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## **RECOMMENDATION** **FOR** **SECOND READING**

on the common position of the Council with a view to the adoption of a directive of the European Parliament and of the Council amending Council Directive 70/221/EEC on the approximation of the laws of the Member States relating to liquid fuel tanks and rear underrun protection of motor vehicles and their trailers (8697/1999 - C5-0031/1999 - 1998/0071 (COD))

Committee on Legal Affairs and the Internal Market

Rapporteur: Malcolm Harbour

<b><i>Symbols for procedures</i></b>	<b><i>Abbreviations for committees</i></b>
* Consultation procedure <i>majority of the votes cast</i>	I. AFET Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy
**I Cooperation procedure (first reading) <i>majority of the votes cast</i>	II. BUDG Committee on Budgets
**II Cooperation procedure (second reading) <i>majority of the votes cast, to approve the common position</i>	III. CONT Committee on Budgetary Control
<i>majority of Parliament's component Members, to reject or amend the common position</i>	IV. LIBE Committee on Citizens' Freedoms and Rights, Justice and Home Affairs
*** Assent procedure <i>majority of Parliament's component Members to give assent</i>	V. ECON Committee on Economic and Monetary Affairs
<i>majority of the votes cast in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty</i>	VI. JURI Committee on Legal Affairs and the Internal Market
***I Codecision procedure (first reading) <i>majority of the votes cast</i>	VII. INDU Committee on Industry, External Trade, Research and Energy
***II Codecision procedure (second reading) <i>majority of the votes cast, to approve the common position</i>	VIII. EMPL Committee on Employment and Social Affairs
<i>majority of Parliament's component Members, to reject or amend the common position</i>	IX. ENVI Committee on the Environment, Public Health and Consumer Policy
***III Codecision procedure (third reading) <i>majority of the votes cast, to approve the joint text</i>	X. AGRI Committee on Agriculture and Rural Development
(The type of procedure depends on the legal basis proposed by the Commission)	XI. PECH Committee on Fisheries
	XII. REGI Committee on Regional Policy, Transport and Tourism
	XIII. CULT Committee on Culture, Youth, Education, the Media and Sport
	XIV. DEVE Committee on Development and Cooperation
	XV. AFCO Committee on Constitutional Affairs
	XVI. FEMM Committee on Women's Rights and Equal Opportunities
	XVII. PETI Committee on Petitions

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## PROCEDURAL PAGE

At its sitting on 10 February 1999 Parliament delivered its opinion at first reading on the proposal for a European Parliament and Council Directive amending Council Directive 70/221/EEC on the approximation of the laws of the Member States relating to liquid-fuel tanks and rear underrun protection of motor vehicles and their trailers.

At the sitting on 23 July 1999 the President of Parliament announced that the common position had been received and referred to the Committee on Legal Affairs and the Internal Market.

The committee appointed Mr Harbour rapporteur at its meeting on 27 and 28 July 1999.

It considered the common position and the draft recommendation for second reading at its meetings on 31 August and 1 September, 21, 22 and 23 September and 11, 12 and 13 October 1999.

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

The following were present for the vote: Palacio Vallelersundi, chairman; Rothley and Beysen, vice-chairmen; Harbour, rapporteur; Berger, Cederschiöld, Ferri, Fourtou, Gebhardt, Grossetête, Harbour, Hautala, Koukiadis, Lechner, Lehne, MacCormick, Manders, Miller, Moraes, Niebler, Uca, Wallis, Wuermeling, Zacharakis,

The recommendation for second reading was tabled on 14 October 1999.

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

## DRAFT LEGISLATIVE RESOLUTION

**Legislative resolution of the European Parliament on the common position of the Council with a view to the adoption of a directive of the European Parliament and of the Council amending Council Directive 70/221/EEC on the approximation of the laws of the Member States relating to liquid-fuel tanks and rear underrun protection of motor vehicles and their trailers (8697/1999 - C5-0031/1999 - 1998/0071 (COD))**

**(Codecision procedure: second reading)**

*The European Parliament,*

- having regard to the Council common position (8697/1999 - C5-0031/1999 ),
  - having regard to its position at first reading<sup>1</sup> on the Commission proposal to Parliament and the Council COM(1998) 97<sup>2</sup>,
  - having regard to the Commission's amended proposal COM(1999) 217<sup>3</sup>,
  - having regard to Article 251(2) of the EC Treaty,
  - having regard to Rule 80 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on Legal Affairs and the Internal Market (A5-0033/1999),
1. Amends the common position as follows;
  2. Instructs its President to forward its position to the Council and the Commission.

