

DEPOSIT AND TREATMENT OF “ILLEGAL GASOLINE” SEIZED BY CRIMINAL OFFENCES AND / OR BREACH OF ADR¹

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ABSTRACT

This essay addresses the issue regarding transport by road of gasoline accomplished by non-enabled private individuals, in vehicles non manufactured for this purpose. Through this, traffic safety, the environment, public safety, and so on are put at risk. This happens because the transport of such fuel is undertaken in breach of the “European Agreement concerning the International Carriage of Dangerous Goods by Road” (ADR, 2019). Due to that reason appears the necessity of action from the Administration. In addition to the foregoing, it is stressed that on many occasions the gasoline is linked to the “*iter criminis*” of some criminal offences.

Once the breach is intercepted by the administration, under the already mentioned circumstances, problems arise about the management of the “gasoline”, from the perspective of safety, prevention as well as environment. This situation arises not only when is found on the road but under other circumstances, for example during the seizure of such gasoline inside of a private residence during an entering and searching of such premises.

Not only the transport of such fuel represents a risk for the public safety, but also the treatment and/or destruction in an environmentally adequate way.

Keywords: ADR², environmental risk, public and traffic safety, gasoline.

1. INTRODUCTION

The work addresses the problem consisting of the deposit and treatment by the Administration, generally after interventions by the “Security Forces and Bodies” (BOE, s.f.), hereinafter (FCS), of what the press has dubbed “illegal gasoline” (narcogasolina), “large quantities of gasoline transported in private vehicles of individuals, not manufactured for this purpose, and with total non-observance of the safety regulations, mainly contained in the ADR”. The individuals who carry out said transport are not authorized for said activity either³.

1 “European Agreement concerning the International Carriage of Dangerous Goods by Road”. (ADR, 2019)

2 European Agreement concerning the International Carriage of Dangerous Goods by Road.

3 Driving vehicles that transport dangerous goods requires a special administrative authorization, known as an ADR or Dangerous Goods Permit”. (ADR, 2019).

This fuel is usually used to transport hashish from North Africa to the coasts of southern Spain. It is also found on occasions even inside private homes, during entries and searches in the scope of judicial investigations.

We are dealing mainly with gasoline destined for the so-called and known as “trafficking vessels” (narcolanchas)⁴, although it is not always proven that said gasoline is related at criminal level. More specifically, it focuses on the subsequent storage, deposit, and destruction of the fuel after its seizure by the FCS and the corresponding authorization issued by the competent authority in each case, either administrative or judicial.

The lack of logistical means by the Public Administrations to deposit, destroy or recycle said fuel, when its destruction has already been authorized, either by the judicial and / or administrative authority, are urging issues and that are also outside the competences assigned to the FCS by the “Organic Law 2/1986, for Security Forces and Bodies” (BOE, s.f.), these being the ones that normally initiate the action of the Administration in the subject matter of this work.

In Spain, we do not have a specific regulation within the framework of “Occupational Risk Prevention” that deals with the transport of dangerous goods on a sectoral basis. Having the ADR, and the “general regulation of “Occupational Risk Prevention”, namely, Law 31/1995, of 8th of November, about Occupational Risk Prevention” (BOE, s.f.).

It is significant that gasoline⁵ as a fuel can be considered a dangerous good, a hazardous waste and a hydrocarbon subject to excise duties.

The three main axes or threats that this work tries to undertake in relation to the transport and / or possession of illegal gasoline under the conditions described are: drug trafficking, the avoidance of risks to the environment and the prevention of dangers derived from explosions, deflagrations, etc., whose non-natural origin would be generated in the transport and / or deposit of the illegal gasoline.

It is the opinion of the author of this article that in the interventions with “illegal gasoline”, as occurs with drugs, psychotropic substances and / or narcotics, the Administration, and as part of it, the FCS when seizing said substances, is linked to them until their destruction, when it is guaranteed that they will no longer pose a threat to citizens, human health, the environment, etc.

4 High-speed inflatable and semi-rigid vessels used by smuggling mafias. Vessels that have been generating alarm and social deterioration in different areas of the national coast, such as Campo de Gibraltar. Problem widely covered by the social media and justified by the “Royal Decree-Law 16/2018, 26th of October, which adopts certain measures to combat the human and goods smuggling, in relation to vessels used, with the aim of improving the effectiveness in the prevention and fight against smuggling practised by means of this type of vessels.” (BOE, s.f.).

5 “Gasoline is a fuel and at room temperature it gives off flammable vapours. The problem is that it is very volatile (it evaporates quickly), and its vapour can generate an explosion. It is almost impossible to explode a tank full of gasoline, but, paradoxically, if it is empty it can explode, because it contains gases that cannot get out of it - although these gases disperse very quickly in open spaces”. <https://www.elcomercio.es/economia/motor/gasolina-verdades-mentiras-mitos-uso-combustible-coche-20191230102205-nt.html?ref=https%3A%2F%2Fwww.google.com%2F> (Motor en Asturias, 2019) (date of consultation 07/31/2020).

2. BACKGROUND

After the interception of the "illegal gasoline", in the cases and conditions already described, it arises a problem with its management. As an example, there are news that show with some clarity the background of the work.

The news in question, and that will be used as an example, is dated 13th of July 2018, and had 3,225 visits as of 20th of February, 2020⁶. It was published in the *Diario de Cádiz*⁷, *Europa Sur*⁸, and *Diario de Jerez*⁹, as well as on the website of the "Asociación Unificada de Guardias Civiles (AUGC)".

The subtitle of the news is "The AUGC denounces the lack of coordination between administrations with the intervened objects", and the headline "A truck full of fuel, immobilized in Comandancia". Obviously, these types of situations not only generate a great risk, but the actions of the Administration are linked to the generation of risks for the population and therefore, greatly damage the image of the Administration in a very harmful way. Especially when it is the inevitable result of their daily well-being during the different tasks carried out. Below, you will find part of the text of the news.

