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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.

0. 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.

Decisions taken by the Secretary General or the Committee of Technical Experts on derogations in accordance with this Annex shall, unless otherwise indicated, enter into force on the day after their publication.

1. 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.

~~This Annex applies to derogations related to subsystems situated or used on the territory of Contracting States which are neither Member States of the European Union nor States applying Union legislation as a result of international agreements with the European Union.~~

3. PROCEDURE

Article 9

3.1 In the absence of relevant specific cases a Contracting State need not apply one or more structural or functional UTPs in accordance with this


| a Member State

| TSIs

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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 UTP Article 8 § 8 are NOT included; derogations cannot be made to general UTPs (i.e. those with an abbreviation UTP GEN-x).

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

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<i>OTIF regulations</i>	<i>Corresponding text in EU regulations²</i>	<i>EU ref.</i>
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 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);	Article 1(1) 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 UTP is not compatible with those of the existing subsystem;	TSIs	
(c) for a proposed new subsystem or for the proposed renewal or upgrading of an existing subsystem in the territory of that Contracting 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	Member State rest of the Community;	
(d) for any proposed renewal, extension or upgrading of an existing subsystem, when the application of these UTP would compromise the economic viability of the project and/or the compatibility of the rail system in that Contracting State;	TSIs 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 UTPs;	TSIs;	
(f) for vehicles coming from or going to third countries, the track gauge of which is different from that of the main ³ 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 Stat	paragraph 1(a) TSI each Member State	3.

³ "main" meant 1435 mm gauge as the Directive was adopted

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<i>OTIF regulations</i>	<i>Corresponding text in EU regulations ²</i>	<i>EU ref.</i>
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.	Commission	
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 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 B. without delay.	1(a), (c) and (e) the Commission inform the 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 ⁴ 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 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 Contracting State may apply the alternative provisions referred to in Annex B.1 to this Annex B.	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 Commission's decision Member State Annex IX.	5.
3.6 All Contracting States shall be informed of the results of the analyses and of the outcome of the procedure set out in the paragraphs 3.4 and 3.5.	Member States 4 and 5.	6.

4. OTHER PROVISIONS

~~Decisions on derogations taken in accordance with this Annex shall not be considered as modification of APTU and/or ATMF in the sense~~

⁴ ~~Decisions on derogations taken in accordance with this provision are not modifications of the Convention in the sense of its Article 35. Only those States which apply the UTP provision(s) subject to the derogation can vote.~~

⁵ ~~Article 9 of APTU is related to provisions included in UTPs and therefore not applicable to decisions taken in accordance with this Annex on a specific derogation – neither is it applicable by analogy. ATMF Article 6 § 4 concerning technical admission by each Contracting State does apply in the case of derogation and each Contracting State decides whether to accept the derogation for its territory.~~



OTIF

REQUIREMENTS AND PROCEDURE FOR DEROGATIONS FROM APPLICATION OF UTP(S) RELATED TO A STRUCTURAL OR FUNCTIONAL SUBSYSTEM

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~~of Article 35 §§ 3 and 4 of the Convention.~~⁵

~~However, when the Committee of Technical Experts takes decisions according to this Annex, only Contracting States⁶ shall be entitled to vote.~~

*Corresponding text in EU regulations*²

EU ref.

⁶ ~~See definition of Contracting State in ATMF Article 2 e). A Member State may in accordance with APTU Article 9 declare not to apply a certain UTP or parts thereof; a Contracting State which do not apply this Annex (by exclusion in the scope) is in analogy with COTIF 1999 Article 20 § 2 excluded from voting.~~

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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
- (b) A file, annexed to the letter, comprising at least:

| Commission

— [indication of those other Contracting States in which the subsystem/project subject to the derogation will be requested admitted,](#)

- 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) (or their parts) for 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) 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 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.

| TSIs


| Article 9(1)(a)

| Member State

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 ⁷

⁷ The Committee set up in accordance with 2008/57/EC Article 29 (the Committee RISC)

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Explanatory remarks

Introduction

A condition for the technical admission of a subsystem/project is that it meets the essential requirements (UTP GEN-A) and the applicable provisions in the structural and functional UTPs which are implementing 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 derogation from the provisions non-complied with in those UTP(s) is granted by the Organisation in accordance with this Annex B to ATMF.

However, if derogation from a UTP is requested, the derogation must be justified and demonstrate that the alternative solution planned will also meet the essential requirements.

Scope

This Annex B to ATMF applies in the case where derogation from one or more structural or functional UTPs is necessary as 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. Annex B contains the procedure and conditions for a Contracting State's submission of a derogation request to the Organisation represented by the Secretary General which evaluates the derogation request and informs the Committee of Technical Experts thereof; in some cases specified in section 3.5 of Annex B, the Committee of Technical Experts has the competence to decide on the requested derogation.

The procedure for an applicant's (e.g. a manufacturer or a railway undertaking to a Contracting State) request to a Contracting State for 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 therefore will need derogation(s) is not regulated by this Annex B. The procedure for an application for a technical admission is regulated in ATMF and applicable national regulations. ATMF Article 10 § 5a concerning non-discrimination applies also to derogations, and a Contracting State's decision on a derogation may never depend on who the applicant or the manufacturer is.


