



Bulletin

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EDITORIAL

Dear Readers,

OTIF's 15th General Assembly, which took place in Berne on 28 and 29 September, was a great success and an essential contribution to the European Year of Rail. The Assembly succeeded in setting an important course for OTIF's future work. It should particularly be emphasised that the hybrid format made it necessary to mobilise all available resources in the Secretariat. I would like to take this opportunity to thank once again all those involved.

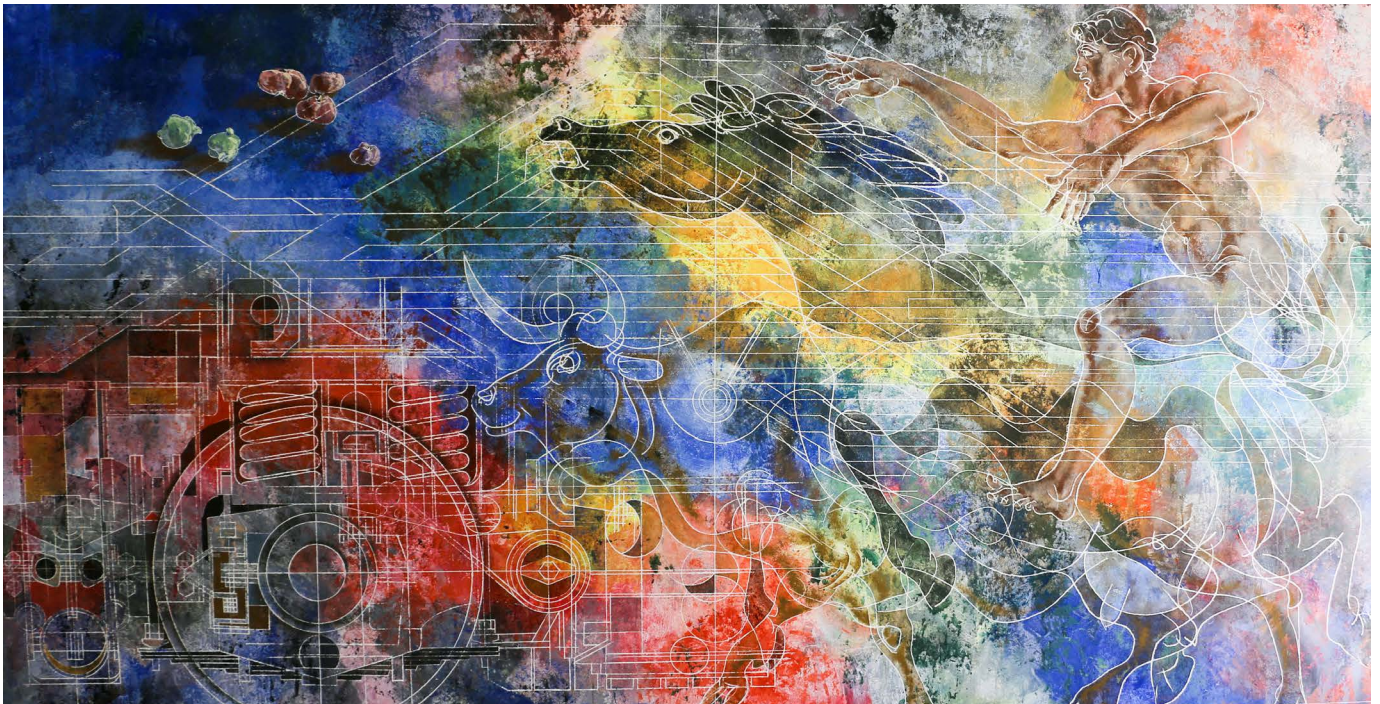
Personally, I am very pleased to be able to continue as Secretary General of OTIF for another three years. I have summarised my specific goals for the next term in this edition of the Bulletin. I would like to thank you for the confidence you have shown in me and I look forward to the tasks that lie ahead.

The Bulletin also contains informative contributions on important legal conclusions by the General Assembly, the meeting of the Joint Coordinating Group of Experts (technical interoperability/safety and dangerous goods) and the meeting of the UN Sub-Committee of Experts on the Transport of Dangerous Goods.

Another important event was the stopover of the "Connecting Europe Express" in Berne one day before the General Assembly. Berne can justifiably be called the cradle of international rail transport, symbolised by the "Berne Key", an indispensable tool for train conductors in their daily work.

Enjoy reading and all the best for the turn of the year!

Wolfgang Küpper
Secretary General



Hans Erni, mural, approximately 20m², 1965, entrance to the Secretariat

HOP ON BOARD A SPECIAL TRAIN – THE CONNECTING EUROPE EXPRESS!

On 27 September 2021, OTIF's Secretary General, Wolfgang Küpper, was on board the Connecting Europe Express train, which arrived in the late afternoon in Berne, the capital of Switzerland and a pioneer city in terms of international rail transport.

Also on board were Federal Councillor Simonetta Sommaruga and Vincent Ducrot, President and CEO of Swiss Federal Railways. Both referred to the "Key of Berne", the master key that was standardised by the International Railway Conference in Berne, the forerunner of OTIF, in 1886, and which can be seen as the starting point for efforts to establish an interoperable European railway system.

Mr Küpper then took part in the celebrations organised by the Federal Office of Transport (FOT) of the Federal Department of the Environment, Transport, Energy and Communications (DETEC) and by the Swiss Federal Railways (SBB).

The Connecting Europe Express left Lisbon on 2 September 2021 and arrived in Paris, its final destination, on 7 October 2021. It stopped in Switzerland, the crossroads of intense international rail traffic in Europe. The unique Connecting Europe Express project was conceived as part of

the European Year of Rail by the European Union and its partners. In 36 days, this special train covered 20,000 kilometres, crossed 26 states and 33 borders and brought together 40 partners from the sector. The train highlighted the unifying power of rail by travelling along railways that connect people and countries across Europe.

The Secretary General of OTIF welcomes this initiative as an example of the challenges the railway sector has to face in order to become the mode of choice for both passengers and companies. The Secretary General would like to thank DETEC and CFF for their invitation.



OTIF'S 15th GENERAL ASSEMBLY

OTIF's 15th General Assembly took place on 28 and 29 September 2021 in Berne (Switzerland) and remotely online. This hybrid format enabled a total of 44 Member States to participate, of which 20 were represented in Berne; the European Union, a regional

organisation that acceded to OTIF in 2011, also participated.

Kuwait and Qatar attended this session of the General Assembly as observer states. Lastly, four international associations were represented: the European

Association of Rail Infrastructure Managers (EIM), the International Rail Transport Committee (CIT), the International Coordinating Council on Trans-Eurasian Transportation (CCTT) and RailNetEurope (RNE).

Chaired by H.E. Mr. Victorio Redondo Baldrich, Spanish Ambassador to Switzerland, this 15th General Assembly was marked by various highlights.

Firstly, the General Assembly re-elected Mr Wolfgang Küpper as Secretary General for the period from 1 January 2022 to 31 December 2024. A lawyer with 30 years' professional experience in the field of international railway policy, Mr Küpper has served a first term of almost three years as head of the OTIF Secretariat (April 2019 - December 2021).



The General Assembly then discussed the draft long-term strategy for OTIF proposed by the Secretary General. The proposal is innovative in that it sets out a multi-year course for the organisation. The General Assembly instructed the Secretary General, in consultation with the organs of OTIF, in particular the ad hoc Committee on Legal Affairs and International Cooperation, to prepare a revised proposal. This new draft long-term strategy will be submitted for adoption to the next ordinary session of the General Assembly, which is scheduled for autumn 2024.

The General Assembly then established, for a three-year period, an ad hoc Committee on Legal Affairs and International Cooperation. Its main tasks will be to:

- prepare draft amendments or supplements to the Convention,
- promote and facilitate the functioning and implementation of COTIF,
- monitor and assess legal instruments (see article on page 15),
- take decisions on cooperation with other international organisations and associations, including establishing and dissolving consultative contact groups.

The General Assembly also adopted the “Decision on the monitoring and assessment of legal instruments”.

Later, it also adopted the modifications to the “Regulation on the election and conditions of service of the Secretary General”.

Lastly, the General Assembly noted the information submitted by the Secretary General on the project to renovate OTIF’s headquarters and set a maximum amount of

expenditure of CHF 7,400,000 for the duration of the projects for the renovation of the headquarters and the temporary relocation of staff. It also set a maximum annual amount

of CHF 4,200,000 for Secretariat expenditure for the period 2022-2027.

