

25 November 1998

A4-0435/98

****I**

REPORT

on the proposal for a Council Directive on the approximation of the laws of the Member States with regard to the transport of dangerous goods by vessels on inland waterways (COM(97)0367 - C4-0449/97 - 97/0193(SYN))

Committee on Transport and Tourism

Rapporteur: Mr Hugh R. McMahon

PE 228.056/fin.

CONTENTS

	<u>Page</u>
Procedural page	3
A. LEGISLATIVE PROPOSAL	4
DRAFT LEGISLATIVE RESOLUTION	8
B. EXPLANATORY STATEMENT	9
Opinion of the Committee on Environment, Public Health and Consumer Protection.....	14

By letter of 8 September 1997 the Council consulted Parliament, pursuant to Article 189c and 75, par. 1 of the EC Treaty, on the proposal for a Council Directive on the approximation of the laws of the Member States with regard to the transport of dangerous goods by vessels on inland waterways.

At the sitting of 15 September 1997 the President of Parliament announced that he had referred this proposal to the Committee on Transport and Tourism as the committee responsible and the Committee on the Environment, Public Health and Consumer Protection for its opinion.

At its meeting of 23 September 1997 the Committee on Transport and Tourism appointed Mr McMahan rapporteur.

It considered the Commission proposal and the draft report at its meetings of 20 January 1998, 21 April 1998, 29 September 1998, 27 October 1998 and 24 November 1998.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Bazin, chairman; McMahan, rapporteur; Aparício Sánchez; Baldarelli; Camisón Asensio; Castricum; Cornelissen; Danesin; Ferber (for Jarzembowski); González Triviño; Grosch; Kaklamanis (for Donnay); Koch; Lagendijk; Langenhagen; Lataillade (for Killilea); McIntosh; Megahy; Mendes Bota (for Parodi); Piecyk; Sarlis; Scarbonchi (for Dary); Schierhuber (for Stenmarck); Schlechter; Schmidbauer; Seal; Simpson; Sindal; Stockmann (for Klironomos); Swoboda; Vaz da Silva (for Ferri) and Watts.

The opinion of the Committee on the Environment, Public Health and Consumer Protection is attached.

The report was tabled on 25 November 1998.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

A
LEGISLATIVE PROPOSAL

Proposal for a Council Directive on the approximation of the laws of the Member States with regard to the transport of dangerous goods by vessels on inland waterways (COM(97)0367 - C4-0449/97 - 97/0193(SYN))

The proposal is approved with the following amendments:

Text proposed by the Commission⁽¹⁾

Amendments by Parliament

(Amendment 1)
Recital 3a (new)

Whereas creating Community-wide rules for the transport of dangerous goods on EU inland waterways by using the existing ADN recommendation as a basis for harmonisation is not a satisfactory solution and moreover calls into question the unification of laws that has been achieved; whereas a coherent and practical set of EU rules for the transport of dangerous goods on inland waterways can be drawn up only on the basis of a new ADN agreement with official legal status, which has as far as possible aligned the safety standards in its technical annexes on those of the existing ADNR regulation,

⁽¹⁾ OJ C 267, of 03.09.1997, p. 96

(Amendment 2)

Twelfth recital

Whereas the transport of dangerous goods by inland waterway to or from a third country is authorised, provided it is carried out in accordance with the requirements of the ADN;

Whereas the transport of dangerous goods by inland waterway to or from a third country is authorised, provided it is carried out in accordance with the requirements of the ADNR for a transitional period until the new ADN Agreement officially takes effect;

(Amendment 3)

Thirteenth recital

Whereas it must be possible to adapt the Annexes to this Directive rapidly to technical progress, notably by adoption of new provisions laid down in the ADN; whereas the Committee created by Article 9 of Directive 94/55/EC should be used for this purpose,

Whereas during the transitional period it must be possible to adapt the Annex to this Directive rapidly to scientific and technical progress, notably by adoption of new provisions laid down in the ADNR; whereas the Committee created by Article 9 of Directive 94/55/EC should subsequently be used for this purpose, and whereas a new directive should be used for the adoption of the new provisions laid down in a future ADN Agreement,

(Amendment 4)

Article 2

- 'ADN' shall mean the technical Annexes to the Recommendation concerning the International Carriage of Dangerous Goods by Inland Waterways, concluded at Geneva, as annexed hereto in their version of 1. January 1997;

