



Organisation intergouvernementale pour les transports internationaux ferroviaires
Zwischenstaatliche Organisation für den internationalen Eisenbahnverkehr
Intergovernmental Organisation for International Carriage by Rail

**Commission d'experts techniques
Fachausschuss für technische Fragen
Committee of Technical Experts**

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Future development of vehicle admission requirements

Discussion paper

1. INTRODUCTION

In 2006, Appendices F and G to COTIF entered into force. Since then the legal framework established by these appendices has been steadily developed. These developments over the past decade have been based on the European Union's legal framework for interoperability and safety of the railway system.

One objective in the OTIF work programme for 2018-2019 is to review the provisions related to regional economic integration organisations that have acceded to COTIF. At present, this only concerns the European Union (EU), but it cannot be excluded that other such organisations might also accede in future. It would be important for any of these organisations to be able to enjoy similar legal relations with COTIF.

In this context this paper reflects on what has been achieved so far and explores the scope for further development. The aim of this document is to support a discussion, so it does not go into detailed amendment proposals.

2. CONTEXT, SCOPE AND AIMS

Article 2 of COTIF sets out that the aim of the Organisation is to promote, improve and facilitate, in all respects, international traffic by rail, including the following points which are relevant for this paper:

- c) contributing to interoperability and technical harmonisation in the railway field by the validation of technical standards and the adoption of uniform technical prescriptions;*
- d) establishing a uniform procedure for the technical admission of railway material intended for use in international traffic.*

Under this umbrella of Article 2 of COTIF, Appendices F and G to COTIF contribute to these aims. In particular, the APTU Uniform Rules lay down, for railway material intended to be used in international traffic, the procedure for the validation of technical standards and the adoption of Uniform Technical Prescriptions (UTP) and the ATMF Uniform Rules lay down, for railway vehicles and other railway material, the procedure for the admission to circulation or use in international traffic.

Not all states have similar ambitions when it comes to interoperability. Article 42 COTIF permits states to declare that they will not apply certain appendices, so that each state can apply the appendices that match their requirements. The practical effect of this is that international railway traffic is improved and facilitated at different levels in different states. This justifies the development of COTIF provisions which cater to the needs of the states with the most far-reaching ambitions. It is very important that compatibility between EU law and the interoperability provisions of COTIF be maintained, which will require efforts by both OTIF and the EU.

3. COMPATIBILITY OF COTIF AND EU LAW

From their inception the technical provisions of COTIF have been based on EU provisions concerning the interoperability and safety of railways. The established practical working method is that firstly the interoperability and safety provisions are developed at EU level and subsequently the provisions which are also relevant in the scope of COTIF are taken over into the technical provisions under APTU and ATMF. This working method permits OTIF to establish detailed and comprehensive specifications, without the need to organise numerous meetings to develop all these specifications from scratch. As a consequence, the provisions suit the specific needs of the EU from their inception, and adaptations may be required when they are taken over into COTIF to align them with the scope of COTIF.

With the aim of providing some background information, the following sections summarise and compare the main objectives of these provisions.

3.1. EU RAILWAY INTEROPERABILITY LAW

Since the early 1990s, the EU has implemented consecutive packages of legislation to harmonise and connect the railway markets of the EU Member States. The objectives include opening the market to provide international and national railway services and opening the railway equipment supply market.

With regard to the opening of the supply market, it was necessary to harmonise the requirements for railway equipment across the EU. To this end, EU railway legislation was aligned with generic EU product legislation referred to as the New Legislative Framework (and previously as the New Approach and Global Approach). This framework not only harmonises the product requirements, but also conformity assessment and market surveillance.

The general principles can be summarised as follows: an EU Directive concerning a particular product group (e.g. medical equipment, machinery, toys, pressure vessels) sets out the so-called essential requirements for a product. No product may be marketed in the EU without meeting the essential requirements. Standards devised by standardisation bodies set out best practices to meet the essential requirements. These are referred to as harmonised standards. Complying with harmonised standards is not mandatory, but provides presumption of conformity with the essential requirements. When not following the harmonised standards the applicant, which is the entity seeking market access for the product, must prove conformity with the essential requirements by other (robust) means. Assessment of conformity with the essential requirements typically involves a Notified Body, which performs third party (independent) assessments. In the end the applicant or manufacturer declares full responsibility for the product's conformity with all legal requirements and will be liable if it later turns out that there are issues with the product. For the product groups concerned, this EU framework replaces national legislation. It therefore avoids manufacturers' having to receive permission based on national provisions in each state, making it easier to market their product.

