



STATUTORY INSTRUMENTS.

**S.I. No. 555 of 2017**

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EUROPEAN COMMUNITIES (CARRIAGE OF DANGEROUS GOODS  
BY ROAD AND USE OF TRANSPORTABLE PRESSURE EQUIPMENT)  
(AMENDMENT) (NO. 3) REGULATIONS 2017

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I, HEATHER HUMPHREYS, Minister for Business, Enterprise and Innovation, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) (as amended by section 2 of the European Communities Act 2007 (No. 18 of 2007)) and for the purpose of giving further effect to Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods<sup>1</sup>, Directive 2010/35/EU of the European Parliament and the Council of 16 June 2010 on transportable pressure equipment<sup>2</sup>, Commission Directive 2010/61/EU of 2 September 2010 adapting for the first time the Annexes to Directive 2008/68/EC of the European Parliament and of the Council on the inland transport of dangerous goods to scientific and technical progress (insofar as that Directive relates to the transport of dangerous goods by road)<sup>3</sup>, Commission Directive 2012/45/EU of 3 December 2012 adapting for the second time the Annexes to Directive 2008/68/EC of the European Parliament and of the Council on the inland transport of dangerous goods to scientific and technical progress (insofar as that Directive relates to the transport of dangerous goods by road)<sup>4</sup>, Commission Directive 2014/103/EU of 21 November 2014 adapting for the third time the Annexes to Directive 2008/68/EC of the European Parliament and of the Council on the inland transport of dangerous goods to scientific and technical progress (insofar as that Directive relates to the transport of dangerous goods by road)<sup>5</sup> and Commission Directive 2016/2309/EU of 16 December 2016 adapting for the fourth time the Annexes to Directive 2008/68/EC of the European Parliament and of the Council on the inland transport of dangerous goods to scientific and technical progress (insofar as that Directive relates to the transport of dangerous goods by road)<sup>6</sup>, hereby make the following regulations:

1. (a) These Regulations may be cited as the European Communities (Carriage of Dangerous Goods by Road and Use of Transportable Pressure Equipment) (Amendment) (No. 3) Regulations 2017.

<sup>1</sup>OJ L260, 30.09.2008, p.13

<sup>2</sup>OJ L165, 30.06.2010, p.1

<sup>3</sup>OJ L233, 03.09.2010, p.27

<sup>4</sup>OJ L332, 4.12.2012, p.18

<sup>5</sup>OJ L335, 22.11.2014, p.15

<sup>6</sup>OJ L345, 20.12.2016, p.48

*Notice of the making of this Statutory Instrument was published in  
"Iris Oifigiúil" of 12th December, 2017.*

- (b) The Principal Regulations and these Regulations can be referred to using the collective citation “European Communities (Carriage of Dangerous Goods by Road and Use of Transportable Pressure Equipment) Regulations 2011 to 2017”.

2. In these Regulations “Principal Regulations” means the European Communities (Carriage of Dangerous Goods by Road and Use of Transportable Pressure Equipment) Regulations 2011 (S.I. No. 349 of 2011) as amended by the European Communities (Carriage of Dangerous Goods by Road and Use of Transportable Pressure Equipment) (Amendment) Regulations 2013 (S.I. No. 238 of 2013), by the European Communities (Carriage of Dangerous Goods by Road and Use of Transportable Pressure Equipment) (Amendment) Regulations 2015 (S.I. No. 31 of 2015), by the European Communities (Carriage of Dangerous Goods by Road and Use of Transportable Pressure Equipment) (Amendment) (No. 2) Regulations 2015 (S.I. No. 288 of 2015), by the European Communities (Carriage of Dangerous Goods by Road and Use of Transportable Pressure Equipment) (Amendment) Regulations 2017 (S.I. No. 5 of 2017) and by the European Communities (Carriage of Dangerous Goods by Road and Use of Transportable Pressure Equipment) (Amendment) (No. 2) Regulations 2017 (S.I. No. 282 of 2017)”;

3. The Principal Regulations are amended—

(1) in Regulation 2, in paragraph (1) by the following amendments—

(a) by replacing the definition of “Minister” with:

““Minister” means the Minister for Business, Enterprise and Innovation;”

(b) in the definition of “notifying authority” by substituting “the Minister” for “the Health and Safety Authority”,

(c) by substituting “a conformity assessment body or inspection body” for “an inspection body” after “means” into the definition of “notified body”.

