



Organisation intergouvernementale pour les transports internationaux ferroviaires

Zwischenstaatliche Organisation für den internationalen Eisenbahnverkehr

Intergovernmental Organisation for International Carriage by Rail

# COTIF 1999

Explanatory Report

Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (ATMF – Appendix G to the Convention)

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## **Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (ATMF)**

### **Explanatory Report<sup>22</sup>**

#### **General Points**

Preliminary remark: the explanatory report which follows applies analogously to railway material other than rail vehicles which are intended for use in international traffic.

1. The judicial systems of almost all the Member States of the Intergovernmental Organisation for International Carriage by Rail (OTIF) provide that, in order to be operated or used in public traffic, means of transport (motor vehicles, railway vehicles, river boats, ships of the high seas and aircraft) must conform to certain specifications concerning construction and operation. Approval for public traffic is generally effected by means of an administrative document in the form of an approval of a model or a type of vehicle (prototype), followed by an admission to traffic of the individual vehicle, the latter being effected in a simplified manner, to the extent that the individual vehicle, according to the information supplied by the manufacturer, corresponds to the type or model already approved.
2. The purpose of these procedures, which are based on national and international law, is primarily traffic safety. In the majority of the Member States of OTIF, technical admission of vehicles for traffic is a sovereign task (state or at least public) which is partially entrusted to private companies (e.g., manufacturers). The procedure involves the manufacturers and the competent authority in the case of a model or type approval (admission of a type of construction). On the other hand, the admission procedure involves the person using the vehicle, or the keeper, and the competent authority in the case of admission of an individual vehicle for traffic (admission to operation). Technical admission is documented in certificates issued by the competent authorities. Frequently, the authorities with responsibility for admission also act as technical supervision authorities, with responsibility for periodic inspections of the safety of vehicles required by law, either by conducting these inspections or supervising them. This task is entrusted in part to private agencies (e.g., approved inspection centres).
3. The situation is essentially the same with regard to the technical admission of railway vehicles. Unlike the system in respect of the technical admission of other vehicles, in the majority of the Member States of OTIF, the agency responsible for the admission of railway vehicles is the same as the company which uses the vehicle: in this case, the railway. The reason for this lies in the fact that, to a large extent, the railways and the State constituted, or still constitute, a single entity (railways as a part of the state administration, incorporated in the State in the form of a public undertaking, patrimony or other form). For this, technical admission of railway vehicles is still performed, as in the past, by the railways themselves, in their capacity as

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22 The articles, paragraphs, etc. which are not specifically designated are those of the ATMF Uniform Rules; unless otherwise evident from the context, the references to the reports on sessions not specifically identified relate to the sessions of the Revision Committee.

state agencies. In addition, the development of technical specifications for the construction and operation of railway vehicles, serving as a basis for technical admission, has been and still is largely entrusted to the railways and their international associations. At international level, this has resulted in the Regulations on the Reciprocal Use of Wagons (RIV) and of Carriages and Vans (RIC) in International Traffic, agreed between the railways, as well as the technical leaflets of the International Union of Railways (UIC).

4. For the majority of the Member States of OTIF, this special legal situation in the rail sector cannot be maintained indefinitely. Today, this is true for the 15 Member States of the European Community (EC), as well as for Liechtenstein and Norway, which are States which are party to the Agreement on the European Economic Area (EEA) and, in the medium term, will be true for States which have lodged an application for accession to the EC (Turkey, Hungary, Poland, Romania, the Slovak Republic, Estonia, Latvia, Lithuania, Bulgaria, the Czech Republic, Slovenia), starting from the date of their accession.
5. On the basis of the Directive 91/440/EEC, Union law prescribes for the members of the EC and of the EEA an independent management of the rail transport undertakings, and hence a separation, in terms of organisation and law, of the State from the rail transport undertaking. The Directive also authorises a separation, in terms of law and organisation, of rail transport from infrastructure management, but without imposing the legal form (private or public status). In the majority of the Member States of the EC, as well as in some States wishing to accede to the EC, management of the rail transport undertakings is already independent of the State.
6. Added to these fundamental changes, in the States of the EC and the EEA, is the opening of the rail networks to other rail transport undertakings (Article 10 of the Directive 91/440/EEC and the European Commission proposal of 19 July 1995 seeking to amend that directive). This proposed amendment provides for a complete opening of the rail networks to use by other rail transport undertakings. The idea of “rail freight corridors” is also bringing about fundamental changes.
7. This legal system, which is already mandatory or will be in the future (following accession to the EC) in the majority of the Member States of OTIF, is not comparable with the system, still widely practised, of technical admission and inspection of railway vehicles by the railways themselves or by the rail transport undertakings themselves. The possibility of the use of the public railway infrastructure (private sidings are not included) and the right to its use by all rail transport undertakings having their registered office in the States of the EC and the EEA or by the owners of private wagons, as well as the idea of a free use of railway vehicles in international traffic, necessarily result in a different assessment of the system of auto-approval and auto-inspection of own vehicles, as well as of the system of admission and inspection of vehicles of other undertakings by the (state) railways). For reasons of legal principles, particularly reasons to do with the law on competition, it does not appear to be correct in terms of policy to allow that a rail transport undertaking, in competition with other rail transport undertakings, whether having its own infrastructure or not, should decide on the technical admission for traffic or the admission criteria for vehicles of a competing undertaking (rail transport undertaking or owner of private

wagons). Moreover, such a decision could only relate to admission for traffic on the infrastructure of the undertaking in question.

8. Consequently, it proves to be necessary to regulate in a uniform and mandatory manner, at international level, the principles of a new system of technical admission of railway vehicles for international traffic as well as the technical specifications for the construction and operation of vehicles, serving as a basis for admission. Although the UIC technical leaflets are mandatory for the members of that association, they do not have the same legal status as judicial standards drawn up at state level. The ATMF Uniform Rules, examined by the Revision Committee (15<sup>th</sup>, 18<sup>th</sup>, 22<sup>nd</sup> and 23<sup>rd</sup> sessions, 2 - 6.3.1998, 25 - 28.5.1998, 1 - 4.2.1999 and 23.3.1999) and adopted by the 5<sup>th</sup> General Assembly, are the reasonable and politically logical response to the legal development that has occurred within the EC, the EEA and, to some extent, in other States. Since international rail traffic does not concern only the States of the EC and the EEA, but a further 22 States joined together within OTIF, it should be subject to common rules, and not just with regard to transport law (CIV/CIM Uniform Rules). Consequently, it was logical to regulate the “technical” complex within the framework of OTIF/COTIF, insofar as this is of importance for international traffic.
9. The ATMF Uniform Rules (Appendix G to the Convention) set out the principles, objectives and procedures of technical admission of railway vehicles. The uniform technical specifications concerning the construction and operation of vehicles and of infrastructure, contained in the Annexes of the APTU Uniform Rules (Appendix F to the Convention), will constitute the basis of technical admission. Compliance with these specifications is necessary to render possible competitive international rail traffic without being compelled to change traction vehicles, pass through gauge or axle changing installations, transfer or change train at change-over points from one network to another.
10. The Annexes provided by the APTU Uniform Rules could constitute the precursor of a set of uniform, international regulations for the construction and operation of railway material, the over-riding objective of which is to achieve maximum interoperability - beyond the geographical area of the EC and the EEA - at least in the areas in which standardisation of the technical specifications concerning construction and operation is not justified for financial reasons (e.g., due to differences in gauge, rail gauge template, electric power supply systems and train safety systems).
11. The concept of the ATMF Uniform Rules and the APTU Uniform Rules and their Annexes can also be developed with a view to future tasks of OTIF. It would be conceivable, in the medium term, to make OTIF, or the current Central Office, an authority responsible for admission and technical inspection in international rail traffic matters. The enlargement of OTIF's functions would have to be accompanied by a reduction of powers at national level and with a substantial reduction of the functions of the national institutions currently responsible for technical admission. In this area, civil aviation again serves as an example, with the creation, in 1990, of the Joint Aviation Authorities (JAA) in Paris. In the field of aviation, the JAA can be considered as the precursors of a European technical supervisory authority. Intergovernmental co-operation in matters of rail technical su-

pervision could follow this example. In this context, reference is made to Articles 3 and 4 of the Convention.

