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ATMF (Appendix G to COTIF 1999)

Uniform Rules set out in accordance with Article 7a -

REQUIREMENTS AND PROCEDURE FOR DEROGATIONS FROM APPLICATION OF UTP(S) RELATED TO A STRUCTURAL OR FUNCTIONAL SUBSYSTEM¹

Explanatory note:

The texts of this Annex which appear across two columns are identical to corresponding texts of the European Union regulations. Texts which appear in two columns differ; the left-hand column contains the OTIF regulations, the right-hand column shows the text in the corresponding EU regulations. The text in the right-hand column is for information only and is not part of the OTIF regulations.

OTIF regulations

| Corresponding text in EU regulations²

EU ref.

1. ENTRY INTO FORCE

This Annex to ATMF shall enter into force in accordance with Article 35 of COTIF 1999. The date of entry into force will be published on the Organisation's website.

This Directive shall enter into force on the day following its publication in the Official Journal of the European Union.

Unless otherwise indicated, decisions taken by the Secretary General or the Committee of Technical Experts on derogations in accordance with this Annex shall enter into force on the day after their publication.

2. SCOPE


In accordance with Article 7a of ATMF, this Annex establishes the mandatory procedures and requirements regarding derogations from the application of structural or functional UTPs.

It does **not** apply to:

- a) rolling stock used exclusively on the territory of the Member States of the European Union and of the Contracting States which apply Union legislation as a result of international agreements with the European Union and
- b) other subsystems situated on the territory of the Member States of the European Union and of the Contracting States which apply Union legislation as a result of international agreements with the European Union, used only by the rolling stock subject to point a) of this paragraph;

¹ Only UTPs concerning structural or functional subsystems listed in UTP GEN-B such as rolling stock, infrastructure, energy, operation and traffic management, etc., whereas UTPs according to APTU Article 8 § 8 are NOT included; derogations from general UTPs are not permitted (i.e. those with a UTP GEN-x abbreviation).

² Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community, Official Journal of the European Union No. L 191/1, 18.7.2008

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<i>OTIF regulations</i>	<i>Corresponding text in EU regulations</i> ²	<i>EU ref.</i>
such derogations are regulated by the applicable Community ³ and national legislation.		


3. PROCEDURE

Article 9


- | | | | |
|-----|---|---|----|
| 3.1 | In the absence of relevant specific cases a Contracting State need not apply one or more structural or functional UTPs in accordance with this Annex in the following cases: | | 1. |
| | (a) for a proposed new subsystem, for the renewal or upgrading of an existing subsystem, or for any element referred to in Article 1 or Article 8 of ATMF at an advanced stage of development or the subject of a contract in the course of performance when an applicable UTP enters into force (cf. Article 8 § 3 of APTU); | a Member State
TSIs
Article
Article 1(1) | |
| | (b) for any project concerning the renewal or upgrading of an existing subsystem where the loading gauge, track gauge, space between the tracks or electrification voltage in these UTP is not compatible with those of the existing subsystem; | TSIs | |
| | (c) for a proposed new subsystem or for the proposed renewal or upgrading of an existing subsystem in the territory of that Contracting State when its rail network is separated or isolated by the sea or separated as a result of special geographical conditions from the rail network of the other Contracting States; | Member State
rest of the Community; | |
| | (d) for any proposed renewal, extension or upgrading of an existing subsystem, when the application of these UTP would compromise the economic viability of the project and/or the compatibility of the rail system in that Contracting State; | TSIs
Member State; | |
| | (e) where, following an accident or a natural disaster, the conditions for the rapid restoration of the network do not economically or technically allow for partial or total application of the relevant UTP; | TSIs; | |
| | (f) for vehicles coming from or going to third countries, the track gauge of which is different from that of the main ⁴ rail network of the Contracting State(s). | within the Community. | |
| 3.2 | In the cases referred to in section 3.1 the Contracting State concerned shall communicate to the Secretary General a file containing the information set out in | paragraph 1
the Member State
Commission | 2. |

³ Article 9 of Directive 2008/57/EC as referred to in footnote 2.

⁴ When the Directive was adopted, "main" referred to the 1435 mm gauge.

