



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.11.2003
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2003/0269 (CNS)

Proposal for a

COUNCIL DECISION

on the conclusion by the European Community of the Agreement on the Accession of the European Community to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. With this communication the Commission is submitting to the Council a proposal for a Decision authorising the Community to conclude an Agreement defining the terms of its accession to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999.
2. On 28 March 2003, the Council authorised the Commission to enter into negotiations with the Contracting Parties to COTIF in order to reach agreement on the Community's accession to that Convention under an Agreement by virtue of Article 38 of the revised COTIF. The Council Decision included negotiating directives and instructions for the Community's accession to the COTIF.
3. The special committee established by the Council Decision met on 17 June 2003 to examine the negotiating position presented by the Commission. Consultation with the special committee produced observations and made it possible to forward a preliminary negotiating position to the Intergovernmental Organisation for International Carriage by Rail (OTIF).
4. On 27 June 2003 a single negotiating session held at OTIF headquarters in Bern produced a joint draft Agreement text.
5. The Community's accession is permitted under Article 38 of the COTIF as amended by the Vilnius Protocol, which makes provision for the accession of regional economic integration organisations. The Vilnius Protocol therefore needs to have entered into force following ratification by at least two thirds of the signatories. Consequently, it is important that Member States continue and complete the ratification procedure in order that the Community may accede.

In the light of these considerations and in accordance with the established procedures, the Commission:

- recommends that Member States complete the procedures to ratify the Vilnius Protocol in order that the Community may accede to COTIF;
- proposes that the Council adopt the attached Decision.

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on the conclusion by the European Community of the Agreement on the Accession of the European Community to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 71 and 300(2) and (3) thereof,

Having regard to the proposal from the Commission,¹

Having regard to the Opinion of the European Parliament,²

Whereas:

- (1) The development of rail interoperability, both within the Community and between the Community and neighbouring countries, is a key component of the transport policy, targeted in particular at establishing a better balance between the various modes of transport.
- (2) The European Community has exclusive competence or shared competence with its Member States in the areas covered by the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999.
- (3) The European Community's accession to COTIF for the purpose of exercising its competence is permitted by virtue of Article 38 of the COTIF as amended by the Vilnius Protocol and will be able to take effect once the latter has entered into force following the period of ratification.
- (4) On behalf of the Community, the Commission has negotiated an Agreement on the Accession of the European Community to COTIF with the Contracting Parties to COTIF.
- (5) The Accession Agreement needs to be concluded in order to be applied immediately after the Vilnius Protocol enters into force.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement on the Accession of the European Community to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999, is hereby approved on behalf of the Community. The text of the Agreement and the related declarations by the Community are attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person empowered to sign the Agreement in order to express the Community's consent to be bound thereby, to make the related declarations and to deposit the instrument of approval on the Community's behalf.

The deposit of the instrument of approval is conditional upon the entry into force of the Vilnius Protocol of 3 June 1999 amending the COTIF.

Done at Brussels, [...]

For the Council
The President
[...]

ANNEX 1

AGREEMENT

**ON THE ACCESSION OF THE EUROPEAN COMMUNITY TO THE
CONVENTION CONCERNING INTERNATIONAL CARRIAGE BY RAIL (COTIF)
OF 9 MAY 1980, AS AMENDED BY THE VILNIUS PROTOCOL OF 3 JUNE 1999**

THE INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL CARRIAGE
BY RAIL

AND

THE EUROPEAN COMMUNITY,

Having regard to 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", and in particular Article 38 of the said Convention,

Having regard to the responsibilities which the Treaty of 25 March 1957 establishing the European Community, as revised by the Treaty of Nice of 26 February 2001, confers on the European Community in certain areas covered by the Convention,

Whereas the Convention establishes an Intergovernmental Organisation for International Carriage by Rail (OTIF), the headquarters of which are at Bern;

Whereas, by virtue of Article 3 of the Convention, the obligations arising out of the Convention with regard to international cooperation do not take precedence, for Member States which are also Members of the European Communities or States party to the Agreement on the European Economic Area, over their obligations as Members of the European Communities or as States party to the Agreement on the European Economic Area;

Whereas the purpose of the European Community's accession to the Convention is to assist OTIF in pursuing its objective of promoting, improving and facilitating international rail transport from both the technical and legal angles;

Whereas the European Community's accession to the Convention requires the rules for applying the provisions of the Convention to the European Community and its Member States to be clearly established;

Whereas the conditions of the European Community's accession to the Convention must allow the Community to exercise within the Convention the competences conferred on it by its Member States,

HAVE AGREED AS FOLLOWS:

Article 1

The European Community hereby accedes to the Convention under the terms and conditions laid down in this Agreement, in accordance with Article 38 of the Convention.

