

TAIEX Seminar on transport of dangerous goods by road

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Application of European legislation in a country

JOSÉ ALBERTO FRANCO

Chairman of UNECE - WP.15
Director for Legal and Economic Regulation
IMTT - Portugal

Entering ADR into force

- **ADR Agreement was done on Geneva on 30 September 1957**
- **At the beginning, it has been signed by 9 European countries**
- **4 of these countries (Belgium, France, Italy and the Netherlands) ratified ADR until the end of 1968**
- **A fifth country was needed for entering ADR into force**
- **Portugal has acceded on 29 December 1968**
- **ADR entered into force on 29 January 1969**

Regulatory initiatives

- **During the 1970's and the 1980's, Portugal tried to align its national rules concerning road transport of dangerous goods with ADR**
- **Firstly, Portuguese Government has modernized the regulations concerning transport of explosives (1979)**
- **Secondly, it has been defined a national system of approval and certification of tank-vehicles (1980)**
- **Afterwards, it was defined the regulation of road transport of dangerous goods of classes 2 to 8 (1984)**

Drivers and safety advisors training

- **During the 1990's and the 2000's, Portugal became a EU member state**
- **For us, it had been very important to keep a serious approach to European rules concerning professional training**
- **Portugal didn't accepted the possibility of certification of drivers without training, as permitted by Directive 89/684/EEC, of 21 December (provisional certificate...)**

Drivers and safety advisors training (cont.)

- **Professional training of existing drivers had been provided through a long period of time (10 years), to avoid great difficulties for companies**
- **We have started from the youngest drivers until the oldest ones**
- **Training organizations were based on industrial associations for each sector**
- **The same approach for the training of safety advisors, after 2000**

Obligations in the ADR Agreement

- **In restructured ADR (2001), it was agreed that it would be useful to list the main obligations of companies involved in the carriage of dangerous goods by road**
- **The aim was to systematise indications that were dispersed and in some cases were even incongruent or partially superimposed**
- **The intention was also to influence the national authorities in the hope that they would bring their systems for characterising and punishing infringements closer to ADR**

Obligations in the ADR (cont.)

- **1.4.1.3: a party can “in its domestic legislation transfer the obligations falling to a specific participant to one or several other participants...”,**
- **...on the condition that this does not reduce safety and that all the obligations in 1.4.2 and 1.4.3 are covered**
- **exception: “the requirements ... concerning the definitions of participants and their respective obligations shall not affect the provisions of domestic law concerning the legal consequences (criminal nature, liability, etc.) stemming from the fact that the participant in question is e.g. a legal entity, a self-employed worker, an employer or an employee”**

Obligations in the ADR (cont.)

- what are the obligations listed in Chapter 1.4 of ADR and how are the responsibilities channelled?
- general obligation of all the participants in the carriage: the duty to “take appropriate measures according to the nature and the extent of foreseeable dangers, so as to avoid damage or injury and, if necessary, to minimize their effects” and also when there is an immediate risk that public safety may be jeopardized, “shall immediately notify the emergency services and shall make available to them the information they require to take action”
- going on now to the specific obligations of each of the seven types of company involved, it is important not to lose sight of the concepts established in Chapter 1.2, relevant to the correct identification of the agents

Definitions of participants

- ***"Consignor"*** means the enterprise which consigns dangerous goods either on its own behalf or for a third party. If the transport operation is carried out under a contract for carriage, consignor means the consignor according to the contract for carriage
- ***"Carrier"*** means the enterprise which carries out the transport operation with or without a transport contract
- ***"Consignee"*** means the consignee according to the contract for carriage. If the consignee designates a third party in accordance with the provisions applicable to the contract for carriage, this person shall be deemed to be the consignee within the meaning of ADR. If the transport operation takes place without a contract for carriage, the enterprise which takes charge of the dangerous goods on arrival shall be deemed to be the consignee

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Definitions of participants (cont.)