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<i>OTIF regulations</i>	<i>Corresponding text in EU regulations ²</i>	<i>EU ref.</i>
Annex B.1. The Secretary General shall analyse the measures proposed by the Contracting State and shall inform the Committee of Technical Experts.	Annex IX. The Commission Member State Committee referred to in Article 29.	
3.3 In the case referred to in section 3.1(a) within one year of entry into force of each UTP each Contracting State shall communicate to the Secretary General a list of projects that are taking place within its territory and are at an advanced stage of development.	paragraph 1(a) TSI each Member State Commission	3.
3.4 In the cases referred to in paragraph 3.1(a), (c) and (e) the Secretary General shall check that the file is in conformity and shall inform the Contracting State of the results of his/its analysis. Where necessary, a recommendation shall be drawn up concerning the specifications to be applied. The Contracting State may apply the alternative provisions referred to in Annex B.1 to this Annex without delay.	1(a), (c) and (e) the Commission Member State Member State Annex IX	4.
3.5 In the cases referred to in paragraph 3.1(b), (d) and (f), the Committee of Technical Experts shall decide whether to accept a request for a derogation. In the case referred to in paragraph 3.1(b) the decision by the Committee of Technical Experts shall not cover the loading gauge and the track gauge. The Committee of Technical Experts shall give its decision within six months of the submission of the request supported by the complete file. In the absence of such a decision, the request shall be deemed to have been accepted. Pending the decision by the Committee of Technical Experts in the case referred to in paragraph 1(f), a Contracting State may apply the alternative provisions referred to in Annex B.1 to this Annex.	1(b), (d) and (f), Commission shall decide, in accordance with the regulatory procedure referred to in Article 29(3), 1(b) the Commission's decision Commission Commission's decision Member State Annex IX.	5.
3.6 All Contracting States shall be informed of the results of the analyses and of the outcome of the procedure set out in paragraphs 3.4 and 3.5.	Member States 4 and 5.	6.

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Annex B.1

OTIF regulations

EU regulations

EU ref.


FILE FOR SUBMITTING A REQUEST FOR A DEROGATION FROM ONE OR MORE UTPs

When submitting a request for a derogation, the
applying Contracting State | Member State
must supply the following documents:

- (a) A formal letter communicating the proposed derogation to the
Secretary General | Commission
- (b) A file, annexed to the letter, comprising at least:
 - a description of the work, goods and services subject to the derogation, specifying the key dates, the geographical location and the operational and technical area,
 - a precise reference to the
UTP(s) | TSIs
(or their parts) from which a derogation is requested,
 - a precise reference to and details of the alternative provisions which will be applied,
 - for requests made under
chapter 3 (Procedure), paragraph 1(a) | Article 9(1)(a)
justification of the advanced stage of development of the project,
 - justification of the derogation, including the main reasons of a technical, economic, commercial, operational and/or administrative nature,
 - any other information justifying the request for a derogation,
 - a description of the measures that the
Contracting State | Member State
proposes to take in order to promote the final interoperability of the project. In the case of a minor derogation, this description is not required.

Documentation must be supplied in paper form and as electronic files, so that it can be distributed among the members of the
Committee of Technical Experts. | Committee ⁵

⁵ The Committee set up in accordance with Article 29 of 2008/57/EC (the RISC Committee)

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Explanatory remarks

Introduction

One condition for the technical admission of a subsystem/project is that it must meet the essential requirements (UTP GEN-A) and the applicable provisions in the structural and functional UTPs which implement these essential requirements.

If a subsystem/project is not fully compliant with the applicable UTPs, it might still obtain a technical admission according to ATMF, provided a derogation from the provisions not complied with in those UTP(s) is granted by the Organisation in accordance with this Annex to ATMF.

However, if a derogation from a UTP is requested, the derogation must be justified and it must be demonstrated that the alternative solution planned will also meet the essential requirements.

This regulation on derogation is set up in order that the Organisation can prevent that the aim of interoperability is not jeopardised through derogations from the UTPs. Therefore, the Organisation (Secretary General and in some cases the Committee of Technical Experts) shall check the submitted justification for the derogation in accordance with this Annex section 3.1(a)-(f). The technical check (of safety, technical compatibility and safe integration) of the proposed alternative solution for the subsystem subject to a derogation is the responsibility of the assessing entity(ies) and of the authority in each Contracting State where the subsystem is intended to be admitted in accordance with ATMF Article 6 § 4.

