EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT
Directorate A – Legal Affairs and Civil Protection
ENV.A.4 Civil Protection – prevention and preparedness

Seveso 22-3-3-2-2

22ND MEETING OF THE COMMITTEE OF COMPETENT AUTHORITIES (CCA) RESPONSIBLE FOR THE IMPLEMENTATION OF DIRECTIVE 96/82/EC OF 9 DECEMBER 1996 ON THE CONTROL OF MAJOR-ACCIDENT HAZARDS INVOLVING DANGEROUS SUBSTANCES (SEVESO II DIRECTIVE)
LULEA, SWEDEN, 21 - 23 OCTOBER 2009

Agenda Item 3.3.2.2: Review of the Seveso II Directive – possible points for improvement

At the last CCA meeting, during the discussion on the ongoing review of the Directive, the Czech Republic, on behalf of a group of 8 Member States (UK, Austria, Germany, Poland, France, Czech Republic, Belgium and the Netherlands), presented a non-paper setting out some suggestions for the revision of the Directive.

In the light of the discussion, the Commission announced that it would consult with interested experts from the Member States and develop a paper for discussion at the next CCA meeting setting out possible ideas for dealing with the various issues.

To that end, an informal expert meeting was held in Brussels on Friday 3 July. That meeting was attended by experts from Austria, Belgium, Czech Republic, Denmark, France, Germany, Ireland, Lithuania, the Netherlands, Portugal, UK and Norway.

The meeting discussed the issues raised in the non-paper as well as written comments that the Commission had received following the CCA meeting from Denmark, Ireland, Lithuania, Portugal, Sweden, UK and Norway. All these comments are available on CICRA. Subsequently Italy also submitted comments. The Commission is grateful for all the contributions made.

The attached paper takes account of the views received and the discussion at the informal meeting of experts. In the light of the wide range of views expressed, it outlines possible lines of approach as regards ways and means of tackling the issues identified, including where appropriate amendments to the directive. It should be underlined that in doing so, the aim is to as far as possible maintain the flexibility of the Directive's existing approach, including the two-tier approach and the goal-setting nature of the requirements, while at the same time improving implementation and enforceability without unduly adding to the administrative burdens on operators and authorities. The views expressed in the paper do not necessarily represent the final position of DG Environment or the Commission on the matters covered.

The issues have been grouped under the following broad headings:

(1) Definitions, scope, exclusions, readability

(2) Major Accident Prevention Policy (MAPP) and Safety Management System (SMS)

(3) Domino Effects

(4) Land-use planning

(5) Information to the public

(6) Emergency planning/Annex IV

(7) Reporting obligations and databases

Comments of committee members are invited.

Annex

Possible points for improvement

1.1 Definitions

There appears to be a general perception that consistency with other Directives could be improved, although there have not been any concrete suggestions made regarding how specific definitions should be changed in this regard. One example where this should perhaps be examined further is whether the definitions and terms used should be made consistent with the currently revised IPPC Directive. Another solution could be to analyse the inter-relationship between the different Directives concerned and bring together information about the different provisions to aid implementation and enforcement.

Some Member States have also suggested that the current Q&As (Questions & Answers) be integrated into the text of the Directive itself. The Commission will explore whether any of the current Q&As lend themselves to this, but there are unlikely to be many. In any event, the practice of compiling non-legally-binding Q&A guidance on questions of interpretation will continue to be followed.

A few Member States have proposed that certain definitions such as major accident and establishment be amended. However the existing definitions do not seem generally to have caused major problems of implementation and there is no strong support for any such changes. The Q&A mechanism could be used to provide any necessary clarifications if required.

Some Member States would like to see temporary versus permanent storage clarified; another suggests that intermediate storage be clearly defined. However in practice most Member States have found ways of managing with the existing provisions and it could be very difficult to find a solution acceptable to all, particularly given the borderline with legislation relating to **transport safety**. Perhaps the development of guidance and/or exchanges of experience might be the best approach.

