

Regulation concerning the International Carriage of Dangerous Goods by Rail (RID)

Explanatory Report

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Explanatory Report ⁷

General Points

1. The first international regulation of the carriage of dangerous materials and objects was contained in § 1 of the Regulatory Provisions for the Implementation of the Bern International Convention of 14 October 1890 concerning the Carriage of Goods by Railway, and their Annex 1. The provisions of that Annex concerned only conditions of contract of carriage imposed on the consignor of the dangerous materials and objects concerned. The objective was to maintain the safety of persons and property in rail operation. The legal consequence, in the case of non-compliance with the conditions, consisted in the possibility of the railway refusing carriage, despite the obligation to carry which existed in principle. According to the judicial situation at that time, however, the railway was not prohibited from carrying such goods. Rather, at the time of conclusion of a contract of carriage, it could require the consignor to comply with his obligations under civil law ensuing from these special conditions of carriage and, if need be, claim compensatory damages.
2. In the course of the revisions of the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID), the emphasis has changed, more or less unnoticed: a regulation with a content that came under private law has changed to become safety regulations which are now, instead, classified as regulations under public law.
3. An essential problem of the current constitution of RID lies in the fact that, according to marginal note 1, indent (1), it constitutes the implementing regulation of Article 4, letter d), and of Article 5, § 1, letter a) of the CIM Uniform Rules 1980. The scope of application of RID thus depends, in principle, on the scope of application of the CIM Uniform Rules. From this, there result three important formal restrictions:
 - RID applies only to international carriage
 - it applies only to carriage on lines included in the CIM list
 - the carriage must be performed on the basis of a CIM contract of carriage covered by a CIM consignment note.

Safety regulations which serve to protect persons, the environment and goods should, however, be applicable irrespective of such formal restrictions. Now, on the basis of the Directive 96/49/EC of 23 July 1996 (RID Framework Directive), the Member States of the European Community (EC) must also apply RID to the carriage of dangerous goods by rail in national traffic and to carriage between the Member States, this being irrespective of a CIM contract of carriage and the transport document used.

⁷ The articles, paragraphs, etc. which are not specifically designated are those of the RID; unless otherwise evident from the context, the references to the reports on sessions not specifically identified relate to the sessions of the Revision Committee.

4. Substantial difficulties have arisen from the legal structure of RID in force in the context of the carriage of empty tank wagons, empty tank containers for bulk goods and empty small containers for bulk goods, these uncleaned wagons and containers, belonging to the railway, having contained dangerous goods. Such carriage is performed by the railway without the conclusion of a CIM contract of carriage and is thus not subject to RID. This problem has been resolved for the time being by an additional uniform rule of railways (Additional Uniform Rule No. 2, of railways, to Article 28 CIM 1980), a provision which imposes on the consignee of the preceding “carriage with load” certain obligations in order to guarantee safety in the subsequent “carriage without load”.
5. The CIM contract of carriage commences with the acceptance of the goods for transport with the consignment note and ends with the delivery of the goods. The loading and unloading activities are frequently performed outside this timeframe, particularly in the carriage of wagon loads. The typical dangers associated with the carriage of dangerous goods are thus not limited by the duration of the contract of carriage. Despite the fact that RID has its origin in the law concerning the carriage of goods, the obligations which now ensue from RID no longer apply solely to the parties to the contract of carriage (consignor, consignee and carrier). A concrete example of this are the stipulations relating to gas recuperators (gas return), which create obligations for the loader and the unloader, even when the latter are not directly involved as a consignor or consignee in the contract of carriage.
6. From the legislative point of view, the RID which is in force is inadequate. This is because, as a general rule, it does not clearly indicate the persons to whom the various obligations apply. In the interest of safety, it is desirable to stipulate more clearly in RID itself to whom the various obligations contained in RID are applicable.
7. On the basis of a detailed presentation of the areas in which the constitution and current methodology of RID give rise to difficulties, in 1992 the Central Office conducted a survey of the Member States, seeking their opinion with regard to a possible restructuring of RID. Of a total of 20 States which responded, 17 declared themselves in favour of the restructuring proposed by the Central Office. On the basis of this result, the Committee of Experts on the Carriage of Dangerous Goods by Rail (RID Expert Committee), in its twenty-ninth session (22 – 26.3.1993), instituted a working group under the chairmanship of Austria. In its sixth session (28 – 31.10.1996), this working group completed the second reading of the basic document of 10 September 1993 compiled by its chairman in agreement with the Central Office. The result of this work, including the explanatory report on it, was submitted to the Fourth General Assembly (Athens, 8 – 11.9.1997) as an information document (General Assembly) AG 4/3/3 of 1 July 1997. It was noted by the General Assembly (Final Document, No. 7.2).
8. The basic concept provides for the creation of a separate Appendix C to COTIF (= RID), this Appendix C to be composed of both a “legal” section and a “technical” section. The technical annex is to be constituted in accordance with the results of the work aimed at restructuring RID/ADR in a user-friendly form.

