

Amended 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 ⁽¹⁾

(2003/C 20 E/23)

(Text with EEA relevance)

COM(2002) 540 final — 2001/0257(COD)

(Submitted by the Commission on 26 September 2002)

1. BACKGROUND

On 3 July 2002, the European Parliament voted in first reading on the amendments tabled on the 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 ⁽²⁾ (COM(2001) 624 final of 10 December 2001).

Transmission of the proposal to the Council and to the European Parliament (COM(2001) 624 — 2001/0257(COD) in accordance with Article 175(1) of the EC Treaty: 11 December 2001.

Opinion of the Committee of the Regions: 24 April 2002.

Opinion of the Economic and Social Committee: none

2. OBJECTIVE OF THE COMMISSION PROPOSAL

Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (so-called Seveso II Directive) aims at the prevention of major accidents 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 proposal follows the Communication on the 'Safe operation of mining activities: a follow-up to recent mining accidents' (COM(2000) 664 final) in which the Commission sets out three key actions in order to increase the safety of mining operations (an amendment of the Seveso II Directive, an initiative on the management of mining waste and a Best Available Technologies reference document under the IPPC Directive (96/61/EC)) and aims at including certain activities of the extractive industries, including tailings disposal facilities.

The proposal also addresses the fireworks explosion that occurred in Enschede in May 2000 by proposing a better definition of explosive and pyrotechnic substances along with a decrease of qualifying quantities for these substances. Furthermore, following the recommendations of two studies on carcinogens and substances dangerous for the environment, it proposes to include more carcinogenic substances and to lower the qualifying quantities for substances toxic to aquatic environment.

Consideration has also been given as to whether the explosion of the chemical site of AZF that occurred in Toulouse on 21 September 2001 necessitates immediate amendments of the Seveso II Directive. However, as the site was fully covered by the obligations of the Seveso II Directive (contrary to the sites in Baia Mare and Enschede), and as accident had only started at the time of the adoption of the proposal, it does not contain additional legislative measures in this respect.

3. COMMISSION OPINION ON THE AMENDMENTS ADOPTED BY THE EUROPEAN PARLIAMENT

On 3 July 2002, the European Parliament adopted 47 amendments out of the 55 that were tabled. Only 13 of the 47 amendments adopted are related to the scope of the Seveso II Directive. Many of the other amendments seem to have been developed under the cloud of the tragic accident in Toulouse and address issues unrelated to the scope of the Directive.

⁽¹⁾ OJ No C 75 E, 26.3.2002, p. 357.

⁽²⁾ OJ No L 10, 14.1.1997, p. 13.

The Commission emphasises that its proposal was solely aimed at broadening the scope of the Directive, and not at a major revision. The Seveso II Directive has fully replaced the original Seveso Directive ⁽¹⁾ of 1982 that had been in force for more than fifteen years. The step from Seveso to Seveso II itself represented a fundamental revision of the European major hazard legislation. The new Directive has only been applicable for three years. The Commission does not yet have sufficient feedback from both industrial operators and the Member States with regard to any problems encountered in the application of the Directive, and therefore the Commission is of the opinion that it is too early to proceed to a broader revision.

Nevertheless, the Commission has examined all the amendments proposed with a view to accepting as many as possible. The Commission is particularly pleased to note that a Workshop on Ammonium Nitrate organised by the Major Accident Hazards Bureau established within its Joint Research Centre has contributed to developing proposals for an appropriate follow-up of the Toulouse accident.

Amendments 1, 2, 27, 37, 39, 40, 42 and 45 can be accepted by the Commission in full.

Amendments 8, 9, 13, 16, 18, 23-25, 32, 46 and 53 are accepted in principle subject to re-wording. The Commission partially accepts amendments 7, 17, 26, 54 and 55.

Amendments 3-6, 10-12, 14, 15, 19-22, 28, 29, 31, 33-36, 38, 43 and 44 are not accepted by the Commission.

The Commission's position with regard to the amendments of the European Parliament is as follows:

3.1. Amendments accepted fully by the Commission

Amendments 1 and 2 propose recitals related to the Toulouse accident, introducing the modifications of the entries for ammonium nitrate while pointing out that sites of end-users of ammonium nitrate should not be covered by the Directive.

Amendment 27 creates a link with Council decision 2001/792/EC establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions ⁽²⁾, by requiring Member States to take account of the decision in external emergency plans.

Amendment 37 aims at obliging the Member States to provide the Commission with basic information on establishments covered by the Directive (name, address, activity).

Amendment 39 proposes the creation of 4 new entries for ammonium nitrate including their qualifying quantities.

