TRANSPORT OF DANGEROUS GOODS COMMITTEE

10th session – 2 March 2023





3. International cooperation as a language for international cooperation

International legal order

Transport Community **Member State** OTIF & OSJD Accession /Stabilisation United European Union **Nations** -Regional **Partners** -Observing participants

Membership TCT

- Transitory status
- "The Transport Community shall be based on the progressive integration of transport markets of the South East European Parties into the European Union transport market on the basis of the relevant acquis, including in the areas of technical standards, interoperability, safety, security, traffic management, social policy, public procurement and environment, for all modes of transport excluding air transport"
- (Art. 2 Transport Community Treaty)



* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 (1999) and the ICJ Opinion on the Kosovo declaration of independence.

Directive 2008/68/EC







Road

Rail

Inland Waterways

Directive 2008/68/EC

 Applies them to domestic transport => important to have the Annexes translated in the domestic languages

Article 1 Scope

1. This Directive shall apply to the transport of dangerous goods by road, by rail or by inland waterway within or between Member States, including the activities of loading and unloading, the transfer to or from another mode of transport and the stops necessitated by the circumstances of the transport.

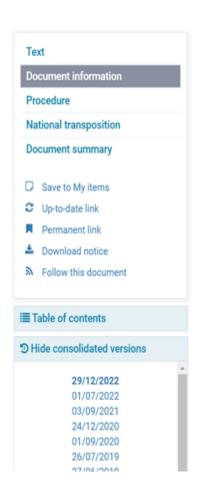
Article 8 Adaptations

1. The Commission is empowered to adopt delegated acts in accordance with Article 8a amending the Annexes in order to take account of amendments to the ADR, RID and ADN, in particular those relating to scientific and technical progress, including the use of technologies for tracking and tracing.

Commission Delegated Directive (EU) 2022/2407

 amending the Annexes to Directive 2008/68/EC of the European Parliament and of the Council to take into account scientific and technical progress

(OJ L 317, 9.12.2022, p. 64–65)



Amended by	32018L1846	Replacement	annex I section I.1	16/12/2018
Amended by	32019D1094	Replacement	annex II section II.3	19/06/2019
Amended by	32019D1094	Replacement	annex I section I.3	19/06/2019
Amended by	32019R1243	Replacement	article 8 paragraph 1	26/07/2019
Amended by	32019R1243	Repeal	article 9 paragraph 3	26/07/2019
Amended by	32019R1243	Addition	article 8a	26/07/2019
Amended by	32020D1241	Replacement	annex II section II.3	
Amended by	32020D1241	Replacement	annex I section I.3	
Amended by	32020L1833	Replacement	annex II section II.1	24/12/2020
Amended by	32020L1833	Replacement	annex I section I.1	24/12/2020
Amended by	32020L1833	Replacement	annex III section III.1	24/12/2020
Amended by	32021D1436	Replacement	annex I section I.3	03/09/2021
Amended by	32021D1436	Replacement	annex II section II.3	03/09/2021
Amended by	32021D1436	Replacement	annex III section III.3	03/09/2021
Amended by	32022D1095	Replacement	annex II section II.3	01/07/2022
Amended by	32022D1095	Replacement	annex I section I.3	01/07/2022
Amended by	32022D1095	Replacement	annex III section III.3	01/07/2022
Amended by	32022L2407	Replacement	annex II section II.1	29/12/2022
Amended by	32022L2407	Replacement	annex III section III.1	29/12/2022
Amended by	32022L2407	Replacement	annex I section I.1	29/12/2022

Transitional period – 30 June 2023

reference is to be made.

