



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03.09.1996
COM(96) 440 final

94/0014 (SYN)

Re-examined proposal for a

COUNCIL DIRECTIVE

on the Control of Major Accident Hazards
involving Dangerous Substances

(presented by the Commission pursuant to Article 189 c (d)
of the EC Treaty)

EXPLANATORY MEMORANDUM

On 26 January 1994, the Commission adopted a proposal for a Council Directive on the control of major accident hazards involving dangerous substances.

The Economic and Social Committee adopted its opinion on 2 June 1994 (OJ C 295, 22.10.94, p83).

The European Parliament delivered its opinion, on first reading, on 16 February 1995 (OJ C 56, 6.3.95, p80).

The Commission prepared an amended proposal (COM(95) 240 final - 94/0014 (SYN)), which was formally sent to the Council on 19 June 1995.

The Council formally adopted its common position on the proposal on 19 March 1996.

The European Parliament examined the Council's common position at second reading on 16 July 1996 and approved it subject to 27 proposed amendments.

The Commission has examined the amendments proposed by the European Parliament at second reading, incorporating a number of them into the present reexamined proposal.

The Commission's position on each of the amendments approved by Parliament at second reading is as follows.

Amendments 1 and 42 are already covered 'in principle' by recitals 5 and 6 in the common position. However, the text can be further improved in the reexamined Proposal by more explicit reference to effective cooperation with third countries outside the EU. In this respect, it is recognised that the UN/ECE Convention on the Transboundary effects of industrial accidents is particularly relevant. A new recital 6a as well as amendments to Articles 3, 13 and Annex IV have been proposed.

Amendments 2, 3, 17 and 18 propose recitals or text changes relevant to the exclusions listed in Article 4 of the Directive. Regarding amendment 2, a more detailed text has been included on pipelines within recital 11. The amendments related to waste landfill sites and intermediate storage associated with transport activities have been rejected as these areas will be subject to specific proposals where necessary.

Amendments 4, 39, and 40 seek to strengthen the provisions in the common position relating to inspection systems. These amendments have been accepted in principle and a new recital 13a and text changes to Article 18 have been incorporated in the reexamined proposal.

Amendment 5 referring to provision of training for the authorities responsible for

external emergency plans has been accepted by proposing a new recital 13b.

Amendments 7, 11, 14, 27, 36 and 41 all refer to the need to fully address 'near major accidents' as well as major accidents. This was already recognised in Annex VI of the common position but further text has been added to recital 21 and Article 9(5) to enhance the coverage of this important aspect.

Amendment 13 has been accepted in principle to recognise Parliament's concerns that the definition used in the common position is much narrower than the original Commission Proposal. It was not considered appropriate to simply revert to the original Proposal as this gave rise to significant uncertainty about the practical application of such a wide definition. However, the text in Article 2(1) has been improved in the reexamined proposal to make clear that certain chemical storage facilities should be covered, not just the 'process'.

Amendments 10, 25, 37, 44 and 45 have been accepted and text changes have been proposed accordingly to recital 19, Articles 9(4) and 17(1) as well as to Annexes I(2) and VI, point 4.

Amendments 8 and 9 proposed recitals which did not directly correspond with the provisions contained in the common position have been rejected.

Amendments 20 and 24, involving deadlines for notification and submission of safety reports, were not accepted as the text in the common position was viewed as more appropriate for practical implementation.

Amendment 28 proposed certain criteria associated with derogations for establishments 'incapable of creating a major accident hazard'. It has not been considered appropriate to accept this amendment as the development of complete and consistent criteria will be a task for a special expert group.

REEXAMINED PROPOSAL FOR A

COUNCIL DIRECTIVE

on the Control of Major Accident Hazards involving Dangerous Substances

(presented by the Commission pursuant to Article 189 c(d) of the EC-Treaty)

Common Position

Amended Text

Recital 6a

Whereas the Convention on the Transboundary Effects of Industrial Accidents of the Economic Commission for Europe provides for measures regarding the prevention of, preparedness for and response to industrial accidents capable of causing transboundary effects as well as for international cooperation in this field;

Recital 11

Whereas, with due regard for the EC Treaty and in compliance with the relevant Community legislation, Member States may retain or adopt appropriate measures for transport-related activities at docks, wharves and marshalling yards, which are excluded from this Directive, in order to ensure a level of safety equivalent to that established by this Directive; whereas the problem of dangerous substances transported by pipeline requires further study;

Whereas, with due regard for the EC Treaty and in compliance with the relevant Community legislation, Member States may retain or adopt appropriate measures for transport-related activities at docks, wharves and marshalling yards, which are excluded from this Directive, in order to ensure a level of safety equivalent to that established by this Directive; whereas the transmission of dangerous substances through pipelines and their storage also have a potential to produce major accidents; whereas it is not appropriate to include such activities within the scope of this Directive; whereas the Commission shall, 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:

Recital 13a (new)

Whereas differences in the arrangements for the inspection of establishments by the competent authorities may give rise to differing levels of protection; whereas it is necessary to lay down at Community level the essential requirements with which the systems for inspection established by the Member States must comply;

Recital 13b (new)

Whereas Member States must take the necessary measures to provide adequate training for the authorities responsible for drawing up external emergency plans and taking the necessary decisions in cases of major accidents;

Recital 19

Whereas, in order to provide greater protection for residential areas, areas of substantial public use and areas of particular natural interest or sensitivity, it is necessary for land-use and/or other relevant policies applied in the Member States to take account of the need, in the long term, to keep a suitable distance between such areas and establishments presenting such hazards and, where existing establishments are concerned, to take account of additional technical measures so that the risk to persons is not increased;

Whereas, in order to provide greater protection from major accident hazards for centres of population and areas of particular natural interest or sensitivity, it is necessary for land-use and/or other relevant policies applied in the Member States to take account of the need for appropriate separation between such areas and establishments presenting such hazards and, where existing establishments are concerned, to take account of additional technical measures so that the risk to persons is not increased. Such policies should include consultation procedures between competent authorities and planning authorities.

