

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 665 final - SYN 487

Brussels, 15 December 1993

Proposal for a

COUNCIL DIRECTIVE

on uniform procedures

for checks on the transport of
dangerous goods by road

(presented by the Commission)

EXPLANATORY MEMORANDUM

A. Preliminary remarks

In recent years there has been a marked increase in the transport of dangerous goods by road, in line with economic development.

In volume terms, the transport of dangerous goods by road accounts for about 15% of total land transport tonnage, according to an OECD estimate.

The number of Community road vehicles transporting dangerous goods is estimated at about 20% of the total number of goods vehicles: in other words, at any time some 2 million vehicles are carrying dangerous goods on the Community's road network.

In view of the scale of this phenomenon, and in response to tragic accidents involving consignments of dangerous goods during the 1980s, the Commission decided to examine the matter and -- without in any way questioning the quality of the work carried out in this field within the relevant international organizations -- to draw up and send the Council a series of proposals aimed at improving the conditions for the transport of dangerous goods by road.

Special mention should be made of the measures relating to:

- vocational training for drivers of vehicles carrying dangerous goods by road;¹
- vocational training for road haulage operators transporting dangerous goods by road;²
- minimum requirements for certain tankers entering or leaving Community ports;³
- the appointment of an officer for the prevention of the risks inherent in the carriage of dangerous goods in undertakings which transport such goods, and on the vocational qualification of such officers.⁴

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1 Directive 89/684/EEC of 21 December 1989, OJ No L 398, 30.12.1989.

2 Directive 89/438/EEC of 21 June 1989, OJ No L 212, 22.7.1989.

3 Directive 79/116/EEC of 21 December 1978, OJ No L 33, 8.2.1979.

4 Proposal for a Directive COM(91) 4 final of 11 June 1991.

This Directive has been drawn up with a view to improving and ensuring compliance with the safety conditions for the transport of dangerous goods by road and eliminating barriers to the free movement of dangerous goods transported by road throughout the Community.

In the absence of international or Community rules governing checks on compliance with safety standards for the transport of dangerous goods by road, this Directive introduces a uniform procedure for such checks which will apply both within the Community and to consignments entering the Community from third countries.

This measure is all the more essential as the Council is called on to adopt a Directive on the approximation of the laws of the Member States concerning the transport of dangerous goods by road.⁵

B. Justification with regard to the principle of subsidiarity

(a) What are the objectives of this Directive in terms of the obligations of the Community?

This Directive has three main objectives:

- to introduce a system of checks on the transport of dangerous goods by road which takes account of the elimination of such checks at the Community's internal borders pursuant to Regulations (EEC) Nos 4060/89⁶ and 3912/92⁷ and interrupts such transport as little as possible;

5 OJ No ...

6 OJ No L 390 of 30 December 1989.

7 OJ No L 395 of 31 December 1992.

- in the context of the future Directive on the approximation of national safety standards for the transport of dangerous goods by road, to introduce a uniform and sufficiently effective framework for checks on compliance with those standards by road haulage operators;
- to apply this uniform framework not only to the transport of dangerous goods within the Community but also to road vehicles transporting dangerous goods coming from third countries.

(b) Does this measure fall within a field of exclusive Community competence?

Shared competence: Article 75(1)(c) of the Treaty

(c) What is the scale of the problem (for example, how many Member States are concerned and what solution has been in force hitherto)?

There is no international convention governing checks on the transport of dangerous goods by road. As a result, and in the absence of common standards applicable by all Member States, checks are based on national standards, which obviously differ from one Member State to another. This leads to permanent uncertainty regarding compliance with the applicable safety standards and a succession of checks during journeys.

(d) What is the most effective solution, given the resources of the Community and of the Member States?

