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## Economic Commission for Europe

### Inland Transport Committee

### Working Party on the Transport of Dangerous Goods

#### 113th session

Geneva, 15-17 May 2023

Item 6 of the provisional agenda

#### Interpretation of ADR

### Scope of ADR

#### Note by the secretariat\*

##### *Summary*

At its last session, the Working Party on the Transport of Dangerous Goods considered whether two- and three-wheeled vehicles fell under the scope of ADR or not.

The Working Party agreed on the need for further discussion and felt that special attention would have to be given to other regulatory and legislative texts, such as the Vienna Convention on the Law of Treaties of 1968.

In view of further discussion, the secretariat prepared this document after consultation with the United Nations' Office of Legal Affairs.

The Working Party is invited to analyse this information considering also further details on the implementation to be provided by the participants and decide on a possible way forward to enable safe transport of dangerous goods with micro mobility vehicles and cycles.

*Sustainable development goals (SDGs):* The clarification of the current provisions and the definition of new provisions to enable safe and secure transport of dangerous goods with micro mobility vehicles and cycles would contribute to achieving SDGs 3 (Ensure healthy lives and promote well-being for all at all ages), 11 (Make cities and human settlements inclusive, safe, resilient and sustainable) and 13 (Take urgent action to combat climate change and its impacts) by providing ways to reduce air pollution and congestion in cities, ensuring the safe movement of dangerous goods and enabling the choice of micro mobility models for urban deliveries of dangerous goods.

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\* A/77/6 (Sect. 20), table 20.6

## I. Introduction

1. At its last session, the Working Party on the Transport of Dangerous Goods considered whether two- and three-wheeled vehicles fell under the scope of ADR or not. Some delivery companies have started using such vehicles, particularly in urban operations. Although mostly a local issue, it can also affect international transports e.g. for deliveries in border towns.
2. The Working Party agreed on the need for further discussion and felt that special attention would have to be given to other regulatory and legislative texts, such as the Vienna Convention on the Law of Treaties of 1968. It asked the secretariat to prepare an official document for the 113<sup>th</sup> session and, before then, to consult with the United Nations' Office of Legal Affairs.
3. The Treaty Section of United Nations' Office of Legal Affairs clarified that it was not mandated to give legal advice to the Working Party and that the depositary does not get involved with matters of substantive implementation of the agreements for which it acts as depositary such as ADR. ADR does not have an overall enforcing authority and national designated competent authorities are responsible of its proper implementation.
4. They provided advice from the depositary's point of view on the application of the law of treaties to a possible extension of the scope of ADR by a new protocol of amendment (see under VI.).

## II. Background information

5. Article 1 of ADR reads:

“For the purpose of this Agreement,

  - (a) the term "vehicle" shall mean motor vehicles, articulated vehicles, trailers and semi-trailers, as defined in article 4 of the Convention on Road Traffic of 19 September 1949, other than vehicles belonging to or under the orders of the armed forces of a Contracting Party;
  - (b) the term "dangerous goods" shall mean those substances and articles the international carriage by road of which is prohibited by, or authorized only on certain conditions by, Annexes A and B;
  - (c) the term "international transport" shall mean any transport operation performed on the territory of at least two Contracting Parties by vehicles defined in (a) above.”
6. The following definitions may be found in article 4 of the Convention on Road Traffic of 19 September 1949:

“Motor vehicle” means any self-propelled vehicle normally used for the transport of persons or goods upon a road, other than vehicles running on rails or connected to electric conductors. Any State bound by annex 1 shall exclude from this definition cycles fitted with an auxiliary engine of the type described in that annex;

“Articulated vehicle” means any motor vehicle with a trailer having no front axle and so attached that part of the trailer is superimposed upon the motor vehicle and a substantial part of the weight of the trailer and of its load is borne by the motor vehicle. Such a trailer shall be called a “semi-trailer”;

“Trailer” means any vehicle designed to be drawn by a motor vehicle;

“Cycle” means any cycle not self-propelled. Any State bound by annex 1 shall include in this definition cycles fitted with an auxiliary engine of the type described in that annex.
7. Annex 1 of the Convention on Road Traffic indicates that “Cycles fitted with an auxiliary internal combustion engine having a maximum cylinder capacity of 50 cm<sup>3</sup> shall

not be considered as motor vehicles, provided that they retain all the normal characteristics of cycles with respect to their structure.”.

