



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

TECH-21034-WGT45-5.2

05.10.2021

Original: EN

14TH SESSION (2022)

[Draft] proposal for the adoption of full revision to the Annex B to ATMF UR concerning derogations from application of Uniform Technical Prescriptions (UTP) related to vehicles

1. INTRODUCTION

In accordance with Article 7a of the ATMF Uniform Rules (Appendix G to COTIF), “*The Committee of Technical Experts is competent to adopt guidelines or mandatory provisions for derogations from structural and functional UTPs.*”.

This proposal concerns the full revision of the provisions of [Annex B to ATMF](#), in the version of 1 January 2014, which regulates the procedure for derogations, i.e. competent authority approval of non-compliance with one or more of the UTP requirements.

The proposal has been developed on the basis of COTIF as last amended on 1 March 2019.

2. CONTEXT AND SUBSTANCE OF THE PROPOSAL

The aim of this proposal for full revision of Annex B to ATMF UR is to prescribe simpler and more clearly, the rules and guidelines concerning the non-application of entire UTPs or particular provisions defined in UTPs. The proposed provisions would be applicable to the non-EU Contracting States only¹.

Compared to the version in force, the proposed full revision of Annex B to the ATMF UR will:

- Simplify the provisions;
- Clarify the scope and rules concerning derogations;
- Remove all tasks and roles of the Secretary General of OTIF;
- Reinforce the competences of the competent authorities of the Contracting States;
- Ensure transparency.

The proposed modification is set out in the Annex to this document.

3. PREPARATORY WORK

The proposal has been prepared by the OTIF Secretariat in coordination with WG TECH. The draft was reviewed by WG TECH at its 45th session (remote meeting, 4-5 November 2021).

The proposal is in accordance with the WG TECH working document concerning the analysis of Annex B to ATMF UR (TECH-21016 version 3, dated 5.10.2021) carried out by the OTIF Secretariat. The Analysis was reviewed at the 43rd session of the WG TECH (remote meeting, 23-24 June 2021), at the 44th session of the WG TECH (remote meeting, 8-9 September 2021) and at the 45th session of the WG TECH (remote meeting, 4-5 November 2021).

4. JUSTIFICATION FOR THE AMENDMENTS

The current Annex B to ATMF UR was developed on the basis of the provisions of EU Directive 2008/57/EC. This Directive has been repealed and replaced by Directive (EU) 2016/797 by which the conditions for derogation from the application of TSIs in the EU have changed.

Following an analysis carried out by the OTIF Secretariat, WG TECH identified fundamental differences between the purposes and aims of derogations (or rather avoiding them) from the TSIs at EU level compared with derogations from the UTP under COTIF.

¹ Derogations from the application of the TSIs by the Contracting States that are also Member States of the European Union and Contracting States that apply the relevant Union law in accordance with an agreement with the European Union would remain subject to EU law.

The proposed modification took into consideration the following principles:

- Contracting States should be competent to grant derogations from the application of specific provisions of specific UTPs.
- Applicants should request permission for derogations concerning specific provisions from the Competent Authority of the Contracting State. The Competent Authority should examine the request and decide whether to accept or reject the request.
- Guidelines should help Competent Authorities decide on acceptance or rejection of a derogation request.
- Derogations should be described in the Design Type Certificate and in the Certificate of Operation (Article 11 of the ATMF UR). In particular, there should be a precise description of which UTP provisions were not applied, and which alternative requirements were applied instead. The aim of the description should be to allow Competent Authorities of other Contracting States and railway actors to understand the impact of the derogation and the consequences of the derogation for a possible admission of the vehicle to other network(s) and to facilitate route compatibility assessment.
- The provisions should apply to vehicle admissions by non-EU Contracting States. This would include the vehicle admission by a non-EU Contracting States for vehicles first authorised in accordance with EU law that have a derogations granted in accordance with EU law.

The proposed new version of Annex B to ATMF UR (Annex) should repeal and replace the current version.

[DRAFT] PROPOSAL FOR DECISION

1. In accordance with Article 20 § 1 e) and Article 35 of COTIF and Article 7a and Article 21 of the ATMF Uniform Rules, the Committee of Technical Experts fully revises Annex B to ATMF the UR concerning derogations from application of Uniform Technical Prescriptions , as set out in the Annex (reference TECH-21034 Annex).
2. The Annex shall replace the Annex B to ATMF of 1 January 2014; the previous version shall therefore be repealed from the moment of entry into force of the new version.
3. The Committee of Technical Experts instructs the Secretary General to publish the new version of the UTP on the Organisation's website, although the repealed version should also remain available online for future reference.



Organisation intergouvernementale pour les transports internationaux ferroviaires

Zwischenstaatliche Organisation für den internationalen Eisenbahnverkehr


Intergovernmental Organisation for International Carriage by Rail

ATMF Annex B

Rules, guidelines and explanations concerning

Derogations

Applicable from [Click here to enter a date.](#)

 OTIF	Annex B to ATMF			ATMF Annex B
	Derogations			Page 2 of 4
Status: DRAFT	Version 1	TECH-21034 Annex	Original: EN	Date: 5.10.2021

Article 1

Scope

This Annex B to the ATMF Uniform Rules (UR) is adopted by the Committee of Technical Experts on the basis of Article 7a of the ATMF UR. It lays down rules and provides guidelines to be applied by Contracting States to the APTU and ATMF UR when granting derogations.

