



Organisation intergouvernementale pour les transports internationaux ferroviaires  
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**NOTE FROM THE OTIF SECRETARIAT CONCERNING THE REVISION  
OF ATMF**

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Questions concerning the new role of ERA in the context of ATMF

Considerations concerning Article 3a ATMF

*This note consists of two parts:*

- 1. Questions in connection with the draft working paper (version 0.3) for an Agency proposal for the Commission Implementing act on practical arrangements for the vehicle authorisation process referred to in Article 21(9) of EU Directive (EU) 2016/79, and*
- 2. Considerations relating to the draft revised ATMF Article 3a to align it with the changes brought about by the European Union's 4th railway package and in particular EU Directive (EU) 2016/797.*

## **1. QUESTIONS CONCERNING THE NEW ROLE OF ERA**

### **1.1. REASON FOR THE QUESTIONS**

The EU Agency for railways (ERA) shared a working paper with the OTIF Secretariat which set out proposals for processes, tasks and responsibilities and requirements concerning EU vehicle authorisation under the 4<sup>th</sup> railway package. ERA invited the OTIF Secretariat to provide comments on the paper. As the paper concerns the development of internal EU specifications, the OTIF Secretariat has no particular comments on it; however the developments do raise a few questions about the link between ATMF and the new role of ERA.

### **1.2. CHANGES BROUGHT ABOUT BY THE EU'S 4<sup>TH</sup> RAILWAY PACKAGE**

European Union (EU) Interoperability Directive 2016/797 sets out the provisions concerning the interoperability of the rail system within the EU. Together with EU Regulation 2016/796, it defines tasks and responsibilities for the ERA in cooperation with the EU Member States' (MSs) National Safety Authorities (NSAs) concerning the authorisation of railway vehicles within the EU.

### **1.3. COTIF, ATMF AND THE EU**

COTIF is a Convention between, at the time of writing, 50 States. Appendix G<sup>1</sup> to COTIF (ATMF) sets out provisions concerning the tasks and responsibilities of States applying ATMF. These States are referred to as Contracting States (CS). ATMF includes tasks, procedures and responsibilities for each CS's Competent Authority (CA) for the admission of railway vehicles to international traffic. All EU MSs<sup>2</sup> with a railway network are also CS of OTIF and apply ATMF. The EU acceded to COTIF in 2011 and bound itself in accordance with the accession agreement<sup>3</sup>. The NSAs of the EU Member States are considered as Competent Authorities in the meaning of Article 5 ATMF.

ATMF provides the legal basis for the international use in non-EU CSs of vehicles authorised in the EU and vice versa. A disconnection clause in the EU accession agreement to COTIF and Article 3a § 3 ATMF ensures that for internal EU relations concerning vehicle authorisations (between EU MSs) only EU law applies (and not ATMF).

Considering COTIF and EU law there are four categories of vehicles approvals:

1. Vehicles authorised in the EU for use only within the EU,
2. Vehicles authorised in the EU for use within the EU and in OTIF non-EU CSs,

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<sup>1</sup> [http://www.otif.org/fileadmin/user\\_upload/otif\\_verlinkte\\_files/07\\_veroeff/03\\_erlaeut/10\\_Appendix\\_G.pdf](http://www.otif.org/fileadmin/user_upload/otif_verlinkte_files/07_veroeff/03_erlaeut/10_Appendix_G.pdf)

<sup>2</sup> EU MSs are also meant to include States that are not Members of the European Union but which apply the provisions of the Interoperability Directive on the basis of bilateral agreements with the EU.

<sup>3</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013D0103>

3. Vehicles admitted to operation by a non-EU OTIF CS for use in OTIF non-EU CSs only, and
4. Vehicles admitted to operation by an OTIF non-EU CS for use in the EU also.

From an OTIF perspective in particular categories 2 and 4 are relevant in the scope of the new role of ERA. The table in the annex to this note breaks down further these four categories.

#### **1.4. QUESTIONS CONCERNING THE NEW ROLE OF ERA IN THE CONTEXT OF ATMF**

By implementing the new Interoperability Directive and Regulation 2016/796, ERA will take over certain tasks and responsibilities that are currently incumbent upon the NSAs of the EU Member States. The question arises how these new ERA activities will relate to the EU MSs' obligations under COTIF, in particular:

1. Will ERA become the Competent Authority of each EU Member State in the scope of ATMF, particularly with regard to vehicle authorisation?
2. Article 10 § 3 ATMF states that the application for a technical certificate (=vehicle admission) may be made to the competent authority of any Contracting State. If the answer to question 1 is yes, would this mean that any non-EU applicant could ask ERA for vehicle admission/authorisation? This is also relevant in the context of Article 3a § 2 last sentence ATMF (additional authorisation in the EU following an initial admission according ATMF).
3. If, for the first authorisation, the area of use of a vehicle includes EU and non-EU OTIF Contracting States, as is often the case for freight wagons:
  - a. Would the Interoperability Directive still (co)apply, or should the authorisation/admission be issued solely on the basis of COTIF?<sup>4</sup>
  - b. How would ERA and the non-EU CSs' CA cooperate in case the vehicle is not eligible for unique authorisation, e.g. in case National Technical Requirements apply?
4. Article 10a ATMF sets out competences for the suspension of technical certificates by Competent Authorities. Will such (supervisory) competences be assumed by ERA or by the EU MSs' NSA in case of non-compliance of a vehicle coming from a non-EU CS?

