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Proposals for the revision of ATMF with regard to Entities in Charge of Maintenance (ECM)

1. INTRODUCTION

The ATMF Uniform Rules (Appendix G to COTIF and further referred to as ATMF) set out general rules concerning entities in charge of maintenance (ECMs). Further detailed provisions concerning ECMs are set out in Annex A to ATMF.

At the time of writing this document, the rules for the certification and auditing of ECMs (Annex A to ATMF) are subject to revision by a vote using the written procedure. If adopted, the new provisions are expected to enter into force on 1 April 2021.

Compared with the existing rules, the proposed new rules would extend the scope of certification beyond its current scope, which is limited to the certification of freight wagon ECMs. As a general rule, under the future rules, ECMs of all types of vehicles should be certified. Every ECM would have to comply with the general requirements and criteria set out in Annex II of the proposed future rules.

At the 40th session of WG TECH, the question was raised as to whether the ECM related provisions in ATMF needed updating. This document analyses the current ATMF provisions and discusses the need for possible modifications.

2. RELEVANT EXISTING PROVISIONS IN ATMF

The current texts in ATMF (in force since 1 March 2019) relating to the certification and auditing of ECMs and the tasks and responsibilities of ECMs are as follows:

Article 3a

Interaction with other international agreements

[...]

§ 5 An entity in charge of maintenance² (ECM) for a freight wagon, certified according to Article 15 § 2, shall be deemed as certified according to applicable European Union and corresponding national legislation and vice versa in the case of full equivalence between the certification system adopted under Article 14a (5) of the EU Railway Safety Directive 2004/49/EC and rules adopted by the Committee of Technical Experts according to Article 15 § 2. These adopted rules are set out in Annex A to these Uniform Rules.

Footnote 2: The requirements relating to the entity in charge of maintenance are set out in Article 15.

Article 15

Maintenance of vehicles

§ 1 Vehicles must be in a good state of maintenance in such a way that they comply with the provisions as defined in Article 7. The condition of vehicles must not in any way compromise operational safety and must not harm the infrastructure, environment and public health by their circulation or their use in international traffic. To that end, vehicles shall be made available for and undergo the service, inspections and maintenance as prescribed in the Maintenance File. It shall be the responsibility of the keeper to designate an ECM for this purpose.

§ 2 Each vehicle, before it is admitted to operation or used on the network, shall have an ECM assigned to it and this entity shall be registered in the data bank referred to in Article 13. The ECM shall ensure that the vehicles for which it is in charge of maintenance are in a safe state of running by means of a system of maintenance. The ECM may make use of contractors including maintenance workshops.

The Committee of Technical Experts shall be competent to adopt and amend rules for certification and auditing of ECM and maintenance workshops. The rules are set out in Annex A to these Uniform Rules.

The ECM for a freight wagon shall be certified by an ECM Certification Body accredited or recognised in one of the Contracting States in accordance with Annex A to these Uniform Rules.

§ 3 The keeper shall make available to the ECM, as far as necessary for maintenance, the elements relating to the instructions concerning servicing, constant or routine monitoring, adjustment and maintenance.

The ECM must ensure, either directly or via the keeper, that reliable information about maintenance and restrictions affecting operations, necessary and sufficient to support safe operations are available for the operating railway undertaking.

The operating railway undertaking must in due time, either directly or via the keeper, provide the ECM with information on operation of the vehicles (including mileage, type and extent of activities, incidents/accidents) for which the ECM is in charge.

§ 4 The ECM of an admitted vehicle shall keep and update the Maintenance File and Maintenance Record File for that vehicle. The ECM shall inform the keeper of updates to the Maintenance Record File. The files shall be available for inspection by the competent national authority.

Article 15a **Train composition and operation**

§ 1 The rail transport undertaking shall control the risks associated with its activities and especially those related to the operation of trains. To that end it shall ensure that these trains comply with the essential requirements and shall in particular:

- a) ensure correct and safe train composition and preparation, including pre-departure checks,
- b) take into account information necessary for the safe operation of each vehicle, including possible operating restrictions,
- c) only use vehicles within their limit and conditions of use,
- d) be required to comply with the prescriptions relating to operation in international traffic, such as those specified in the relevant UTPs,
- e) ensure that each vehicle carried has an ECM assigned to it and when required that the ECM has a valid certificate.

[...]

