



INF. 14

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RID: 7th 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 comments to document OTIF/RID/CE/GTP/2016/9 and informal document INF. 6 transmitted by Poland

1. Document OTIF/RID/CE/GTP/2016/9 and informal document INF. 6 reproducing parts of the report of the 101st session of the WP.15 (Geneva, 8 – 10 November 2016) address Polish regulations, namely art. 13 (2) of the Act on the transport of dangerous goods (TDG Act), and raise a number of questions in this respect. Therefore below a few comments have been made as to the content of these documents.
2. First, the letter mentioned in paragraph 5, which is referred later in the document, was signed on behalf of the Minister of Infrastructure and Construction, that is by a minister competent for transport matters (not Ministry of Transport) and unlike it is stated in paragraph 8, the Minister of Energy (in 2016/9 Ministry of Energy) had not submitted the project of the act concerned to the Parliament.
3. As for art. 13 (2) of the Act on the transport of dangerous goods, article 3 of RID stipulates that "Each RID Contracting State shall retain the right to regulate or prohibit, for reasons other than safety during carriage, the international carriage of dangerous goods on its territory." Similarly according to article 1 (5) of the directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (though it applies only to the EU states): "Member States may regulate or prohibit, strictly for reasons other than safety during transport, the transport of dangerous goods within their territory." In other words RID Contracting States have the right to adopt regulations concerning transport of dangerous for reasons other than safety though with respect to safety regulations for the transport of dangerous goods.

4. Art. 13 (2) falls within the scope of the aforementioned rules. This regulation as it has been correctly mentioned in 2016/9 has been issued with the aim of curbing the black market in liquid fuels (the term "liquid fuels" has been defined in the Act amending the Energy Act and other acts – to make it clear the regulation concerned has been adopted by this Act amending the Energy Act) so it has been adopted for other than safety reasons. As it has been adopted by the Polish Parliament and published in the Official Journal of Laws, no doubt that it is binding and applies to all carriages of dangerous goods that take place on the territory of Poland.
5. This regulation is reproduced in 2016/9. It stipulates that "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 and ADN respectively the name and address of the entity which owns the dangerous goods ...". A number of questions and requests for clarification on the application of art. 13 (2) of the TDG Act were sent to the Minister of Infrastructure and Construction. To address this situation, taking into account international regulations on the transport of dangerous goods, the Minister communicated his position on the regulations on the transport of dangerous goods falling within his scope of competence in response to question on penalties.
6. The Minister of Infrastructure and Construction in the letter addressed to inspection authorities under the supervision of the Minister explained that in his opinion the Polish TDG Act on transport of dangerous goods cannot form the legal basis for imposing penalties on participants of carriage of dangerous goods for lack of information on the owner of the goods in the transport document. The Polish TDG Act in its annex lists breaches of regulations which are penalized with pecuniary fines. As far as transport documents are concerned a penalty is foreseen, among other things, if the transport document does not contain any "other required information". As the content of transport document is regulated by RID, it seems that there is no legal basis to consider information on the entity owing dangerous goods as "other required information" (in the meaning of RID). Therefore in view of the content of the letter addressed to the inspection authorities it would be incorrect to say that the "Ministry of Transport recommended that the inspection authorities refrain from applying penalties when infractions of the law were committed during transport". The Minister in the letter pointed out that lack of this information cannot be deemed as lack of "other required information" so cannot be considered as infringement of regulations concerning transport documents referred to in the Annex to the TDG Act and thus cannot be penalised under the above mentioned regulations.
7. As mentioned above the Government had taken note of the problems raised in document OTIF/RID/CE/GTP/2016/9 and informal document INF. 6 and takes steps to bring the best possible solution "in respect of economic aspects and for the facilitation of international trade".
8. The opinions presented by the (Standing Working Group) RID Committee of Experts in response to questions raised by UIC in the document 2016/9 will form valuable guidelines which will be taken into consideration in the course of actions taken to solve the problem connected with the application of art. 13 (2).