"A truck that was identified by a Civil Guard patrol in Algeciras was carrying a boat dedicated to drug trafficking in any of its variants (loading or fuelling), turning out to be a boat without a serial number and three 350 hp engines, as well as 111 bottles of 20 litres of fuel, consequently proceeding to the arrest of the carrier for a crime of forgery of documents.

But the problem does not end there. The truck with all its load was immobilized at the door of the Los Barrios barracks, with the consequent risk that it entails for the workers and families that live there. AUGC denounces a new case of lack of coordination in the Public Administration" (Ruiz, 2018).

Dos detenidos en Algeciras por transportar 30 garrafas de gasolina para narcolanchas



Uno de los detenidos junto a la gasolina incautada

Figure 1: Gasoline seized by the Spanish NP for trafficking vessels.

6 <https://www.augc.org/news/2018/7/13/no-cesan-los-incidentes-con-el-narcotrafico-en-el-campo-de-gibraltar> (date of consultation 07/31/2020).

7 <https://www.pressreader.com/spain/diario-de-cadiz/20180714/281891594046732> (date of consultation 05/25/2020).

8 <https://www.pressreader.com/spain/europa-sur/20180714/281625306074383/textview> (date of consultation 05/25/2020).

9 <https://www.pressreader.com/spain/diario-de-jerez/20180714/281917363850512/textview> (date of consultation 05/25/2020).

In a link of “*VideoActualidad.com Noticia*”¹⁰ it is seen how the “gasoline trafficking” is transported by road and it addresses the danger that transporting said fuel poses to public safety in those circumstances; It also shows how the FCS deposit and discharge gasoline in a refinery, an unsuitable place from any point of view for said operation.

In another video of Ana Rosa Quintana’s program¹¹, it can be observed, during the home search of an important drug trafficking chief, that “illegal gasoline” is a fundamental piece for the introduction of hashish from North Africa since he even had it in his own address.

And finally, highlight a news published in different media on 5th of June 2020, where three seizures of “illegal gasoline” are detailed, carried out by the Civil Guard in the province of Cádiz and a video is shown where they can be viewed the carafes, vehicles, and their temporary storage, waiting to be transferred to a suitable place¹².

In three services, more than 2,500 litres of gasoline are seized, “destined to supply the vessels that are engaged in drug trafficking.

The news had an impact Publico¹³, Cope¹⁴, La Vanguardia¹⁵, Teleprensa¹⁶, Europa-press¹⁷, Andalucía Información¹⁸, Costa Cádiz comunicación¹⁹, and Benemerita al día²⁰.

3. THE ADR, EXEMPTIONS OR COMPLIANCE BY PARTICULARS

The origin of the term ADR comes from the first letter of some keywords in the French title: “Accord Européen relatif au Transport International des Marchandises Dangereuses par Route. The ADR has the objective of facilitating the transport of dangerous goods and, above all, guaranteeing the maximum safety conditions for this type of substances” (ADR, 2019).

“European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) was drawn up after the Second World War. It was adopted in Geneva on 30th of September 1957, within the United Nations Economic Commission for

10 <https://www.youtube.com/watch?v=QdE7fvhrdy0>

11 <https://youtu.be/HHDr6ixNJmU>

12 <https://www.publico.es/videos/873959/incautados-mas-de-2500-litros-de-combustible-para-narcot-lanchas-en-cadiz>

13 <https://www.publico.es/videos/873959/incautados-mas-de-2500-litros-de-combustible-para-narcot-lanchas-en-cadiz> (date of consultation 06/05/2020).

14 https://www.cope.es/actualidad/espana/noticias/incautados-mas-2500-litros-gasolina-para-narcot-lanchas-cadiz-20200605_753310 (date of consultation 06/05/2020).

15 <https://www.lavanguardia.com/vida/20200605/481603848029/incautados-mas-de-2500-litros-de-gasolina-para-narcot-lanchas.html> (date of consultation 06/05/2020).

16 <http://www.teleprensa.com/es/nacional/andalucia/cadiz/incautados-mas-de-2500-litros-de-combustible-para-narcot-lanchas-en-la-costa-noroeste.html> (date of consultation 06/05/2020).

17 <https://www.europapress.es/andalucia/cadiz-00351/noticia-incautados-mas-2500-litros-combustible-narcot-lanchas-costa-noroeste-cadiz-20200605104432.html> (date of consultation 06/05/2020).

18 <https://andaluciainformacion.es/sanlucar/902326/incautados-mas-de-2500-litros-de-combustible-para-narcot-lanchas/> (date of consultation 06/05/2020).

19 <http://costacadizcomunicacion.es/guardia-civil-incauta-mas-de-2-500-litros-de-combustible-destinado-a-abastecer-a-las-embarcaciones-del-narcotrafico/> (date of consultation 06/05/2020).

20 <https://www.benemeritaaldia.org/actualidad/52258-la-guardia-civil-de-cádiz-incauta-más-de-2-500-litros-de-combustible-destinado-a-abastecer-a-las-embarcaciones-del-narcotráfico.html> (date of consultation 06/05/2020).

Europe (CEPE / UNECE). It entered into force on 29th of January 1968 and prevailed in Spain on its accession on 19th of October 1972" (ADR, 2019).

"The ADR is reviewed every two years - coinciding with odd years - by the WP-15 working group. This working group (Working Party) is attached to the Inland Transport Committee of the Economic Commission for Europe (CEPE / UNECE)" (BOE, 2019, pág. 68989).

The objective is to apply technological innovations to the regulations, thus helping to reduce claims and incidents in which dangerous materials are involved. Also, update and clarify aspects that have not been clear from previous editions.

"The ADR lists the dangerous goods that can be subject to national and international transport. It applies to all international transport of dangerous goods by road, as well as the activities involved (packing, loading, unloading, signalling...), between the countries adhering to the agreement (ADR, 2019)."