Deleted

(Amendment 5)

Article 2

- 'ADNR' shall mean the Regulation on the Transport of Dangerous Goods on the Rhine as in force at 1. January 1997;

- 'ADNR agreement' shall mean the Regulation on the Transport of Dangerous Goods on the Rhine as revised by the forthcoming international agreement;

(Amendment 6)
Article 5

(3) If on the occasion of an accident or an incident, a Member State considers that the safety provisions applicable have been found to be insufficient to limit the hazards involved in the transport operation, and if there is an urgent need to take action, that Member State shall notify the Commission at the planning stage of the measures which it proposes to take. Acting in accordance with the procedure laid down in Article 9, the Commission shall decide whether the implementation of the measures in question should be, authorized and shall determine the duration thereof. The Commission may amend the Annexes to the present Directive in accordance with the procedure set out in Article 9.

(3) If on the occasion of an accident or an incident, a Member State considers that the safety provisions applicable have been found to be insufficient to limit the hazards involved in the transport operation, and if there is an urgent need to take action, that Member State shall take any measure immediately required and shall notify the Commission without delay; in all other cases, that Member State shall notify the Commission at the planning stage of the measures which it proposes to take. Acting in accordance with the procedure laid down in Article 9, the Commission shall decide whether the implementation of the measures in question should be, authorized and shall determine the duration thereof. The Commission may amend the Annexes to the present Directive in accordance with the procedure set out in Article 9.

(Amendment 7)
Article 8

The amendments necessary to adapt the Annexes to scientific and technical progress in the fields covered by this Directive, in particular to take account of amendments to corresponding provisions in the ADN, shall be adopted in accordance with the procedure laid down in Article 9.

During the transitional period preceding the official entry into force of the new ADN Agreement, the amendments necessary to adapt the Annex to this Directive to scientific and technical progress in the fields covered by it shall be adopted after the ADNR has made amendments and in accordance with the procedure laid down in Article 9. The new provisions concerning the transport of dangerous goods by navigable waterway laid down in a future ADN Agreement shall be adopted by a new Directive.

(Amendment 8)
Annex

Replace the existing annexes by ADNR annexes

DRAFT LEGISLATIVE RESOLUTION

Legislative resolution embodying Parliament's opinion on the proposal for a Council Directive on the approximation of the laws of the Member States with regard to the transport of dangerous goods by vessels on inland waterways (COM(97)0367 - C4-0449/97 - 97/0193(SYN))

(Cooperation procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the Council, COM(97)0367 - 97/0193(SYN)⁽¹⁾,
 - having been consulted by the Council pursuant to Article 189c and 75, par. 1 of the EC Treaty (C4-0449/97),
 - having regard to Rule 58 of its Rules of Procedure,
 - having regard to the report of the Committee on Transport and Tourism and the opinion of the Committee on the Environment, Public Health and Consumer Protection (A4-0435/98),
1. Approves the Commission proposal, subject to Parliament's amendments;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 189a(2) of the EC Treaty;
 3. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 189c(a) of the EC Treaty;
 4. Calls for the conciliation procedure to be opened should the Council intend to depart from the text approved by Parliament;
 5. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 6. Instructs its President to forward this opinion to the Council and Commission.

