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Working Party on the Transport of Dangerous Goods

Joint Meeting of the RID Committee of Experts and the
Working Party on the Transport of Dangerous Goods

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Agenda item 4 of the provisional agenda

INTERPRETATION OF RID/ADR/ADN

Examination of the provisions of 4.1.3.6.1 (b)

Transmitted by the Government of Germany^{1,2}

SUMMARY

<i>Executive summary:</i>	Clarification of the scope and application of 4.1.3.6.1 (b)
<i>Action to be taken:</i>	Clarify legal issues; consider amendment to 4.1.3.6.1 (b)
<i>Related documents:</i>	INF.29 (Netherlands) of the Joint Meeting in March 2009 ECE/TRANS/WP.15/AC.1/114, paragraph 24

¹ In accordance with the programme of work of the Inland Transport Committee for 2006-2010 (ECE/TRANS/166/Add.1, programme activity 02.7 (c)).

² Circulated by the Intergovernmental Organisation for International Carriage by Rail (OTIF) under the symbol OTIF/RID/RC/2009/26.

Introduction

1. At the Joint Meeting in March 2009, the Netherlands introduced informal document INF.29, raising issues over the interpretation and application of the provisions of 4.1.3.6.1 (b) to the use of particular pressure receptacles for particular liquid or solid substances.
2. The report of the Joint Meeting adds: “It was noted that 4.1.3.6, as currently worded, allowed the use of pressure receptacles built and approved in a country of manufacture other than the contracting parties to ADR, ADN or COTIF for the carriage of liquids and solids. Furthermore, for the interpretation of 4.1.3.6.1 (a), though it was unlikely that a pressure receptacle would be built in accordance with European standards in a country that was not a party to ADR, ADN or COTIF, Chapter 6.2 also covered UN pressure receptacles approved for RID/ADR/ADN carriage, for carriage not only of liquids and solids, but also gases, as set out in paragraph 4.1.1.16, even if they were approved in a country that was not a contracting party.”
3. In discussion, it should also be mentioned that this could not have been a definitive opinion and that the issues arising from application of 4.1.3.6.1, in particular sub-section (b), require thorough discussion.
4. The aim of this proposal is to prompt such a discussion.

Rationale for a thorough discussion

4.1.3.6.1 (a)

5. 4.1.3.6.1 (a) refers to pressure receptacles conforming to the requirements of Chapter 6.2. These are divided into UN pressure receptacles, which should conform to the requirements of sections 6.2.1 and 6.2.2, and other pressure receptacles - for simplicity's sake referred to here as RID/ADR pressure receptacles - which should conform to the requirements of section 6.2.1 read in conjunction with section 6.2.3 or 6.2.4. Moreover, 6.2.5 gives the competent authority the option of authorizing pressure receptacles deviating from the sections in question provided that they recognize a technical code and that they inform the OTIF and UNECE secretariats.
6. To facilitate a response to the following questions, it is important to note that pressure receptacles conforming to Chapter 6.2 are manufactured, equipped, tested and approved in accordance with harmonized provisions and that they bear a harmonized marking allowing the essential requirements met by the receptacle to be traced throughout the transport chain. For particular pressure receptacles provided for in section 6.2.5, it is possible to monitor adherence to the relevant requirements by consulting the technical regulations transmitted to the secretariats, if necessary upon request.

4.1.3.6.1 (b)

7. Application of the provisions of (b) is much more complex. This sub-section contains a reference to the (any) national or international standards on the design, construction, testing, manufacturing and inspection, as applied by the country in which the pressure receptacles are

manufactured. Moreover, there is no requirement that this country should be an OTIF member State/contracting party to ADR or ADN, nor that it should be a State applying UN Model Regulations or the IMDG Code. It is only stipulated that the general safety requirements should be met and that the zone in which the substances are carried should be subject to restrictions.

8. The following provisions in 4.1.3.6.2 to 4.1.3.6.9 stipulate other technical provisions or authorize specific equipment. However, they are worded so imprecisely that it is not completely clear whether they apply both to pressure receptacles conforming to Chapter 6.2 and to pressure receptacles conforming to other provisions in the country of manufacture, or only to one of these two groups.

9. Thus, with the best of intentions, 4.1.3.6.2 could be understood to mean that pressure receptacles conforming to Chapter 6.2 should be approved by the competent authority as indicated in Chapter 6.2 and that only other pressure receptacles conforming to 4.1.3.6.1 (b) may be approved by the competent authority of the country of manufacture. It is not legally clear as currently worded.

10. Nor is it clear whether 4.1.3.6.2 to 4.1.3.6.8 refer to both types of pressure receptacles. At first, they appear to refer to pressure receptacles not conforming to Chapter 6.2; later, they refer to carriage of liquid or solid substances and therefore - as throughout sub-section 4.1.3.6 - to both types of pressure receptacles again.

11. Furthermore, certain terms used (such as cylinders, pressure drums, competent authority) are defined in section 1.2.1 of RID/ADR/ADN; however, it is not clear whether these terms are used in the same way in States not OTIF member States/contracting parties to ADR or ADN. Thus, gas cylinders of more than 150 litres, for example, might be approved in these countries.

