

OTIF



**ORGANISATION INTERGOUVERNEMENTALE POUR
LES TRANSPORTS INTERNATIONAUX FERROVIAIRES**

**ZWISCHENSTAATLICHE ORGANISATION FÜR DEN
INTERNATIONALEN EISENBAHNVERKEHR**

**INTERGOVERNMENTAL ORGANISATION FOR INTER-
NATIONAL CARRIAGE BY RAIL**

**7^{ème} Assemblée générale
7. Generalversammlung
7th General Assembly**

**AG 7/PV
Annex 2**

Original : DE

Final document

1. Pursuant to Article 6 of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, the 7th General Assembly met on 23 and 24 November 2005 in Berne.
2. The following took part in the General Assembly:
 - 2.1 **34 Member States of OTIF**
 - 2.2 **2 States with observer status**
 - 2.3 **1 supranational organisation**
 - 2.4 **2 international organisations**
 - 2.5 **4 international associations**
3. In accordance with Article 6 of the Rules of Procedure, the Central Office provided the Secretariat.
4. **The General Assembly elected**
 - as chairman: Mr Wolfgang Catharin (Austria)
 - as first deputy chairman: Mr Mahmoud Ben Fadhl (Tunisia) and
 - as second deputy chairman: Mr Knud Elm-Larsen (Denmark)
5. The General Assembly formed the Committees as set out below:
 - 5.1 **Credentials Committee**
 - chairman: His Exc. Mr Mladen Andrić (Croatia)
 - deputy chairman: Mr Claudiu Dumitrescu (Romania)
 - members: Ireland, Netherlands, Poland
 - 5.2 **Editorial Committee**
 - chairman: Mr Michel Aymeric (France)
 - co-chairmen: Mr Wolfram Neuhöfer (Germany)
Mr Colin Poole (United Kingdom)
 - members: Belgium, Finland, Switzerland
6. The General Assembly deliberated on the basis of the Rules of Procedure as adopted by the 5th General Assembly, 26 May 1999, applicable from 1 January 2000, with the amendments adopted by the 6th General Assembly which entered into force on 15 November 2000.

7. The General Assembly
 - 7.1 adopted its agenda;
 - 7.2 adopted its Rules of Procedure applicable from the entry into force of COTIF 1999 (Annex 1);
 - 7.3 discussed the legal consequences of the entry into force of COTIF 1999 if not all States have ratified the Vilnius Protocol in due time, and took decisions on this subject as contained in Annex 2;
 - 7.4 discussed the development and implementation of the COTIF technical approval system (COTIF 1999 Appendices F (APTU) and G (ATMF)) and reached conclusions on this subject, which are contained in Annex 3;
 - 7.5 noted the report of the Administrative Committee on its activities during the period 2000-2005 and approved it;
 - 7.6 decided the composition of the Administrative Committee for the five year period 2006-2010 as follows:
 - Germany
 - Belgium
 - Croatia
 - Spain
 - Greece
 - Ireland
 - Lithuania
 - Morocco
 - Poland
 - Romania
 - Switzerland
 - Syria;
 - 7.7 fixed the maximum amount that the Organisation's expenditure may reach in each annual budgetary period for the five year period 2006-2010 as follows:

the annual increase in the amount of expenditure of the OTIF budget may not exceed the index fixed, based on the average of inflation recorded in the Euro zone countries and Switzerland; the theoretical maximum amount of expenditure at the end of 2006 is fixed at SFr. 3,301,890.-, which corresponds to the amount of the 2006 budget. The maximum amount for 2010 is fixed at SFr. 3,720,000.-, unless the 8th General Assembly decides otherwise after the entry into force of the Vilnius Protocol.
 - 7.8 agreed that OTIF should assume the role of Secretariat of the Supervisory Authority in accordance with Article XIII § 2 of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment concerning Matters Specific to Railway Rolling Stock, as adopted by the 3rd Joint Meeting of Governmental Experts, on condition that

