

COMMISSION OF THE EUROPEAN COMMUNITIES

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94/0014 (SYN)

Proposal for a
COUNCIL DIRECTIVE
on the control of major-accident hazards involving dangerous substances (COMAH)

(presented by the Commission)

EXPLANATORY MEMORANDUM

INTRODUCTION

1. Community Policy Context

Council Directive 82/501/EEC of 24 June 1982 on the Major Accident Hazards of Certain Industrial Activities⁽¹⁾ was introduced in response to accidents like Flixborough in 1974, Beek in 1975 and Seveso and Manfredonia in 1976. The action taken by Member States in the field of industrial risks up to then was fragmented. Furthermore, Community action was required to ensure equal treatment of the problem in all Member States.

The aim of the Directive was to ensure that all Member States introduced legislation in this area in accordance with the objectives of the Directive, and that the Competent Authorities established procedures to implement its provisions. The detailed requirements under the Directive covered measures relating to prevention, preparedness and response to Major Accidents as they affect man and the environment both inside and outside the establishments concerned.

The Council in its accompanying resolution concerning the Fourth European Community Action Programme on the Environment⁽²⁾ called for more effective implementation of the Directive, greater exchange of information between Member States and review, including a possible widening of the scope.

The Council, on 24 November 1986⁽³⁾, invited the Commission to review the Community measures for the prevention of Major Accidents and the limitation of their consequences and, if necessary, to present appropriate proposals.

During the adoption procedure for the first amendment⁽⁴⁾ (87/216/EEC) the Commission gave the assurance that it intended to propose a fundamental revision of Annexes I, II and III.

Furthermore during the adoption of the second amendment of the Directive (88/610/EEC) on 24 November 1988⁽⁵⁾ the Council in its accompanying statement asked the Commission to give priority to a re-examination of the Directive, particularly the application Annexes.

In its Resolution of 16 October 1989⁽⁶⁾ on guidelines to reduce technological and natural hazards the Council invited the Commission to consider ways of including land use planning controls into the Directive taking into account, particularly, the consequences of the accident at Bhopal, and the means towards achieving mutual understanding and harmonization of national principles and practices regarding safety reports.

(1) OJ No L 230, 5.8.1982, p. 1.

(2) OJ No C 328, 7.12.1987, p. 3.

(3) 1121st Session of the Council (Environment).

(4) OJ No L 85, 28.3.1987, p. 36.

(5) OJ No L 336, 7.12.1988, p. 14.

(6) OJ No C 273, 26.10.1989, p. 1.

The 5th Environmental Action Programme, "Towards Sustainability: A European Community Programme of Policy and Action in Relation to the Environment and Sustainable Development"⁽⁷⁾, proposes that, for the period 1993-2000, two common features of the programme, including the control of industrial risks, are:

- the involvement of all levels of society in the spirit of shared responsibility, and,
- in order to ensure that Community measures on the environment are more effectively implemented, cooperation procedures between the Commission and the Member States should be further improved.

2. Need for action at Community level

2.1. What are the objectives of the action envisaged in relation to the Community's obligations?

The objective of this proposal is to improve the effectiveness of the current legislative framework regarding the prevention of major accidents and thus ensure a higher level of protection of man and the environment. To achieve this objective the proposal seeks to replace Directive 82/501/EEC with a new Directive which carries forward the essential principles of the existing Directive, but also incorporates additional measures which reflect current good practice in risk management, as well as provisions to improve the effectiveness of implementation.

The provisions of the original Directive have proved successful, particularly with respect to the technical aspects of prevention, preparedness and response. Nevertheless, since the adoption of the Directive, over 130 major accidents have occurred in the Community and many more have occurred around the world.

The primary need when the original Directive was adopted was to stimulate action by Member States on the basic aspects of a major hazard risk control policy. The purpose of this proposal is to refine and supplement this policy in the light of experience and developments, and to provide tools and guidance to increase the consistency of implementation of the Directive.

The proposal contributes to the realization of Article 130r of the Treaty which contains specific provisions on the Community's role in environmental protection; in particular the preservation and protection of the quality of the environment and the protection of human health. It is based on the principles of precautionary and preventive action, that environmental damage should be rectified at source and that the polluter should pay. It aims at a high level of protection and takes account of the diversity of situations in the various regions of the Community.

⁽⁷⁾ COM(92) 23 final.

2.2. Is the action envisaged an exclusive competence of the Community or a shared competence with the Member States?

The envisaged action is not within the exclusive competence of the Community. However, the proposal respects the principle of subsidiarity contained in Article 3b of the Treaty. The text proposes the measures necessary to prevent major accidents, i.e. those potentially capable of having significant and wide effects; minor accidents with only limited local effects are not addressed. The essential policy provisions for the control of major hazard risks are defined at Community level, but the choice of the means for implementing these provisions is left to the relevant national and local authorities in Member States.

2.3. What is the Community dimension of the problem? What solution has been in force until now?

This proposal is primarily concerned with the prevention of low frequency, high consequence accidents. Major accidents such as Seveso, Flixborough and, more recently, Bhopal and Basel have shown that the costs, both economically and environmentally, of only one such major accident are significant, not just for the industrial establishment concerned, but also for the Authorities of the State and on a wider scale for the International Community. Indeed the potential severity of accidents arising from the sites concerned, is such that they could have transboundary implications and thus affect the environment in adjacent Member States.

It is often difficult to assess the actual costs of the type of incidents addressed by this proposal. The calculations need to consider, amongst other things, the loss of lives, long term damage to health (of man and the environment), property damage, loss of production, loss of amenity, cost of response and remedial action. Nevertheless cost estimates have been made for some of the high profile incidents. The cost of property loss alone for three of the major incidents that have shaped Community policy are estimated (at 1989 costs) as:

Flixborough explosion (UK - 1974)	ECU 110 million
Seveso explosion (Italy - 1976)	ECU 72 million
Basle warehouse fire (Switzerland - 1986)	>ECU 26 million

Major hazard premises are found in all Member States. The figures given below are the latest available to the Commission and represent the numbers of establishments covered by the more stringent requirements of Directive 82/501/EEC which require the production of a detailed safety report.

Limited information is available from the Member States on the current state of implementation of Council Directive 82/501/EEC as amended. This is mainly due to the fact that the original powers granted to the Commission were not sufficient to require the information needed to effectively monitor the practical implementation of the Directive. This is rectified in the current proposal.

The state of transposition of Directive 82/501/EEC (as amended) within the Community is as follows:

BELGIUM

The second amendment to Council Directive 82/501/EEC, Directive 88/610/EEC has been transposed into law by Royal Decrees of 7 February 1990 and 16 May 1990. Information available for the end of 1992 indicated that a total of 87 enterprises were covered by the provisions made as a result of Article 5 of Council Directive 82/501/EEC as amended. Public information campaigns have been carried out.

DENMARK

Transposition of the second amendment is complete by virtue of Statutory Order No 520 of 5 July 1990. Information available up to June 1993 indicated that 38 establishments were covered by the requirements of the amended Directive.

FRANCE

Transposition of the second amendment has been carried out by administrative instruction. Public information is already freely available and the public have access to the safety report produced, with the exception of certain confidential information. Information to June 1993 indicated that 377 establishments were covered by the provisions of Article 5 of Council Directive 82/501/EEC including the additional establishments covered as a result of the second amendment.

FEDERAL REPUBLIC OF GERMANY

Transposition of the second amendment has been carried out by the amended version of the Twelfth Order implementing the Federal Emission Control Act (Hazardous Incidents Order) of 20 September 1991. Approximate information received up to July 1990 indicated 283 establishments were covered by the provisions of Article 5 of Council Directive 82/501/EEC. Since implementation of the second amendment and re-unification of Germany, up to date information is not available.

GREECE

No up to date information is currently available on the transposition of the second amendment. Information available up to the end of 1992 indicates that 34 establishments were covered by the provisions of Article 5 of Council Directive 82/501/EEC.

IRELAND

The transposition of the second amendment was completed in January 1992. Information received for the end of 1992 indicated that 20 establishments were covered by the requirements of Article 5 of Council Directive 82/501/EEC (as amended).

ITALY

Work to prepare for the transposition of the second amendment has been underway for some time but no up to date information is available. Information received for the end of 1992 indicated that 329 establishments were covered by the requirements of Article 5 of Council Directive 82/501/EEC.

LUXEMBOURG

Work is completed to transpose the requirements of the second amendment via a Regulation of 19 July 1991. Information received for the end of 1992 indicates that four establishments were covered by the requirements of Article 5 of Council Directive 82/501/EEC. No further establishments have been notified as a result of the second amendment.

NETHERLANDS

Transposition of the second amendment has already been carried out by changes to law and guidelines issued to local and regional authorities. Information to the end of July 1990 indicated 79 establishments were covered by Article 5 of Council Directive 82/501/EEC. No further information was available on the number of establishments brought in as a result of the second amendment.

PORTUGAL

Transposition of the second amendment has begun. Information for the end of 1992 indicated that 45 establishments were covered by Article 5 of Council Directive 82/501/EEC. No further up to date information is available.

SPAIN

Transposition of the second amendment was completed by Royal Decree 952/1990. Information for the end of 1992 indicated approximately 270 establishments were covered by Article 5 of Council Directive 82/501/EEC.

UNITED KINGDOM

Transposition of the second amendment was completed by the Control of Major Hazards (Amendment) Regulations 1990 which came into force on 31 December 1990. Information for the end of 1992 indicated that 298 establishments were covered by Article 5 of Council Directive 82/501/EEC (as amended).

Currently the major hazard risks in these establishments are addressed by the implementation of Directive 82/501/EEC supplemented by other provisions introduced at the initiative of Member States.

It is clear from the information provided voluntarily by Member States, exchanges at the Committee of Competent Authorities and other studies, that because the original Directive was framework in nature it has resulted in variable approaches with unacceptable differences between Member States in the level of protection for man and the environment against major hazard risks.

Issues where this is the case include the contents of Safety Reports (and the response by the Competent Authorities to their receipt) and the inspection regime established to regulate major hazard sites.

The terrible accident at Bhopal confirmed, to all those involved with Major Accident controls, the possible dangers to man and the environment simply because of the proximity of the establishments concerned to sensitive areas. It led to the Council Resolution of 1989 calling on the Commission to consider ways of including land use planning controls in the Directive. Several studies of Siting and Land Use in individual Member States and around the world have concluded that specific land use measures are justified even from a purely economic point of view by the prevention of major accidents with their high resulting social and industrial costs.

The long term aim of any siting and land use policy is obviously the separation of major accident hazards and centres of population or sensitive environments. The industrial growth of Europe has resulted in many areas where existing industry is in close proximity to such sensitive areas. Some Member States have existing siting and land use legislation. They use a number of different approaches to the problem and this proposal addresses these differences by concentrating upon the common features found in existing requirements, policy creation, and information exchange. This is backed up with a provision for the development of Community guidelines if necessary.

