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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union on the amendments to the Annexes to the Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) and to the Annexed Regulations to the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN)

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the EU's behalf on the amendments to the Annexes to the Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) and to the Annexed Regulations to the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN), applicable as from 1 January 2023, in connection with the envisaged end of the standstill period in which contracting parties members of the Working Party on the Transport of Dangerous Goods (WP.15) and of the ADN Administrative Committee can object to the proposed amendments for the 2023 edition.

2. CONTEXT OF THE PROPOSAL

The Annexes and Regulations mentioned above, commonly known as the Annexes to the ADR and the Annexed Regulations to the ADN, regulate the international transport of dangerous goods by road and inland waterways, respectively, between members of the United Nations Economic Commission for Europe (UNECE), who are also contracting parties to the ADR and the ADN.

The development of the transport of dangerous goods by road and inland waterways, both in the EU and between the EU and neighbouring countries, is a key component of the European common transport policy, ensuring the proper functioning of all industrial branches producing or using the goods classified as dangerous under the ADR and the ADN. Adapting these agreements to technical and scientific progress is therefore essential for the development of transport and associated industrial branches. The amendments aim to align the ADR and the ADN with the UN Model Regulations, including new definitions, classification criteria and UN numbers, packaging/labelling requirements, and updating applicable standards and technical provisions, as well as editorial corrections.

International provisions on the transport of dangerous goods have been established by various international organisations, such as the UNECE, the Intergovernmental Organisation for International Carriage by Rail (OTIF) and various specialised bodies of the United Nations. Since the rules need to be compatible with one another, a complex international system for coordination and harmonisation has been developed between the organisations involved. The provisions are adapted over periods of 2 years.

2.1. The Agreement concerning the International Carriage of Dangerous Goods by Road (ADR)

The Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) regulates the international transport of dangerous goods by road between the UNECE Member States and other countries that apply the ADR (ADR contracting parties). The ADR entered into force on 29 January 1968.

The EU is not a party to the ADR, but all its Member States are contracting parties to it.

2.2. The European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN)

The European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN) regulates the international transport of dangerous goods by inland

waterways between the UNECE Member States that apply the ADN (ADN contracting parties). The ADN entered into force on 28 February 2008.

The EU is not a party to the ADN, but 13 Member States are contracting parties to it.

2.3. The Working Party on the Transport of Dangerous Goods (WP.15) and the ADN Administrative Committee

The Working Party on the Transport of Dangerous Goods (WP.15) and the ADN Administrative Committee and ADN Safety Committee (WP.15/AC.2) are the bodies set up by the UNECE to decide on the amendments to the ADR and the ADN. These bodies are made up of the representatives of the UNECE Member States that apply the ADR and the ADN. Each ADR and ADN contracting party has a vote.

According to Chapter VII – ‘Voting’ – of the Terms of Reference and Rules of Procedure of the WP.15, only full participants have a vote in the WP.15, and its decisions must chiefly be taken by consensus. WP.15 votes by show of hands.

Article 17(7) of the ADN states that each contracting party represented at the session of the ADN Administrative Committee has a vote.

The amendments adopted during the two-year 2020-2022 period include a wide-ranging series of adaptations to technical and scientific progress.

For the ADR, the WP.15 took its decision on these proposed amendments at every one of the sessions mentioned in Section 2.4 below. For the ADN, the Administrative Committee decided on the amendments at its 27th session in Geneva on 28 January 2022.

In accordance with Article 14 of the ADR, once decided upon by the WP.15, any proposed amendment to the Annexes to the ADR must be considered accepted unless, within 3 months of the date on which the Secretary-General of the United Nations circulates it, at least one third of the contracting parties, or five of them if one third exceeds five, have given the Secretary-General written notification of their objection to the proposed amendment.

In accordance with Article 20 of the ADN, once decided upon by the ADN Administrative Committee, the amendments must be considered accepted unless, within 3 months of the date on which the Secretary-General of the United Nations circulates it, at least one third of the contracting parties, or five of them if one third exceeds five, have given the Secretary-General written notification of their objection to the proposed amendment.

The amendments adopted by the WP.15, as presented in the documents contained in the Annex to this proposal, were sent to the Secretary-General of the United Nations so that they could be notified to the ADR contracting parties on 6 July 2022 for acceptance in accordance with the procedure set out in Article 14 of the ADR. They are also online¹.

The amendments adopted by the ADN Administrative Committee, as presented in the documents contained in the Annex to this proposal, were notified by the Secretary-General of the United Nations to the ADN contracting parties on 1 July 2022 for acceptance in accordance with the procedure set out in Article 20 of and. They are also online².

¹ <https://unece.org/transport/dangerous-goods>

² <https://unece.org/transport/documents/2022/06/standards/european-agreement-concerning-international-carriage>

Until 30 September 2022 for the ADN and until 5 October 2022 for the ADR, the Secretary-General of the United Nations, in its capacity as depositary, can receive objections to the amendments, as adopted in the sessions mentioned above.