12. In the Member States of OTIF, there are several different gauges:

- 1688 mm wide gauge in Spain and Portugal
- 1600 mm wide gauge in Ireland
- 1524 mm wide gauge in Finland
- 1520 mm wide gauge in Lithuania, as well as in a section in the south of Poland and on a section in Romania
- 1000 mm narrow gauge and other gauges in Tunisia, as well as in some parts of Spain, in Portugal, Algeria, France (Corsica), Italy (Sardinia), Greece (Peloponnese) and Switzerland
- 1435 mm standard gauge in the other Member States, apart from some small regional networks

This situation alone prevents mandatory uniform technical specifications for technical admission of vehicles and any other railway material from being established for *all* the Member States of OTIF. For this reason, the scope of application of the new Appendices F and G will probably remain initially, to a large extent, limited to the Member States of OTIF whose railway network is of the standard gauge.

13. The same could apply with regard to uniform technical prescriptions concerning the track gauge template, the electric power supply systems and the safety systems. With regard to the electric power supply systems, the following systems are operated:

- 3000 V DC (direct current) in Spain, Italy, Slovenia, Croatia, some parts of the Czech Republic and the Slovak Republic, in Poland and in Belgium
- 1500 V DC, and lower voltage, in the south of France, in the Netherlands, and in the south-east of England
- 25 kV / 50 Hz AC (alternating current) in Portugal, Spain (Madrid-Seville high-speed line), Sardinia, Macedonia, the Federal Republic of Yugoslavia, Bosnia and Herzegovina, Hungary, some parts of the Czech Republic and the Slovak Republic, in Finland, Denmark, the United Kingdom (with the exception of the south-east of England), Ireland, Luxembourg, as well as in the north and east of France and on the Paris-Lyon-Provence high-speed line
- 15 kV / 16 2/3 Hz AC in Switzerland, Liechtenstein, Austria, Sweden, Norway and Germany

With regard to the train safety systems, the following systems are operated: ATC, ATS, ZUB, AWS, ATB, Krokodil, TLB, TWM 430, Indusi, LZB, KGB, TVM 300, TVM 430, Signum 121, BACC 50 Hz / 100 Hz and ASFA.

14. The ATMF Uniform Rules essentially contain a uniform regulation for the procedure for the technical admission, by the authorities of the Member States, of railway material intended for use in international traffic. A consequence of this uniform procedure is that technical admission granted in a Member State is recognised in another Member State of OTIF without the need for a repeat procedure in these States. A “competitive situation” with the EU is excluded insofar as the powers of the Member States of the EU to establish procedural prescriptions and to follow administrative procedures based on these prescriptions remain uncontested. With regard to relations between OTIF and the EU, see also Nos.12 to 20 of the General Points of the Explanatory Report on the APTU Uniform Rules, as well as Article 38 of COTIF and the explanations relating to the latter.
15. The ATMF Uniform Rules were unanimously adopted by the Fifth General Assembly, with one abstention, subject to a series of amendments to the version decided by the Revision Committee.
16. At its 24<sup>th</sup> session (Berne, 23-25.6.2009), the Revision Committee adopted extensive amendments to the APTU and ATMF UR, changing parts of the basic concept; see the additional parts of the Explanatory Report at the end of the explanations on both Appendices.

### **In particular**

#### **Article 1 Scope**

1. This article defines the scope of application of the ATMF Uniform Rules and states that this is a *regulation concerning procedure*.
2. See also the additional parts of the Explanatory Report below.

#### **Article 2 Definitions**

1. This article defines the terms that are necessary to the ATMF Uniform Rules. Some of these definitions are also to be found in other Appendices, e.g. in the CUI Uniform Rules and the CUV Uniform Rules (“rail transport undertaking”, “infrastructure manager”, “keeper”), while other terms are of relevance only to the ATMF Uniform Rules (“admission of a type of construction”, “admission to operation”, etc.). In the 19<sup>th</sup> session, the Revision Committee decided to incorporate all the definitions into the Appendices concerned and not into the basic Convention if and insofar as this proved to be necessary (Report on the 19<sup>th</sup> session, p. 17).

At its 24<sup>th</sup> session, the Revision Committee adopted a comprehensive amendment to this Article; see the additional parts of the Explanatory Report below.

2. The distinction between “Member State” and “Contracting State” (letter a) proves to be necessary since the differing gauges of the networks in the Member States will make it impossible for all the Member States of OTIF to apply the new Appendix F and its Technical Annexes, as well as the new Appendix G (see Nos. 12/13 of the General Points). The term “Contracting State” is used only where it is necessary to distinguish from “Member State” of OTIF for objective reasons.

As the 24<sup>th</sup> session of the Revision Committee decided to restructure this Article, this comment now refers to e).

3. The definition provided in letter b) takes account only of the fact that the traffic occurs on infrastructure located on the territory of at least two “Contracting States”, irrespective of the purpose of this traffic. Consequently, even traffic which is not subject to the CIV/CIM Uniform Rules or to the CUI Uniform Rules is subject to the ATMF Uniform Rules.

As the 24<sup>th</sup> session of the Revision Committee decided to restructure this Article, this comment now refers to l).

4. The definition provided in letter c) corresponds to the result of the work of the 12<sup>th</sup> session of the Revision Committee concerning Article 2, letter a) of the CUV Uniform Rules (Report, pp. 8 to 10).

As the 24<sup>th</sup> session of the Revision Committee decided to restructure this Article, this definition is now in t) in an amended form.

5. The definition provided in letter d) is more detailed than that of Article 3, letter b) of the CUI Uniform Rules and is compatible with EU law.

As the 24<sup>th</sup> session of the Revision Committee decided to restructure this Article, this comment now refers to k).

6. The definition of the keeper provided in letter e) corresponds to that of Article 2, letter c) of the CUV Uniform Rules.

As the 24<sup>th</sup> session of the Revision Committee decided to restructure this Article, this definition is now in n) in an amended form.

7. The definitions provided in letters f) to h) explain newly introduced notions, the notion of “technical admission” being understood as a general term with regard to the procedure leading to admission of a type of construction or admission to operation and thus also including the result of the procedure.

As the 24<sup>th</sup> session of the Revision Committee decided to restructure this Article, these definitions are now in the following paragraphs:

f) is now in letter cc) in an amended form;

g) is now in letter b) in an amended form;

- h) is now in letter c) in an amended form.
8. The definition provided in letter i) corresponds to that of Article 2, letter f) of the APTU Uniform Rules and the definition provided in letter j) is based on that of Article 2, letter e) of the APTU Uniform Rules.

As the 24<sup>th</sup> session of the Revision Committee decided to restructure this Article, the references to APTU are now invalid for these definitions. The definitions are in the following paragraphs:

- i) is now in letter w) in an amended form;
- j) is now in letter s).