We should note that most of these questions are also relevant today, with EU NSAs having to work with both ATMF and EU law. The OTIF Secretariat is not aware of any problems arising from this.

#### **1.5. CONCLUDING NOTE**

Although strictly speaking the tasks of ERA as defined in the 4<sup>th</sup> railway package do not concern COTIF, the questions illustrate that there are elements to address. For example, if the Agency is to become the competent authority of EU MSs in the meaning of Article 5 ATMF, it would also have some responsibilities under COTIF. Another example is that some authorisation cases may involve an

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<sup>4</sup> In principle COTIF applies, as the condition for applying Article 3a §3 is not met: *"The authorisation for placing in service, the operation and the maintenance of railway vehicles intended to be used **only** in Member States of the European Union are regulated by the applicable European Union and national legislation. This provision is also applicable to Contracting States which apply relevant European Union legislation as a result of international agreements with the European Union.*

*For Railway Undertakings and Infrastructure Managers, when operating within the EU, EU legislation takes precedence over the provisions in these Uniform Rules."*

area of use that exceeds the EU borders and it would thus be relevant to take COTIF into consideration.

It would be of interest to clarify these interactions, not only from an administrative perspective, but also with a view to making things as easy as possible from the legal perspective for applicants, manufacturers, keepers and railway undertakings.

## **2. CONSIDERATIONS IN THE CONTEXT OF ARTICLE 3a ATMF**

This second part of the document describes remarks and suggestions for further discussion of the interaction between the new EU Interoperability Directive 2016/797 and ATMF (no changes to ATMF have been suggested in document TECH-17003-CTE10-6.3a based on these remarks):

Article 3a ATMF entitled “Interaction with other international agreements” describes how EU law concerning railway vehicle authorisation interacts with the vehicle admission provisions of ATMF. These provisions are very important because they allow simultaneously:

- EU States to pursue further mutual integration of their railway systems, whilst continuing to apply ATMF, because in their mutual relations EU States could apply EU law and not ATMF;
- Non-EU States to use ATMF as a basis for the admission of railway vehicles so that these can be used in international traffic;
- The mutual acceptance of EU vehicle authorisations and non-EU ATMF vehicle admissions.

The OTIF Secretariat would welcome a discussion on the possible future development of Article 3a ATMF by taking account of the following:

1. COTIF, and as a result also APTU, ATMF and all subsidiary provisions, have a scope which is limited to international traffic. The EU Interoperability Directive is not limited to international traffic (i.e. covers also vehicles used only domestically). Because of this and other reasons EU vehicle authorisations and ATMF vehicle admissions are not identical concepts.
2. However, ATMF Article 3a provides that if EU and COTIF technical provisions are equivalent and cover all necessary aspects:
  - a) Railway vehicles which have been placed in service according to applicable European Union (EU) and corresponding national legislation shall be deemed as admitted to operation by all Contracting States according to these Uniform Rules, and
  - b) Railway vehicles which have been admitted to operation according to these ATMF shall be deemed as authorised for placing in service in the Member States of the European Union.
3. The agreement on the EU’s accession to COTIF was concluded in 2011, i.e. after the time when the initial concept of Article 3a was drafted. Article 2 of this accession agreement contains a so-called ‘disconnection clause’, setting out that in their mutual relations EU MSs apply EU rules and not COTIF (except in so far as there is no EU rule governing the particular subject concerned). Article 3a ATMF provides more details on the basis of the disconnection principle.

Today, all EU Member States with a railway network are Member States of OTIF and all apply ATMF.

Some OTIF Member States are not members of the EU but apply EU law on the basis of an agreement with the EU. They may declare that their agreement with the EU prevails over the provisions of COTIF. For the purpose of applying ATMF they then fall into the same category as EU Member States (this currently concerns CH and NO).

4. Considering the nature of COTIF as providing binding international law, ATMF provisions apply to Member States of OTIF except in cases in which they do not apply. In its current version, ATMF provisions do not apply:
  - a) If a State has made a declaration that it does not apply ATMF in its entirety, or
  - b) For mutual relations between EU States on the basis of Article 2 of the EU accession agreement to COTIF.

