

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 24 November 1993

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

A. General

Current situation

Dangerous goods are subject to detailed national and international regulations directed towards ensuring by law that these goods are carried under optimum conditions as regards the safety of persons, property and the environment.

Each year the volume and range of dangerous goods carried within the Community, in particular by road, increases, with a number of accidents focussing particular attention on this form of transport.

All Member States of the Community, except Ireland, are contracting parties to the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR), which sets down uniform rules for the international transport of these goods by road.

Alongside the ADR, the international transport of dangerous goods by road between the contracting parties is regulated by numerous bilateral agreements.

At national level rules have developed in a diverse manner. As there is as yet no comprehensive Community legislation in place, it would be in line with Community strategy in the context of the Single Market to require the same established international rules in national transport in order to achieve harmonisation of the conditions for transport of dangerous goods by road throughout the Community, concurrently ensuring a sufficiently high level of protection and safety.

Already the Commission has been active in developing proposals on the transport of dangerous goods in line with its principle of plugging the gaps, where these exist, in existing international legislation. In this context the Council has adopted Directive 89/684/EEC⁽¹⁾ on vocational training for certain drivers of vehicles carrying dangerous goods by road.

B. Justification for action at Community level

I. Subsidiarity

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

In seeking to harmonise rules on the transport of dangerous goods within, as well as between, Member States, it is intended that an acceptable level of safety in this form of transport will be ensured.

(1) OJ No. L 398, 30.12.89, p. 33.

Moreover, 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 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 (vehicles, cylinders, tanks, packaging, safety devices) are concerned.

- (b) Does competence for the planned activity lie solely with the Community or is it shared with the Member States?

Shared competence.
Article 75, paragraph 1(c)

- (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)?

All Member States, except Ireland, are already signatory to the ADR Agreement on the international transport of dangerous goods by road and all Member States, without exception, have national rules more or less based on those applied in international transport. Nevertheless, conditions under which dangerous goods are transported at national level vary from one Member State to another. Such divergences as do exist constitute an obstacle to free provision of transport services 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?

All Member States, except Ireland, are already Contracting Parties to the ADR Agreement for the purposes of international transport. However, a very large number of bilateral or multilateral agreements provide for derogations to ADR rules which impair the uniform character of those rules. At national level rules on the transport of dangerous goods 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. The Commission has a role to play in coordinating 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.

- (e) What real added value will the activity proposed by the Community provide and what would be the cost of inaction?

The added value of this proposal for the Community will be greater clarity through the application of uniform provisions Community-wide, a commonly agreed and acceptable level of safety, the freedom of provision of transport operations as well as an enlarged, open market for products and transport equipment. Costs of inaction would be the persistence of obstacles to free provision of transport services caused by diverging national legislations and international agreements.

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

It is considered that a Directive is the best means available of achieving the goal of uniform national requirements in this field, which is already regulated to some degree by Member States. A Directive would allow the flexibility of amending existing national rules rather than abandoning these for a regulation. A recommendation is considered insufficient for a transport sector which constitutes around 15% of all freight movements in the Community and which, by its very nature, might have considerable implications for safety. Financial support would clearly be inadequate.

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

The nature of the ADR Agreement as it exists at present is complex and detailed in its technical provisions. It is not the Community's intention to further complicate these rules by developing additional requirements, but rather, as far as possible, to take the existing ADR for international transport and transpose this additionally into national law.

II. Harmonisation of conditions

Most national rules are more or less aligned with the existing international recommendations or regulations but certain conditions under which dangerous goods are carried at national level differ from one Member State to another. Divergences between the national regulations constitute an obstacle to free provision of transport services around the Community and there are also differing interpretations of existing international rules. This situation requires the introduction of Community legislation ensuring harmonised rules.

Moreover, at present and under the terms of the ADR, Member States conclude, on a bilateral basis, agreements derogating from the ADR. The number of existing Agreements is large and the nature of these creates distortion in the provision of transport services. The availability of a Committee to adapt this proposal to scientific and technological progress should overcome the need for such derogations.

