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CONSOLIDATED EXPLANATORY REPORT

APTU UR

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Uniform Rules concerning the Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic (APTU)

Explanatory Report

General Points

Background

1. Within the framework of the mandate of the 3rd General Assembly (14 - 16.11.1995) of the Intergovernmental Organisation for International Carriage by Rail (OTIF) concerning the revision Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, the Secretariat[1] also dealt with the problem of the technical admission of railway vehicles and the validation of technical standards applicable to rail stock. In future, it will no longer be possible to grant to the rail undertakings the competence to legislate in a mandatory manner in these areas, as is *de facto* currently the case in numerous States. To avoid repetition, reference is made to the following documents:

   - Explanatory report on the draft of a new COTIF (Annexes 3 to 4 to the circular letter of 30.8.1996, A 50.00/517.96)

   - General Assembly documents AG 4/5.3 (aim of the Organisation, validation of technical standards) and AG 4/5.4 (aim of the Organisation, uniform procedure for Technical Admission of Railway Material) of 2 June 1997, submitted to the 4th General Assembly (8 - 11.9.1997).

   - Explanatory report on the Uniform Rules concerning Technical Admission of Railway Material Used in International Traffic (ATMF - Appendix G to the Convention).

2. The 4th General Assembly of OTIF:

   - had noted that "technical harmonisation, in as wide a geographical scope as possible, is a fundamental task in enabling the rail sector to be capable of undertaking international transport without obstacles"

   - had considered that "for the devising of technical standards, it is essential to have recourse to the expertise and experience of the relevant organisations"

   - had instructed "the Central Office and Revision Committee to examine, in particular, and in collaboration with the other organisations involved, the problems of the validation of technical standards in the rail sector and of the technical admission of railway material used in international traffic, in order to present for the information of the General Assembly the solutions which are possible at international level".

[1] At that time the "Central Office"

3. In executing this mandate, the Secretariat invited technical experts to participate in a meeting which was held in Bern on 2 and 3 December 1997. On the basis of the results of these deliberations, the Secretariat prepared a draft "Uniform Rules concerning the Recognition and Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions Applicable to Railway Material Intended to be used in International Traffic (APTU - Appendix G [2] to the Convention)". This draft was sent by the circular letter of 19 December 1997 to the governments of the Member States and to the interested international organisations and associations.

4. The Revision Committee examined this draft in its 15th session (2 - 6.3.1998). Although a quorum was present, the Revision Committee conducted only indicative voting, since the texts that had been dealt with were to be re-examined in the light of the proposals of the European Commission for technical harmonization in so-called conventional rail traffic, announced for the autumn of 1998 (see No. 15). The unanimous opinion was that it is necessary to avoid any divergence between Union law and the law that is to be applicable in future within the framework of OTIF (see Nos. 15-22).

5. In its 18th session (25 - 28.5.1998), the Revision Committee conducted a 2nd reading of the APTU Uniform Rules, but again for indicative purposes only, particularly since the necessary quorum was not achieved (16 of the 39 Member States were represented).

6. Following completion of the 2nd reading, other substantive proposals were submitted in the course of the drafting work. These proposals were dealt with in two sessions of the Revision Committee (22nd session, 1 - 4.2.1999 and 23rd session, 23.3.1999).

7. The 5th General Assembly (26.5. - 3.6.1999) received approximately a dozen submitted proposals and suggestions, sometimes identical in content, from the States, the international organisations and associations and from the Secretariat. These proposals and suggestions resulted in amendments to Articles 2, 3 and 8 (see No. 2 of the remarks relating to Article 2, No. 2 of the remarks relating to Article 3 and no. 2 of the remarks relating to Article 8). The texts, amended thus, were adopted unanimously, less one abstention, by the General Assembly (Report on the 5th General Assembly, p. 184).

Basic concept

8. The devising of technical standards (standardisation) must not and cannot come within the remit of OTIF. Rather, the devising of technical standards must remain within the scope of competence - but not necessarily the exclusive competence – of the existing standardisation bodies, such as the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC), the European Telecommunications Standardisation Institute (ETSI), etc., in collaboration with the rail transport undertakings, the infrastructure managers,the manufacturers of railway material and other entities having relevant expertise, in order to benefit from their expertise.

2 Currently Appendix F

9. The adoption of uniform technical prescriptions (UTP) used for the admission and operation of railway material in international traffic, which do not have the character of technical standards, is in the competence of Member States.

