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**Commission d'experts techniques
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Committee of Technical Experts**

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11TH SESSION

UTP adoptions and modifications, including procedures for urgent modifications

Explanatory document concerning Articles 6, 8 and 8a of the APTU UR and their corresponding practical implementation

1. INTRODUCTION

At the 10th session of the Committee of Technical Experts (CTE) there was a short discussion concerning the possibilities with regard to urgent modifications to UTPs if safety-relevant gaps or errors are identified.

The report of the session states as follows:

In view of the fact that CTE only met once a year, CER wondered about the efficiency of the CTE in cases where it was necessary to make urgent amendments to UTPs.

The representative of the EU (Patrizio Grillo) explained that in the EU there are provisions which prescribe what to do in urgent cases. The EC would request a technical opinion from ERA, which would subsequently be validated at one of the three RISC meetings that are held each year. In addition, there was also the option of RISC's written procedure.

The Secretariat reminded the meeting that the conditions for the withdrawal or suspension of certificates for operation are set out in Article 10 § 8 of ATMF and could be used in urgent safety critical cases. Concerning urgent changes to UTPs Article 8a §1 of APTU allowed CTE to take "appropriate measures". The Secretary General of OTIF thought that, instead of modifying Article 8a, WG TECH could prepare a specific procedure for urgent cases, which could then be discussed at the CTE.

The Chairman summarised the discussion, and concluded item 6.2 as follows:

[...]

3. With regard to how the CTE should act in urgent cases, the CTE noted that the existing legal framework in Article 8a § 1 was sufficient and could be used to develop specific procedures for urgent cases;

[...]

2. PREPARATORY WORK

On the basis of documents prepared by the Secretariat the standing working group WG TECH discussed the matter in more detail and drafted an explanatory document concerning the possibilities for (urgently) modifying UTPs. The document reviews:

- The normal process for adoption or modification of UTPs, which includes competencies, preparation of the proposal, decision-making process, and subsequent notification and publication of the decision,
- Possibilities for urgent UTP modifications,
- Other possibilities for dealing with UTP deficiencies which may affect railway safety.

3. PROPOSAL FOR DECISION

The Committee of Technical Experts takes note of the explanatory document at annex, endorses its contents and requests the Secretariat to publish it on the Organisation's website as an explanatory document for Articles 6, 8 and 8a of the APTU UR.

ANNEX

This paper sets out the general principles and practices applicable to the adoption and modification of UTPs. It summarises the processes, tasks and responsibilities with the aim of providing the reader with a comprehensive overview. It was reviewed by the Committee of Technical Experts during its 11th session. As this is an explanatory document, it does not contain any legal requirements. The content of this document is solely for information purposes. For the applicable law, see COTIF.

1. NORMAL PROCESS FOR ADOPTION OR MODIFICATION OF UTP

1.1. COMPETENCE

In accordance with Article 20 § 1 b) COTIF and Articles 6, 8 and 8a APTU, the Committee of Technical Experts (CTE) is competent to take decisions about the adoption of a UTP or a provision amending a UTP.

1.2. PROPOSAL

In accordance with Article 21 § 4 COTIF, the Secretary General may, on his own initiative, present proposals aiming to modify the Convention. In this context the Convention is meant to cover not only the Convention itself, but also its Appendices, such as APTU and ATMF, as well as the provisions subsidiary to these Appendices, such as UTPs.

In addition to this general competence of the Secretary General, Article 6 § 2 APTU lays down that an application for adoption of a UTP or a provision amending it may be made by:

- a) any Contracting State;
- b) any regional organisation as defined in Article 2 x) of ATMF;
- c) any representative international association for whose members the existence of UTP relating to railway material is indispensable for reasons of safety and economy in the exercise of their activity.

It is common and good practice that, before submitting a proposal to the CTE, any proposal for adoption or modification of a UTP is first examined and discussed in the standing working group technology (WG TECH).

