

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DELEGATED DECISION No 049/22/COL

of 9 February 2022

to grant three derogations requested by the Principality of Liechtenstein in relation to Article 30, Article 36(2) and Chapter 1.1.3.6.3. lit. b of Annex 5 to the Liechtenstein Ordinance of 3 March 1998 on the transport of dangerous goods by road based on Article 6(2)(a) of Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods [2022/1984]

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Act referred to at point 13c in Chapter I of Annex XIII to the EEA Agreement,

Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods ('the Directive'),

as amended and as adapted to the EEA Agreement by point 4(d) of Protocol 1 thereto and having regard to Article 5(2)(d) of the Surveillance and Court Agreement and Article 1(1)(c), Article 1(2) and Article 3 of Protocol 1 thereto, in particular Articles 6 and 9 of the Directive,

Having regard to Standing Committee Decisions No 3/12/SC and No 4/12/SC,

Whereas:

1. PROCEDURE

The Liechtenstein Government, by letter to the Authority of 20 December 2013 ⁽¹⁾, requested four derogations on the basis of Article 6(2)(a) of the Directive. The derogations as requested by Liechtenstein were laid down in Articles 29, 30 and 36 and in Annex 5 to the Ordinance of 3 March 1998 on the transport of dangerous good by road (LR 741.621, as last amended) ⁽²⁾ ('the Ordinance').

To assist it in this assessment, the Authority commissioned DNV GL AS ('DNV') to assess whether the requested derogations would conform to the requirements set out in Article 6(2)(a) of the Directive, with emphasis on any potential or actual risks brought about by the derogations, whether the derogations would lead to less, more or equal safety, and on the identification of possible mitigating measures ⁽³⁾.

After having assessed the derogations requested by Liechtenstein, the Authority concluded that only the provisions in Articles 30 and 36 and in Annex 5 to the Ordinance qualify as derogations within the meaning of Article 6(2)(a) of the Directive, whereas Article 29 of the Ordinance, concerning explosives in once opened transport packages, did not qualify as a derogation.

⁽¹⁾ Doc No 694300.

⁽²⁾ *Verordnung über den Transport gefährlicher Güter auf der Strasse – VTGGS.*

⁽³⁾ Doc No 709161.

After consulting with the EFTA Transport Committee, the Authority adopted College Decision 30/15/COL, authorising derogations for the three qualifying provisions. That authorisation was valid for a period of 6 years from 27 January 2015.

By letter dated 8 March 2021 ⁽⁴⁾ the Liechtenstein Government requested an authorisation for derogations under the Ordinance, which are laid down in Article 30, Article 36(2) and Chapter 1.1.3.6. lit. b of Annex 5 to the Ordinance and corresponds with the derogation authorised by the Authority by College Decision 30/15/COL. The derogations concern the transport of explosives, tank inspection undertakings, the special training of drivers and construction site tanks, respectively.

According to Article 6(4) of the Directive, if an EEA EFTA State requests extension of an authorised derogation, the Authority is to review the request. If no amendment to Annex I, Section I.1, Annex II, Section II.1, or Annex III, Section III.1, affecting the subject matter of the derogation has been adopted, the Authority, acting in accordance with the procedure referred to in Article 9(2), is to renew the authorisation for a further period not exceeding 6 years from the date of authorisation, such period to be fixed in the authorisation decision.

As the request from Liechtenstein was submitted after the expiry date referred to in College Decision 30/15/COL, Article 6(4) is not applicable even if the request is identical in substance to the one authorised by the Authority by that Decision. The request must therefore be assessed in accordance with the procedure referred to in Article 6(2) of the Directive. Information in relation to College Decision 30/15/COL is nevertheless still relevant for this assessment, such as the risk assessment conducted by DNV.

2. ASSESSMENT

Article 6(2)(a) of the Directive stipulates that '[p]rovided that safety is not compromised, [EEA] States may request derogations from Annex I, Section I.1, Annex II, Section II.1 and Annex III, Section III.1, for the transport within their territories of small quantities of certain dangerous goods, with the exception of substances having a medium or high level of radioactivity, provided that the conditions for such transport are no more stringent than the conditions set out in those Annexes.'

According to Article 6(3) of the Directive, derogations are to be valid for a period not exceeding 6 years from the date of authorisation, such period to be fixed in the authorisation decision.