### **Article 3** **Admission to international traffic**

1. Admission of vehicles to operation is necessary and justified for reasons of safety in international traffic (§ 1). The purpose of the technical admission according to the procedure in accordance with the ATMF Uniform Rules (§ 2) is to facilitate the free movement of railway vehicles and the free use of other railway material in international traffic. In addition, the protection of the environment and public health must be taken into account (see Article 3 APTU). No other consideration applies to the procedure for the technical admission of railway vehicles and other railway material in accordance with the ATMF Uniform Rules.
2. § 3 states that the technical admission procedure also applies analogously to other railway material and to construction elements of vehicles and other railway material. In these cases, in particular, it is the procedure for the granting of an admission of a type of construction which will be applicable (Article 4, § 1, letter b), Nos. 1 and 2). Throughout the text, the term “railway vehicle” includes the construction elements.
3. The possibility of the technical admission of construction elements is useful because this allows simplification of subsequent technical admission, e.g., of a vehicle as a whole. However, in the case of the technical admission of a vehicle whose construction elements have already been approved, it is necessary to examine the way in which the elements operate together. It is self-evident that the approval of construction elements cannot replace the approval of a vehicle as a whole (Report on the 15<sup>th</sup> session, p. 40/41).
4. At its 24<sup>th</sup> session, the Revision Committee decided to include a new Article 3a after this Article. The new Article concerns the interaction with other international agreements; see the additional parts of the Explanatory Report below.

### **Article 4** **Procedure**

1. Apart from admission through individual inspection, § 1 letter b) provides for a two-



stage technical admission procedure. This corresponds, to a very large extent, to the technical admission procedure for road vehicles and aircraft. Whereas the admission of a type of construction of a vehicle requires an intensive inspection (squareness, test runs, etc.) of this construction model/prototype, admission to operation can be granted through a simplified procedure provided that the vehicles concerned conform in all respects to the model or prototype that has already been admitted. Admission of a type of construction of a vehicle prototype includes the granting of admission to operation for this prototype.

2. § 1 gives a general description of the course of the procedure. In order to make clear that the different procedural provisions of Article 10 are nevertheless applicable, the Revision Committee was of the opinion that it was judicious to clarify this in § 2 (Report on the 23<sup>rd</sup> session, p. 18). The 5<sup>th</sup> General Assembly, which supported a proposal by France seeking substantially to simplify the wording of Article 4, nevertheless retained this clarification (Report, pp. 145-147).
3. At its 24<sup>th</sup> session, the Revision Committee adopted an amendment and addition to this Article; see the additional parts of the Explanatory Report below.

### **Article 5** **Competent authority**

1. § 1 states that the technical admission of railway vehicles - like the technical admission of other means of transport - necessarily comes within the competence of an authority. The activity of rail transport undertakings (the carriage of goods and persons, or management of the infrastructure) is commercial in character. A rail transport undertaking, whether or not it has its own infrastructure, can very well be in competition with other rail transport undertakings operating in the same way which might be using the infrastructure of the competing rail transport undertaking. For reasons of competition, these two activities (technical admission and transport / infrastructure management) must be separate from one another (see also Nos. 1-7 of the General Points).
2. The competence to grant admission of a type of construction and admission to operation can be transferred to qualified, recognised agencies, including private undertakings (legal institution of [German: “beliehenes Unternehmen”] = company authorised by the State). In the case of such a transfer, it is ultimately the State which must assume liability and undertake supervision of these agencies. It is only in this manner that it will be possible to eliminate doubts with regard to the law on competition (Report on the 15<sup>th</sup> session, p. 42; Report of the 5<sup>th</sup> General Assembly, pp. 147-151).
3. An “exclusive” transfer to a single rail transport undertaking and/or to the manager of an infrastructure is not permitted when there is a risk of conflict of interest, since that would be contrary to the principles of the law on competition and independence (Report of the 5<sup>th</sup> General Assembly, pp. 147-151).
4. At its 24<sup>th</sup> session, the Revision Committee adopted extensive additions to this Article; see the additional parts of the Explanatory Report below.

## **Article 6**

### **Recognition of technical admission**

1. This article sets out the important principle according to which a technical admission of a vehicle which is granted by the competent authority of a Contracting State of the ATMF Uniform Rules, either in the form of admission of a type of construction or in the form of admission to operation in accordance with the provisions of the annexes of the APTU Uniform Rules, is recognised in the other Contracting States of the ATMF Uniform Rules by the authorities, rail transport undertakings operating in those States and the infrastructure managers. This also applies to the related certificates. Within one of the States concerned which are Contracting States of the ATMF Uniform Rules, there is no need for a repeat technical admission procedure in respect of a vehicle which has been technically admitted for international traffic on their territory. A repeat procedure would be contrary to this regulation of international law (see also the remarks relating to Article 19).
2. At its 24<sup>th</sup> session, the Revision Committee adopted extensive amendments to the provisions on mutual recognition. In this context, this Article was reworded and supplemented by two new Articles 6a and 6b; see the additional parts of the Explanatory Report below.

## **Article 7<sup>23</sup>**

### **Construction prescriptions applicable to vehicles**

1. § 1 indicates the substantive law on which technical admission of vehicles must be based: the construction prescriptions contained in the Annexes of the APTU Uniform Rules (letter a) and the construction and equipment prescriptions contained in the “Technical” Appendix of RID (letter b). Through integration of the content of certain UIC technical leaflets into one of the Annexes of the APTU Uniform Rules, the UIC rules contained in these leaflets will assume the status of state regulations and will thus become mandatory.
2. This provision does not expressly mention the requirement for technical compatibility with the infrastructure to be used and with the control systems: that goes without saying.
3. Technical admission is a necessary, but not in itself sufficient, condition for the free movement of rolling stock. The rail transport undertaking must have, in addition, a right of access (see Directive 91/440/EEC), an operating licence and a safety certificate, and must also meet various other conditions. These other requirements in addition to technical admission so that railway vehicles can be used in international traffic can be regulated, or are to be regulated, in other prescriptions (Report on the 15<sup>th</sup> session, p. 43-45).
4. Since, due to continuous technical development, the technical specifications of the

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23 As a result of the amendments adopted by the 24th session of the Revision Committee, which also include the introduction of an Article 7a on derogations, the explanations on this Article are mainly of historical significance; see the additional parts of the Explanatory Report below.

Annexes of the APTU Uniform Rules cannot be complete or make provision for all cases, § 2 provides that, in the absence of provisions in the annexes, the generally recognised technical rules can or must replace and complement these specifications. If need be, the technical prescriptions contained in the UIC technical leaflets, which have not yet been validated, may be considered as generally recognised technical rules (Report on the 15<sup>th</sup> session, p. 46). An unvalidated technical standard has probant force, i.e., it creates the refutable presumption of a generally recognised technical rule (Report on the 15<sup>th</sup> session, p. 47).

5. Whereas § 2 regulates the case of a gap in the provision of specifications, § 3 permits innovation and technical development. Prior to its introduction at international level, a technical rule could be provisionally recognised at national level (Report on the 15<sup>th</sup> session, p. 46/47). § 3 only permits dispensation from generally recognised technical rules on condition that it is proved that a level of safety which is at least equal to that resulting from compliance with these rules remains guaranteed. Furthermore, such dispensations must not hinder interoperability or render access to the market more difficult (Report on the Eighteenth session, p. 34).
6. Moreover, the Revision Committee considered that it was expedient to grant to the Committee of Technical Experts the right to decide upon generally recognised technical rules (Report on the Fifteenth session, p. 47). § 4 guarantees identical application of §§ 2 and 3 in all the Contracting States. Control by the Committee of Technical Experts is intended to prevent risks in respect of safety and also to prevent abuse (Report on the 18<sup>th</sup> session, p. 31). This point of view was supported by the 5<sup>th</sup> General Assembly (Report, p. 154/155).