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

§ 1 In case of accident, incident or severe damage to vehicles, all parties involved (the infrastructure managers, the keepers, the ECM, the railway undertakings concerned and possible others), shall be required

- a) to take, without delay, all necessary measures to ensure the safety of railway traffic, respect for the environment and public health and
- b) to establish the causes of the accident, the incident or the severe damage.

[...]

3. ANALYSIS

There are two main reasons for modifying the current texts.

Firstly, the scope of certification of ECMs in the new Annex A to ATMF extends beyond freight wagons. This should be reflected, particularly in Article 15 of ATMF, which currently mandates the certification of ECMs of freight wagons only.

Secondly, ATMF makes reference in Article 3a to EU legislation that is no longer in force (Directive 2004/49/EC has been repealed and replaced by Directive (EU) 2016/798).

4. PROPOSALS AND JUSTIFICATIONS

The texts of Article 3a § 5 and Article 15 § 2 of ATMF should be modified as follows. The other texts of the existing ATMF Uniform Rules, including those relating to ECMs, do not need to be modified.

4.1 PROPOSED MODIFICATIONS TO ARTICLE 3A § 5 OF ATMF:

Article 3a

Interaction with other international agreements

§ 5 An entity in charge of maintenance² (ECM) ~~complying with the provisions of for a freight wagon, certified according to~~ Article 15 § 2, shall be deemed to comply with the corresponding as certified according to applicable European Union ~~and corresponding national~~ legislation and vice versa in the case of full equivalence between the ~~certification system adopted under Article 14a (5) of the EU Railway Safety Directive 2004/49/EC and~~ rules applicable in the European Union and the COTIF rules according to Article 15 § 2.

~~The adopted by the~~ Committee of Technical Experts shall be competent to declare equivalence between the rules applicable in the European Union and the COTIF rules according to Article 15 § 2. ~~These adopted rules are set out in Annex A to these Uniform Rules.~~

Footnote 2: The requirements relating to the entity in charge of maintenance are set out in Article 15.

Justification for proposed modifications to Article 3a § 5 of ATMF:

1. The new rules for the certification of ECMs in Annex A to ATMF are no longer specific to freight wagons, so the reference to freight wagons must be deleted.
2. Before 1 April 2021, the rules in Annex A to ATMF applied only to the certification of ECMs for freight wagons and therefore only certificates of ECMs for freight wagons could be mutually recognised. As there were no certification requirements applicable to ECMs of vehicles other than freight wagons, mutual acceptance of these ECMs was therefore implicit.

The rules in Annex A to ATMF that enter into force on 1 April 2021 cover all ECMs and all ECMs must comply with common requirements. Nevertheless, under defined exceptional conditions defined in Annex A to ATMF, some ECMs can demonstrate compliance with the requirements without the need to be certified. Mutually recognising ECM certificates only would therefore entail the risk that ECMs which are exempt from certification would not be mutually recognised.

It is therefore necessary to mutually recognise the compliance of ECMs with the applicable rules rather than mutually recognising ECM certificates. As a consequence, the reference to certification should be removed from Article 3a § 5 of ATMF.

3. The reference to national legislation should be deleted, as the rules on certification of ECMs for vehicles in international traffic are now exhaustively regulated at international level.
4. The precise reference to EU legislation should be removed and replaced by a general reference to avoid having to modify ATMF every time EU law changes.

5. The reference to “rules adopted by the Committee of Technical Experts” should be deleted. The adoption of rules alone does not give them legal force. The entry into force of decisions by the Committee is governed by Article 35 §§ 3 and 4 of COTIF (Base Convention). It is therefore better simply to refer to “COTIF rules”, which is an expression covering all legal provisions falling under COTIF.
6. As the precise reference to EU legislation is removed, it is important to establish competence for declaring equivalence between EU rules and OTIF rules. This competence should be given to the Committee of Technical Experts, by analogy with Article 13 § 4 letter b of the APTU Uniform Rules, which gives the Committee of Technical Experts competence to declare equivalence, in railway safety terms, between provisions in the UTP and the corresponding TSI.
7. The final sentence, which merely refers to Annex A, is not needed here as it is mentioned in Article 15 of ATMF.

4.2 PROPOSED MODIFICATIONS TO ARTICLE 15 § 2 OF ATMF:

Article 15 Maintenance of vehicles

§ 2 Each vehicle, before it is admitted to operation or used on the network, shall have an ECM assigned to it and this entity shall be registered in the data bank referred to in Article 13. The ECM shall ensure that the vehicles for which it is in charge of maintenance are in a safe state of running by means of a system of maintenance. The ECM may make use of contractors, including maintenance workshops.