With regard to the invitation, agenda and documents, the Rules of Procedure of the CTE provide for the following in Article 8 Convening – Documents:

§ 1 Not less than three months before the meeting opens, the Secretary General shall serve upon the members of the Technical Committee and the observers:

- a) an invitation indicating the place, date and time of the opening of the meeting, and*
- b) the provisional agenda.*

§ 2 The Secretary General shall send the documents relating to the meeting to the members of the Technical Committee and observers not less than two months before the opening of the meeting. If the Secretary General receives a document of more than 10 pages which is not in all of the working languages, the deadline shall only apply to the version(s) of the document received. Translation(s) into the other working language(s) shall be made available as soon as possible.

[...]

1.3. CONVENING A COMMITTEE OF TECHNICAL EXPERTS MEETING

In the version applicable since 11.2.2009, the CTE Rules of Procedure set out the conditions for convening meetings in Article 7:

§ 1 In accordance with Article 16 § 2 of the Convention, the Secretary General shall convene the Technical Committee either on his own initiative or at the request of at least five members of the Technical Committee or at the request of the Administrative Committee according to Article 15 of the Convention.

§ 2 In addition to the requirements of Article 16 § 2 of the Convention, the Secretary General shall also convene the Technical Committee at the request of a regional organisation which, according to Article 4 § 2, enjoys the votes of at least five members of the Technical Committee.

1.4. DECISION

In practical terms, a CTE decision may concern:

1. **The adoption of a new UTP** covering a subsystem, part of a subsystem, or another subject as set out in Article 8 § 8 APTU that was not previously covered by a UTP.

2. **The adoption of a UTP to replace an existing UTP:** in this case, the decision of the CTE repeals the original UTP and a new, modified UTP replaces the existing one. Such a decision is taken if the existing provisions must undergo major modifications, thus affecting a significant part of the UTP.

3. **Amendment of an existing UTP:** the original instrument remains in force, albeit modified in accordance with the CTE decision. The amendments may improve some parts of the original provisions, or add new provisions, or delete them. The parts of the existing UTP not subject to the amendments remain unaffected. The decision amending the UTP should be read in conjunction with the existing UTP and, from the date of entry into force of the decision, the UTP should be read in conjunction with all the amendments.

Within the meaning of Article 35 COTIF, any of these three cases are deemed ‘modifications’.

1.5. NOTIFICATION

Following the CTE decision to adopt or amend the UTP, the Secretary General is required to notify these modifications to the Member States in accordance with Article 35 § 1 COTIF. This is done by means of a circular letter. In the first two cases described above, the notification will concern the entire UTP, while in the third case it will concern the amendments only.

Notification is the action that formally initiates the process for entry into force of the modification. Article 35 § 3 and 4 COTIF set out the conditions for the modifications to enter into force following their notification.

In the case of modifications decided by the CTE, the entry into force of a modification takes place¹ on the first day of the sixth month following the notification.

1.6. PUBLICATION

APTU Article 8 § 1 stipulates that UTP must be published on the Organisation’s website. § 3 of the same Article further specifies that publication must take place at least one month before entry into force and that the website should also indicate the date of entry into force of the UTP.

For the adoption of a new UTP: publication is straightforward. The Secretariat makes the UTP available in three languages in pdf format.

¹ Provided that objections from Member States do not prevent entry into force in accordance with Article 35 § 4 COTIF.

For the adoption of a UTP to replace an existing UTP: publication is identical to the first case. In addition, although it is not formally required by the Convention, the Secretariat ensures that the previous version of the UTP remains accessible on the website. On the one hand, this may be important because the previous version might in some cases continue to apply during a transitional period. On the other hand, this may be useful e.g. in terms of traceability, as it provides access to the requirements on the basis of which a vehicle was approved in the past. The status of the former UTP will be changed in accordance with the CTE decision; in most cases, this will mean that the previous version of the UTP is repealed.

