

Legal Framework for the Transportation of Dangerous Goods in Kosovo

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Abstract:

This paper addresses the transport issues of dangerous goods that relate to the new legislation in Kosovo. The Law on land transport of dangerous goods of 2012, which has repealed the Law on transport of dangerous goods of 2004, as well as other legal acts issued by the Ministry of Infrastructure in accordance with the law, with which have been set the conditions and circumstances in which the dangerous goods can be transported, have been addressed in particular.

Through this law, it is aimed to increase the safety during the transportation of dangerous goods by road or railway, the effective assistance in the protection of human life, property and the environment by preventing any contamination that may be caused by accidents during this transport within the territory of Kosovo.

*In this paper, a special emphasize has been given to harmonization, respectively, to the approximation of the new legislation in Kosovo with the **acquis**, in the field of transport of dangerous goods, as well as the aspects of direct implementation in Kosovo of EU Legislation and other international acts in this area.*

In this paper are also addressed the rights and obligations of carriers of dangerous goods arising from the contract for the carriage of dangerous goods, based on national legislation of Kosovo and the international legislation, as is the European Agreement for Transport of Dangerous Goods by Road (ADR), and the Convention on International Railway Transport (COTIF) Annex C - Rules concerning the international transport of dangerous goods (RID).

Key words: Dangerous goods, transport, accident, Administrative Instruction, ADR, RID, UNMIK.

Introduction

The end of the war in Kosovo raised for discussion many issues which required responses by the legislative body. The laws of the period before 1999 became applicable under some conditions set by the United Nations Mission in Kosovo (UNMIK) regulation¹, whereas on the other hand, new laws begun to be issued in those areas that were less regulated.

Legal regulation of the field of transport in general and the transport of dangerous goods in particular, as an area of special importance for every state and for Kosovo, was a priority because depending on the level of the laws that govern this, depends how much the safety and protection of rights, arising from the contract for the transportation of goods, will be provided, for the participants in the movement of goods and provision of services.

Such voluminous and important changes in the context of a legal discipline, in a relatively short period of time, persuaded me to make, in this paper, a comparative presentation of the situation of a significant segment of land transport, transport of dangerous goods, using in this case the comparative approach, by comparing the applicable provisions, national provisions with international acts.

The issue of transport of dangerous goods is very important for the legal system and the right of transport in Kosovo, which is already regulated by law in accordance with international conventions, due to the fact that in recent times the transportation of dangerous goods is carried by the

¹ Regulation No. 1999/24 for the Applicable Law in Kosovo, and the Regulation No. 2000/59 for Amending the Regulation No. 1999/24 on the Applicable Law in Kosovo.

transport operators with headquarters in Kosovo and as well as via Kosovo roads.

Through this law is intended to prevent the risk and to increase the supervision and safety of traffic during the transportation of dangerous goods which by their combustible, toxic, explosive, vaporous, infectious and radioactive peculiarities pose a risk to the safety of people and the environment.

This law also regulates the transport of dangerous goods in the individual sector of transport, obligations of persons involved in the Transport of Dangerous Goods, competencies and responsibilities of respective authorities on the supervision regarding the implementation of this law.

1. The legal definition of dangerous goods

Dangerous goods, in the context of the law, are considered those goods and materials, that are envisaged by the Agreement on the International Transport of Dangerous Goods by Road (ADR), that are divided into classes: explosives, gases, flammable liquids, solid hazardous materials, self-reactive substances, and solid desensitized explosives, spontaneously self-flammable substances, substances which, when in contact with water emit sensitive gases, oxidizing substances, organic peroxides, poisons, infectious substances, radioactive materials, corrosive substances, and other dangerous substances. Hazardous materials and the presence of the waste of radioactive and nuclear materials, if they meet the criteria for the classification as dangerous goods under the provisions of the said agreement², are classified as such.

The definition of the dangerous items comes out as a result of the definition used in our and international law, the legal dispositions refer to them as hazardous materials.

² "Law No. 04 / L-183 for the Transport of Dangerous Goods, Official Gazette of the Republic of Kosovo, No. 9,26 April 2013, Pristine, Article 1.3.14."

