

COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
COUNCIL DIRECTIVE
on the approximation
of the laws of Member States with regard to the transport of
dangerous goods by rail

(presented by the Commission)

EXPLANATORY MEMORANDUM

A. FOREWORD

This proposal is the culmination of wide-ranging consultation with Member States, industry and the social partners. Indeed, as early as 1992, the Member States expressed a desire to see the international rules for the transport of dangerous goods by road and rail forming the basis of both national and international legislation in this field. The Commission has already acted upon this in adopting its proposal for a framework Directive to transpose the provisions of the European Agreement concerning the International Carriage of Dangerous Goods by Road to cover all intra-Community road transport and follows with a parallel measure for rail transport.

It is not difficult to see the reasons for such interest in the transport of dangerous goods by rail. The transport of dangerous goods generally, by all modes, has greatly increased over recent years, following trends in economic development.

In view of this increase, and particularly because of a number of accidents involving dangerous goods which occurred especially during the 1980s, the Community has already taken certain measures to improve the safety conditions for such transport. These measures supplemented similar work undertaken by a number of international bodies, outside the Community framework.

However, measures were until now aimed at the transport of such goods by road and sea, in the light of the number of accidents which have occurred in these two sectors.

Nevertheless, the potential risks associated with the transport of such goods by rail is equally important, particularly given the fact that these goods are often transported in quantity through urban areas.

It is also to be noted that the railways in general are undergoing change and restructuring. Already, the adoption of Directive 91/440/EEC¹ has for the first time provided for a certain separation of infrastructure management and transport operation in the rail sector and has created certain rights of access to railway infrastructure. This creates the possibility of new railway undertakings entering the sector, offering services which could include the transport of dangerous goods. Therefore, because of this gradual opening up of the rail transport market, it is vital that a framework of safety legislation is in place to cover the transport of dangerous goods by rail in this new environment.

¹ O.J. L 237, 24.8.1991, p. 25

B. OBJECTIVES OF THE DIRECTIVE

The international transport of dangerous goods by rail is currently governed by the Regulations concerning the International Carriage of Dangerous Goods by Rail (RID), appearing as Annex 1 to Appendix B of the Convention concerning International Carriage by Rail (COTIF). All Member States of the European Community are Contracting Parties to this Convention. The Community, itself, is not.

However, these Regulations only cover the transport of dangerous goods by rail between Contracting States. Consequently, the transport of such goods by rail at national level falls outside its scope.

At national level rules have developed in a diverse manner. In the absence of Community legislation concerning the transport of dangerous goods by rail, the safety level required by the various Member States for the transport of such goods in national transport varies considerably from one Member State to another. In effect, these disparities mean that throughout the Community the same sufficiently high level of protection and safety cannot be guaranteed. This means, for instance, that additional equipment or procedures required for a transport operation in one Member State, which have proved their added safety benefit, might not be mandatory in other Member States.

Moreover, quite apart from the strictly safety aspect, the multiplicity and diversity of the various national laws applicable to the transport of dangerous goods at national level constitutes a serious obstacle to the free circulation of such goods throughout the Community, and is consequently incompatible with the requirements of the Single Market. Thus, rail wagons constructed for use in one Member State may be refused entry in the market of another Member State which has supplementary national requirements.

The possibility of serious distortions of competition is further aggravated by the existence of agreements made on a bilateral or multilateral basis between Member States or with third countries. These agreements, which include provisions derogating from the safety rules laid down by the RID, mean that two Member States of the Community could agree bilaterally to allow certain dangerous goods to be transported between their two territories, while those same goods could not be transported in the rest of the Community. Such a situation clearly leads to market fragmentation which is equally incompatible with the Single Market. Thus, it is important to eliminate these agreements, or at least make them compatible with the principle of non-discrimination on the grounds of nationality of the Member States concerned.

In order to provide a solution to the problems referred to above, uniform safety rules applicable throughout the Community should be established for the transport of dangerous goods by rail.

The most appropriate means to achieve this is to make the contents of the RID applicable not only for transport of dangerous goods by rail between Member States, but also for transport of such goods within those Member States. One obvious advantage of using the RID as the basis of harmonisation is that no new rules or standards will need to be created at Community level. In practice, what is intended is a simple extension of the RID rules to national transport. It is, in fact, a simplification exercise which will require little additional legislation or administrative burden on the Member States. The aim is therefore to create a set of harmonised rules applicable in a uniform manner throughout the Community area, in accordance with the requirements of the Single Market. This is one element which makes the Commission's proposal particularly attractive to the Member States.