Scope

Annex B to ATMF applies in the case where derogation from one or more structural or functional UTPs is necessary as basis for a (subsequent) technical admission of a subsystem/project subject to COTIF. The derogation must be described and justified in accordance with Annex B.1. Annex B contains the procedure and conditions for a Contracting State to request a derogation from the Organisation, represented by the Secretary General. The Organisation assesses the request for derogation and informs the Committee of Technical Experts. In some cases specified in section 3.5 of Annex B, the Committee of Technical Experts has the competence to take a decision on the requested derogation.

The procedure for an applicant's (e.g. a manufacturer or a railway undertaking of a Contracting State) request to a Contracting State for the technical admission (Certificate) of a subsystem/project in the case where the subsystem does not fully meet one or more provisions of the applicable UTPs, and will therefore need one or more derogation(s), is not regulated by this Annex. The application procedure for a technical admission is regulated in ATMF and in the applicable national regulations. ATMF Article 10 § 5a concerning non-discrimination also applies to derogations, and a Contracting State's decision on a derogation may not depend on who the applicant or the manufacturer is.


A request for a derogation based on the same justification, and the granting of the derogation, may cover a project consisting of a series of identical subsystems (such as vehicles) which are to be technically admitted at the same time.

When a subsystem/project depends on a derogation, ATMF Article 6 § 4 applies, and in this case the subsystem/project must be admitted by all the Contracting States where it is intended to be operated. However, only the first admitting Contracting State shall submit a request for derogation in accordance with section 3.2 and Annex B.1 (the file) of this Annex, unless the justification for the derogation might, in some hypothetical cases, be different for the Contracting States in question. The derogation will be granted to all the Contracting States indicated in the file.

EU

A recital in the agreement on the EU's accession to the Organisation states as follows: *"whereas the Convention applies fully between the Union and its Member States on the one hand, and the other Parties to the Convention, on the other hand"* and Article 2 of the agreement says *"...in their mutual relations, Parties to the Convention which are Member States of the Union shall apply Union rules and shall therefore not apply the rules arising from the Convention except insofar as there is no Union rule governing the particular subject concerned"*.

Therefore, the following three cases are relevant, as reflected in the scope of this Annex to ATMF:

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- 1) If the vehicle is to (is requested to) operate only between non-EU OTIF Contracting States, then COTIF applies. In this case, Annex B to ATMF applies and a Contracting State's application for a derogation shall be submitted to the Secretary General.
- 2) If the vehicle is (to be) restricted to operating between the EU Member States only, this is covered by the term "mutual relations" (see above), so EU law applies, i.e. a derogation from a TSI must be in accordance with Article 9 of Directive 2008/57/EC. The EU Member State must submit its application for a derogation to the European Commission.
- 3) If the vehicle is to (is requested to) operate between (at least) one EU Member State and (at least) one non-EU Contracting State, then COTIF applies. In this case, Annex B to ATMF applies and a Contracting State's application for a derogation shall be submitted to the Secretary General. The Secretary General shall inform the European Commission of the derogation request and the EU may, in the cases where section 3.5 applies - i.e. if the derogation is subject to 3.1(b), (d) or (f) - give a coordinated position in accordance with its exclusive competence on behalf of the EU Member States to the Committee of Technical Experts when the Committee decides.

If a Contracting State applies EU legislation as a result of international agreements with the European Union and has made a declaration in accordance with Article 11 of the Agreement on EU's accession to COTIF, it shall, in respect of point 2) and 3), be considered as an EU Member State.

Which UTPs can be derogated from?

Derogations from UTPs concerning general provisions (UTP GEN-x, where x may be A (essential requirements), B (list of subsystems), C (requirements for the Technical File), D (Assessment modules), etc.) are not permitted.⁶ Neither can derogations generally be granted for Interoperability Constituents (IC) as such. But the project/subsystem into which an IC which does not comply with the applicable UTP(s) is actually incorporated may be granted a derogation.

