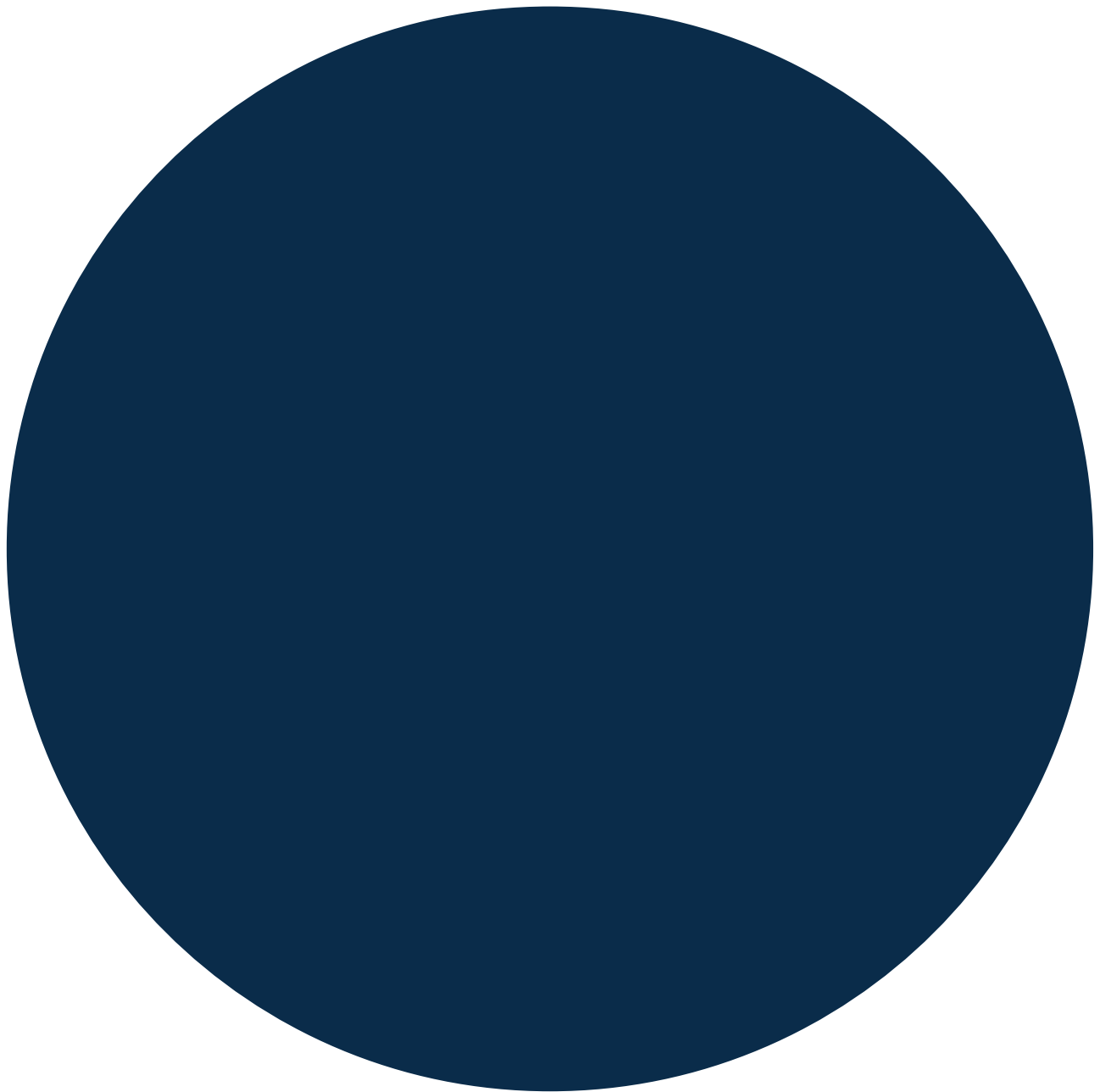


AWARENESS DOCUMENT

Approval of the modifications adopted at the 12th and 13th sessions
of the General Assembly



CALL FOR THE EXPEDITED APPROVAL OF THE MODIFICATIONS

Introduction

The Convention concerning International Carriage by Rail ([COTIF](#)) is an international agreement concluded between states. COTIF established the Intergovernmental Organisation for International Carriage by Rail (OTIF) and establishes uniform railway law for international railway transport among OTIF's members ([OTIF membership and application of appendices to COTIF](#)).