Coherence with other Community policies

Whilst reflecting as far as possible existing international legislation on the transport of dangerous goods by road, this proposal has the additional aim of coherence with Community policies. In particular, technical requirements for vehicles specially adapted and equipped for the transport of dangerous goods by road have been framed against the background of existing Community legislation for vehicles in Council Directive 70/156/EEC⁽¹⁾, as last amended by Council Directive 92/53/EEC⁽²⁾, with the aim of ensuring free movement of vehicles across Community territory.

Pending the adoption of this proposal, a new separate Directive in the framework of Council Directive 92/53/EEC will be proposed, which will cross-refer to this proposal in its adopted form (the Annexes to this Directive containing the Annexes to the ADR where technical requirements for vehicles are covered). In that way specific supplementary technical requirements for vehicles transporting dangerous goods will become a part of Community legislation. All vehicles specifically adapted for this type of transport will anyway have to meet the technical requirements of all the relevant separate Directives as prescribed in Annex IV of Council Directive 70/156/EEC, as last amended by Council Directive 92/53/EEC.

In addition, Council Directives 90/219/EEC⁽³⁾, 90/220/EEC⁽⁴⁾ and 90/679/EEC⁽⁵⁾ on the contained use and deliberate release of, as well as protection of workers from, biological agents and genetically modified organisms, do not seek to cover the conditions under which these are transported. Currently this is only covered in international transport legislation and it is proposed, by way of this proposal, to require the same safety provisions in the national transport of these substances by road.

In terms of safety of workers in the transport of dangerous goods, the Council has already adopted Directive 89/391/EEC⁽⁶⁾ on measures for improvements in the safety and health of workers. Two further proposals for Directives have been submitted to the Council for adoption, concerning minimum safety and health requirements for transport activities and workplaces on means of transport⁽⁷⁾, and protection of workers from risks related to chemical agents⁽⁸⁾.

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- (1) OJ No L 42, 23.2.70, p.1
 - (2) OJ No L 225, 10.8.92, p.1
 - (3) OJ No L 117, 8.5.90, p.1
 - (4) OJ No L 117, 8.5.90, p.15
 - (5) OJ No L 374, 31.12.90, p.1
 - (6) OJ No L 183, 29.6.89, p.1
 - (7) OJ No C 25, 28.1.93, p.17
 - (8) OJ No C 165, 16.6.93, p.4

The Council agreed upon arrangements⁽¹⁾ for liberalizing cabotage operations for road transport at its meeting of 19 June 1993 which lay down a definitive system regulating the conditions under which non-resident carriers may operate national road haulage services within a Member State (cabotage). Although under this system national rules on technical standards governing the construction and equipment of road vehicles applicable in the host Member State cannot impose restrictions on vehicles which comply with Community or international rules concerning technical construction and equipment requirements, other, non-technical, requirements can be imposed. Moreover, in such a situation, different rules would apply to resident and non-resident Community hauliers, which would lead to distortions of competition. Therefore, the introduction of uniform rules governing the transport of dangerous goods by road would complement the establishment of a final cabotage regime, securing the Council's legal obligation to introduce complete freedom to provide transport services, as laid down in the Treaty.

The Community has adopted Council Regulation (EEC) 4060/89⁽²⁾, as amended by Council Regulations (EEC) 3356/91⁽³⁾ and (EEC) 3912/92⁽⁴⁾, on the removal of border controls for international transport of dangerous goods in accordance with the ADR Agreement.

The abolition of existing infrastructure for checking vehicles carrying dangerous goods at internal frontiers of the Community will require that adequate and common standards of safety in this transport are laid down to be complied with by all Member States in a single market.

The Council Directive 67/548/EEC⁽⁵⁾ on the classification, packaging and labelling of dangerous substances lays down rules for the classification, packaging and labelling of dangerous substances and preparations which are placed on the market. These rules differ from the rules for the classification as contained in Annex A of this proposal, which have been decided on the basis of the UN system of classification of dangerous goods.