"The ADR is an agreement between States. No central authority oversees its application. Roadblocks are carried out by the Contracting Parties. If rules are broken, the national authorities can act against the driver in application of their internal legislation. The ADR itself does not establish any penalty" (ADR, 2019). In Spain, the national transport of dangerous goods is also carried out based on ADR, following "Directive 94/55/CE of the European Parliament and of the Council".

ADR standards acquire legal force when they are incorporated²¹ into the legislation of the Member States. Currently 51 countries, mainly European, are part of the Agreement, including all the European Union, but also Morocco, Tunisia, Turkey, Kazakhstan, and Azerbaijan.

3.1. TOTAL EXEMPTION OF ADR BY INDIVIDUALS

"The provisions of the ADR shall not apply to the transport of dangerous goods carried out by individuals when these goods are put up for retail sale and intended for personal or domestic use or leisure or sports activities provided that measures are taken to prevent any leakage of content under normal transport conditions²². Dangerous goods in Large Bulk Container (GRG) (ADR, 2019) or English acronyms for (Intermediate Bulk Container), cubic-shaped container (IBC), large packages or tanks are not considered packed for retail sale.

When is an individual exempt?

If "240 litres per transport unit and 60 litres per container" (ADR, 2019) are not exceeded, we can transport fuels "as individuals without complying with the ADR, therefore, we could carry out this transport in non-approved containers." Always under the "condition that measures are taken to prevent any leakage of content under normal transport conditions" (Ministerio de Transporte, Movilidad y Agenda Urbana, 2020) that

21 "RD 97/2014 of 14th of February, which regulates dangerous goods transport operations by road in Spanish territory" (BOE, s.f.).

22 "When these goods are flammable liquids transported in refillable containers filled by, or for, an individual, the total quantity will not exceed 60 litres per container and 240 litres per transport unit" (ADR, 2019).

the stowage does not cause any risk and, in general, that the transport unit is not in a position to cause damage or a dangerous situation for road safety due to unsuitable conditions arranged in transport. “It is pointed out that service stations do not sell bottled fuel for retail sale” (JUBEN, 2020).

An explanatory example is given making a simile with bleach. When, as private users, and for domestic use, “we go to the supermarket and buy bleach (sodium hypochlorite solution), we acquire a hazardous material according to the ADR with nº UN 1791, corrosive substance (class 8). We can buy this product and transport it, since, in this case, the exemption of marginal 1.1.3.1 a) of the ADR is fully complied with since the bleach is packaged (plastic bottle) and prepared for retail sale.” (JUBEN, 2020)- (ADR-2019).

This exemption from the ADR, contained in marginal 1.1.3.1 a) is also applicable to the transport of fuel, which means that the user, as a private individual (“professional and / or business activities are excluded”), is not infringing any administrative rule for transporting said fuel in a non-approved container. But there may be an infringement if it is provided by the service station in irregular conditions. “In a service station the fuel is in a tank, therefore, it is not prepared for retail sale (ADR, 2019).” “The service stations sell retail (final consumer), but the product is not prepared for such sale, since the service stations do not sell the packaged product. (ADR, 2019)”

In this sense, the “Royal Decree 706/2017, of 7th of July, which approves the complementary technical instruction MI-IP 04 “Installations for supply to vehicles ”and orders certain aspects of the regulation of oil installations in its Third additional provision: general conditions for the retail distribution of fuels and fuels to vehicles in retail facilities says: *“It is understood as the sale to the public of fuels and fuels in vehicle supply facilities, the activity consisting of the delivery of fuel and petroleum fuels in bulk (not packed), carried out at a price in favour of consumers at the facility itself (BOE, s.f.).”*

“Service stations do not sell conditioned fuel for retail sale (that is, they sell it in bulk and not packaged), RD 97/2014 of 14th of February, which regulates dangerous goods transport operations by road in Spanish territory, solved this problem by means of article 7 of APPENDIX 1”:

“The transport of containers containing automotive fuels, regardless of whether the fuels are prepared for retail sale, carried out by individuals in vehicles for private use, are considered included in the general exemption that, for the transport of dangerous goods carried out by individuals, it appears in the ADR. Notwithstanding the aforementioned, the rest of the conditions cited in said general exemption will apply to them regarding the use to which the goods are intended, limitations on the quantities transported and type of container / packaging” (ADR, 2019) (BOE, s.f.).

“Now, although such transport as private individuals can be carried out in non-approved containers, measures must be taken to prevent any leakage of content under normal transport conditions, as stated in marginal 1.1.3.1 a) of the ADR.

In summary, the transport of fuel by private individuals is exempt from complying with the ADR if it is used for personal or domestic use or leisure or sports activities, if measures are taken to prevent any leakage of content under normal transport conditions” (ADR, 2019).

"The latter is also added by Royal Decree 706/2017, of 7th of July, which approves the complementary technical instruction MI-IP 04 "Systems for supply to vehicles" in its third additional provision". The retail supply of gasoline and diesel to containers or packaging is allowed, provided that the following conditions are met" (BOE, s.f.): "The supply will be a maximum of 60 litres for gasoline and 240 litres for diesel, complying with the standards and recommendations contained in the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR). (ADR, 2019)"

Which, in practice, means that if the service station supplies a particular fuel "gasoline" in a non-approved container, it would be in breach of "Royal Decree 706/2017, of 7th of July", when said gasoline supplied exceeds 60 litres per container²³, even if the consumption is for "personal or domestic use or intended for leisure or sports activities provided that measures are taken to prevent any leakage of content under normal transport conditions."

If this is breached, and it must be understood including exceeding 240 litres per transport unit, the individual would have to meet certain ADR requirements, the retail supply by the service station would be committing a presumed infringement. In this case, it must be understood that in "matters of responsibilities, infractions and sanctions related to the sale to the public of fuels and petroleum fuels, the provisions of Title VI of Law 34/1998, of 7th of October, of the hydrocarbon sector" (BOE, s.f.).

