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Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances*Official Journal L 010 , 14/01/1997 P. 0013 - 0033*

COUNCIL DIRECTIVE 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130s (1) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure laid down in Article 189c of the Treaty (3),

(1) Whereas Council Directive 82/501/EEC of 24 June 1982 on the major-accident hazards of certain industrial activities (4) is concerned with the prevention of major accidents which might result from certain industrial activities and with the limitation of their consequences for man and the environment;

(2) Whereas the objectives and principles of the Community's environment policy, as set out in Article 130r (1) and (2) of the Treaty and detailed in the European Community's action programmes on the environment (5), aim, in particular, at preserving and protecting the quality of the environment, and protecting human health, through preventive action;

(3) Whereas the Council and the representatives of the Governments of the Member States, meeting within the Council, in their accompanying resolution concerning the fourth Action Programme on the Environment (6), highlighted the need for more effective implementation of Directive 82/501/EEC and called for a review of the Directive to include, if necessary, a possible widening of its scope and a greater exchange of information on the matter between Member States; whereas the fifth Action Programme, the general approach of which was approved by the Council and the representatives of the Governments of the Member States, meeting within the Council, in their resolution of 1 February 1993 (7), also presses for better risk-and-accident management;

(4) Whereas, in the light of the accidents at Bhopal and Mexico City, which demonstrated the hazard which arises when dangerous sites and dwellings are close together, the Council Resolution of 16 October 1989 called on the Commission to include in Directive 82/501/EEC provisions concerning controls on land-use planning when new installations are authorized and when urban development takes place around existing installations;

(5) Whereas the said Council resolution invited the Commission to work with Member States towards greater mutual understanding and harmonization of national principles and practices regarding safety reports;

(6) Whereas it is desirable to pool the experience gained through different approaches to the control of major-accident hazards; whereas the Commission and the Member States should develop their relations with the relevant international bodies and seek to establish measures equivalent to those set out in this Directive for use in third countries;

(7) Whereas the Convention on the Transboundary Effects of Industrial Accidents of the United Nations Economic Commission for Europe provides for measures regarding the

prevention of, preparedness for and response to industrial accidents capable of causing transboundary effects as well as for international cooperation in this field;

(8) Whereas Directive 82/501/EEC constituted a first stage in the harmonization process; whereas the said Directive should be revised and supplemented in order to ensure high levels of protection throughout the Community in a consistent and efficient manner; whereas the present harmonization is limited to the measures which are necessary to put in place a more effective system for preventing major accidents with widespread effects and for limiting their consequences;

(9) Whereas major accidents can have consequences beyond frontiers; whereas the ecological and economic cost of an accident is borne not only by the establishment affected but also by the Member States concerned; whereas it is therefore necessary to take measures ensuring a high level of protection throughout the Community;

(10) Whereas the provisions of this Directive must apply without prejudice to Community provisions as regards health and safety at work;

(11) Whereas use of a list specifying certain installations while excluding others with identical hazards is not an appropriate practice, and may allow potential sources of major accidents to escape regulation; whereas the scope of Directive 82/501/EEC must be altered to make the provisions applicable to all establishments where dangerous substances are present in sufficiently large quantities to create a major-accident hazard;

(12) Whereas, with due regard for the Treaty and in compliance with the relevant Community legislation, Member States may retain or adopt appropriate measures for transport-related activities at docks, wharves and marshalling yards, which are excluded from this Directive, in order to ensure a level of safety equivalent to that established by this Directive;

(13) Whereas the transmission of dangerous substances through pipelines also has a potential to produce major accidents; whereas the Commission should, after collecting and evaluating information about existing mechanisms within the Community for regulating such activities and the occurrence of relevant incidents, prepare a communication setting out the case, and most appropriate instrument, for action in this area if necessary;

(14) Whereas, with due regard for the Treaty and in compliance with the relevant Community legislation, Member States may retain or adopt measures on waste land-fill, which do not come within the scope of this Directive;

(15) Whereas analysis of the major accidents reported in the Community indicates that the majority of them are the result of managerial and/or organizational shortcomings; whereas it is therefore necessary to lay down at Community level basic principles for management systems, which must be suitable for preventing and controlling major-accident hazards and limiting the consequences thereof;

(16) Whereas differences in the arrangements for the inspection of establishments by the competent authorities may give rise to differing levels of protection; whereas it is necessary to lay down at Community level the essential requirements with which the systems for inspection established by the Member States must comply;

(17) Whereas, in order to demonstrate that all that is necessary has been done to prevent major accidents, to prepare contingency plans and response measures, the operator should, in the case of establishments where dangerous substances are present in significant quantities, provide the competent authority with information in the form of a safety report containing details of the establishment, the dangerous substances present, the installation or storage facilities, possible major accidents and the management systems available, in order to prevent and reduce the risk of major accidents and to enable the necessary steps to be taken to limit the consequences thereof;

(18) Whereas, in order to reduce the risk of domino effects, where establishments are sited in such a way or so close together as to increase the probability and possibility of major accidents, or aggravate their consequences, there should be provision for the exchange of appropriate information and cooperation on public information;

(19) Whereas, in order to promote access to information on the environment, the public should have access to safety reports produced by operators, and persons likely to be affected by a major accident should be given information sufficient to inform them of the correct action to be taken in that event;

(20) Whereas, in order to provide against emergencies, in the case of establishments where dangerous substances are present in significant quantities it is necessary to establish external and internal emergency plans and to create systems to ensure those plans are tested and revised as necessary and implemented in the event of a major accident or the likelihood thereof;

(21) Whereas the staff of an establishment must be consulted on the internal emergency plan and the public must be consulted on the external emergency plan;

(22) Whereas, in order to provide greater protection for residential areas, areas of substantial public use and areas of particular natural interest or sensitivity, it is necessary for land-use and/or other relevant policies applied in the Member States to take account of the need, in the long term, to keep a suitable distance between such areas and establishments presenting such hazards and, where existing establishments are concerned, to take account of additional technical measures so that the risk to persons is not increased;

(23) Whereas, in order to ensure that adequate response measures are taken if a major accident occurs, the operator must immediately inform the competent authorities and communicate the information necessary for them to assess the impact of that accident;

(24) Whereas, in order to provide for an 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; whereas 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,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Aim

This Directive is aimed at the prevention of major accidents which involve dangerous substances, 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.