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 various UN organisations, e.g. the responsible UN transport bodies, to harmonize the two classification systems.

C. Scope of the proposal

It is not the intention of this proposal for a Directive, in harmonising existing requirements in Member States throughout the Community, to lower the level of safety required for the transport of dangerous goods. Such safety should be maintained at as high a level as possible and this is achieved by reflecting amendments adopted in the regular updating of the ADR and United Nations Recommendations on the Transport of Dangerous Goods which aim to reach the highest possible acceptable levels of safety. This proposed Directive should be provided with the opportunity to take account of these amendments, by way of the Committee procedure provided for in Articles 8 and 9. Moreover, as and when European standards are developed on the technical aspects of the transport of dangerous goods, these new standards should be reflected in revisions to the proposal, through the Committee procedure provided for.

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- (1) Council Decision of 19 June 1993
(2) OJ No L 390, 30.12.89, p.18
(3) OJ No L 318, 20.11.91, p.1
(4) OJ No L 395, 31.12.92, p.6
(5) OJ No 196, 16.8.1967, p.1

Furthermore, given the special nature of this transport, it should be made possible in this proposal that Member States be allowed to provide for additional laws which meet specific requirements in respect of the transport of dangerous goods, for reasons other than safety - e.g. environment, national security - while ensuring that the effects of such an option do not run counter to the objectives of the Treaty, particularly with regard to the setting up of a common area without internal frontiers. Where applied, such restrictions should be notified to the Commission.

In seeking to apply uniform provisions throughout the Community, thereby eliminating obstacles to the free movement of goods between Member States and creating a single market in the provision of transport services with regard to the transport of dangerous goods within the Community, it is considered that certain benefits would accrue from this proposal for businesses involved in the transport sector, particularly transport operators.

This proposal does not address the issue of controls, which the Commission intends to cover in a separate Community instrument.

D. Contents of the Proposal

Article 1 determines the scope of this proposal. Excluded from scope are postal consignments as well as vehicles used for the transport of dangerous goods under the control of the armed forces of a Member State. An additional paragraph confirms that existing and future Community legislation on worker safety, construction of vehicles and environmental protection shall be respected.

Article 2 defines the main terms used in the proposal. It is proposed that the definition of dangerous goods covered by this proposal is that provided for in the Annexes, originally taken from the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR), as amended. This definition of dangerous goods is already used in international transport of dangerous goods by road in Europe and in most Member States' national law. In so far as the ADR Agreement is likely to be amended subsequently to align with the multimodal United Nations Recommendations on the Transport of Dangerous Goods, the Annexes to this proposal will likewise be amended to reflect changes to these Recommendations.

The definition of vehicle has been taken from Council Directive 92/53/EEC concerning vehicle type approval, in order to ensure coherence between this proposal and existing Community legislation. While the definition given might be slightly more restrictive in scope than that given in the ADR Agreement, it is considered to cover most 'normal' transports. Other types of vehicle not covered by the definition given in this proposal may be regulated by Member States in their national legislation.

Article 3 regulates the conditions under which dangerous goods are authorised for carriage both in packages and in bulk and covers the prohibitions from transport for certain goods.

The purpose of Article 4 is to allow Member States to retain national standards where these national rules are compatible with the multimodal United Nations Recommendations on the Transport of Dangerous Goods, with which the ADR is gradually being harmonised, so that this state of events will have a temporary character.

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, paragraph 1 reproduces the existing exemption under the ADR Agreement for international transport, whereby Member States are free to prohibit or regulate the transport of certain dangerous goods on their territory for reasons other than safety. Justifiable grounds for a stricter regulation or prohibition might be environmental or reasons of national security. Examples would be restrictions on dangerous goods transport in environmentally sensitive areas or prohibitions on the transport of explosives for reasons of national security.

Paragraph 2, linked to paragraph 1, seeks to clarify the scope of the existing provision in marginal 10 599 of the Annexes to the proposal where Member States may impose the same restrictions currently applied in national transport of dangerous goods, to vehicles effecting an international journey across its territory. Such restrictions should be limited to aspects of local traffic circulation.