Article 2

Subject to the provisions of this Agreement, provisions in the Convention shall be so interpreted as also to include the European Community, within the framework of its competence, and the various terms used to designate the Contracting Parties to the Convention and their representatives are to be understood accordingly.

Article 3

The European Community will not contribute to the budget of OTIF and will not take part in decisions concerning that budget.

Article 4

1. Without prejudice to the exercise of its voting rights under Article 6, the European Community shall be entitled to be represented and involved in the work of all OTIF bodies in which any of its Member States is entitled to be represented as a Contracting Party, and where matters falling within its competence may be dealt with. In all OTIF bodies in which it may participate, the European Community will present its positions, within the framework of its competence, in accordance with its institutional rules.
2. The European Community shall be represented by the European Commission. The European Commission may mandate one or more of the Member States of the Community to represent it.

Article 5

1. For decisions in matters where the European Community has exclusive competence, the European Community shall exercise the voting rights of its Member States under the Convention. Subject to Article 26(7) of the Convention, it shall have a number of votes equal to that of its members who are also member States of OTIF. When the Community votes, its Member States shall not vote.
2. For decisions in matters where the European Community shares competence with its Member States, either the European Community or its Member States shall vote. When the European Community votes, it shall have a number of votes equal to that of its Members who are also member States of OTIF, and the latter shall not vote.
3. The European Community shall, on a case-by-case basis, inform the other Contracting Parties to the Convention of the cases where, with regard to the various items on the agendas of the General Assembly and the other deliberating bodies, it will exercise the voting rights provided for in paragraphs 1 and 2 above. This obligation shall also apply when decisions are taken by correspondence.

Article 6

The scope of the competence transferred to the Community shall be indicated in general terms in a written declaration made by the European Community at the time of the conclusion of

this Agreement. This declaration may be modified as appropriate by notification from the European Community to OTIF. It shall not replace or in any way limit the matters that may be covered by the notifications of Community competence to be made prior to OTIF decision-making by means of formal voting or otherwise.

Article 7

The European Community shall be represented on the RID Expert Committee by the European Commission, which, for reasons of technical expertise, will generally mandate European Community Member States to represent it. However, the European Commission may at any time exercise the right provided for in Article 33(5) of COTIF, whereby one third of the Member States represented on the Committee may request that a proposal presented to the Committee be submitted to the General Assembly for decision.

Article 8

Title V of the Convention shall apply to any dispute arising between the Contracting Parties to this Agreement in respect of the interpretation, application or implementation of this Agreement, including its existence, validity and termination.

Article 9

This Agreement shall enter into force when the OTIF General Assembly approves its conclusion by the Community and OTIF.

Article 10

Each accession to the Convention after its entry into force shall also constitute consent to be bound by this Agreement.

Article 11

This Agreement shall remain in force for an indefinite period.

If all OTIF Member States which are Members of the European Community denounce the Convention, notification of that denunciation, as well as of denunciation of this Agreement, shall be considered to have been given by the European Community at the same time as the last Member State of the European Community to denounce the Convention notifies its denunciation under Article 41 of the Convention.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having presented their Full Powers, found to be in good and due form, have signed this Agreement.

DONE at ..., this ... day of ... (month) ... (year), in the French language, in two originals, one to be kept by OTIF and the other by the European Community. OTIF shall notify this Agreement to its members in its official languages. In the event of any inconsistency, the text in the French language shall prevail.

For the Intergovernmental
Organisation for International
Carriage by Rail (OTIF)

For the European Community

Annex to the Agreement

Declaration by the European Community concerning the exercise of competence

In the rail sector, the Community exercises a general shared competence with its Member States pursuant to Articles 70, 71, 80(1) and 156 of the EC Treaty.