Article 2

Scope

1. The Directive shall apply to establishments where dangerous substances are present in quantities equal to or in excess of the quantities listed in Annex I, Parts 1 and 2, column 2, with the exception of Articles 9, 11 and 13 which shall apply to any establishment where dangerous substances are present in quantities equal to or in excess of the quantities listed in Annex I, Parts 1 and 2, column 3.

For the purposes of this Directive, the 'presence of dangerous substances' shall mean the actual or anticipated presence of such substances in the establishment, or the presence of those which it is believed may be generated during loss of control of an industrial chemical process, in quantities equal to or in excess of the thresholds in Parts 1 and 2 of Annex I.

2. The provisions of this Directive shall apply without prejudice to Community provisions concerning the working environment, and, in particular, without prejudice to Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (8).

Article 3

Definitions

For the purposes of this Directive:

1. 'establishment` shall mean the whole area under the control of an operator where dangerous substances are present in one or more installations, including common or related infrastructures or activities;
2. 'installation` shall mean a technical unit within an establishment in which dangerous substances are produced, used, handled or stored. It shall include all the equipment, structures, pipework, machinery, tools, private railway sidings, docks, unloading quays serving the installation, jetties, warehouses or similar structures, floating or otherwise, necessary for the operation of the installation;
3. 'operator` shall mean any individual or corporate body who operates or holds an establishment or installation or, if provided for by national legislation, has been given decisive economic power in the technical operation thereof;
4. 'dangerous substance` shall mean a substance, mixture or preparation listed in Annex 1, Part 1, or fulfilling the criteria laid down in Annex 1, Part 2, and present as a raw material, product, by-product, residue or intermediate, including those substances which it is reasonable to suppose may be generated in the event of accident;
5. 'major accident` shall mean an occurrence such as a major emission, fire, or explosion resulting from uncontrolled developments in the course of the operation of any establishment covered by this Directive, and leading to serious danger to human health and/or the environment, immediate or delayed, inside or outside the establishment, and involving one or more dangerous substances;
6. 'hazard` shall mean the intrinsic property of a dangerous substance or physical situation, with a potential for creating damage to human health and/or the environment;
7. 'risk` shall mean the likelihood of a specific effect occurring within a specified period or in specified circumstances;
8. 'storage` shall mean the presence of a quantity of dangerous substances for the purposes of warehousing, depositing in safe custody or keeping in stock.

Article 4

Exclusions

This Directive shall not apply to the following:

- (a) military establishments, installations or storage facilities;
- (b) hazards created by ionizing radiation;
- (c) the transport of dangerous substances and intermediate temporary storage by road, rail, internal waterways, sea or air, outside the establishments covered by this Directive, including loading and unloading and transport to and from another means of transport at docks, wharves or marshalling yards;
- (d) the transport of dangerous substances in pipelines, including pumping stations, outside establishments covered by this Directive;
- (e) the activities of the extractive industries concerned with exploration for, and the exploitation of, minerals in mines and quarries or by means of boreholes;
- (f) waste land-fill sites.

Article 5

General obligations of the operator

1. Member States shall ensure that the operator is obliged to take all measures necessary to prevent major accidents and to limit their consequences for man and the environment.
2. Member States shall ensure that the operator is required to prove to the competent authority referred to in Article 16, hereinafter referred to as the 'competent authority', at any time, in particular for the purposes of the inspections and controls referred to in Article 18, that he has taken all the measures necessary as specified in this Directive.

Article 6

Notification

1. Member States shall require the operator to send the competent authority a notification within the following time-limits:
 - for new establishments, a reasonable period of time prior to the start of construction or operation,
 - for existing establishments, one year from the date laid down in Article 24 (1).
2. The notification required by paragraph 1 shall contain the following details:
 - (a) the name or trade name of the operator and the full address of the establishment concerned;
 - (b) the registered place of business of the operator, with the full address;
 - (c) the name or position of the person in charge of the establishment, if different from (a);
 - (d) information sufficient to identify the dangerous substances or category of substances involved;
 - (e) the quantity and physical form of the dangerous substance or substances involved;
 - (f) the activity or proposed activity of the installation or storage facility;
 - (g) the immediate environment of the establishment (elements liable to cause a major accident or to aggravate the consequences thereof).
3. In the case of existing establishments for which the operator has already provided all the information under paragraph 2 to the competent authority under the requirements of national law at the date of entry into force of this Directive, notification under paragraph 1 is not required.
4. In the event of:
 - any significant increase in the quantity or significant change in the nature or physical form of the dangerous substance present, as indicated in the notification provided by the operator pursuant to paragraph 2, or any change in the processes employing it, or
 - permanent closure of the installation,the operator shall immediately inform the competent authority of the change in the situation.

Article 7

Major-accident prevention policy

1. Member States shall require the operator to draw up a document setting out his major-accident prevention policy and to ensure that it is properly implemented. The major-accident prevention policy established by the operator shall be designed to guarantee a high level of protection for man and the environment by appropriate means, structures and management systems.