   At its 24th session (Berne, 23-25.6.2009), the Revision Committee decided to establish full compatibility between the EU's Technical Specifications for Interoperability (TSI) and the Uniform Technical Prescriptions (UTP) adopted by OTIF's Committee of Technical Experts. This is attended by amendments to the procedure for the adoption and publication of the UTP.

10. UTPs are set up in a two-column format; identical/equivalent provisions are shown across the whole width of the page (both columns), whilst provisions specific to COTIF 1999 are shown in the left-hand column and the corresponding EU provisions (TSI and/or others) are shown in the right-hand column, but only for information. This way, both sets of provisions can be shown in the same document.

11. When the Explanatory Report refers to EU Member States, it also applies mutatis mutandis to States where Union legislation applies as a result of international agreements with the European Union.

12. Apart from their Annexes, the APTU Uniform Rules contain rules of procedure. Their principal purpose is the validation or adoption of the technical standards and uniform technical prescriptions by the Committee of Technical Experts. The technical standards and uniform technical prescriptions listed in the Annexes constitute the substantive bases for the construction and operation/use of railway material and for the admission procedure in accordance with the ATMF Uniform Rules (Appendix G to the Convention).

13. It is the APTU Uniform Rules which create the necessary preconditions for uniform regulation of the procedure according to which the authorities of the Member States undertake technical admission of vehicles and other railway material intended to be used in international traffic. As a result, a technical admission granted in one Member State will be recognised by the other Member States of OTIF without the need for new procedures. A common basis for the procedure of technical admission of railway material can only exist if mandatory uniform standards and technical prescriptions are created in all the Member States of OTIF for the construction and operation/use of railway material.

14. The validation of technical standards and the adoption of uniform technical prescriptions, as a mandatory legal basis for the approval procedure, must therefore be performed at state level, with OTIF as the appropriate Organisation.

Committee of Technical Experts

15. The procedure for validation of technical standards and adoption of uniform technical prescriptions has been designed to be as flexible as possible, following the example of the RID amendment procedure.

16. Decisions are taken by the Committee of Technical Experts as provided for in the Basic Convention (see Article 20 COTIF). Represented in this Committee, with

a seat and voting rights, are all the Contracting States and any regional economic integration organisations which have acceded to COTIF (e.g. the EU).

17. The creation of the Committee of Technical Experts and the principal questions of procedure, including the provisions relating to the implementation of decisions, are regulated in the actual Convention (see Articles 20, 33 and 35 COTIF).

In particular

Article 1
Scope

1. The Article lays down the general scope.

2. APTU regulates procedure with regard to:

   - the "*validation*" of technical standards, and

   - the "*adoption*" of uniform technical prescriptions in general.

3. The scope of application was defined fairly broadly, so as to include technical standards and uniform technical prescriptions not only for rail vehicles, their equipment and parts, but also for the infrastructure, the traffic safety and operational control systems and the railway material in general, insofar as these are intended to be used in international traffic (see the list of Technical Annexes in Article 8).

   With regard to the above note in brackets, see the comments under General Points.

   The 25th Revision Committee deleted the term "other railway material" from all the Articles in their competence.

Article 2
Definitions

1. Some of these definitions are already included in other Appendices, e.g. the CUI Uniform Rules and the CUV Uniform Rules ("railway infrastructure", "rail transport undertaking", railway infrastructure "manager"), while other definitions were included only in the APTU Uniform Rules ("railway material", "traction unit", "technical standard", etc.). In its 19th session, the Revision Committee decided to include all the definitions - when and insofar as necessary - in the respective Appendices and not in the basic Convention itself (Report on the 19th session, p. 17), since the definitions are not necessarily uniform, but may be worded differently according to the subject-matter of the respective Appendix.

2. At its 24th session, the Revision Committee adopted a comprehensive amendment to this Article. In order to avoid expanding the texts unnecessarily, it was decided only to include in Article 2 of ATMF those terms that are used in both Appendices. This Article in APTU therefore contains a reference to the definitions in ATMF as well as definitions of those terms that are only used in APTU. In the English version, the terms are arranged alphabetically. The other language versions follow the sequence of the English version.

3. "Technical prescriptions" is, in fact, a general, generic term which also, strictly speaking, includes the "technical standards". However, the term "technical standards" is not understood or used in a uniform manner in current language. Consequently, the APTU Uniform Rules attempted to delimit these terms and designates as "technical prescriptions" only those prescriptions which are not "technical standards"

in the strict sense of the definition of letter k). On the suggestion of the European Commission, the 5th General Assembly decided to incorporate into a "technical standard" the technical specifications prepared within the framework of the EU. This is intended to avoid confusion with regard to the technical regulations adopted or validated by European institutions. Since the EU "technical specifications" are not always the result of a standardisation in the sense of letter k), it would however have been more logical to incorporate these specifications in the "uniform technical prescriptions".