⁽¹⁾ OJ C 267, of 03.09.1997, p. 96

B.
EXPLANATORY STATEMENT

1. INTRODUCTION

- 1.1. The European Union has a number of navigable waterways, including the world's busiest waterway, the river Rhine. Such is the importance (economic strategic and social) of this river, that in 1868 the riparian states signed an agreement with the aim of optimising the use of the river for the development of trade and industry. This agreement is the Mannheim Convention by which the Central Commission for the Navigation of the Rhine (CCNR founded in 1816) is established. It is by far the oldest European institution in operation today and a prime example of promoting the economic welfare of the states involved through joint coordination.
- 1.2. One of the achievements of the Central Commission for the Navigation of the Rhine is the setting-up, 160 years ago, of provisions for the transport of dangerous goods by inland waterway. As it was last revised in 1995, the Regulation on the Transport of Dangerous Goods on the Rhine (ADNR) dates from 1972.
- 1.3. Other areas covered by CCNR agreements concern the required qualifications of persons working on board vessels, technical specifications for vessels, rules for waste disposal, etc. It should be stressed that CCNR's agreements are based on uniform rules and procedures whereby the certificates issued by the authorities of one Member State are valid in all. The other similar organisation, the Danube Commission, applies a system of national rules and procedures in combination with mutual recognition.
- 1.4. The Economic Commission for Europe (ECE), a specialised UN Agency, is also dealing with the international transport of dangerous goods by inland waterways. The set of rules currently governing this matter is the Recommendation concerning the international carriage of dangerous goods by inland waterway (ADN) which, in its current version, reflects the latest ADNR regulation.
- 1.5. Until the Main-Danube Canal opened in 1992, the Rhine and Danube river systems were physically separate and subject to rules of different origin, although some degree of harmonisation has been achieved within the framework of the ECE. The differences were understandable and did not give rise to particular problems. However, this cannot be the case now and uniform rules, in particular for the carriage of dangerous goods, are necessary.
- 1.6. The development of inland waterways transport requires the setting-up of uniform binding international rules. This could be best achieved by the new ADN Agreement, currently under negotiation, that could substitute the ADNR Agreement and which will guarantee the same high level of protection.
- 1.7. The two organisations i.e. the Economic Commission for Europe (the Inland Transport Committee) and the Central Rhine Commission, have set up a joint working party to revise the ADN rules in the light of the more advanced ADNR and the Agreement, which is expected to be completed possibly by the end of 1999, will be binding and ensure that safety

levels applying on Rhine navigation will also apply to the entire European inland waterway network. This agreement will have to be adopted by a diplomatic conference and ratified by the required number of States.

2. THE COMMISSION'S PROPOSAL

- 2.1. The purpose of the proposed Directive is to align national and international rules on the transport of dangerous goods by inland waterways, as is the case for this transport by road and rail. This would improve both transport safety and fair competition between transport operators. It also sets training requirements for crews on inland waterways vessels transporting dangerous goods.
- 2.2. This mode of transport, which faced a serious decline in recent years (with a loss of approximately 5% of its market share due to the growth of road transport) shows signs of an increase in the future not only for the transportation of chemicals, which has always been a major part of this mode of transport, but also for coal, building materials, electronic components and fuel.
- 2.3. This increase, foreseen for the next decade, depends largely on the general economic situation in Europe, given the direct relation between transport and the economy at national level or transport and commercial flows at international level. It also depends on a number of other parameters, such as adequate width and depth of the waterways in conjunction with port installations able to accommodate container vessels, the total cost of navigation, the total volume of goods to be transported and the ability of port installations to exploit the advantages offered by new techniques in this field.
- 2.4. In view of these prospects for the near future it would be necessary to ensure safe conditions for the transportation of goods, in particular for those which represent a serious danger for the environment of inland waterways and the adjacent ecosystems.
- 2.5. Inland waterway transport may only concern a limited number of EU Member States and be considered of lesser importance, despite its intrinsic advantages of low energy consumption, cost saving, adaptability to the requirements of multimodal transportation and low pollution. Nevertheless, the effect of an accident or incident concerning a vessel carrying dangerous or polluting goods or the discharge of polluting substances represents a real danger as pollution can spread and affect a larger number of countries.
- 2.6. In the international context, where the relations between the ADN and the ADNR agreements are not yet defined, the proposal of the Commission could create a potential conflict of competences between Community law and the Mannheim Convention. The aim of the proposed Directive should be to contribute to the setting-up of a uniform system for the transportation of dangerous goods not only between European States but also within the Member States of the European Union, where the ADNR rules already apply.
- 2.7. For this reason, the Commission is in favour of the EU's participation as such in the current ADN negotiations and the final Agreement. However, this course of action does not appear feasible for both practical and legal reasons. In addition, the European Union could not

replace or substitute in practice the competencies which the CCNR has under the 1868 Mannheim Convention.

- 2.8. However, as indicated in its proposal, the Commission is prepared to replace the existing ADN Recommendation by the proposed new ADN Agreement when this new Agreement is concluded. Consequently, to avoid impediments to the free movement of goods as well to the Common Transport Policy, this would mean that Community and other non-CCNR certificates would have to be recognised on the Rhine.

