Control of major-accident hazards involving dangerous substances

2010/0377(COD) - 12/10/2011 - Committee report tabled for plenary, 1st reading/single reading

The Committee on the Environment, Public Health and Food Safety adopted a report by János ÁDER (EPP, HU) on the proposal for a directive of the European Parliament and of the Council on control of major-accident hazards involving dangerous substances. The committee recommends that the position of the European Parliament in first reading following the ordinary legislative procedure should be to amend the Commission proposal. The main amendments are as follows:

Delegated acts: the Commission proposal states that the Commission should be empowered to adopt delegated acts for adoption of criteria for derogations and amendments to the Annexes to the Directive. However, the committee considers that **only amendments to Annexes II to VI of the Directive should be done through delegated acts**. It states that Annexes I and VII to the Directive contain fundamental elements. Therefore, any amendments to those elements should be subject to the ordinary legislative procedure.

More specifically, it should be possible to amend by delegated acts:

- Part 3 of Annex I (List of dangerous substances-Substances and mixtures excluded from the Directive pursuant to Article 2(2)(h) and Article 4(1) which changes the scope, but only for very specific situations) and

- the Annexes II to VI.

Amendments to Part 1 (categories of substances and mixtures) **and 2** (named substances) of **Annex I - and to Annex VII** (criteria for derogations pursuant to Article 4) can have large impacts on the scope and **should therefore be dealt with through the ordinary legislative procedure.**

Derogations: Members consider that the assessment of possible derogations should start swiftly, in particular after the change of classification of a dangerous substance, to avoid unnecessary burdens for operators and competent authorities.

Criteria for derogations pursuant to Article 4 will be decided through the ordinary legislative procedure rather than through powers delegated to the Commission. The committee has amended Annex VII, stating that It is not acceptable to leave the Annex completely empty during the legislative procedure. This amendment includes the existing criteria as specified in Commission Decision 98/433 /EC. The Commission is invited to come forward with a proposal for new criteria, so that they can still be included in the basic act.

Members clarified that where it is demonstrated, on the basis of the criteria set out in Annex VII that particular substances or mixtures covered by Parts 1 or 2 of Annex I are under specific conditions incapable of creating a major accident hazard, in particular due to their physical form, properties, classification, concentration or generic packaging, and should thus benefit from a derogation, the Commission may adopt delegated acts in order to list those substances and mixtures together with the applicable conditions, in Part 3 of Annex I.

The Commission shall consult the forum prior to listing substances in Part 3 of Annex I and about notifications. Previously, the Commission merely had to inform the forum.

Where a Member State considers that a dangerous substance not listed in Parts 1 or 2 of Annex I, presents a major-accident hazard, or that a threshold is too high, it may take appropriate measures and shall notify the Commission. In the event that the Commission considers that the non-listed dangerous substance should be listed in Part 1 or Part 2 of Annex I it shall present to that effect a legislative proposal to the European Parliament and to the Council.

The committee states that where it concerns very specific well defined cases, the addition of substances to Part 1 or 2 could result in a substantial extension of the scope, with potentially large economic impacts. As Member States may take appropriate measures if they consider that a dangerous substance presents a major-accident hazard, they will be able to act anyhow if necessary. The Commission will notify other Member States. Changing the scope for the EU as a whole should, however, subsequently take place trough the ordinary legislative procedure.

Where appropriate, the **Commission may adopt delegated acts in order to lower the threshold** of the substances in Part 1 or Part 2 of Annex I.

With regard to **derogations for establishments rather than for substances**, the proposal allows the competent authority of the Member State to authorise derogations at the level of individual establishments. As the level of protection should not decrease, the committee decided to **maintain in all cases at least the lower-tier requirements and to only allow for derogations for the information requirements for upper-tier establishments** (Article 9, (10(b), 11, 13(2)).

Scope: Members point out that substances listed in Part 3 of Annex I are not excluded from the scope of the Directive, they only enjoy special treatment if strict conditions are fulfilled.

A new clause states that further extension of the scope of the Directive shall be preceded by an impact assessment.

Definitions: certain definitions are amended and new definitions are inserted, for terms such as 'neighbouring establishment' or 'neighbouring site', ‘appropriate safety distance’ ,and ‘domino effect’.

General obligations of the operator: a new clause states that the establishment must operate according to best available techniques, in particular in relation to safety aspects, pursuant to Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control), without any derogations.

Notification: Members add to requirements listed a certificate from the management of the establishment to the effect that the operator would be able to deal with the consequences of an accident involving dangerous substances.

The notification shall be sent to local authorities as well as the competent authority.

Members amended the time limits for notifications.

Major-accident prevention policy (MAPP): the document setting out the MAPP must also be sent to **local authorities** and shall include the operator's overall aims and principles of action, the timetable and measures for the attainment of these objectives the role and responsibility of management and shall demonstrate how a high level of protection with respect to major-accident hazards is continuously ensured. It must be **publicly available** on request.

Again, the committee amended the time limits for the document setting out the MAPP.

