

Uniform Rules concerning the Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic (APTU)

Explanatory Report

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Explanatory Report ¹⁰

General Points

Background

1. Within the framework of the mandate of the Third General Assembly (14 – 16.11.1995) of the Intergovernmental Organisation for International Carriage by Rail (OTIF) concerning the revision Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, the Central Office also dealt with the problem of the technical admission of railway vehicles and the validation of technical standards applicable to rail stock. In future, it will no longer be possible to grant to the rail undertakings the competence to legislate in a mandatory manner in these areas, as is de facto currently the case in numerous States. To avoid repetition, reference is made to the following documents:
 - Explanatory report on the draft of a new COTIF (Annexes 3 to 4 to the circular letter of 30.8.1996, A 50.00/517.96)
 - General Assembly documents AG 4/5.3 (aim of the Organisation, validation of technical standards) and AG 4/5.4 (aim of the Organisation, uniform procedure for Technical Admission of Railway Material) of 2 June 1997, submitted to the Fourth General Assembly
 - Explanatory report on COTIF in its new version
 - Explanatory report on the Uniform Rules concerning Technical Admission of Railway Material Used in International Traffic (ATMF – Appendix G to the Convention)

2. The Fourth General Assembly of OTIF:
 - had noted that “technical harmonisation, in as wide a geographical scope as possible, is a fundamental task in enabling the rail sector to be capable of undertaking international transport without obstacles”
 - had considered that “for the devising of technical standards, it is essential to have recourse to the expertise and experience of the relevant organisations”
 - had instructed “the Central Office and Revision Committee to examine, in particular, and in collaboration with the other organisations involved, the problems of the validation of technical standards in the rail sector and of the technical

¹⁰ The articles, paragraphs, etc. which are not specifically designated are those of the APTU Uniform Rules; unless otherwise evident from the context, the references to the reports on sessions not specifically identified relate to the sessions of the Revision Committee.

admission of railway material used in international traffic, in order to present for the information of the General Assembly the solutions which are possible at international level”.

3. In executing this mandate, the Central Office invited technical experts to participate in a meeting which was held in Bern on 2 and 3 December 1997. On the basis of the results of these deliberations, the Central Office prepared a draft “Uniform Rules concerning the Recognition and Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions Applicable to Rolling Material Intended to be used in International Traffic (APTU – Appendix G ¹¹ to the Convention)”. This draft was sent by the circular letter of 19 December 1997 to the governments of the Member States and to the interested international organisations and associations.
4. The Revision Committee examined this draft in its fifteenth session (2 – 6.3.1998). Although a quorum was present, the Revision Committee conducted only indicative voting, since the texts that had been dealt with were to be re-examined in the light of the proposals of the European Commission for technical harmonisation in so-called conventional rail traffic, announced for the autumn of 1998 (see No. 15). The unanimous opinion was that it is necessary to avoid any divergence between Community law and the law that is to be applicable in future within the framework of OTIF (see Nos. 15-22).
5. In its eighteenth session (25 – 28.5.1998), the Revision Committee conducted a second reading of the APTU Uniform Rules, but again for indicative purposes only, particularly since the necessary quorum was not achieved (16 of the 39 Member States were represented).
6. Following completion of the second reading, other substantive proposals were submitted in the course of the drafting work. These proposals were dealt with in two sessions of the Revision Committee (twenty-second session, 1 – 4.2.1999 and twenty-third session, 23.3.1999).
7. The Fifth General Assembly (26.5. – 3.6.1999) received approximately a dozen submitted proposals and suggestions, sometimes identical in content, from the States, the international organisations and associations and from the Central Office. These proposals and suggestions resulted in amendments to Articles 2, 3 and 8 (see No. 2 of the remarks relating to Article 2, No. 2 of the remarks relating to Article 3 and no. 2 of the remarks relating to Article 8). The texts, amended thus, were adopted unanimously, less one abstention, by the General Assembly (Report on the Fifth General Assembly, p. 184).