8. Article 2 of ADR reads:
- “1. Subject to the provisions of article 4, paragraph 3, dangerous goods barred from carriage by Annex A shall not be accepted for international transport.
  2. International transport of other dangerous goods shall be authorized subject to compliance with:
    - (a) the conditions laid down in Annex A for the goods in question, in particular as regards their packaging and labelling, and
    - (b) the conditions laid down in Annex B, in particular as regards the construction, equipment and operation of the vehicle carrying the goods in question, subject to the provisions of article 4, paragraph 2.”

### **III. Status of cycles and other two- and three-wheeled vehicles**

9. In view of this background information, the secretariat considers that the following applies for international transports in the contracting parties to ADR.

#### **A. Cycles with an auxiliary engine of 50 cm<sup>3</sup> or more, or cycles with no other means of propulsion than an engine**

10. Cycles with an auxiliary engine of 50 cm<sup>3</sup> or more, or cycles with no other means of propulsion than an engine, are motor vehicles, and the international carriage of dangerous goods under ADR is permitted if the requirements of ADR are complied with.

11. However, some provisions of ADR have not been developed to take into account these types of vehicles. The provisions of Annexes A and B have never been intended for transport by scooters, motorcycles, etc. and therefore the interpretation of the current provisions may vary.

12. The Working Party may wish to modify the ADR provisions to clarify which requirements should apply to transports of dangerous goods with these vehicles (e.g. by introducing appropriate definitions for the vehicles in question in 1.2.1, and some provisions in chapters 7.1 or 7.2 and parts 8 and 9 or by creating a new section 1.1.6 with the provisions applicable to these vehicles covered by Article 1(a) but not by Part 9).

#### **B. Cycles with an auxiliary engine with a maximum cylinder capacity of less than 50 cm<sup>3</sup>**

13. Cycles with an auxiliary engine with a maximum cylinder capacity of less than 50 cm<sup>3</sup> (i.e. you can move the cycle by pedalling without using the engine) are not motor vehicles according to the definition and are not covered by the scope of ADR.

14. According to Article 1 c), transport carried out by vehicles other than those referred to in Article 1 a) are not subject to ADR. The carriage of dangerous goods by such cycles may otherwise be prohibited or regulated in legal instruments other than ADR (in accordance with national or regional legislation).

15. If contracting parties would like ADR to cover and regulate the transport of dangerous goods with these cycles, it would be necessary to convene a Conference of the Parties to consider the modification of Article 1 a).

#### IV. Domestic transport in the European Union (EU) including European Economic Area (EEA)

16. The situations described in part III. above apply for international transports in all contracting parties to ADR, including European Economic Area's Members States.

17. Annexes A and B of ADR have also been adopted by EU Member States as the basis for regulating the carriage of dangerous goods by road within and between their territories (Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods, as amended). Directive 2008/68/EC also applies to EEA countries.

18. Directive 2008/68/EC indicates that: “*vehicle*’ shall mean any motor vehicle intended for use on the road, having at least four wheels and a maximum design speed exceeding 25 km/h, and any trailer, with the exception of vehicles which run on rails, mobile machinery and agricultural and forestry tractors that do not travel at a speed exceeding 40 km/h when transporting dangerous goods;”.

19. In addition, article 4 of directive 2008/68/EC states that:

“4. Member States may lay down specific safety requirements for the national and international transport of dangerous goods within their territory as regards:

(a) the transport of dangerous goods by vehicles, wagons or inland waterway vessels not covered by this Directive; ...

They shall inform the Commission of such provisions and their justifications.

The Commission shall inform the other Member States accordingly.”