Analysis of the major accidents reported in the Community indicates that, in the majority (90%) of cases, management error was the underlying cause. This error can manifest itself as deficiencies of organization, inadequate training, or simply failing to take into account the possibility of human error.

The existing Directive concentrates on the technical aspects of risk control and does not adequately deal with the management and human factors issues. This emphasis is reflected in Member States legislation in this area.

In recognition of this the proposal includes improved consideration of management systems and human factors. The main changes relate to the new concept of an internal Major Accident Prevention Policy (MAPP) for all establishments covered by the Directive. This policy now forms the basis of the requirements for any establishment where the lower threshold is exceeded and is enhanced by a requirement to implement management systems as appropriate to control the major accident hazards identified by the operator.

A key requirement of the proposal, as in the existing Directive, lies in the production, by the larger establishments covered by the proposal, of a Safety Report and its submission to the Competent Authorities. However this will in addition have to include consideration of management systems and organization of the establishment.

Based on the experience of Member States, the contents of the Report have been more clearly defined although its presentation is made more flexible to take into account the different types of industry covered by the Directive and other legislation which may require similar information to be provided to the Authorities in the Member States. To take these factors into account the operator will be able to present the safety report in the most appropriate format for the particular establishment concerned, combining other reports or parts of other reports, provided a clear description of the establishment is presented, and the objectives of the report are maintained.

A fundamental tenet of the Community's environmental policy is the provision of information to the public to enable them to both understand and, if necessary influence the action and performance of companies. The existing Directive does not actively contribute to this. The provision of information is limited to a "need to know" basis - in the event of a major accident. This gap is addressed in the current proposal by requiring the Safety Report to be made available to the public. There are also new rights for the public to participate in relevant procedures and debate on siting and land use, and control policies produced by the authorities. However the need to keep certain information confidential is recognised in an identical fashion to Directive 90/313/EEC⁽⁸⁾.

The proposal addresses the issue of unequal inspection practices by introducing clear responsibilities and duties of the inspection system created by the Competent Authority backed up by new duties and powers to prohibit establishments if necessary, and minimum standards for the inspections themselves.

Under the present Directive 82/501/EEC no specific procedure is established for easy evolution of the control measures required or the harmonization of criteria for the key elements of the Directive. This is addressed in the proposed text by providing for the adoption of Community criteria for the essential parts of the control system. These requirements or guidance, it is foreseen, could be developed by the Commission assisted by a Committee of representatives of Member States.

The procedure proposed is designed to produce, where necessary, greater harmonization at high levels of protection.

Studies undertaken by the Commission indicate that only 47% of the chemicals currently listed in Annex III of the Directive are in use in the Community industries covered by the Directive. Changes to industrial processes have resulted in the need to re-examine the use of lists of specific industrial activities and chemicals as the basis for application. Such a system is inflexible in dealing with both the elimination of redundant processes and chemicals and the introduction of new ones. Further, the use of a specific list of industries and the exclusion of others where the hazards are identical is not justifiable in technical or policy terms.

⁽⁸⁾ OJ No L 158, 23.6.1990, p. 56.

The method of application in the proposed new Directive has therefore been amended to apply the provisions wherever dangerous substances are present in sufficient quantities to create a Major Accident Hazard. This is more flexible and removes any distortions. The remaining exemptions apply only to areas where existing legal provisions are equal to the current proposals or, where the industry concerned has special problems or needs with respect to major accident controls (e.g. in the case of pipelines, transport and the extractive industries).

2.4. What is the most effective solution, comparing the means of the Member States and the Community?

Industry is subject to various pressures to improve environmental performance and control of the hazards and risks it inevitably creates. These pressures include industry's own sense of responsibility (as illustrated by the chemical industry's Responsible Care programme) as well as a variety of stakeholders including, amongst others, employees, neighbours, customers, suppliers, shareholders and financiers. In recent years the insurance industry, in particular, has begun to take a more active and influential role in this area.

However pressure from such sources is not equally applied across the Community and is not in itself sufficient to give public reassurance in this area. Indeed the awareness of active stakeholders is often expressed through calls for more legislation or more effective implementation of existing legislation.

As far as Major Hazards are concerned the most effective solution is an action taken at Community level. Only the Community can alter the approach followed to date by modifying and complementing the existing legislation covering industrial risk, particularly by emphasising the policy of prevention of major accidents by a more active system of management and organization in relevant establishments, and the development of Community criteria for the most important aspects of the control system. This approach has been endorsed by the Council in the various resolutions which initiated this review (referred to above) calling on the Commission to modify Directive 82/501/EEC as appropriate and to improve the effectiveness of its implementation.

2.5. What is the value added brought about by the action envisaged to the Community and what would be the cost of inaction?

The action envisaged in the proposal is to further improve the systems in place in industry and the competent authorities to control major accident hazards and thus to reduce the likelihood of their occurrence, and, where they do occur, to minimise their consequences for man and the environment. It also seeks to simplify the Directive's application criteria and make it more flexible in response to the changing nature of industry. Failure to do this would result in an unacceptably different level of protection in Member States and would mean that best risk management principles are not applied equally across the Community.

2.6. What action is available to the Community (recommendation, financial support, legislation, etc.)?

In order to modify or repeal an existing Directive, legislation at Community level is necessary.

2.7. Is uniform regulation necessary or is a Directive setting out the general objectives leaving the detailed execution to the Member States enough?

The initiative for the review of Directive 82/501/EEC lay inter alia in concerns about the effectiveness of its implementation. However the principles of subsidiarity and proportionality suggest that a modified Directive is preferable to a regulation.

Throughout the proposal these principles have been met as follows:

- the proposal sets out the objectives and requirements needed for harmonization, where necessary, to achieve a high level of protection for the environment, whilst maintaining implementation at the appropriate lower level, adapted for national conditions;
- the objectives to be achieved and the matters to be considered are clearly identified for such things as safety reports, emergency planning, and inspection systems, whilst responsibilities for the practical implementation remain at the lowest appropriate level;
- the concrete application and management of the requirements are left to the national or even local level; in particular, safety reports are produced by the operator and assessed by the Competent Authority, Emergency Plans are produced by the operator or local authority and assessed by the Competent Authority, and information of the public is the responsibility of the local authorities;

3. International situation

The Commission and the Member States have been actively involved in many international fora, including the OECD, Rhine Commission, International Labour Office and United Nations, developing codes of practice, conventions, and recommendations relating to major accident controls. In these fora the original format of the Council Directive of 24 June 1982 on the major accident hazards of certain industrial activities has been an important reference as well as the emerging proposals from the review of that Directive. However in order to remain at the forefront of industrial risk policy, the Community now needs to update the Directive to take into account the experience in Member States in implementing Directive 82/501/EEC and other developments, internationally and within the Community, dealing with major hazard risk management.

The most active international fora in the field have been the United Nations Economic Commission for Europe (UNECE), the International Labour Office (ILO) and the Organization for Economic Cooperation and Development (OECD).

In 1992 the UNECE completed work on a Convention, signed in Helsinki, covering Transboundary Major Accidents. Although the Convention is without prejudice to other more stringent measures taken by signatories, it does include such matters as Land Use Planning and increased emphasis on Safety Management Systems all of which will be implemented by the equivalent provisions contained in this proposal.

The ILO published a Code of Practice on Major Accidents in 1991. Member States and the Commission were also involved in consultation and negotiations on a proposed Convention which was adopted in June 1993. The Convention covers pipelines and the extractive industries, which are not part of this proposal.

The OECD has recently completed a programme of work on major accidents including the publication of a number of Environment Monographs following workshops and the conclusion of a Recommendation. The Commission and Member States have actively participated in this programme. Subjects covered included "the role of human factors in plant operations", "good management practice", "information to the public and the role of workers in accident prevention and response", and "the role of public authorities in preventing major accidents and in major accident land use planning". Information from this work is included in this proposal, particularly those aspects relating to management systems and human factors.

The USA, Canada, Sweden, and Japan have been particularly active in these fora, notably the OECD, and have all agreed to adopt approaches to major accident control based upon the ideas expressed in the documents produced. The legislation in the Nordic States is comparable to the current Council Directive 82/501/EEC whilst the USA, Canada and Japan traditionally take a less regulatory approach - although the former have recently proposed Federal Regulations modelled on Directive 82/501/EEC. Many of the countries in Eastern Europe with economies in transition have also looked to the Community framework when developing proposals for major accident controls.

CONSULTATION ON PROPOSED REVISION

The organizations consulted by the Commission during the development of this proposal include the Advisory Committee on Safety, Hygiene and Health Protection at Work set up by Decision 74/325/EEC⁽⁹⁾, the Mines Safety and Health Commission set up by Decision 74/326/EEC⁽¹⁰⁾, the European Council of Chemical Manufacturers' Federations (CEFIC), the Oil Companies' European Organization for Environmental and Health Protection (CONCAWE), the Oil Industry International Exploration and Production Forum (E & P FORUM), the European Liquefied Petroleum Gas Association (AEGPL), the Union of the Gas Industries of the Common Market (MARCOGAZ), the European Federation of Chemical Trade (FECC), the European Petroleum Industry Association (EUROPIA), the European Industrial Gases Association (EIGA), the International Group of National Associations of Manufacturers of Agrochemical Products (GIFAP), EUROMETAUX, the Federation of European Explosives Manufacturers (FEEM), the European Fertilizer Manufacturers Association (EFMA), the European Crop Protection Association (ECPA), the European Trade Union Technical Bureau for Health and Safety, and the European Trade Union Institute (ETUI).

All Competent Authorities of the Member States have been involved in detailed discussions at five meetings of national experts to discuss the work and two special working groups to elaborate the application Annex and the system of accident reporting.

⁽⁹⁾ OJ No L 185, 9.7.1974, p. 15.

⁽¹⁰⁾ OJ No L 185, 9.7.1974, p. 18.

LEGAL BASIS

The legal basis of this proposed Directive is Article 130s, paragraph 1, of the Treaty on European Union. Its main objective is to ensure high levels of protection throughout the Community in the prevention of major accidents involving dangerous substances and thus preserving and protecting the quality of the environment and protecting human health. The implementation of the Directive by Member States can also have implications for the conditions of competition inside the Community but these issues are of a secondary nature and have also been addressed in the proposal.

Since the adoption of Council Directive 82/501/EEC and its amendments various Directives under Article 118A have been adopted, notably Council Directive 89/391/EEC⁽¹¹⁾ on the introduction of measures to encourage improvements in the safety and health of workers at work. Even though the provisions of Council Directive 82/501/EEC were not amended by 89/391/EEC, the provisions of these various Directives complement the provisions to manage major accident hazards. Because of their complex nature Major Accident controls can only be dealt with in an integrated fashion addressing both the environment and man, inside and outside the establishment, so in order to show the complementary nature of these proposals a cross reference to the Directives adopted under Article 118A has been made.