- a) the Secretariat of the Supervisory Authority enjoys the usual international immunities from legal and administrative procedures and exemption from tax, and other privileges provided by agreement with the host State;
- b) the fees of the International Registry in accordance with Article XVIII § 1 of the preliminary draft referred to above cover the Secretariat's costs incurred in connection with the fulfilment of these tasks;
- c) the conditions for the Secretariat to fulfil its activity will be set out in an agreement between the Administrative Committee of OTIF and the Supervisory Authority of the Rail Registry;

7.9 until the International Registry is fully operational, authorised the Administrative Committee to exceed the maximum amount fixed by the General Assembly for each budgetary period from 2006 to 2010. The overspend may at most reach the amount equivalent to the costs of half a post of a First Secretary and the material expenses made necessary by the decisions of the Diplomatic Conference (to adopt the Rail Protocol referred to) in the development phase of the International Registry. The General Assembly considers that this additional expenditure that is necessary in the start-up phase and that will have to be borne by the OTIF budget will be repaid to this budget by the fees raised in the operational phase of the International Registry;

7.10 with regard to the arrears of contributions of the Former Yugoslavia

- endorsed the initiative and the strategy of the Director General to resolve the open questions in relation to outstanding contributions of the Former Yugoslavia to the OTIF debts/budget. It encourages him to pursue the endeavours in this direction;
- welcomed the preparedness of Serbia and Montenegro, Slovenia and Croatia to accept, in principle, the compromise proposal put forward by the Central Office;
- urged Bosnia-Herzegovina and FYR of Macedonia also to consider accepting, in principle, this compromise proposal;
- agreed that additional consultations have to be undertaken to determine the extent to which the successor countries will be assuming their responsibility for amounts originally owed by the former Socialist Federal Republic of Yugoslavia;
- expressed its expectation that the issue concerned will be resolved before, and the results presented to, the 8th General Assembly.

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The Director General will send the Governments of the Member States of OTIF and all other delegations a copy of this final document, adopted by the General Assembly on 24 November 2005.

Annexes

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**7^{ème} Assemblée générale
7. Generalversammlung
7th General Assembly**

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Original : DE

General Assembly Rules of Procedure

(version adopted by the 7th General Assembly on 23 November 2005)

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In accordance with Article 14 § 2 (a) of the 3 June 1999 Protocol version of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, the General Assembly has adopted these Rules of Procedure.

Article 1 Definitions

For the purpose of these Rules of Procedure, the term:

- (a) "Convention" means the 3 June 1999 Protocol version of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980;
- (b) "OTIF" means the Intergovernmental Organisation for International Carriage by Rail;
- (c) "Member State" means one of the Member States of OTIF;
- (d) "regional organisation" means a regional economic integration organisation which has acceded to the Convention in accordance with Article 38 of the Convention;
- (e) "Assembly" means the OTIF General Assembly;
- (f) "Secretary General" means the Secretary General of OTIF;
- (g) "Secretariat" means the Secretariat of the Assembly.

Article 2 Composition and tasks

The composition and tasks of the Assembly shall be determined on the basis of Article 14 of the Convention.

Article 3 Sessions

- § 1 The Secretary General shall convene the Assembly in accordance with Article 14 § 3 of the Convention.
- § 2 If an Assembly has not been able to complete its agenda during a session, it shall reconvene for a complementary session within a period to be determined by the Assembly, depending on the circumstances.
- § 3 The Assembly shall convene at the headquarters of OTIF. However, with the agreement of the majority of the Member States, the Secretary General may convene the Assembly at any other place.

Article 4 Right to vote

- § 1 Subject to the cases provided for in Articles 14 § 5, 26 § 7 and 40 § 4 (b) of the Convention, each Member State entitled to take part in decision making that is repre-

sented at the Assembly by a delegation that is suitably vested with powers in accordance with Article 6 shall have one vote.

