Control of major-accident hazards involving dangerous substances

2010/0377(COD) - 14/06/2012 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted 593 votes in favour, 12 against and 6 abstentions a legislative resolution on the proposal for a directive of the European Parliament and of the Council on control of major-accident hazards involving dangerous substances. Parliament adopted its position in first reading following the ordinary legislative procedure. The amendments are the result of a compromise between Parliament and Council. The main amendments are as follows:

Scope: Parliament excluded from the scope of the Directive the storage of gas at underground offshore sites including both dedicated storage sites and sites where exploration and exploitation of minerals, including hydrocarbons are also carried out.

It added that onshore underground gas storage in natural strata, aquifers, salt cavities and disused mines and chemical and thermal processing operations and storage related to those operations which involve dangerous substances, as well as operational tailings disposal facilities, including tailing ponds or dams, containing dangerous substances shall be included within the scope of this Directive.

Moreover, the text notes that unwanted effects from the alignment to Regulation (EC) No 1272/2008 and subsequent adaptations to that Regulation having an impact on the classification of substances and mixtures may occur. On the basis of criteria included in this Directive, the Commission must assess whether, notwithstanding their hazard classification, there are dangerous substances that do not present a major-accident hazard and, where appropriate, **submit a legislative proposal to exclude the dangerous substance concerned from the scope of this Directive**. The assessment should start swiftly, in particular after the change of classification of a substance or mixture, in order to avoid unnecessary burdens for operators and competent authorities in the Member States. Exclusions from the scope of the Directive should not prevent any Member State from maintaining or introducing more stringent protective measures.

Assessment of major-accident hazards for a particular dangerous substance: the Commission shall assess, where appropriate or in any event on the basis of a notification by a Member State, whether it is impossible in practice for a particular dangerous substance covered by Part 1 (categories of dangerous substances) or listed in Part 2 (named dangerous substances) of Annex I (Dangerous substances), to cause a release of matter or energy that could create a major accident under both normal and abnormal conditions which can reasonably be foreseen. **Following this assessment, the Commission shall, if appropriate, present a legislative proposal** to the European Parliament and to the Council **to exclude the dangerous substance concerned from the scope of this Directive.**

The assessment shall take into account certain specified information (see below), and shall be based on one or more of the following characteristics: (i) the physical form of the dangerous substance under normal processing or handling conditions or in an unplanned loss of containment; (ii) the inherent properties of the dangerous substance, in particular those related to dispersive behaviour in a major-accident scenario, such as molecular mass and saturated vapour pressure; (iii) the maximum concentration of the substances in the case of mixtures.

Information necessary for assessing the health, physical and environmental hazard properties of the dangerous substance concerned shall include: (i) a comprehensive list of properties necessary to assess the dangerous substance's potential for causing physical, health or environmental harm; (ii) physical and chemical properties (for instance molecular mass, saturated vapour pressure, inherent toxicity, boiling

point, reactivity, viscosity, solubility and other relevant properties); (iii) health and physical hazard properties (for instance reactivity, flammability, toxicity together with additional factors such as mode of attack on the body, injury to fatality ratio, and long-term effects, and other properties as relevant); (iv) environmental hazard properties (for instance ecotoxicity, persistence, bio-accumulation, potential for long-range environmental transport, and other properties as relevant); (v) where available, the Union classification of the substance or mixture; (vi) information about substance-specific operating conditions (for instance temperature, pressure and other conditions as relevant) under which the dangerous substance is stored, used and/or may be present in the event of foreseeable abnormal operations or an accident such as fire.

References to derogations in the Commission proposal are deleted.

Delegated acts: the Commission proposal stated 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 amended text states that the Commission will be empowered to adopt delegated acts in respect of amending Annexes II to VI to adapt them to technical progress.

General obligations of the operator: Member States shall ensure that the operator is obliged to take all necessary measures to prevent major accidents and to limit their consequences for human health and the environment.

Major-accident prevention policy (MAPP): the MAPP shall include the operator's overall aims and principles of action, the role and responsibility of management, as well as the **commitment towards continuously improving the control of major-accident hazards**, and ensuring a high level of protection.

The text specifies that the MAPP shall be implemented by appropriate means, structures and by a safety management system, in accordance with Annex III, proportionate to the major-accident hazards, and the complexity of the organisation or the activities of the establishment. For lower-tier establishments, the obligation to implement the MAPP may be fulfilled by other appropriate means, structures and management systems, proportionate to major-accident hazards, taking into account the principles set out in Annex III.

Domino effect: the competent authority must identify all lower-tier and upper-tier establishments or groups of establishments where the risk or consequences of a major accident may be increased because of the geographical position and the proximity of such establishments, and their inventories of dangerous substances.

