System for revision of the Convention concerning International Carriage by Rail (COTIF) and its appendices

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

1. The drafters of the first international convention concerning the carriage of goods by rail realized that it would be necessary to adapt it regularly to economic, legal and technical changes. Member States have been able, through eight regular review conferences and several extraordinary review conferences, to not only regularly adapt rail transport law to continuous changes, but also to maintain the unity of the law.

2. The revision procedure established by the Eighth Revision Conference, of 1980 (COTIF 1980), and amended by the Vilnius Protocol of 1999 (COTIF 1999), makes provision for amendment proposals to be considered and decisions to be taken by four different competent bodies: the General Assembly; the Revision Committee; the RID Committee of Experts; and the Committee of Technical Experts.

3. The revision procedures are different depending on which bodies receive amendment proposals for a final decision. Decisions of the General Assembly must be ratified, accepted or approved, but that is not the case for decisions of the other three bodies.

4. In other words, there are two systems for amending the Convention concerning International Carriage by Rail (COTIF) and its appendices:
   - A “conventional” public international law system to amend the basic provisions under the competence of the General Assembly, requiring the approval of member States
   - Another revision system, for the amendment of the more technical provisions, which fall under the competence of the committees
5. In practice, the holding of preparatory and advisory working groups has proven useful for ensuring the coherence and consistency of the legal rules.

I. General Assembly

6. The General Assembly is the supreme decision-making body of OTIF. It meets in ordinary session every three years. It may also hold extraordinary sessions.

7. Pursuant to article 33 of COTIF, the General Assembly is competent to amend the Convention itself and its appendices, unless the amendments are clearly under the competence of the Revision Committee, the RID Committee of Experts or the Committee of Technical Experts.

8. Interestingly, in the current revision system of COTIF, the General Assembly is competent for any important amendments and changes in civil law provisions that, in some member States, must be adopted by the parliament, such as provisions relating to the scope of the instrument, the basis for liability or the burden of proof (see the provisions of COTIF and its appendices falling under the competence of the General Assembly, in the annex).

9. The amendments made by the General Assembly have to be submitted to the member States for approval, and the approval process is determined by the constitutional law of each member State.

10. Approval of amendments by member States, and any declarations objecting to such amendments, must be notified to the Secretary-General; approval of an amendment by a member State or its declaration objecting to such an amendment must thus be explicit.

11. Amendments to the appendices (requiring approval by half of the member States) may enter into force more quickly than amendments to the Convention itself (requiring approval by two thirds of the member States).

12. Amendments enter into force 12 months after their approval for all member States except those that, before their entry into force, have filed a declaration in which they state that they do not approve of the amendments in question. Member States are thus not forced to accept amendments if they do not wish to do so, but they must explicitly make it known before the entry into force of such an amendment.

13. For traffic with and between member States that have declared that they do not approve of the amendments within the respective deadline, application of the relevant appendix or appendices is suspended as soon as such decisions enter into force. This system makes it possible to ensure uniformity of the law applicable to international carriage by avoiding the simultaneous application of several versions of the uniform rules among the various member States.

14. In practice, it takes approximately six years for amendments adopted by the General Assembly to enter into force. For this reason, the General Assembly at its thirteenth session, on 25 and 26 September 2018, changed the revision procedure for the COTIF provisions and appendices falling within its competence.

15. When the new revision procedure introduced by the thirteenth session of the General Assembly enters into force, amendments of the appendices adopted by the General Assembly will enter into force more promptly, within a specified time frame, three years after notification by the Secretary-General. The General Assembly may, however, decide by a simple majority to defer their entry into force.

II. Revision Committee

16. The Revision Committee is convened by the Secretary-General.

17. Within the limits defined in article 33 (4), the Revision Committee is competent to make amendments to certain provisions of the Convention itself, and also to the Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV), the Contract of International Carriage of Goods by Rail (CIM), Contracts of Use of Vehicles in
International Rail Traffic (CUV) and the Contract of Use of Infrastructure in International Rail Traffic (CUI), as well as to the 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) and the Uniform Rules concerning the Technical Admission of Railway Material Used in International Traffic (ATMF).

18. Amendments approved by the Revision Committee enter into force for all member States/States parties on the first day of the twelfth month following their notification by the Secretary-General to the member States.

19. At the international level, there is no requirement for explicit approval by member States/States parties of the amendments adopted by the Revision Committee (amendments are tacitly accepted).

20. Member States/States parties may file objections within four months from the date of notification by the Secretary-General of amendments. If a quarter of member States/States parties file objections, the amendments do not enter into force. When amendments to an appendix enter into force, application of the appendix is suspended for traffic with and between States parties that have objected to the amendments.

21. The suspension is lifted one month after the date when the Secretary-General notifies the other member States that such an objection has been withdrawn.

III. RID Committee of Experts

22. The RID Committee of Experts meets every two years. It has exclusive competence to decide on proposed amendments to COTIF appendix C and its annex.

23. Amendments approved by the RID Committee of Experts enter into force for all States parties on the first day of the sixth month following their notification by the Secretary-General to the member States.