§ 2 A Member State may arrange to be represented by another Member State; no State may however represent more than one other State.

§ 3 Subject to the cases provided for in Articles 14 § 5, 26 § 7 and 40 § 4 (b) of the Convention, a regional organisation which is represented by a delegation that has been suitably vested with powers in accordance with Article 6, shall enjoy in those matters under discussion that come within its competence the number of votes equal to those of its members which are also Member States of OTIF. The regional organisation shall not enjoy the right to vote in respect of Title IV of the Convention. Moreover, individual Member States that are also members of a regional organisation may only exercise their right to vote in so far as the matters under discussion do not come within the competence of the regional organisation.

Article 5 Observers

§ 1 The representatives of Associate Members of OTIF and the representatives of non-Member States and international organisations and associations invited in accordance with Article 14 § 7 of the Convention, may attend sessions of the Assembly in an advisory capacity.

§ 2 Observers shall receive the documents prepared for the Assembly, subject to any requirements concerning confidentiality.

Article 6 Powers

§ 1 In order to participate in proceedings and in Assembly votes, other than as provided in § 2, delegations of the Member States and regional organisations shall be appropriately vested with powers by the competent organs.

§ 2 In order to participate in Assembly votes concerning amendments to the Convention, delegations of Member States shall be vested with specific powers assigned by name by the Head of State, the Head of Government, the Minister for Foreign Affairs or the Head of the authority authorized to issue these powers. In the latter case, the letter of credentials shall indicate that the authorization has been granted by the Head of State, the Head of Government or the Minister for Foreign Affairs. Delegations of regional organisations shall be vested with powers assigned by the organ that is competent to represent the organisation externally.

§ 3 The authorizations referred to in § 1 and the powers referred to in § 2 of a Member State represented at the Assembly by another Member State shall be granted by the organs referred to in § 2.

§ 4 If the authorizations and powers are not drawn up in one of the working languages of OTIF, a translation in one of the working languages shall be attached to them.

- § 5 Before the meeting is opened or at the latest within 24 hours of the meeting being opened, delegations shall deposit the powers in accordance with Article 6 § 2 and § 3 with the Secretariat.

Article 7
Verification of powers

- § 1 A Credentials Committee shall be formed at the beginning of every session. It shall be made up of five delegations of the Member States or of the regional organisations designated by the Assembly on the basis of a proposal from its Chairman. Each delegation shall have one vote.
- § 2 When the session is opened, the Committee shall check whether the powers are in conformity with the requirements of Article 6 § 2 and § 3; in the case of Article 6 § 1, the Committee shall only examine the authorizations when a delegation has expressed doubts about it to the Chairman of the Assembly.
- § 3 The Committee shall report to the Assembly as soon as possible. The Assembly shall note the report and shall, in case of doubt, take a decision on the right to vote.
- § 4 Pending the Assembly's decision concerning their powers, delegations shall be entitled to participate in the work on a provisional basis.

Article 8
Secretariat

- § 1 The Secretary General shall provide the Secretariat of the Assembly.
- § 2 The items included in the agenda shall be prepared by the Secretary General and may be referred to one of the Committees provided for in Article 13 for examination and reporting to the Assembly.
- § 3 The Secretary General or the representative designated by him shall attend the Assembly and its Committees in an advisory capacity.

Article 9
Public nature of sessions

Unless the Assembly decides otherwise, its sessions and those of its subsidiary organs shall not be open to the public.

Article 10
Provisional agenda

- § 1 The provisional agenda shall be prepared by the Secretary General and presented by the Chairman of the Assembly at its first session for adoption or amendment.
- § 2 The calling notice indicating the venue of the Assembly and the date and time it opens, and the provisional agenda, shall be sent to Member States and the regional organisations no later than three months, and for documents, no later than two months before the session opens.

§ 3 The provisional agenda for each session shall include items suggested by the Secretary General as well as any other items requested for inclusion by a previous session and any items proposed by a Member State or by a regional organisation no later than five months before the session opens.