### **Article 8**<sup>24</sup>

#### **Construction prescriptions applicable to other material**

1. Article 8 and the Annexes of the APTU Uniform Rules - like Article 7, in respect of railway vehicles - specify the substantive law on which the technical admission of other railway material is based: the construction prescriptions contained in the APTU Uniform Rules.
2. Since, until the new regime is implemented, railway infrastructures remain subject to the principle of territoriality - to date, there are no extra-territorial railway lines excluded from state sovereignty - the procedure for admission of railway infrastructure to operation can remain subject to the national law. This, however, does not necessarily apply to the construction elements and equipment which are produced and technically approved in a Contracting State, but which are not used in that State, being used only in other Contracting States, e.g. rails, electric power supply installations. On this point, the APTU Uniform Rules and ATMF Uniform Rules are of importance for industrial and commercial policy.
3. § 3 states that the obligations of the States which are party to the Euro-

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24 As a result of the amendments adopted by the 24th session of the Revision Committee, the explanations on this Article are only of historical significance; see the additional parts of the Explanatory Report below.

pean Agreement on Main International Railway Lines (AGC) of 31 May 1985 and the European Agreement on Important International Combined Transport Lines and Related Installations (AGTC) of 1 February 1991 concerning the equipping and construction of AGC lines or AGTC installations remain applicable. The AGC and AGTC standards and parameters must, however, be in keeping with the technical prescriptions, standards and parameters of the APTU Uniform Rules.

### **Article 9** **Operation prescriptions**

1. This article constitutes a link between, on the one hand, the technical specifications concerning the construction and operations of railway vehicles and, on the other hand, those concerning the construction and management of a railway infrastructure.
2. The Revision Committee considered as purely declarative, but nevertheless useful, the provisions obliging all rail transport undertakings to conform to the technical prescriptions of the Annexes of the APTU Uniform Rules, insofar as the provisions relate to the operation of a vehicle in international rail traffic (Report on the 15<sup>th</sup> session, p. 47/48). A subsequent proposal, seeking to withdraw this article, did not achieve the necessary majority (Report on the 23<sup>rd</sup> session, p. 22). The operating prescriptions are neither the basis nor the subject-matter of the technical admission of vehicles, although they are closely linked to international rail traffic safety.
3. § 2 contains the important obligation, for infrastructure managers in the Contracting States, to conform to the unified “rail” system, and also the technical prescriptions of the Annexes of the APTU Uniform Rules, insofar as these relate to the construction and management of the infrastructure.
4. At its 24<sup>th</sup> session, the Revision Committee decided not to publish the Uniform Technical Prescriptions (UTP) and validated technical standards adopted by the OTIF Committee of Technical Experts as Annexes to the text of APTU, but to publish them on the Organisation’s website. A consequential editorial amendment was that the references to the Annexes were replaced with references to the UTP; see also the additional parts of the Explanatory Report at the end of the Explanatory Report on the APTU UR.

### **Article 10**<sup>25</sup> **Technical admission**

1. This article stipulates the prescriptions which relate to the administrative procedure proper.
2. § 1 states that technical admission in the form of admission of a type of construction and admission to operation is an “*ad rem*” admission.

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25 As a result of the decisions of the 24th session of the Revision Committee, in the context of which the definitions were restructured, the provisions of this Article were reworded and two new Articles 10a and 10b were introduced, the explanations on this Article are mainly of historical significance only; see the additional parts of the Explanatory Report below.

3. § 2 sets out the persons who, or institutions which, may apply for technical admission, in the form of admission of a type of construction and in the form of admission to operation. According to Article 2, letter e), the keeper is the person who economically exploits a railway vehicle in a permanent manner as a means of transport, i.e., who “uses” the vehicle. They are not necessarily the owner of the vehicle. In view of the developments in the domain of railway, it is important that the keeper is also granted the right to apply for technical admission of a vehicle, all the more so since in future a keeper will no longer be obliged to register a vehicle with a railway (Report on the 18<sup>th</sup> session, p. 38).
4. § 3 prescribes the documents which must be presented in the case of the simplified admission to operation and the proofs to be furnished in order to benefit from the facility of the simplified procedure.
5. § 4 stipulates that, in the technical admission procedure, i.e., in an admission of a type of construction or an admission to operation, decisions must be made without regard to the position of the applicant for admission.
6. Technical admission must be granted for, in principle, an unlimited period (§ 5). If a vehicle presents a safety risk, it is possible, and obligatory, to withdraw this vehicle from traffic without awaiting the consent of the authority which registered or technically admitted this vehicle. Due to the system of prescribed periodic inspections, even an unlimited admission is, in fact, a limited admission.
7. § 5 furthermore indicates the possibility of granting a differentiated and restricted technical admission, e.g., restricted to certain categories of lines or restricted to traffic in certain conditions.
8. §§ 6 and 7 contain a restrictive list of the grounds on which the competent authorities (§ 8) may withdraw an admission of a type of construction or an admission to operation. The notion of “public health” in § 6 has been added by analogy with Article 3, letter c) of the APTU Uniform Rules (Report on the 18<sup>th</sup> session, p. 41).
9. §§ 9 and 10 distinguish between the suspension of an admission and its becoming void. Only in the case of a vehicle being put out of service does the admission become void, whereas in all other cases it is merely suspended (Report on the 15<sup>th</sup> session, p. 54/55). The 5<sup>th</sup> General Assembly also decided to make provision, in addition to that for the cases of “automatic” suspension of admission to operation as regulated in § 9, letters a) to c), for the possibility of a suspension decided by the competent authority (letter d), the more so since the question of whether the suspension could occur “automatically”, i.e., without an administrative notice, was a subject of dispute (Report, pp. 156-160).
10. § 11 refers to the national law with regard to the other procedure prescriptions, namely, the law of the State in which an application for technical admission has been made.

### **Article 11**

#### **Certificates**

1. §§ 1 to 3 stipulate that the technical admission must be certified by a document and they prescribe the content of documents relating to an admission of a type of construction and to an admission to operation.
2. The term “manufacturer” must be understood as also referring to an association of manufacturers; the applicant is free to apply for admission of a type of construction on his own behalf only or, if need be, also on behalf of other manufacturers (Report on the 15<sup>th</sup> session, p. 59).
3. § 4 stipulates the languages in which the certificates must be printed.
4. At its 24<sup>th</sup> session, the Revision Committee adopted amendments and additions to this Article; see the additional parts of the Explanatory Report below.

### **Article 12**

#### **Uniform models**

1. § 1 makes provision for the Organisation to prescribe uniform model of certificates of admission of a type of construction and certificates of admission to operation. The Committee of Technical Experts, as a body of the Organisation in accordance with Article 20 of COTIF, has the authority to devise and adopt these model certificates.
2. § 2 regulates the procedure for the determination of uniform models, particularly entry into force and the possibility of lodging an objection. This was added, upon proposal by Germany, by the 5<sup>th</sup> General Assembly (Report, p. 161/162).
3. At its 24<sup>th</sup> session, the Revision Committee adopted amendments and additions to this Article; see the additional parts of the Explanatory Report below.

### **Article 13**

#### **Data bank**

1. This article provides for a central register, to be administered under the authority of OTIF, to contain all important data relating to vehicles admitted for international rail traffic (§ 1). This data is recorded on the basis of notices from the competent authorities. Since the term “central register” could give the impression that this is a “paper register”, the Revision Committee preferred the term “data bank” (Report on the 15<sup>th</sup> session, p. 64). The registering of the data of an admitted vehicle does not replace the technical admission certificate, but merely constitutes a refutable proof (§ 3).
2. According to § 2, certain data must be communicated to the Organisation in all cases. Furthermore, the necessary data is specified by the Committee of Technical Experts. Only this data is registered in the databank.
3. This databank must be available to the authorities of the Contracting States, the rail

transport undertakings and the infrastructure managers, as well as to manufacturers and keepers, in respect of their vehicles (addition made by the 5<sup>th</sup> General Assembly, Report, p. 163) (§ 4). Its purpose is to facilitate monitoring of whether vehicles used in international rail traffic are actually admitted for this use or whether such vehicles should be immobilised or withdrawn from service.

