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(Information)

COUNCIL

COMMON POSITION (EC) No 15/2003

adopted by the Council on 20 February 2003

with a view to the adoption of a Directive of the European Parliament and of the Council amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances

(2003/C 102 E/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Economic and Social Committee [2],

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances [4] aims 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 in a consistent and effective manner.

(2) In the light of recent industrial accidents and studies on carcinogens and substances dangerous for the environment carried out by the Commission at the Council's request, the scope of Directive 96/82/EC should be extended.

(3) The cyanide spill that polluted the Danube following the accident at Baia Mare in Romania in January 2000 has demonstrated that certain storage and processing activities in mining have a potential to produce very serious consequences. The Commission Communications on the safe operation of mining activities and on the sixth environment action programme of the European Community have therefore highlighted the need for an extension of the scope of Directive 96/82/EC. In its Resolution of 5 July 2001 on the Commission Communication on the safe operation of mining activities, the European Parliament also welcomed the extension of the scope of that Directive to cover risks arising from storage and processing activities in mining.

(4) The 'fireworks accident' at Enschede in the Netherlands in May 2000 has demonstrated the major accident potential arising from storage and manufacture of pyrotechnic and explosive substances. The definition of such substances in Directive 96/82/EC should therefore be clarified and simplified.

(5) The explosion at a fertiliser plant in Toulouse in September 2001 has raised awareness of the accident potential arising from the storage of ammonium nitrate and ammonium nitrate-based fertilisers, in particular of material rejected during the manufacturing process or returned to the manufacturer (so-called 'off-specs'). The existing categories of ammonium nitrate and ammonium nitrate-based fertilisers in Directive 96/82/EC should therefore be reviewed with a view to include 'off-specs' material.

(6) Directive 96/82/EC should not be applied to sites of end-users where ammonium nitrate and ammonium nitrate-based fertilisers, which on delivery conformed to the specification in that Directive but subsequently have become degraded or contaminated, are temporarily present prior to removal for reprocessing or destruction.

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[1] OJ C 75 E, 26.3.2002, p. 357.

[2] OJ C 149, 21.6.2002, p. 13.

[3] Opinion of the European Parliament of 3 July 2002 (not yet published in the Official Journal), Council Common Position of 20 February 2003 and Decision of the European Parliament of ... (not yet published in the Official Journal).

[4] OJ L 10, 14.1.1997, p. 13.

(7) Studies carried out by the Commission in close cooperation with the Member States support extending the list of carcinogens with appropriate qualifying quantities and significantly lowering the qualifying quantities assigned to substances dangerous for the environment in Directive 96/82/EC.

(8) For establishments which subsequently fall within the scope of Directive 96/82/EC, it has been shown necessary to introduce minimum periods for notifications and the establishment of major accident prevention policies, safety reports and emergency plans.

(9) The experience and knowledge of relevant staff in the establishment can greatly assist in the drawing up of emergency plans, and all staff in an establishment and persons likely to be affected should be appropriately informed on safety measures and actions.

(10) The adoption of Council Decision 2001/792/EC, Euratom of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions [1] highlights the need to facilitate reinforced cooperation in civil protection assistance interventions.

(11) It is useful, in order to facilitate land-use planning, to draw up guidelines defining a database to be used for assessing the compatibility between the establishments covered by Directive 96/82/EC and the areas described in Article 12(1) of that Directive.

(12) There should be an obligation on Member States to supply the Commission with minimum information concerning the establishments covered by Directive 96/82/EC.

(13) It is appropriate at the same time to clarify certain passages in Directive 96/82/EC.

(14) The measures provided for in this Directive have been the subject of a public consultation process involving interested parties.