It should be noted, moreover, that a parallel measure with support from Member States, industry and the social partners has already been taken in respect of transport of dangerous goods by road² and that this will shortly be adopted by the Council. The necessity for a parallel measure in the rail sector has been strongly advocated by Member States, particularly in view of the risk of distortions in inter-modal competition if such action were not taken. Moreover, at international level the RID and ADR are handled in parallel.

C. JUSTIFICATION WITH REGARD TO THE PRINCIPLE OF SUBSIDIARITY

a) What are the objectives of this Directive in relation to the Community's obligations?

It is to be noted that the Treaty on European Union now mentions the specific responsibility of the Community with regard to transport safety. This was a recognition that increased liberalisation of the transport sector must entail a parallel and increased guarantee of safety standard. The Community has already acted in adopting legislation to ensure sufficiently high levels of safety for other modes than rail. These efforts have aimed at dealing with lack of transparency, inadequacy of certain provisions in the Community context and frequent recourse to divergent national safety standards.

In the rail sector there are no Community rules governing the national transport of dangerous goods and national rules are varied and disparate.

This Directive is intended to harmonize those national laws as regards safety levels associated with the transport of dangerous goods by rail to ensure the same safety level, both for international transport and for transport conducted within each Member State. In addition, it is envisaged that a harmonisation of rules at national level will lead to a Single Market in the provision of transport services with regard to the transport of

² Proposal for a Council Directive on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road - OJ No C 17, 20.1.1994, p.6

dangerous goods within the Community. Moreover, such a harmonisation would remove existing obstacles to free movement of goods between Member States as far as transport equipment (wagons, cylinders, tanks, packagings, safety devices) are concerned, particularly by eliminating distortions to competition.

- b) Does competence in this area lie solely with the Community or is it shared with the Member States?

Shared competence - Article 75, paragraph 1 (c) of the Treaty.

- c) What is the Community dimension of the problem (for example, how many Member States are involved and what solution has been used up to now?)

The Community is not a Contracting Party to COTIF, Annex 1 of Appendix B constituting the RID, for the purposes of international transport of dangerous goods by rail. But all Member States are Contracting Parties. Nevertheless, conditions under which dangerous goods are transported at national level vary from one Member State to another. As was indicated in the examples given above, such divergences constitute an obstacle to the free movement of dangerous goods by rail and, moreover, to free movement of transport equipment within the Community. Moreover, differing interpretations of existing national rules might lead to a lowering of transport safety.

- d) What is the most effective solution, taking into account the means available to the Community and those of the Member States ?

The problems are three-fold. All Member States are already Contracting Parties to COTIF and apply the RID for the purposes of international transport.

However, a large number of bilateral and multilateral agreements and tariff clauses provide for derogations to RID rules which impair the uniform character of these rules.

Furthermore, at national level rules on the transport of dangerous goods by rail exist and are, to a greater or lesser extent, based on international rules. Nevertheless, these national rules remain different in each Member State, although gradual alignment with the international rules is emerging.

Transposing the RID additionally to national transport within the Member States would therefore appear to be the least cumbersome means of Community action in this domain and one which requires the least action on the part of the Member States and the Community. It should be considered as a simplification exercise, using existing widely-recognised rules rather than introducing new ones.

As was stated earlier, the Commission is best placed to coordinate these harmonisation efforts and this is the aim of such a proposal. Moreover, by bringing existing dangerous goods transport rules into Community legislation, the Commission will be more able to ensure coherence between these rules and other related aspects of Community legislation. A comparable measure has already been taken to cover the safe transport of dangerous goods by road within the Community.

- e) What real added value will action at Community level provide and what would be the cost of inaction ?

As stated in the response to question (a), this Directive is intended to harmonize national laws as regards safety rules associated with the transport of dangerous goods by rail, ensuring the same safety level both for transport conducted at international level and that carried out within each Member State, thereby permitting the creation of a Single Market for the services of transport of dangerous goods which is valid for the Community as a whole.

In the case of inaction, the obstacles to the free provision of transport services in this field, created by the deviations between national laws relating to the transport of dangerous goods by rail at national level and rules applicable to the same transport at international level, would persist.

