

OTIF



**ORGANISATION INTERGOUVERNEMENTALE POUR
LES TRANSPORTS INTERNATIONAUX FERROVIAIRES**

**ZWISCHENSTAATLICHE ORGANISATION FÜR DEN
INTERNATIONALEN EISENBAHNVERKEHR**

**INTERGOVERNMENTAL ORGANISATION FOR INTER-
NATIONAL CARRIAGE BY RAIL**

**Commission de révision
Revisionausschuss
Revision Committee**

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Partial revision of COTIF – Basic Convention

Explanatory document and suggestions for additions to the Explanatory Report

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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 25th session of the Revision Committee, either for decision (Article 27 of COTIF), or for consideration prior to a decision by the General Assembly.

It also sets out the modifications to the Explanatory Report that should be made as a result of the amendments to these provisions.

In accordance with Article 33 § 4 a) of COTIF, the Revision Committee has the competence to amend Articles 9 and 27, §§ 2 to 5 of COTIF. The General Assembly has the competence to amend all the other Articles of COTIF.

General

The purpose of the proposed amendments to the Basic Convention is firstly, to comply with a recommendation by the Auditor concerning the period covered by the budget and accounts and secondly, to amend Article 20 of COTIF in line with a proposal submitted by the Committee of Technical Experts (CTE) to remove a contradiction between the rules that apply to the CTE and the practical requirement the CTE has to adopt uniform technical prescriptions (UTP).

It is also proposed to align the definition of "keeper" in COTIF with the definition that will be approved in the amendments to the CUV Uniform Rules, and to replace the term "European Communities" with "European Union" in order to take account of the entry into force of the Lisbon Treaty.

Article by Article justification for the amendments

Article 3 International cooperation

Reasons for the proposed amendment

The only aim of the proposed amendment to Article 3 of COTIF is to replace the term "European Communities" with "European Union" in order to take account of the entry into force of the Lisbon Treaty.

Proposed amendment to the Explanatory Report:

It is proposed to add a new paragraph as follows:

- "5. The 12th General Assembly (Bern, ...) decided to replace "the EC" with "the EU" in order to take account of the entry into force of the Lisbon Treaty."

Article 12 Execution of judgements. Attachment

Reasons for the proposed amendment:

The proposed amendment to Article 12 § 5 of the Basic Convention aims to align the definition of the term "keeper" with the definition that will be approved by the Revision Committee in the amendments to the CUV Uniform Rules (see document CR 25/7).

Proposed amendment to the Explanatory Report:

It is proposed to add a new paragraph as follows:

"4. The 12th General Assembly (Bern, ...) decided to align the definition of "keeper" with the definition approved by the Revision Committee in the amendment to Article 2 c) of the CUV UR."

Article 20 Committee of Technical Experts

Reasons for the proposed amendment:

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).

Proposed amendment to the Explanatory Report:

After paragraph 6, it is proposed to add a new paragraph 7 as follows:

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 sub-

mitted a proposal along these lines to the Revision Committee and to the General Assembly.

The 12th General Assembly (Bern, ...) shared the CTE's point of view and decided to adopt the amendment to Article 20 submitted by the CTE.

Current paragraphs 7 and 8 become paragraphs 8 and 9¹.

Article 24

Lists of lines or services

Reasons for the proposed amendment:

The Secretary General's aim in submitting this proposal is 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).

If a carrier ceases to operate a shipping route which is taken over by another carrier, first of all the service is deleted and then it is newly registered. If the periods differ, there is an overlap, which does not reflect what happens in practice. The same one month period should apply in both cases.

Proposed amendment to the Explanatory Report:

It is proposed to amend paragraph 3 as follows:

"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 (Bern, ...) decided 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).**"

¹ The Explanatory Report on the APTU will be adapted as a result.

Article 25 Work Programme Budget. Accounts. Annual Report

Reasons for the proposed amendment:

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.

Proposed amendment to the Explanatory Report:

It is proposed to amend the part of the Explanatory Report dealing with Article 25 as follows:

- "1. **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 Revision Committee decided at its 25th session in 2014 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)."~~

It is proposed to amend the part of the Explanatory Report dealing with Article 26 as follows:

[...]

- "5 At its 25th session, the Revision Committee decided to return to an annual timetable, as recommended by the Auditor (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. ~~With the exception~~

~~of the biennial timetable, the new § 5 corresponds, essentially, to the current Article 12 of the Financing and Accounting Regulations.~~

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."~~

Article 27 **Auditing of accounts**

Reasons for the proposed amendment:

In a recommendation issued in 2012, the Auditor invited OTIF to "do what is necessary to initiate the process of reform of this provision of COTIF at the 25th session of the Revision Committee (RC) so that Art. 27 of COTIF only contains the general elements of the audit of the accounts. I propose to keep § 1, delete § 2 to 5 and to introduce a new § 2 as follows: *"The mandate for the auditing of accounts is defined in the Finance and Accounts Rules and by the additional mandate annexed to the latter"*.

The Secretary General proposes to amend Article 27 of COTIF in order to comply with this recommendation. However, he supports retaining *not only § 1, but also § 3 and § 5 of Article 27 of COTIF*. This is because these provisions enable the auditors' monitoring powers to be guaranteed in their integrity in accordance with the international standards in force.

Following this addition, the deletions and the renumbering of the remaining paragraphs of Article 27, the references in Articles 14 § 6 and 33 § 4 a) of the Convention should be adapted. Subject to the adoption of these amendments by the Revision Committee, the adaptation of these Articles will be proposed to the General Assembly.

Proposed amendments to the Explanatory Report (Articles 9 and 27):

After paragraph 6, it is proposed to add a new paragraph 7 as follows:

- "7. At its 25th session (Bern, 25-27.6.2014), the Revision Committee ultimately decided to keep §§ 1, 3 and 5 of this provision and to add a new § 4 in line with the Auditor's recommendation.

Following this addition, the deletions and the renumbering of the remaining paragraphs of Article 27, the references in Articles 14 § 6 and 33 § 4 a) of the Convention should be adapted on the basis of a decision by the General Assembly."