordinated closely between the Preparatory Commission, Regulis and OTIF.

Designating States for the supervisory authority

Operation of the Luxembourg Protocol will be overseen by the Supervisory Authority, a new international body which will be established under the Protocol once it enters into force. In accordance with Article XII (6) of the Protocol, OTIF will serve as the official secretariat.

All States Parties to the Protocol are automatically members of the Supervisory Authority. The Protocol will initially enter into force with four States Parties. To ensure that the Supervisory Authority has at least ten members from the start, the Supervisory Authority will be supplemented by three states designated by UNIDROIT and three states designated by OTIF. The overarching objective of the states to be designated by UNIDROIT and OTIF is to ensure the proper functioning of the Supervisory Authority during the first period after entry into force of the Protocol

As soon as the Protocol has ten States Parties, the members designated by UNIDROIT and OTIF are gradually phased out over a period not exceeding two years. The designated members which become States Parties to the Protocol would remain members of the Supervisory Authority in their own right.

In accordance with Article XII (1) of the Protocol, OTIF and UNIDROIT are each responsible for defining the terms for designating the three states on their behalf. The only qualification criterion, laid down in Article XII (2) of the Protocol, is that "regard shall be had to the need to ensure broad geographical representation". The OTIF General Assembly decided that the states designated by OTIF must be members of OTIF.

One could argue that geographical spread is the most important criterion, as it is the only qualification expressed in the Protocol. However, a good geographical spread of states which would be unwilling to partici-

pate or which would not be active in the Supervisory Authority is not very useful. Therefore, the Administrative Committee decided that OTIF would apply the following criteria, in order of importance, as a basis for designating three of its Member States:

- Signatory States
- The likeliness of imminent ratification of the Protocol
- Expression of interest in actively taking part in the Supervisory Authority and willingness to send a delegation to each meeting
- Active participation in the Preparatory Commission and other activities related to the Luxembourg Protocol
- Size of the railway market.

These criteria have been informally coordinated with UNIDROIT.

The decision to designate three OTIF Member States will be taken by the Administrative Committee on the basis of a proposal from the Secretary General. The Secretary General should coordinate the proposal with UNIDROIT and with the states concerned, with a view to ensuring that there is a good geographical spread, duplicate nominations are avoided and that the states designated are willing to participate.

OTIF as the secretariat of the supervisory authority

According to Article XII (6) of the Protocol, "OTIF shall be the Secretariat of the Supervisory Authority".

The tasks incumbent on OTIF as the Secretariat of the Supervisory Authority include the following:

- In accordance with Article 3(3) of the draft Rules of Procedure, meetings will in general be convened at the 'domicile of the Supervisory Authority' which is the OTIF building. By agreement of the majority of members of the Supervisory Authority, it may convene at any other place.
- In accordance with Article 7 of the Statutes, the official working lan-

guage of the Supervisory Authority is English and in accordance with Article 3(4) of the draft Rules of Procedure, meetings will be in English only, so no interpretation will usually be required. Attendees may however use another language, provided they arrange interpretation at their expense.

- In accordance with Article 3 of the draft Rules of Procedure, there will be a general meeting once every calendar year. There may be additional meetings by agreement of one-third of the members (or three members if there are less than nine members).
- In accordance with Article 8 of the draft Rules of Procedure, the Secretariat, in coordination with the chair, prepares the provisional agenda for each session. It must send the notice (invitation) of a meeting, including the provisional agenda, no later than three months before the meeting opens. It must send documents for the meeting no longer than two months before the meeting opens.
- In accordance with Article 17 of the draft Rules of Procedure, the Secretariat prepares minutes of meetings summarising the proceedings and including the full texts of all proposals and decisions. The fact that full texts of proposals and decisions must be included means that the sessions should be recorded. The minutes must be sent out no later than eight weeks after the meeting has closed.
- In accordance with Article 8(4) of the Statutes, by 31 March of each year, the Secretariat must submit an invoice to the Supervisory Authority for the costs it has incurred in the previous calendar year for performing the tasks of the Secretariat.
- In accordance with Article 11 of the Statutes, the Secretariat has a role in the administrative handling of complaints.
- In accordance with Article 5(9) of the Statutes of the Supervisory Author-

ity, the Supervisory Authority “shall sign with the Secretariat (which is OTIF) an agreement setting out the detailed conditions for performing the tasks of the Secretariat”.

At its 13th session, OTIF’s General Assembly decided that in close cooperation with the working group on ratification of the Luxembourg Protocol, the Administrative Committee should prepare a draft agreement between OTIF and the Supervisory Authority. The agreement should take as a basis the draft statutes and rules of procedure of the Supervisory Authority. It should include a financial estimate of the costs of the secretariat tasks.

