

## Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonized System of Classification and Labelling of Chemicals

Sub-Committee of Experts on the Transport of Dangerous Goods

21 November 2017

### Fifty-second session

Geneva, 27 November-6 December 2017

Item 11 of the provisional agenda

### Other business

## Status report on discussions on the scope of section 1.1.1.2 in the Model Regulations

### Transmitted by the expert of the Netherlands

### Background

1. At the fifty-first session, the Sub-Committee discussed document ST/SG/AC.10/C.3/2017/13 proposing exemptions for data loggers containing lithium batteries, and document ST/SG/AC.10/C.3/2017/22 in which more general exemptions for electrical energy storage and production systems were proposed. Although the proposal in document ST/SG/AC.10/C.3/2017/13 was provisionally adopted as amended, the Sub-Committee also agreed to discuss the issue more broadly as suggested by the Netherlands in informal document INF.27 (51<sup>st</sup> session) and reported in paragraph 59 of the report from the 51<sup>st</sup> session (ST/SG/AC.10/C.3/102):

*“The Sub-Committee agreed that the issues raised by the Netherlands in relation to the scope of 1.1.1.2 could be discussed intersessionally in order to broaden the approach, and the proposal made by the expert from Switzerland in ST/SG/AC.10/C.3/2017/22 could be discussed in this context. Delegations interested in participating in such work were invited to contact the expert from the Netherlands.”*

2. A number of interested delegates contacted the representative from the Netherlands. The representative of the Netherlands thanks all of those that have contributed to the discussions so far. This document summarises the work carried out and outlines the next steps of the work.

### Status update

3. The group discussed the goal of the work and the proposed work plan in a written round. The group agreed that the overall goal was to “determine the applicability of the Model Regulations with regard to dangerous goods that are transported but are not the consignment (see 1.1.1.1 and 1.1.1.2)”. The aim is to present a formal document containing the conclusions of the work and proposals for changes to the fifty-third session of the TDG Sub-Committee.

4. In order to have better overview of what sort of goods are transported without being the consignment, a number of examples of such goods were provided. These goods can be clustered into few categories based on use, some of which are comparable to existing exemptions in the Model Regulations and/or the modal regulations:

- Dangerous goods as a part of the means of transport and necessary for its propulsion or the operation of the (permanent) equipment of the means of transport, e.g. fuel, fire extinguishers, refrigerant gas for cooling units;
- Dangerous goods as a part of the means of transport necessary for operations other than propulsion or the operation of the means of transport or its equipment, e.g. portable fridges with refrigerants, stoves with propane tanks;
- Dangerous goods carried by drivers, conductors, shippers, pilots and other crew (for personal use), e.g. lithium battery containing telephones and computers, medicine, first-aid kits and hygiene products;
- Dangerous goods carried by passengers on cars, busses, trains, airplanes and ships, e.g. e.g. lithium battery containing telephones, computers and pacemakers, medicine, hygiene products, oxygen apparatus;
- Dangerous goods carried by private persons for private use in their private vehicles;
- “Other” dangerous goods that are transported but are not the consignment, e.g. GPS tracking systems and sensors on or in a packaging, or attached to a container or a railway car, tanks fitted with integrated computers system, solar panels and sensors, dry ice in packaged or in containers used for cooling, methyl bromide used for fumigation of cargo transport units, oxygen for transport of live aquatic animals.

5. The group has held one teleconference so far (6 November). Detailed minutes of the teleconference are included in the Annex to this document. In summary, the group agreed that the Model Regulations are intended for transport of dangerous goods that are carried as a consignment. This includes goods that are being traded but also other consignments such as empty uncleaned packaging, and even waste. The group agreed that goods such as GPS trackers with lithium batteries fall within the scope of the Model Regulations when carried as a consignment, but when placed on the frame of a rail vehicle or attached to a container, they are not considered a consignment and should therefore be excluded from the scope of the Model Regulations.

6. The group agreed that when the Model Regulations do not apply to goods because they are not a consignment, these goods should not be subject to any of the provisions of the Model Regulations. Excluding goods with conditions leads to complex regulations and could in addition have far-reaching consequences and bring under scope goods and operations for which the Model Regulations were not intended.

7. It was acknowledged that in the past, the Model Regulations had brought into scope items that are not consignments, such as fumigated CTUs (section 5.5.2) and substances used for cooling (section 5.5.3). Although addressing safety issues, these provisions extend the scope of the Model Regulations to areas that are outside the focus/scope of the Model Regulations since these sections are also applicable to non-dangerous goods.

8. The group agreed to continue the discussions during the 52<sup>nd</sup> session of the UN SCE TDG, e.g. in a lunch-time working group. The Dutch representative suggests examining whether and how the relevant parts of the Model Regulations e.g. section 1.1.1 can be adjusted through e.g. relocations of some provisions or additional text, to clarify the status of and provisions for consignments, non-consignments that are excluded from scope, and non-consignments/operational aspects/worker safety issues that in the past were brought into scope (e.g. current sections 5.5.2 and 5.5.3).