Furthermore, the conditions set out in Article 3a ATMF provide for EU law taking precedence over ATMF for mutual relations between EU Member States.

5. When approving vehicles, EU States will in principle only apply EU provisions and not ATMF, meaning that all new vehicles intended to be first used in EU MSs will be subject to authorisation for placing on the market issued in accordance with the EU interoperability Directive.

EU authorisations are at the same time valid as ATMF admissions as well, which avoids undue burdens for EU based applicants.

6. In accordance with Article 6 § 1 ATMF, admissions are valid in all States which apply ATMF (EU Member States are not excluded).

These remarks lead to the following suggestions for further discussion:

- Considering the fact that a vehicle admission is valid in all States (thus including EU Member States), it is not necessary to specify that vehicles with an ATMF admission are also deemed to be authorised in the EU. Such vehicles can be used in the EU on the basis of their ATMF admission.
- In the future, more regional organisations could accede to COTIF in a similar way to the EU. Multiple disconnection clauses would not necessarily lead to problems, but a complex set of interactions between multiple vehicle admission regimes probably would. For this reason ATMF should define the conditions under which a regional (e.g. EU) authorisation can be considered valid as ATMF admission as well, but not vice-versa.

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Annex: Matrix with EU/ATMF authorisation cases

area of use / additional. auth.	first auth./ adm.	1 EU MS	>1 EU MSs	all EU MSs	1 non-EU CS	>1 non-EU CSs	all non-EU CSs
		1	2	3	4	5	6
1 EU MS	<b>A</b>	only EU law applies cf. Art. 3a §3	only EU law applies cf. Art. 3a §3		step 1: Art. 6 §4 by non-EU CA; step 2: EU law (cf. Art. 3a § 2 last sentence) by ERA or NSA	step 1: Art. 6 §4 by non-EU CAs; step 2: EU law (cf. Art.3a § 2 last sentence) by ERA or NSA	unlikely case. Art. 6 § 4 to be applied by each CA and NSA (case C6 more likely)
>1 EU MSs	<b>B</b>	only EU law applies cf. Art. 3a §3	only EU law applies cf. Art. 3a §3		step 1: Art. 6 §4 by non-EU CA; step 2: EU law (cf. Art. 3a § 2 last sentence) by ERA	step 1: Art. 6 §4 by non-EU CAs; step 2: EU law (cf. Art. 3a § 2 last sentence) by ERA	unlikely case. Art. 6 § 4 to be applied by each CA and ERA (case C6 more likely)
all EU MSs	<b>C</b>	only EU law applies cf. Art. 3a §3	will de facto be case 1C	"unique authorisation" issued by ERA	unlikely case. Step 1: Art. 6 §4 by Non-EU CA; step 2: Art. 3a §2 by ERA (case C6 more likely)	unlikely case. Step 1: Art. 6 §4 by Non-EU CAs; step 2: Art. 3a §2 by ERA (case C6 more likely)	Art. 6 § 3 ("free circulation") admission by one CA; valid in EU cf. Art. 3a § 2
1 non-EU CS	<b>D</b>	step 1: EU law by NSA or ERA; step 2: Art. 6 § 4 by CA	step 1: EU law by ERA; step 2: Art. 6 § 4 by CA	unlikely case. Step 1: Art. 3a § 1 by ERA; step 2: Art. 6 §4 by non-EU CA (case F3 more likely)	Art. 6 §4 (separate admission in each CS)	Art. 6 §4 (separate admission in each CS)	
>1 non-EU CSs	<b>E</b>	step 1: EU law by NSA or ERA; step 2: Art. 6 § 4 by CAs	step 1: EU law by ERA; step 2: Art. 6 § 4 by CAs	unlikely case. Step 1: Art. 3a § 1 by ERA; step 2: Art. 6 §4 by non-EU CAs (case F3 more likely)	Art. 6 §4 (separate admission in each CS)	Art. 6 §4 (separate admission in each CS)	
all non-EU CSs	<b>F</b>	unlikely case. Step 1: EU MS NSA; step 2: Art. 3a §1 (cases F3 or E2 more likely)	unlikely case. Step 1: ERA; step 2: Art. 3a §1 (cases F3 or E2 more likely)	Art. 3a § 1 and Art. 6 § 3 ("free circulation") by ERA (?)	Art. 6 § 3 ("free circulation") by one CA	Will de facto be case F4	will de facto be case F4

colour legend:

EU not concerned, only COTIF applies
EU and non-EU concerned
only EU concerned, COTIF does not apply
not relevant / unlikely case

acronyms:

CA = OTIF non-EU Competent Authority  
CS = OTIF non-EU ATMF Contracting State  
MS = EU Member State  
NSA = EU National Safety Authority