

***REGULATORY IMPACT ANALYSIS (RIA)***

**To update the inspection and testing Provisions for National Tanks used to transport dangerous goods by road.**

**Proposed amendment of European Communities (Carriage of Dangerous Goods by Road and Use of Transportable Pressure Equipment) Regulations 2011, S.I. No. 349 of 2011 to 2023**

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## Regulatory Impact Assessment – National Tanks pre-2003

### Foreword

*The Health and Safety Authority has prepared this Regulatory Impact Analysis (RIA).*

*This analysis concerns proposals for the updating of the inspection and testing provisions of existing regulations for the testing and examination of national tanks for the transport of dangerous goods.*

*National tanks being transport tanks built prior to 2003 which operate outside of the ADR requirements because the original design and operational certification obtained was prior to the introduction of ADR legislation.*

*All other transport tanks post 2003 for the transport of dangerous goods placed on the market and used in Ireland are required meet ADR provisions.*

This RIA can be considered an RIA under the terms of the [REVISED RIA GUIDELINES How to conduct a Regulatory Impact Analysis](#) (Department of the Taoiseach, 2009).

*Date 04/04/24*

## **1.0 BACKGROUND, CONTEXT, OBJECTIVES AND OPTIONS**

### **1.1 Background, Context and objectives**

Dangerous goods transport is governed by national legislation, the European Communities (Carriage of Dangerous Goods by Road and Use of Transportable Pressure Equipment) Regulations 2011 (S.I. No. 349 of 2011 to 2023). This legislation gives effect to the Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR), an international agreement setting standards and requirements for the safe transport of dangerous goods and signed by over 50 countries.

These regulations amongst other things, govern the design, construction and testing and maintenance of tanks and tank vehicles used in the transport of dangerous goods. In Ireland there are in use tanks that fully meet these regulations and tanks that do not, these latter tanks are referred to as national tanks.

National tanks include fixed tanks, tank containers, portable tanks, and tanks forming elements of multiple element gas containers (MEGCs). They operate under national legislation provisions rather than ADR and are used to carry fuels, gases, and industrial chemicals.

National tanks are (with limited exceptions) over 20 years old and historically have been subject to less stringent testing and examination requirements than modern ADR compliant tanks. These tanks currently form a minority of the overall tank population in Ireland (circa 17%).

Total tank vehicle<sup>1</sup> population - 2,107

Total national tank population - 361

There is currently a two-tier system in Ireland comprising 1) national tanks and 2) ADR tanks. This two-tier system started around 2001 when Ireland moved both legislatively and formally as a contracting party and acceded to the International Agreement Concerning the Carriage of Dangerous Goods by Road (ADR) in 2006.

The ADR sets internationally agreed standards for the design, construction and testing of tanks carrying dangerous goods. Therefore, the provision of national requirements for tanks in operation prior to this time was necessary to allow the continued use at the time of these older tanks as they were by default not in compliance with ADR.

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<sup>1</sup> Tank vehicle population excludes tanks that are not vehicles e.g. tank containers. Currently there is no data or estimates of such tanks in operation.

These national provisions have remained largely unchanged since 2003 (the relevant “cut-off” date for existing national tanks before the introduction of the regulations) while on the other hand ADR standards have been under continuous regular review and update every two years, resulting in significant differences between the test and inspection regime for national tanks compared with ADR compliant tanks.

The typical life expectancy of tanks is between 12 years (eight years for heavily used tanks) and 30 years dependent on use. In Ireland most of these pre-2003 national tanks are now between 20 and up to nearly 40 years old.

All tanks develop structural problems over time which can manifest as stress fractures in the shell of the tank or intercompartment failures, as well as corrosion impacting on shell thickness and other issues. Such deterioration can result in loss of containment as witnessed by HSA inspectors. It is therefore important to address the testing and inspection regime of this ageing population of tanks and to manage the eventual removal from service of those tanks that are deemed no longer fit for use.

