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Proceedings of the Workshop 'Seveso III Directive: Control of major-accident hazards involving dangerous substances'

Brussels, 13 April 2011

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DIRECTORATE GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY

ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY

Workshop
Seveso III Directive: Control of major-accident hazards involving dangerous substances
Brussels, 13 April 2011

Proceedings

Abstract

These proceedings summarise the presentations and discussions at the Workshop on the proposed Seveso III Directive, held on 13 April 2011. The aim of the workshop was to allow an exchange of views between the European Commission, MEPs and stakeholders. Topics for discussion included the impacts on the scope resulting from the alignment with the CLP Regulation, informational requirements and proposed obligatory inspection intervals.

The workshop was chaired by MEP János Áder, rapporteur for the Seveso III Directive.

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LIST OF ABBREVIATIONS

CEFIC	European Chemical Industry Council
CLP	Regulation (EC) No. 1272/2008 on classification, labelling and packing of (dangerous) substances and mixtures
CMR	carcinogenic, mutagenic, repro-toxic
EEB	European Environmental Bureau
GHS	Globally Harmonised System on chemical hazard classification
IPPC	Directive (EC) 2008/1 on Integrated Pollution Prevention and Control
PBT	persistent, bio-accumulating, toxic
REACH	Regulation (EC) 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals
SME	Small and Medium Enterprise

EXECUTIVE SUMMARY

A workshop was held on 13 April 2011 at the European Parliament in Brussels to discuss the proposal of the Commission for the Seveso III Directive (COM(2010)781). The proposal was published on 21 December 2010 and is currently (April 2011) passing through the ordinary legislative co-decision procedure.

The workshop was chaired by MEP János Áder, rapporteur on the Seveso III Directive. Mr Áder pointed out that there are three main areas of focus in the parliamentary discussion on which he wanted to hear the view of the workshop participants. The first issue he identified is possible changes in the scope of Seveso III as a result of the alignment to the CLP Regulation. He indicated that maintaining the same level of protection should be the guiding principle in this exercise. Secondly, he informed, the debate will address the issue of information to the public, public participation and access to justice. As a third issue he identified the topic of Delegated Acts.

During the first part of the workshop, Mrs Soledad Blanco, Director for Sustainable Resources Management, Industry & Air at the DG Environment, presented the major changes proposed under the review and the reasons why the European Commission saw the need to revise the Seveso II Directive. The proposed changes are aimed at an alignment with two other important pieces of European legislation: the CLP Regulation (1272/2008(EC)) which has an impact on the Seveso Directive in terms of the substances falling within its scope (as a result of the implementation of the Globally Harmonised System on chemical hazard classification), as well as the Aarhus Convention on public information. She admitted that an alignment with CLP might have effects on the Seveso Directive, namely on the number of substances and installations falling within its scope. She also stressed the new possibility of derogation, in particular the possibility of excluding specific substances and installations from the scope of the Seveso Directive if there are good reasons for such exclusions. Also, the Commission is aware of the additional costs that may arise from the new inspection requirements under the revised Directive; however, the additional costs of implementing the revised Directive are marginal compared to the costs incurred under the Seveso II Directive. According to Mrs Blanco the Commission is of the opinion that the benefit achieved by preventing damage from major industrial accidents outweighs the costs of prevention.

Mrs Katalin Garáné Nagy, the representative of the Hungarian Presidency, gave an update on the progress of the discussions conducted by the Working Party on the Environment. She stated that many points were still under discussion and that possible changes of the scope of the Directive and the new information and inspection requirements were identified as controversial.

Mr Wolfgang Gierke of the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, gave insights into the socio-economic context of the Directive in Germany.
The second part was dedicated to a debate between different stakeholders. The participants in the panel discussion were Mr Pawel Dadasiewicz (Chief Inspectorate for Environmental Protection in Poland) as representative from a competent authority, Mr Peter Schmelzer from CEFIC (European Chemical Industry Council), Mr Christian Schaible from the EEB (European Environment Bureau), Mr Marco Caldiroli from Medicina Democratica and Mrs Marianne Wenning from the DG Environment as representative for the European Commission.

The issues for debate were the three core changes of the proposed Directive: alignment with CLP and the subsequent impact on the scope of Seveso III, the new requirements for public information and the proposed obligatory inspection intervals.

Of these three topics, the change of the scope of the Seveso Directive through alignment with the CLP Regulation was the issue that was most intensely debated. Estimations of this change, in terms of the number of installations/establishments affected by Seveso III, varied widely – from assuming a slight decrease (Mrs Wenning, based on the impact assessment undertaken by the European Commission) up to a 30% increase (Mr Schmelzer, based on Belgian estimations). It was admitted by the representatives from both the European Commission and industry that the change would not only lead to new enterprises falling within the scope of the Seveso III Directive but also to enterprises falling out of scope of the Directive. Mr Schmelzer stressed that for SMEs newly falling within the scope of the Seveso III Directive this might cause an excessive administrative burden.

The NGO representatives criticized the fact that many CMR and PBT substances were missing from the list of regulated substances, despite the fact that they may pose a threat during industrial accidents. Mrs Wenning stated that the Seveso Directive dealt with substance properties that may cause these substances to be a major risk source during an accident. CMR substances and others are covered by the REACH Regulation and need not be addressed separately by the Seveso Directive.
In terms of the new information requirements, the industry representatives saw no need for more detailed information to be made available to the public. They would rather support better methods for the dissemination of emergency plans. On the other hand, both the NGOs and the Commission pointed out that the public had a right to know how operators in the vicinity dealt with their risks and that this information should be made available online.

The new obligatory intervals for inspections were also criticised both by industry and the competent authority for being too rigid. More flexible intervals in line with a risk-based approach and a preliminary safety report were considered to be more favourable. This was opposed by both the Commission and the NGOs for two reasons. On the one hand, inspections in the past were found to have often been too infrequent. On the other hand, a preliminary safety report may (according to this criticism) not consider the latest changes, or human errors which may arise during the operation of an installation. Still, the importance of preliminary safety plans was acknowledged by all participants.

The attending MEP and the audience were given the opportunity to ask questions of both the key note speakers after part one of the workshop and of the participants of the panel discussion during the second part.

MEPs Jacky Hénin and Sabine Wils, as well as other workshop participants, raised the question of transport, which is not covered by the Seveso Directive. As major accidents linked with the transport of hazardous substances show, transport must be identified as an important issue in the context of chemical safety. Mrs Wenning pointed out that transport was a topic covered by other pieces of legislation and that it is not the aim to produce a Directive where all conceivable issues were covered.

Mrs Wenning pursued this argument also in regard to the criticism raised over the list of substances in Annex I, mentioned by environmental organisations and MEP Wils, a criticism focused on the fact that many CMR and PBT substances were missing from Annex I.

Mr Wenning explained again that this issue and these substances were dealt with in a different regulation (REACH).

The issue of SMEs was raised by MEP Alajos Mészáros and some industrial representatives, as small enterprises may have economical difficulties in complying with the Seveso requirements. The European Commission emphasised that the proportion of SMEs falling within the scope of the Seveso Directive was relatively small. But, as Mrs Blanco pointed out, the directive aims at the size of the hazard, not the size of the enterprise. Still, it was made clear by Mrs Blanco that most SMEs would fall within the scope of lower tier establishments for the requirements are less strict.

The question raised by MEP Karl-Heinz Florenz regarding the implementation process and his concern over different levels of ambition between Member States was answered by Mrs Blanco by stating that all Member States had to fulfil the same requirements when transposing the Directive into national legislation. Mrs Blanco acknowledged although that there were different levels of implementation to be observed between the different MS.

In his concluding statement, MEP Áder pointed out the still very different opinions, especially as regards the number of establishments affected by the proposed modifications. He emphasised that from the meeting with the shadow rapporteurs, he had gained the impression that there was a consensus across all political parties that the safety level should not be lowered by the Seveso III Directive.

In technical terms, MEP Áder outlined a roadmap for the Seveso III decision-making process. In mid-June the ENVI Committee will address the relevant questions again. Proposed amendments can be handed in up to 23 June 2011. The vote in ENVI will take place in autumn. The plenary vote is currently scheduled for December.

WORKSHOP PROCEEDINGS

Opening Remarks

MEP Janos ÁDER, Rapporteur

In his opening remarks, MEP Janos Áder, Rapporteur on the Seveso III Directive, welcomed all participants of the Workshop, particularly the representatives of the European Commission. He also thanked Mr. Olaf Kopczyński from the Polish Permament representation. He expects them to ensure the continuity between the Hungarian and the Polish presidency on this matter, as he is anticipating a decision on the Seveso III Directive to be taken under the forthcoming Polish presidency.

Mr Áder informed that he had been assigned one and a half months ago with the task to prepare the Seveso III proposal. In this time, many meetings with colleagues, stakeholder representatives and members of the European Commission have been held to exchange ideas. Also, the first political discussion with the shadow rapporteurs on this matter has been held the day before the workshop.

Mr Áder outlined that the aim of the workshop was to give the different stakeholders the opportunity to express and to hear the various positions and to pool ideas. Also, he underlined that with this workshop, it was the intention to clarify some issues.
Mr Áder wished that the workshop would make clear what the outcomes of the present agreements have been, which issues have been clarified, but also which issues have arisen or are still outstanding as stumbling blocks of the proposed Directive.

Mr Áder pointed out that there are three main areas of focus in parliamentary discussion on which he wanted to hear the view of the workshop participants. The first issue he identified is the applicational scope of Seveso III. He emphasized that during the preparation work there were different opinions in this respect, with an expected change in the number of affected establishments, ranging from -2% up to +30%. He stated that under Seveso II already roughly 10,000 enterprises fall under the scope of the Directive. Given this significant difference in the expected impacts on scope, it is of crucial importance to carefully look at all the different figures and find the most probable answer (best forecast). However, maintaining the same level of protection shall be the guiding principle in this exercise. Secondly, he informed, the debate will address the issue of the general public. He put top debate whether a broad representation of the public should be involved in the discussion and how the right balance might be maintained under Seveso III. As a third issue he identified the topic of Delegated Acts.

Mr Áder asked the participants to bear in mind that this workshop shall not rediscuss REACH. He made it clear that the REACH-Directive has been adopted 4 years ago and therefore those issues shall not be put to debate when discussing Seveso III.

Introduction of the proposal by the European Commission

Mrs Soledad BLANCO, Director Sustainable Resources Management, Industry & Air, DG Environment, European Commission

Mrs Blanco provided an overview of the background and the major changes contained in the Seveso III Proposal, which is currently passing through legislative procedure at the EP and the European Council. She informed the participants that the Proposal had been approved by the European Commission at the end of 2010, accompanied by a thorough impact assessment which was made available to the public. At the moment, the Proposal was undergoing its first reading.

To give a historical background, Mrs Blanco explained that the first Seveso Directive dated back almost 30 years, namely to 1982, when it was adopted in the wake of a severe accident which occurred in the ICMESA plant in Seveso, Italy in 1976. The first major revision (i. e. the current version), referred to as Seveso II, was adopted in 1996 and was now, according to Mrs Blanco, a well established piece of legislation. She pointed out that so far, all modifications and revisions of the Seveso Directive had been based on lessons learned from other accidents. For the first time, the revision of the Seveso Directive was now intended to go beyond the established practice of addressing shortcomings detected not until after a new major incident had occurred.
She declared that the proposal was the result of a thorough review process that had started in 2008. The revision was mainly triggered by the need to align Seveso with the new CLP Regulation (Regulation on classification, labelling and packaging of dangerous substances and mixtures). Mrs Blanco explained that CLP was the Regulation implementing the new UN Globally Harmonized System on chemical hazard classification at European level.
Mrs Blanco added that, since the main provisions of the Directive had essentially remained unchanged since it was adopted in 1996, the European Commission had taken the opportunity to introduce several other modifications as well.

Mrs Blanco stated that she agreed with the commonly held viewpoint that the Directive had been instrumental in reducing major accidents in Europe and in limiting their effects. According to the information she provided, the number of establishments falling under the scope of Seveso had increased over the years while the number of accidents recorded in these plants in the last decade went down 10 %. Still, about 20 to 35 accidents are reported to the European Commission every year - still too many, according to Mrs Blanco.
Therefore, the European Commission wishes to further reduce the risks related to major accidents and to limit their impact by improving the impact of the Seveso Directive. Given the potentially very high costs of major accidents – in terms of human health, environment and in economic terms -, the proposed updating and improvement by the amendment should, according to Mrs Blanco, not only help the whole society to save money but also give an assurance to European citizens that the environment they live in can be better and safer.

