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Policy directive laying down rules regarding compliance and supervision of the Hazardous Substances Transport Advisor (Safety Advisor Policy Directive)

Document number: ILT-2014/54973

The State Secretary for Infrastructure and the Environment,

Pursuant to Section 34, section 5, and Section 46 of the Transport of Dangerous Goods Act, Article 1 of the Decree on the Supervision and Tracing of Hazardous Goods Transports, Appendix 1, Section 1.8.3 of the Regulations governing the Transport of Dangerous Goods on Inland Waterways, the Regulations governing the Transport of Dangerous Goods by Rail and the Regulations governing the Transport of Dangerous Goods over Land and Section 4:81, clause 1, of the General Administrative Law Act;

HEREBY DECREES:

Article 1. Definitions

In the context of this policy directive, the following definitions apply:

VLG: Regulations governing the Transport of Dangerous Goods over Land

VSG: Regulations governing the Transport of Dangerous Goods by Rail

VBG: Regulations governing the Transport of Dangerous Goods on Inland Waterways

Safety advisor: a safety advisor as referred to in Appendix 1, Section 1.8.3, of Appendix 1 to the VLG, VSG or VBG

Annual report: an annual report detailing a company's activities in the field of the transportation of dangerous goods over a period of twelve months

ILT: Human Environment and Transport Inspectorate

Part 1 Discharge of duties

Article 2. Duties of the safety advisor

The duties of the safety advisor are the duties specified in subsection 1.8.3.3 of Appendix 1 to the VLG, VSG or VBG.

Part 2 Enforcement policy

Article 3. Enforcement by the ILT

The ILT shall intervene to enforce this directive if:

- a company fails to appoint a safety advisor, as referred to in Appendix 1, subsection 1.8.3.1 of Appendix 1 to the VLG, VSG or VBG.
- a company fails to produce an annual report on its activities in the field of the transportation of dangerous goods, as referred to in Appendix 1, subsection 1.8.3.3 of Appendix 1 to the VLG, VSG or VBG.
- a company fails to include in its annual report the required information regarding its activities in the field of the transportation of dangerous goods.
- a safety advisor cannot demonstrate that he or she has adequately performed his/her duties and/or has checked the practices and procedures pertaining to the activities referred to in Appendix 1, subsection 1.8.3.3 of Appendix 1 to the VLG, VSG or VBG.

Article 4. Enforcement instruments

Intervention by the ILT in response to a violation, as referred to in clauses 1 to 4 of Article 3, shall take the form of enforcement action under administrative law. The size of the penalty shall be as follows:

1. If a company has failed to appoint a safety advisor, as referred to in subsection 1.8.3.1 of Appendix 1 to the VLG, VSG or VBG: € 5,000 (five thousand euros).
2. If a company has failed to produce an annual report regarding its activities in the field of the transportation of dangerous goods, as referred to in subsection 1.8.3.3 of Appendix 1 to the VLG, VSG or VBG: € 2,500 (two thousand five hundred euros).

3. If a company has failed to include in its annual report the required information regarding its activities in the field of the transportation of dangerous goods, as referred to in subsection 1.8.3.3 of Appendix 1 to the VLG, VSG or VBG: € 1,000 (one thousand euros).
4. If a safety advisor has been unable to demonstrate that he or she has adequately performed his/her duties and/or has checked the practices and procedures pertaining to the activities referred to in subsection 1.8.3.3 of Appendix 1 to the VLG, VSG or VBG: € 2,500 (two thousand five hundred euros).

Part 3 Other matters

Article 5. Concluding provisions

Citation

This policy directive may be cited as: the Safety Advisor Policy Directive.

Effective date

This policy directive shall come into effect on the day after the date of publication of the Government Gazette in which it is included.

J. Thunnissen

*Inspector-General of the Human Environment and Transport,
on behalf of
The State Secretary for Infrastructure and the Environment,*

NOTES

Subsection 1.8.3.1 of Appendix 1 to the VLG, VSG and VBG creates an obligation for any company engaged in the transportation of dangerous goods by road, rail or inland waterway, or in packing, loading, filling or unloading activities associated with such transportation, to appoint one or more dangerous goods transport safety advisors. The appointment must be recorded in writing by the company. The provisions of 1.8.3.3 define the duties of the safety advisor as follows: primarily, acting under the responsibility of the company manager and within the parameters of the relevant activities of the company, to use all possible resources and measures to ensure that the activities may be undertaken more readily in compliance with the applicable regulations and under optimum safety conditions.