Amendments 40 and 42 propose the creation of 2 new entries for potassium nitrate including their definitions and qualifying quantities.

Amendment 45 rephrases a part of the section on organisation and personnel in Annex III, which defines the information to be included in the safety management system, emphasising the involvement of subcontractors.

⁽¹⁾ Council Directive 82/501/EEC of 24 June 1982 on the major-accident hazards of certain industrial activities (OJ No L 230, 5.8.1982, p. 1).

⁽²⁾ OJ No L 297, 15.11.2001, p. 7.

3.2. Amendments accepted in part or in principle by the Commission

Amendment 7, relating to the coverage of tailings from mining activities, specifies that only 'operational' tailings facilities are to be covered, which the Commission accepts in principle, while proposing to replace the term 'operational' by 'active'. The amendment also proposes to broaden the scope of the tailings facilities covered to include those used in connection with mechanical and physical processing, which the Commission does not accept for the reasons given under Amendment 6 (see section 3.3 below). As stated in the Explanatory Memorandum attached to the Commission's original proposal, the Commission intends to cover the safety aspects of such tailings disposal facilities through the initiative on the management of mining waste. The Commission therefore proposes the following text for Article 4, point (g) (new):

'(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 of this Directive and used in connection with the chemical and thermal processing of minerals.'

Amendment 8 proposes to create an additional paragraph in Article 4, moving the exclusion of offshore exploration and exploitation of minerals from paragraph (e) into this paragraph for reasons of clarity. The Commission accepts this clarification, subject to an addition to make explicit that hydrocarbons are covered by the exclusion. The Commission therefore proposes:

In Article 4, the following text for point (e):

'(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 of this Directive.'

In Article 4, the following text for point (f):

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

Amendments 9, 13, 18, 23 and 24 address the issue of establishments that come subsequently under the scope of the Seveso II Directive. These amendments aim at providing reasonable time limits for the submission of notifications (Article 6) and safety reports (Article 9), and the establishment of the major accident prevention policy (Article 7) and the internal and external emergency plans (Article 11). The Commission accepts all of these in principle, with slight modifications to the wording. It therefore proposes:

In Article 6(1), a new indent to be added after the second indent:

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

In Article 7, a new paragraph to be inserted after paragraph (2):

'2(a) For establishments which subsequently fall under the scope of this Directive, the document will be drawn up without delay, however at the latest within three months after the date on which the Directive applies to the establishment concerned, as laid down in the first sentence of Article 2(1).'

In Article 9(3), a new indent to be inserted after the third indent:

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

In Article 11(1), point (a), a new indent to be added after the third indent:

- ‘— for establishments which subsequently fall under the scope of this Directive, without delay, however at the latest within one year after the date on which the Directive applies to the establishment concerned, as laid down in the first sentence of Article 2(1).’

In Article 11(1), point (b), a new indent to be added after the third indent:

- ‘— for establishments which subsequently fall under the scope of this Directive, without delay, however at the latest within one year after the date on which the Directive applies to the establishment concerned, as laid down in the first sentence of Article 2(1).’

Amendment 16 proposes to replace in Article 8 the term ‘competent authority for external emergency planning’ with the term ‘authority responsible for external emergency planning’. The Commission accepts this in principle. However, since the amendment is proposed in conjunction with amendment 15, rejected by the Commission, new wording is necessary. The Commission therefore proposes the following text for Article 8(2), point (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.’

Amendment 17 proposes that the safety report indicate all persons and organisations involved in drawing it up, as well as describing the methods used. The Commission accepts the first part of this proposal, but does not believe that an additional requirement to describe the methods used — beyond the elements necessary for the evaluation of the safety report — would contribute to safety. It therefore proposes the following text to replace the first subparagraph in Article 9(2):

‘The safety report shall contain at least the data and information listed in Annex II. It shall name all persons and organisations involved in the drawing up of the report. The safety report shall also contain an updated inventory of the dangerous substances present in the establishment.’

Amendments 25 and 26 propose to reinforce the provisions of Article 11 for consultation in the preparation and review of emergency plans. The Commission accepts in principle amendment 25, and also accepts in principle the intention of amendment 26 to insist on the consultation of staff of external enterprises employed on the site. It therefore proposes the following text to replace Article 11(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 relevant subcontracted personnel, and that the public is consulted on external emergency plans, when they are established or updated.’