Mrs Blanco emphasised once more that the main change needed was an alignment of Annex I (which defines the scope) with the new chemicals regulation system (CLP Regulation). She pointed out that this was not a completely straightforward exercise and that the European Commission had to consider various options with different impacts on the scope of the Directive.

The criterion upheld by the European Commission was to maintain the current high level of protection for humans and the environment while minimising any impact on the scope of the Directive, a balance which, as Mrs Blanco underlined, the European Commission was convinced could be achieved with the proposed amendment.

Mrs Blanco mentioned concerns about future changes in the classification of chemicals under CLP, which would directly affect the scope of Seveso III. She stated that it was for this reason that the European Commission had included a flexibility mechanism which made it possible to mitigate any unwanted effects. She admitted the need to have such a correction mechanism so as to be able to include or exclude substances of concern on the basis of whether or not they present a major accident hazard.

Mrs Blanco outlined several other elements that were proposed under Seveso III either as updates or to clarify existing provisions. She underlined the need for certain improvements e.g. better implementation, or for raising the protection level. She identified information and participation of the public as key provisions of the Directive with a clear improvement potential. She stressed that the public should be able at all times to access information on the internet on hazards as well as on how to act appropriately in the case of an accident. She explained that more detailed rules on public participation and provisions on access to justice had been proposed in order to protect the legitimate rights of citizens in matters concerning their safety. In short, she concluded, the European Commission was trying to bring Seveso more in line with the Aarhus convention.
Mrs Blanco furthermore underlined the importance of strengthening the standards for inspections, especially concerning their frequency. She claimed that inspections were fundamental to the effective implementation of the rules.

Regarding the other changes in the proposed amendment, she explained that these were modifications aimed at the general improvement of clarity and consistency in the text.
Mrs Blanco closed by explaining that the European Commission proposed that the new Directive should apply as of 1 June 2015 (i.e. the date of CLP entering fully into force). She believed that Member States would thus have enough time to adopt the new legislation, which would also give Seveso operators the legal security to plan ahead accordingly.

The position of the EU Presidency

Mrs Katalin GARÁNÉ NAGY, Counsellor-Environment, Permanent Representation of Hungary in Brussels

Mrs Garáné gave in her presentation a short snapshot of the current negotiations on Seveso III in the Council's Working Party on the Environment. She started by giving a short overview of the main environmental priorities of the Hungarian Presidency amongst which Seveso III is the only new Directive to be adopted under the Hungarian Presidency.

Mrs Garáné explained that the debate in the WPE was still just at the beginning of a longer process. Therefore she stressed that the information she would give represented only preliminary views.
As already underlined by Mrs Blanco, Mrs Garáné pointed out that the main rationale behind the revision of the Seveso Directive was to reach better alignment with the CLP Regulation. She identified this aspect as the most important one and also as the most debated issue of the revised Directive, since it had a direct effect on the scope of the Directive and the number of affected establishments.

She stated that the Council considered it very important that there was a correction mechanism to provide for possible derogations and that Annex I was adapted. She explained that in the European Commission's Proposal, the correction mechanism - as foreseen in Article 4 - was intended to be implemented by delegated acts.

Also, Mrs Garáné underlined that the European Commission needed qualitative information on the actual implementation process. She thus set out to explain the new required information systems. She also addressed the alignment of the proposed Directive with other pieces of legislation that have entered into force since Seveso II (namely the Aarhus Convention and the Industrial Emissions Directive).

Mrs Garáné then described the progress of the roadmap for the decision process so far. She referred to the Seveso Directive as one of the five priorities of the Hungarian presidency. She explained that negotiations had therefore started very early, only two weeks after the release of the proposal which had been just before Christmas.
The first meeting of the Council on Seveso III was held on 17 January 2011 with a first general debate on the proposed Directive and the accompanying impact assessment. Mrs Garáné admitted that most Member States, due to the short notice, had not even formed a preliminary view at that stage.
Mrs Garáné explained that a detailed examination between the MS was ongoing: Issues like scope and derogation mechanisms, public involvement and information systems, inspections and other aspects had been discussed in a first round. The first round was now finished and a first proposal by the presidency had to be submitted by 8 April. Mrs Garáné made it clear that the changes submitted were, though numerous, either only editorial (clarifying the text) or else not controversial in any way. She explained that the controversial parts on all major issues were still lying ahead and that it was planned to tackle them in the second half of the year. Still, she announced that some points of reference might already be given in the progress report intended to be presented to the Council in June.

Mrs Garáné then gave an overview of the main issues identified by the Council. Again she stressed that the views expressed were still preliminary. As indicated by Mr Áder before, it was also Mrs Garáné's impression that the scope of the new Directive was the most controversial issue which had already been the topic of a lot of discussions in the Council. She stated that as yet, one could not conclude whether the Council had formed an opinion. Still, Mrs Garáné stated that the only conclusion one could safely draw was that there was a consensus among the MS that the decision about the scope of the new Directive should not be made by a delegated act. Also, she said that several MS had expressed concern about categories and certain named substances and that the rules for derogations had also been criticised. She therefore concluded that it was the general intention of the WPE that decisions about both Annex I and VII should be made in a co-decision procedure.

As regards the issues of a required information system and public participation, Mrs Garáné boldly stated that these proposed changes were not well received. She added that the major concern was that the Council still needed to have more detailed information on what exactly the link with the Aarhus convention was supposed to be. Also, she said that the subject of confidentiality was an issue for the Council. She concluded that due to these controversies, it was likely that the debate on the articles concerned with information and public participation would not be completed during the Hungarian presidency.

Regarding the subject of inspection, Mrs Garáné reported that several MS wanted tailor-made solutions and that the required measures were regarded as being too much of a burden for the authorities concerned. She also indicated that the emergency plans for neighbouring Seveso establishments were not considered to be realistic.

Mrs Garáné closed by emphasising that most MS thought that the current Seveso Directive worked well and that the new text should therefore remain close to the current version.

The socio-economic context

Mr Wolfgang GIERKE, Head of "Plant Safety", Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (Germany)

Mr Gierke opened his statement by telling the audience that when he was asked to present his insights into the socio-economic context, he – as a member of one of the competent authorities - found it quite hard to deal with the topic. Still, he expressed his hope that the information he was going to provide would be considered as interesting by the audience.

He summarized again that Seveso dealt with hazards originating from industrial activities. Mr Gierke gave a retrospective view on the subject of industrial hazards, which is not a new topic. He explained that from the start of industrialization at the beginning of the 19th century it had been a well known fact that industrial activities may cause hazards. Mr Gierke illustrated that, while safety measures and legislation had at first concentrated on the protection of the human health, the protection of the environment came into the focus of legislation only after World War II.

Mr Gierke underlined that Seveso had been accompanied, or triggered, by major industrial accidents since the very beginning. He considered it thus quite unusual that the current revision was not triggered by an industrial accident but by the need to align the Directive with the CLP Regulation.

To illustrate the situation in Germany, he provided several figures to illustrate the impact of the Seveso Directive in his home country. Mr Gierke explained that in Germany there were 2100 enterprises falling under the scope of the Seveso Directive, approximately 21% of all European Seveso establishments. These establishments, Mr Gierke added, were quite unevenly spread across the country, with roughly a quarter of all German Seveso establishments in the highly industrialized North Rhine-Westphalia and only about 1% in smaller Länder like the Saarland.

Mr Gierke pointed out that the industry sector by far mostly affected by Seveso was the chemical industry, which accounted for one third or up to 50% of the German Seveso establishments (depending on the source of information). Also, he underlined that the chemical industry was the fourth largest branch in Germany, employing more than 415,000 persons and creating an estimated 380,000 additional jobs for its suppliers. He also stated that, while the big companies attracted most of the attention, it had to be considered that 90% of the companies in this sector had to be ranked among the group of SMEs with less than 500 employees. He made it clear that changes in European legislation cause special problems for in area.

Mr Gierke continued that while the industry was obliged to meet requirements by installing appropriate safety measures, it was the task of the authorities to control and monitor whether the requirements were fulfilled by the industry. To put these tasks into legislation was, according to the explanation provided by Mr Gierke, quite a laborious task for a country made up of federal states like Germany. He illustrated this by explaining that 35 statutory rules had been necessary to translate Seveso II into federal law. He expected that Seveso III would need about as many.

Mr Gierke mentioned another problem which he considered to be common to all affected authorities, namely that most authorities were confronted with an increasing number of tasks while available resources were decreasing. He urged that it should be borne in mind that accepting new tasks would inevitably be at the expense of other tasks.

Mr Gierke concluded his statement by giving an insight into the efficiency of Seveso over the past few years. Since it was not possible to evaluate the number of accidents prevented, he proposed to look at the numbers of accidents reported from Seveso enterprises. According to his interpretation of the figures on major accidents and near misses during the last few years no visible trend could be discerned. The total number of accidents and near misses had remained fairly constant (at approx. 20) over the last 11 years. He also added that there had been no fatalities for many years which had occurred outside industrial premises and been linked with industrial accidents. Mr Gierke concluded that the situation in Germany was quite good but that even so, improvements were still possible.

Questions and answers

Q: Karl Heinz Florenz
As MEP, Mr Florenz stated that he had followed the history of the development of many Directives. He saw that a review process was going on for many Directives. Mr Florenz thus wanted to raise the question how the implementation of the old Directive worked. He said that the motive for his question was that as rapporteur for the WEEE Directive (Directive on Waste Electrical and Electronic Equipment) he had observed major deficits in the implementation process throughout Europe.
MEP Florenz wanted to know whether one could say for Seveso that all MS were equally ambitious. While he admitted that it was obvious that compliance would not be identical in all MS and that the new candidates might need more time to comply, he emphasized that there should be no serious differences between the MS – differences as he had already observed between very ambitious MS like Germany and Austria and others (with little ambition) . He wanted to hear the European Commission's estimation as to how the implementation would work for Seveso III.

A: Blanco
Although Mrs Blanco agreed that the level and quality of implementation varied between MS, she argued that the requirements for the implementation process were the same as for any other European Directive. She explained that after a certain transition period all Member States had to notify the European Commission which would then check whether the transposition into national law fulfilled the requirements and objectives of the Directive.

She underlined that though differences between MS might arise from national law, it was essential for this examination performed by the European Commission that all objectives and requirements of the Directive were transposed properly into national law. She agreed that national mechanisms might vary but at the same time made it very clear that the same implementation standards applied for all MS.

Q: Jacky Hénin
MEP Hénin raised the topic of transportation. He wanted to know whether the cited decrease of 10% in the number of accidents also took transport accidents into account. MEP Hénin indicated that trucks were hauling lots of hazardous substances about, even on the industrial premises themselves, with the (according to his knowledge) sometimes (apparent) aim to circumvent the Seveso Directive.

A: Blanco
Mrs Blanco underlined the fact that the Seveso Directive applied only to installations insofar as the amount of substances stored and processed was concerned. She emphasised that for transportation there were other applicable regulations on different levels (European, national, regional and local levels).

Q: Alajos Mészáros
MEP Mészáros asked how SMEs were taken into account in the Seveso Directive as he believed that large scale companies were more likely to cause major incidents than small SMEs; and that they were also able to pay much higher penalties. He wanted to know whether there were any distinctions between larger and smaller companies and if there were any concessions or extra protection measures for SMEs.

A: Blanco
Mrs Blanco declared once more that the European Commission had aimed at minimizing the impact on the scope of the Directive while maintaining or even raising the level of protection. She informed that at this stage around 10,000 establishments were covered by Seveso II and that according to the impact assessment there would be very little change with respect to the scope of the revised Directive (an estimated change of ca. -2% meaning about 180 establishments). She stated that the conclusion of the impact assessment with regard to this issue was that the new Seveso III Directive would not change the number of SMEs affected.

She made it clear, though, that if a company was covered by the Seveso Directive this was due to the fact that it held a number of hazardous substances in an amount that justified such protective measures. In her opinion, if there were reasons for an SME to be included in the Seveso Directive the SME had to be subjected to the same rules, namely those aiming at the protection of nature and the human life. Mrs Blanco concluded that it was logical that the number of SMEs falling under the scope of the Seveso Directive would be smaller than that of the larger companies but that there was no justification why less strict regulations should apply to a smaller enterprise to prevent major accidents. But all in all there are clearly much less smaller companies affected by the legislation than big companies.

A: Garáné
Mrs Garáné added that those SMEs that stored or handled dangerous substances above the Seveso threshold were not very numerous. She also explained that two groups of establishments were foreseen (lower and upper tier) and while it was not a general rule that all SMEs concerned would be classified as lower tier establishments, that fact was that most of the SMEs would. With regard to these SMEs she stressed that less strict requirements applied. The distinction between the lower and upper tier establishments has been made in the old legislation and will be kept in the revision as well.

