



EUROPEAN PARLIAMENT

2009 - 2014

Committee on the Internal Market and Consumer Protection

2010/0377(COD)

16.8.2011

OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on the Environment, Public Health and Food Safety

on the proposal for a directive of the European Parliament and of the Council
on control of major-accident hazards involving dangerous substances
(COM(2010)0781 – C7-0011/2011 – 2010/0377(COD))

Rapporteur: Małgorzata Handzlik

PA_Legam

SHORT JUSTIFICATION

Objectives of the proposal

Directive 96/82/EC on the control of major-accident hazards involving dangerous substances (commonly referred to as the SEVESO II Directive) is aimed at preventing major accidents involving large quantities of dangerous substances (or mixtures thereof), as listed in Annex I to the directive, and to limit the human and environmental impact of such accidents.

General comments on the amendments to the SEVESO II Directive

The amendments to the SEVESO II Directive stem from the need to align it with Regulation No 1272/2008 on the classification, labelling and packaging of substances and mixtures (hereinafter the CLP Regulation). During this adaptation process, the Commission decided to make limited changes to the directive's provisions while retaining the main elements of the SEVESO system. The rapporteur considers that a two-tiered approach (dividing operators into upper-tier and lower-tier risk categories) is fully justified and necessary in order to maintain the stability and predictability of the current system. In view of the fact that the amendments to the SEVESO II Directive stem from the need to align it with the CLP Directive, and not from an increase in the number of major accidents, the rapporteur considers changing the overall approach adopted in the SEVESO II Directive to be unjustified.

Comments on the amendments to Annex I

Annex I is a key element of the SEVESO II Directive which sets down a list of dangerous substances and their lower- and upper-tier qualifying quantities. Annex I should therefore be recognised as a key element in setting the scope of the directive as well as the number of operators coming under its provisions. Article 4 of the Commission proposal provides for correction mechanisms to adapt Annex I taking the form of EU-wide derogations enabling substances or mixtures to be excluded from the scope of Annex I and a safeguard provision enabling new substances or mixtures to be included under Annex I. The Commission is proposing that Annex I should be adapted via delegated acts. The rapporteur does not agree with this approach and considers that amendments to Annex I should be adopted under the ordinary legislative procedure. For the same reason, the rapporteur proposes that Annex VII, which defines the criteria for derogations pursuant to Article 4, should also be adopted under the ordinary legislative procedure.

The rapporteur's comments on the other remaining amendments

The rapporteur welcomes the addition of new provisions to the SEVESO II Directive and the Commission's clarification of a large number of provisions, particularly those relating to: information to the public (Article 13), public consultation and participation in decision-making (Article 14), access to justice (Article 22), and information systems and exchanges (Article 20).

With regard to information exchange systems, the rapporteur for the opinion welcomes in particular the opening up of SPIRS to the public, the setting of a maximum time limit of one year for the submission of information regarding major emergencies and the lowering of notification criteria from 5% to 1% of the qualifying quantity laid down in column 3 of Annex I. As a result of the lowering of notification criteria, the number of major accidents reported will increase; however, this will at the same time enable other operators to draw appropriate conclusions for the future and to learn from others' mistakes. Nonetheless, it is important for the information stored on SPIRS and MARS to be comprehensive. Unfortunately, many of the reports currently stored on MARS are incomplete. The rapporteur proposes that the Commission should regularly (every four years) submit a report to Parliament and to the Council on major accidents that have taken place within the European Union and the lessons that should be learned from them with a view to increasing the effectiveness of the SEVESO II Directive.

