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ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

Working Party on the Transport of Dangerous Goods

Joint Meeting of the RID Safety Committee and the
Working Party on the Transport of Dangerous Goods
(Bern, 28 May – 1 June 2001)

**REPORT ON THE SECOND MEETING OF THE WORKING GROUP
OF THE JOINT MEETING ON SECTION 1.8.5 OF THE
RESTRUCTURED RID/ADR (ACCIDENT/INCIDENT)**

Transmitted by the Government of Germany */

Opening of the Working Group Meeting

1. The second meeting of the Working Group of the Joint Meeting on section 1.8.5 of the restructured RID/ADR (accident/incident) took place, on the invitation of the Federal Ministry of Transport, Building and Housing, in Frankfurt/Main on 17 and 18 August 2000.

Mr. Rein from the Federal Ministry of Transport, Building and Housing opened the meeting and welcomed especially the new members of the Working Group who underline the great interest and the importance of the subject.

It was agreed that Mr. Rein should chair the meeting of the Working Group.

Working Papers

2. The working papers were: Annex 1 to the Report of the Joint Meeting (Geneva, 13 to 24 March 2000), the discussion paper of the Federal Ministry of Transport, Building and Housing, and a synopsis with the definitions of individual countries concerning section 1.8.5 "Reports on incidents involving dangerous goods" of the restructured RID.

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Discussion of Principles

3. At the beginning of the meeting, comments of principle of the individual participants were discussed. The discussion also served the purpose of creating a common basis for the contents of section 1.8.5 in order to thus be able to define the criteria required.

4. The representative of the NL/the UIC asked, why accident reports of the dangerous goods advisers according to 1.8.3.6 could not be considered as a basis for the reports of the transport operators according to 1.8.5.

The chairman referred to the report of the first meeting of the Working Group and once again explained the different aims of the reports. Whereas the accident reports of the dangerous goods advisers are addressed to the management of the transport company and have the purpose of making organizational improvements within the company possible, the reports of the transport operators to the competent authorities and those of the competent authorities themselves to the OTIF Secretariat or to the UN/ECE Secretariat serve the purpose of developing the regulations further and of informing the other states (example: on forced ventilation valves).

The accident reports of the dangerous goods advisers according to 1.8.3.6 address all accidents entailing personal, material or environmental damage without differentiating in accordance with certain criteria (example: a tank vehicle runs over a pedestrian; this accident is of no relevance for the dangerous goods regulations).

The following different report levels were treated in the discussion:

1. Reports by the dangerous goods advisers according to section 1.8.5 addressed to the management of the transport company
2. Reports by the competent authorities according to section 1.8.5 to the Secretariats.
3. The reports according to 1.8.3.6 sentence 2 do not replace the reports of the company management which have to be drawn up on the basis of different legal regulations. The participants agreed, however, that the contents of the reports of the dangerous goods advisers to the management of the transport company can also be used as a basis for the reports of the transport operators to the competent authorities.

It cannot be excluded that there are items which belong to both, the reports according to 1.8.3.6 and the reports according to section 1.8.5. Suggestions made by the Working Group in this context on the further development of the accident reports of the dangerous goods advisers should be presented to the European Commission.

5. The outcome of the discussion was that it is estimated that the number of reports of the transport operators to the competent authorities is much higher than the number of the reports of the competent authorities to the Secretariats. It was, therefore, proposed to impose a meaningful limit on the wealth of the expected data by introducing special criteria.

6. The distinction between the definitions of a "serious accident" and an "incident" which does not yet exist must be seen in close connection with the necessary criteria for a clear delimitation; for reasons of time constraint it has not been possible up to now to find a consensus on them. It was regarded as necessary that the term "incident" should also be defined, because incidents can also lead to findings for the further development of the regulations. Only a markedly comprehensive definition of the term "serious incident" would make it possible to renounce on a definition of "incident". For this reason, the comprehensive word "incidents" was chosen as the new heading of item 1.8.5.

The reference to a relevant definition in ICAO was not pursued, because no difference is made there between accidents requiring a report and accidents not requiring one.