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- **“*Loader*”** means any enterprise which loads dangerous goods into a vehicle or large container
- **“*Packer*”** means any enterprise which puts dangerous goods into packagings, including large packagings and intermediate bulk containers (Ibis) and, where necessary, prepares packages for carriage
- **“*Filler*”** means any enterprise which loads dangerous goods into a tank (tank-vehicle, demountable tank, portable tank or tank-container) and/or into a vehicle, large container or small container for carriage in bulk, or into a battery-vehicle or MEGC
- **“*Tank-container/portable tank operator*”** means any enterprise in whose name the tank-container/portable tank is registered

Specific obligations of participants

Consignor

- (a) ... dangerous goods classified and authorized for carriage
- (b) ... information and data and, if necessary, the required transport documents and accompanying documents
- (c) ... only packagings, large packagings, IBCs and tanks approved for and suited to the carriage ... and bearing the markings prescribed
- (d) ... requirements on the means of dispatch and on forwarding restrictions
- (e) ... empty uncleaned and not degassed tanks or empty uncleaned vehicles and bulk containers are marked and labelled and closed and present the same degree of leakproofness as if they were full

The consignor may, in the case of (a), (b), (c) and (e), rely on information and data made available to him by other participants

Specific obligations of participants (cont.)

Carrier

- (a) ... dangerous goods to be carried are authorized for carriage
- (b) ... prescribed documentation is on board the transport unit
- (c) ... vehicles and loads have no obvious defects, leakages or cracks, missing equipment, etc.
- (d) ... date of the next test for tanks has not expired
- (e) ... vehicles are not overloaded
- (f) ... danger labels and markings prescribed for the vehicles have been affixed
- (g) ... equipment prescribed in the written instructions for the driver is on board the vehicle

The carrier may, in the case of (a), (b), (e) and (f), rely on information and data made available to him by other participants

Consignee

- (a) ... cleaning and decontamination of the vehicles and containers
- (b) ... the containers once completely unloaded, cleaned and decontaminated, no longer bear danger markings

Specific obligations of participants (cont.)

Loader

- (a) hand the dangerous goods ... only if they are authorized for carriage
- (b) ... check whether the packaging is damaged
- (c) ... special requirements concerning loading and handling
- (d) ... requirements concerning danger markings
- (e) ... prohibitions on mixed loading taking into account dangerous goods ... and requirements concerning the separation of foodstuffs

The loader may, in the case of (a), (d) and (e), rely on information and data made available to him by other participants

Packer

- (a) ... requirements concerning packing conditions, or mixed packing conditions
- (b) ... requirements concerning marking and labelling of the packages

Specific obligations of participants (cont.)

Filler

- (a) ... prior to the filling of tanks ... they and their equipment are technically in a satisfactory condition
- (b) ... date of the next test for tanks has not expired;
- (c) ...only fill tanks with the dangerous goods authorized for those tanks
- (d) ...in filling the tank, comply with the requirements concerning dangerous goods in adjoining compartments;
- (e) ...in filling the tank, ... maximum permissible degree of filling or the maximum permissible mass of contents per litre of capacity for the substance being filled
- (f) ...after filling the tank, ... leakproofness of the closing devices
- (g) ... no dangerous residue of the filling substance adheres to the outside of the tanks
- (h) ... the orange plates and placards or labels prescribed are affixed on the tanks, on the vehicles and on the containers for carriage in bulk

Tank-container/portable tank operator

- (a) ... compliance with the requirements for construction, equipment, tests and marking
- (b) ... maintenance of shells and their equipment is carried out as to ensure that the tank satisfies the requirements until the next inspection
- (c) ... exceptional check when the safety of the shell or its equipment is liable to be impaired by a repair, an alteration or an accident

Obligations and infringements

- In October 2003, Portugal reproduced in full Chapter 1.4 of ADR in its regulations applicable to national transport
- Article 12 of the national decree indicated which economic agents (consignor, carrier, consignee, loader or filler) would be held liable for infringements as a result of failure to fulfil obligations and lists the obligations for which failure to comply constitutes an infringement, as follows:

1 – ... consignor's obligations:

To despatch only dangerous goods whose carriage is not expressly forbidden

To despatch dangerous goods with special transport authorisation, derogation authorisation or a copy of the derogation agreement, when required

To issue the transport document for the dangerous good to be carried

To complete the transport documents correctly with regard to the UN number, the official designation of the dangerous goods transport, labels, classification code and packing group, when required