Where the competent authority has additional information to that provided by the operator, it shall make this information available to that operator, if it is necessary for the application of provisions on the domino effect.

Safety report: the text adds in Annex II that the safety report must also contain a description of any technical and non-technical measures relevant for the reduction of the impact of a major accident.

The safety report shall be sent to the competent authority within the following time-limits: (i) for new establishments, a reasonable period of time prior to the start of construction or operation, or prior to the modifications leading to a change in the inventory of dangerous substances; (ii) for existing upper-tier establishments, 1 June 2016; (iii) for other establishments, two years from the date from which the Directive applies to the establishment concerned.

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 consequences for major-accident hazards, or could result in a lower-tier establishment becoming an upper-tier

establishment or vice versa , Member States shall ensure that the operator reviews, and where necessary updates the notification, the MAPP, the safety management system and the safety report and informs the competent authority of the details of those updates in advance of that modification.

Emergency plan: the public concerned must be given early opportunity to give its opinion on external emergency plans when they are being established or substantially modified.

Information to the public: the information must be available electronically, and for upper-tier establishments, all persons likely to be affected by a major accident must receive regularly and in the most appropriate form, without having to request it, **clear and intelligible information** on safety measures and requisite behaviour in the event of a major accident. The information shall include at least the information referred to in Annex V and also be supplied to **all buildings and areas of public use.** ,It must be supplied at least every five years and periodically reviewed and where necessary, updated, including in the event of modifications to an establishment.

Public consultation and participation in decision-making: the text states that the public concerned must be given an early opportunity to give its opinion on specific individual projects relating to: (i) planning for new establishments; (ii) significant modifications to establishments; (iii) new developments around establishments where the siting or developments may increase the risk or consequences of a major accident.

Where general plans or programmes are being established relating to points (i) or (iii) above, the public must be given early and effective opportunities to participate in their preparation and modification or review using the procedures set out in Directive 2003/35/EC on public participation in respect of the drawing up of certain plans and programmes relating to the environment.

Member States shall identify the public entitled to participate for these purposes including relevant non-governmental organisations meeting any relevant requirements imposed under national law, such as those promoting environmental protection.

This provision does not apply to plans and programmes for which a public participation procedure is carried out under Directive 2001/42/EC.

The detailed arrangements for informing the public and consulting the public concerned shall be determined by the Member States.

Reasonable time-frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making.

Action to be taken by the competent authority following a major accident: the text adds that following a major accident, the competent authority must inform the persons likely to be affected, of the accident which has occurred and, where relevant, of the measures undertaken to mitigate its consequences.

Inspections: the period between two consecutive 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.

Within **four months** after each inspection, the competent authority shall communicate the conclusions of the inspection and all the necessary actions identified to the operator. If an inspection has identified an important case of non-compliance with this Directive, an **additional inspection shall be carried out within six months.**

Information system and exchanges: the amended text states that for establishments covered by the Directive, Member States shall supply the Commission with at least the following information: (i) the name or trade name of the operator and the full address of the establishment concerned; (ii) the activity or activities of the establishment.

The Commission shall keep up to date a database containing the information supplied by Member States. Access to the database shall be restricted to persons authorised by the Commission or the competent authorities of the Member States.

Access to information and confidentiality: in the interests of transparency, the competent authority must be required to make any information held pursuant to this Directive available to any natural or legal person who so requests in accordance with Directive 2003/4/EC.

Access to justice: Member States shall ensure that (i) any applicant requesting information pursuant to the provisions on access to access to information or information to the public of the Directive is able to seek a review in accordance with Directive 2003/4/EC of the acts or omissions of a competent authority in relation to such a request; (ii) in their respective national legal system, members of the public concerned have access to the review procedures set up in Directive 2011/92/EU for cases subject to certain provisions on public consultation.

Guidance: a new clause states that the Commission may develop guidance on safety distance and domino effects.

Amendment of Annexes: the Commission shall be empowered to adopt delegated acts in order to **adapt Annexes II to VI to technical progress**. Such adaptations shall not result in substantial changes in the obligations of the Member States and the operators as laid down in this Directive.

Reporting and Review: by 30 September 2020, and every four years thereafter, the Commission, on the basis of information submitted by Member States and of information held in databases, and taking into account the implementation of Article 4 (Assessment of major-accident hazards for a particular dangerous substance), shall submit a report on the implementation and efficient functioning of the Directive, including information on major accidents that have occurred within the Union and their potential impact upon the implementation of the Directive. The Commission shall include in the first of those reports an assessment of the need to amend the scope of the Directive. Any report may, where appropriate, be accompanied by a legislative proposal.

The text adds that in the context of relevant Union legislation, the Commission may examine the need to address **the issue of financial responsibilities of the operator in relation to major accidents, including issues related to insurance.**