4. The term "Contracting State" is used in this Appendix since the Member States of OTIF which have made a declaration in accordance with Article 42, § 1, first sentence, of COTIF, are not Contracting States in respect of the APTU Uniform Rules.

Article 3
Aim

1. The term "variants" used in § 3 should be understood not as a *terminus technicus*, but as an overarching term for corresponding terms taken from the TSI, such as the terms "alternative target system", "specific case" and "open point".

2. This provision is intended to serve as a basis for the work of the Committee of Technical Experts. § 1 sets out the general objectives of the validation of technical standards and of the adoption of uniform technical prescriptions.

3. The 5th General Assembly decided to introduce a clarification according to which only those technical standards or uniform technical prescriptions which had been prepared at international level may be validated (§ 2).

4. Moreover, the interoperability of the systems and components necessary for international traffic is to be assured as far as possible (§ 3, letter a). A formulation similar to that of § 3, letter b), according to which the technical standards and uniform technical prescriptions are performance related, is also found in Article 1, indent 1 of the Geneva Agreement of 1958 on homologation. The experts of the Revision Committee were in agreement on the principle that the standards and uniform technical prescriptions were to be performance related so that technical development is not hindered. This problem, however, cannot be regulated in a general manner. Rather, it is a question of examining, for each standard and each technical prescription, whether its content meets this criterion, this being from the preparation stage.

5. This "subject-matter article", however, does not have any legal effects with regard to the decisions duly taken by the Committee of Technical Experts. This means that decisions taken in proper and due form cannot be called into question again, in respect of their content, on the pretext that they do not correspond to Article 3.

Article 4
Preparation of technical standards and prescriptions

1. The Revision Committee was of the opinion that this provision is declaratory in nature. Its importance lies in the fact that it expresses clearly the division of the

work between preparation on the one hand, and validation or adoption on the other (report of the 18th session, p. 12).

2. This Article clarifies the division of work relating to the preparation of technical standards and the preparation of UTPs:

   a) standardisation bodies prepare technical standards concerning railway material and industrial products and procedures (§ 1)

   b) the Committee of Technical Experts, assisted by appropriate working groups and the Secretary General, prepares the UTP (§ 2), which corresponds to Articles 20 and 33 § 6 of the Convention.

Article 5
Validation of technical standards

1. This Article, in addition to Article 6, contains the essential provision of the APTU Uniform Rules.

2. In § 1 reference is made to the provisions of the Convention that are significant for the decision on validation. The validation of a standard means that the Committee of Technical Experts ascertains that the provisions of this standard, or of more precisely defined parts of it, can be used as a viable solution to indicate that the legal requirements have been met. Application of validated standards is voluntary. In addition however, such validated standards or validated parts of standards can be made into binding requirements by means of a provision in the UTP.

3. In § 3, the Secretary General is required to publish references to validated technical standards on OTIF's website; the voluntary application of a published technical standard, in accordance with § 4, thus has legal consequences. The voluntary application of a validated standard does not preclude the assessing entity from checking the correct use of it and the compliance with the regulations.

4. Each State which is a Contracting State of the APTU Uniform Rules is free to decide the manner in which it transposes into national law the obligations of international public law resulting from the validation of a technical standard.

Article 6
Adoption of uniform technical prescriptions

1. In § 1, reference is made to the provisions of the Convention that are significant for the decision on the adoption of a UTP. The decision may also affect amendments to an adopted UTP.

2. Each State which is Contracting State of the APTU Uniform Rules is free to decide the manner in which it transposes to national law the obligations of international public law resulting from the adoption of uniform technical prescriptions.

Article 7
Form of applications

1. This is a regulatory provision intended to facilitate the appraisal of applications by the Committee of Technical Experts. Compliance with this provision is in the interest of the applicants.

2. It makes clear that the application is to be sent to the Secretary General, although it is intended for the Committee of Technical Experts. It must also contain an assessment of the social and economic consequences and of the effects on the environment, and may, for certain reasons, be refused by the Committee of Technical Experts.

