



ORGANISATION INTERGOUVERNEMENTALE POUR LES TRANSPORTS INTERNATIONAUX FERROVIAIRES
ZWISCHENSTAATLICHE ORGANISATION FÜR DEN INTERNATIONALEN EISENBAHNVERKEHR
INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL CARRIAGE BY RAIL

**Assemblée générale
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PARTIAL REVISION OF COTIF – BASIC CONVENTION

Convention concerning International Carriage by Rail (COTIF)

INTRODUCTION

The aim of this document is to explain the proposals to amend the Basic Convention submitted to the General Assembly for adoption.

It also sets out the modifications to the consolidated Explanatory Report that should be made (doc. AG 12/13) concerning these provisions. In the following proposals, the amendments to be made are shown in crossed out text and bold characters.

In accordance with Article 17 § 1 b) of COTIF, the 25th session of the Revision Committee (Berne, 25 – 26.6.2014) examined and adopted the amendments to Articles 3, 12, 14, 15, 20, 24 and 26 of COTIF to be submitted to the General Assembly for decision.

In addition, as a result of the amendment to Article 27 of COTIF adopted by the Revision Committee within its own area of competence, the General Assembly will also have to adapt the reference to this provision in Article 14 § 6 and Article 33 § 4 of COTIF.

In accordance with Article 33 § 2 of COTIF, the General Assembly has the competence for the amendments to these Articles.

Documents AG 12/8 Add.1 and Add.2 set out the precise wording of the provisions put to the vote.

GENERAL POINTS

The main aims of the amendments to the Basic Convention are firstly, to comply with a recommendation made the auditor concerning the period covered by the budget and accounts and secondly, to deal with an amendment to Article 20 of COTIF submitted by the Committee of Technical Experts (CTE) in order to remove a contradiction between the rules applicable to the CTE and the CTE's practical necessity to adopt Uniform Technical Prescriptions (UTP).

It is also proposed to align the definition of "keeper" in COTIF with the definition adopted by the Revision Committee when amending the CUV Uniform Rules, and to replace the term "European Community" by "European Union" to take account of the entry into force of the Treaty of Lisbon.

JUSTIFICATION FOR THE AMENDMENTS ARTICLE BY ARTICLE AND PROPOSALS TO AMEND THE REVISED, CONSOLIDATED EXPLANATORY REPORT

1. Article 3 – International cooperation

a) It is proposed to amend Article 3 § 2 of COTIF as follows:

"The obligations resulting from § 1 for the Member States, which are at the same time Members of the ~~European Communities~~ **European Union** or States parties to the European Economic Area Agreement, shall not prevail over their obligations as members of the ~~European Communities~~ **European Union** or States parties to the European Economic Area Agreement."

The sole aim of this proposed amendment is to replace "European Communities" by "European Union" to take account of the entry into force of the Treaty of Lisbon.

- b) It is not necessary to make any further amendments to the consolidated Explanatory Report.

2. Article 12 – Execution of judgments. Attachment

- a) It is proposed to amend Article 12 § 5 of COTIF as follows:

"§ 5 Railway vehicles may only be seized on a territory other than that of the Member State in which the keeper has its registered office, under a judgment given by the judicial authority of that State. The term "keeper" means ~~the person who, being the owner or having the right to dispose of it, exploits the railway vehicle economically in a permanent manner as a means of transport~~ **the person or entity that, being the owner of a vehicle or having the right to use it, exploits the vehicle as a means of transport.**"

The aim of the proposed amendment to Article 12 § 5 of COTIF is to align the definition of "keeper" with the definition adopted by the Revision Committee (25th session, 25 - 26.06.2014) when amending Article 2 c) of the CUV UR, which says:

""keeper" means the person or entity that, being the owner of a vehicle or having the right of disposal over it, exploits the vehicle as a means of transport;"

- b) It is proposed to amend the part of the consolidated Explanatory Report on Article 12 of COTIF as follows, with the addition of a paragraph 4:

"4. The 12th General Assembly (Berne, 29 - 30.9.2015) decided to align the definition of "keeper" with the definition adopted by the Revision Committee (25th session, 25 - 26.06.2014) in the amendment to Article 2 c) of the CUV UR."