### **1.1.1 Key differences in the national tank requirements compared with requirements for ADR tanks:**

1. **Hydraulic testing** - this test subjects the tank and tank compartments to hydraulic stresses, similar to when the tank is in use, to identify critical structural flaws, such as fractures in the tank shell or between tank compartments. Currently, all national fuel tanks carrying petrol, diesel or kerosene are exempted from this test requirement while all ADR tanks (tanks put into use post 2003) have to undergo this test.
2. **Competent persons** - national tanks have provisions for testing by competent persons. Competent persons are tank inspection companies who are allowed to perform tank testing on national tanks. However, competent persons who inspect national tanks are not monitored and are not required to hold detailed tank inspection procedures or to be accredited unlike the inspection bodies that are responsible for inspecting ADR tanks (tanks put into use post 2003).

ADR requires that tank inspection bodies for ADR tanks are accredited and must have detailed inspection procedures based on specified international tank inspection standards. On the other hand, all national tanks may be inspected and tested by a competent person. Unlike those who are required to test ADR tanks, competent persons who inspect national tanks are not currently required to be registered or to be appointed by the competent authority and therefore operate with no oversight.

There are some accredited tank inspection bodies (AIBs) operating in Ireland (since the introduction of revisions to the regulations in 2017) who can also inspect national tanks in addition to the competent persons. However, as there is no requirement for accreditation of tank inspectors for national tanks (even for LPG<sup>2</sup> Annex C tanks) the difference in the standards set for inspection service providers in ADR and national legislation is considerable.

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<sup>2</sup> LPG is liquefied petroleum gas, a Class 2 gas under ADR.

**1.1.2 National tank data**

The Road Safety Authority (RSA) provided the Health and Safety Authority with a list of competent persons. From this list, it would appear the number of competent persons has decreased from a high of ca. 16 some years ago (2007) to six currently. National tank inspections are undertaken on a three-year cycle.

The Health and Safety Authority made contact with these competent persons, and the number is further reduced to five as one of the competent persons identified has indicated they no longer engage in the testing of national tanks (0-1 tanks per year inspected).

From discussions with the competent persons, we have determined that competent persons are inspecting circa 40 tanks per year (this figure is based on an estimate of 120 tanks being presented yearly for tank testing, one third of the 361 tank vehicles population identified by the RSA. Tank inspections are undertaken on a 3-year cycle, not annual). The bulk of these national tanks are being inspected by two competent persons. There may be another couple of competent persons not on the RSA list that may come forward during the public consultation however based on the data received from the RSA the probability is low and likely if any to be in single digits.

The balance of national tank vehicles is inspected by accredited AIBs.

**Table summary of differences between the testing requirements for national tanks versus ADR tanks:**

	<b>ADR Tanks</b>	<b>National Tanks</b>
<b>Hydraulic Testing</b>	Required for all tanks	Petrol, diesel, kerosene tanks exempted
<b>Tank Testing</b>	Carried out by AIBs (accredited inspection bodies): <ul style="list-style-type: none"> <li>○ Inspection bodies are required to be accredited and</li> <li>○ required to have detailed tank inspection procedures</li> </ul>	Carried out by competent persons (and accredited inspection bodies): <ul style="list-style-type: none"> <li>○ competent persons are not required to be accredited to test national tanks and</li> <li>○ not required to have detailed tank inspection procedures</li> </ul>

### **1.1.3 National tank legislation provisions**

In addition, the current national tank testing provisions do not currently accommodate specific tank design types. It is important to account for key differences in tank design when testing to modify testing and inspection accordingly. The ADR regime recognises and accommodates these types of design issues during testing however the national provisions do not.

Apart from LPG tanks built to EN12493 inclusive of Annex C, all other national transport tanks are those which were built pre-2003 and consequently because of their age more likely to fail or require repairs compared to newer transport tanks built and tested to ADR standards.

It is recognised that test, inspection, examination and improved requirements for documenting procedures for those who carry out these activities needs to be markedly improved due to this increased risk of failure as the tank population ages.

While the long-term objective is to eventually have a fully ADR compliant tank population in Ireland, national provisions will nonetheless still be necessary to better manage an ageing population of tanks and also for certain categories of tanks such as LPG Annex C tanks.

The present situation that allows for less stringent provisions for older tanks makes little sense when older tanks are inherently less robust due to their many years of wear and tear.