(15) Directive 96/82/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 96/82/EC is hereby amended as follows:

1. in Article 4:

— points (e) and (f) shall be replaced by the following:

'(e) the exploitation (exploration, extraction and processing) of minerals in mines, quarries, or by means of boreholes, with the exception of chemical and thermal processing operations and storage related to those operations which involve dangerous substances, as defined in Annex I;

(f) the offshore exploration and exploitation of minerals, including hydrocarbons;',

— the following point shall be added:

'(g) waste land-fill sites with the exception of active tailings disposal facilities, including tailing ponds or dams, containing dangerous substances as defined in Annex I and used in connection with the chemical and thermal processing of minerals.';

2. the following indent shall be added in Article 6(1):

'— for establishments which subsequently fall within the scope of this Directive, within three months after the date on which this Directive applies to the establishment concerned, as laid down in the first subparagraph of Article 2(1).';

3. the following paragraph shall be inserted in Article 7:

'1a. For establishments which subsequently fall within the scope of this Directive, the document referred to in paragraph 1 shall be drawn up without delay, but at all events within three months after the date on which this Directive applies to the establishment concerned, as laid down in the first subparagraph of Article 2(1).';

4. point (b) of Article 8(2) shall be replaced by the following:

'(b) provision is made for cooperation in informing the public and in supplying information to the authority responsible for the preparation of external emergency plans.';

5. the first subparagraph of Article 9(2) shall be replaced by the following:

'2. The safety report shall contain at least the data and information listed in Annex II. It shall name the relevant organisations involved in the drawing up of the report. It shall also contain an updated inventory of the dangerous substances present in the establishment.';

[1] OJ L 297, 15.11.2001, p. 7.

6. (a) the following indent shall be inserted between the third and fourth indents of Article 9(3):

'— for establishments which subsequently fall within the scope of this Directive, without delay, but at all events within one year after the date on which this Directive applies to the establishment concerned, as laid down in the first subparagraph of Article 2(1),';

(b) in Article 9(4), the reference to 'the second, third, and fourth indents' shall become 'the second, third, fourth and fifth indents' respectively;

7. the following indent shall be added to points (a) and (b) of Article 11(1):

'— for establishments which subsequently fall within the scope of this Directive, without delay, but at all events within one year after the date on which this Directive applies to the establishment concerned, as laid down in the first subparagraph of Article 2(1).';

8. Article 11 shall be amended as follows:

— paragraph 3 shall be replaced by the following:

'3. Without prejudice to the obligations of the competent authorities, Member States shall ensure that the internal emergency plans provided for in this Directive are drawn up in consultation with the personnel working inside the establishment, including long-term relevant subcontracted personnel and that the public is consulted on external emergency plans when they are established or updated.',

— the following paragraph shall be inserted:

'4a. With regard to external emergency plans, Member States should take into account the need to facilitate enhanced cooperation in civil protection assistance in major emergencies.';

9. the second subparagraph of Article 12(1) shall be replaced by the following:

'Member States shall ensure that their land-use and/or other relevant policies and the procedures for implementing those policies take account of the need, in the long term, to maintain appropriate distances between establishments covered by this Directive and residential areas, buildings and areas of public use, major transport routes as far as possible, recreational areas and areas of particular natural sensitivity or interest and, in the case of existing establishments, of the need for additional technical measures in accordance with Article 5 so as not to increase the risks to people.';

10. the following paragraph shall be inserted in Article 12:

'1a. The Commission is invited, in close cooperation with the Member States, to draw up guidelines defining a technical database to be used for assessing the compatibility between the establishments covered by this Directive and the areas described in paragraph 1. The definition of this database shall take account of the technical and scientific evaluations performed by the Member States, the information obtained from operators and all other relevant information.';

11. the first subparagraph of Article 13(1) shall be replaced by the following:

'1. Member States shall ensure that information on safety measures and on the requisite behaviour in the event of an accident is supplied regularly and in the most appropriate form, without their having to request it, to all persons and all establishments serving the public (such as schools and hospitals) liable to be affected by a major accident originating in an establishment covered by Article 9.';

12. Article 13(6) shall be replaced by the following:

'6. In the case of establishments subject to the provisions of Article 9, Member States shall ensure that the inventory of dangerous substances provided for in Article 9(2) is made available to the public subject to the provisions of paragraph 4 of this Article and Article 20.';

13. the following paragraph shall be inserted in Article 19:

'1a. For establishments covered by this Directive, Member States shall supply the Commission with at least the following information:

(a) the name or trade name of the operator and the full address of the establishment concerned; and

(b) the activity or activities of the establishment.

The Commission shall set up and keep up to date a database containing the information supplied by the Member States. Access to the database shall be reserved to persons authorised by the Commission or the competent authorities of the Member States.';

14. Annex I shall be amended as set out in the Annex.

15. in Annex III, point (c), (i) shall be replaced by the following:

'(i) organisation and personnel — the roles and responsibilities of personnel involved in the management of major hazards at all levels in the organisation. The identification of training needs of such personnel and the provision of the training so identified. The involvement of employees and of subcontracted personnel working in the establishment.'