In view of the specificity of the products concerned and the very strict safety standards which must be applied to their transport, in the complete absence of coordination the action taken by the various Member States can lead to a level of checks which is either inadequate or excessive. The harmonization and coordination of checks at Community level can ensure an adequate level of checks and, as a result, greater compliance with the provisions governing the transport of dangerous goods, while avoiding serious disruption of the movements of the vehicles concerned. The elimination of successive checks during a journey and the reduction to 30 minutes of the time required for such checks will have a favourable impact on the efficiency of such transport.

- (e) What concrete added value does the envisaged Community measure have and what would be the cost of failing to act?

Regulations (EEC) Nos 4060/89 and 3912/92, referred to above, eliminated checks on the transport of dangerous goods carried out at the Community's internal borders, a step which was necessary for the completion of an internal market without internal borders. However, achievement of this objective did not bring with it the optimum fluidity of such transport throughout the Community. As stated at (c) above, in the absence of Community or international standards for checks on the transport of dangerous goods, the Member States find themselves obliged, on account of the specificity of the goods transported, to continue to apply within their respective territories their own criteria as regards compliance with the safety standards for the transport of dangerous goods, and these criteria obviously vary; this results in a proliferation of checks during each journey and the continued disruption of transport operations which it was the main objective of the above-mentioned Regulation to eliminate.

A measure of this kind is all the more necessary as the Council will be asked at the same time to adopt a Directive approximating the laws of the Member States on the transport of dangerous goods by road. This Directive, introducing uniform procedures for checks on the transport of dangerous goods by road, makes compliance with the safety standards laid down in the above-mentioned Directive credible and therefore effective.

- (f) What measures are available to the Community?
(g) Are uniform rules necessary or would a directive specifying general objectives and leaving it to the Member States to adopt appropriate measures to achieve them suffice?

The adoption of common rules embodied in a binding legal instrument is essential, given the specific nature of the transport operations concerned. Goods transport is by definition extremely mobile. It includes domestic transport, transport between Member States and transport to and from third countries. Compliance with the very strict safety standards applying to the transport of dangerous goods and checks on such compliance must follow criteria which are as nearly

identical as possible in all Member States in order to avoid being a danger to human life, property and the environment and a serious obstacle to the free movement of products and the vehicles concerned throughout the Community.

In procedural terms, a directive can attain the objective pursued, as this legislation is addressed principally to governments and is intended to be incorporated into existing legislation.

C. Objectives and content of the proposal for a Directive

The proposal for a Directive is intended to attain the following objectives:

- to enable checks on the transport of dangerous goods within the Community to take place throughout the territory of the Member States, provided they are carried out within the framework of normal checks and without discrimination on the basis of the nationality of the drivers or vehicles. The same applies to the transport of dangerous goods coming from third countries, in that checks need not necessarily take place at the external border of the Member State where the consignments in question enter the Community (Article 3);
- to define a uniform and sufficiently comprehensive list of the minimum safety aspects to be checked and the infringements to be penalized (first sentence of Article 4(a));
- to apply the above-mentioned uniform list also to consignments transported by vehicles registered or having received authorization to use the highways in a third country, whether or not that country is a contracting party to the ADR. Checks on such vehicles, and in particular on the items listed in Annex I, are intended to ensure that such vehicles comply with ADR standards;
- to provide the driver with a copy of the results of the checks carried out, in order to avoid a succession of such checks during a journey, wherever possible (second sentence of Article 4(a));
- to arrange for checks to be carried out in the road haulage undertaking concerned or the undertaking responsible for loading the vehicle, in particular where infringements jeopardizing the safety of the transport of dangerous goods have been detected during roadside checks (Article 6);
- to encourage the reporting of carriers who have committed infringements to the Member State in which the vehicle is registered or the undertaking responsible for loading the vehicle is established (Article 7(2));
- to encourage cooperation between Member States with a view to recording and penalizing infringements uncovered during roadside checks (Article 8).