Moreover, the existence and proliferation of bilateral or multilateral agreements between Member States would lead to the continued existence of an element of discrimination with regard to the remaining Member States, which is unacceptable in a European context.

Finally, the risk of inter-modal distortion should not be ignored. The RID and ADR rules are developed in parallel at international level. Given that the Commission has already adopted a proposal for an ADR 'framework' Directive which has reached Common Position in the Council, the rail sector has up to now been left behind, remaining un-communitarized. This proposal aims to remedy that situation.

- f)g) - What forms of action are available to the Community?
- Is it necessary to have a uniform Regulation or is a Directive setting out the general objectives sufficient, leaving implementation at the level of Member States ?

The adoption of common rules, using a legal instrument, is essential, bearing in mind the specific nature of the transport operations concerned. On a general level, the transport of goods takes place at national level, between Member States and with third countries.

Observance of very strict safety rules in the transport of dangerous goods should meet criteria which are as identical as possible for all Member States, for fear of constituting a danger to human life, property and the environment, as well as a serious obstacle to the free circulation of such goods and of the rail wagons concerned, throughout the Community.

At a procedural level, the Commission does not intend to complicate the task of Member States in this harmonization process. Resorting to a "Directive" is a valid response to the aim being pursued, since the measure is restricted to amending existing national laws, whereas a "Regulation" would require that they be abandoned. A "Recommendation" would clearly be inadequate, bearing in mind the special nature of the subject and the technical nature of the provisions concerned.

D. COHERENCE WITH OTHER COMMUNITY POLICIES OR ACTIONS

As stated earlier, this Directive aims to establish a set of safety rules relating to the transport of dangerous goods by rail, applicable in a uniform way throughout the Community.

While pursuing this objective, this action is also intended to ensure consistency with other Community policies, and in particular with the following measures:

- Proposal for a Council Directive on the approximation of the laws of Member States with regard to the transport of dangerous goods by road³.

This proposal for a Directive, already adopted by the Council in a common position, has in mind for road transport the same objective as that pursued by this Directive for the transport of dangerous goods by rail. Adoption of this proposal on rail transport will ensure the desired equality of competition between the modes for the transport of dangerous goods.

- Council Directives Nos. 90/219/EEC⁴ and 90/220/EEC⁵ relating to the confined use and deliberate release of genetically modified micro-organisms, as well as Directive 90/679/EEC⁶ relating to the protection of workers against exposure to biological agents.

These Directives do not cover the transport of the goods referred to. Currently this is only covered in international transport, within the framework of the RID. This Directive consequently aims to plug the gap by making it obligatory for the transport of such goods, at national level, to comply with the same safety provisions as those applicable for international transport.

³ OJ No C 17, 20.1.1994, p.6

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

- Council Directive 89/391/EEC⁷ on measures for improvements in the safety and health of workers.
- Proposals for Council Directives concerning minimum safety and health requirements for transport activities and workplaces on means of transport⁸, and protection of workers from risks related to chemical agents⁹.
- Proposal for Council Directive on the control of major-accident hazards involving dangerous substances¹⁰.
- Council Directive 67/548/EEC¹¹ on the classification, packaging and labelling of dangerous substances for placing on the market.

These rules do not cover the classification, packaging and labelling of dangerous goods for transport, this aspect being covered in national and international transport legislation. Given that no Community legislation exists to cover these elements for the purposes of transport, this proposal is aimed at filling that gap.

The Commission, in accordance with its undertaking and that of Member States, under the long-term goals set under Agenda 21, Chapter 19 of the UNCED Conference in Rio de Janeiro in June 1992, will work actively within the UN organisations, e.g. the responsible UN transport bodies, to harmonize classification systems. Under this Rio mandate the Community is required to harmonise national and international rules for the classification and labelling of dangerous goods.

E. CONTENTS OF PROPOSAL

Article 1 determines the scope of this proposal. Paragraph 2 safeguards existing Community legislation affecting the field covered by this Directive.

Article 2 defines the main terms used in the proposal.

Article 3 states that the transport of dangerous goods by rail is authorized, insofar as it takes place in accordance with the requirements of the Directive, and especially its Annex.

