



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.03.1998
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98/0106 (SYN)

Proposal for a

COUNCIL DIRECTIVE

on

**the harmonization of examination requirements for safety advisers
for the transport of dangerous goods by road, rail or inland waterways**

(presented by the Commission)

Explanatory memorandum

A. The aim of the proposal

This proposal aims to harmonize regulations in the Member States concerning the examination of safety advisers for the transport of dangerous goods by road, rail or inland waterway. The need for requiring harmonized test rules as a condition of exercising the safety adviser profession derives from the fact that examination requirements and levels in all Member States are different.

The proposed Directive would serve to guarantee a uniform and high standard of training of safety advisers and would be a further step toward ensuring the safe transport of dangerous goods. Such a measure is also necessary because the EC training certificate awarded to safety advisers will be recognized by all Member States.

The proposed Directive would also have a favorable effect with regard to competition between companies affected by the measure. The Commission wishes to ensure that the quality of training of safety advisers is not undermined in relation to the transport of dangerous goods, an area of particular sensitivity for transport safety and environmental protection. The prevention of accidents and incidents requires a guaranteed and uniformly high level of training throughout the Community confirmed after passing of an examination.

Under Directive 96/35/EC¹, all companies whose activity includes the transport of dangerous goods by road, rail or inland waterway, including loading or unloading connected with such transport, are obliged to appoint one or more safety advisers. The task of the safety advisers is to reduce as far as possible the risks to persons, property and the environment arising from the transport of dangerous goods, on the basis of the principle of prevention.

The professional competence of the safety adviser is to be ensured by special training and approved by a certificate, after passing of an examination. The training certification is to be recognized by all Member States. Directive 96/35/EC does not contain any detailed provisions on the harmonization of examination requirements.

¹ Council Directive 96/35/EC of 3 June 1996 on the appointment and the vocational qualification of safety advisers for the transport of dangerous goods by road, rail or inland waterway, OJ No L 145 of 19 June 1996, p. 10

B. Justification for action at Community level

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

The main objective of the action envisaged is to enhance safety in the transport of dangerous goods within the Community. This would be achieved through the proposed harmonization, at a high level, of examination conditions for safety advisers. In addition, the proposal contributes towards the harmonization of the terms of competition regarding training costs. The need for requiring harmonized test rules as a condition of exercising the safety adviser profession derives from the fact that examination requirements and levels in all Member States are different.

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

Competence is shared between the Community and the Member States.

- 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)?*

Council Directive 96/35/EC, regulating the appointment of safety advisers, is binding on all Member States. However, measures for harmonizing examination conditions do not exist.

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

Given the different conditions of examination in Member States which do not ensure that the level of knowledge corresponds to the same high standards required throughout the Community for the transport of dangerous goods, action at Community level is the only possible way to solve these problems.

Therefore, the enhancement of transport safety and the completion of the Internal Market call for measures that can only be taken satisfactorily at Community level in order to achieve this objective.

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

The principles established by the proposed Directive will have the favorable effect of establishing uniform examination conditions throughout the Community. Thus, for example, the minimum frames for examination with regard to the organization and content are clearly specified. Finally, conditions are fixed for companies wishing to provide services on the training market as examination bodies. The role of the competent authority in the Member States is also laid down.

To sum up, in the interest of transport safety, the education standard for dangerous goods officers is standardized, and at the same time a high standard of examination conditions is guaranteed.

- f) *What forms of actions 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 harmonizing the training requirements and enhancing transport safety. A Directive offers sufficient flexibility to allow of existing national rules to be amended rather than replacing them with a Regulation. A recommendation is not a legally binding act.

- 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 adoption of a Council Directive is the appropriate procedure for laying down a legal framework for harmonizing examination requirements for safety advisers, while leaving to the Member States the means of enforcement and the implementation of this Directive.

C. Legal basis

The measure is proposed on the basis of Article 75,1 (c) of the Treaty.
The text is relevant for the EEA Treaty.

D. Consultation of interested parties

Member States and representatives of associations from various industry sectors including chemicals, gas and transport industries were consulted about this proposal. It was acknowledged that the establishment of a level playing field for the examinations to be taken by safety advisers will help to guarantee high safety standards. Notwithstanding comments on the details, a clear majority of those involved advocated the new project and they supported it. There will be no additional burdens or costs to industry resulting from this Directive.