Some of the establishments covered by this proposal will also be within the scope of the proposed Directive on integrated pollution prevention and control⁽¹²⁾, and Directive 85/337/EEC⁽¹³⁾ on the assessment of the effects of certain public and private projects on the environment. However in neither case does this cause any conflict with this proposal as they have different objectives.

The proposed Directive on integrated pollution prevention and control is concerned with emissions produced as part of the normal operation of the installation. This should be contrasted with the present proposal which is concerned with adventitious emissions during an uncontrolled incident. Directive 85/337/EEC applies to a very wide range of projects. As far as it would cover establishments within the scope of this proposal, it addresses the evaluation of the likely environmental impact of a planned establishment and public participation in the decision-making process. Whilst the safety of the establishment may be a relevant issue, the focus of that Directive is on deciding whether it should be built. The present proposal will only come into play once that decision has been taken.

It is however recognized that, despite the differing objectives of these two instruments, some of the documents (or parts of documents) produced to comply with them could also be relevant to the Safety Report required for this proposed Directive. To reduce unnecessary duplication of effort in such circumstances the text specifically allows for the use of such documents for the purposes of the Safety Report.

(11) OJ No L 183, 29.6.1989, p. 1.

(12) COM (93) 423 final.

(13) OJ No L 175, 5.7.1985, p. 40.

PRESENTATION OF THE ARTICLES

Articles 1 and 2

These Articles define the application of the Directive, and outline its objectives.

Application will be based upon any establishment where dangerous substances are present above a certain threshold set out in Annex I. The requirements with respect to smaller establishments are linked to column 2 of Parts 1 and 2 of Annex 1. Requirements for larger establishments are linked to column 3 of Parts 1 and 2 of Annex 1.

Article 3

The Article defines the basic terms used in the Directive. Only the terms used in a specific sense in this proposal are defined.

Establishment

This is the whole area under the control of the operator to which the Directive applies. It includes not only those installations or storage areas where dangerous substances are present but all other activities at that place. This is a crucial concept in the system of application, in that it recognises that all aspects of the establishment can be affected by or indeed affect a Major Accident. It is especially important to consider the establishment as a whole if the concept of good management practice is to be promoted and an integrated approach to the control of major accidents is to be maintained.

Installation and Storage

This is the plant or equipment at an establishment involved in the processing of dangerous substances and, together with those storage areas used for the purpose of storing dangerous substances, is the place where a major accident is likely to occur. It is therefore the area about which the operator is required to provide specific details.

Operator

This is the individual who or the organization which is in charge of the establishment and is therefore responsible for compliance with the Directive.

Dangerous Substance

A dangerous substance as defined is any substance present on site, even those liable to be present as a result of an accident, and either listed in Part 1 of Annex 1 or fulfilling the criteria of Part 2 of Annex 1. For the purposes of this Directive only, it includes mixtures and preparations.

Major Accident

A major accident is the type of event which the proposal is designed to control. The definition given is identical to that given in Council Directive 82/501/EEC.

Hazard and Risk

These terms are used extensively in many areas of major accident control. They are often used in ways which have caused confusion and misunderstanding. By providing simple definitions based upon those used by the Institute of Chemical Engineers harmonized Community requirements can be developed in a consistent fashion.

Article 4

This Article outlines the exemptions to the proposal. Military exemptions are maintained from the current Council Directive 82/501/EEC, whilst the hazards created by ionizing radiation are an amended form of the current exemption in recognition of the fact that these hazards are dealt with by specific specialized legislation. The remaining exemptions are in recognition of the fact that, although each of these areas presents major accident potential, they do not fall easily within the framework of this proposal given special needs or special hazards.

Article 5

This Article repeats the existing requirements of Article 3 of Council Directive 82/501/EEC.

In the case of establishments in mixed ownership, the operators will be required to cooperate together to achieve compliance with the Directive.

Article 6

This Article introduces the concept of a Major Accident Prevention Policy (MAPP) for all establishments where dangerous substances are present above the first threshold quantity, given in column 2 of Annex 1 Parts 1 and 2. The MAPP is a management tool to ensure operators begin the process of considering major accidents and introduce appropriate management systems. It is designed to set out the operator's aims and objectives and to ensure that these are periodically reviewed.

Operators of establishments covered by this Article will also be required to notify the Competent Authorities of their existence, giving only basic details, such as name, address, dangerous substances present etc. This is to enable the Competent Authority to manage its programme of inspections more effectively, identify possible domino effects and to monitor implementation by operators.

Article 7

This Article updates the requirement of Article 4 of Council Directive 82/501/EEC by relating it to the current proposal and in particular the MAPP. The proposal does not include requirements formerly contained relating to worker training, and protective equipment since this is now extensively covered by the requirements of Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the health and safety of workers at work and its various daughter Directives.

Article 8

This Article covers so called Domino effects. It requires the Competent Authority to identify those establishments which are so close together that the probability and/or consequences of a major accident are increased. The Competent Authorities shall act on the basis of the information provided by the operators. The provisions of Article 9 shall apply to all the establishments identified, and the operators of those establishments will have to exchange information necessary for compliance with the provisions of the Directive. This approach is technically justifiable, in that it is based upon the information received by the Competent Authority and the professional judgment of that Authority.

The approach proposed removes the "500 metre rule" which applied under the provisions of Council Directive 82/501/EEC and provides for establishments presenting the increased risk of domino effects to be dealt with effectively even if they are more than 500m apart. Harmonized criteria concerning the domino effect will be established if necessary by the Commission.

Article 9

This Article contains the core requirement to prepare a safety report, previously contained in Article 5 of Council Directive 82/501/EEC. Clear objectives for the report are given and the link between the management systems used by the operator and the report itself is emphasised. The requirement will apply to all establishments where dangerous substances are present above the quantities given in column 3 of Parts 1 or 2 of Annex 1.

The content of the safety report in technical terms remains the same as the content of the report required under Council Directive 82/501/EEC with the important addition of management and organizational factors, detailed in Annex 2.

Management review is encouraged by the requirement to carry out internal safety audits and to review the safety report periodically, at least every five years. A flexible presentation of the report is allowed to take into account that certain information is likely to be common to a number of establishments owned by the same operator, or may have been prepared in response to other legislation. Harmonized criteria concerning safety reports will be established if necessary by the Commission.

Article 10

This Article requires operators to update their management systems, particularly the MAPP and Safety Report, as a result of significant modifications. It is similar to the requirements previously contained in Article 6 of Council Directive 82/501/EEC, amended to take into account the changes as a result of this proposal.

Article 11

This Article contains the requirements relating to emergency planning previously contained within Article 5 of Council Directive 82/501/EEC updated and separated from the requirement to produce a safety report. The Article contains clear objectives for the plans and, in Annex 3, details the content of the relevant plans for internal or external emergency response. The responsibility for drafting the internal plan rests with the operator, whilst the external plan is the responsibility of an authority designated by the Member State. The duty of the operator to provide sufficient information to the Authorities to enable them to produce the external emergency plan is carried over from the existing requirements of Directive 82/501/EEC.

Review, test and implementation of the emergency plans are ensured by specific requirements on the relevant party.

An important new feature to be incorporated is the potential for the Competent Authority, on the basis of the information provided by the occupier, to assess that there is no need for an external emergency plan. This, in practice, prevents the preparation of unnecessary external emergency plans and ensures that resources of the Member State are thereby released for other work. A procedure to confirm decisions taken under this Article using the Committee procedure proposed under Article 22 prevents the procedure being used inconsistently across the Community. Harmonized criteria concerning this particular aspect can be established if necessary by the Commission.

Article 12

This Article contains the provisions relating to siting and land use planning. The approach proposed concentrates upon the essential elements in the creation of a Community siting and land use planning policy, particularly the requirement for Member States to produce individual policies, the exchange of information between relevant authorities, and the possibility to create harmonized Community requirements.

The proposal recognizes that major-accident hazards are only one element to be considered in the process of land use planning controls. It further recognizes the long-term nature of land use planning policies, particularly to achieve the aim of separation of major accident hazards and residential areas, areas of public occupancy, and natural areas of particular interest or sensitivity. Guidelines concerning land use planning criteria will be established if necessary by the Commission.

Article 13

This Article retains the requirement to provide information of a simple nature to persons liable to be affected in the case of a Major Accident, currently contained in Article 8 of Directive 82/501/EEC.

The policy of freedom of access to information, begun in Council Directive 90/313/EEC, is however continued by making the Safety Report, produced in response to Article 9, a public document, and by involving the public in procedures and debate relating to siting and land use planning specifically and major accident control policies of the Competent Authority in general.

The requirement to provide information to neighbouring States is carried over from the existing Directive 82/501/EEC and extended to the exchange of criteria regarding decisions taken by the Competent Authority.

The confidentiality of information is ensured, where necessary, by reference to the same principles used within Council Directive 90/313/EEC.

The Article further requires the operator to produce an inventory of the dangerous substances present at the establishment, above the higher threshold quantity, to provide a copy to the Competent Authority, and to make it available to the public.

Articles 14 and 15

These Articles provide for the reporting of major accidents. Article 14 relates to the reporting by the operator to the Competent Authority, and Article 15 by the Competent Authority to the Commission.

Examination of the major accidents reported to the Commission over the 10 years of experience under the requirements of Council Directive 82/501/EEC shows that the deficiencies of the existing system relate to the lack of harmonized criteria and long periods before reports are made. Both these deficiencies are addressed in the present proposal with the mechanism for developing criteria and a two stage reporting system, which ensures that essential information is rapidly available. In addition, provision is made for the drawing up by the Commission of a questionnaire for the transmission to it of the information required.

Articles 16, 17 and 18

These Articles maintain and build upon the responsibilities and duties of Competent Authorities. Study of the existing requirements of Council Directive 82/501/EEC shows that one of the greatest harmonizing factors in the legislation relating to major accident control is the practical implementation, achieved by the Competent Authorities, and their inspection of the establishments covered.

The details included within the inspection requirements contained in the Article are designed to improve the management of the inspection process by the Competent Authorities and to provide for sufficient information and resources to ensure harmonized implementation at a practical level. The Commission will if necessary establish the harmonized criteria applicable to the inspection programmes and procedures.

Articles 19 and 20

These Articles relate to the availability of information on Major Accidents, and particularly the duties of the Commission to ensure access to information. The most successful action taken by the Commission in the past ten years in this field has been the creation and operation of the Community Documentation Centre on Industrial Risk (CDCIR) and the creation and operation of the Major Accident Reporting System (MARS). These activities have been used as the basis for the proposals contained within these Articles and emphasize the essential role information exchange plays in the control of major accident hazards.

The proposals forming the basis of Article 20 are modelled closely upon the phrasing used in Council Directive 90/313/EEC on freedom of access to information on the environment.

The role the Commission plays to ensure harmonized implementation of the Directive is emphasized by the requirement to request information from the Member States, and to receive an annual report giving basic information on the action taken.

Articles 21 and 22

These Articles contain provisions relating to the adaptation of the Annexes to technical progress, and the development of harmonized Community requirements.