2. The document must take account of the principles contained in Annex III and be made available to the competent authorities for the purposes of, amongst other things, implementation of Articles 5 (2) and 18.

3. This Article shall not apply to the establishments referred to in Article 9.

Article 8

Domino effect

1. Member States shall ensure that the competent authority, using the information received from the operators in compliance with Articles 6 and 9, identifies 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, and their inventories of dangerous substances.

2. Member States must ensure that in the case of the establishments thus identified:

- (a) suitable information is exchanged in an appropriate manner to enable these establishments to take account of the nature and extent of the overall hazard of a major accident in their major accident prevention policies, safety management systems, safety reports and internal emergency plans;
- (b) provision is made for cooperation in informing the public and in supplying information to the competent authority for the preparation of external emergency plans.

Article 9

Safety report

1. Member States shall require the operator to produce a safety report for the purposes of:

- (a) demonstrating that a major-accident prevention policy and a safety management system for implementing it have been put into effect in accordance with the information set out in Annex III;
- (b) demonstrating that major-accident hazards have been identified and that the necessary measures have been taken to prevent such accidents and to limit their consequences for man and the environment;
- (c) demonstrating that adequate safety and reliability have been incorporated into the design, construction, operation and maintenance of any installation, storage facility, equipment and infrastructure connected with its operation which are linked to major-accident hazards inside the establishment;
- (b) demonstrating that internal emergency plans have been drawn up and supplying information to enable the external plan to be drawn up in order to take the necessary measures in the event of a major accident;
- (e) providing sufficient information to the competent authorities to enable decisions to be made in terms of the siting of new activities or developments around existing establishments.

2. The safety report shall contain at least the data and information listed in Annex II. It shall also contain an updated inventory of the dangerous substances present in the establishment.

Safety reports, or parts of reports, or any other equivalent reports produced in response to other legislation, may be combined to form a single safety report for the purposes of this Article, where such a format obviates the unnecessary duplication of information and the repetition of work by the operator or competent authority, on condition that all the requirements of this Article are complied with.

3. The safety report provided for in paragraph 1 shall be sent to the competent authority within the following time limits:

- for new establishments, a reasonable period of time prior to the start of construction or of operation,
- for existing establishments not previously covered by Directive 82/501/EEC, three years from the date laid down in Article 24 (1),
- for other establishments, two years from the date laid down in Article 24 (1),
- in the case of the periodic reviews provided for in paragraph 5, without delay.

4. Before the operator commences construction or operation, or in the cases referred to in the second, third and fourth indents of paragraph 3, the competent authority shall within a reasonable period of receipt of the report:

- communicate the conclusions of its examination of the safety report to the operator, if necessary after requesting further information, or
- prohibit the bringing into use, or the continued use, of the establishment concerned, in accordance with the powers and procedures laid down in Article 17.

5. The safety report shall be periodically reviewed and where necessary updated:

- at least every five years,
- at any other time at the initiative of the operator or the request of the competent authority, where justified by new facts or to take account of new technical knowledge about safety matters, for example arising from analysis of accidents or, as far as possible, 'near misses', and of developments in knowledge concerning the assessment of hazards.

6. (a) Where it is demonstrated to the satisfaction of the competent authority that particular substances present at the establishment, or any part thereof, are in a state incapable of creating a major-accident hazard, then the Member State may, in accordance with the criteria referred to in subparagraph (b), limit the information required in safety reports to those matters which are relevant to the prevention of residual major-accident hazards and the limitation of their consequences for man and the environment.

(b) Before this Directive is brought into application, the Commission, acting in accordance with the procedure laid down in Article 16 of Directive 82/501/EEC, shall establish harmonized criteria for the decision by the competent authority that an establishment is in a state incapable of creating a major accident hazard within the meaning of subparagraph (a). Subparagraph (a) shall not be applicable until those criteria have been established.

(c) Member States shall ensure that the competent authority communicates a list of the establishments concerned to the Commission, giving reasons. The Commission shall forward the lists annually to the Committee referred to in Article 22.

Article 10

Modification of an installation, an establishment or a storage facility

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:

- reviews and where necessary revises the major-accident prevention policy, and the management systems and procedures referred to in Articles 7 and 9,
- reviews, and where necessary revises, the safety report and informs the competent authority referred to in Article 16 of the details of such revision in advance of such modification.

Article 11

Emergency plans

1. Member States shall ensure that, for all establishments to which Article 9 applies:

(a) the operator draws up an internal emergency plan for the measures to be taken inside the establishment,

- for new establishments, prior to commencing operation,
- for existing establishments not previously covered by Directive 82/501/EEC, three years from the date laid down in Article 24 (1),
- for other establishments, two years from the date laid down in Article 24 (1);

(b) the operator supplies to the competent authorities, to enable the latter to draw up external emergency plans, the necessary information within the following periods of time:

- for new establishments, prior to the start of operation,
- for existing establishments not previously covered by Directive 82/501/EEC, three years from the date laid down in Article 24 (1),
- for other establishments, two years from the date laid down in Article 24 (1);

(c) the authorities designated for that purpose by the Member State draw up an external emergency plan for the measures to be taken outside the establishment.

2. The emergency plans must be established with the objectives of:

- containing and controlling incidents so as to minimize the effects, and to limit damage to man, the environment and property,
- implementing the measures necessary to protect man and the environment from the effects of major accidents,
- communicating the necessary information to the public and to the services or authorities concerned in the area,
- providing for the restoration and clean-up of the environment following a major accident.

Emergency plans shall contain the information set out in Annex IV.

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 personnel employed inside the establishment and that the public is consulted on external emergency plans.

