 OTIF	REQUIREMENTS AND PROCEDURE FOR DEROGATIONS FROM APPLICATION OF UTP(S) RELATED TO A STRUCTURAL OR FUNCTIONAL SUBSYSTEM			ATMF – Annex B Page 1 of 9
	Status: PROPOSAL	Version: 04	Ref.: A 94-40/3.2012	Original: EN

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.

These uniform rules apply to derogations concerning subsystems intended to be used for international traffic and which are situated in, or intended to be used exclusively on the territory of OTIF Contracting States which are not members of the European Union and do not apply Union legislation as a result of international agreements with the European Union.

These uniform rules **do not** apply to derogations concerning subsystems situated in, or intended to be 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

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

 OTIF	REQUIREMENTS AND PROCEDURE FOR DEROGATIONS FROM APPLICATION OF UTP(S) RELATED TO A STRUCTURAL OR FUNCTIONAL SUBSYSTEM			ATMF – Annex B Page 2 of 9
	Status: PROPOSAL	Version: 04	Ref.: A 94-40/3.2012	Original: EN

OTIF regulations

with the European Union: such derogations are regulated by the applicable Community and national legislation.

In case of derogations applicable to vehicles intended to be operated in both:

- 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
- Contracting States which are not members of the European Union and do not apply Union legislation as a result of international agreements with the European Union

the derogations are processed and granted separately for each of the States concerned. In non-EU OTIF contracting states, Annex B to ATMF applies and in EU Member States, Article 9 of Directive 2008/57/EC applies.

Corresponding text in EU regulations²

EU ref.

3. PROCEDURE

Article 9

3.1 In the absence of relevant specific cases

1.

a Contracting State | a Member State
need not apply one or more |
structural or functional UTPs | TSIs
in accordance with this |
Annex | Article
in the following cases:

(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 | Article 1(1)

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); | these TSIs are published;

(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 UTPs | TSIs
is not compatible with those of the existing subsystem;

(c) for a proposed new subsystem or for the proposed renewal or upgrading of an existing subsystem in the territory of that

Contracting State | Member 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 | rest of the Community;³

(d) for any proposed renewal, extension or upgrading of an existing subsystem, when the application of these


UTPs | TSIs

³ Separated or isolated networks do not allow international traffic; therefore a derogation for such reasons is not in the scope of the OTIF regulations.


 OTIF	REQUIREMENTS AND PROCEDURE FOR DEROGATIONS FROM APPLICATION OF UTP(S) RELATED TO A STRUCTURAL OR FUNCTIONAL SUBSYSTEM			ATMF – Annex B Page 3 of 9
	Status: PROPOSAL	Version: 04	Ref.: A 94-40/3.2012	Original: EN

<i>OTIF regulations</i>		<i>Corresponding text in EU regulations</i> ²	<i>EU ref.</i>
would compromise the economic viability of the project and/or the compatibility of the rail system in that Contracting State;		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 Annex B.1. The Secretary General shall analyse the measures proposed by the Contracting State and shall inform the Committee of Technical Experts.		paragraph 1 the Member State Commission Annex IX. The Commission Member State Committee referred to in Article 29.	2.
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		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	5.

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

 OTIF	REQUIREMENTS AND PROCEDURE FOR DEROGATIONS FROM APPLICATION OF UTP(S) RELATED TO A STRUCTURAL OR FUNCTIONAL SUBSYSTEM			ATMF – Annex B Page 4 of 9
Status: PROPOSAL	Version: 04	Ref.: A 94-40/3.2012	Original: EN	Date: 21.11.2012

<i>OTIF regulations</i>	<i>Corresponding text in EU regulations</i> ²	<i>EU ref.</i>
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	Commission's decision	
Contracting State	Member State	
may apply the alternative provisions referred to in Annex B.1 to this Annex.	Annex IX.	
3.6	All	6.
	Contracting States	Member 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.	4 and 5.

 OTIF	REQUIREMENTS AND PROCEDURE FOR DEROGATIONS FROM APPLICATION OF UTP(S) RELATED TO A STRUCTURAL OR FUNCTIONAL SUBSYSTEM			ATMF – Annex B Page 5 of 9
	Status: PROPOSAL	Version: 04	Ref.: A 94-40/3.2012	Original: EN

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
must supply the following documents:

| Member State

(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)

 OTIF	REQUIREMENTS AND PROCEDURE FOR DEROGATIONS FROM APPLICATION OF UTP(S) RELATED TO A STRUCTURAL OR FUNCTIONAL SUBSYSTEM			ATMF – Annex B Page 6 of 9
	Status: PROPOSAL	Version: 04	Ref.: A 94-40/3.2012	Original: EN

Explanatory remarks

Introduction

A derogation constitutes permission not to apply entire, or particular parts of UTP regulations to a particular project. A derogation is applicable to a Contracting State which, based on the derogation, need not impose the application of the UTP..

Since OTIF regulations apply to international traffic only, derogations for vehicles in the scope of this Annex to ATMF concern at least two OTIF Contracting States. This implies that coordination between the Contracting States concerned is necessary for vehicle related derogations.

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 has been set up in order that the Organisation can prevent the aim of interoperability from being jeopardised as a result of derogations from the UTPs. Therefore, the Organisation (Secretary General and in some cases the Committee of Technical Experts) will check the justification submitted in support of the derogation in accordance with section 3.1(a)-(f) of this Annex. The assessing entity(ies) and the authority in each Contracting State where the subsystem is intended to be admitted in accordance with ATMF Article 6 § 4 are responsible for checking the alternative solution proposed for the subsystem subject to a derogation.

Annex B.2 provides a simplified overview of the different derogation cases and their scope of application.