Intervenidos 240 litros de gasolina en Palmones destinados a abastecer a narcolanchas

• Agentes del Grupo Operativo de Apoyo y Prevención de la Policía Local de Los Barrios (GOAP) incautan 10 garrafas en un vehículo durante un control rutinario



Figure 2: Gasoline seized by PI.

3.2. PARTIAL EXEMPTION OF ADR BY AN INDIVIDUAL

In the case of the transport of gasoline by individuals, until the amount of 333 litres is exceeded, the transport would be subject to the partial exemptions of the ADR, not being applicable many of the prescriptions established by the ADR. "1.1.3.6.2 When the quantity of dangerous goods on board a single transport unit does not exceed the values indicated

²³ "The retail supply of gasoline and diesel to containers or packaging is allowed, provided that the following conditions are met: a) The supply will be a maximum of 60 litres for gasoline and 240 litres for diesel, complying with the standards and recommendations contained in the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR)" (ADR, 2019).

in column (3) of the table in 1.1.3.6.3,... (in the case of gasoline it would be 333 litres), may be transported in packages in the same transport unit without the following provisions being applicable” (ADR, 2019): orange panels, written instructions, special driver authorization. Specific Personal Protective Equipment (PPE) for said transport, statutory fire extinguishers, identification labels, approval of the containers will be required.

This partial exemption from ADR will be given when the transport unit exceeds 240 litres but not 333 litres. That is, it will be between 240 litres and 333 litres.

3.3. WHEN APPROVAL OF THE CONTAINERS IS REQUIRED

The transportation of fuels by individuals is exempt from complying with the ADR determinations regarding the approval of containers and the issuance of a transport document, if they comply with the conditions described:

FIRST: The products are carried by individuals and intended for personal or domestic use or for leisure or sports activities.

SECOND: Measures to prevent any leakage of content under normal transport conditions must be taken (not in buckets or similar, but in carafes, drums, etc., that prevent spills due to transport activity).

THIRD: The supply object of transport “will be a maximum of 60 litres for gasoline and 240 litres for diesel.”

Otherwise, it will be mandatory to transport them in approved, labelled and marked containers according to the ADR determinations, as well as the need for the transport document (businessmen, freelancers, larger quantities of fuel to be transported...)

Therefore, the supply may not be denied by a service station to an individual who demands a supply in a non-approved container, when the fuel is to be used for domestic, personal, leisure or sports use, if it does not exceed the maximum quantity limits.

In another case, because it is an entrepreneur or self-employed person, or exceeding the maximum quantities subject to exemption, the supply must be made in approved containers, labelled, and marked according to the product to be transported, as well as the corresponding transport document issued.

Then, if this requirement is not met, it means that the supply is NOT allowed, then if we can prove who supplied it under those conditions, it would be necessary to report²⁴ him for failing to comply with the obligations “related to the sale to the public of fuels and fuels, in accordance with the provisions of Title VI of Law 34/1998, of 7th of October, on the hydrocarbons sector. (BOE, s.f.)”

Conclusion, if the service station supplies gasoline in non-approved containers, when the individual is not covered by the general exemption of the ADR, he may be sanctioned either by the hydrocarbon law or by the LOTT.

24 For example, it could constitute the serious infraction typified in letter m), of “Article 110, of Law 34/1998 of 7th of October, on hydrocarbons”, due to “non-compliance, on the part of carriers, distributors, marketers or, in general, of the owners of the facilities, of the obligations established in this law and development regulations when, due to the concurrent circumstances, it is not classified as a very serious or minor infraction”.

3.4. PARTIAL CONCLUSIONS

It must be considered that ADR has mainly three ways of total or partial non-application.

FIRST: the total so-called exemptions.

These are those referred to marginal 1.1.3.1, which are aimed at an exemption for individuals, companies as an accessory to their activity, wreckers, emergencies, etc.

This exemption would include what is indicated for 240 litres per unit of transport by individuals.

But you must consider two more exemptions:

SECOND: Is the so-called general exemption.

Exemptions for "Limited and Excepted Quantities" (Chapters 3.4 and 3.5 of the ADR). This refers to when Dangerous Goods (MMPP) are transported in small containers and all of them in a box. Example: bottles of cologne, aerosols that we find in supermarkets, etc. They are small containers with limitations, which the legislator, even being MMPP, has excluded them from ADR compliance because they have a greater dispersion of the danger and have several types and packaging.

THIRD: the so-called partial exemptions (1.1.3.6 of the ADR).

This exemption is directed to "quantities transported per transport unit."

This is when a vehicle is transporting the MMPP that do not fall within the "total" exemptions (individuals) or the "general" (small containers), they are forced to comply with the ADR.

But it is not obliged to comply with "all" the ADR (hence the name of partial exemptions) because, if it does not exceed certain values that are determined in the marginal 1.1.3.6.3 (in the case of gasoline it would be 333 litres), you do not have to meet "all ADR". If it does not exceed the transport unit, these limits only must comply with a part of the ADR safety regulations, which regulates the marginal 1.1.3.6.2.

In summary:

It must be considered that, if the containers do not exceed 60 litres in capacity and the vehicle does not carry more than 240 litres, an individual in the indicated conditions does not have to meet any ADR requirements.

If it exceeds this amount (both in the 60-litre containers and in the total of 240 litres), but without exceeding 333 litres, it would be included within the "Partial Exemptions".

For example, if you transport three 80-litre carafes (240 litres total), you can no longer benefit from the total exemptions for individuals, it will fall within the partial exemptions of marginal 1.1.3.6 (Basically mandatory: transport document, approved, marked, and labelled container and a 2 kg fire extinguisher). The same happens if you carry five 60-litre carafes. (300 litres), would not be included within the exemptions for individuals, but within the partial exemptions.

If, on the other hand, it exceeds 333 litres, (ex: six 60-litre carafes. = 360 l.), does not fall within any exemption and must comply with all the ADR (transport document, orange panels, written instructions, driver qualification for ADR, statutory fire extinguishers, etc.)