The aim of OTIF is to promote, improve and facilitate, in all respects, international traffic by rail, as provided in Article 2 § 1 of COTIF. OTIF pursues this aim primarily through the development, adoption and application of uniform rules governing international railway transport. Like any legal system, COTIF must remain relevant over time and be capable of responding to legal, economic, technological and other developments. This is achieved by modifying the provisions of COTIF. However, modifications have legal effect only once they have entered into force and are effectively applied.

COTIF provides for two principal ways of modifying the Convention and its appendices: by means of modifications adopted by the General Assembly and by means of those adopted by the various Committees in accordance with Article 33 of COTIF. This document concerns modifications adopted by the General Assembly at its 12th and 13th sessions.

Call for the expedited approval of the modifications adopted in 2015 and 2018

At its 12th session in 2015, the General Assembly adopted modifications to the Base Convention, as well as modifications to Appendices D (CUV UR)¹, F (APTU UR)² and G (ATMF UR)³. At its 13th session in 2018, the General Assembly adopted further modifications to the Base Convention, modifications to Appendices E (CUI UR)⁴ and G (ATMF UR) and a new Appendix H (EST UR)⁵.

The entry into force of the modifications adopted by the General Assembly at its 12th and 13th sessions is still pending because the required number of approvals by Member States under Article 34 of COTIF (see p. 9) has not yet been reached ([overview of the current state of approvals](#)). Until the modifications enter into force, the current provisions apply in all Member States⁶, including in those

Member States which have already approved the modified provisions.

It is in the collective interest of OTIF, its Member States and the railway sector that the modifications referred to above enter into force as soon as possible. Member States that have not yet approved these modifications are therefore strongly encouraged to take the necessary steps to do so as soon as possible.

Timely approval by Member States is essential. It will enable the reforms adopted in 2015 and 2018 to take legal effect, strengthen the legal system of COTIF and ensure that OTIF remains fit for purpose and able to continue adapting its legal framework to the needs of international rail transport.

¹ Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic (CUV – Appendix D to the Convention)

² Uniform Rules concerning the Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic (APTU – Appendix F to the Convention)

³ Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (ATMF – Appendix G to the Convention)

⁴ Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI – Appendix E to the Convention)

⁵ Uniform Rules concerning the Safe Operation of Trains in International Traffic (EST – Appendix H to the Convention)

⁶ With the exception of those which have made a declaration (reservation) not to apply a particular Appendix to COTIF pursuant to Article 42 § 1, first sentence, of COTIF.

Approval of the modifications to the Convention adopted by the General Assembly at its 12th and 13th sessions – a short guide

Depositary of the Convention

Under the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Modification Protocol of 3 June 1999, the functions of Depositary are assumed by the Secretary General of OTIF (cf. Article 21 § 3 of [COTIF](#) and par. 3 ff. of the [Guidelines on treaty acts under COTIF](#)).

Requirements with regard to the instrument of approval

Original instrument

The Depositary can only accept original instruments as valid. This means that only a physical, hard copy fulfils the necessary criteria (cf. Annex V of the [Guidelines on treaty acts under COTIF](#)). Only the original paper instrument signed by hand will be accepted. Electronically signed instruments will not be accepted.

The Secretariat is very conscious of the highly complicated and specific nature of an instrument of approval and therefore kindly requests Member States first to send a digital copy of a draft instrument for review to the Department of Legal and External Affairs (law@otif.org), before it is finalised by the competent authorities. This is to ensure that the final version is legally valid and can be accepted by the Depositary.

All instruments should be addressed to:

Intergovernmental Organisation for International Carriage by Rail
Department of Legal and External Affairs
Gryphenhübeliweg 30
3006 Bern
Switzerland

Linked below **are model instruments for approval** of the modifications adopted by the General Assembly

[at its 12th session](#);
[at its 13th session](#);
[at its 12th and 13th sessions](#).

Who can sign an instrument of approval?

In accordance with internationally recognised practice, an instrument signed by the Head of State, Head of Government or Minister for Foreign Affairs ('Qualified Authorities') is valid and expresses consent to be bound by the modifications (cf. par. 17 ff. and Annex V of the [Guidelines on treaty acts under COTIF](#)).

For anyone else to be able to sign an instrument of approval, that person will have to produce full powers.

