



Organisation intergouvernementale pour les transports internationaux ferroviaires  
Zwischenstaatliche Organisation für den internationalen Eisenbahnverkehr  
Intergovernmental Organisation for International Carriage by Rail

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**INF. 5**

28/07/2020

Original: English

**Joint Coordinating Group of Experts**  
(Video conference, 8 and 9 September 2020)

**Agenda item 4b: Operation and maintenance: actors and terminology: e.g. carrier vs RU, tank-wagon operator vs keeper**

**Definition of tank-wagon operator**

**Transmitted by European Union Agency for Railways**

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## Note to the file

### *3rd JCGE – Point 4b on Operators and Keepers*

#### 1. Introduction

Before the adoption of ITCO proposal the clarification of the use of terms ‘Operator’, ‘Keeper’ and ‘Railway undertaking’ in RID and EU legislation was already considered as needed by the Joint Coordinating Group of Experts, ranked in priority 2 (having potential impact on the smooth implementation of the 4<sup>th</sup> railway package). The recent adoption of ITCO proposal by the Joint Meeting, clearly distinguishing the roles of the owner and of the operator, is a good opportunity to also improve RID in this respect.

As agreed on 13 May 2020 at the RID Committee of Experts, ERA is submitting this note to further discuss the problem of coherence on the use of the terms “operator” and “keeper” between general railway law and RID.

#### 2. Problem statement

RID 2019, in chapter 1.2.1, states the following definition:

**"Operator of a tank-container, portable tank or tank-wagon"<sup>5</sup>** means any enterprise in whose name the tank-container, portable tank or tank-wagon is registered or approved for transport;

According to the text agreed for RID 2021 the footnote 5 is amended as follows:

<sup>5</sup> The term "operator" is equivalent to the term "keeper" as defined in Article 2, n) of Appendix G to COTIF (ATMF) and in Article 3.19 of Directive 2016/798/EU on railway safety and Article 2.21 of Directive 2016/797/EU on the interoperability of the rail system within the European Union."

The equivalence between the terms operator and keeper could create misunderstanding when reading other RID paragraphs.

#### 3. State of play

In Annex, an analysis aims at linking all the RID provisions considering tank-wagon operator with the relevant European legislation that take into account the different actors involved in rail transport, as a basis for discussion.

The analysis highlights how some of the responsibilities may be misunderstood or inconsistent for the various actors implementing both the railway and dangerous goods transport legislation.

#### **4. Next steps**

The recent CSM mandate 2018/8887 of the European Commission that uses the term 'operators' to designate the entities who operates of the railway system, meaning the 'Railway Undertakings' and the 'Infrastructure Managers'. In the future, it may also include 'Entities in Charge of Maintenance' to be considered in the category of 'operators'.

Having regards with the analysis in Annex and the examples explained, ERA consider that JCGE should discuss the further this issue and provide advice for potential future clarifications improving the consistency of the terms or of the requirements for the concerned actors.

## Annex

**In RSD (DIRECTIVE (EU) 2016/798),**

- The terms operator is generically used to indicate RUs and IMs.
- **Art.3** 'railway undertaking' means a railway undertaking as defined in point (1) of Article 3 of Directive 2012/34/EU, and any other public or private undertaking, the activity of which is to provide transport of goods and/or passengers by rail on the basis that the undertaking is to ensure traction, including undertakings which provide traction only;
- **Art. 3** 'keeper' means the natural or legal person that, being the owner of a vehicle or having the right to use it, exploits the vehicle as a means of transport and is registered as such in a vehicle register referred to in Article 47 of Directive (EU) 2016/797;
- **Art 4** describes RU role with relevant tasks and responsibilities.