⁷ OJ No L 183, 29.6.1989, p.1

⁸ OJ No C 25, 28.1.1993

⁹ OJ No C 165, 16.6.1993

¹⁰ OJ No C 106, 14.4.1994, p.4

¹¹ OJ No L 196, 16.8.1967, p.1

Article 4 allows Member States to continue to apply national rules which are compatible with the multimodal United Nations Recommendations on the Transport of Dangerous Goods, with which the RID is gradually being harmonised, until the revised version of the Annex to this Directive has been brought into conformity with the aforementioned Recommendations.

Articles 5 and 6 provide for instances in existing national legislation where rules on the transport of dangerous goods might be more, or less, stringent for certain goods and for specific purposes. Such instances should be notified to the Commission.

Article 5 provides for Member States to continue to impose more stringent measures than those provided for by this Directive for wagons belonging to their rail network or which are registered therein, provided the transport of dangerous goods is conducted as national transport.

Article 6 § 1 has the aim of facilitating multimodal transport in recognising the requirements for the safe transport of dangerous goods in sea and air transport. These modal rules are based more closely on the global multimodal UN Recommendations than is the RID at this stage in its harmonisation. It also allows Member States to ensure that the basic safety rules for sea transport are met.

Article 6 § 2 permits a derogation from the requirement in the Annex to this Directive - according to which the marking and documentation relating to the transport operation must be drawn up in several languages - in cases where transport is confined to the territory of a single Member State. It also allows for a different format of that documentation.

Article 6, paragraphs 3 and 4 provide for an exemption for an unlimited period from the provisions of this Directive for wagons, receptacles and tanks constructed in accordance with national legislation in force at the date of application of this Directive. Given the investment in such rolling stock and equipment, this should be allowed to continue, provided that it remains safe, to the end of its commercial life. Paragraph 4 additionally allows Member States to continue to construct and use equipment which satisfies provisions in national law until standards for such equipment are developed and incorporated by reference in the Annex to this proposal, and at the latest until 31 December 1998. Any equipment constructed after the date of application of this Directive but before 31 December 1998 may also continue to be used for an indefinite period under the conditions set out above. Until then, Member States are provided with the option of constructing and using equipment either according to the existing requirements of the RID or according to national provisions.

Article 6 § 5 provides for a derogation to allow the use on the territory of a Member State of a reference temperature different to that prescribed in the Annex for the transport in tanks of liquefied gases and mixtures and appropriate to the climatic zone for transport.

Article 6 § 6 provides for an exemption similar to that in Art. 6 § 4 for existing (long-life) re-usable packagings.

Article 6 § 7 allows for the transport until 1 January 1998 of dangerous goods classified, packaged and labelled in accordance with national legislation prior to the date of transposition of this Directive

Article 6 § 8 allows for the display, but only for transport carried out on national territory, of "emergency action codes" (such as the 'Hazchem' code), replacing the "hazard identification code" prescribed by the RID.

Article 6 § 9 permits a Member State to retain less stringent provisions for certain small quantities of dangerous goods which might, for instance, include those used for maintenance on the railway.

Article 6 § 10 permits Member States to derogate from the provisions in the Annex to this Directive for single transports required in a timescale which would not allow sufficient time for revision of the Annex.

Article 6 § 11 covers the case of temporary derogations from the provisions laid down in the Annex to this proposal, to be administered by the competent authority designated by the Member State, for example for newly developed packagings not yet incorporated into the RID.

Article 6 § 12 places a two year limit from the date of application of this proposal for existing agreements, or tariff clauses, concluded between two or more Member States, or rail networks negotiated under the terms of CIM. This period allows sufficient time for existing derogations, deemed to be necessary, to be introduced and published as new provisions in the Annex to the RID and to be adopted by way of the Committee procedure provided for in Article 8 - in the form of amendments to the Annex to this Directive.

Article 7 states that wagons transporting dangerous goods to or from a third country may perform international transport of dangerous goods on the territory of the Community, provided the transport is conducted in accordance with the requirements of the RID.

Articles 8 and 9 establish the Committee procedure for further harmonization of provisions governing the transport of dangerous goods by rail. In particular, this is to take account of new provisions laid down in the RID.

In the case of amendments to specific danger classes of the Annex, for example, radioactive material, the Committee provided for will take into account the opinions of the experts on this subject.