Keeping the public informed is vital in building trust as well as in raising public awareness of the correct action to take in the event of a major accident. It is important not to overwhelm the public with unnecessary information and to ensure that the information is clearly worded and easy to understand; so that it will not needlessly arouse panic in the absence of a genuine threat, but should ensure that appropriate steps are taken when a major accident does occur. This information should reach the greatest possible number of persons likely to be affected by the consequences of a major accident. Operators should endeavour to keep the public informed on a regular and proactive basis, and to ensure that the information is systematically updated. The information should also be accessible in electronic form. In addition to this basic information, the public should also be able to gain access to more in-depth information. For reasons such as the need to ensure security, the confidentiality of commercial and the protection of industrial information and intellectual property rights, some information should only be made available on demand.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on the Environment, Public Health and Food Safety, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Recital 6

Text proposed by the Commission

(6) Major accidents can have consequences beyond frontiers, and the ecological and economic cost of an accident is borne not only by the establishment affected but also by the Member state concerned. It is therefore necessary to take measures ensuring a high level of protection throughout the Union.

Amendment

(6) Major accidents can have consequences beyond frontiers, and the ecological and economic cost of an accident is borne not only by the establishment affected but also by the Member state concerned. It is therefore necessary to take measures ensuring a high level of protection throughout the Union ***and to strengthen cooperation between the Member States and, for that reason, between the regional and local authorities, so as to prevent cross-border accidents and ensure coordinated response to major accidents.***

Amendment 2

**Proposal for a directive
Recital 11**

Text proposed by the Commission

(11) Operators should have a general obligation to take all necessary measures to prevent major accidents ***and*** to mitigate their consequences. Where dangerous substances are present in establishments above certain quantities the operator should provide the competent authority with sufficient information to enable it to identify the establishment, the dangerous substances present and the potential dangers. The operator should also draw up and send to the competent authority a major-accident prevention policy setting out the operator's overall approach and measures, including appropriate safety management systems, for controlling major-accident hazards.

Amendment

(11) Operators should have a general obligation to take all necessary measures to prevent major accidents, to mitigate their consequences ***and to take recovery measures.*** Where dangerous substances are present in establishments above certain quantities the operator should provide the competent authority with sufficient information to enable it to identify the establishment, the dangerous substances present and the potential dangers. The operator should also draw up and send to the competent authority a major-accident prevention policy setting out the operator's overall approach and measures, including appropriate safety management systems, for controlling major-accident hazards.

Justification

Responsibility for taking recovery measures following an accident should rest with the operators.

Amendment 3

Proposal for a directive Recital 16

Text proposed by the Commission

(16) In order to promote access to information on the environment, in accordance with the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, which was approved on behalf of the Union by Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, the level and quality of information to the public should be improved. In particular, persons likely to be affected by a major accident should be given sufficient information to inform them of the correct action to be taken in that event. In addition to providing information in an active way, without the public having to submit a request, and without precluding other forms of dissemination, it should also be made available permanently and kept up to date on the internet. At the same time there should be appropriate confidentiality safeguards, to address security-related concerns, among others.

Amendment

(16) In order to promote access to information on the environment, in accordance with the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, which was approved on behalf of the Union by Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, the level and quality of information to the public should be improved. In particular, persons likely to be affected by a major accident should be given sufficient information to inform them of the correct action to be taken in that event.

Information disseminated to the public should be worded clearly and intelligibly.

In addition to providing information in an active way, without the public having to submit a request, and without precluding other forms of dissemination, it should also be made available permanently and kept up to date on the internet. ***In order to achieve greater transparency, more detailed and comprehensive information, including in the form of documents, should be made available to any natural or legal person upon request.*** At the same time there should be appropriate confidentiality safeguards, to address security-related concerns, among others.

Justification

While respecting confidentiality safeguards, access to additional information or documents upon request from any natural or legal person would enhance transparency and public confidence in the safety of industrial installations.

Amendment 4

Proposal for a directive Recital 20

Text proposed by the Commission

(20) In order to provide for 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 analyze the hazards involved, and operate a system for the distribution of information concerning, in particular, major accidents and the lessons learned from them. This information exchange should also cover 'near misses' which Member States regard as being of particular technical interest for preventing major accidents and limiting their consequences.