In Kosovo the issue of transportation of the dangerous goods is regulated by law, which is applicable for the transport of goods in road traffic as well as the railway traffic, and is in accordance with the provisions of the international legal acts, which regulate this field of transport, such as: the European Agreement on the International Transport of Dangerous Goods by Road (ADR) and the Convention on International Railway Transport COTIF "Annex C - Rules concerning the international transport of dangerous goods (RID).

The law for the transport of dangerous goods of the year 2004, which was repealed by the law on road transport of dangerous goods of the year 2012, has set the conditions and criteria that must be met by a substance, respectively by a commodity, in order to be considered as dangerous. Thus, under the provisions of that law, dangerous goods are substances and objects which endanger the public safety or public order, especially, the life and health of people and animals, plants and objects due to their nature, characteristics and the conditions during their transportation, whose transport is forbidden by the ADR, or are permitted to be transported under special conditions.³

According to the European Agreement on the International Transport of Dangerous Goods by Road (ADR), in which our provisions that govern the transport of dangerous goods are based, based on their nature and their basic peculiarities, dangerous goods are classified into nine classes. For each class there are special rules that define how to transport them, so for each of such substance additional instructions may exist.

Law on the transport of dangerous goods by road shall apply to the transport of dangerous goods within the territory of

³ "Law for the Transport of Dangerous Goods No. 2004 / 6 Promulgated by the Special Representative of the Secretary General, Regulation 2005/30, Article 2."

Kosovo or from the territory of a Contracting Party in the territory of Kosovo.⁴

The law is in harmony with the European Agreement on the International Transport of Dangerous Goods by Road (ADR) and the Convention on International Railway Transport COTIF "Annex C - Rules concerning the international transport of dangerous goods (RID).

The provisions of this law shall not apply when dealing with the transport of dangerous goods within an existing plant in which dangerous goods are produced, processed, stored or systematized until shipped within a closed space and for operations of the Kosovo Security Forces.

The European Agreement on the International Transport of Dangerous Goods by Road (ADR) and the Convention on International Railway Transport COTIF "Annex C - Rules concerning the international transport of dangerous goods (RID), is directly applied in Kosovo in all cases when dealing with the international transport of dangerous goods by road traffic or railway traffic.

The purpose of our law, which supports and is in harmony with RID and ADR, is to ensure the traffic during the transportation of dangerous goods, and to prevent the risk, by increasing the supervision and securing the traffic during the transportation of dangerous goods, which by their combustible, toxic, explosive, vaporous, infectious, and radioactive nature, present danger to the safety of people and the environment. So as it is seen, our law wants to influence preventively, by requiring the fulfilment of certain conditions for transport that will create a greater safety in traffic and in the environment in general.

In addition, the law obliges the competent authority, in this case, the Ministry, to regulate the transport of dangerous goods by other bylaws. Ministry, through bylaws, in accordance

⁴ "Law No. 04 / L-183 for the Transport of Dangerous Goods, Official Gazette of the Republic of Kosovo, No. 9,26 April 2013, Pristine, Article 2."

with this Law and the International Convention, has issued administrative instructions in which has foreseen the terms and conditions that must be met by carriers in case of transportation of dangerous goods.

Thus, among others, the administrative instruction has made the classification of dangerous goods, which classification or categorization is in full compliance with the International Convention ADR. According to this administrative instruction, dangerous goods, taking into account the basic qualities and their specific peculiarities are classified into nine classes in accordance with the European Agreement on the International Transport of Dangerous Goods by Road (ADR), as follows:

- Class 1: Explosive substances and articles.
- Class 2: Gases.
- Class 3: The leaking flammable liquid.
- Class 4.1: solid flammable substances, self reactive substances and solid desensitized explosives.
- Class 4.2: Substances that can be self flammable.
- Class 4.3: Substances which when in contact with water create flammable gases.
- Class 5.1: Oxidizing substances.
- Class 5.2: Organic peroxides.
- Class 6.1: Toxic substances.
- Class 6.2: Infectious Substances.
- Class 7: Radioactive material.
- Class 8: Corrosive substances.
- Class 9: Substances and other dangerous goods.

2. Transportation of hazardous shipments

When dealing with land transport of shipments containing dangerous goods, certain criteria that are defined by the European Agreement on the International Transport of Dangerous Goods by Road (ADR), and the Convention on international Railway Transport (COTIF) "Annex C-Rules

concerning the international transport (RID) of dangerous goods must be respected both in terms of packaging, and in terms of means of transportation.

