

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)

*Article 1*

**Subject matter**

This Directive lays down rules for the prevention of major accidents which involve dangerous substances, and the limitation of their consequences for human health and the environment, with a view to ensuring a high level of protection throughout the Union in a consistent and effective manner.

*Article 2*

**Scope**

- 1 This Directive shall apply to establishments as defined in Article 3(1).
- 2 This Directive shall not apply to any of the following:
  - a military establishments, installations or storage facilities;
  - b hazards created by ionising radiation originating from substances;
  - c the transport of dangerous substances and directly related intermediate temporary storage by road, rail, internal waterways, sea or air, outside the establishments covered by this Directive, including loading and unloading and transport to and from another means of transport at docks, wharves or marshalling yards;
  - d the transport of dangerous substances in pipelines, including pumping stations, outside establishments covered by this Directive;
  - e the exploitation, namely the exploration, extraction and processing, of minerals in mines and quarries, including by means of boreholes;
  - f the offshore exploration and exploitation of minerals, including hydrocarbons;
  - g the storage of gas at underground offshore sites including both dedicated storage sites and sites where exploration and exploitation of minerals, including hydrocarbons are also carried out;
  - h waste land-fill sites, including underground waste storage.

Notwithstanding points (e) and (h) of the first subparagraph, onshore underground gas storage in natural strata, aquifers, salt cavities and disused mines and chemical and thermal processing operations and storage related to those operations which involve dangerous substances, as well as operational tailings disposal facilities, including tailing ponds or dams, containing dangerous substances shall be included within the scope of this Directive.

*Article 3*

**Definitions**

For the purposes of this Directive the following definitions shall apply:

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1. 'establishment' means the whole location under the control of an operator where dangerous substances are present in one or more installations, including common or related infrastructures or activities; establishments are either lower-tier establishments or upper-tier establishments;
2. 'lower-tier establishment' means an establishment where dangerous substances are present in quantities equal to or in excess of the quantities listed in Column 2 of Part 1 or in Column 2 of Part 2 of Annex I, but less than the quantities listed in Column 3 of Part 1 or in Column 3 of Part 2 of Annex I, where applicable using the summation rule laid down in note 4 to Annex I;
3. 'upper-tier establishment' means an establishment where dangerous substances are present in quantities equal to or in excess of the quantities listed in Column 3 of Part 1 or in Column 3 of Part 2 of Annex I, where applicable using the summation rule laid down in note 4 to Annex I;
4. 'neighbouring establishment' means an establishment that is located in such proximity to another establishment so as to increase the risk or consequences of a major accident;
5. 'new establishment' means
  - (a) an establishment that enters into operation or is constructed, on or after 1 June 2015; or
  - (b) a site of operation that falls within the scope of this Directive, or a lower-tier establishment that becomes an upper-tier establishment or vice versa, on or after 1 June 2015 due to modifications to its installations or activities resulting in a change in its inventory of dangerous substances;
6. 'existing establishment' means an establishment that on 31 May 2015 falls within the scope of Directive 96/82/EC and from 1 June 2015 falls within the scope of this Directive without changing its classification as a lower-tier establishment or upper-tier establishment;
7. 'other establishment' means a site of operation that falls within the scope of this Directive, or a lower-tier establishment that becomes an upper-tier establishment or vice versa, on or after 1 June 2015 for reasons other than those referred to in point 5;
8. 'installation' means a technical unit within an establishment and whether at or below ground level, in which dangerous substances are produced, used, handled or stored; it includes all the equipment, structures, pipework, machinery, tools, private railway sidings, docks, unloading quays serving the installation, jetties, warehouses or similar structures, floating or otherwise, necessary for the operation of that installation;
9. 'operator' means any natural or legal person who operates or controls an establishment or installation or, where provided for by national legislation, to whom the decisive economic or decision-making power over the technical functioning of the establishment or installation has been delegated;
10. 'dangerous substance' means a substance or mixture covered by Part 1 or listed in Part 2 of Annex I, including in the form of a raw material, product, by-product, residue or intermediate;
11. 'mixture' means a mixture or solution composed of two or more substances;
12. 'presence of dangerous substances' means the actual or anticipated presence of dangerous substances in the establishment, or of dangerous substances which it is