Therefore, the Authority has considered the following options available to address the test and inspection gaps and risks.

## **1.2 Options**

### ***Option 1***

#### ***Do Nothing:***

This option means that the standards between national tanks and ADR tanks will continue to widen.

National tanks will continue be poorly served by the existing regulations: –

- specific tank types will continue to not be addressed for relevant testing and inspection aligned to the tank type,
- competent person tank inspectors will be able to continue to operate without detailed tank procedures,
- testing of petroleum tanks will continue to not require hydraulic testing, a standard test specified as necessary in ADR for all tanks,



- the existing legislation allows that competent persons may test and inspect national Class 2 gas tanks, a function that is currently reserved for EU notified bodies (accredited and notified to the Commission) for the equivalent ADR tank.

As an ageing population of tanks, the risk of failure/loss of containment is higher therefore option 1 is no longer appropriate.

### ***Option 2***

#### ***Introduction of a Code of Practice***

Regulation of the Transport of Dangerous Goods by Road does not stem from EU Occupational health and safety legislation. ADR stands for the “Agreement concerning the International Carriage of Dangerous Goods by Road”. It was first adopted in Geneva in 1957 under the auspices of the United Nations Economic Commission for Europe. The ADR became effective through implementation in the respective national law. Every two years, the ADR is revised and adapted to reflect technological progress. In Ireland it is regulated under the European Communities Act. There is no provision under the European Communities Act for the Authority to introduce Codes of Practice. As fundamental changes are being proposed guidance is not an appropriate option. Option 2 is also not appropriate.

### ***Option 3***

#### ***Introduction of amendments to the existing Regulations:***

Current regulations are inadequate for national tanks as they do not provide the relevant detailed requirements for test and inspection and do not reflect allowances for different tank design types. Introducing appropriate regulation to improve standards of tank inspectors and a testing regime suitable for the adequate assessment of all tank types used in Ireland will improve safety in this sector.

It is proposed that standards in tank testing and inspection can be improved by introducing additional and more appropriate legislative requirements for national tanks without the need for competent person tank testers to be accredited.

While the national tank population will continue to decline naturally as old tanks become unserviceable or are replaced, this process will take several years. Taking reasonable measures to improve legislation will better ensure the transition to fully ADR compliant tank population and protect against the ever-increased risk of incidents involving this cohort of tanks.

An exception to this will be for LPG tanks built to approved standards outside of ADR but provided for by national legislation (these LPG tanks cover modern newly built tanks to the same standard in ADR, but with permitted differences, resulting in the tank being designated instead as a national tank). This is the most appropriate option.

## IMPACT ANALYSIS ON THE INTRODUCTION OF LEGISLATION TO ADDRESS RISKS

### 1.3 Objectives

Current provisions (test and examination) for national tanks are provided in national legislation and it is proposed to amend these existing regulations as fundamental changes are being proposed that would necessitate amendments to legislation. The proposed amendments are prescriptive requirements.

The goal for putting in place national legislation is to align national tank requirements more fully with ADR as far as practicable. The majority of tanks operating in Ireland comply with ADR. However, the current national provisions for this cohort of national tanks deviates even more from international standards compared to 2006 when the ADR requirements were initially introduced in Ireland.

The current proposal is to reduce the differences which now exist between ADR and national provisions.

#### **Competent persons inspection and testing transitioning to accreditation or a managed phasing out of national tank vehicles and competent persons**

**Option a** – Transition to requiring competent persons to be accredited. Accreditation is a standard requirement for tank inspectors in ADR and as such some competent person tank testers in Ireland have chosen to become accredited for this activity during the last major revision of national tanks legislation in 2017. At that time all ADR tanks being operated as national tanks (post-2003 construction) were required to comply in full with ADR thus requiring accredited tank inspectors to service this population of tanks.

Pre-2003 tanks were allowed at the time to remain in service as a national tank and competent person tank inspectors were allowed to continue to serve this population.

**Option b** – An improved mandated inspection regime in legislation would also improve test and inspection standards in the industry without the need for competent persons to be accredited. The exception to this is in respect to the draft proposal to introduce a requirement for national tanks designed for the carriage of Class 2 gases, to require tank testers to be accredited for this activity.

