



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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URGENT UTP MODIFICATIONS

Analysis of possibilities

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 provisional report of CTE 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;*

[...]

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. USUAL ADOPTION PROCESS FOR UTPs

APTU Articles 6 and 8 set out the usual adoption process for UTPs. 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 irregularity is identified 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 may take about one and a half years.

The CTE rules of procedure in its current version (applicable since 11.2.2009) sets 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.

Concerning the invitation, agenda and documents the rules of procedure 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.

[...]

3. 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 CTE¹ 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;*
- 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 twentyone calendar days;*

¹ http://otif.org/fileadmin/user_upload/otif_verlinkte_files/02_organe/06_fachaus_tech/RI-CTE_11_02_2009_e.pdf

- 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).

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

4. OTHER POSSIBILITIES

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 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.

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). 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. 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.
