

OTIF



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LES TRANSPORTS INTERNATIONAUX FERROVIAIRES**

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**INTERGOVERNMENTAL ORGANISATION FOR INTER-
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Justification document for the

Revision of Appendix G (ATMF UR)

and points to be included in the Explanatory Report

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Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (ATMF - Appendix G to the Convention)

Introductory note

This document serves two purposes. On the one hand it provides justifications for the proposed amendments to Appendix G to the Convention as proposed to the 25th session of the Revision Committee. On the other hand it provides elements which may serve as explanation and interpretation of the revised Appendix G and which are intended to be included in the Explanatory Report. The Explanatory report will be discussed and voted as a separate document in the Revision Committee.

Texts in **bold** are intended to be included in the Explanatory Report.

General justifications

The primary trigger for the revision of ATMF was the conclusions reached by the ad-hoc safety subgroup, which had been validated by the Committee of Technical Experts in June 2013. These conclusions resulted in a new draft Article 15a and a modified Article 17 § 1.

In addition to these two modifications, and to take advantage of the opportunity of a revision, the entire draft revised ATMF is being brought into line with the latest developments. This concerns elements of consistency with recent European Union law, updated references to other OTIF regulations, etc.

Compared to the 2011 version of ATMF, the revised version will make more explicit the functions of and mutual relations between

- Contracting State,
- Competent authority and
- Assessing entity.

Furthermore, the revised version harmonises terms. The 2011 version of ATMF uses different terms for the same concept, such as “bodies recognised as suitable”, “the bodies”, “authority carrying out technical admission”, “the bodies responsible for carrying out assessments”, “approving authority”. Where feasible these have been replaced by either “competent authority” or “assessing entity”, as appropriate.

The term ‘other railway material’ seems to serve no practical purpose. As a first step, the proposal is to delete all references to ‘other railway material’ insofar as this is in the competence of the Revision Committee. This concerns all Articles except 1, 3 and 9. As a second step ‘other railway material’ should be deleted from Articles 1, 3 and 9, which are in the competence of the General Assembly.

The changes which are not covered by this introductory note are explained in the rest of this document.

Article 2 Definitions

- ab) Accreditation is added as a definition, as it is referred to in Articles 5 and 15. The definition is based on the definition used in the EU.
- ac) **The definition of accreditation body is included to distinguish it from ‘Recognition’ attributed by a competent national body other than the accreditation body (e.g. when no accreditation body exists in a country).**
- b) For clarity the link between ‘admission of a type of construction and the ‘Design Type Certificates’ should be established.
- c) For clarity the link between ‘admission to operation’ and ‘Certificate of Operation’ should be established.
- f) The definition of ‘declaration’ is deleted because it is no longer used in the original context (Article 10 § 3). Keeping the term ‘declaration’ would be ambiguous as ‘Declaration of verification’ is used in UTP GEN-D and is a very different concept.

‘Declaration’ is replaced by “Design Type Certificate” which is now consistently used throughout ATMF, particularly in Articles 10, 10a and 11.

- h) For two reasons the definition of ECM is deleted:

The requirements for ECM are clear from Art.15 and the ECM regulation (Annex A to ATMF).

The original definition made the existence of the ECM conditional on registration in the ECM register. Although such registration is still mandatory in Article 15, the NVR is not operational in all CSs. The absence of an operational NVR should not result in ambiguity with respect to the ECM responsibilities.

- o) It should be clarified that the maintenance record file is part of the maintenance file. This is relevant to Articles 10, 11 and 15.
- r) UTPs must be explicit on the open points, as it must be clear to all what the open points are.
- s) The term ‘other railway material’ seems to serve no practical purpose. All movable railway material used in international traffic is covered by ‘railway vehicle’.
- t) To be more in line with EU Directive 2001/14 EC, the definition of ‘rail transport undertaking’ is modified.

The identical concept of ‘railway undertaking’ is added because this term is used in several places in the ATMF and the Convention.

- wa) Recognition includes two different concepts:

Recognition of a national body is used in Articles 5 § 3, 13 § 2, 15 § 2.

Recognition of a certificate is used in Article 6a, 6b.