4. Member States shall ensure that internal and external emergency plans are reviewed, tested, and where necessary revised and updated by the operators and designated authorities at suitable intervals of no longer than three years. The review shall take into account changes occurring in the establishments concerned or within the emergency services concerned, new technical knowledge, and knowledge concerning the response to major accidents.

5. Member States shall ensure that emergency plans are put into effect without delay by the operator and, if necessary by the competent authority designated for this purpose:

- when a major accident occurs, or
- when an uncontrolled event occurs which by its nature could reasonably be expected to lead to a major accident.

6. The competent authority may decide, giving reasons for its decision, in view of the information contained in the safety report, that the requirement to produce an external emergency plan under paragraph 1 shall not apply.

Article 12

Land-use planning

1. Member States shall ensure that the objectives of preventing major accidents and limiting the consequences of such accidents are taken into account in their land-use policies and/or other relevant policies. They shall pursue those objectives through controls on:

- (a) the siting of new establishments,
- (b) modifications to existing establishments covered by Article 10,
- (c) new developments such as transport links, locations frequented by the public and residential areas in the vicinity of existing establishments, where the siting or developments are such as to increase the risk or consequences of a major accident.

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, areas of public use 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.

2. Member States shall ensure that all competent authorities and planning authorities responsible for decisions in this area set up appropriate consultation procedures to facilitate implementation of the policies established under paragraph 1. The procedures shall be designed to ensure that technical advice on the risks arising from the establishment is available, either on a case-by-case or on a generic basis, when decisions are taken.

Article 13

Information on safety measures

1. Member States shall ensure that information on safety measures and on the requisite behaviour in the event of an accident is supplied, without their having to request it, to persons liable to be affected by a major accident originating in an establishment covered by Article 9.

The information shall be reviewed every three years and, where necessary, repeated and updated, at least if there is any modification within the meaning of Article 10. It shall also be made permanently available to the public. The maximum period between the repetition of the information to the public shall, in any case, be no longer than five years.

Such information shall contain, at least, the information listed in Annex V.

2. Member States shall, with respect to the possibility of a major accident with transboundary effects originating in an establishment under Article 9, provide sufficient information to the potentially affected Member States so that all relevant provisions contained in Articles 11, 12 and this Article can be applied, where applicable, by the affected Member State.

3. 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.

4. Member States shall ensure that the safety report is made available to the public. The operator may ask the competent authority not to disclose to the public certain parts of the report, for reasons of industrial, commercial or personal confidentiality, public security or national defence. In such cases, on the approval of the competent authority, the operator shall supply to the authority, and make available to the public, an amended report excluding those matters.

5. Member States shall ensure that the public is able to give its opinion in the following cases:

- planning for new establishments covered by Article 9,
- modifications to existing establishments under Article 10, where such modifications are subject to obligations provided for in this Directive as to planning,
- developments around such existing establishments.

6. In the case of establishments subject to the provisions of Article 9, Member States shall ensure that the inventory of dangerous substances provided for in Article 9 (2) is made available to the public.

Article 14

Information to be supplied by the operator following a major accident

1. Member States shall ensure that, as soon as practicable following a major accident, the operator shall be required, using the most appropriate means:

(a) to inform the competent authorities;

(b) to provide them with the following information as soon as it becomes available:

- the circumstances of the accident,
- the dangerous substances involved,
- the data available for assessing the effects of the accident on man and the environment, and

- the emergency measures taken;

(c) to inform them of the steps envisaged:

- to alleviate the medium- and long-term effects of the accident,
- to prevent any recurrence of such an accident;

(d) to update the information provided if further investigation reveals additional facts which alter that information or the conclusions drawn.

2. Member States shall require the competent authority:

(a) to ensure that any urgent, medium- and long-term measures which may prove necessary are taken;

(b) to collect, by inspection, investigation or other appropriate means, the information necessary for a full analysis of the technical, organizational and managerial aspects of the major accident;

(c) to take appropriate action to ensure that the operator takes any necessary remedial measures; and

(d) to make recommendations on future preventive measures.

Article 15

Information to be supplied by the Member States to the Commission

1. For the purpose of prevention and mitigation of major accidents, Member States shall inform the Commission as soon as practicable of major accidents meeting the criteria of Annex VI which have occurred within their territory. They shall provide it with the following details:

(a) the Member State, the name and address of the authority responsible for the report;

(b) the date, time and place of the major accident, including the full name of the operator and the address of the establishment involved;

(c) a brief description of the circumstances of the accident, including the dangerous substances involved, and the immediate effects on man and the environment;

(d) a brief description of the emergency measures taken and of the immediate precautions necessary to prevent recurrence.

2. Member States shall, as soon as the information provided for in Article 14 is collected, inform the Commission of the result of their analysis and recommendations using a report form established and kept under review through the procedure referred to in Article 22.

Reporting of this information by Member States may be delayed only to allow for the completion of legal proceedings where such reporting is liable to affect those proceedings.

3. Member States shall inform the Commission of the name and address of any body which might have relevant information on major accidents and which is able to advise the competent authorities of other Member States which have to intervene in the event of such an accident.

Article 16

Competent authority

Without prejudice to the operator's responsibilities, Member States shall set up or appoint the competent authority or authorities responsible for carrying out the duties laid down in this Directive and, if necessary, bodies to assist the competent authority or authorities at technical level.

Article 17

Prohibition of use

1. Member States shall prohibit the use or bringing into use of any establishment, installation or storage facility, or any part thereof where the measures taken by the operator for the prevention and mitigation of major accidents are seriously deficient.

Member States may prohibit the use or bringing into use of any establishment, installation or storage facility, or any part thereof if the operator has not submitted the notification, reports or other information required by this Directive within the specified period.

