



INF. 13

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(English only)

RID: 9th Session of the RID Committee of Experts' standing working group
(Berne, 28 to 30 May 2018)

Subject: Comments on document OTIF/RID/GTP/2018/9 – Interpretation of Directive
2010/35/EU (TPED)

Transmitted by the European Union

1. In Document OTIF/RID/GTP/2018/9, Switzerland states that some provisions of Directive 2010/35/EU on transportable pressure equipment (TPED) cause confusion; in order to clarify the matter, Switzerland proposes an interpretation of the Directive's text, upon which it asks for confirmation by the RID Committee of Experts' SWG and by the EU.
2. The subject matter deserves to be commented on two different aspects, i.e. the procedure and the content:
 - a) Procedure

Although the question can be of interest for the RID Committee of Experts' standing working group as we see the practical implication of the matter, this body does not seem the most appropriate to deal with the subject matter.

It is considered that a request for clarification via a formal communication to the EU, including in the framework of the 1999 Land Transport Agreement between Switzerland and the EU or of the Agreement between the Swiss Confederation and the European Community on the mutual recognition of conformity assessments, would have been more appropriate.

b) Content

The interpretation of the TPED provisions proposed by Switzerland in document OTIF/RID/GTP/2018/9 cannot be accepted, as it is based on erroneous assumptions. In particular, Recital (14) of the Directive anticipates and explains the content of the whole Article 1 of the Directive. Thus, paragraph 3 of Article 1 cannot be read individually, but should be read in context.

3. Recital (14) and Article 1, taken together, allow to very clearly define the scope of the Directive, which reads as follows:

Recital (14)

"(14) Where existing transportable pressure equipment not previously assessed for conformity with Directive 1999/36/EC is to benefit from free movement and free use, it should be subject to reassessment of conformity."

The Recital is very precise and it is difficult to express the same concept in a clearer way: to benefit from free movement and free use, existing TPE not previously assessed according to Directive 1999/36/EC should be subject to reassessment of conformity.

Article 1

Article 1 then details in full the scope of the Directive. In particular, in respect of the relationship of TPE with Directive 1999/36/EC it indicates what follows:

"Art. 1.2 (a) – new TPE which does not bear the conformity markings provided for in Directive(s) [...] 1999/36/EC is covered by the Directive for the purpose of making it available on the market;

Art. 1.2 (b) – TPE bearing the conformity markings provided for in the TPED or in Directive(s) [...] 1999/36/EC is covered for the purposes of its periodic inspections, intermediate inspections, exceptional checks and use;

Art. 1.2 (c) – TPE which does not bear the conformity markings provided for in Directive 1999/36/EC is covered for the purposes of reassessment of conformity."

4. All what above indicates that TPE as listed in the various cases reproduced above enjoys the mutual recognition and the free circulation ensured by the TPED if it follows the respective rules as provided by the Directive itself.
5. On the contrary, TPE which does not follow those provisions is excluded from the scope of the Directive, and does not benefit, therefore, of its positive consequences i.e. mutual recognition and free circulation within the EU. This is what is indicated by Art. 1.3 of the Directive:

"Art. 1.3 – This Directive shall not apply to transportable pressure equipment which was placed on the market before the date of implementation of Directive 1999/36/EC and which has not been subject to a reassessment of conformity. "

6. Therefore, the interpretation proposed by Switzerland at § 14 of Document OTIF/RID/GTP/2018/9 cannot be accepted.
7. This means that Directive 2010/35/EU is clear and does not need to be revised on this aspect; it also means that the Directive is correctly implemented in the Swiss Dangerous Goods Means of Containment Regulations mentioned in document OTIF/RID/GTP/2018/9, which therefore does not need to be adapted.