F. INTEREST FOR THE EEA

Since the Contracting Parties to the EEA, with the exception of Iceland, are also all Contracting Parties to COTIF, it would be appropriate for them to be associated in a suitable way with this action, to ensure that the rules relating to the transport of dangerous goods by rail specified in the Directive would be applicable throughout the European Economic Area.

In this connection, the Commission recognises the particular circumstances pertaining to transport of dangerous goods by rail in Finland. Owing to the different track gauge of the Finnish rail network, the only international transport from and to Finland without changing gauge is with the states of the ex-Soviet Union. In this case, for specific technical reasons, Finland does not require that the transport of dangerous goods by rail from and to the ex-Soviet Union (Finland being, and states of the ex-Soviet Union not being Contracting Parties to COTIF) be in accordance with the RID requirements and would want to maintain this situation. Finland envisages that transport using its own wagons will remain, for both national and international transport (namely, with the ex-Soviet Union), in accordance with the RID. Finland is satisfied, nevertheless, that these transports fulfill requirements in national legislation ensuring a sufficiently high level of safety. This transport, although not insignificant to both parties in terms of revenue, does not affect any other Community or EEA Member State nor engender any discrimination, given the geographical location of this transport. The Commission is disposed to view in a favourable light and at the appropriate time a suitable and limited derogation, both in the framework of the EEA and after accession, to cover this case if Finland were to accede to the Community.

**Proposal for a Council Directive
on the approximation of the laws of 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 Commission¹,

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

in cooperation with the European Parliament³,

whereas, in recent years, the transport of dangerous goods by rail has considerably expanded, thus increasing the risks of accidents occurring and whereas it is therefore necessary that measures should be taken to ensure that such transport is carried out under the best possible conditions of safety;

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whereas all Member States of the Community are Contracting Parties to the Convention concerning International Carriage by Rail (COTIF), Appendix B constituting the 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) - and the geographical scope of which extends beyond the Community alone; whereas these Regulations only cover the transport of dangerous goods by rail between States, and whereas, consequently, the transport of such goods by rail at national level falls outside its scope;

whereas, therefore, the application of uniform safety rules throughout the Community is indispensable; whereas the most appropriate means of achieving this is to make the RID applicable not only to transport operations between Member States, but also within Member States;

whereas this action does not create additional rules, but rather brings the various national laws applied by the Member States into line with the RID, with the aim of creating a set of harmonized rules applicable in a uniform way throughout the Community area, compatible with the requirements of the Single Market;

whereas, having regard to the principle of subsidiarity, it is appropriate that action be taken at Community level to ensure a sufficiently high level of safety for national 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 that the consistency of such legislation with that arising from other Community policies is assured;

whereas Member States should retain the right, with regard to the transport of dangerous goods by rail at national level, to implement rules reflecting the multimodal United Nations' Recommendations on the Transport of Dangerous Goods, insofar as the RID is not yet harmonized with these rules, which would facilitate the inter-modal transport of dangerous goods;

whereas Member States should be able to retain the right to maintain more stringent requirements for certain operations involving the transport of dangerous goods by rail performed as national transport;

whereas, in particular, this harmonization of conditions should take into account specific national circumstances and, therefore, this Directive should allow sufficient flexibility in providing Member States with the possibility of certain temporary derogations, particularly with regard to the construction of wagons, tanks, receptacles, packaging or the use of an emergency action code; whereas the application of new developments in technology and industry should not be hindered and that temporary derogations should be provided for this purpose;

whereas the provisions of the CIM authorize the conclusion of agreements, or tariff clauses, derogating from the RID and that the large number of these agreements, or tariff clauses, negotiated on a bilateral basis between Member States, or rail networks, creates distortion in the free provision of transport services for dangerous goods;

whereas the inclusion of necessary provisions in the Annex to this Directive should overcome the need for such derogations; whereas it is necessary to provide for a transitional period during which existing agreements, or tariff clauses, may still be applied by Member States;