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1 OJ C 150, 28.5.1999,p. 170.

2 OJ C 164, 29.5.1998,p. 16.

3 Not published in the Official Journal.

(Amendment 1)  
recital 2a

"(2a) Whereas the accidental spillage of fuel (especially diesel) onto the road is a significant hazard for riders of two-wheeled motor vehicles and pedal cycles:"

(Amendment 2)  
Annex, section 5.9.1.1

The requirements of section 5.9.1 will be deemed to be satisfied if the vehicle meets the requirements of section 5.3.1 of Annex I to Directive 98/69/EC<sup>1</sup>.

The requirements of section 5.9.1 will be deemed to be satisfied if the vehicle meets the requirements of section 5.1.3 of Annex I to Directive 70/220/EEC<sup>2</sup>, subject to the proviso that the examples listed in the third indent of that section do not apply to vehicles in categories other than M1 or N1.

Or. en

<sup>1</sup> OJ L 350, 28.12.1998, p. 1.  
<sup>2</sup> OJ L 76, 6.4.1970, p. 1, as amended.  
PE 231.612

## EXPLANATORY STATEMENT

Commented [COMMENT1]:  
NOAM

### I. KEY POINT SUMMARY AND RECOMMENDATION

This legislative proposal was introduced by the Commission in April 1998, with the sensible objective of aligning EC type approval rules for motor vehicle fuel tanks with the UN Economic Commission for Europe (ECE) Standards. In particular, the proposed directive now covers plastic fuel tanks (increasingly common on passenger cars), and makes provision for the future adoption of technical specifications for tanks in vehicles powered by gaseous fuels. The legislation includes a provision for technical updating of the annexes by a regulatory committee procedure. This would bring the legislation into line with all other EC type approval directives. The proposal is supported by the European car manufacturers.

At first reading on 10 February 1999, Parliament moved six amendments, the most significant being those related to the control of fuel spillage (especially diesel), which is posing an increasing hazard to motor and pedal cyclists. It also proposed an alternative management committee procedure for technical updating, together with a number of detailed technical changes (*see Section II below*)

The Commission's amended proposal of 4 May 1999 rejected almost all of Parliament's amendments. However, the Common Position adopted by the Council on 12 July 1999 (*see Section III for details*) accepted the need for action on fuel spillage by adding new clauses, thereby achieving most of Parliament's objectives, albeit not in the form sought by Parliament. The Council also made it clear that it wished to introduce provisions for fuel tanks as separate entities in a future directive. Neither the Commission nor the Council accepted Parliament's proposed switch from a regulatory to a management committee procedure.

Your rapporteur has examined the common position and consulted key interest groups involved. In his view, the directive as contained in the common position meets Parliament's technical concerns. No objections are seen to accepting the regulatory committee procedure, given the changes made to increase transparency and parliamentary scrutiny by the new Comitology Decision, the inconsistencies with other motor vehicle type approval procedures that would have resulted from Parliament's amendment at first reading and the fact that the procedure will relate only to purely technical adaptations (*see Section IV for details*).

Your rapporteur's recommendation, therefore, is that the Committee should agree to the proposal, with two small but significant amendments.

The first is the addition of a recital to the preamble formally confirming that the safety hazard presented by fuel spillage is explicitly addressed by the legislation. This has no substantive impact on the directive but constitutes good legislative drafting technique and draws attention to an initial step taken to deal with this problem at Parliament's instigation. The Commission has indicated that it has no objections to this proposed amendment, which fulfils the criteria laid down in Rule 80 of the Rules of Procedure (*see Section V for details*).

The second amendment reinforces the design requirement, for commercial vehicles, that positive measures are taken to avoid diesel fuel spillage. The amendment has the effect of confirming that the required design solutions must employ a form of positive filler closure. The Council and the Commission have not so far indicated any objections.

The Committee has made a number of additional comments to the Commission on the need to address the issue of diesel fuel spillage. These relate to the detailed drafting of related technical legislation and to the need to address the issue in future environmental and operational legislation for goods vehicles (*see Section VI for details*).