(2) by substituting for Regulations 69, 70, 71, 72 and 73 the following:

*“Notifying authority*

69. For the purposes of these Regulations, the notifying authority shall be responsible for setting up and carrying out the necessary procedures for the assessment, notification and subsequent monitoring of notified bodies approved in the State.

*Accreditation body*

70. For the purposes of these Regulations, INAB is responsible for the development and carrying out of procedures for the assessment and monitoring of notified bodies.

*Notified bodies*

71. (1) The notifying authority shall notify the Commission and the other Member States of the conformity assessment bodies and inspection bodies authorised under these Regulations to carry out the conformity assessment, periodic inspection, intermediate inspection, exceptional checks and reassessment of conformity requirements set out in the Annexes to the Directive and the TPE Directive.

(2) Only a conformity assessment body or inspection body which has been notified to the European Commission and other Member States in accordance with these Regulations and the TPE Directive, and against whom no objections are raised by the European Commission or other Member States within the time periods set down under Article 22 of TPE Directive, shall be a notified body for the purposes of these Regulations and the TPE Directive.

(3) The assessment and monitoring referred to in Article 17(1) and (2) of the TPE Directive shall be carried out by INAB within the meaning of and in accordance with Regulation (EC) No. 765/2008.

*Applications for notification by conformity assessment bodies*

72. (1) A conformity assessment body or inspection body seeking to become a notified body shall meet the requirements set down in the Annexes to the Directive and the TPE Directive.

(2) A conformity assessment body or inspection body seeking to become a notified body shall submit to the notifying authority an application, which application shall be in accordance with Article 21 of the TPE Directive and shall be accompanied by the appropriate fee, as may be prescribed by the notifying authority.

*Notification of conformity assessment bodies and inspection bodies*

73. (1) The notifying authority may only notify a conformity assessment body or inspection body where that body—

- (a) has made an application to it in accordance with Article 21 of the TPE Directive,
- (b) meets the requirements set out in Article 20 of the TPE Directive, and
- (c) meets the minimum criteria specified in subsection 1.8.6.8 of the ADR.

(2) Notifications by the notifying authority under paragraph (1) shall be made in accordance with the notification procedure set down in Articles 22 (2), (3) and (4) of the TPE Directive.

(3) The notifying authority shall notify the European Commission and the other Member States of any subsequent relevant changes to the notification.”

(3) By substituting for Regulation 74 the following:

*“Changes to notification*

74. (1) Where the notifying authority has ascertained or has been informed that a notified body no longer meets the requirements laid down in Article 20 of the TPE Directive, or that it is failing to fulfil its obligations under Article 26 or 27 of the TPE Directive or under these Regulations, that notifying authority shall restrict, suspend or withdraw notification as appropriate, depending on the seriousness of the failure to meet those requirements or fulfil those obligations.

(2) In the event of restriction, suspension or withdrawal of notification, or where the notified body has ceased its activity, the notifying authority shall—

(a) immediately inform the Commission and the other Member States of same, and

(b) take appropriate steps to ensure that the files of that notified body are either processed by another notified body or kept available for the responsible notifying and competent authorities at their request.

(3) The notifying authority shall inform the notified body concerned of its decision and allow that body an opportunity to make representations to it.

(4) The notifying authority shall establish a panel (“appeal panel”) for the purposes of considering appeals under this Regulation. An appeal panel shall consist of at least 3 but not more than 5 persons appointed by the notifying authority, one of whom shall be designated by the notifying authority to be chairperson of the panel. An appeal panel shall not consist of any person who decided, or was involved in the decision, to restrict, suspend or withdraw the relevant notification pertaining to a notified body. The notifying authority may establish more than one appeal panel to consider one or more appeals. An appeal panel shall establish its own procedure.

(5) Where the notifying authority decides to restrict, suspend or withdraw notification pertaining to a notified body, the latter may, within 14 days of the notification under paragraph (3), appeal to an appeal panel against the restriction, suspension or withdrawal, as the case may be. The notification pertaining to a notified body stands restricted, suspended or withdrawn, as the case may be, from the date of the notification of the decision under paragraph (3), unless the appeal panel, upon an application to it, decides otherwise, pending the outcome of the appeal. On hearing the appeal the appeal panel may confirm the decision, vary it or allow the appeal and shall notify the appellant of its decision. The decision of the appeal panel is final except that an appeal lies to the High Court on application to it on a specified point of law. Such an application does not affect the decision of the appeal panel and its operation.

