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Item 7 (a) of the provisional agenda

MISCELLANEOUS PROPOSALS FOR AMENDMENTS TO RID/ADR/ADN

Pending issues

Proposal to amend 2.2.9.1.10.5.2 (classification of environmentally hazardous substances)

Transmitted by the European Chemical Industry Council (CEFIC)^{1,2}

SUMMARY

Executive summary:	The purpose of this proposal is to remove a conflict between RID/ADR/ADN and the new European Union (EU) Regulation 1272/2008/EC on classification, labelling and packaging of substances and mixtures, and a disharmony between RID/ADR/ADN and the International Maritime Dangerous Goods (IMDG) Code, resulting from this.
Action to be taken:	Amending 2.2.9.1.10.5.2 Signing multilateral agreements ADR M205 and RID 2/2009.
Related documents:	None

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/2009/41.

Background

1. The EU Directives on classification, labelling and packaging of substances (Directive 67/548/EEC) and mixtures (Directive 1999/45/EC) are being replaced by the EU Regulation 1272/2008/EC (called “CLP-Regulation”) which is aligned to the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) to a large extent.
2. There is a difference however between the aquatic toxicity criteria of the current EU Council Directives and those of the new CLP-Regulation, which will affect the classification of a number of substances. Whereas GHS exempts substances with chronic toxicity data of >1 mg/l and acute toxicity data of > 1 mg/l completely of being classified as “environmentally hazardous”, the EU Directives did limit this to the non-application of R50/53 but not of R51/53, hereby maintaining the “N” classification.
3. The following example, taken from practice, illustrates this difference: a liquid substance with a L(E)C₅₀ value of 8 mg/l and a NOEC value of 2.7 mg/l has to be classified as “N” (R 51/53) according to EU Directive 67/548/EEC. However according to GHS and following the flowchart on the classification procedure for environmentally hazardous substances (RID/ADR/ADN 2.2.9.1.10.3) this liquid will be classified as “not environmentally hazardous”.
4. Such a non-classification for transport purposes is in conflict however with provision 2.2.9.1.10.5.2 of RID/ADR/ADN, which requires all “N” substances to be classified as either UN 3077 or UN 3082 (if they cannot be assigned to another entry). This means that in case one is already applying GHS for “handling” purposes i.e. applying the EU Regulation 1272/2008/EC, there is a conflict between the classifications for handling and for transport of the same substance.
5. Additionally there remains a disharmony between the classification in RID/ADR/ADN and the IMDG Code. Indeed such a substance is presently not classified as dangerous for transport by sea as the classification criteria of the 33rd Amendment to the IMDG Code do not consider this to be a marine pollutant. Due to the NOEC value of > 1 mg/l, this situation will not change when the 34th Amendment enters into force.
6. This disharmony in classification between RID/ADR/ADN and IMDG Code will lead to confusion and will delay the international harmonization aimed for by GHS and the UN Recommendations. It may prompt European industry into classifying such substances as dangerous goods of UN 3077 or UN 3082 for all modes of transport (which is allowed by Special Provisions 909 of the IMDG Code, A97 of the International Civil Aviation Organization’s Technical Instructions/International Air Transport Association’s Dangerous Goods Regulations and 146 of the United States’ Code of Federal Regulations 49 (CFR49), even if they do not meet the criteria of environmentally hazardous substances according to these regulations), but this may not be in line with all non-European overland modal regulations. Thus the disharmony may hamper interregional transports and complicate imports into Europe in the coming years.

Proposal

7. In order to allow industry classifying goods according to EU Regulation 1272/2008/EC (and thus GHS), CEFIC proposes amending 2.2.9.1.10.5.2 by adding the following at the end:

“unless they are classified as not environmentally hazardous according to EU Regulation 1272/2008/EC¹³.”

¹³ *Official Journal of the European Communities No. L 353, of 30 December 2008*

8. In order to avoid that industry has to deal with intermodal differences till an amended 2.2.9.1.10.5.2 has been incorporated into RID/ADR/ADN 2011, there is a need for a multilateral agreement to cover the gap from now till 2011. Multilateral agreements ADR M185 and RID 1/2007 could be used for this but expire on 30-6-2009. Fortunately the United Kingdom recently initiated ADR M205 and RID 2/2009: they have the same contents as their predecessors, they run till 1 June 2011 and they offer a perfect solution for this temporary problem. If the amendment in paragraph 7 is adopted, national competent authorities, who did not do so yet, are invited to sign ADR M205 and its corresponding RID 2/2009.

Justification

9. Industry should be allowed to use new legislation to the fullest extent, which does not jeopardize safety and avoids confusion between different aspects of legislation.

10. The signature of M205 is required not only for substances exported from Europe, but also for the numerous shipments imported in Europe from abroad, being rightfully classified by foreign shippers as “not dangerous goods” for the sea and air mode. In the absence of a multilateral agreement these substances would need to be classified for the onward transport overland from the sea- or airport to the final destination as dangerous goods UN 3077/3082 according to 2.2.9.1.10.5.2 of RID/ADR/ADN. M205 will thus help in avoiding problems during pre-carriage and/or onward-carriage by road or rail.

Safety implications

11. No problems are foreseen.

Feasibility

12. No problems are foreseen as similar multilateral agreements ADR M185 and RID 1/2007 were already in place in the previous years.