§ 4 As a rule, the first item on the provisional agenda of each session shall be the election of the Chairman and Vice-Chairmen.

Article 11 Chairmanship

§ 1 Subject to Article 3 § 2, when each session of the Assembly is opened, the Chairman of the previous session or, in his absence, the delegate of his country, shall chair the opening session of the meeting until the new Chairman and the Vice-Chairmen are elected. If no delegate from the country of which the Chairman of the previous session was a national is present, one of the Vice-Chairmen of the previous session, or, in his absence, the delegate from his country, shall chair the opening session in the order decided upon previously by the Assembly.

§ 2 The chairmanship and vice-chairmanship of the Assembly shall not, in principle, be assumed by delegates:

- of Member States whose nationals were elected to chair one of the preceding three sessions of the Assembly,
- of the Member State that chairs the Administrative Committee,
- of the Member State of which the Secretary General is a national.

§ 3 The Chairman elected by the Assembly or, in his absence, one of the Vice-Chairmen, shall chair the sessions in the order decided upon by the Assembly.

§ 4 In addition to exercising the powers conferred upon him by virtue of the Rules of Procedure, the Chairman shall conduct proceedings, ensure that the Rules of Procedure are applied, give the floor, direct the votes and announce decisions.

§ 5 The Chairman shall decide all questions concerning application of the Rules of Procedure. If a delegation disputes the Chairman's decision, a vote shall be taken. The Chairman's decision shall stand if a majority in accordance with Article 21 § 1 does not oppose it.

Article 12 Bureau

§ 1 The Chairman and Vice-Chairmen of the Assembly shall, with the Chairmen of the Committees, form the bureau of the Assembly. The Secretary General or the representative designated by him shall attend the meetings of the bureau in an advisory capacity.

§ 2 If necessary, the bureau shall assist the Chairman in conducting and co-coordinating the work.

Article 13 Committees

- § 1 In addition to the Credentials Committee provided for in Article 7, the Assembly shall designate an Editorial Committee and, if necessary, other Committees. It shall compose them and lay down their tasks.
- § 2 Each Committee may set up one or more sub-committees to examine particular questions.
- § 3 Committees and sub-committees shall conform to the requirements of these Rules of Procedure in so far as they are applicable to them.
- § 4 The Committees' conclusions shall be brought to the attention of the Secretariat and delegates, if possible in writing, and before the plenary session during which they are discussed. Otherwise, the Committee Chairmen shall give a verbal, provisional account.

Article 14 Conducting proceedings

- § 1 In principle, the Chairman shall give the floor in the order in which it is requested.
- § 2 In general, a delegation shall not be given the floor a second time, except to reply to a question, until all those delegations wishing to speak on the same question have done so.
- § 3 In a plenary session, the Chairman of a Committee may have priority in taking the floor in order to explain the conclusions of the organ he chairs.

Article 15 Languages

- § 1 The proceedings shall be conducted in the working languages.
- § 2 If possible, there shall be simultaneous translation of the Assembly's proceedings into the other languages; in the latter case, the text of proposals and announcements by the Chairman shall be translated in full.
- § 3 Delegations that use other languages shall provide interpretation of their interventions into one of the working languages.
- § 4 All Assembly documents shall be prepared in the working languages.
- § 5 If there is a difference between the wording in the working languages, the wording of the language in which the proposal was written or in which an intervention was made shall prevail; however, with regard to Assembly decisions, the French text shall prevail in the event of differences.

Article 16 Proposals

In principle, proposals submitted during the meeting shall be submitted in writing to the Secretariat in one of the working languages before the discussion in order that they can be made available to delegations as soon as possible. The Chairman shall read them out.