1.2 Scope

Several Member States have noted that inclusion of new and emerging technologies such as Carbon dioxide/carbon Capture and Storage and nanotechnologies needs to be considered. The Commission, supporting and promoting the development of CCS, recognises that the Seveso II Directive could be a suitable means to regulate the safety of such CCS establishments where very large quantities of CO2 are present. It is ready to look into this issue to find appropriate definitions and thresholds. As regards other technologies and substances, it is probably premature to include such substances in the Directive at this stage, it might be useful to provide a mechanism, such as a regulatory procedure with scrutiny, to facilitate adding substances to Annex I where justified by their hazards. Such a mechanism could also be used to adapt existing entries in Annex I such as thresholds in the light of experience of accidents, technological developments and so on.

A related issue concerning scope is the derogation clause laid down in Article 9(6) in relation to safety reports for upper-tier establishments. The provision is little used,

which is as it should be. However some Member States consider that this is because it is unduly burdensome for operators and public authorities and that the procedure should be simplified and/or extended to include other provisions in cases where the substances present are incapable of creating a major-accident hazard. There seem to be 4 options for dealing with the issue: deletion of the provision (i.e. no derogation rule at all); simplification of the criteria laid down in Commission Decision 98/443/EC; extension of the derogation to a complete exemption from the obligation to produce a safety report and have emergency plans; a more general dispensation rule (perhaps with a list of substances fulfilling appropriate criteria (to be developed) listed in a part 3 of Annex I, together with any other relevant conditions that would need to be met).

The first option would have limited impact compared with the current situation. The scope for relaxing the criteria under the second option is likely to be limited and would in any case not meet the expectations of those Member States that wish to see wider-ranging derogations. Under the third and fourth options the qualifying criteria would have to be strict and apply only to single substances. So there would be no impact on establishments where other substances falling under the Directive were present above the qualifying thresholds. On the other hand, and in the light of discussions about waste and Annex I, it may be also suitable to have not only a derogation, but also a safeguard clause allowing Member States to take appropriate provisional measures and to inform the Commission and Member States thereof (combination of note 1 para 3 in Seveso Annex I with the safeguard article 52 in the CLP Regulation).

1.3 Exclusions

Following the discussion at the 19th and 20th CCA meetings, it should be made clear in the exception to the exclusion of mining, etc activities in Article 4 (c) that underground gas storage in natural strata and disused mines fall within the scope of the Directive. Additionally and more generally, it would seem appropriate to make it clear in the definition of 'installation' in Article 3.2 that underground installations are included.

It would also seem appropriate to simplify the exclusion relating to waste land-fill sites in Article 4(g) by removing the exception for tailing disposal facilities. Directive 2006/21/EC appears to adequately cover such facilities. This would remove any confusion and should lead to a more consistent implementation of requirements for operators of such installations.

There has been a suggestion that there should be a simplified approach for simple storage facilities. However it is difficult to see how this could be justified bearing in mind that the Directive's approach is founded on the presence or anticipated presence of dangerous substances, which should remain the basic criterion for inclusion within its scope.

1.4 Readability

At the informal expert meeting, there was also a discussion about the 'readability' of the Directive. There was general agreement that the current text is confused and unclear, for example as regards which provisions apply to which type of establishments. The Commission fully recognises this concern and will look at how the text could be improved in this respect. The simplest way of achieving this could be to modify Article 2 to expressly refer to upper- and lower-tier establishments and make clearer which provisions are relevant to each. Linked to this is the need to ensure linguistic consistency

of key terms and provisions in the different language versions. As announced at the CCA Bordeaux meeting in the context of the discussion on follow-up to the Brdo seminar on enforceability, the Commission will develop a technical glossary to avoid a repetition of the kind of problems that have been experienced with the current Directive.