20. With this, we can conclude that vehicles with less than four wheels do not fall into the scope of directive 2008/68/EC. Domestic carriage of dangerous goods in vehicles with less than four wheels could however be regulated by countries in the European Union and European Economic Area in accordance with article 4 of directive 2008/68/EC.

#### V. Protocol amending article 1 (a), article 14 (1) and article 14 (3) (b) of ADR

21. The protocol amending article 1 (a), article 14 (1) and article 14 (3) (b) of ADR contains an amendment to the definition of “vehicle” in article 1:

##### Amendment to Article 1 (a) of the Agreement

Article 1 (a) of the Agreement shall be amended to read as follows:

“(a) The term “vehicle” shall mean any motor vehicle, other than a vehicle belonging to or under the orders of the armed forces of a Contracting Party, intended for use on the road, being complete or incomplete, having at least four wheels and a maximum design speed exceeding 25 km/h, and its trailers, with the exception of vehicles which run on rails and of agricultural and forestry tractors and all mobile machinery”.

22. This amendment was adopted by the Conference of Parties following a proposal from Austria to replace the reference to Article 4 of the Convention on Road Traffic of 19 September 1949, which had been superseded, by a full definition corresponding to that used in Directive 92/53/EEC<sup>1</sup>. See the Report of the Conference of the Contracting Parties to the ADR (28 October 1993) ([TRANS/WP.15/CD/6](#)).

23. This Protocol has not yet entered into force. It will come into effect only when all contracting parties to ADR will also have ratified it or acceded to it.

<sup>1</sup> Directive 92/53/EEC of the Council of the European Communities of 18 June 1992 amending Directive 70/156/EEC on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers, published in the Official Journal of the European Communities, No. L225, of 10 August 1992.

24. The restriction of “at least 4 wheels” would also apply to ADR if the 1993 Protocol of amendment came into force.

## VI. Possible extension of the scope of ADR

25. At the last session, some delegations raised the fact that, when this protocol of amendment was adopted by the Conference of the Contracting Parties to the ADR in 1993, the question of deliveries with vehicles/devices other than regular trucks or vans was not even foreseen. With the greening of the cities, alternative means of deliveries like vehicles with less than four wheels, bikes or e-bikes are now used. Most delegations were of the opinion that some regulations should be put in place to make sure that these transports are done safely when they are used for carrying dangerous goods. For international transport, some delegations considered the possibility to extend the scope of ADR through a new protocol of amendment. However, some delegations wondered whether it would be possible to modify the scope of ADR before the Protocol of amendment of 1993 entered into force, particularly in the light of article 18 of the Vienna Convention on the Law of Treaties (1968).

26. Article 18 reads as follows:

*“Article 18 Obligation not to defeat the object and purpose of a treaty prior to its entry into force*

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or

(b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.”

27. According to the Treaty Section, under the law of treaties, the fact that the Protocol amending article 1(a) of the Agreement has not yet entered into force doesn't preclude the parties to agree on the adoption of amendments that would extend the scope of the ADR.

28. Any new amendment should take care of any eventual inconsistency with the said Protocol amending article 1(a).

29. Further, Article 18 of the Vienna Convention on the Law of Treaties relates to the obligation not to defeat the object and purpose of a treaty prior to its entry into force. The rule enunciated therein does not, as such, preclude the parties to further amend a treaty in consecutive instruments should they wish so.

## VII. Follow-up

30. Country representatives may wish to inform the Working Party on whether or not transport of dangerous goods with cycles with an auxiliary engine with a maximum cylinder capacity of less than 50 cm<sup>3</sup> and other transport devices not covered by ADR are regulated in their countries and how.

31. It may also be useful to know how micro mobility vehicles such as light electric vehicles/cycles are defined and classified in ADR contracting parties and which categories are used or could be used in the future for the transport of dangerous goods.

32. To facilitate further discussions, delegations wishing to do so are invited to send their comments before the session to the secretariat or in the form of an informal document.