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before . . . (*). They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

Article 3

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

. . .

For the European Parliament	*For the Council*
The President	*The President*

(*) 18 months after entry into force of this Directive.

ANNEX

Annex I to Directive 96/82/EC is hereby amended as follows:

1. The following points shall be added to the Introduction:

'6. For the purposes of this Directive, a gas is any substance that has an absolute vapour pressure equal to or greater than 101,3 kPa at a temperature of 20 °C.

7. For the purposes of this Directive, a liquid is any substance that is not defined as a gas and that is not in the solid state at a temperature of 20 °C and at a standard pressure of 101,3 kPa.'

2. In the table in Part 1:

(a) the entries relating to 'Ammonium nitrate' shall be replaced by the following:

Column 1	Column 2	Column 3
Dangerous substances	Qualifying quantity (tonnes) for the application of	
	Articles 6 and 7	Article 9
'Ammonium nitrate	5 000	10 000
Ammonium nitrate	1 250	5 000
Ammonium nitrate	350	2 500
Ammonium nitrate	10	50'

(b) the entry relating to 'The following CARCINOGENS' shall be replaced by the following:

Column 1	Column 2	Column 3
Dangerous substances	Qualifying quantity (tonnes) for the application of	
	Articles 6 and 7	Article 9
'The following CARCINOGENS at concentrations above 5 % by weight: 4-Aminobiphenyl and/or its salts, Benzotrichloride, Benzidine and/or salts, Bis (chloromethyl) ether, Chloromethyl methyl ether, 1,2-Dibromoethane, Diethyl sulphate, Dimethyl sulphate, Dimethylcarbamoyl chloride, 1,2-Dibromo-3-chloropropane, 1,2-Dimethylhydrazine, Dimethylnitrosamine, Hexamethylphosphoric triamide, Hydrazine, 2- Naphthylamine and/or salts, 4-Nitrodiphenyl, and 1,3 Propanesultone	0,5	2'

(c) the entry relating to 'Automotive petrol and other petroleum spirits' shall be replaced by the following:

Column 1	Column 2	Column 3
Dangerous substances	Qualifying quantity (tonnes) for the application of	
	Articles 6 and 7	Article 9
'Petroleum products (a) gasolines and naphthas, (b) kerosenes (including jet fuels), (c) gas oils (including diesel fuels, home heating oils and gas oil blending streams)	2 500	25 000'

(d) (i) Notes 1 and 2 shall be replaced by the following:

'1. *Ammonium nitrate (5 000/10 000): fertilisers capable of self-sustaining decomposition*

This applies to ammonium nitrate-based compound/composite fertilisers (compound/composite fertilisers contain ammonium nitrate with phosphate and/or potash) in which the nitrogen content as a result of ammonium nitrate is

— between 15,75 % ([1]) and 24,5 % ([2]) by weight, and either with not more than 0,4 % total combustible/organic materials or which fulfil the requirements of Annex II of Directive 80/876/EEC,

— 15,75 % ([3]) by weight or less and unrestricted combustible materials,

and which are capable of self-sustaining decomposition according to the UN Trough Test (see United Nations Recommendations on the Transport of Dangerous Goods: Manual of Tests and Criteria, Part III, subsection 38.2).

2. *Ammonium nitrate (1 250/5 000): fertiliser grade*

This applies to straight ammonium nitrate-based fertilisers and to ammonium nitrate-based compound/composite fertilisers in which the nitrogen content as a result of ammonium nitrate is

— more than 24,5 % by weight, except for mixtures of ammonium nitrate with dolomite, limestone and/or calcium carbonate with a purity of at least 90 %,

— more than 15,75 % by weight for mixtures of ammonium nitrate and ammonium sulphate,

— more than 28 % ([4]) by weight for mixtures of ammonium nitrate with dolomite, limestone and/or calcium carbonate with a purity of at least 90 %,

and which fulfil the requirements of Annex II of Directive 80/876/EEC.