2. MAPP and SMS

The seminar in Prague on lower-tier sites revealed that there was a wide divergence of approaches between Member States as regards the treatment of lower-tier establishments, with for example about half of them having legislation in place that goes beyond the requirements of the Directive and around one third requiring a safety management system (SMS). It was agreed that the legal requirements in relation to such sites on major accident prevention policy (MAPP) and on SMS should be clarified. In line with those findings, several Member States have proposed that it should be clarified in the text of Article 7 that both upper- and lower-tier establishments should have a MAPP and a SMS. There is broad agreement amongst those Member States that the SMS should be proportionate to the hazards, industrial activities and the complexity of the organisation in the establishment, some Member States considering that there should be a simplified SMS and less stringent documentation requirements for lower-tier establishments. It seems appropriate that the provisions in the Directive should reflect this, while still allowing those Member States that wish to impose stricter requirements to be able to do so.

Several Member States have suggested that the structure of Annex III should be revised, with the SMS and MAPP requirements disentangled and a distinction made between obligations to apply/implement the procedures laid down in an SMS and MAPP, which is more important and should come first, and then the obligations to document these. These suggestions would make the text clearer and the Commission will look at how such redrafting could be done accordingly.

In addition several Member States consider that the wording of Annex III should take into account existing management systems like ISO, OSHAS, etc. This seems a useful suggestion. The Commission sees two options: a simple reference to such systems; or redrafting of Annex III to put it into ISO/OSHAS language, as some Member States have already done at national level. The latter would entail extensive redrafting so the former could be the best 'quick-fix' solution.

Several Member States also consider that there should be the option for authorities to require process safety indicators and safety culture indicators from operators to assist continuous monitoring, assessment and enforcement. The Commission recognises that the use of such indicators could help to improve safety performance and to reduce the administrative burden, for example the number and frequency of inspections could be relaxed where appropriate. It may be premature at this stage to include a specific requirement in the Directive as these concepts are somewhat complex and cannot be properly used or analysed without all Member States having a full understanding of how they work. However that problem could be addressed through the development of guidance for Member States. In the meantime, as a signal of intent for the future such an option for Member States could be included in the proposals for a revised directive, with the possibility of introducing a requirement via comitology at a later stage once experience has been gained.

Linked to the above issues, at the informal experts' meeting some Member States also raised the idea of bringing greater specificity to the general obligations laid down in Article 5 of the Directive. These include an obligation to comply the precautionary principle and the use of best available techniques (BAT); an obligation to have a process safety study; and specification of all of the relevant hazards to be covered (operational hazards, human and organisational aspects, external hazards, including interference by unauthorised persons, etc.). However, to include more specific safety obligations in this Article would not be in line with its goal-setting character. Moreover although the BAT concept for best available environmental technologies is seen as a very good means to bring emissions limits in line, the concept may not be readily transferable to the Directive given the relatively limited number of Seveso establishments, particularly in smaller Member States, the high number of unique and small enterprises, and because of the different risk assessment approaches used.

3. Domino effects

Several Member States consider that the title of Article 8 should be changed to reflect the broader scope of the Article (inter-relationship between establishments and exchange of information about risks between them, and need for those establishments to take appropriate measures, which is key). Some have also argued that that the label "domino establishment" is disliked by industry because it seems to give rise to additional concern for the public. The Commission would be ready to look at any drafting suggestions, but is not convinced that such a change of title is necessary or worthwhile.

Several Member States take the view that they should be allowed to decide whether the competent authority or the company is responsible for identifying relevant establishments. Some consider that the obligation on authorities to identify such establishments is burdensome and does not provide much added value. On the other hand, some other Member States consider that identification of such establishments properly belongs to the competent authority, a view that the Commission shares. At the informal experts' meeting there was also discussion about whether it was feasible for the competent authority to assess the "likelihood and possibility of a major accident". Accordingly perhaps this obligation could be dropped, or a Q&A developed clarifying what it should reasonably entail.