Article 17 Examination of proposals and voting

- § 1 If there is more than one proposal on the same question, the Chairman shall decide in which order they shall be discussed, beginning, in principle, with the proposal that differs the most from the base text, or, in the absence of a base text, from the original proposal.
- § 2 If a proposal is the subject of an amendment, the amendment shall be put to the vote before the proposal itself. If a proposal is the subject of two or more amendments, the vote shall first take place on the amendment that differs the most, with regard to its substance, from the original proposal. If the Assembly does not adopt any amendment, the vote shall take place on the original proposal.
- § 3 If a proposal can be separated into different parts, with the agreement of the author of the proposal, each part may be voted on separately. Once the different parts have been adopted, a vote shall be taken on the proposal as a whole.
- § 4 The Chairman of the Assembly and the chairmen of the Committees shall, after each session, transmit the text of the proposals adopted to the Editorial Committee.

Article 18 Motions of order

Delegations may, at any time, submit motions of order, provided they do not concern the substance of the question being dealt with. The Chairman shall take a decision immediately. If a delegation disputes the Chairman's decision, a vote shall be taken. The Chairman's decision shall stand if it is not rejected by a majority in accordance with Article 21 § 1.

Article 19 Rediscussion of proposals

A proposal that has been adopted or rejected may only be examined again if the Assembly so decides, and this shall be carried out in the same way as the initial vote on the proposal in question was taken (show of hands, nominal vote, secret ballot).

Article 20 Quorum

There shall be a quorum in the Assembly when a majority of the Member States entitled to take part in decision making are represented either by its own delegation, the delegation of another Member State or by the delegation of a regional organisation. In deciding whether there is a quorum, account shall not be taken of Member States that do not have a right to vote

in accordance with Article 14 § 5 of the Convention or whose right to vote in accordance with Article 26 § 7 or 40 § 4 (b) has been suspended.

Article 21

Voting procedure

- § 1 In principle, decisions of the Assembly shall be taken by a majority vote of the Member States represented, within the meaning of Article 20, at the time of the vote.
- § 2 Decisions of the Assembly shall be taken by a majority vote of two-thirds of the Member States represented, within the meaning of Article 20, at the time of the vote
- (a) on fixing, for six-year periods, the maximum amount that the expenditure of OTIF may reach in each budgetary period, or else on directives relating to the limitation of this expenditure that it shall issue for a period of not more than six years;
 - (b) on the relocation of the OTIF headquarters (Article 1 § 2 of the Convention);
 - (c) on the introduction of other working languages (Article 1 § 6 of the Convention);
 - (d) on OTIF's taking on further attributions (Article 4 § 1 of the Convention) and on transferring OTIF attributions to another intergovernmental organisation (Article 4 § 2 of the Convention);
 - (e) on proposals to amend the Convention itself, with the exception of Articles 9 and 27 §§ 2 to 10 and on proposals to amend the Protocol referred to in Article 1 § 4 of the Convention;
 - (f) on the dissolution of OTIF and any transfer of its attributions to another intergovernmental organisation (Article 43 of the Convention);
 - (g) on whether an amendment to the Convention is of such importance that the membership of any Member State which will have made a declaration pursuant to Article 34 § 2 or 3 of the Convention, and which will not have approved the amendment within the period of eighteen months running from its entry into force, will cease, on the expiration of this period, to be a Member of OTIF (Article 34 § 6 of the Convention).
- § 3 Determination of the majorities provided for in §§ 1 and 2 shall be based on the number of Member States represented in the meeting room at the time of the vote by physically present delegations within the meaning of Article 20. Non-participation of a delegation physically present in the meeting room at the time of the vote shall be considered as an abstention.
- § 4 In principle, voting shall take place by show of hands. However, any delegation may request a nominal vote. This vote shall take place in French alphabetical order, beginning with the delegation whose name the Chairman draws out. Votes shall be recorded in the minutes.