(6) All expenses reasonably incurred by the notifying authority in relation to an appeal before an appeal panel or the High Court shall be borne by the appellant where the appeal panel or the court confirms or confirms with a variation the decisions of the notifying authority. The notifying authority may

recover these expenses as a simple contract debt in a court of competent jurisdiction.”

(4) By inserting after Regulation 74 the following:

*“Operational obligations of notified bodies*

74A. A notified body shall—

- (a) carry out conformity assessments, periodic inspections, intermediate inspections and exceptional checks in accordance with the terms of their notification and the procedures set out in the Annexes to the Directive,
- (b) ensure that reassessments of conformity are carried out in accordance with the provisions of Annex III to the TPE Directive, reproduced here at Schedule 5,
- (c) be authorised to carry out work in any other Member State, and
- (d) participate in the activities of the notified body coordination group established in accordance with Article 29 of the TPE Directive, and ensure that its assessment personnel are kept informed of, and apply, the relevant guidance and standardisation procedures arising from the work of the group.

*Information obligation of notified bodies*

74B. Notified bodies shall—

- (a) keep the notifying authority informed;
  - (i) of any refusal, restriction, suspension or withdrawal of a type approval certificate issued to an applicant,
  - (ii) of any circumstances affecting the scope of and conditions for notification,
  - (iii) on request, of activities performed, both within and outside the scope of their notification, including subcontracted tasks and cross-border activities, or
  - (iv) of any requests for information received from market surveillance authorities,

and
- (b) provide other notified bodies carrying out activities on the same transportable pressure equipment with relevant information relating to conformity assessment and inspection results.

*Appeals against decisions of notified bodies*

74C. (1) The notifying authority shall establish one panel per appeal (“appeal panel”) for the purposes of considering appeals against restrictions, suspensions

or withdrawals rendered by notified bodies under Regulation 74B, arising from the operational obligations of notified bodies as set out in Regulation 74A.

(2) An appeal panel shall consist of at least 3 but not more than 5 persons appointed by the notifying authority, one of whom shall be designated by the notifying authority to be chairperson of the panel. An appeal panel shall not consist of any person who decided, or was involved in the decision, to restrict, suspend or withdraw the relevant certificate or approval decision. An appeal panel shall establish its own procedure.

(3) Where a notified body decides to restrict, suspend or withdraw a certificate held by a manufacturer, the latter may, within 14 days of the notification of a decision under Regulation 74B, appeal to an appeal panel against the restriction, suspension or withdrawal, as the case may be. The certificate or approval decision stands restricted, suspended or withdrawn, as the case may be, from the date of notification of the decision under Regulation 74B, unless the appeal panel, upon an application to it, decides otherwise, pending the outcome of the appeal. On hearing the appeal the appeal panel may confirm the decision, vary it or allow the appeal and shall notify the appellant of its decision. The decision of the appeal panel is final except that an appeal lies to the High Court on application to it on a specified point of law. Such an application does not affect the decision of the appeal panel and its operation.

#### *Transitional Provisions*

74D (1) Appointments made by the Notifying Authority in accordance with the TPE Directive prior to the coming into effect of these Regulations remain valid until their renewal date.

(2) Certificates and decisions issued by conformity assessment bodies under the TPE Directive shall be valid under these Regulations.”

(5) by inserting the following Schedule after Schedule 4:

“*Regulation 74A*

#### SCHEDULE 5

Text of ANNEX III of TPE Directive

#### PROCEDURE FOR THE REASSESSMENT OF CONFORMITY

1. The method for ensuring that the transportable pressure equipment referred to in Article 1(2)(c) of the TPE Directive manufactured and put into service before the dates of implementation of Directive 1999/36/EC<sup>7</sup> complies with the relevant provisions of the Annexes to the Directive and of the TPE Directive as applicable at the time of reassessment shall be as set out in this Schedule.
2. The owner or operator must make available to a notified body conforming to EN ISO/IEC 17020:2004 type A, notified for reassessment of conformity, the information regarding the transportable pressure equipment which

<sup>7</sup>OJ. L138. 01.06.1999. p.20

enables that body to identify the equipment precisely (origin, design rules, and for acetylene cylinders also details of the porous material). The information shall include, where appropriate, any prescribed restrictions on use, and any notes on possible damage or repairs which have been carried out.