Paragraph 3 provides for Member States to impose more stringent measures, which might already exist for vehicles registered on their territory, provided that these do not relate to vehicle construction.

Article 6, paragraph 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 ADR at this stage in its harmonisation.

Paragraph 2 permits a derogation from the requirement in the Annexes to this Directive for documentation pertaining to a transport journey to appear in a number of languages where transport is confined to the territory of a single Member State.

Paragraphs 3 and 4 provide for an exemption for an unlimited period from the provisions of this Directive for vehicles, receptacles and tanks constructed in accordance with national regulations in force at the date of application of this Directive. Given the investment in such equipment, this should be allowed to continue, provided that it remains safe, to the end of its economic life. Paragraph 4 additionally allows Member States to continue to construct and use equipment which satisfies provisions in national law until harmonised standards for such equipment are developed and incorporated by reference in the Annexes to this proposal but no later than 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. Work on standards is currently underway and will replace much of the detailed provisions in the ADR within the coming years. Until then, Member States are provided with the option of constructing and using equipment either according to the existing provisions of the ADR or according to national provisions.

Paragraph 5 provides for a similar exemption for existing (long-life) re-usable packagings.

Paragraph 6 allows for the display, in national transport only, of emergency action codes (such as the 'Hazchem' code) on the orange plate where these are prescribed for vehicles transporting dangerous goods. This is as an addition, or alternative, to the 'hazard identification number' prescribed by the ADR in the Annexes to this proposal. Such codes provide the emergency services with immediate information on what action to take in the case of an accident involving the load and are well-established, as well as highly valued, in certain Member States. Adoption of a harmonised emergency action code is currently under discussion for incorporation in the ADR.

Paragraph 7 provides for less stringent requirements which might, for instance, apply for consumer transport of gas cylinders for camping equipment, small quantities of explosives for the construction industry or limited amounts of fuel carried in passenger cars.

Paragraph 8 covers the case of temporary derogations from the provisions laid down in the Annexes 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 ADR.

Paragraph 9 permits Member States to derogate from the provisions of the Annexes to this Directive for one-off transports required in a timescale which would not allow sufficient time for revision of the Annexes.

Paragraph 10 places a 2 year limit on existing bilateral or multilateral agreements negotiated under the terms of ADR as from the date of application of this proposal. This period allows sufficient time for existing derogations, deemed to be necessary, to be introduced and published as new provisions in the annexes to the ADR and to be adopted by way of Committee procedure provided for in Article 8 as amendments to the Annexes to this Directive.

Article 7 states that vehicles registered in third countries may perform international transport of dangerous goods on the territory of the Community in so far as they comply with the provisions of the ADR.

Articles 8 and 9 establish the Committee procedure for further harmonisation of provisions governing the transport of dangerous goods by road. In particular, this is to align this Directive with amendments to the ADR, but also to harmonise with the UN Recommendations on the Transport of Dangerous Goods, to incorporate newly developed standards and to allow for additional measures which ensure a satisfactory level of safety.

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

Article 11 relates to existing Council Directive 89/684/EEC, the provisions of which are now covered in the annexes this proposal. Existing provisional certificates issued by a Member State under Article 4,4 of that Directive will be recognised under this proposal up to the same terminal dates.

**Proposal for a Council Directive on the approximation
of the laws of Member States with regard to the transport of dangerous
goods by road**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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 opinion of the European Parliament⁽²⁾,

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

Whereas, over the years, both national and international transport of dangerous goods by road have significantly increased, adding to the risk of accidents;

Whereas all Member States of the Community, except Ireland, are contracting parties to the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) - the geographical scope of which extends beyond the Community alone - which sets down uniform rules for the safe international transport of dangerous goods by road; whereas it is consequently desirable that such rules should be extended in scope to national traffic in order to harmonise across the Community conditions under which dangerous goods are carried by road;