3. Article 14 – General Assembly

- a) It is proposed to amend Article 14 § 2 e) and § 6 of COTIF as follows:

"§ 2 The General Assembly shall:

[...]

- e) fix, for ~~six~~ **three** year periods, the maximum amount that the expenditure of the Organisation may reach in each budgetary period (Article 25); if not, it shall issue directives relating to the limitation of that expenditure for a period no longer than ~~six~~ **three** years;

§ 6 The General Assembly shall take its decisions by the majority of the Member States represented at the time of the vote, save in the case of § 2, letters e), f), g), h), l) and p) as well as of Article 34 § 6, for which the majority shall be two-thirds. However, in the case of § 2, letter l) the majority shall be two-thirds only in the case of proposals aiming to modify the Convention itself, with the exception of Articles 9 and 27 §§ 2 to ~~5-4~~ and the Protocol referred to in Article 1 § 4."

These amendments result partly from the amendment of Article 25 of COTIF proposed in accordance with a recommendation made by the auditor and partly from the amendment of Article 27 of COTIF adopted by the 25th session of the Revision Committee.

- b) It is not necessary to make any further amendments to the consolidated Explanatory Report.

4. Article 15 – Administrative Committee

- a) It is proposed to amend Article 15 § 5 g) of COTIF as follows:

"§ 5 The Committee shall:

[...]

- g) fix, on the basis of the approved accounts, the definitive contributions due from the Member States in accordance with Article 26 for the ~~two~~ previous calendar year, as well as the amount of the treasury advance due from the Member States in accordance with Article 26 § 5 for the current year ~~and the next calendar year;~~"

The amendments result from the amendment of Article 25 of COTIF proposed on the basis of a recommendation made by the auditor.

- b) It is not necessary to make any further amendments to the consolidated Explanatory Report.

5. Article 20 – Committee of Technical Experts

- a) It is proposed to amend Article 20 of COTIF as follows:

"§ 1 The Committee of Technical Experts shall:

- a) take decisions, in accordance with Article 5 of the APTU Uniform Rules, about the validation of a technical standard relating to railway material intended to be used in international traffic; **when taking such decisions, the technical standards or certain specific parts of these standards may either be validated or rejected; they may not under any circumstances be modified;**
- b) take decisions, in accordance with Article 6 of the APTU Uniform Rules, about the adoption **or modification** of a uniform technical prescription relating to the construction, operation, maintenance or relating to a procedure concerning railway material intended to be used in international traffic;
- c) keep a watch on the application of technical standards and uniform technical prescriptions relating to railway material intended to be used in international traffic and examine their development with a view to their validation or adoption in accordance with the procedures provided for in Articles 5 and 6 of the APTU Uniform Rules;
- d) take decisions, in accordance with Article 33 § 6, about proposals aiming to modify the Convention;
- e) deal with all other matters which are assigned to it in accordance with the APTU Uniform Rules and the ATMF Uniform Rules.

§ 2 There shall be a quorum (Article 13 § 3) in the Committee of Technical Experts, when one-half of the Member States, within the meaning of Article 16 § 1, are represented there. When the Committee is taking decisions about provisions of the Annexes to the APTU Uniform Rules, Member States which have made an objection, in accordance with Article 35 § 4, with regard to the provisions concerned or have made a

declaration, in accordance with Article 9 § 1 of the APTU Uniform Rules, shall not have the right to vote.