The General Assembly designated the members of the Administrative Committee for the period from 1 October 2021 to 30 September 2024:

MEMBERS

- AUSTRIA
- BELGIUM (CHAIR)
- CROATIA
- FINLAND
- FRANCE
- GEORGIA
- IRAN
- ITALY
- NORTH MACEDONIA
- PORTUGAL
- CZECH REPUBLIC
- ROMANIA
- UNITED KINGDOM
- SWEDEN
- SWITZERLAND
- TUNISIA

DEPUTY MEMBERS

- AZERBAIJAN
- BOSNIA-HERZEGOVINA
- BULGARIA
- ESTONIA
- GERMANY
- GREECE
- HUNGARY
- LATVIA
- LUXEMBOURG
- NETHERLANDS
- NORWAY
- POLAND
- SERBIA
- SLOVAKIA
- SLOVENIA
- TURKEY

At the end of the first day, the OTIF Secretariat and the Swiss Confederation hosted a reception for participants. The Secretary General of OTIF, Mr Wolfgang Küpper, and Mr Pierre-André Meyrat, Head of the Financing Division and Deputy Director of the Federal

Office of Transport (FOT) in the Federal Department of the Environment, Transport, Energy and Communications (DETEC), gave two opening speeches, highlighting the role of OTIF internationally and in Berne.



THE AIMS OF OTIF'S SECRETARY GENERAL FOR THE PERIOD OF OFFICE FROM 2022 TO 2024

On 28 September 2021, OTIF's 15th General Assembly elected me for another (second) term (2022-2024). The following article describes my main aims for this period. The article is based on the application speech I gave at the General Assembly.

Experience from two and a half years with OTIF

When I took office in April 2019, I found a functioning organisation with excellent and very motivated staff, so that I could immediately start implementing the priorities I had announced. These priorities were: continuity with my predecessors' policy regarding OTIF's accession and enlargement policy, and the continuation of harmonisation between the two existing major rail transport legal systems of OTIF and OSJD.

It became clear to me that OTIF's work is very much defined by firmly structured and long-term processes. The individual departments work very autonomously, precisely and professionally.

At the same time though, I was also confronted with some unanswered questions:

- The question of renovating or relocating the Organisation was unresolved.
- The staff of OTIF work under constant high pressure, caused by the necessary financial savings measures of past years.

Need for acute measures

Then, in early 2020, the COVID-19 pandemic emerged and required immediate and comprehensive crisis management. How could the health of employees and, at the same time, the working capacity of the Organisation be ensured?

It was very quickly possible to create a special safety concept and introduce new working methods that met OTIF's special requirements – law-making in three working languages. These measures made it possible to keep working and avoid delays in law-making.

My future aims/my vision for OTIF

What are my future aims for OTIF? What specific vision do I have? My vision for rail and transport policy remains unchanged: "It is necessary to make railways the most important mode of transport of the 21st century."

In my view, the political framework conditions for realising this vision have never been so favourable – keywords: the European Union's Green Deal and the United Nations' Sustainable Development Goals.

The aim should be for OTIF also to use this "momentum" and to emphasise the importance of international rail transport in solving environmental and transport problems at every possible opportunity.

This means that OTIF does not merely accompany this process as a spectator, but actively. OTIF

has a lot to offer in this respect: the COTIF acquis (e.g. RID) is a valuable, attractive and strategic asset.

OTIF's proactive role will not always be a soundless process. The legal (keyword URL - uniform railway transport law), technical (keyword ECM - entity in charge of maintenance) and geographical interfaces (keyword OSJD) require clarification, but I see no alternative.

My goal is to find pragmatic solutions that directly benefit international rail transport. Ideological disputes will get us nowhere, especially in the sector. On the other hand, I will not shy away from confrontation when it comes to solving important questions of principle.

I hope that OTIF's long-term strategy, which I initiated, will bring about significant clarification here.

Specific aims for the Secretariat

What is my specific "vision" for OTIF? I would like to mention three items:

1st item: "resilience" i.e. "robustness" in order to "future-proof" OTIF to the outside world!

The first step is to develop the long-term strategy already mentioned, based on a stock-check: "Where does OTIF stand 20 years after Vilnius and where is the journey going"?

The work on this should be coordinated in the Working Group of Legal Experts In terms of

content. The aim is to strengthen multilateral cooperation further and to continue OTIF's enlargement and accession policy, taking into account the geopolitical conditions.

2nd item: "strengthening OTIF's core competences"

The establishment of the working group of legal experts by my predecessor was a good decision. What the working group is doing under the leadership of Cléo Liégeois is outstanding. This concerns, for example, the development of regulations for exercising the important depositary function of the Secretary General and for monitoring the application and implementation of COTIF and its revisions in the Member States.

Specific transport law topics, such as further harmonisation and digitalisation, the relationship with customs regulations and the additional function of the CIM consignment note as a "negotiable" security are also on the agenda.

But there are also major tasks ahead in the areas of dangerous goods and technical interoperability: The area of dangerous goods, RID, is becoming more and more of a bestseller. It garners worldwide interest. Owing to its global and multimodal approach and its topicality, it also offers the best prerequisites for this. In the area of technical interoperability, OTIF's bridging role has also proved its worth. However, additional intensive work is needed to transform the European Union's rapidly growing body of

technical law into OTIF law in a timely and prudent manner. This also concerns the creation of new regulations in the area of safety, an approach which, as is well known, was already taken at the 13th General Assembly with the creation of the new Appendix H.

3rd and last item of my vision for OTIF: "resilience" to make OTIF "future-proof" internally

For me, it is particularly important that the OTIF Secretariat is also sufficiently equipped for future tasks. The increased use of digital working techniques and improved working conditions for staff are at the top of the list.

Employee satisfaction is important to me. Some progress has already been made in this area, e.g. through trustful cooperation with the staff representatives. However, some tasks still need to be completed.

The first part of a study on "social benefits", i.e. benefits provided by OTIF to its staff that are not directly included in their salary, is now available. The second part of the personnel study will deal with the basic personnel situation and staffing requirements. The aim of both parts of the study is that working at OTIF must be possible within a reasonable framework and must remain attractive.

The Luxembourg Protocol is expected to enter into force shortly. Is OTIF able fully to fulfil its role as the secretariat of the Supervisory Authority? This is certainly not the

case under the existing conditions.

I have mentioned the renovation of the building several times. There is no question in my mind that this is necessary and that it will also send a clear signal for the future viability of OTIF. Employees will thus be offered a stable perspective with regard to their place of work here in Berne.

However, it is also important to me to maintain sound finances, which is primarily linked to the Member States' contributions. However, it should be possible to provide additional financial leeway in order to carry out the tasks described.

Summary and outlook

The tasks I have set out can only be carried out together with the other organs of OTIF, the Member States, the European Union, the international organisations and associations and, last but not least, with the staff in the Secretariat!

I would like to thank the members of OTIF and my team in the Secretariat for the confidence they have shown in me by re-electing me and for the pleasant and smooth cooperation so far. I am encouraged by this cooperation. I am looking forward to putting the above projects into practice together.

Wolfgang Küpper

DEPOSITARY NOTIFICATIONS

Since 17 September 2021 ([Bulletin 3/2021](#))

NOT-21015	17.09.2021	Editorial corrections to the French, German and English versions of the revised UTP concerning locomotives and passenger rolling stock (UTP LOC&PAS) adopted by the Committee of Technical Experts at its 13 th session
NOT-21038	08.10.2021	Publication of a modification and addenda to the Guidelines on Treaty Acts under COTIF
NOT-21039	08.10.2021	Addendum 1 to the Guidelines on treaty acts under COTIF – Maritime and inland waterway services
NOT-21040	08.10.2021	Addendum 2 to the Guidelines on treaty acts under COTIF – Accession to COTIF 1999 with a reservation to apply CIV UR and/or CIM UR only to part of a Member State's railway network
NOT-21041	08.10.2021	Modification of and Addendum 3 to the Guidelines on treaty acts under COTIF – Authentic texts and certified copies of COTIF 1999 and amendments to it
NOT-21042	29.10.2021	Decisions taken by the Committee of Technical Experts at its 13 th session on 22 and 23 June 2021

UNIDROIT AND OTIF FOR THE LUXEMBOURG PROTOCOL

From 22 to 24 September 2021, the 100th anniversary session of the Governing Council of the International Institute for the Unification of Private Law (UNIDROIT) took place in Rome, Italy.

The Secretary General of OTIF, Mr Wolfgang Küpper, was invited to speak in the context of cooperation between the two organisations concerning the Luxembourg Protocol.

Mr Küpper began by recalling the role of OTIF, which is to provide the legal and technical framework for

improving international rail transport for Europe, Asia and Africa.

He stressed the importance of the international aspect, underlining that the success of railway operations is always greater when they are carried out across borders.

All the major trends, such as considering transport in the context of sustainable development, urbanisation, digitalisation and demographic changes, seem to favour the railways. Rail transport could become the transport mode of the 21st century and the

Luxembourg Protocol has an undeniable role to play in achieving this goal.

Mr. Küpper explained that facilitating the financing of railway rolling stock creates a solid basis and an additional means for the international development of rail transport.

The Secretary General of OTIF wishes the UNIDROIT bodies a long life.

12th TRANSPORT AND COMMUNICATIONS FORUM IN ISTANBUL

This year's Transport and Communications Forum in Istanbul took place from 6 to 8 October. At the invitation of the Turkish Ministry of Transport and Infrastructure, the Secretary General of OTIF, Mr Wolfgang Küpper, travelled to Turkey.

The theme of the Forum was "Logistics, mobility and

digitalisation". More than 120,000 participants attended and 100 companies were represented.

