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

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Item 3 (c) of the provisional agenda

**Implementation of the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN):
Interpretation of the Regulations annexed to ADN**

Approval of classification societies – Interpretation of 1.15.1 and 1.15.3.8**Transmitted by the Government of France** *****Summary*

Executive summary:	With the aim of gathering the positions of the other States that are contracting parties to ADN, this document explores a number of possible interpretations or readings of various aspects of Chapter 1.15 of the Regulations annexed to ADN.
Proposed decision:	See paragraph 14.
Related documents:	None.

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Introduction

1. France considers it necessary to clarify certain provisions of Chapter 1.15 concerning the recognition of classification societies. It would thus like to gather the positions of the other States that are contracting parties to ADN and also those of non-governmental organizations.

Discussion of the provisions of section 1.15.1 of the annexed Regulations, entitled “General”

2. The first sentence of 1.15.1 of the Regulations annexed to ADN is worded as follows:

“1.15.1 General

In the event of the conclusion of an international agreement concerning more general regulations or the navigation of vessels on inland waterways and containing provisions relating to the full range of activities of classification societies and their recognition, any provision of this Chapter in contradiction with any of the provisions of the said international agreement would, in the relations among Parties to this Agreement which had become parties to the international agreement and as from the day of the entry into force of the latter, automatically be deleted and replaced ipso facto by the relevant provision of the international agreement.”

3. For the 13 member States of the European Union that are also contracting parties to ADN, such an international agreement “concerning more general regulations or the navigation of vessels on inland waterways” exists, namely Directive (EU) 2016/1629 of the European Parliament and of the Council of 14 September 2016 laying down technical requirements for inland waterway vessels, amending Directive 2009/100/EC and repealing Directive 2006/87/EC.

4. Article 21 and annex VI to that Directive set out the conditions for the recognition of classification societies. A comparison between the provisions of the Directive and those of ADN Chapter 1.15 can be found in the annex to this document.

5. This comparison shows many similarities between the provisions of Chapter 1.15 of the Regulations annexed to ADN and those of Directive (EU) 2016/1629. However, there are some significant differences between 1.15.3.8 of the Regulations annexed to ADN on the one hand, and the group of provisions composed of paragraphs 10, 11 and 12 of annex VI to Directive (EU) 2016/1629 on the other.

6. The wording of 1.15.1, above, prompts France to raise the following questions, which concern only the 13 member States of the European Union that are also contracting parties to ADN:

(a) Can or should the provisions of Chapter 1.15 of the Regulations annexed to ADN be replaced with the conditions for the recognition of classification societies contained in Directive (EU) 2016/1629? Following the logic of 1.15.1, the answer may be that the provisions of Chapter 1.15 should be replaced with those of the Directive.

(b) Should this replacement (or substitution) lead to their disregarding the procedures, conditions and criteria for approval set out in 1.15.2 and 1.15.3 of the Regulations annexed to ADN? Again, following the logic of 1.15.1, the answer may be yes.

(c) If the answer is again affirmative, this may specifically lead to the 13 States concerned abandoning the concept of a classification society recommended for recognition, which appears in 1.15.2.3.

(i) Following this logic, could one or more of the 13 European Union member States in question consequently approve a classification society that is not on the list drawn up by the ADN Administrative Committee?

- (ii) Would it be possible to consider that the classification societies included in the list referred to in Article 21 (5) of Directive (EU) 2016/1629 are automatically authorized to act within the territory of the European Union, including under ADN?

Discussion of the provisions of section 1.15.3.8 of the annexed Regulations

7. Irrespective of points 1 to 5 above, section 1.15.3.8 of the Regulations annexed to ADN, in its current formulation, leaves much room for national interpretations and raises questions about the clarification of its provisions:

“1.15.3.8 The classification society shall have prepared and implemented and shall maintain an effective system of internal quality based on the relevant aspects of internationally recognized quality standards and conforming to the standards EN ISO/IEC 17020:2012 (except clause 8.1.3) (inspection bodies) and ISO 9001 or EN ISO 9001:2015. The classification society is subject to certification of its quality system by an independent body of auditors recognized by the administration of the State in which it is located.”

