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|  OTIF | REQUIREMENTS AND PROCEDURE FOR DEROGATIONS FROM APPLICATION OF UTP(S) RELATED TO A STRUCTURAL OR FUNCTIONAL SUBSYSTEM | | | ATMF – Annex B Page 1 of 10 |
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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.

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.


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

~~a) rolling stock 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 with the European Union and~~

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

³ Article 9 of Directive 2008/57/EC as referred to in footnote 2.

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OTIF regulations

Corresponding text in EU regulations ²

EU ref.

~~b) other subsystems situated 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 with the European Union, used only by the rolling stock subject to point a) of this paragraph;~~

~~such derogations are regulated by the applicable Community ³ and national legislation.~~

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 in accordance with this

| TSIs

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~~ is notified (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~~

(c) for a proposed new subsystem or for the proposed renewal or upgrading of an existing subsystem in the territory of that 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 rest of the Community;⁴

~~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;

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

UTPs


| TSIs

would compromise the economic viability of the project and/or the compatibility of the rail system in that

Contracting State;

| Member State;

⁴ Separated or isolated networks do not allow international traffic; therefore a derogation for such reasons is not in the scope of the OTIF regulations.

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| <i>OTIF regulations</i> | | <i>Corresponding text in EU regulations ²</i> | <i>EU ref.</i> |
|---|--|--|----------------|
| (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 ⁵ 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 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 | | 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 | 5. |

⁵ When the Directive was adopted, "main" referred to the 1435 mm gauge.



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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.

| *Corresponding text in EU regulations* ²

EU ref.

| Member State

| Annex IX.

3.6

All

Contracting 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.

| Member States

| 4 and 5.

6.

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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

- 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) 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) 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 ⁶

⁶ The Committee set up in accordance with Article 29 of 2008/57/EC (the RISC Committee)

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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 on the parties concerned.

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 **technical** 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 some cases 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 ATMF. Annex B to ATMF contains the procedure and conditions for a Contracting State to ~~communicate~~request a derogation ~~from~~to the Organisation, represented by the Secretary General. The Organisation ~~assesses~~analyses the ~~request for~~ derogation and informs the Committee of Technical Experts. In ~~some~~ 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 ~~requested~~communicated derogation.

The procedure for an applicant's (e.g. a manufacturer or a railway undertaking ~~of~~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 ~~at the same time~~.

When a subsystem/project depends on a derogation, ATMF Article 6 § 4 applies, and in this case the subsystem/project must be admitted by all the Contracting States where it is intended to be operated. However, only the first admitting Contracting State needs to submit a request for derogation in accordance with section 3.2 and Annex B.1 to ATMF (the file) ~~of this Annex~~, unless the justification for the derogation

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might, in some hypothetical cases, be different for the Contracting States in question. The derogation will be granted to all the Contracting States indicated in the file.

EU

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, as reflected in the scope of ~~this~~ Annex B to ATMF:

- 1) If the vehicle is to (is requested to) operate 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 (to be) restricted to operating 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 Secretary General and the European Commission should cooperate with a view to reaching a common position regarding the request for derogation.
- ~~3) If the vehicle is to (is requested to) operate between (at least) one EU Member State and (at least) one non-EU Contracting State, then COTIF applies. In this case, Annex B to ATMF applies and a Contracting State's application for a derogation shall be submitted to the Secretary General. The Secretary General shall inform the European Commission of the derogation request and the EU may, in the cases where section 3.5 applies i.e. if the derogation is subject to 3.1(b), (d) or (f) give a coordinated position in accordance with its exclusive competence on behalf of the EU Member States to the Committee of Technical Experts when the Committee decides.~~


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) ~~x, where x may be A (essential requirements), B (list of subsystems), C (requirements for the Technical File), D (Assessment modules), etc.)~~, are not permitted.⁷ Neither can derogations generally be granted for Interoperability Constituents (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 ~~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 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.

⁷ In EU law, these COTIF regulations have their parallel not in TSIs, but in “higher level” regulations, such as EU directives.

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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. 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 in the following order:

- (1) 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 whether Annex B to ATMF needs to be applied.
- (2) 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.
- (3) 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.
- (4) Is a mandatory specific case specified in the UTP for the particular CS? If yes, then the provisions as set out in the specific case need to be implemented.
- (5) Is it possible to apply the technical specifications in chapters 4 and 5 of the applicable structural or functional UTPs, with the exception of mandatory specific cases? If yes, the UTP should be applied.
- (6) Is a voluntary specific case included for the parts of the subsystem for which the UTP cannot be applied; If yes, this specific case should be applied. If not, a derogation from the applicable UTP(s) should be requested in accordance with section 3.

The alternative provisions covering the specific case are either included in the UTP, or are covered by National Technical Rules.

~~In 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 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 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

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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 ~~this~~ 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.

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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.

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