

Economic Commission for Europe

Inland Transport Committee

Working Party on the Transport of Dangerous Goods

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Item 6 of the provisional agenda:

Interpretation of ADR

Clarification of the scope of exemptions 1.1.3.2 a), 1.1.3.3 a), 1.1.3.7 b) and SP669

Transmitted by the Government of Switzerland

Summary

Executive summary: The text “intended for use during carriage” in 1.1.3.2 a), 1.1.3.3 a), 1.1.3.7 b) and SP669 need to be clarified

Action to be taken: INF.40 of the September 2012,
ECE/TRANS/WP.15/AC.1/2015/40

Introduction

1. Following the discussion on the respective scopes of the exemption of 1.1.3.3 and SP363, the text “used or intended for use during carriage” was introduced in 1.1.3.3 a) as proposed in INF.40 of the Joint Meeting at the session of September 2012 for the edition 2015 of ADR. Before this addition and the introduction of special provision 363 (SP 363), the exemption under 1.1.3.3 could be interpreted in such a way that any vehicle, in which any equipment was permanently fixed, could be covered by the exemption. For example, permanently fixed compressors or generators could be considered eligible for an exemption under ADR 1.1.3.3 (a) even if they are not used for the carriage but only for other purposes at destination. After this modification these equipment intended for other uses as the transport operation could only be exempted according to SP363 and only equipment intended for use during carriage are exempted under 1.1.3.3 a).

2. The addition of this phrase defines more narrowly the scope of the exemption under 1.1.3.3. It now applies only to appliances that are part of the vehicle equipment and intended for use during carriage. It is therefore clear that it doesn't cover any equipment moved for another purpose as the use during carriage as might be the case with a compressor, a generator or an emergency heating appliance intended for construction sites, provision of electricity or emergency heating of buildings or festive or public events

3. Since then however many changes were adopted in relation to the use of vehicles, motor-fuel and gases. Some of them are related to the following points:

- 2.1 The same wording “used or intended for use during carriage” has been introduced in 1.1.1.3.2 a) for the case of gas used as fuel on vehicles.

2.2 One of the last changes in ADR 2017 refers to the substitution in French of the word “carburant” by “combustible” in 1.1.3.3. This change was adopted during the autumn session in 2015 of the Joint meeting based on a proposal from Switzerland in document ECE/TRANS/WP.15/AC.1/2015/40 in order to allow to apply the exemption of 1.1.3.3 also for heating devices installed in vehicles (towing vehicles or trailer) which are used during carriage.

4. Heating oil exclusively used at destination for other purposes as the use during carriage is not exempted by 1.1.3.3 a). The text “intended for use during carriage” together with the change in French from “carburant” to “combustible” permit to include under the exemption 1.1.3.3 a) heating oil intended to be used during carriage. But this can only be understood so, if one considers the definition of carriage because the words “intended for use during carriage” taken alone could be misinterpreted.

5. In fact, considering the definition of carriage in ADR, the words “intended for use during carriage” appears as being redundant, because the definition of carriage already contains the concept of stops made necessary by transport conditions:

“*Carriage*” means the change of place of dangerous goods, including stops made necessary by transport conditions and including any period spent by the dangerous goods in vehicles, tanks and containers made necessary by traffic conditions before, during and after the change of place.”

Thus, by using the word “carriage” alone we don’t exclude the use of dangerous goods during these stops, as could be for example the case of a refrigerating or heating equipment.

However due to the fact that we underline with the words “intended for use during carriage” in the prescriptive texts only in some cases (in 1.1.3.2 a), 1.1.3.3 and in SP 669), some people not having in mind the definition of carriage could interpret wrongly, that the word “carriage” used alone has another meaning as when it used together with the words “intended for use during carriage”. Thus it could be interpreted that the word “carriage” means only the change of place of the goods and results to the wrong conclusion that the dangerous goods are only exempted when the vehicle is in motion or intended to be used during this motion. This having as a consequence that dangerous goods used exclusively during the necessary stops of a carriage would not be exempted by 1.1.3.2 a) or 1.1.3.3 a), as is the case of heating devices for heating the roof of the trailer in winter to avoid accumulation of snow or ice on it.

6. We wonder if other delegations have experienced the same difficulty at the moment to explain this different uses of the word “carriage” and the added value of the text “intended for use during”. If this would be the case we would propose to delete from the regulatory text the text “intended for use” everywhere it appears in relation with carriage and to substitute it for clarification through a NOTE in 1.1.3.2 (a) and 1.1.3.3 (a). As a matter of additional justification for a NOTE we should consider that in the SP363 a clarifying NOTE has already been added referring to 1.1.3.2 (a), (d) and (e), 1.1.3.3 and 1.1.3.7. The same could thus be envisaged in 1.1.3.2 (a), and 1.1.3.3 (a), as follows:

“NOTE: The exemption applies only to appliances that are integral part of the vehicle equipment and intended for use during carriage, including stops made necessary by transport conditions and any period spent by dangerous goods in vehicles, tanks and containers made necessary by traffic conditions before, during or after the change of place. For exemption of equipment used only at destination as might be the case, for example with a compressor, a generator or an emergency heating appliance for buildings or festive purposes, and moved for other purposes as the use during the carriage see SP363.

7. The delegates may in addition envisage to introduce the same clarification as a note in 1.1.3.7 b) and in special provision 669, as follows.

“NOTE: The exemption applies only to appliances intended for use during carriage, including stops made necessary by transport conditions and any period spent by dangerous goods in vehicles, tanks and containers made necessary by traffic conditions before, during or after the change of place. For exemption of equipment used only at destination as might be the case, for example with a compressor, a generator or an emergency heating appliance for buildings or festive purposes, and moved for other purposes as the use during the carriage see SP363.”

In case of electronic devices the prescription to be integral part of the vehicle does not seem to be appropriate. For this reason we have not included this concept in the case of SP669.

8. If the Working Party recognizes the problem of interpretation of these exemptions and agrees that the approach presented could reduce some misunderstanding, Switzerland could make a proposal to the Joint Meeting in March next year.