On 7 October 2021, Mr Küpper spoke at the 3rd session on "Logistics". He presented the Organisation and the Convention concerning International Carriage by Rail (COTIF). He then highlighted the advantages of COTIF. Lastly, he

explained the relationship between European Union law, the law of the Organisation for Cooperation between Railways (OSJD) and OTIF law.

The Secretary General of OTIF warmly thanks the Ministry of Transport and Infrastructure for its invitation and warm welcome.

JOINT COORDINATING GROUP OF EXPERTS AND THE COORDINATION OF DANGEROUS GOODS AND GENERAL RAILWAY LAW

The Joint Coordinating group of Experts (JCGE) is an ad hoc working group that has been tasked with identifying issues that require coordination in order to align the provisions of the Regulation concerning the Transport of Dangerous Goods (RID) and the rules concerning interoperability and safety, in particular UTPs/TSIs, and to make them more consistent with each other. Representatives from the Member States and sector associations actively participate in the discussions on the two areas of law and existing practices. The JCGE cannot itself take binding decisions, but it may advise the respective Committees to amend RID or the UTPs/TSIs. These committees are:

- OTIF's RID Committee of Experts
- OTIF's Committee of Technical Experts
- The EU's Committee on the Transport of Dangerous Goods
- The EU's Railway Interoperability and Safety Committee.

The subjects dealt with are mainly vehicle-related and are grouped into different categories, reflecting:

- Consideration of the need for and alignment of new requirements that take into account innovation and new technologies: e-documents, telematics applications, derailment detection devices (DDD) and digital automatic coupling (DAC)
- Design and construction of

vehicles

- Coordination processes between RID and general railway legislation in terms of reporting accidents/incidents and statistics
- Vehicle authorisation processes, assessments and the actors involved
- Operation and maintenance: procedures, rules, responsibilities.

The JCGE held its 4th meeting on 7 and 8 September 2021 to discuss the following issues:

The use of and requirements for derailment detection devices, which have been discussed for many years after the RID Committee of Experts' standing working group had identified an urgent need for derailment detectors in the transport of dangerous goods. Last year, the JCGE asked the European Union Agency for Railways (ERA) to develop requirements for the TSIs, in the event that such devices are used. With help from the sector, ERA has drafted recommendations to modify the WAG TSI and LOC&PAS TSI, which introduce requirements for three functions:

- DPF – derailment prevention function, which would detect a precursor to derailment and would send a signal to the driver's cab
- DDF – derailment detection function, which would detect the derailment and would send a signal to the driver's cab
- DDAF – derailment detection

and actuation function, which would detect derailment and automatically activate application of the brakes, with no possibility of overriding the activation.

For the DDF and DPF, the requirements with regard to how the locomotive driver should process and act upon the signal would be described in the LOC&PAS TSI. The driver should receive operational instructions on how to react to a derailment signal. This reaction could depend on where the train is operating, e.g. in an urban area or a tunnel.

As a next step, the ERA recommendations will be presented to the EU's Railway Interoperability and Safety Committee. Once the TSIs have been amended, the provisions of COTIF will be aligned by the Committee of Technical Experts.

Digitalisation is also on the agenda of the Joint Coordinating Group of Experts, particularly where telematics applications and paperless documents concern all aspects of railway transport: vehicle and cargo related data, route compatibility and access to networks, timetables, documentation requirements, monitoring, safe operations of trains, and reporting of incidents and accidents. In 2020, the European Union introduced the Electronic Freight Transport Regulation (eFTI), which requires states to exchange information digitally on any goods carried and along the supply chain across different modes of transport. The JCGE identified the need to analyse possible interactions

between the TAF UTP/TSI and RID and to follow the discussions in various fora and working groups. Earlier this year, experts on the transport of dangerous goods by rail, road and inland waterways at the RID/ADR/ADN Joint Meeting (for which OTIF and the UNECE jointly provide the secretariat) adopted harmonised guidelines for paperless documentation and the exchange of information on the transport of dangerous goods. These guidelines, which include an architecture and data model for the digital exchange of information, will contribute to successful implementation of the EU's eFTI Regulation.

The JCGE also discussed passive safety in the event of a collision. Requirements for crash buffers have already been defined in RID. However, these requirements are not currently suitable for central couplers, such as the future Digital Automatic Coupler (DAC). In addition, these requirements only apply to tank-wagons and not to the carrying wagons of tank-containers, as these carrying wagons are not used exclusively for the transport of dangerous goods. In addition, the functional high-level safety objectives that would apply in the event of a crash still have to be defined in RID. On the basis of these high-level safety objectives, the relevant UTPs and TSIs could define detailed technical requirements. Questions of passive

safety also have to be resolved for the carrying wagons of extra-large tank-containers.

At the 2nd JCGE meeting in December 2019, ERA asked the experts to discuss the various options for common standards for reporting accidents or incidents. The reporting of accidents/incidents and statistics required alignment and an interface with ERA's task of developing the Common Safety Methods on the assessment of safety levels and safety performance (CSM ASPL), which should take into account the transport of dangerous goods (TDG). The aim is to achieve a common standard of reporting covering TDG and non-TDG occurrences. The reporting and reporting entities could differ, depending on the occurrence. At this year's JCGE meeting, ERA presented its recommendation for the CSM ASPL, which has been submitted to the EU's Railway Interoperability and Safety Committee.

National rules are applied not only within the scope of railways interoperability and safety, but also within the scope of the transport of dangerous goods. However, such rules may not necessarily be managed in the same way. Practical examples and the experience of Member States have helped the JCGE to identify the possible problem areas and

address them to the appropriate working group.

The JCGE closed two priority items that have been dealt with successfully. One item concerned the vehicle authorisation process and the actors involved. In 2019, the RID Committee of Experts' standing working group identified a possible risk of duplicate inspections, despite the certification of tanks. Inspection should be a possibility, but not a standard requirement for vehicle authorisation. Competent authorities should be able to have confidence in the certification according to RID. This year, the RID/ADR/ADN Joint Meeting agreed on a new text in RID and ADR that indicates that the competent authority might occasionally require an entry into service verification for tanks in order to verify conformity with the applicable requirements.

The other closed items dealt with the definition of Entity in Charge of Maintenance (ECM) and an amended reference to Annex A of ATMF UR and the EU Regulation on ECM. These changes were included in the 2021 version of RID.

The next JCGE meeting will be held on 6 September 2022.

Maria Price

REGULATION ON THE ELECTION AND CONDITIONS OF SERVICE OF THE SECRETARY GENERAL

At its 15th session, the General Assembly adopted a ‘Regulation on the election and conditions of service of the Secretary General’ and approved the ‘Explanatory notes on the Regulation on the election and conditions of service of the Secretary General’. The Regulation establishes clear rules and constitutes a solid legal basis for a fair, equitable and transparent process for the entire election process.

Background

The Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 in the version of the Protocol of 3 June 1999 (COTIF 1999) introduced the organ of Secretary General to the institutional structure of the Intergovernmental Organisation for International Carriage by Rail (OTIF). Without going into detail, under COTIF 1980, the Central Office was an organ of the organisation and the Director General was the executive head of this organ.

Article 21 § 2 of COTIF 1999 stipulates that ‘the Secretary General shall be elected by the General Assembly for a period of three years, renewable twice at most’. In the period between the entry into force of COTIF and up to the 15th session of the General Assembly, this general provision had been implemented by ad hoc decisions and subsequent practice of the General Assembly and the Administrative Committee. However, this approach has not always led to consistent implementation of the provisions. Moreover, it was not suitable for dealing with atypical situations, such as that which arose at the 13th session of the General Assembly when it was not able to elect a Secretary General due to the withdrawal of the only candidate.

At its 15th session, the General Assembly adopted the ‘Regulation on the election and conditions of service of the Secretary General’ (OTIF-21004-AG 15) and approved, the ‘Explanatory Notes on the Regulation on the election and conditions of service of the Secretary General’ (OTIF-21005-AG 15). The Regulation entered into force on 1 October 2021.

In order to draft the Regulation, the existing practice and rules of OTIF with regard to electing the Secretary General were assessed in depth in the light of best international practice, in particular the recommendations of the independent oversight body of the United Nations system on the selection and conditions of service of Executive Heads.

Scope of the Regulation

The Regulation applies to the election of the Secretary General and the conditions of service and appointment of the Secretary General ad interim. However, deputising for the Secretary General is not regulated and should be subject to the Staff Regulations. “Ad interim” or “acting” means standing in for the Secretary General during a period in which the position is vacant, whereas “deputising” means standing in for the Secretary General if the Secretary General in office is

temporarily absent.

Term of office

The terms of office and number of renewals are defined in COTIF 1999. However, the election of the Secretary General at the extraordinary session of the General Assembly for the remainder of the term as a result of the sudden vacancy in the post poses the question of the number of terms. It has been decided that a term of office of one year or less shall not count when determining the limit to the terms of office, as defined in COTIF Article 21 § 2.

Election principles

Some basic general principles of conduct by members¹ and candidates² are established.