3. *Ammonium nitrate (350/2 500): technical grade*

This applies to

— ammonium nitrate and preparations of ammonium nitrate in which the nitrogen content as a result of the ammonium nitrate is

  — between 24,5 % and 28 % by weight, and which contain not more than 0,4 % combustible substances,

  — more than 28 % by weight, and which contain not more than 0,2 % combustible substances,

— aqueous ammonium nitrate solutions in which the concentration of ammonium nitrate is more than 80 % by weight.

4. *Ammonium nitrate (10/50): "off-specs" material and fertilisers not fulfilling the detonation test*

This applies to:

— material rejected during the manufacturing process and to ammonium nitrate and preparations of ammonium nitrate, straight ammonium nitrate-based fertilisers and ammonium nitrate-based compound/composite fertilisers referred to in Notes 2 and 3, that are being or have been returned from the final user to a manufacturer, temporary storage or reprocessing plant for reworking, recycling or treatment for safe use, because they no longer comply with the specifications of Notes 2 and 3;

— fertilisers referred to in Note 1, first indent, and Note 2 which do not fulfil the requirements of Annex II of Directive 80/876/EEC.'

(ii) The note relating to polychlorodibenzofurans and polychlorodibenzodioxins shall become Note 5.

(iii) the following footnotes shall appear below the table entitled 'International Toxic Equivalent Factors (ITEF) for the congeners of concern (NATO/CCMS)':

'([1]) 15,75 % nitrogen content by weight as a result of ammonium nitrate corresponds to 45 % ammonium nitrate.

([2]) 24,5 % nitrogen content by weight as a result of ammonium nitrate corresponds to 70 % ammonium nitrate.

([3]) 15,75 % nitrogen content by weight as a result of ammonium nitrate corresponds to 45 % ammonium nitrate.

([4]) 28 % nitrogen content by weight as a result of ammonium nitrate corresponds to 80 % ammonium nitrate.'

3. In Part 2:

(a) entries 4 and 5 shall be replaced by the following:

Column 1	Column 2	Column 3
Dangerous substances	Qualifying quantity (tonnes) for the application of	
	Articles 6 and 7	Article 9
'4. EXPLOSIVE (see Note 2) where the substance, preparation or article falls under UN/ADR Division 1.4	50	200
5. EXPLOSIVE (see Note 2) where the substance, preparation or article falls under any of: UN/ADR Divisions 1.1, 1.2, 1.3, 1.5 or 1.6 or risk phrase R2 or R3	10	50'

(b) entry 9 shall be replaced by the following:

Column 1	Column 2	Column 3
Dangerous substances	Qualifying quantity (tonnes) for the application of	
	Articles 6 and 7	Article 9
'9. DANGEROUS FOR THE ENVIRONMENT risk phrases:		
(i) R50: "Very toxic to aquatic organisms" (including R50/53)	100	200
(ii) R51/53: "Toxic to aquatic organisms; may cause long term adverse effects in the aquatic environment"	200	500'

(c) In the Notes:

(i) Note 1 shall be replaced by the following:

'1. Substances and preparations are classified according to the following Directives and their current adaptation to technical progress:

— Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances ([1]),

— Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations ([2]).

In the case of substances and preparations which are not classified as dangerous according to either of the above Directives, for example waste, but which nevertheless are present, or are likely to be present, in an establishment and which possess or are likely 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 in accordance with 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 lowest qualifying quantities shall apply. However, for the application of the rule in Note 4, the qualifying quantity used shall always be the one corresponding to the classification concerned.

For the purposes of this Directive, the Commission shall establish and keep up to date a list of substances which have been classified into the above categories by a harmonised Decision in accordance with Directive 67/548/EEC.'

(ii) Note 2 shall be replaced by the following:

'2. An "explosive" means:

— a substance or preparation which creates the risk of an explosion by shock, friction, fire or other sources of ignition (risk phrase R2),

— a substance or preparation which creates extreme risks of explosion by shock, friction, fire or other sources of ignition (risk phrase R3), or

— a substance, preparation or article covered by Class 1 of the European Agreement concerning the International Carriage of Dangerous Goods by Road (UN/ADR), concluded on 30 September 1957, as amended, as transposed by Council Directive 94/55/EC of 21 November 1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road ([3]).