9. The objective of the restructuring of the Technical Annexes of RID and of the European Agreement on the International Carriage of Dangerous Goods by Road (ADR) is to standardize the structure both of the provisions which are common to all modes of transport and of the provisions which are specific to the various modes of transport, in a form which facilitates users' comprehension and application of the provisions for the carriage of dangerous goods.
10. The working group ascertained that it would be necessary to provide for uniform provisions in RID and in ADR, not only with regard to the Technical Annexes, but also with regard to the legal section, particularly for the listing of the obligations of the parties involved. Since the inclusion in the actual ADR of the content of the new Appendix C to the COTIF devised by the working group would have entailed an amendment of ADR which would have required ratification, the chairman of the working group submitted appropriate proposals by Austria to the Common RID/ADR Meeting in January 1997. These proposals consisted in including in the general part of the Technical Annex, not subject to ratification, from both ADR and RID, a significant portion of the restructured legal provisions of the future Appendix C, particularly the definitions and the provisions relating to the obligations of the involved parties. The Common RID/ADR Meeting (17 – 21.3.1997) approved, in principle, this manner of proceeding. The proposal by Austria was adapted to the legal framework of ADR and of the Convention on the Contract for the International Carriage of Goods by Road (CMR), and to the structure of the Annexes of ADR, resulting in a re-editing of RID texts drafted by the working group. This manner of proceeding was also supported by the European Commission because it offers the advantage of being able to include in the Appendices to RID and ADR Framework Directives, by this means, the new, restructured legal provisions and technical provisions.
11. The problem of amending the common provisions of the general part of the Technical Annexes of RID and ADR by the simplified procedure, i.e., in the case of RID, by decision of the RID Expert Committee as has been the case hitherto and, for the Technical Annexes of ADR, in accordance with its Article 14, is a problem which arises in essentially the same way for the two Regulations: insofar as an amendment of these provisions by the simplified procedure is acceptable to the Member States in respect of ADR, this should also be possible in respect of the parallel provisions of RID.
12. The legal provisions of a general nature which have remained from the original draft of a new Appendix C, devised by the Working Group (General Assembly document AG 4/3.3 of 1.7.1997), were examined by the Revision Committee in the seventeenth session (4.5.1998). They were initially adopted on an indicative basis only, due to the fact that a quorum had not been achieved (18 of the 39 Member States of OTIF were represented). From the content point of view, these provisions represent the strict minimum for giving a legal basis to the "Technical" Annex of Appendix C.

