

**Transport and Environment:
Vessels, aircrafts, trains and lorries – equal treatment before the law in
view of their environmental impact?**

Commissions: TLC and EEC

Munich, 2016

National Report of Ireland

Eoin Cassidy

Mason Hayes & Curran
Barrow Street,
Ireland
(01) 614 5000
ecassidy@MHC.ie

General Reporters:

Dr. Nicoletta Kröger, CORVEL LLP Rechtsanwälte, Hamburg, Germany
Dr. Sarah Wolf, Dabelstein & Passehl, Hamburg, Germany

5 February 2016

INDEX

1. Description of the Workshop
2. Questionnaire
3. Disclaimer

DESCRIPTION OF THE WORKSHOP

Vessels, aircrafts, trains and lorries – Equal treatment before the law in view of their environmental impact?

The aim of the workshop is to verify whether the four main means of transport, vessels, aircrafts, trains and lorries, are treated reasonably equally before the law in view, inter alia, of their shipping volumes in relation to their emissions, their impact on/danger for the environment by accidents/collisions, the transport of hazardous goods etc., or if there is a regulatory overkill with regard to one or few of the means of transport.

QUESTIONNAIRE

Legislation for Means of Transport regarding Emissions

1. By which national rules is the normal operation of vessels, aircrafts, trains and lorries with respect to emissions governed?

Vessels

The following regulations are the key legislation in Ireland governing emissions from vessels:

- (i) Sea Pollution (Prevention of Air Pollution from Ships) Regulations 2010 (the “**2010 Regulations**”)

The 2010 Regulations give effect to the 2008 revision of Annex VI as added to the International Convention for the Prevention of Pollution from Ships (MARPOL Convention) by its Protocol adopted by the International Maritime Organization on 26 September 1997.

The application of the Regulations is broad and covers (i) Irish ships everywhere and (ii) other ships when they are in Irish waters.

The overall aim of the 2010 Regulations is to protect human health and prevent air pollution. The Regulations provide for improved specification of marine diesel engines with a view to reducing nitrogen and sulphur oxide emissions and provide a mechanism for the establishing Emission Control Areas where more stringent standards of emission control are to apply.

- (ii) European Union (Sulphur Content of Marine Fuels) Regulations 2015 (the “**2015 Regulations**”)

The 2015 Regulations transpose those marine fuel provisions of Directive 2012/33/EU of the European Parliament and of the Council of 21 November 2012 amending Council Directive 1999/32/EC (the ‘Sulphur Directive’) which have not already been implemented in Irish law by the 2010 Regulations.

- (iii) Vessels are also subject to the European Communities (Greenhouse Gas Emissions Trading) Regulations 2012. The Regulations specifically provide that a “premises” is any place and shall include any building, ship or other vessel, aircraft, railway wagon and includes a lorry or container used to transport vehicles, or a lorry found on the lands.

Aircraft

The Air Navigation and Transport Act (as amended) 1998 is the main piece of legislation governing aircraft in Ireland.

The Aviation Directive (2008/101/EC) was incorporated into Irish law through (i) the European Communities (Greenhouse Gas Emissions Trading) (Aviation) Regulations 2009 (S.I. No. 274 of 2009) which were subsequently revoked and replaced by the European Communities (Greenhouse Gas Emissions Trading) (Aviation) Regulations 2010 (S.I. No. 261 of 2010). The 2010 regulations provide for certain procedures regarding the monitoring of emissions, for example, Section 7 of the 2010 Regulations requires an aircraft operator to submit a monitoring plan

to the Environmental Protection Agency setting out measures to monitor and report emissions.

Trains

The Railway Safety Act 2005 governs railway operations in Ireland. Railway infrastructure is governed by the European Communities (Railway Infrastructure) Regulations 2010. Directive 2007/59/EC regarding the certification of train drivers in the European Union was transposed by the European Communities (Train Driver Certification) Regulations

2010 (SI No. 399 of 2010) which has subsequently been amended by European Union (Train Drivers Certification) Regulations 2010 (Amendment) Regulations 2015. The 2015 Regulations transpose Directive 2014/82/EU amending Directive 2007/59/EC as regards general professional knowledge and medical and licence requirements. These changes to the certification requirements for obtaining a train driver licence will apply from 1 January 2016 with some transitional provisions also being introduced to facilitate the changes.

“A railway wagon” also falls within the definition of a “premises” for the purposes of the the European Communities (Greenhouse Gas Emissions Trading) Regulations 2012..

Lorries

Lorries also come within the ambit of the European Communities (Greenhouse Gas Emissions Trading) Regulations 2012.

