



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Directive 94/55/EC
on the approximation of the laws of the Member States
with regard to the transport of dangerous goods by road**

(presented by the Commission)

EXPLANATORY MEMORANDUM

A. General points

Current situation

Council Directive 94/55/EC on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road entered into force on 1 January 1997.

This Directive lays down a number of transitional provisions valid until 1 January 1999 to permit completion of standardisation work being carried out by the European Committee for Standardisation (CEN) and amendment of some provisions of the Annexes to the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR).

Because of delays in this work, the time-limit fixed in Directive 94/55/EC is not consistent with the current situation, involving short-term problems of application.

These short-term problems are as follows:

1. The first short-term problem concerns Article 6(4) on receptacles for transporting Class 2 gases and on tanks. The time-limit for this transitional provision is 1 January 1999.

Given that the standardisation work is held up, only a very small number of standards will be incorporated into the 1999 version of the annexes to ADR.

This lack of standards, and the fact that the date on which the transitional provisions cease to apply is to be applied strictly, means that those Member States whose national legislation does not comply with the annexes to ADR will be obliged to draw up new national regulations and apply them as from 1 January 1999.

Afterwards, as soon as the standards have been incorporated into the annexes to ADR (1 January 2001 for most equipment), those same Member States will have to amend their national legislation once again.

2. The second short-term problem concerns Article 5(3)(b) on the centre of gravity of tank-vehicles. The time-limit for this transitional provision is 31 December 1998.

Despite the fact that work on the amendment of the provisions of Annex B to ADR on the centre of gravity of tank-vehicles is in progress, they have not yet been incorporated in the 1999 version of this annex.

For the countries concerned by this transitional provision (Denmark, Norway) this means that they must amend their national legislation in line with the provisions currently in force and apply them from 1 January 1999.

This amendment will be followed by a new amendment probably on 1 January 2001 in accordance with the provisions of the ADR annexes which will enter into force on that date.

3. The third short-term problem concerns the last subparagraph of Article 1(2)(c) which provides that 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.

As the CEN standard on quality assurance has not yet been adopted and has therefore not yet been used, the Commission is at present not in a position to produce a report on this subject.

In addition to these short-term problems of application, some provisions of Directive 94/55/EC are no longer correct. This applies to the following provisions:

1. The reference to certain substances in Article 1(2)(c) corresponds to the 1995 version of the ADR annexes but is no longer consistent with the 1997 version.
2. The reference to Marginal 2212 in Article 6(4) is no longer valid as the correct reference should be Marginal 2211 in accordance with the 1997 version of the ADR annexes.

B. Justification of Community action

I. Subsidiarity

- (a) What are the objectives of the planned action in relation to the obligations of the Community?

The first objective of this amendment of Directive 94/55/EC is to avoid having to amend national legislations for a very brief period, i.e. to avoid expenditure for the Member States and industry without any benefit to the Community.

Moreover, Article 8 of Directive 94/55/EC makes provision for the adaptation of Annexes A and B to technical progress and the Community must ensure the coherence of its legislation, i.e. between the provisions laid down in the articles of a directive and those laid down in the annexes.

- (b) Does the envisaged action relate to an exclusive competence of the Community or a competence shared with the Member States?

Shared competence.

Article 71(1)(c)

- (c) What is the Community dimension of the problem (for instance, how many Member States are involved and which is the solution so far)?

In accordance with Directive 94/55/EC all the Member States must amend certain national provisions from 1 January 1999 for a very brief period.

- (d) Which solution is most efficient in comparison between Community measures and measures of the Member State?

Amending Community legislation is more efficient than amending national legislations for a very brief period.

- (e) What is the specific value of the envisaged Community action and what would be the cost of inaction?

Inaction would oblige the Member States to amend their national legislation for a very brief period, entailing extra expenditure for the Member States and industry. The specific value of Community action is that it obviates unnecessary expenditure.

- (f) What forms of action are available to the Community (recommendations, financial support, regulation, mutual recognition, etc.)?

Amending a directive is the sole means to deal with the problems connected with the application of certain provisions of a directive in force.

- (g) Is it necessary to have a uniform regulation or is a directive setting out the general objectives sufficient, leaving implementation to the Member States?

Amending a directive is sufficient to deal with the problems connected with the application of certain provisions of a directive.

II. Harmonisation of conditions

Amending Directive 94/55/EC does not entail amending the level of harmonisation established in the Community for the transport of dangerous goods by road.

Coherence with other Community policies

Amending Directive 94/55/EC has no impact on other Community policies.

