

COUNCIL DIRECTIVE 96/49/EC

of 23 July 1996

on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail

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 referred to in Article 189c of the Treaty⁽³⁾,

and international transport operations, to guarantee the elimination of distortions of competition by facilitating the free movement of goods and services throughout the Community and to ensure consistency with the other Community provisions;

- (1) Whereas in recent years the transport of dangerous goods by rail has considerably expanded, thus increasing the risks of accidents occurring; whereas measures must therefore be taken to ensure that such transport is carried out under the best possible conditions of safety;
- (2) Whereas all Member States are Contracting Parties to the Convention concerning international carriage by rail (COTIF), which, in Appendix B thereto, defines uniform rules concerning the contract for international carriage of goods by rail (CIM), Annex 1 to which constitutes the regulations concerning the international carriage of dangerous goods by rail (RID); whereas the geographical scope of the Convention extends beyond the Community;
- (3) Whereas the Convention does not cover the national carriage of dangerous goods by rail; whereas it is therefore important to ensure the uniform application of harmonized safety rules throughout the Community; whereas the most appropriate way of achieving this is to align the laws applied by the Member States on the RID;
- (4) Whereas, in compliance with the principle of subsidiarity, these laws must be approximated in order to ensure a high level of safety for national
- (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 in 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 Directives 90/219/EEC⁽⁴⁾, 90/220/EEC⁽⁵⁾ and 90/676/EEDC⁽⁶⁾ should be transported;
- (7) Whereas the provisions of this Directive are without prejudice to the application of other Community provisions in the field of worker safety and environmental protection;
- (8) Whereas the Member States must be able to apply specific traffic regulations to the transport on their territory of dangerous goods by rail;
- (9) Whereas, the Member States should retain the right, with regard to the transport of dangerous goods by rail, provisionally to implement rules in conformity with the United Nations recommendations on the multimodal transport of dangerous goods, in so far as the RID is not yet harmonized with those regulations, which should facilitate the inter-modal transport of dangerous goods;
- (10) Whereas each Member State must retain the right to regulate or prohibit, strictly for reasons other

⁽¹⁾ OJ No C 389, 31. 12. 1994, p. 15, and amended proposal forwarded on 3 October 1995 (not yet published in the Official Journal).

⁽²⁾ OJ No C 236, 11. 9. 1995, p. 36.

⁽³⁾ Opinion of the European Parliament of 13 July 1995 (OJ No C 249, 25. 9. 1995, p. 138), Council common position of 8 December 1995 (OJ No C 356, 30. 12. 1995, p. 34) and Decision of the European Parliament of 16 April 1996 (OJ No C 141, 13. 5. 1996, p. 51).

⁽⁴⁾ OJ No L 117, 8. 5. 1990, p. 1. Directive amended by Commission Directive 94/51/EC (OJ No L 297, 18. 11. 1994, p. 29).

⁽⁵⁾ OJ No L 117, 8. 5. 1990, p. 15. Directive amended by Commission Directive 94/15/EC (OJ No L 103, 23. 4. 1994, p. 20).

⁽⁶⁾ OJ No L 374, 31. 12. 1990, p. 1. Directive as last amended by Commission Directive 95/30/EC (OJ No L 155, 6. 7. 1995, p. 41).

than safety, the internal transport of certain dangerous goods by rail;

- (11) Whereas account should be taken of the more stringent safety measures applied in the Channel Tunnel because of its specific characteristics, in particular its route and length; whereas provision should also be made for Member States to be able to introduce the same kind of measures where similar situations arise; whereas it must be possible for some Member States to apply more stringent standards for material intended for transport because of the ambient temperature in their countries;
- (12) Whereas, in view of the volume of investment required in this sector, a transitional period should be laid down to enable Member States to retain temporarily certain specific national provisions concerning construction requirements or the use of tanks, receptacles, packaging or an emergency action code;
- (13) Whereas the introduction of new developments in technology and industry must not be hindered; whereas temporary derogations should be provided for that purpose;
- (14) Whereas the provisions of the RID authorize the conclusion of agreements derogating therefrom; whereas the large number of agreements concluded bilaterally between Member States impedes the free provision of dangerous-goods transport services; whereas including the necessary provisions in the Annex 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;
- (15) Whereas the transport of dangerous goods by rail to or from a third country is authorized, provided it is carried out in accordance with the requirements of the RID; whereas, however, in the case of transport operations from and to the Republics of the former Soviet Union which are not contracting parties to the COTIF, the Member States are entitled to adopt appropriate measures with regard to such operations; whereas they guarantee a level of safety equivalent to that provided for in the RID;
- (16) Whereas it must be possible to adapt this Directive rapidly to technical progress, notably by adoption of the new provisions laid down within the framework of the RID; whereas, for that purpose, a Committee should be set up and a procedure established for close cooperation between Member States and the Commission within that Committee,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

Scope

Article 1

1. This Directive shall apply to the transport of dangerous goods by rail within Member States or between Member States. Member States may, however, exempt from the scope of this Directive the transport of dangerous goods conducted by means of transport equipment belonging to or under the responsibility of the armed forces.

