



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.06.1995
COM(95) 240 final

94/0014 (SYN)

Amended proposal for a

COUNCIL DIRECTIVE

on the Control of Major Accident Hazards
involving Dangerous Substances

(presented by the Commission pursuant to Article 189 a (2)
of the EC-Treaty)

EXPLANATORY MEMORANDUM

Pursuant to Article 189 (a) paragraph 2 of the EC Treaty, the Commission submits an amended proposal for a Council Directive on the control of major accident hazards involving dangerous substances. The amended proposal takes account of a number of amendments from the European Parliament, adopted at its February 1995 Plenary Session.

Several Parliamentary amendments concern the disclosure (and confidentiality) of information. The Commission proposal reverses the position on confidentiality from that contained in Directive 82/501/EEC¹ (on the major accident hazards of certain industrial activities) and carries forward the principles contained in Directive 90/313/EEC² concerning the freedom of access to information on the environment. However the latter also provides safeguards against disclosure in certain circumstances and the Commission would generally wish to be consistent with these - albeit in a slightly amended text targeted at major hazards. It has thus incorporated amendments 47, 48, 49, 51 and 65 into the text but is unable to accept amendments 62, 63, and 64.

The Commission has clarified the text of (what was) recital 4 by separating the two aspects of the Council Resolution of 16 October 1989³ (on guidelines to reduce technological and natural hazards) that, inter alia, inspired the proposal - as requested by amendments 1 and 3. However the cross border warning systems referred to in amendment 3 are not covered by the proposal so that part of the amendment has not been included.

As suggested by amendments 14 and 15 the definitions of "risk" and "hazard" have been amended to make explicit that the proposal is concerned with effects harmful to man and the environment - although the wider elaboration in amendment 14 is considered too detailed. The definition of establishments has been amended to include "handling areas" (amendment 10) - although the addition of "mobile containers" is thought unnecessary and has not been incorporated into the modified proposal.

The Commission agrees that an operator's major accident prevention policy should appraise, as well as identify, major accident hazards (amendment 22) and should also include, where appropriate, arrangements for simulation exercises to test emergency plans (Amendments 24 and 101) and has modified the text accordingly. The requirement contained in amendment 102 to anticipate the effects of mixing dangerous substances is considered too onerous for establishments with smaller quantities.

The need to provide "precise" rather than "sufficient" information to identify dangerous substances in the notification required by Article 6 (amendment 26) has been accepted. The need to notify any subsequent change "in advance", and for such a "change" to include one in the number of substances present has also be introduced into the text (amendment 27). On a similar vein Article 10 has been amended to ensure that any modification, within the meaning of that Article, includes a change in the manufacturing process (Amendment 39).

¹ OJ No.L 230, 5.8.1982, p.1

² OJ No L 158, 23.6.1990, p.56

³ OJ No C 273, 26.10.1989, p.1

The Commission has amended Article 11 to alter the emphasis regarding involvement of interested parties in the preparation of emergency plans (amendment 40) and clarified the text relating to the implementation of such plans (amendment 41). Amendment 50 requires Member States to ensure that the public participates in relevant procedures and debates relating to implementation of the directive. Whilst the Commission agrees that the public should be given the opportunity to participate it does not believe that its participation should be compulsory as is inferred by this amendment.

There are several areas where the Commission accepts Parliament's view concerning the need to improve the clarity of the text of the proposal. It has therefore amended recitals 18 (amendment 7) and 21 (amendment 89), as well as Article 17 as it relates to the circumstances where compensation provisions should be available to operators (amendments 56 and 57). Amendment 57 also seeks to specify what the compensation should cover - as the Commission proposal refers to any costs, and scope of this will vary from case to case, the Commission cannot accept that part of the amendment.

Amendment 73 requires the Commission to establish relations with international bodies (such as OECD) to ensure that world standards are agreed for the control of major-accident hazards. Although the establishment of relations with appropriate international bodies is current practice (and is indeed required by Article 130r para 4 and Article 229 of the Treaty), it would not be appropriate for the Commission to be legally obliged to ensure agreement on world standards. This amendment has therefore been incorporated in the form of a recital setting out the general policy orientation.

Article 12 has been modified to clarify the relationship between land use policies and the precautions taken inside the establishment to minimise risks (amendment 115).

