Council Directive 95/50/EC of 6 October 1995 on uniform procedures for checks on the transport of dangerous goods by road

COUNCIL DIRECTIVE 95/50/EC

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on uniform procedures for checks on the transport of dangerous goods by road

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

Whereas checks on the transport of dangerous goods by road are carried out in accordance with Council Regulation (EEC) No 4060/89 of 21 December 1989 on the elimination of controls performed at the frontiers of Member States in the field of road and inland waterway transport[(4)] and Council Regulation (EEC) No 3912/92 of 17 December 1992 on controls carried out within the Community in the field of road and inland waterway transport in respect of means of transport registered or put into circulation in a third country[(5)];

Whereas the Council has adopted 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[(6)]; whereas the respective procedures for checking and the definitions relating to this type of transport should accordingly be harmonized in order for compliance with the safety standards laid down therein to be verified more effectively;

Whereas the Member States should ensure a sufficient level of checks on the vehicles concerned throughout their territory while, where possible, avoiding the proliferation of such checks;

Whereas, in the light of the principle of subsidiarity, Community action is therefore necessary to improve the level of safety of the transport of dangerous goods;

Whereas checks should be carried out using a list of common items applicable to such transport throughout the Community;

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

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Whereas, in order to improve compliance with saftey standards for the transport of dangerous goods by road, it is necessary to make provision for checks to be carried out in undertakings as a preventive measure or when serious infringements of laws on the transport of dangerous goods have been recorded at the roadside;

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

Whereas, in the event of serious or repeated infringements, the competent authorities of the Member State in which the vehicle is registered or in which the undertaking is established may be asked to take appropriate measures and whereas they shall inform the requesting Member State of any follow-up measures taken;

Whereas the application of this Directive should be monitored on the basis of a report to be submitted by the Commission,

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

It shall not apply to the transport of dangerous goods by vehicles belonging to or under the responsibility of the armed forces.

2 This Directive shall not, however, affect the Member States' right, with due regard to Community law, to carry out checks on the national and international transport of dangerous goods within their territories performed by vehicles not covered by this Directive.

Article 2

For the purposes of this Directive:

— ‘vehicle’ shall mean any motor vehicle intended for use on the road, whether complete or incomplete, which has at least four wheels and a maximum design speed exceeding 25 km/h, together with its trailers, with the exception of vehicles which run on rails, of agricultural and forestry tractors and of all mobile machinery,

— ‘dangerous goods’ shall mean dangerous goods defined as such in Directive 94/55/EC,

— ‘transport’ shall mean any road transport operation performed by a vehicle wholly or partly on public roads within the territory of a Member State, including the loading and unloading of goods covered by Directive 94/55/EC, without prejudice to the arrangements laid down by the laws of the Member States concerning liability in respect of such operations,

— ‘undertaking’ shall mean any natural or legal person, whether or not profit-seeking, any association or group of persons without legal personality, whether or not profit-seeking, and any body coming under a public authority, whether itself possessing legal personality or dependent on an authority having such personality, which carry, load or unload dangerous goods or cause them to be carried and those which temporarily store, collect, package or take delivery of such goods as part of a transport operation and are located in the territory of the Community,

— ‘check’ shall mean any check, control, inspection, verification or formality carried out by the competent authorities for reasons of safety inherent in the transport of dangerous goods.

Article 3

1 The Member States shall ensure that a representative proportion of consignments of dangerous goods transported by road is subject to the checks laid down by this Directive, in order to check their compliance with the laws on the transport of dangerous goods by road.

2 Such checks shall be carried out in the territory of a Member State in accordance with Article 3 of Regulation (EEC) No 4060/89 and Article 1 of Regulation (EEC) No 3912/92.

Article 4

1 In order to carry out the checks provided for in this Directive, the Member States shall use the checklist in Annex I. A copy of this checklist or a certificate showing the result of the check drawn up by the authority which carried it out shall be given to the driver of the vehicle and presented on request in order to simplify or avoid, where possible, subsequent checks. This paragraph shall not prejudice Member States' right to carry out specific measures for detailed checks.