A: Gierke
Mr Gierke closed the issue by underlining that it was not appropriate to assume automatically that small enterprises meant small risk. Still, he indicated that both under Seveso II and in the current draft there were approaches to drawing distinctions between smaller and larger companies. He pointed out that the aim of Seveso was to reduce the danger potential and that it would thus have to be structured according to this danger potential rather than according to the size of the company.

ROUND TABLE ON TECHNICAL ASPECTS

Background

Alignment of the Seveso III Directive with the CLP Regulation (EC 1272/2008)

The European Commission proposed a revision of the Seveso II Directive (96/82/EC) mainly due to the entry into force of Regulation No. 1272/2008 on classification, labelling and packaging of dangerous substances and mixtures (CLP Regulation). By this Regulation, the Directives on Dangerous Substances (67/548/EEC) and Dangerous Preparations (1999/45/EC) are amended and will be repealed (by June 2015), introducing the Globally Harmonised System (GHS) in the European Union. The new classification system is more differentiated in regard to hazard categories and more specific hazard classes. A simple transformation of classifications from the old into the new system is often, but not always possible. This is especially true for mixtures – justifying a six year long transition phase.

The new classification system is reflected in Annex I (list of dangerous substances) of the proposed Seveso III Directive. Like in Seveso II, Annex I distinguishes between named substances (with individual threshold quantities) and substances and mixtures covered by categories. Part I on the named substances remains mainly unchanged, although six new substances and substance groups are included1. Part II on substances and mixtures by category is now structured according to the new system. Threshold levels are, where applicable, in accordance with the corresponding old category, or have been adapted proportionately to those that apply to the old categories where new hazard classes are introduced.

One main concern identified by the European Commission regarding the application of the new classification is that substances and mixtures might automatically be included in or excluded from the Directive, irrespective of whether they may or may not present a major accident hazard. To deal with this concern, the European Commission has introduced the new Article 4 in the proposed Directive, providing a correction mechanism for such derogations both on substance level and on the level of individual establishments.

Derogations on substance level are to be corrected by:

- Introduction of a third part in Annex I, covering substances and mixtures that shall be excluded from the Directive (conditions and process for such an exclusion are given in Article 4(1) and (2)).
- Possibility of including dangerous substances that, although not covered through their hazard class, may present a major accident hazard, by listing them in the "named substances" part of Annex I.

On the level of individual establishments, the Member States may apply for the exclusion of certain establishments by giving a reason why the establishment concerned is considered incapable of creating a major accident. Also, several types of establishments are excluded from the Directive in Article 2(2) as they are or will be covered by other EU regulations, e.g. (offshore) exploitation of minerals including hydrocarbons, waste landfill sites etc.

[1] anhydrous ammonia, boron trifluoride, hydrogen sulphide – all three previously covered by their hazard category arsenic pentoxide (acid and salts), arsenic trioxide (acid and salts), heavy fuel oils

Public information, participation and access to justice

According to the European Commission, it is the main goal of the proposed Directive to improve the level and quality of information to the public. Relevant data should be collected, updated, shared and made available in an efficient and streamlined way. As a result, the provisions of the Directive will be brought more into line with the Aarhus Convention on access to information. Operators should exchange appropriate information and inform the public, including neighbouring establishments that could be affected. They should provide information in an active way, without having the public to submit a request, and without precluding other forms of dissemination. Information should also be made available permanently and kept up to date on the internet and include basic information on all establishments (name, address and activities). Information on establishments and major accidents is currently held by the European Commission in the so-called Seveso Plants Information Retrieval System (SPIRS). This database shall be made open to the public and used for the purposes of reporting on implementation by Member States. This sharing of information will help to ensure that the public has the necessary information and allow operators and competent authorities to draw lessons from the best practices of others.

To be in line with the principles of the relevant provisions of the Aarhus Convention the European Commission foresees in the proposed Directive that the public should be able to give its opinion in certain cases relating to land-use planning, modifications to existing establishments, external emergency plans, etc.
Member States should ensure that the public concerned, including interested environmental NGOs, have access to administrative or judicial review to challenge any acts or omissions that could breach their rights in relation to access to information.

Inspections

The requirements in relation to inspections in the proposed Directive are largely based on Recommendation 2001/331/EEC providing for minimum criteria for environmental inspections in the Member States and the Industrial Emissions Directive (2010/75/EU).
The European Commission underlines the importance of making available sufficient resources for inspections, and the need to encourage exchange of information, for example at Union level through the current Mutual Joint Visits Programme for inspections.

Member States shall ensure that the competent authorities organize a system of inspections which shall cover all establishments. Based on an inspections plan the competent authority shall regularly draw up programmes for routine inspections including the frequency of site visits for different types of establishments. The period between two site visits shall not exceed one year for upper-tier establishments and three years for lower-tier establishments. 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.

Discussion

The participants of the panel discussion were Mr Pawel Dadasiewicz as representative of the Polish Competent Authority, Mr Peter Schmelzer from CEFIC (European Chemical Industry Council), Mr Christian Schaible from EEB (European Environment Bureau), Mr Marco Caldiroli from Medicina Democratica and Mrs Marianne Wenning from DG Environment, Head of Unit "Industrial Emission, Air Quality & Noise", as representative of the European Commission.

Alignment of the Seveso III Directive with the CLP Regulation (EC 1272/2008)

Dadasiewicz:

As head of the major accident prevention department of the Chief Inspectorate for Environmental Protection (GIOS), Mr Dadasiewicz represents one of the two Polish Competent Authorities that deal with the implementation of the Seveso Directive (the other being the state fire service). He identified the alignment with the CLP Regulation as the most crucial element of the proposed Directive. In his opinion, this alignment was neither a simple task nor a simple transformation of categories. He saw that it needed different approaches which must be very well analysed. He concluded that there might be some establishments that would now fall under the scope of Seveso III while others might fall out. According to Mr Dadasiewicz, this was an issue that Poland was considering very closely.

He acknowledged that the change in classification might be reasonable but that any impact on the scope of the directive needed to be well analysed.

Schmelzer:

Mr Schmelzer made it clear in his opening statement that the chemical industry was committed to advancing process and plant safety. Also, he declared that CEFIC was in favour of GHS because of the expected long-term benefits – although, he stressed, any changes would make tremendous investments necessary to cope with new administration. For him it was important to show that GHS and CLP required new administration since - although the substances did not change - the administrative umbrella would be new. He explained that GHS was setting new thresholds for new categories and therefore demanded additional testing. This, he concluded, would create additional costs and efforts for the industry.

Mr Schmelzer declared that it was the wish of the industry that Seveso III would not result in changes of scope.

He pointed out that Europe was in a leading position in process and plant safety, partly thanks to Seveso. He expressed his wish to strengthen this position but emphasised that the economic consequences should not be forgotten. In terms of global competitiveness he urged that the costs for the industry should also be considered.

He therefore proposed an alteration which should enable the industry to be more competitive globally as well as ensure the safety level. CEFIC would like to limit – or reduce - the number of substances to be included in the new Directive, especially those that are unlikely to be a source for major hazards - like for instance substances categorized as toxic and listed in Category 3 (exposure routes inhalation, oral or dermal).

He also stressed that the direct conversion from CLP to Seveso and the derogation mechanisms executed via delegated act caused a legal uncertainty for everybody involved. It was therefore the wish of CEFIC that no delegated acts should apply to Annex I.

Schaible:

Mr Schaible acknowledged that there had been a decrease of approx. 10% in reported accidents since the adoption of the Seveso Directive 30 years ago. But he made his position clear by emphasising that he did not believe that this was the real picture in Europe. He explained that not all major accidents had been entered into the database since what happened outside the scope of Seveso, that also involves hazardous substances, was not registered although it might be a major accident. He illustrated his statement by giving the example of several recent tank explosions in Italy and pipelines which had caused major damage but were not considered to be Seveso relevant. When looking at all industrial accidents, he found that the level was more or less stable with an average of 30 major incidents per year - so for Mr Schaible there were no obvious signs as to whether Seveso helped to prevent major industrial accidents.

Regarding the scope, he pointed out that under most of the options considered in the Impact Assessment, more establishments would fall out of the scope of the new Directive than new ones being included. He saw only one option (which also included toxicity Cat. 3 - oral exposure) which would involve a slight increase in the number of establishments affected by the new Directive from 104 establishments in the current proposal to 128 additional establishments. That would mean an increase in +0,3%. He therefore concluded that with Seveso III a constant level of protection would not be maintained.

Mr Schaible also criticised that a clear link to REACH was missing. He stated that PBT substances (persistent, bioaccumulative, toxic) were completely left out of the picture, and that only 17 carcinogenic and no mutagenic or repro-toxic substances were considered. The question about those substances would be asked by concerned workers because they have to deal with those chemicals every day. He wondered why this was the case and stated that for him something was missing in Annex I.

Also, Mr Schaible expressed his doubts about the origins of some threshold levels which seemed - to him - to have been fixed politically. By way of example he cited the threshold level for dioxins of 1 kg - which is not realistic and can therefore not be expected in reality on industrial premises.

Caldiroli:

Mr Caldiroli stated that his organisation was generally in favour of an extension of the scope of the Directive in order to strengthen the culture of security and guarantee a high level of protection for workers and concerned citizens.

First and foremost he underlined that according to the definition of major accidents delayed health effects and environmental hazards had to be considered as well and that therefore e.g. PBT and CMR substances should be included from his point of view. As far as he could make out, only some carcinogenic substances were included in the scope of the new Directive while others were not, e.g. due to their low acute toxicity. Mr Caldiroli mentioned several examples.

Mr Caldiroli stressed that this aspect needed to be considered with regard to possible derogations.

Mr Caldiroli also put forward the problem of the transport of hazardous substances, which he illustrated by citing railway accidents in Italy in the recent past, especially the Viareggio accident in June 2009 which caused 32 casualties. Those injuries are not included in the statistics. Therefore he expressed the wish of Medicina Democratica to consider this problem in the Seveso context.

Wenning:

Mrs Wenning expressed her hope that the proposed Directive would be regarded as effective solution, stating that this was how the European Commission felt about it. She acknowledged that there were still several details that needed to be worked out.

Mrs Wenning stated that the European Commission was convinced that with the proposed Directive it was on the right track to find a compromise between the interests of the industry and NGOs. She made it clear that the CLP alignment was a necessity and that there was no way around it.

Mrs Wenning underlined the fact that it was the intention of the European Commission that all substances which were in the same harmonised hazard class should be treated in the same way under the Seveso Directive. She explained that the European Commission had considered all exposure routes that were relevant to major accident scenarios and that each possible route had to be taken into account without any differentiation and treated in a harmonised way. She expressed the hope that the proposed Directive would allow this. To give an example, she stated that substances –listed as toxic via oral exposure in Category 3 were not regarded as a major hazard source and therefore not included in Annex I.

Mrs Wenning stressed the need to find a "fair" way to implement CLP. Thus transformation was not straightforward – although it proved to be even more difficult than the European Commission had expected it to be. She informed the participants that there were several different ways to tackle the transformation into CLP which had been discussed in working groups. However, some of the discussed options were not considered in the final impact assessment. With the outcome of the impact assessment, the European Commission was convinced that an efficient way to assure the alignment with CLP had been found. According to the estimation of the European Commission, there were no significant changes with regard to coverage, costs and protection levels when looking at Seveso II and III.

Mrs Wenning also wished to raise some counter-arguments in response to CEFIC whose figures on a predicted increase of affected establishments were claimed to have largely been derived from the European Commission's estimations. Since Mrs Wenning was convinced of the quality and thoroughness of the European Commission's calculations, which predicted a slight decrease in the total number of affected establishments, she believed that the CEFIC figures were in some respects based on incorrect assumptions. She defended the European Commission's calculation, which predicts a slight decrease by 2%, by showing that while there were some establishments that would be newly affected by the Seveso III Directive (an estimated 240 newly under the directive) there were even more that would fall out of the scope of the new Directive (an estimated 440-480). That leaves 180 establishments covered and that is the minus 2%.

She stated that the CEFIC information had been provided to the European Commission only at the very last minute and that, therefore, the European Commission had not had the time to analyse it in detail. All she could say was that the EU Commission found that some of the assumptions which formed the baseline of the proposed CEFIC changes were only very rough estimates. She explained that the European Commission had analysed all individual substances that ought to be included on a very detailed level. She also stressed that the sheer number of substances had no direct implication as not all of the substances were relevant for Seveso. She thinks that only 50% of the substances will be Seveso relevant and believed that regarding this issue, the estimations provided by the chemical industry did not deviate all that much from those of the European Commission. The Industry would find 1-2% increase rather than 10-20% increase. So the difference between the estimation of the EC and the estimation of the industry would only be 5%.

