

OTIF



**ORGANISATION INTERGOUVERNEMENTALE POUR
LES TRANSPORTS INTERNATIONAUX FERROVIAIRES**

**ZWISCHENSTAATLICHE ORGANISATION FÜR DEN
INTERNATIONALEN EISENBAHNVERKEHR**

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

**Secrétaire général
Generalsekretär
Secretary General**

(Translation)

Mr Jean-Eric Paquet
Director
MOVE.B – Réseau européen de mobilité
European Commission (EC)
Directorate-General of mobility and transport
DM 28 6/109
BE-1049 Brussels

Berne, 25 September 2013
A 57-21/3.2013 FDA/FJA

Dear Director

Setting up a more relaxed working framework between the European Commission and OTIF is one of the key objectives of my term of office. I therefore welcome the very effective collaboration between our two organisations, which has enabled us to reveal a common vision of how OTIF's bodies will function.

Please find attached at annex a note for the attention of OTIF's Member States concerning the voting procedures in our technical bodies.

As this note was the subject of in-depth discussions between OTIF and DG MOVE, I am sure you will be able to confirm that you share its conclusions.

In the meantime, I should like to ensure you of my best wishes.

Yours faithfully

Signed François Davenne

Annex ref.

Voting procedures in OTIF's technical bodies - Committee of Technical Experts and RID Committee of Experts

The Secretary General of OTIF is aware of the need to coordinate the work of COTIF in the technical field with the EU, so this note aims to clarify the way in which the representatives of the European Union will work within OTIF's technical groups. This document is purely interpretative and does not create any new legal obligation for OTIF or for the European Union.

This note provides clarification in terms of the increased technical cooperation between the two organisations. The interest in developing the railways presupposes the development of an increased level of interoperability. Owing to its particular position, OTIF is able to play a bridging role between the EU's integrated railway organisation and its Member States that are not in the EU. This new role will require new and better defined methods of cooperation, which must also include clarification of the relationship with the European Railway Agency.

As a result, administrative arrangements have been negotiated between the European Commission, the European Railway Agency and OTIF. These administrative arrangements are set out in the annex to this note, as they form the basis of the conditions for cooperation, which in future will enable the development and implementation of technical regulations with a high level of consensus. A prerequisite for the effective development of interoperability beyond the borders of the European Union is the advance involvement of the Member States of OTIF that are concerned.

With the help of this new framework, the regulations can be developed more quickly and can be made more attractive. At present, only some of the OTIF Member States apply the technical Appendices (C, F and G). The aim is to increase the number of States Parties by demonstrating the usefulness and effectiveness of this approach.

In a letter dated 11 October 2013 (MOVE B2/PG/gt D (2013) 3230124) annexed to this note, the European Commission indicated that it agreed to work within the framework outlined in this note.

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1. The aim of this note is to propose a better understanding of the voting procedures in the organs of OTIF following the accession of the European Union to COTIF. The issue here is to implement:

- the principles set out in the accession agreement of 23 June 2011, which guarantee the independence of the two organisations, and in particular the intergovernmental character of OTIF;
 - the conditions that govern the European Commission, as the representative of the European Union, in order to take part in the various organs of OTIF according to the European Union's competence, whether it be exclusive or shared with the Member States.
2. The agreement on the European Union's accession to COTIF recaps the ways in which the EU can be represented, as set out in the EU Treaties:
- in those areas in which the Treaties confer exclusive competence on the EU, the European Commission speaks and votes on behalf of the European Union;
 - when competence is shared between the EU and its Member States, and insofar as the EU has not exercised its competence or has decided not to continue exercising it, the Member States exercise their competence. In areas of shared competence, the European Union undertakes to inform OTIF in good time whether the European Union or the EU Member States will speak and exercise the right to vote;
 - competences not conferred on the EU by the Treaties remain within the competence of the EU Member States. The way of working in these areas where the EU Member States have exclusive competence is the classic intergovernmental model.

The EU's position on an issue which falls within its exclusive competence or within the EU's shared competence has to be determined in accordance with the EU's internal procedures. Specifically, on a proposal from the European Commission, the Council of the European Union establishes the position of the European Union. This position is the result of an internal decision-making process which ensures that the opinions of the various EU Member States' are expressed, and in particular the opinions of those that are also members of OTIF. The European Commission supports these positions as the representative of the EU.

