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## Draft terms of reference for the development of safety management and safety certification principles in OTIF regulations

### 1 MANDATE AND SCOPE

1.1 At its 5<sup>th</sup> session in June 2012, the Committee of Technical Experts concluded that terms of reference should be established which would serve as a starting point for the development of OTIF regulations in the domain of safety management and safety certification. The present document is intended to serve as such terms of reference.

1.2 At the same time it was concluded that a subgroup may be established which would be tasked with the development and drafting of such regulations, based on the terms of reference. This subgroup would be established by and report to the WG TECH.

### 2 INTRODUCTION

2.1 Safety management is an integral element in all rail operations. If the rail system is an integrated system without international correspondence, the safety management does not need to be harmonised with international standards. However, with international traffic and harmonised technical requirements comes the need to define harmonised responsibilities. It should be clear which actor within the rail system bears which responsibility, in particular vis-à-vis other actors.

2.2 In its White Paper "Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system", adopted on 28 March 2011 ('2011 White Paper'), the European Commission announced its vision to establish a Single European Railway Area and clarified that this objective implies creating the internal railway market where European railway undertakings can provide services without unnecessary technical and administrative barriers. The EU railway market has seen massive changes in the last decade. They were gradually introduced by three legislative "railway packages" (with some accompanying acts) intended to open up the national markets and make railways more competitive and interoperable at the EU level, while maintaining a high level of safety. The most recent development is the adoption (passed 2<sup>nd</sup> reading in Parliament in July, to be adopted by the Council in December 2012) of the recast of the 1<sup>st</sup> Railway Package, which in addition to legislative simplification and consolidation, clarifies certain provisions on competition issues, regulatory oversight and the financial architecture of railway operations.

2.3 The aim of OTIF is to promote, improve and facilitate international traffic by rail in accordance with the Convention concerning International Carriage by Rail (COTIF), as defined in Article 2 thereof.

2.4 The aim and scope of the OTIF technical regulations are not identical to those of the EU railway regulations. Some of the differences between the EU and OTIF objectives could be summarised as follows:

- The aim of OTIF regulations is to establish uniform law in order to facilitate international traffic by rail. In contrast, EU regulations also affect domestic traffic.
- Unlike EU law, OTIF regulations do not impose opening the international freight and passenger markets to competition.
- Unlike EU law, OTIF regulations do not impose a harmonised approach to safety management and safety certification.
- Unlike EU law, OTIF regulations do not define requirements for the access of new or foreign railway undertakings to Contracting States' rail systems for international traffic.
- Unlike EU law, OTIF regulations do not contain provisions regulating international train drivers' licences.
- Unlike EU law, OTIF regulations do not contain provisions relating to common safety targets.

2.5 Because of the differences in the aims and scope of EU and OTIF rail regulations, there may be continued justification for certain safety management principles and regulations to continue to differ between EU and OTIF regulations.

### **3 DESCRIPTION OF THE PROBLEM AND OBJECTIVE**

3.1 Unlike OTIF regulations, EU regulations contain overarching safety management principles contained in the Safety Directive 2004/49/EC and its amendments. These provide the legal basis for assuming that rail transport undertakings and infrastructure managers act in accordance with their responsibilities and that these responsibilities are distributed and divided in the same way in the different EU Member States. This is increasingly important with the introduction of new TSIs, which assume a harmonised level of safety management and in return permit a degree of technical freedom. In order for UTPs to be fully equivalent to TSIs, OTIF regulations may also need some of these overarching safety management principles.

3.2 Notwithstanding the above, OTIF regulations also already contain several provisions related to safety management. One example is the transposition of the Common Safety Methods on risk assessment into OTIF regulations (UTP GEN-G), which is a tool to assess and evaluate the safety risks of subsystems and their integration into their environment. Another example is the provision in ATMF Article 6 § 2, which makes the rail transport undertaking responsible for ensuring compatibility with the infrastructure; safety management processes should be in place to ensure such compatibility during operations. In addition to these examples, each wagon must have an entity in charge of maintenance assigned to it in accordance with ATMF Annex A.

3.3 Over time, freight wagon designs have been optimised to fit into a particular operative regime, i.e. the former RIV. Whilst continuing to allow the construction and admittance of such wagons, the revised WAG TSI will also allow the use of wagons of different designs.

For this reason, it will no longer be mandatory to fit freight wagons with ‘heritage’ systems and components which are considered to be known to all railway transport undertakings using them. It may be necessary to use wagons using non-traditional technical solutions under different/dedicated operative regimes. In particular the necessary checks, maintenance activities and limits of use for the wagon must be defined in the technical file and respected accordingly by the users. Therefore it must be ensured that the operative regime used by the rail transport undertaking fits in with the vehicles used and vice versa. In order to ensure this and other aspects relating to safe rail traffic, the rail transport undertaking should have a safety management system in place.

## **4 TASKS**

4.1 A subgroup to be established under WG TECH will be set up and tasked with developing principles and draft proposals for the amendment of OTIF regulations which should ensure the right level of equivalence with the EU Safety Directive, whilst taking into account the scope of OTIF regulations.

4.2 The subgroup is asked by WG TECH:

- a) To analyse the differences between the EU and OTIF legal frameworks with regard to safety management and safety certification and the roles and responsibilities thereof.
- b) To report on the possible impact of these differences in the application of UTPs and other OTIF regulations.
- c) To identify the need to establish safety management principles in OTIF regulations.
- d) To present a proposal to amend the OTIF regulations ATMF and APTU with a view to establishing functional safety management equivalence between EU and OTIF regulations in the application of UTPs.

4.3 The subgroup may consider using the following list, which contains a set of safety management and safety certification principles, as input to their work.

- I. Ensure that each body involved in the admission or operation of vehicles in international traffic is made responsible for its part of the system and its safe operation.
- II. Regulate infrastructure managers and rail transport undertakings to ensure that they establish their safety management systems. These safety management systems should ensure that the level of safety of international traffic will at least be maintained for the parts of the rail system which are subject to OTIF regulations.
- III. Regulate the safety management systems so that they control all risks associated with the activity of the infrastructure manager or rail transport undertaking which fall under the scope of OTIF regulations, including the supply of maintenance and material and the use of contractors. Without prejudice to existing national and international liability rules, the safety management system will also take into account, where appropriate and reasonable, risks arising as a result of activities by other parties.

- IV. Ensure that the safety management system of any infrastructure manager which manages international traffic takes into account the effects of operations of all railway undertakings that may operate on their network.
- V. Ensure that the safety management systems are audited, supervised and certified by safety certificates issued by certifying authorities.
- VI. Set out that the purpose of the safety certificate is to provide evidence that the rail transport undertaking and infrastructure manager have established their safety management system and can meet the requirements laid down in UTPs and other relevant OTIF regulations and in national rules in order to control risks and provide international transport services safely on the network concerned.
- VII. Set out rules for the issuing of safety certificates, conditions for validity and for the responsibilities and competences of the certifying authorities.
- VIII. Oblige safety certificate holders to issue annual safety reports to the certifying authorities.
- IX. Establish a mechanism for informing the Organisation of the safety certificates which have been issued, their content and the validity of those certificates.
- X. Define harmonised formats for safety certificates.
- XI. Define implementing provisions for all of the above.

## **5 PLANNING**

(where and when will the group meet and when will it be expected to deliver results)

t.b.d.

## **6 GROUP COMPOSITION**

(who will be in the group and how is it structured)

t.b.d.

## **7 REPORTING AND CONTROL REQUIREMENTS**

(how will the subgroup report to the WG TECH)

t.b.d.