Mrs Wenning admitted that it was true that it was possible and there is the potential that more substances might fall under the scope of Seveso, but she wanted to remind the audience that this was not due to Seveso but to the way how the REACH and CLP systems had been designed. She pointed out that it was not the aim to modify or rectify CLP through the Seveso Directive. She therefore explained to the industry that, if they thought that the categorisation was wrong, they would have to go back to the beginning and the source (REACH, CLP).

To conclude she once more mentioned the possibility of the derogation clause, which allows for the inclusion or exclusion of substances if there is a good reason. There is flexibility but she stressed that we shouldn't address what belongs to another directive under the Seveso Directive.

Public information, participation and access to justice

Dadasiewicz:

Mr Dadasiewicz declared that under the new provisions MS needed to ensure that information on potential hazards and relevant consequences had to be permanently available to all those interested or possibly affected by consequences of those accidents. He stressed that in his opinion this should be done in a rational way. He pointed out that, if such information on safety measures was not disseminated in the proper way, this might even increase anxiousness and thus lead to social unrest.

Schmelzer:

Mr Schmelzer pointed out that some of the details in the proposed Seveso amendment were even more specific than in the Aarhus Convention. He said that it was thus the wish of CEFIC to limit the requirements on public information to the Aarhus Convention, and their conviction that there was no need to add new details to Seveso.

Also, Mr Schmelzer wanted to remind the audience that the new Directive was about major hazard incidents. In his opinion the most important information and thus the essential element of the policy directive was that the public should be well informed and prepared so that they knew what to do in the case of a major accident. He stated that this was already part of the Seveso Directive and while the methods might be improved there was no need to provide the public with more detailed information.

Mr Schmelzer stated that detailed information on e.g. inspection might be misinterpreted by the public and could be very distracting from the essential information that the public needs to be prepared. He expressed the industry's concern that this effect might even reduce the preparedness of the population and so CEFIC would like to take this part out of the proposal.

Schaible:

Mr Schaible provided a quote from an anecdote, namely the idea (which had been brought up in the former GDR) of dealing with terrorist attacks by erasing high-risk installations from the map. He saw that this was one way of dealing with risks, by blacking them out completely. Still, he felt that it was a better option to deal with risks by enabling enforcement authorities, neighbours and other stakeholders to have access to information on risk prevention and to see how operators dealt with risks. For him this was a key benefit of exchanging information.

Mr Schaible was well aware that problems might arise for a company where widespread shortcomings were discovered during inspection and disseminated widely. Still, he pointed out that IPPC already demanded the publication of inspection reports four months after the inspection. He believed that maybe there had to be a compromise regarding appropriate periods for taking certain measurements and publishing relevant information. Still, he stated that it was important to know what the problems were and what the operator was committed to do to avoid the risk, and had done, to cope with them.

Caldiroli:

Mr Caldiroli stated that Medica Democratica was embracing the idea of a broader public access to information on possible risks, on the content of risk assessment and preventive measures. He even hoped for an extension of Article 19 with regard to the operator's communication in cases of major accidents and the measures enacted or recommended by the Competent Authorities.

Wenning:

Mrs Wenning addressed the issue of public information by first citing a report of the last year on the implementation of Seveso II. Here, although not all the information from the MS was coherent, it was found that in around 80% of the cases, the public concerned had received information as foreseen on the neighbouring Seveso establishments. Although she admitted that this was a good result, it still meant that 20% had not received the information. Also, she underlined once more the fact that Seveso was concerned with major industrial accidents which might affect thousands of people. So, to improve this matter, she explained that the new information requirements proposed by the European Commission demanded only that information which should already be available anyway should be made available by ways and means which were more appropriate for the 21st century. So she stated that all materials that companies have to make available anyway like leaflets and booklets should also be made available in the internet and the data should be updated regularly.

She also underlined the positive aspects of having up-to-date data at the right time, which was not possible when using the old "conservative" way of disseminating information.

She made it clear that not all the data – especially not all inspection data – needed to be put in the internet database. But it was important to her that the public must be able to see what actions had to be taken. So in case there would be a shortcoming the public should be informed and the rectification could be publicly verified.

Also, as there were some discussions on the costs, Mrs Wenning pointed out that the European Commission did not believe that considerable extra costs would be needed. She cited figures of roughly 1 million EUR which would be needed to set up the database and only very low maintenance costs. She therefore considered the proposed changes to be very reasonable.

Inspections

Dadasiewicz:

Mr Dadasiewicz's argument was in line with his views on information requirements, namely that strengthening the inspection scheme - was on the whole a good idea but that it should be carried out in a rational way. He stated that it was important that the operators had enough time to comply with the provisions.

Schmelzer:

Mr Schmelzer demanded more flexibility of the inspection scheme. He stated that instead of a strict one-year rhythm for inspecting the facilities it would be better to follow a risk-oriented approach which was more openly designed. He felt that a strict scheme placed a burden on inspectors, authorities and the industry.

When speaking of a risk-based approach, Mr Schmelzer wanted to consider not only the risk level of the establishments but also already made efforts with regard to security. He argued that inspection intervals should be based on these efforts, with the result that certain establishments might be inspected more often but that most of the establishments did not need to be inspected on a yearly basis. In his opinion, the most important issue was the identification of the risk – he concluded therefore that the most important report was the safety review which had to be performed even before a plant is built.

Schaible:

With regard to Mr Schmelzer's wish for a risk-based approach, Mr Schaible explained that under IPPC there was already a risk-based approach which demanded a one-year inspection interval for higher risk establishments (which corresponded to the upper-tier establishments under Seveso) and a every three years inspection with low risk establishments (corresponding to lower tier establishments under Seveso). But even for a risk-based approach, the question that remained for Mr Schaible was: how often is an on-site inspection, as opposed to an assessment on paper, needed? He answered this question by declaring that the EEB preferred - for the highest risk installations - inspections at least once a year or even at more frequent intervals.

It was his conviction that the money that might be saved by avoiding major accidents outweighed by far the costs for the Directive's implementation. The importance is to detect the risks at the earliest possible moment and with that approach to reduce the total risks.

Caldiroli:

As there had been several examples of fatalities in Italy in the past – like the accident close to Milano in the year 2010 -, Medicina Democratica was in favour of coordinated inspections. Still, Mr Caldiroli declared that it needed to be clarified which checks and controls should take place, also with regard to other pieces of legislation like REACH, IPPC etc.

Mr Caldiroli also stressed that checking the correct development and implementation of external emergency plans should also be part of the inspections.

Wenning:

Mrs Wenning first made it clear that with regard to upper and lower tier establishments, Seveso already had some risk-based approach. There is no one size fits all approach taken. To advocate the proposed fixed intervals she cited the implementation assessment of Seveso II which showed that quite a high number of establishments had not been inspected for many years. She therefore saw a good justification for an obligatory inspection frequency of once a year from the inspection plans for the upper tier very high risk establishments. For the lower tier establishments three years are seen as sufficient by the EC.

Mrs Wenning also pointed out that the desired flexibility for the authority was provided for in the current Proposal and this is a similar approach that has already been taken for other directives in the past.

Questions and answers

Q: Sabine Wils
MEP Wils addressed the subject of the scope of Seveso III with regard to the input of Mr Caldiroli. What she had understood was that carcinogenic substances would not be included in the scope, but that they would, if released into the air or water, become a possible hazard to human health. She therefore suggested that this issue should be considered.

A: Wenning
Mrs Wenning stressed that Seveso dealt with major industrial accidents. She underlined that it was thus concerned with avoiding the risks of hazardous substances, caused either through toxicity to humans or the aquatic environment or through physical characteristics (flammability...). She did not consider carcinogenic substances to be risk factors for major hazards. According to Mrs Wenning CMR, substances needed to be considered differently and were dealt with under REACH.

Q: Wils
MEP Wils also raised the question of transport, as already addressed before by MEP Hénin. As mentioned by Mr Caldiroli, major transportation accidents had recently happened in Italy and she reminded the audience of other train accidents with hazardous substances. She therefore proposed that the transport of hazardous substances should at least be considered and taken into account and that this should create a demand for different legislation. She stressed that in view of the cited accidents, the current legislation on transportation did not provide enough protection.

A: Schmelzer
Mr Schmelzer pointed out that there were good reasons for keeping transport legislation apart, as fixed installations had other possibilities to deal with risks of accidents involving hazardous chemicals than mobile equipment.

A: Wenning
Mrs Wenning stressed that, like she had said before when explaining the issue of carcinogenic substances, there was another piece of legislation that dealt with the subject of transportation. While she underlined the intention of the European Commission to have a clear and comprehensive link between different pieces of legislation, she made it clear that it was not the intention to set up a Directive that covered everything. She acknowledged that maybe the link between different pieces of legislation needed to be stronger. Still, she stressed that if the issue of transportation was not covered sufficiently by the respective Directive, it was that other piece of legislation that needed to be reviewed. She concluded that otherwise there would be a patchwork of many different directives dealing with the same issues in probably too many (and thus different) ways. According to the view of the European Commission, this would make legislation less clear.

A: Schaible
In a short comment on this topic, Mr Schaible added that the issue of pipelines was not addressed either although they were fixed premises.

Q: Wils

MEP Wils spoke on the subject of public information. In view of the experiences of Fukushima she stressed that chemicals, like radiation, might spread far and wide, which was why she considered it important to have clear contingency plans which would also specify what emergency measures had to be taken for the population not living in the direct neighbourhood of the site.
Further, MEP Wils pointed out that safety plans were important but that monitoring and inspections – even unannounced – on the part of the Competent Authorities were essential.

A: Wenning
Mrs Wenning seconded MEP Wils' statement by stressing that one aspect did not exclude the other. She considered it very important to have safety reviews and emergency plans but said that at the same time there was a need for regularly updated information online. She said that human errors might occur as well as technical problems which had not been foreseen and that, in general, things were changing all the time. Therefore inspections are very important and they should be related to the risks that are coming from such an installation.
Also, she emphasised that emergency plans should be adopted an developed for each installation and not only deal with internal safety information but also deal with the wider neighbourhood and that the local, regional and national authorities should see to it that in case of an accident, relevant information was not only available but also properly used, so as to minimise the impact and effect as much as possible.

Q: Blanche Lermite (AISE)
The AISE representative commented that some of the CLP requirements were not properly reflected in the Seveso Directive. Therefore, she concluded, additional small sites/enterprises would fall under the scope artificially, not because of a change in the risk but because of the changed classification. She stated that this would create additional work for both industry and the authorities. Her proposition was that either Annex I should be adapted or that there should be exceptions for small packed finished products since they were covered by the transportation legislation.

Q: Herbert Bender (BASF)
Mr Bender expressed his doubts about the numbers given by Mrs Wenning with respect to the impact on the scope of the Directive and stated that the estimations of the industry were about one order of magnitude higher. He therefore put forward their plea to reconsider the list of substances very closely, have another look on the threshold values and offered the chemical industry's support in this matter.

A: Schmelzer:
Mr Schmelzer supported Mr Bender's view and stressed that CEFIC was very willing to work with the European Commission to arrive at a fact-based decision. He explained that there had already been such collaboration as a technical working group had been installed in the review process. He underlined that this technical working group had come to a different conclusion than the European Commission, a conclusion which would mean a lesser impact in terms of the increase in substances and sites affected.

A: Wenning
Mrs Wenning stated first that, although additional information was still coming in, the participants had to understand that the process could not be re-opened. She stressed that

throughout the review process all stakeholders had had the opportunity to put forward their figures and relevant information. She acknowledged that the European Commission might have chosen another option than the technical working group but asked the audience to bear in mind that the technical working group was only an advisory group which provided data for the impact assessment. Based on the impact assessment, the European Commission reached the conclusion that the chosen option was the right one. She emphasised once more that other options had been looked at but had been found to be less suitable.

Q: Oliver Kalusch (Bundesverband Bürgerinitiativen Umweltschutz)
Mr Kalusch concluded that when stating that the changes in Annex I should have a minimal impact on the protection level, this should also mean that any changes which would cause a disadvantage to the environment were minimised. So, therefore, he concluded, what should not happen was that, while some sites were newly included, others would fall out of the scope. Maintaining the level of protection meant, in his view, that no sites were lost or downgraded.
In pursuing a second line of argument, he stressed the importance of a philosophy that considered the public as active partner in the process of plant security. He emphasised that the public should not only be receiving information in case of an accident but that it should also have the opportunity to express a view on safety matters to authorities and operators. He thus stressed the importance of having a broad and easy access to safety information via the internet et al..