Scope

Derogations are initiated by Contracting States, which always need to communicate the derogation file to the Organisation. In the cases as defined in sections 3.1 b), d) and f), the derogation is subject to approval by a decision of the Committee of Technical Experts.


Annex B to ATMF applies in the case where derogation from one or more of the structural or functional UTPs is necessary as the 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 to AMTF. Annex B to ATMF contains the procedure and conditions for a Contracting State to communicate a derogation to the Secretary General. The Secretary General analyses the derogation and informs the Committee of Technical Experts. In the cases specified in section 3.5 of Annex B to ATMF, the Committee of Technical Experts has the competence to take a decision on the communicated derogation.

The procedure for an applicant's (e.g. a manufacturer or a railway undertaking in 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 B to ATMF. 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.

When a subsystem/project depends on a derogation, ATMF Article 6 § 4 applies, and in this case the subsystem/project must be separately admitted by all the Contracting States where it is intended to be operated.

EU

 OTIF	REQUIREMENTS AND PROCEDURE FOR DEROGATIONS FROM APPLICATION OF UTP(S) RELATED TO A STRUCTURAL OR FUNCTIONAL SUBSYSTEM			ATMF – Annex B Page 7 of 9
	Status: PROPOSAL	Version: 04	Ref.: A 94-40/3.2012	Original: EN

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 in case of vehicle related derogations, as reflected in the scope of Annex B to ATMF:

- 1) If the vehicle is intended to be operated 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 must be submitted to the Secretary General.
- 2) If the vehicle is intended to be operated 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 intended to be operated between (at least) one EU Member State and (at least) one non-EU Contracting State, the derogations are processed and granted separately for each of the States concerned. In non-EU OTIF contracting states, Annex B to ATMF applies and in EU Member States, Article 9 of Directive 2008/57/EC applies. The applicant should contact all the Contracting States in which the derogation is required. The Contracting States concerned should cooperate in order to prepare one combined derogation file, or several consistent derogation files to be submitted to the Secretary General and the European Commission respectively. The Secretary General and the European Commission should cooperate with a view to reaching a common position regarding the derogation.

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 the 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). are not permitted.⁶ Neither can derogations generally be granted for Elements of Construction (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 Annex B 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.

Procedure to be applied

When implementing a project, the following questions should be asked with regard to the applicability of UTP technical requirements:

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

 OTIF	REQUIREMENTS AND PROCEDURE FOR DEROGATIONS FROM APPLICATION OF UTP(S) RELATED TO A STRUCTURAL OR FUNCTIONAL SUBSYSTEM			ATMF – Annex B Page 8 of 9
	Status: PROPOSAL	Version: 04	Ref.: A 94-40/3.2012	Original: EN

- Does the project concern the renewal or upgrading of an existing subsystem? If yes, then ATMF Article 10 §11 applies, and based on the application of that Article, it shall be established by the Contracting State whether a derogation is required.
- Is the project outside the technical and geographical scope as defined in sections 1 and 2 of the UTP? If yes, then the UTP does not apply and National Technical Rules may be imposed instead of the UTP. In such case a derogation is not needed.
- Does the implementation strategy in section 7 of the UTP permit its (partial) non-application, e.g. due to transitional measures? If yes, then the transitional measures in section 7 of the UTP apply. In such case a derogation is not needed.
- Is a specific case specified in the UTP for the particular Contracting State? If yes, then the provisions as set out in the specific case apply.

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 Annex B 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 for his subsystem/project in accordance with ATMF Article 6 § 4.
- 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) issue(s) the COTIF Technical Certificate(s) – including the conditions relevant to its validity.

 OTIF	REQUIREMENTS AND PROCEDURE FOR DEROGATIONS FROM APPLICATION OF UTP(S) RELATED TO A STRUCTURAL OR FUNCTIONAL SUBSYSTEM			ATMF – Annex B Page 9 of 9
	Status: PROPOSAL	Version: 04	Ref.: A 94-40/3.2012	Original: EN

Annex B.2

The table below provides a simplified overview of the derogation cases as set out in section 3 of ATMF Annex B. The table is for information only and does not provide full accuracy.

Derogation cases as defined in 3.1	New subsystems	Renewal/ upgrading of subsystems
(a) Advanced stage of development of projects or for contracts already signed when UTP enters into force. <i>(for projects which are notified within 1 year after UTP is notified, in accordance with section 3.3 of Annex B to ATMF)</i>	Derogation possible: CS sends file to SG, SG checks and may recommend specifications to be applied.	Derogation possible: CS sends file to SG, SG checks and may recommend the specifications to be applied.
(b) For renewal or upgrading of existing subsystems when UTP is not compatible with existing subsystem's loading or track gauges, space between tracks or catenary voltage.	Derogations for new subsystems not possible for such reason	Derogation possible, pending CTE approval within 6 months. No CTE decision needed in case of derogations relating to the loading and track gauges.
(c) For networks isolated or separated from other contracting states' networks.	Derogation possible: CS sends file to SG, SG checks and may recommend specifications to be applied.	Derogation possible: CS sends file to SG, SG checks and may recommend the specifications to be applied.
(d) If application of UTP to a renewal, extensions, or upgrading project would compromise economic viability	Derogations for new subsystems not possible for such reason, except for extensions.	Derogation possible, pending CTE approval within 6 months.
(e) Restoration following an accident or a natural disaster	Derogation possible: CS sends file to SG, SG checks and may recommend the specifications to be applied.	
(f) For vehicles coming from or going to countries with a track gauge other than 1435 mm. <i>(UTPs in force have been based on 1435 mm networks, this scope may be extended at a future stage)</i>	Derogation possible, subject to CTE approval within 6 months. Pending this approval, the CS may immediately apply the alternative provisions.	