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Proposal for a

COUNCIL DECISION

establishing the position to be adopted by the Union with regard to the amendments to the Annexes of the European 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. CONTEXT OF THE PROPOSAL

The proposed Council Decision has the objective to establish the position of the European Union with regard to the amendments to the Annexes of the European 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), as applicable from 1 January 2017.

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

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

2. RESULTS OF CONSULTATIONS WITH INTERESTED PARTIES AND IMPACT ASSESSMENTS

The international provisions relating to the transport of dangerous goods are established in various international organisations, such as United Nations Economic Commission for Europe (UNECE), various specialised agencies of the United Nations, the International Organisation for International Carriage by Rail (OTIF) and the Central Commission for the Navigation of the Rhine (CCNR). 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 in this work. The provisions are adapted following a two-year cycle.

A large range of public and private sector experts has been consulted during the preparation of these amendments. The following technical meetings have been carried out during the development of these amendments:

at the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods in its:

- (1) 43rd session in Geneva, 24 – 28 June 2013,
- (2) 44th session in Geneva, 25 November – 4 December 2013,
- (3) 45th session in Geneva, 23 June – 2 July 2014, and
- (4) 46th session in Geneva, 1–9 December 2014,

at the UN-ECE – OTIF Joint Meeting of the RID Committee of Experts and the Working Party on the Transport of Dangerous Goods in its

- (1) autumn 2014 session in Geneva, 15-19 September 2014
- (2) spring 2015 session in Bern, 23-27 March 2015
- (3) autumn 2015 session in Geneva, 15-25 September 2015, and
- (4) spring 2016 session in Bern, 14-18 March 2016,

at the sessions of the Working Party on the Transport of Dangerous Goods – WP.15, as follows:

- (1) spring 2014 session in Geneva, 6-9 May 2014,
- (2) autumn 2014 session in Geneva, 3-7 November 2014,
- (3) spring 2015 session in Geneva, 4-7 May 2015,
- (4) autumn 2015 session in Geneva, 9-13 November 2015 and
- (5) spring 2016 session in Geneva, 9-13 May 2016,

at the session of the Administrative Committee of the European Agreement Concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN) on the basis of those proposed by the Safety committee, as follows:

- (1) summer 2014 session in Geneva, 25-29 August 2014
- (2) winter 2015 session in Geneva, 27-30 January 2015
- (3) summer 2015 session in Geneva, 24-28 August 2015
- (4) winter 2016 session in Geneva, 25–29 January 2016

In these meetings the individual proposals for amendments have been analysed and processed by the expert committees. In most cases the recommended action has been agreed upon unanimously. Certain proposals have been recommended by a majority view of the experts. The Working Party on the Transport of Dangerous Goods – WP.15 took the decision on these proposals at every one of the above mentioned sessions.

PROCEDURE FOR THE AMENDMENTS OF THE ANNEXES TO ADR AND ADN

According to Chapter VII – "Voting" of the Terms of Reference and Rules of Procedure of the Working Party on the Transport of Dangerous Goods (WP.15), only full participants shall have one vote in WP.15, and decisions of that body shall chiefly be taken by consensus. WP.15 votes by show of hands.

In accordance with Article 14 of ADR, once decided upon by the Working Party on the Transport of Dangerous Goods – WP.15, any proposed amendment to the Annexes of ADR shall be deemed to be accepted unless, within three months from 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 that figure, have given the Secretary-General written notification of their objection to the proposed amendment.

The amendments currently adopted by the WP.15, as presented in the documents contained in the Annex to the present proposal, will be sent to the Secretary-General of the United Nations so that they could be notified to ADR Contracting Parties on 1 July 2016 for acceptance in accordance with the procedure set out in Article 14 of ADR and are available online¹.

In accordance with Article 20 of ADN, once decided upon by the ADN Administrative Committee, the amendments shall be deemed to be accepted unless, within three months from the date on which the Secretary-General of the United Nations circulates it, at least one-third of the Contracting Parties, or five or them if one-third exceeds this figure, have given the Secretary-General written notification of their objection to the proposed amendment.

