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2014/0035 (NLE)

Proposal for a

COUNCIL DECISION

establishing the position to be adopted by the Union at the 53rd session of the OTIF Committee of Experts on the Transport of Dangerous Goods as regards certain amendments to Appendix C to the Convention concerning International Carriage by Rail (COTIF) applicable from 1 January 2015

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The proposed Council Decision has the objective to establish the position of the European Union at the OTIF Committee of Experts on the Transport of Dangerous Goods (henceforth "RID expert committee") due to take place on 22 May 2014 as regards certain amendments to the technical and administrative provisions contained in the Annex to Appendix C to the Convention concerning International Carriage by Rail (COTIF), which are due to be decided upon by the said committee.

The above mentioned annex, commonly known as the "RID" (*Regulations concerning the International Carriage of Dangerous Goods by Rail*), regulates the international transport of dangerous goods by rail between those COTIF Contracting States that apply the RID rules (RID Contracting States).

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The international provisions relating to the transport of dangerous goods are established in various international organisations such as OTIF, United Nations Economic Commission for Europe (UN-ECE) and various specialised agencies of United Nations. Since the rules need to be compatible with one another, a complex international system for coordination and harmonisation has been developed between the organisations involved in this work. The provisions are adapted following a two-year cycle.

A large range of public and private sector experts has been consulted during the preparation of these amendments. The following technical meetings have been carried out during the development of these amendments:

at the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods in its

(1) 41st session in Geneva, 25 June – 4 July 2012,

(2) 42nd session in Geneva, 3 – 11 December 2012,

(3) 43rd session in Geneva, 24 – 28 June 2013 and

(4) 44th session in Geneva, 25 November – 4 December 2013,

at the UN-ECE – OTIF Joint Meeting of the RID Committee of Experts and the Working Party on the Transport of Dangerous Goods in its

(1) autumn 2012 session in Geneva, 17 – 21 September 2012,

(2) spring 2013 session in Bern, 18 – 22 March 2013,

(3) autumn 2013 session in Geneva, 17 – 27 September 2013, and

(4) there is a further Joint Meeting, spring 2014 session in Bern, 17 – 21 March 2014, which is expected to recommend further amendments applicable on 1 January 2015,

at the standing working group of the RID committee of experts in its

(1) first session in Riga, 12 – 15 November 2012, and

(2) second session in Copenhagen, 18 – 22 November 2013.

In these meetings the individual proposals for amendments have been analysed and processed by the expert committees. In most cases the recommended action has been agreed upon

unanimously. Certain proposals have been recommended by a majority view of the experts. The RID expert committee will take decisions on these proposals on 22 May 2014.

The committee on the transport of dangerous goods, established under Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods[1], carried out preliminary discussions on the proposals in its meeting on 12 December 2013.

The European Railway Agency (ERA) has made an extensive impact assessment on the application of derailment detectors[2]. ERA concludes that the compulsory application of these devices on wagons carrying certain dangerous goods is not cost-effective.

3. LEGAL ELEMENTS OF THE PROPOSAL

The Union acceded to COTIF in July 2011 by virtue of Council Decision 2013/103/EU[3]. COTIF is a mixed agreement where both the Union and all Member States are contracting parties. Annex III to the Decision establishes the internal arrangements for the Council, the Member States and the Commission in proceedings under OTIF. In matters of exclusive EU competence, the EU votes with the number of votes of all Member States which are members of COTIF. There are 26 EU Member States that are also Member States of COTIF. Currently there are forty-six RID Contracting states and forty-eight OTIF Member States.

Since 1 January 1997 the Union has applied the RID provisions to all transport on the EU territory, initially pursuant 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[4]. In 2008 Directive 96/49/EC was repealed by Directive 2008/68/EC which pursues the principles of its predecessor.

Article 4 of Directive 2008/68/EC, concerning third countries establishes that "The transport of dangerous goods between Member States and third countries shall be authorised in so far as it complies with the requirements of the ADR, RID or ADN, unless otherwise indicated in the Annexes"[5]. In addition, Recital 12 of the Directive establishes that "The use of means of transport registered in third countries should be allowed for the international transport of dangerous goods within the territories of the Member States, subject to compliance with the relevant provisions of the ADR, RID or ADN and of this Directive". Therefore the matter of the above mentioned amendments falls entirely within exclusive Union competence.

Thus, in accordance with Article 35 of Title VI of COTIF, once decided upon by the RID expert committee, the amendments shall enter into force for all Contracting parties on the first day of the sixth month following that during which the Secretary General has given notice of them to the Contracting Parties. A contracting party may formulate an objection within the period of four months from the day of the notification. In the case of objection by one-quarter of the Contracting Parties, the modification shall not enter into force.

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1 OJ L 260, 30.9.2008, p. 13.

2 Impact assessment on the use of derailment detection devices in the EU railway system, reference ERA/REP/03-2009/SAF.

3 Council Decision of 16 June 2011 on the signing and conclusion of the Agreement between the European Union and the Intergovernmental Organisation for International Carriage by Rail on the Accession of the European Union to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999, OJ L 51 of 23.2.2013, p. 1.

4 OJ L 235 of 17.09.1996, p. 25.

5 ADR and ADN are the acronyms for the international agreements concerning the transport of dangerous goods by road and inland waterways, respectively.