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- reasonable to foresee may be generated during loss of control of the processes, including storage activities, in any installation within the establishment, in quantities equal to or exceeding the qualifying quantities set out in Part 1 or Part 2 of Annex I;
13. ‘major accident’ means an occurrence such as a major emission, fire, or explosion resulting from uncontrolled developments in the course of the operation of any establishment covered by this Directive, and leading to serious danger to human health or the environment, immediate or delayed, inside or outside the establishment, and involving one or more dangerous substances;
  14. ‘hazard’ means the intrinsic property of a dangerous substance or physical situation, with a potential for creating damage to human health or the environment;
  15. ‘risk’ means the likelihood of a specific effect occurring within a specified period or in specified circumstances;
  16. ‘storage’ means the presence of a quantity of dangerous substances for the purposes of warehousing, depositing in safe custody or keeping in stock;
  17. ‘the public’ means one or more natural or legal persons and, in accordance with national law or practice, their associations, organisations or groups;
  18. ‘the public concerned’ means the public affected or likely to be affected by, or having an interest in, the taking of a decision on any of the matters covered by Article 15(1); for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any applicable requirements under national law shall be deemed to have an interest;
  19. ‘inspection’ means all actions, including site visits, checks of internal measures, systems and reports and follow-up documents, and any necessary follow-up, undertaken by or on behalf of the competent authority to check and promote compliance of establishments with the requirements of this Directive.

#### *Article 4*

##### **Assessment of major-accident hazards for a particular dangerous substance**

1 The Commission shall assess, where appropriate or in any event on the basis of a notification by a Member State in accordance with paragraph 2, whether it is impossible in practice for a particular dangerous substance covered by Part 1 or listed in Part 2 of Annex I, to cause a release of matter or energy that could create a major accident under both normal and abnormal conditions which can reasonably be foreseen. That assessment shall take into account the information referred to in paragraph 3, and shall be based on one or more of the following characteristics:

- a the physical form of the dangerous substance under normal processing or handling conditions or in an unplanned loss of containment;
- b the inherent properties of the dangerous substance, in particular those related to dispersive behaviour in a major-accident scenario, such as molecular mass and saturated vapour pressure;
- c the maximum concentration of the substances in the case of mixtures.

For the purposes of the first subparagraph, the containment and generic packing of the dangerous substance should, where appropriate, also be taken into account, including in particular where covered under specific Union legislation.

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2 Where a Member State considers that a dangerous substance does not present a major-accident hazard in accordance with paragraph 1, it shall notify the Commission together with supporting justification, including the information referred to in paragraph 3.

3 For the purposes of paragraphs 1 and 2, information necessary for assessing the health, physical and environmental hazard properties of the dangerous substance concerned shall include:

- a a comprehensive list of properties necessary to assess the dangerous substance's potential for causing physical, health or environmental harm;
- b physical and chemical properties (for instance molecular mass, saturated vapour pressure, inherent toxicity, boiling point, reactivity, viscosity, solubility and other relevant properties);
- c health and physical hazard properties (for instance reactivity, flammability, toxicity together with additional factors such as mode of attack on the body, injury to fatality ratio, and long-term effects, and other properties as relevant);
- d environmental hazard properties (for instance ecotoxicity, persistence, bio-accumulation, potential for long-range environmental transport, and other properties as relevant);
- e where available, the Union classification of the substance or mixture;
- f information about substance-specific operating conditions (for instance temperature, pressure and other conditions as relevant) under which the dangerous substance is stored, used and/or may be present in the event of foreseeable abnormal operations or an accident such as fire.

4 Following the assessment referred to in paragraph 1, the Commission shall, if appropriate, present a legislative proposal to the European Parliament and to the Council to exclude the dangerous substance concerned from the scope of this Directive.

#### *Article 5*

### **General obligations of the operator**

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

2 Member States shall ensure that the operator is required to prove to the competent authority referred to in Article 6, at any time, in particular for the purposes of inspections and controls referred to in Article 20, that the operator has taken all necessary measures as specified in this Directive.

#### *Article 6*

### **Competent authority**

1 Without prejudice to the operator's responsibilities, Member States shall set up or appoint the competent authority or authorities responsible for carrying out the duties laid down in this Directive ('the competent authority') and, if necessary, bodies to assist the competent authority at technical level. Member States which set up or appoint more than one competent authority shall ensure that the procedures for carrying out their duties are fully coordinated.

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2 The competent authorities and the Commission shall cooperate in activities in support of implementation of this Directive, involving stakeholders as appropriate.

3 Member States shall ensure that competent authorities accept equivalent information submitted by operators in accordance with other relevant Union legislation, which fulfils any of the requirements of this Directive, for the purposes of this Directive. In such cases the competent authorities shall ensure that the requirements of this Directive are complied with.