According to Article 9 of the Directive, and as further prescribed in Standing Committee Decisions No 3/2012/SC and No 4/2012/SC, the Authority is to submit a draft of the Decision to be taken to the EFTA Transport Committee. The EFTA Transport Committee is to deliver its opinion on the draft pursuant to Article 3 of Standing Committee Decision No 3/2012/SC.

According to Article 3(2) of the Directive, transport of dangerous goods by road is to be authorised 'subject to compliance with the conditions laid down in Annex I, Section I.1, Annex II, Section II.1, and Annex III, Section III.1'.

Annex I, Section I.1 of the Directive contains provisions regarding the applicability of Annexes A and B to the ADR ⁽⁵⁾.

Annex A is divided into seven parts. Part 1 contains general provisions, whereas parts 2 and 3 classify and list up dangerous goods. Part 4 lays down requirements for packaging and use of portable tanks, part 5 sets out consignment procedures, part 6 lays down requirements for construction and testing of packaging, and part 7 sets out provisions concerning the conditions of carriage, loading, unloading and handling.

⁽⁴⁾ Document No 1185764.

⁽⁵⁾ The European Agreement concerning the International Carriage of Dangerous Goods by Road, concluded at Geneva on 30 September 1957, as amended.

Annex B, part 8 lays down requirements for vehicle crews, equipment, operation and documentation, and part 9 sets out construction requirements and approval of vehicles carrying dangerous goods.

The derogations requested are identical to those authorised by the Authority in 2015. Furthermore, the mitigating measures implemented by Liechtenstein are still in place. The Authority, therefore, concludes that the derogations can be sufficiently assessed based on information presented in relation to College Decision 30/15/COL, including the risk assessment conducted by DNV.

2.1. Article 30 VTGGS

In its letter of 8 March 2021, the Liechtenstein Government described the derogation in the following way:

Article 30 para. 1 lit. b VTGGS allows for a deviation as regards the labelling of the carrier vehicle. The orange labels at the front and at the rear of the carrier vehicle have to correspond to Chapter 5.3.2.1.1 ADR, but do not need to contain the hazard identification number.

Article 30 para. 1 lit. c VTGGS exonerates the driver from the special training requirements foreseen by Chapter 8.2 ADR. The driver, however, needs to be in the possession of the training for tank inspection undertakings. This training is provided by CITEC (Swiss Association for the protection of the waters and the security of tanks) and consists of a 3-week course and a fresh-up course every 5 years, in which the drivers are trained in all the necessary security and environment relevant aspects as regards cleaning, inspecting and repairing tanks. It leads to the Federal Specialist Certificate for Tank Security ().*

Finally, Article 30 para. 2 VTGGS foresees that the tank and its carrier vehicle are exempt from the construction, equipment and control requirements foreseen in Chapters 4.3, 4.4, 6.8, 6.9 and 9.1 ADR.

In its report, DNV assessed whether the risk would increase following accidents that may happen during transportation on public roads, such as in case of collision, off-road driving and load dislocation. DNV came to the conclusion that risk would not increase in these situations provided that the drivers have the specific CITEC training.

2.2. Article 36(2) VTGGS

In its letter of 8 March 2021, the Liechtenstein Government described the derogation in the following way:

‘This provision allows for the transport of dangerous goods belonging to class 1 ADR (explosive substances and explosive articles) beyond the free amount foreseen in Chapter 1.1.3.6 ADR. However, this is only allowed under the strict condition that the driver is in possession of a licence on explosive blasts (“Sprengausweis”), thus has enjoyed a special education for explosive experts. The training authorising a person to receive such a licence is a specialised training for persons handling explosives, which goes beyond the usual training concerning the transport of dangerous goods and ensures a high standard of safety. Additionally, such transport may only be undertaken for explosives and pyrotechnical articles for which the above mentioned licence has been granted.

Due to these reasons, the exception foreseen in Article 36 para. 2 VTGGS does not compromise the safety and Liechtenstein would hereby like to request a derogation in accordance with Article 6 of the Directive.’

In its report DNV concluded that the risk with the derogation in place will not increase, provided that BBT license is equivalent to ADR training for the drivers.

(*) *Spezialistin für Tanksicherheit mit eidgenössischem Fachausweis.*

2.3. Chapter 1.1.3.6.3. lit. b of Annex 5 VTGGS

In its letter of 8 March 2021, the Liechtenstein Government described the derogation in the following way:

'This provision in combination with Chapter 6.14 deals specifically with construction site tanks ("Baustellentanks"), a notion which the ADR is not familiar with.

