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ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

Working Party on the Transport of Dangerous Goods

Joint Meeting of Experts on the Regulations annexed to the
European Agreement concerning the International Carriage
of Dangerous Goods by Inland Waterways (ADN)¹
(ADN Safety Committee)²

Thirteenth session
Geneva, 17-18 June 2008
Item 4 of the provisional agenda

PROPOSALS FOR AMENDMENTS TO THE REGULATIONS ANNEXED TO ADN

Recognition of certificates of approval issued by countries that
are not Contracting Parties to ADN

Note by the secretariat^{3, 4}

1. At its twelfth session (21-25 January 2008), the Joint Meeting of Experts considered a proposal by the Government of Germany (ECE/TRANS/WP.15/AC.2/2008/6) aiming at clarifying that certificates of approval issued according to the future European Directive on the inland transport of dangerous goods should be considered as equivalent to ADN certificates of

¹ This meeting is organized jointly by the Economic Commission for Europe and the Central Commission for the Navigation of the Rhine (CCNR).

² The Joint Meeting of Experts was established jointly by the Economic Commission for Europe and the Central Commission for the Navigation of the Rhine (CCNR) pursuant to the invitation by the Diplomatic Conference for the Adoption of a European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN) in its resolution adopted on 25 May 2000. The said resolution makes provision for the Joint Meeting of Experts to take the place of the Safety Committee referred to in article 18 of the ADN after entry into force of the Agreement. As the ADN entered into force on 29 February 2008, the Joint Meeting of Experts will henceforth play the role of the ADN Safety Committee.

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⁴ In accordance with the programme of work of the Inland Transport Committee for 2006-2010 (ECE/TRANS/166/Add.1, programme activity 02.7 (b)).

approval (see ECE/TRANS/WP.15/AC.2/25, paras. 12-17). The secretariat was asked to examine the matter and to propose a text that would reflect the spirit of the proposal aimed at ensuring mutual recognition of certificates by States able to show that they applied ADN, whether or not they were Parties (ECE/TRANS/WP.15/AC.2/25, para. 17).

2. The ECE secretariat has examined the question accordingly, and consulted in particular section 4 of Part III of the Vienna Convention on the Law of Treaties (Vienna, 1969), articles 34 to 38 dealing with obligations and rights for third States to a treaty (see annex).

3. The ECE secretariat notes that the ADN Agreement itself does not contain any clause relating to the rights and obligations of third States. On the contrary, the Agreement contains restrictive clauses as regards participation of States in ADN (Article 10, para. 1), which seems to imply that negotiating States intended to restrict the benefits of this Agreement to member States of the Economic Commission for Europe whose territory contains inland waterways other than those forming a coastal route, which form part of the network of inland waterways of international importance as defined in the European Agreement on Main Inland Waterways of International Importance (AGN).

4. The background for the proposal by the Government of Germany in ECE/TRANS/WP.15/AC.2/2008/6 was that certain member States of the European Union would be required to apply the Regulations annexed to ADN to domestic and intracommunautary traffic through a directive of the European Parliament and of the Council, to be issued very soon, and that as a consequence certificates of approval issued by such countries, whether or not they are parties to ADN, should also be recognized under ADN.

5. During the discussion, it was underlined that other countries other than European Union countries also apply the Regulations annexed to ADN to domestic traffic.

6. The secretariat notes that the proposal by the Government of Germany would create a right for third States, through the annexed Regulations, which is not foreseen in the Agreement itself, and would not create any obligation for these third States in relation to reciprocal recognition of certificates nor to consent to be bound by the provisions of ADN.

7. As requested by the Joint Meeting of Experts, the ECE secretariat had started to draft provisions for a new paragraph 1.16.2.5 whereby certificates issued by States which are not parties to ADN would be recognized on the condition that the State in question had effectively transposed the annexed Regulations into its national legislation, and that this national legislation would also recognize certificates issued by any contracting Party to ADN, conditions which would have been checked by the Administrative Committee.

8. Nevertheless, after consideration of articles 34 to 38 of the Vienna Convention of the Law of Treaty, the ECE secretariat does not feel competent to make such a proposal. This would mean that all current and future Contracting Parties would be asked to recognize certificates issued by third States, by virtue of a provision contained in the annexed Regulations, i.e. through a decision process depending on article 20 of the Agreement, which, contrary to article 19, does not require unanimous consent of all parties. In other words, certain parties to ADN could be

required, by virtue of an amendment to the annexed Regulations, to grant rights to third States, which are not foreseen in the Agreement itself, possibly without their consent.

9. Bearing in mind the importance of certificates of approval in the context of ADN, the secretariat believes that the issue raised in the proposal by the Government of Germany should rather be solved by the Administrative Committee through a proposal of amendment to the Agreement itself which would consist in introducing new clauses concerning rights and obligations for third States.

10. The ECE secretariat notes in addition that each Contracting Party to ADN is free to recognize certificates of approval issued by third States for navigation on their own territorial inland waterways.

11. As a conclusion, the ECE secretariat believes that the issue raised by the Government of Germany needs more careful consideration with respect to its legal implications. Before amending ADN, it could be useful to determine:

- (a) which States will be required to – or will – apply the Regulations annexed to ADN to domestic traffic, and when;
- (b) if they apply the Regulations annexed to ADN to domestic traffic, what the reasons are for their non acceding to ADN.

Annex

Vienna Convention on the Law of Treaties, Part III, section 4, Treaties and third States

Article 34

General rule regarding third States

A treaty does not create either obligations or rights for a third State without its consent.

Article 35

Treaties providing for obligations for third States

An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.

Article 36

Treaties providing for rights for third States

1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to All States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.

2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

Article 37

Revocation or modification of obligations or rights of third States

1. When an obligation has arisen for a third State in conformity with article 35, the obligation may be revoked or modified only with the consent of the parties to the treaty and of the third State, unless it is established that they had otherwise agreed.

2. When a right has arisen for a third State in conformity with article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State.

Article 38

Rules in a treaty becoming binding on third States through international custom

Nothing in articles 34 o 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such.