In addition, the methods of cooperation between OTIF, ERA and the European Commission are enshrined in administrative arrangements (annexed), which ensure that there can be effective advance coordination between the parties, including those States that are not EU members.

3. The European Union's participation within OTIF, particularly the definition of positions at EU level, does not call into question the contribution of OTIF's technical bodies.

The technical organs in which a formal vote is required are as follows:

- The RID Committee of Experts on the Transport of Dangerous Goods;
- The Committee of Technical Experts for the adoption of technical rules.

Voting matters should be viewed dynamically rather than statically. Before holding a formal vote at sessions of these two Committees, the Member States of OTIF and the European Commission, in its capacity of representative of the European Union, take part in technical working groups to prepare the work of the Committees.

In the working groups that prepare the texts submitted to a vote at the RID Committee of Experts and the Committee of Technical Experts, the European Union Member States and the European Commission participate fully in the technical discussions. Good preparation of issues in the technical bodies and, if need be, in dedicated sub-committees, makes it possible to reach compromise positions on the basis of which consensus-based decisions can be taken. However, in the case of a vote, it is ensured that the Member States of OTIF can express any disagreement they might have.

This is because Article 35 of COTIF allows the Member States of OTIF to formulate an objection within the period of four months from the day of the notification of decisions taken by the Committee of Technical Experts or the RID Committee of Experts. In the case of objection by one-quarter of the Member States of OTIF, the modification does not enter into force.

So in all cases, there is a follow-up procedure whereby a decision that might be considered as being contrary to the States' interests can be withdrawn.

The working method therefore makes it possible to reach a consensus in advance so that voting takes place as infrequently as possible.

4. Holding meetings of OTIF's technical committees is conditional upon reaching a quorum. In these organs, the issues discussed are mainly within the exclusive competence of the EU and more rarely, for some of them, competence shared with its Member States.

When acting in its capacity of representative of the European Union, the European Commission expresses the position of all the EU Member States, and not just that of the Member States that are present. In other words, with a view to determining the quorum within OTIF's technical committees, the European Commission represents all the EU Member States whose voting rights are up to date, even if the representatives of these States are not physically present.

There are two advantages to this method:

- it ensures that there is a quorum for both the technical committees;
- it enables the EU Member States to attend meetings only when there are issues in which they are directly interested.

As the matters discussed in the Committee of Technical Experts and the RID Committee of Experts mainly come within the exclusive competence of the EU, the presence of the European Commission representative counts for all the EU Member States whose voting rights are up to date in accordance with Articles 13 § 3 and 16 § 1 of COTIF, and for determining the quorums under COTIF Article 18 § 2 for Appendix C and COTIF Article 20 § 2 for Appendices F and G

To this end, before each meeting of the technical committees, the European Commission, in its capacity of representative of the EU, sends the Secretary General of OTIF an annotated agenda indicating for each question to be put to the vote:

- (a) whether it will exercise the voting rights for the EU Member States; in this case, when these questions are discussed, the representative of the EU may vote on behalf of all the EU Member States;**

or

- (b) whether, in the areas of shared competence, the EU Member States will exercise their right to vote individually, whether they are present or whether they have given a proxy to another Member State of OTIF.**

(Translation)

EUROPEAN COMMISSION
Directorate-General for Mobility and Transport

Directorate B – Réseau européen de mobilité
The Director

Brussels, 11 Oct. 2013
MOVE B2/PG/gt D (2013) 3230124

Mr Françoise Davenne
Secretary General
Intergovernmental Organisation
for International Carriage by Rail
Gryphenhübeliweg 30
CH – 3006 Berne

Dear Secretary General

In reply to your letter of 25 September 2013 concerning the voting procedures in OTIF's technical bodies, I should also like to say how pleased I am that it has been possible to find an agreement between our respective services. The explanatory note you sent me will allow those Member States of OTIF that are not members of the EU to gain a better understanding of the framework in which the Commission, as the representative of the EU, is able to exercise all the voting rights of the Member States, even when they are not physically present.

Yours faithfully

Signed Jean-Eric PAQUET