

EEB opinion on
the proposal to amend Directive 96/82/EC
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1 Integration of relevant guidelines

For establishments which are subject to Directive 96/82/EC (the Seveso Directive), other very important directives are

1. Directive 85/337/EEC, amended by 97/11/EEC, on the assessment of effects on the environment, and
2. Directive 96/61/EEC, the IPPC Directive.

Unfortunately,

- a. these directives are each based on their own definition of the scope of application, which differ in methodology and contents from those of the other directives; and
- b. the directives contain obligations which can concern the same operators and authorities, but which are not coordinated with each other in either their content or with respect to legal responsibility.

This situation

- is damaging to the public image of the Commission, the Parliament and the Council in the various Member States;
- inevitably results in shortcomings in transposing the directives into national law;
- inevitably results in shortcomings in the application of the directives; and
- makes it harder to build and expand the affected facilities, since the operators are unclear about their present (and future) obligations.

It is understandable that a substantial improvement in this situation is not possible in the amendment of a directive required at such short notice.

Nevertheless, it must be acknowledged that an improvement at the level of European legislation is urgently required and a medium-term concept should be worked out and implemented as soon as possible to amend the directive, for the purpose of harmonization.

1.1 The limitations of the IPPC directive

1.1.1 Waste from mining and the extraction of ores, concentrates and so forth

The EEB welcomes the Commission's plans to amend the SEVESO directive and to prepare a new mining waste directive. When using the BREF notes from the IPPC directive, attention should be given to the limited scope of the directive. The scope of the BREF work should be sufficiently broad, in order to cover all mining tailing dams and not only the ones covered by the directive.

The mining and ore preparation sector is characterized by extensive turnover of material, associated with the production of large quantities of waste. Moreover, dangerous substances (explosives, chemicals, auxiliary agents) are either used or released from these minerals or ores through these activities (e.g. acid mine drainage). In addition, usually the location cannot be freely chosen, so that little consideration is given to the vulnerability of the environment. Finally, relatively old facilities are often involved, and cannot be adapted to progressive environmental standards because they are "protected".

Unfortunately, however, the arrangements proposed in this draft amendment are not sufficient to alleviate the existing problems significantly.

Chapter 2.2 of the Justification states that the hazards presented by tailings ponds should be dealt with in a document on the best available technique in accordance with the IPPC Directive.

Under the arrangements of Annex I of the IPPC Directive, it is not at all clear that tailings ponds fall under the scope of the Directive.

Of relevance in this connection are:

2.5 Annexes

- a. for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.*

If, as described in Chapter 2.2 of the Justification of the draft amendment, tailings ponds may be located several kilometres away from the mine and ore preparation, and run, if necessary, by yet another operator, thus constituting a separate facility, then according to this sub-section they do not fall under the scope of the IPPC Directive.

Annex 1, sub-section 5.1 must also be considered:

5.1 Installations for the disposal or recovery of hazardous waste as defined in the list referred to in Article 1 (4) of Directive 91/689/EEC, as defined in Annexes II A and II B (operations R1, R5, R6, R8 and R9) to Directive 75/442/EEC and in Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils (3), with a capacity exceeding 10 tonnes per day.

It can be argued that the storage of waste in tailings ponds constitutes none of the cited operations R1, R5, R6, R8 and R9, but instead operation R13, "Collection of waste to subject it to one of the operations listed under R1 to R12".

Producing a document on the best-available technique for mining, ore preparation and so on offers no solution towards resolving this sector's environmental and safety problems if this document's application is not binding. Therefore, we support the use of such information for a harmonised approach, as suggested by the working document of the Commission on the management of mining waste from 15th June 2001.

1.2 The manufacture, processing, storage and disposal of explosive substances, mixtures and preparations, and of products and articles which contain them

The efforts of the draft amendment to apply the Seveso Directive to a greater degree to establishments where pyrotechnical substances, articles and products are located, is to be welcomed.

Unfortunately here too the proposed arrangements are inadequate, since the Seveso Directive alone will not resolve the problems involved in the manufacture, processing, storage and disposal of explosive substances and pyrotechnic articles.

In these cases, the IPPC Directive should also be applied to appropriate facilities, in conjunction with the production of a document on the best available techniques in this area.