The EU Interoperability Directive concerns railways and is based on this framework. It distinguishes interoperability constituents (ICs), subsystems (such as rolling stock and infrastructure) and vehicles.

Conformity assessment of subsystems and (most) ICs must be performed by a Notified Body (third party assessor) at the request of an applicant (in case of subsystems) or the manufacturer (in case of ICs). Unlike other New Legislative Framework Directives, the checks by a Notified Body are not directly on the basis of the Directive, but, as the railway system is rather complex, on the basis of an additional layer of specifications referred to as TSIs (technical specifications for interoperability). The Notified Body will check whether the subsystem or IC complies with all the applicable TSI provisions. The applicant (in case of subsystems) or the manufacturer (in case of ICs) will bear full product responsibility and has to declare on his sole responsibility that all legal requirements have been complied with.

Vehicles are composed of subsystems and ICs. Vehicles require authorisation by an authorising entity (the EU Agency for Railways or the National Safety Authority). There is no vehicle-level third party assessment.

Vehicles which are in conformity with an authorised vehicle type will be authorised on the basis of a declaration of conformity to that type submitted by the applicant.

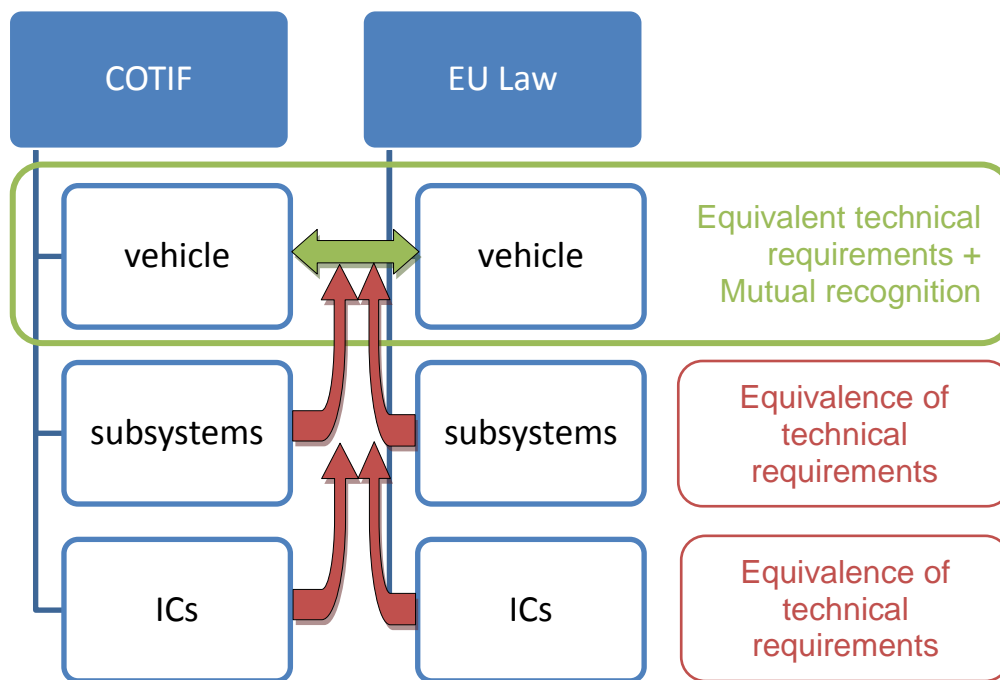
3.2. COTIF TECHNICAL UNIFORM RULES

Unlike EU law, COTIF has no objective in terms of opening the railway supply market. This means that meeting COTIF provisions will not give automatic access to the EU market (or any other market) and products approved according to EU law have no automatic right to be marketed in non-EU states which apply the relevant COTIF provisions. Despite the fact that facilitating trade is not an objective

of COTIF, harmonising technical requirements may of course have beneficial effects for the railway industry in contracting states.

The COTIF provisions have largely been harmonised with EU railway law. On this basis, assessments and admissions (OTIF)/authorisations (EU) of railway vehicles (including their ICs) are mutually recognised in all EU and non-EU OTIF Member States that apply APTU and ATMF as far as using these vehicles in international traffic is concerned. A significant benefit of this alignment is that freight wagons can be used in all Contracting States (including those which are also members of the EU) without additional authorisation, provided the harmonised technical requirements in TSI and UTP WAG are fulfilled. For other types of vehicles, such as for example locomotives, duplication of checks can be avoided as far as harmonised requirements contained in TSI and UTP are concerned.

