

**Proposal for a Directive of the European Parliament and of the Council amending Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances**

(2002/C 75 E/25)

(Text with EEA relevance)

COM(2001) 624 final — 2001/0257(COD)

*(Submitted by the Commission on 10 December 2001)*

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,

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

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,

Whereas:

(1) Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances <sup>(1)</sup> 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 needs to be broadened.

(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 Communications of the Commission on the safe operation of mining activities <sup>(2)</sup> and on the sixth environment action programme of the European Community <sup>(3)</sup> 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 firework accident at Enschede in the Netherlands in May 2000 has demonstrated the major hazard potential arising from storage and manufacture of pyrotechnic substances. Therefore, the definition of such substances in Directive 96/82/EC should be clarified and simplified.

(5) Studies carried out by the Commission in close co-operation 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.

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

(7) Directive 96/82/EC should therefore be amended accordingly.

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

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 96/82/EC is amended as follows:

1. In Article 4, points (e) and (f) are replaced by the following:

'(e) the exploitation (exploration, extraction and processing) of minerals in mines and quarries, with the exception of chemical and thermal processing operations and related storage involving dangerous substances as defined in Annex I of this Directive; hazards related to offshore exploration and exploitation of minerals;

(f) waste land-fill sites with the exception of tailings disposal facilities containing dangerous substances as defined in Annex I to this Directive and used in connection with the chemical and thermal processing of minerals.'

2. Annex I is amended as set out in the Annex to this Directive.

<sup>(1)</sup> OJ L 10, 14.1.1997, p. 13.

<sup>(2)</sup> COM(2000) 664 final.

<sup>(3)</sup> COM(2001) 31 final.

## Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by (12 months after entry into force) at the latest. They shall forthwith inform the Commission thereof.

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 twentieth day following that of its publication in the *Official Journal of the European Communities*.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

## Article 4

This Directive is addressed to the Member States.

## ANNEX

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

1. In the Introduction the following point 6 is added:

'6. For the purposes of this Directive, a gas is a substance that is completely gaseous at 20 °C at a standard pressure of 101.3 kPa.'

2. In Part 1 the entry which starts with the words: 'The following CARCINOGENS' is replaced by the following:

'The following CARCINOGENS at concentrations above 5 %: 4-Aminobiphenyl and/or its salts, Benzotrighloride, 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, Dimethylnitrosomine, Hexamethylphosphoric triamide, Hydrazine, 2-Naphtylamine and/or salts, 4-Nitrodiphenyl, and 1,3 Propanesultone	0,5	2'
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----	----

3. In Part 1 the entry 'Automotive petrol and other petroleum spirits' is replaced by the following:

'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
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------	--------

4. In Part 2 the entries 4 'EXPLOSIVE' and 5 'EXPLOSIVE' are replaced by the following:

'4. EXPLOSIVE (see Note 2) where the substance or preparation falls under HD 1.4	50	200
5. EXPLOSIVE (see Note 2). where the substance or preparation falls under any of: HD 1.1, HD 1.2, HD 1.3, HD 1.5, HD 1.6, R2, R3	10	50'

5. In Part 2 entry 9 'DANGEROUS FOR THE ENVIRONMENT' is replaced by the following:

'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"; and "May cause long term adverse effects in the aquatic environment"	200	500'

6. In the Notes to Part 2, Note 1 is 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 <sup>(1)</sup>
- 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 <sup>(2)</sup>
- 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 <sup>(3)</sup> (UN/ADR classification scheme)

In the case of substances and preparations which are not classified as dangerous according to any of the above Directives 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 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 lowest thresholds shall apply. However, for the application of the summation rule in Note 4 of these Notes, the threshold 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 harmonised decision in accordance with Directive 67/548/EEC.'

7. In the Notes to Part 2, Note 2 is replaced by the following:

'2. "Explosive" means a substance or preparation which is classified with risk phrase R2 or R3, or which is classified in any of the hazard divisions HD1.1 to HD1.6 according to the UN/ADR classification scheme. 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.

The hazard divisions and risk phrases concerned are:

HD 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)."

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

HD 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."

<sup>(1)</sup> OJ 196, 16.8.1967, p. 1. Directive as last amended by Commission Directive 2000/33/EC (OJ L 136, 8.6.2000, p. 90).

<sup>(2)</sup> OJ L 200, 30.7.1999, p. 1.

<sup>(3)</sup> OJ L 319, 12.12.1994, p. 7. Directive as last amended by Commission Directive 2001/7/EC (OJ L 30, 1.2.2001, p. 43).

HD 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."

HD 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."

HD 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."

R2: "Substances or preparations which create the risk of an explosion by shock, friction, fire or other sources of ignition"

R3: "Substances or preparations which create extreme risks of explosion by shock, friction, fire or other sources of ignition"

In the case of objects containing explosive or pyrotechnic substances or preparations, if the quantity of the substance or preparation contained in the object 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 object shall be treated as explosive.'

8. In the Notes to Part 2, Note 3 (b) 1, second indent, is 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;'

9. In the Notes to Part 2, Note 3 (c) 2 is 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'

10. In the Notes to Part 2, Note 3 (c) 3 is replaced by the following:

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

11. In the Notes to Part 2, Note 4 is 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 summation 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

$$q_1/Q_U + q_2/Q_U + q_3/Q_U + q_4/Q_U + q_5/Q_U + \dots \text{ is greater than or equal to } 1,$$

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

and  $Q_U$  = the relevant threshold quantity from column 3 of Parts 1 or 2.

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

$$q_1/Q_L + q_2/Q_L + q_3/Q_L + q_4/Q_L + q_5/Q_L + \dots \text{ is greater than or equal to } 1,$$

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

and  $Q_L$  = the relevant threshold quantity from column 2 of Parts 1 or 2.

This summation 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 summation 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 summation 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 summation of substances and preparations falling into categories 9 (i) or 9 (ii).

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

---