The experts' meeting confirmed the generally-held view that the provisions apply to both upper- and-lower tier establishments. This should already be sufficiently clear from the wording, but perhaps could be more clearly expressed in the text. It was noted that there could be a problem due to lack of sufficient information from operators of lower-tier establishments, although the Commission would note that Article 6.2(g), if strictly applied, could help to address this concern.

The experts' meeting also touched on the issue of non-Seveso establishments in the vicinity such as in industrial parks. It is clear that the Directive cannot impose obligations on the operators of such establishments. However it is important that information is exchanged with them and that Seveso establishments take into account the risks from neighbouring non-Seveso establishments. The Commission will consider whether, and if so how, the text could be modified in this regard; likewise Article 13.1 and Annex II. Where appropriate, co-operation in external emergency planning would also be necessary, but this is more an implementation issue for Member States.

4. Land-use planning

Several Member States have underlined the importance of sharing experiences about methodology for calculating appropriate safety distances and consequence analysis. The mandate of the European Working Group on Land Use Planning could be extended to examine how this could be done.

Most Member States consider that Article 12 should be reworded to make it clear that it applies to all Seveso establishments; and to explicitly refer to the environment, which could be achieved by adding the words 'to man and the environment' after 'accidents' in paragraph 1. The Commission can agree with both suggestions.

In discussion at the experts' meeting it was generally recognised that it is necessary to protect areas of particular natural sensitivity or interest. However it was noted that the term 'sensitive areas' is not defined. Moreover several Member States questioned the requirement for appropriate safety distances, given that Seveso sites should not be close to such areas at all. Possible options for dealing with the issue discussed included: deleting any reference to sensitive areas in Article 12 and perhaps instead including it in Article 5; or retaining the reference in Article 12, but only in the context of siting of new establishments. However no clear conclusions or drafting amendments emerged. It was also noted that Directive 92/43/EEC (the habitats directive) could also be relevant in this context, although it was noted that this is limited in its scope.

Several Member States also considered that the Article should be redrafted, with the obligations split into two parts as regards those relating to new sites and developments around existing sites respectively. This might help to resolve the above issue at the same time. The Commission is willing to look at how the text could be improved in this way and is ready to consider any specific drafting suggestions Member States may have. However the existing text does not seem to have caused major problems of application and is generally well understood. Perhaps in the medium to longer term the EWGLUP could examine the issue and come up with guidance if deemed necessary.

It is also recognised that information in notifications (for lower-tier establishments) is insufficient for the competent authority to meet its obligations to comply with the requirements of Article 12. At the same time a proportionate approach is needed. Possible solutions identified would be to cover LUP risk scenarios in Annex III or to include a requirement in Article 12 itself that sufficient information proportionate to the level of risk, should be provided. The Commission would tend to favour the latter approach, with the required information to include assessment of selected scenarios.

Several Member States consider that the provisions should take into account or refer to environmental impact assessment of strategic plans (long-term dimension of planning) as provided for in Directive 2001/42/EC (SEA Directive). The Commission can go along with this suggestion and would propose that reference should also be made to the EIA Directive (85/337/EEC). Furthermore, with a view to reducing administrative burdens, there could be provision for closer integration of procedures under the different directives, i.e. where appropriate there could be a single procedure in order to fulfil the various requirements.

5. Information to the public

There is general agreement that the safety report is not a very suitable way of informing the public (and the evidence suggests that there are not many requests for such reports). However it is also generally recognised that safety reports should in principle remain available to the public. As regards the need to balance transparency against security considerations, the existing provisions of the Directive (Article 13.4, which allows for parts of the safety report to remain confidential, and Article 20), appear to provide adequate safeguards. However the Commission will examine whether any changes to the latter are needed to take into account the requirements of Directive 2003/4/EC on public access to environmental information.