13. In the nineteenth session, the Revision Committee decided, in the deliberations relating to COTIF, Basic Convention, that the RID Experts Committee will be competent not only with regard to decisions relating to the “Technical” Annex to Appendix C, but also with regard to the proposed amendments of Appendix C itself (Report, p. 77). This is not without importance in view of Article 2 (exemptions) (see No. 3 of the remarks relating to Article 2). The text adopted by the Revision Committee nevertheless provides that one third of the States represented in the Committee may request that the proposed amendments be submitted to the General Assembly for decision (Article 33, § 5 COTIF). See also the remark in No. 9.
14. In the twentieth session (1.9.1998), in the second reading, the Revision Committee, with the necessary quorum, completed the deliberations concerning the new Appendix C (RID – without Annex).
15. Despite the agreement in principle by the Common Meeting in March 1997 to establish the definitions and the obligations of the different parties involved in the carriage of dangerous goods in the so-called Technical Annexes of RID and ADR (see No. 10), the texts drafted to this end by the Working Group were called into doubt many times (see the reports on the following meetings: Common RID/ADR Meeting, September 1997, Bulletin 1997, p. 336; Ninth Session of the Working Group, October 1997, Bulletin 1997, p. 338; Tenth Session of the Working Group, January 1998, Bulletin 1998, p. 41; Common RID/ADR Meeting, March 1998, Bulletin 1998, p. 80; Eleventh Session of the Working Group, 19 May 1998, Bulletin 1998, p. 148). With the exception of just a few points which remained in abeyance, the texts in question, in the first part of the Annexes to RID and ADR, were finally adopted by the Common RID/ADR Meeting in September 1998. The points which remained in abeyance, particularly the definitive determination of the obligations of the different involved parties, were again the subject-matter of deliberations within various other working groups. All the texts, however, must still be formally decided: with regard to RID, by the RID Expert Committee and , with respect to ADR, by the competent body of the United Nations Economic Commission for Europe (UNECE).
16. The restructuring of the Technical Annex for the purpose of facilitating its application by the user involves a substantial workload. Insofar as the “Technical” Annex includes provisions whose adoption and amendment come within the exclusive remit of the Committee of Experts on RID, this work did not affect the timetable scheduled for the work within the framework of the preparation of the decisions of the Fifth General Assembly. Since all the work on the restructuring of the Annex of Appendix C cannot be finally completed until after the Fifth General Assembly, but also because of the volume of the texts of this Annex, the legal solution chosen was the same as that accepted in the revision of the CIV and CIM Conventions in 1980.

17. It is planned that the work relating to the restructuring centred on the user of the “Technical” Annex to Appendix C be completed between now and the end of 1999, after a total of 15 one-week sessions of the Working Group commissioned with the restructuring, so that the date of entry into force, 1 January 2001, can be met. That is also the date planned by the UNECE for the amendments to ADR and by the IMO for the amendments to the International Maritime Dangerous Goods Code (IMDG).
18. The Fifth General Assembly (26.5 – 3.6.1999) adopted, without amendment, the texts decided by the Revision Committee (Report, p. 182/183).
19. In the context of the “plenary competence” of the RID Expert Committee with regard to the amendments of the whole of Appendix C, confirmed by the Fifth General Assembly, there is a certain interest in the suggestion by Belgium, the International Rail Transport Committee (CIT) and the International Union of Railways (UIC) submitted to the Fifth General Assembly, according to which “the questions of liability of the future RID must come within the scope of competence of the Revision Committee and not within that of the RID Expert Committee”. The Central Office had always been of the opinion that legal questions should come within the scope of competence of the Revision Committee. However, it was unable to persuade the majority of the Member States (for more details, see General Assembly document AG 5/3.16 of 1.5.1999).

In particular

Article 1

Scope

1. The term “international” has not been defined. In any case, it is necessary that the carriage is performed on the territory of at least two Member States. Moreover, the applicability of RID does not depend on the fact of the carriage being subject or not subject to the CIM Uniform Rules (see Nos. 3-5 of the General Points).
2. In addition to the carriage proper, the scope of application also includes all the activities provided for by the Annex, particularly the operations of loading and unloading of dangerous goods. In Part 1 of the Annex, General Provisions, the term “carriage” is defined substantively and independently of the contract of carriage, namely, as the changing of place of dangerous goods, including the stops necessitated by the conditions of the carriage and including the holding of dangerous goods in wagons, tanks and containers which is necessitated by the traffic conditions before, during and after the changing of place. The term “carriage” also includes the intermediate temporary holding of dangerous goods for the purpose of changing the mode or means of transport (transfer).

