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Evolution of the Regulation of the Transport of Dangerous Goods by Road, Part 2

In the first part of the two-part publication, the author presented the main stages in the history of the transport of dangerous goods by road, the administrative background, the current trends in the transport of dangerous goods and the most serious accidents. The author considers the development of the regulation of the transport of dangerous goods as a milestone in the development of the relevant international conventions and their amendments. The ADR Agreement has been amended twice so far, firstly in the body of the Agreement and secondly in the title. The second amendment removed the word "European" from the title of the Agreement, thus allowing it to be extended worldwide. In the second part of the publication, the author describes the process of the second amendment of the Agreement and examines its impact.

Keywords: ADR Agreement, Transport History, Protocol, Amendment, European

Introduction

In the first part, I showed that the transport of dangerous goods in large quantities across national borders became possible after the revolution in transport. The 18th and 19th centuries were the birth of dangerous goods transportation with modern risks. It continued with the technical revolutions of the 20th century, the spread of machine production, the use of petroleum products and the start of mass production. Therefore, it cannot be measured on today's scale, but the transport of dangerous goods in larger quantities, crossing national borders, is approx. It looks back on a history of 200–300 years, in which I consider the establishment of relevant international conventions and their amendments as milestones.²

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² ALMÁSI 2023: 113–122.

In the first part of the two-part publication, I presented the most important milestones in the history of the transport of dangerous goods by road, up to the beginning of its most recent, second amendment. I presented the relevant international organisations, their structure and operation, today's trends in the transportation of dangerous goods, and the most serious accidents in the history of the transportation of dangerous goods.

The European Agreement concerning the International Carriage of Dangerous Goods by Road was concluded in Geneva on 30 September 1957 and entered into force on 29 January 1968.

The Agreement has been amended twice so far. Firstly, by the New York Protocol of 21 August 1975, Article 14 (3), which entered into force on 19 April 1985. The first amendment concerned the body of the Agreement.

The second amendment concerned the title of the Agreement, which entered into force on 1 January 2021 by the Protocol adopted by the Contracting Parties on 13 May 2019. The second amendment is effective from 1 January 2021, and is particularly significant because it was implemented in the title of the Agreement by removing the adjective "European", thus allowing the Agreement to be extended worldwide.

This article describes the main stages in the history of the Agreement, the process of the second amendment and reviews the experience gained since then.

Preparation of the second amendment to the ADR, Portugal's proposal

On the 13th of May 2019, Geneva, the Contracting Parties of the 1957 European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR) held a conference to inspect the Portuguese proposal regarding the amendment of the ADR's title. The ECE/TRANS/ADR/CONF/2019/3³ document includes Portugal's statement which is summarised in short below.

The Working Party on Transport of Dangerous Goods inspected the proposal on the removal of "European" from the title of European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR) at its 104th meeting from 15 to 17 May 2018.

The Portuguese proposal points out that the word "European" in the agreement's title does not refer to those non-European countries wishing to join the ADR. But the joining criteria give opportunity for these countries too. In accordance with the 6th Article of the agreement, the members of the United Nations Economic Commission for Europe, and the consultative members of the Commission can join the agreement. The agreement is therefore opened for those member states of the UN that are not members of the Commission but participate in its work. The proposed amendment would allow in practice the joining of countries that are not members of the Commission but the word "European" hinders their affiliation.

³ United Nations Digital Library 2019a.

It is declared that the proposal is part of the argument regarding the improvement of the ADR, and part of the Working Party's effort to help certain countries in reaching the UN Sustainable Development Goals by 2030.⁴

No objections were raised against the proposal. The Working Party took the initiative to launch the appropriate legal procedures to this end.

The Working Party supports the tacit acceptance procedure under the principle of no objection because of the amendment's nature. This would mean that if the amendment is taken as accepted in the case of no objections, it would become compulsory for all Parties. Furthermore, any State that becomes a Contracting Party after the conditions for entry into force of the amendment have been met would become a Contracting Party to the Agreement as amended by the amending Protocol.

