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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

ILO REPORT V 1992 on

'PREVENTION OF INDUSTRIAL DISASTERS'

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The ILO report just issued contains a questionnaire to be answered by October 2, 1991. On the basis of the answers, the ILO will prepare draft conclusions to be discussed, in a first reading at the 79th Session of the International Labour Conference in 1992.

The subject matter of the ILO Report is full covered by Community legislation (Annex I).

In accordance with the Council Decision of 22 December 1986 concerning the procedure to be followed when the Community has sole power, due regard should be given to Convention N° 144 and the independence of the two sides of industry when standards are drawn up.

The Community's replies to the ILO questionnaire will be forwarded to the ILO by the Commission once they have been adopted by the Council on a proposal from the Commission.

It goes without saying that the replies will take account of the results of consultations with the two sides of industry. As in the past, the consultations will be carried out by the Member States and the results passed on to the Commission. The results may be enclosed with the reply sent to the ILO.

The Commission has drawn up a proposal for a reply to the questionnaire on prevention of industrial disasters based on Community legislation (Annex II).

In conclusion and in accordance with the Council decision of 22.12.1986, the Council is requested to:

- adopt the proposal of answers to the ILO questionnaire, drafted by the Commission, taking into account the results of the consultations of the social partners; answers that the Commission will transmit to ILO together with the results of the consultations of the social partners which will have been transmitted to the Commission by Member States.

COMMUNITY LEGISLATION COVERING THE
SUBJECT MATTER OF ILO REPORT V (1) 1991
ON "PREVENTION OF INDUSTRIAL DISASTERS"

- Council Directive 82/501/EEC of 24 June 1982 on the major-accident hazards of certain industrial activities.

Official Journal L 230 of 5.8.82, p. 1

- Council Directive 87/216/EEC of 19 March 1987 amending Directive 82/501/EEC on the major-accident hazards of certain industrial activities.

Official Journal L 85 of 28.3.87, p. 36

- Council Directive 88/610/EEC of 24 November 1988 amending Directive 82/501/EEC on the major-accident hazards of certain industrial activities.

Official Journal L 336, of 7.12.1988 p. 14

- Council Directive 80/1107/EEC of 27 November 1980 on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work.

Official Journal L 327 of 3.12.80, p. 8

- Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

Official Journal L 183 of 29.6.1989, p. 1

- Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace.

- Council Directive 89/655/EEC of 30 November 1989 concerning safety and health requirements for the use of work equipment by workers at work.

- Council Directive 89/656/EEC of 30 November 1989 on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace.

Official Journal L 393 of 30.12.89, p. 18.

- Council Directive 79/831/EEC of 18 September 1979 amending for the sixth time Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances and following adaptations to technical progress latest Commission Directive 91/326/EEC of 5 March 1991.

Official Journal L 259 of 15.10.1979, p. 10

Official Journal L 180 of 8.07.1991, p. 79

- Council Directive 88/379/EEC of 7 June 1988 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations.

Official Journal L 187 of 16 July 1988, p. 14

- Commission Directive 91/155/EEC of 5 March 1991 defining and laying down the detailed arrangements for the system of specific information relating to dangerous preparations in implementation of Article 10 of Directive 88/379/EEC

Official Journal L 76 of 22.3.1991, p. 35

- Council Directive 78/631/EEC of 26 June 1978 on the approximation of the laws of the Member States relating to the classification, packaging and labelling of dangerous preparations (pesticides).

Official Journal L 206 of 29.7.78, p. 13

- Commission Directive 84/291/EEC of 18 April 1984 adapting Council Directive 78/631/EEC on the approximation of the laws of the Member States relating to the classification, packaging and labelling of dangerous preparations (pesticides).

Official Journal L 144 of 30.5.84, p.1

- Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste.

Official Journal L 84 of 31.3.78, p. 43

- Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste.

Official Journal L 78, 26.3.1991, p. 32

Resolution 91/C198/01 of the Council and of the representatives of the governments of the Member States meeting within the Council of 8 July 1991 on improving mutual aid between Member States in the event of natural or technological disaster.

