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Economic Commission for Europe**Inland Transport Committee****Working Party on the Transport of Dangerous Goods****107th session**

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Item 5 (b) of the provisional agenda

Proposals for amendments to annexes A and B of ADR: miscellaneous proposals**Proposal to amend special provision 363 (l) and section 5.4.1.1.1 (k)****Transmitted by the Government of Switzerland****Summary*

Executive summary:	The second indent of special provision 363 (l), and section 5.4.1.1.1 (k), rely on subjective factors that make them difficult to interpret and implement. The provision should be formulated in such a way that the tunnel prohibitions are simple to interpret and implement.
Action to be taken:	Amend the text of the second indent of special provision 363 (l), and section 5.4.1.1.1 (k).
Related documents:	ECE/TRANS/WP.15/2019/6 and ECE/TRANS/WP.15/246

Introduction

1. At the 106th session (May 2019) of the Working Party (WP.15), special provision 363 (l) was amended in order to clarify its scope. Following that amendment (see annex to the report ECE/TRANS/WP.15/246), we received comments showing that there were uncertainties as to the meaning of the new text:

“SP 363 (l) Amend the second indent to read as follows:

“- The transport unit shall display orange-coloured plates according to 5.3.2 and the tunnel restrictions according to 8.6.4 apply. The orange-coloured plates according to 5.3.2 are not necessary where the carriage is known beforehand not to pass through a tunnel with restrictions for carriage of dangerous goods.”

* In accordance with the programme of work of the Inland Transport Committee for 2018–2019 (ECE/TRANS/2018/21/Add.1, (9.1)).



2. The second sentence does not help in understanding the requirement already set forth in the first sentence. From a regulatory point of view it is not important whether it is known in advance that the transport is to pass through a tunnel subject to restrictions. The only requirement the carrier needs to be aware of is that the transport unit must display orange-coloured plates when tunnel restrictions apply.

3. Accordingly, we propose amending the text adopted at the May session as follows.

Proposal 1

4. Amend the second indent of special provision 363 (l) as follows (added text **underlined in bold**, deleted text struck through):

“363 (l) ...

“- **For passage through restricted tunnels the** ~~The~~ transport unit shall display orange-coloured plates according to 5.3.2 and the tunnel restrictions according to 8.6.4 shall apply. ~~The orange coloured plates according to 5.3.2 are not necessary where the carriage is known beforehand not to pass through a tunnel with restrictions for carriage of dangerous goods.~~”

Justification

5. The precautions originally introduced in the text of 5.4.1.1.1 (k), and thereafter in the text of special provision 363 (l), on the requirement to display markings only for passage through restricted tunnels are adequately covered by the new text. The marking requirement applies only when the transport unit is to pass through a tunnel subject to restrictions, and not in every case.

6. In the report of the May meeting, ECE/TRANS/WP.15/246, the text adopted for 5.4.1.1.1 (k) is as follows:

“5.4.1.1.1 (k) ~~where appropriate~~: the tunnel restriction code given in Column (15) of Table A of Chapter 3.2, in capitals within parenthesis, or the mention ‘(–)’. The tunnel restriction code or the mention ‘(–)’ need not be added in the transport document where the carriage is known beforehand not to pass through a tunnel with restrictions for carriage of dangerous goods.”

7. It seems to us that the amendment to delete “where appropriate”, which was not contained in the original proposal, should be revised because it is that deletion that renders the second sentence in the adopted text necessary. Yet the second sentence is difficult to interpret and implement.

8. In principle, with the words “where appropriate”, the second sentence was already unnecessary. As with special provision 363, the requirement is applicable only if the route is known in advance and would not be applicable if the carrier did not know in advance whether the route would pass through a tunnel subject to restrictions. A provision that relies on subjective factors is difficult to implement. The second sentence is not necessary if, as in special provision 363 (l), the first sentence already states that the provision applies only for transport through restricted tunnels.

9. For these reasons we propose simplifying the text of 5.4.1.1.1 (k) in the same way as special provision 363 (l).

Proposal 2

10. Amend 5.4.1.1.1 (k) as follows (added text in **underlined in bold**; deleted text in strikethrough):

“(k) **for passage through tunnels with restrictions for carriage of dangerous goods**, the tunnel restriction code given in Column (15) of Table A of Chapter

3.2, in capitals within parenthesis, or the mention '(—)'. ~~The tunnel restriction code or the mention '(—)' need not be added in the transport document where the carriage is known beforehand not to pass through a tunnel with restrictions for carriage of dangerous goods.~~ “

Justification

11. The precautions originally introduced by means of a complicated text in the second sentence of 5.4.1.1.1 (k), and subsequently in special provision 363 (l), the purpose of which was to clarify that these provisions apply only in the case of passage through restricted tunnels, will be easier to understand and implement.

12. The requirement to include the tunnel restriction code in the transport document applies only when the transport unit will be passing through a tunnel subject to restrictions, and not in every case.
