



OTIF/RID/CE/GTP/2014/22

8 October 2014

Original: German

RID: 4th Session of the RID Committee of Experts' standing working group
(Madrid, 17 - 20 November 2014)

Subject: Explanatory Report on Appendix C to COTIF

Proposal transmitted by the Secretariat

Introduction

1. The Secretariat submitted document OTIF/RID/CE/2010/14 to the 49th session of the RID Committee of Experts (Luxembourg, 2 – 4 November 2010), in which the RID Committee of Experts was asked to check the new version of the Explanatory Report on Appendix C. The document pointed out the importance of the Explanatory Report, which serves as “supplementary means of interpretation” in the sense of Article 32 of the 1969 Vienna Convention on the Law of Treaties.
2. The RID Committee of Experts adopted this new version of the Explanatory Report with various minor amendments (see report OTIF/RID/CE/2010-B, paragraph 4 and Annex II).
3. Since then, the RID Committee of Experts has not made any more amendments to Appendix C. However, at the request of the Secretariat, the RID Committee of Experts' standing working group adopted an explanatory addition on page 1 of the official edition of RID, in which it is made clear that only those States that have ratified COTIF 1999 and whose membership is not suspended are considered as RID Contracting States (see document OTIF/RID/CE/GTP/2014/8 and informal document INF.5 of the 3rd session of the standing working group as well as report OTIF/RID/CE/GTP/2014-A, paragraphs 41 to 43 and Annex I).
4. The Secretariat has now included this addition in the Explanatory Report on Appendix C and requests the standing working group to examine and approve it. The amendments are shown in the following text in **bold and underlined**.

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

Explanatory Report ¹

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 ² 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.

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.

² Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods published in the Official Journal of the European Union L 260, 30 September 2008, p. 13.

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.
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 return (gas compensation pipe), which create obligations for the filler 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 29th session (22 – 26 March 1993), instituted a working group under the chairmanship of Austria. In its 6th session (28 – 31 October 1996), this working group completed the 2nd 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 4th 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 17th 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 19th 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 20th session (1. September 1998), in the 2nd 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; 9th session of the Working Group, October 1997, Bulletin 1997, p. 338; 10th session of the Working Group, January 1998, Bulletin 1998, p. 41; RID/ADR Joint meeting, March 1998, Bulletin 1998, p. 80; 11th 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 5th General Assembly. Since all the work on the restructuring of the Annex of Appendix C was not finally completed until after the 5th 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 5th 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 5th General Assembly, there was a certain interest in the suggestion by Belgium, CIT and UIC submitted to the 5th 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 COTIF, 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 the Baltic Sea ferries; assumes a particular importance. In every case of complementary carriage by road or by inland waterway, ADR and ADN will always apply to the transport operation with the respective mode, 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. The so-called "Memorandum of Understanding" contains rules 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 20th session, 1st meeting, p. 2/3).
6. 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.

7. Only those States that have ratified the 1999 Protocol and which, for amendments to Appendix C, including the Annex to Appendix C, are vested with all rights, are considered to be RID Contracting States. However, in terms of their rights and obligations in accordance with the Annex to Appendix C, the Member States of COTIF 1980 are equivalent to the RID Contracting States up to the time at which they ratify COTIF 1999 and become RID Contracting States themselves (see 1.1.2.4 of the version of RID in force from 1 January 2015).³

8. § 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 N°. **6** of the remarks 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.

³ Annex 2 to the final document of OTIF's 7th General Assembly (Berne, 23 and 24 November 2005) sets out the legal consequences of the entry into force of COTIF 1999 if not all States have ratified the Vilnius Protocol in due time (http://www.otif.org/fileadmin/user_upload/otif_verlinkte_files/04_recht/AG_7_PV_24.11.2005_ad02_e.pdf).

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 20th session, 1st meeting, pp. 3-5).

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 RID Contracting 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. For the reasons why Member State was changed to RID Contracting State, see N°. 6 of the remarks 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 5th 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 (car on train), in accordance with Article 12 of the CIV Uniform Rules in the version adopted by the 5th 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 5th 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, for example (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 20th session, 1st meeting, p. 7).
