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INLAND TRANSPORT COMMITTEE

**Working Party on the Transport
of Dangerous Goods**

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Restructuring of Chapter 1.4

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Introduction

The chapter 1.4 "Safety obligations of the participants" in the restructured ADR is a new element.

Since "safety obligations" are a major change to the ADR, the IRU has contested on many occasions the inclusion of "safety obligations" in the restructuring work; these obligations are much too difficult to take them on board the restructuring work.

The majority of the joint RID/ADR meeting did not share the IRU position.

Nevertheless, the IRU has to come back to the "safety obligations" issue since the documents on restructuring are more and more widespread throughout Europe, and read amongst more and more interest groups, including transport operators.

Transport operators are extremely concerned, to say the least, about the obligations addressing them. Their worries are related to the experience that every fault or mistake discovered during a roadside check has direct consequences for them, also when the fault/mistake was not within their competence. To put it as plainly as possible: transport operators pay the fine for every infringement that is found by the inspectors.

The perception is, amongst practitioners, that under cover of restructuring, the "safety obligations" are introduced into the ADR in a form that has not been well thought out.

Concerns are heard from lawyers regarding the legal position of the specific obligations in an international Agreement that is not intended to interfere with international conventions on the contract for the international carriage of goods, namely the CMR Convention and with national legal systems.

Carrier's safety obligations

First point.

The article 1.4.1. starts with a very confusing statement which might have its merits, but which are explained nowhere. "In the context of 1.4.1., where appropriate, the carrier shall in particular:".

Who decides when and where something is appropriate? The players themselves or the inspectors ?

Second point.

In 1.4.2.2.1 a list of 7 obligations is mentioned, some are very far-reaching and are difficult for the carrier to control or to manage.

If one takes the example of overloading under (e). When the carrier (the driver) loads a tank himself and knows the weight of the liquid per liter, he can calculate the amount of liters to be loaded. In this example, it is in the control of the carrier. If the loading is not done by the driver but by someone else, then already the difficulties start.

To overcome some of the difficulties, it is said in 1.4.2.2.2 that the carrier may rely on the information made available to him by the participants.

What does this mean when a truck is stopped during a roadside check ? How does the driver prove that it was not him but another who loaded ? Does a policeman or an inspector take such an excuse seriously ?

Does this article help the position of the carrier? How does it help the other participants? How does it help the policemen and the authorities?

The question at stake is: how can one find a satisfying system for the "obligations" for a party that has to rely almost always on other parties? And how can such a system work during each part of the transport ?

Third point.

Another example.

Under 1.4.2.2.1 (a), the carrier has to "ascertain that the dangerous goods to be carried are accepted for carriage".

Carriers who are specialists in dangerous goods, such as tank transport operators, will be in the position to be in conformity with this obligation. But what is the situation in irregular transport, in groupage and in local transport ? There is in many cases no home base to find out the acceptance for carriage of the goods transported. In such types of transport, in particular, the carrier has to rely on the information made available to him.

But does the neutralizing article 1.4.2.2.2 help the carrier when an inspector sees that a wrong UN number is used? Again, the question arises: who is in what position and what does it mean at a roadside check ?

The description of the obligations contains controversies in itself: one article gives an impossible obligation and later on, another article intends to help. Where does that bring us? Especially when the first line of the article states "where appropriate".

Observation

Without going into the details of safety obligations of the other parties, the system of safety obligations contains mistakes in its scope and contents.

On behalf of the road transport sector, this Inf. document aims to inform WP.15 about the consequences for it of chapter 1.4 and how unclear the situation is.

What is lacking is a well thought out system for safety obligations that excludes as far as possible loop-holes and controversies.

Controversies within the system itself and between this part of the ADR and the CMR and national legal systems.