## Article 7

### Notification

1 Member States shall require the operator to send a notification to the competent authority containing the following information:

- a the name and/or trade name of the operator and the full address of the establishment concerned;
- b the registered place of business of the operator, with the full address;
- c the name and position of the person in charge of the establishment, if different from point (a);
- d information sufficient to identify the dangerous substances and category of substances involved or likely to be present;
- e the quantity and physical form of the dangerous substance or substances concerned;
- f the activity or proposed activity of the installation or storage facility;
- g the immediate environment of the establishment, and factors likely to cause a major accident or to aggravate the consequences thereof including, where available, details of neighbouring establishments, of sites that fall outside the scope of this Directive, areas and developments that could be the source of or increase the risk or consequences of a major accident and of domino effects.

2 The notification or its update shall be sent to the competent authority within the following time-limits:

- a for new establishments, a reasonable period of time prior to the start of construction or operation, or prior to the modifications leading to a change in the inventory of dangerous substances;
- b for all other cases, one year from the date from which this Directive applies to the establishment concerned.

3 Paragraphs 1 and 2 shall not apply if the operator has already sent a notification to the competent authority under the requirements of national legislation before 1 June 2015, and the information contained therein complies with paragraph 1 and has remained unchanged.

4 The operator shall inform the competent authority in advance of the following events:

- a any significant increase or decrease in the quantity or significant change in the nature or physical form of the dangerous substance present, as indicated in the notification provided by the operator pursuant to paragraph 1, or a significant change in the processes employing it;
- b modification of an establishment or an installation which could have significant consequences in terms of major-accident hazards;
- c the permanent closure of the establishment or its de-commissioning; or
- d changes in the information referred to in points (a), (b) or (c) of paragraph 1.

## Article 8

### Major-accident prevention policy

1 Member States shall require the operator to draw up a document in writing setting out the major-accident prevention policy (MAPP) and to ensure that it is properly implemented. The MAPP shall be designed to ensure a high level of protection of human health and the environment. It shall be proportionate to the major-accident hazards. It shall include the operator's overall aims and principles of action, the role and responsibility of management, as well as the commitment towards continuously improving the control of major-accident hazards, and ensuring a high level of protection.

2 The MAPP shall be drawn up and, where required by national law, sent to the competent authority within the following time-limits:

- a for new establishments, a reasonable period of time prior to the start of construction or operation, or prior to the modifications leading to a change in the inventory of dangerous substances;
- b for all other cases, one year from the date from which this Directive applies to the establishment concerned.

3 Paragraphs 1 and 2 shall not apply if the operator has already established the MAPP and, where required by national law, sent it to the competent authority before 1 June 2015, and the information contained therein complies with paragraph 1 and has remained unchanged.

4 Without prejudice to Article 11, the operator shall periodically review and where necessary update the MAPP, at least every five years. Where required by national law the updated MAPP shall be sent to the competent authority without delay.

5 The MAPP shall be implemented by appropriate means, structures and by a safety management system, in accordance with Annex III, proportionate to the major-accident hazards, and the complexity of the organisation or the activities of the establishment. For lower-tier establishments, the obligation to implement the MAPP may be fulfilled by other appropriate means, structures and management systems, proportionate to major-accident hazards, taking into account the principles set out in Annex III.

## Article 9

### Domino effects

1 Member States shall ensure that the competent authority, using the information received from the operators in accordance with Articles 7 and 10, or following a request for additional information from the competent authority, or through inspections pursuant to Article 20, identifies all lower-tier and upper-tier establishments or groups of establishments where the risk or consequences of a major accident may be increased because of the geographical position and the proximity of such establishments, and their inventories of dangerous substances.

2 Where the competent authority has additional information to that provided by the operator pursuant to point (g) of Article 7(1), it shall make this information available to that operator, if it is necessary for the application of this Article.

3 Member States shall ensure that operators of the establishments identified in accordance with paragraph 1:

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- a exchange suitable information to enable those establishments to take account of the nature and extent of the overall hazard of a major accident in their MAPP, safety management systems, safety reports and internal emergency plans, as appropriate;
- b cooperate in informing the public and neighbouring sites that fall outside the scope of this Directive, and in supplying information to the authority responsible for the preparation of external emergency plans.

#### *Article 10*

### **Safety report**

1 Member States shall require the operator of an upper-tier establishment to produce a safety report for the purposes of:

- a demonstrating that a MAPP and a safety management system for implementing it have been put into effect in accordance with the information set out in Annex III;
- b demonstrating that major-accident hazards and possible major-accident scenarios have been identified and that the necessary measures have been taken to prevent such accidents and to limit their consequences for human health and the environment;
- c demonstrating that adequate safety and reliability have been taken into account in the design, construction, operation and maintenance of any installation, storage facility, equipment and infrastructure connected with its operation which are linked to major-accident hazards inside the establishment;
- d demonstrating that internal emergency plans have been drawn up and supplying information to enable the external emergency plan to be drawn up;
- e providing sufficient information to the competent authority to enable decisions to be made regarding the siting of new activities or developments around existing establishments.

