Introduction

Chapter 1.9 as revised by a working group entered into force on 1 January 2005.

In a legal examination of the provisions of this Chapter in a COTIF Member State, it was established, among other things, that the terminology used in paragraphs (b) and (c) of 1.9.2 is different in the various languages. While the German version always refers to “Strecken” or “Ersatzstrecken”, the English version uses the expressions “sections”, “(alternative) routes” and “routeing” and the French version uses the expressions “lignes” and “itinéraire(s)”. In the legal examination, the French text was interpreted to mean that the alternative routes to be established (“itinéraires de remplacement”) do not have to be railway routes, but could also be road or inland waterway routes.

In order to rule out the possibility of this misinterpretation, it is proposed that the English and French versions be aligned with the German version (see proposal 1).

In addition, the legal examination also came to the view that the provisions of 1.9.1, last indent, and of 1.9.2 (b) are perhaps contradictory.
The Secretariat of OTIF does not share this view, as the last indent of 1.9.1 concerns a general prohibition on the whole territory, while 1.9.2 (b) only provides for the possibility of prohibiting the carriage of certain substances on certain sections. The aim of the provision in the last indent of 1.9.1 is that the provisions for the international carriage of dangerous goods adopted jointly by the Member States should not be rescinded by general prohibitions imposed by individual Member States. The drafting of this provision was also guided by the ADR Agreement which, in its Article 2 § 2, permits the international carriage of dangerous goods if the conditions of Annexes A and B of ADR are met.

In order to avoid different legal interpretations, the last indent of 1.9.1 could also be slightly adapted (see proposal 2).

Proposal 1

1.9.2 Amend the English text to read as follows: (amendments are shown in bold type):

"1.9.2 The additional provisions referred to in 1.9.1 are:

(a) additional safety requirements or restrictions on carriage
   – using certain structures such as bridges or tunnels ¹,
   – using combined transport installations such as transhipment installations, or
   – where the transport operation begins or ends in ports, railway stations or other transport terminals.

(b) provisions according to which the carriage of certain dangerous goods on sections of lines with special and local risks is prohibited, such as sections of lines in residential areas, environmentally sensitive areas, economic centres or industrial zones containing hazardous installations, or to which special conditions, e.g. operational measures (reduced speed, specified journey times, prohibition on trains meeting each other, etc.) apply. Where possible, the competent authorities shall establish alternative railway routes which may be used for each prohibited route line or each route line subject to special provisions.

(c) exceptional provisions specifying the excluded or prescribed routing line or provisions to be observed for temporary storage resulting from extreme weather conditions, earthquake, accident, demonstrations, civil disorder or military hostilities."

1.9.2 Amend the French text to read as follows: (amendments are shown in bold type):

"1.9.2 Les dispositions supplémentaires visées au 1.9.1 sont :

a) des conditions supplémentaires ou des restrictions servant à la sécurité pour des transports,
– empruntant certains ouvrages d’art tels que ponts et tunnels,
– utilisant des installations du trafic combiné telles que p. ex. transbordeurs ou
– arrivant dans des ports, gares ou autres terminaux de transport ou les quittant.

b) des conditions sous lesquelles le transport de certaines marchandises dangereuses est interdit ou est soumis à des conditions particulières d’exploitation (par ex. vitesse réduite, durée du trajet déterminée, interdiction de croisement, etc.), sur des lignes présentant des risques particuliers ou locaux, telles que des lignes traversant des zones résidentielles, des régions écologiquement sensibles, des centres commerciaux ou des zones industrielles où se trouvent des installations dangereuses. Les autorités compétentes devront fixer, dans la mesure du possible, des itinéraires de remplacement à utiliser pour les lignes fermées ou soumises à des conditions particulières.

c) des conditions exceptionnelles précisant l’itinéraire à exclure ou à suivre ou les dispositions à respecter pour les séjours temporaires en cas de conditions atmosphériques extrêmes, de tremblements de terre, d’accidents, de manifestations syndicales, de troubles civils ou de soulèvements armés.

Comments on the existing French version

This text was discussed at length in a working group on Chapter 1.9. For the French text, the French delegation had proposed "itinéraire de remplacement" and "itinéraire exclu ou à suivre", probably to take account of the special operational conditions for the carriage of goods by rail and especially for wagonload traffic. It is true that the expression "itinéraire" can be used for all modes. However, there was never any question of shifting transport onto the roads or inland waterways. The French expression "ligne" can also be interpreted in different ways, as there are also "lignes maritimes" (shipping routes), some of which are entered as CIM/CIV routes. In order to avoid unwanted legal interpretations, the word “ferroviaire” should be added after "itinéraire" or "ligne" in the cases referred to. The French speaking delegations are requested to give their views on these alternatives.

Proposal 2

1.9.1 Amend the last indent to read as follows (the amendment is shown in bold type):

“– do not result in the prohibition of carriage by rail of the dangerous goods covered by these provisions in the whole territory of the Member State.”

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