OTIF

ORGANISATION INTERGOUVERNEMENTALE POUR LES TRANSPORTS INTERNATIONAUX FERROVIAIRES

ZWISCHENSTAATLICHE ORGANISATION FÜR DEN INTERNATIONALEN EISENBAHNVERKEHR

INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL CARRIAGE BY RAIL

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Amendment of Article 20 § 3 of the Convention

1. Introduction

Article 20 § 3 of the Convention sets out 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 sets out 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 practical needs for this Committee to adopt uniform technical prescriptions (UTPs). It proposes solutions to resolve this discrepancy.

2. Brief history

The version of Article 20 § 3 of the Convention adopted by the Revision Committee[1] 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 for adoption of the 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 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.

[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*

3. Definition of the problem

The wording of Article 20 § 3 of the Convention which does not allow any modifications to uniform technical prescriptions during the adoption of the UTPs is not in line with the practice of 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 the drafting of these requirements.

In reality however, the UTPs are developed by the standing working group TECH according to Article 4 § 2 APTU[2]. The Member States, the EU and the sector organisations (as observers) have an influence on these developments. Many participants of the working group TECH 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 not in line with Article 20 § 3 of the Convention.

So for the adoption of UTPs, either the practical procedures of the Committee, or Article 20 § 3 of the Convention, should be changed.

4. Proposed solutions

In the sections below, two possible solutions are described which will allow the CTE to perform its tasks efficiently and at the same time comply with the Convention. Solution 2 is the preferred solution; however since solution 2 cannot be implemented in the short term, solution 1 is proposed as an intermediate solution.

4.1 Solution 1: Division of meeting into WG TECH and CTE

Compliance with Article 20 § 3 could be achieved by dividing the Committee of Technical Experts' session into two parts:

- Preparatory meeting (as a session of standing working group TECH) immediately before the session of the Committee of Technical Experts to prepare the final amendments to documents proposed for adoption
- Consecutive session of the Committee of Technical Experts to adopt or reject documents that have recently been amended (at the preparatory meeting) and proposed for adoption.

4.2 Solution 2: Amendment of the Convention

The option of amending Article 20 § 3 of the Convention by returning to a similar wording as adopted by the Revision Committee in October 1998 would reflect practice and would be entirely in accordance with Article 33 § 6 of the Convention and with Articles 5 and 6 of APTU. 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.

[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.*

The text of a new Article 20 (to be examined by the Revision Committee and adopted by the General Assembly) could 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” includes the adoption of additional Annexes (UTPs) as well as the modification of existing Annexes (UTPs).