Basic concept

8. It is necessary to distinguish between, on the one hand, the devising of uniform technical prescriptions and technical standards and, on the other hand, validation. The devising of technical standards (standardisation) must not and cannot come within the remit of OTIF. Rather, the devising of technical standards must remain within the scope of competence – but not necessarily the exclusive competence – of the existing standardisation bodies, such as the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC), the European Telecommunications Standardisation Institute (ETSI), etc., in collaboration with the rail transport undertakings, the infrastructure managers and the manufacturers of railway material, in order to benefit from the expertise of the latter.
9. The devising of uniform technical prescriptions for the construction and operation of railway material, which do not have the character of technical standards, continue to come within the remit – but again, not necessarily exclusively – of the associations of the rail transport undertakings, infrastructure managers and manufacturer of railway material (e.g. the International Union of Railways – UIC, the Organisation for Railways Co-operation – OSJD and the Union of European Railway Industries – UNIFE).
10. Apart from their Annexes, the APTU Uniform Rules contain rules of procedure. Their principal purpose is the validation or adoption and introduction into the Annexes of the APTU Uniform Rules of the technical standards and uniform technical prescriptions devised by the above-mentioned bodies. The technical standards and uniform technical prescriptions listed in the Annexes constitute the substantive bases for the construction and operation/use of railway material and for the admission procedure in accordance with the ATMF Uniform Rules (Appendix G to the Convention).
11. It is the APTU Uniform Rules which create the necessary preconditions for uniform regulation of the procedure according to which the authorities of the Member States undertake technical admission of vehicles and other railway material intended to be used in international traffic. As a result, a technical admission granted in one Member State will be recognised by the other Member States of OTIF without the need for new procedures. A common basis for the procedure of technical admission of railway material can only exist if mandatory uniform standards and technical prescriptions are created in all the Member States of OTIF for the construction and operation/use of railway material.
12. The validation of technical standards and the adoption of uniform technical prescriptions, as a mandatory legal basis for the approval procedure, must therefore be performed at state level, with OTIF as the appropriate Organisation.

13. Due to the decision of the Fifth General Assembly, according to which the Committee of Technical Experts can only adopt, without amending, or reject but not amend in any case, not only technical standards, but also uniform technical prescriptions (Article 20, § 3 COTIF), terminological distinction between “validation” and “adoption” loses its meaning to a large extent. That notwithstanding, the General Assembly did not make editorial amendments.

Relations between OTIF and the European Community (EC)

14. On 23 July 1996, the Council of the EC adopted the Directive 96/48/EC on the interoperability of the trans-European high-speed rail system. This directive is based on Article 129 D, indent 3 of the EC Treaty, in the terms of the Maastricht Treaty.
15. In the course of recent years, the European Commission, in its various publications dealing with transport policy, has repeatedly expressed its intention to submit proposals on the subject of the harmonisation and the development of technical specifications in the area of conventional rail traffic also. This was confirmed by the representative of the European Commission who participated in the deliberations concerning the drafting of the APTU Uniform Rules and the ATMF Uniform Rules within the Revision Committee. The publication of the EC’s ideas was planned for October 1998, but had still not taken place by the closure of the Fifth General Assembly.
16. In the opinion of the large majority of the Member States and the Central Office, it is necessary in any case to avoid conflict or incompatibility between the system which the EC plans to develop and the concept devised within the framework of OTIF.
17. Irrespective of the problem of whether, and to what extent, the provisions of the EC Treaty (Article 75, Article 100, Article 129 B to D) and compliance with the principle of subsidiarity allow the EC to regulate in detail the “technical complex” in the area of conventional rail traffic, the question in this case is not one of whether there is a conflict of competence between the EC and OTIF. Rather, it is a question at the very most of whether and, if applicable, to what extent the – currently – 15 Member States of the EC are still empowered to act autonomously in this area within OTIF from the point at which the EC exercises whatever powers it may have by presenting a proposed regulation, directive or decision. In this context, the question of whether and, if applicable, according to what terms and conditions the EC may accede to COTIF, is also of definite interest. The Central Office had prepared a draft text on this subject, which had been agreed by the Revision Committee (see Article 38 of the draft COTIF, General Assembly document AG 5/3.2 of 15.2.1999) and the principle of which was adopted by the Fifth General Assembly (see remarks relating to article 38 of COTIF). The fact of creating the possibility of accession does not in any way affect the question of whether the EC will make use of such accession.

