

Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (Text with EEA relevance)

DIRECTIVE 2012/18/EU OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

of 4 July 2012

on the control of major-accident hazards involving dangerous substances,
amending and subsequently repealing Council Directive 96/82/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure⁽²⁾,

Whereas:

- (1) Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances⁽³⁾ lays down rules for the prevention of major accidents which might result from certain industrial activities and the limitation of their consequences for human health and the environment.
- (2) Major accidents often have serious consequences, as evidenced by accidents like Seveso, Bhopal, Schweizerhalle, Enschede, Toulouse and Buncefield. Moreover the impact can extend beyond national borders. This underlines the need to ensure that appropriate precautionary action is taken to ensure a high level of protection throughout the Union for citizens, communities and the environment. There is therefore a need to ensure that the existing high level of protection remains at least the same or increases.
- (3) Directive 96/82/EC has been instrumental in reducing the likelihood and consequences of such accidents thereby leading to a better level of protection throughout the Union. A review of that Directive has confirmed that the rate of major accidents has remained stable. While overall the existing provisions are fit for purpose, some changes are required in order to further strengthen the level of protection, in particular with regard to the prevention of major accidents. At the same time the system established by Directive 96/82/EC should be adapted to changes to the Union system of classification

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of substances and mixtures to which that Directive refers. In addition, a number of other provisions should be clarified and updated.

- (4) It is therefore appropriate to replace Directive 96/82/EC in order to ensure that the existing level of protection is maintained and further improved, by making the provisions more effective and efficient, and where possible by reducing unnecessary administrative burdens by streamlining or simplification, provided that safety and environmental and human health protection are not compromised. At the same time, the new provisions should be clear, coherent and easy to understand to help improve implementation and enforceability, while the level of protection of human health and the environment remains at least the same or increases. The Commission should cooperate with the Member States on the practical implementation of this Directive. That cooperation should, *inter alia*, address the issue of self-classification of substances and mixtures. As appropriate, stakeholders such as representatives of industry, workers and non-governmental organisations promoting the protection of human health or the environment should be involved in the implementation of this Directive.
- (5) The Convention of the United Nations Economic Commission for Europe on the Transboundary Effects of Industrial Accidents, which was approved on behalf of the Union by Council Decision 98/685/EC of 23 March 1998 concerning the conclusion of the Convention on the Transboundary Effects of Industrial Accidents⁽⁴⁾, provides for measures regarding the prevention of, preparedness for, and response to industrial accidents capable of causing transboundary effects as well as for international cooperation in this field. Directive 96/82/EC implements the Convention within Union law.
- (6) Major accidents can have consequences beyond frontiers, and the ecological and economic costs of an accident are borne not only by the establishment affected, but also by the Member States concerned. It is therefore necessary to establish and apply safety and risk-reduction measures to prevent possible accidents, to reduce the risk of accidents occurring and to minimise the effects if they do occur, thereby making it possible to ensure a high level of protection throughout the Union.
- (7) The provisions of this Directive should apply without prejudice to the provisions of Union law relating to health and safety at work and the working environment, and, in particular, without prejudice to Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work⁽⁵⁾.
- (8) Certain industrial activities should be excluded from the scope of this Directive provided they are subject to other legislation at Union or national level providing for an equivalent level of safety. The Commission should continue to examine whether there are significant gaps in the existing regulatory framework, in particular as regards new and emerging risks from other activities as well as from specific dangerous substances and, if appropriate, present a legislative proposal to address those gaps.
- (9) Annex I to Directive 96/82/EC lists the dangerous substances falling within its scope, *inter alia*, by reference to certain provisions of Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions

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relating to the classification, packaging and labelling of dangerous substances⁽⁶⁾ as well as Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations⁽⁷⁾. Directives 67/548/EEC and 1999/45/EC have been replaced by Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures⁽⁸⁾, which implements within the Union the Globally Harmonised System of Classification and Labelling of Chemicals that has been adopted at international level, within the structure of the United Nations (UN). That Regulation introduces new hazard classes and categories only partially corresponding to those used under those repealed Directives. Certain substances or mixtures would, however, not be classified under that system due to an absence of criteria within that framework. Annex I to Directive 96/82/EC therefore needs to be amended to align it to that Regulation while maintaining the existing level, or further increasing the level, of protection provided for in that Directive.