A: Schmelzer
In Mr Schmelzer's opinion there was no need for any change in the Directive. He pointed out that there was a possibility for public participation, even before a plant was built. In this regard he cited the experience of Bayer, namely that in the last couple of years - although the plans for bigger plants had been subjected to public review - only one or two individuals had actually looked at these plans.
He concluded that Seveso did not need a change with regard to information on safety measures etc., since this information was already contained in Seveso.
All information how installations are planned and managed are available to the public and emergency plans as well made public and updated regularly.

A: Schaible
In contrast to Mr Schmelzer, Mr Schaible stressed the need for a change of information policy in the new Directive. He underlined the fact that there was a serious doubt as to whether information on emergency plans was covered by the Aarhus convention which was concerned with environmental information. He explained that requirements relating to emergency measures were much more detailed in regard to internal management plans, instructions on how to respond in the event of an emergency etc. than those foreseen under Aarhus. He concluded that therefore the requirements on public participation should be explicitly stated in the new Directive.

Q: Eric Angelini (European Flavour Association / European Federation of Essential Oils)
As representative of the Essential Oils Industry, Mr Angelini referred to a weakness he had experienced with the technical side of the CLP classification, namely those natural products, on which little information was available, would directly fall into the worst category. He

concluded that if this was the case, there would be more SMEs which would be affected by this regulation.
He therefore asked whether there would be any derogation procedure for companies producing natural products or natural products in general.

A: Wenning:
Mrs Wenning answered that with regard to the topic of SMEs, which had been raised on various occasion during the workshop, the European Commission was still awaiting information from the industry on how many SMEs were actually affected. Based on the information already received, the European Commission had come to the opinion that the proportion of SMEs with respect to the bigger companies would remain essentially the same.

Concluding Remarks

Schmelzer:
Mr Schmelzer stressed that during the workshop he had not heard any reason which made it clear to him why the Seveso Directive, with the scope it currently covered, had to be extensively changed. He once more underlined the opinion of the chemical industry that the change in scope with regard to the substances and sites that had to be included was not as insignificant as assumed by the European Commission.

Dadasiewicz:
In his final comment Mr Dadasiewicz stated that it was his conviction that some changes were necessary and should be implemented, especially to ensure alignment with other legislation. But he made it clear that every change should be made in line with the idea of "better regulation", in other words with the idea of reducing the administrative burden.

Wenning:
Mrs Wenning once more emphasised that the process that they have gone through within the last 2,5 years would not be re-started as otherwise it would be very difficult to make any progress. After the impact assessment based on the advices from the technical working groups the best options have been identified and all inputs from the different groups have been taken on board. But not everything can be agreed on and therefore taken into account. However, she said that the European Commission was open for discussions as much as they are necessary and prepared to look at the figures provided by the chemical industry.

MEP Janos Áder
MEP Áder summarised the discussion by stating that it was his impression that there was a wide variety of different opinions, especially with regard to the topic of the estimated number of establishments affected. He could see clear contradictions between the different views of the stakeholders on the impact and certain aspects of the proposal.

In technical terms, he briefed the audience that the ENVI Committee would be looking at the issue of Seveso III again in mid-June. He informed the participants that suggestions for amendments could be submitted up to 23 June and that a vote would be taken by the members of the ENVI Committee at the meeting of 3-5 October. According to his expectations, it was likely that the vote in plenary would be scheduled for December.

Annexe I: programme

Policy Department A-Economy & Science
Committee on the Environment, Public Health and Food Safety (ENVI)

Workshop on Seveso III Directive: Control of major-accident hazards involving dangerous substances

Wednesday 13 April 2011 - 14:00 - 16:30
European Parliament, JAN 6Q2

Interpretation in EN-DE-FR-HU-PL

AGENDA

14.00 -14.10 **Welcome** *by MEP János ÁDER, Rapporteur*

Part 1 - GENERAL CONTEXT

14.10 - 14.20 **Introduction of the proposal by the European Commission** *Mrs. Soledad BLANCO, Director Sustainable Resources Management, Industry & Air, DG Environment, European Commission*

14.20 - 14.30 **The position of the EU Presidency**
Mrs. Katalin GARANE NAGY, Counsellor-Environment, Permanent Representation of Hungary in Brussels

14.30 - 14.40 **The socio-economic context**
Mr. Wolfgang GIERKE, Head of Unit "Plant Safety", Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (Germany)

14.40 - 15.00 **Q&A, open discussion**

Part 2 - ROUND TABLE ON TECHNICAL ASPECTS

15.00 - 16.00 **Debate on the following issues:**

1) Alignment of the Seveso III Directive to the CLP Regulation (EC) No. 1272/2008 (including provisions on possible derogations)

2) Public information, participation and access to justice

3) Inspections

The debate will be chaired by Mr. Jürgen SCHNEIDER, Director of the programme Economy & Impact; Environment Agency Austria and will take place between the following stakeholders:

- **Seveso Committee of Competent Authority of Poland**
  Mr. Pawel DADASIEWICZ, , Chief Inspectorate for Environmental Protection(GIOS)

- **CEFIC** (The European Chemical Industry Council)
  Mr. Peter SCHMELZER , Chairman CEFIC Issue Team Process and Plant Safety, Bayer AG

- **EEB** (European Environmental Bureau)
  Mr. Christian SCHAIBLE, Senior Policy Officer for Industrial Policies and Chemicals

- **Medicina Democratica**
  Mr. Marco CALDIROLI, Prevention technician for the environment and the workplace

- **European Commission, DG Environment**
  Mrs. Marianne WENNING, Head of Unit "Industrial Emissions, Air Quality & Noise"

16.00 - 16.25 **Q&A, open discussion**

16.25 - 16.30 **Closing remarks** by *János ÁDER, Rapporteur*

Annexe II: short biographies of experts

Mr. Pawel DADASIEWICZ, Chief Inspectorate for Environmental Protection(GIOS)

Paweł Dadasiewicz studied environmental protection and management at Technical University in Gdansk (PL). He has worked for the Chief Inspectorate for Environmental Protection, dealing with major accidents prevention, since 2004.
His current job position is Head of major accidents prevention division within Inspection and Administrative Ruling Department.

Mr. Peter SCHMELZER, Chairman CEFIC Issue Team Process and Plant Safety, Bayer AG

Dr. Peter Schmelzer represents the European Chemical Industry Council (CEFIC) as Chairman of Issue Team Process & Plant Safety Committee. He is currently employed at Bayer Health Care AG as Head of Health, Safety, Environment BHC global platform. Also, he chairs several other predominately industry-orientated German and European Commitees and Associations on Industrial Hazards.

Mr. Christian SCHAIBLE, Senior Policy Officer for Industrial Policies and Chemicals, EEB

Christian Schaible joined the European Environmental Bureau (EEB), Europe's largest federation of environmental citizens' organisations, since May 2008.
Working in the EU Policy Unit, he is coordinating the organisation's advocacy work in the areas of EU chemicals (e.g. REACH implementation) and industrial policy (e.g. Industrial Emissions Directive). His academic background is in international law, having studied in Cairo, Strasbourg, Paris, and Oslo. He holds two Masters in Environmental Law (University of Montpellier and Limoges). He previously had roles in the European Commission's Energy DG and in a Brussels-based industry group working on the promotion of renewable energy sources.

Mr. Marco CALDIROLI, Prevention technician for the environment and the workplace, Medicina Democratica

Marco Caldiroli is a member of Medicina Democratica, an Italian non-governmental organization following i.a. the goal of promoting the establishment of a policy to prevent industrial hazards and thus protect the general health.
As prevention technician involved in environmental protection and workplace safety in the Public Health Service of the district Milan, he is responsible for the correct implementation of REACH and CLP regulations.
He has acted as technical consultant in favor of the aggrieved parties in several lawsuits against industrial plants and waste landfills and is strongly involved in both executing and critically observing environmental impact assessment procedures.

Mrs. Marianne WENNING, Head of Unit "Industrial Emissions, Air Quality & Noise", European Commission

Marianne Wenning, has been working for the European Commission, DG Environment, since 1992. Throughout her Commission career she was actively involved in the development and implementation of environmental policy and legislation related to industrial emissions, transport, energy, agriculture and climate change. Her experience includes the econonomic aspects of environmental policy, programme-management in Asia as well as negotiations at European and international level in particular with regard to the Kyoto and the Montreal Protocols.

Ms. Wenning is currently Head of Unit for 'Industrial Emissions, Air Quality & Noise' in DG Environment. In this capacity she is responsible for the development and implementation of EU legislation on industrial emissions, air quality, noise and major industrial accidents.

The new Industrial Emissions Directive, adopted in January 2011 and now in the process of being implemented is one of the flag-ships of environmental policy that combines environmental ambition with ensuring a 'level playing field' through a more harmonized application of the 'best-available-technology' (BAT) approach within the EU, further incentives for eco-innovation and the reduction of administrative burden.

Other tasks of the unit include a revision of the Commission's longstanding policy on air quality to be completed by 2013 by taking into account scientific and policy developments. In addition, the unit deals with multi-lateral agreements such as the Convention on Long-range Transboundary Air Pollution and the intergovernmental group on mercury for the establishment of a globally binding instrument.

Annexe III: Presentations and briefings

Negotiations in the Council
Position of the Hungarian Presidency

Workshop on Seveso III Directive: Control of major-accident hazards involving dangerous substances

European Parliament, Brussels
13 April 2011

Katalin Garáné Nagy, Ph.D.
Permanent Representation of Hungary to the EU

Environmental Priorities of the Hungarian Presidency

- Biodiversity
- Water policy
- Climate change
- Resource efficiency – Sustainable materials management

Legislative files

- **Waste electrical and electronic equipment** (WEEE)
  political agreement reached at March Council
- **Restriction or prohibition by the Member States to the cultivation of GMOs in their territory**
  political agreement expected at June Council
- **Non-road Mobil Machinery** (NRMM)
  first reading agreement expected in June

- **Seveso III Directive**
  Progress report/orientation debate at June Council

Seveso III Directive

Revision of the Seveso II Directive (96/82/EC) on the control of major-accident hazards involving dangerous substances

- **Adaptation to the GHS – Globally Harmonised System**
  Change Reference from DSD and DPD to CLP Regulation
  -> Revision of Annex I to the Seveso II Directive
  -> Derogations
- **General review**
  - basically unchanged since adoption
  - qualitative information about actual implementation
  - adaptation to other legislation (e.g. Aarhus, IED)

Roadmap in Council

- **Introduction of the proposal and its impact assessment**
  1st working party (WPE) meeting 17 January
- **1st examination of the text**
  5 WPE meetings by the date
  New text proposed by Presidency
- **2nd examination of the text**
  4 more WPE meetings envisaged
  ➡ ***Progress report/questions***
- **Coreper** : 1 June
- **Environmental Council**: 17 June

Main issues identified (1)

Preliminary views

- General view: Seveso II Directive functions well
- Experience on implementation: slight modifications are needed

- **Scope of the Directive**
  - Careful analysis of alignment with CLP regulation:
    - *general criteria*
    - *derogations*
  - *Scope (including Annex I) cannot be modified by delegated act*

Main issues identified (2)

- **Information to the public, public participation**

New measures are not well received

- No further obligations

- Distinction between information needed and made available for the public

- **Operational Articles**

Precision of tasks for lower-tier, upper-tier establishment

Neighbouring establishments/sites

Thank you for your attention

Katalin GARÁNÉ DR. NAGY

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Permanent Representation of Hungary

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http://www.eu2011.hu/

Bundesministerium
für Umwelt, Naturschutz
und Reaktorsicherheit

DAS HAT ZUKUNFT

Workshop on Seveso III Directive: Control of major-accident hazards involving dangerous substances

– The socio-economic context –

Dr. Wolfgang Gierke

German Federal Ministry for the Environment,
Nature Conservation and Nuclear Safety

wolfgang.gierke@bmu.bund.de

European Parliament
Brussels, 13 April 2011

Bundesministerium
für Umwelt, Naturschutz
und Reaktorsicherheit

DAS HAT ZUKUNFT

Hazards of industrial activities

- Hazards of industrial activities are known since the early days of industrialization in the 19th century. Main concern at that time were frequent explosions of pressure tanks which caused many fatalities. As a consequence, legislation to protect workers and the population from such accidents was developed.
- Until the middle of the 20th century, legislation on the safety of industrial installations concentrated on the protection of human health. Only with the dynamic industrial development following World War Two, insight grew that not only human health, but also man‘s natural environment like water, soil, air, plants and animals had to be protected from unwanted effects of industrial activities.