2 The safety report shall contain at least the data and information listed in Annex II. It shall name the relevant organisations involved in the drawing up of the report.

3 The safety report shall be sent to the competent authority within the following time-limits:

- a for new establishments, a reasonable period of time prior to the start of construction or operation, or prior to the modifications leading to a change in the inventory of dangerous substances;
- b for existing upper-tier establishments, 1 June 2016;
- c for other establishments, two years from the date from which this Directive applies to the establishment concerned.

4 Paragraphs 1, 2 and 3 shall not apply if the operator has already sent the safety report to the competent authority under the requirements of national law before 1 June 2015, and the information contained therein complies with paragraphs 1 and 2 and has remained unchanged. In order to comply with paragraphs 1 and 2, the operator shall submit any changed parts of the safety report in the format agreed by the competent authority, subject to the time-limits referred to in paragraph 3.

5 Without prejudice to Article 11, the operator shall periodically review and where necessary update the safety report at least every five years.

The operator shall also review and where necessary update the safety report following a major accident at its establishment, and at any other time at the initiative of the

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operator or at the request of the competent authority, where justified by new facts or by new technological knowledge about safety matters, including knowledge arising from analysis of accidents or, as far as possible, ‘near misses’, and by developments in knowledge concerning the assessment of hazards.

The updated safety report or updated parts thereof shall be sent to the competent authority without delay.

6 Before the operator commences construction or operation, or in the cases referred to in points (b) and (c) of paragraph 3 and in paragraph 5 of this Article, the competent authority shall within a reasonable period of receipt of the report communicate the conclusions of its examination of the safety report to the operator and, where appropriate, in accordance with Article 19, prohibit the bringing into use, or the continued use, of the establishment concerned.

#### *Article 11*

### **Modification of an installation, an establishment or a storage facility**

In the event of the modification of an installation, establishment, storage facility, or process or of the nature or physical form or quantity of dangerous substances which could have significant consequences for major-accident hazards, or could result in a lower-tier establishment becoming an upper-tier establishment or vice versa, Member States shall ensure that the operator reviews, and where necessary updates the notification, the MAPP, the safety management system and the safety report and informs the competent authority of the details of those updates in advance of that modification.

#### *Article 12*

### **Emergency plans**

- 1 Member States shall ensure that, for all upper-tier establishments:
  - a the operator draws up an internal emergency plan for the measures to be taken inside the establishment;
  - b the operator supplies the necessary information to the competent authority, to enable the latter to draw up external emergency plans;
  - 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 two years following receipt of the necessary information from the operator pursuant to point (b).
- 2 Operators shall comply with the obligations set out in points (a) and (b) of paragraph 1 within the following time-limits:
  - a for new establishments, a reasonable period of time prior to the start of operation, or prior to the modifications leading to a change in the inventory of dangerous substances;
  - b for existing upper-tier establishments, by 1 June 2016 unless the internal emergency plan drawn up under the requirements of national law before that date, and the information contained therein, and the information referred to in point (b) of paragraph 1, complies with this Article and has remained unchanged;
  - c for other establishments, two years from the date from which this Directive applies to the establishment concerned.
- 3 The emergency plans shall be established with the following objectives:

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- a containing and controlling incidents so as to minimise the effects, and to limit damage to human health, the environment and property;
- b implementing the necessary measures to protect human health and the environment from the effects of major accidents;
- c communicating the necessary information to the public and to the services or authorities concerned in the area;
- d providing for the restoration and clean-up of the environment following a major accident.

Emergency plans shall contain the information set out in Annex IV.

4 Member States shall ensure that the internal emergency plans provided for in this Directive are drawn up in consultation with the personnel working inside the establishment, including long-term relevant subcontracted personnel.

5 Member States shall ensure that the public concerned is given early opportunity to give its opinion on external emergency plans when they are being established or substantially modified.

6 Member States shall ensure that internal and external emergency plans are reviewed, tested, and where necessary updated by the operators and designated authorities respectively at suitable intervals of no longer than three years. The review shall take into account changes occurring in the establishments concerned or within the emergency services concerned, new technical knowledge, and knowledge concerning the response to major accidents.

With regard to external emergency plans, Member States shall take into account the need to facilitate enhanced cooperation in civil protection assistance in major emergencies.

7 Member States shall ensure that emergency plans are put into effect without delay by the operator and, if necessary, by the competent authority designated for this purpose when a major accident occurs, or when an uncontrolled event occurs which by its nature could reasonably be expected to lead to a major accident.

8 The competent authority may decide, giving reasons for their decision, 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.