Linked below are **model instruments of full powers** regarding the approval of the modifications adopted by the General Assembly

[at its 12th session](#);
[at its 13th session](#);
[at its 12th and 13th sessions](#);

as well as a model instrument of [general full powers](#).

Thus, if a person other than the three Qualified Authorities were to sign, the Depositary would require two instruments: the instrument of full powers and the instrument of approval.

Modifications adopted by the General Assembly at its 12th session

Modifications to the Base Convention

[Authentic text](#) of the modifications notified by the Depositary. Relevant modifications to the [Consolidated Explanatory Report](#), as amended.

Summary of modifications

Article 3 'International cooperation': the term 'European Communities' is replaced by 'European Union'.

Article 12 'Execution of judgements. Attachment': the definition of 'keeper' is aligned with the definition in the CUV UR adopted by the Revision Committee at its 25th session.

Articles 14 'General Assembly', 15 'Administrative Committee', 25 'Work programme. Budget. Accounts. Management report' and 26 'Financing the expenditure': the modifications mainly concern the financial and budgetary cycle of the Organisation. They return to an annual timetable for the budget, accounts, management report, contributions and treasury advance, while retaining a two-year period for the work programme. The General Assembly fixes, for three-year periods instead of six-year periods, the maximum amount that the expenditure of the Organisation may reach in each budgetary period.

Article 20 'Committee of Technical Experts': the modification clarifies the powers of the Committee of Technical Experts concerning technical standards and uniform technical prescriptions. The Committee may validate or reject technical standards, but may not modify them. By contrast, it may adopt or modify uniform technical prescriptions.

Article 24 'Lists of lines or services': the amendment harmonises the period after which a maritime or inland waterway service, or a railway line, becomes subject

to COTIF following its inclusion, and the period after which it ceases to be subject to COTIF following its deletion.

Article 33 'Competence': the amendment adjusts the competence of the Revision Committee by updating the reference to the provisions falling within its competence, following the modification of Article 27 by the Revision Committee at its 25th session.

Modifications to Appendix D (CUV) Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic

[Authentic text](#) of the modifications notified by the Depositary. Relevant modifications to the [Consolidated Explanatory Report](#), as amended.

Summary of modifications

A new Article 1a (Areas governed) is added to the CUV Uniform Rules to make clear that the CUV Uniform Rules 'govern only the rights and obligations of the parties which arise from a contract concerning the use of railway vehicles as means of transport for carriage in accordance with the CIV Uniform Rules and in accordance with the CIM Uniform Rules' and that '[p]ublic law prescriptions applicable to the use of railway vehicles, in particular those prescriptions relating to the technical admission of vehicles, to maintenance and to operational safety, shall remain unaffected.'

An additional provision is added to Article 9 to confirm expressly that the entity in charge of maintenance (ECM) 'shall be considered as a person whose services the keeper makes use of.' This is done by inserting a new Article 9 § 3, with the existing Article 9 § 3 becoming Article 9 § 4, with one minor amendment to refer additionally to the new Article 9 § 3.

Modifications to Appendix F (APTU)

Uniform Rules concerning the Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic

[Authentic text](#) of the modifications notified by the Depositary. Relevant modifications to the [Consolidated Explanatory Report](#), as amended.

Summary of modifications

In Article 3, the term ‘other railway material’ is deleted.

The aim as set out in Article 3 § 1 a) is now to facilitate the free circulation of vehicles in international traffic. The previous additional aim to ‘facilitate the free use of other railway material in international traffic’ is deleted.

The justification for the deletion was that the term ‘other railway material’ seemed to serve no practical purpose. An additional argument was that the term ‘other railway material’ had no equivalent in European Union (EU) law, meaning that any requirement relating to ‘other railway material’ could become a source of incompatibility between COTIF and EU law and, as such, hamper international railway traffic or make it more difficult.

Modifications to Appendix G (ATMF)

Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic

[Authentic text](#) of the modifications notified by the Depositary. Relevant modifications to the [Consolidated Explanatory Report](#), as amended.

Summary of modifications

In Articles 1 and 3, the term ‘other railway material’ is deleted.

The justification for this is that the term has been deleted from Appendix F (APTU).

Note: at its 25th session (25–26 June 2014), as a first step, the Revision Committee deleted all references to ‘other railway material’ insofar as this was within its competence. This concerned all Articles except Articles 1 and 3, as only the General Assembly is competent to decide on modifications to these Articles.