The French representative pointed out that an incident involving a contamination with radioactive substances of class 7, for example, does not have to occur as a consequence of an accident, but should be included in the considerations because of its safety relevance.

In this connection it was proposed that the reports on incidents involving radio active substances should be sent by the competent authority to IAEA and not to the Secretariats.

7. On a question posed by the representative of Macedonia, the chairman pointed out that the provisions of section 1.8.5 do not automatically apply to consignments of the armed forces, but that their inclusion or non-inclusion has to be specially laid down in the national laws of the individual states.

8. Several participants requested to have a precise definition of the criteria which would be a differentiation characteristic especially for small transport operators and which is indispensable for a reduction of administrative work. In this context an appeal was made that all countries participating should have a uniform regulation.

The Czech representative proposed that the competent authorities should anonymize their reports to the Secretariats.

9. At the end of the discussion of the comments of principle of the individual participants the chairman stated that

1. the Working Group should concentrate on the development of a proposal on section 1.8.5 with the necessary definition and the criteria for the report on incidents involving dangerous goods;
2. requirements under section 1.8.3 in this framework are a desirable side effect, but need to be discussed in another forum;
3. the reports are to be used for the development of the legal regulations and not for prosecution, and that therefore they should be anonymized;
4. a uniform standard for the evaluation of the reports by the Secretariat should be ensured, and
5. certain criteria should be developed which constitute an obligation for the transport operator to write a report.

10. With regard to the further procedure for the development of a proposal on section 1.8.5 with the relevant definition and criteria the chairman proposed that first the criteria should be elaborated, because they would automatically result in a definition. The participants agreed to this procedure.

Discussion of the Criteria

11. For this purpose first the synopsis containing the definitions currently existing in the individual states or with the various railway undertakings, which had been distributed as a working paper, was examined as to completeness and corrected. It was made clear that the synopsis contained the criteria which constitute an obligation for the transport operator to write a report, and that the criteria for the reports by the competent authority to the Secretariats needed to specially defined.

The following criteria of the synopsis were treated in more detail:

1. Loss of product

2. personal damage
3. material/environmental damage
4. involvement of the authorities
5. media reports.

The CIT representative suggested in the course of the discussion that the sequence should be changed for ethical reasons, and that the aspect "personal damage" should come first. The Working Group accepted this suggestion (see draft in the annex).

12. Discussion of the Criterion "Loss of Product"

It was found that the criterion "loss of product" is a major criterion and should, therefore, be a criterion constituting an obligation for the transport operator to write a report, especially since it states that the incident is originally one involving a dangerous good. In this context the question was discussed whether the criterion "loss of product" should be looked at in connection with defined quantities (e.g. from 200 litres/kg up) or in connection with the possible consequences "personal or material damage".

The question was also raised whether the "risk of loss of product" could be an additional criterion which would make it possible to also consider a potential risk. The inclusion of this source of findings is important, because it is not always easy to recognize whether a certain case is relevant to the regulations or not, and because it is also possible to learn from minor incidents.

Another approach results from the combination of the criteria "loss of product" and "risk of loss of product" which, if connected with additional limiting criteria, for example the involvement of authorities/emergency services, can be a characteristic for differentiation from minor and not so serious incidents, so that it is clear from the start that they do not require a report to be written.

13. It was discussed whether the transport operator or the competent authority has to take the decision as to whether an incident is relevant for the modification of a regulation. Some of the participants were of the opinion that the transport operator cannot be expected to take this decision and that this is the task of the competent authorities.

14. It was also discussed whether the transport operator actually has to write the report, because he is not present in case of incidents occurring during on- and offloading and, therefore, cannot fulfil his obligation in these cases.

15. The problem of the different languages in which the reports of the transport operators are written was also discussed. It was proposed that the individual national languages should be used, and that this should be taken into account for the future model reports.