- ya) Reference to RID should be superfluous. RID is part of the same Convention as ATMF and as such, it is known about.
- aa) It is important to stress that it is not the ‘requirement for it that validates a specific case, but the fact of its being indicated in the UTP.
- dd) The definition of ‘technical certificate’ is deleted, as both the design type certificate and certificate of operation are included with separate definitions. It is clear from e.g. Article 11 that technical certificates concern both.
- ee1) The definition of train is needed, in particular for the new Article 15a. **This is to distinguish between a vehicle on the one hand, which is a technical product, and a train on the other, which is an operational formation prepared for operation under the responsibility of e.g. a railway undertaking.**
- ff) **The distinction between type examination certificate and design examination certificate is introduced to better support the two principles as set out in UTP GEN-D.**

Article 3a

Interaction with other international agreements

§ 1

- e) **Specific cases are national deviations from the requirements in sections 4 or 5 of the UTP. Specific cases can either be more restrictive or less restrictive than the UTP specifications. A more restrictive specific case requires the vehicle to meet stricter requirements than those set out in sections 4 or 5 of the UTP. Application of a more restrictive specific case will not affect the interoperability of the vehicle subject to the specific case, because it still meets the requirements as set out in sections 4 or 5 of the UTP. Less restrictive specific cases allow the vehicle, subject to the specific case, wider margins than those defined in sections 4 or 5 of the UTP. In the latter case the vehicle is no longer compliant with the requirements in sections 4 or 5 of the UTP and its interoperability is therefore reduced. States applying more restrictive specific cases will restrict access to their network for ‘standard’ vehicles meeting the requirements in section 4 and 5 of the UTP. Access to networks of States that apply less restrictive specific cases will not be affected as far as ‘standard’ vehicles are concerned.**

§ 3 As § 3 is about the application of EU law, it is better to use the EU terminology. ‘Authorised for placing in service’ is the EU terminology; ‘admission to operation’ is an OTIF term.

§ 5 With the deletion of the definition of Entity in Charge of Maintenance (ECM), formerly Article 2 h), this paragraph is the first in which the concept of ECM is men-

tioned. A footnote indicates that the requirements linked to ECM are set out in Article 15.

Article 4 Procedure

§ 1

- b) According to Article 10 § 8, the appropriate manner to demonstrate that the vehicle corresponds to the admitted type of construction is a certificate of verification (module SD/SF), it is not really a simplified procedure. This is a standard procedure and the word ‘simplified’ is ambiguous if it is not further clarified, so it is deleted.

§ 2 It seems important to introduce here the basic procedure for UTP assessment. It can then be referred to in e.g. Article 10.

The competence of the CTE to amend or revoke assessment procedures and the content of UTP certificates is not explicitly covered by APTU Article 8 § 4.

By analogy with European Union law and in accordance with UTP GEN-D, the Intermediate Statement of Verification (ISV) should only apply to subsystems, not to elements of construction.

Article 5 Competent authority

§ 2 ‘Declaration’ is deleted because it is no longer used in the original context (Article 10 § 3). ‘Declarations’ is replaced by ‘certificates of verification’, as this is the document issued by the assessing entity.

§ 3 The deleted texts in a)-h) are covered by UTP GEN-E.

The ‘relevant UTP’ referred to in c) should be understood as a reference to the UTPs GEN-D and GEN-E.

§ 4 **A competent authority that does not transfer competences to an assessing entity, must meet the requirements applicable for assessing entities in order to safeguard the independence of the assessment from the entities listed in § 2 a) - e).**

§ 5 All bodies which have competences defined in the ATMF should be notified to the Secretary General.

Article 6 Validity of technical certificates

§ 3 The concept of ‘free circulation’ is deleted and replaced by ‘validity of the admission’. The reason for this modification is that UTP compliance does not automatically result in ‘free circulation’. The concept of ‘free circulation’ is kept under b), with reference to conditions specified in the UTP. This is more in line with what

happens in practice, e.g. for freight wagons where the conditions for free circulation are set out in Appendix C to the UTP WAG.