4. For reasons concerning data protection and the law on competition, not all data registered is open to unlimited access. The Committees of Technical Experts determines - in the form of an Annex, which will be an integral part of the ATMF Uniform Rules (§ 5) (proposal by Germany at the 5<sup>th</sup> General Assembly) - the data to which there is a right of access, and under what conditions (Report on the 15<sup>th</sup> session, p. 65 and Report on the 5<sup>th</sup> General Assembly, pp. 164-166).

At its 24<sup>th</sup> session, the Revision Committee adopted extensive amendments and additions to this Article. These dealt particularly with the competences of the OTIF Committee of Technical Experts and among other things, they prescribe that the provisions the Committee establishes will not be published in an Annex to the ATMF UR but on the OTIF website; see the additional parts of the Explanatory Report below.

#### **Article 14** **Inscriptions and signs**

1. By way of supplement to Article 11, §§ 2 and 3, which regulate the content of certificates, Article 14 prescribes the inscriptions and signs on vehicles which must make it possible to see at a glance whether, and in what condition, the vehicle concerned has been admitted to operation in international rail traffic.
2. The regulation merely states the principle that the inscriptions and signs prescribed in the Annexes of the APTU Uniform Rules must be applied. The Annexes of the APTU Uniform Rules were intended, essentially, to repeat the specifications contained in No. 3.1.16 of the International Convention on the Technical Unity of Railways (UT), in the terms of the April 1986 draft, and in Nos. 5.1, 34.1.1, 34.1.2 and 34.2.3 of RIC and in Nos. 34.1, 34.1.1, §§ 2 and 3 and 34.1.3 of RIV.
3. Vehicles must carry a sign proving that the vehicle has been admitted in accordance with the ATMF UR and APTU UR. This logo is to be determined at a later point by the Committee of Technical Experts (Report on the 18<sup>th</sup> session, p. 50), which also determines the transition periods during which vehicles carrying different inscriptions and signs are still permitted to operate in international traffic (Report of the 5<sup>th</sup> General Assembly, pp. 167-170).
4. At its 24<sup>th</sup> session, the Revision Committee adopted amendments and additions to this Article which also take into account that the Uniform Technical Prescriptions (UTP) and validated technical standards adopted by OTIF's Committee of Technical Experts will not be published as Annexes to the text of APTU, but will be published on the Organisation's website; see the additional parts of the Explanatory Report at the end of the Explanatory Report on the APTU UR and at the end of these explanations.

### **Article 15<sup>26</sup>**

#### **Maintenance**

1. This article merely stipulates the principle that railway vehicles and other railway material must be in a good state of maintenance, such that their condition does not in any way compromise operational safety and does not harm the environment or public health when they are operated or used in international traffic. Servicing, prescribed maintenance operations, servicing intervals, etc. are stipulated by the APTU Uniform Rules and RID.
2. The provision which was initially adopted by the Revision Committee, according to which maintenance and repair work is to be entrusted to qualified and *recognised* workshops (Report on the Eighteenth session, p. 50), was withdrawn in the 23<sup>rd</sup> session (Report, p. 31/32) and was not reincluded by the 5<sup>th</sup> General Assembly.

### **Article 16**

#### **Accidents and severe damage**

1. This article repeats a provision from No. 16.7 of RIV. The principal obligation, to implement the necessary measures immediately and to determine the causes of the accident or severe damage, rests, in the first place, with the infrastructure manager (§ 1).
2. § 3 stipulates the obligation to inform the competent authorities and also stipulates the power of the latter to require presentation of the damaged vehicle.
3. The purpose of § 4 is the prevention of future accidents, and it is intended to guarantee that international prescriptions are amended and developed in an appropriate manner.
4. At its 24<sup>th</sup> session, the Revision Committee adopted extensive amendments and additions to this Article; see the additional parts of the Explanatory Report below.

### **Article 17**

#### **Immobilisation and rejection of vehicles**

1. The Central Office draft of 19 December 1997 again included an exhaustive list of the grounds and conditions allowing competent authorities, other rail transport undertakings or infrastructure managers to reject a railway vehicle admitted for international traffic. Letters a) to e) of the aforementioned draft had repeated the provisions of Nos. 6.2, 6.4.1, 6.4.2, 6.4.3, 6.4.4, 6.4.5 and 34.1.3 of RIC and of Nos. 2.2, 3.3.1, 3.3.3, 3.4, 3.6, 14.2 and 34.1.2 of RIV. The Revision Committee, however, decided to give this article a more general and more positive wording (Report on the 15<sup>th</sup> session, p. 69; Report on the 18<sup>th</sup> session, p. 53/54).

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26 As a result of the decisions of the 24th session of the Revision Committee, in the context of which particular account is taken of developments in EU law, the explanations on this Article are mainly of historical significance only; see the additional parts of the Explanatory Report below.



2. At its 24<sup>th</sup> session, the Revision Committee adopted amendments and additions to this Article; see the additional parts of the Explanatory Report below.

### **Article 18** **Non-compliance with prescriptions**

1. With regard to the legal consequence of non-compliance with the provisions of the ATMF Uniform Rules and APTU Uniform rules, a distinction is made:
  - between the consequences in criminal and civil law, with respect to the infrastructure (§ 2) and
  - all other consequence, including, in particular, in administrative law (§ 1).
2. This is a so-called *global reference*, i.e., reference is not made directly to the substantive law of the Contracting State concerned but, in the first place, to its rules on the conflict of laws. These rules determine the substantive rules which are ultimately applied.
3. At its 24<sup>th</sup> session, the Revision Committee decided to add a new Article 19 after this Article concerning transitional provisions; see the additional parts of the Explanatory Report below.

### **Article 19** **Disputes**

1. Article 19 assigns to the Committee of Technical Experts a mediation role when two or more Contracting States of the ATMF Uniform Rules disagree concerning the technical admission of railway vehicles. Furthermore, such disputes can also be submitted to the arbitration tribunal provided for in Title V of COTIF.
2. As the 24<sup>th</sup> session of the Revision Committee decided to add a new Article 19 concerning transitional provisions, this comment now relates to Article 20; see also the additional parts of the Explanatory Report below.

### **Additions to the Explanatory Report**

based on the decisions of the 24<sup>th</sup> session of the Revision Committee (Berne, 23-25.6.2009) and the 9<sup>th</sup> General Assembly (Berne, 9/10.9.2009)

**NOTE:** The general remarks and the remarks on individual provisions in this Explanatory Report contain a summary of the information in relation to the following points:

- a) Background to and justification for the amendments that were submitted to the Revision Committee and adopted by it, and
- b) Discussion on the provisions for the amendment of which the General Assembly is responsible in accordance with Article 33 § 2 and § 4 letter (g) of the Convention, including editorial amendments.

The information referred to in

- a) has been examined and approved by the Revision Committee, together with the approved amendments and the General Assembly has noted them;
- b) has been examined and approved by the General Assembly following the Revision Committee's considerations and recommendations in this respect.

### **General Remarks**

1. The General Remarks concerning the text amendments to APTU also apply to the ATMF Appendix.
2. When the Explanatory Report refers to EU Member States, it also applies *mutatis mutandis* to States where Community legislation applies as a result of international agreements with the European Community.
3. The Revision Committee followed to a large extent the suggestions made by the Schweinsberg Group as endorsed by the Committee of Technical Experts. Clarifications in the texts and the Explanatory Report were added in particular with regard to the "Entity in charge of maintenance" mentioned in Article 3a and 15, and to the limits of the admission to operation and to the obligations of the competent authority in Article 6.
4. The 9<sup>th</sup> General Assembly (Berne, 9/10.9.2009) noted the results of the 24<sup>th</sup> session of the Revision Committee concerning the amendments to Appendix G (ATMF) of the Convention and the Explanatory Report and approved the editorial amendments and the Explanatory Report on Articles 1, 3 and 9 of ATMF. It noted that these amendments are not decisions to which Article 34 of the Convention applies and instructed the Secretary General with regard to bringing these amendments into force to proceed in accordance with Article 35 of COTIF. It also authorised the Secretary General to summarise its decisions on the results of the Revision Committee in the general part of the Explanatory Report.