18. The system devised within the framework of OTIF with a view to harmonising and developing technical standards and uniform technical prescriptions in the area of international rail traffic is limited, essentially, to a validation. It is intentionally not based on the methods and procedures provided for in the Directive 96/48/EEC. The system of the APTU Uniform Rules devised by OTIF does not create new agencies and bodies for the development and preparation of technical standards and uniform technical prescriptions, but leaves that task, as is currently the case, to the national or international standardisation agencies (e.g., CEN, CENELEC, ETSI) as well as to the industry – both manufacturers and users – and its associations (e.g., UIC, OSJD and UNIFE); on this point, there is a parallel with the above-mentioned directive.
19. Rather, with regard to the harmonisation and development of technical standards and uniform technical prescriptions, OTIF's concept can be compared to the "Agreement concerning the adoption of uniform technical specifications applicable to wheeled vehicles, equipment and parts which can be fitted or used on a wheeled vehicle and the conditions of reciprocal recognition of approvals issued in accordance with these specifications" of 20 March 1958 (Geneva Agreement of 1958 on homologation).
20. OTIF noted with interest the fact that in 1998, the EC, as such, became a contracting party of this agreement, and welcomes this. This case could serve as a precedent for the EC's accession to OTIF. This would apply particularly if the EC were to decide not to have its own system of harmonisation and development of technical prescriptions for conventional rail traffic (with the exception of high-speed traffic) and were to decide to participate actively in OTIF's work. The scope of application of the APTU Uniform Rules and the ATMF Uniform Rules, devised within the framework of OTIF, will extend beyond the geographical area of the EC. Including the current number of Member States of OTIF, it will extend over 39 States in Europe, North Africa and the Near East, provided, of course, that none of these States declares a reservation against these new Appendices (see Article 42 COTIF).
21. In the case of the Council Directive 96/49/EC on the reconciliation of the legislations of the Member States with regard to the carriage of dangerous goods, the EC has embarked on a course which was greatly approved of by the 39 Member States of OTIF and which has proved its worth. The EC has decided not to devise its own legal regulations of a technical nature in respect of the carriage of dangerous goods and has adopted in its entirety, in the form of an Appendix to the Directive 96/49/EC, the Regulations concerning the International Carriage of Dangerous Goods by Rail (RID) which, within OTIF, is continuously developed and adapted to scientific and technical progress in close co-operation with the United Nations Economic Commission for Europe (UNECE), in consideration of the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR).

22. The concept of the APTU Uniform Rules and the ATMF Uniform Rules, developed within the framework of OTIF, affects not only transport policy but also policy relating to transport safety, industry and competition. It is in line with the policy pursued hitherto by the EC in the areas of transport, industry and competition, namely: internal market, liberalisation of transport, legal harmonisation, technical harmonisation and neutrality in matters of competition.

Committee of Technical Experts

23. The procedure for validation of technical standards and adoption of uniform technical prescriptions has been designed to be as flexible as possible, following the example of the RID amendment procedure.
24. Decisions are taken by the Committee of Technical Experts as provided for in the Basic Convention (see Article 20 COTIF). Represented in this Committee, with a seat and voting rights, are all the Member States and any regional economic integration organisations which have acceded to COTIF (e.g. the EC).
25. The creation of the Committee of Technical Experts and the principal questions of procedure, including the provisions relating to the implementation of decisions, are regulated in the actual Convention (see Articles 20, 33 and 35 COTIF).