Whereas there is no Community legislation embracing the full range of measures required to be met to ensure the safe transport of dangerous goods and the relevant national measures vary from one Member State to another; whereas these divergences create an obstacle to the free provision of transport services and, moreover, to the free movement of vehicles and transport equipments; whereas in order to overcome this obstacle, uniform conditions applicable for all intra-Community transport need to be put in place;

(1) OJ No C
(2) OJ No C
(3) OJ No C

Whereas application of the principle of subsidiarity leads to the conclusion that an action of this nature is most appropriate at Community level in order to ensure coherence with other Community legislation, to ensure a sufficient degree of harmonisation to facilitate the free movement of goods and services and to ensure a high level of safety for national and international transport operations;

Whereas no Community legislation is yet in place to cover the classification, packaging and labelling of dangerous substances for transport; whereas the Community has adopted Council Directive 67/548/EEC⁽¹⁾ on the approximation of 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 substances, 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 no specific Community legislation is yet in place to govern the conditions of safety under which biological agents and genetically modified organisms, regulated under Council Directives 90/219/EEC⁽²⁾, 90/220/EEC⁽³⁾ and 90/679/EEC⁽⁴⁾ should be transported;

Whereas measures for the safety and health of workers at work have been set down in Council Directive 89/391/EEC⁽⁵⁾; whereas further Community measures are being developed on the minimum safety and health requirements for transport activities and workplaces on means of transport;

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, vehicle construction and environmental protection;

(1) OJ No L 196, 16.8.67, p.1
(2) OJ No L 117, 8.5.90, p. 1
(3) OJ No L 117, 8.5.90, p.15
(4) OJ No L 374, 31.12.90, p.1
(5) OJ No L 183, 29.6.89, p.1

Whereas the provisions of the ADR Agreement authorise the conclusion of agreements derogating from the ADR and that the large number of these agreements negotiated on a bilateral basis between Member States creates distortion in the free provision of transport services for dangerous goods; whereas the inclusion of necessary provisions in the Annexes to this Directive should overcome the need for such derogations; whereas it is necessary to provide for a transitional period during which existing agreements may still be applied by Member States;

Whereas it is necessary to transpose into Community law internationally accepted ADR provisions, including construction requirements for vehicles transporting dangerous goods, since Council Directive 70/156/EEC⁽¹⁾, as last amended by Council Directive 92/53/EEC⁽²⁾, does not currently cover specific requirements for type approval of vehicles used for the transport of dangerous goods;

Whereas requirements for type approval purposes will be harmonized in the context of Council Directive 70/156/EEC, referring to the requirements of this Directive, as appropriate;

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

Whereas Member States should retain the right to implement rules reflecting the multimodal United Nations Recommendations on the Transport of Dangerous Goods in national transport in so far as the ADR is not yet harmonised with these rules which would facilitate the inter-modal transport of dangerous goods;

Whereas Member States should have the right to regulate or prohibit the transport of certain dangerous goods on their territory, but only for reasons other than transport safety;

(1) OJ No L 42, 23.2.70, p.1

(2) OJ No L 225, 10.8.92, p.1

Whereas for the purposes of this Directive Member States should be allowed to apply more stringent, or more lenient requirements on certain transport operations performed on their territory in vehicles registered on that territory; whereas in this context Member States may retain the right to impose for certain transports the use of other modes;

Whereas, in particular, this harmonisation 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 derogations; 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 vehicles registered in third countries should be allowed to perform international transport on the territory of a Member State if they comply with the provisions of the ADR;

Whereas it must be possible to adapt this Directive rapidly to technical progress, namely by adoption of new provisions laid down in the ADR, by incorporation of a reference to harmonised standards and by inclusion of other measures considered to enhance safety and, 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 the Member States and the Commission within this Committee;

Whereas the Annexes to this Directive contain provisions covering the vocational training of certain drivers of vehicles carrying dangerous goods by road and that therefore Council Directive 89/684/EEC⁽¹⁾ should be repealed;

HAS ADOPTED THIS DIRECTIVE:

(1) OJ No L 398, 30.12.89, p.33

CHAPTER I

Scope, definitions and general provisions

Article 1

1. This Directive shall apply to the transport of dangerous goods by road effected in the Community. It shall not apply to the transport of dangerous goods effected by vehicles belonging to or under the control of the armed forces of a Member State nor to postal consignments.
2. However, the provisions of this Directive shall not affect the right of Member States, with due regard to Community law, to lay down requirements for transport of dangerous goods effected by vehicles falling outside the scope of this Directive.
3. The provisions contained in this Directive shall apply without prejudice to other Community legislation on worker safety, vehicle construction and environmental protection.