2. Member States shall ensure that operators may appeal against a prohibition order by a competent authority under paragraph 1 to an appropriate body determined by national law and procedures.

Article 18

Inspections

1. Member States shall ensure that the competent authorities organize a system of inspections, or other measures of control appropriate to the type of establishment concerned. Those inspections or control measures shall not be dependent upon receipt of the safety report or any other report submitted. Such inspections or other control measures shall be sufficient for a planned and systematic examination of the systems being employed at the establishment, whether of a technical, organizational or managerial nature, so as to ensure in particular:

- that the operator can demonstrate that he has taken appropriate measures, in connection with the various activities involved in the establishment, to prevent major accidents,
- that the operator can demonstrate that he has provided appropriate means for limiting the consequences of major accidents, on site and off site,
- that the data and information contained in the safety report, or any other report submitted, adequately reflects the conditions in the establishment,
- that information has been supplied to the public pursuant to Article 13 (1).

2. The system of inspection specified in paragraph 1 shall comply with the following conditions:

(a) there shall be a programme of inspections for all establishments. Unless the competent authority has established a programme of inspections based upon a systematic appraisal of major-accident hazards of the particular establishment concerned, the programme shall entail at least one on-site inspection made by the competent authority every twelve months of each establishment covered by Article 9;

(b) following each inspection, a report shall be prepared by the competent authority;

(c) where necessary, every inspection carried out by the competent authority shall be followed up with the management of the establishment, within a reasonable period following the inspection.

3. The competent authority may require the operator to provide any additional information necessary to allow the authority fully to assess the possibility of a major accident and to determine the scope of possible increased probability and/or aggravation of major accidents, to permit the preparation of an external emergency plan, and to take substances into account which, due to their physical form, particular conditions or location, may require additional consideration.

Article 19

Information system and exchanges

1. Member States and the Commission shall exchange information on the experience acquired with regard to the prevention of major accidents and the limitation of their consequences. This information shall concern, in particular, the functioning of the measures provided for in this Directive.

2. The Commission shall set up and keep at the disposal of Member States a register and information system containing, in particular, details of the major accidents which have occurred within the territory of Member States, for the purpose of:

- (a) the rapid dissemination of the information supplied by Member States pursuant to Article 15 (1) among all competent authorities;
- (b) distribution to competent authorities of an analysis of the causes of major accidents and the lessons learned from them;
- (c) supply of information to competent authorities on preventive measures;
- (d) provision of information on organizations able to provide advice or relevant information on the occurrence, prevention and mitigation of major accidents.

The register and information system shall contain, at least:

- (a) the information supplied by Member States in compliance with Article 15 (1);
- (b) an analysis of the causes of the accidents;
- (c) the lessons learned from the accidents;
- (d) the preventive measures necessary to prevent a recurrence.

3. Without prejudice to Article 20, access to the register and information system shall be open to government departments of the Member States, industry or trade associations, trade unions, non-governmental organizations in the field of the protection of the environment and other international or research organizations working in the field.

4. Member States shall provide the Commission with a three-yearly report in accordance with the procedure laid down in Council Directive 91/692/EEC of 23 December 1991 standardizing and rationalizing reports on the implementation of certain Directives relating to the environment (9) for establishments covered by Articles 6 and 9. The Commission shall publish a summary of this information every three years.

Article 20

Confidentiality

1. Member States shall ensure, in the interests of transparency, that the competent authorities are required to make information received pursuant to this Directive available to any natural or legal person who so requests.

Information obtained by the competent authorities or the Commission may, where national provisions so require, be kept confidential if it calls into question:

- the confidentiality of the deliberations of the competent authorities and the Commission,

- the confidentiality of international relations and national defence,
- public security,
- the confidentiality of preliminary investigation proceedings or of current legal proceedings,
- commercial and industrial secrets, including intellectual property,
- personal data and/or files,
- data supplied by a third party if that party asks for them to be kept confidential.

2. This Directive shall not preclude the conclusion by a Member State of agreements with third countries on the exchange of information to which it is privy at internal level.

Article 21

Terms of reference of the Committee

The measures required to adapt the criteria referred to in Article 9 (6) (b) and Annexes II to VI to technical progress and to draw up the report form referred to in Article 15 (2) shall be adopted in accordance with the procedure laid down in Article 22.

Article 22

Committee

The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 23

Repeal of Directive 82/501/EEC

1. Directive 82/501/EEC shall be repealed 24 months after the entry into force of this Directive.

2. Notifications, emergency plans and information for the public presented or drawn up pursuant to Directive 82/501/EEC shall remain in force until such time as they are replaced under the corresponding provisions of this Directive.

Article 24

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 24 months after its entry into force. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the main provisions of domestic law which they adopt in the field governed by this Directive.

Article 25

Entry into force

This Directive shall enter into force on the 20th day following that of its publication in the Official Journal of the European Communities.

Article 26

This Directive is addressed to the Member States.

Done at Brussels, 9 December 1996.

For the Council

The President

B. HOWLIN

List of Annexes

Page

Annex I - Application of the Directive 24

Annex II - Minimum data and information to be considered in the safety report specified in Article 9 29

Annex III - Principles referred to in Article 7 and information referred to in Article 9 on the management system and the organization of the establishment with a view to the prevention of major accidents 30

Annex IV - Data and information to be included in the emergency plans specified under Article 11 31

Annex V - Items of information to be communicated to the public as provided for in Article 13 (1) 32

Annex VI - Criteria for the notification of an accident to the Commission as provided for in Article 15 (1) 33

(1) OJ No C 106, 14. 4. 1994, p. 4 and OJ No C 238, 13. 9. 1995, p. 4.

(2) OJ No C 295, 22. 10. 1994, p. 83.