As “transport unit” we understand both the vehicle individually and the vehicle with its own traction capacity with a trailer or semi-trailer (that is, by carrying a trailer it CAN-NOT transport more than that indicated in marginal 1.1.3.1.).

“The GRG / IBC cannot be used by individuals if they want to be included within the exemptions of the ADR related to the nature of the transport operation, marginal (1.1.3.1 as of the ADR) and they are caged plastic tanks, which they usually have a capacity of 1,000 litre” (ADR, 2019) (Pérez, 2020.).

4. INTERVENTION OF GASOLINE

4.1. GENERAL

Without the intention of vehemently stating what must be done and under what circumstances, an attempt will be made to set guidelines to follow when illegal gasoline is intervened by the FCS.

The organization of the infrastructures and procedures is suggested to be carried out at provincial level since the technical means, the facilities and the authorities that can agree, validate or give the go-ahead to a protocol, must be framed in some area and the provincial level is chosen by the speaker as a work ideal, by having a Government Subdelegation, a Provincial Council and, normally, the Autonomous Governments, which are also subdivided into provincial areas, which have decision-making bodies at the provincial level. It seems obvious that it would not be operational to agree on a fuel collection centre “for FCS seizures” in Seville, which serves the entire Autonomous Community of Andalucía due to the distances. This can be extrapolated to any autonomous community, large area, etc.

At this point, it is necessary to draw up a procedure to follow both for an administrative intervention initiated before the road transport of “illegal gasoline” in the aforementioned conditions, where the corresponding complaints have been made to the “Ley de Ordenación del Transporte Terrestre” (LOTT), “Reglamento General de Conductores” (RGCON) and, if applicable, “Impuestos Especiales” (I.E.E) and waste, as in an allegedly criminal intervention, where alleged infractions may have also been committed that should be notified to the competent authority.

Since gasoline is a dangerous merchandise, all regulations concerning the environment, ADR and occupational risk prevention should be complied with both for the fuel deposit, the transfer of the same, and for its destruction. From a technical and operational point of view, a seizure of two thousand litres of gasoline intercepted on an inter-urban road will present various operational problems of great magnitude and depth.

Considering the requirements set forth in the general regulations on “occupational risk prevention”, elimination or treatment of waste, ADR, etc., it is practically impossible for a patrol or an FCS Unit to deposit the fuel in a suitable place and that meet all prescribed

requirements. It is also difficult to carry out the corresponding transfer of fuel in adequate conditions and that, in turn, comply with all legal precepts, both in transport and in its storage, as well as in the procedure of destruction and / or recycling. Thus, the FCS are exempt from complying with the ADR precepts to transport "illegal gasoline" seized for a criminal offence or immobilized, deposited or withdrawn for an administrative offence. In accordance with "Chapter I on general provisions and definitions, second article, fifth epigraph of Royal Decree 97/2014, of 14th of February, which regulates dangerous goods transport operations by road in Spanish territory, where it is indicated clearly that the FCS would be exempted from ADR compliance, when transporting gasoline in their vehicles, or even in other external means, but under their responsibility.²⁵"

However, you should always try to act with the "illegal gasoline" found in the way that generates the least possible risk.

In practice, like any other merchandise, it should be deposited in a place that meets the appropriate conditions, request its destruction either to the competent authority of the autonomous community "in terms of transport of merchandise and travellers by land", and / or the judicial authority, if it is linked to a criminal act, can even address the authority in charge of waste, if it is reported as a hazardous waste. Until said place of deposit, it should be moved under legal or maximum-security conditions.

It would be possible to think that said fuel could be reused in service stations, refineries or be delivered to FCS or Non-Governmental Organizations (NGOs), for example, the Red Cross for their ambulances or boats. But this is not advisable, since each brand adds different tracers to their fuels, these fuels are difficult to trace using said tracers, because they can be mixed, and the origin of the fuel from the different pouches where they are usually packaged is unknown; in addition to the risk that the contents of the seized containers may be adulterated, so they are not easily reintroduced to the legal or regular market. It is significant that normally there is never the invoice from the service station proving the purchase of gasoline. This is because the fuel loader would be attributed a series of infractions for non-compliance with the ADR and even the "hydrocarbon sector law."

Now in which the fuel is found, both in an address by an entry and search before a judicial investigation and in a road transport control, said dangerous merchandise becomes a dangerous waste, because it does not meet the conditions for that can be marketable again. The reasons are those set out in the previous paragraph, an approach has been understood through meetings of the author of this work with the Head of Service of the Servicio del Departamento de Residuos y Calidad del Suelo de Cádiz, of the Delegación Territorial de la Consejería de Agricultura, Ganadería, Pesca y Desarrollo Sostenible de Cádiz, Joaquín Caballero Valcarce, and also (last 3rg of August, 2020) with the head of the Service of the Servicio del Departamento de Residuos y Calidad del Suelo de la "Consejería de Agricultura, Ganadería, Pesca y Desarrollo Sostenible from Andalusia, David Fernández Guerra. What in practice, for work, has meant going from a provincial consensus to an autonomous one.

25 Article two on general provisions, from chapter one "general provisions and definitions", "The transport of dangerous goods by road carried out with vehicles belonging to the Armed Forces or the Security Forces and Bodies is excluded from the scope of application of this Royal Decree. or carried out under its responsibility - said transports will be governed by their special regulations, including international treaties to which Spain is a party, without prejudice to the particularities established by reason of their purposes and special characteristics".

Given the practical impossibility of carrying out the operations legally, the temptation to deposit the merchandise under the responsibility of the offender could be given the green light. But, to adopt this decision, all circumstances must be analysed and given the suspicion of the illicit origin of the fuel, that it could be “illegal gasoline”, if the adoption of security measures, etc. is not guaranteed, it does not seem to result in any way sensible to make such a decision.

In any case, it will never be possible to assume that the criminal or administrative offender has the adequate means to guarantee that said dangerous “flammable liquid” merchandise is deposited under adequate security conditions.

It is evident that it becomes essential to find a solution on the part of the Administration, which must be at zero cost for the public money.