As the population of national tanks declines so too will the competent person cohort, this is already evident in the small numbers of active competent persons remaining, the number of tanks they are inspecting and the number of national tanks in operation.

Following initial discussions with competent persons (Q1 2024) it is understood that accreditation is not viable for this group, based mainly on the costs to achieve accreditation and the decline in tank vehicle numbers.

- Five competent person tank testers according to the RSA (from circa 16 in 2007)
- 361 national tank vehicles at December 2023 (from 866 in 2017)

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- 50 LPG Annex C tanks form part of the 361 national tank-vehicle population.

With the exception of class 2, gas tank vehicles it is proposed that standards can be improved through legislation without the need to impose accreditation on competent persons.

Justification being:

- Considering the relatively short time frame existing for national tanks to continue in service and the rate of decline of national tank vehicles (except for LPG Annex C tanks).
- Competent persons may be unwilling to engage in accreditation based on efforts and cost compared to the share in the market of vehicles to be tested. Imposing accreditation would result in excluding this small group of tank testers at a point in time when these test services are still mandatory.

To progress the measures necessary to ensure the safety of these tanks the following legislative transition is proposed to align tank inspection more closely with ADR:

- a) requiring competent persons to have written inspection procedures.
- b) Introducing a requirement specifically for Class 2 tanks (this includes LPG Annex C tanks) to be tested by an accredited body (which already applies to all post-2003 ADR tanks).

### National Tank Data

National tank vehicle population is approximately 17% of the population of tank vehicles on the road in Ireland (these figures exclude non-vehicle tanks for which the RSA does not have data).

Type of tank	Number of tanks	Less than 25 years old	Less than 30 years old	Greater than 30 years old
ADR and national tanks vehicles	2,107	N/A	N/A	N/A
Tank Vehicles pre-2003	361			
Non tank vehicles	no data			
Competent Inspectors national tanks	5	N/A	N/A	N/A

Source: RSA data received December 2023

HSA or other competent authority appointed inspection bodies (see [HSA website](#)):

- Tank inspectors accredited: four (plus up to an additional five from EU/UK)

The proposed draft changes to Schedule 4 of the Regulations will introduce amendment to the regulations in 2024/2025.

The draft proposed changes are essentially an incremental step up from current regulations but still do not provide a comprehensive scheme of inspection. However, adapting to these measures as currently drafted would be more easily accommodated by competent person tank inspectors rather than moving to ADR/EN12972 and accreditation and all the necessary procedures and costs that this would entail.

Marking and certification requirements also need to be developed to clearly identify tank types and reflect test results. For example, some tank certificates for national tanks have ADR tank codes when they are not ADR tanks.

### **Impacts from current draft proposal**

#### **Tank inspection changes**

##### **Maintain or remove the exemption for fuel tanks with regard to hydraulic testing (an ADR norm)**

The existing exemption for national tanks is a historic exemption with no documented history as to why it was required. Some tank designs, those with thin wall partitions, may not be suitable for hydraulic testing, however some may be and certainly whole tank rather than individual compartments could be tested in most if not all circumstances.

Changing to a mandatory hydraulic testing scheme would likely see tank failures or reveal tanks not suitable for testing resulting in the removal of certain tanks from circulation or the phasing out of unsuitable tanks. The public consultation may provide further information on whether or not certain tank types which cannot be subjected to hydraulic testing exist which can be considered.

##### **Making provisions to accommodate the testing of LPG Annex C tanks**

Tanks designed to different reference temperatures are provided for in Directive 2008/68/EC as amended (see Regulation 10(9)). While the design and construction of LPG Annex C tanks are in accordance with EN12493 (inclusive of Annex C), these tanks are not in compliance with ADR which specified the design and construction in accordance with EN12493, excluding Annex C and therefore fall under the national tank provisions.

The resulting tank is a thinner shelled tank which is lighter and can therefore carry a greater load than the ADR equivalent. This is allowed for under the Directive as LPG develops a lower pressure in colder climates and this provision has seen a few north European countries take advantage of this option but being considered as non-ADR tanks, these tanks are restricted to national use only.