The Commission accepts that there is a need to consider whether action at Community level is necessary in respect of the use of pipelines for transporting dangerous substances. It has included a new recital to confirm its intention in this area (Amendment 114).

It is accepted that the major hazard potential of Nickel substances will vary depending on its physical state and the entries for these substances in Annex 1 have been amended in accordance with amendment 117. Amendment 69 cannot be accepted as the major accident potential of an explosive substance during manufacture is not a function of the final use to which that substance is put.

Several amendments (21, 31, 38, 42, 66, 70 and 105) seek to lay down more detail in the text of the proposal and severely restrict the issues that could be developed by the committee procedure. These amendments run counter to the Commission's intended framework approach, would reduce flexibility and do not respect subsidiarity. The change in the Committee procedure foreseen in Amendment 68 would reduce the speed and efficiency of the decision-making process - as would Amendment 107 seeking to prevent adaptation of the Annexes by the Committee procedure. None of these amendments are thus acceptable.

Amendments 18 and 113/rev concerning the proposed exemptions are effectively in several parts. The exemptions of activities only where the exempted activity is "covered by specific equivalent community or national legislation" is too narrow and not acceptable. The part concerning nuclear establishments is acceptable and Article 4(b) has been amended accordingly. The part relating to the extractive industries is not acceptable as drafted - although the Commission recognises that a

clearer interface is required with Directives 92/91/EEC⁴ (concerning the safety and health of workers in the mineral extracting industries through drilling) and 92/104/EEC⁵ (concerning the safety and health of workers in the surface and underground mineral extracting industries) and has amended Article 4(e) accordingly. The removal of the exemption for military installations is not acceptable. The Commission would not seek to regulate the activities of the military in this instrument.

Amendments 9, 19, 23, 28 and 33 consider the training of employees. The Commission agrees that this is an important issue - indeed the existing 'Seveso' Directive contains equivalent provisions. However, since that directive came into force, Directive 89/391/EEC⁶ - which adequately covers these matters - has been introduced and the Commission does not see the need to repeat these provisions. Amendment 5 on the other hand is related to training matters not covered by Directive 89/391/EEC and has been incorporated into the modified proposal.

Amendments 52, 54, 55 and 59-62 and part of amendment 8 on the role of the European Environment Agency are not acceptable. The functions foreseen in these amendments are currently being carried out by Commission Services and the Commission sees no added value in the European Environment Agency duplicating this work.

The Commission believes that Amendments 4, 11, 29 and 86 are unnecessary, as they do not add to the clarity of the text.

The Commission accepts that there are lessons to be learnt from experience of so-called "near misses" and its proposal requires operators in Annex 2, para 5(h) to take account of them in their management system. However it does not believe that a "near miss" should be defined in the text of the directive nor that the safety report should automatically be amended after such an event. Amendments 13 and 36 are therefore not acceptable. Neither is Amendment 30 which requires near misses to be taken into account in identifying so-called "domino" situations. This is not necessary - if there is a potential for a major accident there is clearly a potential for a near miss.

The Commission acknowledges the need for clear criteria for reporting major accidents, but it believes that they should be developed through the Committee procedure. Amendment 12 is thus not acceptable. Amendment 53 concerning what should be included in a notification of a major accident is not necessary. Article 15 requires a two stage notification. Article 15 (1) refers to a quick, early notification of major accidents, Article 15 (2) to a more detailed notification - once further enquiries have been completed. The information sought in this amendment is already required in the second stage notification - but only once it has become available.

Amendment 32 is not acceptable. The objective of the proposal is that the reference point for consideration of the safety report should be the design or intended operation of the plant, not the way it is currently being operated.

The production of the safety report by the operator and review by the Competent Authorities are both lengthy, resource intensive activities. A three year cycle as required by amendment 35 would impose an unreasonable burden on both parties and would not be justified on cost benefit grounds.

⁴ OJ No L 348, 28.11.1992, p.9

⁵ OJ No L 404, 31.12.1992, p.10

⁶ OJ No L 183, 29.6.1989, p.1

Article 10 provides a fall back during the five year period by requiring an update of the report if there are any significant modifications to the installation/establishment.

Amendments 44 and 45 have not been accepted. Amendment 44 is opposed on grounds of subsidiarity. Amendment 45 seeking a "safety perimeter" with a "guarantee" of safety for residents around establishments is both too prescriptive and an oversimplification of what is practicable.