It should be borne in mind that the provisions of Article 13 require a proactive approach in supplying information to the public, although the directive leaves it open who has to supply the information. Furthermore, the Article does not reflect that nowadays a lot of information is available via the internet; making review/updating and repetition deadlines of 3/5 years somewhat anachronistic. Some Member States considered that there appears to be a gap between the provisions in Article 13.1 and 13.4 in terms of risk communication. Some Member States have suggested that there should be the option of a 'sanitised' or non-technical, public version of the safety report. Some others consider that there are more efficient instruments (like local emergency planning groups) to close this gap. This is probably a decision best left to Member States in implementing the Directive. The Commission intends however to reflect further on these issues and the sufficiency or otherwise of the existing provisions in considering relevant findings of the ERM study and the feedback from stakeholders.

6. Emergency planning/Annex IV

The non-paper did not address this subject. However some Member States raised the issue of internal emergency plans and Annex IV in their written comments and these were discussed at the informal experts' meeting.

As was made clear at the Prague seminar on lower-tier sites, some Member States require internal emergency plans for lower-tier establishments. In discussion at the experts' meeting, several Member States considered that such plans (which all establishments would normally have anyway as a matter of course) were necessary, pointing out that parts c (ii) and (v) of Annex III (relating to the scope of the safety management system) implicitly provide for identification of major hazards and establishment of an emergency plan for lower-tier establishments. According to those Member States, Article 11.1 should be amended to explicitly cover lower-tier establishments. On the other hand, it was recognised that such a change would weaken the Directive's two-tier approach and could lead to calls for the obligations relating to external emergency plans to be similarly extended. This could be problematic, adding to the burdens of public authorities who may cover lower-tier sites only in local emergency plans without formal external emergency plans in conformity with the Directive's requirements.

It is therefore probably best not to make any changes to the Directive in this regard.

Some Member States have suggested that Annex IV should be revised to better reflect what is needed by emergency planners. Furthermore a technical working group could be established to develop guidance. Specific suggestions include:

- linked to the discussion on domino effects above, the data and information to be provided in internal emergency plans should include arrangements providing for early warning of the incident to neighbouring establishments;

- arrangements for training staff (paragraph 1(f)) are more a part of the safety management system (Annex III, (c) (v)) and should be deleted;

- criteria/guidance is needed to help Member States decide when the Article 11(6) exemption in relation to the external emergency plan requirement can be applied.

Some of these suggestions could already be taken up in the Commission's proposals for a revised directive. The development of exemption criteria or guidance is probably best left to a technical working group at a later stage. The Commission is ready to consider setting up such a group to develop guidance on this and internal and external emergency planning more generally once a revised directive is closer to adoption.

7. Reporting obligations and databases

The non-paper and the informal meeting did not address this subject. However, in the light of the current reporting round, and as reporting and providing data is often seen as burdensome for authorities, the review provides an opportunity to examine how information systems and exchange of information could be improved.

There have been significant developments in IT since the Directive's adoption. More reporting in electronic format would facilitate information exchange for authorities to apply the directive more consistently, and allow the public and authorities to be well informed about hazards, risks, safety measures and safety behaviour.

Reporting under some other directives have already been modernised (fully automatised workflows, automated systems and data exchange formats, eReporting, etc).The Commission therefore plans to examine whether the reporting obligation under Article 19.4 could be replaced by regular simplified implementation reporting through databases at Member State level, also containing the information to be communicated to the public pursuant to Article 13.1/Annex V such as information on establishments and information to the public on safety measures, together with risk data and risk scenarios. The information to be made available in this way could be drawn up via comitology and listed in an Annex to the Directive.

The Commission would also like to see the criteria for reportable major accidents under section I.1 of Annex VI reduced significantly since the current rule (5% of the upper-tier threshold) often equates to half of the inventory of a lower-tier site and results in potentially major accidents with important lessons for accident prevention not being reported. The Commission would prefer this be revised to 5% of the lower-tier threshold.