While in practice these LPG Annex C national tanks are inspected by accredited tank inspectors, there is a regulatory provision that allows for competent person tank inspectors

to test these tanks. The proposed draft legislative amendments formalise the requirement for only an accredited inspection body to service these tanks which is appropriate.

There is at least one inspection body in Ireland accredited for these LPG Annex C tanks and as the practice already exists there should be minimal impact regularising with the regulatory position. This proposed change would not prevent other bodies with the necessary scope of accreditation doing this work.

### **Introducing new requirements for tank inspection certification forms, marking of tanks and holding tanks records**

These measures will provide clarity and traceability for all stakeholders and do not impose a great cost burden as it is formalising/improving activities already generally accepted that should be in place.

### **Making provisions for existing national tanks in use in Ireland but preventing tanks or tank-vehicles otherwise meeting the provisions of national tanks from being imported from outside the jurisdiction (with the exception of LPG Annex C tanks as mentioned above).**

As old tanks are naturally removed from service in Ireland this proposed provision would prevent them being replaced by any further imports of tanks constructed pre-2003 from outside the jurisdiction. This measure is to stop the activity of importation of old tanks (pre-2003) into the national population. This will not impact greatly on Irish operators generally as it is a low-level practice. It would also place a finite end period to the existing old population of national tanks, except for LPG Annex C national tanks, as the national population of tanks diminishes it is not supported by further imports of older tanks.

*The Authority will target the RSA in the consultation on this proposal affecting “vehicles” as it has links with their competent authority function.*

## **1 COSTS, BENEFITS AND IMPACTS**

*Identify costs, benefits and other impacts, where possible these should be quantified or monetised. Although costs, benefits and impacts cannot be predicted with certainty analysis of available statistics (e.g. the Indecon Report) and consultation with stakeholders should help. The use of ranges in presenting estimated costs can be useful in dealing with uncertainty.*

### **2.1 General Costs**

*Potential costs of poor health and safety implementation include: Lost-time/shutdowns, fines, legal costs, liabilities, inquiries.*

Negligible: Potential general costs are associated with the loss in time resulting from loss of tank usage due to a tank failure or in having to secure another tanker (new or second hand) when an existing tanker fails the testing and inspection regime. However, these are not considered additional costs as this situation will exist irrespective of whether there is a change in the legislation if there is a tank fail incident or when a tank reaches its end of life. The only difference is the potential for end of life to be expedited if higher fail rates occur when national tanks are subjected to hydraulic testing.

### **2.2 Direct Compliance Costs**

*Compliance costs and who will bear them should be included.*

It is anticipated that costs will not be significant considering the volume of national tanks (361) in Ireland and competent persons (five) that will be impacted by this proposal. Concerns from affected stakeholders re costs can be captured as part of the consultation.

- a) Costs for national tank owners to undertake hydraulic testing under proposed new regulations compared to the current test requirements. From initial discussions with a tank inspector, the cost to a tank operator for a hydraulic test on a national tank would be approximately €300 (this would equate to €50/annum as this test is done every six years).
- b) Costs to existing competent persons to acquire additional equipment to undertake hydraulic testing. (Note of the five competent persons identified, two competent persons are mostly active. This part of the test could in any event be undertaken by an existing AIB).

## **2.3 Enforcement Costs**

*Extra costs incurred by the enforcing body should be identified*

No additional compliance/enforcement costs for the Authority.

## **2.4 Identify the Costs of each option**

*Costs of each option should be identified and where possible estimated.*

### **Option 1**

Environmental clean-up costs for spill due to a greater probability of failures from an ageing population of tanks.

Healthcare costs due to persons being injured in an accident following the loss of containment from a pre-2003 tank

### **Option 2**

Not applicable

### **Option 3**

- Costs for national tank owners to undertake hydraulic testing under proposed new regulations compared to the current test requirements. From initial discussions with a tank inspector, the cost to an operator for a hydraulic test on a national tank would be approximately €300 (this would equate to €50/annum as the test is done every six years).
- Estimated costs to tank operator to replace a national tank with a) new ADR tank and b) second hand ADR tank. Additional costs/loss for small operators may have a greater impact if they only have one older national tank on the road.
- Costs to existing competent persons to acquire additional equipment to undertake hydraulic testing. (Note of the five competent persons identified, two competent persons are mostly active. This part of the test requirement can however be undertaken by an AIB thus negating the costs for competent persons to acquire additional equipment)

## 2.5 Benefits

*If appropriate the benefits of intervention per se should be discussed*

## 2.6 Identify the benefits of Each Option

*The benefits of each option should be identified taking into account both tangible and intangible benefits*

Option a) No additional costs for national tank owners or competent persons having to arrange for hydraulic testing and administrative costs associated with developing/documenting test procedures.

