

**NOTE OF A MEETING HELD ON 11 SEPTEMBER 2012 TO DISCUSS EU COMPETENCE
IN INTERNATIONAL TRANSPORT OF DANGEROUS GOODS MEETINGS**
(documento submetido pelo Presidente do WP.15)

DG MOVE building 28 Rue de Mot, Brussels

Present:

EU Commission DG MOVE:

Szabolcs Schmidt, Head of Road Safety Unit

Patrizio Grillo, Deputy Head, Rail Unit

Timo Aaltonen, Road Safety Unit

Stefano Campagnolo, Road Safety Unit

ERA

Emmanuel Ruffin, European Rail Authority

International Body Chairmen:

Jeff Hart (UK), Chairman of the UN Sub-Committee of Experts on the Transport of Dangerous Goods

Jose Alberto Franco (PT), Chairman of UNECE WP.15 – ADR Agreement on the International Carriage of Dangerous Goods by Road;

Helmut Rein (DE), Chairman of UNECE WP.15 – ADN Agreement on the International Carriage of Dangerous Goods by Inland Waterway and OTIF Carriage of Dangerous Goods by Rail (RID) Committee of Experts;

Claude Pfauvadel (F), Chairman of RID/ADR/ADN Joint Meeting;

The meeting had been convened by Mr Schmidt to discuss the “EU position to be taken in international meetings” concerning the transport of dangerous goods. In fact, it concerned the legitimacy and exercise of EU competence in such meetings. It was agreed at the outset that the meeting was informal in nature and that no note would be taken for outside distribution.

Mr Schmidt began the meeting in very conciliatory tones stating clearly that the Commission was highly satisfied with the outcomes of the international meetings, subsequently referenced as technical annexes to Directive 2008/68, and did not wish to interfere with the processes and outcomes which were working well. The Commission merely wanted to ‘stabilise and enrich’ the outcomes. He explained that in this discussion he wanted to cover three points:

As a question of principle, what is the legal position of the EU in respect of the international fora?

What is the difference between the political and technical processes, including timelines?

The logistics issues – distribution of papers; languages etc.

Mr Schmidt’s starting point was that the Treaty of Lisbon had changed the relationship between the Commission and MS in the context of all external representation. Mr. Grillo was adamant that this clearly established EU competence in the field of the transport of dangerous goods through EU accession to the COTIF Agreement and application of Directive 2008/68 and that he could not understand MS reluctance to accept this. Mr Rein and Mr Hart firstly rehearsed the development and inter-relationship of the various international modal and multi-modal provisions that long pre-dated the first EU initiatives in this field, implemented in 1997. It was clear that Mr. Schmidt had not previously understood fully the complexity and fine balance of the inter-relationships or the basis on which the EU had first entered this field. All four Chairmen then stated that their legal advisers did not necessarily share the Commission’s interpretation of the Lisbon Treaty and that much depended on the treaty basis of the various modal instruments, which were explained to the Commission. They did accept, however, that the Commission had established exclusive competence in the context of the RID Agreement by EU becoming a contracting party to the COTIF Agreement.

Mr Schmidt tabled a document entitled ‘Lifecycle for adoption of a new version of rules’. Working back from an entry into force date of January (say 2015 as an example) this attempted to show a timeline for the various actions needed to achieve a Commission common position on adoption of amendments to RID, ADR or ADN. It was agreed, however, that discussion would now be conducted solely in the context of the RID Agreement position. Mr Schmidt explained the various Commission processes that need to be gone through. This culminated in a Council of Ministers’ decision on an EU position on the amendments in the preceding April (i.e. April 2014) on the basis of a recommendation by

COREPER held at a minimum two weeks beforehand (say March 2014). Prior to COREPER a Council Working Group would need to review the proposed amendments at a minimum between 2 to 4 weeks before the COREPER meeting (i.e. say February 2014). The Commission needed to show in the Council Working Group that it had studied the amendments closely and was able to make appropriate recommendations. This could be done in the Technical Committee supporting Directive 2008/68 which normally meets in December (i.e. December 2013). The Chairmen confirmed that it would normally be the case that the amendments to the RID Agreement proposed to be adopted would be available in October/November (i.e. Oct/Nov 2013) with only minor corrections/amendments stemming from the final Joint Meeting available the following April (i.e. April 2014). This could thus form the basis for discussion at the December (2013) Technical Committee. Minor corrections or urgent amendments stemming from the Spring sessions of the Joint Meeting and from the EU process could still be taken into account by the RID Safety Committee in Spring 2014 before transmitting in July 2014 the set of amendments to Contracting Parties for acceptance. Final approval by the Council of Ministers would then give the Commission time to publish a Commission Directive applying the latest (2015) revisions to RID in the Annex to Directive 2008/68 before the RID coming into force date of 1 January 2015 (with the usual transitional period to 30 June 2015).

With lengthy detailed examination and questioning of the processes involved, it was concluded that the Commission need not involve itself in the technical discussions that would take place in the four meetings of the RID biennium, leaving MS free to act and decide on the basis of the usual interaction and technical discussion that takes place now. Only once the final proposals for the amendments for the next revision of the annexes to the RID Agreement were available would the Commission seek the opinion of MS to determine an EU position on support or otherwise for the whole package of amendments. Since the opinion would be on texts already agreed by MS that are contracting parties to RID, this should be little more than a 'rubber stamping' exercise. Clearly, the Commission would like to see the same process applied to ADR, ADN and RID/ADR/ADN meetings as well, but the Chairmen were non-committal on this point. It was also noted that the Technical Committee meetings would be held with interpretation in all of the major languages of the EU and that the texts of proposed amendments to RID to be discussed would be available in French, German and English.

As for on site 'coordination' meetings, the Commission are clear that the intention of such meetings would not be to review each paper being considered by the RID Standing Working Group but simply to alert MS representatives that may not otherwise be aware to information relating to other EU legal instruments that may have a bearing on the subject under discussion. An example would be that of recent discussions on automatic derailment detection devices. A better description for such meetings would, therefore, be 'informative' meetings. For practical reasons relating to the organisation of the RID (and possibly other) plenary sessions, it was agreed that for future sessions such informative meetings would be arranged for Monday lunchtimes but only if there was a need. Since it had already been notified and a meeting room obtained, it was agreed that such a meeting would be held before the start of the following week's RID/ADR/ADN Joint Meeting and, since Mr Aaltonen would be unable to attend for family reasons, it would be led by Mr Schmidt.

Finally, the Commission agreed, albeit rather reluctantly, that this process would not be applied for the time being for meetings of the UN Sub-Committee of Experts on the Transport of Dangerous Goods given the greater sensitivities arising from the participation of many non-European representatives. Mr Hart indicated that concerns about 'EU coordination' in this body had already been expressed to him as Chairman by the UNECE Secretariat, the expert of the United States and various European industry representatives.

At the last meeting between the Commission and MS held in May, it had been agreed that a further meeting would be held in October to review the whole issue of how the Commission would exercise competence. In view of the outcome of today's meeting, it was felt that this should not be convened but rather dealt with by the next Technical Committee meeting which would be scheduled for December 2012 (but not before 6 December). The Commission would explain to MS at that time what had been agreed today.