Article 2

For the purpose of this Directive:

- 'ADR' shall mean the European Agreement concerning the International Carriage of Dangerous Goods by Road, concluded in Geneva on 30 September 1957, as amended;
- 'vehicle' shall mean any motor vehicle intended for use on the road, being complete or incomplete, having at least four wheels and a maximum design speed exceeding 25 km/h, and its trailers - with the exception of vehicles which run on rails and of agricultural and forestry tractors and all mobile machinery;
- 'dangerous goods' shall mean those substances and articles the transport by road of which is prohibited by, or authorized only on certain conditions by Annexes A & B to this Directive;

- 'transport' shall mean any road transport operation performed wholly or partly on public roads on the territory of a Member State by vehicles defined above. It shall not mean transport wholly performed within undertakings.

Article 3

1. Dangerous goods prohibited from transport by Annexes A & B to this Directive, without prejudice to the provisions of Article 6, shall not be accepted for transport by road.
2. Transport of other dangerous goods listed in Annexes A & B shall be authorised subject to compliance with the conditions laid down in Annexes A & B , in particular as regards:
 - (a) the packaging and labelling of the goods in question, and
 - (b) the construction, equipment and operation of the vehicle carrying the goods in question, subject to the provisions of Articles 4, 5 & 6.
3. Any references in Annexes A & B to this Directive to a "contracting party" shall, for the purposes of this Directive, mean a Member State.

CHAPTER II

Derogations, restrictions and exemptions

Article 4

Each Member State may, for the purposes of national transport operations performed by vehicles registered on its territory only, retain provisions existing in national law on the transport of dangerous goods by road which are consistent with the UN Recommendations on the Transport of Dangerous Goods until such time as Annexes A & B to this Directive are revised to reflect those recommendations. In such a case each Member State shall inform the Commission thereof.

Article 5

1. Without prejudice to other Community legislation, each Member State may retain the right to regulate or prohibit, strictly for reasons other than safety during transport, the transport of certain dangerous goods on its territory.
2. Any provisions imposed by a Member State concerning the operation of vehicles in international transport on its territory and authorised by marginal 10 599 of Annex B to this Directive shall be limited in scope to aspects of local traffic circulation, shall apply both to national and international transport and shall not entail any discrimination.
3. Each Member State may continue to apply more stringent provisions concerning transport carried out by vehicles registered or brought into service on its territory, excluding construction requirements.

Article 6

1. Each Member State may accept for transport by road on 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.
2. Any provisions given in the Annexes to this Directive concerning the use of languages in relevant marking or documentation shall not apply to transport operations confined to the territory of a single Member State. Member States may authorise the use of languages other than those provided for in the Annexes for transport operations performed on their territories.
3. Each Member State may allow on its territory the use of vehicles constructed before the date of application of this Directive which do not conform to the provisions herein but were constructed according to the requirements in national legislation in force up to the date of application of this Directive, provided that these vehicles are satisfactorily maintained to the relevant safety levels.

4. Each Member State may retain provisions existing in national legislation before the date of application of this Directive relating to the construction, use and conditions of carriage of new tanks and receptacles, which differ from the provisions laid down in Annexes A & B to this Directive, until such time as references to standards for the construction and use of tanks and receptacles are provided in Annexes A & B to this Directive as satisfying the provisions therein and no later than 31 December 1998. Receptacles and tanks constructed before 1 January 1999 and satisfactorily maintained to the relevant safety levels may continue to be used under the original conditions.