Article 13 (1) provides that the review of the agreement can be performed by the conference of the Contracting Parties which is convened by the Secretary General at the request of any Contracting Party.

As the Chair of the Working Party, the Portuguese Government has the duty to initiate the convocation of Contracting Parties' conference, preferably during the 106th session (13–17 May 2019) to ponder and accept amendment of ADR's current title. The modified title would be: "Agreement Concerning the International Carriage of Dangerous Goods by Road". The abbreviation (ADR) would remain the same.

The negotiation and the acceptance of the amending protocol

The summary report of the conference (ECE/TRANS/ADR/CONF/2019/2),⁵ held on 13 May 2019 in Geneva is reviewed in the section below. The report includes the ITC's and the Working Party on Transport of Dangerous Goods' (WP.15) examination procedure which started in 2009 on whether it is possible to remove the word "European" from the agreement's title.

Austria indicated that according to them, regulations in Article 13 (2) of the agreement were ignored. But others pointed out that the Portuguese proposal was commonly known, it was discussed at the meetings of the ITC and the WP.15 during the last 10 years. It was also added that the section (3) recommendation of the 1993 Amending Protocol was followed during the procedure.

It was highlighted that no formal proposal was handed in except the Portuguese in the 10 years during which the WP.15 pondered the possibility of the agreement's amendment.

Austria noted that the Agreement's Article 6 already involves the joining possibility of non-European countries, and that the change of title is obviously intended to promote and extend the Agreement. The country also added that a huge number of acceding states is expected, and if the number of the Contracting Parties grows, modifying the regulations for participation in the decision-making process regarding ADR amendment, modifying the rules

⁴ Cf. ECE document /TRANS/WP.15/242, paragraphs 45–49.

⁵ United Nations Digital Library 2019b.

for finalising amendments and modifying the rules for participation in WP.15 meetings would be needed. The suggested problem was forwarded for discussion to the WP.15 meetings.

The representative of Turkey suggested that the approval of the Turkish Government may be needed to allow the amendment to enter into force in Turkey. The conditions for ratification are not set out in the Agreement on this account, it is for the Contracting Parties to determine the process of enactment.

Having discussed the different viewpoints, the conference accepted the Portuguese proposal in document ECE/TRANS/ADR/CONF/2019/3 by consensus, and the related Protocol amending the Agreement in document ECE/TRANS/ADR/CONF/2019/4, with a correction of a typographical error in the title of the Protocol (affecting only the English version) and an amendment to Article 2 (3). The Annex of the document ECE/TRANS/ADR/CONF/2019/2 includes the amending protocol accepted by the conference.

All Contracting Parties receive the decision for acceptance in the form of a depositary notification. If no objections are raised within 6 months of the date of the Depositary Notification, the amendment shall be deemed to be accepted and shall enter into force on 1 January 2021.

Introduction of the amendment into the Hungarian legal system

The European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) was signed in Geneva on 30 September 1957 and entered into force on 29 January 1968.

Hungary joined the Agreement three years after an ethylene explosion in Aszód. The accession was announced by the legislative decree 19/1979, which entered into force on 18 August 1979, and the domestic application of Annexes was specified in the 20/1979 (18.IX.) KPM Regulation. Due to the removal of the term "European" from the Agreement, the previously mentioned legislative decree had to be amended. At present, concerning the content of the Agreement, the Government Decree 508/2020 (18.XI.) is in effect.

The application of the rules for road, rail and inland waterway transport is now standardised for the Member States of the European Union by Directive 2008/68/EC on the inland transport of dangerous goods.

284/2023 (30.VI.) Government Decree and The European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) and the 39/2021 (30.VII.) ITM regulation are in effect since 2021.

Today, in Hungary, Act I of 1988 on Road Traffic establishes the jurisdiction of certain authorities to carry out independent inspections and to impose fines. The law defines the procedure for the imposition of fines in accordance with the powers of control. The bodies entitled to carry out inspections are the traffic authority, the police, the customs authority and the disaster management authority.⁶

⁶ Act I of 1988 on Road Traffic.