Packing should be wrought and closed so that during the transportation under normal conditions of transportation, the loss of the contents, of the prepared shipment for transport, cannot be caused, especially this should not occur due to changes in temperature and humidity. Packaging parts, which come into direct contact with matter (substance), due to chemical or other influences, must not be damaged in terms of their functionality.

For this purpose, the packing must have the relevant inner layer or should be appropriately wrought for that purpose. Those parts of the packaging must not contain any elements, which when in contact with the contents may have reactions, respectively dangerous reactions, to create a dangerous object or to visibly damage these parts. So the packing for the transportation of dangerous items should be wrought depending on which class the transporting material is classified, and must be attested according to the strict rules envisaged by law.

According to the Law on the land transport of dangerous goods, the dangerous goods are allowed to be packaged only in packages, which by the quality, composition and shape are in accordance with the quantity and specifications that correspond to the dangerous goods during transportation, are controlled and approved, and that have warning signs and labels indicating danger and other data for dangerous goods and packaging in accordance with the European Agreement on the International Transport of Dangerous Goods by Road (ADR).⁵

When dealing with the transportation of dangerous goods, it is worth mentioning that, among other things, there are special rules concerning the loading and unloading of these

⁵ "Law No. 04 / L-183 for the Transport of Dangerous Goods, Official Gazette of the Republic of Kosovo, No. 9,26 April 2013, Pristine, Article 8."

goods. According to the rule, dangerous goods are loaded and unloaded during the day, but if the loading and unloading of the dangerous goods is done at night, the lighting in the place of loading and unloading must be electric, whereas electric devices that are used for lighting must be wrought that way that they are not able to cause fire or explosion.

3. Obligations of the participants in land transport of dangerous goods

From the importance that the rules, of the land transport of dangerous goods, have, and in order to increase the safety, the law has defined all the necessary means for all participants that are engaged in the transport of dangerous goods, in accordance with the nature and the predicted extent of the risk, for reduction or avoidance of damages in people, property and the environment.

The consignor of the dangerous goods, either a natural or legal person, who is listed as the consignor of goods in the documents of the transport of goods, may deliver the goods only under certain conditions.

If the consignor acts on behalf of a third party, he is obliged to inform the consignor in writing for the dangerous goods that will be shipped, and must send him all the necessary information and documents that are needed to perform his own duties.

The conditions, which must be fulfilled by the consignor of dangerous goods, are determined by the law and regulations, and are in full compliance with the conditions set by the European Agreement on the International Transport of Goods by Road (ADR) and the International Convention on Transportation of Goods by Railway (CIM) and the Convention on international Railway Transport (COTIF), Annex C - Rules

concerning the international transport of dangerous goods by railway (RID).⁶

The consignor of the dangerous goods can make the transportation of dangerous goods, if the goods that must be transported are allowed, and are accompanied by appropriate documentation, which is located in the transport vehicle, he is equipped with an authorization for the transport of the dangerous goods, for which the authorization is required, dangerous goods are packaged in appropriate packaging and dangerousness labels are placed, the conditions for the transport mode are met, technical conditions are met, the vehicle is loaded according to the rule and in accordance with the maximum level and if the carrier respects other security measures in accordance with the rules set in RID and ADR.

The consignee is obliged to accept the goods as fast as possible, and after the unload, to verify if the requirements have been completed according to legal provisions, and he should especially clean and decontaminate the vehicles and containers, to take away the unloaded containers, to unload the dangerous goods in the designated places for unload, to clean and fully decontaminate panels and signs indicating danger.

The obligations of the packager are determined by law, and he must adhere to strict rules for packaging of the dangerous goods, the packaging must meet the requirements relating to packaging conditions, conditions about the warning signs and labels on packages and to respect other safety measures in accordance with the provisions of the European Agreement on the International Transport of Goods by Road (ADR).⁷

When dealing with the transport of dangerous goods by railway, specific rights and obligations derive for the employees who participate in the transport of dangerous goods. Thus, all

⁶ "Law No. 04 / L-183 for the Transport of Dangerous Goods, Official Gazette of the Republic of Kosovo, No. 9,26 April 2013, Pristine, Article 15."