Article 7a
Assessment of consequences

1. The consequences for all

   - Contracting States,
   - transport undertakings,
   - other actors in relevant areas of activity and
   - other UTP, where there are interfaces with them

   must be assessed.

2. According to § 3 the entities concerned must provide data free of charge.

Article 8
UTP

1. At its 24th session, the Revision Committee decided not to publish the Uniform Technical Prescriptions (UTP) and validated technical standards adopted by OTIF's Committee of Technical Experts as Annexes to the text of APTU, but to publish them on the Organisation's website.

2. § 2a has been included in order to clarify the impact of a newly adopted UTP on existing subsystems, concerning e.g. an existing wagon, locomotive, passenger coach or piece of infrastructure.

3. § 9 contains the basis for the two-column layout. The texts of the UTP that have the same wording as the TSI are written across the whole width of the page, the texts of the UTP that differ from the TSI are written in the left-hand column and the corresponding text of the TSI is shown in the right-hand column for information.

Article 8a
Deficiencies in UTP

§ 1 deals with the approach the Committee of Technical Experts must take if it discovers that a UTP that has already been adopted contains errors or other deficiencies, particularly if the

source of the discovery is those who are obliged to notify the Secretary General in accordance with § 2. From the main example given in Article 8a § 1 (contradiction with or insufficient provisions concerning the essential requirements) and appropriate measures to be taken (amendment to the UTP and provisional solution), it ensues that the only deficiencies concerned are those for which an impact on the material content of the provision cannot be ruled out a priori.

Article 9
Declarations

1. § 1 states that declarations of non-application may be made not only against an adopted UTP, but also against a validated technical standard. According to Article 5 § 4 the application of validated technical standards is in principle voluntary, but a standard or a part of it may be made obligatory through provisions in a UTP. In this regard therefore, § 1 is to be understood as offering the possibility of making a declaration of non-application against a validated technical standard or a part of it which has been made obligatory through provisions in a UTP.

2. This does not relate to a declaration in the sense of Article 42, § 1, first sentence, of COTIF, concerning the APTU Uniform Rules in their entirety, but to reservations, in the sense of Article 42, § 1, second sentence, of COTIF, in respect of UTPs or in respect of certain provisions of these UTPs.

3. In view of the differences that exist with regard to technical equipment in the Member States of OTIF, the possibility of such declarations is of practical interest, although it goes against the objectives mentioned in Article 3. Even a harmonisation which does not extend to all of these areas in all of the States which are party to the Convention can result in an improvement of the current situation with regard to interoperability.

4. The declarations in accordance with Article 9 can be withdrawn at any time.

Article 10
Abrogation of Technical Unity

1. In this Article, which has been editorially adapted as a consequence of changes in other Articles, it is stated that the entry into force of the UTP, adopted by the Committee of Technical Experts in accordance with Article 6 § 1, in all the States parties to the 1938 version of the International Convention on the Technical Unity of Railways (Technical Unity 1938), shall abrogate that convention. However it does not seem that the wording of this provision gives an exact answer to the question if and when the abrogation of that Convention would take effect. It has been assumed that this would be the case when all relevant UTP and validated standards covering the provisions of the Technical Unity 1938 are in force. But it is unlikely that a common interpretation among the Member States of OTIF and the States parties to the Technical Unit 1938 can easily be achieved. Taking account in particular of States where the abrogation of the Technical Unity 1938 would concern their national legislation any interpretation on the validity of the Technical Unity 1938 or of parts of it needs to remain the prerogative of its States parties.

2. The technical standards and uniform technical prescriptions are to be included in the Annexes of the APTU Uniform Rules.

3. The former managing administration of the UT, the Swiss Government (Federal Transport Office) has been involved in the work relating to the APTU Uniform Rules and has approved this approach in principle (see Federal Transport Office letter of 24.4.1997 addressed to the States which are party to the UT).

4. The UT was a convention under international public law and was mandatory for the States which were party to it. Even if its importance diminished compared to the time of its adoption and the time of the subsequent amendments/supplements - the last version dates from 1938 - this Convention under international public law has never been abolished or annulled. Some of its content has been included in other agreements, in particular, in the RIC and RIV which, however, as agreements between the rail administrations/companies, do not have the same legal status and do not bind the States which are party to the UT, but only the participating railways.

5. The following States were party to the UT at the time of the last formal amendment in force (1938 version, entry into force 1.1.1939): Belgium, Bulgaria, Czechoslovakia, Denmark, France, the German Reich, Greece, Hungary, Italy, Luxembourg, The Netherlands, Norway, Poland, Romania, Sweden, Switzerland, Turkey, Yugoslavia.