Technical Annexes

26. Originally, the objective of the work of the Central Office was to submit to the Fifth General Assembly texts which had been discussed and approved by the Revision Committee, not limited solely to the APTU Uniform Rules and ATMF Uniform Rules. However, provision was made to reinclude in the Annexes of the APTU Uniform Rules, as far as possible, after necessary rewording, the technical standards and prescriptions which already exist and to have these adopted by the Fifth General Assembly. This concerned, in particular, the International Convention on the Technical Unity of Railways (UT) of 1882/1938, the technical prescriptions of the Regulation for the Reciprocal Use of Wagons (RIV) and of Carriages and Vans (RIC) in International Traffic and the technical leaflets of the UIC, which are mandatory for railways.
27. The preparation of the Annexes of the APTU Uniform Rules does, however, involve a considerable work-load. In March 1998 the UIC declared that it was prepared to undertake the preliminary work. At the eighteenth session of the Revision Committee (25 – 28.5.1998), a representative of the UIC presented the preliminary work for the introduction of the technical prescriptions of the RIV and RIC and of the UIC technical leaflets into Annex 1 to 7 (currently 8, see No. 2 of the remarks relating to Article 8) of the APTU Uniform Rules. On the request of the Central Office, the UIC had prepared a document intended to give the Member States, by way of example, an idea of the manner in which the Annexes of the APTU Uniform Rules could be drafted. This document was available to the delegates to the Fifth General Assembly (General Assembly document AG 5/3.22 of 21.5.1999).

28. Since the Technical Annexes contain provisions whose adoption and amendment comes within the exclusive scope of competence of the Committee of Technical Experts, this work did not affect the course of the work for the preparation of the decisions of the General Assembly.
29. The majority of the work connected with the preparation of the Annexes of the APTU Uniform Rules cannot be completed until after the Fifth General Assembly. Due to the volume of these Annexes, a legal technical solution was adopted similar to that chosen in the revision of the CIV and CIM Conventions in 1980 for Annex I of Appendix B to COTIF 1980 (RID).
30. The Committee of Technical Experts, however, should decide upon the Annexes of the APTU Uniform Rules immediately after the entry into force of COTIF, in accordance with Article 8, § 3. The preparatory work relating to this should be undertaken by an appropriate agency, composed of representatives of governments and experts, which – subject to the granting of financial means by the Administrative Committee – would be able to sit formally as a Revision Committee, in accordance with the COTIF in force, but without taking definitive decisions.
31. The current provisions will remain until the new COTIF and all the new provisions come into force (see No. 26).
32. The medium to long-term objective would be to create a regulation which is broadly uniform in respect of the construction and operation of railway material, applicable to all railways in the Member States of OTIF.

In particular

Article 1 **Scope**

1. The draft regulates procedure with regard to:
 - the “*validation*” of technical standards, and
 - the “*adoption*” of uniform technical prescriptions

in general.

See, however, No. 13 of the General Points.

2. However, the group of experts mentioned in No. 3 of the General Points distinguished three stages in the standardisation procedure, namely, in addition to preparation and validation, that of “homologation”, i.e., the ascertainment, by an authority or by a body duly mandated by that authority, that a technical standard provides recognised technical regulations, the standard not being generally mandatory but having an effect of proof, which may have indirect legal consequences.