**In particular**

**Articles marked with \* may not be changed by the Revision Committee, only by the General Assembly.**

**Article 1 \*  
Scope**

1. According to Article 33 § 2 and § 4 letter (g) of the Convention, only the General Assembly could decide on an amendment to this Article, not the Revision Committee.
2. The Article lays down the general scope. The specific rules on the cases in which provisions adopted according to the procedures under APTU for the use of railway material in international transport are applicable, particularly when this concerns States in which EU law applies, are dealt with in this Appendix. Traffic between the following groups of States is dealt with:
  - a) only between Member States of OTIF that are not members of the EU or the European Economic Area Agreement (EEA), Article 6 § 3,
  - b) only between Member States of OTIF that are also members of the EU or EEA, Article 3a § 3,
  - c) from one OTIF Member State that is also a member of the EU or EEA to an OTIF Member State that is not a member of the EU or EEA, Article 3a § 1 and
  - d) from one OTIF Member State that is not a member of the EU or EEA to an OTIF Member State that is also a member of the EU or EEA, Article 3a § 2.
3. With regard to matters that are not covered or that are only partly covered by UTPs, see the remarks on Article 7.
4. Where particular matters are not covered by APTU and ATMF or by the provisions that are based on them, it is generally the national technical provisions that apply in the Contracting State in which the application for technical approval is made (see Article 7). In the case of States in which EU law applies, this particularly concerns aspects covered by the EU directives on interoperability (placing interoperability constituents on the market, conformity assessment and verification by notified bodies, etc.), safety (safety certification, safety authorisation, compliance with Common Safety Methods and Common Safety Targets, obligation to report on Common Safety Indicators, accident investigation procedures, etc.) and market access (Directive 95/18/EC on licensing of railway undertakings, Directive 2001/12/EC on the development of the Community's railways, Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, etc.).

## **Article 2 Definitions**

1. In order to avoid expanding the texts unnecessarily, it was decided only to include in Article 2 of ATMF terms that are used in both Appendices. This Article therefore contains definitions of terms used in APTU and ATMF as well as definitions of those terms that are only used in ATMF. In the English version, the terms are arranged alphabetically. The other language versions follow the sequence of the English version.
2. Regarding the “Committee of Technical Experts” in letter d) it should be noted that for border crossing infrastructure objects such as tunnels, bridges, etc. two Contracting States may agree to set up a specific joint authority like the Intergovernmental Safety Commission for the Eurotunnel between France and United Kingdom. Such authorities are allowed to be separately represented in the Committee of Technical Experts according to Article 16 § 5 c) of the Convention, i.e. without the right to vote.
3. Under the definition “other railway material” in letter s) falls movable equipment not being a railway vehicle for which equipment common specifications to achieve interoperability would be important.
4. For the definition of “serious accident” in letter z) an amount in SDR is mentioned. SDR means the currency of the International Monetary Fund (IMF) which according to Article 9 of the Convention is the unit of account referred to in its Appendices. 1 SDR is equal to approximately 1.27 €(July 2010).

## **Article 3 \* Admission to international traffic**

According to Article 33 § 2 and § 4 letter (g) of the Convention, only the General Assembly could decide on an amendment to this Article, not the Revision Committee. With regard to the editorial amendments to the references in § 2 b) and c), see letter b) of the NOTE under the heading “Explanatory Report”.

## **Article 3a Interaction with other international agreements**

1. This article is new.
2. § 1 deals with the operating approval according to ATMF of a railway vehicle and other railway material which has been approved in accordance with the applicable EC law by a Contracting State. Such item is deemed admitted to operation according to ATMF if
  - a) there is full equivalence between the applicable TSIs, which must cover all the vehicle’s subsystems, and the applicable UTP in accordance with APTU, and

- b) the applicable TSIs do not contain any open points in relation to technical compatibility with the infrastructure, and
  - c) no derogation applies to the item in question.
3. § 2 deals with the authorisation of placing into service in EU Member States and in Contracting States which apply EU law as a result of international agreements with the European Community of a railway vehicle and other railway material approved in accordance with ATMF. Such item is deemed authorised to be placed into service in accordance with the EU law if
- a) there is full equivalence between the applicable UTPs, which must cover all the vehicle's subsystems, and the corresponding TSIs, and
  - b) the applicable UTPs do not contain any open points in relation to technical compatibility with the infrastructure, and
  - c) no derogation applies to the item in question.
4. § 3 deals with railway vehicles and other railway material that is only used in Contracting States that apply EU law as EU Member States or on the basis of international agreements. For such items, the applicable EU law applies.
5. The cross-acceptance dealt with in §§ 1 and 2 concerns not only individual approvals, but also admissions of vehicle types in accordance with § 4.
6. The full title of the EC Directive mentioned in § 5 is "Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive)". The Directive was published in the EU Official Journal (OJ) L 164, 30.4.2004, p. 44 –113 and amended by Directive 2008/110/EC, published in OJ L 345, 23.12.2008 p. 62 – 67.

#### **Article 4 Procedure**

1. This Article only deals with the approval procedure for vehicles, while with regard to the approval of infrastructure, § 3 refers generally to the provisions that apply in the State concerned (clarified further in Article 8 § 2). For EU Member States, these provisions include the relevant EU law.
2. According to § 1, the procedure is single stage (admission of a vehicle) or two stage (admission of a type of construction with subsequent admission of individual vehicles corresponding to this type of construction).
3. The conformity assessment to be carried out in the approval procedure in accordance with § 2 may cover the entire vehicle or, on the basis of corresponding guidelines from the CTE, it may be split into assessment elements, whose conformity must

be evidenced by a declaration in accordance with a model that also has to be decided by the CTE.

4. According to Article 3 § 3, the provisions of this Article also apply to other railway material.

### **Article 5** **Competent authority**

1. With regard to official responsibility, § 1 refers in principle to the law that applies in the respective Contracting State, which, in the case of EU Member States, includes the relevant EU law. However, according to § 4, certain requirements apply to these competent authorities and “suitable recognised bodies” appointed by these authorities. Only the competent authority may issue Certificates of Operation and Design Type Certificates.
2. § 2 does not exclude the competent authority in accordance with § 1 from transferring its competence in respect of conformity assessments wholly or partly to suitable recognised bodies in accordance with § 3, although these bodies may not be
  - rail transport undertakings (RU),
  - infrastructure managers (IM),
  - keepers,
  - entities in charge of maintenance (ECM),
  - design undertakings participating directly or indirectly in the manufacture or maintenance of railway material, or
  - subsidiaries of any of the above indicated.

The bodies listed are mainly the same as those that are entitled in accordance with Article 10 § 2 to submit applications for a technical certificate to be issued.

The word “partly” indicates that a “suitable body” may be appointed only for a specific technical competence, e.g. a specific UTP/TSI.

3. § 2 will allow a Contracting State to appoint “suitable bodies” residing in the State. They may carry out tasks equivalent to the EC Notified Bodies. Article 6 § 1 will ensure that the approving authority of all Contracting States and other “suitable bodies” shall accept assessments of compliance with the UTPs that have been carried out by a “suitable body”. § 3 contains detailed conditions for bodies recognised as suitable taken from provisions that apply in the EU, particularly as regards their organisation, workforce, working methods, abilities, independence and discretion.
4. § 5 requires that the Secretary General be notified of the bodies responsible for assessments, certifications and approvals and that he must publish this information in a list which must be kept up to date.

5. § 6 requires that the Contracting States monitor continually the bodies referred to in § 2. If it is ascertained that they are not meeting the requirements in accordance with § 3, their competence must be withdrawn and the Secretary General must be informed accordingly.
6. § 7 deals with the course of action in cases where a Contracting State has come to the view that an authority or body for which another Contracting State is responsible is not meeting the requirements in accordance with § 3. Such cases must be submitted to the CTE, which has to take certain measures.