In the past, only chemical plants for the production of explosives have been subject to the IPPC Directive (Annex I, sub-section 4.6).

Consequently, facilities that are not subject to the IPPC Directive are:

1. plants in which explosive substances, mixtures or preparations are manufactured but which are not chemical plants,
2. plants for manufacturing explosive substances which are not intended for use as an explosive (e.g. propellant charges for pyrotechnical items),
3. plants for treating or processing explosive substances, mixtures and preparations and products or articles which contain them (munitions, other explosive charges, igniters, pyrotechnic products or articles),
4. plants for storing explosive substances, mixtures and preparations and products or articles which contain them (munitions, other explosive charges, igniters, pyrotechnic products or articles), and
5. plants for the disposal of explosive waste, substances, mixtures and preparations and products or articles which contain them (munitions, other explosive charges, igniters, pyrotechnic products or articles), such as plants for decommissioning munitions or munitions incinerators.

To solve the problems of this sector, as revealed by the Enschede accident, Annex I of the IPPC Directive must be supplemented as appropriate.

2 Simplifying the arrangement governing the scope of application of the directive

According to the information available, the classification needs to be revised in accordance with Directive 67/548/EEC (the Chemicals Directive), based on revisions to the classification of dangerous substances and goods at the level of the United Nations (coordinated by the Intergovernmental Forum on Chemical Safety, Stockholm). Since the Seveso Directive also makes reference to this directive, this will create a need to revise its definitions of scope.

A strategy of simplification is urgently needed as part of the upcoming revision of the scope of the Seveso Directive. As noted above, this should be coordinated and made consistent with the definitions of other directives concerning the same authorities, operators and plants. The ideal situation would be to have **a single** document on the definition of the scope of application of the following directives:

1. Directive 85/337/EEC as amended by 97/11/EC on assessment of effects on the environment,
2. Directive 96/61/EC, the IPPC Directive, and
3. Directive 96/82/EC (the Seveso Directive).

3 Completion of the scope of application

The arrangements governing the scope of application are characterized by:

1. inconsistent schemes;
2. shortcomings in the wording; and
3. intentional shortcomings.

A few major shortcomings of this type can be resolved by making simple, minor changes.

3.1 Hazards caused by fumes

Fires frequently occur in - the most serious accidents involving dangerous substances. They pose a threat to both people and the environment from the release of dangerous substances into the air or via water used to fight the blaze, or as a result of the combustion of dangerous substances or of dangerous substances resulting from the fire itself.

The current consideration of dangerous substances formed in the fire itself is

- a. inconsistent and also
- b. fails to take into account the vast majority of all actual relevant cases.

The Directive has to be amended to be applicable to all establishments where dangerous substances beyond a certain mass threshold are released, or where they can occur in the corresponding amounts in the case of fire.

3.1.1 An inadequate arrangement

Under Article 2 (Scope of application), Paragraph 1, Sentence 2, the application of the Directive with respect to the formation and release of dangerous substances in an accident is restricted to "during loss of control of an industrial chemical process".

This lacks any technical justification and the arrangement specified is inconsistent. Substances, preparations, products and wastes from which dangerous substances can be created in the event of a fire occur not only in industrial chemical processes, but also, for example, in metal and nonmetal production and processing, cement production and the generation of power from secondary fuels or in the petroleum industry.

This raises questions about whether, for instance, storage is clearly an "industrial chemical process", especially if the operating company does not belong to the chemical industry.

Example:

For example, when fertilisers are stored in large quantities by agricultural concerns, (but are not necessarily ammonium nitrate as defined in Annex 1, Part 1 of the

Directive), toxic nitric oxides may be released after a self-sustaining decomposition process is initiated. However, if this storage is not considered to be part of an "industrial chemical process", then the Directive is not applied, despite the existence of significant hazards.

If, however, we are dealing with a warehouse for the same type of fertiliser in an establishment *producing* fertiliser, then the Directive will be applied.

The same is true for the storage of halogen-containing plastics and their intermediate products, from which very toxic hydrogen fluoride, hydrogen chloride or hydrogen bromide, or even halogenated dioxins, can form in a fire.