3. The type A notified body, notified for reassessment of conformity, shall assess whether the transportable pressure equipment affords at least the same degree of safety as the transportable pressure equipment referred to in the Annexes to the Directive. The assessment shall be carried out on the basis of the information produced in accordance with paragraph 2 and, where appropriate, of further inspections.
4. If the results of the assessment in paragraph 3 are satisfactory, the transportable pressure equipment shall be subject to the periodic inspection provided for in the Annexes to the Directive. If the requirements of that periodic inspection are met the Pi marking shall be applied by or under the surveillance of the notified body responsible for the periodic inspection in accordance with Article 14(1) to (5) of the TPE Directive. The Pi marking shall be followed by the identification number of the notified body responsible for the periodic inspection. The notified body responsible for the periodic inspection shall issue a certificate of reassessment in accordance with paragraph 6.
5. Where pressure receptacles were manufactured in series, Member States may authorise the reassessment of conformity of individual pressure receptacles, including their valves and other accessories used for transport, to be carried out by a notified body notified for periodic inspection of the relevant transportable pressure receptacles provided that conformity of the type has been assessed in accordance with paragraph 3 by a type A notified body, responsible for the reassessment of conformity, and a certificate of type reassessment issued. The Pi marking shall be followed by the identification number of the notified body responsible for the periodic inspection.
6. In all cases the notified body responsible for the periodic inspection shall issue the certificate of reassessment containing as a minimum:
  - (a) the identification of the notified body issuing the certificate, and, if different, the identification number of the type A notified body responsible for the reassessment of conformity in accordance with paragraph 3;
  - (b) the name and address of owner or operator specified in paragraph 2;
  - (c) in the case of the application of the procedure in paragraph 5, the data identifying the certificate of type reassessment;
  - (d) the data for identification of the transportable pressure equipment to which Pi marking has been applied including at least the serial number or numbers; and
  - (e) the date of issue.



7. A certificate of type reassessment shall be issued.

Where the procedure in paragraph 5 is applied the type A body, responsible for the reassessment of conformity, shall issue the certificate of type reassessment containing as a minimum:

- (a) the identification of the notified body issuing the certificate;
  - (b) the name and address of the manufacturer and the holder of the original type approval for the transportable pressure equipment being reassessed when the holder is not the manufacturer;
  - (c) the data identifying the transportable pressure equipment belonging to the series;
  - (d) the date of issue; and
  - (e) the words: ‘this certificate does not authorise manufacture of transportable pressure equipment or parts thereof’.
8. By affixing or having affixed the Pi marking, the owner or operator indicates that he takes responsibility for the conformity of the transportable pressure equipment with all applicable requirements set out in the Annexes to the Directive and in the TPE Directive as applicable at the time of reassessment.
9. Where appropriate, the provisions of Annex II (2) of the TPE Directive shall be taken into account and the cold marking provided for in that Annex shall also be affixed.”



Given under my Official Seal,  
7 December 2017.

HEATHER HUMPHREYS,  
Minister for Business, Enterprise and Innovation.

## EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation)*

These Regulations give further effect to the provisions of Directive 2010/35/EC of the European Parliament and the Council on transportable pressure equipment in as much as they allocate the responsibility for the role of Notifying Authority under that Directive to the Minister for Business, Enterprise and Innovation, this responsibility having previously sat with the Health and Safety Authority.

These Regulations may be cited as the European Communities (Carriage of Dangerous Goods by Road and Use of Transportable Pressure Equipment) (Amendment) (No. 3) Regulations 2017.

The Regulations amend the European Communities (Carriage of Dangerous Goods by Road and Use of Transportable Pressure Equipment) Regulations 2011 (S.I. No. 349 of 2011) for the sixth time and shall be cited as European Communities (Carriage of Dangerous Goods by Road and Use of Transportable Pressure Equipment) Regulations 2011 to 2017.

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