Amendment

(20) In order to provide for 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 analyze the hazards involved, and operate a system for the distribution of information concerning, in particular, major accidents and the lessons learned from them. This information exchange should also cover 'near misses' which Member States regard as being of particular technical interest for preventing major accidents and limiting their consequences. ***Member States and the Commission should strive to ensure the completeness of information held on information systems established in order to facilitate the exchange of information on major accidents.***

Justification

Information exchange systems are extremely important for the sharing of experience between Member States and, among other things, enabling operators to learn necessary lessons. However, the information must be complete and must enable the causes of the accident to be identified.

Amendment 5

Proposal for a directive Recital 23

Text proposed by the Commission

(23) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty

Amendment

(23) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty

in respect of the *adoption of criteria for derogations and* amendments to the *Annexes* of this Directive.

on the Functioning of the European Union in respect of the amendments to *Annexes II to VI* of this Directive. ***It is of particular importance that the Commission carry out appropriate and transparent consultations during its preparatory work, including at expert level, well in advance. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.***

Justification

Annexes I and VII to the directive contain fundamental elements; therefore, any amendments to those elements should be subject to the ordinary legislative procedure. In order to ensure the transparency of consultations and of the documents forwarded, provisions should be included from the Common Understanding on Practical Arrangements for the Use of Delegated Acts.

Amendment 6

Proposal for a directive Article 4 – paragraph 1

Text proposed by the Commission

1. Where it is demonstrated, on the basis of the criteria referred to in paragraph 4 of this Article, that particular substances covered by Parts 1 or 2 of Annex I are incapable of creating a major accident hazard, in particular due to their physical form, properties, classification, concentration or generic packaging, the Commission may ***list those substances*** in Part 3 of Annex I ***by delegated acts in accordance with Article 24.***

Amendment

1. Where it is demonstrated, on the basis of the criteria referred to in paragraph 4 of this Article, that particular substances covered by Parts 1 or 2 of Annex I are incapable of creating a major accident hazard, in particular due to their physical form, properties, classification, concentration or generic packaging, the Commission may ***submit a legislative proposal to list those substances*** in Part 3 of Annex I.

Justification

Annex I to the directive contains fundamental elements that define its scope. Therefore, amendments to that annex should be subject to the ordinary legislative procedure and not delegated acts.

Amendment 7

Proposal for a directive Article 4 – paragraph 4

Text proposed by the Commission

4. By 30 June 2013, the Commission shall ***adopt delegated acts in accordance with Article 24***, to establish criteria to be used for the purposes of paragraphs 1 and 3 of this Article respectively, and to amend Annex VII accordingly.

Amendment

4. By 30 June 2013, the Commission shall ***submit a legislative proposal*** to establish criteria to be used for the purposes of paragraphs 1 and 3 of this Article respectively, and to amend Annex VII accordingly.

Justification

Annex VII contains fundamental elements. Therefore, amendments to that annex should be subject to the ordinary legislative procedure and not delegated acts.

Amendment 8

Proposal for a directive Article 4 – paragraph 5 – subparagraph 3

Text proposed by the Commission

Where appropriate, the Commission may list the substances referred to in the first subparagraph of this paragraph in Part 1 or Part 2 of Annex I ***by delegated acts in accordance with Article 24***.

Amendment

Where appropriate, the Commission may ***submit a legislative proposal to*** list the substances referred to in the first subparagraph of this paragraph in Part 1 or Part 2 of Annex I.

Justification

Annex I to the directive contains fundamental elements that define its scope. Therefore, amendments to that annex should be subject to the ordinary legislative procedure and not delegated acts.

Amendment 9

Proposal for a directive Article 6 – paragraph 1 – point e

Text proposed by the Commission

(e) the quantity and physical form of the dangerous substance or substances

Amendment

(e) the quantity, ***nature*** and physical form of the dangerous substance or substances

involved;

involved;

Justification

In line with Article 6(4)(a).

Amendment 10

Proposal for a directive

Article 7 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) for new establishments, a reasonable period of time prior to the start of construction or operation,

(Does not affect English version.)