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Major accidents triggering European legislation

1974	Flixborough	
1976	Seveso	➔ Seveso I, 1982
1986	Schweizerhalle/Basel	➔ Amendment of Seveso I, 1988
1992	Bhopal	➔ Seveso II, 1996 (LUP)
1984	Mexico City	
2000	Baia Mare	
2000	Enschede	➔ Amendment of Seveso II, 2003
2001	Toulouse	

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Seveso establishments in Germany as of 31.12.2008

Lower tier:	1054
Upper tier:	1077
	2131

North Rhine-Westfalia:	493
Saarland:	22

Chemical industry:	33%
LPG storage:	10%
Steel production, metalworking:	9%

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Structure of German chemical industry

- Chemical industry is fourth-largest branch of German industry after construction of motor vehicles, mechanical engineering and food production. Share in turnover of processing industry: 10.7%
- 416.000 employees in 2009,
  380.000 additional jobs at suppliers
- 2000 enterprises, more than 90% being SMEs with less than 500 employees

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Competent authorities in Germany

- Federal structure: 16 Länder
- To transpose Seveso II into German law,
  35 legal provisions had to be issued or amended
  (32 at Länder level, 3 at federal level)
- Competent authorities are confronted with increasing tasks and decreasing staff. Therefore, new tasks usually have to be fulfilled at the expense of already existing tasks

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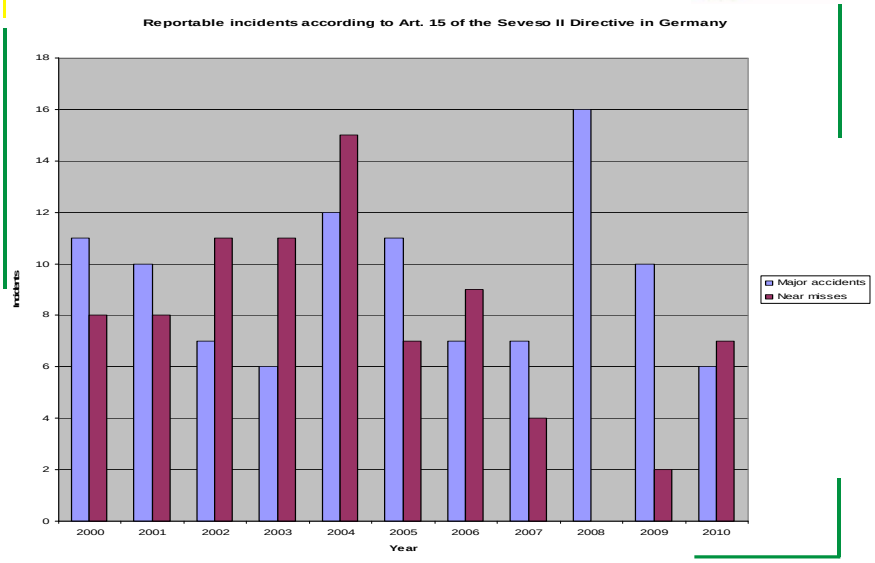

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und Reaktorsicherheit

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Thank you very much for your attention!

25 March 2011

Cefic Position on the EU Commission proposal for amending the Directive on control of major-accident hazards involving dangerous substances ("Seveso Directive")

At the end of December 2010, the EU Commission published a draft proposal for amending the Seveso II Directive. The main reason for the amendment was to adapt this Directive to the GHS system. As this is about a "formal recategorisation" - and not about new scientific findings based on risk assessment - the Commission intended to achieve the harmonization without further tightening of legislation and, consequently, as far as possible without widening the scope of the Seveso II Directive. The Commission excluded any lowering of the safety level. This was supported by the chemical industry right from the start.

The impact assessment presented by the Commission claims that fewer establishments will fall under the Directive and expected costs will be low. However, chemical industry estimates that some 10% (a Belgian assessment even confirms 30%) more establishments are likely to fall within the scope of the Seveso Directive, because significantly more substances will be covered by this Directive. Due to administrative workloads and plant investments, considerable costs would arise especially for small and medium-sized enterprises (SMEs), without a commensurate increase in safety level.

Moreover, the draft amendment includes clearly tighter rules for inspections and wider information to the public.

Accordingly, The European Chemical Industry particularly opposes the following amendments. In this position paper, the sequence of proposed amendments reflects their importance to the chemical industry.

1. Annex I: No unnecessary extension of the scope of the Directive

In preparatory consultations both member states and industry experts agreed that an extension of the Directive's scope should be limited as far as possible. Other than recommended, the model stated in the Commission's draft does not correspond to the model favoured by the Commission's Technical Working Group, which would have brought a minimal extension of the scope of the Directive. The chemical industry estimates a 20-30% increase in the number of substances falling under the Directive's scope as a consequence of the proposed amendment. This extension is not justified by safety reasons but would result in unnecessary burden from more administration and extra costs. This applies especially to SMEs.

It is important for the chemical industry that any inclusion of toxic substances in Annex I remain strictly in line with current legislation.

Another important contribution to the disproportionate application extension is the expected increase of substances to be labeled ‘hazardous for the aquatic environment’.

2. Article 19 (Inspections): No rigid frequency and no wider requirements

The option should be maintained to extend intervals of one year for inspections if an inspection programme – drawn up by competent authorities – is available. Rigid one-year periods and a significant widening of the scope of inspections will involve higher workloads and costs. This is out of proportion for both authorities and operators: the success of the present system proves there is no need for stricter requirements in respect of safety. The existing system, which takes into account the inspection programme, has proven its functionality and gives the necessary flexibility for a risk-oriented approach to the competent authorities.

3. Articles 13, 14 and Annex V, information to the public: No extension of requirements

The existing system of public participation and information under the Seveso II Directive is sufficient in its current form. Extended rules on information and public participation would unnecessarily increase administrative workloads and bureaucracy for competent authorities and operators. The proposed information obligation risks being counterproductive: Citizens are provided with a large amount of information without having the tools or know-how to draw out the most appropriate and essential information they need. An overload of information could lead to vital messages not getting through and raise unnecessary concerns.

Also, the goal must be to make licensing procedures for chemical plants more efficient and not more difficult, in order not to hinder or stop future investments in the chemical industry.

4. Article 4(5) subpara 3, Derogation and safeguard clauses: Maintaining the regular legislative decision procedure for defining the scope of application

The role of the European Parliament and Council on the possibility of widening the scope of application (Article 4(5) subpara 3) must not be limited by delegated acts but should remain subject to the regular legislative procedure.
The option of widening the scope of the Seveso Directive at short notice could bring major impacts, especially for SMEs. Moreover, with the expected highly dynamic nature of the Directive, uncertainties are to be expected in planning and on the legal side.

CEFIC position and ammendment proposal

Workshop on Seveso III Directive: Control of major-accident hazards involving dangerous substances

Policy Department A-Economy & Science
Committee on the Environment, Public Health and Food Safety (ENVI)

Wednesday 13 April 2011 - 14:00 - 16:30,
Brussels, European Parliament, JAN 6Q2

Dr. Peter G. Schmelzer, Bayer HealthCare AG

Chairman of CEFIC Issue Team Process and Plant Safety

Key messages

1. Chemical industry is committed to advancing process and plant safety and supports the globally harmonized classification and labelling system (GHS) and invests into this approach
2. Integrating key GHS requirements into the Seveso directive and other EU and member state regulations contributes to strengthening this global approach
3. Seveso adaptation should nevertheless not result in changes in the scope of the directive or additional testing and operational requirements with no significant positive impact on safety levels
   - For example, GHS covers more substance categories with different threshold definitions than the existing substance regulation

Today: focus on EU Commission proposal for Seveso III directive

Goal: A directive that helps EU chemical industry to…

1. **Strengthen its leading position in process and plant safety**
   - Keep focus on major hazard incident prevention
   - Ensure any changes in the directive lead to real safety gains

2. **Secure its economic competitiveness**
   - Safety gains have to be evaluated considering the associated costs and administrative burdens for member state economies

Round table on three technical aspects of the proposed Directive SEVESO III

1. Alignment of the Seveso III Directive to the Regulation No. 1272/2008 on classification, labelling and packaging of dangerous substances and mixtures (including provisions on possible derogations)
2. Public information, participation and access to justice
3. Inspections

Three key alterations to EU Commission proposal …

… **to ensure that GHS integration into Seveso contributes to building a safe, competitive chemical industry**

(current scenario: 20-30% more substances, 10-30% more establishments, 415 Mio€ one-off cost, 180 Mio€ annual costs)

1. Limit inclusion of substances which are unlikely to be source of major hazard incidents
   - **No inclusion of Cat. 3** for exposure route inhalative vapour and dermal, oral Cat. 3 only in case other exposition data not available

   "Delegated acts" NOT for changes to the definition of the **application field** (Annex I) to ensure adequate stakeholder involvement through EU-council and EU-parliament
2. Ensure access to information to the public within the scope of the Aarhus Convention
3. Foster a risk oriented approach instead of simply increasing inspection frequency

Thank You for Your Kind Attention

Questions ?

2011-04-13, Brussels

Position of the European Environmental Bureau – Preliminary Observationy

Speaking points April 13th Workshop at EP

(NOTE these are preliminary observations). The official EEB position on the new Proposal – Seveso III proposal- is not yet available, however the main points raised in the EEB "Ideas paper" of 12 December 2009 remain valid.

ISSUE NO 1: Annex I alignment

EEB has supported a "precautionary alignment" (position paper available upon request), which has not been retained in the new Proposal. The adaptation of Annex I of the Seveso Directive to GHS should not only ensure that no establishments are downgraded to lower categories or "drop out" from the scope. The adaptation will also give an opportunity to include substance categories of the GHS which have not been taken into account so far, and to **adapt the qualifying thresholds to adequate levels**. A clear methodology that enables continuous updates according to new scientific findings to Annex I should be defined, for instance this could be a task for a standing technical committee (e.g. within the Major Accident Hazard Bureau), where all the relevant stakeholders should be represented.

1. As regards health hazards
   - Constitute the „Acute Toxic 1" category with at least the following sub categories:
     - cat 1, all routes; cat 2 via oral route and inhalative route aerosols cat 2
   - Constitute the „Acute Toxic 2" category with at the least the following sub-categories:
     - cat 2 acute toxic via dermal route, inhalative route (vapour and gases); **cat 3 all routes**
   - the list of carcinogenic substances only includes some substances, a review is urgently needed. **category 1A with thresholds of 0,5t/2t and cat. 1B with thresholds 5t/20t should be included**

2. the category „Specific Target Organ Toxicity-single exposure (STOT cat 1) shall be allocated to the thresholds **5t/20t**

3. As regards environmental hazards the threshold need to be reduced in order to reflect the need for environmental protection
   - Hazardous to the aquatic environment Cat Acute 1, chronic 1: **5t/20t**
   - Hazardous to the aquatic environment Cat Chronic 2: **50t/200t**

4. As regards physical-chemical hazards
   - for flammable aerosols „extremely flammable" or „flammable aerosols with flammable gases" should be subject to the thresholds of **75t/ 300t**

5. as regards other hazard categories
   - **EUH031 „contact with acids liberates toxic gases" should be included**

6. other issues:
   - **CO2 should be included with appropriate thresholds**, also taken particular account of bigger CO2 fire extinguishing plants. We consider thresholds in the range of 20t/1000t as appropriate
   - the **threshold of 1kg! for PCDD/PCDF is not adequate**, there is no single example on when this high threshold could ever be reached. The threshold should be brought to an adequate level of 1mg that may be supplemented with a concentration threshold, e.g. 1ppb Also brominated compounds or mixed dioxins should be covered
   - **other highly unwanted substances such as Substances of Very High Concern (SVHC) according to Article 57 a-f of REACH should be included in Annex I with lowest possible thresholds**. In particular extremely low quantity thresholds should be set for non threshold substances or those having effect at very low doses (i.e. endocrine disrupting substances).

NGOs have established a list of 356 substances that fulfil the official REACH SVHC criteria www.sinlist.org , all these substances need to be included in Annex I.

- Synergy and cumulative effects should be fully taken into account within note 4 part 2 of Annex I and not depend on sum of qualifying quantities.

ISSUE No 2: public participation, access to information and justice

Any environmental information that derives from the SEVESO II directive has to be accessible for the public unless one of the refusal provisions of the Aarhus framework applies. However, according to the Aarhus provisions the exceptions may only be applied if other interests would be "adversely affected" and in addition any such exclusion has to be interpreted in a restrictive way, taking into account the public interest served by disclosure. This information has to be available not only upon request, but be made available actively. The safety report could be a suitable way of informing the public if its content would not be undermined by confidentiality provisions and if the legislation would promote an active dissemination policy having transparency as its key objective. Therefore EEB strongly supports the Commission proposal to make information available through online database(s).

Public participation should be provided in the relevant processes for planning measures under this Directive (e.g. safety reports, emergency plans) taking into account the abovementioned Aarhus provisions. It is important that public participation is carried out in an early and effective manner and due account is taken of its outcome. Next to the abovementioned procedures this counts in particular for land-use planning regulated in Art. 12 of the Seveso II Directive.