Amendments 2, 6, 16, 17, 20, and 46 relate to matters such as third country issues, the transfer of technology or liability after incidents. The proposal does not seek to address such matters and the Commission is unable to accept these amendments.

A more flexible approach is required towards the frequency of internal audits than that foreseen by Amendment 34. Amendment 81 is not acceptable as the use of third parties to carry out inspections is permissible and the Commission would wish to be less prescriptive on the frequency of on-site inspections. Amendment 37 cannot be accepted because Article 9(5) addresses the duties of the operator, not the competent authority. Amendment 25 seeks to link the internal management review of the operator's major accident prevention policy with requirements concerning environmental auditing foreseen in the voluntary Eco-management and Audit regulation. This is both too prescriptive and legally unclear and cannot be accepted.

Amended proposal for a

COUNCIL DIRECTIVE

on the Control of Major Accident Hazards involving Dangerous Substances

(presented by the Commission pursuant to Article 189 a paragraph 2 of the EC Treaty)

Commission Proposal

Amended Proposal

Recital 4

Whereas the Council Resolution of 16 October 1989 invited the Commission to consider ways of including in the Directive planning controls on land use, taking into account, in particular, the consequences of the accident at Bhopal, and the means of seeking mutual understanding and harmonization of national principles and practices regarding safety reports;

Whereas in the light of the accidents at Bhopal and Mexico City which demonstrated the hazard which arises when dangerous sites and dwellings are close together, the Council Resolution of 16 October 1989 called on the Commission to include in the Directive provisions concerning controls on land use planning when new installations are authorised and when urban development takes place around existing installations;

Recital 4 a (new)

Whereas the Council Resolution of 16 October 1989 invited the Commission to consider ways of including in the Directive planning controls on land use, taking into account, in particular, the consequences of the accident at Bhopal, and the means of seeking mutual understanding and harmonization of national principles and practices regarding safety reports;

Whereas the Council Resolution of 16 October 1989 invited the Commission to work with Member States towards mutual understanding and harmonization of national principles and practices regarding safety reports;

Recital 4 b (new)

Whereas it is desirable to share experiences in approaches to the control of major accident hazards; whereas the Commission and Member States should develop relations with relevant international bodies to establish policies, equivalent to those set out in this Directive, for use in third countries.

Recital 17 a (new)

Whereas Member States must take the necessary measures to ensure that the authorities responsible for drawing up external emergency plans and taking the necessary decisions in cases of major accidents are adequately trained;

Recital 18

Whereas, in order to promote access to information on the environment the public should have access to the safety report produced by the operator, and persons liable to be affected by a major accident should be given information sufficient to inform them of the correct action to be taken in the event of a major accident;

Whereas, in order to promote access to information on the environment the public should have access to safety reports produced by operators, and persons liable to be affected by a major accident should be given information sufficient to inform them of the correct action to be taken in the event of major accidents;

Recital 21

Whereas, in order to provide for an information exchange and to prevent future accidents of a similar nature, Member States should forward information to the Commission regarding major accidents occurring in their territory, so that the Commission can analyse the hazards from major accidents, and operate an information system for the distribution of information on any particular major accident, and the lessons learned from it

Whereas, in order to provide for an information exchange and to prevent future accidents of a similar nature, Member States must inform the Commission of major accidents occurring in their territory, so that the Commission can analyse the hazards from major accidents, and operate an information system for the distribution of information on any particular major accident, and the lessons learned from it

Recital 23 a (new)

Whereas the transmission of dangerous substances through pipelines also has a potential to produce major accidents; whereas it is not appropriate to include such pipelines and associated compression stations within the scope of this Directive; whereas the Commission should, after collecting and evaluating information about existing mechanisms within the Community for regulating such activities and the occurrence of relevant incidents, prepare a communication setting out the case, and most appropriate instrument, for action in this area;

Article 3 (a)

(a) 'Establishment' means the whole area under the control of an operator where dangerous substances are present in any installation or any storage facility and all the remaining area under the control of the operator at that place, including administrative buildings, ancillary equipment, pipework, storage, process and production equipment, marshalling yards, docks, piers, jetties, depots, or similar structures, whether floating or not.

(a) 'Establishment' means the whole area under the control of an operator where dangerous substances are present in any installation or any storage facility and all the remaining area under the control of the operator at that place, including administrative buildings, ancillary equipment, pipework, storage and handling areas, process and production equipment, marshalling yards, docks, piers, jetties, depots, or similar structures, whether floating or not.