A request for derogation based on the same justification, and the grant of it, may cover a project consisting of a serie of identical subsystems (such as vehicles) to be technically admitted at the same time.

When a subsystem/project depends on derogation then ATMF Article 6 § 4 applies, and in this case the subsystem/project must be admitted by all the Contracting States where it is requested to operate. However, only the first admitting Contracting State shall submit a derogation request in accordance with section 3.2 and Annex B.1 (the file) of this Annex B, except if the justification for derogation in some hypothetical cases might be different for the Contracting States in question. The grant of the derogation will be issued to all the Contracting States indicated in the file.

From which UTPs can be derogated?

Derogations from UTPs concerning general provisions (UTP GEN-x where x may be A (essential requirements), B (list of subsystems), C (requirements to the Technical File), D (Assessment modules), etc.) cannot be made. Neither can derogations be made in general to Interability Constituents (IC) as such. But the project/subsystem in which an IC which does not comply with the applicable UTP(s) is actually incorporated might be granted derogation.

ATMF is an international regulation which (contrary to EU regulations) does not apply to subsystems used exclusively in domestic traffic (unless a Contracting State might decide so). Therefore derogations according to this 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 part of energy (UTP ENE) and control command systems (UTP CCS) and functional subsystems such as operation (UTP OPE) – will, when having interfaces to the rolling stock used in international traffic, need to be complied with in accordance with ATMF Article 3, 6 and 8 in order to admit such rolling stock. Derogation can also be requested from provisions in the UTPs for structural immovable subsystems.

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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. Contrary thereto, is a derogation based on a Contracting State's specific justified request to the Organisation for not applying the applicable UTP(s) to a certain subsystem/project which it has the intention to admit.

When implementing a project, the following questions should be asked in the following order:

- (a) is it possible to apply the technical specifications in the applicable structural or functional UTPs chapter 4 and 5?
- (b) if not, is there a specific case specified in the UTP?
- (c) if not, is this a case for request of derogation from the applicable UTP(s)?
- (d) if not and if it is an upgrading/renewal project, what part of the UTPs technical specifications can be applied? (In some cases, the implementation strategy of a UTP (chapter 7) may have provisions related to this subject.)

In the cases (a) and (b) the Contracting State will be able to take decisions without intervention from the Committee of Technical Experts or other Contracting States. In cases (c) and (d) the Committee of Technical Experts and the other Contracting States will have access to the information and, in some cases, will be able to intervene:

- either through a decision in the Committee of Technical Experts,
- or through a bilateral discussion (Secretary General and relevant Contracting State).

In cases (c) and (d), the partial application of the UTP is not recommended in the case of infrastructure and track-side equipment, because this may hamper the free movement of trains for a long period. Partial application of a UTP in the case of rolling stock is less onerous as it affects only to the keeper of the vehicle and the railway undertakings using it. Finally, the provision of information requested under ATMF Article 10 § 11 is valuable in determining both the future developments/revisions of the UTPs and the progress of interoperability. It also allows the Committee of Technical Experts to verify the correct application of ATMF.

Annex B.1

The term “*work, goods and services*” means “*the subsystem/project (what is to be done)*”, “*the subject (e.g. a locomotive, a freight wagon or line of infrastructure, etc.)*” and “*the functions (in the case of operational UTPs concerned)*”.


Derogation procedure

When the project need derogation from one or more UTPs, the following “itinerary” should be applied:

- 1) (a) The applicant submits in accordance with national regulations a derogation request to the Contracting State (the competent authority) where he intends to apply for an OTIF technical admission (Certificate) for the subsystem/project that needs derogation. In the derogation request must be demonstrated how the essential requirements will be met instead of through 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) In the case where a requested derogation concerns more than one Contracting State, the applicant shall (in his own interest) indicate those other Contracting States in Annex B.1 (the file);
 - (c) The derogation request may (in the applicants own interest of not to waste his resources) be submitted to and discussed with the competent authority(ies) at an early stage of the project.
- 2) The Contracting State evaluates, and if necessary compiles the request, and submits it together with its evaluation in accordance with this Annex B to the Secretary General.

The Contracting States concerned by the derogation should coordinate their evaluations.

- 3) The Secretary General evaluates the request from the Contracting State(s) and decides in accordance with section 3 of this Annex B to ATMF, and informs the Committee of Technical Experts; if prescribed in section 3 the Committee of Technical Experts takes a decision.

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- 4) The Secretary General informs the requesting Contracting State and the other Contracting States indicated in Annex B.1 of the outcome of the derogation procedure, including possible recommendations and conditions.
- 5) The Contracting State inform the applicant that the derogation can be used for his subsystem/project in question for the technical admission in accordance with ATMF Article 6 § 4.
- 6) Each Contracting State indicated in Annex B.1 evaluates whether the subsystem/project complies with its applicable national technical requirements (rules) notified in accordance with APTU Article 12.
- 7) The Contracting State(s) issues the COTIF Technical Certificate(s) – including the relevant conditions for its validity.