3. In current language, however, and particularly in the Geneva Agreement of 1958 on homologation (see No. 19 of the General Points) the term “homologation” is used in a different sense, namely, in the sense of an administrative procedure according to which the competent authorities declare, following an inspection, that a vehicle, item of equipment or parts conform to a particular regulation or a particular type. Consequently, the APTU Uniform Rules do not use this term.
4. Moreover, the opinions of the experts were divided with regard to the question of whether this stage of the validation of a technical standard should be regulated in the Uniform Rules or whether this question could possibly be regulated by means of the definition of the term “technical standard”. The opinions of the experts differed with regard to the question of whether and, if applicable, to what extent a statement or a regulation concerning the *preparation* of technical standards and specifications was useful and necessary in the APTU Uniform Rules. On this subject, see also the remarks relating to Article 2 concerning the definition of the term “technical standard”.
5. The Revision Committee had not judged it necessary to provide for, in addition to “preparation” and “validation”, such “recognition” of a technical standard in the APTU Uniform Rules (Report on the Fifteenth Session, pp 7-10; Report on the Eighteenth Session, p. 12).
6. Article 4 states that the *preparation* of technical standards and uniform technical prescriptions is not regulated by the APTU Uniform Rules.
7. The scope of application was defined fairly broadly, so as to include technical standards and uniform technical prescriptions not only for rail vehicles, their equipment and parts, but also for the infrastructure, the traffic safety and operational control systems and the railway material in general, insofar as these are intended to be used in international traffic (see the list of Technical Annexes in Article 8).

Article 2

Definitions

1. Some of these definitions are already included in other Appendices, e.g. the CUI Uniform Rules and the CUV Uniform Rules (“railway infrastructure”, “rail transport undertaking“, “infrastructure manager”), while other definitions are included only in the APTU Uniform Rules (“railway material”, “traction unit”, “technical standard”, etc.). In its nineteenth session, the Revision Committee decided to include all the definitions – when and insofar as necessary – in the respective Appendices and not in the basic Convention itself (Report on the Nineteenth Session, p. 17), since the definitions are not necessarily uniform, but may be worded differently according to the subject-matter of the respective Appendix.
2. “Technical prescriptions” is, in fact, a general, generic term which also, strictly speaking, includes the “technical standards”. However, the term “technical standards” is not understood or used in a uniform manner in current language. Consequently, the APTU Uniform Rules attempted to delimit these terms and designates as “technical prescriptions”

only those prescriptions which are not “technical standards” in the strict sense of the definition of letter k). On the suggestion of the European Commission, the Fifth General Assembly decided to incorporate into a “technical standard” the technical specifications prepared within the framework of the EC (Report, pp 125-127). This is intended to avoid confusion with regard to the technical regulations adopted or validated by European institutions. Since the EC “technical specifications” are not always the result of a standardisation in the sense of letter k), it would however have been more logical to incorporate these specifications in the “uniform technical prescriptions”.

3. The term “Contracting State” is used in this Appendix since the Member States of OTIF which have made a declaration in accordance with Article 42, § 1, first sentence, of COTIF, are not Contracting States in respect of the APTU Uniform Rules.

Article 3

Aim

1. This provision is intended to serve as a basis for the work of the Committee of Technical Experts. § 1 sets out the general objectives of the validation of technical standards and of the adoption of uniform technical prescriptions.
2. The Fifth General Assembly decided to introduce a clarification according to which only those technical standards or uniform technical prescriptions which had been prepared at international level may be validated (§ 2) (Report, p. 134).
3. Moreover, the interoperability of the systems and components necessary for international traffic is to be assured as far as possible (§ 3, letter a). A formulation similar to that of § 3, letter b), according to which the technical standards and uniform technical prescriptions are performance related, is also found in Article 1, indent 1 of the Geneva Agreement of 1958 on homologation (see No. 19 of the General Points). The experts of the Revision Committee were in agreement on the principle that the standards and uniform technical prescriptions were to be performance related so that technical development is not hindered. This problem, however, cannot be regulated in a general manner. Rather, it is a question of examining, for each standard and each technical prescription, whether its content meets this criterion, this being from the preparation stage.
4. This “subject-matter article”, however, does not have any legal effects with regard to the decisions duly taken by the Committee of Technical Experts. This means that decisions taken in proper and due form cannot be called into question again, in respect of their content, on the pretext that they do not correspond to Article 3.