~~§ 3 — The Committee of Technical Experts may either validate technical standards or adopt uniform technical prescriptions or refuse to validate or adopt them; it may not under any circumstances modify them."~~

Article 20 § 3 of the Convention stipulates that: "*The Committee of Technical Experts may either validate technical standards or adopt uniform technical prescriptions or refuse to validate or adopt them; it may not under any circumstances modify them.*"

Article 33 § 6 of the Convention stipulates that: "*The Committee of Technical Experts shall decide on proposals aiming to modify the Annexes to the APTU Uniform Rules. When such proposals are submitted to the Committee of Technical Experts, one-third of the States represented on the Committee may require these proposals to be submitted to the General Assembly for decision.*"

So there is a contradiction between the rules applicable to the Committee of Technical Experts (CTE) and the practical requirement the CTE has to adopt uniform technical prescriptions (UTP). This is why the CTE is proposing a solution to the Revision Committee to eliminate this contradiction.

The version of Article 20 § 3 of the Convention adopted by the Revision Committee in October 1998 (last Revision Committee before the 5th General Assembly, which dealt with this Article) said that the CTE could validate **technical standards** or refuse to validate them if they were drafted by (external) standardisation bodies. The limitation (adopt without amendment or refuse) was not included in Article 20 § 3 of the Convention with respect to the adoption of UTP.

In contrast to the solution adopted by the Revision Committee, the 5th General Assembly (the last one held before the Vilnius Protocol was signed) decided in June 1999 that **with regard to the uniform technical prescriptions**, the CTE can either adopt or reject them, but cannot under any circumstances modify them at the time they are adopted. The CTE's role is therefore limited to analysing the contents of the proposed standard or prescription.

However, the wording of Article 20 § 3 of the Convention, which prohibits any modification of the uniform technical prescriptions at the time the UTP are adopted, is not in line with Article 33 § 6 of the Convention.

The aim of Article 20 § 3 of the Convention is to avoid introducing modifications into a set of requirements being prepared by people who are not responsible for drafting them.

The UTP are in fact drafted by the standing working group WG TECH, in accordance with Article 4 § 2 of APTU. The Member States, the EU and the railway organisations (as observers) may influence the drafting. A number of participants at WG TECH are also CTE delegates.

At each session of the CTE, the UTP have had to be modified during the session so that they could be adopted. Modifications such as this are allowed in the CTE's Rules of Procedure, but they are not in conformity with Article 20 § 3 of the Convention.

At its 6th session (Geneva, 12 June 2013), the CTE was therefore of the view that the text of Article 20 should be amended as proposed, in order to return to a similar wording as that adopted by the Revision Committee in October 1998, as this would reflect current practice

and would be fully in line with Article 33 § 6 of the Convention, Articles 5 and 6 of APTU and with the Committee of Technical Experts' Rules of Procedure.

On the other hand, the CTE did not think it was necessary to amend Article 33 § 6, given that "modify the Annexes" includes both the adoption of further annexes (UTP) and the modification of existing annexes (UTP).

- b) It is proposed to amend the part of the consolidated Explanatory Report on Article 20 of COTIF as follows, with the addition of a new paragraph 7:

“7. According to the CTE, the wording of Article 20 § 3 of the Convention, which prohibited any modification of the uniform technical prescriptions at the time the UTP are adopted, was not in line with Article 33 § 6 of the Convention.

The aim of Article 20 § 3 of the Convention adopted by the 5th General Assembly was to avoid introducing modifications into a set of requirements being prepared by people who are not responsible for drafting them. But the UTP are in fact drafted by the standing working group WG TECH, in accordance with Article 4 § 2 of APTU. The Member States, the EU and the railway organisations (as observers) may influence the drafting. A number of participants at WG TECH are also CTE delegates.

However, at each session of the CTE, the UTP have had to be modified during the session so that they could be adopted. Modifications such as this are allowed in the CTE's Rules of Procedure, but they were not in conformity with Article 20 § 3 of the Convention.

At its 6th session (Geneva, 12 June 2013), the CTE was of the view that the text of Article 20 should be amended, in order to return to a similar wording as that adopted by the Revision Committee in October 1998, as this would reflect current practice and would be fully in line with Article 33 § 6 of the Convention, Articles 5 and 6 of APTU and with the Committee of Technical Experts' Rules of Procedure, and submitted a proposal along these lines to the Revision Committee and to the General Assembly.