- § 5 If at least two delegations so request, voting shall take place by secret ballot, unless the majority, within the meaning of Article 20, of the Member States represented are opposed to this. On the basis of a proposal by the Chairman, two scrutineers shall be designated to count the votes. All invalid ballot papers shall be reported to the Assembly.
- § 6 If the votes are divided equally, a second vote shall take place, if necessary after a break in the session. If the votes are again divided equally, the proposal shall be considered as rejected.
- § 7 Once voting has begun, no delegation may interrupt it, unless for the purpose of a motion of order concerning the manner in which the vote is taking place.

Article 22 Election of the Secretary General

- § 1 The candidate who receives the majority of votes in accordance with Article 21 § 1 shall be elected.
- § 2 If no candidate receives this majority in the first ballot, as many ballots shall be carried out as are necessary to leave only two candidates. After each ballot, the candidate who has received the least number of votes, as well as all candidates who have received no votes, shall withdraw.
- § 3 If, in the ballots in accordance with § 2, two or more candidates receive the same number of votes and fewer votes than one or several other candidates, a vote shall be taken on which of these candidates shall withdraw. If, in two further ballots, the number of votes is equal, lots shall be drawn to decide.
- § 4 If two candidates remain at this stage and they receive the same number of votes, a new vote shall be taken, if necessary after a break in the session. If, in two further ballots, the number of votes is still equal, the Chairman shall decide, unless the Assembly decides to invite applications for the post again.

Article 23 Record of the Assembly

All decisions by the Assembly shall be recorded in a document and sent to the Member States by the Secretary General.

Article 24 Minutes

- § 1 Minutes of the plenary sessions and of the Committee sessions shall be prepared. They shall summarize the proceedings in the working languages. The text of proposals and decisions shall be reproduced in full.
- § 2 Each delegate shall have the right to request that any statement he has made be reproduced in the minutes in full, provided the text is given to the Secretariat in one of the working languages.

- § 3 The Secretary General shall send participants the provisional minutes as soon as possible after the session has closed. Participants shall, within one month of receipt, inform the Secretary General in writing of any corrections they wish to make to the text of their interventions.
- § 4 The final version of the minutes shall be sent to Member States, regional organisations and observers.

Article 25
Amending the Rules of Procedure

- § 1 These Rules of Procedure may be amended based upon a decision by the Assembly, provided a proposal for amendment submitted by a Member State, or a regional organisation, or a suggestion for amendment from the Secretary General, is on the provisional agenda.
- § 2 A decision by the Assembly taken in accordance with § 1 may be brought into force for the session at which the decision is taken.

Article 26
Entry into Force

These Rules of Procedure shall enter into force on the day on which the Protocol of 3 June 1999 enters into force.

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7. Generalversammlung
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**Legal consequences of the entry into force of COTIF 1999 if not all States
have ratified the Vilnius Protocol in due time**

I.

In consideration of the fact that on the one hand, the 1999 Protocol will probably enter into force before all the Member States of OTIF have ratified, accepted or approved it or have acceded to it,

in consideration of the fact that on the other hand, the 1999 revision was carried out by the 5th General Assembly in Vilnius, ensuring legal continuity on the basis of Article 20 of COTIF 1980 and that those States that have not ratified, accepted or approved the 1999 Protocol or have not acceded to it also continue to be Member States of OTIF,

further, in consideration of the fact that 33 Member States have signed the 1999 Protocol, four Member States have acceded to this Protocol and two other States have acceded to COTIF since 1999 – including the 1999 version,

considering the general principle under international law of utmost good faith (*bona fides*),

considering the general principle under international law, according to which signing the new version of the Convention obliges the signatory State to refrain from acts which would defeat the object and purpose of the treaty and

considering further principles under international law established in the Vienna Convention on the Law of Treaties (e.g. Art. 30 and 34),

in the interest of the smoothest possible application of the new rules, while ensuring Member States' existing rights,