### *Article 13*

#### **Land-use planning**

1 Member States shall ensure that the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment are taken into account in their land-use policies or other relevant policies. They shall pursue those objectives through controls on:

- a the siting of new establishments;
- b modifications to establishments covered by Article 11;
- c new developments including transport routes, locations of public use and residential areas in the vicinity of establishments, where the siting or developments may be the source of or increase the risk or consequences of a major accident.

2 Member States shall ensure that their land-use or other relevant policies and the procedures for implementing those policies take account of the need, in the long term:

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- a to maintain appropriate safety distances between establishments covered by this Directive and residential areas, buildings and areas of public use, recreational areas, and, as far as possible, major transport routes;
- b to protect areas of particular natural sensitivity or interest in the vicinity of establishments, where appropriate through appropriate safety distances or other relevant measures;
- c in the case of existing establishments, to take additional technical measures in accordance with Article 5 so as not to increase the risks to human health and the environment.

3 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 operators provide sufficient information on the risks arising from the establishment and that technical advice on those risks is available, either on a case-by-case or on a generic basis, when decisions are taken.

Member States shall ensure that operators of lower-tier establishments provide, at the request of the competent authority, sufficient information on the risks arising from the establishment necessary for land-use planning purposes.

4 The requirements of paragraphs 1, 2 and 3 of this Article shall apply without prejudice to the provisions of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment<sup>(1)</sup>, Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment<sup>(2)</sup> and other relevant Union legislation. Member States may provide for coordinated or joint procedures in order to fulfil the requirements of this Article and the requirements of that legislation, inter alia, to avoid duplication of assessment or consultations.

#### *Article 14*

#### **Information to the public**

1 Member States shall ensure that the information referred to in Annex V is permanently available to the public, including electronically. The information shall be kept updated, where necessary, including in the event of modifications covered by Article 11.

- 2 For upper-tier establishments, Member States shall also ensure that:
- a all persons likely to be affected by a major accident receive regularly and in the most appropriate form, without having to request it, clear and intelligible information on safety measures and requisite behaviour in the event of a major accident;
  - b the safety report is made available to the public upon request subject to Article 22(3); where Article 22(3) applies, an amended report, for instance in the form of a non-technical summary, which shall include at least general information on major-accident hazards and on potential effects on human health and the environment in the event of a major accident, shall be made available;
  - c the inventory of dangerous substances is made available to the public upon request subject to Article 22(3).

The information to be supplied under point (a) of the first subparagraph of this paragraph shall include at least the information referred to in Annex V. That information shall likewise be supplied to all buildings and areas of public use, including schools and

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hospitals, and to all neighbouring establishments in the case of establishments covered by Article 9. Member States shall ensure that the information is supplied at least every five years and periodically reviewed and where necessary, updated, including in the event of modifications covered by Article 11.

3 Member States shall, with respect to the possibility of a major accident with transboundary effects originating in an upper-tier establishment, provide sufficient information to the potentially affected Member States so that all relevant provisions contained in Articles 12 and 13 and in this Article can be applied, where applicable, by the potentially affected Member States.

4 Where the Member State concerned has decided that an establishment close to the territory of another Member State is incapable of creating a major-accident hazard beyond its boundary for the purposes of Article 12(8) and is not therefore required to produce an external emergency plan under Article 12(1), it shall inform the other Member State of its reasoned decision.

#### *Article 15*

### **Public consultation and participation in decision-making**

1 Member States shall ensure that the public concerned is given an early opportunity to give its opinion on specific individual projects relating to:

- a planning for new establishments pursuant to Article 13;
- b significant modifications to establishments under Article 11, where such modifications are subject to obligations provided for in Article 13;
- c new developments around establishments where the siting or developments may increase the risk or consequences of a major accident pursuant to Article 13.

2 With regard to the specific individual projects referred to in paragraph 1, the public shall be informed by public notices or other appropriate means, including electronic media where available, of the following matters early in the procedure for the taking of a decision or, at the latest, as soon as the information can reasonably be provided:

- a the subject of the specific project;
- b where applicable, the fact that a project is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 14(3);
- c details of the competent authority responsible for taking the decision, from which relevant information can be obtained and to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
- d the nature of possible decisions or, where there is one, the draft decision;
- e an indication of the times and places where, or means by which, the relevant information will be made available;
- f details of the arrangements for public participation and consultation made pursuant to paragraph 7 of this Article.

3 With regard to the specific individual projects referred to in paragraph 1, Member States shall ensure that, within appropriate time-frames, the following is made available to the public concerned:

- a in accordance with national legislation, the main reports and advice issued to the competent authority at the time when the public concerned was informed pursuant to paragraph 2;

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- b in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information<sup>(3)</sup>, information other than that referred to in paragraph 2 of this Article which is relevant for the decision in question and which only becomes available after the public concerned was informed in accordance with that paragraph.