Firstly, the election process must be guided by the best interests of the Organisation, respect for the dignity of the candidates and the Member States nominating them, non-discrimination, full transparency and inclusiveness at all stages. With regard to the principle of ‘inclusiveness’, two aspects are taken into account:

- inclusion of all OTIF members at all stages of the election process: submission of applications, candidates’

¹ ‘Member’ means Member States, regional organisations and Associate Members.

² ‘Candidate’ means a person nominated for election as the Secretary General.

forum and actual voting at the General Assembly, and

- various people, representing different visions of the Organisation, can become candidates.

Secondly, members and candidates must act in good faith throughout the election process. Thirdly, members and candidates must refrain from improperly influencing the election process, for example by granting or accepting financial or other benefits as a quid pro quo for the support of a candidate, or by promising such benefits.

Fourthly, candidates must not make promises or commitments in favour of, or accept instructions from, any person or entity, public or private, and must avoid any other similar action, when that could undermine, or be perceived as undermining, the integrity of the election process.

Lastly, in order to ensure equal opportunities for all candidates, special additional rules are laid down for internal candidates³. Internal candidates must not combine their official travel with campaigning activities. Electoral promotion under the guise of technical meetings or similar events must be avoided.

Qualification criteria

With the aim of ensuring accountability, efficiency, effectiveness and transparency of the election process and the search for the best-qualified candidates, the qualification criteria are established. The qualification criteria largely reproduce those adopted by the General Assembly at its 14th session for the election of the Secretary General for the term of office from 1 January 2022 to 31 December 2024.

Call for applications

The election of a Secretary General may take place at an ordinary, extraordinary or urgent extraordinary session of the General Assembly. It is not therefore possible to adopt a pre-established timetable for organising elections. Consequently, the Administrative Committee is authorised to take the necessary decisions.

The Administrative Committee decides the date of publication of the call for applications and period for the submission of applications, which must not be less than two months. The call for applications must contain information on the deadline for applications, election requirements and procedures, conditions of service and the description of the post and must indicate whether or not the Secretary General in office is seeking re-election.

The description of the post includes the description of the functions of the Secretary General set out in Article 21 §§ 1, 3 and 4 of COTIF, particularly the tasks referred to in § 3, letter d), as well as the qualification criteria. This description of the post of Secretary General serves two purposes:

- to inform potential candidates about the functions of the Secretary General and
- to provide a basis for requesting a certificate of good health.

Applications

Applications must contain:

- a cover letter with a concise statement explaining why the candidate is qualified for the post;
- a curriculum vitae;

- a statement on the candidate's vision for the priorities and strategies of the Organisation;

- a certificate of good health.

The Regulation also defines requirements for the curriculum vitae and certificate of good health.

It is an established requirement and practice to require that applications have to be submitted by the Member States. Taking into account the status and nature of the functions of the Secretary General, the representation of a Member State for the purpose of submitting applications is limited to four agents: Head of State, Head of Government, Minister of Foreign Affairs or Minister of Transport.

Formal examination of applications

The Administrative Committee must examine in advance whether applications comply with the formal requirements. However, members of the Administrative Committee representing a Member State which has proposed a candidate do not take part in the formal examination of applications.

Transparency

Following the prevailing international practice, a list of candidates and the Member States which have submitted applications should be published on the Organisation's website. However, access to applications is restricted to the members.

Candidates' forum

As a general rule, the Member States' preferences with regard to candidates are decided before the General Assembly, so both candidates and members must

³ 'Internal candidate' means a Secretary General in office or staff member of the OTIF Secretariat nominated for election as the Secretary General.

be given an opportunity to meet before the General Assembly. For that purpose, a candidates' forum⁴ has to be organised. This forum provides an opportunity for all candidates to make themselves and their vision known to all OTIF members on an equal footing at least several weeks in advance of the General Assembly. Not only does it give all candidates more visibility, it also gives members time for reflection and consultations before the election.

The Administrative Committee must convene the candidates' forum no later than four weeks before the session of the General Assembly at which the election is to take place. As a general rule, the forum must be convened back to back with other meetings of one of the Organisation's organs.

The Chair of the Administrative Committee or another person designated by the Administrative Committee chairs the candidates' forum.

In view of the sensitive nature of the process and in order to respect the dignity of the candidates as well as to ensure more candid interaction between candidates and members, participation is limited to the members. However, there must be no debate on, or conclusions or recommendations from any of the statements or interventions made.

Voting

Voting at the General Assembly is subject to its Rules of Procedure. In accordance with the 'General Assembly's Rules of Procedure' (OTIF-21006-AG 15), the vote on electing the Secretary General must take place by secret ballot.

Of the candidates for the post of Secretary General, the one who receives the majority of votes is elected. If none of these candidates

receives this majority in the first ballot, as many ballots must be carried out as are necessary to leave only two candidates. After each ballot, the candidate who has received the least number of ballots, as well as all those who have received no votes, must withdraw. However, if the number of candidates is large, in order to limit the frequency of ballots the General Assembly may decide that two or more candidates receiving the least number of votes may be declared ineligible to participate in the next vote (i.e. they are eliminated) in order to leave only two candidates.

Appointment of the elected Secretary General

The appointment of the Secretary General is confirmed by a letter of appointment signed by the Chair of the General Assembly on behalf of OTIF and by the elected Secretary General.

Conditions of service

The Secretary General's conditions of service (including salary and other emoluments) have to be defined in advance. Taking into account the provisions of COTIF requiring the Administrative Committee to supervise the activities of the Secretary General, and the Organisation's current practice, determination of the conditions of service is delegated to the Administrative Committee and must be regulated in the Staff Regulations.

There are no age requirements or limitations, such as a desirable maximum or minimum age. Such an approach prevails in other intergovernmental organisations. The physical and mental ability of candidates to perform the functions of the Secretary General can be ensured based on the results of a medical examination.

Vacancy in the post of Secretary General

The Secretary General is an organ of the Organisation which performs a number of important functions, such as depositary functions, convening committees etc. Therefore, there cannot be any interruption in the performance of these functions. On the other hand, as proved in practice, the most expedite procedure for the election of the Secretary General takes 6 months from the start of the procedure to the date on which the successful candidate takes office.

If there is a sudden vacancy in the post of Secretary General, urgent action will be required. It is worth mentioning that in the event of temporary absence of the Secretary General, sick leave, annual leave, etc., the deputising rules apply. Should the post of Secretary General become vacant prior to expiry of the term of office, the Administrative Committee must promptly appoint a Secretary General ad interim and make the necessary arrangements for the election of a new Secretary General for the remainder of the term. As a general rule, the highest-ranking senior officer in the Organisation is appointed as the Secretary General ad interim.

Implementation of this Regulation

The Administrative Committee must adopt the necessary implementing measures to give effect to the Regulation, in particular with regard to calls for applications, model curriculum vitae, formal examination of applications, organisation of the candidates' forum, candidates' travel expenses, defining the conditions of service and appointing a Secretary General ad interim if the post of Secretary General becomes vacant.

Legal Department

⁴ "Candidates' forum" means an informal meeting for the presentation of candidates and questions to them.

DECISION ON THE MONITORING AND ASSESSMENT OF LEGAL INSTRUMENTS

At its 15th session, the General Assembly adopted a ‘Decision on the monitoring and assessment of legal instruments’ and approved the ‘Explanatory notes on the Decision on the monitoring and assessment of legal instruments’. Monitoring the implementation and application of the Organisation’s legal instruments would provide evidence concerning their usage. Based on the monitoring outcome, assessment of the Organisation’s legal instruments would determine their relevance and any need to revise them.

Background

The importance of systematic monitoring and assessment (evaluation) of policy and legislation at national and international levels is being increasingly recognised. Rules established at national level or international level should remain relevant over time. To this end, their application should be observed and evaluated. As a result of such activities, rules may prove to be efficient and effective or they may have to be modified or abolished.

The Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 in the version of the Protocol of 3 June 1999 (COTIF 1999) is an important international instrument that provides uniform international railway law for about fifty states in Europe, Asia and Africa. COTIF established the Intergovernmental Organisation for International Carriage by Rail (OTIF) in order to manage and further develop international railway law and to cooperate effectively and efficiently in the railway field.

With regard to ensuring the relevance of regulations, the Organisation has been carrying out ad hoc reviews of its legislation. However, no consistent and systematic policy had been established in the Organisation until the 15th session of the General Assembly.

With a view to the Organisation’s task of keeping a watch on

the application of all the rules and recommendations (legal instruments) established within the Organisation, the 15th General Assembly adopted the ‘Decision on the monitoring and assessment of legal instruments’ (OTIF-21002-AG 15) and approved the ‘Explanatory notes on the decision on the monitoring and assessment of legal instruments’ (OTIF-21003-AG 15). The General Assembly emphasised that due attention should be given to ensuring that activities in connection with the monitoring and assessment of legal instruments have an added value and are proportionate. The decision entered into force on 30 September 2021.