Articles 23 to 25

These Articles concern the entry into force of the new Directive and revoke the existing Directive 82/501/EEC, as amended. The dates chosen for revocation and implementation are the same to prevent any overlap and consequent confusion due to differences between the regimes.

Annex 1

This Annex determines the application of the relevant Articles of the Directive and covers all relevant establishments. There is no differentiation made between storage and use of dangerous substances since the application of the Directive is based clearly upon the potential to create a major accident, i.e. hazard, which is identical for the same quantity of dangerous substance wherever it occurs.

The differentiation between the likelihood of a major accident occurring, i.e. risk, is dealt with in terms of the specific measures taken by each establishment, and so is best dealt with in the specific areas of concern, such as Land Use Planning, or specific technical requirements.

Part 1 of the Annex contains a list of named substances which are in most cases carried over from Annexes II and III of Directive 82/501/EEC with identical qualifying quantities for both the requirements of Articles 6, 7 and 9. The number of named substances listed in Part 1 is significantly reduced from the number currently listed in Part 1 of Annex II and Annex III of Directive 82/501/EEC since study of the current situation in the Community indicates that 53% of the substances listed in the those Annexes are not used in the establishments covered (84 substances used out of 180 listed), and those remaining substances which are currently listed can be further reduced by their inclusion into the categories given in Part 2 of the proposal. The effect of this is to produce a significantly shorter list of named substances which are listed since they have significantly different qualifying quantities to categories covered in Part 2.

Part 2 of the Annex contains a set of categories similar to the format used in Part 2 of Annex II of Directive 82/501/EEC. Each category is given a specific listing and a category "dangerous for the environment" as well as a category covering special hazards are introduced. A substance is covered by a category, where it is not already covered under Part 1, when it is classified according to the relevant Council Directive, listed in note 1 of the Annex. Special notes relating to explosives and the various flammable categories provide further technical clarification based upon the major accident hazard of the particular categories involved. A simplified rule is given to permit the addition of certain categories. This rule, although simplified, allows for situations where establishments have a large number of different substances present, with the potential to create, in combination, a major accident.

Annex 2

This Annex contains the items to be considered in the safety report required by Article 9. The content of Parts 1, 2, 3, and 4 of the Annex correspond to the requirements of the safety report contained within the Article 5 of Council Directive 82/501/EEC. Part 5 is completely new and requires consideration of management systems and organizational factors. The inclusion of these matters into the safety report underlines the fact that 95% of all major accidents have management error as their underlying cause. By addressing this issue directly within the safety report, the core requirement of the Directive, the proposal emphasizes its commitment to preventing and controlling major accidents.

Annex 3

This Annex contains the items to be included in the emergency plans required under Article 11. The detail required for internal and external emergency plans is outlined and the link between the management of the establishment and the emergency services emphasized. Information exchange with respect to accidents with possible transboundary consequences is also covered within the context of the external emergency plan.

Annex 4

This Annex lists the information to be given to the public in terms of Article 13.1. It is identical to the requirements contained within the current Council Directive 82/501/EEC Annex VII.

Proposal for a
COUNCIL DIRECTIVE
on the control of major-accident hazards involving dangerous substances (COMAH)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130s(1) thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas Council Directive 82/501/EEC of 24 June 1982 on the major-accident hazards of certain industrial activities⁽¹⁾, as last amended by Directive 91/692/EEC⁽²⁾, is concerned with the prevention of major accidents which might result from certain industrial activities and with the limitation of their consequences for man and the environment;

Whereas the objectives and principles of the Community's environment policy, as set out in Article 130r(1) and (2) of the Treaty and detailed in the European Community's Action Programmes on the Environment⁽³⁾, aim, in particular, at preserving and protecting the quality of the environment, and protecting human health, through preventive action;

Whereas the Council in its accompanying resolution concerning the Fourth Action Programme on the Environment⁽⁴⁾ highlighted the need for more effective implementation of Directive 82/501/EEC, and called for the review of the Directive, if necessary, to include inter alia a possible widening of its scope, and a greater exchange of information on the matter between Member States;

Whereas the Council Resolution of 16 October 1989⁽⁵⁾ 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;

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- (1) OJ No L 230, 5.8.1982, p. 1.
(2) OJ No L 377, 31.12.1991, p. 48.
(3) OJ No C 112, 20.12.1973, p. 1
OJ No C 139, 13.6.1977, p. 1
OJ No C 46, 17.2.1983, p. 1
OJ No C 70, 18.3.1987, p. 1.
OJ No C 138, 17.5.1993, p.1
(4) OJ No C 328, 7.12.1987, p. 3.
(5) OJ No C 273, 26.10.1989, p. 1.

Whereas Directive 82/501/EEC constitutes a first stage in the harmonization process; whereas the measures taken by the Member States to implement that Directive have resulted in differing levels of protection of man and the environment;

Whereas major accidents can have repercussions beyond frontiers; whereas the environmental and economic cost of an accident is borne not only by the establishment affected but also by the competent authorities of the Member States concerned; whereas it is therefore necessary to take measures ensuring a high level of protection throughout the Community;

Whereas action at Community level is necessary in order to modify and to supplement Directive 82/501/EEC; whereas the present harmonization is limited to the measures which are necessary to put in place a more effective system for preventing major accidents having widespread effects and for limiting their consequences by improving safety management, land-use policies, the provision of information to the public and inspection systems in order to ensure a high level of protection for man and the environment throughout the Community.

Whereas in order to take account of the significant changes that have occurred in industrial practice regarding risk management and the prevention of major accidents, Directive 82/501/EEC should be replaced by more extensive provisions seeking to ensure that those in control of major-hazard plants throughout the Community provide a high level of safety;

Whereas the use of a list specifying certain undertakings and excluding others with identical hazards is inflexible and technically unsound, and allow potential sources of major accidents to escape regulation; whereas the scope of the Directive should be altered in order to make the provisions applicable to all establishments where dangerous substances are present in sufficiently large quantities to create a major-accident hazard;

Whereas analysis of the major accidents reported in the Community indicates that the majority of them are the result of managerial and/or organizational shortcomings; whereas it is therefore necessary to lay down at Community level essential requirements for management systems, which must be suitable for controlling major-accident hazards;

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 control systems established by the Member States must comply;

Whereas in order to prevent major accidents, the operator must, for every establishment at which dangerous substances are present and where, in the event of a major accident, there may be serious consequences for man and the environment, take all measures necessary to prevent such accidents and to limit the consequences thereof;

Whereas, in order to improve management systems and reduce human error, in the case of establishments where dangerous substances are present in certain quantities it is necessary for the operator to introduce a major-accident prevention policy and systems to improve the management of safety in the establishment and to provide the competent authority with information sufficient to enable it to identify the establishment, the dangerous substances present and the potential dangers, in order that it may manage its resources and responsibilities adequately;

Whereas, in order to demonstrate the preventive measures, contingency plans and response measures taken, the operator should, in the case of establishments where dangerous substances are present in significant quantities, provide the competent authority with information in the form of a safety report containing details of the establishment, the dangerous substances present, the installation or storage facilities, possible major accidents and the management systems available, in order to reduce the risk of major accidents and to enable the necessary steps to be taken to reduce the consequences thereof;

Whereas in order to reduce the risk of domino effects, the operators should, in the case of establishments which are so close together that the probability of a major accident may be increased, or its consequences aggravated, cooperate in devising measures to prevent, prepare for and respond to major accidents;

Whereas, in order to provide against emergencies, in the case of establishments where dangerous substances are present in significant quantities it is necessary to establish external and internal emergency plans in response to major accidents and to create systems to ensure those plans are tested and revised as necessary and implemented in the event of a major accident or threat thereof;

Whereas, where an external emergency plan is not prepared within the period fixed, it is necessary to make authorities responsible for the creation of the external emergency plan liable for any costs incurred by the operator owing to his being unable to operate his establishment;

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 provide greater protection from major-accident hazards for centres of population and natural areas of particular interest or sensitivity, it is necessary for Member States' land-use policies to take account of the need for adequate separation between such areas and establishments presenting such hazards. Such policies should include consultation procedures between competent authorities and planning authorities;

Whereas, in order to ensure that adequate response measures are taken if a major accident occurs, the operator must immediately inform the competent authorities and communicate the information necessary for assessing the impact of that accident;

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 the establishment of management systems in the field of preventing, preparing against and responding to major accidents involving dangerous substances it is necessary to ensure appropriate participation by workers in the establishment, in order to contribute to the prevention of occupational risks and to promote protection of the health and safety of workers;

Whereas the requirements of this Directive should not prejudice Community requirements concerning the working environment as regards the health and safety of workers,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive is aimed at the prevention of major accidents which involve dangerous substances, and the limitation of their consequences for man and the environment, with a view to ensuring high levels of protection throughout the Community.

Article 2

1. The Directive will apply to any establishment where dangerous substances are present, or likely to be produced as a result of an accident, in quantities equal to or in excess of the quantities listed in Annex 1, Parts 1 and 2, column 2, with the exception of Article 9, which will apply to any establishment where dangerous substances are present, or likely to be produced as a result of an accident, in quantities equal to or in excess of the quantities listed in Annex 1, Parts 1 and 2, column 3.
2. The requirements of this Directive shall apply without prejudice to Community requirements concerning the working environment, and, in particular, without prejudice to Council Directive 89/391/EEC⁽⁶⁾.

Article 3

For the purposes of this Directive:

- (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.
- (b) 'Installation' means the equipment, building, pipework, machinery, tools and all other appliances, whether fixed or not, at an establishment for the chemical, physical or biological processing of a dangerous substance.
- (c) 'Operator' means any person (including individuals and corporate bodies), responsible for the control of an establishment covered by this Directive.
- (d) 'Dangerous substance' means a substance, mixture or preparation listed in Annex 1, Part 1, or fulfilling the criteria laid down in Annex 1, Part 2, and present as a raw material, product, by-product, residue, or intermediary, including those substances produced in the course of an accident.

⁽⁶⁾ OJ No L 183, 29.6.1989, p. 1.

- (e) 'Major accident' means an occurrence such as a major emission, fire, or explosion resulting from uncontrolled developments in the course of the operation of any establishment covered by this Directive, and leading to serious danger to man and/or the environment, immediate or delayed, inside or outside the establishment, and involving one or more dangerous substances.
- (f) 'Hazard' means the intrinsic property of a dangerous substance or physical situation at an establishment, with a potential for creating damage.
- (g) 'Risk' means the likelihood of a specific effect occurring within a specified period or in specified circumstances.
- (h) 'Storage' means the presence of a quantity of dangerous substances for the purposes of warehousing, depositing in safe custody or keeping in stock for trading purposes.

Article 4

This Directive shall not apply to the following:

- (a) military installations or storage facilities;
- (b) hazards created by ionizing radiation;
- (c) the transport of dangerous substances by road, rail, water, or air, outside the establishments covered by this Directive;
- (d) the transmission of dangerous substances in pipelines outside the establishment covered by this Directive;
- (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.

