

OTIF



**ORGANISATION INTERGOUVERNEMENTALE POUR
LES TRANSPORTS INTERNATIONAUX FERROVIAIRES**

**ZWISCHENSTAATLICHE ORGANISATION FÜR DEN
INTERNATIONALEN EISENBAHNVERKEHR**

**INTERGOVERNMENTAL ORGANISATION FOR INTER-
NATIONAL CARRIAGE BY RAIL**

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Subject: Explanatory Report on Appendix C to COTIF

Proposal transmitted by the Secretariat

1. At its 47th and 48th sessions (Sofia, 16 – 20 November 2009 and Berne, 19 and 20 May 2010), the RID Committee of Experts adopted, among other things, amendments to Appendix C of COTIF. As a result, it has become necessary to adapt the parts of the Explanatory Report (see http://www.otif.org/fileadmin/user_upload/otif_verlinkte_files/07_veroeff/03_erlaeut/rpex99-rid-e.pdf) that deal with the provisions of this Appendix concerned by the amendments.
2. The Secretariat has taken this opportunity to check the whole Explanatory Report on Appendix C in order to bring it up to date. In view of the fact that the Explanatory Report is to be considered as “supplementary means of interpretation” within the meaning of Article 32 of the 1969 Vienna Convention on the Law of Treaties, it was decided following last year’s revision of Appendices E, F and G of the Convention that the Explanatory Report must be approved by the organs of OTIF that are responsible for amending the provisions concerned in each case.
3. The attached new version of the Explanatory Report on Appendix C is therefore submitted to the RID Committee of Experts for examination and approval.

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

Explanatory Report¹

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 RID system before the first restructured version in 2001 lay in the fact that, according to marginal note 1, indent (1), it constituted 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 depended, in principle, on the scope of application of the CIM Uniform Rules. From this, there resulted three important formal restrictions:
 - RID applied only to international carriage.
 - It applied only to carriage on lines included in the CIM list.
 - Carriage had to 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 Directive 2008/68/EC of 24 September 2008 on the inland transport of dangerous goods (RID/ADR/ADN Framework Directive), the Member States of the European Union (EU) 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.

4. Substantial difficulties have arisen from the legal structure of RID in force before COTIF 1999 in the context of the carriage of empty tank-wagons, empty tank-containers as well as empty wagons and empty small containers for bulk goods, these uncleaned wagons and containers, belonging to the railway, having contained dangerous goods. Such carriage was performed by the railway without the conclusion of a CIM contract of carriage and was thus not subject to RID. This problem was resolved transitionally 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”.

¹ 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.

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. 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 was in force up to 31 December 2000 was inadequate. This was because, as a general rule, it did not clearly indicate the persons to whom the various obligations applied. In the interest of safety, it was 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 Committee of Experts), in its twenty-ninth session (22 – 26 March 1993), instituted a working group under the chairmanship of Austria. In its sixth session (28 – 31 October 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 September 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 provided 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” annex. The Technical Annex was 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) was to standardise 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 RID/ADR Joint 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 RID/ADR Joint Meeting (17 – 21 March 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 reediting of RID texts drafted by the working group. This approach was also supported by the European Commission because it offered the advantage of being able to include in the Appendices to the RID/ADR/ADN Framework Directive, 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 Committee of Experts, 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 July 1997), were examined by the Revision Committee in the seventeenth session (4 May 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 Committee of Experts would 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. 19.
14. In the twentieth session (1. September 1998), in the second reading, the Revision Committee, with the necessary quorum, completed the deliberations concerning the new Appendix C (RID – without the "Technical" Annex).
15. Despite the agreement in principle by the RID/ADR Joint 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: RID/ADR Joint 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; RID/ADR Joint 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 RID/ADR Joint 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, had still to be formally decided: with regard to RID, by the RID Committee of Experts and, with respect to ADR, by the competent body of the UNECE.
16. The restructuring of the Technical Annex for the purpose of facilitating its application by the user involved a substantial workload. Insofar as the "Technical" Annex includes provisions whose adoption and amendment come within the exclusive remit of the RID Committee of Experts, 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 was not 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 was planned that the work relating to the restructuring centred on the users of the “Technical” Annex to Appendix C should be completed by 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, could be met. That was also the date planned by the UNECE for the amendments to ADR and by the IMO for the amendments to the IMDG Code.
18. The Fifth General Assembly (26 May – 3 June 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 Committee of Experts with regard to the amendments of the whole of Appendix C, confirmed by the Fifth General Assembly, there was a certain interest in the suggestion by Belgium, CIT and 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 Committee of Experts”. 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 May 1999).
20. At its 47th session (Sofia, 16 – 20 November 2009) and 48th session (Berne, 19 and 20 May 2010), the RID Committee of Experts adopted amendments to Articles 1, 3 and 5 of Appendix C. These were necessary firstly because of the accession of the Russian Federation to CO-TIF, which took effect on 1 February 2010, and secondly because of amendments to the provisions on the carriage of dangerous goods as hand luggage, registered luggage and in and on board motor vehicles; see the amendments to the Articles concerned in the Explanatory Report.