Discussion of the Criterion "Personal Damage"

16. During the discussion it was found that the criterion "personal damage" is not really suitable as a basis for the decision that a report has to be made. This applies in particular when the personal damage was caused directly by the dangerous good. It was discussed whether the general differentiation characteristics death, injury/damage to health are sufficient or whether additional differentiation characteristics, like duration of absence from work, should be taken into consideration. Criterion 2 of the French proposal was considered to be favourable.

The following definition can be regarded as the outcome of the discussion:

"Personal damage" is an incident where death or injury are directly connected with the dangerous good carried and where the injury as a consequence requires hospitalization of at least 1 day or absence from work of at least 3 days.

The combination in the definition to a large extent achieves the intended limitation of the obligation to write a report to serious incidents. The criterion "hospitalization" ensures that private persons are also included.

Discussion of the Criteria "Material/Environmental Damage"

17. The discussion showed that the criterion "material/environmental damage" is, in principle, a criterion constituting an obligation to write a report. The question was raised whether the amount of damages alone is a sufficient criterion or whether additional criteria are necessary for a meaningful limitation.

Hereby the issue of different damage amounts for the rail mode, with the typical transport of bulk goods and an infrastructure which does not involve a large number of human beings, and for the road mode, with higher-value goods and consequential costs and a potentially higher involvement of persons, was of some importance.

Further more, the participants in the discussion were in favour of including a criterion "disturbance of public traffic" (e.g. closure of routes); in these cases it is very problematic, however, to calculate the amount of damage, because the costs are largely unknown. The inclusion of later consequential damage also plays a certain role. For this reason the proposal of SGCI Switzerland only contains the damage resulting directly from the incident.

For the definition of the term "material/environmental damage" the costs for the following types of damages were proposed as damage indicators:

- a) damage to the vehicles involved,
- b) damage to the infrastructure directly concerned,
- c) environmental damage including the costs for the immediate elimination of the consequences.

As a limit value according to which a report is required a total amount of > 50.000 EURO was suggested. It was pointed out that UIC sets a limit of 500.000 DM for operational rail accidents, and that therefore the first limit value is considered too low.

To achieve a useful delimitation of the obligation to write a report in case of "material/environmental damage" it was proposed to link this criterion with the criteria "loss of product" and "immediate risk of loss of product", so that there is no obligation to write a report if there is neither a loss of product nor risk of a loss of dangerous goods.

The proposal was subject to a controversial discussion.

Using the example of class 7, France points out that it is possible that even small quantities, for example a contamination in connection with class 7 can have as a consequence a considerable public impact and the involvement of the competent authorities.

For a subsequent vote on the question when there should be an obligation to write a report, the choice was between two options:

- a) loss of any given quantity of product, i.e. dangerous goods, in connection with "material/environmental damage" or
- b) no loss of product, but the immediate risk of loss of dangerous goods in connection with "material/environmental damage".

Option a) was unanimously accepted by the representatives of all states and associations, whereas the states B, CH, D, DK, F, NL, P, S voted "yes" on option b).

Since there was no clear opinion on this issue, it was proposed to elaborate a proposal on this for the next meeting of the Working Group.

The trends appearing in the framework of the vote are summarized in the following proposals:

Proposal 1

Material and/or environmental damage exists if the amount of damage exceeds >50.000 EURO and if a loss of dangerous goods has occurred or there was an immediate risk of a loss of dangerous goods.

Proposal 2

Material and/or environmental damage exists if the amount of damage exceeds >50.000 EURO and if a loss of any amount of dangerous goods has occurred.

Discussion of the Criterion "Involvement of Authorities"

18. It was found that the criterion "involvement of authorities" is, in principle, a criterion which lays down the obligation to write a report. It was considered necessary, however, to link this criterion with others for major incidents.

The first criterion mentioned was the evacuation of persons, and the second the closure of public traffic routes for a duration of at least six hours.

As regards the closure of public traffic routes, it was pointed out that the duration of the closure must be in direct connection with the danger emanating from the dangerous good carried and that it must not be the duration of a closure due to the elimination of the damage caused by an accident.

Proposal of a definition:

An involvement of authorities exists if authorities/emergency services were involved in the incident involving dangerous goods, and if persons were evacuated or if public traffic routes were closed for a duration of at least six hours.