2 The checks shall be random and shall as far as possible cover an extensive portion of the road network.

3 The places chosen for these checks must permit infringing vehicles to be brought into compliance or, if the authority carrying out the check deems it appropriate to be immobilized on-the-spot or at a place desginated for that purpose by the said authority without causing a safety hazard.

4 Where appropriate and provided that this does not constitute a safety hazard, samples of the goods transported may be taken for examination by laboratories recognized by the competent authority.

5 Checks shall not exceed a reasonable length of time.

Article 5

Without prejudice to other penalties which may be imposed, vehicles in respect of which one or more infringements of the rules on the transport of dangerous goods, in particular infringements listed in Annex II, are established may be immobilized either on-the-spot or at a place designated for this purpose by the authorities carrying out the check and required to be brought into conformity before continuing their journey or may be subject to other appropriate measures, depending on the circumstances or the requirements of safety including, where appropriate, refusal to allow such vehicles to enter the Community.

Article 6

1 Checks may also be carried out at the premises of undertakings, as a preventive measure or where infringements which jeopardize safety in the transport of dangerous goods have been recorded at the roadside.

2 The purpose of such checks shall be to ensure that safety conditions for the transport of dangerous goods by road comply with the relevant laws.

Where one or more infringements, in particular those listed in Annex II, have been established in respect of the transport of dangerous goods by road, the transport in

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question shall be brought into conformity before the goods leave the undertaking or shall be subject to other appropriate measures.

Article 7

1 Member States shall assist one another in order to give proper effect to this Directive.

2 Serious or repeated infringements jeopardizing the safety of the transport of dangerous goods committed by a non-resident vehicle or undertaking must be reported to the competent authorites in the Member State in which the vehicle is registered or in which the undertaking is established.

The competent authorities of the Member State in which serious or repeated infringements have been recorded may ask the competent authorities of the Member State in which the vehicle is registered or in which the undertaking is established for appropriate measures to be taken with regard to the offender or offenders.

The latter competent authorities shall notify the competent authorities of the Member State in which the infringements were recorded of any measures taken with regard to the transporter or the undertaking.

Article 8

If the findings of a roadside check on a vehicle registered in another Member State give grounds for believing that serious or repeated infringements have been committed which cannot be detected in the course of that check in the absence of the necessary data, the competent authorities of the Member States concerned shall assist one another in order to clarify the situation. Where, to that end, the competent Member State carries out a check in the undertaking, the other Member States concerned shall be notified of the results.

Article 9

1 Each Member State shall send the Commission for each calendar year not later than twelve months after the end of that year a report, drawn up in accordance with the model in Annex III, on the application of this Directive, including the following particulars:

— if possible, determined or estimated volume of dangerous goods transported by road (in tonnes transported or in tonnes/kilometres),

— number of checks carried out,

— number of vehicles checked by place of registration (vehicles registered nationally, in other Member States or in third countries),

— number and types of infringements recorded,

— type and number of penalties imposed.

2 The Commission shall send the European Parliament and the Council, for the first time in 1999 and subsequently at least every three years, a report on the application of this Directive by the Member States, stating the particulars in accordance with paragraph 1 above.

***[F1** Article 9a*

The Commission is empowered to adopt delegated acts in accordance with Article 9aa amending the Annexes in order to adapt them to scientific and technical progress in the fields covered by this Directive, in particular to take account of amendments to Directive 2008/68/EC of the European Parliament and of the Council[(7)].**]**

Textual Amendments

F1 Substituted by Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union (Text with EEA relevance).

[F2 Article 9aa

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2 The power to adopt delegated acts referred to in Article 9a shall be conferred on the Commission for a period of five years from 26 July 2019. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3 The delegation of power referred to in Article 9a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4 Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[8].

5 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6 A delegated act adopted pursuant to Article 9a shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.**]**

Textual Amendments

F2 Inserted by Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union (Text with EEA relevance).

F3 Article 9b

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