

## COUNCIL DIRECTIVE 94/55/EC

### of 21 November 1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure laid down in Article 189c of the Treaty (3),

(1) Whereas, over the years, both the national and the international transport of dangerous goods by road have significantly increased, adding to the dangers in the event of an accident;

(2) Whereas all Member States except Ireland are Contracting Parties to the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR), the geographical scope of which extends beyond the Community and which lays down uniform rules for the safe international transport of dangerous goods by road; whereas it is consequently desirable that such rules be extended to cover national traffic in order to harmonize across the Community the conditions under which dangerous goods are transported by road;

(3) Whereas no Community legislation embraces the full range of measures required to ensure the safe transport of dangerous goods and the relevant national measures vary from one Member State to another; whereas those divergences are an obstacle to the free provision of transport services and, moreover, to the free movement of vehicles and transport equipment; whereas in order to overcome that obstacle uniform rules applicable to all intra-Community transport should be defined;

(4) Whereas an action of this nature must be carried out at Community level to ensure consistency with other Community legislation, to ensure a satisfactory degree of harmonization to facilitate the free movement of goods and services and to ensure a high level of safety for national and international transport operations;

(5) Whereas the provisions of this Directive are without prejudice to the commitment entered into by the Community and its Member States, in accordance with the goals set under Agenda 21, Chapter 19, at the Unced conference of June 1992 in Rio de Janeiro, to strive for the future harmonization of systems for the classification of dangerous substances;

(6) Whereas no specific Community legislation yet governs the safety conditions under which biological agents and genetically modified micro-organisms, regulated under Council Directives 90/219/EEC (4), 90/220/EEC (5) and 90/679/EEC (6), should be transported;

(7) Whereas this Directive takes account of other Community policies in the fields of worker safety, vehicle construction and environmental protection;

(8) Whereas the Member States remain free to regulate any operation for the transport of dangerous goods carried out within their territory by a vehicle not covered by the Directive regardless of where the vehicle is registered;

(9) Whereas the Member States must be able to apply specific road-traffic regulations to the transport of dangerous goods within their territories;

(10) Whereas the Member States must be able to maintain their quality-control requirements as regards certain national transport operations until the Commission reports to the Council on these matters;

(11) Whereas the provisions of the ADR authorize the conclusion of agreements derogating therefrom, and whereas the large number of agreements concluded bilaterally between Member States impedes the free provisions of dangerous-goods transport services; whereas including the necessary provisions in the Annexes to this Directive should overcome the need for such derogations; whereas provision should be made for a transitional period during which the Member States may continue to apply existing agreements amongst themselves;

(12) Whereas it is necessary to transpose into Community law the provisions of the ADR, including the requirements concerning the construction of vehicles transporting dangerous goods; whereas, in this context, provision should be made for a transitional period so that the Member States may temporarily maintain certain specific national provisions on construction requirements for nationally registered vehicles;

(13) Whereas existing information procedures in the field of related national legislative proposals must be used in order to increase transparency for all economical operators;

(14) Whereas as regards national transport, the Member States must retain the right to apply rules complying with the United Nations multimodal Recommendations on the Transport of Dangerous Goods, in so far as the ADR is not yet harmonized with those rules, the purpose of which is to facilitate the inter-modal transport of dangerous goods;

(15) Whereas the Member States must be able to regulate or prohibit the transport by road of certain dangerous goods within their territories, but only for reasons other than transport safety; whereas in this context the Member States may retain the right in the case of certain transports of very dangerous substances to impose the use of transport by rail or inland waterway or may maintain very specific packaging for certain very dangerous substances;

(16) Whereas for the purposes of this Directive the Member States must be able to apply more stringent or more lenient rules to certain transport operations performed within their territories by means of vehicles registered there;

(17) Whereas the harmonization of conditions should take account of specific national circumstances and therefore this Directive must be sufficiently flexible in providing the Member States with the possibility of granting certain derogations; whereas the application of new technological and industrial developments must not be impeded and provision must therefore be made for temporary derogations;

(18) Whereas vehicles registered in non-member countries must be allowed to perform international transport within the territories of Member States if they comply with the ADR;

