EXPLANATORY MEMORANDUM ON EUROPEAN UNION DOCUMENT

Proposal for a COUNCIL DECISION establishing the position to be adopted by the Union at the 12th General Assembly of OTIF as regards certain amendments to the Convention concerning International Carriage by Rail (COTIF) and to its Appendices

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Submitted by the Department for Transport 7 September 2015

SUBJECT MATTER

1. The Convention concerning International Carriage by Rail of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999, ("COTIF 1999") is a mixed agreement, where both the EU and the 26 Member States which have railway networks are contracting parties. When the EU acceded to COTIF 1999 in 20111, it made a declaration concerning the exercise of competence and agreed internal arrangements for the Council, the Member States and the Commission in proceedings under OTIF. In areas where the EU has exclusive competence, the EU votes with the number of votes of all Member States which are parties to COTIF 1999. In other areas, where EU rules exist but are not affected by COTIF 1999 or legal instruments adopted pursuant to it, the EU shares external competence with the Member States and either the EU or the Member States may choose to act.

2. The proposed Council Decision will establish the position to be adopted on behalf of the European Union and its Member States on some of the items that the forthcoming 12th General Assembly (29-30 September 2015) of the Intergovernmental Organisation for International Carriage by Rail (OTIF) will vote on. These items include election of a Secretary-General, proposed amendments to the COTIF 1999 Basic Convention and to the following Appendices:

- **D** – Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic;
- **F** – 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; and

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• G – Uniform Rules concerning Technical Admission of Railway Material used in International Traffic.

3. The amendments to Appendix D clarify the roles of the “keeper” and the “entity in charge of maintenance” (both concepts from EU law) in the contracts of use of vehicles in international rail traffic. The amendments to Appendices F &G clarify their scope by the deletion of the reference to “other railway material”. The amendments to the Basic Convention update the tasks of the Committee of Technical Experts in line with EU law, amend the definition of “keeper” in line with the amendments to Appendix D and modify certain rules concerning the financing of OTIF, its auditing and reporting.

SCRUTINY HISTORY

4. None for these documents. The proposal that resulted in Council Decision 2013/103/EU was the subject of EM 12802/09. The House of Commons European Scrutiny Committee considered the EM on 14 October 2009. The Committee recommended that the document was not legally or politically important and cleared it (Report 29, Session 2008/2009, 30883). The House of Lords Select Committee on the European Union cleared the EM at the 1369th sift on 13 October 2009.

5. The proposal that resulted in Council Decision 2014/699/EU was the subject of EM 10823/14. The House of Commons European Scrutiny Committee considered the EM on 18 June 2014. The Committee recommended that the document was not legally or politically important and cleared it (Report 3, Session 2014/2015, 36120). The House of Lords Select Committee on the European Union cleared the EM at the 1548th sift on 18 June 2014.

MINISTERIAL RESPONSIBILITY

6. The Secretary of State for Transport.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

7. The Department for Transport represents the UK in negotiations on COTIF. The devolved administrations have been consulted in the preparation of this Explanatory Memorandum.

LEGAL AND PROCEDURAL ISSUES

8.

i. Legal basis
   Article 91 TFEU, read in conjunction with Article 218(9) TFEU.

ii. European Parliament Procedure
   There is no requirement to get the European Parliament’s consent under Article 218(9) TFEU. The European Parliament must, however, be kept immediately and fully informed in accordance with Article 218(10) TFEU.

iii. Voting procedure
    Qualified Majority Voting.
iv. Impact on United Kingdom Law
COTIF 1999 was implemented in the UK by the Railways (Convention on International Carriage by Rail) Regulations 2005 (SI 2005/2092), as amended. The Regulations give effect to the Basic Convention and to its Appendices as modified in accordance with its provisions from time to time whether such modification occurs before or after the coming into force of the Regulations. Therefore, no further changes are required to UK legislation.

v. Application to Gibraltar
The proposal does not affect Gibraltar.

vi. Fundamental rights analysis
The proposal does not interfere with fundamental rights.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

9. EU legislation on COTIF matters has EEA relevance. EEA members with railways are all COTIF signatories, and so will apply the changes if agreed.

SUBSIDIARITY

10. The amendments to Appendices F and G and to Article 20 of the Basic Convention (updating the tasks of the Committee of Technical Experts) fall with an area of exclusive EU competence so subsidiarity does not apply. The EU shares competence with the Member States in relation to the other agenda items where the Council is proposing to adopt an EU coordinated position: the amendments to Appendix D and to Article 12 of the Basic Convention (updating the definition of "keeper"). These amendments are consistent with the EU's strategic objective to promote amendments to COTIF 1999 that are consistent with EU legislation. The Government supports this approach. The EU contingent constitutes over 50% of the States acceding to COTIF. Acting together, the EU has become an increasingly powerful lobby. The Government is satisfied that the proposal to adopt a coordinated EU position in relation to these amendments is justified in accordance with the principles of subsidiarity as set out in Article 5 TEU.

POLICY IMPLICATIONS

11. In line with a request from the Commission, and together with most other EU Member States, the UK has recently lifted the declaration it made on ratification of COTIF 1999 that it would not apply Appendices F and G on the basis that they conflicted with European Union law at the time. Therefore the UK vote will now be included when the EU votes on the amendments to Appendices F and G at the General Assembly.

12. The General Assembly agenda items of most interest to the UK are:

(i) Item 5: Election of a Secretary General. There are 2 candidates: the incumbent François Davenne from France and challenger Sylvia Leodolter from Austria. The Government has been content with the work of the current incumbent.

(ii) Item 8: Partial revision of the Basic Convention.
(iii) Item 10: Partial revision of Appendix D (Contracts of Use of Vehicles in International Traffic).

13. Updating the definition of “keeper” in Article 12 of the Basic Convention (part of Agenda Item 8) and the amendments to Appendix D (Agenda Item 10) are currently the subject of EU litigation in Case C-600/14 Germany v the Council where Germany seeks the partial annulment of the 2014 Council Decision establishing the EU coordination position on these amendments at the OTIF Revision Committee.

14. While the UK has no concerns with the substance of these amendments, we have intervened in support of parts of Germany’s case because we think the Council has gone further than it should and asserted that the EU has exclusive external competence when in the UK’s view it only shares competence with the Member States. The UK is lobbying with other Member States to seek to secure changes that make clear that the EU shares competence with the Member States as regards this amendment. This is consistent with our position in the litigation. The Presidency has put forward a suggested compromise text which will be discussed in a working group on 8 September which, however, does not yet go far enough to meet our objectives. If we are unable to achieve the revisions we are looking for, we are proposing to abstain.

CONSULTATION

15. The amendments to COTIF 1999 have been discussed at meetings of dedicated working groups within OTIF. As such, stakeholders are fully engaged in the development process and are expected to broadly welcome the proposals. No further consultation is planned.

IMPACT ASSESSMENT

16. No impact assessment is necessary for these amendments as they make minor changes that are based on EU legislation which the UK already applies.

FINANCIAL IMPLICATIONS

17. No new financial implications are expected as a result of this proposal.

TIMETABLE

18. The proposed Decision will be considered by the Council of Ministers, possibly on 18 September 2015, in advance of the vote in the OTIF General Assembly on 29-30 September.

Claire Perry
Parliamentary Under-Secretary of State
Department for Transport