

## Economic Commission for Europe

### Inland Transport Committee

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

##### Joint Meeting of the RID Committee of Experts and the Working Party on the Transport of Dangerous Goods

Geneva, 17-21 September 2018

Item 2 of the provisional agenda

##### Tanks

14 September 2018

### Comments on the Report of the 8<sup>th</sup> meeting of the informal working group on the inspection and certification of tanks

#### Transmitted by the European Union

#### Background

1. The European Commission wishes to thank the IWG on the inspection and certification of tanks for their valuable work summarised in INF.9.
2. We take this opportunity to clarify one of the outstanding issues in this area, i.e. the difference in terms of legal validity of the terms “mutual recognition” and “carriage”.
3. “Mutual recognition” is a term which is actually specific to EU law, and it is enshrined in Articles 34 to 36 of the Treaty on the Functioning of the European Union (TFEU), which prohibit quantitative restrictions to trade or measures having equivalent effect.
4. Case law of the European Court of Justice, especially case 120/78 (the ‘Cassis de Dijon’ case<sup>1</sup>), provides the key elements for mutual recognition. The effect of this case law is as follows: — Products lawfully manufactured or marketed in one Member State should in principle move freely throughout the Union where such products meet equivalent levels of protection to those imposed by the Member State of destination. — In the absence of Union harmonisation legislation, Member States are free to legislate on their territory subject to the Treaty rules on free movement of goods (Arts 34-36 TFEU). — Barriers to free movement which result from differences in national legislation may only be accepted if national measures: — are necessary to satisfy mandatory requirements (such as health, safety, consumer protection and environmental protection), — serve a legitimate purpose which justifies overriding the principle of free movement of goods, and — can be justified with regard to the legitimate purpose and are proportionate with the aims<sup>2</sup>.
5. International carriage is an economic activity whose aim is to cross borders. Therefore a certain drive towards international harmonisation of technical rules applicable in this sector is incumbent.

---

<sup>1</sup> Judgment of the Court of Justice of 20 February 1979. — Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein. Case 120/78. European Court reports 1979, p. 649.

<sup>2</sup> ‘Blue Guide’ on the implementation of EU product rules, p.7

([http://ec.europa.eu/growth/content/%E2%80%98blueguide%E2%80%99-implementation-eu-product-rules-0\\_en](http://ec.europa.eu/growth/content/%E2%80%98blueguide%E2%80%99-implementation-eu-product-rules-0_en))

6. "Carriage", as defined in section 1.2.1 ADR, RID and ADN, "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".
  7. The definition is clearly mentioning the "change of place of dangerous goods", and circumstantiates it according to the needs of the sector (i.e. including stops).
  8. However, the agreements contain legal requirements concerning manufacture and tests for tanks and cylinders, and they are used as a basis for Union harmonisation legislation, i.e. Directive 2010/35/EU on transportable pressure equipment – only for class 2 gases.
  9. Harmonisation of rules within the EU legislation and the same term in international agreements do not mean the same thing.
  10. The policy on conformity assessment within the EU was developed as a means to create the trust in the products that could help authorities accept products they could not vouch for. Therefore, harmonisation is to be seen as a prerequisite of the EU internal market.
  11. The harmonisation needed for dangerous goods to circulate is not accompanied by the infrastructure put in place at EU level in order to integrate the EU Member States and to achieve the EU common market, e.g. safeguard systems for withdrawal from the market of product presenting a risk to health and safety, notification schemes etc.
  12. The Committee of experts that the IWG is currently proposing to establish needs to verify the "national systems equivalent to accreditation", as mentioned in paragraph 9 of the document.
  13. However, it will not have the veto right that is accompanying the notification according to Article 22 (2) to (4) of Directive 2010/35/EU. It's worth reminding that the Commission and the other Member States (than the one making the notification) can raise objections to the performed activities of a notified body.
  14. We would like to take this opportunity to inform the London WG that the notification procedures of the EU Member States according to Article 19 of Directive 2010/35/EU are available online at <http://ec.europa.eu/growth/tools-databases/nando/index.cfm?fuseaction=na.main>.
-