Construction site tanks are containers used temporarily on construction sites in order to fuel up the machines used on the site. They consist of an inner tank and a closed outer collection basin (see 6.14.1.1 of Annex 5 VTGGS). They are considered the safest solution for such use.

Construction site tanks up to a volume of 1 210 litres carrying a maximum of 1 150 litres may deviate from certain ADR rules, but may only be used for the storage and transport of UN 1202 diesel fuel/heating oil. The provisions of Chapter 6.8 ADR have to be complied with, except for 6.8.2.1.3, 6.8.2.1.4 and 6.8.2.1.15 to 6.8.2.1.23. The construction and testing requirements for such tanks are foreseen in Chapter 6.14.2 and 6.14.3 of Annex 5 VTGGS. Construction site tanks are subject to standardisation and testing by the authority which is also responsible for testing according to ADR (the Swiss Inspectorate for dangerous goods, "Eidgenössisches Gefahrgutinspektorat"). The Inspectorate ensures that all relevant safety characteristics are complied with in order to ensure a safety level which is comparable to the ADR rules.

Due to these reasons, the exception foreseen in Chapter 1.1.3.6.3. lit. b in combination with 6.14 of Annex 5 VTGGS does not compromise the safety.'

In its report, DNV assessed the increased risk regarding collision, off-road driving and load dislocation. DNV came to the conclusion that the risk is increased with the derogation, but identified the two preventive measures, namely (i) ADR control/tests on construction site tanks and (ii) the usage of double shell construction site tanks.

As stated in the request from Liechtenstein, construction site tanks consist of an inner tank and closed out collection basin and that safety will not be compromised. Furthermore, Liechtenstein stated that '[t]he exemption from Chapter 1.1.3.6.3. lit. b and Chapter 6.14 of Annex 5 VTGGS will no longer be required from 2027 onwards, as these provisions will be repealed'.

3. CONCLUSION

The Authority considers that safety will not be compromised by granting these derogations and that the three requests for derogations meet the conditions in Article 6(2)(a) of the Directive. Thus, the derogations contained in Article 30, Article 36(2) and in Chapter 1.1.3.6.3. lit. b of Annex 5 to the Ordinance should be authorised.

On 17 December 2021, the Authority, by its Delegated Decision No 298/21/COL (Document No 1228844), duly submitted a draft Decision concerning the measures to be taken to the EFTA Transport Committee in accordance with Article 9 of the Directive. On 14 January 2022, the EFTA Transport Committee delivered no opinion on the draft Decision.

According to Article 3(4) of the Decision of the Standing Committee of the EFTA States No 3/2012/SC, the Authority may adopt the measure envisaged, unless the basic act provides that the draft measure may not be adopted where no opinion is delivered, which does not apply to the current procedure, and the Authority may therefore adopt the measure.

The Authority therefore grants the derogation as requested, based on Article 6(2)(a) of the Directive. The derogation is to be valid for 6 years, as provided for in Article 6(3) of the Directive. The Authority may, in line with Article 6(4) of the Directive, renew its authorisation.

The College Member with special responsibility for Transport has been empowered, on behalf of the Authority and under its responsibility, to adopt the measures, if the draft measures to be adopted are in accordance with the opinion of the EFTA Transport Committee.

HAS ADOPTED THIS DECISION:

Article 1

The three derogations requested by the Liechtenstein Government in relation to Article 30, Article 36(2) and Chapter 1.1.3.6.3. lit. b of Annex 5 to the Liechtenstein Ordinance of 3 March 1998 on the transport of dangerous good by road are granted.

Article 2

The derogations set out in Article 1 of this Decision shall be published in the EEA section of the *Official Journal of the European Union* and in the EEA Supplement thereof, according to point 6 of Protocol 1 to the EEA Agreement.

Article 3

The derogations set out in Article 1 of this Decision shall be valid for a period of 6 years.

Article 4

This Decision is addressed to the Principality of Liechtenstein and shall take effect upon notification to that State.

Article 5

This Decision shall be authentic in the English language.

Done at Brussels, 9 February 2022.

For the EFTA Surveillance Authority, acting under Delegation Decision No 103/13/COL,

Árni Páll ÁRNASON
Responsible College Member

Mel-po-Menie JOSÉPHIDÈS
Countersigning as Director, Legal and Executive Affairs