(3) Opinion of the European Parliament of 16 February 1995 (OJ No C 56, 6. 3. 1995, p. 80), Council common position of 19 March 1996 (OJ No C 120, 24. 4. 1996, p. 20) and Decision of the European Parliament of 15 July 1996 (OJ No C 261, 9. 9. 1996, p. 24).

(4) OJ No L 230, 5. 8. 1982, p. 1. Directive as last amended by Directive 91/692/EEC (OJ No L 377, 31. 12. 1991, p. 48).

(5) OJ No C 112, 20. 12. 1973, p. 1.

OJ No C 139, 13. 6. 1977, p. 1.

OJ No C 46, 17. 2. 1983, p. 1.

OJ No C 70, 18. 3. 1987, p. 1.

OJ No C 138, 17. 5. 1993, p. 1.

(6) OJ No C 328, 7. 12. 1987, p. 3.

(7) OJ No C 138, 17. 5. 1993.

(8) OJ No L 183, 29. 6. 1989, p. 1.

(9) OJ No L 377, 31. 12. 1991, p. 48.

ANNEX I

APPLICATION OF THE DIRECTIVE

INTRODUCTION

1. This Annex applies to the presence of dangerous substances at any establishment within the meaning of Article 3 of this Directive and determines the application of the relevant Articles thereof.
2. Mixtures and preparations shall be treated in the same way as pure substances provided they remain within concentration limits set according to their properties under the relevant Directives given in Part 2, Note 1, or their latest adaptation to technical progress, unless a percentage composition or other description is specifically given.
3. The qualifying quantities set out below relate to each establishment.
4. The quantities to be considered for the application of the relevant Articles are the maximum quantities which are present or are likely to be present at any one time. Dangerous substances present at an establishment only in quantities equal to or less than 2 % of the relevant qualifying quantity shall be ignored for the purposes of calculating the total quantity present if their location within an establishment is such that it cannot act as an initiator of a major accident elsewhere on the site.
5. The rules given in Part 2, Note 4 governing the addition of dangerous substances, or categories of dangerous substances, shall apply where appropriate.

PART 1

Named substances

Where a substance or group of substances listed in Part 1 also falls within a category of Part 2, the qualifying quantities set out in Part 1 must be used.

>TABLE>

NOTES

1. Ammonium nitrate (350/2 500)

This applies to ammonium nitrate and ammonium nitrate compounds in which the nitrogen content as a result of the ammonium nitrate is more than 28 % by weight (compounds other than those referred to in Note 2) and to aqueous ammonium nitrate solutions in which the concentration of ammonium nitrate is more than 90 % by weight.

2. Ammonium nitrate (1 250/5 000)

This applies to simple ammonium-nitrate based fertilizers which comply with Directive 80/876/EEC and to composite fertilizers in which the nitrogen content as a result of the ammonium nitrate is more than 28 % in weight (a composite fertilizer contains ammonium nitrate with phosphate and/or potash).

1. Polychlorodibenzofurans and polychlorodibenzodioxins

The quantities of polychlorodibenzofurans and polychlorodibenzodioxins are calculated using the following factors:

>TABLE>

PART 2

Categories of substances and preparations not specifically named in Part 1

>TABLE>

NOTES

1. Substances and preparations are classified according to the following Directives (as amended) and their current adaptation to technical progress:

- Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (1),
- Council Directive 88/379/EEC of 7 June 1988 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations (2),
- Council Directive 78/631/EEC of 26 June 1978 on the approximation of the laws of the Member States relating to the classification, packaging and labelling of dangerous preparations (pesticides) (3).

In the case of substances and preparations which are not classified as dangerous according to any of the above Directives but which nevertheless are present, or are likely to be present, in an establishment and which possess or are likely to possess, under the conditions found at the establishment, equivalent properties in terms of major-accident potential, the procedures for provisional classification shall be followed according to the relevant Article of the appropriate Directive.

In the case of substances and preparations with properties giving rise to more than one classification, for the purposes of this Directive the lowest thresholds shall apply.

For the purposes of this Directive, a list providing information on substances and preparations shall be established, kept up to date and approved by the procedure set up under Article 22.

2. An 'explosive` means:

- (a) (i) a substance or preparation which creates the risk of an explosion by shock, friction, fire or other sources of ignition (risk phrase R 2),
- (ii) a pyrotechnic substance is a substance (or mixture of substances) designated to produce heat, light, sound, gas or smoke or a combination of such effects through non-detonating self-sustained exothermic chemical reactions, or
- (iii) an explosive or pyrotechnic substance or preparation contained in objects;
- (b) a substance or preparation which creates extreme risks of explosion by shock, friction, fire or other sources of ignition (risk phrase R 3).

3. 'Flammable`, 'highly flammable`, and 'extremely flammable` in categories 6, 7 and 8 mean:

(a) flammable liquids:

substances and preparations having a flash point equal to or greater than 21 °C and less than or equal to 55 °C (risk phrase R 10), supporting combustion;

(b) highly flammable liquids:

- 1. - substances and preparations which may become hot and finally catch fire in contact with air at ambient temperature without any input of energy (risk phrase R 17),
- substances which have a flash point lower than 55 °C and which remain liquid under pressure, where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards;

2. substances and preparations having a flash point lower than 21 °C and which are not extremely flammable (risk phrase R 11, second indent);

(c) extremely flammable gases and liquids:

1. liquid substances and preparations which have a flash point lower than 0 °C and the boiling point (or, in the case of a boiling range, the initial boiling point) of which at normal pressure is less than or equal to 35 °C (risk phrase R 12, first indent), and

2. gaseous substances and preparations which are flammable in contact with air at ambient temperature and pressure (risk phrase R 12, second indent), whether or not kept in the gaseous or liquid state under pressure, excluding liquefied extremely flammable gases (including LPG) and natural gas referred to in Part 1, and

3. liquid substances and preparations maintained at a temperature above their boiling point.