3. GENERAL REMARKS

- 3.1. The proposed Directive, aimed at extending and harmonising within the Community the international rules of transport of dangerous goods by inland waterways, should be welcomed as an essential step towards a comprehensive and coherent framework for the transportation of these goods, as the transport of dangerous goods by road, rail and sea is already subject to similar rules. It is only for inland waterways that no such internationally binding rules exist, except on the Rhine.
- 3.2. However, the proposed Directive harmonises the rules within the Community on the basis of the ADN Recommendations, which are currently undergoing modifications.

The outcome of the current negotiations is not yet known, but in all likelihood the ADN convention will be aligned to the ADNR rules. If the proposed Directive is adopted before the new agreement is concluded, it could lead to the EU (or the Member States applying the ADNR) having two separate and diverging systems existing alongside each other: the Rhine system (ADNR) and the EU system (ADN).

- 3.3. Such a situation could result, for example, in three types of certificates being in circulation at the same time: one issued under the national law of a Member State, as provided by the derogation in Article 5 of the proposal, a second one issued according to the ADNR and valid not only on the Rhine but in all EU inland waterways and an ADN certificate which will be valid in the EU but would not apply on the Rhine, unless the Central Commission for the Navigation on the Rhine admits the validity of such a certificate.
- 3.4. It is clear that the Commission proposes the ADN for EU law mainly because these rules should apply to all European waterways, including those of Central and Eastern Europe as a number of these countries concerned are candidates for EU membership. This constitutes a sound and practical approach. It is however, acceptable only if the ADN system is completely harmonized with the ADNR provisions in the long term.
- 3.5. One other area of concern is the possibility left in the proposed Directive for Member States to set up different rules for the transport of dangerous goods between the EU and third countries when these rules are decided on by bilateral agreements.

4. CONCLUSIONS

- 4.1. Parliament fully supports the establishment of a uniform system for the transport of dangerous goods on all internal waterways of the European Union and for transport to and from third countries, mainly in view of the importance of this mode of transport at the European level .
- 4.2. However, there are serious grounds for concern in that the ADN Recommendation, to which the proposal refers, does not constitute the optimal legal and political reference. In light of the current negotiations, the ADN Recommendation is expected to be replaced by the ADN Agreement which will be legally binding for its participating states after ratification and its entry into force. This would then entail a revision of the Directive under consideration.
- 4.3. On the other hand, the fact that the ADNR applies on the Rhine and is applied by the states concerned on their waterways outside the Rhine means that two different sets of rules would apply simultaneously: the ADN (in the Directive) for inland waterways in the EU not including the Rhine and the ADNR for carriage of dangerous goods on the Rhine.
- 4.4. The existence of more than one type of certificate cannot be acceptable as it does not reflect the objective to integrate the river systems concerned and to establish a single uniform system. The same applies to the provision in the proposed Directive which makes it possible, in bilateral agreements with third countries, for rules different from EU rules to be accepted.
- 4.5. Finally, there are some discrepancies between the existing rules for the transport of dangerous goods by road and by internal waterways, e.g. the bulk carriage of fertilizers. The Commission should ensure that the introduction of the new Directive abolishes these discrepancies and that no new ones are created, in order to prevent distortions of competition between two modes of transport.
- 4.6. On this basis and given the importance that the rules laid down at Community level in the framework of the proposed Directive (ADN) correspond to the ADNR, as the only means for harmonizing mandatory provisions in national as well as international transport, the Commission's proposal, has to be adapted to the new developments.
- 4.7. A solution could be that EU legislation incorporates the current ADNR rules. This solution however, may raise a number of problems due to the fact that the ADNR is constantly being adapted to match technical advances and evolutions in the nature and size of cargoes. Often, these changes are made without delay in the Member States of the Mannheim Convention but this cannot always be the case for Community rules. In addition, if the EU rules de facto substitute the CCNR, any further measures would be taken without the direct participation of Switzerland.
- 4.8. It would therefore seem more appropriate and more efficient for the EU to transpose the ADN Agreement into internal legislation. This would of course entail that the EU directive is presented once the current negotiations in Geneva produce a final text. Any other course of action would result in either a set of Community rules which will have to be

revised shortly after their adoption or a set of Community rules which are different from both the revised ADN and the ADNR.