Article 4
Preparation of technical standards and prescriptions

1. It is evident even from Article 1 that the APTU Uniform Rules *do not* regulate the *preparation* of standards or technical prescriptions, but only the *procedure* according to which the technical standards are validated and according to which the uniform technical prescriptions are adopted. Primarily, preparation remains the responsibility of the national or international standardisation agencies (e.g. CEN, CENELEC, ETSI, etc.) and of other competent institutions, particularly, the UIC, OSJD and UNIFE (§ 1).
2. Certain experts and delegates declared themselves to be in favour of introducing into the text a provision regulating the question of competence in respect of the preparation of prescriptions and, in particular, technical standards, or even in favour of the granting of an express mandate to certain agencies. On the other hand, other experts, supported by the Central Office and, ultimately, by the majority of the Revision Committee, considered that such a provision was inopportune and unnecessary. A regulation concerning the right to make applications (see Articles 5 and 6) is sufficient to guarantee that the work of the agencies and institutions in question are capable of bringing about the validation or adoption of uniform technical prescriptions. Following these deliberations, the Revision Committee adopted a very general wording (Report on the Fifteenth Session, pp 17-10; Report on the Eighteenth Session, p. 11/12). The Fifth General Assembly adopted, without change, the text decided by the Revision Committee.
3. § 2 is intended to clarify that the conventional standardisation process remains unchanged in respect of industrial products and procedures.
4. The Revision Committee was of the opinion that this provision is declaratory in nature. Its importance lies in the fact that it expresses clearly the division of the work between, on the one hand, preparation, and on the other hand, validation or adoption (Report on the Eighteenth Session, p. 12).

Article 5
Validation of technical standards

1. This Article, in addition to Article 6, contains the essential provision of the APTU Uniform Rules.
2. The Central Office had raised the question of whether it was necessary to distinguish between, on the one hand, “technical standards” as a restricted term and, on the other hand, “uniform technical prescriptions” as a more general term. The Central Office was inclined to take as a basis the example of the Geneva Agreement of 1958 on homologation (see No. 19 of the General Points). It considered that it was sufficient to make provision only for a regulation concerning the “adoption of uniform technical prescriptions” without distinguishing between “technical standards” and “uniform technical prescriptions”. However, a more extensive wording of provisions was presented in the Central Office draft of 19 December 1997, so that the Revision Committee could better judge this question.

The Revision Committee considered that a distinction was appropriate (Report on the Fifteenth Session, pp 12-16; see also No. 13 of the General Points) and, consequently, adopted the definitions included in Article 2, letters k) and l), as well as the texts of Articles 5 and 6.

3. § 1, letter d) refers in particular to the UIC, but does not exclude other railway organisations such as the OSJD, and other associations, such as UNIFE.
4. Each State which is party to the APTU Uniform Rules is free to decide the manner in which it transposes into national law the obligations of international public law resulting from the validation of a technical standard.
5. According to Article 20, § 3 of COTIF, the Committee of Technical Experts can only either validate technical standards or refuse to validate them, but it cannot amend these standards on the occasion of a validation. The reason for this is that, before being adopted as such, these technical standards have already been submitted to a certain procedure (see the definition given in Article 2, letter k), as well as No. 4 of the remarks relating to Article 20 COTIF.
6. In the interest of clarity, § 2 refers, with regard to the decision-making procedure within the Committee of Technical Experts and the entry into force of these decisions, to the relevant articles of COTIF.

