



**OTIF/RID/CE/GTP/2016/9**

10 October 2016

Original: German

**RID:** 7<sup>th</sup> Session of the RID Committee of Experts' standing working group  
(Prague, 22 to 24 November 2016)

**Subject:** Entry into force of a Polish law to indicate the owner of the dangerous goods in documents in accordance with RID Chapter 5.4

### **Information and questions transmitted by the International Union of Railways (UIC)**

#### **Introduction**

1. In mid August, UIC was informed by one of its members about the entry into force on 2 September 2016 of a Polish law stipulating that the participant in the carriage of dangerous goods is required to enter in the documents prescribed in RID/ADR/ADN the name and address of the undertaking in whose possession the dangerous goods are when they are handed over to the carrier (original Polish version and English and German translations of this provision, see Annex 1).
2. UIC was also informed that some Polish rail transport undertakings have informed their partners abroad accordingly, and asked them to ensure that this information is contained in the transport documents for the carriage of dangerous goods to Poland. It was also indicated in some instances that consignments without this information in the transport document would not be taken over for onward transport to Poland, as the rail transport undertakings would be in breach of applicable laws and would be threatened with fines by the Polish Office of Rail Transport (UTK).
3. As this matter concerns all international rail traffic with Poland, UIC informed CIT and OTIF about it.
4. In addition to UIC, OTIF has also expressed doubt as to the validity of this law for international transport in accordance with RID. Some rail transport undertakings in Poland were also of this view, but pointed out that they have to comply with the existing law.
5. In order to continue to ensure smooth international rail freight traffic with Poland, those involved obtained an official written statement from the Polish Ministry of Transport.

6. The letter concerned from the Polish Ministry of Transport, dated 2 September 2016 and sent to the regulatory authorities, makes clear that:
  - the provisions of RID and ADR Chapter 5.4, which Poland must apply in accordance with Directive 2008/68/EC, define the type and content of the documents that accompany the consignment,
  - any additional information not required by RID and ADR, such as the name and address of the owner, cannot be considered as a mandatory element of the information prescribed,
  - the relevant Article of the law cannot therefore be used as a basis for fining participants if the information on the owner is not included in the transport document,
  - participants in the carriage of dangerous goods in Poland cannot require this information from other participants in other RID/ADR Contracting States, as such a demand could be considered as a breach of the provisions of RID and ADR.
7. The letter of 2 September 2016 (original Polish version and English translation) is attached as Annex 2.
8. Despite this clarification from the Ministry of Transport, it was stated by official Polish bodies at a hearing of Polish associations before several Polish ministries on 6 September 2016 that the letter from the Ministry of Transport had no legal effect for participants in the carriage or for the regulatory authorities. The law, which was not submitted to Parliament by the Polish Ministry of Transport, but by the Ministry of Energy, with the aim of curbing the black market in fuels, therefore still applied in full, i.e. to international traffic as well.
9. As a result, participants are still very uncertain and unclear what to do. This is all the more so as the law does not say clearly which entity concerned by the law is obliged to enter the information on the owner.

#### **Question from UIC**

10. As far as UIC is aware, carriers in Polish rail freight traffic must in every case be held responsible by the Polish regulatory authority for information on the owner of the dangerous goods that is missing from the transport document.
11. UIC therefore asks the 7<sup>th</sup> session of the RID Committee of Experts' standing working group to answer the following questions:
  - a) Bearing in mind the provisions of Article 3 RID and Article 1, paragraph 5 of Directive 2008/68/EC, does the Polish law also apply to international carriage to or through Poland, or do only the provisions of RID Chapter 5.4 apply in this case?
  - b) Bearing in mind the provisions of Directive 2008/68/EC, is it permissible to hold carriers in Polish rail freight transport responsible for the absence in the transport document of information on the owner of the dangerous goods?
12. Owing to the consequences of this Polish law that are to be feared in terms of international transport, UIC considers this to be a matter of great urgency. Although this law applies to all three land modes, it is first being submitted to the RID Committee of Experts' standing working group to deal with. Depending on the outcome of the discussion, UIC is willing, if necessary, to submit an appropriate document to the RID/ADR/ADN Joint Meeting, together with the International Road Transport Union (IRU).

## Annex 1

**Art 13 ust. 2 ustawy PTN w brzmieniu określonym ustawą z dnia 22 lipca 2016 r. o zmianie ustawy – Prawo energetyczne oraz niektórych innych ustaw (Dz. U. poz. 1165.**

**Article 13 (2) of the Transport of Dangerous Goods Act in the wording specified in the Act of 22 July 2016 amending the Energy Law Act and certain other acts (Journal of Laws, item 1165)**

***Artikel 13 (2) des Gesetzes über die Beförderung gefährlicher Güter im Wortlaut gemäß Gesetz vom 22. Juli 2016 zur Änderung des Energiegesetzes und bestimmter anderer Gesetze (Gesetzblatt Ziffer 1165)***

Uczestnik przewozu towarów niebezpiecznych jest obowiązany zamieścić, w wymaganych dokumentach, o których mowa w ustawie, oraz odpowiednio w ADR, RID lub ADN nazwę i adres podmiotu, którego własnością, w chwili przekazania osobie wykonującej przewóz towarów, jest towar niebezpieczny.