Official Journal C 198 of 27.7.91, p.1

ANNEX II

**Proposal of
Answers to ILO Questionnaire
on the Prevention of Industrial Disasters**

- Question 1:** Yes, the European Community considers that the world-wide problem of safety and health in connection with the prevention of Industrial Disasters deserves attention. A unified approach, drawing on experience already gathered in this area by various countries and organizations would be of paramount importance and to the benefit of workers', general public' and environmental protection.
- Question 2:** "c", a Convention supplemented by a Recommendation
- Question 3:** Yes, in order to point out the coherent/global approach to occupational health and safety.
- Question 4:** Yes, but the preamble to the instrument(s) should only high-light the problem and concerns without too many details.
- Question 5:** Yes. The ILO instrument(s) should primarily address the safety of workers but the need to protect the general public and environment means that other international organisations with relevant experience should participate in its application.
- Question 6:** Yes, but the wording "abnormal developments" could be replaced by "uncontrolled developments" thus identifying the inability to control the event. Furthermore the Community considers the general problems of waste disposal and production under controlled conditions which can result in some instance in so called "silent accidents" to be properly covered by provisions of the Convention n° 170 on Chemicals or by other international instruments developed by UNEP. Only sudden uncontrolled events should be covered by the Convention, not long term, low level exposure or pollution.
- Question 7:** Yes. It is also important to ensure that prevention measures which the instrument(s) is (are) to introduce have to be graduated in a sense

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of two levels of requirements: general and special ones. The special requirements should apply to major hazard installations where the type, the process or quantity of the chemical makes the situation more serious compared to others. The two levels of action can be introduced by the creation of a lower "action quantity" and a higher "threshold quantity".

In any case it will be inoperable if all measures should apply to all installations covered by the Convention.

Additionally, the question of transport of chemicals within the enterprise should be addressed.

Question 8: Yes, however the Community finds that the Convention should not be limited to a list of hazardous substances, given that such a list would require regular updating by the Member States and the Convention would become rapidly out of date. It will be more suitable for the Convention to list categories of substances and preparations defined by the classification system (from the Convention n° 170 on chemicals) together with fixed action and threshold limits. The Recommendation could contain lists of chemicals as an example. Lists of this kind do already exist in the EEC Council Directive 82/501/EEC.

Question 9:

- a: Yes, but it must be made clear that exemption of nuclear installations and plant processing radioactive chemicals covers only the nuclear aspect of those installations, and e.g. storage requirements for "cold" chemicals have to be covered by this (these) instrument(s).
- b: The problem has to be substantial before exclusions should be considered, and the safeguarding of workers, general public and environment in case of derogations must be ensured. Furthermore the Community suggest that the phraseology from Article 1.2 a of the Convention n° 170 on this point should be used.

Question 10: No. It is better to establish a simple system of provisions than to provide a stage by stage implementation.

Question 11: No

Question 12: Yes

Question 13: Yes. The Convention should not be limited to a single list of hazardous substances. It should lay down requirements for a link between the system of classification of chemicals as prescribed by the Convention n° 170 on Chemicals and threshold quantities in order to identify the establishment.

The Recommendation could contain an indicative list of the types of major hazard installations meant to be covered by the provisions.

Question 14: Yes

Question 15: Yes, however the Community finds that special attention also should be paid to the needs for training of the management and workers involved not only in normal running operations but also for emergency situations and to the provision of information to the emergency services as appropriate.

The Community interprets that "the proper design" covers also siting of installation as being a responsibility of the employer.

It has to be pointed out that appropriate personal protective equipment and training for its use has to be included in provisions for safe operation of the installations.

15 c (ii) The information has to be provided, in an appropriate manner, also to the public liable to be affected by a major accident.

Question 16: Yes

Question 17: 1 Yes.

2(a) and 2(b) Yes, but by introducing differentiation in requirements for new and existing installations, there is created a need for a definition of new and existing installations (before and after the ratification of the Convention?)

It is also important to mention that changes in the existing installations will need a new risk assessment and in some cases the installation after such change has to be treated as a new one, and then should follow the requirements for new installations (e.g. notification).

