

OTIF



ORGANISATION INTERGOUVERNEMENTALE POUR
LES TRANSPORTS INTERNATIONAUX FERROVIAIRES

ZWISCHENSTAATLICHE ORGANISATION FÜR DEN
INTERNATIONALEN EISENBAHNVERKEHR

INTERGOVERNMENTAL ORGANISATION FOR INTER-
NATIONAL CARRIAGE BY RAIL

Version: 02

Ref.: A 92-03/8.2012

Original: EN

Date: 05.03.2013

Amendment of Article 20 § 3 of the Convention

1. Introduction

Article 20 § 3 of the Convention says that: *The Committee of Technical Experts may either validate technical standards or adopt uniform technical prescriptions or refuse to validate or adopt them; it may not under any circumstances modify them.*

Article 33 § 6 of the Convention says that: *The Committee of Technical Experts shall decide on proposals aiming to modify the Annexes to the APTU Uniform Rules. When such proposals are submitted to the Committee of Technical Experts, one-third of the States represented on the Committee may require these proposals to be submitted to the General Assembly for decision.*

This document explains the discrepancy between the rules applicable to the Committee of Technical Experts (CTE) and the Committee's practical need to adopt uniform technical prescriptions (UTPs). It proposes a solution to resolve this discrepancy.

2. Brief history

The version of Article 20 § 3 of the Convention adopted by the Revision Committee¹ in October 1998 (last Revision Committee before the 5th General Assembly which dealt with this Article) stipulated that the Committee of Technical experts may validate **technical standards** or refuse to validate them if they were developed by (external) standardisation bodies. This limitation (adopt without modification or refuse) was not included in Article 20 § 3 of the Convention in connection with the adoption of UTPs.

Contrary to the solution adopted by the Revision Committee, the 5th General Assembly in June 1999 (the last Assembly before the Vilnius Protocol was signed) decided that, **with regard to the uniform**

¹ *The Committee of Technical Experts may validate technical standards without modifying them or refuse to validate them; it may not modify them during the validation.*

technical prescriptions, the Committee of Technical Experts may also either adopt or reject them, but may not in any circumstances amend them at the time of their adoption. The role of the Committee of Technical Experts is thus limited to analysing the content of the proposed standard or prescription.

3. Definition of the problem

The wording of Article 20 § 3 of the Convention, which prohibits any modifications to uniform technical prescriptions during the adoption of UTPs, is not in line with Article 33 § 6 of the Convention.

The aim of Article 20 § 3 of the Convention is to avoid changes to a draft set of requirements being introduced by people who were not responsible for drafting them.

In reality however, the UTPs are developed by the standing working group TECH in accordance with Article 4 § 2 APTU². The Member States, the EU and the sector organisations (as observers) may influence these developments. Many working group TECH participants are also delegates to the Committee of Technical Experts.

At every session of the Committee of Technical Experts (CTE), modifications during the session have been necessary in order to get the UTPs adopted. Such modifications are foreseen by the Rules of Procedure for the Committee of Technical Experts³, but are not in line with Article 20 § 3 of the Convention.

4. Short term working solution

In order to carry out efficiently its tasks as set out in the Convention, the CTE should be able to make amendments to UTPs before they are adopted. With the adoption of this document, the CTE would therefore be declaring that it will work as if the long term solution as set out in point 5 of this document had already been implemented.

5. Long term solution: Amendment of the Convention

As agreed at the 19th session of the standing working group TECH, amending Article 20 § 3 of the Convention by returning to a similar wording as that adopted by the Revision Committee in October 1998 would reflect current practice and would be entirely in accordance with Article 33 § 6 of the

² *The preparation of UTP shall be the responsibility of the Committee of Technical Experts assisted by appropriate working groups and the Secretary General on the basis of applications made in accordance with Article 6.*

³ Annex to the Rules of Procedure for the CTE

Convention and with Articles 5 and 6 of APTU and the Rules of Procedure of the Committee of Technical Experts. The disadvantage of this solution is that it would take a long time to implement, as a revised Convention would entail a new process of ratification.

The CTE is therefore of the opinion that the text of the revised Article 20 (to be examined by the Revision Committee and adopted by the General Assembly) should read as follows:

Article 20

Committee of Technical Experts

§ 1 The Committee of Technical Experts shall:

- a) take decisions, in accordance with Article 5 of the APTU Uniform Rules, about the validation of a technical standard relating to railway material intended to be used in international traffic. In such decisions, technical standards or specific parts of them may either be validated or their validation may be refused; they may not under any circumstances be modified;
- b) take decisions, in accordance with Article 6 of the APTU Uniform Rules, about the adoption or amendment of a uniform technical prescription relating to construction, operation or maintenance or relating to a procedure concerning railway material intended to be used in international traffic;
- c) keep a watch on the application of technical standards and uniform technical prescriptions relating to railway material intended to be used in international traffic and examine their development with a view to their validation or adoption in accordance with the procedures provided for in Articles 5 and 6 of the APTU Uniform Rules;
- d) take decisions, in accordance with Article 33 § 6, about proposals aiming to modify the Convention;
- e) deal with all other matters which are assigned to it in accordance with the APTU Uniform Rules and the ATMF Uniform Rules.

§ 2 ... unchanged,

§ 3 ... to be deleted.

Article 33 § 6 does not need to be amended because “modifying the Annexes” covers the adoption of additional Annexes (UTPs) as well as the modification of existing Annexes (UTPs).