Proposal for a Council Directive on uniform procedures
for checks on the transport of
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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

in cooperation with the European Parliament,²

Having regard to the opinion of the Economic and Social Committee,³

Whereas the Community has adopted a number of measures for the establishment of an internal market comprising an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty;

Whereas checks on the transport of dangerous goods by road carried out at internal frontiers were abolished pursuant to Regulation (EEC) No 4060/89,⁴ as amended by Regulation (EEC) No 3356/91,⁵ and Regulation (EEC) No 3912/92;⁶

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4 OJ No L 390, 30.12.1989.

5 OJ No L 318, 20.11.1991.

6 OJ No L 395, 31.12.1992.

Whereas, in the absence of Community coordination, there is a risk that the checks carried out by the Member States throughout their territory will prove either excessive, with certain of the vehicles concerned being stopped repeatedly, or insufficient;

Whereas the Community is in the process of adopting a Directive on the approximation of the laws of the Member States concerning the transport of dangerous goods by road;⁷ whereas the procedures for checking this type of transport should accordingly be harmonized in order for compliance with the safety standards laid down therein to be verified more effectively;

Whereas, in the light of the principle of subsidiarity, Community action is therefore necessary to improve the level of safety of the transport of dangerous goods, while at the same time ensuring the necessary fluidity of such transport;

Whereas a uniform and sufficiently comprehensive list of items to be checked, applicable to such transport throughout the Community, should therefore be established;

Whereas it is necessary to identify a minimum number of infringements deemed sufficiently serious by all Member States to result in the application to the vehicles concerned of appropriate measures depending on the circumstances or the requirements of safety, including, where appropriate, refusal to admit the vehicles concerned to the Community;

Whereas in order to improve compliance with safety standards for the transport of dangerous goods by road it is necessary to make provision for checks to be carried out also in undertakings in Member States where the goods were packaged, collected, stored, loaded or unloaded, in particular when serious infringements of laws on the transport of dangerous goods have been recorded on the road;

Whereas the checks in question must apply to all consignments of dangerous goods transported by road wholly or partly within the territory of the Member States, irrespective of the point of departure or the destination of the goods or the country in which the vehicle is registered,

HAS ADOPTED THIS DIRECTIVE

Article 1

This Directive shall apply to checks carried out by Member States on the transport of dangerous goods by road in vehicles entering or travelling in their territory.

It shall not apply to the transport of dangerous goods carried out by vehicles belonging to the armed forces or for which they are responsible, or to postal consignments.

Article 2

For the purposes of this Directive:

- "dangerous goods" means dangerous goods defined as such in the Council Directive on the approximation of the laws of the Member States concerning the transport of dangerous goods by road;⁸
- "undertakings" means any natural person, whether or not profit-seeking, any association or group of persons without legal personality, whether or not profit-seeking, and any body coming under a public authority,

whether itself possessing legal personality or dependent on an authority having such personality, which carry, load, or unload dangerous goods or cause them to be carried, and those which store, collect, package or take delivery of such goods for their later conveyance, which are located in the territory of the Community;

- "check" means any check, control, inspection, verification or formality carried out on the road or in undertakings for reasons of safety inherent in the transport of dangerous goods;
- "consignment" means a consignment of dangerous goods transported wholly or partly on the road network of a Member State;
- "vehicle" means any vehicle falling within the scope of the ADR or, as the case may be, the Council Directive on the approximation of the laws of the Member States concerning the transport of dangerous goods by road.

Article 3

Consignments of dangerous goods transported within or entering the Community may be checked in the territory of a Member State, provided such checks are not carried out at the internal frontiers of the Community but as part of normal checks and without discrimination on the basis of the nationality of the drivers or vehicles concerned, in order to check their compliance with the laws on the transport of dangerous goods by road.

Article 4

- (a) These checks must cover at least the items included in the checklist in Annex I. A duplicate checklist showing the result of the check duly certified by the authority which carried it out shall be given to the driver of the vehicle and presented on request in order to avoid, where possible, repetition of the check later in the journey.
- (b) These checks shall be made at different places, at any time of day, and cover a sufficiently extensive portion of the road network to make checkpoints difficult to avoid.
- (c) These places shall be selected so as to make it possible to bring infringing vehicles into compliance or to immobilize them without causing a safety hazard.
- (d) Where appropriate, samples of the goods transported may be taken for examination by recognized laboratories.
- (e) Except where an infringement constituting a safety hazard is established, the time taken to conduct a check shall not normally exceed half an hour.