(19) Whereas it must be possible to adapt this Directive rapidly to technical progress, in order to take account of new provisions incorporated in the ADR and to decide upon the application and implementation of emergency measures in the event of accidents or incidents; whereas a committee should be created for that purpose and a procedure should be established for close cooperation between the Member States and the Commission within that committee;

(20) Whereas the Annexes to this Directive contain provisions covering the vocational training of certain drivers of vehicles transporting dangerous goods by road; whereas, therefore, Council Directive 89/684/EEC of 21 December 1994 on vocational training for certain drivers of vehicles carrying dangerous goods by road (7) should be repealed,

HAS ADOPTED THIS DIRECTIVE:

## CHAPTER I Scope, definitions and general provisions

### Article 1

1. This Directive shall apply to the transport of dangerous goods by road within or between Member States. It shall not apply to the transport of dangerous goods by vehicles belonging to or under the responsibility of the armed forces.

2. This Directive shall not, however, affect the Member States' right, with due regard to Community law, to lay down requirements as regards:

(a) the national and international transport of dangerous goods within their territories performed by vehicles not covered by this Directive,

(b) road-traffic regulations specific to the national and international transport of dangerous goods;

(c) quality controls on undertakings, in accordance with ISO standards 9001 and 9002, where they carry out national transport operations involving:

(i) explosive substances and article in Class 1, where the quantity of explosive substance contained per transport unit exceeds:

- 1 000 kg for division 1.1, or

- 3 000 kg for division 1,2, or

- 5 000 kg for divisions 1.3 and 1.5;

(ii) the following very dangerous substances in tanks or in tank-containers of a total capacity exceeding 3 000 litres:

- substances of Class 2

- gas classified under

(at)

(bt)

(b)

(ct)

(c)

- deeply refrigerated liquified gases of 7° (b) and 8° (b),
  - substances of Classes 3, 4.1, 4.2, 4.3, 5.1, 5.2, 6.1 and 8
  - not listed under (b) or (c) in those classes, or
  - listed therein but having a hazard code with three or more significant digits (not including any zero);
- (iii) the following packages of Class 7 (radioactive materials): packages of fissile materials, packages of type B (U), packages of type B (M).

The scope of the national provisions concerning these requirements may not be extended.

The provisions in question shall cease to apply if similar measures are made obligatory under Community provisions.

Before 31 December 1998 the Commission shall submit to the Council a report assessing the safety aspects covered by this provision together with an appropriate proposal for its continuation or repeal.

#### Article 2

For the purposes of this Directive:

- 'ADR` shall mean the European Agreement concerning the International Carriage of Dangerous Goods by Road, concluded at Geneva on 30 September 1957, as amended,
- 'vehicle` shall mean any motor vehicle 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,
- 'dangerous goods` shall mean those substances and articles the transport of which by road is prohibited or authorized only in certain circumstances by Annexes A and B to this Directive,
- 'transport` shall mean any road transport operation performed by a vehicle wholly or partly on public roads within the territory of a Member State, including the activity of loading and unloading, covered by Annexes A and B, without prejudice to the arrangements laid down by the laws of the Member States concerning liability in respect of such operations.

It shall not include transport wholly performed within the perimeter of an enclosed area.

#### Article 3

1. Without prejudice to Article 6, dangerous goods the transport of which is prohibited by Annexes A and B to this Directive shall not be transported by road.
2. Save as otherwise provided in this Directive, the transport of other dangerous goods listed in Annex A shall be authorized subject to compliance with the conditions imposed in Annexes A and B, in particular as regards:
  - (a) the packaging and labelling of the goods in question; and
  - (b) the construction, equipment and proper operation of the vehicle carrying the goods in question.

#### CHAPTER II Derogations, restrictions and exemptions

##### Article 4

Solely for the purposes of national transport operations performed by vehicles registered within its territory each Member State may retain provisions of its national law on the transport of dangerous goods by road which are consistent with the UN Recommendations on the Transport of Dangerous Goods until Annexes A and B to this Directive are revised to reflect those recommendations. The Member States concerned shall inform the Commission accordingly.

##### Article 5

1. Without prejudice to other Community legislation, in particular that on market access, each Member State shall retain the right, strictly for reasons other than safety during transport, such as reasons of national security or environmental protection, to regulate or prohibit the transport of certain dangerous goods within its territory.