Included in this definition are pyrotechnics, which for the purposes of this Directive are defined as substances (or mixtures of substances) designated to produce heat, light, sound, gas or smoke or a combination of such effects through self-sustained exothermic chemical reactions. Where a substance or preparation is classified by both UN/ADR and risk phase R2 or R3, the UN/ADR classification shall take precedence over assignment of risk phrases.

Substances and articles of Class 1 are classified in any of the divisions 1.1 to 1.6 in accordance with the UN/ADR classification scheme. The divisions concerned are:

Division 1.1: "Substances and articles which have a mass explosion hazard (a mass explosion is an explosion which affects almost the entire load virtually instantaneously)."

Division 1.2: "Substances and articles which have a projection hazard but not a mass explosion hazard."

Division 1.3: "Substances and articles which have a fire hazard and either a minor blast hazard or a minor projection hazard or both, but not a mass explosion hazard:

(a) combustion of which gives rise to considerable radiant heat; or

(b) which burn one after another, producing minor blast or projection effects or both."

Division 1.4: "Substances and articles which present only a slight risk in the event of ignition or initiation during carriage. The effects are largely confined to the package and no projection of fragments of appreciable size or range is to be expected. An external fire shall not cause virtually instantaneous explosion of virtually the entire contents of the package."

Division 1.5: "Very insensitive substances having a mass explosion hazard which are so insensitive that there is very little probability of initiation or of transition from burning to detonation under normal conditions of carriage. As a minimum requirement they shall not explode in the external fire test."

Division 1.6: "Extremely insensitive articles which do not have a mass explosion hazard. The articles contain only extremely insensitive detonating substances and demonstrate a negligible probability of accidental initiation or propagation. The risk is limited to the explosion of a single article."

Included in this definition are also explosive or pyrotechnic substances or preparations contained in articles. In the case of articles containing explosive or pyrotechnic substances or preparations, if the quantity of the substance or preparation contained is known, that quantity shall be considered for the purposes of this Directive. If the quantity is not known, then, for the purposes of this Directive, the whole article shall be treated as explosive.'

(iii) in Note 3(b)1, the second indent shall be replaced by the following:

'— substances and preparations which have a flash point lower than 55 °C and which remain liquid under pressure, where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards;'

(iv) Note 3(c)2 shall be replaced by the following:

'2. gases which are flammable in contact with air at ambient temperature and pressure (risk phrase R12, second indent), which are in a gaseous or supercritical state, and';

(v) Note 3(c)3 shall be replaced by the following:

'3. flammable and highly flammable liquid substances and preparations maintained at a temperature above their boiling point.';

(vi) Note 4 shall be replaced by the following:

'4. In the case of an establishment where no individual substance or preparation is present in a quantity above or equal to the relevant qualifying quantities, the following rule shall be applied to determine whether the establishment is covered by the relevant requirements of this Directive.

This Directive shall apply if the sum:

$q_1/Q_{U1} + q_2/Q_{U2} + q_3/Q_{U3} + q_4/Q_{U4} + q_5/Q_{U5} + \ldots$ is greater than or equal to 1,

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

and Q_{UX} = the relevant qualifying quantity for substance or category x from column 3 of Parts 1 or 2.

This Directive shall apply, with the exception of Articles 9, 11 and 13, if the sum:

$q_1/Q_{L1} + q_2/Q_{L2} + q_3/Q_{L3} + q_4/Q_{L4} + q_5/Q_{L5} + \ldots$ is greater than or equal to 1,

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

and Q_{LX} = the relevant qualifying quantity for substance or category x from column 2 of Parts 1 or 2.

This rule shall be used to assess the overall hazards associated with toxicity, flammability, and eco-toxicity. It must therefore be applied three times:

(a) for the addition of substances and preparations named in Part 1 and classified as toxic or very toxic, together with substances and preparations falling into categories 1 or 2;

(b) for the addition of substances and preparations named in Part 1 and classified as oxidising, explosive, flammable, highly flammable, or extremely flammable, together with substances and preparations falling into categories 3, 4, 5, 6, 7a, 7b or 8;

(c) for the addition of substances and preparations named in Part 1 and classified as dangerous for the environment (R50 (including R50/53) or R51/53), together with substances and preparations falling into categories 9(i) or 9(ii);

The relevant provisions of this Directive apply if any of the sums obtained by (a), (b) or (c) is greater than or equal to 1.'