The safety advisor also has duties adapted to the activities of the company, in particular:

- to investigate whether the rules regarding the transportation of dangerous goods are being adhered to;
- to provide the company with advice in connection with activities that relate to the transportation of dangerous goods; and
- to draw up an annual report for the company management or, in certain cases, for a local government regarding those of the company's activities that relate to the transportation of dangerous goods. Each such report must be retained for five years and made available to the national authorities on request.

The safety advisor's duties additionally include checking the following practices and procedures relating to the regulated activities:

- the working practices whose purpose is to ensure compliance with the rules regarding the identification of the dangerous goods transported;
- company practice relating to the consideration, in connection with the purchase of transport means, of any special requirements relating to the dangerous goods transported;
- the working practices whose purpose is the inspection of equipment and machinery used for the transportation of dangerous goods or for the loading and unloading of such goods;
- the provision and documentation of appropriate training to company employees involved with dangerous goods, covering matters such as regulatory changes;
- the presence of appropriate emergency procedures to be followed in the event of an accident or incident that could compromise safety during the transportation of dangerous goods or during the loading and unloading of such goods;
- the analysis and, where necessary, reporting of accidents, incidents or serious infringements observed during the transportation of dangerous goods or during the loading and unloading of such goods;
- the implementation of appropriate measures to prevent the repetition of accidents, incidents or serious infringements;
- company practice relating to the consideration, in connection with the selection and engagement of subcontractors or other intermediaries, of the statutory provisions and private requirements relating to the transportation of dangerous goods;
- the possession by the personnel assigned to the transportation or the loading and unloading of dangerous goods of detailed operating procedures and instructions;
- the implementation of measures to promote awareness of the hazards associated with the transportation and the loading and unloading of dangerous goods;
- the implementation of measures to verify that the documents and safety equipment required to accompany dangerous goods in transit are present on board the transport means and conform to the applicable requirements;
- the implementation of measures to verify that the requirements relating to the loading and unloading of dangerous goods are adhered to; and
- the existence of a safety plan, as provided for in 1.10.3.2.

The ILT has the statutory duty to supervise compliance with the requirements of subsection 1.8.3.1 and 1.8.3.3 of Appendix 1 to the VLG, VSG and VBG. A wide range of intervention measures are available to the ILT for the purpose of enforcement. They include both measures for the prevention of non-compliance and measures for acting against observed violations and findings. The available intervention measures vary from warnings to sanctions under administrative and criminal law. The entire body of interventions available to the ILT, including those for use in the supervision of safety advisors, is detailed in the ILT's intervention ladder. The ILT additionally supervises safety advisors by means of administrative inspections (company audits) and the various interrogative investigations undertaken further to the findings of checks performed on the roads, the railways and the inland waterways. Interrogative investigations are always undertaken in cases of multiple, serial or serious violation and always involve detailed examination of the company's fulfilment of its safety advisor obligations.

This policy directive is intended to provide adequate clarity regarding the manner in which the ILT uses its administrative law enforcement powers in connection with the checks referred to above. The clarification of the ILT's administrative law enforcement activities does not exclude the possibility that action under criminal law may also be taken in certain cases involving the violation of section 1.8.3 of Appendix 1 to the VLG, VSG and/or VBG. Information regarding such action is provided in the Guidelines on Criminal Proceedings pursuant to the Transport

of Dangerous Goods Act. The Guidelines include details of the transaction tariff levels, penalties and hearing requirements that may be imposed if no safety advisor is appointed or no annual report is produced.

The policy directive is intended to provide clarity for all interested parties. Its publication is also expected to result in fewer objection and appeal proceedings, which require considerable input and follow-up. Moreover, it is anticipated that the policy directive will have a preventive effect, due to awareness of the supervision and enforcement arrangements on the part of companies engaged in the relevant fields.

Specific notes regarding the provisions

Article 1

This Article is self-explanatory.