The participant in the carriage of dangerous goods is obliged to provide in the required documents referred to in the Act, and accordingly in ADR, RID or ADN respectively the name and address of the entity which owns the dangerous goods upon handover to the person dealing with the carriage of the dangerous goods.

Der an der Beförderung gefährlicher Güter Beteiligte ist verpflichtet, in den gemäß diesem Gesetz und entsprechend RID/ADR/ADN vorgeschriebenen Dokumenten Name und Anschrift des Unternehmens anzugeben, in dessen Eigentum sich das gefährliche Gut bei der Übergabe an den Beförderer befindet.

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THE MINISTER OF  
INFRASTRUCTURE AND CONSTRUCTION

Warsaw, 2 September 2016

DTK.9.054.13.2016.JD.01  
DTD.4.4311.72.2016.ŁK.3

Mr Ignacy Góra  
acting President of the Railway  
Transport  
Office

Mr Alvin Gajadhur  
acting Chief Inspector of Road  
Transport

Dear Mr President and Mr Inspector,

Pursuant to Article 34a of the Act of 8 August 1996 on the Council of Ministers (Journal of Laws of 2012, item 392, as amended) and Article 97 (4) in conjunction with Article 97 (2) of the Act of 19 August 2011 on the transport of dangerous goods (Journal of Laws, item 1367, as amended), hereinafter referred to as the "TDG Act", as part of supervision over the transport of dangerous goods, to avoid any possible irregularities during application by the control authorities of the provisions of Article 13 (2) of the TDG Act in the wording specified in the Act of 22 July 2016 amending the Energy Law Act and certain other acts (Journal of Laws, item 1165), the following explanations and guidelines are presented below.

The Regulation concerning the international carriage of dangerous goods by rail forming Appendix C to the Convention concerning international carriage by rail (COTIF), (Journal of Laws of 2015, item 1726), hereinafter "RID" and the European Agreement concerning the international carriage of Dangerous goods by Road (ADR) executed in Geneva on 30 September 1957 (Journal of Laws of 2015, item 882), hereinafter "ADR" that Poland is obliged to apply as a country-party and according to directive No. 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (Official Journal of the European Union L of 30.09.2008, p. 1), implemented by the TDG Act, defines documents and the content that should accompany the transport of dangerous goods.

These documents are listed in RID/ADR (chapter 5.4) and they include respectively: a transport document, container or railway car packing certificate/container or vehicle packing certificate and written instructions.

Taking into account the list of data specified in RID/ADR that should be included in the transport document, any additional information not required by RID i ADR cannot be treated as an obligatory element of the transport document within the meaning of RID/ADR. Therefore, the data referred to in the provision of Article 13 (2) of the Act, i.e. the name and address of the entity being the owner of the dangerous goods cannot be considered as the element of the transport document referred to above, required by the provisions of the international law.

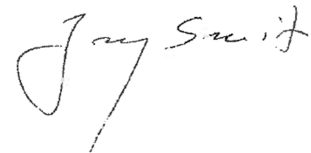
Consequently, it cannot be identified as "other required information" referred to in item 1.1.3 of the Annex to the TDG Act including the list of breaches related to the transport of dangerous goods.

Therefore, it seems that Article 13 (2) of the TDG Act in connection with the Annex to the mentioned Act cannot form the basis for imposing a fine on the party involved in the transport of dangerous goods for missing information about the owner of the dangerous goods.

In addition, it should be stated that in view of the above-mentioned regulations, the party involved in the transport of dangerous goods cannot effectively request the entities operating in other countries-parties to RID and the Contracting Parties to ADR to provide information about the owner of the dangerous goods and such a request may be considered a violation of the provisions of RID.

At the same time please note that having regard to the objective of the Act of 22 July 2016 amending the Energy Law Act and certain other acts that consists in ensuring the effective control over the liquid fuel market, it is being considered whether to commence the works on amendment of the act on the transport of dangerous goods within the above-mentioned scope.

Best regards

A handwritten signature in black ink, appearing to read "Jay Smit". The signature is written in a cursive, slightly slanted style.

CC:

1. The Ministry of Internal Affairs and Administration,
2. The Ministry of Finance,
3. The Ministry of Development,
4. The Ministry of Energy,
5. The Ministry of Maritime Economy and Inland Navigation.



MINISTER  
INFRASTRUKTURY I BUDOWNICTWA

Warszawa, dnia 2 września 2016 r.