Likewise, the manufacture, handling and storage of tyres present a serious hazard since tyre fires are very difficult to extinguish, and not only generate substantial quantities of airborne pollutants, but also produce oils that pollute the ground and water.

3.1.2 Proposed amendment to Article 2, Scope of application

Article 2, Paragraph 1, Sentence 1 should be amended as follows:

*For the purposes of this Directive, the 'presence of dangerous substances' shall mean the actual or anticipated presence of such substances in the establishment, **as well as possible amounts generated in uncontrolled incidents**, in quantities equal to or in excess of the thresholds in Parts 1 and 2 of Annex I".*

3.2 The clear inclusion of products and waste

Various parties believe that when assessing the application of the Directive in accordance with Article 3, No. 4 in conjunction with Annex I, Part 2, only substances and preparations as defined in Directive 67/548 are relevant. This means that part of the Directive is then not applied if the dangerous substances are a component of products (goods) or waste.

This is not consistent with the objectives of the Directive, and also is not technically justified, since the intended use of a dangerous substance does not automatically correspond to the risks that it generates during an accident..

Example:

An establishment stores fireworks. One expert believes that fireworks are not substances or preparations, but rather products or goods. The competent authority's efforts in court to apply the Directive are unsuccessful.

A similar situation is conceivable where dangerous substances are components of products for controlling rodents. Highly toxic substances are included in products packaged to exclude or minimise access by people or other animals. The same line

of reasoning (that these are products or goods, not substances or preparations) could be used to avoid applying the Directive to a warehouse for such products.

3.2.1 Proposed amendment to Article 3, Definitions

Article 3, Definitions, No. 4 should be amended as follows:

"For the purposes of this Directive

4. *'dangerous substance' shall mean a substance, mixture or preparation listed in Annex 1, Part 1, or fulfilling the criteria laid down in Annex 1, Part 2, **or present as a substance, mixture or preparation or a component of products, goods or waste**, including those substances which it is reasonable to suppose may be generated in the event of accident;*

The notes to Annex I, Part 2 should be supplemented as follows:

Wastes shall be considered equivalent to preparations.

Where dangerous substances, mixtures or preparations are part of a product or goods, the quantity specified shall apply to the corresponding proportion. In the event the proportion is unknown, then the quantity specified shall apply to the total quantity of the product or goods.

3.3 The complete inclusion of stops during transport, pipelines and waste facilities

The current arrangement for applying the Directive to the storage of dangerous substances in connection with transport processes is problematic since it yields different requirements for technically identical processes.

The Directive applies to storage for transport inside establishments, but not to such storage outside them. This encourages the economic and organizational separation of plant units assigned to carry out transport processes. The risk inherent in shifting the storage of dangerous substances to public streets and so forth is obvious.

Example:

Before entering a chemical plant, arriving lorries are registered and admitted. If the car park needed for this is created on land owned by the operator, then it can fall within the scope of the Directive as a part of the plant. If, however, the car park is owned by someone else or by the municipality, then as a rule no application of the Directive will be possible. Even though the operator would be the person most likely to have the best knowledge of the dangerous substances on the lorry and also the most likely to have made technical and organizational precautions in the event of

emergencies, a reorganization of this type would mean that he was no longer responsible for emergency measures in the lorry park.

Pipelines for dangerous substances (natural gas, petroleum products, chemicals) also contain substantial quantities in individual block sections, in some cases under high pressure. Damage to such pipelines can pose a serious threat to people and to the environment. Many such pipelines cross the borders of EU Member States or follow heavily used railway lines that run through industrial estates. In some cases, the dangers associated with the pipelines are determined by technical components or actions undertaken in control centres in other Member States. It is therefore understandable why in the past this area has been exempted from the Directive's scope of application. Its inclusion is required not only from a technical point of view, but also because the security problems of such plants cannot be resolved at the level of the Member States, or can only be resolved with a considerable danger of distorting the conditions governing competition.

Either pipelines for dangerous substances need to be included in the Seveso Directive or a separate directive needs to be drawn up in the near future.