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Commission Delegated Directive (EU) 2022/2407	ADR, RID, ADN 2023
Transposition 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2023 at the latest. They shall forthwith communicate to the Commission the	substances and articles of ADR/RID/ADN may be carried until 30 June 2023 in accordance with the
When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such	

Transitional period – 30 June 2023

Commission Delegated Directive (EU) 2022/2407	ADR, RID, ADN 2023	
Defined in terms of activities EU Member States need to develop in order to comply with the obligations assumed by adoption of the initial legal act, Directive 2008/68/EC.	Defined as possibility to "carry substances" according to ADR 2021 &/ 2023	
\Rightarrow Allows for necessary adaptation and calls for development of national transposition measures: \circ laws,		

- regulations and
- o administrative provisions.
- ⇒ Includes translation in a series of other necessary adaptations of the national legislation. +
- ⇒ Any other measure which is necessary to allow for adaptation to technical and scientific progress
- e.g. Amendments of the transposition measures of Directive 2010/35/EC on transportable pressure equipment as a follow-up of the amendments in

1.8.6 Administrative controls for the activities described in 1.8.7 and 1.8.8

e.g. Give the task to the competent authority to notify the inspection bodies to UNECE Secretariat according to 1.8.6.2.4.3 \Leftrightarrow NOTE: In that context, reciprocal recognition agreements between Contracting Parties to ADR shall be respected. (i.e. Directive 2010/35/FII)

Why does the transitional period coincide in the EU & UN?

- Dangerous goods are the same and circulate worldwide
- The timelines need to coincide as the legal requirements to transport them will change e.g.:
- ✓ Transitional provisions in Ch. 1.6 which still allow carriage in the conditions of previously applicable technical conditions
 - e.g. "1.6.4.58 Type approval certificates issued for tank-containers intended for the carriage of substances other than those for which TA4 and TT9 of 6.8.4 apply, issued before 1 July 2023 in compliance with Chapter 6.8, but which do not comply with 1.8.7 as applicable from 1 January 2023, may continue to be used until the end of their validity."
- ✓ Chapter 3.2 New entry

UN 3550 COBALT DIHYDROXIDE POWDER, containing not less than 10 respirable particles

What happens when a Member State cannot comply with ADR/RID/ADN?

- Complementary system of derogation => Commission Implementing Decisions
- Last exercise : COMMISSION IMPLEMENTING DECISION (EU) 2022/1095 e.g.

Derogation	Section derogated from
Transport of waste containing free asbestos	Annex I, Section I.1, to Directive 2008/68/EC: 4.1.4
Scheme for transport of domestic hazardous waste 2015 The scheme was set up to enable individuals and businesses to deposit small chemical waste at a single location. The substances in question therefore consist of residues such as paint waste.	Annex I, Section I.1, to Directive 2008/68/EC: 1.1.3.6, 3.3, 4.1.4, 4.1.6, 4.1.8, 4.1.10, 5.1.2, 5.4.0, 5.4.1, 5.4.3, 6.1, 7.5.4, 7.5.7, 7.5.9, 8 and 9.
Transport of dangerous goods in the close proximity of industrial site(s), including transport on public roads between various parts of the site(s).	Annex I, Section I.1, to Directive 2008/68/EC: Annexes A and B

What is a Directive?

• A directive shall be binding, as *to the result to be achieved*, upon each Member State to which it is addressed, but shall leave to the national authorities *the choice of form and methods*.

Article 288 Treaty on the Functioning of the European Union (ex Article 249 TEC)

=> flexible legal act => domestic transposition measures should take in account such flexibility

Problems in transposition

Transposition measure	Directive 2008/68/EC	Comments
2. This law does not apply to the transport of dangerous goods:	Art. 1 (2) It shall not apply to the transport of dangerous goods:	✓ What set of exemptions from ADR or RID are referred to here?
a) by vehicles belonging to or under the responsibility of the Armed Forces of the XXXX, as well as the armed forces of other states, in accordance with the agreement / agreements in force; b) within the perimeter of an enclosed area where goods may be produced, handled, processed, stored, collated or transferred to the interior space; c) when this process is in accordance with the exemptions provisions of ADR or RID.	responsibility of the armed forces; (b) by seagoing vessels on maritime waterways forming part of inland waterways; (c) by ferries only crossing an inland waterway or harbour; or (d) wholly performed within the perimeter of an enclosed area.	 Section 1.3.1 Exemptions Exemptions related to limited and exempted quantities — Chapters 3.4 and 3.5 One of the other 650 occurrences in Volume 1 of ADR

