



Economic and Social Council

Distr.: General
8 July 2016

Original: English

Economic Commission for Europe

Inland Transport Committee

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

Geneva, 19-23 September 2016

Item 5 (b) of the provisional agenda

Proposals for amendment to RID/ADR/ADN: new proposals

Carrier's obligations; visual inspection of the load in sealed cargo transport units

Proposal transmitted by Austria^{1, 2}

Summary

Executive summary:	Clarification of which sealed cargo transport units need not be subject to a load inspection by the carrier.
Action to be taken:	Addition to 1.4.2.2.
Related documents:	Informal document INF.42 from the Joint Meeting in March 2016; Paragraph 12 of report ECE/TRANS/WP.15/AC.1/142.

¹ In accordance with the programme of work of the Inland Transport Committee for 2016-2017, (ECE/TRANS/2016/28/Add.1 (9.2)).

² Circulated by the Intergovernmental Organisation for International Carriage by Rail (OTIF) under the symbol OTIF/RID/RC/2016/34.

Introduction

1. According to 1.4.2.2.1 (c), the carrier (in RID only the first carrier in a chain) has to carry out a visual inspection of the load. At the RID/ADR/ADN Joint Meeting in March 2016, Austria raised the question of how this obligation is understood in different countries in terms of sealed cargo transport units.
2. Austria assumes that official seals must be respected, but that private seals should be considered differently. There may certainly be loaders' interests that are worthy of protection in terms of avoiding unauthorised access or having such access documented for the authorities or trading partners (customs, compensation, public safety, etc.). However, it cannot be left to a participant's discretion to override, by means of private measures, the legal obligation for someone else to inspect him. This invites misuse.
3. For containers which are subsequently carried by sea, this is a question which will arise more frequently. According to an amendment to the SOLAS Regulation VI/2, in force as from 1 July 2016, the consignor has to determine the gross mass of the container under certain quality requirements and inform the shipping company in advance. As a result, it will also be important to make clear that the container has remained sealed during the journey and that the information is still correct in the port.
4. The carrier is therefore faced with differing legislative, private law and economic requirements. If the extent of his legal obligations is not clear, he will tend to be careful in complying with them in opposition to other participants on whom he might be economically dependent.
5. Domestic regulations regularly prescribe similar control obligations for vehicle drivers, so they are also exposed to a comparable level of uncertainty.
6. In order to avoid misunderstandings, it should be noted that the checks being referred to here are not those carried out by the national control authorities. These authorities have clearer and more extensive powers and their activities are not restricted by company seals.
7. The discussion in March revealed a broad range of interpretations. Sometimes, the carrier is only expected to open the cargo transport unit if it is suspected that the load is not in conformity with the provisions. In contrast, others require that he agrees with the loader how he can comply with his obligation to carry out an inspection, for instance by ensuring that the cargo transport unit is only loaded and sealed in the presence of the driver who is representing him.
8. It also emerged from the discussion that the wording used in the introduction to ADR and ADN 1.4.2.2.1 that the subsequently listed obligations have to be complied with "where appropriate" is sometimes wrongly understood to mean that the carrier has a certain right of disposal over these obligations. For the same reason, railway operators have already complained several times that RID does not contain such a limitation. However, delegates who were involved in drafting this text made clear that all it is trying to say is that an obligation only – but also always – comes into effect if the relevant circumstances exist. Thus the deadline for the next tank inspection is only to be checked in the carriage of tanks, but it then always has to be done.
9. In the end, Austria was asked to submit proposals to clarify matters in an official document. This document has now been submitted on the basis of the following considerations:

- The words “where appropriate” in the introduction and at the end of 1.4.2.2.1 should be deleted, as they are ambiguous and unnecessary. The texts in RID, ADR and ADN thus read the same in this respect;
- It should be made clear that official seals should not be broken;
- Company seals only rule out the obligation to inspect in certain cases;
- For cargo transport units subsequently carried by sea, the IMDG Code prescribes loading provisions that are comparable to those of RID/ADR/ADN and requires the loader to guarantee that they have been complied with in a container/vehicle packing certificate;
- The container/vehicle packing certificate is also required under RID/ADR/ADN 5.4.2 for such container transport and from 2017, will be specifically allowed for wagons and vehicles. With regard to the containers, these are the same dangerous goods transport operations that are covered by the IMO’s new weight provisions;
- Like maritime carriers, land transport carriers should also be able to rely on the information in the container/vehicle packing certificate.

Proposal

10. In the introduction and final sentence of 1.4.2.2.1, delete the words “where appropriate”.

11. Add the following to the end of 1.4.2.2.2:

“In the context of the load inspection in accordance with 1.4.2.2.1 (c), the carrier may rely on the information in the attached container/vehicle packing certificate and waive the internal visual inspection of the cargo transport unit if it bears a company seal. Official seals shall be respected even without a container/vehicle packing certificate.”

12. With the deletions and additions shown, 1.4.2.2.1 to 1.4.2.2.3 therefore read:

1.4.2.2.1 In the context of 1.4.1, the carrier who takes over the dangerous goods at the point of departure shall in particular: (RID)

1.4.2.2.1 In the context of 1.4.1, ~~where appropriate~~, the carrier shall in particular: (ADR/ADN)

(...)

(c) ascertain visually that the wagons/vehicles and loads have no obvious defects, leakages or cracks, missing equipment, etc.; (RID/ADR)

(c) ascertain visually that the vessels and loads have no obvious defects, leakages or cracks, missing equipment, etc.; (ADN)

(...)

~~Where appropriate~~, (ADR/ADN) This shall be done on the basis of the transport documents and accompanying documents, by a visual inspection of the wagon/vehicle/vessel or the containers and, ~~where appropriate~~, the load.

1.4.2.2.2 The carrier may, however, in the case of 1.4.2.2.1 (a), (b), (d), (e) and (f) (RID)/1.4.2.2.1 (a), (b), (e) and (f) (ADR)/1.4.2.2.1 (a) and (b) (ADN), rely on information and data made available to him by other participants. In the context of the load inspection in accordance with 1.4.2.2.1 (c), the carrier may rely on the information in the container/vehicle packing certificate attached in accordance with 5.4.2 and waive the internal visual inspection of

the cargo transport unit if it bears a company seal. Official seals shall be respected even without a container/vehicle packing certificate.

- 1.4.2.2.3** If the carrier observes an infringement of the requirements of RID/ADR/ADN, in accordance with 1.4.2.2.1, he shall not forward the consignment until the matter has been rectified.”

Justification

Safety: The amendment means that the safety guarantees provided by the loader are accepted in a way similar to the IMDG Code. It is not expected that this will impair transport safety.

Feasibility: No problems are anticipated. The amendment creates legal certainty without incorporating new requirements.