(vii) the following footnotes shall appear at the end of the Notes:

'([1]) OJ L 196, 16.8.1967, p. 1. Directive as last amended by Commission Directive 2001/59/EC (OJ L 225, 21.8.2001, p. 1).

([2]) OJ L 200, 30.7.1999, p. 1. Directive as amended by Commission Directive 2001/60/EC (OJ L 226, 22.8.2001, p. 5).

([3]) OJ L 319, 12.12.1994, p. 7. Directive as last amended by Commission Decision 2002/886/EC (OJ L 308, 9.11.2002, p. 45).'

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 11 December 2001, the Commission presented to the Council its proposal for a Directive of the European Parliament and of the Council amending Directive 96/82/EC relating to the control of major-accident hazards involving dangerous substances (Seveso II).

2. The European Parliament gave its opinion on 3 July 2002.

   The Economic and Social Committee adopted its opinion on 9 April 2002.

   The Committee of the Regions announced its intention not to give an opinion by letter dated 9 April 2002.

3. On 20 February 2003, the Council adopted its common position in accordance with Article 251(2) of the Treaty.

II. OBJECTIVE

Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances [1] (so-called Seveso II Directive) aims 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 in a consistent and effective manner.

The principal novelty of that new Directive which had to be applied in the Member States from 3 February 1999, consists of the introduction of an obligation for industrial operators to put into effect *safety management systems* including a detailed risk assessment using possible accident scenarios. Such a risk assessment plays a key role in preventing major accidents. Moreover, the obligation to provide information to the public on industrial risks and on the behaviour to adopt in the case of an accident is of paramount importance for the limitation of the consequences of major accidents.

In the light of recent industrial accidents in Baia Mare/Romania (a tailings pond damburst resulting in cyanide poisoning of several river basins) and Enschede/Netherlands (explosions in a fireworks factory causing the death of 22 people and injury to almost 1 000), and following studies on carcinogens and substances dangerous for the environment carried out by the Commission on request of the Council, the scope of the 1996 Directive now needs to be broadened in order to achieve the goals of the Directive.

The Commission had also given consideration as to whether the explosion of the chemical site of AZF that occurred in Toulouse on 21 September 2001 (detonation of Ammonia-Nitrate causing death of 30 people and injury to 2 400) necessitated immediate amendments of the Seveso II Directive. However, that site was fully covered by the obligations of the Directive (contrary to the sites in Baia Mare and Enschede) and moreover, the Commission did not wish to significantly delay the coverage of establishments that should be brought under the scope of Seveso II as soon as possible from an environmental protection and safety point of view. However, during both Council's consideration of the proposal and the European Parliament's first reading it became clear that there was a strong feeling that account should be taken of the Toulouse accident in this proposal and suitable amendments have been introduced in the Council's common position.

The obligations to comply with the different safety requirements imposed by the Directive are triggered according to the tonnage (qualifying quantity) of the dangerous substance, or class of dangerous substance, which is held on the industrial site. These thresholds are identified in Annex I to the Directive (Part 1 of the Annex refers to specific substances and Part 2 to classes of substances). This amendment changes several of the thresholds, adds some new substances and changes some of the classes of substances. The Commission undertook extensive consultation with industry and the Member States to arrive at this proposal. There seems to be general consensus that the proposal is a sensible reaction to the accidents and that it should be agreed as soon as possible to ensure that similar accidents can be avoided in the future.

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[1] OJ No L 10, 14.1.1997, p. 13.

III. **ANALYSIS OF THE COMMON POSITION**

1. **General**

The main issues are:

— exemption of mining operations from this Directive. The Commission's amendment proposes that any chemical and thermal processing operations, plus storage related to it, which involves Annex I substances would not be exempt from the Directive, even if carried out in connection with mining. Tailings disposal facilities used in connection with such processing operations are also now covered by the Directive, however, offshore exploration and exploitation of minerals is not covered,

— the Council introduced time limits providing a period of time for establishments falling under the scope of the Directive due to this amendment to comply with all the requirements of the Directive,

— in relation to Part 2 of Annex I to the Directive the Commission's proposal for the alteration to the classification system for explosives was amended slightly to take account of other classification systems,

— amendments to take account of the Toulouse accident were agreed, these create four classes of ammonium nitrate each having different thresholds and requirements, according to the danger involved in their storage,

— following receipt of the EP's first reading many amendments relating to provision of information were also incorporated into the common position.