24. States parties may file objections within four months from the date of notification by the Secretary-General of amendments. If a quarter of States parties file objections, the amendments do not enter into force. When amendments to appendix C enter into force, for traffic with and between States parties that have objected to the amendments, application of appendix C is suspended.

25. Furthermore, twice a year, OTIF and the Economic Commission for Europe hold an RID/ADR/ADN Joint Meeting, which makes it possible to provide for simpler multimodal transport of dangerous goods by rail, road and inland navigation.

26. For obvious safety reasons, the annex to appendix C must be able to be adapted promptly. Revision of this annex takes place through a simplified procedure every two years, in parallel with the revision of the UN Model Regulations, which contain recommendations for the transport of dangerous goods for all modes of transport.

IV. Committee of Technical Experts

27. In practice, the Committee of Technical Experts meets once a year. It approves proposals to validate technical standards or to adopt uniform technical requirements.

28. The Committee adapts the APTU and ATMF Uniform Rules applicable to railway material for use in international traffic, in particular in respect of:

   (a) Adoption of technical prescriptions for vehicles and infrastructure and validation of standards;

   (b) Procedures for vehicle conformity assessment;

2 “State party” means any member State of the Organization that has not made a declaration according to which it will not apply an appendix in its entirety (first sentence of art. 42 (1) of COTIF).
(c) Provisions for vehicle maintenance;
(d) Responsibilities for train composition and the safe use of vehicles;
(e) Provisions for risk assessment and evaluation;
(f) Specifications for registers.

29. Amendments approved by the Committee of Technical Experts enter into force for all States parties on the first day of the sixth month following their notification by the Secretary-General to the member States.

30. States parties may file objections to the validation of a technical standard or the adoption of a uniform technical requirement within four months from the date of the notification of amendments by the Secretary-General. If one fourth of the States parties file objections, the validation of a technical standard or the adoption of a uniform technical requirement does not enter into force.

31. If an objection is raised against the validation of a technical standard or the adoption of a uniform technical requirement, only the ones in question are suspended in the traffic with and between States parties, with effect from the time when the decisions enter into force; the same applies in the case of a partial objection.

V. Working groups

32. Article 16 (9) of COTIF specifically allows the committees to appoint working groups to deal with specific questions.

A. Working group of the Committee of Technical Experts

33. At its first session, in 2006, the Committee of Technical Experts established a working group on technical aspects (WG TECH) to prepare its sessions. The working group has been active for more than 10 years and meets three times a year.

B. Working group of the RID Committee of Experts

34. At its fifty-first session, in 2012, the RID Committee of Experts established a standing working group that meets once or twice a year in order to prepare amendments to RID or its annex for adoption by the RID Committee of Experts.

35. Under the Convention, the other bodies of OTIF (General Assembly, Administrative Committee and Secretary-General) also implicitly have the right to establish working groups.

C. Working groups of the Secretary-General

(a) The working group established in 2013 on the revision of the CUV Uniform Rules. Consisting of experts from the States, national safety authorities and other stakeholders, the committee has met three times. Its proposals served as a basis for the amendment of the CUV Uniform Rules by the twenty-fifth session of the Revision Committee and the twelfth session of the General Assembly.

(b) The working group established in 2014 with the support of the Revision Committee to prepare for the revision of the CUI Uniform Rules. It has met four times. On the basis of the proposals prepared by the working group, the twenty-sixth session of the Revision Committee and the thirteenth session of the General Assembly considered and adopted the amendment to the CUI Uniform Rules.

(c) The working group established in 2017 on the amendment of the revision procedure for COTIF. The OTIF secretariat prepared proposals for the twenty-sixth session of the Revision Committee and the thirteenth session of the General Assembly on the basis
of the findings of the working group and additional information received from member States.

(d) The working group of legal experts established in December 2018 in order to ensure a coherent and consistent approach to the development and implementation of the OTIF legal framework. Its task will be to assist the existing bodies referred to in article 13 (1) of COTIF in the legal field, to facilitate their operation and to ensure effective management of the Convention. It will be responsible for travaux préparatoires and will have an advisory role in the legal field. It will specifically address the following:

(i) Preparation of draft amendments or additions to COTIF;
(ii) Provision of advice and legal assistance;
(iii) Promotion and facilitation of the operation and implementation of COTIF;
(iv) Monitoring and evaluation of the application and implementation of COTIF;
(v) Provision of a forum for discussion and reflection, where members of OTIF can raise relevant legal matters and discuss them.
Annex

Provisions of COTIF and its appendices under the competence of the General Assembly

COTIF

All articles except article 9 (Unit of account), and article 27 (2–5) (Auditing of accounts)

CIV

Title I General provisions
Article 1 Scope
Article 2 Declaration concerning liability in case of death, or personal injury to, passengers
Article 5 Mandatory law

Title II Conclusion and performance of the contract of carriage
Article 6 Contract of carriage

Title III Luggage
Article 16 Consignment of registered luggage

Title IV Liability of the carrier
Chapter I Liability in case of death of, or personal injury to, passengers
Article 26 Basis of liability
Article 27 Damages in case of death
Article 28 Damages in case of personal injury
Article 29 Compensation for other bodily harm
Article 30 Form and amount of damages in case of death and personal injury
Article 31 Other modes of transport