E. Contents of the proposal

Article 1 outlines the purpose of this proposal and determines its scope.

Article 2 defines the main terms used in the proposal.

Article 3 regulates the organization and content of the examination.

Article 4 specifies Member States' right to grant a derogation in order to limit the scope of the examinations in some well-defined cases.

Article 5 regulates the minimum requirements for examination bodies.

Article 6 specifies requirements for approval of examination bodies.

Article 7 concerns the cooperation between Member States and the exchange of information on the catalogue of questions as referred to in Article 3.

Article 8 describes the procedure to be followed in the Committee to be used by this Directive.

Article 9 establishes the measures with which each Member State has to comply in order to enforce the Directive.

Articles 10 and 11: No comment.

**Proposal for a Council Directive on
the harmonization of examination requirements for safety advisers
for the transport of dangerous goods by road, rail or inland waterways**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 75,1 (c) thereof;

Having regard to the proposal from the Commission¹,

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

Acting in accordance with the procedure referred to in Article 189c of the Treaty and in co-operation with the European Parliament³,

Whereas the improvement of transport safety and the protection of the environment especially within the transport of dangerous goods by road, rail and inland waterways are important issues, whereas the human element is relevant in the safe operation of the modes of transport;

Whereas under the terms of 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 waterway⁴ all companies whose activity includes the transport of dangerous goods including loading or unloading connected with such transport, are obliged to appoint one or more safety advisers; whereas Council Directive 96/35/EC does not contain any detailed provisions on the harmonization of examination requirements and examination bodies;

¹ O J C ...

² O J C ...

³ O J C ...

⁴ O J No L 145, 19.06.1996, p. 10

Whereas the Member States must set up a common framework for the examination and the conditions for the examination bodies in order to guarantee a certain level of quality and to facilitate the mutual recognition of the certificates throughout the Community;

Whereas the provisions of this Directive aim to harmonize the examination requirements; whereas the examination shall take the form of a written examination and consist of questions based on topics laid down in Annex II of Directive 96/35/EC and a case study where the candidates can demonstrate that they have the capacity to fulfill the tasks of a safety adviser;

Whereas Member States may provide that safety advisers working for undertakings whose activities are concerned only with specific dangerous goods shall be examined only on the subject matters related to their activities, whereas the EC certificate will clearly indicate the limited validation;

Whereas the examination carried out by the examination bodies shall be subject to approval by the competent authority of the Member States, whereas Member States shall define the conditions of examination bodies in order to guarantee a high level of quality of the services, whereas the examination bodies shall be technically competent and reliable;

Whereas Member States shall assist one another in the implementation of this Directive;

Whereas the Commission shall be assisted by a consultative committee provided by Council Decision 87/373/EEC of 13 July 1987;

HAS ADOPTED THIS DIRECTIVE:

Chapter I
Scope and definitions

Article 1
Scope

(1) This Directive lays down the compulsory examination requirements to be met for the appointment of safety advisers for the transport of dangerous goods in accordance with Directive 96/35/EC.

(2) Member States shall take all necessary and appropriate measures to ensure that safety advisers are examined in conformity with the requirements provided by the present Directive.

Article 2
Definitions

For the purposes of this Directive :

- ‘safety adviser for the transport of dangerous goods’, hereinafter referred to as ‘adviser’, shall mean any person specified in Article 2 letter b) of Directive 96/35/EC;
- ‘dangerous goods’ shall mean goods defined in Article 2 of Directive 94/55/EC⁵ and Article 2 of Directive 96/49/EC⁶ on the approximation of the laws of Member States with regard to the transport of dangerous goods by road and rail;
- ‘initial training’ shall mean the training, after which successful conclusion pursuant to Article 5 of Directive 96/35/EC a vocational-certificate is issued;
- ‘undertaking’ shall mean the undertakings specified in Article 2 letter a) of Directive 96/35/EC;

⁵ OJ No L 319, 12.12.1994, p. 4. Directive amended by Commission Directive 96/86/EC (OJ L 335, 24. 12.1996, p. 43).

⁶ OJ No L 235, 17.09.1996, p. 25. Directive amended by Commission Directive 96/87/EC (OJ No L 335, 24.12.1996, p. 45).

