

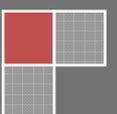
2011

SEVESO III and the Aarhus Convention

A quick analysis



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2011.05.12.



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General context

In 2010 Justice and Environment (J&E) has produced a position paper highlighting the necessary amendments to the existing Seveso Directive in order to comply with the requirements of the Aarhus Convention. Several critical issues were identified. The present document shall assess the developments in the proposal for a new Seveso Directive in the areas covered by the 2010 position paper. It is available under: <http://www.justiceandenvironment.org/files/file/2010/02/Aarhus-and-SEVESO-JE-2010-02-16.pdf>

J&E is a European network of environmental law organisations which was created in 2003 and was founded as non-profit association in 2004. J&E is striving to protect the environment, human health and nature by improving environmental legislation and enhancing the enforcement thereof. The Aarhus Convention (on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters) and its implementation to European and national environmental law has been the major focus of J&E in the past years. J&E has published several studies and analyses on this issue (see: <http://www.justiceandenvironment.org/publications/aarhus>).

Overview

According to the Explanatory Memorandum accompanying the draft the main reason for the revision of the Directive is *“to align its Annex I to Regulation (EC) No. 1272/2008 on classification, labelling and packaging of dangerous substances and mixtures (hereinafter the CLP Regulation)”* (p. 2). Adaptations made necessary by the signing and ratification of the Aarhus Convention by the EU in 1998 are mentioned later and less prominently.

The major focus of the Aarhus-relevant amendments is on the information to be made available to the public. According to the Memorandum the proposed changes shall *“improve the level and quality of information and how this is collected, managed, made available, updated and shared in an efficient and streamlined way.”* (p. 4). Further the proposal takes into account advances regarding information management systems such as the internet as well as the efforts to increase the efficiency of such systems, for instance the Shared Environmental Information System (SEIS) initiative and the INSPIRE Directive (2007/2/EC).

The amendments in detail

The following remarks relate to the Justice & Environment position paper of 16 February 2010 which was a contribution to the SEVESO II review process. The document is available on the J&E homepage (see above). In the following each proposed

provision is assessed as regards changes with relevance for issues governed by the Aarhus Convention with a particular focus on the proposals made by J&E in 2010.

Seveso III and Access to environmental information

Art 6: The new Article extends the information obligations of the operator towards the competent authority (CA). This is a positive signal since the CA is regularly the addressee of environmental information requests.

Art 12: The provision determines that the objective of preventing major accidents and limiting the consequences of such accidents have to be taken into account in the process of land-use planning. The draft provision explicitly states the protection of human health and the environment as an objective and provides for measures other than safety distances, which could already be found in the old Directive. The article further extends the possibility for CA to demand risk-related information also from lower-tier establishments.

As demanded in J&E's 2010 position paper, public participation procedures are explicitly introduced into this Article by reference to the provisions of the EIA (Council Directive 85/337/EEC12) and SEA (Directive 2001/42/EC of the European Parliament and of the Council) Directives.

Art 13: J&E welcomes the fact that as compared with the current Directive more information has to be provided to the public. This was demanded explicitly in J&E's 2010 position paper. The changes welcomed are, amongst others, the following:

- The obligation to permanently keep available for the public the information referred to in Annex V and to update it in yearly intervals.
- The requirement regarding upper-tier establishments to establish a pro-active information policy towards those potentially affected by a major accident.
- The requirement as regards upper-tier establishments the safety report and the inventory of dangerous substances have to be made available to the public upon request.

A drawback is the fact that the information which is to be provided by the operator to the CA in the Member States of major accidents as well as the information to be provided by the Member State to the Commission regarding major accidents (Arts. 14 and 15 of the current Directive, Arts 15 and 16 of the proposal) still does not have to be made available to the public. This contrasts Art 5 par 1c of the Aarhus Convention which regulates information policy in case of an imminent threat to human health or the environment.

Art 20: The provision on confidentiality has, in accordance with J&E's 2010 recommendation been adapted as to limit the grounds for the refusal of access to environmental information in the context of Seveso by referring to the conditions laid down in Article 4(2) of Directive 2003/4/EC. **However the new provision does not underline the public interest served by disclosure and does not explicitly demand a narrow interpretation for the grounds for refusal.**

Seveso III and public participation

Art 14: A completely new provision on public participation has been included in the proposal. The public will, according to the proposal, be able to give its opinions in the procedures concerning the following issues:

- Land-use planning pursuant to Art 12.
- Modifications to existing installations pursuant to Art 10.
- New developments around existing establishments pursuant to Art 12.
- External emergency plans pursuant to Art. 11 (1) c.

This is a positive development and will allow for broader public participation in relevant proceedings. But again there is a major drawback: **No public participation is foreseen in the highly relevant procedures concerning the prohibition of use (Art 18: this concerns the prohibition of the use of (parts of) establishments in case of non-compliance with requirements of the Directive) and the inspections regime according to Art 19.**

Art 19: J&E welcomes the efforts to implement Recommendation 2001/331/EEC into the new Directive as well as the possibility for penal measures to be taken in case of non-compliance. As regards the NGO position on the European environmental inspections regime please refer to the EEB position paper of 2009 on minimum criteria for environmental inspections which is available under <http://www.eeb.org/?LinkServID=D768B86D-E6B2-9FE9-84465AF82626DB0B&showMeta=0>.

Art 20: J&E welcomes in particular the opening of the database for members of the public as well as the obligation for the Member States to provide the information referred to in Annex V of the proposal.

Art 21: J&E welcomes the greater attention paid to the openness and transparency by means of reference to Directive 2003/4/EC.

Art 22: The insertion of a provision on access to justice would help to bring the SEVESO Directive more in line with the requirements of the Aarhus Convention in this context. The proposal takes up J&E's 2010 recommendation to align the legal protection procedure regarding requests for environmental information with Directive 2003/4/EC.

As regards access to justice relating to decisions, acts and omissions the proposal refers only to cases subject to Art 14 of the proposal. This alone would be a major step forward as compared to the current Directive. **However, as mentioned above, Art 14 does not cover all areas relevant for public participation. Procedures concerning the prohibition of use (Art 18) and the inspections regime (Art 19) do not fall under Art 14 and are consequently not covered by Art 22 on access to justice. To exclude these procedures from public participation and review is in conflict with the Aarhus Convention and should be adapted accordingly.**

The Work Plan of J&E has received funding from the European Union through its LIFE+ funding scheme. The sole responsibility for the present document lies with the author and the European Commission is not responsible for any use that may be made of the information contained therein.