It is for all the above that it is necessary to reach agreements with private companies and the competent environmental authority in the autonomous communities and / or at the provincial level. To be able to standardize a work system that, in the best possible way and without risk to citizens or the environment, makes it possible to withdraw, deposit, destroy and recycle gasoline. The ideal would be to agree, with the provincial environmental authority, a factory that has AAI.

“The Autorización Ambiental Integrada (AAI)²⁶ is a figure of administrative intervention that, for the affected facilities, replaces the set of existing environmental authorizations until the entry into force of Law 16/2002²⁷, (Today repealed by Royal Legislative Decree 1/2016, of 16th of December, which approves the revised text of the integrated pollution prevention and control law). This authorization is granted prior to any other substantive authorization or license required and is binding for everything related to the environment. The AAI includes all environmental aspects, and those other related that the competent environmental authorities consider, in accordance with the basic state legislation and the corresponding autonomic ones.” (Vicepresidencia Cuarta del Gobierno. Ministerio para la Transición Ecológica y el Reto Demográfico, s.f.)

4.2. MANAGEMENT, DESTRUCTION / RECYCLING OF THE “ILLEGAL GASOLINE”

The FCS are not producers or owners of the waste, the subject of the matter, but they are the ones who are seizing the fuel in the scope of this paper. It is normal that it is practically impossible to deposit the fuel in an authorized centre for hazardous waste number LER²⁸ 130702 (gasoline). For this reason, just as when an accident occurs with dangerous goods involved, where a transfer cannot be notified in advance or the ground must be decontaminated, it is necessary to apply the doctrine “*Quod non es licitum in lege, you need facit licitum*”, which for the law is not legal necessity does (Caballero Valcarce, 2020).

While the appreciation of need is not trivial, nor is responsibility. To begin with, the action must remedy a greater risk or harm than the one it is trying to avoid. The need should not respond to a situation created by the negligence or passivity of the person

26 “Royal Legislative Decree 1/2016, of 16th of December, allowed the articulation in Spain of Directive 2010/75/EU of the European Parliament and of the Council, of 24th of November, on Industrial Emissions, in addition to integrating Law 16/2002 on Prevención y Control Integrados de la Contaminación or IPPC, as well as its subsequent modifications.” (BOE, s.f.)

27 “R.D. Legislative 1/2016, of 16th of December, which approves the revised text of the Integrated Pollution Prevention and Control Act”.

28 European Waste List.

who acts or demands the necessary action -responsibility-, although afterwards none of this will be so simple. Finally, the issue is that a public authority seizes a substance that, given the risk situation, must be destroyed in the most suitable facility.

The ideal is a judicial order, as when it intervenes in a private property, since this must be respected when emanating from a power of attorney and it cannot be arbitrary but, even failing that, if the FCS order the action and justify its Necessity, the most suitable centres should respect the situation and remain outside the scope of waste management "the accounting and documents required by the Law and the Waste Regulation are not kept" as an imperative has been created that requires an action designed to avoid a greater harm. As, for example, causing a certain amount of gasoline, temporarily deposited in an adjacent open area to the road platform, near town and in dangerous circumstances, generates a situation of danger greater than the one that was tried to avoid when the acting force intervened when observing a series of supposed irregularities in application of the security conditions of the ADR.

"All of this, just like when it is necessary to destroy merchandise seized in customs that may pose a risk of transmission of tropical disease (in a cement plant or in a kiln for SANDACH²⁹), or to bury a whale that has died in undetermined circumstances in a Municipal mixed waste landfill, as there is no other facility suitable for a waste of that size.

Obviously, the manager is left out of the determination of said need, he only receives an order (judicial or from the competent authority - GC de Tráfico, Agente de Aduana, Inspector de Sanidad Animal del Puesto de Inspección Fronterizo...), he complies and he retains to justify its action and is exempt from liability (Caballero Valcarce, 2020).

For different reasons, it would be advisable to reach a consensus with the local environmental authority (for example, in a province of the Autonomous Community of Andalusia, go to the Delegación Territorial de Medio Ambiente y Ordenación del Territorio, Departamento de Residuos y Calidad del Suelo) and raise a query on which are the centres where, in the event of a "criminal, administrative or supervening intervention such as a work accident or road accident", a certain amount of seized or collected gasoline could be deposited, which in case of need could be treated. In this way, we will first know which are the most suitable centres in our demarcation. We will also have the approval of the environment, since it is agreed in some assessed cases which would be the reference waste management centres.

And, finally, certain centres are given the possibility of attending to the FCS in the collection "always documented and under receipt, with subsequent communications of destruction / recycling, registered and certified, as well as delivery by the FCS, of the corresponding requests for the destruction of gasoline.

Communication between the regional authority and the company "the Waste Management Centre" is essential. If the environmental and waste authority does not give the go-ahead, for a management centre to carry out the recycling or destruction of gasoline, "requested by the FCS and justified either by avoiding a greater evil, or by the impossibility of doing so in an even more suitable centre", should not be carried out in that centre. In addition, the scope of the environmental authorizations of any centre are known by the regional environmental authority.

29 Animal by-products not intended for human consumption and products derived from them.

Therefore, this environmental authority has first-hand knowledge of what transformations can be carried out without any danger or risk to the public, or to the environment, in the centres that are under its jurisdiction or area of competence.

Intervienen 3.725 litros de gasolina para narcolanchas en un depósito clandestino en La Línea

La **Guardia Civil** ha intervenido en la Línea de la Concepción, en **Cádiz**, un total de 3.725 litros de gasolina que estaban destinados al abastecimiento de "narcolanchas". Según el instituto armado, se trata de la mayor cantidad de **combustible** que se ha incautado en una sola actuación.



Combustible incautado de las narcolanchas | Agencias

El combustible, que estaba distribuido en **149 garrafas de 25 litros cada una**, se hallaba en un trastero del puerto de La Atunara, en La Línea. Dicho puerto es utilizado habitualmente como punto de apoyo logístico para el **abastecimiento de combustible** y relevo de tripulaciones de las "narcolanchas".