At its 25th session (25 - 26.6.2014), the Revision Committee approved this proposal to amend Article 20 § 3 of COTIF, which the General Assembly adopted at its 12th session (Berne, 29 - 30.9.2015.)”.

Current paragraphs 7 and 8 become paragraphs 8 and 9.

6. Article 24 – Lists of lines or services

- a) It is proposed to amend Article 24 § 5 of COTIF as follows:

"§ 5 Carriage on the maritime and inland waterway services referred to in § 1 and carriage on the railway lines referred to in § 2 shall be subject to the provisions of the Convention on the expiration of one month running from the date of the notification of their inclusion by the Secretary General. Such a service or line shall cease to be subject to the provisions of the Convention on the expiration of ~~three~~ **one** months running from the date of the notification of the deletion by the Secretary General, save in respect of carriage underway which must be finished."

The aim of this amendment is to harmonise the period after which a deleted line is no longer subject to COTIF (up to now, three months) and the period for entering new lines (up to now, the line has been subject to COTIF after one month).

If a carrier interrupts the operation of a shipping line that is taken up by another carrier, the line is both deleted and entered as a new line. If the periods differ, there is overlapping, which does not reflect reality. The same period of one month should be prescribed for both cases.

- b) It is proposed to amend the part of the consolidated Explanatory Report on Article 24 of COTIF as follows, with the addition of a sentence in paragraph 3:

"3. This does not apply to the case of complementary maritime transport or to inland waterway transport, when this part of the transport is itself trans-frontier. This is why, in these cases, the application of the CIV Uniform Rules and the CIM Uniform Rules continues to be determined by the registration of such lines on the corresponding lists (see the decisions of the Revision Committee concerning Article 1, § 4 of CIV and Article 1, § 4 of CIM cited in No. 1, as well as No. 19 of the remarks relating to Article 1 CIM, General Assembly document AG 5/3.5 of 15.2.1999). These are taken into account in Article 24, §§ 1, 3 and 5. To this extent, the regulation corresponds to Article 10 of COTIF 1980. The retention of the system of registered lines for maritime trans-frontier complementary transport or for inland waterway transport is possible due to the fact, for example, that application of international maritime transport law is not mandatory, as is the case with the CIM Uniform Rules. **Nevertheless, the 12th General Assembly (Berne, 29-30.9.2015) decided in § 5 to harmonise the period after which a deleted line is no longer subject to COTIF (previously three months) and to harmonise the period prescribed for registering new lines (up to now, the line has been subject to COTIF after one month).**"

7. Article 25 – Work programme. Budget. Accounts. Management report

- a) It is proposed to amend Article 25 of COTIF as follows:

"§ 1 The ~~work programme~~, budget and accounts of the Organisation shall cover a period of ~~two~~ one calendar years. **The work programme shall cover a period of two calendar years.**

§ 2 The Organisation shall publish a management report ~~at least every two years~~ **year**.

§ 3 The total amount of expenditure of the Organisation shall be fixed, for each budgetary period, by the Administrative Committee on a proposal by the Secretary General."

The current version of Article 25 § 1 prescribes that the budget and accounts cover a period of two calendar years. However, in the audit of the 2011 financial statements, the Auditor noted that the Secretariat of OTIF did not apply this provision, as it had continued to present the budget and accounts annually. The Auditor therefore invited OTIF to do what is necessary to begin the process of reform of this provision at the 25th session of the Revision Committee so that current practices in financial and accounting matters could be formally regularised at the 12th General Assembly.

In order to respond to the Auditor's recommendation, which was issued in 2012, the Secretary General proposes to return to an annual cycle for the budget, the accounts and the "management report".

As the entire system set up under COTIF 1999 was based on a two-yearly cycle, returning to an annual cycle will require consequential amendments to the following provisions: Article 14 § 2 e), Article 14 § 6, Article 15 § 5 g) and Article 26 § 5 to 7.