## II. THE ORIGINAL PROPOSAL AND PARLIAMENT'S FIRST READING

The Commission adopted the proposal for a directive on 23 April 1998 (COM(1999) 97 - C5-0031/99 - 98/0071 (COD))(1). It is based on Article 95 of the EC Treaty and deals with plastic fuel tanks for passenger cars (category M1 vehicles). Its primary aim is to align the basic Directive 70/221/EEC(2) with Regulation No 34 of the UN Economic Commission for Europe on the approval of vehicles with regard to the prevention of fire risks associated with this type of fuel tank. The proposal also seeks to amend the basic directive so as to allow technical specifications for tanks for gaseous fuels to be introduced at a later date and to enable the annexes to that directive to be adapted to technical progress by means of a regulatory committee procedure in common with the technical annexes to all other EC type-approval directives relating to motor vehicles and trailers.

At first reading on 10 February 1999, Parliament adopted the following amendments on the basis of the report by Mr Camisón Asensio, a member of the former Committee on Monetary Affairs and Industrial Policy (A4-0495/98)(3):

- Addition of a new recital (2a) in the preamble pointing to the hazard posed to motor cyclists and pedal cyclists by spillages of fuel, especially diesel, and of new sections to Annex I to Directive 70/221 requiring the filler cap to be fixed to the filler pipe and latched in place and a warning light to signal to the driver if the cap is not latched and closed. Alternative means of preventing fuel spillage must afford at least equivalent security against faulty closure, failure to replace the cap, a displaced, damaged or missing seal or a misplaced, lost or stolen cap. A further section sought to prevent fuel escaping through devices to compensate excess pressure or any other openings into or out of the fuel tank with the tank 100% full under foreseeable operating conditions;
- Amendments to adapt the annexes to technical progress to be adopted by a type II(a) management committee rather than by a type III(a) regulatory committee procedure (Article 1);
- The implementation dates to be made more realistic (Article 2(1), (2) and (3));
- The definition of "unladen mass" (Annex I, section 2.3) to be defined by reference to a provision in an annex to an existing directive so as to enable it to be updated automatically every time that provision is amended;
- The words "and [all] its accessories" to be removed from section 6.3.2 of Annex I in order to secure consistency with the rest of the directive and with UN Economic Commission for Europe Regulation No 34.

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(1) OJ C 164, 29.05.1998, p.16.

(2) OJ L 76, 6.4.1970, p. 23.

(3) OJ C 104, 14.04.1999, p. 4.



The Commission's amended proposal of 4 May 1999 (COM(1999) 217 final) accepted the need to alter the implementation dates and the amendment relating to the definition of "unladen mass". It rejected all the other amendments. As regards the question of fuel tank spillage, it acknowledged the problem but considered that it should be addressed by other legislative action under the 'auto-oil' directives.

### **III. COMMON POSITION OF THE COUNCIL (C5-50031/1999 - 1998/0071 (COD))**

#### **1. Parliament's amendments taken over by the Council**

The Council has adjusted the implementation dates and has gone some considerable way towards meeting the Parliament's concerns about fuel spillage. It has done so by adding sections 5.9.1 and 5.9.1.1 to Annex I, which refer to the provision of Annex I to Directive 70/220, as amended by Directive 1998/69(1), which seeks to prevent excess evaporate emissions and fuel spillage. Although that provision is badly drafted, it went a long way towards Parliament's aim, albeit not providing for a warning light, or measure affording equivalent security, in the event that the cap is faulty, missing or badly closed. However, Directive 1998/69 does contain specific provision requiring fuel spillage to be contained in the event of filler cap loss. The Committee's proposed second amendment is designed to remove a potential loophole contained in the relevant provision.

#### **2. New points inserted by the Council**

The Council has made a series of other technical amendments which raise no problems and are endorsed by the Committee. They are as follows:

- a new recital 4 in the preamble asking for provision to be made for type-approval of liquid and gas fuel tanks as separate entities in order to cover the increasing practice of replacing factory-fitted fuel tanks with larger ones or of installing additional non-approved tanks (the Commission has noted the Council's concern in a statement);
- amended sections 5.6 and 5.7 of Annex I to include the words "during normal conditions of use", thus accepting amendments proposed by the former Committee on Monetary Affairs and Industrial Policy; by the same token, it has also added the words "during the foreseeable course of operation of the vehicle" to section 5.9 of Annex I;
- added section 5.11 to Annex I relating to the avoidance of any build-up of static electricity on the surface of the fuel tank;
- amended section 6.3 of Annex I so as to make the tests for plastic tanks cover tanks for all categories of vehicles and not just passenger cars (category M1).