2.4. The envisaged acts of WP.15 and the ADN Administrative Committee

The purpose of the envisaged acts is to ensure safe and secure transport of dangerous goods by road and inland waterways, by updating certain provisions. These include, among others, the list of dangerous goods admitted for carriage, the packing instructions, the list of applicable standards, and other technical requirements for various means of containment.

International provisions on the transport of dangerous goods have been established by various international organisations. These include the United Nations Economic Commission for Europe (UNECE) and various specialised bodies of the United Nations, such as the Economic and Social Council's (ECOSOC) Sub-Committee of Experts on the Transport of Dangerous Goods. Since rules need to be compatible, a complex international system for coordination and harmonisation has been developed by the organisations involved. The provisions are adapted over periods of 2 years.

A wide range of public and private sector experts has been consulted during the preparation of these amendments. The following technical meetings took place during the preparation of the amendments:

- UN ECOSOC Sub-Committee of Experts on Transport of Dangerous Goods in its:
 - (1) 57th session in Geneva, 27 November to 8 December 2020;
 - (2) 58th session in Geneva, 28 June to 2 July 2021;
 - (3) 59th session in Geneva, 29 November to 8 December 2021;
- UNECE-OTIF Joint meeting of the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID) Expert Committee and the Working Party on the Transport of Dangerous Goods:
 - (4) autumn 2020 session in Geneva, 10-18 September 2020;
 - (5) spring 2021 session in Bern, 15-19 March 2021;
 - (6) autumn 2021 session in Geneva, 21 September to 1 October 2021;
 - (7) spring 2022 session in Bern, 14-18 March 2022;
- UNECE-WP.15 (ADR) in its:
 - (8) 108th session in Geneva, 10-13 November 2020;
 - (9) 109th session in Geneva, 4-7 May 2021;
 - (10) 110th session in Geneva, 8-12 November 2021;
 - (11) 111th session in Geneva, 9-13 May 2022;
- UNECE-WP.15/AC.2 (ADN) in its:
 - (12) 37th session in Geneva, 25-29 January 2021;
 - (13) 38th session in Geneva, 23-27 August 2021;
 - (14) 39th session in Geneva, 24-28 January 2022;

and the ADN Administrative Committee in its 27th session in Geneva on 28 January 2022.

In these meetings, the individual proposals for amendments were analysed and processed by the experts of the committees mentioned above. In most cases, the recommended action has been supported unanimously. For certain proposals, the recommendations were supported by a majority of experts.

Unless the proposed amendments to the Annexes to the ADR, as notified by the Secretary-General of the United Nations, are considered rejected pursuant to Article 14(3) within 3 months of the date of their notification, i.e. on 6 October 2022, the amendments in question will enter into force on 1 January 2023.

Unless the proposed amendments to the Annexed Regulations to the ADN are considered rejected pursuant to Article 20 (5) within 3 months of the date of their notification, i.e. on 1 October 2022, the amendments in question will enter into force on 1 January 2023.

3. POSITION TO BE TAKEN ON THE EU'S BEHALF

The European Union is not a contracting party to ADR and ADN. Nevertheless, the fact that the European Union does not take part in an international agreement does not prevent it from exercising its competence by establishing, through its institutions, a position to be adopted on its behalf in the body set up by that agreement, in particular through the Member States which are party to that agreement acting jointly in its interest (see *Germany v Council*, C-399/12 ("OIV"), paragraph 52 and the case law referred to).

Currently, there are 53 Contracting Parties to ADR, and all the EU Member States are contracting parties to this Agreement. There are 18 Contracting Parties to ADN, and 13 EU Member States are Contracting Parties to this Agreement.

Since 1 January 1997 the European Union has applied the provisions of ADR to road transport of dangerous goods on the EU territory, initially pursuant to Council Directive 94/55/EC of 21 November 1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road³. In 2008, Directive 94/55/EC was replaced by Directive 2008/68/EC⁴ which pursues the principles of its predecessor and covers also the transport of dangerous goods by inland waterways. Based on that Directive, since 1 July 2009 the European Union has applied the provisions of ADN to inland waterway transport of dangerous goods.

The envisaged amendments are considered to be appropriate for the safe transport of dangerous goods in a cost-effective manner, taking into account technological progress, and can therefore be supported.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing '*the positions to be adopted on the Union's behalf in a body set up by*

³ OJ L 319, 12.12.1994, p. 7.

⁴ OJ L 260, 30.9.2008, p. 13.

an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.'

Article 218(9) TFEU applies regardless of whether the Union is a member of the body or a party to the agreement⁵.

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'⁶.

4.1.2. Application to the present case

The WP.15 is a body set up by an agreement, namely the Agreement concerning the International Carriage of Dangerous Goods by Road (ADR).

The ADN Administrative Committee is a body set up by an agreement, namely the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN).