Article 5

1. Member States shall ensure that the operator is obliged to take all measures necessary to prevent major accidents and to limit their consequences for man and the environment.
2. In the case of establishments where there is more than one operator, owing to the mixed ownership or control of the establishment concerned, Member States shall ensure that all the operators are collectively responsible for compliance with this Directive and in particular the production of the safety report required by Article 9(1).

Article 6

1. Without prejudice to Article 5, Member States shall require operators to draw up a document setting out their Major Accident Prevention Policy and in particular a management system and procedures. That document shall cover the following elements:
 - (a) the overall aims, approach and specific objectives of the operator in the control of major accidents;
 - (b) the principles and criteria on which action to prevent, and respond to major accidents is based;
 - (c) the identification of major-accident hazards;
 - (d) the measures identified as necessary to prevent major accidents;
 - (e) the measures identified as necessary to limit the consequences of major accidents for man and the environment;
 - (f) the organization and procedures necessary for implementing and managing the Major-Accident Prevention Policy including the appointment of suitably qualified and trained personnel;
 - (g) the programme for implementation, assessment of effectiveness and introduction of improvements;
 - (h) the periodic review of the Major-Accident Prevention Policy and management system by senior management of the establishment, in order to check performance against relevant standards.

2. Member States shall require the operator to send the competent authority specified in Article 16 a notification in writing within the following time-limits:
 - for new establishments, between four and eight months before commencing construction or operation;
 - for existing establishments, a period of time between eight and twelve months after the date referred to in Article 24(1);

3. The notification required by paragraph 2 shall contain the following details:
 - (a) the name or trade name of the operator and complete address of the establishment concerned;
 - (b) the registered place of business of the operator and complete address;

- (c) the name of a director or person in charge of the establishment, if different from (a);
 - (d) information sufficient to identify the dangerous substance or category of substances involved;
 - (e) the quantity and physical form of the dangerous substance or substances involved;
 - (f) the activity or proposed activity of the installation or storage.
4. In the case of existing establishments for which the operator has already provided all the information under paragraph 3 to the competent authority under the requirements of national law at the date of entry into force of this Directive, notification under paragraph 2 is not required.
 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 immediately inform the competent authority of the change.

Article 7

Member States shall ensure that all operators are required to prove to the competent authority at any time, in particular for the purposes of the inspections and controls referred to in Article 18, that they have taken all the measures necessary as specified in this Directive.

Article 8

1. Member States shall ensure that the competent authority using the information received from operators in compliance with this Directive and taking into account inter alia the location, proximity and total quantities of dangerous substances present, identifies groups of establishments where the likelihood of a major accident may be increased.

For the purposes of this Article the competent authority shall identify those groups of establishments where the total quantity of dangerous substances is equal to or in excess of the relevant quantity listed in Annex 1, Parts 1 and 2, column 3.

2. Member States shall ensure that, whenever an increased likelihood or an aggravation of major accidents is identified under paragraph 1 in a group of establishments:
 - (a) the provisions of Article 9 are extended to all the establishments thus identified;
 - (b) the operators of all the establishments identified shall exchange such information as is necessary to enable them all to take account of the overall major-accident hazard;
 - in their Major-Accident Prevention Policy,
 - in their management systems,

- in their management systems,
 - in the safety report,
- (c) the operators of all the establishments identified are required to cooperate in the preparation of emergency plans and the provision of information to the public.
3. Member States shall inform the Commission of the criteria which they apply in determining the conditions under which the provisions of Article 9 are to be applied to all the establishments of a group. The Commission shall, if necessary, establish harmonized criteria, in accordance with the procedure laid down in Article 22.

Article 9

1. Without prejudice to Articles 5, 6 and 7, Member States shall require the operator to produce a safety report for the purposes of:
- (a) demonstrating the establishment and implementation of the Major-Accident Prevention Policy and management systems and procedures, as specified in Article 6(1);
 - (b) demonstrating the safety and reliability incorporated into the design, construction, and covering, where appropriate, the abandonment of the installation, storage or establishment;
 - (c) demonstrating the safe operation and maintenance of the installation or storage facility;
 - (d) detailing the operational requirements and limitations of the establishment with respect to technical, organizational and managerial matters used to prevent major accidents;
 - (e) providing for continuing safety assurance by means of regular review;
 - (f) providing for emergency preparedness and for the response in the event of a major accident;
 - (g) providing sufficient information to the relevant authorities to enable decisions to be made in terms of the siting and land use for new establishments and developments around existing establishments.

The safety report, as an integral part of the safety management systems of the establishment, shall contain the data and information listed in Annex 2.

Internal safety audits shall be carried out as an integral part of the management system of the establishment. The results of these shall be made available to the competent authorities at the time at which inspections are carried out under Article 18.

2. The report presented to the competent authority shall provide a clear description of the installation or storage concerned, and meet the objectives outlined in this Article. Safety reports, or parts of reports, or any other equivalent reports produced in response to other legislation, may be combined to form a single safety report for the purposes of this Article, where such a format obviates the unnecessary duplication of information and the repetition of work by the operator or competent authority, on condition that all the requirements of this Article are complied with.
3. The safety report or details of the content, conclusions and any changes resulting from the review specified in paragraph 5, shall be sent to the competent authority within the following time-limits:
 - for new establishments, between four and eight months before commencing construction or operation;
 - for existing establishments, within two years of the date referred to in Article 24(1);
 - without delay following periodic review under paragraph 5.
4. Before the operator commences construction or operation, or, in the cases referred to in the second and third indents of paragraph 3, within one year of the submission of the safety report, the competent authority shall:
 - write to the operator expressing satisfaction with the report; or
 - ask for further information, to be supplied within three months; or
 - prohibit the bringing into use, or the continued use, of the establishment concerned, in accordance with the powers and procedures laid down in Article 17.

Where the competent authority requests further information, the conclusions of its examination of the report must be communicated to the operator within six months of submission of the information required.

5. The safety report shall be reviewed and where necessary updated periodically, as follows:
 - at least every five years;
 - at any time, at the explicit request of the competent authority;
 - at any other time to take account as necessary of new technical knowledge about safety matters and of developments in knowledge concerning the assessment of hazards.
6. Where it is demonstrated to the satisfaction of the competent authority that particular substances present at the establishment, or on any part thereof, are in a state incapable of creating a major-accident hazard, then the Member State may limit the information required in safety reports to those matters which are relevant to the prevention of those residual major-accident hazards and the limitation of their consequences for man and the environment.
7. Member States shall ensure that the competent authority publishes the criteria it intends to use in reaching a decision that a substance or establishment are in a state incapable of creating a major-accident hazard under paragraph 6 and that it communicates a copy of the said criteria to the Commission. The Commission shall, if necessary, establish harmonized criteria in accordance with the procedure laid down in Article 22.
8. Member States shall inform the Commission of the criteria they use for:
 - risk analysis and risk evaluation methods and procedures;
 - safety management systems, including safety audit methods and procedures;
 - assessing the reliability of technical systems and arrangements for accident prevention.

The Commission shall if necessary, establish harmonized criteria in accordance with the procedure laid down in Article 22.

Article 10

In 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:

- reviews and where necessary revises the Major-Accident Prevention Policy, and management systems and procedures referred to in Article 6(1);
- reviews, and where necessary revises, the safety report and informs the competent authority of the details of such revision in advance of such modification.

Article 11

1. Member States shall ensure that, for all establishments to which Article 9 applies:
 - (a) an Internal Emergency Plan is drawn up by the operator for action inside the establishment, as follows:
 - for new establishments, prior to commencing operation;
 - for existing establishments not previously covered by Directive 82/501/EEC, one year from the date referred to in Article 24(1);
 - for other establishments, by the date referred to in Article 24(1).
 - (b) the necessary information is supplied by the operator to the authorities designated by the Member State for establishing External Emergency Plans, so as to enable External Emergency Plans to be produced, as follows:
 - for new establishments, between four and eight months before commencing construction or operation;
 - for existing establishments not previously covered by Directive 82/501/EEC, two years from the date referred to in Article 24(1);
 - for other establishments, by the date referred to in Article 24(1).
 - (c) an External Emergency Plan is drawn up by the authorities designated for that purpose by the Member State for implementation outside the establishment, as follows:
 - for new establishments, prior to commencing operation;
 - for existing establishments not previously covered by Directive 82/501/EEC, not more than six months from receipt of the information deemed necessary by the competent authority under this Article;
 - for other establishments, by the date referred to in Article 24(1).
2. The Emergency Plans must be established with the objectives of:
 - containing and controlling incidents so as to minimize the effects, and to limit damage to man and the environment;
 - implementing response measures to protect man and the environment from the effects of major accidents;
 - communicating relevant information to the public and other services or authorities concerned in the area;

- providing for the restoration and clean-up of the environment following a major accident.

Emergency Plans shall contain the information set out in Annex 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.
4. Member States shall ensure that Internal and External Emergency Plans are reviewed, tested, and where necessary revised and updated by the operators and designated authorities at suitable intervals no longer than three years. The review shall take into account changes occurring in the establishments concerned or within the emergency services concerned, new technical knowledge, and knowledge concerning the response to major accidents.
5. Member States shall ensure that Emergency Plans are put into effect without delay by the person nominated or by the designated authority, whenever:
 - a major accident occurs; or
 - an uncontrolled event occurs which by its nature could reasonably be expected to lead to a major accident.
6. Where a safety report demonstrates to the satisfaction of the competent authority that the establishment is incapable of creating a major-accident hazard beyond its boundary, the requirements to produce an External Emergency Plan in terms of Article 11(1) shall not apply.
7. Member States shall ensure that the competent authority publishes the criteria which it intends to use in reaching a decision that an establishment is incapable of creating a major-accident hazard beyond its boundary under of paragraph 6 and that it communicates a copy of the said criteria to the Commission. The Commission shall, if necessary, establish harmonized criteria, in accordance with the procedure laid down in Article 22.

Article 12

1. Member States shall ensure that their land-use policy includes among its objectives the prevention of major accidents and the limitation of their consequences. They shall accomplish this objective through controls on:
 - (a) the siting of new establishments;
 - (b) modifications to existing establishments covered by Article 10;
 - (c) new developments surrounding such existing establishments where the siting or developments may be liable to increase the risk or consequences of a major accident.

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.

2. Member States shall ensure that all competent authorities and planning authorities responsible for decisions on siting and land use set up appropriate consultation procedures to facilitate the implementation of the policy established under paragraph 1. The procedures shall be designed to ensure that technical advice on the risks arising from the establishment is available, either on a case-by-case or on a generic basis, when decisions are taken.
3. Member States shall inform the Commission of the siting and land-use planning criteria which they apply for the purpose of paragraph 1. The Commission shall, if necessary, establish guidelines on such criteria in accordance with the procedure laid down in Article 22.

Article 13

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.

Such information shall contain, at least, the information listed in Annex 4.

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.