- 4.9. However, considering the length of time needed for the entry into force of the new ADN Agreement (ratification by the required number of States), the Commission could propose, as a transitional solution, the adoption of the ADNR set of rules.
- 4.10. In conclusion, your rapporteur proposes the adoption of the ADNR in the Community legal order to cover the period until the new ADN Agreement comes into force. The EU Member States participating in the Geneva negotiations as well as the Commission and the other contracting parties should be urged to conclude the new ADN agreement as soon as possible.

OPINION
(Rule 147 of the Rules of Procedure)

for the Committee on Transport and Tourism

on the proposal for a Council Directive on the approximation of the laws of the Member States with regard to the transport of dangerous goods by vessels on inland waterways (COM(97)0367 - C4-0449/97 - 97/0193(SYN)) (report by Mr McMahon)

Committee on the Environment, Public Health and Consumer Protection

Letter from the committee chairman to Mr Bazin, chairman of the Committee on Transport and Tourism

Brussels, 13 October 1998

Dear Mr Chairman,

The Committee on the Environment, Public Health and Consumer Protection considered the above proposal at its meeting of 13 October 1998.

At this meeting it adopted the following conclusions():

1. General

In the coming years the quantities of goods transported by road will continue to increase sharply, with all the familiar adverse effects this will have on the environment and the population. Inland waterway shipping should certainly be promoted, along with the railways, within the framework of an integrated transport concept as a means of transport that is environmentally more friendly than road transport.

When the legislation on the transport of dangerous goods on inland waterways is harmonised, it should also be borne in mind that the inland waterway fleet in the EU, unlike HGVs and railways, is very largely owned by small independent operators with one to three vessels, their crews normally consisting of members of the family. The vessel is therefore not only their workplace but often their family home too.

(¹) The following took part in the vote: Collins, chairman and draftsman; Dybkjær and Lannoye, vice-chairmen; d'Aboville, Blokland, Bowe, Breyer, Cabrol, Eisma, Fitzsimons, González Álvarez, Graenitz, Grossetête, Hautala (for McKenna), K. Jensen, Kuhn, Leopardi, Marinucci, Pinel, Roth-Behrendt, Schleicher, Schnellhardt, Tamino, Trakatellis, Virgin and White.

2. The Commission proposal

The purpose of the proposal is to align national and international rules on the transport of dangerous goods by inland waterway within and between Member States.

Legally, this is to be achieved by Article 3(2) of the proposed directive simply stipulating that Annexes A, B.1 and B.2 of the Recommendation concerning the International Carriage of Dangerous Goods by Inland Waterways (AND) in their version of 1 January 1997 are declared applicable.

Annex A of the Recommendation contains rules on dangerous substances and articles and a list of substances classified as 'dangerous'; Annex B.1 contains rules on the nature of the transport of dangerous goods, i.e. whether they are to be transported in packagings or in bulk; Annex B.2 contains rules on the transport of dangerous goods in tanks.

These annexes comprise more than 350 pages and are not attached to the Commission proposal.

It is not normally possible for a parliament to take a decision on the basis of a proposal which is incomplete in that what is in fact its most important part (the three annexes) has not been submitted in all the languages.

3. Conclusions

- (a) The Committee on the Environment, Public Health and Consumer Protection endorses Community rules on the transport of dangerous goods on all the Community's inland waterways and on transport from and to third countries. The proposed directive is, however, unsuitable for this in some respects because it is not complete.
- (b) On no account, however, should harmonisation support the trend towards large vessels whose owners are not content with the existing system of rivers and canals, but regularly call for the expansion of waterways, which would destroy valuable river landscapes, exacerbate the problem of flooding and encourage predatory competition against EU inland shipping.
- (c) Informative statistics on the transport of dangerous goods and accidents occurring in this context should be compiled at European level.
- (d) The Commission is urged to advocate at the negotiations currently being conducted by UN Working Group ECE-UNO/ZKR in Geneva on a legally binding convention that sufficiently frequent checks on all operations involving the transport of dangerous goods be introduced and defined in percentage terms (e.g. 0.5% of all such operations).
- (e) The Commission is urged to propose harmonisation of legislation on the transport of dangerous goods and liability at Community level that provides for

- the establishment of an insurers' fund to cover the full cost of damage to the environment caused by accidents involving dangerous goods and
- the participation of the contracting transport undertaking in the liability arrangements where dangerous goods are transported by subcontractors.

Yours sincerely,

(sgd) Ken Collins