Further essential domestic legislations guaranteeing the safety of goods transported are:

- Government Decree 1/2002 (11.I.) on the uniform procedure for the control of the transport of dangerous goods by road
- Government Decree 156/2009 (29.VII.) on the amount of fines for infringements of certain provisions relating to the carriage of goods and passengers by road and road transport, and on the duties of the authorities in relation to the imposition of fines
- Decree 7/2011 (8.III.) of the Ministry of Agriculture (NFM) on the road transport of agricultural chemicals and fuels by agricultural tractors or trailers towed by slow vehicles
- the NFM Decree 25/2014 (30.IV.) on the Dangerous Goods Transport Safety Guide.

In Hungary, considering all transport sectors, there are approximately 40–60 yearly incidents of greater significance regarding the transport of dangerous goods⁷

Conclusions

The Agreement concerning the International Carriage of Dangerous Goods by Road entered into force on 1 January 2021 – from here on, not containing the term “European”. Austria expected a major increase in the number of member states. According to the registry of the UN Treaty Collection, after 1 January 2021, only Armenia (12 April 2022) and Uganda (23 August 2022) joined the Agreement.⁸ The large number of connections expected before the amendment is therefore still to come.

Uganda is in the unique position of not bordering any other member state, with the closest Contracting Party being Nigeria, which is also “isolated” from an ADR perspective. The location of these countries, not least the member states with external borders with the Contracting Parties, raises questions.

It is useful to start by examining the benefits of joining the ADR. One of the advantages of ADR is that it is a long-established, continuously developed and proven safety system, which the Contracting Parties are equal partners in shaping. However, the most important result of accession is that member states may set a common minimum security threshold and conditions for the entry of dangerous goods into their territory, but in the case of cooperation with third countries, compliance with these requirements must be specifically provided for. The European Union settles the issue in Directive 2008/68/EC on the inland transport of dangerous goods: “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.”⁹ For the Member States of the European Union, the above Directive also contains the various national provisions (Annexes I, II and III to Directive 2008/68/EC) in all the official languages of the EU, in a single text.

⁷ Vass 2012.

⁸ United Nations Treaty Collection 2022.

⁹ Directive 2008/68/EC of the European Parliament and of the Council.

The Contracting Parties do not necessarily have to have a common border, but the expansion of the Agreement is the result of economic cooperation and would be reasonable.

Thus, in the case of Uganda, Nigeria, Tunisia, Morocco, or French Guiana, as well as in the case of States with external borders of the Contracting Parties, if the application of the ADR, which is presumably incorporated into their internal legal order, is also required for shipments from third countries entering their borders, they will either face import and supply barriers or indirectly extend compliance to the territory of a non-ADR Party.

The Agreement does not even explicitly state how to proceed in case of a shipment coming from a third, non-contracting country, whether it may enter the territory of a Contracting Party at all. There is a point in Article 4.1 of the Agreement stating that "the Contracting Parties reserve the right to regulate or prohibit the entry of dangerous goods into their territory for reasons other than the safety of transport".¹⁰ However, from the context of the text, it is clear that the goods in question are dangerous goods, the transport of which is not otherwise prohibited and will continue to be so between the Contracting Parties.

Based on the above, two main types of so-called "ADR operations" can be distinguished in relation to third countries. The first category covers those types of transport operations between the territory of the European Union and the territory of third countries, and the second category covers those operations between the territory of Contracting Parties other than the European Union and the territory of third countries.