Article 3 (f)

(f) 'Hazard' means the intrinsic property of a dangerous substance or physical situation at an establishment, with a potential for creating damage.

(f) 'Hazard' means the intrinsic property of a dangerous substance or physical situation at an establishment, with a potential for creating damage to man and the environment.

Article 3 (g)

(g) 'Risk' means the likelihood of a specific effect occurring within a specified period or in specified circumstances.

(g) 'Risk' means the likelihood that specific effects harmful to man and the environment will occur within a specified period or in specified circumstances.

Article 4 (b)

(b) hazards created by ionizing radiation;

b) nuclear installations, solely as regards hazards created by ionizing radiation;

Article 4 (e)

(e) The activities of the extractive industries concerned with exploration for, and the exploitation of, minerals in mines and quarries or by means of boreholes, including the preparation of extracted materials for sale

(e) The activities of the extractive industries concerned with exploration for, and the exploitation of, minerals in mines and quarries or by means of boreholes, including the preparation of extracted materials for sale, but excluding the activities of processing the materials extracted.

Article 6 (1) (c)

the identification of major-accident hazards; (c) the identification of major-accident hazards and an appraisal of their impact on man and the environment;

Article 6 (1) (e)

the measures identified as necessary to limit consequences of major accidents for man and environment; (e) the measures identified as necessary to limit the consequences of major accidents for man and the environment including the arrangements for simulation exercises under emergency plans, where required under article 11, and the frequency with which these are held;

Article 6 (3) (d)

information sufficient to identify the dangerous substance or category of substances involved; (d) precise information to identify the dangerous substance or category of substances involved;

Article 6 (5)

In the event of any significant change to the maximum quantity or physical form of the dangerous substance present, as indicated in the notification provided by the operator pursuant to paragraph 2, or in the event of the permanent closure of the installation, the operator shall mediately inform the competent authority of change. 5. The operator shall inform the competent authority in advance of any change in the maximum quantity, number, or physical form of dangerous substances present, as indicated in the notification provided by the operator pursuant to paragraph 2, which has significant implications for major accident hazards.

6. The operator shall inform the competent authority in advance in the event of the permanent closure of any installation.

Article 10 introductory phase

the event of the modification of an installation, storage facility or establishment which could have significant repercussions on major-accident hazards, the Member States shall ensure that the operator: In the event of the modification of an installation, manufacturing process, storage facility or establishment which could have significant repercussions on major-accident hazards, the Member States shall ensure that the operator:

Article 11 (3)

3. Member States shall ensure that, without prejudice to the obligations of the competent authorities, the opportunity of contributing to the preparation of Emergency Plans under this Directive is afforded:

- in the case of Internal and External Emergency Plans, to personnel inside the establishment; and,
- in the case of External Emergency Plans, to the public liable to be affected.

3. Member States shall ensure that, without prejudice to the obligations of the competent authorities, the preparation of Emergency Plans under this Directive is carried out following consultation with:

- personnel employed inside the establishment in the case of Internal and External Emergency Plans; and,
- the public liable to be affected in the case of External Emergency Plans.

Article 11 (5) introductory phrase

5. Member States shall ensure that Emergency Plans are put into effect without delay by the person nominated or by the designated authority, whenever:

5. Member States shall ensure that Emergency Plans are put into effect without delay by the person nominated by the operator and, where necessary by the designated competent authority, whenever:

Article 12 (1) second subparagraph

Member States shall ensure that their land-use policy, and the procedures for implementing it, take account of the need, in the long term, to separate establishments covered by this Directive from residential areas, areas of substantial public use, and areas of particular natural sensitivity or interest, and also of the need to facilitate emergency planning in the event of a major accident.

Member States shall ensure that their land-use policy, and the procedures for implementing it, take account of the technical and other measures taken under Article 5(1) and the need, in the long term, to separate establishments covered by this Directive from residential areas, areas of substantial public use, and areas of particular natural sensitivity or interest, and also of the need to facilitate emergency planning in the event of a major accident.

Article 13 (1)

1. Member States shall ensure that information on safety measures and on the requisite behaviour in the event of an accident is supplied, without their having to request it, to persons liable to be affected by a major accident originating in an establishment covered by Article 9. The information shall be reviewed every two years, and where necessary repeated and updated, at least if there is any modification within the meaning of Article 10. It shall also be made permanently available to the public. The maximum period between the repetition of the information to the public shall, in any case, be no longer than four years.