Discussion of the Criterion "Media Reports"

19. The Working Group was of the opinion that the criterion "involvement of the authorities" is not an objective criterion which requires a report to be written and that it does not have a clear reference to a potential modification of the regulations. The criterion was therefore not considered as a suitable basis for the requirement to write a report.

Other Criteria/Proposal of a Definition of the Term "Dangerous Incident" in Accordance with Section 1.8.5

20. The participants did not make any proposals concerning the discussion of other criteria constituting an obligation to write a report.

The chairman, therefore, suggested to elaborate a proposal of a definition of the term "dangerous incident" in accordance with section 1.8.5 on the basis of the criteria developed up to this time. A draft definition is in the annex to this report.

The proposal made by France should be compared with the proposal which was developed further.

Reports of the Competent Authority to the Secretariats

21. The question was discussed whether it was necessary to have a more concrete definition of the term "if necessary" contained up to now in 1.8.5.2. The majority of the participants, however, was of the opinion that the general comments from the information paper of the Federal Ministry of Transport, Building and Housing were sufficient as a description of the cases in which the competent authority has to make a report to the Secretariats.

It was also the general view that the competent authorities have to exercise a filter function when they send the reports to the Secretariats.

The discussion on the tasks of the Secretariats concerning the treatment of the reports by the competent authorities resulted in two different positions. Whereas the OTIF representative sees his task in distributing the reports to the Member States, other participants see a more far-reaching responsibility of the Secretariats. The majority of the members was in favour of maintaining the currently determined range of tasks of the Secretariats, i.e. the authority competent in a certain case has to make the evaluation, not the Secretariats.

Further Procedure

22. For the further procedure of the Working Group it was decided that

- a) the chairman of the Working Group has to make a brief report at the next Joint Meeting,
- b) the report on the result of the meeting of this Working Group will be sent to the participants via OTIF, and proposed amendments to the report are to be sent, in writing, to OTIF,
- c) there is further need for discussion in order to elaborate a proposal for the Joint Meeting,
- d) Germany will invite for another meeting of the Working Group in Hamburg in spring 2001, before the session of the Joint Meeting.

23. Finally it was discussed in what form the criteria developed should be implemented (as an amendment to RID/ADR or as a Protocol note etc.). The majority of the participants (with the exception of the UK) were in favour of a determination of the criteria in the regulations, which should be as legally binding as possible, because the aim should be to ensure in this way a uniform application. Therefore, definitions should be included in section 1.2.1.

24. The chairman thanked the participants for their work. He especially expressed his thanks to Macedonia for the active cooperation and promised support and assistance for the implementation of RID/ADR.

Draft

1.8.5 Report on Incidents Involving Dangerous Goods

Criteria Requiring a Transport Operator/Infrastructure Company to Write a Report

- *Situation on 6 October 2000* –

1	Definition	An incident is an incident according to 1.8.5 which requires a report to be written, if there has been a loss of dangerous goods or the immediate risk of a loss, if personal, material or environmental damage was caused, and if authorities were involved.
2	Criteria	
2.1	Personal damage	Personal damage is an event where death or an injury is directly connected with the dangerous good carried and where the injury has caused hospitalization of at least 1 day or absence from work of at least 3 days.
2.2	Loss of product	Loss of product occurs if a quantity of xxx kg/litres of dangerous goods were lost or if there was the immediate risk of a loss of product
2.3	Material/environmental damage	<u>Proposal 1</u> Material and/or environmental damage exists if the amount of damage exceeds >50,000 EURO and if a loss of dangerous goods has occurred or there was an immediate risk of a loss of dangerous goods <u>Proposal 2</u> Material and/or environmental damage exists if the amount of damage exceeds >50,000 EURO and if a loss of any amount of dangerous goods has occurred.
2.4	Involvement of authorities	An involvement of authorities exists if authorities/emergency services were involved in the incident involving dangerous goods, and if persons were evacuated or public traffic routes were closed for a duration of at least six hours.
2.5		not to be taken into consideration
2.6	Other criteria	-