Definitions

International organisations use different terms, such as ‘monitoring’, ‘review’, ‘evaluation’, ‘compliance’, ‘assessment’ etc. Even when the same terms are used, they are defined differently by different organisations. Nevertheless, differences in terminology are largely theoretical, because these terms overlap and lead to similar results in practice. Nevertheless, it is necessary to clarify the terminology used in OTIF for the purpose of monitoring and assessing legal instruments.

‘*Stakeholder*’ means a natural or legal person affected by legal instruments or with a legitimate interest in them. Different actors are affected by legal instruments

(such as passengers, railway undertakings, infrastructure managers, etc.) or have a legitimate interest in them (such as national or international associations representing railway undertakings, infrastructure managers, etc.). It goes without saying that Member States and regional organisations are also affected by and have an interest in legal instruments, but as they are directly involved in the decision-making process within the Organisation, they are not included in the term “stakeholders”.

‘*Legal instrument*’ means the Convention or any other legally binding or non-binding act adopted by OTIF organs. OTIF’s legal system consists of different legal instruments, which are either legally binding (“hard law”) or non-binding (“soft-law”). Legally binding instruments are the Convention, including its appendices and their annexes, the rules of procedure of the organs, the Staff Regulations, etc. Instruments which are not legally binding are various recommendations, guidelines, explanatory reports, explanatory notes, etc.

‘*Implementation*’ means an international obligation of Member States and regional organisations to ensure that legal instruments are fully applied, firstly by incorporating them into their respective legal orders. States and regional economic integration organisations may become parties to the Convention. In accordance with public international law, the

conclusion of a treaty primarily results in international obligations for contracting States and organisations. Therefore, the parties to a treaty must ensure that the treaty is implemented and applied in their legal orders. However, there is no legal obligation to incorporate non-legally binding instruments or instruments governing the functioning of the Organisation. Effective implementation (in its broad sense) also involves the application of legal instruments on the ground. However, for the purpose of this decision, implementation is defined narrowly and is limited to formal incorporation into the legal order of a Member State or regional organisation. It is worth recalling that a Party to the Convention retains discretion with regard to the specific methods of incorporating relevant instruments into its legal order. ‘Application’ means putting the requirements of legal instruments into daily practice. The application of legal instruments involves many different actors: national authorities, passengers, carriers, railway undertakings, vehicle keepers, infrastructure managers, etc.

‘Monitoring’ means a continuous and systematic process of data collection. The result of monitoring is factual data about the implementation and application of legal instruments. Monitoring is a basis for the subsequent assessment.

‘Assessment’ means an evaluation of the actual effects of a legal instrument or certain provisions thereof. Assessment should allow the Organisation and stakeholders to judge how well legal instruments are functioning and whether there is a need to improve, replace or repeal them.

Scope

The Secretary General must systematically monitor and assess

implementation of the Convention. Implementation of the Convention is an international legal obligation of Member States and regional organisations. However, the manner of giving legal effect to the Convention is within the competence of Member States and regional organisations. In other words, it is up to the Member States and regional organisations to ensure that the relevant provisions of the Convention are valid in their territory, so that they can be relied upon in private relationships (e.g. contract of carriage) as well as before national courts or other public authorities. It is in the interest of the Organisation continuously to monitor whether the Convention has legal status in national law and can thus be effectively applied. The Secretary General therefore has a general obligation to monitor and assess implementation of the Convention.

The OTIF organs referred to in COTIF Article 13 §§ 1 and 2 or organs established by them (in other words, all organs of the Organisation) are entitled to initiate monitoring and assessment of the application of a particular legal instrument within the sphere of their competence or specific provisions thereof. The Secretary General may initiate monitoring and assessment of any legal instrument. To be precise, his right to initiate monitoring and assessment is a general one.

Stakeholders do not have a formal right to initiate monitoring and assessment, but could request the competent organs to do so. In principle, the application of all legal instruments is subject to monitoring and assessment. However, bearing in mind the breadth of OTIF’s legal system and the limited resources of the Organisation, the Member States and the regional organisations, as well as for reasons of practicality and the principle of proportionality, the monitoring and assessment of

the application of legal instruments should be initiated on a case by case basis. In many cases, it would be reasonable and proportionate to monitor and assess the application of only certain provisions of a legal instrument, but not the entire legal instrument.

As a general rule, the monitoring and assessment of the application of a legal instrument should be performed only at least three years after that legal instrument or specific provisions thereof have entered into force. The actual usefulness of legal instruments depends on the outcomes and impacts that follow their adoption, entry into force and implementation. Usually, it is only after at least several years of on-the-ground application that outcomes and effects will gradually become clear.

Planning and prioritisation

The Secretary General has to prepare an inception paper for each initiative to launch monitoring and assessment of a legal instrument. The inception paper must lay down the necessary actions for the monitoring and assessment and must describe their feasibility, affordability, timing and priority.

The requisite and available human and financial resources and preliminary timing for the monitoring and assessment must be determined. The size and complexity of OTIF’s legal system and the limited financial and human resources available mean that planning and prioritisation will be required in order to implement the monitoring and assessment policy effectively. It is also equally important to foresee any actions that are necessary to perform the monitoring and assessment of legal instruments; data collection methods, for instance. The substantive work should only start and resources should only be allocated if it is decided that the

above actions are feasible.

Cooperation

Member States and regional organisations must cooperate with the Secretary General and provide all relevant information for the purpose of monitoring and assessing legal instruments. Active and genuine cooperation of the Member States and regional organisations, primarily by submitting comprehensive information on time, is a precondition for the monitoring and assessment policy to be effective.

The Secretary General must endeavour to engage relevant stakeholders effectively in the performance of monitoring and assessment of legal instruments. Stakeholders are not parties to the Convention, so the General Assembly cannot oblige them to cooperate. However, as they are directly affected by many legal instruments, cooperation for the purpose of monitoring and assessing legal instruments is in their own interest.

Data Collection

Different quantitative and qualitative data sources, including stakeholders' opinions, should be used. Data collection should start with checks on existing information that is available. The reliability and comprehensiveness of any data obtained should be assessed.

Different data sources should be used, such as reports, academic literature, case law, and surveys by Member States, regional organisations and/or stakeholders. One of the most important sources of information about legal interpretation and application of the Convention is case law or judicial practice.

The stakeholders concerned and

affected by OTIF include railway undertakings, infrastructure managers, wagon keepers etc., and their representative associations. Their experience, expertise and perspectives are valuable as a primary source of information on the practical application of regulations. Cooperation between OTIF and its stakeholders is crucial if OTIF's legal system is to deliver its full benefits. Knowledge of application on the ground and input from stakeholders are of critical importance for the design, monitoring and assessment of OTIF's legal system. It is also necessary to ensure that regulations remain most relevant for users. The multiple and sometimes divergent interests of stakeholders involved in international railway transport are pervasive. It is essential to identify these divergent interests and take the steps necessary to avoid an adverse impact on the quality of data and, consequently, the findings.

Collecting and collating data should not create an excessive administrative burden, but should be kept to what is absolutely necessary. Member States, regional organisations, international organisations and associations collect a lot of information, so OTIF should primarily rely on relevant data that are already available. It is therefore important to know what already exists in order to avoid duplication and the creation of unnecessary data collection burdens.

The absence of critical data may lead to the evaluation's being postponed.

Assessment and follow-up

An assessment must describe the current situation, in particular the implementation and application of a legal instrument in practice.

An assessment must evaluate the degree of implementation of a legal instrument, its relevance, effectiveness and coherence.

The relevance of a legal instrument is determined as the relationship between the current requirements/problems in international railway transport and the objectives of an instrument. Requirements and problems may change over time, so the relevance of a legal instrument can change accordingly. If an instrument is not relevant, there is no need to assess its effectiveness and coherence.

A legal instrument is effective if it achieves the intended outcomes. The effectiveness of a legal instrument is determined as the relationship between costs and benefits. Cost should be proportionate to the benefits. The benefits of legal instruments may or may not be financially measurable (i.e. they can or cannot be translated into a monetary value). However, non-financial benefits still have to be measured, for instance improved transparency or increased legal certainty.

No instrument exists in a legislative vacuum; many different instruments are interrelated within OTIF's legal system and with other rules. The assessment of coherence involves looking at how well different actions work together (or not). Coherence may be internal and external. Checking internal coherence means looking at how the various components of OTIF's legal system operate together. External coherence can look at compliance with other international legal instruments, for instance OSJD legal instruments.

The findings of the monitoring and assessment of an instrument or certain provisions do not have any effect on the legal status of it/them. The legal status of any provisions can only be changed in accordance with formal procedures

prescribed by COTIF or defined by OTIF's competent organs.

Completed monitoring and assessment should provide clear information on the effectiveness, efficiency and relevance of the

legal instruments, disclosing weaknesses and other shortcomings, as well as strengths and best practices. Consequently, appropriate follow-up actions have to be identified, such as disseminating best practice

or launching a formal revision procedure, etc.

Legal Department

ADDENDA 1 TO 3 TO THE 'GUIDELINES ON TREATY ACTS UNDER COTIF'

The 'Guidelines on treaty acts under COTIF' were published in 2017 with the aim of assisting OTIF members and making legal requirements clear and depositary practice transparent. The first three addenda have been issued in 2021.