In the Contracting Parties which have formulated objections against a decision within the foreseen period, the application of the Appendix C shall be suspended, in its entirety, from the moment the decisions take effect, in so far as it concerns traffic with and between those parties. However, in the case of objection to the validation of a technical standard or to the adoption of a uniform technical prescription, only that standard or prescription shall be suspended in respect of traffic with and between the Member States from the time the decisions take effect; the same shall apply in the case of a partial objection.

Unless a sufficient number of objections are raised by the parties, the amendments concerned under this proposal are expected to enter into force on 1 January 2015 and become binding on the Union and the Member States, forming an integral part of the Union *acquis.*

Finally, Article 38 of Title VII of COTIF establishes that for the purposes of the exercise of the right to vote and the right to object provided for in Article 35§2 and 35§4, the regional organisation, in particular the European Union shall enjoy the number of votes equal to those of its members which are also Member States of the Organisation.

The proposal has been developed based on the provisions of the Council Decision on EU accession to COTIF (Decision 2013/103/EU). The legal basis of the proposed Council Decision is Article 91 TFEU in conjunction with Article 218(9) TFEU.

The proposal for a Council Decision provides for in its Annex a detailed list of the envisaged amendments, specifying which amendments can be accepted by the Union and which amendments must be opposed. A majority of the envisaged amendments are considered to be appropriate for the safe transport of dangerous goods in a cost effective manner, taking into account technological progress, and can therefore be supported.

However, the amendment indicated with number 9 in the annex to the draft decision has not been developed enough to take a decision in view of entry into force on 1 January 2015 and thus the decision should be postponed to a later stage.

Amendment 14 on the compulsory use of derailment detectors has been already discussed for the revision of 1 January 2013 and the decision was postponed. While certain Member States support the initiative there are others that oppose it. According to the impact assessment carried out by ERA the measure would not be cost-efficient and more efficient alternative measures are available. Thus it is proposed to oppose this amendment at this stage. However, this position is without prejudice to any further work and development in this area.

Where the amendments adopted by the RID expert committee referred are not in accordance with the Union's position established in the Annex to the draft decision, the Union should formulate an objection following the procedure established in Article 35§4 of Title VI of COTIF in order to avoid such amendment to enter into force.

4. IMPLEMENTATION IN THE EUROPEAN UNION

The above mentioned amendments, to the extent that they become binding on the Union, will need to be incorporated into Directive 2008/68/EC on the inland transport of dangerous goods, which applies uniform rules under COTIF to the transport of dangerous goods by road, by rail or by inland waterway within or between Member States. To this end, the Commission has been empowered to adapt Annex II, Section II.1 to Directive 2008/68/EC to scientific and technical progress. Once the objection period as regards the notification by the Secretary General of OTIF has expired, the Commission will launch the adaptation process.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91 in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Union acceded to the Convention concerning International Carriage by Rail of 9 May 1980 as amended by the Vilnius Protocol of 3 June 1999 (hereinafter referred to as the "COTIF Convention"), by virtue of Council Decision 2013/103/EU of 16 June 2011 on the signing and conclusion of the Agreement between the European Union and the Intergovernmental Organisation for International Carriage by Rail on the accession of the European Union to the said Convention[6].

(2) All Member States, with the exception of Cyprus and Malta, are contracting parties to the COTIF Convention.

(3) Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods[7] lays down requirements for the transport of dangerous goods by road, by rail or by inland waterway within or between Member States, by referring to the Regulations concerning the International Carriage of Dangerous Goods by Rail, appearing as Appendix C to the COTIF Convention (RID Annex). In addition, Article 4 of this Directive provides that "The transport of dangerous goods between Member States and third countries shall be authorised in so far as it complies with the requirements of the ADR, RID or ADN, unless otherwise indicated in the Annexes." Therefore, the subject-matter of these regulations, as well as their amendments, falls within the Union's exclusive competence.

(4) The Committee of Experts on the Transport of Dangerous Goods set up in accordance with Article 13.1(d) of the COTIF Convention, at its 53rd session due to take place on 22 May 2014, is expected to decide upon certain amendments to the RID Annex. These amendments, which concern technical standards or uniform technical prescriptions, have the objective to ensure safe and efficient transport of dangerous goods whilst taking into account scientific and technical progress in the sector and the development of new substances and articles that pose danger during their transport.

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6 OJ L 51 of 23.2.2.2013, p. 1.

7 OJ L 260, 30.9.2008, p. 13.

(5) The committee on the transport of dangerous goods established by Article 9 of Directive 2008/68/EC has carried out preliminary discussions on these amendments.

(6) Most of the proposed amendments are justified and beneficial, and should therefore be supported by the Union. However, certain proposed amendments are not proportional to the risks posed during transport or are not efficient in improving transport safety and should therefore be opposed. Furthermore, should the latter amendments be approved, the Union should formulate an objection following the procedure established in Article 35§4 of Title VII of the COTIF Convention,

HAS ADOPTED THIS DECISION:

Article 1
Position of the European Union

1. The position to be taken by the European Union at the 53rd session of the Committee of experts on the transport of dangerous goods in the framework of the Convention concerning international carriage by rail shall be in accordance with the Annex to this Decision.

2. Minor changes to the documents mentioned in the Annex to this Decision may be agreed by the representatives of the Union in the above-mentioned body without further decision of the Council.

Article 2

After its adoption the Decision of the above-mentioned body shall be published in the Official Journal of the European Union.

Article 3
Entry into force

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council
The President