The amendments currently adopted by the ADN Administrative Committee, as presented in the documents contained in the Annex to the present proposal, will be sent to the Secretary-General of the United Nations so that they could be notified to ADN Contracting Parties on 1 July 2016 for acceptance in accordance with the procedure set out in Article 20 of ADN and are available online².

3. LEGAL ELEMENTS OF THE PROPOSAL

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 48 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/EC which pursues the principles of its predecessor. Since 1 January 2009, the European Union has applied the provisions of ADN to inland waterway transport of dangerous goods.

Article 4 of Directive 2008/68/EC, concerning third countries establishes 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". In addition, Recital 12 of the Directive establishes that "The use of means of transport registered in third countries should be allowed for the international transport of dangerous goods within the territories of the Member States, subject to compliance with the relevant provisions of the ADR, RID or ADN and of this Directive".

¹ <http://www.unece.org/trans/main/dgdb/wp15/wp15rep.html>.

² http://www.unece.org/trans/main/dgdb/adn/adn_rep.html.

³ OJ L 263, 4.11.1995, p. 18–19.

Unless a sufficient number of objections are raised by the parties, the amendments concerned under this proposal are expected to enter into force on 1 January 2017 and become binding.

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

The draft proposal provides for in Article 1 a detailed list of the envisaged amendments, specifying that they can be accepted by the Union. 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. IMPLEMENTATION IN THE EUROPEAN UNION

The above mentioned amendments, to the extent that they become binding, will need to be incorporated into Directive 2008/68/EC on the inland transport of dangerous goods, which applies uniform rules to the transport of dangerous goods by road, by rail or by inland waterway within or between Member States. To this end, the Commission has been empowered to adapt Annex I, Section I.1 and Annex III, Section III.1 to Directive 2008/68/EC to scientific and technical progress. Once the objection period as regards the notification by the Secretary-General of the United Nations has expired, the Commission will launch the adaptation process.

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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) Action by the Union in the sector of transport of dangerous goods should aim at improving transport safety and security, protecting the environment and facilitating international transport.
- (2) The Union is not a Contracting party to the European Agreement Concerning the International Carriage of Dangerous Goods by Road (hereinafter referred to as the 'ADR') and to the European Agreement Concerning the International Carriage of Dangerous Goods by Inland Waterway (hereinafter referred to as the 'ADN'). However, this fact 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.
- (3) All Member States are Contracting Parties to and apply ADR, and 13 EU Member States are Contracting Parties to and apply ADN.
- (4) Directive 2008/68/EC of the European Parliament and of the Council⁴ lays down requirements for the transport of dangerous goods by road, by rail or by inland waterway within or between Member States, by referring to the ADR and the ADN. In addition, Article 4 of this Directive 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.'
- (5) The Working Party on Transport of Dangerous Goods – WP.15 and the ADN Administrative Committee in accordance with the procedures stipulated in Article 14 of ADR and Article 20 of ADN respectively, adopted, over the biennium 2014-2016, certain amendments which are expected to enter into force on 1 January 2017.

⁴ 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.

- (6) These amendments, which concern technical standards or uniform technical prescriptions, have the objective to ensure safe and efficient transport of dangerous goods whilst taking into account scientific and technical progress in the sector and the development of new substances and articles that pose danger during their transport. The development of transport of dangerous goods by road and inland waterways, both within the Union and between the Union and neighbouring countries, is a key component of the common transport policy and ensures the proper functioning of all industrial branches producing or making use of the goods classified as dangerous under ADR and ADN.
- (7) All the proposed amendments are justified and beneficial, and should therefore be supported by the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the European Union on the proposed amendments to the Annexes to ADR and the Annexed Regulations to ADN shall be in accordance with the Annex to this Decision.

Minor changes on this position may be agreed upon without further decision of the Council.

Article 2

The position of the Union as set out in Article 1 shall be expressed by the Member States which are contracting parties of the ADR and ADN, acting jointly in the interest of the Union.

Article 3

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