#### **3. Other amendments not taken up**

The Council did not incorporate the recital in the preamble referring to the provisions on fuel spillage. It is considered that Parliament should insist on this addition, both to confirm the

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(<sup>1</sup>) Directive 98/69/EC of the European Parliament and of the Council of 13 October 1998 relating to measures to be taken against air pollution by emissions from motor vehicles and amending Council Directive 70/220/EEC, OJ L 350, 28.12.1998, p. 1.

importance of the issue and to satisfy the requirements of good drafting practice (see point 10 of the Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation( 1)).

The failure to take up Parliament's proposal to exclude the accessories from mechanical strength testing may be allowed to stand on the ground that it is in the public interest to have the strictest possible requirements. As the Commission points out in its amended proposal, it is of great importance that not only the tank, but also its accessories, are leakproof.

Finally, having regard to the proposed directive taken as a whole, the Council's failure to add a section 5.9.2 to Annex I concerning the escape of fuel from pressure compensation devices does not seem to detract from the aim or severity of the directive.

#### **IV. PROSPECTIVE CHANGES TO THE COMITOLGY ARRANGEMENTS**

The Council has rejected the proposed change to the comitology arrangements. Parliament had proposed switching from a procedure III(a) regulatory committee to a procedure II(a) management committee on the ground that "regulatory committees make the Commission's job of implementing legislation unnecessarily lengthy and complicated" and give "the Council greater powers over the Commission" (Mr Camisón Asensio's report). The Commission considers the comitology arrangements to be a general, horizontal issue: the proposed directive cannot deviate from the framework directive in this sector (Commission Communication SEC(1999) 1185 final).

Since the first reading, the Council has adopted a new Comitology Decision( 2), which entered into force on 18 July. According to declarations on that decision published in the C series of the Official Journal( 3), the old procedure II(a) is to become the new management procedure and the old procedure III(a) the new regulatory procedure.

Whereas under the old procedure II(a) the Commission might defer application of its proposed measures for one month, under the new management procedure, it may defer application for up to three months depending upon the period laid down in the basic instrument. Otherwise, the procedure is virtually unchanged.

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(<sup>1</sup>) OJ C 73, 17.3.1999, p. 1.

(<sup>2</sup>) Council Decision (1999/468/EC) of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 184. 17.07.1999, p. 23.

(<sup>3</sup>) OJ C 203, 17.7.1999, p. 1.

The Committee on Legal Affairs and the Internal Market believes that it is appropriate to take account of the new Decision by not reinstating the amendments proposed to Article 1 at first reading in view of the greater degree of openness and Parliamentary scrutiny introduced by that Decision and of the fact that the regulatory committee procedure will be concerned only with purely technical matters.

## V. PARLIAMENTARY PROCEDURE

Parliament has three months in which to amend the common position acting by an absolute majority of its Members, the deadline for the present proposal being 23 October, for which an extension was granted. The Commission has to deliver its opinion and the Council may adopt Parliament's amendments within three months by a qualified majority, unless the Commission delivers a negative opinion, in which case the Council has to act unanimously.

It therefore needs to be considered to what extent the common position reflects the interests expressed by Parliament at first reading.

As a general rule, Parliament can only reinstate the amendments adopted at first reading (Rules of Procedure, Rule 80(2)(a)), amend a part of the text of the common position which was not included in - or differs in content from - the proposal submitted for first reading (Rule 80(2)(c)) or move amendments to take account of a new fact or legal situation (Rule 80(2)(d)). However, given that new elections have taken place since the first reading, the President may, under paragraph 3 of Rule 80, decide to waive those restrictions.

## VI. RELATED QUESTIONS

The Committee on Legal Affairs and the Internal Market observes that the drafting of this legislation leaves much to be desired. In particular, it points out that section 5.9.1.1 of the Annex should refer to Annex I to Directive 70/220, as amended, and not to Annex I to Directive 1998/69. The clause related to fuel spillage provisions in Directive 1998/69 is also very ambiguous and its provisions should be made clearer. The second amendment seeks to overcome the ambiguities, but further drafting work is necessary in order to resolve this problem completely. Both these points have been drawn to the attention of the Industry Directorate (DG III).

The Committee has also asked DG III to address the issue of filler cap security for heavy duty vehicles through the discussions relating to an emission control proposal for new heavy duty vehicles due to be made by the Commission by the end of 2000. The Committee would also draw the attention of the Commission and the Council to the issue of in-use controls (such as vehicle testing standards and vehicle checks) and urges them to examine what further action can be taken to reduce this safety hazard to an important, and expanding, group of road users.