The storage of waste containing dangerous substances on, in or under the ground normally does not merely entail storage. Usually procedures for intermediate storage, trans-shipment and handling are required before depositing or storing. The hazards associated with this are comparable to those created by establishments for manufacturing such substances. It is therefore incomprehensible why such landfills are excluded from the Directive's application. This loophole must be closed immediately.

Example:

Slurries produced in the course of electroplating should be stored in a waste dump. If necessary, to this end cyanides need to be oxidised and chromates reduced. There is a danger that hydrogen cyanide and chromate-containing dusts can be released in the intermediate storage and handling. These dangers are comparable to those of an establishment for manufacturing such substances. Neither the past exception under Article 4, nor the current proposed amendment makes it clear that the Directive should also be applied to such facilities.

In addition, the newly proposed wording of Article 4 (f) is inadequate and inexpedient, as can already be ascertained from Chapter 2.2 of the Justification. If waste dumps and mine ponds have to be operated several kilometres away from the mine, then an operator (or the two operators of the mine and tailings pond) can successfully argue that the facilities are not operated "in connection" with each other. It is conceivable that for this specific purpose, the transport of waste from either the mine or the ore preparation to the tailings pond could be switched from a pipeline to transport by road or rail with a view to destroying such a "connection".

3.3.1 Proposed amendment to Article 4, Exclusions:

Exclusions (c), (d) and (f) in Article 4 should be deleted.

3.4 The inclusion of other carcinogenic substances

The proposed inclusion of other carcinogenic substances is to be welcomed.

However, the proposed increase in the threshold from 1 kg to 0.5 t is entirely excessive.

In principle, one can agree with the reasoning in Chapter 2.3.1 of the Justification that the 1 kg threshold for the carcinogenic substances cited in the past bears no suitable relationship to the threshold for chlorinated dioxins, but the wrong conclusion will be drawn from this. In fact, the 1 kg threshold for chlorinated dioxins should be lowered to make this arrangement at all relevant.

The justification that hospitals and research centres should be excluded from the Directive's scope of application makes no sense when considered in conjunction with the proposal to raise the threshold for the carcinogenic substances cited. Research centres are usually also collection centres, so - like hospitals - they should be places where large quantities of dangerous substances are present only when absolutely necessary, and even then only subject to strict security precautions.

For these reasons, we recommend that:

- a) the threshold for chlorinated dioxins be lowered from 1 kg to 0.001 kg, and**
- b) that the threshold for the carcinogenic substances cited be set at 0.1 t for the application of Articles 6 and 7, and 0.5 t for the application of Article 9.**

3.5 Amending the scope of application regarding substances that pose a threat to the environment

The proposal to change the thresholds for substances that pose a threat to the environment to 200 and 500 t respectively is to be welcomed.

However, the special provision applying to types of petrol, naphtha, kerosene, gas oils and petroleum products with similar boiling points, with a view to assisting the petroleum industry, must be rejected.

The result of this provision, with a threshold 10 times higher, will be that the majority of plants which have over 200 t of substances that pose a threat to the environment will not be subject to the Seveso Directive. Consequently, the proposed amendment largely fails to attain the objective.

Moreover, the special provision on behalf of the petroleum industry described is incompatible with the UNECE's agreement on the cross-border impact of industrial

accidents, which generally sets a threshold of 200 t for substances that pose a threat to the environment and contains no exception for the petroleum industry.

Under this draft, the EU would be unable to ratify the UNECE agreement, a situation which, given the numerous welcome features it contains, is unacceptable.

The special arrangement governing types of petrols, naphtha, kerosene, gas oils and petroleum products with similar boiling points must be eliminated.

4 Clear adoption of the Precautionary Principle as a basis

At present, the Directive does not clearly acknowledge either a risk principle or a precautionary principle. It is not evident whether installations and their facilities should be designed, built, operated and shut down in accordance with the Precautionary Principle or the Risk Principle. Instead, the Directive refers to "necessary measures" and "measures which may prove necessary".

