

OTIF



**ORGANISATION INTERGOUVERNEMENTALE POUR
LES TRANSPORTS INTERNATIONAUX FERROVIAIRES**

**ZWISCHENSTAATLICHE ORGANISATION FÜR DEN
INTERNATIONALEN EISENBAHNVERKEHR**

**INTERGOVERNMENTAL ORGANISATION FOR INTER-
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RID: 3rd Session of the RID Committee of Experts' standing working group
(Berne, 20 and 21 May 2014)

Subject: Entity in Charge of Maintenance (ECM)

Proposal transmitted by UIC

Summary: Introducing the concept of the ECM into RID

Related documents:

- OTIF/RID/CE/GTP/2013-A (final report of the 2nd session of the RID Committee of Experts' standing working group),
- OTIF/RID/CE/2012/8 (proposal from Belgium, 51st session of the RID Committee of Experts),
- Informal document INF.3 (UIP), 12th session of the working group on tank and vehicle technology,
- Informal document INF.12 (ERA), 50th session of the RID Committee of Experts,
- OTIF/RID/CE/2011-A (report of the 50th session of the RID Committee of Experts)

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Introduction

1. At the 3rd session of the RID Committee of Experts' standing working group (Copenhagen, 18-22 November 2013), UIC agreed to submit a proposal to introduce the concept of the Entity in Charge of Maintenance (ECM) into RID, in line with railway legislation. This term has been introduced into Appendix G (ATMF UR)¹ of COTIF in the context of harmonising the latter with European railway legislation, particularly directives 2004/49/EC (Articles 3 and 14 bis) and 2008/57/EC (Articles 2 and 33) and Regulation (EU) 445/2011².
2. The issue of ECMs has been discussed on various occasions at the RID Committee of Experts and its standing working group, as well as at the initiative of the European Railway Agency (ERA), which organised a workshop on this issue at the end of 2012³. The issue of the ECM was put forward for discussion at the request of the UIP in 2011, but in 2012, the proposal to amend RID submitted by Belgium was deferred.

Explanations

3. UIC has based its considerations on the documentation available, particularly the legal texts. The analysis highlights the complexity of the problems that need to be resolved and shows that the conditions are perhaps not yet in place for the risk-free introduction of the concept of ECM into the 2015 version of RID. It has not been possible to carry out all the checks and exchanges required with the various stakeholders involved and the deadlines for the discussion in the RID Committee of Experts' standing working group are too short.
4. For this reason, this proposal from UIC aims only to clarify the tasks relating to maintenance in 1.4.3.5 (b), which deals with the safety obligations of tank-wagon operators, for the 2015 version of RID. The obligations relating to the current paragraph 1.4.3.5 (b) are already provided for in the railway legislation, where they are the responsibility of the ECM. The current 1.4.3.5 (b) could be deleted without any further explanation, as railway legislation already deals with the obligation to maintain wagons in general and wagons used for dangerous goods in particular.
5. Pending more systematic treatment of the issue, UIC proposes another option which is more suited to the situation, particularly from the point of view of understanding the provisions in the context of RID, by maintaining harmony between the provisions of 1.4.3.5 and those of 1.4.3.4 relating to the tank-container or portable tank operator. The proposal is to amend the current 1.4.3.5 (b) by deleting the obligations that are already stipulated in railway legislation and by adding a reference to Appendix G (ATMF UR) of COTIF and a footnote indicating the main texts in European legislation with which Appendix G is harmonised.
6. However, the amendment being proposed to the current 1.4.3.5 (b) only deals with part of the questions raised by the need for consistency set out above. Indeed, the current 1.4.3.5 (c) should also be the responsibility of the ECM, which must ensure the timely execution of non-destructive tests in accordance with Annex A to Appendix G of COTIF. The same is true of paragraph (a), which should be adapted, as some periodic or intermediate checks or inspections are also the responsibility of the ECM, whereas the obligations relating to the initial check (1.8.7.4) are the responsibility of the applicant.

¹ Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (ATMF UR). Annex A to Appendix G (French version) refers to the "ECE" (*Entité chargée de l'entretien*), whereas Appendix G itself contains the equivalent term of "*entité chargée de la maintenance*" (ECM).