Justification

Amendment 11

Proposal for a directive

Article 10 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

In the event of the modification of an installation, establishment, storage facility, or process or of the nature or quantity of dangerous substances which could have significant repercussions on major-accident hazards, the Member States shall ensure that the operator:

In the event of the modification of an installation, establishment, storage facility, or process or of the nature or ***physical form or*** quantity of dangerous substances which could have significant repercussions on major-accident hazards, the Member States shall ensure that the operator:

Justification

In line with Article 6(4)(a) and Article 6(1)(e).

Amendment 12

Proposal for a directive

Article 13 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the information referred to in Annex V is permanently available to the public, including in an electronic format. The information shall be reviewed and where necessary updated at least once a year.

Amendment

1. Member States shall ensure that the information referred to in Annex V is permanently available to the public, including in an electronic format. ***That information shall be worded clearly and in a way that is intelligible to the public.*** The information shall be reviewed and where necessary updated at least once a year. ***Upon request from any natural or legal person, Member States shall ensure that more detailed and additional information going beyond the information referred to in Annex V, and without prejudice to Article 21, is made available to that person.***

Justification

It is important that information disseminated to the public is worded intelligibly and does not give rise to any doubts as to the correct action to take in the event of an accident.

Amendment 13

Proposal for a directive

Article 13 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

(a) all persons liable to be affected by a major accident receive regularly and in the most appropriate form, without their having to request it, information on safety measures and requisite behaviour in the event of an accident;

Amendment

(a) all persons liable to be affected by a major accident receive regularly and in the most appropriate form, without their having to request it, information on safety measures and requisite behaviour in the event of an accident. ***That information shall be worded clearly and in a way that is intelligible to the public;***

Justification

It is important that information passed on persons likely to be affected is worded intelligibly and does not give rise to any doubts as to the correct action to take in the event of an accident.

Amendment 14

Proposal for a directive

Article 13 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

(b) the safety report is made available to the public upon request subject to Article 21(3); where Article 21(3) applies, an amended report in the form of a non-technical summary, which shall include at least general information on major-accident hazards, potential effects and the requisite behaviour in the event of an accident, shall be made available;

Amendment

(b) the safety report is made available to the public upon request subject to Article 21(3); where Article 21(3) applies, an amended report in the form of a non-technical summary, which shall include at least general information on major-accident hazards, potential effects **on human health and the environment** and the requisite behaviour in the event of an accident, shall be made available;

Amendment 15

Proposal for a directive

Article 13 – paragraph 2 – subparagraph 2

Text proposed by the Commission

The information to be supplied under point (a) of this paragraph shall include at least the information referred to in Annex V. That information shall likewise be supplied to all establishments serving the public, including schools and hospitals, and to all neighbouring establishments in the case of establishments covered by Article 8. Member States shall ensure that the information is supplied and that it is periodically reviewed and updated at least every five years.

Amendment

The information to be supplied under point (a) of this paragraph shall include at least the information referred to in Annex V. That information shall likewise be supplied to all establishments serving the public, including **pre-school facilities**, schools and hospitals, **other public amenities**, and to all neighbouring establishments in the case of establishments covered by Article 8. Member States shall ensure that the information is supplied and that it is periodically reviewed and updated at least every five years. **That information shall be updated in particular in the event of modifications as referred to in Article 10.**

Justification

In order to ensure the safety of persons affected, and to ensure that such persons take appropriate action, it is important that information on an emergency reaches the greatest possible number of persons potentially likely to be affected. This information should be updated in the event of modifications to an installation, establishment or storage facility.

Amendment 16

Proposal for a directive Article 13 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Amendment 17

Proposal for a directive Article 20 a (new)

Text proposed by the Commission

Amendment

Article 20a

Reporting

Every four years the Commission, on the basis of information submitted by Member States in accordance with Article 16 and information held in databases, as referred to in Article 20(3) and (5), shall submit to the European Parliament and to the Council a report on the major accidents that have occurred within the Union and their potential impact upon the efficient functioning of this Directive. However, following any accident considered as extremely serious in terms of number of victims or major damage to the environment, a report shall be drawn up with the aim of preventing possible new damage.

