

Fecc Position Paper

Position on the EU Commission's proposal for amending the Directive on control of major-accident hazards involving dangerous substances ("Seveso Directive") - status: 21 December 2010

At the end of December 2010 the EU Commission published the draft for amending the Seveso II Directive. The initial objective of the revision process was to align the Seveso Directive to the CLP Regulation with the intention to keep the scope as close as possible to the current Directive, so as to avoid as far as possible to widen or to lower the safety level. Upon viewing the proposal document it is apparent that other changes to the Directive are being suggested so it has taken some time to review each part of the text.

Fecc welcomes the Commission's proposal to introduce corrective mechanisms to improve the flexibility by allowing for the exclusion of certain substances from the scope of the Directive if they do not present a major-accident hazard. However, we are concerned by some of the other provisions that will extend the rules for inspection and for information to the public.

The impact assessment presented by the Commission – according to which fewer establishments will fall under the Directive and expected costs will be low – is not conclusive. More establishments are likely to fall in the scope of the Seveso Directive, because significantly more substances will be covered by this Directive (see point 1 below). Due to administrative workloads and plant investments, considerable costs would arise especially for small and medium-sized enterprises (SMEs), without any justification in terms of an increase in safety levels. Moreover, as more sites will be covered by the scope of Seveso, Member States would have to allocate more financial and trained human resources to the enforcement of the enlarged scope of the Directive and its enabling legislation.

For these reasons, we are opposing in particular the following amendments. In this position paper, the sequence of proposed amendments reflects their importance to the chemical distribution industry.

1. Annex I, no tightening of rules by extending the scope of the Directive

Fecc agrees with the initial Commission edict that an extension of the scope of the Directive should be limited as far as possible. However, the model stated in the Commission current 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 revised Directive. As tighter rules are neither necessary nor justified because of safety reasons, industry should not be unnecessarily burdened with stricter provisions and thus extra costs. This applies in particular to SMEs. The chemical industry assessment is that 20-30%¹ of additional substances will fall under the Directive in consequence of the amendment as proposed.

Therefore, in Annex I for "H2 Acute Toxic", Fecc recommends that the hazard category 3 (Dermal and Inhalative (except inhalation aerosols)) entry be removed from Annex 1. The Commission and the Committee of the Competent Authorities would then utilise the delegated acts procedure and the list of criteria set in Annex VII to

¹ VCI study

capture additional substances or Hazard categories, like H2 cat 3, that should be included into Annex I of the Directive.

2. Article 19 (Inspections): no rigid time periods and no wider requirements

The current option should be maintained to extend intervals of one year for inspections if an inspection program – drawn up by Competent Authorities – is available. Rigid one-year periods and a significant widening of the scope of inspections will involve higher workloads, costs and burdens for both companies, especially SMEs, and Competent Authorities. This is out of proportion for both authorities and operators, because there is no need for stricter requirements in respect of safety. The existing system, which takes into account the inspection program, has proven its effectiveness and gives the necessary flexibility for a risk-oriented approach to the Competent Authorities.

Article 19 (5)(c) makes a reference to the Union eco-management and audit scheme (EMAS). However as many companies are trading and operating internationally, they usually apply international standards such as BS EN ISO 14001. Therefore it would be useful to add this standardisation system as an example as well.

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 clearly increase administrative workloads and bureaucracy for both Competent Authorities and site operators. The proposed information requirements are likely to cause uncertainty among the public. The public should not be overwhelmed by a flood of information; the public needs to be provided with a limited number of information items which are really important. It is essential for the public to know what to do in the unlikely event of a major accident. Too much information has exactly the opposite effect, namely confusion.

Fecc strongly suggests that the additional information to be provided under Annex V Part 2 point 1 for upper-tier establishments is extremely sensitive and could be used by ill-intentioned persons for other purposes. DG HOME is currently working on the subjects of CBRN and explosives to increase security of sites storing specific substances and the provision of the proposed level of information in the public domain undermines their efforts and should therefore be removed.

The goal of the Seveso directive should be to make licensing procedures for chemical plant proportionate and not merely more difficult without appreciable safety benefit, in order not to further hinder or prevent potential investments in the European chemical industry.

4. Article 4(5) sub-paragraph 3, Derogation and safeguard clauses; maintaining the regular legislative procedure for widening the scope of application

With the expected highly dynamic nature of the Directive, uncertainties remain on how to include new substances on the exemption list. Article 4 of the Commission proposal states that adaptation of Annex I should be done via delegated acts. According to the delegated acts procedure the Commission is empowered to make non-legislative changes to the Annex I. Fecc welcomes the use of delegated acts which enables a proper consideration of technical issues rather than diversion into political considerations. However, clear information on the criteria to be used to include new substances, under the delegated acts procedure, MUST be provided before the new Seveso proposal is adopted. Article 4 states that the criteria in Annex VII will only be established

by June 2013. This is unacceptable as the criteria will have major consequences on flexibility and on the number of substances to be exempted.

Article 4 should apply from the entry into force of the Directive in order to take into account all classification changes (i.e introduced by CLP and REACH) which will occur before 1 June 2015.

5. Self classification implementation timescales

There are already examples of substances falling within the scope of Seveso due to their progress through the REACH regime, because they are now classified as environmentally hazardous under the CLP Regulation.

Examples of these are Sodium hypochlorite and Sodium chlorite. The imposition of an 'M' factor within the CLP classifications has brought solutions, with greater than 2.5% concentration of these substances into the scope of Seveso for the first time.

The more substance classifications are changed according to the REACH regime, the greater the impact under this Directive leading to an increase in the numbers of 'Seveso sites'. These increases will affect the way Member States enforce the Directive and when combined with the prescriptive inspection regime mentioned in point 2 will place additional disproportionate burdens on all those involved within the Seveso regime.

6. Additional comments

Fecc would like to raise an illogical aspect of the current Seveso Directive. Mixtures, whatever the quantity of hazardous substances they contain, are treated in the same way as pure substances. Although this is already the case in the current Directive, it means that a hazardous mixture counts as 100% when calculating the qualifying quantity of the mixture regardless of the percentage of the hazardous substance responsible for the classification in the mixture.

According to Article 3, the definition of "establishment" means the whole location under the control of an operator where dangerous substances falling within the scope of this Directive are present in one or more installations, including common or related infrastructures or activities'. This wording is therefore used in the scope of the Directive.

However Article 19(3) sub-paragraph (d) refers to establishments with possible domino-effects which are not part of the Directive. Fecc recommends that a consistent use of the terminology 'establishment' for industrial sites falling within the scope of the Directive be maintained in order to avoid any confusion. If the wording within this sub-paragraph is adopted it will extend the scope of the Directive further to include sites 'out of the scope' of the Directive and could dramatically increase the number of sites brought in the scope and enhance the administrative burdens for all involved.