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INLAND TRANSPORT COMMITTEE

Working Party on the Transport of Dangerous Goods
(Seventy-ninth session, agenda Item 4(b),
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PROPOSALS FOR AMENDMENTS TO ANNEXES A AND B OF ADR

Sale on delivery to consumers

Proposal transmitted by the Government of Austria

Summary:	This proposal seeks to solve the difficulty of entering the consignee in the transport document in the case of sale on delivery to multiple consumers.
Action to be taken:	Insert a Note under paragraph 5.4.1.1.1 h).
Related documents :	- TRANS/WP.15/2004/INF. 23 (Austria) (see Annex) - TRANS/WP.15/181, paras. 53-57 - TRANS/WP.15/2005/11 and INF. 34 (Spain) - TRANS/WP.15/183, paras. 36-38 - TRANS/WP.15/AC.1/98, para. 48

Introduction

Beginning with TRANS/WP.15/2004/28, the Government of Spain and the Working Party spent much time in proposing and discussing solutions for the problem, that 5.4.1.1.1 h) of ADR requires the name and address of the consignee(s) to be entered in the transport document, whereas in the case of sale on delivery to multiple consumers they are normally not known in advance.

In informal document INF.23 submitted at the seventy-seventh session (see annex hereto), the Government of Austria presented its interpretation that in these cases the customers do not have to be entered as consignees. The document says that the merchant may enter himself. He is either the real consignee everywhere he stops to sell his goods afterwards, or he can be seen

as a potential consignee as long as he does not know where his load might become less (because the aim of the transport document is to show the present status and not to give a permanent documentation) and again as a real one for what he brings back home.

In a similar way, during the seventy-seventh session of the Working Party, a drafting group prepared “an amended text of paragraph 5.4.1.1.1 (h) in which, when the consignee could not be identified at the start of the transport operation, as, for example, in the case of local distribution, the name and address of the carrier could be given in place of those of the consignee” (TRANS/WP.15/181, para. 54).

TRANS/WP.15/181, paras. 55-57 describe the reactions as follows:

“55. Some delegations were not completely satisfied with this proposal in view of the legal implications which they would like to review. In this case, the carrier would be regarded as the consignee and would take on the consignee’s obligations for which Chapter 1.4 provided. According to IRU, when a contract for carriage existed, there could be contradictions with the Convention on the Contract for the International Carriage of Goods by Road (CMR). According to the definitions of ADR, when no contract for carriage existed, the consignee was the enterprise which took charge of the goods on arrival.

56. Some delegations also considered that the question should be settled as a whole. Account should be taken not only of deliveries of gas cylinders but also of petroleum products, and of supplies of fertilizers, pesticides, etc. to farmers.

57. Although the proposal was supported by several delegations, the majority of the Working Party wished to reflect further on these issues and it was decided to come back to them at the next session.”

The amendments proposed for that session intended to delete for transport “in connection with distribution” the requirement to enter the consignee’s name and address. This would have called for a definition of distribution which already in the session before could not be achieved. The proposal failed again.

Justification

A generally applicable solution within the framework of the ADR instead of a patchwork of special regulations, as far as they are not necessary or even national ones, still seems to be preferable. Austria would, therefore, like to come back to its approach and to reflect the objections to it.

If the carriage is based on CMR, the consignment note, signed by consignor and carrier, has to contain the name and address of the consignee, who must therefore be known in advance. Then the problem discussed does not exist. If there is no contract for carriage, INF. 23 shows that the definition in 1.2.1 of ADR does not work in every case.

It also shows that the importance of this definition for 5.4.1.1 is limited. The Joint Meeting of the RID Safety Committee and the Working Party on the Transport of Dangerous Goods meanwhile stated too in TRANS/WP.15/AC.1/98, para 48:

“It was also considered that the transport document had nothing to do with the RID/ADR obligations of participants. The information required by RID/ADR were related to safety only as a safety issue. The Chairman said that if this situation was to be changed, a written proposal to amend ADR would have to be submitted.”

However, the consignee has only minimal duties, which can - especially in case of distribution - be better fulfilled by the carrier anyway. It is not really evident, why e.g. someone should have to clean a vehicle, which he normally would not be allowed to enter.

Although according to INF. 23 Austria considers the carrier to be the consignee, in many cases the amendment proposed does not prejudice this.

Proposal

In paragraph **5.4.1.1.1 letter h)**, introduce a **NOTE** to read:

“NOTE: When the consignee cannot be identified at the start of the transport operation, as, for example, in the case of local distribution, the name and address of the carrier may be given in place of those of the consignee(s).”

Safety Implications

The safety level will remain unchanged. Neither an important destination nor an well informed participant gets lost.

Feasibility

The solution does not change the regulations. It is a user-friendly clarification of how to fill in the transport document in a correct way.

Enforceability

No problems are expected to arise from this amendment.

Annex

**“DELIVERY-SALE” TRANSPORT
(Informal document INF.23 submitted by the Government of Austria
at the seventy-seventh session)**

1. Problem

In TRANS/WP.15/2004/28 Spain described “delivery-sale” transport as follows: “For example, a carrier loads butane cylinders and goes round several villages before returning to his point of departure. In the villages he stops on request and furnishes butane cylinders to private individuals.” We have to add, that at the same time he collects the empty ones.

It was pointed out that the main problem arising from this practice is to carry a transport document on the transport unit which indicates the consignee(s) and the correct status of the load.

2. Two possible ways to find an easy solution:

2.1 The customers are the final consignees but they do not need to be entered in the transport document.

2.1.1 Who is the consignee?

"Consignee" means the consignee according to the contract for carriage. If the consignee designates a third party in accordance with the provisions applicable to the contract for carriage, this person shall be deemed to be the consignee within the meaning of ADR. If the transport operation takes place without a contract for carriage, the enterprise which takes charge of the dangerous goods on arrival shall be deemed to be the consignee. (1.2.1 ADR)

This is helpful to identify the person bearing the obligations in 1.4.2.3 ADR, but it only works when the transport is finished. Then you know for sure whether someone has been designated or who has taken charge of the dangerous goods on arrival. Yet the transport document is required before this. We therefore see that the information which has to be entered in the document might differ from the finally correct one.

2.1.2 What does this mean for the problems mentioned above?

In the example given the merchant starts his journey with a load of gas cylinders. He hopes to sell as many as possible of them but he does not know who really will get any. Since he does so on his own charge without a contract for carriage he enters himself as (potential) consignee of the (whole) load. After selling parts of it he corrects the quantity as well as the number of the returned empty cylinders using a table preferably.

It is not necessary to enter the customer then because the transport to him is over and the document contains the new and correct although again provisional data. The aim of it is the present and not a permanent documentation. So at the end of the journey the merchant comes back to his location and now indeed he is the consignee of what the vehicle carries and what is equally indicated in the transport document.

2.2 The customers are not consignees.

The sale has nothing to do with the transport. The merchant goes to a certain place and offers his goods. If he stayed on the market place for two or three hours no one would consider his customers to be consignees. To stop in front of a house to offer the goods to the people living or working in it does not really change the situation. Wherever he goes, it is always the merchant who is the consignee. Again he only has to enter himself in the transport document and to update the load as described above.

3. Conclusion

The system works on its own. Changes of the regulations to make it possible to fulfil them are not required. Neither restrictive definitions nor restrictive provisions seem to be necessary.