² These texts deal with the safety, interoperability and certification system of entities in charge of the maintenance of freight wagons.

³ ERA, 24 October 2012 Workshop on EU regulations on ECM and on APIS in the context of transport of dangerous goods by rail. The agenda and documents are available from: <http://www.era.europa.eu/Document-Register/Pages/ECM+APIS-dangerous-goods.aspx>.

7. Like amendments concerning other questions raised in connection with other parts of RID, these amendments, which need to be examined, require that some problems concerning regulatory texts other than RID will also have to be resolved. In order to achieve this objective, it is therefore necessary to ensure that there is agreement between the various stakeholders and to carry out an overall in-depth examination into the regulations that apply. UIC proposes that the work should be carried out in the context of the Administrative Arrangements between DG MOVE, OTIF and ERA, the existence of which was announced at the end of 2013 at the RID Committee of Experts' standing working group. Apart from proposal 1 below to amend RID 2015, UIC proposes to continue work on defining amendments for the 2017 edition of RID and, if necessary, for the railway legislation. Attached at annex is UIC's contribution towards this work in the form of initial considerations and guidelines.

Proposal 1

8. Amend 1.4.3.5 as follows:

"1.4.3.5 Tank-wagon operator

In the context of 1.4.1, the tank-container/portable tank operator shall in particular:

- (a) ensure compliance with the requirements for construction, equipment, tests and marking;
- (b) ensure that the maintenance of tanks and their equipment is carried out by an entity certified in accordance with the provisions of Appendix G (ATMF)¹ to CO-TIF;
- (c) 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.

¹ Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (ATMF UR). Appendix G is harmonised with the European legislation, particularly Directives 2044/49/EC (Articles 3 and 14 a) and 2008/57/EC (Articles 2 and 33) and Regulation (EU) 445/2011 dealing with the safety, interoperability and certification system of entities in charge of the maintenance of freight wagons. "

Proposal 2

9. UIC requests the RID Committee of Experts' standing working group to decide what action to take with a view to preparing the introduction of the concept of ECM into RID as soon as possible.
10. The most suitable working framework to do this would seem to be the Administrative Arrangements between DG MOVE, OTIF and ERA, the existence of which was announced at the RID Committee of Experts' standing working group at the end of 2013. Setting up a working group with experts on RID and railway experts should make it possible to achieve this objective as efficiently as possible, while maintaining consistency with the various regulations.

Discussion points for introducing the concept of ECM into RID

1. The new terms "keeper" and "entity in charge of maintenance" reflect new participants in the organisation of rail transport, particularly the ECM. They concern rail transport in general, and hence the carriage of dangerous goods as well. Implementation of the regulations relating to these two terms is defined by existing railway legislation. It is undeniable that the ECM is a new participant in the carriage of dangerous goods by rail. The safety obligations the ECM has to meet could be put in RID Chapter 1.4, in line particularly with those of the carrier (railway undertaking⁴) and the keeper, especially a tank-wagon operator, and in line with the railway legislation.
2. The concept of "keeper" was introduced into RID 2013 following a proposal from Belgium. This has found expression in information concerning the existing definition of the term "tank-wagon operator" in the form of a footnote in RID Chapter 1.2.1, which sets out definitions. For tank-wagons only, the term "keeper" is considered to be equivalent to the term "tank-wagon operator". This has not had any impact on the existing provisions of RID, particularly those of Chapter 1.4 concerning the participants' safety obligations.
3. In contrast, the introduction of the term ECM into RID, which was also proposed by Belgium, was deferred. This participant takes over certain obligations for which others were formerly responsible, particularly the keeper. In addition, the obligations of the rail transport undertaking (referred to as the "carrier" in RID) have also changed, as according to Annex A to Appendix G, it must now check the the maintenance of the wagon it operates is carried out by an ECM whose ECM certification meets the "dangerous goods" criteria.
4. The above-mentioned Annex A to Appendix G concerning ECMs refers to RID and lays down two "dangerous goods" criteria for obtaining an ECM certificate⁵ valid for the following fields of activity: "tank wagons for dangerous goods" and/or "other wagons specialised in transport of dangerous goods". Wagons for the carriage of containers or bulk wagons/wagons for packages are not wagons specialised in the transport of dangerous goods. Therefore, RID transport also takes place in wagons for which the "dangerous goods" field(s) of activity in the ECM certificate do not need to be ticked.
5. The current version of RID refers to the maintenance of tanks in 1.4.3.5 (b) concerning the safety obligations of the tank-wagon operator (or keeper), in the sense that the latter must "ensure that the maintenance ... is carried out". The scope of the maintenance is not defined and it is not indicated clearly whether the tests and inspections required under RID are part of the maintenance programme. However, this obligation to provide maintenance is also set out in Appendix G (ATMF UR) to COTIF and in Annex A ⁶to Appendix G, which refers to an obligation of the ECM and not of the "keeper", who, for tank-wagons, is the "tank-wagon operator", which indicates a clear difference between RID and this other COTIF Appendix. The correction of this difference is dealt with in the proposal to which this Annex is attached.
6. The concept of maintenance as dealt with in the railway legislation (Appendix G to COTIF and Regulation 2011/445/EU) obviously has a broader meaning than that used in RID, where it has not been developed very far as regards tank-wagons (in essence 1.4.3.5 (b)). RID does not deal with the maintenance arrangements for dangerous goods wagons. For example, the