- (10) For the purpose of classifying upgraded biogas, any developments on standards under the European Committee for Standardisation (CEN) should be taken into account.
- (11) Unwanted effects from the alignment to Regulation (EC) No 1272/2008 and subsequent adaptations to that Regulation having an impact on the classification of substances and mixtures may occur. On the basis of criteria included in this Directive, the Commission should assess whether, notwithstanding their hazard classification, there are dangerous substances which do not present a major-accident hazard and, where appropriate, submit a legislative proposal to exclude the dangerous substance concerned from the scope of this Directive. The assessment should start swiftly, in particular after the change of classification of a substance or mixture, in order to avoid unnecessary burdens for operators and competent authorities in the Member States. Exclusions from the scope of this Directive should not prevent any Member State from maintaining or introducing more stringent protective measures.
- (12) Operators should have a general obligation to take all necessary measures to prevent major accidents, to mitigate their consequences and to take recovery measures. Where dangerous substances are present in establishments above certain quantities the operator should provide the competent authority with sufficient information to enable it to identify the establishment, the dangerous substances present and the potential dangers. The operator should also draw up and, where required by national law, send to the competent authority a major-accident prevention policy (MAPP) setting out the operator's overall approach and measures, including appropriate safety management systems, for controlling major-accident hazards. When the operators identify and evaluate the major-accident hazards, consideration should also be given to the dangerous substances which may be generated during a severe accident within the establishment.
- (13) Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of

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environmental damage⁽⁹⁾ is normally relevant for environmental damage caused by a major accident.

- (14) In order to reduce the risk of domino effects, where establishments are sited in such a way or so close together as to increase the likelihood of major accidents, or aggravate their consequences, operators should cooperate in the exchange of appropriate information and in informing the public, including neighbouring establishments that could be affected.
- (15) In order to demonstrate that all that is necessary has been done to prevent major accidents, and to prepare emergency plans and response measures, the operator should, in the case of establishments where dangerous substances are present in significant quantities, provide the competent authority with information in the form of a safety report. That safety report should contain details of the establishment, the dangerous substances present, the installation or storage facilities, possible major-accident scenarios and risk analysis, prevention and intervention measures and the management systems available, in order to prevent and reduce the risk of major accidents and to enable the necessary steps to be taken to limit the consequences thereof. The risk of a major accident could be increased by the probability of natural disasters associated with the location of the establishment. This should be considered during the preparation of major-accident scenarios.
- (16) To prepare for emergencies, in the case of establishments where dangerous substances are present in significant quantities, it is necessary to establish internal and external emergency plans and to establish procedures to ensure that those plans are tested and revised as necessary and implemented in the event of a major accident or the likelihood thereof. The staff of an establishment should be consulted on the internal emergency plan and the public concerned should have the opportunity to give its opinion on the external emergency plan. Sub-contracting may have an impact on the safety of an establishment. Member States should require operators to take this into account when drafting a MAPP, a safety report or an internal emergency plan.
- (17) When considering the choice of appropriate operating methods, including those for monitoring and control, operators should take into account available information on best practices.
- (18) In order to provide greater protection for residential areas, areas of substantial public use and the environment, including areas of particular natural interest or sensitivity, it is necessary for land-use or other relevant policies applied in the Member States to ensure appropriate distances between such areas and establishments presenting such hazards and, where existing establishments are concerned, to implement, if necessary, additional technical measures so that the risk to persons or the environment is maintained at an acceptable level. Sufficient information about the risks and technical advice on these risks should be taken into account when decisions are taken. Where possible, to reduce administrative burdens, especially for small and medium-sized enterprises, procedures and measures should be integrated with those under other relevant Union legislation.
- (19) In order to promote access to environmental information under the Convention of the United Nations Economic Commission for Europe on access to information,

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public participation in decision-making and access to justice in environmental matters (the Aarhus Convention), which was approved on behalf of the Union by Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters⁽¹⁰⁾, the level and quality of information to the public should be improved. In particular, persons likely to be affected by a major accident should be given sufficient information on the correct action to be taken in that event. Member States should make information available on where to find information on the rights of persons affected by a major accident. Information disseminated to the public should be worded clearly and intelligibly. In addition to providing information in an active way, without the public having to submit a request, and without precluding other forms of dissemination, it should also be made available permanently and kept up to date electronically. At the same time there should be appropriate confidentiality safeguards, to address security-related concerns, among others.