Amendment 32 specifies that information on safety measures and on the requisite behaviour in the event of an accident should be supplied to persons liable to be affected by major accidents ‘regularly and in the most appropriate form’ and extends the scope of this obligation to ‘all establishments serving the public (schools, hospitals, etc.)’. The Commission accepts this amendment in principle and proposes the following text to replace the first subparagraph of 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 regularly and in the most appropriate form, without their having to request it, to all persons and all establishments assembling people (schools, hospitals, etc.) liable to be affected by a major accident originating in an establishment covered by Article 9.’

Amendment 54 proposes to modify Article 12 (Land-use planning) by extending the list of developments which should, in the long term, be separated from Seveso II establishments, to include buildings of public use, transport routes, industrial establishments, and recreational areas. The Commission accepts this proposal in part, with the exception of industrial establishments, noting that domino effects between hazardous industrial establishments are already addressed in Article 8. It also believes that 'transport routes' is too broad in this context, and should be replaced by 'major transport routes'. It therefore proposes the following text to replace Article 12(1) second subparagraph:

'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, 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.'

Amendment 55 would oblige the Commission to draw up guidelines to be used for assessing the compatibility between existing establishments covered by the Directive and sensitive areas and to develop a methodology for establishing appropriate minimum safety distances. The Commission supports the further development of guidelines on land-use planning, in addition to those already published (<http://mahbsrv.jrc.it/downloads-pdf/Landuse2.pdf>), and is already leading work in this domain. However, it is not convinced that it is possible or useful to develop a single methodology at the present time. The Commission can therefore only partly accept this amendment. Given also the necessary involvement of the Member States in the preparation of the guidelines requested, it proposes the following new paragraph for Article 12, to be inserted after paragraph (1):

'1(a) The Commission is invited, in close cooperation with the Member States, to draw up guidelines defining a harmonised technical database of risk data and risk scenarios to be used for assessing the compatibility between the establishments covered and the sensitive areas listed in Article 12, paragraph 1. The establishment of this database shall take account of the evaluations performed by the Member States, the information obtained from operators and all other relevant information.'

Amendment 53 proposes definitions for the four new entries on ammonium nitrate proposed in amendment 39. The Commission accepts this amendment in principle, and proposes the following text to replace Notes 1 and 2 to Annex I, Part 1:

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⁾ in 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 (as amended and updated),
- 15,75 % ⁽³⁾ in 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, sub-section 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 % in 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 % in weight for mixtures of ammonium nitrate and ammonium sulphate,
- more than 28 % ⁽⁴⁾ in 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 (as amended and updated).

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 % in weight, and which contain not more than 0,4 % combustible substances,
 - more than 28 % in 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 Notes 1 and 2 which do not fulfil the requirements of Annex II of Directive 80/876/EEC (as amended and updated).

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

⁽²⁾ 24,5 % nitrogen content in weight as a result of ammonium nitrate corresponds to 70 % ammonium nitrate

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

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

Amendment 46 concerns the obligation to supply information to those liable to be affected by the consequences of an accident. The amendment proposes to add to the items to be communicated a map showing risk areas. The Commission accepts this amendment in principle, and proposes the following text to be inserted in Annex V after point 10:

'10(a) A map showing areas which might be affected by the consequences of major accidents arising from the establishment.'

3.3. Amendments not accepted by the Commission

Amendments 3-5 propose recitals which refer to matters arising from the Toulouse accident. The Commission is of the opinion that the recitals proposed in amendments 1 and 2 are sufficient, and the recitals here proposed are not appropriate in Community legislation.

Amendment 6 proposes to broaden the scope of the mining activities to be covered by the Directive by including mechanical and physical processing of minerals. The Commission emphasises that this Directive should only apply where dangerous substances are brought onto site and stored there, and/or where chemical and thermal processing take place. Where the processing is mechanical or physical, the only dangerous substances on site will normally be those contained in the minerals extracted.

Amendment 10 proposes to require the operator to include information on training measures in the notification. However, the notification is intended to provide the competent authorities with certain minimum information, such as name of the operator, address of the establishment etc. The Commission is of the opinion that the issue of training is more appropriately addressed elsewhere, for example in Annex III (safety management systems) and Annex IV (emergency plans).

Amendment 11 proposes to require operators to inform the competent authority in the event of a modification of an installation, establishment or storage area. This would introduce further bureaucratic burdens without improving safety, since Article 6 already imposes an obligation on operators to notify any significant increase in the quantity of the dangerous substance, or any change in the processes employing it.

Amendment 12 proposes to require the operator to 'evidence compliance with his obligations' in the document setting out the major accident prevention policy (MAPP). This is inappropriate for the MAPP. Normally, there should be a hierarchy of documentation: at the top of this hierarchy the MAPP sets out the policy and principles of major hazard prevention, and then each subsequent level explains in more detail the application of these principles, finishing with working documents and instructions.

