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Subject: Entry into force of the new directive on railway safety (Directive 2016/798/EU) – Impact on the obligations of carriers, infrastructure managers (IM) and other participants within the meaning of RID Chapter 1.4

Information from the International Union of Railways (UIC)

1. The UIC has submitted to the TDG Committee a request for clarification of the safety obligations of participants within the meaning of Directive 2008/68/EC in light of the interpretation of Directive 2016/798/EC.
2. This request is enclosed for information.

Subject: Entry into force of the new directive on railway safety (Directive 2016/ 798/EU); Impacts on the obligations of carriers, infrastructure managers (IM) and other participants within the meaning of chapter 1.4 RID

Union Internationale des Chemins de fer (UIC)

Interpretation of Directive 2016/798/EU – Request for clarification on the safety obligations of participants within the meaning of Directive 2008/68/EC

Introduction

1. Directive 2016/798/EU of the European Parliament and of the Council dated 11 May 2016 on railway safety has replaced Directive 2004/49/EC, which has been in force up until now.
2. It states in recital (19) that "Rail freight services should also encompass the transport of dangerous goods. However, a distinction should be made between the objective of this Directive, which is to maintain and, where possible, improve the safety of the Union rail system, and that of Directive 2008/68/EC of the European Parliament and of the Council (...), which is, mainly, to regulate the classification of substances and the specification of their containments, including the safe loading, unloading and use of the containments within the existing railway system. Consequently, without prejudice to Directive 2008/68/EC, the safety management system of the railway undertakings and of the infrastructure managers should duly take into consideration the potential additional risks generated by carrying dangerous goods containments."
3. According to article 4(3) of the Directive, which concerns the role of the actors, including the Member States and the Agency¹, RUs and IMs must:
 - implement "the necessary risk control measures referred to in point (a) of Article 6(1), where appropriate in cooperation with each other and with other actors;"
 - take account "in their safety management systems of the risks associated with the activities of other actors and third parties;"
 - where appropriate, "contractually oblige the other actors referred to in paragraph 4 having a potential impact on the safe operation of the Union rail system to implement risk control measures;"
4. Article 4(4) lists the other actors having a potential impact on safe operation of the rail system. These actors are defined in Article 3 "Definitions". These are essentially the actors mentioned in Chapter 1.4 RID² "Safety obligations of participants", such as consignors, carriers, consignees, fillers, loaders and unloaders, which are defined in 1.2 RID. The definitions of the actors in Article 3 of the directive are very similar to those of Chapter 1.2 of the RID.

¹ European Union Agency for Railways.

² The application of which to the internal transport of dangerous goods is imposed by Directive 2008/68/EC.

Explanation of grounds

5. From UIC's perspective, some of the provisions of Directive 2016/798/EU are liable to have a significant impact on the activities of railway undertakings carrying dangerous goods regarding the "control of potential additional risks" connected with the carriage of such goods.

The arguments presented below and the questions that UIC is putting to the TDG Committee concern the impact of Directive 2016/798/EU, in relation to Directive 2008/68/EC and consequently to the RID.

6. Under Directive 2016/798/EU, railway undertakings have to consider the risks associated with the activities of other actors and third parties in their safety management systems (SMS) and, if necessary, contractually oblige other actors involved in the carriage of goods to implement risk control measures. Under the terms of the RID, carriers must comply with the safety obligations set out in 1.4.2.2 of the RID. Most of these obligations are harmonised with those to be applied by the carriers of other modes of transport (ADR, ADN).
7. The two notions of "carrier" and "railway undertaking" are often considered to be equivalent, but this is not the case as far as the safety obligations for the carriage of dangerous goods are concerned. Recital 19, an extract of which is cited above, implicitly confirms this as it makes a distinction between the different objectives of Directive 2016/798/EU and of Directive 2008/68/EC, respectively.

If the UIC is correct in its understanding, the provisions of Directive 2016/798/EU, described in simplified terms above, would modify the conditions for the application of the requirements set out in 1.4 RID, with the added, not insignificant, risk of differences in the assessment of situations depending on the country, the actors in the Union rail system and the participants as defined in 1.4 RID.

8. To the above arguments, UIC is proposing to add four questions with the aim of facilitating and focusing discussions on the subject.
9. Question 1:

Under the terms of article 4(3 b) of Directive 2016/798/EU, in future should the SMS of an RU or IM also take into account the inherent risks of failure to meet the obligations that the RID regulation imposes on other participants, such as the consignor, the filler or the loader of dangerous goods?

As regards the transport of dangerous goods, it should be noted that the SMS of an RU or IM, and also the supervision and verification measures that it organises, meet the safety obligations set out in the RID, which apply to the RUs and IMs. Thus, the SMS of an RU will contain provisions ensuring compliance with the obligations from 1.4.2.2. RID applicable to the carrier. The requirements of 1.4.2.2.1 on checking loading are an integral part of each RU's Quality Assurance (QA) System. The IM incorporates arrangements for meeting the obligations from 1.4.3.6 of the RID in its rescue and emergency plan.