8. Is it necessary to refer to two standards (EN ISO/IEC 17020 and ISO 9001 or EN ISO 9001), when the requirements of ISO 9001 are covered by sections 3 to 7 of the EN ISO/IEC 17020 standard?

9. In the meaning of annex A (normative) of EN ISO/IEC 17020, classification societies are what type of bodies? France considers that classification societies should be required to be of Type A, as defined in section A-1 of annex A to EN ISO/IEC 17020.

10. What is the meaning of the term “relevant aspects”? In France, as in many other States, proof of conformity with EN ISO/IEC 17020 can normally only be demonstrated through accreditation. If it is accepted that proof of conformity can be provided without accreditation, at a minimum, all “relevant aspects” would have to be listed, and the corresponding processes or procedures of the classification society would have to be made evident.

11. In Directive (EU) 2016/1629 (annex VI, para. 11), this notion of “relevant aspects” is replaced by compliance with EN ISO/IEC 17020, “*as interpreted by the IACS quality certification scheme requirements*”.

12. This interpretation appears in the IACS (International Association of Classification Societies) publication, *IACS PROCEDURES – Volume 3: IACS QUALITY SYSTEM CERTIFICATION SCHEME (QSCS)*, accessible via the link: <http://www.iacs.org.uk/download/1790>, and that the reference documentation for this certification scheme only covers maritime references (IMO Resolution MSC.349(92) – IMO RO Code and various IACS requirements and unified interpretations, etc.).

13. What is the meaning of “an independent body of auditors recognized by the administration of the State in which it is located”?

(a) What is the State to which the reference is made? Is it the State where the body of auditors is located? Or is it the State in which the classification society operates? France would tend to opt for the second version.

In this regard, the French and English versions of the annexed Regulations may be understood differently. In the French text, the State of reference seems to be the State of origin of the body of auditors (which is not necessarily a contracting party to ADN). In the English text, it could instead be the State in which the classification society is located (a contracting party to ADN), which is apparently more appropriate and more in line with the principles of the European Directive.

Directive (EU) 2016/1629 is clearer, since it refers to the State in which the classification society has its “headquarters ... or a subsidiary ... authorized to give a ruling and to act in all areas incumbent on it under the regulations governing inland waterway transport”.

(b) What is the meaning of “an independent body of auditors”? As 1.15.3.8 is currently worded, this concept of independence seems to be largely left to the discretion or initiative

of each contracting party. In the interpretation of France, “an independent body of auditors” should be a body of auditors recognized as such by an accreditation issued by an accreditation body, for example, a signatory to the European co-operation for Accreditation (EA).

Action to be taken

14. As indicated in the introduction to this document, France wishes to ascertain the position of the other States that are contracting parties to ADN, as well as that of non-governmental organizations, on the questions of interpretation raised in paragraphs 2 to 10 above.

15. If some clarification can be reached by consensus, it may be possible to consider proposing amendments to the Regulations annexed to ADN at a forthcoming session of the Safety Committee.

16. France, either alone or in the framework of an informal working group to be set up, could submit such proposals for amendments.

17. The Safety Committee is invited to consider the proposals included in paragraphs 12 and 13, above, and to take action as it deems appropriate.

Annex

Comparison between Chapter 1.15 of the Regulations annexed to ADN and Directive (EU) 2016/1629 related to the approval of classification societies

<i>ADN 2019</i>	<i>Directive (EU) 2016/1629</i>	<i>Remarks</i>
<i>Chapter 1.15 Recognition of Classification Societies</i>	<i>Article 21 Recognition of Classification Societies</i>	

- 21.1** The Commission shall adopt implementing acts in order to recognise a classification society which meets the criteria listed in Annex VI, or to withdraw recognition, in accordance with the procedure set out in paragraphs 2 and 3 of this Article. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 33 (2).

1.15.1 General

In the event of the conclusion of an international agreement concerning more general regulations or the navigation of vessels on inland waterways and containing provisions relating to the full range of activities of classification societies and their recognition, any provision of this Chapter in contradiction with any of the provisions of the said international agreement would, in the relations among Parties to this Agreement which had become parties to the international agreement and as from the day of the entry into force of the latter, automatically be deleted and replaced ipso facto by the relevant provision of the international agreement. This Chapter would become null and void once the international agreement came into force if all Parties to this Agreement became Parties to the international agreement.