⁴ "Rail transport undertaking" in COTIF.

⁵ As a result of the work on harmonisation carried out by OTIF and the European Commission, the term "ECM certificate" is common to Annex A of Appendix G of COTIF and to European Regulation 2011/445/EC.

⁶ Annex A of Appendix G to COTIF is harmonised with Regulation 2011/445/EC of 10 May 2011 on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007. With regard to Annex A of Appendix G, see in particular annexes III, IV and V.

railway legislation does not explicitly indicate that the ECM has to ensure the timely performance of checks or inspections on tanks or that it can carry them out, but on the other hand, it certainly entrusts the ECM with the task of ensuring that non-destructive testing is carried out (cf Annex A of Appendix G). This situation should be examined by the RID Committee of Experts' standing working group.

7. In fact, Article 15 (2) of the ATMF in force stipulates that "the ECM shall ensure that the vehicles for which it is in charge of maintenance are in a safe state of running by means of a system of maintenance" and paragraph (4) stipulates that "the ECM of an admitted vehicle shall keep and update a Maintenance Record File for that vehicle". The draft (Version 09) ATMF whose revision will be proposed to the COTIF Revision Committee at the end of June 2014 contains the same sentence as above in paragraph 2 Art.15. This also contains the following sentences:
 - a) Art. 15, paragraph 1: *"To that end, railway vehicles shall be made available for and undergo the service, inspections and maintenance as prescribed in the Maintenance File. It shall be the responsibility of the keeper to designate an ECM for this purpose."*
 - b) Art. 15, paragraph 4: *"The ECM of an admitted vehicle shall keep and update the Maintenance File and Maintenance Record File for that vehicle."*
8. In the European legislation, Art. 14a of Directive 2004/49/EC also stipulates that "(...) the entity (in charge of maintenance) shall ensure that the vehicles for which it is in charge of maintenance are in a safe state of running by means of a system of maintenance."
9. For these reasons, the ECM, which must ensure that the wagons for which it is responsible are in a safe state of running, must schedule in good time the tests and inspections (which of course contribute to safety) to check that they have in fact been carried out, and must record them to ensure traceability.
10. Therefore, the question arises as to whether the tests and inspections within the meaning of RID (periodical or after damage or modification, ...) are part of the maintenance or not, and whether or not they concern an ECM whose fields of activity according to the ECM certificate relate to dangerous goods. The initial inspection should be the responsibility of the applicant, who might be the manufacturer or the keeper (tank-wagon operator). Subject to examination by the competent services, it can be considered that the periodic tests and inspections or those carried out after an accident and/or repair are in fact the responsibility of the ECM, and not of the keeper.
11. The question also arises as to whether the ECM's tasks prescribed in the current railway legislation (Appendix G to COTIF and Regulation 2011/445/EU, particularly Annex III) should be clarified.
12. With the introduction of the term ECM into RID, any unnecessary redundancy should however be avoided. For some aspects, RID should certainly be amended, but for others, it might also be desirable to amend the railway legislation. It is also necessary to take account of the fact that compliance with the requirements of RID will be all the more certain if the rules are easy to understand. Firstly therefore, the definitions of the safety obligations in RID Chapter 1.4 must be complete and clear and must avoid any useless redundancy, particularly with the other Appendices to COTIF, which may justify having some clarification to aid understanding of RID in terms of the application of railway legislation.