the General Assembly deems that

- the Member States that have not ratified, accepted or approved the 1999 Protocol or have not acceded to it, are to be considered as third countries in relation to the 1999 Protocol,
- but the existence of the organs in accordance with COTIF 1980 and COTIF 1999 in parallel is not acceptable, since it is not practicable,
- there are thus only uniform organs of OTIF, although it must be assumed that the right to vote can only be granted to States that have not ratified, accepted or approved the 1999 Protocol or have not acceded to it to the extent that the discussions in these organs concern provisions that it would be possible to amend on the basis of the enabling power in accordance with COTIF 1980; in particular, this means
 - only one **General Assembly**, in which those Member States that have not ratified, accepted or approved COTIF 1999 or have not acceded to it may also exercise their right to vote, provided this is consistent with the rights and obligations they have in accordance with COTIF 1980, without defeating the purpose of COTIF 1999;
 - only one **Administrative Committee** consisting of one third of the Member States, which however, in its decisions, particularly on financial

matters, must take account of the interests of the Member States that have not (yet) ratified, accepted or approved the 1999 Vilnius Protocol or have not acceded to it, in accordance with the principles under international law that have been referred to;

- only one **Revision Committee**, in which the States that have not ratified, accepted or approved the 1999 Protocol or have not acceded to it do not have the right to vote in decisions concerning amendments to COTIF 1999, while the Revision Committee should refrain from making amendments to COTIF 1980;
- only one **RID Committee of Experts**, in which all Member States are entitled to develop further the Annex to RID, while those States that have not ratified, accepted or approved the 1999 Protocol or have not acceded to it do not have the right to vote in decisions concerning amendments to Appendix C itself;
- a new organ, the **Committee of Technical Experts**, in which the Member States that have not ratified, accepted or approved the 1999 Protocol or have not acceded to it do not have the right to vote;
- the European Community cannot exercise such rights in the organs of OTIF as are not granted to the Member States concerned because they have not ratified, accepted or approved the 1999 Protocol or have not acceded to it,
- in contrast, the European Community can exercise its Member States' right to vote in such matters, under the conditions applicable in this respect, where such States could have the right to vote, even though they have not yet ratified, accepted or approved the 1999 Protocol or have not acceded to it,

the General Assembly requests the Secretary General,

not only to keep the Lists of Lines prescribed in Article 24 of COTIF 1999 up to date and to publish them, but also – for those States that have not ratified, accepted or approved the 1999 Protocol or have not acceded to it – to continue to keep the Lists of Lines in accordance with Article 10 of COTIF 1980 up to date, in view of Article 11 of COTIF 1980, and to publish them.

II.

In consideration of the fact that application of the CIV and CIM Uniform Rules, and hence of RID as an executive order in respect of Article 4 (d) and Article 5 § 1 (a) of CIM 1980, is suspended when the 1999 Protocol enters into force, in accordance with Article 20 § 3 of COTIF 1980, in respect of traffic with and between those Member States which, one month before the entry into force of the 1999 Protocol have not yet deposited their instruments of ratification, acceptance, approval or accession,

Conscious that application of the CIV Uniform Rules on the basis of an agreement between the parties to the contract of carriage is not provided for in the 1999 CIV UR, in contrast to the 1999 CIM UR,

Conscious that the public law provisions of the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID – Appendix C to COTIF 1999) are not subject to disposal by the parties,

the General Assembly recommends the Member States concerned

to use suitable measures to make the existing possibilities available to the parties to the contract of carriage, in order to prevent the negative consequences of the suspension of the application of the CIM and CIV Uniform Rules, by

- making use of the possibility of applying the 1999 CIM Uniform Rules to the international carriage of goods by choice of law in accordance with Article 1 § 2 of CIM 1999, and
- choosing the 1999 CIV Uniform Rules as contract law on the basis of international private law for the international carriage of passengers, provided the respective national law so permits.

In addition, with regard to the international carriage of dangerous goods, the General Assembly recommends that the Member States to whom the provisions of RID do not apply on the basis of the European Communities' RID Framework Directive should check, bearing in mind their national law, the extent to which the provisions of RID should be applied, given that these provisions reflect the current state of science and technology and thus define the degree of care required.