ADN 2019	Directive (EU) 2016/1629	Remarks
Chapter 1.15 Recognition of Classification Societies	Article 21 Recognition of Classification Societies	

1.15.2 Procedure for the recognition of classification societies

- 1.15.2.1** A classification society which wishes to be recommended for recognition under this Agreement shall submit its application for recognition, in accordance with the provisions of this Chapter, to the competent authority of a Contracting Party.
- The classification society shall prepare the relevant information in accordance with the provisions of this Chapter. It shall produce it in, at least, an official language of the State where the application is submitted and in English.
- The Contracting Party shall forward the application to the Administrative Committee unless in its opinion the conditions and criteria referred to in 1.15.3 have manifestly not been met.
- 1.15.2.2** The Administrative Committee shall appoint a Committee of Experts and determine its composition and its rules of procedure. This Committee of Experts shall consider the proposal; it shall determine whether the classification society meets the criteria set out in 1.15.3 and shall make a recommendation to the Administrative Committee within a period of six months.
- 1.15.2.3** The Administrative Committee shall examine the report of the experts. It shall decide in accordance with the procedure set out in Article 17, 7 (c), within one year maximum, whether or not to recommend to the Contracting Parties that they should recognize the classification society in question. The Administrative Committee shall establish a list of the classification societies recommended for recognition by the Contracting Parties.

- 21.2** An application for recognition shall be submitted to the Commission by the Member State in which the classification society has its headquarters or a subsidiary authorised to issue attestations that a craft satisfies the requirements referred to in Annexes II and V in accordance with this Directive. This application shall be accompanied by all information and documentation needed to check that the criteria for recognition are met.

ADN 2019	Directive (EU) 2016/1629	Remarks
<i>Chapter 1.15</i> <i>Recognition of Classification Societies</i>	<i>Article 21</i> <i>Recognition of Classification Societies</i>	
<p>1.15.2.4 Each Contracting Party may or may not decide to recognize the classification societies in question, only on the basis of the list referred to in 1.15.2.3. The Contracting Party shall inform the Administrative Committee and the other Contracting Parties of its decision.</p> <p>The Administrative Committee shall update the list of recognitions issued by Contracting Parties.</p>	<p>21.4 The classification societies which, by 6 October 2016, have been granted recognition in accordance with Directive 2006/87/EC shall retain their recognition.</p> <p>21.5 The Commission shall publish for the first time by 7 October 2017, and shall keep updated on an appropriate website, a list of the classification societies recognised in accordance with this Article. Member States shall communicate to the Commission any changes relating to the names or addresses of the classification societies for which they have applied for recognition.</p>	Very close between the two texts
<p>1.15.2.5 If a Contracting Party considers that a classification society no longer meets the conditions and criteria set out in 1.15.3, it may submit a proposal to the Administrative Committee for withdrawal from the list of recommended societies. Such a proposal shall be substantiated by convincing evidence of a failure to meet the conditions and criteria.</p>	<p>21.3 Any Member State may submit to the Commission a request to withdraw the recognition if it considers that a classification society no longer meets the criteria set out in Annex VI. The request for withdrawal shall be accompanied by documentary evidence.</p>	Very close between the two texts
<p>1.15.2.6 The Administrative Committee shall set up a new Committee of Experts following the procedure set out under 1.15.2.2 which shall report to the Administrative Committee within a period of six months. The classification society shall be informed and invited by the Committee of Experts to comment on the findings.</p>		

ADN 2019	Directive (EU) 2016/1629	Remarks
Chapter 1.15 Recognition of Classification Societies	Article 21 Recognition of Classification Societies	
<p>1.15.2.7 The Administrative Committee may decide, in case of a failure(s) to meet the conditions and criteria in 1.15.3, that the classification society shall have the opportunity to present a plan to address the identified failure(s) within a deadline of six months and to avoid any reoccurrence or, in accordance with Article 17, 7 (c), to withdraw the name of the society in question from the list of societies recommended for recognition.</p> <p><i>In the French text of ADN 2019, there is a second paragraph which does not appear in the English version owing to an error. That paragraph appeared in ADN until 2011, and reads as follows:</i></p> <p>“In such a case the society in question shall immediately be so informed. The Administrative Committee shall also inform all the Contracting Parties that the classification society in question no longer meets the requirements to act as a recognized classification society in the context of the Agreement and shall invite them to take the necessary steps in order to remain in conformity with the requirements of the Agreement.”</p>		