For the amendment of an existing UTP: the CTE decision amending the UTP will be published on the same website page in addition to the existing UTP that has already been published. If a UTP is amended more than once, all amendment decisions will be published.

For information and documentation purposes the Secretariat will also publish consolidated versions of amended UTPs. A consolidated version includes all the amendments to date. As the original instrument and the amendments do not usually enter into force on the same date, it follows that the provisions in the consolidated version did not all enter into force on the same date. A consolidated version should therefore be for information only and contain a disclaimer which clarifies its status. A table on the opening pages of the consolidated UTP will list all the applicable amendments. A consolidated version is intended for use as a documentation tool and has no legal value; the legally binding provisions are those which are notified by the Secretary General in accordance with Article 35 COTIF.

2. POSSIBILITIES FOR URGENT UTP MODIFICATIONS

As the CTE generally meets once a year, modification of the UTP in the usual process may take quite a long time, particularly if an apparent error is identified in a UTP not long after the CTE has met. In such a case the time between identification of an error and the entry into force of the corresponding modifications to correct the error may take about one and a half years.

APTU Article 8a - Deficiencies in UTP states:

- § 1 If it comes to the attention of the Committee of Technical Experts that an adopted UTP contains errors or deficiencies including where an adopted UTP does not fully meet the essential requirements, the Committee shall take the appropriate measures including:*
- a) the decision whether the relevant UTP may need to be amended in accordance with Articles 6 and 8 and*
 - b) recommendations for justified provisional solutions.*
- § 2 The Contracting States, regional organisations and assessing bodies have the obligation to inform the Secretary General without delay if they discover errors or deficiencies in a UTP.*

2.1. WRITTEN PROCEDURE

The requirement in APTU Article 8a that CTE must take ‘appropriate measures’ means that there may be other processes for the CTE to adopt modifications to UTPs. The Rules of Procedure of the CTE² provide for the possibility of a vote by written procedure in accordance with Article 21 § 3:

Where a matter arises outwith a meeting, and, if the Chair, the Secretary General or at least five members of the Technical Committee believe a decision needs to be taken which should not be postponed until the next meeting of the Technical Committee, then the Chair shall conduct a vote by written procedure in accordance with the following rules:

- a) if no permanent Chair is elected, the Chair shall be defined as that of the most recent session;*

² http://otif.org/fileadmin/user_upload/otif_verlinkte_files/02_organe/06_fachaus_tech/RI-CTE_11_02_2009_e.pdf

- b) *all members of the Technical Committee shall be informed in writing about the subject of and reason for such a vote;*
- c) *independent issues are to be voted upon separately;*
- d) *the members shall be invited to send the Secretary General their written votes within a specific deadline (date and time), which must allow them no less than twenty one calendar days;*
- e) *receipt of each vote shall be confirmed in writing by the Secretary General;*
- f) *all responses received within the deadline shall be recorded;*
- g) *the quorum shall be the same as for a meeting of the Technical Committee. If the number of responses received before the deadline does not reach the required quorum, the proposal shall be considered to be rejected. It may, however, be resubmitted at the next meeting of the Technical Committee;*
- h) *if at least three Committee members request that the proposed measures be examined at a Committee meeting, the written procedure shall be terminated without result; a new Committee meeting shall be convened as soon as possible and*
- i) *all members shall be notified of the result of the voting procedure.*

The vote by written procedure may speed up the overall process, but will still be subject to the provisions of Article 35 § 3 COTIF, which stipulate that:

[...]Modifications decided upon by the RID Expert Committee or by the Committee of Technical Experts shall enter into force for all Member States on the first day of the sixth month following that during which the Secretary General has given notice of them to the Member States.

So in all, the time between the proposal for a UTP amendment and its entry into force will be at least around five months (three weeks for the vote + a short time for notification + the period mentioned in Article 35 § 3 COTIF).

2.2. OTHER POSSIBILITIES FOR DEALING WITH UTP DEFICIENCIES

From the above, it is clear that truly urgent modifications to UTPs are not possible.

