

Competent authorities of third countries

Note by the UNECE Secretariat

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1. ADR, COTIF and ADN are international legal instruments which are to be interpreted in accordance with the Vienna Convention on the Law of Treaties, by relevant entities.
2. The UNECE secretariat notes that, according to Article 36, paragraph 1 of the Vienna Convention, a right arises for a third State [which is not Party to a treaty] 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 States assents thereto. The assent of the third State shall be presumed so long as the contrary is not indicated unless the treaty otherwise provides.
3. According to Article 36, paragraph 2 of the Vienna Convention, "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".
4. The definition of "competent authority" in 1.2.1 of ADR/RID/ADN reads as follows: "... means the authority or authorities or any other body or bodies designated as such in each State and in each specific case in accordance with domestic law".
5. It does not seem to the UNECE secretariat that this definition would accord, by itself, any right to competent authorities of countries which are not parties to RID/ADR/ADN in relation to international transport of dangerous goods governed by ADR, RID or ADN, e.g. as regards the issuance of ADR certificates of approval of vehicles

or ADN certificates of approval of vessels, unless otherwise specified by ADR, RID or ADN.

6. In most cases, ADR, RID and ADN are very specific in this respect. They refer to the competent authority of the country of origin, and if the country of origin is not party to RID, ADR or ADN, to the competent authority of the first country reached by the consignment (e.g. paras. 2.2.1.1.3, P101). Sometimes they also refer to the competent authority of other ADR/RID countries (e.g. 9.1.9.3, P200 (9) P200 (10) ta, special provision 645).

7. In some other specific cases, RID and ADR accord clearly a right to third states, e.g. for approval of UN packagings (4.1.1.16), UN portable tanks/MEGCs (NOTE 2 under Chapter 6.7), radioactive material packages (6.4.22.6), etc. This has been the subject of lengthy debates, and the intention of Contracting Parties to accord such a right to third States is well documented, not only by the text of RID/ADR itself, but also in reports of the Joint Meeting. In such cases, it seems that the term “competent authority” (e.g. in Chapter 6.1) covers the competent authority of third countries. It would also seem that in such cases, the provisions of Article 36, para. 2, of the Vienna Convention would apply to third States exercising such a right.

8. In the case of P099, and IBC 99, reference is made to the competent authority without any indication of whether it could be the competent authority of a third country or not, or even of which RID/ADR country. In the absence of an express clause indicating that this could mean the competent authority of third States, it seems to the secretariat that this reference could not be interpreted as giving any right to third States. Moreover, if no specific country is mentioned, the reference to the competent authority could be interpreted as meaning the competent authorities of all ADR/RID countries (origin, transit, destination) concerned by the journey. Attention is drawn in particular to paragraph 4.1.3.7 which

makes it clear that packagings or IBCs not specifically authorized in the applicable packing instruction shall not be used for the carriage of a substance or article unless specifically allowed under temporary derogation agreed between Contracting Parties in accordance with 1.5.1. This is well clarified in LP99, where a reference to 4.1.3.7 appears.

9. This question of meaning of “competent authority” could also be discussed in the context of multimodal transport involving maritime or air transport, under the conditions of 1.1.4.2.1. During the discussion, one delegation said that packages approved by a competent authority of a third country for carriage by sea would be accepted for onward carriage under ADR and RID. This is not legally obvious in all cases, since for P099 and IBC 09, the IMDG Code does not contain specific conditions of transport and refers to the competent authority but without specifying whether this means the competent authority of the country of origin, that of the flag State or that of the port States of origin, transit and destination.. The secretariat notes in this respect that when special transport equipment not provided for under the ADR/RID provisions is used for international carriage under RID or ADR, this is normally subject to a multilateral agreement. And as underlined above, it would seem that carriage under P099 and IBC 99 is subject to multilateral agreement under 4.1.3.7.

Recommendations

10. In order to avoid problems of legal interpretation, the secretariat suggests that the Joint Meeting should specify clearly, whenever such problems of interpretation occur, the competent authority of which country is meant (e.g. in the case of P099, IBC 09, and in the context of 1.1.4.2.1 when competent authority approval is required under the IMDG Code or the ICAO Technical Instructions).

11. The Joint Meeting may wish to align the wording of PO99 and IBC 99 on that of LP99, i.e. to add “(see 4.1.3.7)”.