



INF. 8

9 November 2021

(English only)

RID: 13th Session of the RID Committee of Experts' standing working group
(Geneva, 15 – 19 November 2021)

Subject: Proposal concerning the obligations of tank-wagon operators and keepers

Proposal transmitted by the European Union Agency for Railways (ERA)

SUMMARY

Executive summary: Proposal concerning the obligations of tank-wagon operators and keepers

Related document: Informal document INF.1 (ERA) submitted to the last session of JCGE (7 and 8 November 2021)
Informal document INF.1 (Belgium) submitted to the 13th session of the RID Committee of Experts' standing group.

Introduction

1. ERA welcomes the comments received from the participants to the JCGE 4th session meeting and the proposal from Belgium to reach a solution which could be understood by every participant in the scope of RID chapter 1.4.

Background

2. European legislation, including Railway Safety Directive and Interoperability Directive are setting the roles and obligations of railway actors as it is the case also in Appendices F and G to the COTIF, that are the most relevant for this topic.
3. Those sets of laws are maintained equivalent as it can be seen in this table maintained by OTIF secretariat ([EU-OTIF equivalence table](#)). It implies also the usage of equivalent terminology ([Cross reference table EU and OTIF terminology](#)) within the EU and within

the COTIF area.

4. Consecutively to the adoption of ITCO proposal concerning the definition of tank-container operators, ERA explained that the use of the term 'operator' in RID, covering different meaning depending on the provision considered would make very confusing the understanding of the respective obligations of the different type of 'operators'.
5. The discussion held at the JCGE confirmed that the situation was very confused, and that clarity should be brought in RID, possibly using the general definition of the railway actors as used in the Railway Safety Directive, Interoperability Directive and in the Appendices F and G to the COTIF. As a result, it would provide better legal certainty to each actor concerned.
6. With this perspective, ERA welcomes the objectives pursued by Belgium in its INF.1 however this proposal is not fully consistent with the roles and responsibilities established in general railway legislation, in particular for safe tank-wagon operations.

Supporting justifications

7. From the whereas 7 to 9 of the Railway Safety Directive, as well as its articles 4.3 and 4.4 it can be understood that:
 - The obligations of the section 1.4.3.5 are corresponding to responsibilities directly laying on the railway undertaking (liability) to ensure that every operating risks are under control;
 - The same obligations indirectly lay on the keeper (accountability), in case a contract exist between the Railway undertaking and this keeper;
 - It is not an obligation for a railway undertaking to use the service of a keeper;
 - To allow the assessment of the railway undertakings' safety management systems in either situation, the authorising entities issuing the safety certificates (NSA and/or ERA) are entitled to access the contract existing between railway undertakings and keepers;
 - Depending on the contract between the railway undertaking and the keeper (when applied) the keeper may perform the obligations of the 1.4.3.5, in part or entirely, for the railway undertaking it contracts with;
 - When issuing safety certificates to railway undertakings, the authorising entities shall assess the railway undertaking Safety Management System (SMS) and shall check if the obligations of 1.4.3.5 are fulfilled in either ways, with or without the service of a keeper;
 - The assessment of the safety management system should also become an obligation for the non-EU contracting parties that will apply the future Appendix H to COTIF;
8. Taking into account the above ERA is proposing the following clarifications in RID.

Proposals

9. Restarting from Belgium proposal, ERA is proposing the following modifications of the 1.4.3.5 of RID, in order to be consistent with the EU railway legislation and COTIF appendices.

Proposal 1

10. Modify 1.4.3.5 to read:

"1.4.3.5 Railway undertaking and tank-wagon keeper

1.4.3.5.1 Railway undertaking

In the context of 1.4.1, the railway undertaking operating tank-wagons shall in particular:

- (a) ensure compliance with the requirements for construction, equipment, inspections and tests and marking;
- (b) have an exceptional check made when the safety of the shell or its equipment is liable to be impaired by a repair, an alteration or an accident;
- (c) ensure that the results of the activities as required in (a) and (b) are recorded in the tank record;
- (d) ensure that the entity in charge of maintenance (ECM) assigned to the tank-wagon holds a valid certificate covering tank-wagons for dangerous goods;
- (e) ensure that the information made available to the ECM as defined in Article 15 § 3 of Appendix G to COTIF (ATMF) and in Annex A to ATMF also covers the tank and its equipment.

1.4.3.5.2 Tank-wagon keepers

In the context of 1.4.1, the tank-wagon keeper supplying tank-wagons to a railway undertaking shall in particular:

- (a) formalise the service delivered to the railway undertaking with a contract, not limited to, but including all or a part of the obligations of section 1.4.3.5.1 that are in the scope of the contract;
- (b) ensure that the supplied tank-wagons comply with specified requirements and conditions for use so they can be safely operated by the railway undertaking."

Proposal 2 (consequential amendments)

11. (a) Insert in 1.2.1 the definitions of 'Railway undertaking' and 'Tank-wagon keeper'.
- (b) Delete the footnote (5) of section 1.2.1.
- (c) In 1.4.2.2.8 change the word 'operator of the tank-wagon' by 'railway undertaking or the tank-wagon keeper'.
- (d) Modify the current footnote (13) of the current 1.4.3.5 to read "The railway undertaking or the tank-wagon keeper may transfer the organisation of inspections according to Chapter 6.8 to an entity in charge of maintenance (ECM)".
- (e) In 4.3.2.1.7 first paragraph, change the words 'operator' by:

(left column) 'the railway undertaking or the tank-wagon keeper'
(right column) 'the tank-container operator'.

- (f) In 4.3.2.1.7, change the sentence starting with 'Should a change...' by:

'Should a change occur during the life of the tank, the tank record shall be transferred without delay to the new owner or

(left column) 'the new railway undertaking or the new tank-wagon keeper'
(right column) 'the new tank-container operator'.

- (g) In 6.8.2.5.2, change the word 'operator' by:

(left column) 'railway undertaking'
(right column) 'tank-container operator'.

Note: Further checking of consequential amendments needed throughout RID should be finalised depending on the text finally adopted.

Justification

12. The aim is to avoid misunderstanding of RID concerning the roles and responsibilities already established by Railway Safety and Interoperability Directives as well as Appendices F and G to the COTIF.
 13. To avoid confusions brought by the usage of the word 'operator' in RID covering very different meanings and legal roles and obligations depending on the section in which it is used.
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