Common provision in all transposition measures consulted so far

Transposition measure	Directive 2008/68/EC	Comments
Translation and publication of agreements 1. The Minister authorizes the translation into (domestic language XXXXX) and the publication of agreements, according to points aa and bb of article cc of this law, ADR and RID	Article 8 Adaptations	These provisions concerning the availability of the law in domestic languages reflect the practice of the EU and other relevant provisions at international level

Background dispositions concerning availability of the law in the domestic language

EU

REGULATION No 1

determining the languages to be used by the European Economic Community

Article 1

The official languages and the working languages of the institutions of the Union shall be Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish.

<= reflects constitutional provisions of the Member States & ensures equality of treatment &

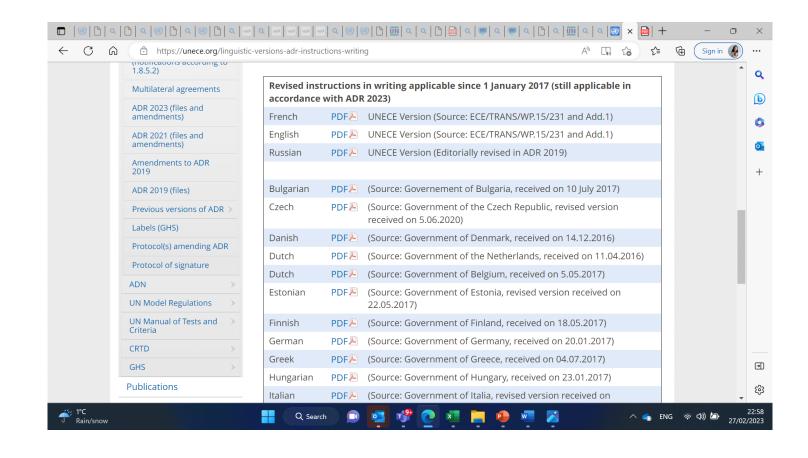
Article 14 European Convention on Human Rights

Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

ADR also reflects this approach

The instructions (in writing) shall be provided by the carrier to the vehicle crew in language(s) that each member can read and understand before the commencement of the journey. The carrier shall ensure that each member of the vehicle crew concerned understands and is capable of carrying out the instructions properly.



Last but most important

Vienna Convention on the Law of the Treaties

Article 29

Territorial scope of treaties

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its **entire territory.**

Vienna Convention on the Law of Treaties (1969) (un.org)

Explanation

- IF a transposition measure is presented for a part of the territory of a Regional Partner or Observing Participant it cannot be taken into account if:
- ✓ It does not have a background in historical legal division of the international legal order (OTIF ≠ OSJD)
- ✓ It cannot be considered as partial transposition for the entire territory, but for a part of it

Task for Regional Partners & Observing Participants

- By 2 April 2023, please communicate to the TC Permanent Secretariat a 1-page answer to the following questions:
- 1) What is the status of your respective Regional Partner concerning the Vienna Convention on the Law of the Treaties? (Signatory/Successor)
- 2) How does membership/non-membership affect your work as a Regulator in transport of dangerous goods?
- 3) What are the measures that you will need your Ministry to take in order to support your activities of ensuring safety and security of transport in your territory?

Task for Regional Partners & Observing Participants

- Please put in subject of the email the name of the Regional Partner
- Do not forget to consult all relevant colleagues dealing with dangerous goods on a daily basis
- Discuss the matter with other Ministries having competences on TDG also.
- Compulsory consult the answer with the Legal department and International Relations Department in your administration
- This is a good occasion to activate the TDG IMPLEMENTATION GROUP (see Guidelines TDG Guidelines .pdf)

Thank you!

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Thank you!

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