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## Economic Commission for Europe

### Inland Transport Committee

#### Working Party on the Transport of Dangerous Goods

101st session

Geneva, 8–11 November 2016

Item 6 of the Provisional agenda

**Interpretation of ADR**

21 October 2016

### **Entry into force of a new Polish law to indicate the owner of the dangerous goods in documents in accordance with ADR Chapter 5.4**

**Transmitted by the International Road Transport Union (IRU)**

#### **Introduction**

1. By end of August, IRU was informed by their Polish member about the entry into force on 2 September 2016 of a Polish law stipulating that the participant in the carriage of dangerous goods is required to enter in the documents prescribed in RID/ADR/ADN **the name and address of the undertaking** in whose possession the dangerous goods are when they are handed over to the carrier (original Polish version and English and German translations of this provision, see Annexe 1).
2. IRU was also informed that some Polish road transport organisation undertakings have accordingly informed their partners abroad and asked them to ensure that this information is contained in the transport documents for the carriage of dangerous goods to Poland. It was also indicated in some instances that consignments without this information in the transport document would not be taken over for onward transport to Poland, as the road transport undertakings would be in breach of applicable laws and would be threatened with fines by the Polish authority.
3. As this matter concerns all international road traffic with Poland, IRU informed its Members about it.
4. In addition, IRU has also expressed doubt as to the validity of this law for international transport in accordance with the European Agreement concerning the international carriage of dangerous goods by road (ADR). Some road transport undertakings in Poland were also of this view, but pointed out that they have to comply with the existing law.
5. Taking into account the list of documentation and data specified in ADR that should be included in the transport document (Chapter 5.4 and section 8.2.1), any additional information not required by the ADR cannot be treated as an obligatory element of the transport document within the meaning of the ADR.
6. Therefore, the data referred to in the provision of Article 13 (2) of the Transport of Dangerous Goods (TDG) Act, i.e. the name and address of the entity being the owner of the dangerous goods cannot be considered as an element of the transport document referred to above, is required by the provisions of the international law. Consequently, it cannot be identified as “other required information” referred to in item 1.1.3 of the Annexe to the TDG Act, including the list of breaches related to the transport of dangerous goods.

7. For IRU, the Polish Article 13 (2) of the TDG Act cannot form the basis for imposing a fine on the party involved in the transport of dangerous goods for missing information about the owner of the dangerous goods.

8. In addition, it should be stated that in view of the above-mentioned regulations, the party involved in the transport of dangerous goods cannot effectively request the entities operating in other countries-parties to RID and the Contracting Parties to ADR to provide information about the owner of the dangerous goods and such a request may be considered a violation of the provisions of RID.

9. The letter concerned from the Polish Ministry of Infrastructure and Construction, dated 2 September 2016 and sent to the regulatory authorities, makes clear that:

- the provisions of ADR Chapter 5.4 and section 8.1.2, which Poland must apply, define the type and content of the documents that accompany the consignment,
- any additional information not required by ADR, such as the name and address of the owner, cannot be considered as a mandatory element of the information prescribed,
- the relevant Article of the law cannot therefore be used as a basis for fining participants if the information on the owner is not included in the transport document,
- participants in the carriage of dangerous goods in Poland cannot require this information from other participants in other RID/ADR Contracting States, as such a demand could be considered as a breach of the provisions of RID and ADR.

10. The Polish law, which was not submitted to Parliament by the Polish Ministry of Infrastructure and Construction, but by the Ministry of Energy, with the aim of curbing the black market of fuels, therefore still applied in full, i.e. to international traffic as well.

11. It must be recognised that in view of the ADR, an Agreement between States, parties involved in the transport of dangerous goods cannot effectively request entities operating in other countries – Contracting Parties to the ADR to provide information about the owner of the dangerous goods as such a request may be considered a violation of the provisions in ADR.

12. As a result, participants are still very uncertain and unclear what to do. This is all the more so as the law does not say clearly which entity concerned by the law is obliged to enter the information on the owner.

13. Owing to the consequences of this Polish law on international transport, IRU considers this to be a matter of great urgency. Although this law applies to all three land modes,

14. Depending on the outcome of the discussion, IRU is willing, if necessary, to submit an appropriate document to the RID/ADR/ADN Joint Meeting, together with the International Union of Railways (UIC).

## **Interpretation**

15. IRU asks the WP.15 experts to answer the following questions:

- Whether the ADR requirement is applicable in Poland for all international dangerous goods carriage by road to or through Poland, knowing the new national requirement, would Contracting Parties of the ADR acknowledge that international carrier not

complying to Article 13 (2) of the Transport of Dangerous Goods (TDG) Act be fined in Poland?

- Can the Polish representative at the WP.15 confirm that their enforcement authorities got instruction not to penalise the carrier operating under the ADR Agreement the carriage of dangerous goods in relation to this new Polish provision?
- Are Polish road freight carriers in every case held responsible by the Polish regulatory authority for information on the owner of the dangerous goods that is missing from the transport document?

## Annexe 1

*Art 13 ust. 2 ustawy PTN w brzmieniu określonym ustawą z dnia 22 lipca 2016 r. o zmianie ustawy – Prawo energetyczne oraz niektórych innych ustaw (Dz. U. poz. 1165).*

*Article 13 (2) of the Transport of Dangerous Goods Act in the wording specified in the Act of 22 July 2016 amending the Energy Law Act and certain other acts (Journal of Laws, item 1165)*

*Artikel 13 (2) des Gesetzes über die Beförderung gefährlicher Güter im Wortlaut gemäß Gesetz vom 22. Juli 2016 zur Änderung des Energiegesetzes und bestimmter anderer Gesetze (Gesetzblatt Ziffer 1165)*

*Uczestnik przewozu towarów niebezpiecznych jest obowiązany zamieścić, w wymaganych dokumentach, o których mowa w ustawie, oraz odpowiednio w ADR, RID lub ADN nazwę i adres podmiotu, którego własnością, w chwili przekazania osobie wykonującej przewóz towarów, jest towar niebezpieczny.*

*The participant in the carriage of dangerous goods is obliged to provide in the required documents referred to in the Act, and accordingly in ADR, RID or ADN respectively the name and address of the entity which owns the dangerous goods upon handover to the person dealing with the carriage of the dangerous goods.*

*Der an der Beförderung gefährlicher Güter Beteiligte ist verpflichtet, in den gemäß diesem Gesetz und entsprechend RID/ADR/ADN vorgeschriebenen Dokumenten Name und Anschrift des Unternehmens anzugeben, in dessen Eigentum sich das gefährliche Gut bei der Übergabe an den Beförderer befindet.*

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