



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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CONSOLIDATED EXPLANATORY REPORT

Protocol on the Privileges and Immunities of OTIF

Protocol on the Privileges and Immunities of the Intergovernmental Organisation for International Carriage by Rail (OTIF)

Explanatory report ¹

General Points

1. It is customary, and in keeping with international practice, for the Member States of an intergovernmental organisation to undertake to grant the organisation, its personnel, the experts consulted by the organisation and the representative of the Member States the privileges and immunities that are necessary to perform their tasks within the framework of the organisation. This principle is stated in Article 1, § 4 of the Convention concerning International Carriage by Rail (COTIF) and specified in the Protocol on the Privileges and Immunities of the Organisation, which constitutes an integral part of the Convention. This corresponds to the approach adopted in the 1980 revision.
2. The purpose of the privileges and immunities is to maintain the essential relationship of trust between, on the one hand, the Member States and the Organisation and, on the other hand, between the Member States, by preventing a Member State from being able to influence the activity of the Organisation by exerting unwarranted pressure on the latter or from being able to derive undue financial advantage from the activities of the Organisation. The wording of Article 1, § 4 of COTIF and the provisions of the Protocol both clearly disclose the functional nature of the privileges and immunities.
3. Since, hitherto, the Privileges and Immunities Protocol has proved itself in practice, the Secretariat² has not suggested substantive amendments in this matter (Explanatory Report on the draft COTIF of 30.8.1996, No. 37). Only one Member State has submitted a proposed amendment to the Protocol (see the remarks relating to Article 1). The wording of the Privileges and Immunities Protocol has been re-edited and its structure reorganised. The articles have been provided with titles in order to facilitate reading of the Protocol.
4. Although, as far as privileges and immunities are concerned, it is the relations between the Organisation and the Headquarters State that assume the greatest importance, it is nevertheless necessary for the customary privileges and immunities to be granted to the Organisation and the members of its personnel when exercising their functions in other Member States, e.g. at conferences outside the headquarters State. This also applies to the representatives of the Member States. Consequently, the Protocol regulates *in a general manner*, i.e., in relation to all the Member States, the privileges and immunities of:

1 The articles, paragraphs, etc. which are not specifically designated are those of the Protocol on the Privileges and Immunities; unless otherwise evident from the context, the references to the reports on sessions not specifically identified relate to the sessions of the Revision Committee.

2 At that time the “Central office”

- the Organisation itself
 - the representatives of the Member States
 - the members of the Organisation's staff and the experts consulted by the Organisation.
5. The special relations between both the Organisation and the members of its staff and the Headquarters State are to be regulated in the Headquarters Agreement, in accordance with Article 1, § 5 of COTIF³. Supplementary agreements may also be concluded, if need be, with other Member States, in accordance with Article 14 of the Protocol, for example on the occasion of conferences.
6. The 5th General Assembly has unanimously adopted, with amendments (Report, p. 180) the text adopted by the Revision Committee (Report on the 21st session, pp. 61-63).

In particular

Article 1

Immunity from jurisdiction, execution and seizure

The most important privilege of an intergovernmental organisation is the immunity from jurisdiction and the immunity from enforcement in the Member States. Upon proposal by Germany, the Revision Committee, in its 21st session (Report, pp. 61-62), enlarged the list of cases excluded *ex lege*. Excluded are not only civil proceedings instituted against the Organisation by a third party for damage caused by a vehicle belonging to or operated on behalf of the Organisation, but also civil proceedings generally. There are no likely resultant disadvantages for the Organisation.

Article 2

Safeguards against expropriation

Although this provision, hitherto included in Article 1, § 2, indent 2 of the Protocol that was annexed to COTIF 1980 (hereinafter "1980 Protocol"), does allow expropriation for a public purpose, it obliges the Member State in question to take all appropriate measures to prevent this expropriation from constituting an obstacle to the exercising of the Organisation's activities.

Article 3

Exemption from taxes

This article grants the Organisation the customary tax exemptions and corresponds to Article 1, § 3, indents 1 and 2, as well as to § 4 of the 1980 Protocol.

Article 4

Exemption from duties and taxes

This article grants the customary exemptions from international import and export duties and charges and corresponds to Article 1, § 3, indent 3 of the 1980 Protocol.

3 Relations regulated by the agreement concluded between OTIF and the Swiss Federal Council, 10 February 1988, see <http://www.admin.ch/ch/f/rs/i1/0.192.122.742.fr.pdf>

Article 5
Official activities

This provision emphasises the functional nature of the privileges and immunities.

Article 6
Monetary transactions

For editorial reasons, monetary transactions and official communications have been dealt with in different articles. In the 1980 Protocol, these two provisions were included in Article 2.

Article 7
Communications

This provision guarantees preferential treatment in respect of freedom of official communications. See also the remark relating to Article 6.

Article 8
Privileges and immunities of representatives of Member States

This article (Article 3 of the 1980 Protocol) covers the customary international immunities. Arrest and preventive detention, as well as the seizure of personal luggage, are nevertheless possible in cases of in flagrante delicto.

Article 9
Privileges and immunities of members of the staff of the Organisation

The privileges and immunities provided by this article (Article 4 of the 1980 Protocol) are granted to the members of the Organisation's staff by all the Member States, and not only by the Headquarters State.

Article 10
Privileges and immunities of experts

This provision (Article 5 of the 1980 Protocol) is limited by the fact that, in accordance with Article 13, a Member State is not obliged to grant the immunities provided for in letters a) and b) to its own nationals when these persons act in the capacity of expert to the Organisation.

Article 11
Purpose of the privileges and immunities accorded

In accordance with their functional nature, the privileges and immunities are granted solely for the purpose of maintaining, in all circumstances, the unimpeded functioning of the Organisation and the complete independence of the persons to whom they have been accorded (Article 6 of the 1980 Protocol). Also regulated at the same time is the question of which authority is competent to decide upon a possible withdrawal of the immunity.

Article 12
Prevention of abuse

The safeguard clause, in the interest of the public security of the Member States, had been introduced by the Revision Conference of 1980, upon proposal by France. This article (Article 7 of the 1980 Protocol) also obliges the Organisation to co-operate with the competent authorities of the Member States to prevent any abuse.

Article 13
Treatment of own nationals

In addition, the Member States are in any case obliged to grant to their own nationals and to the persons mentioned the following privileges and immunities:

- to the representatives of the Member States, inviolability of all official papers and documents
- to the members of the Organisation's staff, professional immunity and inviolability of all official papers and documents, as well as the fiscal exemptions provided by Article 9, letter d)
- to the experts consulted by the Organisation, professional immunity and inviolability of all official papers and documents.

Article 14
Complementary agreements

With regard to the usefulness of this possibility, see No. 5 of the General Points.