⁷ "Law No. 04 / L-183 for the Transport of Dangerous Goods, Official Gazette of the Republic of Kosovo, No. 9,26 April 2013, Pristine, Article 19."

employees of the transport service must be instructed that the transport must only accept dangerous goods, which are provided with the rules concerning the international transport of dangerous goods by railway (RID), in terms which are specifically assigned to each class.

All employees who directly participate in the transportation of the goods should know the provisions of the rules concerning the international transport of dangerous goods by railway (RID), so that they will recognize the things-dangerous goods according to the notes placed in wagons and containers in which those goods are transported.

So this recognition (knowledge) associated with the features of these goods should be at the satisfactory level depending on the actual position of the worker's job who manipulates with these goods. Before sending the wagon for loading, the storekeeper is obliged to require in writing from the controller of the wagons, to control separately each wagon.

The request for control of wagons and the certification on the regular conditions of the wagons should be placed in the place prescribed by the rules that apply to the loading station. The railway worker is always obliged, before loading the dangerous goods to ascertain whether the conditions for the load of such goods exist, and whether the conditions of the wagons present any risk. Special attention the railway worker must have when accepting the dangerous goods for transport; in particular he is obliged to ascertain that:

- is it allowed to transport the goods, which are accepted for transportation, and under which conditions;
- is the shipment, according to the outside appearance, packaged in a way that does not endanger the life and health of humans, animals and the environment, and it does not contaminate the environment and other shipments that are being transported;
- is the marking of dangerous goods on the consignment note analogous with the note in the wagon;

- is the consignment, which is being transported, listed to the list of risks according to the rules of Regulation concerning the international transport of dangerous goods by railway (RID);
- is the consignment note accurately completed by the consignor, and are other tasks accurately completed as well.

Whenever the personnel of the carrier accept shipments for transport of the dangerous goods, provided by the rules of the Regulation on the international transport of dangerous goods by railway (RID), before signing the contract for transport, the personnel of the carrier are obliged to request from the consignor the documentation that is attached together with the consignment note, which is scheduled for that kind of transport.

Security adviser of the transport of dangerous goods is a trained and certified person, assigned by the entity, whose activity includes transportation, by road or railway, packaging, loading, filling or unloading of the dangerous goods, whose role is to carry out the duties and the fulfilment of functions to prevent risks, from such activity, to people, property and the environment.

The duties of the security adviser are defined by the Law on the land transport of dangerous goods, these duties are as follows⁸:

- Security adviser, under the responsibility of the director of the company, has the duty to enable, with all appropriate means and by all appropriate action, the facilitation in the administration of certain activities.
- Monitoring the implementation of legal provisions governing the transport of the dangerous goods.
- Advising the managers of the enterprise regarding the transportation of the dangerous goods.

⁸ "Law No. 04 / L-183 for the Transport of Dangerous Goods, Official Gazette of the Republic of Kosovo, No. 9,26 April 2013, Pristine, Article 30."

- Preparation of an annual report according to the instructions of the Ministry of Infrastructure.
- Advising other employees of the enterprise and maintaining files for their advising.
- Implementation of appropriate measures to avoid the recurrence of an accident, incident or serious violations.
- Control and verification of equipment used in connection with the transport, loading or unloading of the dangerous goods.
- The implementation of the verification procedures in order to have on the board, of the means of transport, the documents and safety equipment, which must accompany transport, and that these documents and equipment comply with the rules.
- Monitoring of the practices and procedures relating to the relevant activities of the enterprise in accordance with the provisions laid down in RID and ADR.

The carrier has an obligation to ensure the preservation of the explosive, radioactive, flammable and poisonous goods-items from the receipt of the goods for transport until the moment of delivery. In the country in which the dangerous goods are loaded, unloaded or reloaded cannot be present other persons, except the personnel participating in handling the dangerous goods.