5. Each Member State may allow the use of packagings constructed and not certified in accordance with the provisions of the ADR before the date of application of this Directive, provided that the packaging shows the date of manufacture and that it would be capable of passing the appropriate tests according to the requirements in national legislation in force up to the date of application of this Directive 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 stainless steel and aluminium drums for a maximum period of 15 years from their date of manufacture; other metal and plastics packagings for a maximum period of 5 years from their date of manufacture but not after 31 December 1998.

6. Each Member State may retain its provisions requiring only the display in the same manner of an emergency action code on tanks carried by vehicles registered on its territory, until such time as an internationally agreed emergency action code is developed.

7. Each Member State may retain less stringent provisions than those set out in Annexes A & B to this Directive for national transport of small quantities of certain dangerous goods. It shall inform the Commission of the legal provisions concerned.

8. Each Member State may grant approval for temporary derogations from Annexes A & B to this Directive for the purpose of carrying out the trials necessary with a view to amending Annexes A & B to this Directive in order to adapt them to technological and industrial developments, without discrimination on the grounds of nationality or place of establishment of the haulier, for a maximum period of 4 years, provided that no loss of safety arises. Such approvals shall be non-renewable. The Commission shall be informed thereof.

9. Each Member State may authorise one-off transports of dangerous goods which are either prohibited by Annexes A & B or effected under different conditions than those in Annexes A and B to this Directive.

10. Without prejudice to the provisions of paragraph 2 above, each Member State may, until 31 December 1996, apply existing bilateral or multilateral agreements with other Member States as permitted by the ADR without discrimination on the grounds of nationality or place of establishment of the haulier. Any further derogations as authorised by marginals 2010 and 10 602 of Annexes A & B shall only be permitted on a unilateral basis under paragraph 8.

Article 7

Vehicles registered or put into service in third countries shall be admitted to perform international transport within the Community if they comply with the provisions of the ADR.

CHAPTER III
Final provisions

Article 8

Any amendments necessary to adapt the Annexes to scientific and technical progress in the fields covered by this Directive, notably to take account of future amendments to the annexes of the ADR, to incorporate a reference to standards and to ensure that acceptable levels of safety are assured shall be adopted in accordance with the procedure laid down in Article 9.

Article 9

1. The Commission shall be assisted by a Committee on the adaptation to technical progress of the Directive on the approximation of the laws of Member States with regard to the transport of dangerous goods, hereinafter referred to as '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. The Commission shall adopt measures which shall apply immediately. 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 for a period to be laid down in each act adopted by the Council, but which may in no case exceed three months from the date of Communication.

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

Article 10

1. The Member States shall implement the laws, regulations and administrative measures necessary to comply with this Directive before 1 January 1995. They shall immediately inform the Commission thereof.

When these measures are adopted by Member States, they shall contain a reference to this Directive or shall be accompanied by such a reference at the time of their official publication. The procedure of making such a reference shall be laid down by the 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

Council Directive 89/684/EEC on vocational training for certain drivers of vehicles carrying dangerous goods by road is hereby repealed as from the date of application of this Council Directive. Provisional certificates issued by Member States in accordance with Article 4, 2 of that Directive for national transport only shall remain valid until 31 December 1996. Certificates issued in accordance with Article 4, 4 of that Directive may continue to be used until the end of their period of validity, but not later than 1 July 1997 for dangerous goods transported in tanks as well as for explosives and not later than 1 January 2000 for other dangerous goods.

Article 12

This Directive is addressed to the Member States.

Done at Brussels,

ANNEX A

Marginals 2 000 - 3 999 of Annex A of the European Agreement on the International Carriage of Dangerous Goods by Road (ADR), as effective at 1 January 1995.

N.B. A translation in all Community languages will be made available as soon as a consolidated text is prepared and translations are ready.

ANNEX B

Marginals 10 000 - 260 000 of Annex B of the European Agreement on the International Carriage of Dangerous Goods by Road (ADR), as effective at 1 January 1995.

N.B. A translation in all Community languages will be made available as soon as a consolidated text is prepared and translations are ready.

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