

**DECLARATION BY THE EUROPEAN UNION
IN RESPECT OF ARTICLE 2 OF THE AGREEMENT**

The term "governing the particular subject concerned" is to be understood as applying to the specific case which is governed by a provision of the Convention, including its appendices, and is not governed by European Union legislation.

DECLARATION BY THE EUROPEAN UNION CONCERNING THE EXERCISE OF COMPETENCE

In the rail sector, the European Union (hereinafter referred to as "the Union") shares competence with the Member States of the Union (hereinafter referred to as the "Member States") pursuant to Articles 90 and 91, in conjunction with Article 100(1), and Articles 171 and 172 of the Treaty on the Functioning of the European Union (TFEU).

Title VI of the TFEU establishes the Union's common transport policy, and Title XVI provides for the Union's contribution to the establishment and development of trans-European networks in the area of transport.

More specifically, Article 91 of Title VI of the TFEU provides that the Union may adopt:

- common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;
- the conditions under which non-resident carriers may operate transport services within a Member State;

- measures to improve transport safety;
- any other appropriate provisions.

With regard to trans-European networks, Article 171 of Title XVI of the TFEU provides, more specifically, that the Union:

- shall establish a series of guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks; these guidelines shall identify projects of common interest;
- shall implement any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical standardisation;
- may support projects of common interest supported by Member States, which are identified in the framework of the guidelines referred to in the first indent, particularly through feasibility studies, loan guarantees or interest-rate subsidies; the Union may also contribute, through the Cohesion Fund, to the financing of specific projects in Member States in the area of transport infrastructure.

On the basis of these two provisions the Union has adopted a substantial number of legal instruments applicable to rail transport.

Under Union law, the Union has acquired exclusive competence in matters of rail transport where the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999, (hereinafter referred to as "the Convention") or legal instruments adopted pursuant to it may affect or alter the scope of these existing Union rules.

For subject matters governed by the Convention in relation to which the Union has exclusive competence, Member States have no competence.

Where Union rules exist but are not affected by the Convention or legal instruments adopted pursuant to it, the Union shares competence on matters in relation to the Convention with Member States.

A list of the relevant Union instruments in force at the time of the conclusion of the Agreement is contained in the Appendix to this Annex. The scope of the Union competence arising out of these texts has to be assessed in relation to the specific provisions of each text, especially the extent to which these provisions establish common rules. Union competence is subject to continuous development. In the framework of the Treaty on European Union and the TFEU, the competent institutions of the Union may take decisions which determine the extent of the competence of the Union. The Union therefore reserves the right to amend this declaration accordingly, without this constituting a prerequisite for the exercise of its competence in matters covered by the Convention.

**EUROPEAN UNION INSTRUMENTS RELATING TO SUBJECTS
DEALT WITH BY THE CONVENTION**

To date, the Union has exercised its competence inter alia through the following Union instruments:

ECONOMIC / MARKET ACCESS LEGISLATION

- Regulation No 11 concerning the abolition of discrimination in transport rates and conditions, in implementation of Article 79 (3) of the Treaty establishing the European Economic Community (OJ 52, 16.8.1960, p.1121);
- Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ L 237, 24.8.1991, p. 25);
- Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (OJ L 143, 27.6.1995, p. 70);
- Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways (OJ L 75, 15.3.2001, p. 1);

- Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings (OJ L 75, 15.3.2001, p. 26);
- Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ L 75, 15.3.2001, p. 29);
- Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways (OJ L 164, 30.4.2004, p. 164, corrected version in OJ L 220, 21.6.2004, p. 58);
- Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14);
- Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure (OJ L 315, 3.12.2007, p. 44);

INTEROPERABILITY AND SAFETY LEGISLATION

- Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ L 235, 17.9.1996, p. 6);
- Directive 2001/16/EC of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system (OJ L 110, 20.4.2001, p. 1);
- Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ L 164, 30.4.2004, p. 44, corrected version in OJ L 220, 21.6.2004, p. 16);
- Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system (OJ L 164, 30.4.2004, p. 114, corrected version in OJ L 220, 21.6.2004, p. 40);

- Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (Agency Regulation) (OJ L 164, 30.4.2004, p. 1, corrected version in OJ L 220, 21.6.2004, p. 3);
- Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community (OJ L 315, 3.12.2007, p. 51);
- Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (Recast) (OJ L 191, 18.7.2008, p. 1);
- Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (OJ L 260, 30.9.2008, p. 13);
- Directive 2008/110/EC of the European Parliament and of the Council of 16 December 2008 amending Directive 2004/49/EC on safety on the Community's railways (Railway Safety Directive) (OJ L 345, 23.12.2008, p. 62);

- Regulation (EC) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation (EC) No 881/2004 establishing a European Railway Agency (Agency Regulation) (OJ L 354, 31.12.2008, p. 51);
- Regulation (EU) No 913/2010 of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight (OJ L 276, 20.10.2010, p. 22);

PUBLIC SERVICE OBLIGATIONS

- Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road (OJ L 315, 3.12.2007, p. 1).
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