In 2017, the Secretary General published the 'Guidelines on treaty acts under COTIF' prepared by the Legal Department in order to facilitate and accelerate the procedures that are necessary for modifications to the Convention and its Appendices to come into force or for other treaty acts to come into effect.

In order to clarify some other depositary practices and requirements, the Legal Department has prepared three addenda.

Addendum 1 to the 'Guidelines on treaty acts under COTIF' concerning maritime and inland waterway services

This addendum clarifies the requirements and practice developed on the basis of the Convention with regard to when CIV and CIM maritime and inland waterway services may be included and when such inclusion takes effect.

In accordance with COTIF 1999, Article 24 § 3, Member States may send the Secretary General their notifications concerning the inclusion or deletion of maritime and inland waterway services

at any moment. The Secretary General must notify all Member States of the inclusion or deletion of a line or service.

In accordance with COTIF 1999, Article 24 § 5, the inclusion of maritime and inland waterway services takes effect on the expiration of one month running from the date of the notification of their inclusion by the Secretary General. In accordance with COTIF 1999, Article 24 § 5, the deletion of maritime and inland waterway services takes effect on the expiration of three months running from the date of the notification of the deletion by the Secretary General, save in respect of carriage underway which must be finished.

In OTIF's practice, Member States requesting the inclusion or deletion of maritime and inland waterway services may set the effective date of the inclusion and/or deletion, provided that the date is not earlier than required by COTIF 1999, Article 24 § 5. Consequently, Member States should take into account the time the Secretariat needs (usually at least one month) to prepare the relevant depositary notifications.

Addendum 2 to the

'Guidelines on treaty acts under COTIF' concerning accession to COTIF 1999 with a reservation to apply CIV UR and/or CIM UR only to part of a Member State's railway network

This addendum clarifies that any State which intends to accede to the Convention with a reservation to apply CIV UR and/or CIM UR only to part of its railway network must indicate in the instrument of accession or accompanying official documents the convention concerning international through carriage of passengers and/or goods by rail comparable to the CIV UR and/or CIM UR to which it is a party. The addendum also explains the legal consequences if a Member State ceases to be a party to such a convention.

Any State which makes a request to enter a reservation in accordance with CIV UR, Article 1 §§ 6 and 7, and/or CIM UR, Article 1 §§ 6 and 7, must indicate in the instrument of accession or accompanying official documents the convention concerning international through carriage of passengers and/or goods by rail comparable to the CIV UR and/or CIM UR to which it is a party. It should be noted that the

reservation ceases to be in force if its premise ceases to exist, i.e. the State in question is no longer a party to the convention justifying this special regulation.

Addendum 3 to the ‘Guidelines on treaty acts under COTIF’ concerning authentic texts and certified copies of COTIF 1999 and amendments to it

This addendum addresses the issue of authentic texts and certified copies of COTIF and amendments to it adopted by the General Assembly or the Revision Committee.

The authentic version of COTIF 1999 is the original of the Modification Protocol annexed to the Final Document of the 5th session of the General Assembly signed by the Member States. Certified copies should be produced from the above original, excluding pages with the signatures. Corrections of errors should not be integrated into the authentic text.

The authentic text of amendments to COTIF 1999 adopted by the General Assembly or the Revision Committee is the text established by the Secretary General in application of Articles 34 § 1 and 35 § 1 of COTIF 1999.

Corrections of errors should not be integrated into the authentic text. In case of amendments to different parts of the Convention, each set of amendments (e.g. to the Base Convention or specific Appendices, etc.) must be certified separately, as is the case in depositary notifications of adopted amendments.

Legal Department

58th SESSION OF THE UN SUB-COMMITTEE OF EXPERTS ON THE TRANSPORT OF DANGEROUS GOODS

Geneva, 28 June to 2 July 2021

The 58th session of the UN Sub-Committee of Experts was the first session in the 2021/2022 biennium. The decisions of the UN Sub-Committee of Experts are incorporated into the 23rd revised edition of the UN Model Regulations and form the common basis for all the mode-specific dangerous goods regulations. In the context of harmonising RID/ADR/ADN with the UN Recommendations on the Transport of Dangerous Goods, these decisions will later be carried over into the 2025 editions of RID, ADR and ADN. Traditionally, few decisions are made at the first meeting of the biennium, but the work priorities for the biennium become apparent.

Due to ongoing travel restrictions and quarantine regulations, the 58th session of the UN Sub-Committee of Experts, chaired by Mr Duane Pfund (United States of America), was held from 28 June to 2 July 2021, again in the form of a video-conference, with 27 States, 5 governmental organisations and 29 non-governmental organisations represented. As all the decisions of the UN Sub-Committee of Experts have repercussions for the dangerous goods provisions of the various modes, the Intergovernmental Organisation for International Carriage by Rail (OTIF) was represented as a modal organisation.

Classification

Electronic detonators of UN numbers 0511, 0512 and 0513

Three new UN numbers for electronic detonators (UN numbers 0511, 0512 and 0513) were included in the 2021 edition of RID/ADR/ADN in order to align with the 22nd edition of the UN Model Regulations. Previously, such detonators were assigned to the UN numbers for electric detonators (UN 0030, UN 0255 and UN 0456), to which the same provisions apply in relation to packaging and weight limits.

It has emerged that these new UN numbers are not yet applied in all parts of the world or that longer transitional measures are stipulated. Various RID/ADR/ADN Contracting States also grant a transitional period in order to avoid having to relabel goods in stock.

The UN Sub-Committee of Experts decided to extend the transitional period for the application of these new UN numbers until 30 June 2025. At least in the scope of RID/ADR/ADN, this decision cannot be implemented automatically, because the application of these new UN numbers has already been prescribed since 1 July 2021. Concluding a multilateral special agreement is only of limited help as well, because it can only be applied in the signatory states and only to a limited extent in international traffic.

UN Number 1010

In the 2021 edition of RID/ADR/ADN, at the request of Spain, in order to harmonise with the UN Model Regulations, the name of UN number 1010 was amended to: "BUTADIENES, STABILIZED or BUTADIENES AND HYDROCARBON MIXTURE, STABILIZED, containing more than 40% butadienes". The previous name used in

RID/ADR/ADN (BUTADIENES AND HYDROCARBON MIXTURE, STABILIZED, having a vapour pressure at 70°C not exceeding 1.1 MPa (11 bar) and a density at 50°C not lower than 0.525 kg/l) did not include a requirement for the minimum content of butadienes in the mixture with hydrocarbon.

The European Chemical Industry Council (CEFIC) has now established that this amendment will have a significant impact on the chemical industry in Europe, because half of the products sold in Europe with this UN number have a butadiene content of between 20 and 40%. In contrast, all products meet the vapour pressure and density requirements specified in the previous name used for land transport. The new name now means that the butadiene content must be determined before each consignment. If the butadiene content is less than 40%, UN number 1965 (Hydrocarbon gas, mixture, liquefied, n.o.s.) or 3161 (Liquefied gas, flammable, n.o.s.) must now be used instead of UN number 1010. However, this assignment to a different UN number does not lead to stricter conditions of carriage. In contrast, this different classification depending on the butadiene content could cause problems among the emergency services in

the event of an incident, because the two UN numbers mentioned no longer reflect the specific danger of butadiene (e.g. carcinogenic substance).

In its proposal to amend the name of UN number 1010 in the UN Model Regulations, CEFIC recalled a document from the International Union of Railways (UIC) from 2003, which already referred to these problems and which, at that time, led to the amendment to the name of UN number 1010 adopted at that time for the UN Model Regulations not being carried over into RID/ADR/ADN. In its proposal, UIC had pointed out that the vapour pressure and density specified in the RID/ADR/ADN name were important parameters for establishing the test pressure and degree of filling of tanks, which was particularly important for multiple use tanks. At that time, the European chemical industry was also of the view that, for safety reasons, stabilisation should also be prescribed for concentration values of less than 40% butadienes.

The chemical industry's proposal to reduce the minimum butadiene content in UN number 1010 from 40% to 20% was adopted by a large majority. The vapour pressure and density limits applicable until the 2021 edition of RID/ADR/ADN were included in a special provision, which can be looked at again at the next session, if necessary.

The Netherlands had previously initiated multilateral special agreements RID 4/2021, M338 for ADR and M030 for ADN, which aim to restore the situation before the 2025 edition of RID/ADR/ADN and which have been signed by several Member States.

UN 2426 Ammonium nitrate

The last Joint Meeting adopted

a proposal from Spain to align the name and description of UN number 2426 in RID/ADR/ADN with those in the UN Model Regulations. Spain had been requested to submit the conditions contained in column 17 of the dangerous goods list in the IMDG Code and the conditions in special provision 644 of RID/ADR/ADN to the UN Sub-Committee of Experts for discussion, so that if necessary, they could be applied to all modes of transport.