European Communities (Random Roadside Vehicle Inspection) (Amendment) Regulations 2004 transpose Directive 2003/26/EC relating to random roadside vehicle inspections through the amendment of the European Communities (Random Roadside Vehicle Inspection) Regulations 2003. Directive 2003/26/EC, which amends Directive 2000/30, specifies the testing procedures for certain test items at a roadside inspection.

2. Are international and/or European rules (if applicable) fully implemented in your country?

- Ireland has implemented the various heavy-duty vehicles Euro emissions regulations:
 - Directive 2005/55/EC through the European Communities (Passenger Car Entry into Service) (Amendment) Regulations 2006¹ and through the European Communities (Passenger Car Entry into Service) (Amendment)(No 2) Regulations 2006². Amongst other matter, the 2005 Directive recast and restated the Euro IV and Euro V emission limits, originally published in Directive 1999/96/EC.
 - EC Regulation 595/2009 (as amended³) has direct effect in Ireland and introduced the Euro VI emissions standards. The objective of the Regulation is to improve air quality by reducing pollutants emitted from the road transport sector by setting the emission limit values for all vehicle categories with a reference mass in excess of 2,610kg.
- As regards charging HGVs for using infrastructure, Directive (EU) No 2011/76, was implemented in Ireland under the European Union (Charging of Heavy Goods Vehicles for the Use of Certain Infrastructures)(Amendment) Regulations 2014⁴. It gives Member States the option to charge heavy lorries for causing "external costs" such as pollution and noise in addition to infrastructure costs (construction, maintenance and operation of the road infrastructure).

¹ S.I. No. 165/2006

² S.I. No. 541/2006

³ For example technical details were added in the Commission Regulation (EU) No 582/2011

⁴ S.I. No. 384/2014

- Ireland transposed the Energy Efficiency Directive 2012/27/EU under the European Union (Energy Efficiency) Regulations 2014⁵. The Directive was due to be transposed into national law by 5 June 2014.
 - The 2007 ‘Type-approval’⁶ Recast Framework Directive⁷ was implemented in Ireland through the European Communities (Road Vehicles: Type-Approval) Regulations 2009⁸. In January 2016 the Commission published a draft Regulation⁹ updating and tightening the type-approval regime. If this is passed it will have direct effect in Ireland. See Regulation (EC) No 595/2009, set out above, in relation to type-approval in respect to emissions from heavy duty vehicles.
 - In the area of ‘Green Procurement’ Ireland has implemented Directive 2009/33/EC through the European Communities (Clean and Energy-Efficient Road Transport Vehicles) Regulations 2011¹⁰. This Directive requires public authorities to take into account carbon dioxide and other emissions as a factor when procuring road vehicles.
3. Do national rules provide stricter or less strict requirements than international and/or European regulations (if applicable)?

European rules appear to be stricter than national rules. The Energy Efficiency Directive provides for more strict requirements than those that exist at present. EU countries (including Ireland) are required to use energy more efficiently at all stages of the energy chain from its production to its final consumption.

4. What are possible consequences if the requirements set forth in the rules are not fulfilled?

⁵ S.I. No. 426/2014. Note also, the European Union (Energy Efficiency Obligation Scheme) Regulations 2014 (S.I. No. 131/2014)

⁶ ‘Type-approval’ is regulation to control vehicle emissions by setting standards in manufacturing requirements, including testing of emissions to pre-approve categories of vehicles before they are placed on the market in the EU (i.e. emissions testing).

⁷ Directive 2007/46/EC

⁸ S.I. No. 158 of 2009

⁹ COM (2016) 31/2

¹⁰ S.I. No. 339/2011.

If Ireland fails to implement the requirements of the Directives it faces a fine imposed by the European Commission. Ireland must notify the European Commission with texts of transposition measures to avoid the European Commission opening an infringement case for non-communication.

5. If you compare the existing rules for the different means of transport, would you say that there are particularly strict rules for certain means of transport?

Directive 2003/26/EC¹¹ which relates to commercial vehicles, provides that where the exhaust emissions are not controlled by an advanced emission control system such as a three-way catalytic converter which is lambda-probe controlled, then a visual inspection of the exhaust system in order to check that it is complete and in a satisfactory condition and that there are no leaks must be carried out.

It is unclear from the Directive whether this should be carried out on an on-going basis or on a less frequent basis.

Legislation for Means of Transport regarding Accidents/Collisions (including Hazardous Goods)

1. Which national rules apply to prevent accidents/collisions and in case an accident/collision happened to prevent and minimize their impact on the environment?

The European Communities (Carriage of Dangerous Goods by Road and Use of Transportable Pressure Equipment) Regulations 2011¹² relate to the transport of goods including hazardous materials. The Regulations provide for measures to be taken to help prevent accidents/collisions involving dangerous goods, for example section 7 provides for the cleaning of containers that are used to transport radioactive material.