It is necessary also to fix the length of time between the submission of the notification/safety report and time the installation can be put into operation.

Question 18: Yes, refers also to question 17. Moreover the Convention should provide that the employer shall review, update and amend a safety report on request from the Competent Authority.

- Question 19:** Yes. The Community believes that the safety report must be transmitted automatically to the competent authority.
- Question 20:** Yes
- Question 21:** Yes.
- Question 22:** Yes. The Convention should be interpreted as covering only major accidents and not classical type of accidents when a worker(s) is involved. The event of the classical type of accidents should be provided/covered by other measures in accordance with national legislation.
- Question 23:** Yes, the detailed report, which should be written, should be passed to the competent authority within a specific time. The report should contain detailed description of the accident, its causes, background circumstances, human exposure and adverse environmental effects. So the information can be used to assist in the prevention of future similar events.
- Question 24:** Yes, the Community agrees in the principle that the general policy on siting of major hazard installation should be established. Such a policy should aim towards the minimalization of human exposure and the reduction of damage to the environment. However this policy setting should involve also other authorities than that traditionally concerned with protection of workers, and for that reason this Convention may not be the right place for introducing such requirement to Member States. Thus the Community suggests to change "provide" into "recommend".
- Question 25:** Yes, the Community considers this point of primary importance. Furthermore the Community interprets the role of inspections as being an essential part of action for prevention of major accidents. This is obvious that this task can only be undertaken by inspectors with training commensurate with the duties they will assume in relation to major hazard control. However the organization of labour inspections seems to be beyond the scope of this Convention as it is already covered by the ILO Convention n° 81 from 1947 and the Recommendations n° 81, 82 and 160.
If Member States feel that there is an additional need for revision or modernization of the existing instruments, it will be more reasonable

to update those than to introduce such special requirement in this Convention.

Question 26: Yes, this point is of vital importance. Furthermore the workers and their representatives should have the right to have an access to the safety report as well.

Question 27: Yes

Question 28: No, The Community understands that ILO interprets any Recommendation as an instrument which is not subject to ratification. The Community has made its comments based on this interpretation. The provisions of the Recommendation should be used as guidelines for the implementation of the Convention

Question 29: Yes. The Community can agree that the Recommendation (cf Q 28) as an optional instrument can be based on the ILO Code of Practice on the Prevention of Major Industrial Accidents.

Question 30: The exchange of informations on major accidents would contribute considerably to improvements of protection, prevention and understanding of events leading to such accidents. However it will be premature to set up such a system under the ILO without further consideration of the role of other international organisations and the purpose of the exchanges of information.
Moreover the Community doubts the usefulness of systematically making the totality of all reports of major accidents publicly available. Information contained in this kind of report is often used for legal procedures for the purpose of establishment of liability. Some information is specifically drafted with specialists in mind. However, the Community supports the need to encourage open discussion and explanation on any incident of the type covered by this Convention.

Question 31(1): No, because most of the contents of the questionnaire are in accordance with the existing Community legislation

Question 32: =

Question 33: No

ANNEX III

QUESTIONNAIRE

REGARDING A POSSIBLE ILO CONVENTION/RECOMMENDATION
ON THE PREVENTION OF INDUSTRIAL DISASTERS

In accordance with article 39 of the Standing Orders of the International Labour Conference, governments are requested to consult the most representative organisations of employers and workers before finalising their replies to the following questionnaire and to send their replies, indicating their reasons for each reply, so as to reach the International Labour Office in Geneva as soon as possible and not later than 2 October 1991.

I. Form of the international instrument(s)

1. Do you consider that the International Labour Conference should adopt an international instrument or instruments concerning the prevention of industrial disasters through a system of major hazard control also called process safety management?

2. If so, do you consider that the instrument(s) should take the form of:
 - (a) a Convention;

 - (b) a Recommendation;

 - (c) a Convention supplemented by a Recommendation?

II. Preamble

3. Should the instrument(s) contain a Preamble referring to relevant ILO instruments, including the Occupational Safety and Health Convention and Recommendation, 1981; and the Chemicals Convention and Recommendation, 1990?