Article 5

Without prejudice to other penalties which may be imposed, consignments in respect of which one or more infringements of the safety standards for the transport of dangerous goods among those listed in Annex II are established shall be immobilized, either on the spot or at a place designated for this purpose by the authorities carrying out the check, and obliged to be brought into conformity before continuing their journey or be subject to other appropriate measures depending on the circumstances or the requirements of safety.

Article 6

1. Checks may also be carried out at the premises of undertakings, in particular where infringements which jeopardize safety in the transport of dangerous goods have been recorded on the road.
2. The purpose of such checks shall be to ensure that safety conditions for the transport of dangerous goods by road comply with the relevant laws.

Article 7

1. Member States shall assist each other to give proper effect to this Directive.
2. Infringements jeopardizing the safety of the transport of dangerous goods committed by a non-resident carrier or consignor must be reported to the competent authorities in the Member State in which the vehicle is registered or in which the consigning undertaking is established.
3. The competent authorities of the Member State in which an infringement has been recorded may, in the case of a second or subsequent offence, ask the competent authorities of the Member State in which the vehicle is registered or in which the consigning undertaking is established for appropriate penalties to be imposed against the offender or offenders.

Article 8

If the findings of a roadside check on a vehicle registered in another Member State give grounds for believing that infringements have been committed which cannot be detected in the course of that check in the absence of the necessary data, the competent authorities of the Member

States concerned must assist each other in order to clarify the situation. Where, to that end, the competent Member State carries out a check on the premises of the undertaking, the other Member State concerned shall be notified of the results.

Article 9

Each Member State shall send the Commission each year a report on the application of this Directive and in particular on the results of checks carried out in its territory. The report shall be drawn up in accordance with the model given in Annex III and shall be sent to the Commission before the anniversary of the adoption of this Directive.

Article 10

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1995. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions they shall contain a reference to this Directive or shall be accompanied by such a reference on their official publication. The procedures for making this reference shall be determined by the Member States.

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

Article 11

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President

CHECKLIST

Place of check	Date	Time
Type of vehicle, registration No		
lorry/road train/articulated vehicle with cargo body/tank/container	Trailer/semi-trailer	
Transport undertaking		
Driver		Nationality
Driver's mate		Nationality
Consignor, address, place of consignment		Consignee, address, destination
Number and weight of packages		
Transport by:		
fixed tank/removable tank/tank-container/battery of receptacles/in bulk/container/package		

Transport documents

1. Transport/accompanying document

on board regulation	not on board non-regulation
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2. Written instructions

on board regulation	not on board non-regulation
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3. Bilateral/multilateral agreement/national authorization

on board	not on board	not applicable
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4. Vehicle type-approval certificates

on board regulation	not on board non-regulation
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5. Driver's training certificate

on board regulation	not on board non-regulation
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Circulation of vehicle

6. Goods authorized for transport
 yes no
7. Transport in bulk/packages
 regulation non-regulation
8. Transport in tanks
 regulation non-regulation
9. Prohibition on mixed loading
 observed not observed not applicable
10. Handling and stowage
 regulation non-regulation
11. Leakage of goods or damage to packages
 leakage damage
12. UN No/labelling of packages
 regulation non-regulation
13. Filling of tank
 regulation non-regulation
14. Special vehicle markings
 yes no
 regulation non-regulation
15. Tank or bulk transport danger labels
 yes no
 regulation non-regulation
16. Prohibition on smoking
 observed not observed not applicable

