

Health and Safety Executive Board		HSE/11/37	
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Type of Paper:	Above the line	Exemptions:	Paragraphs (or part) 5-7, 10-13, 15: Section 35 - formulation of Government policy
TRIM Reference:	2011/328343		

Seveso III Directive - update

Purpose of the paper

1. To provide an update on progress since the European Commission (CION) published the proposed Seveso III Directive in December 2010. In particular the Board is asked to note the potentially significant issues associated with the proposals.

Background

2. This paper updates information provided to the Board in June 2010 (HSE/10/73) which included background to the Seveso Directive. The Directive originates from CION's DG Environment and aims to prevent onshore major accidents and limit the consequences to people and/or the environment. The Seveso II Directive is currently implemented in Great Britain by the Control of Major Accident Hazards (COMAH) Regulations 1999 and through the land-use planning regimes for hazardous substances consents in England, Scotland and Wales. COMAH is enforced by HSE and the environment agencies (Environment Agency and Scottish Environment Protection Agency), working together as the COMAH Competent Authority (CA).
3. A new Directive is needed because the hazard-based classification system for chemicals, upon which the scope of Seveso is determined, is being replaced, and Seveso II will no longer function unless there is a link with the new classification system. The old system was based on the Chemicals (Hazard Information and Packaging for Supply) Regulations (CHIP). The new system is based on the European Regulation on classification, labelling and packaging of substances (CLP). The CLP Regulation adopts the globally harmonised system on the classification and labelling of chemicals (GHS) throughout the EU and will replace CHIP in June 2015. There is no direct correlation in the classification of dangerous substances under CLP and CHIP, hence the need for a new alignment method. This will inevitably lead to changes in scope of Seveso, particularly evident for acute toxic health hazards. There is a benefit in resolving the issue of alignment as quickly as possible so that it provides certainty for industry.
4. CION also aims to take the opportunity to modernise the Directive by making it consistent with other recent related environment Directives and including provision for greater public information provision through the internet. An

earlier CION review of Seveso II found that the fundamental approach of the Directive was correct, against which the extent of the 'modernising' in the proposal has been greater than anticipated.

5. CION published the proposed Seveso III Directive on 21 December 2010 and revised text incorporating technical amendments was produced on 8 April 2011. Negotiations continue. The current Hungarian Presidency initially set an ambitious timetable but is now more realistic and aims to deliver a progress report to the June Environment Council, both as a handover to the Polish Presidency, and to inform the debate. A first reading is planned by the end of 2011, but agreement on the Directive is more likely to be achieved after a second reading by the European Parliament and European Council during 2012. The proposed Directive currently requires that transposition into member state law must take place by 31 May 2015. → ←
6. → ←
7. → ←
8. A pack containing the draft UK negotiating strategy has been sent to the Minister for the European Affairs Committee for approval, including the UK IA.

Argument

9. The proposed Directive identifies 4 main areas for change:

Alignment of the list of applicable dangerous substances with the CLP Directive

- 10 Depending on the alignment method used (there are currently 4) there is potential for sites to move into or out of scope, or to move from lower to top tier or vice versa. The ORC International report indicates the likely impact on COMAH sites which includes a limited number of sites moving out of the scope of the Directive. However the impact for non-COMAH sites could be significant, bringing in to scope new sites which are not currently considered to have major accident potential, although the full extent will not be clear until the final alignment method is implemented into COMAH and operators have notified accordingly. Some initial work has already been done with the cleaning products and aerosol filling industries, where classification changes are likely to have an impact. → ←

Introducing a mechanism for dealing with the unwarranted effects of CLP alignment

- 11 It would be desirable to have a mechanism to remove substances and/or sites that have unjustifiably fallen within or outside scope because they either present or do not present a major accident hazard. However, the mechanism to achieve this could be politically sensitive. The method proposed uses delegated acts to adapt the substances which fall within scope of Seveso and gives CION the power to amend the list of substances following consultation with a group of member state representatives. This has the advantage of not requiring new legislation as new substances are identified, but it gives more power to CION since it would only be obliged to 'consult' the group of member state representatives. → ←

Strengthening the provision of information to and consultation with the public, and access to justice in line with the UNECE Aarhus Convention¹ and other environmental Directives (such as Directive 2003/4/EC² and Directive 2003/35/EC³)

- 12 There are financial implications in supporting the principle of improved provision of information. The proposal currently states that public information should be available electronically and this would attract IT costs to develop and maintain a suitable system. The Directive also seeks to extend existing public information about top tier and lower tier sites. There would be a right to redress through the legal system if the public wanted to challenge a decision made by the Competent Authority or were unfairly denied access to information. → ←
- 13 There are potential security implications of extending the provision of information. For example, there is a new requirement for information from inspections and about major accident scenarios to be made available to the public, including by the internet. This is in addition to the existing requirement for safety reports to be made available. These documents could contain information useful to terrorists. There is an Article in the proposal regarding security and the need to protect sensitive information, allowing the Competent Authority to withhold certain information. If a safety report is deemed to contain sensitive information, the operator has to provide an amended report. Following 9/11, a Direction from the Secretary of State was put in place requiring safety reports to be removed from the public register. → ←
- 14 The proposed Directive provides that the public should have ready access to electronic summaries of inspections carried out and their main findings. Preparing the summaries could be onerous for the Competent Authority. This provision could also affect the way findings are communicated to dutyholders, an issue that has also arisen in the aftermath of Deepwater Horizon.

Tighter standards for inspections

- 15 There are proposals for prescriptive timescales for carrying out inspections and reporting on findings. These may prove to be hard to achieve due to the need to compile multidisciplinary inputs and to balance – sometimes substantial – reactive demands from investigation and enforcement work. These issues were also considered as part of the HID work on COMAH Remodelling.

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Update on other issues referred to in June 2010 Board paper

- 16 Other potentially significant issues identified in the 2010 Board paper have been addressed. The EC has concluded that there is insufficient evidence at

¹ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters; the UK is a signatory to this Convention. It entered into force in 2001 and grants public rights and imposes obligations on public authorities regarding access to information and public participation and access to justice.

² Directive 2003/4/EC on public access to environmental information.

³ Directive 2003/35/EC providing for public participation in respect of drawing up certain plans and programmes relating to the environment and amending with regards to public participation and access to justice. Board1 (01.10)

this stage to include carbon capture and storage within Seveso scope and this will be reviewed at a later stage. There is no intention to include the offshore sector within scope although it is widely believed that the European Parliament will continue to press for it. Pipelines are not within scope of the proposed Directive although there is a review being carried out by CION to look at whether to change this. Prior to the publication of the proposal some member states had lobbied the Commission to include security matters within the scope of Seveso, such as the duties currently carried out by the security services at sites in the UK. However there is nothing in the proposal on this point and pressure to include it has lessened.

Action

- 17 The Board is invited to:
- (i) note progress since the adoption of the proposal for the Seveso III Directive;
 - (ii) note in particular the implications of the more significant proposed changes identified above; and
 - (iii) confirm how the Board wishes to be kept informed of future progress.

Paper clearance

- 18 Cleared by the Senior Management Team on 1 June 2011.