The agreement should be signed by the Chair of the Administrative Committee and the Chair of the Supervisory Authority of the International Rail Registry. The agreement can therefore only be signed once the Supervisory Authority comes into existence and has elected its Chair. For practical reasons however, the agreement should be prepared in advance by the Secretary General of OTIF and the Preparatory Commission in its capacity as Provisional Supervisory Authority. At its 131st session in June 2019, the Administrative Committee requested the Secretary to prepare a draft agreement and submit it to the Administrative Committee for approval.

Statutes and rules of procedure of the supervisory authority

At its 12th session (2015), the General Assembly assigned competence to the Administrative Committee to approve, on behalf of OTIF:

- The Statutes of the Supervisory Authority.
- The Rules of Procedure of the Supervisory Authority.

The draft statutes and draft rules of

procedure for the Supervisory Authority were approved by the Administrative Committee at its 129th session (31 May – 1 June 2018). The documents were proposed for consecutive approval by the Preparatory Commission for the establishment of the International Registry for Railway Rolling Stock Pursuant to the Luxembourg (Rail) Protocol, which convened at the UNIDROIT premises in Rome on 6-7 December 2018. It decided to modify some articles of both the draft Statutes and the draft Rules of Procedure of the Supervisory Authority. All changes made by the Preparatory Commission were consecutively validated by OTIF’s Administrative Committee at its 131st session in June 2019.

Final considerations

The Luxembourg Protocol and its international registry will be an important instrument to attract private investment in railway rolling stock. In terms of governance and oversight, the Supervisory Authority will have an important role in the implementation of the Protocol. OTIF, as the Secretariat of the Supervisory Authority, will have new tasks stemming from the Protocol and will thus widen its scope of activities beyond the scope of COTIF. It will therefore widen its presence both in the field of railways as well as intergovernmental cooperation. Potentially this could also increase interest in COTIF within states which are currently not a member of OTIF, or increase interest in the Protocol within OTIF Member States. In any case, with the imminent entry into force of the Protocol, it is important for OTIF and its staff to be prepared for these new tasks.

Bas Leermakers

CALENDAR OF OTIF'S MEETINGS IN 2019

DATE	EVENT	ORG	LOCATION
9 - 11 September	Joint Coordinating Group of Experts (JCGE). 2 nd Session		Berne - Switzerland
11 - 12 September	Working group WG TECH. 38 th Session		Berne - Switzerland
17 - 27 September	RID/ADR/ADN Joint Meeting	UNECE	Geneva - Switzerland
14 - 16 October	Working Group on Tank and Vehicle Technology	BASF	Ludwigshafen - Germany
29 October 2019	Symposium "20 th anniversary of the Vilnius Protocol: OTIF's achievements and prospects"		Vilnius - Lithuania
29 October 2019	Ad hoc Committee on Cooperation; 2 nd session		Vilnius - Lithuania
30 October 2019	Working Group of Legal Experts; 2 nd session		Vilnius - Lithuania
25 - 29 November	RID Committee of Experts' standing working group (11 th session)		Vienna - Austria
4 - 5 December	Administrative Committee 132		Berne - Switzerland

EVENTS WITH OTIF PARTICIPATION IN 2019

DATE	EVENT	ORG	LOCATION
19 September	International Liaison Group of Government Railway Inspectorates (ILGGRI)		Berne - Switzerland
15 October	Platform of Rail Regulatory Bodies	ERA	Valenciennes - France
16 - 18 October	Group of Experts towards Unified Railway Law (GEURL)	UNECE	Geneva - Switzerland
22 - 23 October	Silk Road Forum		Tbilisi - Georgia
28 - 31 October	OSJD Commission for Transport Law in the field of provisions for the carriage of dangerous goods	OSJD	Warsaw - Poland
7 - 8 November	17. Gefahrgut-Technik-Tage Berlin – Conference	ecomед-Storck	Berlin - Germany
11 - 15 November	Working Party on the Transport of Dangerous Goods (WP.15) (107 th session)	UNECE	Geneva - Switzerland
12 - 13 November	Railway Interoperability and Safety Committee (RISC)	European Commission	Brussels - Belgium
19 - 20 November	UIC Group of Experts on the Carriage of Dangerous Goods	UIC	Edinburgh United Kingdom
2 - 11 December	UN Sub-Committee of Experts on the Transport of Dangerous Goods (56 th session)	UNECE	Geneva - Switzerland

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Thank you for your continued interest.

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