Amendment 14 proposes to add into Article 8 (Domino effect) a link to Article 12 on land-use planning. However, Article 8 is intended to ensure that the possibility of domino effects between different establishments is taken properly into account. The general obligation of the operator to take all necessary measures to prevent major accidents, including domino effects, is sufficiently covered by Article 5. The identification of such measures is a task to be performed by the operator, and not by the Member States within their land-use planning.

Amendment 15 proposes to require explicitly that the public be informed of the possible dangers and risks of domino effects through the local press, by mail and via the Internet website of the regional authority concerned. Under the principle of subsidiarity, this is clearly a matter for national and local authorities to decide.

Amendment 19 proposes to make the review of the safety report compulsory 'in the event of changes in work organisation with an impact on the safety of an installation.' Changes in work organisation occur constantly, and significant changes should indeed lead to adaptation of the safety management system. However, a requirement to conduct a formal review of the safety report under these circumstances would create undue administrative burdens.

Amendment 20 proposes to impose an obligation on Member States to draw together different methods used for drawing up safety reports into a single European method. The methods currently used reflect the wide variety of chemical installations, and it is hard to see how a single method could be appropriate under all circumstances. Nevertheless, the Commission encourages convergence, and has published a guidance document on how to establish safety reports (<http://mahbsrv.jrc.it/GuidanceDocs-SafetyReport.html>).

Amendments 21 and 22 propose to modify Article 10 so that the operators of all establishments are obliged to inform the competent authority of any modifications before making them. This obligation is already in force for 'upper tier' (Article 9) establishments, and in the Commission's view it is not appropriate for 'lower tier' (Article 6 and 7) establishments.

Amendment 28 proposes to oblige Member States, in the case of an accident, to inform the monitoring and information centre established according to Council decision 2001/792/EC and to cooperate with this centre. The Community mechanism concerned aims at facilitating cooperation in civil protection assistance interventions. A general obligation for notification and cooperation under this mechanism seems therefore inappropriate.

Amendment 29 proposes to amend Article 12 on Land-use Planning to include controls on 'technical measures put in place to reduce hazard areas'. However, the need for '... additional technical measures ... so as not to increase risks to people.' is already explicitly mentioned in Article 12, and the paragraph proposed is inconsistent with the structure of the Article.

Amendment 31 would oblige the Commission to develop a 'scheme of incentives and/or funding for the relocation of establishments'. However, on the grounds of subsidiarity considerations, the Commission believes that such a task falls to the Member States. The Commission will monitor compatibility of any such scheme with European competition law.

Amendments 33 and 34 aim at reinforcing the right of the public to have access to safety reports and emergency plans by, among other points, requiring that these should appear in newspapers and on the Internet, be forwarded to local advisory bodies, and be posted in establishments open to large numbers of people. However, the Commission feels that the balance established in the Seveso II Directive between 'active' information, which is supplied automatically to persons liable to be affected by an accident, and 'passive' information, which is made available on request, is broadly correct and should be kept. Moreover, under the principle of subsidiarity, the mechanisms used to make information available are a matter for decision at Member State or local level.

Amendment 35 proposes a new article on 'Training of staff of establishments and of external enterprises', establishing obligations to provide staff with regular training and to provide competent authorities with a report on training every two years. The Commission agrees on the importance of training, but is of the opinion that the issue is appropriately addressed in Annex III (safety management systems) and Annex IV (emergency plans). Moreover, since the safety report has to demonstrate that a safety management has been put into effect, it must necessarily contain information on training of personnel. The Commission does not support the duplication of reporting requirements.

Amendment 36 proposes an obligation for Member States to suspend activities where the operator has not provided information on changes/modifications and on training. The Commission does not find this necessary, since Article 17 already empowers Member States to prohibit the operation of a plant in cases of insufficient supply of information or incompleteness of the safety report.

Amendment 38 aims at restricting 'commercial or industrial secrecy' exclusively to processes, and not to information concerning the storage of dangerous substances. While the Commission endorses the 'right to know' principle in general, and in particular the right of the public to know the hazard to which it may be exposed, it does not find it appropriate to restrict the concept of commercial or industrial secrecy.

Amendment 43 proposes references to Directive 2000/60/EC (Water Framework Directive) and Directive 91/689/EEC on hazardous waste. Such references are not necessary in the view of the Commission. 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.

3.4. Amended proposal

Having regard to Article 250(2) of the EC Treaty, the Commission modifies its proposal as indicated above.