Figure 3: Gasoline seized by CG in an illegal warehouse and destined for trafficking vessels.

Before the consultation of:

Can the seized illegal be deposited in a hydrocarbon marketer (CLH, BP, CEPSA) so that it can, in turn, reintroduce the fuel to the market, after verifying that the fuel is suitable for its particular use?

The answer is:

No, merchandise that is outside the duty suspension arrangement cannot be placed in the tax warehouse. And all the illegal gasoline seized by the FCS within the scope of the article is outside the duty suspension arrangement (Baizán, 2020).

4.3. GASOLINE STORAGE

4.3.1. Legal requirements for gasoline storage

"The storage of chemical products is regulated by the regulation of installations and storage of chemical products (APQ)." All industrial regulations are structured based on complementary instructions (ITCs) that are developed, in this case, types of storage.

Specifically, for flammable and combustible liquid products, we have ITC-APQ-01. This technical instruction establishes the characteristics of this type of storage, what should be arranged and how it should be stored.

In the case of mobile containers, among many other things, it is established that:

"Mobile containers must comply with the construction conditions, tests and maximum unit capacities established in the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR)."

In other words, the container must be approved.

"If we introduce these non-approved containers in the warehouse of a Refinery that does not comply with the requirements, this will make said warehouse (as a whole) not comply with the APQ regulation, with the consequent problems in labour and social security inspections, internal audits and external inspections of insurance and reinsurance companies, etc.

On the other hand, since the fuel is not in an approved container, the safety of that container is not guaranteed, and leaks, spills, etc. may occur, with the consequent danger of fire and therefore all the associated safety and labour problems.

All of this continues to be a management model, roughly said, of risk protection in decision-making, always seeking to comply with the law. (Martínez, 2020)"

For the storage or deposit of gasoline, it will be necessary to adapt to the provisions of the ADR and the "Royal Decree 656/2017, of 23rd of June, which approves the Regulation for the Storage of Chemical Products and its Complementary Technical Instructions MIE APQ 0 to 10.

Despite this, in the event that an installation included in the scope of the Regulation cannot comply with the requirements established in the complementary technical instructions (ITCs), the competent body in matters of industry of the Autonomous Community, upon request of the interested party (which will be accompanied by the corresponding technical documentation stating and justifying this impossibility, formulating an alternative technical solution, with a favourable report from an authorized control body), may authorize that the aforementioned installation adapts to the solution proposal, which in no way may imply a reduction in the security resulting from the prescriptions of said TCs". In any case, storage in any centre must always have the means, comply with technical requirements, and have authorization from the competent authority.

In the case of gasoline, according to ITC MIE-APQ 1: "Storage of flammable and combustible liquids", we would be in a class b, products whose ignition point is less than 55°C.

In general, the characteristics of the facilities will depend on the type of storage³⁰. "

The general aspects of storage are location, on a completely smooth and horizontal surface. In protected cabinets. In storage rooms (indoor, separate, attached). Industrial

30 Storage will be in fixed surface or buried containers or in mobile containers. The containers may be located outdoors or in open or closed buildings". For quantities of products of class B "gasoline", less than 500 litres, "the project may be replaced by a document signed by the owner of the storage or his legal representative, stating: the products to be stored, the characteristics of the same and the description of the warehouse, as well as the means of protection that will be available, which, in any case, must comply with the provisions of the ITC. With the final work certificate or, where appropriate, from the control body, the construction certificate of the containers issued by the manufacturer will be presented" (BOE, s.f.).

storage (indoor, outdoor). Being exterior they require a certificate of suitability that indicates it, they will have protection against UV rays.

They are not allowed in corridors, lobbies, stairwells, vehicle passageways, roofs and attics in non-industrial buildings, work rooms, rest rooms or visits. Connected to each other, not stacked.

These are the requirements for the gasoline fuel tank.

4.4. OCCASIONAL STORAGE OF GASOLINE

The occasional storage of gasoline could be an emergency solution for the FCS, where gasoline could temporarily pass after being seized at untimely hours for the normal operation of waste management plants.

The storage of gasoline or diesel in portable containers is regulated by:

“Royal Decree 1523/1999, of 1st of October, which modifies the Regulation of oil installations, approved by Royal Decree 2085/1994, of 20th of October, and the complementary technical instructions MI-IP03, approved by the Royal Decree 1427/1997, of 15th of September, and MI-IP04, approved by Royal Decree 2201/1995, of 28th of December (BOE, s.f.).”

“Royal Decree 656/2017, of 23rd of June, which approves the Regulation of Installations and Storage of Chemical Products (APQ) and its Complementary Technical Instructions MIE APQ 0 to 10 (BOE, s.f.).”

An option to be considered by the Administration is the fourth additional provision.

Adaptation of chemical storage facilities of the Armed Forces. Where it is stated that the Minister of Defence may establish, temporarily, exceptions to the application of this royal decree, in relation to the storage of certain substances or mixtures, when necessary, for reasons of National Defence.

The review, inspection and eventual adaptation of the facilities affected by the prescriptions contained in this royal decree that are in Zones of Interest for National Defence, within units of the Armed Forces or in the Autonomous Bodies of the Ministry of Defence, will be carried out by their corresponding technical bodies (BOE, s.f.).

The following are excluded from the scope of application of Royal Decree 656/2017:

- The storage that may occur during the transport of dangerous chemical products by road, rail, sea, or air, contained in vehicles, wagons, tanks and containers, including stops and parking lots imposed by transport or traffic conditions. Intermediate temporary stays are also included to exclusively carry out changes of mode of transport.
- Storage in transit, as defined in article 2.6 of the ITC MIE APQ-0”. “Storage in transit. Occasional storage of products awaiting re-dispatch and whose expected storage period does not exceed 72 hours. However, if there is product in the warehouse for more than 8 days a month or 36 days a year, it will not be considered storage in transit. The count of days will be obtained by the sum of the storage times of the product.”