The explanatory document on ATMF 2015, as reviewed by CTE 8, contains some useful information in this context. Below is a reminder of the relevant parts of this document.

With regard to the suspension or withdrawal of certificates of operation (which form the proof of an admission to operation):

Article 10a § 2 concerns the withdrawal of Certificates of Operation. This is a rigorous measure resulting in a vehicle no longer being admitted to international traffic. There is a symmetry between Article 10a § 2b, according to which the keeper should remedy the defects, and Article 11 § 8, which stipulates that the keeper holds the Certificate. In the event that an authority intends to withdraw a Certificate in accordance with Article 10a § 2b, the authority should therefore contact the keeper. If withdrawal of the Certificate is not immediate, the keeper may be instructed to remedy the problem to avoid withdrawal, depending on the type of non-conformity or problem. The Certificate of Operation for the vehicle may only be withdrawn by the competent authority that has granted the Certificate. The withdrawal should be documented in the National Vehicle Register under entry 10.

Article 10a § 4 sets out the concept of suspension of the Certificate of Operation. Suspension is a temporary measure, during which the vehicle may not be used in international traffic. Competent authorities have the obligation to suspend Certificates in the event of the reasons listed in Article 10a § 4, irrespective of whether they or another Contracting State's competent authority issued the Certificate. Suspensions should be documented in the National Vehicle Register under entry 13.3. Improper maintenance by an ECM could, for example, be a reason for suspension. If the problem is caused by the ECM, the keeper can remedy the situation by improving the performance of the ECM, or by changing the ECM. This is in line with Article 15 § 1, which states that it is the responsibility of the keeper to designate an ECM. As soon as the reasons for suspension no longer exist, the Certificate becomes valid again.

Therefore:

A Certificate of Operation may be withdrawn only by the competent authority that issued it.

A Certificate of Operation may be suspended by any competent authority.

Furthermore the CTE has some competences:

CTE may instruct Contracting States to suspend Certificates of Operation of types of vehicles following accidents or incidents in accordance with Article 16 § 4.

Article 5 § 7 of ATMF gives CTE the competence to instruct Contracting States to suspend or withdraw Certificates of Operation which have not been issued in accordance with the rules.

However the legal (penal) consequences are not regulated by COTIF:

The legal consequences resulting from failure to comply with the rules should be regulated in the State by which the vehicle was first admitted in accordance with Article 18 § 1 of ATMF.

Immobilisation and rejection of vehicles:

If a competent authority suspects that a vehicle does not comply with the applicable technical rules, it is entitled to immobilise it for inspection. This inspection should be carried out as quickly as possible and in any case within 24 hours. If non-compliance is confirmed, this should lead to suspension of the vehicle's Certificate in accordance with Article 10a.

Assessing entity or competent authority not meeting the conditions regarding qualification and independence:

Should a Contracting State consider that an assessing entity or competent authority of another Contracting State does not meet the conditions regarding qualification and independence, it should inform the Committee of Technical Experts (CTE) in accordance with Article 5 § 7 of ATMF. The CTE should, within four months, inform the Contracting State in question of the changes that are necessary for the assessing entity or competent authority to retain the status conferred upon it. The CTE may instruct the Contracting State to suspend or withdraw Certificates issued on the basis of the work done by the assessing entity or competent authority in question. If the Contracting State in question does not follow the instruction, other Contracting States are entitled to immobilise the vehicles concerned in accordance with Article 17 § 3.

From the above, it is clear that operational actors, as well as authorities, have several possibilities to deal instantly with safety-critical issues. For example the CTE may instruct Contracting States to suspend Certificates of Operation of types of vehicles following accidents or incidents and competent authorities may immobilise a vehicle for inspection when suspecting that it does not comply with the applicable technical rules. Safety of the railway system should not and does not rely exclusively on the correctness of

technical rules. Nevertheless, if a safety-critical error were to be identified in a UTP, the UTP should be modified as soon as possible.
