The Tecpro Building,
Clonshaugh Business & Technology Park,
Dublin 17, Ireland.

T: + 353 1 847 4220
F: + 353 1 847 4257
E: info@awnconsulting.com
W: www.awnconsulting.com

MMcK/14/Seveso III_RIAL01
15 October 2014

Health and Safety Authority
The Metropolitan Building
James Joyce Street
Dublin 1

Dear Sir or Madam,

RE: Submission on Regulatory Impact Analysis (RIA,) Transposition of Directive 2012/18/EC ('Seveso III')

This submission contains comments on the Regulatory Impact Assessment (RIA) of transposition of Directive 2012/18/EC (Seveso III) under the following headings:

1. General
2. Notification
3. Inspection
4. Information to the public
5. Safety report
6. Major Accident Prevention Policy
7. External Emergency Plan
8. Land Use Planning and modifications to establishments
9. Cost recovery

1. General

Option 5 has been identified as the preferred option for transposition of the Seveso III Directive. Paragraph 1.5.5 of the RIA (option 5) as set out clearly goes beyond the requirements of the Directive and is overly burdensome on operators which will prove to be a barrier to attracting new business to Ireland and a financial, administrative and commercial disadvantage for current businesses operating here which may result in business moving elsewhere or downsizing or closing due to the disadvantages.

Cork Office
Unit 5, ATS Building,
Carrigaline Industrial Estate,
Carrigaline, Co. Cork.
T: + 353 21 438 7400
F: + 353 21 483 4606

AWN Consulting Limited
Registered in Ireland No. 319812
Directors: F Callaghan, C Dilworth,
T Donnelly, T Hayes, D Kelly, E Porter

2. Notification

In relation to the notification (required by Article 7 of the Seveso III Directive), the requirement to provide the Central Competent Authority (CCA) with commercially confidential information on chemical names is a concern for operators. It is submitted that transposition of the Seveso III Directive should provide for operators to provide the CCA with information on chemical hazards, without having to fully identify commercially confidential chemicals.

Paragraph 1.3.8 of the RIA provides that additional information may be needed on the inventory (in relation to notifications). Where in the Directive is this provided for?

3. Inspection

No comments.

4. Information to the public

Option 3, as per paragraph 1.5.3 of the RIA, whereby operators will be responsible for the provision of information to the public would be preferable from an operator's point of view given that the management of confidential information will be of great concern to operators.

Option 5, as described in the RIA document, involves the CCA hosting an information portal and developing a screening system for confidential information. Should this system be implemented, the following aspects will need to be clarified:

- Will the operator be required to submit confidential information to the CCA?
- If so, how will the CCA store such confidential information and what security systems will be in place?
- Once confidential information has been submitted to the CCA, who will then decide what is confidential – the CCA or the operator – and what information will be made available to the public?
- If the CCA is the arbiter of what is confidential, what criteria will be used? Will policies and guidelines be produced?

5. Safety Report

Options 3 to 5, as described in the RIA document, will include for clearer submission deadlines for safety reports. It is submitted that clearer submission deadlines should also be prescribed within which the CCA will provide feedback to the operator, request further information, and sign off on Safety Reports.

In relation to the inclusion of commercially sensitive and confidential information such as chemical names and CAS numbers, if this information is to be provided to the HSA as part of an operator's safety report, then operators will require assurances from the HSA as to how this information will be dealt with by the HSA so as to ensure that it is kept confidential. This will be necessary before any confidential information may be shared with the HSA so as to ensure that valuable company trade secrets remain protected.

6. Major Accident Prevention Policy

Under Option 5, operators of lower tier establishments will submit the MAPP to the CCA with the notification document. The Seveso III Directive allows one year from the date from which the Directive applies to the establishment for preparation and submission of the MAPP to the competent authority.

It is submitted that operators of lower tier establishments should be allowed 1 year for preparation and submission of the MAPP, in line with the Seveso III Directive.