3. § 1, letter b) regulates, in particular, the problem of complementary carriage on maritime routes. In this context, the carriage of tank wagons on short maritime routes in traffic with the United Kingdom and Ireland, and on the Baltic Sea ferries, assumes a particular importance. In the case of complementary carriage by road or by inland waterway, ADR and the Regulation for the Carriage of Dangerous Substances on the Rhine (ADNR) (in future, also the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterway - ADN) will always have primacy over RID with regard to the other means of transport used, even if there is only one contract of carriage.
4. The IMDG code concerning the carriage of dangerous goods by sea does not currently contain any special provisions for the above-mentioned carriage of tank wagons. For this reason, the authorities of the States concerned (Belgium, France, Ireland and the United Kingdom) have agreed supplementary provisions concerning the carriage of dangerous goods on the maritime routes between the United Kingdom and the Continent or Ireland. A similar regulation is contained in the circular letter on the Baltic Sea concerning carriage on the ferry-boat routes between Göteborg and Frederikshavn, Helsingborg/Syd and Copenhagen (København), Malmö and Lübeck/Skandinavienkai, Trelleborg and Saßnitz, as well as Ystad and Swinoujście (Swinemünde).
5. Insofar as the IMDG code will not in future create special provisions for the carriage of rail wagons mentioned above – which is unlikely, at least – it is necessary to have available a legal regulation, to which the Annex of Appendix C lends itself very well. Currently, the IMDG code has the status of a recommendation which is declared by the States to be mandatory on the basis of the national law. Consequently, the States concerned can agree to depart from these recommendations. In future, the IMDG will become mandatory international law, as an integral part of the 1974 International Convention for the Safety of Human Life at Sea (SOLAS). For this reason, the special provisions of RID must not be contrary to these provisions of maritime law; they could, however, complement them. Consequently, and in consideration of future maritime law in particular, the text adopted by the Revision Committee includes a reservation with regard to the provisions that are applicable to carriage with other means of transport (Report on the Twentieth Session, First Meeting, p. 2/3).
6. § 2, in alignment with similar texts in ADR, in the RID and ADR Framework Directives and in the draft ADN, includes the prohibition of the carriage, in international rail traffic, of dangerous goods whose carriage is prohibited by RID. This statement is in the interest of legal clarity (cf. Article 4, letter d) CIM 1980).

Article 2

Exemptions

1. This provision, like the analogous provision in the current draft ADN, states that the Technical Annex can make provision for certain exemptions. Such provisions are already included in the version of RID (marg. 17) and ADR (marg. 2009/10 609) which has been applicable since 1 January 1999. According to these marginal notes, the provisions of RID do not apply to the following categories of carriage:
 - a) carriage of dangerous goods performed by private individuals when the goods in question are packaged for retail sale and intended for their personal or domestic use or in their leisure or sporting activities
 - b) carriage of machines or equipment not specified in RID which incidentally include dangerous materials in their structure or their operating circuits
 - c) carriage performed – in limited quantity – by companies as incidental to their principal activity, such as the supplying construction sites, civil engineering works, or performed for measuring, repair or maintenance work
 - d) carriage performed by the emergency services (e.g., police and fire brigade) or under their supervision
 - e) emergency carriage for the purpose of saving human life or protecting the environment, provided that all steps are taken to enable such carriage to be performed in complete safety
2. The Revision Committee decided not to include in the text of the present Appendix C a restrictive list of the types of carriage which can be exempted. Instead, it insisted on stipulating expressly that exemptions are admissible only if the safety of the carriage is guaranteed (Report on the Twentieth Session, First Meeting, pp 3-5).
3. The reference to the Annex with regard to cases of exemption or their extent is problematical. The amendment of the cases which are provided for in the Annex (e.g. their extension) comes within the scope of competence of the Committee of Experts on RID. According to Article 33, § 5 of COTIF, this same Committee is also competent with regard to the amendments of Article 2 of RID. The restriction of the mandate of the Committee of Experts on RID with regard to the amendment of the Annex of RID, sought by the Revision Committee, is only partially achieved with the regulation as decided upon (but see No. 13 *in fine*, as well as No. 19 of the General Points).