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 involved, and operate a system for the

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 involved, and operate a system for the

distribution of information concerning, in particular, major accidents and the lessons learned from them.

distribution of information concerning, in particular, major accidents and the lessons learned from them; whereas this information exchange should also cover less serious accidents or 'near misses' which Member States regard as being of particular technical interest for preventing major accidents and limiting their consequences.

Article 2(1) second paragraph

For the purposes of this Directive, the 'presence of dangerous substances' shall mean the actual or anticipated presence of such substances in the establishment, or the presence of those which it is believed may be generated during loss of control of an industrial chemical process, in quantities equal to or in excess of the thresholds in Parts 1 and 2 of Annex I.

For the purposes of this Directive, the 'presence of dangerous substances' shall mean the actual or anticipated presence of such substances in the establishment, or the presence of those which it is believed may be generated during loss of containment of an industrial chemical process and/or associated storage facilities, in quantities equal to or in excess of the thresholds in Parts 1 and 2 of Annex I.

Article 3 (9)

"Third countries" shall mean countries, other than Member States, parties to the Convention on the Transboundary Effects of Industrial Accidents of the Economic Commission for Europe, liable to be affected in the event of a major accident with possible transboundary effects originating in an establishment under Article 9.

Article 9(4)

Before the operator commences construction or operation, or in the cases referred to in the second, third and fourth indents of paragraph 3, the competent authority shall within a reasonable period of receipt of the report:

Before the operator commences construction or operation, or in the cases referred to in the second, third and fourth indents of paragraph 3, the competent authority shall within a reasonable period not exceeding one year of receipt of the report:

Article 9(5) second indent

- at any other time at the initiative of the operator or the request of the competent authority, where justified by new facts or to take account of new technical knowledge about safety matters and of developments in knowledge concerning the assessment of hazards.

- at any other time at the initiative of the operator or the request of the competent authority, where justified by new facts or to take account of new technical knowledge about safety matters and of developments in knowledge concerning the assessment of hazards or to take account of information arising from the analysis of 'near misses'.

Article 13

2. The Member States concerned, shall, at the same time, make available to the other Member States liable to be affected in the event of a major accident originating in an establishment under Article 9 sufficient information to enable emergency plans to be prepared where necessary and the same information as is disseminated at national level. Such information shall be reviewed, repeated and updated at the same intervals as are laid down under paragraph 1.

2. The Member States concerned, shall, at the same time, make available to the other Member States and/or third countries liable to be affected in the event of a major accident originating in an establishment under Article 9 sufficient information to enable emergency plans to be prepared where necessary and the same information as is disseminated at national level. Such information shall be reviewed, repeated and updated at the same intervals as are laid down under paragraph 1.

3. Where the Member State concerned has decided that an establishment close to the territory of another Member State is incapable of creating a major-accident hazard beyond its boundary for the purposes of Article 11(6) and is not therefore required to produce an external emergency plan under Article 11(1), it shall so inform the other Member State.

3. Where the Member State concerned has decided that an establishment close to the territory of another Member State or third country is incapable of creating a major-accident hazard beyond its boundary for the purposes of Article 11(6) and is not therefore required to produce an external emergency plan under Article 11(1), it shall so inform and consult with the other Member State or third country.

Article 17(1) first subparagraph

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 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 a serious risk of a major accident.

Article 18(2)

2. The system of inspection specified in paragraph 1 shall provide for a systematic programme of inspections for all establishments. Unless the competent authority has established a programme of inspections based upon a systematic appraisal of the major-accident hazards of the particular establishment concerned, the programme shall entail at least one on-site inspection made by the competent authority every twelve months of each establishment covered by Article 9.

2. The system of inspection specified in paragraph 1 shall comply with the following conditions:

- (a) it shall be managed and implemented by suitably qualified and trained persons;
- (b) there shall be a programme of inspections for all establishments. Unless the competent authority has established a programme of inspections based upon a systematic appraisal of the major-accident hazards of the particular establishment concerned, the programme shall entail at least one on-site inspection made by the competent authority every twelve months of each establishment covered by Article 9.
- (c) following each inspection a report, including any necessary follow-up action, shall be prepared by the competent authority;
- (d) where necessary, every inspection carried out by the competent authority shall be followed up with the management of the establishment, within a reasonable period following the inspection.

Article 18(3a) (new)

3a. Member States shall inform the Commission of the criteria they apply for the establishment and management of inspection programmes and procedures. The Commission shall adopt, if necessary, harmonized criteria under the procedure laid down in Article 22.

Annex I(2), heading of columns 2 and 3

Qualifying quantity (tonnes) for the application of

Qualifying quantity (tonnes) of dangerous substance as defined in Article 3(4), for the application of

Annex IV, Point 2

(g) Arrangements for the provision of information to the emergency services of other Member States in the event of a major accident with possible transboundary consequences.

(g) Arrangements for the provision of information to and for consultation with the emergency services of other Member States and/or third countries in the event of a major accident with possible transboundary consequences.

Annex VI, Point 4, first indent

- damage to property in the establishment or loss of production by the establishment: at least ECU 2 million;

- damage to property in the establishment: at least ECU 2 million;

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