2. **European Parliament amendments**

In its Plenary vote on 3 July 2002, the EP adopted 47 amendments to the proposal (of which eight related to the original Commission proposal). 21 of these have been incorporated (17 to the Articles, two to the Annex and two to the recitals), either verbatim, in part or in spirit, into the Council's common position.

(a) The 21 amendments which have been incorporated into the common position can be grouped as follows:

five Amendments accepted verbatim:

Amendments 1 and 2: recitals on the Toulouse accident;

Amendment 32: on information which must be provided to those likely to be affected, the Council accepts this amendment which clarifies who should be informed;

Amendment 37: requires Member States to provide the Commission with certain basic information about the establishments covered by the Directive;

Amendment 39: new categories and thresholds for ammonium nitrate, following analysis after the Toulouse accident.

16 Amendments accepted in principle or in part:

Amendments 7 and 8: clarify the scope in relation to mining activities, tailing ponds must be 'operational', the Council prefers the use of the word 'active' and maintains the words 'chemical and thermal'; and the exclusion of 'offshore exploitation' is moved into a separate paragraph;

Amendments 9, 13, 18, 23, and 24: provide establishments that will come into the scope of the Directive at a later stage with sufficient time limits for submission of notifications, safety reports, the establishment of a major accident prevention policy and internal and external emergency plans, the wording has been slightly amended in the common position;

Amendment 16: accept alteration to description of authority responsible for preparation of external emergency plans, but given rejection of Amendment 15 replace the words 'informing the public and';

Amendment 17: the Council accepts the first part of this amendment, but prefers the use of the 'relevant organisations' instead of 'persons' involved in drawing up the safety report;

Amendments 25 and 26: in relation to consultation on the preparation and review of the emergency plans the Council has merged these two amendments into a revision of Article 11(3) which includes a reference to 'long-term relevant subcontracted personnel';

Amendment 27: making reference to the need to facilitate enhanced cooperation in civil protection assistance interventions is supported by the Council, with reference to the respective Council Decision 2001/792/EC made in the recitals;

Amendment 54: modifies the Article on land-use planing by listing specific developments which must be separated from Seveso II establishments. The Council felt that this list could be seen as examples of the term 'areas of public use', it did not include all of the suggestions: 'industrial establishments' was deleted and the reference to transport routes in the common position is adjusted to 'major transport routes as far as possible';

Amendment 55: adds a new paragraph to Article 12 obliging the Commission to draw up guidelines for a database of harmonised information to be used to assess compatibility between Seveso II establishments and the sensitive areas listed in Article 12. In principle the Council accepts this idea but has altered the wording, it now invites the Commission to undertake this task;

Amendment 45: with a very minor adjustment to the text, in the common position the words 'subcontracted personnel' replaces the word 'subcontractors', the Council accepts this amendment to the Annex defining certain information which has to be included in the safety management system;

Amendment 53: proposes definitions of the four new categories for ammonium nitrate referred to in Amendment 39 (following the Toulouse accident), in the common position the wording has been amended slightly in Notes 1 and 3 in relation to the reference percentages used.

(b) The 26 amendments which have not been incorporated can be grouped as follows:

Amendments 3 to 5: proposed recitals arising from the Toulouse accident, the Council preferred Amendments 1 and 2 and felt that the content of those two accepted amendments was sufficient and balanced;

Amendment 6: the Council wants to limit this inclusion to 'chemical and thermal processing operations'; it does not want to bring other mining activities within the scope of this Directive, such a reference might be taken up in the awaited draft Directive on mining waste;

Amendments 10 and 35: the issue of staff training is currently dealt with in Annexes III (safety management systems) and IV (emergency plans) and is already contained in the safety report; the Council does not feel it is appropriate that this information has to be included in the notification;

Amendments 11, 21 and 22: relate to requirements to notify changes to installations. Such requirements already exist under Article 9 for upper tier establishments and the need for lower tier establishments is not justified as it would introduce additional bureaucratic burdens without safety improvements (principle of proportionality). Any significant increase in the quantity of dangerous substances held must already be notified (Article 6);