4. The addition of dangerous substances to determine the quantity present at an establishment shall be carried out according to the following rule:

if the sum

$>NUM>q1$

$>DEN>Q$

+ $>NUM>q2$

$>DEN>Q$

+ $>NUM>q3$

$>DEN>Q$

+ $>NUM>q4$

$>DEN>Q$

+ $>NUM>q5$

$>DEN>Q$

+ . . . > 1 where q_x = the quantity of dangerous substances x (or category of dangerous substances) falling within Parts 1 or 2 of this Annex,

Q = the relevant threshold quantity from Parts 1 or 2,

then the establishment is covered by the relevant requirements of this Directive.

This rule will apply for the following circumstances:

(a) for substances and preparations appearing in Part 1 at quantities less than their individual qualifying quantity present with substances having the same classification from Part 2, and the addition of substances and preparations with the same classification from Part 2;

(b) for the addition of categories 1, 2 and 9 present at an establishment together;

(c) for the addition of categories 3, 4, 5, 6, 7 a, 7 b and 8, present at an establishment together.

(1) OJ No 196, 16. 8. 1967, p. 1. Directive as last amended by Directive 93/105/EC (OJ No L 294, 30. 11. 1993, p. 21).

(2) OJ No L 187, 16. 7. 1988, p. 14.

(3) OJ No L 206, 29. 7. 1978, p. 13. Directive as last amended by Directive 92/32/EEC (OJ No L 154, 5. 6. 1992, p. 1).

ANNEX II

MINIMUM DATA AND INFORMATION TO BE CONSIDERED IN THE SAFETY REPORT SPECIFIED IN ARTICLE 9

I. Information on the management system and on the organization of the establishment with a view to major accident prevention

This information shall contain the elements given in Annex III.

II. Presentation of the environment of the establishment

A. description of the site and its environment including the geographical location, meteorological, geological, hydrographic conditions and, if necessary, its history;

B. identification of installations and other activities of the establishment which could present a major-accident hazard;

C. description of areas where a major accident may occur.

III. Description of the installation

A. description of the main activities and products of the parts of the establishment which are important from the point of view of safety, sources of major-accident risks and conditions under which such a major accident could happen, together with a description of proposed preventive measures;

B. description of processes, in particular the operating methods;

C. description of dangerous substances:

1. inventory of dangerous substances including:

- the identification of dangerous substances: chemical name, CAS number, name according to IUPAC nomenclature,

- the maximum quantity of dangerous substances present or likely to be present;

2. physical, chemical, toxicological characteristics and indication of the hazards, both immediate and delayed for man and the environment;

3. physical and chemical behaviour under normal conditions of use or under foreseeable accidental conditions.

IV. Identification and accidental risks analysis and prevention methods

A. detailed description of the possible major-accident scenarios and their probability or the conditions under which they occur including a summary of the events which may play a role in triggering each of these scenarios, the causes being internal or external to the installation;

B. assessment of the extent and severity of the consequences of identified major accidents;

C. description of technical parameters and equipment used for the safety of installations.

V. Measures of protection and intervention to limit the consequences of an accident

A. description of the equipment installed in the plant to limit the consequences of major accidents;

B. organization of alert and intervention;

C. description of mobilizable resources, internal or external;

D. summary of elements described in A, B, and C above necessary for drawing up the internal emergency plan prepared in compliance with Article 11.

ANNEX III

PRINCIPLES REFERRED TO IN ARTICLE 7 AND INFORMATION REFERRED TO IN ARTICLE 9 ON THE MANAGEMENT SYSTEM AND THE ORGANIZATION OF THE ESTABLISHMENT WITH A VIEW TO THE PREVENTION OF MAJOR ACCIDENTS

For the purpose of implementing the operator's major-accident prevention policy and safety management system account shall be taken of the following elements. The requirements laid down in the document referred to in Article 7 should be proportionate to the major-accident hazards presented by the establishment:

(a) the major accident prevention policy should be established in writing and should include the operator's overall aims and principles of action with respect to the control of major-accident hazards;

(b) the safety management system should include the part of the general management system which includes the organizational structure, responsibilities, practices, procedures,

processes and resources for determining and implementing the major-accident prevention policy;

(c) the following issues shall be addressed by the safety management system:

(i) organization and personnel - the roles and responsibilities of personnel involved in the management of major hazards at all levels in the organization. The identification of training needs of such personnel and the provision of the training so identified. The involvement of employees and, where appropriate, subcontractors;

(ii) identification and evaluation of major hazards - adoption and implementation of procedures for systematically identifying major hazards arising from normal and abnormal operation and the assessment of their likelihood and severity;

(iii) operational control - adoption and implementation of procedures and instructions for safe operation, including maintenance, of plant, processes, equipment and temporary stoppages;

(iv) management of change - adoption and implementation of procedures for planning modifications to, or the design of new installations, processes or storage facilities;

(v) planning for emergencies - adoption and implementation of procedures to identify foreseeable emergencies by systematic analysis and to prepare, test and review emergency plans to respond to such emergencies;

(vi) monitoring performance - adoption and implementation of procedures for the ongoing assessment of compliance with the objectives set by the operator's major-accident prevention policy and safety management system, and the mechanisms for investigation and taking corrective action in case of non-compliance. The procedures should cover the operator's system for reporting major accidents or near misses, particularly those involving failure of protective measures, and their investigation and follow-up on the basis of lessons learnt;

(vii) audit and review - adoption and implementation of procedures for periodic systematic assessment of the major-accident prevention policy and the effectiveness and suitability of the safety management system; the documented review of performance of the policy and safety management system and its updating by senior management.