4.4.1. Partial conclusions

1. In general, the storage of portable gasoline containers is regulated and requires a communication to the administration (by means of a supporting report or project) and subsequently periodic reviews certifying that the security measures provided for in the IP03 and / or AQP-regulations are met. WED ITC10.
2. The regulation exempts "storage facilities for chemical products of the Armed Forces" from compliance, but not those of the Security Forces and Bodies.
3. In any case, storage in transit is excluded from the scope of the APQ Regulation.

Storage in transit is understood to be the sporadic storage of products awaiting re-dispatch and whose expected storage period does not exceed 72 hours. However, if there is a product in the warehouse for more than 8 days a month or 36 days a year, it will not be considered storage in transit, since it has already been indicated that the calculation of days is obtained by the sum of the storage times of the product.

4. "The sporadic storage of portable gasoline containers awaiting re-dispatch and whose storage period does not exceed 72 hours" (BOE, s.f.) and as long as there is no product stored in the premises for more than 8 days a month or 36 days a year is excluded from the scope of the regulation, despite which the minimum necessary security measures should be taken during storage to avoid the risk of fire or explosion.
5. Notwithstanding the foregoing, in the Risk Assessment of the installation, the Prevention Service must assess the potential risk to the safety of workers exposed to the dangers derived from explosive atmospheres in the workplace as provided for in the "Royal Decree 681/2003, of 12th of June, on the protection of the health and safety of workers exposed to the risks derived from explosive atmospheres in the workplace" (ATEX³¹).

5. CONCLUSIONS

The FCS find "illegal gasoline" in irregular and dangerous conditions, deposited, or transported by individuals or "even companies", and its origin, composition or future storage in safety conditions cannot be justified regarding said fuel. Gasoline, a dangerous merchandise whose UN number is 1203, would then become non-marketable. Therefore, it is de facto transformed into a hazardous waste number LER 130702 (Caballero Valcarce, 2020), (Guerra, 2020).

Faced with a transport of "illegal gasoline" in the cited unsafe conditions, the FCS agents, in general the Administration, cannot limit themselves to instructing a series of monetary sanctioning proceedings. On the contrary, they must take preventive measures now of the findings that allow the dangerous situation for public safety, human health, the environment, infrastructures, etc., to disappear or be minimized to the maximum.

31 "EXPLOSIVE ATMOSPHERE is understood to be any mixture, under atmospheric conditions, of air and flammable substances in the form of gas, vapour or dust in which, after ignition, the unburned mixture spreads".

It is no coincidence that on the occasions in which the press has reported on seizures of gasoline in homes and / or on the road, it has called them “illegal gasoline.”

The storage of illegal gasoline cannot be carried out haphazardly in any place that is considered, without considering the specific regulations in this regard. Nor should the transport of illegal gasoline be carried out without considering the requirements set by the ADR. These storage and transport conditions cannot be ignored by the FCS in their interventions when they seize “illegal gasoline”, whose destination is temporary or sporadic storage and finally its destruction and / or treatment.

In the case of seizures of gasoline, within the framework of the fight against drug trafficking, or during the inspection of road transport, it would be the acting force of the Security Forces that would have to assess and justify the need “in the terms provided for in the legislation” in administrative and / or criminal matters, when making decisions about the withdrawal of fuel and other actions.



Figure 4: Gasoline seized by CG. Shows the way in which non-approved gasoline containers are transported.

The transformation, treatment or destruction of illegal gasoline can generate a benefit, even if it is in energy mode. The management centre agreed by the environmental authority as the most suitable should carry out the treatment without prejudice to the public treasury based on it.

Environmental management centres with Integrated Environmental Authorization are ideal for managing gasoline from the point of view of safety and environmental quality. If, in addition, it explicitly includes the management of seizures, if the factory allows it depending on the nature of the material, prior request of the authority, it will be an advantage to be assessed (Guerra, 2020).

Individuals who transport gasoline in private vehicles for private use may be exempt from ADR compliance, in whole or in part, depending on the purpose for

which they transport the gasoline, the amount transported and on the condition that no risk is generated.

Therefore, if said fuel is transported in a suitable way by a private individual, but it can be verified that its purpose is not one of those permitted "lawful" for them, that is, "personal or domestic use or intended for leisure or sports activities. provided that measures are taken to prevent any leakage of content under normal transport conditions", it should proceed to report and, in case of danger, remove the fuel and proceed with its treatment / destruction, as indicated in the paper.

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ACRONYMS

“AAI: Autorización Ambiental Integrada.

ADR: Acuerdo Europeo sobre Transporte Internacional de Mercancías Peligrosas por Carretera. European Agreement concerning the International Carriage of Dangerous Goods by Road. Accord Européen relatif au Transport International des Marchandises Dangereuses par Route.

APQ: Almacenamiento de Productos Químicos.

ATEX: Atmósferas Explosivas.

ATGC: Agrupación de Tráfico de la Guardia Civil.

AUGC: Asociación Unificada de Guardias Civiles.

BOE: Boletín Oficial del Estado.

CEPE: Comisión Económica para Europa de las Naciones Unidas.

EPI: Equipo de Protección Individual.

FCS: Fuerzas y Cuerpos de Seguridad.

GRG: Gran Recipiente para mercancías a Granel-.

IBC: Siglas inglesas de (Intermediate Bulk Container), recipiente con forma cúbica.

II.EE: Impuestos Especiales.

ITC: Instrucciones Técnicas Complementarias.

LER Lista Europea de Residuos.

LOTT: Ley de Ordenación del Transporte Terrestre.

MMPP: Mercancías Peligrosas.

ONG: Organización no Gubernamental

RGCON: Reglamento General de Conductores.

SANDACH: Subproductos animales no destinados al consumo humano y los productos derivados de los mismos.

UNECE: Comisión Económica de las Naciones Unidas para Europa.

WP: Grupo de trabajo. Working Group.