3. Where the Member State concerned has decided that an establishment close to a border with 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.
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 make available to the public, an amended report excluding those matters.
5. Member States shall ensure that the public is able to participate in relevant procedures and debates, relating to:
 - planning for new establishments covered by Article 9, modifications to existing establishments under Article 10, where such modifications are subject to obligations provided for in this Directive as to planning, and developments around such existing establishments;
 - the major-accident hazard control policies and criteria of the competent authority and development policies and procedures regarding siting and land-use, developed to implement this Directive.
6. In the case of establishments subject to the provisions of Article 9, Member States shall ensure that the operator provides the competent authority with an inventory of all dangerous substances present which attain or exceed the quantity listed in Annex 1, Parts 1 and 2, column 3, at the establishment; the operator shall give the following details:
 - information sufficient to identify either the dangerous substance or the category of dangerous substance;
 - an indication of the total quantity present; and
 - the source of any additional information.

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

Article 14

1. Member States shall take the necessary measures to ensure that, as soon as practicable following a major accident, the operator shall be required, using the most appropriate means:
 - (a) to inform the competent authorities;
 - (b) to provide them with the following information as soon as it becomes available:
 - the circumstances of the accident;
 - the dangerous substances involved;
 - the data available for assessing the effects of the accident on man and the environment; and
 - the emergency measures taken;
 - (c) to inform them of the steps envisaged:
 - to alleviate the medium and long-term effects of the accident;
 - to prevent any recurrence of such an accident;
 - (d) to update the information provided if further investigation reveals additional facts which alter that information or the conclusions drawn.
2. The Member States shall require the competent authorities:
 - (a) to ensure that any urgent, medium and long-term measures which may prove necessary are taken;
 - (b) to collect, by inspection, investigation or other appropriate means, the information necessary for a full analysis of the technical, organizational and managerial aspects of the major accident;
 - (c) to take appropriate action to ensure that the operator takes any necessary remedial measures; and
 - (d) to make recommendations on future preventive measures.
3. Member States shall inform the Commission of the criteria they apply for the reporting of major accidents under Articles 14 and 15. The Commission shall, if necessary, establish guidelines concerning such criteria in accordance with the procedure laid down in Article 22.

Article 15

1. For the purposes of prevention and mitigation of major accidents, Member States shall inform the Commission as soon as practicable of major accidents which have occurred within their territory and shall provide it with the following details:
 - (a) the Member State, the name and address of the authority responsible for the report;
 - (b) the date, time and place of the major accident, including the full name of the operator and address of the establishment involved;
 - (c) a brief description of the circumstances of the accident, including the dangerous substances involved, and the immediate effects on man and the environment;
 - (d) a brief description of the emergency measures taken and of the immediate precautions necessary to prevent recurrence.
2. Member States shall, as soon as the information is collected in accordance with Article 14, inform the Commission of the result of their analysis and recommendations using a report-form established and kept under review through the procedure referred to in Article 22.

Reporting of this information by Member States may be delayed only to allow for the completion of legal proceedings where such reporting is liable to affect those proceedings.

3. Member States shall inform the Commission of the name and address of any organization which might have relevant information on major accidents and which is able to advise the competent authorities of other Member States which have to intervene in the event of such an accident.

Article 16

Member States shall set up or appoint the competent authority or authorities responsible for planning, organizing, authorizing and supervising the activities of establishments covered by this Directive.

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.

Article 18

1. Member States shall ensure that the competent authorities organize a system of inspections, or other measures of control proper to the type of establishment concerned. Those inspections or control measures shall not be dependent upon receipt of the safety report or any other report submitted. Such inspections or other control measures shall be sufficient for a planned and systematic examination of the systems being employed at the establishment, whether of a technical, organizational or managerial nature, so as to ensure in particular:
 - that the operator can demonstrate that he has taken appropriate measures, in connection with the various activities involved in the establishment, to prevent major accidents;
 - that the operator can demonstrate that he has provided appropriate means for limiting the consequences of major accidents, on site and off site;
 - that the data and information contained in the safety report specified in Article 9(1), or any other report submitted, adequately reflects the conditions in the establishment;
 - that information has been supplied to the public pursuant to Article 13(1).

2. The system of inspection specified in paragraph 1 shall comply with the following conditions:
 - (a) It shall be conducted by a suitably qualified and trained person employed by the competent authority.
 - (b) Inspections shall be undertaken by suitably qualified and trained persons.
 - (c) A programme of inspections for all establishments. Unless the competent authority has established a programme of inspection which provides for a longer period between 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 12 months to each establishment covered by Article 9.
 - (d) Following each inspection a report, including conclusions and follow-up action, shall be prepared by the person carrying out the inspection, for submission to and consideration by the manager appointed by the competent authority.
 - (e) Every inspection carried out by the competent authority shall be followed up with the management of the establishment, no later than three months following the inspection.
3. The competent authority may require the operator to provide any additional information necessary to allow the authority fully to assess the possibility of a major accident and to determine the scope of possible increased probability and/or aggravation of major accidents, to permit the preparation of an external emergency plan, to provide information concerning siting and land use, and to take substances into account which, due to their physical form, particular conditions or location, may require additional consideration.
4. Member States shall ensure that sufficient and appropriate resources, including financial, technical and human resources, are put at the disposal of the competent authority, the authority designated for the establishment of the External Emergency Plans and any other authority designated by the Member State to achieve the objectives of, and to carry out an activity required by, this Directive.
5. 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.

Article 19

1. The Commission shall set up and keep at the disposal of Member States a register and information system containing, in particular, details of the major accidents which have occurred within the territory of Member States, for the purpose of:
 - (a) the rapid dissemination of the information supplied by Member States pursuant to Article 15(1) among all competent authorities;
 - (b) distribution to competent authorities of an analysis of the causes of major accidents and the lessons learned from them;
 - (c) supply of information to competent authorities on preventive measures;
 - (d) provision of information on organizations able to provide advice or relevant information on the occurrence, prevention and mitigation of major accidents.

The register and information system shall contain, at least:

- (a) the information supplied by Member States in compliance with Article 15(1);
 - (b) an analysis of the causes of the accidents;
 - (c) the lessons learned from the accidents;
 - (d) the preventive measures necessary to prevent a recurrence.
2. Access to the register and information system shall be open to government departments of the Member States, industry or trade associations, trade unions, non-governmental organizations in the field of the protection of the environment, and other international or research organizations working in the field.
3. Member States shall provide the Commission with an annual report on the numbers and types of establishments covered by Articles 6 and 9, the number of safety reports received, the number of Internal and External Emergency Plans produced, and the number of inspections made. The Commission shall publish a summary of this information every year.

Article 20

1. Information obtained by the competent authorities and by the Commission in pursuance of this Directive is confidential only so far as it affects:
 - the confidentiality of the proceedings of competent authorities and of the Commission;
 - the confidentiality of international relations and national defence;

- public security or other security aspects;
 - matters which are or have been sub judice, or under investigation (including disciplinary inquiries), or which are the subject of preliminary investigation proceedings;
 - commercial and industrial confidentiality, including intellectual property;
 - the confidentiality of personal data and/or files;
 - material supplied by a third party without that party's being under a legal obligation to do so.
2. This Directive shall not preclude the conclusion by a Member State of agreements with third countries on the exchange of information to which it is privy at internal level other than that obtained through the Community procedures for the exchange of information set up by this Directive.

Article 21

The procedure specified in Article 22 shall be used for the adaptation of the Annexes to technical progress and for establishing: the harmonized Community criteria referred to in Articles 8(3), 9(8), 11(7), 14(3) and 18(5); the guidelines referred to in Article 12(3) and the report form referred to in Article 15(2).

Article 22

Wherever reference is made to this Article, the following procedure shall be applied:

The Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time-limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 23

Directive 82/501/EEC is hereby repealed with effect from 1 January 1996.

Article 24

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive on 1 January 1996. They shall forthwith notify the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.

Article 25

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

Article 26

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

APPLICATION OF THE DIRECTIVE

This Annex applies to the presence of Dangerous Substances at any establishment as defined by this Directive, and determines the application of the relevant articles.

The presence of Dangerous Substances in the context of this Directive includes where their presence, above the relevant threshold quantity, is provided for or when Dangerous Substances are likely to be present above threshold quantities as a result of an accident.

Mixtures and preparations shall be treated in the same way as pure substances provided they remain within concentration limits set according to their properties under the relevant Directive or latest adaptation to technical progress given in note 1, unless a percentage composition or other description is specifically given.

The qualifying quantities set out below relate to each establishment.

The quantities to be considered for the application of the relevant articles are the maximum quantities which are present or are liable to be present at any one time. Dangerous substances present at an establishment solely in an isolated quantity equal to or less than 2% of the relevant qualifying quantity shall be ignored for the purposes of calculating the total quantity present. An isolated quantity refers to a quantity of dangerous substance itself incapable of causing a major accident, and located within an establishment such that it cannot act as an initiator of a Major Accident elsewhere on the site.

The rules given in note 4 governing the addition of Dangerous Substances, or categories of Dangerous Substance shall apply where appropriate.

PART 1: Named Substances

Where a substance or group of substances listed in Part 1 also falls within a category of Part 2, the qualifying quantities set out in Part 1 must be used.

COLUMN 1 Dangerous Substances	COLUMN 2 Qualifying quantity (tonnes) for the application of		COLUMN 3
	Articles 6/7	Article 9	
Ammonium nitrate ⁽¹⁾	350		2 500
Ammonium nitrate ⁽²⁾	1 250		5 000
Arsenic pentoxide, Arsenic(V) acid and/or salts	0.5		0.5
Arsenic trioxide, Arsenious (III) acid and/or salts	0.1		0.1
Bromine	20		100
Chlorine	10		25
Dinickel trioxide	1		1
Dioxins (excluding TCDD)	0.1		0.1
Ethyleneimine	10		50
Fluorine	10		25
Formaldehyde(≥90%)	5		50
Hydrogen	5		50

(1) This applies to ammonium nitrate and mixtures containing ammonium nitrate where the nitrogen content derived from the ammonium nitrate is greater than 28% by weight (other than those covered by footnote No 2) and aqueous solutions of ammonium nitrate where the concentration of ammonium nitrate is greater than 90% by weight.

(2) This applies to straight ammonium nitrate fertilizers which comply with Directive 80/876/EEC, and to compound fertilizers, where the nitrogen content derived from ammonium nitrate is greater than 28% by weight (a compound fertilizer contains ammonium nitrate together with phosphate and/or potash).