4. Should the Preamble provide that the instrument(s) should have regard to the need to ensure that all appropriate measures are taken to minimise the risk of major accidents through control of the causes of such accidents and, in particular, those related to component failure, deviations from normal operating conditions, human and organisational errors, outside accidental interferences, natural forces, and acts of mischief and sabotage?

5. Should the Preamble provide that the instrument(s) should have regard to the need for co-operation within the International Programme on Chemical Safety between the International Labour Organisation, the United Nations Environment Programme and the World Health Organization, as well as with other relevant international organisations?

III. Definitions and scope of the international instrument(s)

6. Should the instrument(s) provide that "major accident" should mean an unexpected, sudden occurrence, including, in particular, a major emission, fire or explosion, resulting from abnormal developments in the course of an industrial activity, leading to a serious danger to workers, the public or the environment, whether immediate or delayed, inside or outside the installation and involving one or more hazardous substances?

7. Should the instrument(s) provide that "major hazard installation" should mean both an industrial installation which stores, processes or produces hazardous substances in such a form and such a quantity that they possess the potential to cause a major accident, and an installation which has on its premises either permanently or temporarily a quantity of a hazardous substance which exceeds the amount, known as the threshold quantity, prescribed in national laws or regulations concerning major hazards?

8. Should the instrument(s) provide that "threshold quantity" should mean that quantity of a listed hazardous substance present or liable to be present in an installation which, if exceeded, brings the installation within the category of a major hazard installation?

9. Should the instrument(s) provide that:

(a) the following installations and branch of economic activity be excluded from their application:

(i) nuclear installations and plants processing radio-active substances;

(ii) military installations;

(iii) transport outside the establishment other than by pipeline;

(b) a Member may, after consultation with the representative organisations of employers and workers concerned, exclude from their application such further branches of economic activity as may be appropriate?

10. (1) Should the instrument(s) provide for flexibility by allowing for the stage by stage implementation of their provisions?
- (2) If so, should this be where special problems of a substantial nature arise so that a complete system of major hazard control cannot be immediately established for major hazard installations?
- (3) If so, should a Member at each stage referred to in paragraph 1 above, be able to limit for a transitional period the application of certain provisions of the instrument(s)?
11. Have you any other proposals regarding the scope of the proposed instrument(s)?

IV. Contents of a Convention

General principles

12. (1) Should the Convention provide that each Member should in the light of national conditions and practice, and in consultation with the most representative organisations of employers and workers, formulate and periodically review a coherent national policy for the protection of workers, the public and the environment against the risk of major accidents resulting from industrial activities?

(2) If so, should the policy be implemented by measures for major hazard control for major hazard installations?

13. Should the Convention provide that the competent authority should establish criteria to enable the identification of major hazard installations based on a list of hazardous substances or categories of substances and threshold quantities?

Identification

14. Should the Convention provide that an employer should be required to identify any major hazard installation within the employer's control according to criteria established referred to in Question 13?

Arrangements at the level of the installation

15. Should the Convention provide that in respect of each major hazard installation the employer should be required to establish and maintain a system of major hazard control which includes provision for:

(a) the identification and analysis of hazards and the assessment of risks;

- (b) the technical and organisational measures necessary for the safe operation of the installation, including:
 - (i) the proper design, construction, operation and maintenance of the installation;
 - (ii) the appointment of competent personnel, the proper instruction and training of personnel, and the regular and systematic inspection of the installation;
- (c) emergency plans and procedures, including:
 - (i) the preparation of site emergency plans and procedures in the case of uncontrolled events and major accidents;
 - (ii) the provision of information on potential accidents and site emergency plans to authorities and bodies responsible for the preparation of emergency plans and procedures for the protection of the public and the environment outside the site of the installation?
 - (iii) any necessary consultation with such authorities and bodies?

Notification

16. Should the Convention provide that an employer should be required to notify the competent authority of the existence of any major hazard installation which the employer has identified?