Provisions regulating access to information requests on environmental information and respective access to justice shall be added, in accordance with relevant EU legislation (i.e. Directive 2003/4/EC[1] and Regulation 1367/2006[2]), **members of the public should be able to legally review procedural and substantive legality of acts and omissions from private persons or public authorities.** As a minimum the following shall be ensured through legislation:

- all information (e.g. safety report, document setting out the MAPP, emergency plans, maps and underlying worst case scenarios informing about potential effects of major accident) should be regularly updated and made available on the internet as soon as available, a non technical report could be added but not replace the publication of the full safety report
- the operator shall regularly, and immediately following to updates, inform the public about the right and means of access to information e.g. through local newspapers, homepage etc
- any exclusion from information to be made public shall be restrictive. A limited list of information that may be regarded as confidential based on objective criteria should be developed with the involvement of all stakeholders. A careful balance of public interests (to disclosure) against non disclosure should be guiding such decisions.
- all the information falling on the reporting obligation under Art. 19 should be made available to the public through online databases, including installation specific "near miss" information, preventive and safety measures, risk data and risk scenarios
- the criteria for reportable major accidents under section I.1 of Annex VI Seveso II needs to be lowered (to **5% of the lower-tier threshold)**

[1] Directive 2003/4/EC of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC

[2] Regulation (EC) No 1367/2006 of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies

ISSUE No 3: Inspections

The Commission Seveso III Proposal in relation to inspection requirements is adding (more or less through copy and paste) the provisions of Article 23 of the Industrial Emissions Directive (IED). EEB has an issue with allowing minimum frequency of site visits to be below one year. Under the IED it was agreed that the minimum frequency shall be at least once a year for the "highest risk installations" and the minimum should be at least every 3 years "for the installations posing the lowest risks".

We cannot accept that Seveso lower- tiers establishments may be considered de facto as "equal" to the lowest risk IED installations. All Seveso installations (lower tier and upper tier) have to be considered as being in the "the highest risk category" within the meaning of the IED, the frequency of site visits shall be kept at least to annual for all installations of the Seveso category. We expect that in practice the inspection frequency for site visits of installations falling under both categories (IED and Seveso) will be streamlined, therefore avoiding administrative burdens.

Concerns have been raised by Member States that adequate human / financial resources may not be available to carry out these important tasks to identify risks of and prevent eventual major accidents. For that reason EEB emphasises the need to establish a "**Seveso fund**" that would enable competent authorities to use financial resources (to be supplied by Seveso operators) in order to adequately implement the Seveso requirements.

The obligation to make the inspection report publicly available (on the online database) within 4 months of the site visit took place needs to be integrated within point 6 of Annex V of Seveso III and Article 20 para 6.

"IDEAS PAPER" to stakeholder consultation

Preliminary views of the European Environmental Bureau
-on Seveso II Directive review-

Brussels, 12 December 2009

In the attached document EEB wishes to submit some preliminary views and comments in relation to the review of the Seveso II Directive[1]. This note follows especially the outline of the non-paper submitted by a group of Member States to the European Commission.

Other issues as well as views of EEB to the adaptation of Annex I are also raised within this document.

General comments:

As recitals 1 and 2 of the Seveso II Directive suggests, this framework is concerned with the prevention of major accidents, reminding that the objectives and principles of the Community's environment policy is to preserve and protect the quality of the environment and human health through preventive action.

So far history has shown that the subsequent reviews of the Seveso Directive have followed a "reactive approach", i.e. once a major accident occurred. More worrying is that provisions focus on "control of risks" instead of their prevention at source.

The review should therefore carefully consider on whether the concept of better identification and control of risks is adequate and rather favour enhanced prevention policies based on the precautionary principle. In order to guarantee the effectiveness of Seveso, it needs to be ensured that measures based on the prevention and precautionary principles are directly enforceable by law at national level through NGOs and the public concerned.

1. Definitions, Scope, Exclusions and Readability

Definitions:

EEB supports any clarification and modification of the definitions if this would provide legal security and would cover effects or events not sufficiently covered under the current scope. For that purpose clear legal requirements are the preferred option compared to non-binding guidance documents.
In any event, EEB strictly opposes any amendments to the definitions that may undermine or restrict the scope and application of protective provisions.

As an example the provisions shall ensure that:

- the presence of substances which do not exceed the Annex I thresholds but could have the potential to exceed the Annex I thresholds in the event of fire shall trigger the application of Article 2.1 (anticipated presence of such substances)
- EEB would like to see temporary versus permanent storage clarified. Since the hazard and risk is constituted through "intermediate temporary storage" (Art. 4c) it should not be excluded from the scope. Only in justified and strictly time limited cases (i.e. maximum 24 hours) may a derogation be granted. A repetition of intermediate storages, even of different substances, shall be considered as "storage"
- the definition "installation" also includes underground installation(s)

[1] Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances

- the exclusion may not apply to activities involving risks such as loading and unloading, the last subordinate clause in Art 4c should be deleted
- the transport of dangerous substances in pipelines should be included in the Seveso Directive since these may constitute considerable risks for human health and the environment in case of leaches, the exemption of Article 4d should therefore be deleted
- operational tailings, disposal facilities, tailing ponds or dams of waste land-fill sites are maintained in the scope. The exclusion of waste land fill sites needs to be re-assessed since risk potential from these installations is not excluded when Annex I thresholds are exceeded
- requirements are not lowered according to the specification of storage installations but set in accordance to threshold of presence/likely presence of substances

Scope/consistency with other EU legislation:
EEB supports consistency of the objectives of the Seveso Directive with other EU legislation. A streamline with the objectives of the Industrial Emissions Directive (IPPC Recast) [2], should be considered. It should therefore be ensured that Seveso installations are designed, operated and maintained according to the "state of the art" in terms of industrial safety, for that purpose:

- Seveso type installations shall automatically fall within the requirements of the Industrial Emissions Directive, in particular in relation to Chapter II
- The Best Available Techniques reference documents (BREFs) shall include special provisions on the attainment of the aims of the Seveso Directive i.e. best available techniques and management practices in relation of prevention of major accidents and limitations of consequences. This chapter should not be limited to Seveso installations only
- emerging risks (nanotechnologies / nanomaterials) shall be addressed (see Annex I discussion)

2. General obligations to the operator, MAPP and SMS:

General obligations to the operator:
EEB supports that the general obligations laid down in Article 5 of the Directive needs to be further specified. The obligation to comply the precautionary principle in this respect needs further elaboration, setting clear measures in line with this principle are therefore necessary.

As an example the following obligations could be included in legal provisions:

- compliance with the Industrial Emissions Directive in particular the use of best available techniques (BAT)
- an obligation to regularly perform independent safety studies (design of installation, processes etc)
- an obligation to prevent or reduce the presence of dangerous substances, including through their elimination or substitution via design changes, materials or components which would not require any of the materials or substances
- minimal specification of all of the relevant hazards to be covered (operational hazards, human and organisational aspects, external hazards including effects of climate change, of cumulative effects, related risks etc)

Major Accident Prevention Policy (MAPP):
The elements developed under section "General obligations to the operator" should be added to the provisions relating to the MAPP and Annex II and III. In particular:

- clear provisions and deadlines for the substitution of dangerous substances by safer alternatives shall be elaborated, in this respect the REACH [3] provisions relating to substances of very high concern should apply (Notwithstanding REACH Article 2b). E.g. analysis of eventual alternatives REACH / proof that no alternatives are available set out in Annex II.3C (REACH Art. 62e), substitution plan to be included in Annex III (REACH Art. 62f)
- overall aims and principles of action with respect of prevention of hazards and risks shall be further elaborated
- the inclusion of process safety indicators and safety culture indicators should be explored

[2] Proposal for an Industrial Emissions Directive, COM (2007) 844 final, 21 December 2007
[3] REACH Regulation No 1907/2006 of 18 December 2006

- better consideration of the "human factor" shall be taken into account

Safety Management System (SMS):
Not only technical measures but also aspects related to organisation, control, responsibility, planning and quality-assurance control are necessary to provide for adequate safety in relation to the prevention of hazardous accidents. These crucial obligations are regulated under the SMS. EEB recommends that:

- Art. 7 shall clarify that both upper-tier and lower-tier establishments should have a SMS
- the derogation clause in relation to safety reports under Art. 9(4) should be deleted, also in the light of its limited impact compared with the current situation.

3. Domino effects
EEB rejects any changes to this provision for the sole purpose of reducing concerns from the public. On the contrary, risks may not only be increased because of the proximity of other establishments/installations but should also consider the cumulative effects of dangerous substances or background pollution levels. In any event a "worst case scenario" shall be used when evaluating the domino effects.

The provisions should ensure that:

- the identification of such establishments/installations belongs to the competent authority
- they apply to both upper- and-lower tier establishments/installations.
- non-Seveso establishments/installations in the vicinity e.g. such as in industrial parks should be considered
- the evaluation of domino effects are based on worst case assumptions

4. Land-use-planning
EEB would welcome a clear formulation that obliges Member States to ensure that major accidents should have a clear prevention focus and the impacts to human health and the environment minimized. Article 12 should be reworded, in order to make clear that:

- it applies to all Seveso establishments/installations;
- it explicitly refers to the environment, with special consideration of areas of particular natural sensitivity or interest
- specific methods regarding the identification and protection of the environment should be developed
- the focus is on prevention of hazards and risks to people and the environment
- In general agreement on the calculation of appropriate distances and scenarios within the Directive are welcomed. For this purpose the standard scenarios shall be based on a precautionary interpretation of "worst case scenario" e.g. release of the highest connected mass of pollutants and unfavourable meteorological conditions (e.g. windspeed of 1m/s)

5. Information to the public and public participation
Any environmental information that derives from the SEVESO II directive has to be accessible for the public unless one of the refusal provisions of the Aarhus framework applies. However, the exceptions may only be applied if other interests would be "adversely affected" and in addition any such exclusion has to be interpreted in a restrictive way, taking into account the public interest served by disclosure. Furthermore information relating to emissions can not fall under the exception at all and has to be disclosed in any case.
This information has to be available not only upon request, but be made available actively. The safety report could be a suitable way of informing the public if its content would not be undermined by confidentiality provisions and if the legislation would promote an active dissemination policy having transparency as its key objective.

As Article 13.4 and Article 20 currently stand, there is a clear unbalance in favour of "security considerations" against transparency. It should be explored on whether these restrictions are contrary to the Aarhus provisions and how these can be amended so that transparency can be ensured.

This means, amongst others, that Art. 13 and Annex V of the SEVESO II Directive have to be revised completely. Any information relating to Art. 14 and 15 of the Directive shall be available for the public.

This does not only derive from the general environmental information provisions of the Aarhus Convention but also from its Art. 5 par 1 c regulating specifically the case of imminent threat to human health or the environment.

Art. 20 on confidentiality has to be adapted to the Aarhus provisions by limiting reasons for refusal and underlining the public interest served by disclosure.

Public participation should be provided in the relevant processes for planning measures under this Directive (e.g. safety reports, emergency plans) taking into account the abovementioned Aarhus provisions. It is important that public participation is carried out in an early and effective manner and due account is taken of its outcome. Next to the abovementioned procedures this counts in particular for land-use planning regulated in Art. 12 of the Seveso II Directive.

Provisions regulating access to information requests on environmental information and respective access to justice shall be added, in accordance with relevant EU legislation (i.e. Directive 2003/4/EC[4] and Regulation 1367/2006[5]), members of the public should be able to legally review procedural and substantive legality of acts and omissions from private persons or public authorities.

As a minimum the following shall be ensured through legislation:

- all information (e.g. safety report, document setting out the MAPP, emergency plans, maps and underlying worst case scenarios informing about potential effects of major accident) should be regularly updated and made available on the internet as soon as available, a non technical report could be added but not replace the publication of the full safety report
- the operator shall regularly, and immediately following to updates, inform the public about the right and means of access to information e.g. through local newspapers, homepage etc
- any exclusion from information to be made public shall be restrictive. A limited list of information that may be regarded as confidential based on objective criteria should be developed with the involvement of all stakeholders. A careful balance of public interests (to disclosure) against non disclosure should be guiding such decisions.
- all the information falling on the reporting obligation under Art. 19 should be made available to the public through online databases, including installation specific "near miss" information, preventive and safety measures, risk data and risk scenarios
- the criteria for reportable major accidents under section I.1 of Annex VI needs to be lowered (to 5% of the lower-tier threshold)

6. Emergency planning/Annex IV

EEB would favour to extend the obligation to hold an internal emergency plans as well as the elaboration of external emergency plans for lower-tier sites; Art. 11.1 should be amended to explicitly cover lower-tier sites. A guideline for external emergency plans may be useful in this respect.