Article 6

Adoption of uniform technical prescriptions

1. On this subject, see No. 8 of the General Points, No. 2 of the remarks relating to Article 2 and Nos. 2 and 6 of the remarks relating to Article 5.
2. In this case, likewise, each State which is Contracting State of the APTU Uniform Rules is free to decide the manner in which it transposes to national law the obligations of international public law resulting from the adoption of uniform technical prescriptions.
3. In keeping with the Central Office draft, Article 20, § 3 of COTIF, in the terms decided by the Revision Committee, did not provide, in respect of the technical prescriptions, and contrary to that which had been provided in respect of the standards, that the Committee of Technical Experts could only validate them without change or refuse to validate them. On the contrary, the Committee would be able to decide amendments, if necessary, before adopting a uniform technical prescription. This difference was explained by the fact that, in this case, the work of the Committee is not preceded by a procedure comparable to the standardisation procedure. The Fifth General Assembly, however, decided not to treat technical standards and uniform technical prescriptions differently (Report, pp 41-44 and Nos. 3 to 5 of the remarks relating to Article 20 COTIF).

Article 7
Form of applications

This is a regulatory provision intended to facilitate the appraisal of applications by the Committee of Technical Experts. Compliance with this provision is in the interest of the applicants.

Article 8
Technical Annexes

1. § specifies the areas in which technical standards and uniform technical prescriptions can be devised. This provision thus creates the framework of the competence of the Committee of Technical Experts to validate technical standards and to adopt uniform technical prescriptions in a very wide variety of areas and to make these the essential basis for the technical admission of railway material (see ATMF Uniform Rules).
2. The Fifth General Assembly decided to introduce an additional annex, namely, an annex concerning technical standards and uniform technical prescriptions concerning systems of information technology (Report, p. 135).
3. Although the Annexes provided for in § 1, letters a) to g) essentially cover all the necessary areas, the purpose of letter h) is to guarantee the necessary flexibility and to allow, if need be, the future introduction of an additional annex through the simplified procedure (Article 35 COTIF) (Report on the fifteenth Session, pp 25-27).
4. The preparation of the Technical Annexes according to Article 8 will involve a considerable work-load. The work relating to the Technical Annexes cannot be undertaken until after the Fifth General Assembly although, according to § 2, first sentence, the Annexes constitute an integral part of Appendix F and thus of COTIF itself. For the text of these Annexes, a legal technical solution has been adopted similar to that chosen in the revision of the CIV and CIM Conventions in 1980 for Annex I of Appendix B to COTIF 1980 (RID) (see also Nos. 28-32 of the General Points, as well as Article 6, § 2 of the 1999 Protocol and Article 20 COTIF).

Article 9
Declarations

1. This does not relate to a declaration in the sense of Article 42, § 1, first sentence, of COTIF, concerning the APTU Uniform Rules in their entirety, but to reservations, in the sense of Article 42, § 1, second sentence, of COTIF, in respect of various Annexes of these Uniform Rules or in respect of certain provisions of these Annexes, i.e., concerning certain validated technical standards or certain adopted uniform technical prescriptions.

2. In view of the differences that exist with regard to technical equipment in the Member States of OTIF, the possibility of such declarations is of practical interest, although it goes against the objectives mentioned in Article 3. Even a harmonisation which does not extend to all of these areas in all of the States which are party to the Convention can result in an improvement of the current situation with regard to interoperability.
3. The declarations in accordance with Article 9 can be withdrawn at any time.