2. This Directive shall not, however, affect the Member State's right, having due regard to Community law, to lay down specific safety requirements for the national or international transport of dangerous goods by rail, in so far as the Annex thereto does not cover that area, in particular as regards, *inter alia*:

- the running of trains;
- the marshalling of freight wagons in trains in national traffic;
- operating rules for operations ancillary to transport such as marshalling and stabling;
- the training of staff and the management of information concerning the dangerous goods transported;
- special rules for the transport of dangerous goods in passenger trains.

Article 2

For the purposes of this Directive:

- 'RID' shall mean the regulations concerning the international carriage of dangerous goods by rail, appearing as Annex I to Appendix B to the Convention concerning international carriage by rail (COTIF), together with its amendments;
- 'CIM' shall mean the uniform rules concerning the contract for international carriage of goods by rail, appearing as Appendix B to the Convention concerning international carriage by rail (COTIF), together with its amendments;
- 'dangerous goods' shall mean those substances and articles the transport by rail of which is prohibited or authorized only on certain conditions by the Annex to this Directive;
- 'transport' shall mean any operation for the transport of dangerous goods by rail, conducted wholly or partially within the territory of a Member State, including the activities of loading, unloading and transfer to or from another mode of transport and the

stops necessitated by the circumstances of the transport, covered by the Annex to this Directive, 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 undertaking.

Article 3

1. Without prejudice to Article 6, dangerous goods the transport of which is prohibited by the provisions of the Annex may not be transported by rail.

2. Save as otherwise provided in this Directive and without prejudice to the rules on market access for railway undertakings or to the rules generally applicable to the transport of goods by rail, the transport of dangerous goods by rail shall be authorized, subject to compliance with the rules laid down in the Annex.

CHAPTER II

Derogations, restrictions and exemptions

Article 4

Each Member State may, for the purposes of national rail transport operations within its territory, retain provisions of its national law on the transport of dangerous goods by rail which are consistent with the United Nations recommendations on the transport of dangerous goods, until such time as the Annex to this Directive is revised to reflect those recommendations. In such cases, the Member State concerned shall inform the Commission thereof.

Article 5

1. Without prejudice to other Community provisions, each Member State shall retain the right to regulate or prohibit, strictly for reasons other than safety during transport connected in particular with national security or environmental protection, the transport of certain dangerous goods within its territory.

2. (a) For transport via the Channel Tunnel, France and the United Kingdom may impose more stringent provisions than those provided for in the Annex. The Commission shall be informed of such provisions and it shall inform the other Member States.

(b) Where a Member State considers that stricter provisions should be applied to transport through tunnels with characteristics similar to the Channel Tunnel within its territory, it shall inform the Commission. The Commission, acting in accordance with the procedure laid down in

Article 9, shall decide whether the tunnel in question has similar characteristics. Provisions adopted by a Member State shall be notified to the Commission, which shall inform the other Member States.

(c) A Member State in which the ambient temperature is regularly lower than -20°C may impose more stringent standards as regards the operating temperature of material intended for use in the national transport of dangerous goods by rail within its territory until provisions on the appropriate reference temperatures for given climatic zones are incorporated in the Annex.

3. If, on the occasion of an accident or an incident, a Member State considers that the safety provisions applicable have been found to be insufficient to limit the hazards involved in the transport operation and if there is an urgent need to take action, that Member State 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 the measures in question should be authorized and shall determine the duration thereof.

4. Member States may maintain all national provisions applicable on 31 December 1996 to the transport and packaging of substances containing dioxins or furans.

Article 6

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

Where a national or international journey involves carriage by sea, a Member State may apply provisions additional to those of the Annex to take account of international rules governing maritime transport, including international rules governing ferry transport.

2. The provisions of the Annex concerning the format of transport documentation and the use of languages in marking or in the documentation required shall not apply to transport operations confined to the territory of a single Member State. A Member State may authorize the use of documentation and languages other than those provided for in the Annex for transport operations confined to its territory.

3. Within its territory a Member State may allow the use of rail wagons constructed before 1 January 1997 which do not conform with the provisions of this Directive, but were constructed according to national provisions in force on 31 December 1996, provided that those wagons are maintained to the required safety levels.

4. A Member State may retain national provisions in force on 31 December 1996 relating to the construction, use and conditions of carriage of new tanks, and new receptacles as defined in Class 2 of the Annex, which differ from the provisions of that Annex, until references to standards for the construction and use of tanks and receptacles are added to the Annex, with the same binding force as the provisions therein, but 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. A Member State may retain national provisions other than those in the Annex with regard to the reference temperature for the transport in its territory of liquefied gases or mixtures of liquefied gases, until provisions relating to appropriate reference temperatures for designated climatic areas are incorporated into European standards and referred to in the Annex.