1.15.3 Conditions and criteria for the recognition of a classification society applying for recognition	ANNEX VI CLASSIFICATION SOCIETIES Criteria for the recognition of classification societies	Remarks
A classification society applying for recognition under this Agreement shall meet all the following conditions and criteria:	Classification societies seeking recognition pursuant to Article 21 of this Directive shall meet all the following criteria:	
1.15.3.1 A classification society shall be able to demonstrate extensive knowledge of and experience in the assessment of the design and construction of inland navigation vessels. The society should have comprehensive rules and regulations for the design, construction and periodical inspection of vessels. These rules and regulations shall be published and continuously updated and improved through research and development programmes.	Annex VI §1 The classification society shall be able to document extensive experience in assessing the design and construction of inland waterway vessels. The classification society shall have comprehensive rules and regulations for the design, construction and periodic inspection of inland waterway vessels, in particular for calculating stability in accordance with Part 9 of the Regulations annexed to the ADN as referred to in Annex II. Those rules and regulations are to be published in, at least, Dutch, English, French or German, and shall be continuously updated and improved through research and development programmes. The rules and regulations must not conflict with the provisions of Union law or with international agreements in force.	Very close between the two texts
1.15.3.2 Registers of the vessels classified by the classification society shall be published annually.	Annex VI §2 The classification society shall publish its register of vessels annually.	Very close between the two texts
1.15.3.3 The classification society shall not be controlled by shipowners or shipbuilders, or by others engaged commercially in the manufacture, fitting-out, repair or operation of ships. The classification society shall not be substantially dependent on a single commercial enterprise for its revenue.	Annex VI §3 The classification society shall not be controlled by shipowners or shipbuilders or by others engaged commercially in the design, manufacture, fitting-out, repair, operation or insurance of ships. The classification society shall not be dependent on a single commercial enterprise for its revenue.	Very close between the two texts
1.15.3.4 The headquarters or a branch of the classification society authorized and entitled to give a ruling and to act in all areas incumbent on it under the regulations governing inland navigation shall be located in one of the Contracting Parties.	Annex VI §4 The headquarters of the classification society or a subsidiary authorised to give a ruling and to act in all areas incumbent on it under the regulations governing inland waterway transport, shall be located in one of the Member States.	Very close between the two texts
1.15.3.5 The classification society and its experts shall have a good reputation in inland navigation; the experts shall be able to provide proof of their professional abilities.	Annex VI §5 The classification society and its experts shall have a good reputation in inland waterway transport; the experts shall be able to provide proof of their professional abilities. They shall act on the responsibility of the classification society.	Very close between the two texts

1.15.3 Conditions and criteria for the recognition of a classification society applying for recognition	ANNEX VI CLASSIFICATION SOCIETIES Criteria for the recognition of classification societies	Remarks	
<p>1.15.3.6 The classification society:</p> <ul style="list-style-type: none"> • Shall have sufficient professional staff and engineers for the technical tasks of monitoring and inspection and for the tasks of management, support and research, in proportion to the tasks and the number of vessels classified and sufficient to keep regulations up to date and develop them in the light of quality requirements; • Shall have experts in at least two Contracting Parties. 	Annex VI §6	The classification society shall have a significant technical, managerial, support, inspection and research staff, in proportion to the tasks and the vessels classified and catering also for developing capability and updating the regulations. It shall have inspectors in at least one Member State;	Very close between the two texts
1.15.3.7 The classification society shall be governed by a code of ethics.	Annex VI §7	The classification society shall be governed by a code of ethics.	Very close between the two texts
	Annex VI §8	The classification society shall be managed and administered in such a way as to ensure the confidentiality of information required by a Member State.	
	Annex VI §10	The classification society's management shall define and document its policy and objectives for, and commitment to, quality and ensured that this policy is understood, implemented and maintained at all levels in the classification society	Very close to the general requirement of the ISO 9001 Standard
1.15.3.8 The classification society shall have prepared and implemented and shall maintain an effective system of internal quality based on the relevant aspects of internationally recognized quality standards and conforming to the standards EN ISO/IEC 17020:2012 (except clause 8.1.3) (inspection bodies) and ISO 9001 or EN ISO 9001:2015. The classification society is subject to certification of its quality system by an independent body of auditors recognized by the administration of the State in which it is located.	Annex VI §11	The classification society shall prepare and implement and shall maintain an effective internal quality system based on the relevant parts of internationally recognised quality standards and complying with the EN ISO/IEC 17020:2004, as interpreted by the IACS quality system certification scheme requirements. The quality system must be certified by an independent body of auditors recognised by the administration of the State in which the classification society has its headquarters or branch, as provided for in point (4), and which, inter alia, ensures that:	Criteria (a) to (j) in the Directive cover 8.1.1, 8.1.2 and 8.2 to 8.6 of the ISO 17020 Standard