COLUMN 1	COLUMN 2	COLUMN 3
Dangerous Substances	Qualifying quantity (tonnes) for the application of	
	Articles 6/7	Article 9
Hydrogen chloride (liquefied gas)	25	250
Hydrogen fluoride (50%)	5	50
Hydrogen sulphide	5	50
Lead Alkyls	5	50
Liquefied Petroleum Gas (including propane and butane)	50	200
4, 4' Methylenebis(2-chloraniline) and/or salts	0.01	0.01
Methylisocyanate	0.15	0.15
Natural gas or other combustible gases	50	200
Nickel monoxide	1	1
Nickel dioxide	1	1
Nickel sulphide	1	1
Oxygen	200	2 000
Sulphur dichloride	1	1
Sulphur trioxide	15	75
Tetrachlorodibenzodioxine	0.001	0.001
Trinickel disulphide	1	1

COLUMN 1

COLUMN 2

COLUMN 3

Dangerous Substances

Qualifying quantity (tonnes)
for the application of
Articles 6/7 Article 9

The following CARCINOGENS:

0.001

0.001

- 4-Aminobiphenyl and/or its salts,
- Benzidine and/or salts,
- Bis(chloromethyl) ether,
- Chloromethyl methyl ether,
- Dimethylcarbonyl chloride,
- Dimethylnitrosamine,
- Hexamethylphosphoric triamide,
- 2-Naphthylamine and/or salts, and
- 1, 3 Propanesultone
- 4-nitrodiphenyl

PART 2: Categories of substances and preparation not specifically named in Part 1

COLUMN 1 Categories of dangerous substances, classified	COLUMN 2 Qualifying quantity (tonnes) for the application of		COLUMN 3
	Articles 6/7		Article 9
1. VERY TOXIC	5		20
2. TOXIC	50		200
3. OXIDISING	50		200
4. EXPLOSIVE (where the substance or preparation falls within the definition given in note 2 a)	50		200
5. EXPLOSIVE (where the substance or preparation falls within the definition given in note 2 b)	10		50
6. FLAMMABLE (where the substance or preparation falls within the definition given in note 3a)	5 000		50 000
7a. HIGHLY FLAMMABLE (where the substance or preparation falls within the definition in given note 3b)	50		200
7b. HIGHLY FLAMMABLE liquids (excluding substances or preparations covered by 7a)	5 000		50 000
8. EXTREMELY FLAMMABLE (where the substance or preparation falls within the definition given in note 3c)	10		50

COLUMN 1

COLUMN 2

COLUMN 3

Categories of dangerous substances, classified

Qualifying quantity (tonnes) for the application of

Articles 6/7

Article 9

9. DANGEROUS FOR THE ENVIRONMENT

in combination with risk phrases:

i) R50 "Very Toxic to aquatic organisms"	500	2 000
ii) R51 "Toxic to aquatic organisms"; and R53 "May cause long term adverse effects in the aquatic environment"	5 000	20 000
10. Any classification not covered by those given above in combination with risk phrases		
i) R14 - Reacts violently with water (including R14/15)	100	500
ii) R29 - Contact with water liberates toxic gas	50	200

NOTES

1. Substances and Preparations are classified according to the following Directives (as amended) and their current Adaptation to Technical Progress:

- Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the Classification, Packaging and Labelling of Dangerous Substances;
- Council Directive 88/379/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to the Classification, Packaging and Labelling of Dangerous Preparations;
- 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).

In the case of substances and preparations which are not classified according to any of the above Directives but which nevertheless are present, or are liable to be present, in an establishment and which possess or are liable to possess, under the conditions found at the establishment, equivalent properties in terms of major accident potential, the procedures for provisional classification shall be followed according to the relevant article of the appropriate Directive.

In the case of Substances and Preparations with properties giving rise to more than one classification, for the purposes of this Directive, the lower thresholds shall apply.

For the purposes of this Directive a list providing information on Substances and Preparations shall be established, kept up to date, and approved by the procedure set up under Article 22.

2. An EXPLOSIVE means:

- (a) a solid or liquid substance or mixture of solid or liquid substances or both, which is capable of detonation, that is the production of a large volume of gas at supersonic velocity from a small volume of solid or liquid; or

a solid or liquid substance or mixture of solid or liquid substances or both which is designed to produce a propellant effect by releasing a large quantity of gas at subsonic velocity from a small volume of solid or liquid;

- (b) notwithstanding substances or preparations covered by the definition given in 2(a), those substances and preparations classified as EXPLOSIVE according to note 1 in combination with risk phrase R3 "Extreme risk of explosion by shock, friction, fire or other sources of ignition", and all other substances and preparations which can produce an effect by explosion.

3. FLAMMABLE, HIGHLY FLAMMABLE and EXTREMELY FLAMMABLE in categories 6, 7 and 8 mean:

(a) FLAMMABLE liquids;

substances and preparations having a flash point equal to or greater than 21°C and less than or equal to 55°C, supporting combustion;

(b) HIGHLY FLAMMABLE liquids;

substances and preparations which may become hot and finally catch fire in contact with air at ambient temperature without any input of energy, and substances which have a flash point lower than 55°C and which remain liquid under pressure, where particular processing conditions, such as high pressure and high temperature, may create major accident hazards;

(c) EXTREMELY FLAMMABLE gases and liquids;

liquid substances and preparations which have a flash point lower than 0°C and the boiling point (or in the case of a boiling range the initial boiling point) of which at normal pressure is less than or equal to 35°C, EXCLUDING gasoline and petroleum spirits which shall be covered by category 7b; and

gaseous substances and preparations which are flammable in contact with air at ambient temperature and pressure whether or not kept in the gaseous or liquid state under pressure, EXCLUDING Liquefied Petroleum Gas (including propane and butane) which shall be treated according to their listing in Part 1.

4. The addition of Dangerous Substances to determine the quantity present at an establishment shall be carried out according to the following rule:

If the sum:

$$q_1/Q + q_2/Q + q_3/Q + q_4/Q + q_5/Q + \dots \geq 1$$

where q_x = the quantity of dangerous substance or category of dangerous substance falling within Parts 1 or 2 of this Annex, x present

Q = the relevant threshold quantity from Parts 1 or 2.

then the establishment is covered by the relevant requirements of the Directive.

This rule will apply for the following circumstances:

- (a) for substances and preparations appearing in Part 1 at quantities less than their individual qualifying quantity present with substances having the same classification from Part 2, and the addition of substances and preparations with the same classification from Part 2;
- (b) for the addition of categories 1, 2, and 10 present at an establishment together;
- (c) for the addition of categories 3, 4, 5, 6, 7a, 7b, and 8, present at an establishment together.

ANNEX 2

DATA AND INFORMATION TO BE CONSIDERED IN THE SAFETY REPORT SPECIFIED IN ARTICLE 9

1. Information relating to the establishment including:
 - (a) the geographical location of the establishment and predominant meteorological conditions and sources of danger arising from its location;
 - (b) the maximum number of persons working at the establishment and particularly those persons exposed to the Major Accident hazard, and an indication of the maximum number of persons likely to be present at the establishment at any one time;
 - (c) a general description of the technological processes for each installation;
 - (d) a description of the sections of the establishment which are important from the safety point of view, the sources of Major Accident hazard and the conditions under which a major accident could occur, together with a description of the preventative measures planned;
2. Information relating to the Dangerous Substances at each installation or storage or present elsewhere at the establishment and liable to be significant in creating a Major Accident Hazard:
 - (a) composition of the Dangerous Substances present in significant quantities, including, chemical name, CAS number, name according to IUPAC nomenclature, other names, empirical formula, degree of purity and the main impurities and their relative percentages;
 - (b) the quantity (order of magnitude), of the dangerous substance, or substances, present;
 - (c) methods and precautions laid down by the operator in connection with handling, storage and fire;
 - (d) methods available to the operator for rendering the substance harmless;
 - (e) an indication of the hazards, both immediate and delayed for man and the environment;
 - (f) the chemical and/or physical behaviour under normal conditions of use during the process;
 - (g) the forms in which the substances may occur or into which they may be transformed in the case of abnormal conditions which can be foreseen.

3. Information relating to the installation or storage:

- (a) detection and determination methods available, including a description of the methods used or the references in the scientific literature;
- (b) the stage at which the dangerous substances are or may be involved in the installation;
- (c) if necessary, other dangerous substances whose presence could have an effect on the potential Major Accident hazard presented;
- (d) the arrangements made to ensure that the technical means necessary for the safe operation of the installation or storage and to deal with any malfunctions that arise are available at all times.

4. Information relating to possible major accidents:

- (a) details of the main possible major accident scenarios including consideration of knock-on effects involving adjacent installations, storage, or establishments and an assessment, in general terms, of the likelihood of its happening, taking into account the preventative and mitigatory actions taken;
- (b) a summary of the events which could be significant in bringing about each of these scenarios together with an assessment of the extent and severity of the consequences;
- (c) emergency measures laid down by the operator in the event of accidental dispersion, including the internal emergency plan prepared in compliance with Article 11.

5. Information relating to the management system and organization of the establishment, as it relates to Major Accident prevention, preparedness and response:

- (a) a summary of the operator's Major-Accident Prevention Policy as required by Article 6;
- (b) a summary of the organizational structure for implementing the aims and objectives of the Major-Accident Prevention Policy, including the position and names of those persons with significant responsibilities and their relevant duties;
- (c) the management systems used to monitor, audit and review the content and implementation of the Major-Accident Prevention Policy, including the evaluation of safety performance;
- (d) analysis of the training needs of the individuals responsible for the implementation and monitoring of the Major-Accident Prevention Policy;

- (e) a summary of the safety critical procedures, including an assessment of possible human error, for the operation, maintenance, and emergency preparedness of the establishment and individual installations or storage;
- (f) the procedures adopted for planning modifications to the existing installations or storage or the design of a new installation or storage;
- (g) the involvement of the workforce, including that of any contractors, in the Major-Accident Prevention Policy, its implementation and assessment;
- (h) the internal system for reporting major accidents or near misses, particularly those involving failure of protective measures, and their investigation and follow up.

DATA AND INFORMATION TO BE INCLUDED IN THE EMERGENCY PLANS SPECIFIED UNDER ARTICLE 11

1. INTERNAL EMERGENCY PLANS.

- (a) Names or positions of persons authorised to set emergency procedures in motion and the person in charge of and coordinating the on site mitigatory action.
- (b) Name or position of the person with responsibility for liaising with the authority responsible for the external emergency plan.
- (c) For foreseeable conditions or events which could be significant in bringing about a major accident, a description of the action which should be taken to control the conditions or events and to limit their consequences, including a description of the safety equipment and the resources available.
- (d) Arrangements for limiting the risks to persons on site including how warnings are to be given and the actions persons are expected to take on receipt of a warning.
- (e) Arrangements for providing early warning of the incident to the authority responsible for setting the external emergency plan in motion, the type of information which should be contained in an initial warning and the arrangements for the provision of more detailed information as it becomes available.
- (f) Arrangements for training staff in the duties they will be expected to perform, and where necessary coordinating this with off site emergency services.
- (g) Arrangements for providing assistance with off site mitigatory action.

2. EXTERNAL EMERGENCY PLANS.

- (a) Names or positions of persons authorised to set emergency procedures in motion and of persons authorised to take charge of and coordinate off site action.
- (b) Arrangements for receiving early warning of incidents, and alert and call out procedures.
- (c) Arrangements for coordinating resources necessary to implement the external emergency plan.
- (d) Arrangements for providing assistance with on site mitigatory action.