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

7. A Member State may authorize the transport within its territory of certain dangerous goods packed before 1 January 1997 until 31 December 1998, provided that the goods are classified, packed and labelled in accordance with the requirements laid down in national provisions in force before 1 January 1997.

8. A Member State may retain the provisions of its national legislation which are in force on 31 December 1996 and relate to the display of an emergency action code in place of the hazard identification number, laid down in the Annex, for national rail transport operations conducted within its territory.

9. Any Member State may, after consulting the Commission, maintain provisions less stringent than those in the Annex for the transport by rail within its territory of small quantities of certain dangerous goods, with the exception of substances having a medium or high level of radioactivity.

10. A Member State may authorize within its territory *ad hoc* transport operations involving dangerous goods

or transport operations which are prohibited by the Annex or transport operations performed under conditions different from those laid down in the Annex.

11. With due regard to Community law, this Directive shall not prejudice the right of a Member State, after consultation with the Commission, to authorize regular transport operations on particular designated routes within its territory, of dangerous goods, forming part of a defined industrial process, which are either prohibited by the Annex or are performed under conditions different from those laid down in the Annex where those operations are of a local nature and are tightly controlled under clearly specified conditions.

12. Provided that there is no loss of safety, a Member State may grant temporary derogations from the Annex for the purpose of carrying out within its territory the trials necessary before the amendment of that Annex in order to adapt them to technological and industrial developments. The Commission shall be informed accordingly and shall in turn inform the other Member States.

Those temporary derogations, agreed among the Member States' competent authorities on the basis of the Annex, shall take the form of a multilateral agreement proposed to all the Member States' competent authorities by the authority that takes the initiative on any agreement. The Commission shall be informed.

The derogations referred to in the first and second subparagraphs shall be applied without discrimination on grounds of the nationality or place of establishment of the consignor, operator or consignee; they may last for up to five years and shall be non-renewable.

13. A Member State may, until 31 December 1998 at the latest, apply existing agreements with other Member States, without discrimination on grounds of the nationality or place of establishment of the consignor, operator or consignee. Any future derogations shall comply with paragraph 12.

14. In accordance with Community law, this Directive shall not affect a Member State's right, after consulting the Commission, to authorize the transport of dangerous goods under conditions less stringent than those laid down in the Annex to this Directive in the case of local transport over short distances within the perimeters of ports, airports or industrial sites.

Article 7

1. Subject to national or Community provisions on market access, the transport of dangerous goods by rail between Community territory and third countries shall be

authorized in so far as it complies with the requirements of the RID.

2. This Directive shall not affect a Member State's right, after informing the Commission, to adopt regulations for its territory on the transport of dangerous goods by rail from and to those Republics of the former Soviet Union that are not contracting parties to the COTIF. Such regulations shall apply only to the transport of dangerous goods by rail (in packaging, in bulk or in tanks) by means of railway wagons authorized in a State which is not a contracting party to the COTIF. By means of appropriate measures and obligations the Member States concerned shall guarantee the maintenance of a level of safety equivalent to that provided for in the RID. In the case of certain Member States the provisions referred to in this paragraph shall apply only to tank wagons.

CHAPTER III

Final provisions

Article 8

The amendments necessary to adapt the Annex to scientific and technical progress in the fields covered by this Directive, in particular to take account of amendments to the RID, shall be adopted in accordance with the procedure laid down in Article 9.

Article 9

1. The Commission shall be assisted by the committee on the transport of dangerous goods set up by Article 9 of Directive 94/55/EC⁽¹⁾, hereinafter referred to as 'the Committee', which shall be composed of representatives of the Member States and chaired by a representative of the Commission.

2. The representative of the Commission 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 opinion of the Committee.
- (b) If the measures envisaged are not in accordance with the opinion of the Committee, 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, on the expiry of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 10

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

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

Article 11

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*.

Article 12

This Directive is addressed to the Member States.

Done at Brussels, 23 July 1996.

For the Council

The President

I. YATES

⁽¹⁾ OJ No L 319, 12. 12. 1994, p. 7.

ANNEX

Regulations concerning the International Carriage of Dangerous Goods by Rail (RID), as applicable with effect from 1 January 1995, on the understanding that 'contracting party' and 'the States or the railways' will be replaced by 'Member State'

NB: Versions in all the official languages of the Community will be published as soon as a consolidated text is ready in all languages.

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For the purposes of this Annex, 'consignment' note means a CIM consignment note used for international transport, but shall not prejudice the right of a Member State to use, for transport not covered by CIM, any other equivalent documentation. In addition, the use of the expression 'ADR' in marginal 15 of this Annex shall not affect a Member State's right, in national traffic, to authorize the rail transport of road vehicles in accordance with national provisions laid down in implementation of Directive 94/55/EC.