4 Member States shall ensure that the public concerned is entitled to express comments and opinions to the competent authority before a decision is taken on a specific individual project as referred to in paragraph 1, and that the results of the consultations held pursuant to paragraph 1 are duly taken into account in the taking of a decision.

5 Member States shall ensure that when the relevant decisions are taken, the competent authority shall make available to the public:

- a the content of the decision and the reasons on which it is based, including any subsequent updates;
- b the results of the consultations held before the decision was taken and an explanation of how they were taken into account in that decision.

6 Where general plans or programmes are being established relating to the matters referred to in points (a) or (c) of paragraph 1, Member States shall ensure that the public is given early and effective opportunities to participate in their preparation and modification or review using the procedures set out in Article 2(2) of Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment<sup>(4)</sup>.

Member States shall identify the public entitled to participate for the purposes of this paragraph, including relevant non-governmental organisations meeting any relevant requirements imposed under national law, such as those promoting environmental protection.

This paragraph shall not apply to plans and programmes for which a public participation procedure is carried out under Directive 2001/42/EC.

7 The detailed arrangements for informing the public and consulting the public concerned shall be determined by the Member States.

Reasonable time-frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Article.

#### *Article 16*

#### **Information to be supplied by the operator and actions to be taken following a major accident**

Member States shall ensure that, as soon as practicable following a major accident, the operator shall be required, using the most appropriate means to:

- (a) inform the competent authority;
- (b) provide the competent authority with the following information as soon as it becomes available:
- (i) the circumstances of the accident;
- (ii) the dangerous substances involved;

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- (iii) the data available for assessing the effects of the accident on human health, the environment and property;
- (iv) the emergency measures taken;
- (c) inform the competent authority of the steps envisaged to:
  - (i) mitigate the medium-term and long-term effects of the accident;
  - (ii) prevent any recurrence of such an accident;
- (d) update the information provided if further investigation reveals additional facts which alter that information or the conclusions drawn.

#### *Article 17*

##### **Action to be taken by the competent authority following a major accident**

Following a major accident, Member States shall require the competent authority to:

- (a) ensure that any urgent, medium-term and long-term measures which may prove necessary are taken;
- (b) collect, by inspection, investigation or other appropriate means, the information necessary for a full analysis of the technical, organisational and managerial aspects of the accident;
- (c) take appropriate action to ensure that the operator takes any necessary remedial measures;
- (d) make recommendations on future preventive measures; and
- (e) inform the persons likely to be affected, of the accident which has occurred and, where relevant, of the measures undertaken to mitigate its consequences.

#### *Article 18*

##### **Information to be supplied by the Member States following a major accident**

1 For the purpose of prevention and mitigation of major accidents, Member States shall inform the Commission of major accidents meeting the criteria of Annex VI which have occurred within their territory. They shall provide it with the following details:

- a the Member State, the name and address of the authority responsible for the report;
- b the date, time and place of the accident, including the full name of the operator and the address of the establishment involved;
- c a brief description of the circumstances of the accident, including the dangerous substances involved, and the immediate effects on human health and the environment;
- d a brief description of the emergency measures taken and of the immediate precautions necessary to prevent recurrence;
- e the results of their analysis and recommendations.

2 The information referred to in paragraph 1 of this Article shall be provided as soon as practicable and at the latest within one year of the date of the accident, using the database referred to in Article 21(4). Where only preliminary information under point (e) of paragraph

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1 can be provided within this time-limit for inclusion in the database, the information shall be updated once the results of further analysis and recommendations are available.

Reporting of the information referred to in point (e) of paragraph 1 by Member States may be delayed to allow for the completion of judicial proceedings where such reporting may affect those proceedings.

3 For the purposes of providing the information referred to in paragraph 1 of this Article by Member States, a report form shall be established in the form of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(2).

4 Member States shall inform the Commission of the name and address of any body which might have relevant information on major accidents and which is able to advise the competent authorities of other Member States which have to intervene in the event of such an accident.

#### *Article 19*

### **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. To this end, Member States shall, inter alia, take into account serious failures to take the necessary actions identified in the inspection report.

Member States may prohibit the use or bringing into use of any establishment, installation or storage facility, or any part thereof if the operator has not submitted the notification, reports or other information required by this Directive within the specified period.

2 Member States shall ensure that operators may appeal against a prohibition order by a competent authority under paragraph 1 to an appropriate body determined by national law and procedures.