C. Objective of the proposal

This proposal for amending Directive 94/55/EC is intended to settle the problems that will arise from 1 January 1999 concerning the application of certain transitional provisions.

These short-term problems have been outlined above under A. General points. They concern the following provisions of Directive 94/55/EC:

- Article 6(4),
- Article 5(3)(b),
- Article 1(2)(c).

They are also intended to ensure coherence between certain provisions of Directive 94/55/EC and the amendments to the ADR annexes. As indicated in the section on the current situation under A. General points, the following provisions are no longer consistent with the 1997 version of the ADR annexes:

- Article 1(2)(c),
- Article 6(4).

Finally, the last objective of this proposal is to amend certain provisions of Article 6 on derogations in order to specify certain derogations, their long-term treatment and their acceptance procedure in more detail.

D. Contents of the proposal

Article 1 sets out the proposed amendments to Directive 94/55/EC.

Paragraph 1 amends Article 1(2)(c) by referring for the list of substances to point 1 of the new Annex C. It also amends the deadline as indicated, by inserting a reference to a maximum period after the entry into force of the European standard on quality assurance in the carriage of dangerous goods.

Paragraph 2 amends Article 5, as follows:

- (a) Point (a) amends paragraph 2 by replacing the reference to Marginal 10599 by a reference to point 2 of the new Annex C.
- (b) Point (b), sub-point (i) amends paragraph 3, point (b), by replacing the reference to Marginal 211 128 with a reference to point 3 of the new Annex C, whilst sub-point (ii) amends the deadline shown in paragraph 3, point (b), substituting 30 June 2001.

Paragraph 3 amends Article 6, as follows:

- (a) In paragraph 4, the reference to Marginal 2212 is replaced by a reference to point 4 of the new Annex C; the deadlines as specified are replaced by 30 June 2001 and 1 July 2001 respectively; and the Committee provided for in Article 9 is allowed the option of postponing these deadlines for some equipment;
- (b) Paragraph 9 is amended in the following manner:
 - the procedure for the acceptance of derogations for small quantities must be in conformity with Article 9;
 - the possibility of derogations for local transport operations, after acceptance, must be in accordance with the procedure provided for in Article 9.
- (c) Paragraph 10 is amended by replacing the references to Marginals 2010 and 10602 by a reference to point 5 of the new Annex C.
- (d) Paragraph 11 is amended by specifying the conditions on which a transport operation can be considered an *ad hoc* transport operation.
- (e) Paragraph 12 is amended by replacing the references to Marginals 2010 and 10602 by a reference to point 5 of the new Annex C.

Paragraph 4 amends Article 8 by adding a reference to the new Annex C.

Paragraph 5 adds a new Annex C.

Articles 2, 3 and 4 contain provisions concerning transposition by the Member States and the entry into force of this act amending Directive 94/55/EC.

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**amending Directive 94/55/EC
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with regard to the transport of dangerous goods by road**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point (c) of Article 71 (1) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³

Acting in accordance with the procedure referred to in Article 251 of the Treaty⁴

1. Whereas the standardisation work of the European Committee for Standardisation (CEN) on quality control in the transport of dangerous goods has not yet been terminated; whereas it is therefore necessary to amend the relevant time-limit laid down in Article 1 of Directive 94/55/EC⁵, as amended by Commission Directive 96/86/EC⁶;
2. Whereas the work of the United Nations Economic Commission for Europe (UNECE) concerning the provisions on the centre of gravity of tank-vehicles laid down in Annex B to the European Agreement concerning the International Carriage of Dangerous Goods by Roads (ADR) has not yet been terminated; whereas it is therefore necessary to amend the time-limit laid down in Article 5(3)(b) of Directive 94/55/EC relating thereto;
3. Whereas the standardisation work of the European Committee for Standardisation (CEN) on receptacles and tanks has not yet been terminated;

¹ OJ C

² OJ C

³ OJ C

⁴ OJ C

⁵ OJ L 319, 12.12.1994, p. 7; and OJ L 275, 28.10.1996, p. 1.