In this connection, it must be noted that facilities which are subject to both the Seveso Directive and the IPPC Directive have an obligation to take precautions anyway, since Article 3 of this directive reads as follows:

Member States shall take the necessary measures to provide that the competent authorities ensure that installations are operated in such a way that:

- a) all the appropriate precautionary measures are taken against pollution, in particular through application of the best available techniques;*
- b) ...*
- c) ...*
- d) ...*
- e) the necessary measures are taken to prevent accidents and limit their consequences;*

...

and Article 2 defines:

For the purposes of this Directive

- 1. ...*

2. *'pollution` shall mean the direct or indirect introduction as a result of human activity, of substances, vibrations, heat or noise into the air, water or land which may be harmful to human health or the quality of the environment, result in damage to material property, or impair or interfere with amenities and other legitimate uses of the environment;*

...

Since any serious accident will also cause 'pollution' as defined in the IPPC Directive, "necessary measures" in Article 3 (e) of the IPPC Directive are defined in greater detail by Article 3 (a).

For the purpose of achieving the required harmonization of directives, the Seveso Directive should make it clear that "necessary measures" or "essential measures" meet the requirements specified in Article 3 (a) of the IPPC Directive.

4.1 Proposed amendments to

Article 5, General obligations imposed on the operator

(1) Member States shall ensure that the operator is obliged to take all measures necessary to prevent major accidents and to limit their consequences for man and the environment.

- (2) *Member States shall ensure that the operator is required to prove to the competent authority referred to in Article 16, hereinafter referred to as the 'competent authority', at any time, in particular for the purposes of the inspections and controls referred to in Article 18, that he has taken all the **measures** necessary as specified in this Directive.*
- (3) *In particular, all measures are necessary which correspond to the use of the best available techniques for preventing accidents and limiting the consequences of accidents which might occur nonetheless, as well as all suitable precautionary measures against accidental environmental pollution.*

Article 7, Major-accident prevention policy

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

Article 9, Safety report

- (1) *Member States shall require the operator to produce a safety report for the purposes of*
- a).... ..
- b) *demonstrating that the risk or hazards of major accidents **have been identified, that his obligations are being met** and that the necessary measures have been taken to prevent such accidents and to limit their consequences for man and the environment;*

5 The equal importance of safety engineering and safety management

Optimal safety at an establishment or facility can only be achieved when both safety engineering and safety management are applied in a balanced manner. Moreover, the explosion accident in Enschede highlighted the serious consequences of ignoring safety management combined with inadequate safety engineering.

The Seveso Directive currently suffers from an under emphasis on obligations with respect to safety management. It lacks the requirements derived from fundamental, substantive obligations which are basic necessities for good safety engineering.

5.1 Proposed amendment:

The insertion of an Article 5a, Obligations of the operator

(1) Member States shall ensure that the operator is obliged to design all facilities of an establishment to protect them against

- a. in-plant safety hazards,***
- b. safety hazards arising from the external causes, such as earthquakes, floods or threats posed by other facilities, and***
- c. unauthorized intervention.***

- (2) They shall ensure that with respect to all his installations the operator is obliged to***
- a) design such installations in such a way that in the event of operational malfunctions they still meet the expected demands,***
 - b) provide such installations with the necessary safety equipment, as far as possible in several different and independent forms, , such as equipment for load relief, for collection, retention, measurement, control, regulation, warning and alarms,***
 - c) prevent explosions and fires by implementing the necessary technical and structural measures, and in the event that such incidents occur nonetheless, to limit their impact on the installation by means of such measures,***
 - d) inspect and maintain safety-related parts of the installation during construction and periodically whilst in operation,***
 - e) take the necessary technical and organizational measures against faulty operation and unauthorized intervention.***

6 External emergency planning (Article 11)

6.1 Time limits

Article 11 requires operators to produce internal emergency plans within specified time limits and to supply the information required for external emergency planning, but does **not** require the Member States to ensure that the external emergency plans are produced within a certain time limit.

This shortcoming can result in external emergency plans being drawn up either late or not at all. In particular, it results in there being no damage compensation claims if people sustain an avoidable injury in a serious accident due to absent or inadequate emergency planning.

The Member States must be given a suitable time limit in Article 11 within which the external emergency plans have to be drawn up.

6.2 Exemption from producing an external emergency plan

In accordance with Article 11 (6), the competent authority for the emergency planning may decide that the requirement to produce an external emergency plan shall not apply. The competent authority must give reasons for its decision. It remains unclear

- a) to whom this decision and justification are addressed,
- b) whether prior coordination with the competent authority responsible for the approval and inspection of the installations in question is necessary, and
- c) whether the public has to be informed of the decision.