DTK.9.054.13.2016.JD.01  
DTD.4.4311.72.2016.ŁK.3

Pan Ignacy Góra  
p. o. Prezes Urzędu Transportu  
Kolejowego

Pan Alvin Gajadhur  
p. o. Główny Inspektor Transportu  
Drogowego

*Szanowny Panie Prezesie, Szanowny Panie Inspektorze,*

Na podstawie art. 34a ustawy z dnia 8 sierpnia 1996 r. o Radzie Ministrów (Dz. U. z 2012 r. poz. 392, z późn. zm.) oraz art. 97 ust. 4 w zw. z art. 97 ust. 2 ustawy z dnia 19 sierpnia 2011 r. o przewozie towarów niebezpiecznych (Dz. U. poz. 1367, z późn. zm.), dalej „ustawa PTN”, w ramach sprawowanego nadzoru nad przewozem towarów niebezpiecznych, w celu uniknięcia ewentualnych nieprawidłowości przy stosowaniu przez organy kontrolne przepisów art. 13 ust. 2 ustawy PTN w brzmieniu określonym ustawą z dnia 22 lipca 2016 r. o zmianie ustawy – Prawo energetyczne oraz niektórych innych ustaw (Dz. U. poz. 1165), poniżej przedstawiam następujące wyjaśnienia oraz wytyczne.

Regulamin międzynarodowego przewozu kolejami towarów niebezpiecznych, stanowiący załącznik C do Konwencji o międzynarodowym przewozie kolejami (COTIF), (Dz. U. z 2015 r. poz. 1726, dalej „RID” oraz Umowa europejska dotycząca międzynarodowego przewozu drogowego towarów niebezpiecznych (ADR), sporządzona w Genewie dnia 30 września 1957 r. (Dz. U. z 2015 r. poz. 882), dalej „ADR”, do których stosowania Polska jest zobowiązana jako państwo-strona oraz na podstawie dyrektywy 2008/68/WE Parlamentu Europejskiego i Rady z dnia 24 września 2008 r. w sprawie transportu lądowego towarów niebezpiecznych (Dz. Urz. UE L z 30.9.2008, str. 1), implementowanej ustawą PTN, określa jakie dokumenty oraz jakiej treści powinny towarzyszyć przewozowi towarów niebezpiecznych. Dokumenty te wymienione są w RID/ADR (dział 5.4) i należą do nich odpowiednio dokument przewozowy, certyfikat pakowania kontenera wielkiego lub wagonu/certyfikat pakowania dużego kontenera lub pojazdu oraz instrukcje pisemne.

Mając na uwadze katalog danych określonych w RID/ADR, który powinien znajdować się w dokumencie przewozowym, wszelkie dodatkowe informacje, które nie są wymagane przepisami RID i ADR nie mogą być traktowane jako obligatoryjny element dokumentu przewozowego w rozumieniu RID/ADR. Dlatego też dane, o których mowa w przepisie art. 13 ust. 2 ustawy, tj. nazwa i adres podmiotu, którego własnością są towary niebezpieczne nie mogą zostać uznane za wymagane przepisami prawa międzynarodowego element dokumentu przewozowego, o którym mowa powyżej. W efekcie nie można ich utożsamiać z „inną wymaganą informacją”, o której mowa w punkcie 1.1.3 załącznika do ustawy PTN zawierającego wykaz naruszeń związanych z przewozem towarów niebezpiecznych.

Wobec powyższego, wydaje się, że art. 13 ust. 2 ustawy PTN w związku z załącznikiem do wymienionej ustawy nie może stanowić podstawy do nałożenia kary na uczestnika przewozu towarów niebezpiecznych za brak informacji dotyczącej właściciela towaru niebezpiecznego.

W uzupełnieniu należy dodać, że mając na uwadze wyżej przedstawione regulacje, uczestnik przewozu towarów niebezpiecznych nie może skutecznie żądać od podmiotów działających w innych państwach-stronach RID oraz Umawiających się Stronach ADR podania informacji dotyczących właściciela towaru niebezpiecznego, a żądanie takie może zostać potraktowane jako naruszenie przepisów RID/ADR.

Jednocześnie informuję, że mając na uwadze cel ustawy z dnia 22 lipca 2016 r. o zmianie ustawy – Prawo energetyczne oraz niektórych innych ustaw, polegający na zapewnieniu skutecznej kontroli rynku paliw ciekłych, rozważane jest podjęcie prac nad zmianą ustawy o przewozie towarów niebezpiecznych w powyższym zakresie.

Podpis  
Jay Smith

Do wiadomości:

1. Ministerstwo Spraw Wewnętrznych i Administracji,
2. Ministerstwo Finansów,
3. Ministerstwo Rozwoju,
4. Ministerstwo Energii,
5. Ministerstwo Gospodarki Morskiej i Żeglugi Śródlądowej.