With regard to the term 'annual report', the directive specifies that each such report relating to the activities of the company must cover a period of twelve months. That may be a calendar year, but may alternatively be another twelve-month period. However, successive annual reports must cover directly contiguous twelve-month periods. If, for example, a company produces an annual report covering the period from 1 July of one year to 1 July of the next year, the inspectorate will ask to be provided with at least the most recent annual report for examination, and possibly the reports regarding previous years.

Article 2

The duties referred to in subsection 1.8.3 of Appendix 1 to the VLG, VSG and VBG are separately listed above.

Article 3

This Article specifies the circumstances in which the ILT will take enforcement action.

The first clause states that the ILT will take enforcement action if a company fails to appoint a safety advisor, as referred to in subsection 1.8.3.1 of the VLG, VSG and/or VBG. The safety advisor may be a company employee, or an external service provider. Regardless of whether a safety advisor is internal or external, he or she must always be in a position to discharge a safety advisor's defined duties and to advise and report to the company management accordingly. A safety advisor who is not a paid employee of the company must be demonstrably associated with the company, e.g. by means of a written contract. Any such external safety advisor must have sufficient insight into all the company's activities to enable him or her to discharge a safety advisor's defined duties and to properly perform the role of safety advisor.

The second clause states that the ILT will take enforcement action if a company fails to produce an annual report regarding its activities in the field of the transportation of dangerous goods. The inspectorate will always ask to be provided with at least the most recent annual report for examination. See also the notes on Article 1 concerning the annual report.

The third clause states that the ILT will also take enforcement action if an annual report does not contain the necessary information concerning the company's activities in the field of the transportation of dangerous goods. The information that an annual report must contain consists of details of the company's activities, as referred to in subsection 1.8.3.3 of Appendix 1 to the VLG, VSG and/or VBG. The detailed activities must also be relevant to the company's operations in connection with the transportation of dangerous goods by road, rail and/or inland waterway and/or the packing, loading, filling or unloading of dangerous goods associated with such transportation.

The fourth clause states that the ILT will take enforcement action if a safety advisor cannot demonstrate that he or she has performed his/her duties adequately and/or has checked the practices and procedures relating to the company's activities, as referred to in subsection 1.8.3.3 of the VLG, VSG and/or VBG. That may be demonstrated by, for example, providing the inspectorate with details of the working practices, procedures, measures, checks, etc. referred to in 1.8.3.3.

Article 4

Article 4 describes the enforcement action under administrative law, which the ILT may take if a violation of a kind referred to in clauses 1. to 4. of Article 3 is observed. Under Article 46 of the Transport of Dangerous Goods Act, the ILT is empowered to issue an administrative order in the event of failure to fulfil an obligation created by or pursuant to that Act. Under Article 5:32 of the General Administrative Law Act, the ILT is also empowered to alternatively issue a penalty payment order. The issue of penalty payment order is the enforcement action normally taken in the event of a violation of a kind referred to in clauses 1. to 4. of Article 3. When taking such action, the ILT adheres to the following procedure:

1st Observation of violation(s):

The ILT officer makes a report detailing the findings and the observed violation(s), which is then sent to the company by letter.

- The report specifies a three-month period in which the reported matters must be rectified.
- At the end of the specified period, a (follow-up) inspection is carried out, in the context of which the ILT determines whether the previously observed violations have been rectified.

2nd Observation of violation(s) in the context of a (follow-up) inspection:

- A proposal to issue penalty payment order is prepared.
- If the opinion on the proposal does not indicate that the violations have been rectified or have ceased, the penalty payment order is issued.

If, when a second follow-up inspection is carried out, the previously observed violations are found to have continued, the penalty is forfeited.

The penalty payable for failure to appoint a safety advisor is set at € 5,000. The size of the penalty reflects the cost of engaging an external safety advisor. Depending on the activities to be undertaken and the size of the company, the cost of engaging an external safety advisor is between € 500 and € 1,500 per year. Assuming that a company will usually have been without a safety advisor for several years before a penalty is imposed and that the ILT cannot check every company every year, the size of the penalty is considered reasonable. The other penalties for failure to appoint a safety advisor, failure to produce an annual report and failure to (adequately) perform the duties of a safety advisor are in proportion to the former penalty.

J. Thunnissen

Inspector-General of the Human Environment and Transport,

on behalf of

The State Secretary for Infrastructure and the Environment,