The formulation of external emergency plans can give rise to both personnel-related and technical shortcomings in terms of the human resources needed in the event of an emergency. Since eliminating these shortcomings entails costs for either the municipalities or the relevant operator, there is a danger that competent authorities may decline to formulate emergency plans so that the shortcomings do not become apparent.

A refusal to engage in emergency planning can also reduce the protection of the public affected, but under the current arrangement it is not informed of this at all.

The accidental explosion in Enschede also showed that inadequate cooperation between various authorities results in shortcomings in emergency planning and that the supervision of local authorities by policymaking bodies is necessary. Consequently, a decision on the need for external emergency plans has to be made in coordination with the competent authority responsible for the approval and inspection of the corresponding establishment, and this decision must be publicly announced.

6.3 Proposed amendment to Article 11, Emergency plans

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

a) ...

b) ...

*c) the authorities designated for that purpose by the Member State draw up an external emergency plan for the measures to be taken outside the establishment **within one year after receiving the information from an operator.***

...

*(6) **The competent authority may decide, after consulting with the competent authority for the approval and inspection of the establishment in question and in view of the information contained in the safety report, that the requirement to produce an external emergency plan under paragraph 1 shall not apply. The competent authority shall give reasons for its decision and shall publicly announce the decision.***

7 Land-use planning

The Enschede incident is not the only event that demonstrates how inadequate spatial planning together with an uncritically accepted expansion of a dangerous establishment can create a serious hazard to an adjacent housing development.

Such situations arise particularly often at old industrial production sites in Germany, where the separation distances do not correspond to the spacing rules that have been drawn up.

A reasonable land-use planning policy, or also a relocation policy, is often ignored when existing establishments are expanded, due to fears concerning competitive disadvantages and concerns about lost municipal income.

To avoid commercial factors not being adequately weighed against hazards, but also to enhance public awareness and strengthen the social community, it is vitally important that the public, and in particular the neighbourhood affected, be involved here.

7.1 Proposed amendment to Article 10 and Article 12

a) to Article 10, Modification of an installation, an establishment or a storage facility:

In the event of the modification...the Member States shall ensure that

.....

- the public is consulted in the procedure concerning such a modification.

b) to Article 12, Land-use planning:

.....

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

(3) The public must be consulted in the procedures under paragraphs (1) and (2).

8 Improving the monitoring and supervision of establishments

Analysis of the Enschede accident in particular has made it clear that there are shortcomings in the monitoring and supervision of facilities where dangerous substances are present. In particular, there are shortcomings in

- the implementation of checks (inspections),
- the granting of permits,
- the resources of the responsible authorities, and
- the derivation of results and their implementation, in particular in cooperation with other authorities.

The European Parliament and Council have issued recommendations providing minimum criteria for environmental inspections¹. Unfortunately, these apply only to facilities which need an authorization, permit or licence and do not include special obligations of the Seveso Directive (e.g. safety reports, emergency plans). Moreover, they are only recommendations.

In view of this situation it seems appropriate to

1. make binding the environmental inspections performed in accordance with the recommendation applying to establishments subject to the Seveso Directive,
2. oblige the Member States to provide the necessary resources, and
3. set deadlines within which operators have to implement the findings of inspections.

8.1 Proposed amendment to

Article 17, Prohibition of use

*(1) Member States shall prohibit the use or bringing into use of any establishment, installation or storage facility, or any part thereof where the measures taken by the operator for the prevention and mitigation of major accidents are seriously deficient **or where instructions associated with authorizations or based on inspections were not implemented within the specified period.***

¹ Official Journal L 118 of 27 April 2001, pp. 41-46.