Modifications adopted by the General Assembly at its 13th session

Modifications to the Base Convention

[Authentic text](#) of the modifications notified by the Depositary ([correction of 03.12.2018](#)). Relevant modifications to the [Consolidated Explanatory Report](#).

Summary of modifications

Articles 2 and 6 are modified to align the terminology used in the CUI UR to read 'Railway Infrastructure' and 'Railway Traffic' and to reflect the addition of new Appendix H (EST).

Article 20 is modified to describe the functioning of the Committee of Technical Experts after the addition of new Appendix H (EST).

Article 33 is modified to define the competences to modify Appendix G (ATMF) and Appendix H (EST). In particular, the Committee of Technical Experts is competent to adopt Annexes to Appendix G (ATMF) and Appendix H (EST). Furthermore, the Revision Committee is competent to adopt modifications to Appendix G (ATMF), except Articles 1, 3 and 9, and to Appendix H (EST), except Articles 1 and 9, for which only the General Assembly is competent.

Article 34 is modified to change the procedure for the entry into force of modifications to appendices to COTIF adopted by the General Assembly.

The modifications to Article 34 of COTIF are of major importance because they will simplify the future entry into force of modifications to the appendices adopted by the General Assembly. Under the rules currently in force, modifications to the appendices adopted by the General Assembly require the approval of a certain number of Member States before they can enter into force. In contrast, once the 2018 modifications to Article 34 enter into force, future modifications to the appendices adopted by the General Assembly will no longer require separate approval by Member States. Instead, they will enter into force after a specified period of time following notification by the Secretary General, unless a certain number of Member States make a declaration of non-approval. In other words, the 2018 reform replaces a system of conditional entry into force based on prior approval with a system of automatic entry into force, provided a certain number of objections is not reached. In the absence of objections or if objections remain below a set threshold, the modifications will enter into force without any further action being required from Member States. This will make the procedure for modifying the appendices significantly more efficient and better suited to the modern pace of legal and technical developments in the railway sector.

Article 35 is modified to enable the possibility of making objections to the adoption of modifications to an Annex to Appendix H (EST) (once an Annex has been adopted by the Committee of Technical Experts).

Modifications to Appendix E (CUI)

Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic

[Authentic text](#) of the modifications notified by the Depositary ([correction of 03.12.2018](#)). Relevant modifications to the [Consolidated Explanatory Report](#).

Summary of modifications

The amendments mainly clarify the scope of application of the CUI UR. They make clear that the CUI UR apply to every contract of use of railway infrastructure in a Member State in ‘international railway traffic’, insofar as the purpose of the contract is international carriage by rail within the meaning of the CIV UR and CIM UR. Following the revision of the scope of application, a new definition of ‘international railway traffic’ is introduced. The definitions of ‘manager’, ‘carrier’ and ‘safety certificate’ are also amended. In addition, the liability provisions are clarified, in particular as regards the manager’s liability for pecuniary loss resulting from damages payable by the carrier under the CIV UR or CIM UR.

Modifications to Appendix G (ATMF)

Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic

[Authentic text](#) of the modifications notified by the Depositary. There were no amendments to the Explanatory Report.

Summary of modifications

In Articles 1, 3 and 9, the term ‘railway vehicle’ is replaced by ‘vehicle’.

The 26th Revision Committee decided only to use ‘vehicle’ and not ‘railway vehicle’ in the Articles for which it was competent. The General Assembly decided to align Articles 1, 3 and 9, which fall within its exclusive competence.

In Article 3 § 3 of the German version, ‘Bauteile von Eisenbahnfahrzeugen’ is replaced with ‘Baulemente’. This was necessary to align with the definition in Article 2 g). This modification did not affect the French and English versions.

New Appendix H (EST)

Uniform Rules concerning the Safe Operation of Trains in International Traffic

[Authentic text](#) of the modifications notified by the Depositary. Relevant modifications to the [Consolidated Explanatory Report](#).