2. Any rules imposed by a Member State on vehicles performing international transport through its territory and authorized by Marginal 10 599 of Annex B shall be limited in scope locally, shall apply to both national and international transport and may not result in any discrimination.

3. (a) Each Member State may apply more stringent provisions concerning transport, with the exception of construction requirements, performed by vehicles registered or put into circulation within its territory.

(b) The Member States may, however, maintain specific national provisions on the centres of gravity of tank-vehicles registered within their territories until the amendment, if any, of Marginal 211 128 of Annex B to this Directive, but not, in any event, after 31 December 1998.

4. If a Member State considers that the safety provisions applicable have been found to be insufficient, on the occasion of an accident or an incident, to limit the hazards involved in transport and if there is an urgent need to take action, it shall notify the Commission, at the planning stage, of the measures which it proposes to take. Acting in accordance with the procedure laid down in Article 9, the Commission shall decide whether the implementation of those measures should be authorized and determine their duration.

5. The Member States may maintain any national provisions applicable on 31 December 1996 with regard to:

- the transport of Class 1.1 substances,
- the transport of toxic, unstable and/or flammable gases of Class 2,
- the transport of substances containing dioxins or furans,
- the transport in tanks or tank-containers of more than 3 000 litres of liquids of Classes 3, 4.2, 4.3, 5.1, 6.1 or 8 which do not appear under (b) or (c) in these classes.

Such provisions may concern only:

- the prohibition of such transport operations by road where it is possible for them to be carried out by rail or by inland waterway,
- a requirement to follow certain preferred routes,
- any other provisions concerning the packaging of substances containing dioxins or furans.

These provisions may not be extended or made more stringent. The Member States shall communicate these national provisions to the Commission, which shall inform the other Member States accordingly.

#### Article 6

1. Each Member State may authorize the transport by road within its territory of dangerous goods classified, packaged and labelled in accordance with the international requirements for maritime or air transport whenever the transport operation involves a sea or air voyage.

2. Any provisions in Annexes A and B concerning the use of languages in relevant marking or documentation shall not apply to transport operations confined to the territory of a single Member State. Member States may authorize the use of languages other than those provided for in the Annexes for transport operations performed within their territories.

3. Within its territory each Member State may authorize the use of vehicles constructed before 1 January 1997 which do not comply with this Directive but were constructed in accordance with the national requirements in force on 31 December 1996 provided that such vehicles are maintained to the required safety levels.

4. Each Member State may maintain provisions of national legislation in force on 31 December 1996 relating to the construction, use and conditions of carriage of new receptacles within the meaning of Marginal 2 212 of Annex A and new tanks which do not comply with Annexes A and B, until references to standards for the construction and use of tanks and receptacles with the same binding force as the provisions of this Directive are added to Annexes A and B and in any event no later than 31 December 1998. Receptacles and tanks constructed before 1 January 1999 and maintained to the required safety levels may continue to be used under the original conditions.

5. Each Member State may maintain national provisions other than those set out in Annexes A and B with regard to the reference temperature for the transport within its territory of liquified gases or mixtures of liquified gases until provisions relating to appropriate reference temperatures for designated climatic areas are incorporated into European standards and references to those standards are added to Annexes A and B.

6. Each Member State may allow the use, for transport within its territory, of packagings constructed but not certified in accordance with the ADR before 1 January 1997 provided that such packaging shows the date of manufacture and is capable of passing the tests laid down in national legislation in force on 31 December 1996 and provided that all such packagings are maintained to the relevant safety levels (including testing and inspection where required), in accordance with the following scheme: intermediate metal bulk containers and metal drums exceeding 50 litres in capacity, for up to 15 years after their date of manufacture; other metal packagings and all plastics packagings, for up to five years after their date of manufacture; other metal packagings and all plastics packagings, for up to five years after their date of manufacture but not after 31 December 1998.

7. Each Member State may allow the transport within its territory of certain dangerous goods packaged before 1 January 1997 until 31 December 1998, provided that the goods are classified, packaged and labelled in accordance with the requirements of national legislation in force before 1 January 1997.