- b) It is proposed to amend the part of the consolidated Explanatory Report on Article 25 of COTIF as follows:

~~"4.~~ In 1999, the introduction of a special article **was** considered to be useful in the interest of editorial simplification, the Revision Committee having decided to change to a biennial timetable in matters relating to the programme of work, the budget, the accounts and the management report (Report on the 19th session, pp. 21/22 and 39/40; Report on the 21st session, p. 33).

However, this Article was adapted when the 12th General Assembly (Berne, 29-30.9.2015) decided to return to an annual timetable, as recommended by the Auditor for the budget, the accounts and the "management report".

~~2. — Notwithstanding the fact that provision has been made for publishing the Management Report on a biennial basis, there is nothing to prevent the Organisation from publishing an annual Management Report insofar as this is justified by the volume of work or the results achieved (Report on the 21st session, p. 33)."~~

8. Article 26 – Financing the expenditure

- a) It is proposed to amend Article 26 §§ 5 to 7 of COTIF as follows:

“§ 5 The contributions of the Member States to the expenditure of the Organisation shall be due in the form of a treasury advance payable ~~in two instalments~~ at the latest by the 31 October of ~~each of the two~~ **the years** covered by the budget. The treasury advance shall be fixed on the basis of the definitive contributions for the ~~two~~ preceding **years**.”

§ 6 When sending the management report and statement of accounts to the Member States, the Secretary General shall notify the definitive amount of the contribution for the ~~two~~ previous calendar **years** as well as the amount of the treasury advance in respect of the ~~two~~ calendar **years** to come.

§ 7 After the 31 December of the year the notification is made by the Secretary General in accordance with § 6, the amounts due for the last ~~two~~ calendar **years** shall bear interest at the rate of five per cent per annum. If, ~~one year~~ **two years** after that date, a Member State has not paid its contribution, its right to vote shall be suspended until it has fulfilled its obligation to pay. On expiry of a further period of two years, the General Assembly shall consider whether the attitude of that State should be regarded as a tacit denunciation of the Convention and, where necessary, shall determine the effective date thereof.”

The amendments result from the amendment of Article 25 of COTIF proposed on the basis of a recommendation made by the auditor.

- b) It is proposed to amend the part of the consolidated Explanatory Report on Article 26 of COTIF as follows:

[...]

"5 **The 12th General Assembly (Berne, 29-30.9.2015) decided to return to an annual timetable, as recommended by the Auditor, particularly for the budget and accounts (see Article 25 of COTIF).** In order to ensure the liquidity of OTIF, the contributions for the current ~~biennial~~ annual period are due, in the form of a cash advance, ~~payable in two instalments~~, by not later than 31 October of the budget year

covered by the budget (§ 5). The treasury advance shall be fixed on the basis of the definitive contribution for the preceding year.

6. § 6 corresponds, to a large extent, to Article 11 § 2, indent 1 of COTIF 1980.
7. § 7 corresponds to Article 11 § 2, indent 2 of COTIF 1980. ~~-, but with the following amendment: the sums due bear interest from 1 January of the following year and the voting right of a debtor State is suspended for one year starting from the year for which it is under formal notice to pay.-"~~

9. Article 33 - Competence

- a) It is proposed to amend Article 33 § 4 a) of COTIF as follows:

“§4 Subject to decisions taken by the General Assembly in accordance with § 3, first sentence, the Revision Committee shall take decisions about proposals aiming to modify:

- a) Articles 9 and 27 §§ 2 to ~~5~~ 4;”

This amendment results from the amendment to Article 27 of COTIF adopted by the 25th session of the Revision Committee.

- b) It is not necessary to make any further amendments to the consolidated Explanatory Report.

Proposal for decision

1. The General Assembly adopts the amendment to Articles 3, 12, 14, 15, 20, 24, 25, 26 et 33 of COTIF as set out in document AG 12/8 Add.1.
2. The General Assembly approves the amendments to the consolidated Explanatory Report proposed in this document and set out in document AG 12/8 Add.2.
3. The General Assembly mandates the Secretary General to make the corresponding amendments to the consolidated Explanatory Report on the COTIF and to summarise the decisions it has taken on the amendments to COTIF in the “General” part of the Explanatory Report.

Annexes