Summary of modifications

The EST UR (Appendix H to COTIF) provide the missing operational and safety pillar for running complete trains across borders, complementing the existing technical framework for vehicles and infrastructure under the APTU UR and ATMF UR. They set out common principles and responsibilities for the safe operation of trains in international traffic, in particular by requiring railway undertakings and infrastructure managers to implement and apply safety management systems, defining the role of independent safety certification and supervision authorities and providing a framework for harmonised operational and safety rules and the mutual recognition of safety certificates. Consequently, the EST UR will make it easier for trains composed of vehicles admitted to international traffic in accordance with the APTU UR and ATMF UR to run safely and efficiently on the networks of several Member States without unnecessary operational interfaces or duplicative assessments. OTIF Member States can use the EST UR as a modern, harmonised framework to make international train operations safer and more efficient. Moreover, the EST UR are designed to be compatible with the EU Railway Safety Directive and to support interoperability beyond the EU.

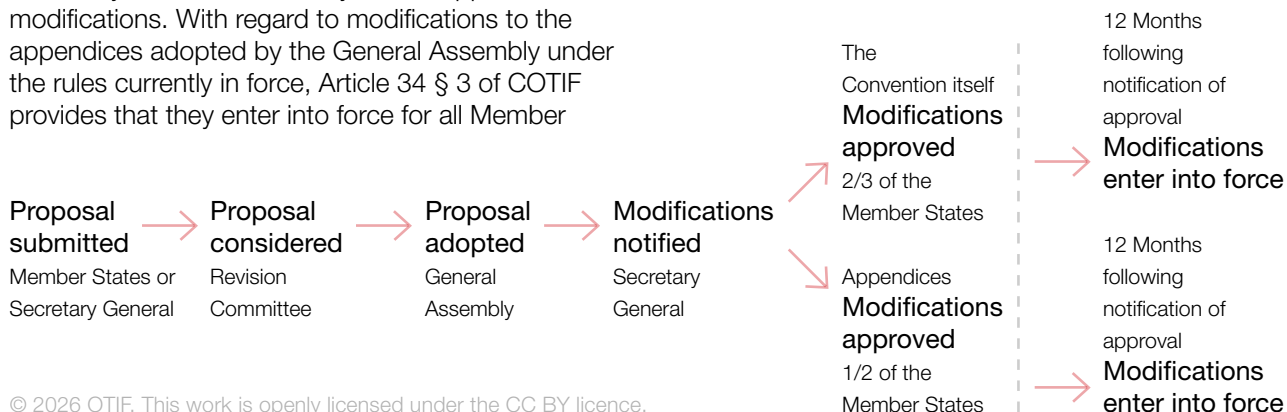
Adoption of modifications by the General Assembly

The General Assembly is competent to adopt modifications to the Convention and its appendices, unless the proposed modifications fall expressly within the competence of particular Committees, as described in Article 33 of COTIF. Once adopted by the General Assembly, the modifications are final and must be notified by the Secretary General in his capacity as Depositary of COTIF. Following such notification, modifications adopted by the General Assembly require the approval of a certain number of Member States before they enter into force. Until they do, the modifications do not alter the text of COTIF currently in force, which is the only one applicable.

Regarding modifications to the Convention itself, Article 34 § 2 of COTIF provides that they enter into force for all Member States twelve months after their approval by two-thirds of the Member States, except for those Member States which declare, before their entry into force, that they do not approve the modifications. With regard to modifications to the appendices adopted by the General Assembly under the rules currently in force, Article 34 § 3 of COTIF provides that they enter into force for all Member

States twelve months after approval by half of the Member States which have not made a declaration in respect of the appendix concerned under Article 42 § 1 of COTIF, except for those which declare that they do not approve the modifications.

Accordingly, approval by Member States is a necessary condition for entry into force. However, approval by a Member State does not render the modifications binding on the approving Member State before the relevant approval threshold has been reached and the modifications have entered into force in accordance with COTIF. It should be emphasised that, for each appendix to COTIF, only one version can be in force at any given time; however, the application of that appendix may be suspended in relation to Member States that have made a declaration of non-approval in accordance with Article 34 of COTIF.



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Modifications adopted by the General Assembly

For each of the modifications adopted by the General Assembly, links to the authentic text of the modifications, as notified by the Depositary, are provided above. At the time of the adoption of modifications, the General Assembly also usually

approves modifications to the Consolidated Explanatory Report. The Explanatory Report serves two purposes: an official commentary and a summary of preparatory work ('travaux préparatoires').

A final word on approval

Member States that have not yet done so are strongly encouraged to approve the modifications described above without delay. Their prompt entry into force is in the collective interest of OTIF, its Member States and the railway sector as a whole.



OTIF

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