Safety report

17. (1) Should the Convention provide that an employer should be required to prepare a safety report containing all necessary information on the measures which the employer has taken to establish and maintain a system of major hazard control at each major hazard installation?
- (2) If so, should the report be prepared:
- (a) in the case of existing major hazard installations within such a period, after notification as is prescribed by national laws or regulations;
- (b) in the case of any new major hazard installation before it is put into operation?
18. Should the Convention provide that an employer should be required to review, to update and to amend a safety report -
- (a) (i) in the event of a significant modification in the installation or in the process or in the quantities of hazardous substances;
- (ii) when new technical knowledge relative to safety or developments in knowledge concerning the assessment of hazards make this appropriate;

(b) at such intervals as are prescribed by national laws or regulations?

19. Should the Convention provide that an employer should be required to transmit, or make available to the competent authority the safety report prepared referred to in Question 17?

General Protective Measures

20. Should the Convention provide that the competent authority should ensure that emergency plans and procedures are prepared for the protection of the public and the environment outside the site of each major hazard installation?

21. Should the Convention provide that the competent authority should ensure that:

(a)(i) information on safety measures and the correct behaviour to adopt in the case of a major accident, is disseminated to members of the public liable to be affected by a major accident without their having to request it;

(ii) such information is updated and repeated at appropriate intervals;

(b) warning of a major accident is given as soon as possible after it has occurred?

Accident reporting

22. Should the Convention provide that an employer should be required to report immediately a major accident to the competent authority and to other bodies designated for this purpose?
23. Should the Convention provide that the employer should also be required to present a detailed report to the competent authority containing an analysis of the causes of the major accident and any steps taken to mitigate the effects of the accident and to prevent a recurrence?

Siting of major hazard installations

24. Should the Convention provide that the competent authority should establish a siting and land use policy for major hazard installations arrange, where appropriate, for their separation from other major hazard installations, from residential and working areas, from public facilities?

Inspection

25. Should the Convention provide that the competent authority should provide specific training for those inspectors who are engaged in the inspection of major hazard installations, in the assessment of safety reports and in the investigation of major accidents, and arrange for such technical and professional support as may be necessary?

Rights of workers

26. Should the Convention provide that the workers employed at the site of a major hazard installation should:

- (a) be adequately and suitably informed of the hazards associated with the major hazard installation;
- (b) have the right to participate in the preparation of
 - (i) the safety report;
 - (ii) the emergency plans and procedures;
 - (iii) the accident reports;
- (c) be instructed and trained in the procedures and practices for the prevention and control of major hazards and the emergency procedures to be followed in the event of a major accident?

Duties of workers

27. Should the Convention provide that such workers should be required to:
- (a) comply with all procedures and practices relating to the prevention of major accidents within the major hazard installations ;
 - (b) comply with all emergency procedures should a major accident occur?

V. Contents of a Recommendation

28. If, in reply to Question 2, you considered that the instrument(s) should take the form of a Convention supplemented by a Recommendation, should the Recommendation provide that the provisions of the Recommendation should be applied in conjunction with those of the Convention?
29. Should the Recommendation provide that the national laws or regulations to give effect to the policy for the prevention of industrial disasters, provided for in the Convention be based, as far as possible, on the ILO Code of Practice on the Prevention of Major Industrial Accidents, the publication of which was approved by the Governing Body of the ILO in November 1990?

30. Should the Recommendation provide that the ILO should arrange for an international exchange of information on major accidents and that member States should be encouraged to make reports of major accidents publicly available, and, where this is not possible, to exchange reports under specified conditions?

VI. Special Problems

31. (1) Are there particularities of national law or practice which, in your view, are liable to create difficulties in the practical application of the proposed instrument(s) as conceived in this report?
- (2) If so, how would you suggest that these difficulties be met?
32. (Federal States only). Do you consider that, in the event of the instrument(s) being adopted, the subject-matter would be appropriate for federal action, or wholly or in part for action by the constituent units of the federation?
33. Are there, in your opinion, any other pertinent problems not covered by the present questionnaire which ought to be taken into consideration when the instrument(s) are being drafted? If so, please specify which.