Similarly *Amendment 19:* would require review of the safety report if changes in the 'work organisation' of an installation take place, the Council did agree that such a review would always be necessary, significant changes would require adaptation of the report anyway, but not necessarily a formal review;

Amendment 36: in the same field, would require suspension of activities where information on such changes/modifications and on training are not supplied. Article 17 already provides Member States with the power to suspend activities if information supplied is incomplete;

Amendment 12: the Council does not see any need to add the phrase 'and evidencing his compliance with his obligations', the operator is already obliged to ensure the major accident prevention policy 'is properly implemented'. This will involve production of a number of documents which evidence compliance with the plan;

Amendment 14: on the prevention of domino effects the Council does not see the need to cross-refer to Article 12 (land-use planning) as the operator already has an obligation to ensure that the possibility of domino effects between establishments is properly taken into account in their major accidents prevention policy;

Amendments 15, 33 and 34: concern public access to information on possible domino effects and on safety requirements and emergency plans. The amendments detail the methods by which this information could be made available. The Council does not wish to incorporate these amendments as it sees this as largely a subsidiarity matter for national and local authorities and supports the Commission view that there is already a good balance in this Directive between information which has to be made available and that which can be requested;

Amendment 20: proposes a single European method for drawing up safety reports, the Council agrees with the Commission that this would not be practical given the wide variety of types of chemical installations;

Amendment 28: would require Member Sates to notify the civil protection monitoring and information centre of any accident. Given that the role of this centre is to facilitate cooperation in civil protection assistance interventions a general requirement to inform does not seem, to the Council, to be appropriate;

Amendment 29: introduces further requirements in relation to land use planning which the Council does not accept as they are either not consistent with the current structure of Article 12, or are already covered there;

Amendment 31: asks the Commission to develop an incentive scheme for the relocation of Seveso establishments to improve safety distances, the Council view is that any such scheme should be more appropriately introduced at the national level;

Amendment 38: aims at restricting 'commercial or industrial secrecy' exclusively to processes, and not to information concerning the storage of dangerous substances. Although recognising the importance of provision of information, the Council does not find it appropriate to restrict the concept of commercial or industrial secrecy;

Amendments 40 and 42: propose the creation of two new entries for potassium nitrate, are rejected by the Council on the basis that it has not seen sufficient detailed analysis behind the proposal and so it should not be included in this amending proposal;

Amendment 43: proposes references to Directive 2000/60/EC (Water Framework Directive) and Directive 91/689/EEC on hazardous waste. The Council does not believe that such references are necessary in this context. The Directive already provides for the case of unclassified substances and preparations, and hazardous waste can therefore be covered on the basis of its properties as a preparation;

Amendment 44: proposes to insert in Annex II, Part IV, an obligation to perform substance-related 'hazard studies'. This requirement is already covered by Annex II, section III.C.2;

Amendment 46: this is not accepted by the Council, most Member States are working on some form of risk maps but do not see any need to set out the criteria for such maps in the Directive.

3. **Most important innovations introduced by the Council**

The most significant alteration to the Commission's proposal is the inclusion of a reaction to the Toulouse accident, also requested by the European Parliament. The solution as it now appears in the common position (recitals 5 and 6 and amendments to Annex I, Part 1) was debated at length and the Commission consulted safety experts and industry. It is the same text as that proposed in European Parliament amendments 1, 2, 39 and, in principle, 53.

IV. **CONCLUSION**

This proposal was never intended as a full-scale revision of the Seveso II Directive, but rather as a quick response to two, now amended to include a third, very specific accidents and some studies the Commission had undertaken on certain carcinogens and substances dangerous for the environment. The Council was therefore very keen to try to work towards a first reading agreement with the European Parliament, with a view to having this legislation implemented as soon as possible to prevent future accidents or damage of this nature.

Against this background and given the large number of amendments tabled at first reading to the Articles of Directive 96/82/EC which were not covered by the proposal, the Council has not been able to accept all of the European Parliament amendments. The Council suggests that it would be advantageous to await the Commission's extensive review of the operation of the Directive which would give rise to a full revision of the terms of Directive before making further amendments to Directive 96/82/EC. The Council does not see merit in using this proposal as a vehicle to review the whole Directive without the proper studies having been undertaken and therefore hopes for close and constructive cooperation with the European Parliament, with a view to reaching a quick second reading agreement.