Spain therefore asked the UN Sub-Committee of Experts whether the following conditions should be included in the UN Model Regulations:

- Is it necessary to limit the maximum content of ammonium nitrate in the solution to 93%?
- Should a minimum water content of 7% of the solution be specified?
- Should a maximum allowable transport temperature of 140°C be established?
- Should the content of combustible materials be limited to 0.2%?
- Should the content of chlorine be limited?
- Should the pH level of the aqueous solution be limited?

While the explosives working group did not object to the inclusion of these conditions, Belgium pointed out in the discussion that the properties and remarks listed in column 17 of the IMDG Code dangerous goods list for the respective dangerous goods were not currently binding under international law.

Spain will submit a revised proposal to the next session of the UN Sub-Committee of Experts, which

will also look in more detail at the proposed pH levels in particular.

UN Number 3536

Once again, the UN Sub-Committee of Experts dealt with a proposal concerning UN number 3536 (LITHIUM BATTERIES INSTALLED IN CARGO TRANSPORT UNITS, lithium ion batteries or lithium metal batteries). Special provision 389, which is assigned to UN number 3536, specifies that lithium batteries installed in cargo transport units are used to provide electrical energy outside the cargo transport unit. It also stipulates how the cargo transport unit must be equipped. According to the definition in 1.2.1, a cargo transport unit means a road vehicle, a wagon, a container, a tank-container, a portable tank or an MEGC. In its definition of container, the IMDG Code requires that it be approved in accordance with the currently applicable version of the 1972 International Convention for Safe Containers (CSC).

In maritime transport, this regulatory situation is sometimes interpreted to mean that containers containing energy storage systems with lithium batteries and not approved in accordance with the CSC may not be accepted for carriage.

Germany therefore asked the UN Sub-Committee of Experts whether the requirements of the CSC apply to containers with lithium batteries assigned to UN number 3536. If this were in fact the case, there would need to be a discussion on which UN number such energy storage systems can be assigned to if they do not meet the requirements of the CSC, and whether the requirements of the CSC also have to be met in land transport.

Most delegations were of the view that containers with energy storage

systems do not have to comply with the CSC. This should be clarified either in special provision 389 or by amending the proper shipping name. Germany agreed to submit a proposal to the next meeting that would take into account the comments made.

New UN numbers for chlorophenols

For chlorophenols, the dangerous goods regulations contain UN numbers 2020 and 2021, which are assigned to Class 6.1. It had emerged that in addition to toxic hazards, various chlorophenols also have corrosive properties, which are additionally considered to be the predominant hazard. As UN numbers 2020 and 2021 do not reflect corrosiveness, Germany proposed to include new UN numbers for chlorophenols with the main hazard of Class 8 and the subsidiary hazard of Class 6.1.

Various experts supported the need to include new entries. However, the following points were highlighted, which Germany will consider in a revised proposal:

- The proper shipping name should not be identical to that of UN numbers 2020 and 2021,
- Data should be used to demonstrate which isomers of chlorophenol these new entries should apply to,
- The transport conditions assigned should be reviewed,
- Possible overlaps with UN number 3155 (pentachlorophenol) should be checked.

Lithium batteries

The hazards posed by lithium batteries relate mainly to the amount of lithium they contain

and the electrolyte used. Special provision 188 contains conditions under which lithium batteries are exempted from the dangerous goods regulations. While a limit based on the mass of the lithium was specified in this special provision for lithium metal batteries, a limit based on the nominal energy in watt-hours (Wh) was considered a more practicable solution for lithium ion batteries. When special provision 188 was drafted, it was based on batteries used in mobile phones, notebooks or power tools, specifying 20 Wh for cells and 100 Wh for batteries.

The battery industry pointed out to the UN Sub-Committee of Experts that the technology had developed a great deal since then and that lithium batteries could provide more energy with the same amount of active substances. For example, the mass of a cell with a nominal energy of 20 Wh has halved, resulting in single-cell batteries used in mobile phones having a nominal energy of just over 20 Wh and batteries in power tools having a nominal energy of more than 100 Wh. Consequently, the exemption provisions of special provision 188 could no longer be applied to these batteries. The battery industry proposed to raise the limit for cells to 30 Wh and the limit for batteries to 150 Wh.

The UN Sub-Committee of Experts was of the view that the technical progress in lithium ion cells and the increase in energy density did not provide proof of safer transport. Several states pointed out that the critical value was the nominal energy and not the mass. The battery industry announced a new proposal with a detailed justification.

Packing

Packing instruction LP 903

Packing instruction LP 903 deals with the packing of lithium batteries in large packagings. Currently, only

a single battery and a single device containing lithium batteries may be packed in a large packaging. In contrast, for packing instruction LP 906, which deals with the packing of damaged or defective lithium batteries in large packagings, it was decided in the last biennium also to allow large packagings for several damaged or defective batteries or devices containing lithium batteries. For the additional test requirements for such large packagings, the highest number of batteries and equipment, the highest total energy content of the batteries and the arrangement within the package, including partitions and protective devices for the parts, were included as supplementary criteria. This amendment will enter into force for RID/ADR/ADN in the 2023 edition.

Against the background of the growing number of battery-powered motor vehicles and the rapidly increasing production of lithium batteries, the battery industry requested that packing instruction LP 903 also be approved for multiple batteries. It was of the view that large packagings containing several lithium cells and batteries properly isolated from each other do not pose a greater risk than numerous smaller packagings containing the same number of cells and stacked on a pallet. The use of one large packaging, rather than numerous smaller packagings, would contribute to safety, as the necessary handling of several small packagings is replaced by the mechanical handling of a single large packaging. In addition, the number of transport operations could be reduced.

Many experts supported the general intent of the proposal, but felt that further work was needed to clarify responsibilities and testing provisions for such large packagings. The battery industry said it would develop its proposal further.

Increasing the limited quantities for non-flammable, non-toxic gases

The Council on Safe Transportation of Hazardous Articles (COSTHA) requested that the current limit for the carriage of non-flammable, non-toxic gases in limited quantities be increased from the current 120 ml per inner packaging to 1000 ml, with the total gross mass of the package (30 kg) remaining unchanged. The justification for this proposal was that RID/ADR/ADN special provision 653 already provides for higher exemption limits for four compressed gases. It was also argued that a limit of one litre is already specified for aerosols containing non-flammable, non-toxic gases, even though aerosols are less resistant than gas cylinders.

Many experts welcomed the proposal in principle. However, concerns were raised about adopting the same limits for compressed gases as for aerosols, whilst not stipulating a pressure limit at the same time. In addition, some experts thought it was necessary to comply with the provisions for the construction and testing of pressure receptacles of Chapter 6.2 if the limit value were increased, and consequently, amendments to Chapter 3.4 (Limited Quantities) with regard to the applicability of the provisions of Chapter 6.2 would also be necessary. COSTHA will revise its proposal on the basis of this discussion.

Non-combustibility criterion

The packing instructions for lithium batteries in Chapter 4.1 of RID/ADR/ADN contain the requirement that “non combustibility shall be assessed according to a standard recognized in the country where the packaging is designed or manufactured”. This requirement can be interpreted to

mean that the non-combustibility of the entire packaging must be assessed. However, Belgium assumed that the assessment of non-combustibility only refers to the thermal insulation material and cushioning material used.

This interpretation was already confirmed by the UN Sub-Committee of Experts at its last meeting. However, there was currently no majority in favour of including an exemplary reference to standard ISO 1182, which can be used to assess non-combustibility, because this standard does not contain acceptance criteria for non-combustibility and these would also have to be listed in any reference to this standard. It was also noted that this standard should also be referred to in the packing instructions for other dangerous goods where reference is made to non-combustibility. The UN Sub-Committee of Experts decided to return to the question of how to proceed in cases where the country in which the packaging is approved is different from the country in which the packaging is designed or manufactured.

Use of recycled plastics material

Global initiatives to limit the negative impact of human activities on the environment (e.g. the European Commission's "Green Deal") also have an impact on the production of plastics packagings. The new levy on non-recycled plastics packagings introduced by the European Commission means that manufacturers and users of plastics packagings will have to change their traditional production processes. Ways are being sought to reduce the amount of non-recycled virgin plastics material and increase the proportion of recycled plastics material in production processes. This also affects the manufacturers and users of plastics packagings for the transport of

dangerous goods.

It was already noted in the last biennium that while the UN Model Regulations contain provisions for the use of recycled plastics material in certain individual cases, there are no provisions for the general use of recycled plastics material. On the other hand, it was also noted that in various places, the construction requirements for packagings use the wording "of suitable plastics material", which does not exclude the use of recycled plastics material. It was decided to return to this issue during this biennium in order to increase the rate of recycling for dangerous goods packagings for reasons of environmental protection.

In a document, Belgium drew the attention of the UN Sub-Committee of Experts to the paradox in the UN Model Regulations that recycled plastics material from well-controlled sources have to meet the quality parameters defined in the definition of "recycled plastics material" in 1.2.1, while for "suitable plastics materials", which can also be recycled plastics material from household waste, there are no requirements in terms of testing the specifications of these materials. In addition, the marking provisions for packagings only provide for special marking ("REC") for recycled plastics material, but not for "suitable plastics materials".