These rules and guidelines shall apply in the event that an applicant for vehicle admission in the meaning of the ATMF UR requests permission not to apply provisions contained in the Uniform Technical Prescriptions (UTPs) for a vehicle or type of vehicle.

Article 2


Definitions

- a) The definitions laid down in the APTU and ATMF UR shall apply.
- b) “Derogation” means the permission granted by a Contracting State not to apply particular or all provisions of a Uniform Technical Prescription.

Article 3

Rules concerning derogations

- § 1 The Competent Authority of each Contracting States shall be competent to grant derogations on behalf of that Contracting State.
- § 2 Derogations shall be applicable and valid only on the territory of the Contracting State that granted it.
- § 3 Derogations shall only concern requirements contained in UTPs dealing with the design and construction of vehicles. Therefore, derogations shall only concern provisions contained in the UTP WAG, the UTP LOC&PAS and the UTP Noise.
- § 4 Applicants seeking derogation shall request it from the Competent Authority of the Contracting State concerned. For this purpose, the applicant shall describe, in detail, the exact provisions it seeks derogation from and the alternative requirements it intends to apply instead in order to fulfil the essential requirements. The request shall be accompanied by justification. The Competent Authority shall examine the information and decide whether to grant or reject the derogation.
- § 5 Contracting States and applicants shall provide full transparency concerning derogations granted. To this end, derogations shall be described in the Design Type Certificate and in the Certificate of Operation provided for in Article 11 of the ATMF UR. In particular, there shall be a precise description of which UTP provisions are not applied, and which alternative requirements are applied instead, including justification.

 OTIF	Annex B to ATMF Derogations			ATMF Annex B Page 3 of 4
	Status: DRAFT	Version 1	TECH-21034 Annex	Original: EN Date: 5.10.2021


Guidelines

1. In practice, there may be a need not to apply certain provisions of the UTP to certain vehicles.
2. UTPs have the aim of harmonising technical requirements. Derogating from UTP requirements may therefore lead to incompatibilities and reduction of interoperability. Contracting States should therefore be reluctant in granting derogations.
3. Article 6 § 3 of the ATMF UR lays down the conditions on the basis of which a vehicle admission to international traffic shall be valid on the territories of all Contracting States. Article 6 § 3 of the ATMF UR lays down that:

Without prejudice to Article 3a an admission to operation issued for a vehicle which is in conformity with all applicable UTP shall be valid on the territories of other Contracting States provided that

 - a) *all essential requirements are covered in these UTP and*
 - b) *the vehicle is not subject to*
 - *a specific case which affects the technical compatibility with the network of the Contracting State concerned, or*
 - *open points in the UTP that are related to technical compatibility with the infrastructure, or*
 - *a derogation.*

The conditions for the free circulation may also be specified in the relevant UTP.
4. From Article 6 § 3 of the ATMF UR, it is clear that if a vehicle is subject to a derogation, its admission is not automatically valid on the territories of other Contracting States. As a consequence, the vehicle can only be admitted in accordance with Article 6 § 4 of ATMF, which requires, inter alia, that “*the area of use concerning the initial admission shall be limited to the issuing State(s). The competent authority or authorities of the other States may ask the applicant for additional technical information such as risk analysis and/or vehicle tests before granting a complementary admission to operation and extending the vehicle’s area of use*”.
5. Consequently, a vehicle subject to a derogation requires separate admission by each Contracting State before it can be used on the territories of these Contracting States.
6. The Competent Authority of the first Contracting State in which the first admission is requested should require all necessary information from the applicant before issuing the Certificate of Operation.
7. The aim of the description of the derogation in the Design Type Certificate and in the Certificate of Operation provided for in Article 11 of the ATMF UR is to allow Competent Authorities of other Contracting States and railway actors to understand the impact of the derogation and the consequences of the derogation for a possible admission of the vehicle to other network(s) and to facilitate route compatibility assessment.
8. For infrastructure, the UTP concerning infrastructure already permits Contracting States on whose territory a line is located to decide whether the UTP applies to that line. There are no further rules on derogations concerning infrastructure.
9. Derogations from UTPs concerning general provisions (UTP GEN) are not permitted.

 OTIF	Annex B to ATMF Derogations			ATMF Annex B Page 4 of 4
Status: DRAFT	Version 1	TECH-21034 Annex	Original: EN	Date: 5.10.2021

Explanations

1. There is a difference between the derogations granted by non-EU Contracting States on the basis of this Annex B to the ATMF UR and the concept of derogations in accordance with EU law, as applied by EU Member States and states that apply EU law on the basis of an agreement with the EU. COTIF's technical rules regulate the admission and use of vehicles and other railway material to international traffic. EU railway law has a much broader scope, including authorisation for placing products on the EU market and the creation of a single European railway area. It is therefore justified and necessary for OTIF and EU to have different approaches to non-compliance with the UTPs, compared to non-compliance with TSIs in the EU.
2. The provisions in this Annex B to the ATMF UR should apply to vehicle admissions by non-EU Contracting States. This would include the vehicle admission by a non-EU Contracting States for vehicles that were first authorised in accordance with EU law and have a derogations granted in accordance with EU law. In such case, derogation should be requested from the non-EU Contracting States as well by application of this Annex B to the ATMF UR.