- b) **A specific case does not necessarily have to limit the free circulation of a vehicle subject to the specific case. See also the explanatory note on Article 3a §1 e).**

Article 7 Prescriptions applicable to vehicles

§ 1 The original text is ambiguous with respect to the words ‘and remain admitted’. **The admission is a ‘snap shot’ for which compliance with the rules is assessed at one point in time.** ‘remain admitted’ seems to indicate there is a continuous process linked to admission, which is not the case. **After admission the keeper, ECM and RU are responsible for ensuring that the vehicle is well maintained and kept in a condition suitable for operation.** There is no such thing as ‘remaining admitted’. See also Art.10 § 9. In addition, **Article 10a covers suspension and withdrawal of certificates after admission in case this is needed.**

- c) **As the UTPs do not necessarily cover all aspects of a vehicle, an additional conformity check may be necessary for parts of the vehicle that are not covered by the UTP, but which may still have an influence on compliance with the essential requirements as set out in UTP GEN-A. This additional check has to be done only once; under the responsibility of the competent authority which is responsible for the first admission to operation. As the UTP exhaustively cover all aspects required for interoperability, consecutive admissions should not need such a check over and above UTP compliance.**

§ 1a To compensate for the modification in §1 (deleting ‘remain admitted’), this paragraph is added to indicate that **the entities responsible for the vehicle after admission, i.e. the keeper, the ECM and the railway undertaking, should keep the vehicle compliant with the UTPs.**

Article 7a Derogations

As of 1.1.2014, ATMF Annex B covers derogations.

Article 8 Prescriptions applicable to railway infrastructure

The modifications are made by analogy with the modifications to Article 7.

Article 10 Application and granting of technical certificates and declarations and related conditions

- § 2 The list of possible applicants is deleted because the list could be misinterpreted as being exhaustive, which was not the intention. **Any entity which is capable of managing the obligation and tasks incumbent on an applicant may be an applicant.**
- § 3 For consistency and clarity the issuing of technical certificates (in the admission domain) and the issuing of declarations and UTP certificates of verification (in the assessment domain) should be separated. § 3 now only refers to technical certificates.
- § 3a **This paragraph has two objectives. Firstly to refer to declarations and UTP certificates of verification which have been deleted from § 3, and secondly to make explicit the principle that applicants may make use of the services of assessing entities having their place of business in other CSs.**
- § 5 “Granting” is the word used in the corresponding definition. This also provides a clearer distinction from carrying out the assessments (by the assessing entity) which may be done for profit (e.g. EU Notified Bodies).
- The ‘not-for-profit’ principle applicable to the competent authority is necessary in order to avoid conflicts of interest.**
- Carrying out assessment for profit is possible, as the assessing entities may be private organisations. Nevertheless, the criteria set out in UTP GEN-E prohibit remuneration of staff responsible for inspections based on the number of inspections performed or the results of those inspections.**
- § 6 **The assessing entity compiles the technical file, it does not check, correct and add. The applicant submits the technical file. The maintenance file is a creation of the ECM (the maintenance file is established and updated by the ECM). The maintenance file has to be in conformity with the documents related to the admission to operation and therefore with the technical file.**
- § 8 A person who applies for a certificate is an applicant.
- Consequently, the certificate is issued to the applicant, see Art.11 § 7.
- For new vehicles, which must comply with the UTP in accordance with Article 7, the UTP certificate is the correct document to confirm that a vehicle is built according to a type.
- § 10 The concept of ‘first admission’ was a little ambiguous here, because the clause concerns a type that was already admitted. It is replaced with ‘the admission of new vehicles according to that type’.
- § 11 In the case where a vehicle does not fully comply with the UTPs, separate admission is necessary in each CS.

Article 11 **Technical Certificates and Declaration**

Declarations should be deleted from the title of the Article because the Article is about certificates only. Declarations by the applicant are not mandatory in COTIF (as set out in more detail in UTP GEN-D).

§ 2

- b) **The maintenance file is a creation of the ECM and is not part of the technical certificates. The maintenance file shall be set up in accordance with the technical file, which is part of the documentation for admission. The technical file contains all elements relating to servicing, monitoring, adjustment and maintenance.**
- h) This specification is in line with the uniform format of certificates (Design Type Certificate & Certificate of operation) as defined in document A 93-01/2.2012.