### **Article 6** **Validity of technical certificates**

1. § 1 prescribes as a general rule that technical certificates issued by a competent authority (Article 5) in a Contracting State are valid in all other Contracting States. However, use of them for certain vehicles or types of construction (§ 5) is subject to the following conditions.
2. According to § 2, the Railway Undertaking (RU) operating a vehicle must ensure that the vehicle is compatible with the infrastructure to be used.
3. The admission to operation for a vehicle which is in conformity with all the applicable UTPs is valid in all other Contracting States if these UTPs cover all the essential requirements and do not contain any open points in respect of compatibility with the infrastructure and provided that the vehicle is not subject to any specific cases or derogations.
4. For vehicles that do not meet the conditions of § 3, the applicant must meet the conditions according to § 4 for a complementary admission to operation. These conditions are set by the respective competent authorities of the Contracting States in which the admission is to apply, in accordance with the notified national technical provisions that apply there. Such conditions may involve risk analysis and/or additional tests, although duplication and repetition must be excluded and the equivalence table shall be taken account of; furthermore, national technical provisions concerning open points that are not related to compatibility with the infrastructure are not to be checked before the admission to operation is complemented as the necessary checks of such open points have been made when the vehicle is admitted by the first Contracting State according to the national requirement of that state and those requirements shall be cross-accepted. This constitutes the same principles as in the Interoperability Directive.
5. The Certificate of Operation for a vehicle does not grant its holder rights to operate trains or other rights. When operating the vehicle in a train, the law on the use of infrastructure has to be observed, including where applicable the Appendix E (CUI) concerning liability and insurance and including the law of the State where the carrier undertakes the activity of carrier. If that law is that of the EU or corresponding domestic law, the relevant conditions, in particular the requirement for licensing, safety certification etc., have to be met and a liability insurance for the vehicle might have to be taken out.

**Article 6a**  
**Recognition of procedural documentation**

**Article 6b**  
**Recognition of technical and operational tests**

The aim of these provisions is to exclude administrative duplication and repetition, particularly as regards technical assessments and tests.

**Article 7**  
**Prescriptions applicable to vehicles**

1. According to § 1, the prerequisite for vehicles to be allowed to circulate in international traffic is that the UTPs be observed, and if they (are to) carry dangerous goods, RID.
2. Where there are no applicable UTP for a subsystem, i.e. the essential requirements have not (yet) been implemented in an UTP, according to § 2 the technical provisions that apply are those national requirements in force according to Article 12 of APTU of the State in which the vehicle is to be approved.
3. If the UTPs do not cover all the essential requirements or if there is a specific case or an open point in relation to the compatibility of the vehicle with the infrastructure, the national technical provisions applicable to these issues also have to be met. In this case, it must be kept in mind that the equivalence table shall be applied and national technical provisions concerning open points that do not deal with compatibility with the infrastructure may only be checked by the Contracting State that first carries out the approval.

**Article 7a**  
**Derogations**

This Article instructs the CTE to decide necessary rules for derogations and the related assessment methods.

**Article 8**  
**Prescriptions applicable to railway infrastructure**

1. § 1 makes clear that the provisions in the UTPs and RID that apply to infrastructure must be observed.
2. § 2 gives further effect to what is laid down in Article 4 § 3.
3. § 3 provides that the rules for cases not covered or not sufficiently covered by UTPs and for derogations also apply by analogy to the area of railway infrastructure.
4. The application of the UTP infrastructure to existing infrastructure is dealt with in APTU Article 8.



**Article 9 \***  
**Operation prescriptions**

According to Article 33 § 2 and § 4 letter (g) of the Convention, only the General Assembly could decide on an amendment to this Article, not the Revision Committee.

**Article 10**  
**Application and granting of Technical Certificates  
and declarations and related conditions**

1. According to § 1, technical certificates may be issued for types of construction or for individual vehicles.
2. § 2 contains an exhaustive list of those entitled to make an application. These correspond largely with those that are excluded from transferring decision-making competence in accordance with Article 5 § 2.
3. § 3 makes clear that the application may be made to the competent authority (Article 5) in any Contracting State, i.e. with no geographical link.
4. § 4 concerns technical certificates for vehicles which, because of their limited degree of conformity, require complementary admissions in accordance with Article 6 § 4. The scope applied for must be described precisely. If this results in the need for admissions/assessments by several competent authorities, these must coordinate in order to speed up the approval process and minimise the cost for the applicant.
5. § 5 provides that admissions may not be carried out for profit and all costs associated with the admission procedure must be borne by the applicant. However, the latter only applies subsidiarily to the national law of the State in which the approval is issued.
6. § 5 letter (a) makes clear that all procedures concerning technical admissions/assessments must be non-discriminatory.
7. § 6 lays down requirements concerning the application documents. These must in all cases contain technical documentation and documentation on servicing and must set out the vehicle characteristics in a way that is sufficient to provide all the information required by the assessing body.
8. According to § 7, assessors must document the content and results of assessments in an Assessment Report.
9. In the (simplified) admission of vehicles for which an admission of the type of construction is already available, § 8 requires that the applicant must attach the certificate of type of construction to the application and must demonstrate in an appropriate manner that the vehicles to be admitted correspond to the type of construction.
10. The first sentence of § 9 makes clear that in principle, technical certificates are to be granted for an unlimited period. However, this does not mean that it may also

be used for an unlimited period. The second sentence reminds users that the scope of the certificate may be limited, although this is not at the discretion of the issuing body, but depends on the particular conditions.

11. § 10 concerns the continued use of technical admissions of the type of construction if the issuing provisions are amended (Article 7). The Contracting State in which the admission of type of construction was issued and the States in which the admission may be used must have consultations on this or, if necessary, on the re-issuing. Even if it is decided that the admission must be re-issued, the type of construction may only be checked that it fulfils the amended provisions, and admissions to operate remain valid.
12. § 11 concerns the continued use of the admission to operate – and, according to § 12, of other certificates also – when vehicles are renovated or upgraded. Appropriately documented projects must be submitted to the Contracting State. This State must involve the CTE if, upon issuing the new approval, there is not full conformity with the applicable UTPs.

### **Article 10a**

#### **Rules for withdrawals or suspensions of technical certificates**

1. § 1 deals with the procedure that applies to the withdrawal or suspension of technical certificates in the international arena.
2. Provisions on the withdrawal of the admission to operation, which, according to § 6, also apply by analogy to the admission of type of construction, are given in §§ 2, 3 and 5, and those concerning suspension (of the validity/use) of these certificates are given in § 4.
3. Reasons for a mandatory suspension are
  - insufficient technical maintenance of the vehicle (inspections, servicing, etc.),
  - failure to observe the order to present a vehicle with severe damage, and
  - non-compliance with the provisions of ATMF, the UTPs or the national provisions on which the approval is based.
  - Reasons for a possible withdrawal are
    - non-compliance with the applicable technical requirements in accordance with the UTPs etc.
    - in some cases failure to correct any deficiencies causing non-compliance, and
    - non-compliance with the conditions imposed for a limited approval.
4. According to § 3, only the body that has granted the design type certificate or the certificate of operation may withdraw it (as opposed to suspension).

**Article 10b**  
**Rules for assessments and procedures**

1. § 1 authorises the CTE to adopt mandatory rules for the assessments and procedural rules for technical admission.
2. If there are supplementary rules within the Contracting States or at EU level, § 2 requires that these be notified to the Secretary General so that the CTE can examine them and they can be published.