ANNEX IV

DATA AND INFORMATION TO BE INCLUDED IN THE EMERGENCY PLANS SPECIFIED UNDER ARTICLE 11

1. Internal emergency plans

(a) Names or positions of persons authorized to set emergency procedures in motion and the person in charge of and coordinating the on-site mitigatory action.

(b) Name or position of the person with responsibility for liaising with the authority responsible for the external emergency plan.

(c) For foreseeable conditions or events which could be significant in bringing about a major accident, a description of the action which should be taken to control the conditions or events and to limit their consequences, including a description of the safety equipment and the resources available.

(d) Arrangements for limiting the risks to persons on site including how warnings are to be given and the actions persons are expected to take on receipt of a warning.

(e) Arrangements for providing early warning of the incident to the authority responsible for setting the external emergency plan in motion, the type of information which should be contained in an initial warning and the arrangements for the provision of more detailed information as it becomes available.

(f) Arrangements for training staff in the duties they will be expected to perform, and where necessary coordinating this with off-site emergency services.

(g) Arrangements for providing assistance with off-site mitigatory action.

2. External emergency plans

(a) Names or positions of persons authorized to set emergency procedures in motion and of persons authorized to take charge of and coordinate off-site action.

(b) Arrangements for receiving early warning of incidents, and alert and call-out procedures.

(c) Arrangements for coordinating resources necessary to implement the external emergency plan.

(d) Arrangements for providing assistance with on-site mitigatory action.

(e) Arrangements for off-site mitigatory action.

(f) Arrangements for providing the public with specific information relating to the accident and the behaviour which it should adopt.

(g) Arrangements for the provision of information to the emergency services of other Member States in the event of a major accident with possible transboundary consequences.

ANNEX V

ITEMS OF INFORMATION TO BE COMMUNICATED TO THE PUBLIC AS PROVIDED FOR IN ARTICLE 13 (1)

1. Name of operator and address of the establishment.

2. Identification, by position held, of the person giving the information.

3. Confirmation that the establishment is subject to the regulations and/or administrative provisions implementing this Directive and that the notification referred to in Article 6 (3), or the safety report referred to in Article 9 (1) has been submitted to the competent authority.

4. An explanation in simple terms of the activity or activities undertaken at the establishment.

5. The common names or, in the case of dangerous substances covered by Part 2 of Annex I, the generic names or the general danger classification of the substances and preparations involved at the establishment which could give rise to a major accident, with an indication of their principal dangerous characteristics.

6. General information relating to the nature of the major-accident hazards, including their potential effects on the population and the environment.

7. Adequate information on how the population concerned will be warned and kept informed in the event of a major accident.

8. Adequate information on the actions the population concerned should take, and on the behaviour they should adopt, in the event of a major accident.

9. Confirmation that the operator is required to make adequate arrangements on site, in particular liaison with the emergency services, to deal with major accidents and to minimize their effects.

10. A reference to the external emergency plan drawn up to cope with any off-site effects from an accident. This should include advice to cooperate with any instructions or requests from the emergency services at the time of an accident.

11. Details of where further relevant information can be obtained, subject to the requirements of confidentiality laid down in national legislation.

ANNEX VI

CRITERIA FOR THE NOTIFICATION OF AN ACCIDENT TO THE COMMISSION AS PROVIDED FOR IN ARTICLE 15 (1)

I. Any accident covered by paragraph 1 or having at least one of the consequences described in paragraphs 2, 3, 4 and 5 must be notified to the Commission.

1. Substances involved

Any fire or explosion or accidental discharge of a dangerous substance involving, a quantity of at least 5 % of the qualifying quantity laid down in column 3 of Annex I.

2. Injury to persons and damage to real estate

An accident directly involving a dangerous substance and giving rise to one of the following events:

- a death,
- six persons injured within the establishment and hospitalized for at least 24 hours,
- one person outside the establishment hospitalized for at least 24 hours,
- dwelling(s) outside the establishment damaged and unusable as a result of the accident,
- the evacuation or confinement of persons for more than 2 hours (persons × hours): the value is at least 500,
- the interruption of drinking water, electricity, gas or telephone services for more than 2 hours (persons × hours): the value is at least 1 000.

3. Immediate damage to the environment

- permanent or long-term damage to terrestrial habitats:
- 0,5 ha or more of a habitat of environmental or conservation importance protected by legislation,
- 10 or more hectares of more widespread habitat, including agricultural land,
- significant or long-term damage to freshwater and marine habitats (1*)- 10 km or more of river or canal,
- 1 ha or more of a lake or pond,
- 2 ha or more of delta,
- 2 ha or more of a coastline or open sea,
- significant damage to an aquifer or underground water (2*)
- 1 ha or more.

4. Damage to property

- damage to property in the establishment: at least ECU 2 million,
- damage to property outside the establishment: at least ECU 0,5 million.

5. Cross-border damage

Any accident directly involving a dangerous substance giving rise to effects outside the territory of the Member State concerned.

II. Accidents or 'near misses' which Member States regard as being of particular technical interest for preventing major accidents and limiting their consequences and which do not meet the quantitative criteria above should be notified to the Commission.

(1*) In assessing damage, reference could be made where appropriate to Directives 75/440/EEC, 76/464/EEC and Directives adopted for its application in relation to certain substances, namely, Directives 76/160/EEC, 78/659/EEC, 79/923/EEC, or to the Lethal Concentration (LC) for 50 % of the species representative of the environment affected as defined by Directive 92/32/EEC for the criterion 'dangerous for the environment'.