Article 3

Restrictions

1. Following the example of Article 4, § 1 of ADR and the analogous provisions in the RID and ADR Framework Directives of the EC, RID also stipulates that each Member State has the right to regulate or prohibit the carriage of dangerous goods by rail for reasons other than safety during carriage, insofar as this is not already provided by the provisions of the Annex.

2. In the course of the revision work, a representative of the railways emphasised several times the importance of railways being rapidly informed of the measures taken by the Governments, in order to guarantee problem-free carriage of dangerous goods by rail. In this context, it was recalled that, with the withdrawal of the obligation to carry in the new CIM Uniform Rules, Article 3, § 4 of the CIM Uniform Rules 1980 and the obligation to provide notification, which is also provided for in the regulation, will also be withdrawn.

Article 4 **Other prescriptions**

Due to the removal of the legal link between RID and the CIM Uniform Rules, the Working Group and the Revision Committee considered that it was necessary to draw express attention to the fact that, in addition to RID, the general provisions relating to carriage by rail were also applicable. A comparable provision is contained in Article 5 of ADR and will also be included in the future ADN.

Article 5 **Type of trains allowed. Carriage as hand luggage, registered luggage or on board motor vehicles**

1. Since, following the decisions of the Revision Committee and the Fifth General Assembly concerning the CIM Uniform Rules, the current Annex IV (RIEx) to CIM 1980 will be withdrawn, it proves necessary to mention this type of carriage in the “legal” part of the future RID, this type of transportation being subject to special provisions in the current RID. This relates to the carriage of small quantities of dangerous goods which may exceptionally be carried in passenger trains instead of goods trains.
2. The prohibition, contained in Article 18 of the CIV Uniform Rules 1980, on the carriage of dangerous substances and objects as luggage is closely linked to the obligation to carry, according to Article 4 of the CIV Uniform Rules 1980. In the CIV Uniform Rules 1980, the prohibition on the carriage of dangerous goods is worded in a much more general manner than is the case in the provisions of RID. The regulation concerning the carriage of dangerous goods as hand luggage or registered luggage must be aligned in future to the regulation for dangerous goods that applies in air traffic (cf. Annex 18 of the Chicago Convention and the Technical Instructions of the International Air Transport Association – IATA).
3. The carriage of dangerous goods as hand luggage, registered luggage or on board motor vehicles in car-sleeper trains, in accordance with Article 12 of the CIV Uniform Rules in the version adopted by the Fifth General Assembly, represents an exception, necessary in practice, from the obligation to carry dangerous goods solely in goods trains.
4. Article 12, § 4, in combination with Article 14 of the CIV Uniform Rules, in the version adopted by the Fifth General Assembly, obliges the passenger to comply with the corresponding provisions of RID. The passenger is liable to the carrier for all damage resulting from non-compliance with this obligation (see remarks relating to Articles 12 and 53 of the CIV Uniform Rules, General Assembly document AG 5/3.4 of 15.2.1999). The

problem of how best to make passengers aware of these provisions concerning dangerous goods, e.g. in the form of notices in stations or in the form of brochures, has to be distinguished from the question of how the legal provisions are drafted. A presentation which is easily understandable and generally accessible will be of particular importance.

5. Article 5 sets out the general principle according to which such carriage is permitted only when subject to the special conditions of RID. The details with regard to quantities, packagings, inscriptions, etc., as well as the special provisions for dangerous goods used in connection with a medical treatment (e.g. bottles of gas) must be regulated in the Annex of RID.

Article 6

Annex

This provision serves the purpose of legal clarity and allows editorial simplification (Report on the Twentieth Session, First Meeting, p. 7).