- (e) Arrangements for off site mitigatory action
- (f) Arrangements for providing the public with specific information relating to the incident and the behaviour which it should adopt.
- (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.

ITEMS OF INFORMATION TO BE COMMUNICATED TO THE PUBLIC IN APPLICATION OF ARTICLE 13(1)

- 1 Name of occupier and address of the establishment.
- 2 Identification, by position held, of the person giving the information.
- 3 Confirmation that the establishment is subject to the regulations and/or administrative provisions implementing the Directive and that the notification referred to in Article 6(3), or the Safety Report referred to in Article 9(1) has been submitted to the Competent Authority.
- 4 An explanation in simple terms of the activity or activities undertaken at the establishment.
- 5 The common names or, in the case of dangerous substances covered by Part 2 of Annex 1, the generic names or the general danger classification of the substances and preparations involved at the establishment which could give rise to a major accident, with an indication of their principal dangerous characteristics.
- 6 General information relating to the nature of the major-accident hazards, including their potential effects on the population, and the environment.
- 7 Adequate information on how the population concerned will be warned and kept informed in the event of a major accident.
- 8 Adequate information on the actions the population concerned should take, and on the behaviour they should adopt, in the event of a major accident.
- 9 Confirmation that the operator is required to make adequate arrangements on site, including liaison with the emergency services, to deal with major accidents to minimise their effects.
- 10 A reference to the external emergency plan drawn up to cope with any off-site effects from an accident. This should include advice to cooperate with any instructions or requests from the emergency services at the time of an accident.
- 11 Details of where further relevant information can be obtained, subject to the requirements of confidentiality laid down in national legislation.

IMPACT ASSESSMENT FORM

THE IMPACT OF THE PROPOSAL ON BUSINESS

WITH SPECIAL REFERENCE TO SMALL AND MEDIUM SIZED ENTERPRISES
(SMEs)

TITLE OF PROPOSAL

PROPOSAL FOR A COUNCIL DIRECTIVE ON THE CONTROL OF MAJOR
ACCIDENT HAZARDS INVOLVING DANGEROUS SUBSTANCES (COMAH)

The Proposal

1. Why is Community Legislation necessary in this area ?

Following ten years of experience with the provisions of Council Directive 82/501/EEC on the major accident hazards of certain industrial activities, study of the situation in the Community has shown that a fundamental revision of the directive is now necessary. The Council in its accompanying resolution to the Fourth European Community Action Programme on the Environment called for more effective implementation of the directive, greater exchange of information between Member States and review, including possible widening of the scope.

In the 5th Environmental Action Programme, "Towards Sustainability, The European Communities Programme of Policy and Action in Relation to the Environment and Sustainable Development", two common features of the programme, including the control of industrial risks, are:

- the involvement of all levels of society in the spirit of shared responsibility, and,
- in order to ensure that Community measures on the environment are more effectively implemented, cooperation procedures between the Commission and the Member States should be further improved.

The Commission services have examined the provisions of Council Directive 82/501/EEC, as amended, and, in consultation with experts from Member States, industry and other interested parties investigated ways in which the existing provisions should be revised.

The examination of the existing provisions, in particular the practical application of the provisions in the Member States, and the major accidents which have occurred in the Community over the past ten years, shows that certain elements were missing from the original directive and that certain other requirements require revision in the light of changing technology.

The main aim of the proposal is to provide for a high level of protection for health, safety, the environment and the public ("consumers").

This aim is achieved in the proposal by the introduction of the following three elements throughout the text;

a) A single application system based upon one application annex and thresholds for all establishments where dangerous substances are present.

b) The inclusion of provisions on land use planning as it relates to Major Accidents.

c) The inclusion of Management systems and human factors throughout the text particularly by the introduction of a Major Accident Prevention Policy, and greater consideration of these matter in the Safety report required under Article 9.

The Impact on Business

2. Who will be affected by the proposal and what will they have to do ?

The Directive will apply to all occupiers of establishments where dangerous substances are present (including dangerous substances present as a result of an accident) above a defined threshold. Establishments are defined therefore in wider terms than the activities covered under the provisions of Council Directive 82/501/EEC. The establishment includes installations and storage facilities covered under the existing requirements and could also add other types of premises where dangerous substances are present in sufficient quantities to create a major accident hazard, such as laboratories, large agricultural stores etc.

The concerns expressed by some sections of industry and other interested parties about the inclusion of these types of establishment were considered in the proposal by the use of sufficiently high thresholds in annex 1 so as to prevent very small enterprises being covered where a major accident hazard clearly does not exist, whilst maintaining equal treatment for all parts of industry which create an equal major accident hazard.

All establishments covered by the proposal will have a general requirement to prevent major accidents. This will therefore be applicable equally to multinational businesses and SMEs. The requirement is identical to the existing requirement of Council Directive 82/501/EEC Article 3 except that whereas in the original directive it applied without a lower threshold in the new proposal it only applies to establishments above the article 6/7 threshold. This is in recognition of the requirements of the various directives made under Article 118A of the Treaty and to better target the directive at major hazard installations.

There are essentially two levels of more specific requirements proposed in the revised Directive.

The first requirement under Articles 6 and 7 will apply to establishments where dangerous substances are present in quantities greater than the thresholds given in column 2 of either parts 1 or 2 of Annex 1. Occupiers of these establishments will have to produce an internal Major Accident Prevention Policy (MAPP) and provide a simple notification to the Competent Authorities. The thresholds chosen for the application of these requirements are, in the majority of cases, identical to the thresholds previously used in Council Directive 82/501/EEC for isolated storage. It will be applicable to multinational businesses and some SMEs.

The second level of application, based upon Article 9, will apply to establishments where dangerous substances are present in quantities greater than the thresholds given in column 3 of either parts 1 or 2 of Annex 1. It will be applicable mostly to the larger businesses and multinational companies. Occupiers of these, Article 9, establishments will have to produce a safety report, which is submitted to the Competent Authority, and an internal emergency plan. They are also subject to external emergency planning, siting and land use planning requirements and requirements relating to the provision of information to the public. The requirements of the safety report have been updated to include management systems and human factors. In other respects the requirements are identical to those under Council Directive 82/501/EEC.

The requirement on siting and land use planning is new and based upon the common aspects of land use planning currently used by some Member States.

Under the current requirements of article 5 of Council Directive 82/501/EEC approximately 2500 establishments in the Community are subject to the requirement to produce a safety report. The thresholds chosen for the application of Article 9 of this proposal are in the majority of cases identical to the thresholds used previously, and therefore the Commission services do not expect a significant increase in the number of businesses covered.

Certain concerns were expressed by industry and other interested parties regarding the inclusion of "DANGEROUS FOR THE ENVIRONMENT" and "CARCINOGENS" in the application annex, and the inclusion of management systems and sanctions for inspectors. There were also some concerns regarding the overlap of this proposal with other Community initiatives or legislation. All these concerns have been addressed, in a balanced way, in the proposal.

The new category of "DANGEROUS FOR THE ENVIRONMENT" has been introduced in part 2 of annex 1 of the proposal but thresholds have been proposed for this category which are high enough to effectively eliminate all except the largest establishments, until such time that further information on the major accident hazards of substances classified as Dangerous for the Environment is available.

CARCINOGENS have been included in the proposal in an identical fashion to the existing requirements of Council Directive 82/501/EEC by naming certain category 1 and 2 carcinogens in part 1 of annex 1.

The inclusion of management systems is an essential feature of the proposal since study of major accidents occurring in the Community indicates that 95% of these accidents have, as their underlying cause, management error. The proposal does not, however, seek to impose particular methods of management, rather it emphasises the need for good management in all its forms.

The inclusion of sanctions for inspectors has been proposed given the need to ensure equivalent practical implementation across the Community and to prevent establishments creating an unacceptable risk of a major accident occurring. The proposal also addresses the question of overlap between various Community requirements by providing a flexibility in the production of the safety report. This flexibility allows occupiers to use reports prepared for other purposes as part of the safety report, provided the objectives of the report are maintained.

3. What Economic Effects is the Proposal Likely to have ?

The harmonisation of measures to provide a high level of protection for health, safety, the environment and the public (consumers) in the field of major accident hazards is difficult to quantify. However various studies have demonstrated that the costs both to industry and society in general of one major accident such as Bhopal can be very significant.

The measures proposed in this directive, in addition to the measures already required under the provisions of Council Directive 82/501/EEC, include the requirement to prepare an internal Major Accident Prevention Policy (MAPP), to improve management systems generally and to include new information on these systems within the safety report produced by the largest establishments covered. Since the measures proposed reflect, to a large extent, the practices of the best companies in this field who find that there are often production benefits from introducing good management systems the calculation of the cost to industry is further complicated.

The current average cost to industry to produce a safety report under Council Directive 82/501/EEC has been estimated to be between 50 000 and 125 000 ECUS depending upon the size of the establishment. Estimates for the inclusion of the additional matters relating to management systems and human factors range between 5 000 and 25 000 ECUS. However this increase can be offset by the potential savings produced from the prevention of Major Accidents. This is particularly relevant following the study of the Major Accidents indicating the underlying cause was management error.

Given the potential advantages to society, the environment, the economy, and specifically to the business concerned of the prevention of even one major accident, and the additional harmonising measures proposed in the directive there should be a considerable advantage to all interested parties. There may be some additional costs for certain sectors of industry primarily in those Member States which presently have less stringent standards of practical implementation of the current requirements. However these additional costs are offset by a certain flexibility in the requirements for businesses able to demonstrate to the satisfaction of the Competent Authority that they have adequately dealt with the particular hazard or it is of no relevance to them. Those businesses will be able, for example, to reduce the amount of information presented in future safety reports.

4. Does the Proposal Contain measures to take account of the specific situation of SMEs ?

The proposal is targetted at high hazard establishments. Normally these will be managed by large multinational companies and so the specific situation of SMEs is naturally taken into account. However those SMEs that might be covered will need to adhere to the same basic principles given the nature of the hazard. However the implementation of control measures will be proportional to risk and the sophistication of the management systems proportional to the size and management structure.

5. Consultations.

The industrial organisations consulted by the Commission during the development of this proposal between October 1990 and December 1991 include, The European Council of Chemical Manufacturers' Federations (CEPIC), The Oil Companies' European Organization for Environmental and Health Protection (CONCAWE), The Oil Industry International Exploration and Production Forum (E & P FORUM), The European Liquefied Petroleum Gas Association (AEGPL), Union of the Gas Industries of the Common Market (MARCOGAZ), The European Federation of Chemical Trade (FECC), The European Petroleum Industry Association (EUROPIA), The European Industrial Gases Association (EIGA), The International Group of National Associations of Manufacturers of Agrochemical Products (GIFAP), EUROMETAUX, and The Federation of European Explosives Manufacturers (FEEM).

Other consultations have included The European Trade Union Technical Bureau for Health and Safety, and The European Trade Union Institute (ETUI).

The majority of consultations have been constructive and have resulted in improvements to the proposal.

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