The proposed acts of the WP.15 and ADN Administrative Committee constitute acts having legal effects. Under the conditions described above, the proposed acts will be binding under international law in accordance with Article 14 of the ADR and Article 20 of the ADN and are capable of decisively influencing the content of EU legislation, namely Directive 2008/68/EC. This is because Article 1 of Directive 2008/68/EC makes compulsory the use of these rules for road and inland waterway transport of dangerous goods within and between the Member States and Article 4 of Directive 2008/68/EC concerning third countries provides that "the transport of dangerous goods between Member States and third countries shall be authorised in so far as it complies with the requirements of the ADR, RID or ADN, unless otherwise indicated in the Annexes". Moreover, the above mentioned amendments will have an incidence on the operation of Directive 2008/68/EC in view of its Article 8. Under that provision, the Commission is empowered to adapt Annex I, Section I.1 and Annex III, Section III.1 to Directive 2008/68/EC to scientific and technical progress, "in particular to take account of amendments to the ADR (...) and ADN".

The envisaged act does not supplement or amend the institutional framework of the Agreements.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely

⁵ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraph 64.

⁶ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and the content of this Decision relate to the transport of dangerous goods by road and inland waterways. Its substantive legal basis is therefore Article 91 TFEU.

4.3. Conclusion

The legal basis of the proposed Council Decision should be Article 91 TFEU in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

For reasons of transparency and proper reference, the decisions of the Working Party on the Transport of Dangerous Goods (WP.15) and of the ADN Safety Committee will be published in the *Official Journal of the European Union*, indicating their entry into force.

Proposal for a

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on the position to be taken on behalf of the European Union on the amendments to the Annexes to the Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) and to the Annexed Regulations to the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) entered into force on 29 January 1968. The European Agreement Concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN) entered into force on 28 February 2008.
- (2) Pursuant to Article 14 of the ADR, any contracting party may propose one or more amendments to the Annexes to the ADR. This means that the Working Party on Transport of Dangerous Goods (WP.15) may adopt amendments to the Annexes to the ADR. Pursuant to Article 20 of the ADN, the Safety Committee and Administrative Committee may adopt amendments to the Annexed Regulations to the ADN.
- (3) The amendments adopted during the two-year 2020-2022 period by WP.15 and the ADN Administrative Committee on the transport of dangerous goods by road and inland waterways were notified to the ADR contracting parties on 6 July 2022 and to the ADN contracting parties on 1 July 2022.
- (4) It is appropriate to establish the position to be taken on the EU's behalf with regard to those amendments to the ADR and the ADN, as they will be binding under international law and are capable of decisively influencing the content of EU law, namely Directive 2008/68/EC of the European Parliament and of the Council¹. That Directive lays down requirements for the transport of dangerous goods by road, rail or inland waterways, which in accordance with Article 1 shall apply within or between Member States, by referring to the ADR and the ADN. Article 4 of the Directive states that the transport of dangerous goods between Member States and third countries shall be authorised in so far as it complies with the requirements of the ADR, RID and ADN, unless otherwise indicated in the Annexes. Moreover, in accordance with Article 8 of Directive 2008/68/EC, the Commission is empowered to adapt Annex I, Section I.1 and Annex III, Section III.1 to Directive 2008/68/EC to scientific and technical progress, in particular to take account of amendments to the ADR, RID or ADN.

¹ Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (OJ L 260, 30.9.2008, p. 13.)

- (5) The EU is not a contracting party to the ADR or to the ADN. However, this does not prevent it from exercising its competence by establishing, through its institutions, a position to be adopted on its behalf in the body set up by either agreement, in particular through the Member States who are party to either agreement acting jointly in its interest.
- (6) All Member States are contracting parties to and apply the ADR, and 13 Member States are contracting parties to and apply the ADN.
- (7) The envisaged amendments aim to ensure the safe and efficient transport of dangerous goods, while taking into account scientific and technical progress in the sector and the development of new substances and articles that could be dangerous while being transported. The development of the transport of dangerous goods by road and inland waterways, both within the EU and between the EU and its neighbouring countries, is a key component of the common transport policy and ensures proper functioning of all industrial branches producing or making use of goods classified as dangerous under the ADR or the ADN.
- (8) The envisaged amendments are considered to be appropriate for the safe transport of dangerous goods in a cost-effective manner and can therefore be supported.
- (9) All the proposed amendments are justified and beneficial, and should therefore be supported by the EU.
- (10) The EUs position is to be expressed by its Member States of the Union who are contracting parties to the ADR and the ADN, acting jointly,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the EU's behalf on the amendments adopted by the Working Party on Transport of Dangerous Goods (WP.15) and the ADN Administrative Committee to the Annexes to the ADR and to the Annexed Regulations to the ADN, respectively, as referred to in the Annex to this Decision, is set out in that Annex.

Minor changes to this position may be agreed without further decision of the Council, in accordance with Article 2.

Article 2

The position referred to in Article 1 shall be expressed by the Member States of the EU who are contracting parties to the ADR and the ADN, acting jointly in the interest of the EU.

Article 3

The decisions of the Working Party on the Transport of Dangerous Goods (WP.15) and of the ADN Safety Committee shall be published in the *Official Journal of the European Union*, indicating the date of their entry into force.

Article 4

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

*For the Council
The President*