

Proposal for a Council Decision amending Council Directive 96/49/EC as regards the time-limits within which pressure drums, cylinder racks and tanks for the transport of dangerous goods by rail must comply with it

(2002/C 262 E/19)

COM(2002) 357 final

(Submitted by the Commission on 3 July 2002)

EXPLANATORY MEMORANDUM

1. Framework Directive 96/49/EC as modified

The transport of dangerous goods in the EU by rail is mainly covered by the Framework Directive 96/49/EC on transport of dangerous goods by rail.

Article 6.4 of the Directive as modified by Council Directive 2000/62/EC authorises each Member State to maintain provisions of national legislation in force on 31 December 1996 relating to the construction, use and conditions of carriage of new receptacles for gases and new tanks which do not comply with its Annex, until references to standards for the construction and use of tanks and receptacles with the same binding force as the provisions of the Directive are added to its Annex and in any event no later than 30 June 2001 with the requirement that this date shall be put back for receptacles and tanks for which there are no detailed technical requirements or for which no sufficient references to the appropriate European standards have been added to the Annex. The receptacles and tanks concerned and the latest date for the application of the Directive as regards those receptacles and tanks shall be determined in accordance with the procedure laid down in Article 9 (comitology procedure with the regulatory Committee on transport of dangerous goods).

This derogation is valid only in national transport and it is currently used by two Member States.

2. Parallel requirements in Council Directive 1999/36/EC on transportable pressure equipment

These receptacles and part of the tanks (pressurised tanks) are also subject to Directive 1999/36/EC on transportable pressure equipment. This Directive, which is merely a Directive on free movement of goods, has the same criteria on the starting date of its application: the Annex to the Framework Directive should contain either sufficient detailed technical requirements or sufficient references to the appropriate European standards on transportable pressure equipment. On this Directive the date of application concerning some types of receptacles (pressure drums and cylinder racks) and all pressurised tanks was deferred to 1 July 2003 using the same comitology procedure (this specific Directive has the same regulatory Committee as the Framework Directive), as it was considered that the Annex did not contain sufficient detailed technical requirements or sufficient references to the appropriate European standards. This opinion of the Committee was given on 19.7.2000 and the corresponding Commission Decision deferring for certain transportable pressure equipment the date of implementation of Council Directive 1999/36/CE was adopted on 25 January 2001 ⁽¹⁾.

3. Comparison of the Framework Directive with the Directive on transportable pressure equipment concerning the deferral of dates of application

It should be noted that deferring the dates of application in the Framework Directive and in the Transportable Pressure Equipment Directive has different consequences. Deferring dates in Article 6.4 of the Framework Directive gives in fact more time to the Member States concerned to use in their national transport equipment that is not in conformity with the Framework Directive, but deferring the dates in the Transportable Pressure Equipment Directive ensures that equipment that has a Community certification mark (π) and that has the guarantee not only for free transport (covered already by the Framework Directive) but most importantly for free putting into the market, is certified using harmonised requirements.

⁽¹⁾ OJ L 39, 9.2.2001, p. 43.

4. The Commission proposal and the decision of the regulatory Committee on transport of dangerous goods

Taking into account the same background facts and the obligation in the Framework Directive to initiate the procedure, the Commission prepared a draft Decision in order to defer the date of application according to Article 6.4 of the Framework Directive to 1 July 2003. This question was first discussed at the Committee meeting on 27 November 2001 with only one Member State opposing such an approach. Therefore the Commission put the question for vote in the Committee meeting of 7 March 2002. During the discussion before the vote Member States became very critical on this issue. The Commission proposal received only 13 votes in favour and was thus rejected by the Committee.

5. The proposal submitted to the Council

As the Committee did not deliver a favourable opinion on the Commission proposal and as the Commission has a legal obligation to propose the deferral of this date taking into account the lack of detailed technical specification or sufficient references to European Standards in the Annex of the Framework Directive, the Commission is now submitting this proposal to the Council.

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty establishing the European Community,

Article 1

In Article 6(4) of Directive 96/49/EC the first and second subparagraphs are replaced by the following:

Having regard to Council Directive 96/49/EC of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail ⁽¹⁾, as last amended by Commission Directive 2001/6/EC ⁽²⁾, and in particular Article 6(4) third subparagraph thereof,

‘A Member State may maintain national provisions in force on 31 December 1996 relating to the construction, use and conditions of carriage of new tanks, and new pressure drums and cylinder racks as defined in Class 2 of the Annex, which differ from the provisions of that Annex until references to standards for the construction and use of tanks, pressure drums and cylinder racks are added to the Annex, with the same binding force as the provisions therein, but in any event no later than 30 June 2003. Pressure drums, cylinder racks and tanks constructed before 1 July 2003 and other receptacles constructed before 1 July 2001 and maintained to the required safety levels may continue to be used under the original conditions.

Whereas:

The dates 30 June 2003 and 1 July 2003 shall be put back for pressure drums, cylinder racks and tanks for which there are no detailed technical requirements or for which no sufficient references to appropriate European standards have been added to the Annex.’

(1) The European standards laying down detailed technical specifications relating to the construction, use and conditions of carriage of pressure drums, cylinder racks and tanks for the transport of dangerous goods by rail have not yet been added to the Annex to Directive 96/49/EC, since standardisation of the CEN on them is not yet complete.

(2) It is therefore necessary to defer the deadlines, fixed in Article 6(4) of Directive 96/49/EC, by which such pressure drums, cylinder racks and tanks must comply with Directive 96/49/EC.

Article 2

(3) Directive 96/49/EC should therefore be amended accordingly.

This Decision shall apply from 1 July 2001.

Article 3

(4) In order to avoid any legal uncertainty this decision should apply from 1 July 2001,

This Decision is addressed to the Member States.

⁽¹⁾ OJ L 235, 17.9.1996, p. 25.

⁽²⁾ OJ L 30, 1.2.2001, p. 42.