1. Member States shall ensure that information on major accident hazards, safety measures and the requisite behaviour in the event of an accident is supplied, without their having to request it, to persons liable to be affected by a major accident originating in an establishment covered by Article 9, and to any natural or legal person who so requests, without the latter being required to demonstrate a legitimate interest. The information shall be reviewed every two years, and where necessary repeated and updated, at least if there is any modification within the meaning of Article 10. It shall also be made permanently available to the public. The maximum period between the repetition of the information to the public shall, in any case, be no longer than four years

Article 13 (4)

4. Member States shall ensure that the safety report is made available to the public. The operator may ask the competent authority not to disclose to the public certain parts of the report, for reasons of industrial, commercial or personal confidentiality, public security or national defence. In such cases, on the approval of the competent authority, the operator shall supply to the authority, and inake available to the public, an amended report excluding those matters.

4. Member States shall ensure that the safety report is made public. The operator may, provided the request is justified, ask the competent authority not to disclose to the public certain parts of the report, for reasons of industrial, commercial or personal confidentiality, public security or national defence. In such cases, on the approval of the competent authority, the operator shall supply to the authority, and make public, an amended report excluding those matters.

Article 13 (6) second subparagraph

This inventory shall be updated annually and shall be made available to the public, on the premises of the establishment.

This inventory shall be updated annually and shall be made available to the public, on the premises of the establishment and from the competent authority to which it is supplied.

Article 17

1. Member States shall prohibit the use or bringing into use of any establishment, installation or storage facility, or any part thereof if its or their continued use will involve an imminent risk of a major accident.

Member States may prohibit the use or bringing into use of any establishment, installation or storage facility, or any part thereof under this Article if:

- the operator has not submitted the notification, reports or other information required by the Directive within the specified period;
- an external emergency plan has not been prepared within the specified period.

In accordance with their own legal systems Member States shall ensure that if the competent authority prohibits the use or bringing into use of any establishment, installation or storage facility, or any part thereof because an external emergency plan has not been prepared within the specified period, the operator is entitled to seek compensation from the authorities responsible for the preparation of such plans for any costs incurred due to the prohibition.

2. Member States shall ensure that operators may appeal against the prohibition by a competent authority mentioned in paragraph 1, according to national law and procedures, to an appropriate body. On such an appeal the prohibition may be cancelled, amended or confirmed. During such appeal the prohibition imposed by the competent authority shall remain in force.

1. Member States shall prohibit the use or bringing into use of any establishment, installation or storage facility, or any part thereof if its or their continued use will involve an imminent risk of a major accident.

2. Member States may prohibit the use or bringing into use of any establishment, installation or storage facility, or any part thereof under this Article if the operator has not submitted the notification, reports or other information required by the Directive within the specified period;

3. Member States may prohibit the use or bringing into use of any establishment, installation or storage facility, or any part thereof under this Article if, despite the operator having submitted the necessary information required by Article 11 (1) (b) to the designated authorities, an external emergency plan has not been prepared within the specified period.

In these circumstances and in accordance with their own legal systems Member States shall ensure that the operator is entitled to seek compensation from the authorities designated for the preparation of external emergency plans for any costs incurred due to the prohibition.

4. Member States shall ensure that operators may appeal against the prohibition by a competent authority mentioned in paragraphs 1, 2 and 3, according to national law and procedures, to an appropriate body. On such an appeal the prohibition may be cancelled, amended or confirmed. During such appeal the prohibition imposed by the competent authority shall remain in force.

Article 20 (1) (a) (new)

No one may be prosecuted for the further public dissemination of any non-confidential information or information made public by virtue of any of the provisions of this directive.

Annex I, part 1, column 1, items 7, 21-23 and 28

Dinickel trioxide
Nickel monoxide
Nickel dioxide
Nickel Sulphide
Trinickel disulphide

Dinickel trioxide - as powder
Nickel monoxide - as powder
Nickel dioxide - as powder
Nickel Sulphide - as powder
Trinickel disulphide - as powder

ISSN 0254-1475

COM(95) 240 final

DOCUMENTS

EN

14

Catalogue number : CB-CO-95-261-EN-C

ISBN 92-77-89495-4

Office for Official Publications of the European Communities

L-2985 Luxembourg