Article 18, Inspections

(1) Member States shall ensure

- *that the competent authorities organize a system of inspections or other measures of control **for all establishments under their jurisdiction in accordance with the recommendations providing for minimum criteria for environmental inspections**²,*
- ***that the necessary resources for such implementation exist.** Those inspections or control measures shall not be dependent upon receipt of the safety report or any other report submitted. Such inspections or other control measures shall **include** a planned and systematic examination of the systems being employed at the establishment **and obligations of the operator, in particular in accordance with this Directive**, whether of a technical, organizational or managerial nature, so as to ensure in particular:*
 - *that the operator can demonstrate that he has taken appropriate measures, in connection with the various activities involved in the establishment, to prevent major accidents,*
 - *that the operator can demonstrate that he has provided appropriate means for limiting the consequences of major accidents, on site and off site,*
 - *that the data and information contained in the safety report, or any other report submitted, adequately reflects the conditions in the establishment,*
 - *that information has been supplied to the public pursuant to Article 13 (1).*

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

- a) *there shall be a programme of inspections for all establishments. Unless the competent authority has established a programme of inspections based upon a systematic appraisal of major-accident hazards of the particular establishment concerned, the programme shall entail at least one on-site inspection made by the competent authority every twelve months of each establishment covered by Article 9 **with all its facilities. The programme of inspections based upon a systematic appraisal shall ensure that***
 - ***the establishment with all its facilities is inspected at least once every five years ,***

² Official Journal L 118 of 27 May 2001, pp. 41-46.

- ***an inspection of facilities is performed after modifications, serious and major accidents and incidents, and when the authorities learn of non-compliance with statutory EU requirements and national requirements;***
- b) ***following each inspection, a report shall be drawn up by the competent authority which shall contain the follow-up measures to be taken by the operator, citing the time periods for their implementation, and which shall be made available to the public;***
- c) ***in particular in the event of non-compliance with statutory EU requirements and national requirements, the competent authority shall prescribe follow-up measures, citing the time period during which the operator must implement them.***

9 Improving the monitoring and supervision of the Directive's implementation

The implementation of the Directive, and unfortunately also the accidental explosion in Enschede, have clearly shown that there are serious legal and practical difficulties in carrying out the Directive. The existing tool of the committee referred to in Article 22 has not proven sufficiently effective and the lack of transparency in its work is unsatisfactory.

The Commission has to step up its efforts to become familiar with shortcomings in the implementation and application and to adopt the necessary measures. It must not rely on being informed about such shortcomings by the representatives of the Member States on the committee referred to in Article 22. The Commission has to be more active, and include the EEA and MAHB.

The need for action seems particularly great in the following areas:

- a. methods, standards and legal rules for the application of land-use planning in accordance with Article 12;
- b. criteria for when external emergency plans do not need to be drawn up, the production of external emergency plans and their contents, and minimum requirements for emergency measures to be provided in the event of certain dangers;
- c. the application of the Directive to chemical plants for manufacturing an undefined number of partly hazardous chemicals (multi-purpose plants);
- d. minimum technical requirements for the construction, operation and shut-down of facilities subject to the Directive;
- e. notification obligations and criteria, communication of experiences gained from accidents; and
- f. possibilities for imposing sanctions when there are shortcomings in applying the Directive.

Re (e):

The notification criteria under Annex VI, in particular under Point 2, are hard to understand since to some degree they are imposed in areas (e.g. hospitals and health protection) that are not directly subject to the Directive and, moreover, partly fall under data protection. On the other hand these criteria are met by notification obligations created by other directives governing such issues as labour protection or health protection. A sensible linkage of notification obligations is missing here, not only at the EU level, but also at Member State level.

This linkage, for example with accident surveys and statistics, would provide the entire Community with a realistic insight into how the event occurred, and would make the institutions EEA and MAHB less dependent on the reports by the Member States, which naturally want to avoid revealing any weaknesses in this regard.

Furthermore, it should be checked how other sources of information can be drawn on, and reports such as those by the media or by NGOs should be examined, in a similar way to the procedure followed by the US EPA's Chemical Incident Reporting Centre, CIRC.

Re (f):

Incidents at Enschede, Baia Mare and Costa Donana have shown that a directive without sanctions cannot cope with inadequate awareness of the law and hazards coupled with criminal actions.

At the very least, appropriate fines should be levied, as is the case in competition law, at EU level, if necessary.

After all, allowing the expansion of an installation which neglects safety measures in the middle of a residential area, as occurred in Enschede, effectively prevents fair competition from installations which incur substantial costs for decentralization and retrofitting.