Guidelines

13. The term ECM must be introduced into RID Chapter 1.4 concerning the safety obligations of participants. However, it is possible that references to the ECM might be required elsewhere in RID in connection with certain issues (tank file, tests, ...). It is important to note that some of

the tasks of the ECM can be sub-contracted to other actors, particularly railway undertakings or keepers, and that the regulations provide that the maintenance activities can take place in a contractual framework. Therefore, to define the amendments to RID and possibly to the railway legislation, it is essential to clarify in advance several subjects, concerning in particular:

- a) The tasks of the ECM concerning dangerous goods, especially as regards:
 - the tank file (4.3.2.1.7, held by the owner or operator),
 - the obligations relating to tanks (maintenance (1.4.3.5), tests, periodic, intermediary or exceptional checks, as prescribed in 1.8.7.5,...),
 - the applicant's prerogatives (see definition in 1.2.1). The ECM is likely to be the "applicant" for a conformity assessment, for example in the case of repair or modification owing to a disruption in supplying a spare part.
- b) The introduction of the ECM in RID Chapter 1.4. This could be done in 1.4.3.5. The current 1.4.3.5 "Tank-wagon operator" could be changed to 1.4.3.4.2 and the current 1.4.3.4 "Tank-container/portable tank operator" could be changed to 1.4.3.4.1. 1.4.3.4 would be given the former title (RID 2011) "Tank-container/portable tank/tank-wagon operator". This would avoid having to amend the numbering of the paragraphs relating to the following participants in the list in 1.4.
- c) The introduction of the definition of ECM in RID 1.2.1, which concerns definitions, avoiding unnecessary redundancy. Perhaps it would be simpler to refer to Appendix G to CO-TIF. RID, Appendix C, must be consistent with Appendix G. It would also need to be checked whether it is necessary to refer to the European legislation (RID is applicable to inland transport within the EU under Directive 2008/68/EC).
- d) The obligations of the carrier (railway undertaking) - (1.4.2.2), as regards the wagon that it uses for the carriage of dangerous goods. He must ensure that the ECM assigned to the wagon holds a valid ECM certificate (the check focuses on the fields of application of the ECM certificate and not on the certification itself).

This obligation is laid down by the railway regulations in general, including for the transport of dangerous goods. It is therefore necessary to check whether it is useful to repeat this in RID or to reference it.

It must also be borne in mind that in general, for all freight wagons, for certain tasks he has to perform, the carrier may rely on the information and data provided to him by other participants. In particular, the carrier can rely on the database set up and updated under the responsibility of the organisation described in Article 13 of ATMF.

- e) The obligations of the tank-wagon operator (keeper) (1.4.3.5). The emergence of the ECM as new participants (the function of ECM can be provided by a keeper or by a railway undertaking ...) alters the obligations of the keeper, particularly as regards maintenance. The same goes for 1.4.3.5 c) relating to the exceptional check in case of repair. In principle, the ECM is involved. This point should be clarified.
- f) The concept of keeper. Introduced into RID 2013 in a footnote referring to the tank-wagon operator, this concept is not quite equivalent to that of the tank-wagon operator, which mainly relates only to the tank (and its equipment). In addition the concept of keeper should cover the "other wagons specialised in transport of dangerous goods". In the current version of RID 2013, where the concept of ECM does not exist, this is no problem. It will need to be checked if this is still the case with the introduction of the ECM, in relation to the railway legislation.