7. Guaranteeing independency and quality of assessments (Seveso fund)

MAPPs, safety reports and other risk assessments are mainly prepared by industry or industry sponsored consultants. Because of constraints on human and financial resources, the evaluation practices vary widely amongst Member States, putting at risk a thorough and critical review of the assessments done.
EEB thinks that the objectivity and quality of the assessments could be considerably improved if the third parties / verifying competent authorities would have access to an independently managed fund that would provide for the necessary financial resources.
According to the polluter pays principle, the operators will be the contributors to the fund, the amount should be paid in proportion to the amount of dangerous chemicals present or produced on the site (e.g. X EUR per kg of dangerous substance in Annex I).
The fund could be managed at EU level / by a Member State on a rotating basis, provided that conflict of interests in management can be prevented.

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[4] Directive 2003/4/EC of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC

[5] Regulation (EC) No 1367/2006 of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies

Member States / competent authorities would be the sole responsible for allocating sums of that fund for the necessary implementation work done by third parties (i.e. consultants). Third parties would by this means not depend on the funding levels from operators concerned and therefore enable these third parties to conduct better and more objective assessments.

That fund should also encompass appropriate financial guarantees in case of accidents. Evaluations of external costs done by insurance companies due to recent accidents (e.g. AZF in Toulouse) could provide some clarification on what amounts would be appropriate.

8. provide for comprehensive liability regime

It needs to be ensured that operators cannot evade civil and penal liability in case of accidents, which in case of Seveso installations are fatal (see point 7 in regards to appropriate financial guarantees). For that purpose artificial legal constructions aiming to distinguish legal personality or establish a shield of the operator and holdings / head office should not be permitted. Strict and extended (absolute) liability shall apply, also if the exact cause of the accident is not clarified and irrespective of fault the operator and the head office shall be held liable as his activities are the source of the risk.
The main principles and inspiration could be drawn from the liability regime applying to nuclear installations (e.g. Vienna and Paris Convention).

Changes to Annex I (substances thresholds)

EEB also support a comprehensive methodology based on the precautionary approach for the inclusion of substances and thresholds contained in Annex I. EEB has specific comments in relation to the adaptation of Annex I "precautionary alignment" (position paper available upon request).

The adaptation of Annex I of the Seveso Directive to GHS should not only ensure that no establishments are downgraded to lower categories or "drop out" from the scope.
The adaptation will also give an opportunity to include substance categories of the GHS which have not been taken into account so far, and to adapt the qualifying thresholds to adequate levels.

A critical and robust scientific and technical justification for the setting of the quantity thresholds should be required, it should also be made visible on how and what basis the thresholds have been derived.

A clear methodology that enables continuous updates according to new scientific findings to Annex I should be defined, for instance this could be a task for a standing technical committee (e.g. within the Major Accident Hazard Bureau), where all the relevant stakeholders should be represented.

EEB therefore proposes to:

1. As regards health hazards
   - Constitute the „Acute Toxic 1" category with at least the following sub categories:
     - cat 1, all routes; cat 2 via oral route and inhalative route aerosols cat 2
   - Constitute the „Acute Toxic 2" category with at the least the following sub-categories:
     - cat 2 acute toxic via dermal route, inhalative route (vapour and gases); cat 3 all routes
   - the list of carcinogenic substances only includes 17 substances, a review is urgently needed. category 1A with thresholds of 0,5t/2t and cat. 1B with thresholds 5t/20t should be included

2. the category „Specific Target Organ Toxicity-single exposure (STOT cat 1) shall be allocated to the thresholds 5t/20t

3. As regards environmental hazards the threshold need to be reduced in order to reflect the need for environmental protection
   - Hazardous to the aquatic environment Cat Acute 1, chronic 1: 5t/20t
   - Hazardous to the aquatic environment Cat Chronic 2: 50t/200t
4. As regards physical-chemical hazards
   - not only pyrophoric liquids but also pyrophoric solids should be included with identical thresholds (50t/200t). The same risks arise from both substance groups

- for flammable aerosols „extremely flammable" or „flammable aerosols with flammable gases" should be subject to the thresholds of 75t/ 300t

5. as regards other hazard categories
   - EUH031 „contact with acids liberates toxic gases" should be included

6. other issues:
   - CO2 should be included with appropriate thresholds, also taken particular account of bigger CO2 fire extinguishing plants. We consider thresholds in the range of 20t/1000t as appropriate
   - the threshold of 1kg! for PCDD/PCDF is not adequate, there is no single example on when this high threshold could ever be reached. The threshold should be brought to an adequate level of 1mg that may be supplemented with a concentration threshold, e.g. 1ppb Also brominated compounds or mixed dioxins should be covered
   - other highly unwanted substances such as Substances of Very High Concern (SVHC) according to Article 57 a-f of REACH should be included in Annex I with lowest possible thresholds. In particular extremely low quantity thresholds should be set for non threshold substances or those having effect at very low doses (i.e. endocrine disrupting substances).
     NGOs have established a list of 356 substances that fulfil the official REACH SVHC criteria www.sinlist.org , all these substances need to be included in Annex I.
   - Synergy and cumulative effects should be fully taken into account within note 4 part 2 of Annex I and not depend on sum of qualifying quantities.

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END

Position of Medicina Democratica

1. Alignment of the Seveso III Directive to the CLP Regulation (including provisions on possible derogation)

During the reassessment of the directive it became clear that it would not be possible to simply transfer the new classification without causing an extension or a reduction of the scope of the Seveso II Directive. The reached compromise regarding health risks is represented by the inclusion of substances classified as acute toxic Category 1 and also Category 2, whereas in the case of toxic substances that belong to Category 3 only dermal and inhalation exposure routes are included.

We are in favor of an extension of the scope of the directive in order to extend and strengthen the culture of safety and guarantee a high level of protection both of workers and concerned citizens.

The definition of major accident [1] also includes delayed health and environmental hazards.
The current and proposed directive excludes substances with delayed health hazards (i.e. "only" carcinogens, mutagens, teratogens), but include substances with delayed environmental hazards (Hazardous to the Aquatic Environment in Category 1 and 2, acute and chronic).
Some carcinogens (potassium dichromate) are included in Annex 1 Part 1 as the CLP Regulation classifies them as toxic; others (i.e. nickel dioxide) are anyway included as they are listed in Annex 1 Part 2.
Similar substances (for instance diethyl sulfate) are not included in Annex 1 as their hazard (acute toxicity category 4) is not the one provided for in this document, however if they are released in an uncontrolled manner into the environment they may produce delayed harmful effects.
Various substances not classified as toxic in the previous classification - for instance, in the old classification as harmful - but labeled as toxic with pictograms, as they are carcinogens, teratogens (for instance dimethylformamide) or mutagens, are falling under this case of not inclusion.

Please note that there was reason to suppose that they could have a carcinogenic effect after a single exposure, but there was agreement that the scientific basis for both the set of substances named and the threshold defined was limited and questionable.[2]

[1] 'major accident' means 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, property or the environment, immediate or delayed, inside or outside the establishment, and involving one or more dangerous substances.
[2] These matters have already been addressed in the past, see INSTITUTE FOR SYSTEMS INFORMATICS AND SAFETY. CARCINOGENS IN THE CONTEXT OF COUNCIL DIRECTIVE 96/82/EC REPORT BY TECHNICAL WORKING GROUP 8, JOINT RESEARCH CENTRE 2000 but not considered in Impact assessment study into possible options for adapting Annex 1 of the SEVESO II Directive into the GHS, COWI, February 2010.

The chemicals included in annex XIV of the REACH Regulations[3] form another group of substances which deserve attention. At present, authorization is required for six groups[4] of substances with various hazardous characteristics: persistent, bio-accumulative and toxic (PBT), very persistent and very bio-accumulative (vPvB), carcinogenic and toxic for reproduction[5].

Two agents are toxic for reproduction substances (phthalates) but are also Hazardous to the Aquatic Environment in Category Acute 1 and are therefore included in Annex 1, while another has none of these characteristics and has therefore been excluded from this directive.

The persistent, bioaccumulative and toxic brominates substances (PBT)[6] considered are not even classified as hazardous in the CLP regulation, for this reason they are not considered in the Seveso Directives.

The proposal to extend the directive on 'transport of dangerous substances and intermediate temporary storage' by road, rail, internal waterways, sea or air, outside the establishments has not been accepted.

In Italy, besides the well known railway accident which occurred in Viareggio in June 2009 involving liquefied petroleum gas with 32 casualties, there have been several accidents or narrowly missed accidents (occurrences of non-compliance) at intermediate temporary storage sites due to the absence of safety systems and controlled chains to transfer substances from transport means to storage tanks or another equivalent emergency system.

There is also a problem of respect of thresholds within particular activities, in Italy there have been several major accidents involving hazardous waste treatment plants; one of the most recent ones occurred in November 2010 (Eureco Company near Milan) where an explosion of flammable waste generated a great fire which caused the death of four workers and much environmental pollution.

Existing laws on safety at work and on emergency prevention and planning have not been adequate in preventing or reducing damage.
Taking into account the above mentioned points, Annex 1 should be extended to include not only substances which belong to categories with acute toxicity risks, but also persistent, carcinogenic and teratogenic chemicals, or with delayed health effects and the proposed directive should be linked to the REACH regulation[7], or better still to the decisions of the European Chemicals Agency.

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[3] *REGULATION (EC) No 1907/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC*

[4] *REGULATION (EC) No 143/2011 OF THE COUNCIL of 17 February 2011.*

[5] *But substances with mutagenic or having endocrine disrupting properties could also be added.*

6 Bis (2-ethylhexyl) phthalate (DEHP) EC No204-211-0CAS No117-81-7 5. | Benzyl butyl phthalate (BBP) EC No201-622-7CAS No85-68-7 Dibutyl phthalate (DBP) EC No201-557-4CAS No84-74-2

7 Hexabromocyclododecane (HBCDD) EC No221-695-9,247-148-4,CAS No3194-55-625637-99-4alpha-hexabromocyclododecane CAS No134237-50-6,beta-hexabromocyclododecane CAS No134237-51-7gamma-hexabromocyclododecane CAS No134237-52-8

This aspect should be considered also in regard to possible derogations (art.4 and Annex 1 part 3) and to the criteria which will have to be established. In current directives (art. 9) derogations are given by single member states, they affect single plants and not the chemicals and they reduce some obligations[8].

In our opinion derogations for substances which require authorization according to REACH regulations should not be allowed.

If one wishes to reduce discretion to grant derogations, single Member states shouldn't be allowed to grant them, the criteria must be specified clearly, among these the chemical – physical characteristics of substances are important, therefore decisions must be made using the chemical safety reports required by the REACH regulations.

2. Public information and participation

At the request and for upper tier establishments, the text of the new directive extends the public's access to information contained in Safety Reports. In some cases Article 21[9] limits access to information contained in the Inventory of hazardous substances. Among the established criteria that allow this there is the right to privacy in commercial and industrial information in cases in which national or European laws safeguard legitimate commercial interests.

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[8] 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

[9] Access to the complete information referred to in Article 13(2)(b) and (c) obtained by the competent authorities may be refused if the operator has requested not to disclose certain parts of the safety report or the inventory of dangerous substances for the reasons provided for in points (b), (d), (e) or (f) of Article 4(2) of Directive 2003/4/EC.

In our opinion there should be no limits to the public's access to information concerning the Inventory of hazardous substances, the content of risk assessments and the preventive measures enacted; restrictions to the public's access to information should be limited to plant patent details and only if the operator obtains explicit dispensation from the national authority.
In our opinion the information to be provided to the public should be extended to inspection results (article 19)[10], to operator's communications in cases of major accidents and to the measures enacted or recommended by the competent authorities (art. 16).

3. Inspections

In the proposed directive the main innovation is that Member States are both requested to plan inspections and invited to coordinate them (art. 19).
It would be advisable to clarify which controls are dealt with and the directive should specify which provisions are applied to. The main concerned directives are those on workers' health protection and safety, the IPPC/IED[11], the REACH regulations and some specific directives, i.e. ATEX (Atmosphere Explosive) and PED (Pressure Equipment) Directive.

The inspections should also involve the correct development of external emergency plans, in particular in case of extraordinary inspections following major accidents.

[10] Also taking into account the 4th April 2001 RECOMMENDATION OF THE EUROPEAN PARLIAMENT AND COUNCIL which establishes the minimum criteria for environmental inspections in member States (2001/33/CE)
[11] Directive 2010/75/EU of 24.11.2010 on industrial emissions (integrated pollution prevention and control) OJ L334 of 17.12.2010

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