ATMF is a set of international regulations which, contrary to EU regulations, does not apply to subsystems used exclusively in domestic traffic (unless a Contracting State might so decide). Therefore, derogations according to this Annex to ATMF are only relevant if the subsystem is used for traffic in more than one Contracting State (i.e. used in international traffic). However, UTPs concerning structural immovable subsystems – such as infrastructure (UTP INF), fixed parts of energy (UTP ENE) and control command systems (UTP CCS) and functional subsystems, such as operation (UTP OPE) – must, when they have interfaces with the rolling stock used in international traffic, be complied with in accordance with ATMF Articles 3, 6 and 8 in order for such rolling stock to be admitted. Derogations from provisions in the UTPs may also be requested for structural immovable subsystems, but the conditions set for the derogation might result in restrictions on vehicles using the immovable or functional subsystem in question, including vehicles that have already been admitted.

Derogation is different from a specific case


When a specific case is included in a UTP it can be applied by the Contracting State(s) indicated for different projects without further approval from the Organisation. This is not the case for derogations based on a Contracting State's specific justified request to the Organisation not to apply the applicable UTP(s) to a certain subsystem/project which it intends to admit.

When implementing a project, the following questions should be asked in the following order:

- (a) is it possible to apply the technical specifications in chapters 4 and 5 of the applicable structural or functional UTPs?
- (b) if not, is a specific case specified in the UTP?
- (c) if not, is this a case in which a derogation from the applicable UTP(s) should be requested?
- (d) if not, and if it is an upgrading/renewal project, what part of the UTPs' technical specifications can be applied? (In some cases, the implementation strategy of a UTP (chapter 7) may have provisions relating to this subject.)

In cases (a) and (b) the Contracting State will be able to take decisions without intervention from the Committee of Technical Experts or other Contracting States. In cases (c) and (d) the Committee of Technical

⁶ In EU law, these COTIF regulations have their parallel not in TSIs, but in "higher level" regulations, such as EU directives.

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Experts and the other Contracting States will have access to the information and, in some cases, will be able to intervene:

- either through a decision in the Committee of Technical Experts,
- or through a bilateral discussion (Secretary General and relevant Contracting State).

In cases (c) and (d), the partial application of the UTP is not recommended in the case of infrastructure and track-side equipment, because this may hamper the free movement of trains for a long period. Partial application of a UTP in the case of rolling stock is less onerous, as it affects only the keeper of the vehicle and the railway undertakings using it. Finally, the provision of information requested under ATMF Article 10 § 11 is valuable in determining both the future developments/revisions of the UTPs and the progress of interoperability. It also allows the Committee of Technical Experts to verify the correct application of ATMF.

Annex B.1

The term “*work, goods and services*” means “*the subsystem/project (what is to be done?)*”, “*the object (e.g. a locomotive, a freight wagon or line of infrastructure, etc.)*” and “*the functions (in the case of any operational UTPs concerned)*”.

Derogation procedure

When the project requires a derogation from one or more UTPs, the following process should be followed:

- 1) (a) The applicant submits a request for derogation in accordance with the national regulations of the Contracting State (the competent authority) where he intends to apply for an OTIF technical admission (Certificate) for the subsystem/project that needs the derogation. The request for derogation must provide evidence as to how the essential requirements will be satisfied if they are not being satisfied in accordance with the UTP provision(s) from which derogation is requested. The competent authority may require further documentation concerning the justification and the proposed alternative technical solution, if necessary.
 - (b) At an early stage of the project (in the applicant’s own interest, so as not to waste his time), the request for derogation may be submitted to and discussed with the competent authority(ies) of the Contracting States where the applicant intends to request technical admission of the subsystem/project.
- 2) The Contracting State assesses and, if necessary amends the request, and submits it to the Secretary General, together with its assessment, in accordance with this Annex.

The Contracting States concerned by the derogation should coordinate their assessments.
- 3) The Secretary General assesses the request from the Contracting State(s) and makes his decision in accordance with section 3 of this Annex to ATMF, and informs the Committee of Technical Experts; if prescribed in section 3, the Committee of Technical Experts then takes a decision.
- 4) The Secretary General informs the requesting Contracting State and the other Contracting States of the outcome of the derogation procedure, including any recommendations and conditions.
- 5) The Contracting State informs the applicant that the derogation can be used to obtain the technical admission in accordance with ATMF Article 6 § 4 for his subsystem/project.
- 6) Each Contracting State in which the applicant applies for a technical admission assesses whether the subsystem/project complies with its applicable national technical requirements (rules) notified in accordance with APTU Article 12.
- 7) The Contracting State(s) issues the COTIF Technical Certificate(s) – including the conditions relevant to its validity.