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 change of place of dangerous goods, including stops made necessary by transport conditions and including any period spent by the dangerous goods in wagons, tanks and containers made necessary by traffic conditions before, during and after the change of place. The term “carriage” also covers the intermediate temporary storage of dangerous goods in order to change the mode or means of transport (transshipment).
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 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 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 so-called Memorandum of Understanding concerning carriage on the Baltic Sea.
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. Since 1 January 2004, the IMDG Code has been a mandatory component of the 1974 International Convention for the Safety of Life at Sea (SOLAS), and hence mandatory international law. 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 transport modes (Report on the Twentieth Session, First Meeting, p. 2/3).
- 5a. The opportunity the Member States have in accordance with the first sentence of Article 42 § 1 of COTIF 1999 to make declarations not to apply in their entirety certain Appendices to the Convention meant that it was necessary in the provisions of certain Appendices to differentiate between Member States that apply this Appendix and Member States that have made a declaration not to apply this Appendix. In Appendices F (APTU) and G (ATMF), a special term was introduced – “Contracting State” – which means a Member State that has not made a declaration not to apply the Appendix concerned. As the Russian Federation acceded to OTIF with effect from 1 February 2010 and made a declaration not to apply Appendix C (RID), so that RID does not apply in all the Member States of OTIF, the need also arose for RID to differentiate. Therefore, by analogy with APTU and ATMF, the term “RID Contracting State” was defined (see explanations on Article 1bis) and in paragraph a, “Member States” was replaced with “RID Contracting States”.
6. § 2, in alignment with similar texts in ADR and ADN and in the EU’s RID/ADR/ADN Framework Directive, 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.

Article 1bis

Definitions

This Article contains the new definition of “RID Contracting State”. For the justification, see paragraph 5a of the comments on Article 1.

Article 2

Exemptions

1. This provision, like the analogous provision in ADN, states that the Technical Annex can make provision for certain exemptions. Such provisions are included in RID 1.1.3. According to 1.1.3, the provisions of RID do not apply to the following categories of carriage, among others:
 - 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 for their leisure or sporting activities;
 - b) carriage of machinery or equipment not specified in RID which happen to contain dangerous goods in their internal or operational equipment;

- c) carriage undertaken by enterprises which is ancillary to their main activity, such as deliveries to or returns from building or engineering sites, or in relation to surveying, repairs and maintenance in limited quantities;
 - d) carriage undertaken by the competent authorities for the emergency response (e.g. police and fire brigade) or under their supervision;
 - e) emergency transport intended to save human lives or protect the environment, provided that all measures are taken to ensure that such transport is carried out 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 RID Committee of Experts. 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 RID Committee of Experts 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 Article 6 of ADN and the analogous provisions in the RID/ADR/ADN Framework Directive of the EU, 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 from 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, was withdrawn.
3. For the reasons why “Member State” was changed to “RID Contracting State”, see paragraph 5a of the comments on Article 1.

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 Article 9 of ADN.

Article 5

Type of trains allowed. Carriage as hand luggage, registered luggage or in 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 has been withdrawn, it was necessary to mention this type of carriage in the “legal” part of the RID, this type of transportation being subject to special provisions in 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 was 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 was worded in a much more general manner than is the case in the provisions of RID.
3. The carriage of dangerous goods as hand luggage, registered luggage or in 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 February 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. gas cylinders) must be regulated in the Annex of RID.
6. The amendment to the heading of the Articles from “on board motor vehicles” to “in or on board motor vehicles” was made to align with the definition in Article 3 d) of CIV and Article 12 § 4 of CIV.
7. The amendments to § 1 b) were made to align with Article 12 § 4 of CIV and to make the correlation with this provision clear.
8. The new wording of § 2 was aligned with Article 12 § 4 of CIV, where the passenger is not shown as the addressee.

Article 6

Annex

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