The Road Traffic Act 2011 is also applicable to road transport in Ireland. The Act obliges operators to inform the Minister of certain convictions. The Act has the

¹¹ See S.I. No. 98/2004 European Communities (Random Roadside Vehicle Inspection)(Amendment) Regulations 2004

¹² S.I. No. 349/2011. See also The European Communities (Carriage of Dangerous Goods by Road and Use of Transportable Pressure Equipment)(Amendment) Regulations 2013, S.I. No. 238 of 2013

objective of minimizing the risk of accidents/collisions by ensuring that all those licensed to operate a motor a vehicle are fit to do so.

Section 23 of the Merchant Shipping (Investigations of Marine Casualties Act) 2000 provides that the owner, charterer, master, skipper, person in charge, ship's agent, shall by using the quickest feasible means, notify the Marine Casualty Investigation Board of the casualty immediately he is aware that the marine casualty has occurred or commenced, or as soon as practicable thereafter.

2. Are international and/or European rules (if applicable) fully implemented in your country?

- Ireland complies with the International Atomic Energy Agency (“IAEA”) and specifically the IAEA Regulations for the Safe Transport of Radioactive Material.
- Ireland has transposed Directive 2006/117/EURATOM¹³ in relation to the control of shipments of radioactive waste and spent fuel.
- Ireland has transposed Directive 2006/94/EC into domestic law. The Directive establishes common rules for certain types of carriage of goods by road.
- The qualification and periodic training of drivers is provided for in Directive 2003/59/EC¹⁴. The Directive ensures that all those transporting goods are suitably qualified and trained.

3. Do national rules provide stricter or less strict requirements than international and/or European regulations (if applicable)?

The International rules on the safe transport of radioactive materials provide for stricter requirements in that they apply on an international basis rather than on a European basis. The international safety standards have three broad categories

¹³ Implemented by S.I. No. 86/2009 European Communities (Supervision and Control of Certain Shipments of Radioactive Waste and Spent Fuel) Order, 2009

¹⁴ Implemented by S.I. No. 91/2008 European Communities (Vehicle Drivers Certificate of Professional Competence) Regulations 2008

which are Safety Requirements, Safety Fundamentals and Safety Guides. The three categories are broad and appear to cover more than the existing national rules.

It must be noted that the national Regulations were implemented on foot of an EU Directive.

4. What are possible consequences if the requirements set forth in the rules are not fulfilled?

IAEA was registered pursuant to Article 102 of the UN Charter; therefore failure to comply with the international regulations would be in breach of the UN charter. The national Regulations provide that for certain breaches an arrest may be made without a warrant and the Regulations also provide that the District Court may grant a search warrant if there exist reasonable evidence that a contravention of the Regulations has occurred.

In the area of transport of spent fuel and radioactive waste, Ireland's implementing regulations of EU law, the European Communities (Supervision and Control of Certain Shipments of Radioactive Waste and Spent Fuel) Order, 2009, create various offences which can meet with a fine of up to €5,000 and/or imprisonment for up to 3 years if prosecuted in Ireland's lowest court level (the District Court) or alternatively a fine of up to €500,000 and/or up to 3 years imprisonment if tried in the Circuit Court.

5. If you compare the existing rules for the different means of transport, would you say that there are particularly strict rules for certain means of transport?

The European Communities (Carriage of Dangerous Goods by Road and Use of Transportable Pressure Equipment) Regulations 2011 are strict in the sense that the District Court can issue search warrants to determine if dangerous goods exist at a certain location¹⁵. The Regulations also give the police the power to arrest without a warrant if they suspect that an offence resulting from a contravention of the Regulations has been or is being committed in connection with the operation on a public road of transport equipment.

DISCLAIMER

¹⁵ S.I. No. 349/2011, Regulation 20

General Reporters, National Reporters and Speakers grant to the Association Internationale des Jeunes Avocats, registered in Belgium (hereinafter: “AIJA”) without any financial remuneration licence to the copyright in his/her contribution for AIJA Annual Congress 2015.

AIJA shall have non-exclusive right to print, produce, publish, make available online and distribute the contribution and/or a translation thereof throughout the world during the full term of copyright, including renewals and/or extension, and AIJA shall have the right to interfere with the content of the contribution prior to exercising the granted rights.

The General Reporter, National Reporter and Speaker shall retain the right to republish his/her contribution. The General Reporter, National Reporter and Speaker guarantees that (i) he/she is the sole, owner of the copyrights to his/her contribution and that (ii) his/her contribution does not infringe any rights of any third party and (iii) AIJA by exercising rights granted herein will not infringe any rights of any third party and that (iv) his/her contribution has not been previously published elsewhere, or that if it has been published in whole or in part, any permission necessary to publish it has been obtained and provided to AIJA.