⁶ OJ L 335, 24.12.1996, p. 43.

whereas it is therefore necessary to amend the time-limits laid down in Article 6(4) of Directive 94/55/EC relating thereto;

4. Whereas it is necessary to ensure consistency between the provisions of Directive 94/55/EC and the amendments necessary to adapt the annexes thereto to scientific and technical progress;
5. Whereas the time-limits under Article 6(4) regarding certain equipment should be postponed; whereas determining such equipment, and the date of application of Directive 94/55/EC, should be made subject to the procedure under Article 9 of that Directive;
6. Whereas the derogations provided for in Article 6(9) of Directive 94/55/EC should be made subject to the procedure provided for in Article 9 of that Directive;
7. Whereas it is necessary to allow Member States to adopt long-term derogations with regard to local transport operations and to make authorisation for this purpose subject to the procedure provided for in Article 9 of Directive 94/55/EC;
8. Whereas it is necessary to specify the conditions to be fulfilled before a transport operation may be regarded as an *ad hoc* transport operation;
9. Whereas Directive 94/55/EC should therefore be amended accordingly;

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 94/55/EC is hereby amended as follows:

1. Point (c) of Article 1(2) is replaced by the following:

"(c) quality controls on undertakings where they carry out national transport operations as indicated in paragraph 1 of Annex C.

The scope of the national provisions concerning the requirements set out in this point may not be extended.

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

Not later than two years after the entry into force of a European standard on quality control in the transport of dangerous goods, the Commission shall submit to the Council a report assessing the safety aspects covered by this point together with an appropriate proposal for its continuation or repeal."

2. Article 5 is amended as follows:

(a) In paragraph 2, the words "by Marginal 10 599 of Annex B" are replaced by "the provision indicated in point 2 of Annex C".

(b) Paragraph 3(b) is amended as follows:

(i) the words "of Marginal 211 128 of Annex B to this Directive" are replaced by "of the provision indicated in point 3 of Annex C".

(ii) the date of "31 December 1998" is replaced by "30 June 2001".

3. Article 6 is amended as follows:

(a) Paragraph 4 is replaced by the following:

"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 the provision indicated in point 4 of Annex C 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 30 June 2001. Receptacles and tanks constructed before 1 July 2001 and maintained to the required safety levels may continue to be used under the original conditions.

These dates shall be postponed for some transportable pressure equipment for which there are no detailed technical requirements or for which no sufficient references to the appropriate European standards have been added to the Annex.

The equipment concerned by this postponement and the date from which this Directive will be applicable to it shall be determined in accordance with the procedure provided for in Article 9."

(b) Paragraph 9 is replaced by the following:

"9. If Member States intend to adopt provisions that are less strict than those laid down in the Annexes for transport operations confined to their territory and relating only to small quantities of certain dangerous goods, with the exception of substances with average and high radioactivity, they shall notify the Commission thereof.

If Member States intend to lay down provisions different from those contained in the Annexes in respect of local transport limited to their territory, they shall notify the Commission thereof provided that no stricter provisions are required for transport operations effected by a vehicle registered in another Member State.

The Commission shall examine whether the conditions required in the first and second subparagraphs are met and shall decide in accordance

with the procedure provided for in Article 9 whether the Member States concerned may adopt the said provisions."

- (c) In paragraph 10, the words "of Marginals 2010 and 10602 of Annexes A and B" are replaced by "of the provisions indicated in point 5 of Annex C".
 - (d) Paragraph 11 is replaced by the following:

"11. The Member States may issue administrative authorisations, valid for their territory only, to carry out *ad hoc* transport operations of dangerous goods which are either prohibited by the Annexes or are effected under conditions different from those provided for by those Annexes, on condition that those *ad hoc* transport operations correspond to exceptional transport operations, clearly defined and limited in time."
 - (e) In paragraph 12, the words "Marginals 2010 and 10602 of Annexes A and B" are replaced by "the provisions indicated in point 5 of Annex C".
- 4. In Article 8, the words "Annexes A and B" are replaced by "Annexes A, B and C".
 - 5. Annex C, as shown in the Annex to this Directive, is added.

Article 2

- 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2000 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament
The President*

*For the Council
The President*

"ANNEX C

Special provisions relating to certain articles of Directive 94/55/EC

1. The national transport operations covered by Article 1(2)(c) shall be the following:
 - (i) Explosive substances and articles 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 substances in tanks or in tank containers of a total capacity exceeding 3 000 l:
 - Class 2: gas assigned to the following risk groups: F, T, TF, TC, TO, TFC, TOC
 - Classes 3, 4.1, 4.2, 4.3, 5.1, 5.2, 6.1, 8: substances 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).
2. The special provisions applicable to Article 5(2) shall be Marginal 10 599 of Annex B.
3. The special provisions applicable to Article 5(3)(b) shall be Marginal 211 128 of Annex B.
4. The special provisions applicable to Article 6(4) shall be Marginal 2211 of Annex A.
5. The special provisions applicable to Article 6(10) and (12) shall be Marginals 2010 and 10 602 of Annexes A and B."

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