**In 2012/34/EU,**

- **Art 3.** 'railway undertaking' means any public or private undertaking licensed according to this Directive, the principal business of which is to provide services for the transport of goods and/or passengers by rail with a requirement that the undertaking ensure traction; this also includes undertakings which provide traction only;
- The terms "operator", mainly refers to Railway undertaking

**In IOD (DIRECTIVE (EU) 2016/797),**

- **Art. 2** 'railway undertaking' means a railway undertaking as defined in point (1) of Article 3 of Directive 2012/34/EU, and any other public or private undertaking, the activity of which is to provide transport of goods and/or passengers by rail on the basis that the undertaking is to ensure traction; this also includes undertakings which provide traction only
- **Art. 2** 'keeper' means the natural or legal person that, being the owner of a vehicle or having the right to use it, exploits the vehicle as a means of transport and is registered as such in a vehicle register referred to in Article 47;

**In ECM regulation (COMMISSION IMPLEMENTING REGULATION (EU) 2019/779),**

- **Art. 2** 'return to operation' means a notice given to the user, such as a railway undertaking or a keeper, by the entity in charge of maintenance, based on a release to service, assuring that all appropriate maintenance works have been completed and the vehicle, previously removed from operation, is in a condition to be used safely, possibly subject to restrictions of use;
- **Art. 4 (2).** The entity in charge of maintenance shall, either directly or via the keeper provide information to the railway undertakings and infrastructure managers operating the vehicles, keepers, manufacturers, holders of vehicles authorisations and holders of the type authorisation of vehicles, subsystems or components, as most appropriate and shall in particular, inform them of exceptional maintenance findings beyond wear and tear.
- **Art 5** describes the obligations of parties involved in the maintenance process.
- **Art. 5 (1)** The entity in charge of the maintenance of the vehicle shall deliver information on the maintenance of a vehicle, and, where applicable on aspects relevant for the operation to the railway undertakings or infrastructure managers at request, either directly or via the keeper.
- **Art. 5 (2)** The railway undertaking or the infrastructure manager shall deliver information on the operation of a vehicle to the entity in charge of maintenance at request, either directly or via the keeper of the vehicle.

- **Art. 5 (3)** All parties involved in the maintenance process such as railway undertakings, infrastructure managers, keepers, entities in charge of maintenance, as well as manufacturers of vehicles, subsystems or components, shall exchange relevant information about maintenance in accordance with the criteria listed in Sections I.7 and I.8 of Annex II.

#### In TSI OPE (COMMISSION IMPLEMENTING REGULATION (EU) 2019/773),

- There are several references to RU and keeper that highlight how the two subjects have different responsibilities that can be combined in a single legal entity but which in fact belong to two different subjects of the railway system.

#### In RID,

- **1.2.1** "Operator of a tank-container, portable tank or tank-wagon" means any enterprise in whose name the tank-container, portable tank or tank-wagon is registered or approved for transport;

##### Comments:

- o *Vehicle registration is a clear responsibility of the Keeper whilst approval for transport is up the applicant who apply for the vehicle authorization, the latter is usually the manufacturer.*
  - o *One of the possible scenarios could be the following: the authorisation for the placing in service of a wagon, which is supposed to operate in more than one EU Member State, is required by the manufacturer to ERA. Once ERA issues the authorisation, the manufacturer sells the authorised wagon to a rental company which registers it and becomes accordingly the keeper. The rental company then makes the wagon available through a rental contract to a railway undertaking which then becomes the material operator of the vehicle. Operator and keeper are different actors with different responsibilities.*
- **1.4.2.2.8** The **carrier** shall ensure that the information to be made available to the entity in charge of maintenance (ECM), either directly or via the **operator of the tank-wagon**, as defined in Article 15 § 3 of ATMF – Appendix G to COTIF – and in Article 5 of Annex A to ATMF also covers the tank and its equipment.