6. The 1938 version of the UT was also intended to be mandatory, from the point of view of international public law, for the successor states of the German Reich, Czechoslovakia and Yugoslavia, in accordance with the Vienna Convention of 1969 on the Law of Treaties. According to this convention, the 1938 version of the UT was also in force in Austria, Croatia, the Czech Republic, Germany, Macedonia, Montenegro, the Republic of Bosnia and Herzegovina, Serbia, the Slovak Republic and Slovenia.

7. Consequently, 24[3] of the 48 member States of OTIF are also States which are party to the 1938 version of the UT.

8. Within the framework of the broadened objective of OTIF (see Article 2, § 1, letters c) and d) COTIF), the Annexes of the APTU Uniform Rules group together all the technical standards and uniform technical prescriptions which are of significance to international rail traffic.

9. The superseding specifications to those of the UT are incorporated into the UTPs so that, the UT can be abrogated between the States which are party to it and the States which are Contracting States of the APTU Uniform Rules.

10. Until all the States which are party to the UT will also be States which Contracting States of the APTU Uniform Rules, it will not be possible to abrogate the UT in all

[3] Belgium, Bulgaria, Czech Republic, Slovakia, Denmark, France, Germany, Greece, Hungary, Italy, Luxembourg, Netherlands, Norway, Poland, Romania, Sweden, Switzerland, Turkey, Serbia, Croatia, Slovenia, Montenegro, Macedonia, Bosnia-Herzegovina.

the States upon the entry into force of the UTPs.

11. The Convention on the UT does not itself include any institutional provisions, e.g., with regard to amendments, entry into force or abrogation. According to the Vienna Convention of 1969 on the Law of Treaties, abrogation of the UT, or a regulation on primacy, can be introduced into a new convention. The 1999 Protocol and its Annex, COTIF in its new version with its Appendices, is such a new convention. A special act of international public law outside or in addition to the 1999 Protocol and the APTU Uniform Rules is therefore unnecessary.

12. Article 10 provides that, upon entry into force of the Annexes, decided by the Committee of Technical Experts in accordance with Article 8, § 3, *in all the states which are party to* the UT, the provisions of the UT are abrogated.

Article 11
Precedence of the UTP

1. This Article contains rules of precedence over the provisions of the Technical Unity 1938 as well as of RIC and RIV. As to the provisions of the Technical Unity 1938, see remarks on Article 10.

2. § 2 which refers to RIC and RIV as applicable before 2000 is to be understood as that the APTU and UTP should also take precedence over agreements replacing RIC and RIV; e.g. as of 01.07.2006 parts of RIV has been replaced by the General Contract of Use (GCU).

3. The UT is an agreement of international public law, whereas the RIV and RIC are agreements between the railways - no direct provision can be made by the APTU Uniform Rules for partial abrogation of RIV and RIC. Consequently, § 2 stipulates only the precedence of the Technical Annexes of the APTU Uniform Rules over RIV and RIC.

Article 12
National technical requirements

1. The Contracting States should ensure that the Secretary General is informed of all their applicable national technical requirements. In order to avoid that EU Member States would have to notify the same rule twice (once to the European Commission, once to the Secretary General), the European Commission will make sure that the Secretary General has access to the relevant European data base. In that case, for the Contracting States which are also members of the European Union, the data base should at the deadline indicated in § 1 second sentence contain the information on the National technical requirements as required by this article and the presence or non-presence in the EU data base is considered to be legal proof in relation to this Article. National technical requirements that are covered by a UTP that has entered into force expire automatically, unless the Secretary General receives notification beforehand, with justification, of the need to maintain the national requirements in question.

2. In § 1 the term "analogous" means that the requirement concerns the same objective, not necessarily prescribes the same solution, e.g. the visibility of a vehicle.

Article 13
Equivalence table

1. The equivalence table provides a way of compiling cross-references between national requirements, UTP and TSI and ultimately of making easier the cross acceptance of vehicles built and approved according to different standards. The Committee of Technical Experts can take decisions on equivalence between

   - national technical requirements of various Contracting States,
   - UTP and TSI and
   - UTP and national requirements.

2. Equivalence must be indicated in the published reference (equivalence) document.

ANNEX

This Annex corresponds to Annex VII of Directive 2008/57/EC as amended by Directive 2009/131/EC. Group A is expanded to include national rules equivalent to provisions in UTP (as in Article 13).