7. External Emergency Plan

The Seveso III Directives requires Member States to give the public an early opportunity to give its opinion on external emergency plans when they are being established or substantially modified. How will this be transposed into legislation? Surely the current system of public consultation for EEPs is sufficient?

8. Land Use Planning and modifications to establishments

In relation to land use planning, Options 3 and 5 require the operator to provide the CCA with information to enable them to provide technical LUP advice to planning authorities. The provision of confidential information is of concern to operators. In the case of modifications to an establishment requiring planning permission (and thus a technical LUP assessment), potential implications on timescale are a major issue.

This has the potential to become a major block to inward investment in Ireland – where an Operator has to obtain H&SA review of what is "significant" or not and if the proposed change is "significant" then the Operator will have to go down the planning route, for a change such as increasing inventory, which would not previously have triggered planning, as we know the planning route in Ireland already is a time consuming process, being up to 1 year if an application is appealed to An Bord Pleanala. This proposal adds another time period, can the H&SA guarantee to respond in 3 weeks with a determination of what is "significant".

The following points require clarification in legislation:

- Will the operator be required to provide the CCA with confidential information on chemical names, storage and operating conditions?
- If so, how will this information be stored and what security systems will be used?
- Will confidential information be included in technical land use planning advice submitted to planning authorities by the CCA?
- Will the timescales for provision of technical LUP advice comply with planning legislation timescales?

Option 4 requires operators to prepare and supply the CCA with generic technical LUP advice. The following points would require clarification in legislation:

- What level of information will be required to be included in the advice?
- Who will sign off on the assessment?
- What timescales would be involved?

In relation to modifications to an establishment, what criteria will the CCA apply to 'significant' modifications that require planning permission? Will this be prescribed in the legislation or will the CCA produce guidance? The definition of "significant" must be published by the H&SA. For example if a site stores 100 tonnes of methanol in a 150 tonne tank and now wishes to store 120 tonnes, is this significant? Significant in what context? Does the Operator have to wait 2 months or whatever timeline the H&SA requires, in order to get a determination from the H&SA that this is significant? Will the H&SA require Major Accident Scenario modelling to demonstrate that the additional 20 tonnes do not cause any significant on-site or off-site impacts? What is significant in this context? We contend it should be an increase in the Specified Area, and that should be the only significance criterion. What will the timescale be for the CCA to make a decision in this regard?

Given that considerable scope is given to the member states under the Directive in relation to the implementation of the requirements of Articles 11, 13 and 15 of the Directive, and given that the requirement for an operator who wishes to make a significant change to be subject to the planning system as is suggested at paragraph 1.3.4 of the RIA would be a considerable obstacle for operators in the course of running their business, very clear guidance and legislation would be required in respect of operators obligations with respect to these provisions, the definition of "significant modification" and a much tighter and more efficient process than the current system for planning permission would be required to be put in place.

Furthermore it is submitted that Article 11 of the Directive provides merely that operators must review and update its notification, MAPP, safety report and safety management system and inform the competent authority in advance of the modification, but it does not provide that consent must be obtained in advance of modification. Article 13 provides that controls shall be provided for with regard to modifications to establishments so as to ensure the stated objectives, but the Article does not specify as to what form the controls may take. Article 15 provides that the public should be given an early opportunity with regard to significant modifications to establishments where such modifications are subject to obligations provided for in article 13 (i.e. not all significant modifications to establishments).

9. Cost recovery

In general, it appears from the RIA that costs to the operator will increase. Operators need to know now, in order to budget for 2015, as to what these costs will be.

Conclusion

Overall, it is submitted that the main issues for operators are the provision of commercially confidential information to competent authorities, potential increases in costs, and timescales for decisions on the significance of modifications and land use planning advice. These issues have the potential to lead to a serious and significant competitive disadvantage in attracting new industry to Ireland.

The issues highlighted will also lead to a disadvantage for businesses currently operating in Ireland who may find the additional burdens too onerous to continue to expand here or to continue operating here at all.

Yours sincerely,

Maeve McKenna

MAEVE MCKENNA
Principal Risk Consultant

DR. FERGAL CALLAGHAN
Director