Only the railway workers are allowed to participate during these manipulations with dangerous goods, under the supervision of a person who is professionally trained in handling the dangerous goods. Whenever the shipments of explosives, poisonous freight and of radioactive materials are transported, they are followed all the way of transport; the railways should meet the requirement of the conductor for placement in the regular composition of the train, or in the additional part of the passengers' wagon. When it comes to transporting the dangerous goods, we have also specific rules

related to the notification of the receiver for the arrival of goods. The railway station of destination shall notify the recipient of the dangerous goods immediately upon arrival of the train. The recipient is obliged to immediately take the shipment after the announcement made by the railway for the arrival of the shipment, except in emergency cases when the safety is at risk, the goods are allowed to be taken immediately, whereas the shipment paper is given later.

The criteria and procedures for issuance, suspension and revocation of the license for road transport of the dangerous goods are regulated by an administrative instruction issued by the Ministry of Infrastructure.

Administrative Instruction on the criteria and procedures for issuance, suspension and revocation of the licenses for the land transport of the dangerous goods establishes the criteria and procedures for the issuance, suspension and revocation of licenses for operators who exercise the road transport of dangerous goods.

This Administrative Instruction intends to prevent the risk, to increase the supervision and ensure the transport of the dangerous goods, which by their peculiarities pose risks to people and the environment.

These provisions provide that the transport operator of the dangerous goods is not entitled to exercise the relevant activity without being licensed and the Ministry of Transport and Post Telecommunications has defined the criteria that should be met by the Operator, in order to grant him the license.

The instruction has decisively counted criteria, technical standards and conditions that must be fulfilled by the transport operator, in order to exercise the right for obtaining the license. The conditions that must be met are:

- Professional competence which is completed when the physical entity of the transport operator of the

dangerous goods has the degree on the superior preparation in the field of traffic engineer.

- Good reputation, which means that the transport operator of the dangerous goods has no legal obstacles to exercise transport activity.
- Financial reliability is met if the legal entity owns a bank guarantee of € 10,000 for 5 years.
- To meet technical standards, the transport operator of the dangerous goods must possess transport vehicles that are in good condition, and which must meet minimum technical standards of emissions and road safety.
- Vehicles that make the transport of dangerous goods should be in accordance with international agreements (ADR).⁹
- Training and the exam for steering and manipulators of the dangerous goods are regulated by the administrative instruction issued by the Ministry of Infrastructure.

Administrative Instruction for the training and exam for the steering and manipulators of the dangerous goods, sets the program for the initial courses and special trainings of the drivers of dangerous goods and of the manipulators with dangerous goods, who deal with packing, loading and unloading of dangerous goods, the exam procedures and organization of additional courses and the conditions for granting the authorization.¹⁰

The above mentioned law and instructions represent the legal framework in Kosovo for the transport of dangerous goods and a contribution to the establishment of safety in case of the transportation of dangerous goods.

⁹ "Administrative Instruction No. 12/2013, on the Criteria and Procedures for Issuance, Suspension, and Revocation of License for the Land Transport of Dangerous Goods, Article 3-6."

¹⁰ "Administrative Instruction No. 06/2013, for the Training and Exam for Steering and Manipulators of the Dangerous Goods."

Conclusion and recommendations

The transport of dangerous goods is an activity that is in constant growth and is mostly accomplished through the land, railway and road transport of dangerous goods.

The transport of dangerous goods has a significant importance, thus this field of transport was regulated both at the national level as well as at the international level.

The transport of dangerous goods was regulated by a number of provisions, which either as *Lex specialis*¹¹, or as general laws, have regulated the traffic safety, the liability of the carrier, the rights and obligations of the participants in the activity of transport of the dangerous goods, the protection of the environment and other important issues.

Kosovo has taken important steps for the legal regulation of the transport of dangerous goods by issuing the Law on land transport of the dangerous goods, and has issued guidelines, for the implementation of this law, that has been approved by the Ministry of Infrastructure.

The European Agreement concerning the International Transport of Dangerous Goods by Road (ADR) and the Convention on International Railway Transport (COTIF) "Annex C- Rules concerning the international transport of dangerous goods (RID), are directly applied in Kosovo in all cases when dealing with international transport of dangerous goods by road traffic or railway traffic.

It is an immediate requirement to complete further legal framework for the transport of dangerous goods, particularly to regulate this issue in more details, whereas on the other hand the transport of dangerous goods by railway occupies also a very important place in Kosovo.

¹¹ "*Lex specialis* in legal theory and practice, is a doctrine relating to the interpretation of laws, and can apply in both domestic and international law contexts."

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