Article 10 **Abrogation of Technical Unity**

1. As mentioned in Nos. 10 and 26 of the General Points, the existing technical standards and uniform technical prescriptions, particularly the provisions of the UT, are to be included in the Annexes of the APTU Uniform Rules.
2. The managing administration of the UT, the Swiss Government (Federal Transport Office) has been involved in the work relating to the APTU Uniform Rules and has approved this approach in principle (see Federal Transport Office letter of 24.4.1997 addressed to the States which are party to the UT).
3. The UT is a convention under international public law which is still in force and mandatory for the States which are party to it. Even if its importance is no longer comparable to that which it had at the time of its adoption and at the time of the subsequent amendments/supplements – the last version dates from 1938 – this Convention under international public law has never been abolished or annulled. Some of its content has been included in other agreements, in particular, in the RIC and RIV which, however, as agreements between the rail administrations/companies, do not have the same legal status and do not bind the States which are party to the UT, but only the participating railways.
4. The following States were party to the UT at the time of the last formal amendment in force (1938 version, entry into force 1.1.1939): Belgium, Bulgaria, Czechoslovakia, Denmark, France, the German Reich, Greece, Hungary, Italy, Luxembourg, The Netherlands, Norway, Poland, Romania, Sweden, Switzerland, Turkey, Yugoslavia.
5. The 1938 version of the UT was also intended to be mandatory, from the point of view of international public law, for the successor states of the German Reich, Czechoslovakia and Yugoslavia, in accordance with the Vienna Convention of 1969 on treaty law. According to this convention, the 1938 version of the UT is also in force in Austria, Croatia, the Czech Republic, the Federal Republic of Yugoslavia, Germany, Macedonia, the Republic of Bosnia and Herzegovina, the Slovak Republic and Slovenia.

6. Consequently, 22 of the 39 member States of OTIF are also States which are party to the 1938 version of the UT. The Federal Republic of Yugoslavia, as one of the successor States of the former Yugoslavia, is the only State which is party to the 1938 version of the UT but is not a Member State of OTIF.
7. Within the framework of the broadened objective of OTIF (see Article 2, § 1, letters c) and d) COTIF), it is planned to group together in the Annexes of the APTU Uniform Rules (and to develop on this basis) all the technical standards and uniform technical prescriptions which are of significance to international rail traffic.
8. The specifications of the UT are to be incorporated into the Technical Annexes of the APTU Uniform Rules so that, when the new COTIF, its Appendices and related Annexes come into force, the UT can be abrogated between the States which are party to it and the States which are party to the APTU Uniform Rules.
9. Since it is not guaranteed that all the States which are party to the UT will also be States which are party to the APTU Uniform Rules, and it is thus not guaranteed that these States might not make a declaration in accordance with article 42, § 1, first sentence, of COTIF, it will not be possible to abrogate the UT in all the States upon the entry into force of the Annexes of the APTU Uniform Rules (decision of the Committee of Technical Experts in accordance with Article 8, § 3 APTU), all the more so since it is not known whether the Federal Republic of Yugoslavia, as a State which is party to the UT, will at that time again be a member of OTIF and also a State which is party to the APTU Uniform Rules.
10. The Convention on the UT does not itself include any institutional provisions, e.g., with regard to amendments, entry into force or abrogation. According to the Vienna Convention of 1969 on treaty law, abrogation of the UT, or a regulation on primacy, can be introduced into a new convention. The 1999 Protocol and its Annex, COTIF in its new version with its Appendices, is such a new convention. A special act of international public law outside or in addition to the 1999 Protocol and the APTU Uniform Rules is therefore unnecessary.
11. Article 10 provides that, upon entry into force of the Annexes, decided by the Committee of Technical Experts in accordance with Article 8, § 3, *in all the states which are party to the UT*, the provisions of the UT are abrogated.

Article 11
Precedence of the Annexes

1. § 1 regulates the case in which not all the States which are party to the UT become Contracting States of the APTU Uniform Rules. Following the entry into force of the Annexes adopted by the Committee of Technical Experts in accordance with Article 8, § 3, the provisions of these Annexes take precedence in relations between the Contracting States of the APTU Uniform Rules over the provisions of the UT.

2. As mentioned in No. 26 of the General Points, it is planned to include in the Annexes of the APTU Uniform Rules, in accordance with Article 8, as far as is possible and following rewording, not only the UT, but also the corresponding provisions of the RIV and RIC Regulations and the UIC technical leaflets, which are mandatory for the railways. Due to the different legal basis – the UT is an agreement of international public law, whereas the RIV and RIC are agreements between the railways – no direct provision can be made by the APTU Uniform Rules for partial abrogation of RIV and RIC. Consequently, § 2 stipulates only the precedence of the Technical Annexes of the APTU Uniform Rules over RIV and RIC.