##### Comments:

- o *Carrier here refers to Railway Undertaking responsibilities.*
  - o *Operator of the tank-wagon refers to keeper responsibilities.*
  - o *Possible scenario: a wagon rental company registers 10 vehicles and for each of them takes on the responsibility of keeper. As a keeper, the rental company identifies and assigns to each of these vehicles an ECM in possession of a valid and relevant certification. The rental company then enters into a contract with a railway undertaking maintaining the keeper responsibilities and the maintenance contract. The ECM of the 10 wagons, in order to carry out its functions, needs the data derived from the operations. For this reason, the keeper establishes in the contract with the railway undertaking that the latter has to communicate weekly to the keeper the operations data of the 10 wagons. The keeper will then provide this data to his ECM. In this possible scenario, the operator of the vehicles is the railway undertaking, while the keeper is the rental company.*
- **1.4.3.5** Tank-wagon operator. In the context of 1.4.1, the tank-wagon operator shall in particular<sup>13</sup>:
    - a) ensure compliance with the requirements for construction, equipment, 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 ATMF – Appendix G to COTIF – and in Article 5 of Annex A to ATMF also covers the tank and its equipment.

<sup>13</sup> The tank-wagon operator may transfer the organisation of inspections according to Chapter 6.8 to an entity in charge of maintenance (ECM).

*Comments:*

- o *The above activities refer to keepers' responsibilities apart from point b) that could be under the railway undertaking responsibility.*

- **6.8.2.5.2**

**6.8.2.5.2**

The following particulars shall be inscribed on both sides of the tank-wagon (on the tank itself or on plates):

- vehicle keeper mark or name of operator<sup>17</sup>;
- capacity<sup>16</sup>;
- unladen mass of tank-wagon<sup>16</sup>;
- load limits according to the characteristics of the wagon and the nature of the lines used;
- for the substances according to 4.3.4.1.3, the proper shipping name of the substance(s) accepted for carriage;
- tank code according to 4.3.4.1.1;
- for substances other than those according to 4.3.4.1.3, the alphanumeric codes of all special provisions TC and TE which are shown in column (13) of Table A of Chapter 3.2 for the substances to be carried in the tank; and
- date (month, year) of the next inspection in accordance with 6.8.2.4.2 and 6.8.2.4.3 or with the TT special provisions of 6.8.4 for the substance(s) accepted for carriage. If the next inspection is an inspection in accordance with 6.8.2.4.3, the date shall be followed by the letter "L".

The following particulars shall be inscribed on the tank-container (on the tank itself or on plates):

- names of owner and of operator;
- capacity of the shell<sup>16</sup>;
- tare<sup>16</sup>;
- maximum permissible gross mass<sup>16</sup>;
- for the substances according to 4.3.4.1.3, the proper shipping name of the substance(s) accepted for carriage;
- tank code according to 4.3.4.1.1; and
- for substances other than those according to 4.3.4.1.3, the alphanumeric codes of all special provisions TC and TE which are shown in column (13) of Table A of Chapter 3.2 for the substances to be carried in the tank.

<sup>17</sup> Vehicle keeper marking in accordance with Annex PP, section PP.1 of the Uniform Technical Prescriptions applicable to rolling stock, subsystem freight wagons (UTP WAG) of the APTU Uniform Rules (Appendix F to COTIF 1999) (see [www.otif.org](http://www.otif.org)) and in accordance with paragraph 4.2.2.3 and Annex P of Commission decision 2011/314/EU of 12 May 2011 concerning the technical specification of interoperability relating to the "operation and traffic management" subsystem of the trans-European conventional rail system.

*Comments:*

- o *Here the term operator could refer to the RU whilst the term vehicle keeper marking (VKM) is the name of the keeper, so the name of the company who registered the already authorised vehicle.*
- o *Putting VKM code on the wagon is a mandatory provision whilst the name of the operator, if it is not the keeper, is not.*

- **1.2.1 "Carrier"** means the *enterprise* which carries out the transport operation with or without a transport contract;

*Comments:*

- o *Considering tank wagon operations, carrier means railway undertaking.*