Some time ago, UIC introduced a procedure for ensuring, on behalf of the RUs and IMs, and also for clients and other participants, a high level of quality for dangerous goods consignments. This procedure, which is based on cooperation between the RUs, is the subject of Leaflet UIC 471-3 O "Inspections of dangerous goods consignments". Point 5 of this leaflet "Inspections" is referred to in RID 1.4.2.2.1 as "Good Practice" leading to the presumption of conformity. Leaflet UIC 471-3 is referenced in the guide GTM-CIT produced by the CIT³ in relation to the conditions of acceptance of the loadings of dangerous goods.

³ International Rail Transport Committee (Bern, Switzerland)

Under the provisions of 1.4 of the RID, this procedure does not require the RUs to check that the other participants, consignors, loaders or fillers meet their obligations, apart from those required under 1.4.2.2 of the RID. The verifications mentioned in 1.4.2.2.1 of the RID concerning the conformity of consignments are those that the carrier is technically able to carry out, under acceptable conditions as regards the safety of its personnel, the economic situation and its competitiveness. Moreover, these verifications are justified by the need to reduce the probability of irregularities occurring during carriage as, while the safety impact is often low, by contrast they often have a negative impact on railway operation in general and on the quality of service, including passenger services.

10. Question 2:

Under the terms of article 4(3 c) of Directive 2016/798/EU, in future will it be necessary for railway undertakings (carriers) in charge of dangerous goods to contractually oblige other participants (e.g. the consignor or loader) to implement risk control measures with respect to these goods, for the purposes of article 6 "Common safety methods" ?

It should be highlighted that while the RID places obligations of safety on the participants listed in Chapter 1.4, its Chapter 1.8 also states that the competent authorities may at any time carry out spot checks to verify that the requirements have been met. As long as the participants meet the legal requirements, the safe transport of dangerous goods is considered guaranteed. The RID does not define safety targets or indicators, compliance with which would have to be checked by the participants applying the Common Safety Methods.

11. Question 3:

Is it now the case under the provisions of Directive 2016/798/EU governing rail safety that a public authority is authorised to require an RU to adopt additional measures beyond the safety obligations that specifically apply to it under Directive 2008/68/EC?

This question concerns initiatives taken by some Member States in the wake of repeated events resulting from irregularities or non-conformances identified during administrative controls. Such situations concerning international transport and also transport between EU countries have already arisen without any link to the new provisions of Directive 2016/798/EU. Chapter 1.8 of the RID on controls is applied in very different ways in Europe and cooperation on inspection between competent authorities (1.8.2 RID) does not seem to be very advanced.

If the station dispatching the dangerous goods and the participants causing the irregularities are located in another country, the Member States' scope for action is limited by 1.8.2 of the RID as regards mutual assistance and administrative control. Action does not always bring the intended result. The competent authority in the country where the irregularity is identified can now, claiming inadequate control, take steps to oblige the RU in charge of the dangerous goods at the moment the irregularity is identified to carry out checks that go beyond those required by 1.4.2.2 of the RID.

12. Question 4:

How should an undertaking (RU or IM) go about evaluating the risks for safe operation that are liable to arise due to other actors' failure to meet the safety obligations regarding the transport of dangerous goods, to contractually oblige them to take risk control measures?

This question is intended to emphasise that the persons within the undertaking with responsibility for rail safety regulations need the assistance of the safety advisor, as described in section 1.8.3 of the RID, for evaluating the potential risks likely to arise during the carriage of dangerous goods due to the participants' failure to meet their safety obligations. This advisor is not qualified in terms of the common

safety measures as set out in article 6 of Directive 2016/798, and no such mission is currently assigned to this advisor under 1.8.3.3 of the RID.

Should this new obligation be confirmed, the corresponding adaptations would have to be made to 1.8.3 of the RID.

13. The UIC's approach is not intended to revive a debate that took place during the various stages of the drafting of the directive, on the roles and responsibilities of the different actors of the Union rail system.
14. UIC questions why a carrier of dangerous goods should be obliged, on its own initiative, to apply measures for controlling potential additional risks resulting from preceding failures committed by other participants. How could it introduce safety arrangements into its contractual relations with other participants, if necessary after evaluating the risks that would be linked with these participants?
15. **Proposal 1**

UIC asks the TDG Committee to examine:

- the arguments it has set out, to respond to the questions presented above and, where applicable,
- the practical conditions under which safety measures should in future be contractually introduced by the RU/IM in their relations with the other participants defined in the RID, if necessary after evaluating the risks connected with these participants,
- how such contractual provisions should work with the safety obligations of the participants under 1.4 of the RID, including those relating to transport documentation.

16. **Proposal 2**

If the TDG Committee considers that the discussion should be pursued in the RID Standing Working Group (RID-SWG) or within an informal working group, UIC wishes to take part in this work. It would be willing to organise an initial meeting.