The Committee of Technical Experts shall be competent to adopt ~~and amend~~ rules for certification and auditing of ECMs and maintenance ~~workshops. The functions, including requirements incumbent on the parties involved. These rules shall be~~ set out in Annex A to these Uniform Rules.

All ECMs shall comply with the requirements and assessment criteria laid down in Annex A to these Uniform Rules.

The ECMs for a-freight ~~wagons~~wagon shall be certified.

The ECMs for vehicles other than freight wagons shall be certified, unless Annex A to these Uniform Rules permits exceptions.

ECM certificates shall be issued only by an ECM Certification Body accredited or recognised in one of the Contracting States in accordance with Annex A to these Uniform Rules.

Justification for proposed modifications to Article 15 § 2 of ATMF:

1. The new rules for the certification of ECMs in Annex A to ATMF are no longer specific to freight wagons, so the reference to freight wagons must be deleted.
2. If the Committee is competent to adopt rules, it is also competent to amend them, so defining the competence to amend rules is superfluous and should be deleted.
3. Annex A to ATMF lays down requirements to be met by all ECMs and rules for the certification and auditing of ECMs to be followed by ECM Certification Bodies. Furthermore, it contains requirements to be met by other parties, such as Contracting States, Competent Authorities, the registrar of the ECM register and the Secretary General of OTIF.
4. ATMF lays down the general rule, which is that all freight wagon ECMs must be certified and as a general rule, all other ECMs must also be certified. Within Annex A to ATMF there is the

possibility for detailed provisions, including whether certain ECMs are to be exempt from certification, for example.

5. Issuing ECM certificates must be the exclusive competence of ECM Certification Bodies which are accredited or recognised in one of the Contracting States in accordance with Annex A to ATMF.

5. COMPETENCES

In accordance with Article 33 § 4 letter g of COTIF (Base Convention), it falls within the competence of the Revision Committee to modify the ATMF Uniform Rules, with the exception of Articles 1, 3 and 9 of ATMF (which are in the competence of the General Assembly).

According to established practice, modifications to the ATPU or ATMF Uniform Rules may be drafted, discussed and reviewed by the Committee of Technical Experts before being proposed for decision by the Revision Committee (for Articles 1, 3 or 9 of ATMF, decisions are taken by the General Assembly, after consideration by the Revision Committee).

6. PREPARATORY WORK AND PLANNING

The proposals in this document have been drafted in coordination with WG TECH and were reviewed at its 41st and 42nd sessions.

After consideration by the Committee of Technical Experts, the proposals can be proposed for adoption by the 27th session of the Revision Committee. At the time of writing this document, no date for the 27th session had yet been scheduled. The Revision Committee can also take decisions using the written procedure. In the context of the current subject, the written procedure would have the benefit of speed. However, the proposals could only be adopted or rejected, without the opportunity to discuss or amend them.

In accordance with Article 35 § 3 of COTIF (Base Convention), modifications of ATMF, decided upon by the Revision Committee (either at a session or by the written procedure), shall enter into force for all Member States on the first day of the twelfth month following that during which the Secretary General has given notice of them to the Member States.

7. PROPOSAL FOR DECISION

The Committee of Technical Experts considered the proposals in points 1 and 2 below and requests the Revision Committee to take decisions within its competence provided for in Article 17 § 1, letter a) of COTIF and Article 33 § 4, letter g) of COTIF to amend Article 3a § 5 and Article 15 § 2 of the ATMF Uniform Rules (Appendix G to COTIF) in accordance with points 1 and 2 below and to modify the Explanatory Report accordingly.

In particular, the Committee of Technical Experts requests the Revision Committee to:

1. Modify Article 3a § 5 of the ATMF Uniform Rules and add the justification to the Explanatory Report as follows:
[text of point 4.1 of this document]
2. Modify Article 15 § 2 of the ATMF Uniform Rules and add the justification to the Explanatory Report as follows:
[text of point 4.2 of this document]

The Committee of Technical Experts considers these modifications urgent, as the current texts may lead to ambiguity or inconsistency with regard to whether or not particular ECMs should be mutually recognised. It therefore requests the Revision Committee to consider these amendments at the earliest

possible opportunity and, if the Revision Committee is not scheduled to convene before the end of 2021, to vote on the proposals using the written procedure as soon as possible.