



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 01.01.2023

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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 any of the 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 has granted them.
- § 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 a 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 from which it is seeking derogation 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 request for derogation.
- § 5 Contracting States and applicants shall provide fully transparent information concerning any 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.

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Guidelines

1. In practice, it may be necessary not to apply certain provisions of the UTP to certain vehicles.
2. The aim of UTPs is to harmonise technical requirements. Derogating from UTP requirements may therefore lead to incompatibilities and may impair interoperability. Contracting States should therefore err on the side of caution when considering whether or not to grant 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 the ATMF UR, 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 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.

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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 to have a different approach 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 vehicle admission by a non-EU Contracting States for vehicles that were first authorised in accordance with EU law and which have been granted a derogation in accordance with EU law. In this case, derogation should be requested from the non-EU Contracting States and by applying this Annex B to the ATMF UR.