- 'examination' shall mean the examinations specified in Article 5 paragraph 2 of Directive 96/35/EC;
- 'examination body' shall mean any institution approved by Member State's competent authority to conduct out examinations.

Chapter II

Examinations

Article 3

(1) After completion of the initial training, an examination shall be held in accordance with Article 5, paragraphs 2 and 4 of Directive 96/35/EC.

(2) In the examination, the candidates shall demonstrate that they have sufficient knowledge to be awarded the vocational certificate.

(3) For this purpose the competent authority, or the examination body approved by that authority, shall prepare a catalogue of questions in which at least the subjects specified in Annex II of Directive 96/35/EC are covered. Questions in the examination shall be drawn from this catalogue.

(4) The examination shall take the form of a written examination.

(5) (a) Each candidate shall be asked questions on the subject matters covered by Annex II of Directive 96/35/EC as follows:

1. three questions on each subject listed below:

- general preventative and safety measures,
- the classification of dangerous goods,
- general packaging requirements, to include tankers, tank-containers, tank-wagons etc.,
- danger markings and labels,
- references in transport documents,

- handling and stowage,
 - crews: vocational training,
 - vehicle papers, means of transport certificates,
 - safety instructions,
 - requirements relating to transport equipment;
2. two questions on each subject listed below:
- the method of consignment and restrictions on dispatch,
 - prohibitions and precautions relating to mixed loading,
 - the segregation of substances,
 - limits on the quantities carried and exempted quantities,
 - cleaning and/or degassing before loading and after unloading,
 - traffic and/or navigation regulations and restrictions,
 - operational and accidental discharges of pollutants;
3. one question on each subject listed below:
- the transport of passengers,
 - surveillance obligations: parking.

(b) Each candidate shall be given a case study linked to Annex I of Directive 96/35/EC where they can demonstrate that they have the ability to fulfill the tasks of an adviser.

Article 4

(1) Notwithstanding Article 3 paragraph 5, Member States may provide that advisers working for undertakings as defined in Article 2 whose activities are concerned only with specific dangerous goods, namely Class 1 (Explosives), Class 2 (Gases), Class 7 (Radioactive material) or mineral oil products (UN numbers 1202, 1203, 1223), shall be tested, in accordance with Annex II of Directive 96/35/EC only on the subject matters related to their activities. The EC certificate of training issued in accordance with Annex III of Directive 96/35/EC will clearly indicate that it is valid only for the specific dangerous goods in accordance with this Article for which the adviser has been examined.

(2) Before deciding on the conditions of examination according to paragraph 1, Member States shall communicate those conditions to the Commission. Such conditions may only be adopted by Member States if they are approved in accordance with the procedure laid down in Article 8.

Chapter III

Tasks of the competent authority, requirements applicable to examination bodies

Article 5

Member States shall appoint examination bodies, with respect to EC law, on the basis of:

- (a) the qualifications and fields of activity of the examination body;
- (b) a detailed program specifying the subjects examined and indicating the planned test methods, the duration of the written examination and the pass mark.

Article 6

(1) Written examinations shall be set by the examination body. The examination body shall be subject to approval by the competent authority or a designated representative of the Member State.

(2) The approval shall be given by the competent authority or a designated representative of the Member State in written form only and may be for a limited period of time.

(3) Where approval is not time-limited the competent authority or a designated representative of the Member State shall regularly review that approval.

Article 7

Member States shall assist one another in the implementation of this Directive and shall exchange information on the catalogue of questions, as referred to in Article 3 paragraph 3.

Chapter IV

Final provisions

Article 8

(1) The Commission shall be assisted by the Committee on the transport of dangerous goods set up by Article 9 of Directive 94/55/EC, 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, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

Article 9

(1) Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 30 June 1999. They shall forthwith inform the Commission thereof.

When the 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 lay down the manner in which such references shall be made.

Member States shall apply these provisions from 1 January 2000.

(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.

(3) Member States shall lay down the system of penalties for breaching the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that those penalties are applied. The penalties thus provided for shall be effective, proportionate and dissuasive. Member States shall notify the relevant provisions to the Commission not later than 30 June 1998 and shall notify any subsequent changes as soon as possible.

Article 10

This Directive shall enter into force on the twentieth day of its publication in the Official Journal of the European Communities.

Article 11

This Directive is addressed to the Member States.

Done at ...

For the Council

The President

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