Option b) N/A

Option c) The main benefit to this option is improved safety for an old tank population to ensure that old tanks are better managed over the final phase of their service life and to ensure these tanks are adequately tested and inspected to appropriate standards. Not doing would likely increase the risk of not detecting tanks that are not suitable for service i.e. tank containment failures.

There will be benefits in the context of

- a) Balancing the costs among and within operators with new versus older tanks. Testing costs for owners of newer tanks are currently higher than for owners of older tanks where the risk of failure is higher.
- b) Environmental benefits from prevention of the likelihood of a fail/spill incident.
- c) Health benefits – prevention of accident and /or hospitalisation due to a failure/spill incident.

## 2.7 Other Impacts

### a) Impacts on National Competitiveness

*Will there be a significant adverse effect on stakeholders under any of the following headings?*

- *Ireland's business and work environment*
- *Economic and technological infrastructure*
- *Education and skills*
- *Entrepreneurship and enterprise development*
- *Innovation and creativity*

No significant adverse impact effect foreseen, based on the insignificant impacts resulting from the last regulatory changes in 2017 that saw the introduction of AIBs.



**b) Impacts on Socially Excluded or Vulnerable Groups**

*Any impact upon vulnerable groups should be identified*

None

**c) Human Health and Environmental Issues**

*Any impacts on health and the Environment should be identified although it is to be expected that our legislation will generally have a positive impact in this area.*

Positive impact based on a reduced likelihood of an incident/spill.

**d) Impacts upon Consumers and Competition**

*Establish whether the proposal will involve a significant policy change in the economic market. This should include an examination of the impacts on competition and customers.*

No – this proposal will level the playing field for those who invested in ADR tanks.

**e) Impacts on the Rights of Citizens**

*Examine the impact on the rights of citizens.*

Not applicable

**f) Compliance Burdens**

*Compliance costs identified in the costs section should be re-examined from the point of view of their proportionality and distribution.*

To be populated if additional costs are established for new provisions (testing) in the consultation however based on initial discussions compliance costs for operators and competent persons are anticipated to be minimal.

**2.8 Discussion, conclusion and preferred option**

*The costs, benefits and impacts of each option should be summarised identifying the preferred option where possible.*

The benefits of reduced potential for an incident and levelling of the playing field for ADR tank owners and national tank owners out-weights the costs. The preferred option is therefore option c.

**3.0 CONSULTATION**

*Conduct consultation as early as possible in the RIA process. Relevant Government Departments and offices, the social partners, industry groups and other parties who might be affected should be consulted.*

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Consultation with RSA to capture data on number of vehicles and with competent persons identified to understand their level of activity.

*Summarise all views expressed and respond to those views.*

See above – cost of accreditation for all competent persons will result in existing cohort of competent persons leaving the market.

### 4.0 ENFORCEMENT AND COMPLIANCE

*Describe the enforcement arrangement indicating the body responsible for enforcement and detailing how the Better Regulation principles of consistency and accountability are to be achieved. Compliance targets and the means of achieving them should be stated.*

No change from status quo, compliance and any enforcement will remain with the Authority.

### REVIEW

*Mechanisms for periodically reviewing the regulations and performance indicators should be identified.*

As the aim is to address the regulatory inspection and testing gap between ADR and national tanks and prevent the importation of old tanks (pre 2003 tanks) it will result in an eventual end to the old population (pre-2003) of national tanks in service. The number of national tanks older than 2003 will potentially be phased out within the next 7-10 years and importation of tanks aged over 20 years from other jurisdictions will be eliminated.

### REFERENCES

*List all documents referred to*

N/A