Justification

The European Parliament and the Council should regularly receive information on major accidents that have occurred within the European Union. Currently, there is no obligation to report to the European Parliament and the Council on a regular basis.

Amendment 18

Proposal for a directive

Article 22 – paragraph 2 – subparagraph 1

Text proposed by the Commission

What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned wide access to justice. To this end, the interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed sufficient for the purpose of paragraph 2(a).

Amendment

What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned wide access to justice. To this end, the interest of any non-governmental organisation promoting environmental **or public health** protection and meeting any requirements under national law shall be deemed sufficient for the purpose of paragraph 2(a).

Amendment 19

Proposal for a directive

Article 23 – paragraph 1

Text proposed by the Commission

Without prejudice to Article 4, in order to adapt Annexes **I to VII** to technical progress, the Commission shall adopt delegated acts in accordance with Article 24.

Amendment

In order to adapt Annexes **II to VI** to technical progress, the Commission shall adopt delegated acts in accordance with Article 24.

Justification

Annexes I and VII to the directive contain fundamental elements; therefore, any amendments to these elements should be subject to the ordinary legislative procedure.

Amendment 20

Proposal for a directive

Article 24 – paragraph 1

Text proposed by the Commission

1. The *powers* to adopt the delegated acts referred to in **Articles 4 and 23** shall be conferred on the Commission for an indeterminate period of time.

Amendment

1. The *power* to adopt the delegated acts referred to in **Article 23** shall be conferred on the Commission for an indeterminate period of time.

Justification

This amendment is necessary in view of the changes made to Article 4.

Amendment 21

Proposal for a directive

Article 25 – paragraph 1

Text proposed by the Commission

1. The delegation of powers referred to in Article 24 may be revoked at any time by the European Parliament or by the Council.

Amendment

(Does not affect English version.)

Justification

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Amendment 22

Proposal for a directive

Article 25 – paragraph 3

Text proposed by the Commission

3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect *immediately* or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. ***It shall be published in the Official Journal of the European Union.***

Amendment

3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect ***on the day following that of its publication in the Official Journal of the European Union*** or at a later date specified therein. It shall not affect the validity of the delegated acts already in

force.

Justification

To ensure legal certainty, it is necessary to specify the exact timing. The wording is in accordance with the clause proposed in the Understanding on Practical Arrangements for the use of Delegated Acts.

Amendment 23

Proposal for a directive
Article 26 – paragraph 1

Text proposed by the Commission

1. The European Parliament and the Council may object to the delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by ***one month***.

Amendment

1. The European Parliament and the Council may object to the delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by ***two months***.

Justification

In line with the Common Understanding on Practical Arrangements for the use of Delegated Acts.

PROCEDURE

Title	Control of major-accident hazards involving dangerous substances	
References	COM(2010)0781 – C7-0011/2011 – 2010/0377(COD)	
Committee responsible Date announced in plenary	ENVI 18.1.2011	
Committee(s) asked for opinion(s) Date announced in plenary	IMCO 18.1.2011	
Rapporteur(s) Date appointed	Małgorzata Handzlik 10.2.2011	
Discussed in committee	13.4.2011	24.5.2011
Date adopted	12.7.2011	
Result of final vote	+: 32 -: 0 0: 0	
Members present for the final vote	Adam Bielan, Lara Comi, António Fernando Correia De Campos, Jürgen Creutzmann, Christian Engström, Evelyne Gebhardt, Louis Grech, Małgorzata Handzlik, Iliana Ivanova, Philippe Juvin, Eija-Riitta Korhola, Edvard Kožušník, Kurt Lechner, Hans-Peter Mayer, Phil Prendergast, Zuzana Roithová, Heide Rühle, Christel Schaldemose, Andreas Schwab, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Kyriacos Triantaphyllides, Emilie Turunen, Bernadette Vergnaud, Barbara Weiler	
Substitute(s) present for the final vote	María Irigoyen Pérez, Morten Løkkegaard, Emma McClarkin, Konstantinos Poupakis, Sylvana Rapti, Olle Schmidt, Wim van de Camp	