1.15.3 Conditions and criteria for the recognition of a classification society applying for recognition	ANNEX VI CLASSIFICATION SOCIETIES Criteria for the recognition of classification societies	Remarks
<p>(a) the classification society's rules and regulations are established and maintained in a systematic manner;</p> <p>(b) the classification society's rules and regulations are complied with;</p> <p>(c) the requirements of the statutory work for which the classification society is authorised are satisfied;</p> <p>(d) the responsibilities, powers and interrelation of personnel whose work affects the quality of the classification society's services are defined and documented;</p> <p>(e) all work is carried out under controlled conditions;</p> <p>(f) a supervisory system is in place which monitors the actions and work carried out by surveyors and technical and administrative staff employed directly by the classification society;</p> <p>(g) the requirements of major statutory work for which the classification society is authorised are only carried out or directly supervised by its exclusive surveyors or by exclusive surveyors of other recognised classification societies;</p> <p>(h) a system for qualification of surveyors and continuous updating of their knowledge is implemented;</p> <p>(i) records are maintained, demonstrating achievement of the required standards in the items covered by the services performed, as well as the effective operation of the quality system; and</p> <p>(j) a comprehensive system of planned and documented internal audits of quality-related activities exists in all locations.</p>	<p>The main apparent difference between the two texts deals with the State into which the independent body of auditors has to be attached:</p> <ul style="list-style-type: none"> • In the State where the body of auditors is located according to the French version of ADN (and ambiguous in the English version) • In the State where the classification society is located according to the Directive <p>The text of the Directive is clearer and seems to be more consistent than the French text of ADN</p>	

1.15.3 Conditions and criteria for the recognition of a classification society applying for recognition	ANNEX VI CLASSIFICATION SOCIETIES Criteria for the recognition of classification societies	Remarks
	Annex VI §12 The quality system must be certified by an independent body of auditors recognised by the administration of the Member State in which the classification society has its headquarters or branch, as provided for in point 4	Seems to be a double-use with Annex VI §11
1.15.4 Obligations of recommended classification societies		
1.15.4.1 Recommended classification societies shall undertake to cooperate with each other so as to guarantee equivalence from the point of view of safety of their technical standards which are relevant to the implementation of the provisions of the present Agreement.	Annex VI §14 The classification society shall undertake periodically to consult with the classification societies already recognised in order to guarantee the equivalence of their technical standards and of implementation thereof, and to allow participation in the development of its rules and regulations by representatives of a Member State and other parties concerned.	Very close between the two texts
1.15.4.2 They shall exchange experiences in joint meetings at least once a year. They shall report annually to the Safety Committee. The secretariat of the Safety Committee shall be informed of those meetings. The opportunity will be given to Contracting Parties to attend the meetings as observers.	Annex VI §13 The classification society shall undertake to bring its requirements into line with the appropriate Union directives and to provide the Commission with all relevant information in good time.	Very close between the two texts
1.15.4.3 Recommended classification societies shall undertake to apply the present and future provisions of the Agreement taking into account the date of their entry into force. In response to requests from the competent authority, recommended classification societies shall provide all relevant information regarding their technical requirements.	Annex VI §9 The classification society shall be prepared to provide relevant information to a Member State.	