#### *Article 20*

### **Inspections**

1 Member States shall ensure that the competent authorities organise a system of inspections.

2 Inspections shall be appropriate to the type of establishment concerned. They shall not be dependent upon receipt of the safety report or any other report submitted. They shall be sufficient for a planned and systematic examination of the systems being employed at the establishment, whether of a technical, organisational or managerial nature, so as to ensure in particular that:

- a the operator can demonstrate that he has taken appropriate measures, in connection with the various activities of the establishment, to prevent major accidents;
- b the operator can demonstrate that he has provided appropriate means for limiting the consequences of major accidents, on-site and off-site;

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- c the data and information contained in the safety report, or any other report submitted, adequately reflects the conditions in the establishment;
- d information has been supplied to the public pursuant to Article 14.

3 Member States shall ensure that all establishments are covered by an inspection plan at national, regional or local level and shall ensure that this plan is regularly reviewed and, where appropriate, updated.

Each inspection plan shall include the following:

- a a general assessment of relevant safety issues;
- b the geographical area covered by the inspection plan;
- c a list of the establishments covered by the plan;
- d a list of groups of establishments with possible domino effects pursuant to Article 9;
- e a list of establishments where particular external risks or hazard sources could increase the risk or consequences of a major accident;
- f procedures for routine inspections, including the programmes for such inspections pursuant to paragraph 4;
- g procedures for non-routine inspections pursuant to paragraph 6;
- h provisions on the co-operation between different inspection authorities.

4 Based on the inspection plans referred to in paragraph 3, the competent authority shall regularly draw up programmes for routine inspections for all establishments including the frequency of site visits for different types of establishments.

The period between two consecutive site visits shall not exceed one year for upper-tier establishments and three years for lower-tier establishments, unless the competent authority has drawn up an inspection programme based on a systematic appraisal of major-accident hazards of the establishments concerned.

5 The systematic appraisal of the hazards of the establishments concerned shall be based on at least the following criteria:

- a the potential impacts of the establishments concerned on human health and the environment;
- b the record of compliance with the requirements of this Directive.

Where appropriate, relevant findings of inspections carried out under other Union legislation shall also be taken into account.

6 Non-routine inspections shall be carried out to investigate serious complaints, serious accidents and ‘near misses’, incidents and occurrences of non-compliance as soon as possible.

7 Within four months after each inspection, the competent authority shall communicate the conclusions of the inspection and all the necessary actions identified to the operator. The competent authority shall ensure that the operator takes all those necessary actions within a reasonable period after receipt of the communication.

8 If an inspection has identified an important case of non-compliance with this Directive, an additional inspection shall be carried out within six months.

9 Inspections shall, where possible, be coordinated with inspections under other Union legislation and combined, where appropriate.

10 Member States shall encourage the competent authorities to provide mechanisms and tools for exchanging experience and consolidating knowledge, and to participate in such mechanisms at Union level where appropriate.

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11 Member States shall ensure that operators provide the competent authorities with all necessary assistance to enable those authorities to carry out any inspection and to gather any information necessary for the performance of their duties for the purposes of this Directive, in particular to allow the authorities to fully assess the possibility of a major accident and to determine the scope of possible increased probability or aggravation of major accidents, to prepare an external emergency plan and to take into account substances which, due to their physical form, particular conditions or location, may require additional consideration.

### Article 21

#### Information system and exchanges

1 Member States and the Commission shall exchange information on the experience acquired with regard to the prevention of major accidents and the limitation of their consequences. This information shall concern, in particular, the functioning of the measures provided for in this Directive.

2 By 30 September 2019, and every four years thereafter, Member States shall provide the Commission with a report on the implementation of this Directive.

3 For establishments covered by this Directive, Member States shall supply the Commission with at least the following information:

- a the name or trade name of the operator and the full address of the establishment concerned;
- b the activity or activities of the establishment.

The Commission shall set up and keep up to date a database containing the information supplied by the Member States. Access to the database shall be restricted to persons authorised by the Commission or the competent authorities of the Member States.

4 The Commission shall set up and keep at the disposal of Member States a database containing, in particular, details of the major accidents which have occurred within the territory of Member States, for the purpose of:

- a the rapid dissemination of the information supplied by Member States pursuant to Article 18(1) and (2) among all competent authorities;
- b distribution to competent authorities of an analysis of the causes of major accidents and the lessons learned from them;
- c supply of information to competent authorities on preventive measures;
- d provision of information on organisations able to provide advice or relevant information on the occurrence, prevention and mitigation of major accidents.

5 The Commission shall, by 1 January 2015, adopt implementing acts to establish the formats for communicating the information referred to in paragraphs 2 and 3 of this Article from Member States and the relevant databases referred to in paragraphs 3 and 4. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(2).