**Article 11**  
**Technical Certificates and Declarations**

1. According to § 1, separate certificates must always be issued for the Design Type Certificate and the Certificate of Operation, but according to § 4, one certificate of operation may be issued for several vehicles of the same design type.
2. The details of what both certificates must contain are laid down in §§ 2 and 3.
3. What is contained in the technical documentation and the documentation on servicing must correspond to the UTPs.
4. A certificate must be prepared in one of the working languages of OTIF (currently German, French and English) and be available in printed form.
5. §§ 7 – 9 prescribe that when the right of disposal over the vehicle changes, the certificates originally issued to the applicant must be handed over.

**Article 12**  
**Uniform formats**

Mandatory uniform formats of the certificates, declarations and assessment reports specified in ATMF shall be prepared and adopted by the CTE. The CTE may also recognise other existing formats as equivalent, provided they contain at least the same information.

**Article 13**  
**Registers**

1. This Article serves as a legal basis for an international data bank containing registers of approved railway vehicles (individual vehicles or design types) (§ 1) and of competent authorities who deal with approvals (§ 2). The CTE may include other information in the data bank (§ 3).
2. The CTE has to decide on the following details (§ 4), although consideration must be given to structures that already exist in the Contracting States (national vehicle registers NVRs) or in the EC (ERA) (§ 5):
  - a) functional and technical architecture of the data bank,
  - b) when and how the required data must be provided,

- c) access rights,
  - d) data bank structure and
  - e) other administrative and organisational provisions.
3. The data bank may be based on decentralized electronic registers in the Contracting States, including National Vehicle Registers (NVR), but the information shall be retrievable via a central search engine; the data bank and its operating rules need to be coordinated with the National Vehicle Registers set up by EU Member States under Commission Decision 2007/756/EC.
  4. In addition, § 7 gives the CTE the right to charge users of the data bank. However, supplying and amending data shall be free of charge.
  5. Certain important pieces of information, e.g. a change of keeper, withdrawals from service or immobilisations must be notified to the Secretary General immediately.
  6. The registration of data in the data bank has consequences with regard to the provision of evidence (§ 6).

#### **Article 14** **Inscriptions and signs**

1. The admission of railway vehicles to operation must be demonstrated by affixing a sign to the vehicles (§ 1 a). This sign will be decided by the CTE.
2. Vehicles must also bear the following: an alphanumeric code (“vehicle number”) used to identify the vehicle clearly, which has to be assigned by the competent authority granting the admission to operation, and which must contain the country code of the first admitting State, and other inscriptions and signs prescribed in the UTPs (§ 1 b)).
3. The authority granting the admission to operation must ensure that the signs and inscriptions are marked on the vehicle and that the vehicle number is registered in the NVR (Article 13).
4. According to § 2, the CTE must adopt transitional rules for vehicles that are already in use.

#### **Article 15** **Maintenance**

1. § 1 sets out the objectives and elements of maintenance.
2. According to § 2, it is up to an accordingly instructed body (Entity in Charge of Maintenance – ECM), which must be registered in the data bank, to organise the maintenance of each vehicle. Such a body is also required according to the law of the EU (see Article 14a of the Railway Safety Directive 2004/49/EC).

3. §§ 3 to 5 contain provisions regarding the interaction between the ECM and the operating railway undertakings, the Maintenance Record File and the possibility to specify further details in Annexes to the ATMF.
4. According to § 4, the ECM shall, for each vehicle for which it is registered as the ECM, keep and update a Maintenance Record File to contain the information required in accordance with § 3 for that vehicle. This includes the vehicle itself and any tank and equipment for which inspections and tests are required. This Maintenance Record File shall be available to the competent authorities for their ordinary inspections and investigations in the case of the vehicle being involved in incidents or accidents.
5. According to § 5, the CTE may adopt guidelines or regulations concerning maintenance workshops and include them in an Annex to ATMF.

### **Article 16** **Accidents, incidents and severe damage**

1. According to § 1, in case of accident, incident or severe damage, all parties involved, specifically the IMs, keepers, ECMs and RUs, are required
  - to take measures to ensure the safety of railway traffic, respect for the environment and public health and
  - to establish the causes.
2. § 1 a) supplements § 1 to the effect that the measures referred to must be coordinated, primarily by the IM, and the investigations referred to and any investigations commissioned by the State must be considered as independent from each other.
3. § 2 says that damage is considered to be “severe” if its repair takes at least 72 hours or costs at least 0.18 million SDR. SDR means the currency of the International Monetary Fund (IMF) which according to Article 9 of the Convention is the unit of account referred to in its Appendices. 1 SDR is equal to approximately 1.27 € (July 2010). According to § 5, the CTE may change the minimum amount referred to in § 2.
4. § 3 contains the obligation – which, within the meaning of § 1 a), mainly concerns the IM – to notify the authority or body (Article 5) which admitted the vehicle to circulation of any accidents, incidents or severe damage. That authority or body may require the damaged vehicle to be presented, possibly already repaired, for examination of the validity of the admission to operation and to decide whether the procedure concerning the granting of admission to operation must be repeated.
5. § 4 deals with accident assessment and resulting questions with a view to amending the construction and operating provisions of the UTPs and measures concerning technical certificates affected by this. The CTE has a key role in this respect.

### **Article 17**

#### **Immobilisation and rejection of vehicles**

1. Subject to the exceptions in §§ 2 and 3, § 1 lays down as a general rule that railway vehicles that meet all the requirements that apply to them may not be immobilised or rejected.
2. § 2 makes clear that authorities (and their organs) entitled to inspect vehicles may immobilise a vehicle if non-compliance with requirements is suspected, although the examination to establish certainty should be carried out as quickly as possible and in any case within 24 hours.
3. § 3 deals with ordering immobilisations and rejections, which is in any case permissible, as a result of unresolved questions between Contracting States concerning the qualification of a competent authority (Article 5 § 7) and consequences arising from the results of an accident assessment (Article 16 § 4).

### **Article 18**

#### **Non-compliance with the prescriptions**

Apart from the consequences in accordance with Article 10 a) with regard to technical certificates, for the legal consequences of failure to comply with the prescriptions, reference is made to national law (including the rules relating to conflict of laws), i.e.

- to the law of the Contracting State in which the IM has his place of business, for the civil and penal consequences concerning infrastructure, and
- in all other cases to the law of the Contracting State whose competent authority (Article 5) issued the first admission to operation.

### **Article 19**

#### **Transitional provisions**

1. This is a new Article.
2. The following vehicles that do not meet the requirements of Article 3 § 1 may continue to be used, provided they already exist at the time this Article enters into force, and until they are renovated/upgraded (§ 3):
  - vehicles marked with “RIC” or “RIV” under the conditions set out in §§ 2, 4 and 5,
  - vehicles without such a marking, but which have an approval and marking in accordance with the agreements notified to OTIF between two or more Contracting States, under the conditions set out in §§ 2 a), 4 and 5, and
  - other vehicles on the basis of a complementary admission to operation to be requested from a competent authority, under the conditions set out in § 6.
3. Section 21.1 of RIV 2004 restricts the RIV marking to the case that the wagon

is approved by the competent authority in accordance with the rules in force (at the time and place of approval) and that it complies with the “Technical Unity” (TU) and UIC standards. Section 31 contains provisions concerning maintenance (overhaul). Similar provisions are included in RIC.

4. Approval by a railway undertaking which is a contracting party to RIV or RIC is considered as an approval by the State in the case where there was no other authority with the responsibility for approving railway vehicles at the time of this approval by the railway undertaking.
5. If future decisions taken by the CTE create the need for further transitional provisions, the CTE may adopt them itself in accordance with § 7, i.e. without the Revision Committee having to make an addition to Article 19.

### **Article 20 Disputes**

There are several phases for resolving disputes between Contracting Parties concerning questions on the enforcement of ATMF:

- direct negotiation,
- submission to the CTE and
- arbitration in accordance with COTIF under the conditions of Title V thereof.

Arbitration is an option, not an obligation.