§ 7 Technical certificates (Design Type certificate & Certificate of Operation) are issued by the Competent Authority to the applicant. Declarations should be deleted here, as the applicant may also issue declarations itself in the scope of UTP GEN-D.

§ 8 The maintenance record file is part of the maintenance file in accordance with Article 2 o) and does not therefore have to be mentioned here.

Article 13 **Registers**

§ 1 In this paragraph only the reference to the National Vehicle Register (NVR) is kept. The NVR is set up under the responsibility of each CS.

The elements related to the creation of a type register, by analogy with the European Register of Authorised Types of Vehicles (ERATV), are deleted. At this time, there does not seem to be a clear need for such a type-based register in the non-EU OTIF Contracting States. In addition, it is questionable whether a separate OTIF type-based register coexisting with ERATV would be an efficient solution.

The modifications to § 3 give competences to the CTE in terms of deciding on the creation of such a type-based register if need be.

§ 1a The ECM register is made explicit.

§ 1b The VKM register is made explicit.

§ 2 The requirement for publishing competent authorities etc. is specified in Art. 5 § 5 and is therefore deleted from Article 13.

§ 4 It is made explicit that the CTE is not only competent to establish the architecture of registers, but also to modify or withdraw them.

§ 7 Deciding on fees for the use of data banks should be fully in the competence of the CTE.

Article 14 Inscriptions and signs

§ 1 The requirement in ATMF 2011 that vehicles must bear a sign to indicate that they have been admitted to operation is not complied with in practice. This has illustrated that the definition of vehicle markings should be dealt with in UTPs and not in ATMF.

§ 2 The requirement deleted from § 1 is transferred to § 2 as a competence of the CTE.

Article 15 Maintenance of vehicles

§ 1 The required permanent compliance of vehicles with UTPs is now dealt with in Article 7 § 1a; the analogous requirement is therefore deleted from Article 15.

In accordance with common practice in several Contracting States and in order to make more explicit the responsibilities of the keeper, the keeper should be responsible for designating an ECM for his vehicles.

§ 2 Since ATMF 2011, additional ECM rules contained in Annex A to ATMF have been adopted and are in force as of 1 May 2012. The CTE retains the competence to amend these ECM rules or to adopt new ECM rules.

The deletion or use of the word ‘external’, or alternatively ‘independent’, was discussed at length. The conclusion of this discussion was that neither external nor independent should be used, as the requirements for the certification body are in Annex A to ATMF and it is therefore sufficient to refer to Annex A.

This last two sections of § 2 of ATMF 2011 are obsolete due to the entry into force of Annex A.

§ 3 **In accordance with Article 11 § 8, the keeper is the entity that holds the technical file which contains elements relating to the instructions concerning servicing, constant or routine monitoring, adjustment and maintenance.**

The responsibilities for railway undertakings are now dealt with in the new Article 15a and are therefore deleted from Article 15.

The direct responsibility of railway undertakings for vehicle maintenance is deleted from § 3, as it is the responsibility of the ECM to ensure that vehicles are in a safe state of running by means of a system of maintenance as set out in § 2. The task of the railway undertaking is to ensure that each vehicle it operates has an ECM assigned to it in accordance with the new Article 15a § 1 e).

The type of information to be exchanged between the railway undertaking and the ECM is set out in Annex A to ATMF; ECM regulation Annex III point 7. This information may be transmitted via the keeper.

§ 5 This § is deleted as it is fully covered by Annex A to ATMF; ECM regulations. The competence of the CTE is transferred to § 1.

Article 15a Train composition and operation

The new Article 15a defines the tasks and responsibilities of the railway undertaking with respect to the use of vehicles and operation of trains.

The Article corresponds to the conclusions of the ad-hoc safety subgroup, which reported its results to WG TECH and whose conclusions were validated at CTE 6.

§ 1 The principles are in line with the requirements incumbent on railway undertakings operating in the EU according to the EU Safety Directive 2004/49/EC and the EU Technical Specifications for Interoperability concerning operations and traffic management (OPE TSI).

d) The words ‘..such as those..’ indicate that there may be other prescriptions relating to operation, e.g. national regulations governing international rail traffic.