12. Certain requirements seem obsolete, such as those in 4.1.3.6.8 on refilling with a different substance, the provisions governing the filling of packagings with liquid or solid substances having since been amended and clarified to avoid dangerous reactions during carriage of different materials.

Legal issues

13. Pursuant to article 6 of ADR, only countries members of the Economic Commission for Europe (UNECE) may become contracting parties to ADR.* This is also the case for ADN, pursuant to ADN article 10. Only OTIF member States may join RID. States outside OTIF and UNECE may therefore not become member States/contracting parties.

14. Therefore, RID/ADR/ADN only applies to countries - and their authorities - that are member States/contracting parties. This poses the following legal issues:

* Note by ECE secretariat: This statement is incorrect. Pursuant to article 6, paragraph 2, all States Members of the United Nations may become Contracting Parties to ADR.

- A. In such a context, is it really possible to take decisions in accordance with RID/ADR/ADN that apply to and are to be enforced by States - and their authorities - if these (third) States are outside the scope of RID/ADR/ADN (third States)?
- B. If the answer to question A could be affirmative:
- How is the fairness of the rules ensured in third States?
 - How is application of the requirements of RID/ADR/ADN achieved in order to ensure that pressure receptacles manufactured in third States do not present safety problems when used for carriage in the territory of OTIF member States/ADR/ADN contracting parties?
 - How can safety and monitoring be improved to ensure that the rules and requirements applied in third States are transparent and traceable for member States/contracting parties?
- C. If the answer to question A must be negative:
- What consequences may be adduced from sections 6.2.1 and 6.2.2, 4.1.3.6.1 and possibly also other chapters of RID/ADR/ADN?
- D. Who verifies whether the requirements provided for in 4.1.3.6.1 (b) and subsequent sections are met?
- E. What authority of an OTIF member State/contracting party to ADR or ADN may, during checks conducted in accordance with section 1.8.1, for example, verify whether the requirements provided for in 4.1.3.6.1 (b) and subsequent sections are in fact met?
- F. What authority is competent to carry out the requirements of 4.1.3.6.6? An authority of an OTIF member State/contracting party to ADR, or an authority of a third State?
- G. Where - and how - may RID/ADR/ADN authorities obtain information on the standards referred to in 4.1.3.6.1 (b)?

Comment: This document does not address the approval of use by member States/contracting parties that are also member States of the European Union of pressure receptacles approved in third States for use for carriage in accordance with RID/ADR/ADN - an issue which poses other European legal issues, for example at the level of the internal European market.

Proposal

15. Taking account of technical safety considerations - irrespective, first, of clarification of the above-mentioned legal issues - seek the Joint Meeting's agreement on the following statements concerning application of 4.1.3.6.1 (a) (see (a) to (c) below) and (b):

(a) UN pressure receptacles conforming to sections 6.2.1 and 6.2.2 should only be approved by the competent authority/authorities, duly authorized under domestic law, of a State applying the version of sections 6.2.1 and 6.2.2 of the UN Model Regulations currently in force or, alternatively, of the IMDG Code;

(b) RID/ADR pressure receptacles conforming to section 6.2.1, linked to section 6.2.3 or 6.2.4 of RID/ADR, should only be approved by a competent authority of an OTIF member State/contracting party to ADR or ADN.

(c) Pressure receptacles conforming to section 6.2.5 of RID/ADR should only be approved by a competent authority of an OTIF member State/contracting party to ADR or ADN; however, pressure receptacles conforming to section 6.2.3 of the UN Model Regulations or of the IMDG Code and approved by the competent authority in accordance with (a) should be considered equivalent.

(d) The use for carriage in the RID/ADR/ADN applicability zone of pressure receptacles conforming to 4.1.3.6.1 (b) that are not manufactured in an OTIF member State/contracting party to ADR or ADN requires prior approval of the competent authority of the first member State/contracting party reached by the consignment. (Alternatively, of a member State/contracting party before first carriage within the RID/ADR/ADN applicability zone.)

16. In order to improve the application and transparency of the provisions of 4.1.3.6, the subsection should be carefully analysed and revised. Hence, establish a working group to report to the Joint Meeting at the earliest opportunity so that an amendment of RID/ADR/ADN for 2013 can be decided upon and the United Nations Expert Sub-committee of Experts on the Transport of Dangerous Goods duly informed.

17. In addition, move 4.1.3.7. This subsection relates to Intermediate Bulk Containers (IBCs) but appears between subsection 4.1.3.6, relating specifically to pressure receptacles, and subsection 4.1.3.8, relating to certain unpackaged articles. From the point of view of content, it would fit better in section 4.1.1, on packagings and IBCs.

Justification

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| Safety: | Safety would be increased thanks to legal clarity and transparency and enhanced monitoring of provisions. |
| Feasibility: | Thanks to enhanced legal clarity, applicability of the provisions to users and authorities would be simplified. |
| Practical application: | The impact can only be estimated once the legal issues have been clarified. |