- (20) The way information is managed should be in line with the Shared Environmental Information System (SEIS) initiative introduced by the Commission Communication of 1 February 2008 entitled ‘Towards a Shared Environmental Information System (SEIS)’. It should also be in line with Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE)⁽¹¹⁾ and its implementing rules, aimed at enabling the sharing of environmental spatial information among public sector organisations and better facilitating public access to spatial information across the Union. Information should be held on a publicly available database at Union level, which will also facilitate monitoring and reporting on implementation.
- (21) In line with the Aarhus Convention, effective public participation in decision-making is necessary to enable the public concerned to express, and the decision-maker to take account of, opinions and concerns that may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken.
- (22) In order to ensure that adequate response measures are taken if a major accident occurs, the operator should immediately inform the competent authority and communicate the information necessary to enable it to assess the effects of that accident on human health and on the environment.
- (23) Local authorities have an interest in the prevention of major accidents and mitigation of their consequences and can have an important role to play. This should be taken into account by the Member States in the implementation of this Directive.
- (24) In order to facilitate the exchange of information and to prevent future accidents of a similar nature, Member States should forward information to the Commission regarding major accidents occurring on their territory, so that the Commission can analyse the hazards involved, and operate a system for the distribution of information concerning, in particular, major accidents and lessons learned from them. That exchange

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of information should also cover ‘near misses’ which Member States regard as being of particular technical interest for preventing major accidents and limiting their consequences. Member States and the Commission should strive to ensure the completeness of the information held on information systems established to facilitate the exchange of information on major accidents.

- (25) Member States should determine the competent authorities responsible for ensuring that operators fulfil their obligations. The competent authorities and the Commission should cooperate in activities in support of implementation such as the development of appropriate guidance and exchanges of best practice. To avoid unnecessary administrative burden, information obligations should be integrated, where appropriate, with those under other relevant Union legislation.
- (26) Member States should ensure that competent authorities take the necessary measures in the event of non-compliance with this Directive. In order to ensure effective implementation and enforcement, there should be a system of inspections, including a programme of routine inspections at regular intervals and non-routine inspections. Where possible, inspections should be coordinated with those under other Union legislation, including Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)⁽¹²⁾, where appropriate. Member States should ensure that sufficient staff is available with the skills and qualifications needed to carry out inspections effectively. Competent authorities should provide appropriate support using tools and mechanisms for exchanging experience and consolidating knowledge, including at Union level.
- (27) In order to take into account technical developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending Annexes II to VI to adapt them to technical progress. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (28) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission’s exercise of implementing powers⁽¹³⁾.
- (29) Member States should lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.
- (30) Since the objective of this Directive, namely to ensure a high level of protection of human health and the environment, cannot be sufficiently achieved by Member States and can, therefore, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on

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European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(31) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents⁽¹⁴⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(32) Directive 96/82/EC should therefore be amended and subsequently repealed,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 248, 25.8.2011, p. 138.](#)
- (2) Position of the European Parliament of 14 June 2012 and decision of the Council of 26 June 2012.
- (3) [OJ L 10, 14.1.1997, p. 13.](#)
- (4) [OJ L 326, 3.12.1998, p. 1.](#)
- (5) [OJ L 183, 29.6.1989, p. 1.](#)
- (6) [OJ 196, 16.8.1967, p. 1.](#)
- (7) [OJ L 200, 30.7.1999, p. 1.](#)
- (8) [OJ L 353, 31.12.2008, p. 1.](#)
- (9) [OJ L 143, 30.4.2004, p. 56.](#)
- (10) [OJ L 124, 17.5.2005, p. 1.](#)
- (11) [OJ L 108, 25.4.2007, p. 1.](#)
- (12) [OJ L 334, 17.12.2010, p. 17.](#)
- (13) [OJ L 55, 28.2.2011, p. 13.](#)
- (14) [OJ C 369, 17.12.2011, p. 14.](#)