§ 2 **‘Entities other than a rail transport undertaking’ refers for example to infrastructure managers that operate on-track machinery for track maintenance purposes. When such equipment is not in transport mode, but in working mode on non-operational tracks, these rules do not apply. In such a situation these vehicles are considered as maintenance or inspection machines instead of trains and are not therefore in the scope of these rules.**

§ 3 **By analogy with Article 15 § 3, the keeper is the entity that holds the technical file which contains elements relating to conditions and limits of use concerning servicing and constant or routine monitoring.**

§ 4 **In order to fulfil its responsibilities as set out in Article 15a, the railway undertaking should have correct and sufficient information about the characteristics of the infrastructure it will operate its trains on. It is the task of the infrastructure manager to supply such information. If there is more than one railway undertaking making use of its infrastructure, the infrastructure manager should make this information available to all railway undertakings.**

Article 17 Immobilisation and rejection of vehicles

§ 1 **ATMF Article 17 § 1 does not mean that every rail transport undertaking must be capable of using every type of vehicle. An admitted vehicle incompatible with the operational environment or fleet of a rail transport undertaking is not prevented from running, but as it simply does not satisfy the technical or opera-**

tional prerequisites for this rail transport undertaking to operate it, this rail transport undertaking is not in a position to operate it. This means that a rail transport undertaking may decide under the conditions set out above, and taking account of its responsibilities under Article 15a, that it is not able to operate a particular type of wagon that has been legally authorised/admitted for service.

Article 19 **Transitional provisions**

§ 1 This paragraph is deleted because it was considered ambiguous as it seemed to suggest that Article 3 § 1 did not apply to new vehicles, besides that it was just an introduction to the following §§.

§ 2 **1.1.2011 marked the entry into force of the 2011 version of ATMF. The modifications to this paragraph do not change the meaning compared to the 2011 ATMF.**

The entry into force of ATMF on 1.1.2011 (and of the Interoperability Directive in the EU on 19.7.2008) transferred competence for approving/admitting vehicles from the railway companies to State level. When the ATMF of 2011 entered into force, there were no uniform technical prescriptions (UTPs) available on which the admission could be based. The admission therefore had to be carried out State by State according to ATMF Art. 6(4). Even in the absence of harmonised UTP rules, the principles of ATMF applied fully in each CS, which means that the State, rather than railway companies, takes responsibility for the admission of vehicles.

The date 19.7.2008 on which the Interoperability Directive entered into force in the EU has no specific meaning outside the EU, therefore this date cannot be taken over in the same spirit in ATMF. Doing otherwise would create the risk that correct decisions taken and correct procedures carried out between 19.07.2008 and 01.01.2011 would become questionable. Such retroactive application should be avoided.

The entry into force of UTPs from 2012 onwards introduces harmonised requirements. The Contracting States should implement these UTPs in their railway sector.

ATMF represents a fundamentally different approach to what is set out in RIV and RIC. With the application of ATMF, Contracting States take responsibility towards each other for the vehicles they admit to operation; this responsibility cannot be covered by the sole application of RIC and RIV. RIV/RIC are not compatible with ATMF and even contradict some of the principles of ATMF. Therefore, after the entry into force of ATMF on 1.1.2011, RIV/RIC can no longer be the sole basis for admission, unless provided otherwise in the applicable UTP.

§ 2a As the content of possible agreements covered by this clause are not known, they should not be given special status.

It is more neutral to say that these rules do not affect the original agreement than to state that vehicles built before 2011 are deemed to be admitted. This way the bilateral and multilateral agreements are not affected and in particular, ambiguity is avoided in case of agreements with a limited validity.

§ 3 To be in line with § 5.

§ 5 ATMF covers not only safety related aspects, but also aspects related to interoperability. The sentence is now in line with the EU Interoperability Directive 2008/57/EC, Article 6(9).

§ 7 The word ‘other’ could signify that the CTE may change the content of Article 19, which is not in line with the Convention, because changing ATMF Article 19 is in the competence of the Revision Committee. ‘Additional’ instead of ‘other’ seems a more appropriate word here.