EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT
Directorate C – Quality of Life, Water & Air
**ENV.C.3 - Air & Industrial Emissions**

# FAQ – Seveso III

Note: These FAQ are intended to assist stakeholders by developing the wording and intent of the Seveso III Directive 2012/18/EU so that Member States transpose and implement the Directive in a consistent manner. Note that the FAQ:

- only concern interpretation of the English language version of the Seveso III Directive.
- do not represent an official position of the Commission and cannot be invoked as such in the context of legal proceedings. Final judgements concerning the interpretation of the Directive can only be made by the European Court of Justice.

## Article 2: Scope

Sev III - Article 2(2)(a) of Directive 2012/18/EU – Exclusion of "military establishments, installations or storage facilities".

Does the exclusion cover establishments where dangerous substances are present and which are:

(1) **not** owned/controlled by the armed forces **but** performing military activities or services?

(2) **not** owned/controlled by the armed forces **but** supplying military goods or services to the armed forces?

(3) **not** owned/controlled by the armed forces **and** supplying non-military goods or services to the armed forces?

(4) owned and/or controlled by the armed forces **but** performing non-military activities?

Military establishments are excluded because their inclusion could have as a consequence the divulgation of information which could adversely affect public security or national defence.

The exclusion reflects Article 346 of the Treaty on the Functioning of the European Union (TFEU) according to which:

*"1. The provisions of the Treaties shall not preclude the application of the following rules:*

*(a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;*

*(b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions or competition in the internal market regarding products which are not intended for specifically military purposes."*

In the light thereof, the exclusion should apply to all sites where military operations take place or where military products are produced or where military products/equipment are present or stored, irrespective of whether these establishments are directly operated by the military/Ministry of Defence or by a private company under an arrangement with the military/Ministry of Defence (situations (1) and (2)).

It would also, in principle, apply to establishments owned or controlled by the military, irrespective of the type of activities taking place since such establishments have arguably been set up to serve military defence purposes (situation (4)).

It would not apply, however, to private companies supplying products or providing services to the military, which are not intended for specifically military purposes (situation (3)). Their situation would not differ from that of any other establishment handling or storing dangerous substances. These private companies are not expected to possess any information which would deserve protection under the exception of national defence/public security.

It is important to note that nothing would prevent a Member State from applying stricter rules than what is prescribed by the Directive – in accordance with Article 193 TFEU.

Sev III – Article 2(2)(e) – exclusion from scope of exploration, extraction and processing of minerals in mines and quarries, including by means of boreholes

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| Would the exemption apply if dangerous substances are used in the framework of the drilling operations or would such use amount to "chemical processing operations and storage related to those operations which involve dangerous substances", to which the exemption does not apply? |

A chemical process is a method intended to change the composition of chemical(s) or material(s). Thus the drilling activity itself, even where use is made of chemicals, such as methanol and propane, cannot be considered a "chemical processing activity", as far as its aim is not to alter the composition of the materials to be extracted. The act of extraction would therefore normally be exempted from Seveso even where chemical substances are used.

Chemical processes are normally understood in relation to mining as being activities aimed at separating the valuable minerals or metals from the waste material which surrounds them. This takes place after extraction. Where these processing operations involve dangerous substances they are covered under Seveso and the storage of dangerous substances related to these processing operations should is also be covered.

However, Where, prior to the drilling, chemical processing activities take place which are aimed at somehow changing one or more chemicals or chemical compounds (in view of their use in drilling operations for instance), such operations, and the related storage of chemical substances also falls under Seveso.

**Article 3: Definitions**

Sev III - Article 3(1) of Directive 2012/18/EU – Definition of "establishment"

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| Would two areas under the control of the same operator and separated only by a road be considered as one establishment? |

Two areas under the control of the same operator where dangerous substances are produced, used, handled or stored are to be considered as one establishment, in particular for the purpose of calculating the thresholds, even if a road separates both areas.

It follows from the definition of "installation" that warehouses or similar structures would also be part of the installation and thus of the establishment. Such warehouses are frequently situated at a certain distance from the other parts of the installation/establishment, often separated from these by a (private) road. The fact that it would be a public (and not a private) road which runs through the area where several installations of a same establishment are situated, should not allow to circumvent the rules for calculating the thresholds, since it would be contrary to the spirit and the objectives of the Directive, which is to prevent accidents resulting from the accumulated presence of dangerous substances present in one or more installations of an establishment, whether or not these installations are separated from each other by a private or public road.

Sev III – Article 3(11) – "Presence of dangerous substances"

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| Does this notion aim to cover establishments where dangerous substances may be generated as a result of loss of control of the processes in quantities exceeding the qualifying thresholds in Annex I, even if such establishment would not normally fall under the scope of the Seveso Directive, for reason of the actual or anticipated presence of dangerous substances in quantities above the qualifying thresholds? |

The definition in Article 3(11) refers to:

(1) the actual presence of dangerous substances in the establishment,

(2) the anticipated presence of dangerous substances in the establishment,

(3) the dangerous substances which it is reasonable to foresee that may be generated during loss of control of the process, including storage activities, in any installation within the establishment.

The reference in (3) to "any installation within an establishment" cannot be understood as meaning to restrict the scope of this third scenario to only those

substances that could be created as a result of loss of control in installations already covered by the Seveso Directive for reason of the actual or anticipated presence of (other) dangerous substances.

The notions "presence of dangerous substances", "installations" and "establishments" are interlinked and used in a circular way. No conclusions shall be drawn from these cross-references.

The Seveso Directive 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 (recital (2) of the Directive). Such high level of protection can only be achieved if the necessary prevention and control measures are taken in all establishments where dangerous substances could be present in quantities above the thresholds.

Therefore, if it is reasonable to believe that, in case of an incident, dangerous substances could be created in quantities exceeding the qualifying thresholds, then the operator of the establishment where non-Seveso substances are present or where Seveso-substances are present but below the qualifying quantities, should notify its activities as if it were a Seveso establishment.

**Article 12: Emergency plans**

Sev III - Article 12(4) of Directive 2012/18/EU – Consultation of "Long-term relevant subcontracted personnel"

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| Does the internal emergency plan have to be updated each time the operator changes subcontractor?<br><br>How to interpret "long-term relevant subcontracted personnel"? |

The Directive provides that the internal emergency plan shall be reviewed and, where necessary, updated at suitable intervals of no longer than three years. This review shall take into account changes occurring in the establishment concerned or within the emergency services concerned, new technical knowledge, and knowledge concerning the response to major accidents.

The obligation to consult the personnel working inside the establishment and the long-term relevant subcontracted personnel would apply not only to the first drawing up of the internal emergency plan, but also to all subsequent reviews and/or updates, since their input may be valuable also for the update or review. The long-term relevant subcontracted personnel should be the subcontracted personnel from which one can expect such valuable input for the internal emergency plan. Short-term sub-contractors whose activities have no impact whatsoever on the safety of the establishment should not be included in the consultation exercise. It would be for the operator to judge on a case-by-case basis the need for consulting the subcontracted personnel, taking into account their potential impact on safety aspects and possible input to the internal emergency plan.

Furthermore, if a change in sub-contractor would have an impact on the content and therefore proper functioning of the internal emergency plan (for instance in terms of responsible persons for setting the emergency procedures in motion or

for coordinating the on-site mitigating action or for liaising with the authority responsible for the external emergency plan), or if the change of sub-contractor would have an impact on the conditions or events which could be significant in bringing about a major accident, this should trigger a necessary review of the internal emergency plan, irrespective of the "normal" three-year interval, and the newly sub-contracted personnel would have to be consulted on the review.