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 the provisions of this Directive are without prejudice to the application of other existing or future Community provisions in the field of worker safety and environmental protection;

whereas no Community legislation exists to cover the classification, packaging and labelling of dangerous substances for transport; whereas the Community has adopted Directive 67/548/EEC⁴ on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances for placing on the market which does not contain specific provisions concerning transport; whereas the provisions of this Directive are without prejudice to the engagement of the Community to strive for a future harmonisation of classification systems for dangerous chemicals, which was undertaken 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;

whereas there is as yet no specific Community legislation to govern the conditions of safety under which biological agents and genetically modified micro-organisms, regulated under Council Directives 90/219/EEC⁵, 90/220/EEC⁶ and 90/679/EEC⁷ should be transported by rail; whereas only international transport of such goods is governed by the RID, and whereas rules identical to those provided for by these Regulations should be laid down with regard to the transport of these goods by rail within Member States;

whereas measures for the safety and health of workers at work have been set down in Council Directive 89/391/EEC⁸; whereas further Community measures are being developed on the minimum safety and health requirements for transport activities and workplaces on means of transport;

⁴ OJ No L 196, 16.8.67, p. 1

⁵ OJ No L 117, 8.5.90, p.1

⁶ OJ No L 117, 8.5.90, p.15

⁷ OJ No L 374, 31.12.90, p.1

⁸ OJ No L 183, 29.6.89, p.1

whereas it must be possible to adapt this Directive rapidly to technical progress, notably by adoption of new provisions laid down in the RID; and whereas, in order to facilitate implementation of the measures required for this purpose, to create a Committee and to establish a procedure for close cooperation between Member States and the Commission within this Committee,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE

Article 1

1. This Directive shall apply to the transport of dangerous goods by rail within or between Member States. However, Member States may exempt from the scope of this Directive the transport of dangerous goods by rail belonging to or under the responsibility of the armed forces.
2. The provisions of this Directive shall not prejudice other Community provisions relating to worker safety and environmental protection.

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 1 to Appendix B of the Convention relating to International Transport by Rail (COTIF), together with its amendments;
- '*CIM*' shall mean the Uniform Rules concerning the Contract for International Carriage of Goods by Rail, Appendix B to the Convention concerning International Carriage by Rail (COTIF);
- '*dangerous goods*' shall mean those substances and articles, the transport by rail of which is prohibited by, 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 fully or partially on the territory of a Member State, including the activities of loading, unloading and transfer to and from another mode of transport and temporary storage related to the transport operation, 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 enclosed site.

Article 3

1. Without prejudice to Article 6, dangerous goods whose transport is prohibited by the Annex to this Directive may not be transported by rail.
2. Save as otherwise provided for in this Directive, transport of other dangerous goods by rail shall be authorized, subject to compliance with the conditions laid down in the Annex to this Directive.

CHAPTER II

DEROGATIONS; RESTRICTIONS AND EXEMPTIONS

Article 4

Each Member State may, for the purposes of national rail transport operations on its territory, retain provisions existing in national law on the transport of dangerous goods by rail which are consistent with the UN Recommendations on the Transport of Dangerous Goods, until such time as the Annex to this Directive are 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 legislation, each Member State shall retain the right to regulate or prohibit, strictly for reasons other than safety during transport, in particular for reasons of national security, the transport of certain dangerous goods in its territory.
2. Member States may continue to apply more stringent provisions than those provided for by the Annex to this Directive for the transport of dangerous goods by rail in its territory, excluding construction requirements.
3. If a Member State considers that the applicable safety provisions have been found to be capable of improvement, following an accident or an incident, to better limit the hazards involved in the transport operation 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 the said measures should be authorised and shall determine the duration thereof.

Article 6

1. Each Member State may accept for transport by rail in its territory dangerous goods classified, packed and labelled in accordance with the international requirements for maritime or air transport whenever the transport operation involves a sea or air voyage. Where an international journey involves carriage by sea, Member States may apply provisions additional to those of the Annex to this Directive to take account of international rules governing that mode of transport.

2. Any provisions given in the Annex to this Directive concerning the format of documentation or 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 Annex for transport operations performed in their territories.
3. Each Member State may allow, in its territory only, the use of rail wagons constructed before 1 January 1997 which do not conform with the provisions herein, but were constructed according to national provisions in force up to 31 December 1996, provided that those wagons are maintained to the required safety levels.
4. Each Member State may retain national provisions as at 31 December 1996 relating to the construction, use and conditions of carriage of new tanks, and new receptacles within the meaning of Class 2 of the Annex to this Directive, which differ from the provisions laid down in those Annex, until such time as references to standards for the construction and use of tanks and receptacles are provided in the Annex to this Directive, with the same binding force as the provisions therein and 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 retain national provisions other than those set out in the Annex to this Directive with regard to the reference temperature for the transport in its territory of liquefied gases or mixtures of liquefied gases, until such time as provisions relating to appropriate reference temperatures for designated climatic areas are incorporated into European standards and referred to in the Annex to this Directive.
6. Each Member State may allow the use, for transport in its territory, of packagings constructed before 31 December 1996, but not certified in accordance with the requirements of the RID, provided that the packaging bears the date of manufacture and is capable of passing the tests according to the requirements of national legislation in force up to 31