It added that the MAPP should be implemented by appropriate means, structures and management systems. For upper-tier establishments, it shall be implemented by safety management systems in accordance with Annex III. Member States shall require lower-tier establishments to implement the MAPP by means of a safety management system proportionate to the major-accident hazards, and to the complexity of the organisation or activities of the establishment, unless they consider it unnecessary.

Domino effect: the competent authority must identify all lower-tier and upper-tier establishments or groups of establishments where the likelihood and the possibility or consequences of a major accident may be increased because of the location and the proximity of such establishments, **or the natural risks associated with their geographical position**, and their inventories of dangerous substances, or the proximity of other sites. Where the information provided by the is not sufficient or available, the competent authority must obtain information directly from the neighbouring establishments or sites, and makes it available to the operators.

The competent authority must take into account the domino effect when drawing up external emergency plans.

Safety report: the committee amended the time limits for the report. In addition, **several amendments are made to Annex II** (Minimum data and information to be considered in the safety report) **and Annex III** (Information referred to in the provisions on the safety report on the management system and the organisation of the establishment with a view to the prevention of major accidents.)

Information to the public: the text is amended to state that the information referred to in Part 1 and 2 of Annex V should be permanently available to the public, including in an electronic format, and that the **information referred to in Part 2a of Annex V is made available to the public at least upon reques** t. The information shall be kept up to date, and reviewed at least every three years.

Annex V contains the items of information to be made permanently available to the public, including through the internet. The committee proposes a requirement to explain the dangerous substances in simple terms on the internet and to indicate when an establishment has been inspected. The more detailed and specialised information on the dangerous substances and on the inspections should at least be made available on request. Member States can then decide themselves whether they consider it to be appropriate to put the more detailed and technical information on the internet.

Public consultation and participation in decision-making: the public must be given early and effective opportunities to participate in certain matters, including the safety report.

Information to be supplied by the operator following a major accident: Members expanded this list to include: (i) restoration of the environment, in the event of proven environmental damage to its original condition, where possible, and to appropriately compensate the population affected, as provided for in Directive 2004/35/EC on environmental liability; (ii) taking all necessary measures to inform victims of their rights; (iii) informing the public concerned of the relevant accident and of the measures undertaken by the operator and initiatives undertaken by the competent authority.

Forum: the forum shall include representatives of industry, workers and non-governmental organisations promoting the protection of human health and/or the environment in support of the application, implementation and technical adaptation of the Directive.

Inspections: the committee amended the text to state that the period between two site visits shall not exceed one year for upper-tier establishments and three years for lower-tier establishments, unless the

competent authority has drawn up an inspection programme based on a systematic appraisal of major-accident hazards of the establishments concerned. If an inspection has identified an important case of non-compliance with this Directive, an additional site visit shall be carried out within six months.

On the point, **Members relaxed the Commission's requirements** stating that the tightening of legislation in the Commission proposal is unjustified in terms of safety technology. The existing system, which takes into account the inspection programme, has proven its worth and provides authorities with the necessary flexibility of a risk-oriented inspection programme. The proposed amendment would burden operators and authorities with extra costs without gain in safety.

Members state that where **best available technology** control systems are in place, inspections can be coordinated with the available data to facilitate the inspections.

Inspections shall be coordinated with inspections under other Union legislation, in particular Directive 2010/75/EU.

Reporting: Members specify that every four years the Commission 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.

Access to information: the text is amended to state that if the operator has requested not to disclose certain parts of the safety report or the inventory of dangerous substances the competent authorities may refuse access in accordance with Article 4 of Directive 2003/4/EC.

Access to justice: the committee considers that in line with the Aarhus convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, the public will have access to justice and be able to legally review procedural and substantive legality of acts and omissions by private persons or public authorities. Access to justice **with regard to other requirements such as general obligations of the operators, inspections and safety reports will therefore also be possible for the public**.

Amendment of Annexes: within six months of an adaptation to technical progress being adopted as provided for in Regulation (EC) No 1272/2008, the Commission shall assess whether Annex I needs to be adapted, taking into account the potential for major accidents linked to a substance and the criteria adopted for the purposes of applying Article 4.

Review: the Commission shall examine:

- by 1 June 2013, whether offshore exploration and exploitation of minerals, including hydrocarbons, should be included in the scope of this Directive

- by 1 June 2015, whether transport of dangerous substances in pipelines, including pumping stations, should be included in the scope of the Directive;

- by 1 June 2015, whether further substances meeting the criteria for classification as carcinogenic, mutagenic or toxic to reproduction category 1A or 1B pursuant to Regulation (EC) No 1272/2008, mixtures containing such substances, and certain nanomaterials should be added to Annex I;

- by 1 June 2015, whether any substances meeting the criteria for classification as persistent, bioaccumulative and toxic, or as very persistent or very bioaccumulative in accordance with the criteria set out in Annex XIII of Regulation (EC) No 1907/2007 should be added to Annex I.

Legislative proposals shall be submitted where appropriate.

By 1 June 2020, and every three years thereafter, the Commission shall submit to the European Parliament and to the Council a report reviewing the implementation of the Directive.

Annexes: substantial amendments are made to the Annexes, including Parts of Annex I.