Chapter II Liability in case of failure to keep the timetable
Article 32 Liability in case of cancellation, late running of trains or missed connections

Chapter III Liability in respect of hand luggage, animals, registered luggage and vehicles
Section 1 Hand luggage and animals
Article 33 Liability
Article 34 Limit of damages in case of loss of or damage to articles
Article 35 Exclusion of liability
Section 2  Registered luggage
Article 36  Basis of liability
Article 37  Burden of proof
Article 38  Successive carriers
Article 39  Substitute carriers
Article 41  Compensation for loss
Article 42  Compensation for damage
Article 43  Compensation for delay in delivery

Section 3  Vehicles
Article 44  Compensation for delay
Article 45  Compensation for loss
Article 46  Liability in respect of other articles
Article 47  Applicable law

Chapter IV  Common provisions
Article 48  Loss of right to invoke the limits of liability
Article 49  Conversion and interest
Article 50  Liability in case of nuclear incidents
Article 51  Persons for whom the carrier is liable
Article 52  Other actions

Title V  Liability of the passenger
Article 53  Special principles of liability

Title VI  Assertion of rights
Article 56  Carriers against whom an action may be brought
Article 57  Forum
Article 58  Extinction of right of action in case of death or personal injury
Article 59  Extinction of right of action arising from carriage of luggage
Article 60  Limitation of actions

CIM

Title I  General provisions
Article 1  Scope
Article 5  Mandatory law

Title II  Conclusion and performance of the contract of carriage
Article 6  Contract of carriage (§§ 1 and 2)
§ 1: The carrier shall undertake to carry the goods for reward to the place of destination and to deliver them there to the consignee.

§ 2: The contract shall be confirmed by a consignment note. The absence, irregularity or loss of the consignment note shall not affect the existence or validity of the contract.

Article 8 Responsibility for particulars entered on the consignment note

Article 12 Evidential value of the consignment note

Article 13 Loading and unloading of the goods (§ 2)

§ 2: The consignor shall be liable for all the consequences of defective loading carried out by him.

Article 14 Packing

Article 15 Completion of administrative formalities (§§ 2 and 3)

§ 2: The consignor shall be liable to the carrier for any loss or damage resulting from the absence or insufficiency of, or any irregularity in, such documents and information [that required by customs or other administrative authorities].

§ 3: The carrier shall be liable for any consequences arising from the loss or misuse of the documents referred to in the consignment note.

Article 19 Exercise of the right to dispose of the goods (§§ 6 and 7)

§ 6: In the case of fault of the carrier he shall be liable for the consequences of failure to carry out an order or failure to carry it out properly.

§ 7: If the carrier implements the consignor’s subsequent modifications without requiring the production of the duplicate of the consignment note, the carrier shall be liable.

Title III Liability

Article 23 Basis of liability

Article 24 Liability in case of carriage of railway vehicles as goods

Article 25 Burden of proof

Article 26 Successive carriers

Article 27 Substitute carrier

Article 30 Compensation for loss

Article 31 Liability for wastage in transit

Article 32 Compensation for damage

Article 33 Compensation for exceeding the transit period

Article 36 Loss of right to invoke the limits of liability

Article 37 Conversion and interest

Article 38 Liability in respect of rail-sea traffic

Article 39 Liability in case of nuclear incidents

Article 40 Persons for whom the carrier is liable

Article 41 Other actions
Title IV  Assertion of rights
Article 44  Persons who may bring an action against the carrier
Article 45  Carriers against whom an action may be brought
Article 46  Forum
Article 47  Extinction of right of action
Article 48  Limitation of actions

CUV
Article 1  Scope
Article 4  Liability in case of loss or damage to a vehicle
Article 5  Loss of right to invoke the limits of liability
Article 7  Liability for loss or damage caused by a vehicle
Article 8  Subrogation
Article 9  Liability for servants and other persons
Article 10  Other actions
Article 11  Forum
Article 12  Limitation of actions

CUI
Title I  General provisions
Article 1  Scope
Article 2  Declaration concerning liability in case of bodily loss or damage
Article 4  Mandatory law

Title III  Liability
Article 8  Liability of the manager
Article 9  Liability of the carrier
Article 10  Concomitant causes
Article 11  Damages in case of death
Article 12  Damages in case of personal injury
Article 13  Compensation for other bodily harm
Article 14  Form and amount of damages in case of death and personal injury
Article 15  Loss of right to invoke the limits of liability
Article 17  Liability in case of nuclear incidents
Article 18  Liability for auxiliaries
Article 19  Other actions
Title IV  Actions by auxiliaries

Article 21  Actions against the manager or against the carrier

Title V  Assertion of rights

Article 23  Recourse
Article 24  Forum
Article 25  Limitation of actions

APTU

Article 1  Scope
Article 3  Aim
Article 9  Declarations
Article 10  Abrogation of technical unity
Article 11  Precedence of the UTP

ATMF

Article 1  Scope
Article 3  Admission to international traffic
Article 9  Operation prescriptions