By analogy with EU law, COTIF also has dedicated provisions for vehicles, subsystems and ICs. The difference is that the aim of the COTIF provisions is only to provide for mutual acceptance of vehicles; the subsystems and ICs are subsidiary to this aim.



Whereas an important component in EU law is the declaration by an applicant, contracting entity or manufacturer that an IC or subsystem meets all the requirements, which means that it assumes full liability, such declarations are not mandatory in COTIF.

At present, COTIF provisions for subsystems only cover the subsystem rolling stock. There are currently no harmonised provisions for on-board CCS subsystems. Therefore, a vehicle admission for a vehicle including on-board CCS under OTIF is not equivalent in technical scope to an EU vehicle authorisation. If equivalent CCS specifications were to become available under COTIF the technical scope could become the same. All provisions for vehicles without CCS (e.g. freight wagons) have already been harmonised.

As in EU law, the principle of third party assessment of ICs and subsystems is required in COTIF. A significant difference between EU law and COTIF is that in COTIF, the responsibilities for the different parties involved in the admission of vehicles can be adjusted, to a certain extent, for each state. Each state must notify the Secretary General of OTIF of its Competent Authority, which issues vehicle admissions. It is then up to the Competent Authority whether it performs conformity assessments itself or whether it transfers the competences to a public or private assessing entity. This means that in COTIF the third party assessor and the authorising entity can be the same body.

4. FURTHER DEVELOPMENT

It is proposed that the following principles be used as a basis to underpin further development of the technical provisions of COTIF:

1. Harmonisation of technical and operational rules is most useful if it is implemented over the widest possible geographical scale. Attracting new Contracting States is therefore relevant. COTIF provisions should make sense and be of use in different geographical areas and between states which may have different legal systems. The organisation of railways can be different as well, ranging from competitive open-access to fully integrated state monopolies. COTIF should build a bridge between these differences.
2. States may choose the level of interoperability suitable for them, i.e. border crossing of vehicles only or of complete trains. The technical provisions should cater to requirements at all levels and should therefore be appropriately flexible. However, this also justifies the development of far reaching interoperability provisions to be used only between states which want to facilitate the cross-border operation of complete trains.
3. Compatibility with the European Union legislation must be maintained. This does not mean all aspects can be taken over, as the general scope of COTIF must be respected. Elements from European Union legislation linked only to market opening, either for services or for products, should for example not be taken over as there is no basis for them in COTIF.
4. There may be a potential to simplify some existing COTIF provisions which have already been taken over from EU law, for example those linked to vehicle approval (consisting of verifications, declarations, certifications etc.). It could e.g. be analysed, in coordination with sector organisations, whether the number of different levels related to vehicle admission (i.e. 'interoperability constituents' (IC) level, subsystem-level and vehicle-level) are actually useful or could be reduced.
5. The technical provisions of COTIF should be compatible with the possible accession of additional regional economic integration organisations which meet the conditions of Article 38 of COTIF. Provided the relevant conditions are met, these organisations should be able to enjoy similar legal relations with COTIF as the EU currently enjoys¹. In this context the feasibility should be analysed of:
 - The current symmetry between EU law and ATMF as set out in Article 3a of ATMF.
 - The requirement for a 2-column layout in UTPs as set out in Article 8 § 9 of APTU.

Any feasibility analysis or proposal for modification of these provisions should be accompanied by concrete alternative proposals which ensure that no functionality will be lost.

6. The technical provision should consist of:
 - Prescriptive rules to ensure interoperability, but limited in scope to what is essential to the aims of the Convention and the scope of its appendices. This is a well-established principle of the existing UTPs.
 - Where relevant, complemented by recommended practices for efficient and harmonised solutions whose application is voluntary. Examples are Appendix C to the

¹ The preconditions for such similar legal relations should be fulfilled, such as for example similar and compatible requirements concerning: approval of railway material, procedures and responsibilities concerning railway operations and maintenance; verification procedures and independence; qualification requirements related to the entities/authorities which perform the tests/checks.

UTP/TSI for freight wagons and the draft provisions for interchangeable passenger coaches.

5. PROPOSAL FOR DECISION

The Committee of Technical Experts:

1. Takes note of the document.
2. Agrees with the principles underpinning further development as set out in chapter 4 and requests the standing working group (WG TECH) to use them, where relevant, as guidance when making proposals to modify the technical provisions of COTIF.