6 The databases referred to in paragraph 4 shall contain, at least:

- a the information supplied by Member States in accordance with Article 18(1) and (2);
- b an analysis of the causes of the accidents;
- c the lessons learned from the accidents;
- d the preventive measures necessary to prevent a recurrence.

7 The Commission shall make publicly available the non-confidential part of the data.

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## Article 22

### Access to information and confidentiality

1 Member States shall ensure, in the interests of transparency, that the competent authority is required to make any information held pursuant to this Directive available to any natural or legal person who so requests in accordance with Directive 2003/4/EC.

2 Disclosure of any information required under this Directive, including under Article 14, may be refused or restricted by the competent authority where the conditions laid down in Article 4 of Directive 2003/4/EC are fulfilled.

3 Disclosure of the complete information referred to in points (b) and (c) of Article 14(2) held by the competent authority may be refused by that competent authority, without prejudice to paragraph 2 of this Article, if the operator has requested not to disclose certain parts of the safety report or the inventory of dangerous substances for the reasons provided for in Article 4 of Directive 2003/4/EC.

The competent authority may also decide for the same reasons that certain parts of the report or inventory shall not be disclosed. In such cases, and on approval of that authority, the operator shall supply to the competent authority an amended report or inventory excluding those parts.

## Article 23

### Access to justice

Member States shall ensure that:

- (a) any applicant requesting information pursuant to points (b) or (c) of Article 14(2) or Article 22(1) of this Directive is able to seek a review in accordance with Article 6 of Directive 2003/4/EC of the acts or omissions of a competent authority in relation to such a request;
- (b) in their respective national legal system, members of the public concerned have access to the review procedures set up in Article 11 of Directive 2011/92/EU for cases subject to Article 15(1) of this Directive.

## Article 24

### Guidance

The Commission may develop guidance on safety distance and domino effects.

## Article 25

### Amendment of Annexes

The Commission shall be empowered to adopt delegated acts in accordance with Article 26 in order to adapt Annexes II to VI to technical progress. Such adaptations shall not

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result in substantial changes in the obligations of the Member States and the operators as laid down in this Directive.

#### Article 26

##### **Exercise of the delegation**

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2 The power to adopt delegated acts referred to in Article 25 shall be conferred on the Commission for a period of five years from 13 August 2012. The Commission shall draw up a report in respect of the delegation of power no later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than four months before the end of each period.

3 The delegation of power referred to in Article 25 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5 A delegated act adopted pursuant to Article 25 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

#### Article 27

##### **Committee procedure**

1 The Commission shall be assisted by the Committee established by Directive 96/82/EC. That Committee is a committee within the meaning of Regulation (EU) No 182/2011.

2 Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

#### Article 28

##### **Penalties**

Member States shall determine penalties applicable to infringements of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 1 June 2015 and shall notify it without delay of any subsequent amendment affecting them.

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## Article 29

### Reporting and review

1 By 30 September 2020, and every four years thereafter, the Commission, on the basis of information submitted by Member States in accordance with Article 18 and Article 21(2) and of information held in databases, as referred to in Article 21(3) and (4), and taking into account the implementation of Article 4, shall submit to the European Parliament and to the Council a report on the implementation and efficient functioning of this Directive, including information on major accidents that have occurred within the Union and their potential impact upon the implementation of this Directive. The Commission shall include in the first of those reports an assessment of the need to amend the scope of this Directive. Any report may, where appropriate, be accompanied by a legislative proposal.

2 In the context of relevant Union legislation, the Commission may examine the need to address the issue of financial responsibilities of the operator in relation to major accidents, including issues related to insurance.

## Article 30

### Amendment of Directive 96/82/EC

In Directive 96/82/EC, the words ‘(d) heavy fuel oils’ are added to the heading ‘Petroleum products’ in Part 1 of Annex I.

## Article 31

### Transposition

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 May 2015. They shall apply those measures from 1 June 2015.

Notwithstanding the first subparagraph, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 30 of this Directive by 14 February 2014. They shall apply those measures from 15 February 2014.

They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

## Article 32

### Repeal

1 Directive 96/82/EC is repealed with effect from 1 June 2015.

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2 References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex VII.

*Article 33*

**Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 34*

**Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 4 July 2012.

*For the European Parliament*

*The President*

M. SCHULZ

*For the Council*

*The President*

A. D. MAVROYIANNIS

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- (1) OJ L 26, 28.1.2012, p. 1.
- (2) OJ L 197, 21.7.2001, p. 30.
- (3) OJ L 41, 14.2.2003, p. 26.
- (4) OJ L 156, 25.6.2003, p. 17.