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**7^{ème} Assemblée générale
7. Generalversammlung
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Conclusions concerning the document AG 7/4

Section 3

The General Assembly agrees that the objectives of the revision of the ATMF and APTU Appendices are that:

- the EU/EEA Member States of OTIF are able to operate within the confines of their own borders in accordance with the European legislation only;
- railway vehicles and other railway material running from EU/EEA Member States may be admitted to circulation or use into international traffic in non-EU/EEA Member States of OTIF on the basis of the certification and approval given under European legislation;
- railway vehicles and other railway material running from non-EU/EEA Member States may be admitted to circulation or use into international traffic in the EU/EEA Member States on the basis of the certification and approval given under the COTIF 1999 system.

The General Assembly agrees that urgent discussion is needed between the Commission and the Secretary General as to how the EC Member States are to reconcile their obligations under the EC Treaty and COTIF 1999.

Section 4.1

The General Assembly concludes that ATMF/APTU may and must include provisions concerning operation. It asks the Secretary General to prepare a draft which makes this legally clear in a way that requires no ratification process. The General Assembly assumes that this clarification be adopted by the Committee of Technical Experts or by the Revision Committee. The EU (ERA) is invited to make contributions to this work.

Section 4.2

The General Assembly accepts the introduction of national requirements into ATMF/APTU as a temporary provision in order to obtain compatibility with the EU regulations. However, the aim of full harmonization of the requirements in order to make the national requirements superfluous within a relatively short time, and the principle that the user should only apply for the approval to one of the OTIF Member States and subsequently receive it from the same Member State is maintained. The implementation of mutual recognition of approvals, and the related processes for notification and translation of national provisions needs further consideration and cooperation between the relevant bodies of the EU and OTIF with the objective of avoiding duplication and maximizing efficiency on the condition that safety requirements are maintained.

Section 4.3

The General Assembly, recognizing that for EU Member States the article 21 Committee is competent to take decisions on technical specifications, requests that a coherent procedure must be agreed and implemented between the EU Commission (ERA) and the OTIF Secretary General to ensure continued compatibility after the revision of ATMF/APTU. This must include fully transparent, close cooperation and – as far as possible - mutual invitations and

participation in all relevant bodies of EU and OTIF dealing with questions concerning the technical regulations.

Section 5.1

The General Assembly agrees to assign competence to the Committee of Technical Experts to propose, discuss and decide upon technical questions/provisions concerning the facilitation of border crossing, coordinating as far as possible with the EU TSI OPE (operation) provisions on this matter.

Section 5.2

The General Assembly agrees that OTIF shall apply the same code system for registration of vehicles as prescribed in Annex P of the EU TSI OPE (operation) with appropriate transitional provisions. A solution for the registration of vehicles when COTIF 1999 enters into force and the railways are no more obliged to register private wagons must be agreed between the competent bodies of the EU and OTIF with the objective that vehicles have only to be registered once. This has a very high priority and the Member States expect that cooperative and flexible approaches will be developed.

Section 5.3

The General Assembly asks the Secretary General to discuss and agree a solution for the Vehicle Keeper Marking (VKM) with the competent bodies of the EU and OSJD. This has also a very high priority and the Member States expect that cooperative and flexible approaches will be developed.

The General Assembly agrees to ask the General Director to take the initiative to solve the outstanding legal and practical problems between the EC Commission and OTIF as mentioned in Document AG 7/4 by –

1. Identifying problems of priority between EU and OTIF
2. Inviting the EU Commission to a number of scheduled negotiating meetings with the objective to find and agree common understandings that can be implemented concerning all subjects outstanding

and

3. Keeping the Governments of all the OTIF Member States informed during this process by transmitting information on dates and agendas for the planned meetings and the minutes related to these.

A report on this subject shall be given to the 8th General Assembly.