Vehicle equipment

17. Toolkit for running repairs
 on board not on board

18. At least one chock per vehicle
regulation non-regulation

19. Two orange lights

on board not on board
regulation non-regulation

20. Vehicle equipment

regulation non-regulation

21. Fire extinguisher

on board not on board
regulation non-regulation

22. Driver protection equipment

on board not on board
regulation non-regulation not applicable

Authority/officer
having carried out the check

INFRINGEMENTS

For the purposes of this Directive the following in particular shall be regarded as infringements:

- (1) Goods not authorized for transport
- (2) Absence of consignor's declaration on the conformity of the goods and their packaging with transport regulations
- (3) Vehicles which, on checking, display leaks of dangerous substances due to the lack of leaktight integrity of tanks or packages.
- (4) Vehicles with no type-approval certificate or with a non-regulation certificate.
- (5) Vehicles lacking the appropriate orange panels or with non-regulation orange panels.
- (6) Vehicles without safety instructions or with inappropriate ones.
- (7) Inappropriate vehicle or packaging.
- (8) Driver without a regulation vocational training certificate for the carriage of dangerous goods by road.
- (9) Vehicles lacking fire extinguishers.
- (10) Vehicles or packages without regulation danger labels.
- (11) Vehicles lacking transport/accompanying documents, or with particulars relating to the dangerous goods on board which are not in compliance with the regulations.
- (12) Vehicles not covered by a bilateral/multilateral agreement or not in compliance with the agreement
- (13) Overfilling of tank

ANNEX III(1)

Model standard form for the report to be sent to the Commission
concerning infringements and penalties

INFRINGEMENTS COMMITTED BY RESIDENT EEC CARRIERS AND PENALTIES APPLIED

STATE:

YEAR:

Name and address of undertaking	Registration No of vehicle ¹	Date of report	Place of infringement	Infringements listed in Annex II to the Directive ²	Penalties - applied - procedure in progress ³	COMMENTS

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1 To be completed in the case of roadside checks.

2 Indicate the point(s) of Annex II corresponding to the infringement(s) recorded.

3 For cases in which, on the date on which the report is sent to the Commission, a decision has not yet been reached.

ANNEX III(2)

INFRINGEMENTS COMMITTED BY NON-RESIDENT EEC CARRIERS AND PENALTIES APPLIED

STATE:

YEAR:

Name and address of undertaking	Registration No of vehicle ¹	Date of report	Place of infringement	Infringements listed in Annex II to the Directive ²	Penalties - applied - procedure in progress ³	COMMENTS

19

- 1 To be completed in the case of roadside checks.
- 2 Indicate the point(s) of Annex II corresponding to the infringement(s) recorded.
- 3 For cases in which, on the date on which the report is sent to the Commission, a decision has not yet been reached.

ANNEX III(3)

INFRINGEMENTS COMMITTED BY CARRIERS FROM A NON-MEMBER COUNTRY AND PENALTIES APPLIED

STATE:

YEAR:

Name and address of undertaking	Registration No of vehicle ¹	Date of report	Place of infringement	Infringements listed in Annex II to the Directive ²	Penalties - applied - procedure in progress ³	COMMENTS

20

1 To be completed in the case of roadside checks.

2 Indicate the point(s) of Annex II corresponding to the infringement(s) recorded.

3 For cases in which, on the date on which the report is sent to the Commission, a decision has not yet been reached.

ANNEX III(4)

ACTION TAKEN BY THE STATE IN WHICH THE VEHICLES ARE REGISTERED IN RESPONSE TO INFRINGEMENTS COMMITTED BY ITS OWN NATIONALS RECORDED IN OTHER MEMBER STATES

STATE:

YEAR:

Name and address of undertaking	Registration No of vehicle ¹	Date of receipt of file	Date and place of infringement	Infringements listed in Annex II to the Directive ²	Penalties - applied - procedure in progress ³	COMMENTS

27

1 To be completed in the case of roadside checks.

2 Indicate the point(s) of Annex II corresponding to the infringement(s) recorded.

3 For cases in which, on the date on which the report is sent to the Commission, a decision has not yet been reached.

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