The Community has exclusive competence only to the extent that provisions of the Convention or legal instruments adopted pursuant to it affect existing Community rules. Where Community rules exist but are not affected, notably in the case of Community provisions which only set minimum standards, the Community Member States have competence without prejudice to that of the Community to act in that area. In any other cases, the Member States have competence.

A list of relevant Community instruments is contained in the Appendix. The scope of the Community 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.

In particular, the Technical Specifications for Interoperability adopted by the Community constitute common and binding rules within the Community. This means that the preparation of the Uniform Rules provided for in Article 6 of COTIF falls within the exclusive competence of the Community, insofar as the subjects they deal with are covered by an existing Technical Specification for Interoperability.

Appendix to the Declaration

COMMUNITY INSTRUMENTS RELATING TO SUBJECTS DEALT WITH BY THE CONVENTION

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

- 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) as amended by Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 (OJ L 75, 15.3.2001, p. 1);
- Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (OJ L 143, 27.6.1995, p. 70) as amended by Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 (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);
- 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);
- Council Directive 96/49/EC of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail (OJ L 235, 17.9.1996, p. 25) and its subsequent amendments.

ARRANGEMENT BETWEEN THE COUNCIL AND THE COMMISSION
REGARDING PREPARATIONS FOR OTIF MEETINGS, AND
REPRESENTATIONS AND VOTING AT MEETINGS

1. COORDINATION PROCEDURE

1.1. Coordination meetings to prepare for OTIF meetings will be held by one of the existing committees created by the rail directives, namely:

- the committee on interoperability (Article 21 of Directive 96/48/EC and Article 21 of Directive 2001/16/EC);
- the committee on the development of the Community's railways (Article 11(2) of Directive 91/440/EEC and Article 35 of Directive 2001/14/EC);
- the committee on the transport of dangerous goods (Article 9 of Directive 96/49/EC).

As far as possible, the Commission will coordinate the proceedings of the aforementioned committees with the timetables of OTIF proceedings.

The committee agendas will group all relevant matters in an “OTIF” item to ensure that the subjects each committee handles are properly coordinated.

1.2. If necessary, coordination meetings may also be held at the meeting venue.

1.3. The Commission will notify the relevant committee of the items on each OTIF meeting agenda requiring representations to be made and will indicate whether those representations will be made on behalf of the Community or the Community and its Member States.

If a vote is to be held on items on the agenda, the Commission will give its opinion as to whether the Community or the individual Member States should vote.

1.4. Coordination meetings held by the committees mentioned in section 1.1 will decide on the exercise of responsibilities and on arrangements in respect of representations and voting in relation to each item on the agenda. The committees will issue their opinions in accordance with their own rules of procedure.

1.5. If the Commission and the Member States fail to agree on the matters referred to in Section 1.4, the Member States and the Commission will refrain from adopting any position or casting any vote such as would damage the coordinated representation of the Community. If agreement is not reached within a reasonable period of time, the matter will be referred to the Permanent Representatives’ Committee.

1.6. The decisions referred to in Section 1.5 do not affect the respective competence of the Community and its Member States.

2. REPRESENTATIONS AND VOTING AT OTIF MEETINGS

- 2.1. If an item on the agenda concerns issues which fall within the exclusive competence of the Community, the Commission will speak and vote on behalf of the Community. The Commission may mandate one or more Member States to represent it. The Commission may also mandate the Executive Director of the European Rail Agency to represent it.
- 2.2. If an item on the agenda concerns issues which fall within their national competence, the Member States will speak and vote for themselves.
- 2.3. If an item on the agenda concerns issues which fall within both national and Community competence, attempts will be made to reach a common position by consensus. If a common position can be found:
 - if it is chiefly a matter which does not fall within the exclusive competence of the Community, the Member State holding the Presidency will set out the common position. The Member States and the Commission may speak to support and/or expand upon the Presidency's contribution. The Member States will vote in accordance with the common position;
 - if it is chiefly a matter which does fall within the exclusive competence of the Community, the Commission will set out the common position. The Member States may speak to support and/or expand upon the Commission's contribution. The Commission will vote in accordance with the common position.

If a common position cannot be found, the Member States will speak and abstain. The Commission is entitled to take part in the discussion.