## Annex

### Summary of the 1<sup>st</sup> teleconference on the scope of sections 1.1.1.1 & 1.1.1.2 of the Model Regulations

- The group agreed that a clear line is needed on which goods fall under the scope of the Model Regulations and to which goods the Model Regulations do not apply. This will increase the clarity of the Model Regulations. It may also increase the efficiency of the meetings as we may spend less time on issues that are on the margins of the Model Regulations.
- The Model Regulations do not contain a definition of dangerous goods but description in 1.1.1.1 and 1.1.1.2 give guidance on the scope.
- The group agreed that the Model Regulations were developed and intended for transport of dangerous goods that are carried as a consignment (payload, load, cargo...). This includes goods that are being traded but also other consignments such as empty uncleaned packaging and containers and even waste.
- The term ‘payload’ was suggested as a possible term to describe the dangerous goods in scope, i.e. the goods that are offered for transport and that have been properly classified, packaged, marked, labelled, placarded, described and certified on a transport document and in a condition for transport (as described in 1.1.1.1). (load, cargo, consignment).
- The group agreed that goods such as GPS trackers with lithium batteries fall within the scope of the Model Regulations when carried as a consignment (payload, load, cargo...). However, when such goods are placed on the frame of a rail vehicle or attached to a container, they are not considered a consignment (payload, load, cargo...) and should therefore be excluded from the scope of the Model Regulations.
- The Model Regulations uses the terms ‘the Regulations do not apply to’, ‘are not subject to these Regulations’, ‘exemptions’ and ‘exceptions’ when limiting the scope and providing for deviations from the general rules. The distinction between these four terms is not entirely clear and there were different views whether ‘the Regulations do not apply’ means the same as ‘exemption’. A common understanding of these terms may increase the clarity of the Model Regulations.
- The group agreed that goods that are outside the scope of the Model Regulations because they are not consignments (payload, load, cargo...), should not be subject to any of the provisions of the Model Regulations. The Model Regulations do not apply to these goods. By subjecting such goods to provisions of the Model Regulations, the Model Regulations would still apply and this makes 1.1.1.2 contradictory and confusing.
- There is a concern with excluding goods from the scope of the Model Regulations via 1.1.1.2 while still subjecting them to some provisions of the Model Regulations. If such goods do not fulfil one or more of these provisions, these goods will come into scope. In that case, all relevant provisions of the Model Regulations will apply irrespective of whether the consignment is dangerous goods or not dangerous goods. A single GPS tracker on a container that does not meet the specified exclusion criteria could cause a whole containership carrying only non-dangerous goods to fall under the scope of all of the relevant provisions of the IMDG code even if the GPS tracker is not the goods being consigned. (See e.g. amendments to 1.1.1.2 provisionally adopted at the 51<sup>st</sup> UN SCE TG as reported in ST/SG/AC.10/C.3/102/Add.1 Annex II, Chapter 1.1).

- Bringing non-consignments (non-load, non-payload, non-cargo) under the scope of the Model Regulations would therefore greatly extend the scope. It was questioned whether the Model Regulations were the appropriate place for such provisions. It was also questioned whether those involved in transport of non-dangerous goods were aware of the relevant regulations on the transport of dangerous goods and whether they could be complied with. If not, then the safety benefit of these provisions will be limited.

- It was discussed whether the primary reason GPS trackers (as an example) should be excluded from scope was because of the low hazard or because of a more fundamental demarcation as a non-consignment (non-load, non-payload, non-cargo). Most agreed that these GPS trackers were not a consignment (payload, load, cargo...) and therefore not in scope.

- However, the current Model Regulations contain provisions that explicitly bring items that are not consignments (load, payload, cargo) into scope. The most notable ones are sections 5.5.2 and 5.5.3 on fumigated CTUs and substances used for cooling and conditioning, respectively. These sections are applicable irrespective of whether the consignment is dangerous goods or any other goods. It is not clear whether those involved with transport of non-dangerous goods are aware of the existence of these provisions in the relevant dangerous goods regulation. How effective are these provisions?

- Are the fumigants a consignment or a part of the transport operation? These provisions relate to routine activities of opening the doors of a fumigated transport unit that can lead to a hazardous situation for the worker.

- Section 5.5.2 on fumigants has been a part of the Model Regulations since before 1999. The group did not know the exact justification for including these provisions in the Model Regulations at the time but it is possible that no other suitable piece of legislation could be identified to host these provisions. It may be worth looking into the origin of these provisions to better understand them and the rationale for their inclusion.

- While the provisions in 5.5.2 and 5.5.3 address important safety issues, the downside of their inclusion is that the scope of the Model Regulations has been extended to areas that are on the border of or outside the focus/scope of the Model Regulations. During recent discussion on security, similar concerns about extending the scope to areas which were not the focus of the Model Regulations were brought up. We hesitate to make the Model Regulations a home to all provisions that would otherwise be homeless.

- It was discussed whether the provisions in 5.5.2 and 5.5.3 were located in the most appropriate place in the Model Regulations. Some restructuring of the Model Regulations might help clarify the status of these provisions and help distinguish between consignments (load, payload, cargo) that are the focus of the Model Regulations, non-consignments that are excluded from scope and non-consignments/operational aspects/worker safety issues that in the past have been explicitly brought into scope. Going through this exercise can help determine which provisions are applicable and to what.

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