To give the driver full instructions in writing appropriate to the materials being transported

To use approved packaging suited to the material transported, displaying the approval markings and with no obvious defects and to respect the maximum filling rates of packaging and the prohibition of packaging materials together in the same package

To use demountable tanks, MEGCs, portable UN tanks, tank-containers and intermediate bulk containers accepted for the carriage in question

To use approved demountable tanks, MEGCs, portable UN tanks, tank-containers and intermediate bulk containers accepted for the carriage with the appropriate equipment and accessories, with no obvious defects and to guarantee the existence on board of the document approving the tanks' shells

Obligations and infringements (cont.)

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To comply with the recommendations on the marking and labelling of packages

To hand the dangerous goods over only to a duly identified carrier or, in the case of transport on the account of others, a duly licensed carrier

To complete the transport document correctly with regard to any details other than those set forth before or with regard to the fixed sequence for indicating the different details.

2 – ... loader's obligations:

To comply with safety rules for the loading, handling or moving of dangerous goods, when carried in packages

To comply with rules forbidding joint carriage of packages in the same vehicle or container

To comply with safety rules on the separation of foodstuffs, consumable items and animal feed

To comply with the rules forbidding loading in public places or built-up areas requiring authorisation.

3 – ...filler's obligation to abide by the safety rules on loading in the carriage in tanks or in bulk

4 – ... carrier's obligations:

To use only accepted vehicles that meet the technical conditions for the carriage in question

To ensure that the vehicle's certificate of approval is on board and corresponds to the requirements of the carriage in question

To carry the goods in packaging, tank-vehicles, demountable tanks, battery-vehicles, MEGCs, portable UN tanks, tank-containers or intermediate bulk containers without leakages and to carry the goods in tank-vehicles with the appropriate equipment and accessories with no obvious defects

To ensure that the vehicles, containers or tanks bear the correct orange plates, placards and labels

To ensure that there are appropriate, operational extinguishers for the vehicle or the load within their expiry date

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Obligations and infringements (cont.)

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To ensure that the vehicle and driver have the equipment, i.e. portable warning signs, wheel chocks, portable flashlight, high-visibility vest or suit, or any other mentioned in the instructions in writing

To ensure that the driver has an appropriate training certificate

Not to carry any passengers other than the on-board personnel Not to park vehicles in places specifically prohibited for the carriage of dangerous goods

To ensure that there is an identification document with a photo of each crew member on board the vehicles

In the case of the carriage of high consequence dangerous goods, to ensure that there are operational protection devices, equipment or systems preventing the theft of the vehicle or its load

Not to use lighting devices with flames or likely to produce sparks on board the vehicles.

5 – ... consignee's obligations:

To comply with safety rules on the unloading, handling or movement of dangerous goods carried in packages, tanks or bulk

To comply with the rules prohibiting unloading in public places or built-up areas requiring authorisation.

6 – ... loader and carrier are jointly responsible for respecting the maximum limit of quantities carried in the transport of packages.

7 – ... filler and carrier are jointly responsible for respecting the maximum filling rates in carriage in tanks.

Obligations and infringements (cont.)

- In April 2007, another national decree added new obligations related to security:

8 – ... the owner of the site, dock or marshalling yard used to park vehicles temporarily during carriage of dangerous goods is responsible for ensuring that the temporary storage areas are properly secured, well lit and not accessible to the general public.

9 – ... the consignor, packer, loader, filler, carrier or consignee, as the case may be, is responsible for ensuring that the security plan for the high consequence goods is adopted and followed.

10– ... any person, whether or not they are involved in the transport, is obliged to refrain from smoking during loading, unloading or any handling of dangerous goods

- Other provisions of the same decree lay down that infringements of Article 12 are assessed in administrative proceedings and punished with fines of three levels, which correspond to the three risk categories fixed in the 2004 revision of the EU directive on road controls.

Risk category I – €750 to €6,000

Risk category II – €250 to €1,500

Risk category III – €100 to €600

I hope that this quick overview of Portuguese legislation have helped you to understand how much governments and professional organisations have to do before road transport of dangerous goods

Thank you very much for your attention