December 1996 and provided that all such packagings 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 a maximum period of 15 years from their date of manufacture; other metal packagings and all plastics packagings may be used for a maximum period of 5 years from the date of their manufacture, but not beyond 31 December 1998.

7. Each Member State may allow certain dangerous goods packaged prior to 1 January 1997 to be transported in its territory until 31 December 1998, provided that the goods are classified, packed and labelled in accordance with the requirements in national legislation in force prior to 1 January 1997.
8. Each Member State may retain provisions in national legislation in force before the date of transposition of this Directive into national legislation, relating to the display of an emergency action code in place of the hazard identification number, as required by the Annex to this Directive, for rail transport operations performed in its territory.
9. Each Member State may, after consulting the Commission, maintain provisions less stringent than those set out in the Annex to this Directive 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. Each Member State may authorize ad hoc transport operations in its territory of dangerous goods which are either prohibited by the Annex to this Directive or which are performed under different conditions from those in the said Annex.

11. Provided that no loss of safety arises, Member States may grant temporary derogations from the Annex to this Directive for the purpose of carrying out in their territory the trials necessary with a view to amending the provisions of the Annex in order to adapt them to technological and industrial developments. The Commission shall be informed thereof and shall inform the other Member States thereof.

Any such derogations shall be applied without discrimination with regard to nationality or place of establishment of the consignor, operator or consignee; they shall last for a maximum period of five years and shall be non-renewable.

12. Each Member State may, until 31 December 1998 at the latest, apply existing agreements with other Member States, without discrimination with regard to nationality or place of establishment of the consignor, operator or consignee. Any future derogations shall comply with the requirements of paragraph 10.

Article 7

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

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, notably to take account of the 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, 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 of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission.

When votes are taken within the Committee, the votes of the representatives of the Member States shall be weighted in the manner set out in the aforesaid Article. The Chairman shall not vote.

3. The Commission shall adopt measures which shall have immediate effect. However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith.
4. In that event, the Commission shall defer application of the measures which it has decided on for a period of three months from the date of communication.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph.

Article 10

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

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

2. The 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 is addressed to the Member States.

Done at Brussels,

For the Council,

The President.

Annex

Regulations concerning the International Carriage of Dangerous Goods by Rail (RID), as applicable with effect from 1 January 1995.

N.B. Versions in all the official languages of the Community will be published as soon as a consolidated text is prepared and translations are ready.

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.

**Agreement on the
European Economic Area**

The EEA Joint Committee

DECISION OF THE EEA JOINT COMMITTEE

No .../9.
of 199.

amending Annex XIII (Transport)
to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as adjusted by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as the Agreement, and in particular Article 98 thereof,

Whereas Annex XIII to the Agreement was amended by Decision 7/94 of the EEA Joint Committee of 21 March 1994 ⁽¹⁾;

Whereas Council Directive .../.../EC on the approximation of the laws of Member States with regard to the transport of dangerous goods by rail ⁽²⁾ is to be incorporated into the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The following shall be added in Annex XIII to the Agreement after point 42 (Council Decision 82/529/EEC):

" (iii) Technical harmonization and safety

42a **39. L : Council Directive .../.../EC on the approximation of the laws of Member States with regard to the transport of dangerous goods by rail(OJ No L , , p .)."**

¹ OJ No L 160, 28.6.94, p. 85.

² OJ No L , , p .

Article 2

The texts of Council Directive .../.../EC in the Finnish, Icelandic, Norwegian and Swedish languages, which are annexed to the respective language versions of this Decision, are authentic.

Article 3

This Decision shall enter into force on 19.., provided that all the notifications under Article 103(1) of the Agreement have been made to the EEA Joint Committee.

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the Official Journal of the European Communities.

Done at Brussels,

[Date]

For the EEA Joint Committee
The President

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The Secretaries
to the EEA Joint Committee

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