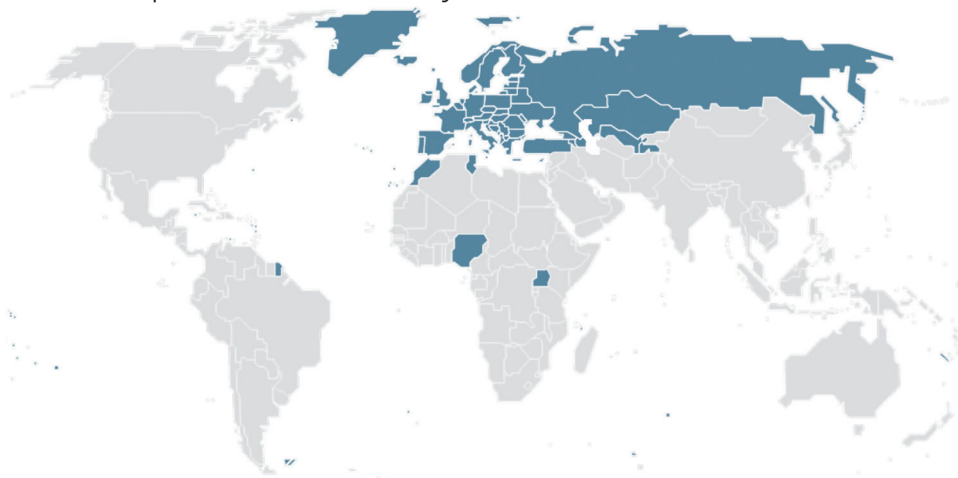


Figure 1: Agreement concerning the International Carriage of Dangerous Goods by Road (ADR), of 30 September 1957 – Date map

Source: UNECE 2022b.

The above points out that the change in the title of the Agreement may also draw attention to the development of issues discussed at different levels of implementation.

¹⁰ UNECE 2022a.

The offices of the Contracting Parties shall cooperate with each other in the implementation of the ADR.¹¹ The UNECE keeps a register of competent authorities, which is available online;¹² however, this register could also form an official part of the ADR Annexes A and B, in order to effectively manage any incident between the authority of the Contracting Party and the undertaking concerned.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Main competent authority	
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	Class 1 Her Majesty's Chief Inspector of Explosives Health and Safety Executive 5 S.2 Redgrave Court Merton Road Bootle Merseyside, L20 7HS United Kingdom Tel.: +44 (0) 20 3028 4025 Fax: +44 (0) 20 3028 3891 E-Mail: explosive.enquiries@hse.gov.uk
	Class 7 Office for Nuclear Regulation Building 4 Redgrave Court Merton Road Bootle L20 7HS Email: ONRenquiries@onr.gsi.gov.uk

Figure 2: Example for country information

Source: UNECE 2022e.

Cooperation between public authorities and undertakings can be essential. For instance, in the Member States of the European Union, hazardous establishments covered by the Seveso Directive must demonstrate to the competent authorities in a safety documentation that the additional risks posed by their operation are below a socially tolerable level and that they are prepared to deal with any possible emergency. The safety documentation is examined and assessed by the authority in three main areas:

1. The establishment must maintain an adequate safety distance from residential areas, public buildings or major traffic routes.

¹¹ UNECE 2022c.

¹² UNECE 2022d.

2. Emergency planning. Operators should prepare internal and external protection plans to protect the public.
3. Preparing the population. The part of the population that may be affected by a major accident event should be provided with appropriate information on the safety measures to be taken and the rules of behaviour to be followed in the event of an emergency.¹³

It is clear that emergency planning is a proven and effective system in the EU for hazardous establishments covered by the Seveso Directive.

For the event of a transport emergency or any incident, there is a number of declared specificities of international relations between the competent authority (state) and the enterprise.

Following the second amendment of the ADR, this publication describes the process of the second amendment and reviews the experience since then. The article also highlights challenges at different levels, for example in relation to third country issues. The Agreement does not explain how to deal with consignments from third, non-Contracting Party countries, in particular whether they can enter the territory of a Contracting Party at all. In my view, the expectations and provisions vis-à-vis third countries should be placed in the body of the Agreement.

ADR is a long-established, continuously developed and proven safety system, which the Contracting Parties are equal partners in shaping. The main advantage of accession is that member states can set a common minimum security threshold and conditions for the entry of dangerous goods into their territory. The creation of a single administrative surveillance mechanism would allow for a faster and better documented detection of non-compliance by the competent authority.

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