8. Each Member State may maintain provisions of national legislation in force on 31 December 1996 relating to the display of an emergency action code in place of the hazard identification number provided for in Annex B for transport operations performed within its territory by vehicles registered within that territory.

9. Each Member State may, after consulting the Commission, maintain provisions less stringent than those set out in Annexes A and B to this Directive for the transport within its territory of small quantities of certain dangerous goods, with the exception of substances having a medium or high level of radioactivity.

10. Provided that safety is not compromised, the Member States may grant temporary derogations from Annexes A and B for the purpose of carrying out within their territories the trials necessary before the amendment of those Annexes to adapt them to technological and industrial developments. The Commission shall be informed thereof and shall inform the other Member States accordingly.

A temporary derogation agreed on between Member States' competent authorities on the basis of Marginals 2 010 and 10 602 of Annexes A and B shall take the form of a multilateral agreement proposed to all Member States' competent authorities by the authority taking the initiative in respect of the agreement. The Commission shall be informed accordingly.

Any derogation such as referred to in the first and second subparagraphs shall be applied without discrimination on grounds of the nationality or the place of establishment of the consignor, haulier or consignee; they may last for up to five years and shall not be renewable.

11. Each Member State may authorize single transports of dangerous goods which are either prohibited by Annexes A and B or performed under conditions different from those laid down in Annexes A and B.

12. Without prejudice to paragraph 2, each Member State may until 31 December 1998 at the latest apply existing agreements with other Member States that comply with the ADR, without discrimination on grounds of the nationality or the place of establishment of the consignor, haulier or consignee. Any other derogation authorized by Marginals 2 010 and 10 602 of Annexes A and B shall comply with paragraph 10.

#### Article 7

Subject to national or Community provisions on market access, vehicles registered or put into circulation in non-member countries shall be authorized to perform the international transport of dangerous goods within the Community if the transport in question complies with the ADR.

#### CHAPTER III Final provisions

#### Article 8

The amendments necessary to adapt Annexes A and B to scientific and technical progress in the fields covered by this Directive in order to take account of amendments to the Annexes to the ADR shall be adopted in accordance with the procedure laid down in Article 9.

#### Article 9

1. The Commission shall be assisted by a committee on the transport of dangerous goods, hereinafter referred to as 'the Committee', which shall consist of representatives of the Member States and be chaired by a representative of the Commission.

2. The Commission representative shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down

in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. (a) The Commission shall adopt the measures envisaged if they are in accordance with the Committee's opinion.

(b) If the measures envisaged are not in accordance with the Committee's opinion or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If the Council does not act within three months of the date of referral to the Council the Commission shall adopt the proposed measures.

#### Article 10

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive before 1 January 1997. They shall forthwith inform the Commission thereof.

When the Member States adopt those measures they shall include references or shall accompany them with such references on their official publication. The Member States shall lay down the manner in which such references shall be made.

2. The Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

#### Article 11

1. Directive 89/684/EEC is hereby repealed as from the deadline for the transposition of this Directive into national legislation.

2. Provisional certificates issued by the Member States in accordance with Article 4 (2) of that Directive for national transport only shall remain valid until 31 December 1996. Certificates issued in accordance with Article 4 (4) of that Directive may continue to be used until the end of their period of validity, but not later than 1 July 1997 for dangerous goods transported in tanks or for explosives and not later than 1 January 2000 for other dangerous goods.

#### Article 12

This Directive is addressed to the Member States.

Done at Brussels, 21 November 1994.

For the Council

The President

M. WISSMANN

(1) OJ No C 17, 20. 1. 1994, p. 6.

(2) OJ No C 195, 18. 7. 1994, p. 15.

(3) European Parliament opinion of 3 May 1994 (OJ No C 205, 25. 7. 1994, p. 54), Council common position of 19 September 1994 (OJ No C 301, 27. 10. 1994, p. 25) and European Parliament decision of 17 November 1994 (not yet published in the Official Journal).

(4) OJ No L 117, 8. 5. 1990, p. 1.

(5) OJ No L 117, 8. 5. 1990, p. 15.

(6) OJ No L 374, 31. 12. 1990, p. 1.

(7) OJ No L 398, 30. 12. 1989, p. 33.