The requirements for the use of recycled plastics material that does not meet the definition in 1.2.1 (i.e. suitable plastics materials) are interpreted quite differently by the competent authorities and inspection bodies. Some choose a safe route and only allow use under very strict conditions (e.g. through exemptions for use at national level). Others use the exemptions provided in the UN Model Regulations (e.g. use of the letter "W" in the marking in accordance with 6.1.2.4) and allow these packagings for international

carriage. Others allow these packagings, like packagings made of virgin materials, and also allow these packagings for international transport.

Against the background that the use of recycled plastics materials for the production of dangerous goods packagings will increase, the UN Sub-Committee of Experts decided to set up a working group to address the following issues:

- Should the term “suitable plastics material” be more clearly defined?
- Depending on what is defined to be “suitable plastics material”, is it deemed necessary to revise what is to be understood as “recycled plastics material”?
- Is solely a performance-based approach on the basis of design type testing sufficient to determine whether recycled plastics material is suitable, or should criteria on the source material be included to determine this?
- Should all types of plastics packaging for dangerous goods be considered equal as far as the use of recycled material is concerned or is an approach based on the type of packaging preferred? Additionally, is an approach preferred based on the contents these packagings are intended to hold (e.g. solid vs. liquid contents)?
- Is it necessary that all packaging made from recycled plastics material be marked to distinguish it from packaging made from virgin material?
- Should the more generalized use of recycled plastics for the manufacture of packagings intended for international transport of dangerous goods

be regulated in the UN Model Regulations or should this be left to the responsibility of the different competent authorities?

This working group could also provide important guidance to the ISO working group that is currently revising ISO standard 16103:2005 (Packaging – Transport packaging for dangerous goods – Recycled plastics material).

Portable tanks

Waiving the internal examination

RID/ADR 6.7.2.19.5 and 6.7.3.15.5 describe the examinations to be carried out as part of the 2.5 year periodic inspection of portable tanks. For portable tanks intended for the carriage of a single substance, the 2.5 year internal examination may be waived or substituted by other test methods or inspection procedures specified by the competent authority or its authorized body.

At the last session of the UN Sub-Committee of Experts, Germany had raised the question of who may grant the waiver of the internal examination and how this can be implemented (e.g. within the framework of the type approval of the tank or by the inspection body during the intermediate inspection). Two options were identified:

- The internal examination in the context of the intermediate inspection and test can be waived if the portable tank is only approved for a single substance/gas in accordance with the design approval.
- The internal examination in the context of the intermediate inspection and test can be waived if the test report of the previous 5 year periodic inspection and test of the portable tank states that

the tank is only intended for the transport of a single substance/gas. If other substances/gases are to be transported subsequently, an internal examination shall be performed.

Opinions within the UN Sub-Committee of Experts were divided on the two options because, according to the current wording of the regulatory text, both interpretations are permissible. Germany will prepare a revised proposal for the next session of the UN Sub-Committee of Experts, in which the wording “for a single substance” will also be clarified, as it is not clear how to proceed with mixtures.

Service equipment made of fibre-reinforced plastics

Currently, valves, pressure relief devices and manholes for all types of portable tanks are made of metallic materials. Particularly when carrying corrosive substances, these devices have a shorter service life than the shell. Russia was firmly of the view that using fibre-reinforced plastics (FRP) in the construction of this service equipment could increase its service life and reduce repair and replacement costs.

The UN Sub-Committee of Experts agreed unanimously that the existing working group on portable FRP tanks had completed its work under the current mandate. The Chairman thanked the members and the Chairman of the working group (Mr Steven Webb, United States of America) for the enormous efforts over the past four years that had resulted in new provisions for portable FRP tanks. These provisions will enter into force for RID/ADR/ADN on 1 January 2023 and will replace the previous provisions of Chapter 6.9, which were used as a starting point for the discussion at UN level.

The UN Sub-Committee of Experts agreed to set up a new working group chaired by Russia to look at service equipment made of fibre-reinforced plastics.

Resilience of FRP tanks

RID/ADR 6.7.2.4 deals with the minimum wall thickness of metallic portable tanks. For tanks made of a metal other than reference steel, an equivalent thickness is required. A formula is given for calculating the equivalent wall thickness.

During the discussions on the new Chapter 6.9, the United Kingdom had already criticised the fact that the principle of equivalence applicable to metallic portable tanks was not being applied to portable FRP tanks. The United Kingdom expressed concern that the resilience of portable FRP tanks to damage that may occur as a result of likely impact situations is not comparable to the resilience of metallic portable tanks. In the discussion, several experts supported the new provisions on the basis of experience and were confident that the requirements would ensure that portable FRP tanks are sufficiently resilient and even more efficient than conventional metallic portable tanks.

The representative of the International Tank-Container Organisation (ITCO) was also of the view that the provisions for the minimum wall thickness of FRP shells in 6.9.2.4.2 should be supplemented by values for energy absorption from standard EN 13094.

Some experts were of the view that the issue of the minimum wall thickness of FRP shells should be discussed further, but did not consider a reference to standard EN 13094, which is only applicable to metallic tanks, to be appropriate.

Any other business

Uniform interpretation of the UN Model Regulations

A lot of proposals submitted to the UN Sub-Committee of Experts concern questions relating to the applicability of existing provisions in the UN Model Regulations. Different interpretations can lead to uncertainty among users and the competent authorities. This uncertainty may in turn result in the provisions of the UN Model Regulations being applied incorrectly or different requirements being applied in different countries and regions. Competent authorities are often faced with having to interpret the intent of provisions of the UN Model Regulations.

The representative of the United States of America pointed out that for ADR, interpretations that had been adopted by the Working Party on the Transport of Dangerous Goods were already published on the UNECE website. "Unified interpretations" are also used in the International Maritime Organization (IMO) to ensure uniform application of the technical provisions.

The UN Sub-Committee of Experts supported the concept of uniform interpretations. It was agreed to continue the discussion on this topic at the next session.

Implementation of the UN Model Regulations

The UN Sub-Committee of Experts recalled the decision taken at the last session to include the new standing agenda item "Implementation of the UN Model Regulations" in its work programme. He welcomed the South African Department of Transport's decision to develop national standards for dangerous goods based on the UN Model Regulations in order to enable the smooth import and export of

chemicals and products. These standards are to be continuously updated on the basis of the biennial revisions of the UN Model Regulations.

UN/OECD seminar in connection with the Beirut port explosion in 2020

On 4 August 2020, a warehouse storing an estimated 2,750 tonnes of ammonium nitrate caught fire and exploded in the port of Beirut. This accident caused about 300 deaths and 6,500 injuries, and an estimated 300,000 people lost their homes. In addition, severe material damage was caused in the port area as well as in the commercial and residential districts in the radius of the explosion. The health infrastructure was also affected. Other accidents involving ammonium nitrate have occurred in the past, for example in 2001 in Toulouse, France, in 2004 in Mihăilești, Romania, in 2013 in Texas, United States of America, in 2015 in Tianjin, China and in 2021 in Bata, Equatorial Guinea. These events have highlighted the importance of complying with existing international regulations for all aspects of chemicals management (from manufacturing to classification, marking, transport, storage, handling and disposal).

At the eleventh meeting of the Conference of the Parties to the UNECE Convention on the Transboundary Effects of Industrial Accidents (Geneva, 7-9 December 2020), the European Union requested an exchange of views on whether and how this accident could be addressed under the Convention.

The UN Sub-Committee of Experts was informed that a seminar jointly organised by the United Nations and the Organisation for Economic Cooperation and Development (OECD) will take place on 14 December 2021. The

main objectives of the seminar are to learn lessons from the Beirut explosion disaster and other accidents relating to the storage and handling of ammonium nitrate and ammonium nitrate-based fertilisers, to exchange experiences and best practices from international and national legal

instruments, and to identify steps to improve incident prevention and response to accidents involving ammonium nitrate.

Next session

The 59th session of the UN Sub-

Committee of Experts will be held from 29 November to 8 December 2021 in Geneva.

Jochen Conrad

CALENDAR OF OTIF'S MEETINGS IN 2022

DATE	EVENT	ORG	LOCATION
23 - 24 February	135 th Administrative Committee		Berne - Switzerland (VIDEO-CONFERENCE)
14 - 18 March	RID/ADR/ADN Joint Meeting	UNECE	Berne - Switzerland (HYBRID MEETING)

EVENTS WITH OTIF PARTICIPATION IN 2022

DATE	EVENT	ORG	LOCATION
8 - 11 February	Working Group on Annex 2 to SMGS "Provisions for the Carriage of Dangerous Goods"	OSJD	Warsaw - Poland (VIDEO-CONFERENCE)
9 - 10 February	Railway Interoperability and Safety Committee	European Commission	(VIDEO-CONFERENCE)
14 - 15 February	International Dangerous Goods Days Hamburg		Hamburg - Germany
21 - 22 February	Topical Working Group – Digital Automatic Coupler	ERA	(VIDEO-CONFERENCE)
22 - 25 February	Inland transport Committee	UNECE	Geneva - Switzerland
24 March	CIM Committee	CIT	Berne - Switzerland



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