COUNCIL DIRECTIVE 96/35/EC

of 3 June 1996

on the appointment and vocational qualification of safety advisers for the transport of dangerous goods by road, rail and inland waterway

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 189c of the Treaty [3],

Whereas over a number of years the quantities of dangerous goods transported nationally and internationally have increased considerably, increasing the risk of accidents;

Whereas some of the accidents which occur when dangerous goods are transported may be caused by insufficient knowledge of the risks inherent in such transport;

Whereass it is necessary, in the context of the completion of the single market in transport, to adopt measures to improve the prevention of the risks inherent in such transport;

Whereas Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work [4] does not introduce measures to prevent the risks inherent in the transport of dangerous goods;

Whereas undertakings involved in the transport or the related loading or unloading of dangerous goods should be required to comply with the rules on the prevention of the risks inherent in the transport of dangerous goods, whether by road, rail or inland waterway; whereas, to that end, the appointment of safety advisers for the transport of dangerous goods who have received appropriate vocational training should be prescribed;

Whereas the objective of the vocational training of such safety advisers must be knowledge of the essential laws, regulations and administrative provisions applicable to such transport;

Whereas the Member States must set up a common minimum framework for vocational training attested to by success in an examination;

Whereas the Member States must issue Community-type certificates attesting to advisers' vocational qualifications so that the possessors of such certificates may then practise their trade throughout the Community;

Whereas the vocational qualification of safety advisers will help to improve the quality of the service they provide in the interests of users; whereas such vocational qualification will also help to minimize the risk of accidents which may cause irreversible damage to the environment and serious injury to other persons who may come into contact with dangerous goods,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Aim

The Member States shall take the necessary measures in accordance with the requirements of this Directive to ensure that no later than 31 December 1999 undertakings the activities of which include the transport, or the related loading or unloading, of dangerous goods by road, rail or inland waterway each appoint one or more safety advisers for the transport of dangerous goods, responsible for helping to prevent the risks inherent in such activities with regard to persons, property and the environment.

Article 2

Definitions

For the purposes of this Directive:

(a) 'undertaking' shall mean any natural person, any legal person, whether profit-making or not, any association or group of persons without legal personality, whether profit-making or not, or any official body, whether it has legal personality itself or is dependent upon an authority that has such personality, that transports, loads or unloads dangerous goods;

(1) OJ No C 185, 17. 7. 1991, p. 5 and OJ No C 233, 11. 9. 1992, p. 5.
(2) Opinion delivered on 27 November 1991 (OJ No C 40, 17. 2. 1992, p. 46).
(3) European Parliament Opinion of 15 May 1992 (OJ No C 150, 15. 6. 1992, p. 332), Council common position of 6 October 1995 (OJ No C 297, 10. 11. 1995, p. 13) and European Parliament Decision of 17 January 1996 (OJ No C 32, 5. 2. 1996, p. 49).
(4) OJ No L 183, 29. 6. 1989, p. 1.

(b) 'safety adviser for the transport of dangerous goods', hereinafter referred to as 'adviser', shall mean any person appointed by the head of an undertaking whose role is to carry out the tasks and fulfil the functions defined in Article 4 and who holds the training certificate provided for in Article 5;

(c) 'dangerous goods' shall mean goods defined as such in Annex A to Council Directive 94/55/EC of 21 November 1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road [1];

(d) 'activities' shall mean the transport of dangerous goods by road, rail or inland waterway with the exception of national inland waterways not connected to the inland waterways of other Member States, together with the related loading and unloading.

Article 3

Exemptions

The Member States may provide that this Directive shall not apply to undertakings:

(a) the activities of which concern the transport of dangerous goods in means of transport that belong to the armed forces or are under their responsibility,

(b) the activities of which concern quantities in each transport unit smaller than those defined in marginals 10010 and 10011 in Annex B to Directive 94/55/EC, or

(c) the main or secondary activities of which are not the transport or the related loading or unloading of dangerous goods but which occasionally engage in the national transport or the related loading or unloading of dangerous goods posing little danger or risk of pollution.

Article 4

The role and appointment of the adviser

1. The main task of the adviser shall be, under the responsibility of the head of the undertaking, to seek by all appropriate means and by all appropriate action, within the limits of the relevant activities of that undertaking, to facilitate the conduct of those activities in accordance with the rules applicable and in the safest possible way. He shall perform the duties listed in Annex I relevant to the undertaking's activities.

2. The adviser may also be the head of the undertaking, a person with other duties in the undertaking, or a person not directly employed by that undertaking, provided that that person is capable of performing the duties of adviser.

3. Each undertaking concerned shall, on request, inform the competent authority or the body designed for that purpose by each Member State of the identity of its adviser.

Article 5

Training certificate

1. An adviser shall hold a Community-type vocational-training certificate, hereinafter referred to as 'the certificate', valid for the mode or modes of transport concerned. That certificate shall be issued by the competent authority or the body designated for that purpose by each Member State.

2. To obtain a certificate a candidate shall undergo training and pass an examination approved by the Member State's competent authority.

3. The main aims of the training shall be to provide candidates with sufficient knowledge of the risks inherent in the transport of dangerous goods, of the laws, regulations and administrative provisions applicable to the modes of transport concerned and of the duties listed in Annex I.

4. The examination shall cover at least the subjects listed in Annex II.

5. The certificate shall take the form laid down in Annex III.

6. The certificate shall be recognized by all Member States.

Article 6

The validity of the certificate

The certificate shall be valid for five years. The period of validity of a certificate shall be extended automatically for five years at a time where, during the final year before its expiry, its holder has followed refresher courses or passed an examination both of which must be approved by the competent authority.

Article 7

Accident reports

Whenever an accident affects person, property or the environment or results in damage to property or the environment during transport, loading or unloading carried out by the undertaking concerned, the adviser shall, after collecting all the relevant information, prepare an accident report to the management of the undertaking or to a local public authority, as appropriate.

[1] OJ No L 319, 12. 12. 1994, p. 7.

That report shall not replace any report by the management of the undertaking which might be required in the Member States under any other international, Community or national legislation.

Article 8

Adaptation of the Directive

The amendments necessary to adapt this Directive to scientific and technical progress in the areas within its scope 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 established by Article 9 of Directive 94/55/EC, hereinafter referred to as 'the Committee', which shall consist of representatives of the Member States and shall be chaired by a representative of the Commission.

2. The Commission representative shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on that 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 laid down in that Article. The chairman shall not vote.

3. (a) The Commission shall adopt the measures envisaged if they are in accordance with the Committee's opinion.

(b) If the measures envisaged are not in accordance with the Committee's opinion or if the Committee does not deliver an opinion the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If within three months of the date of the referral to it the Council has not acted, the Commission shall adopt the measures proposed.

Article 10

This Directive shall be without prejudice to the provisions on the safety and health of workers at the workplace laid down in Directive 89/391/EEC and in the individual Directives implementing it.

Article 11

1. The Member States shall bring into force the necessary laws, regulations and administrative provisions in order to comply with this Directive no later than 31 December 1999. They shall forthwith inform the Commission thereof.

When Member States adopt those measures they shall include references to this Directive or shall accompany them with such references on their official publication. The Member States shall prescribe the manner in which such references shall be made.

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

Article 12

This Directive is addressed to the Member States.

Done at Luxembourg, 3 June 1996.

For the Council

The President

T. TREU