

Changes for freight forwarders in ADR January 2023

On 1st January, the 2023 edition of ADR comes into force. It includes a change that will extend to parties that only consign dangerous goods, that is the requirement to appoint a Dangerous Goods Safety Adviser (DGSA) for the first time. Up until 31.12.2022, ADR contained an exemption (section 1.6.1.44 of ADR 2021) for non-handling consignors.

What will this mean in practice for freight forwarders and for traders who sell ex works? If they act as consignors, or on behalf of consignors, they are brought within scope and will need to appoint a DGSA.

For clarity, who is a “consignor”? Under the UN system the consignor is the party that causes the transport to take place. A party can consign on its own behalf, on behalf of another party, or under a contract of carriage.

Therefore, from now onwards, “office only” freight forwarders who neither pack, mark, label, load/unload, document or carry dangerous goods, but arrange for third parties to do so to their instructions, are now responsible for appointing a DGSA (or establishing that a DGSA is in place), to ensure that those third parties operate in compliance with ADR. Any of those individual parties may use the services of a DGSA already, but that would not remove the overall responsibility of the consignor.

Freight forwarders who already carry out any of the above activities are required appoint a DGSA under existing ADR rules. The change will apply only to bring “office only” freight forwarders into scope.

In a similar vein, manufacturers or traders who sell ex works may not be responsible for any transport operations outside the factory gate, but if they offer dangerous goods for transport, it is difficult to see how they could avoid their ADR responsibilities to pack, mark and label packages according to ADR.

These would require access to the services of a DGSA, even if the packages are deposited on the public highway for the vehicle driver to load.

In a nutshell, under due diligence obligations, any company consigning dangerous goods on its own behalf, or on behalf of another party, or involved in any intermediate transport operations involving dangerous goods, now has the responsibility to appoint or ensure that a DGSA can be accessed to ensure those activities are carried out in compliance with the requirements of ADR.

Residual exemptions

ADR contains some exemptions for freight forwarders (and shippers) that remain unaltered within the UK but not beyond UK borders. These apply principally to exempted small loads (ADR 1.1.3.6), limited quantities (ADR 3.4) and occasional low risk consignments that are ancillary to the main business activity (ADR 1.1.3.1[c]). You may need to consider a one-off consultation with a DGSA to establish whether such exemptions apply to your business within and outside the UK.

BIFA would like to thank Richard Masters, for his assistance in preparing this guidance

BIFA Policy and Compliance team, 20th December 2022