



**BELÜGYMINISZTERIUM**  
**ORSZÁGOS KATASZTRÓFAVÉDELMI FŐIGAZGATÓSÁG**  
„Magyarország szolgálatában a biztonságért!”



## **Survey on Enforcement – Article 19 (Prohibition of Use) Survey Results**

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Department for Hazardous Establishments**

TWG-2 meeting, 1. October 2021.

# Legal aspect

**Article 19:** *„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.“*

# Driving force

$\text{Cl}_2$



$\text{NH}_3$



# Purpose



We were looking for the answer to the following question:

**Do good practices**

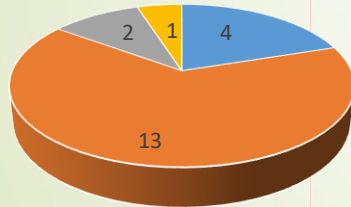
**- like a legally stipulated and detailed checklist of the key obligations -  
exist within the Member States to ensure a consistent interpretation of the prohibition,  
forced by Article 19?**

**Purpose:** establishing a transparent criteria-based system, that would ensure that a prohibition ordered by a competent authority could be confirmed on appeal, even in the case of an operator appealing against it (pointed to Article 19 (2)).

# Respondents

20 respondents

19 countries

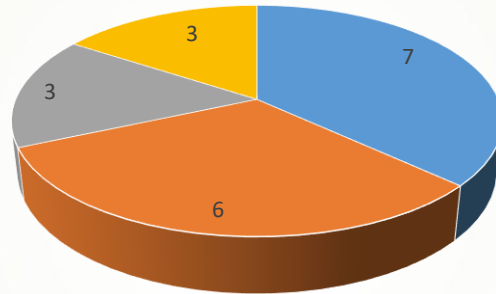


- Only my competent authority
- The national Seveso competent authorities
- The Seveso competent authorities in my region (e.g., Region, State, Länder, etc.)
- Other



# Background

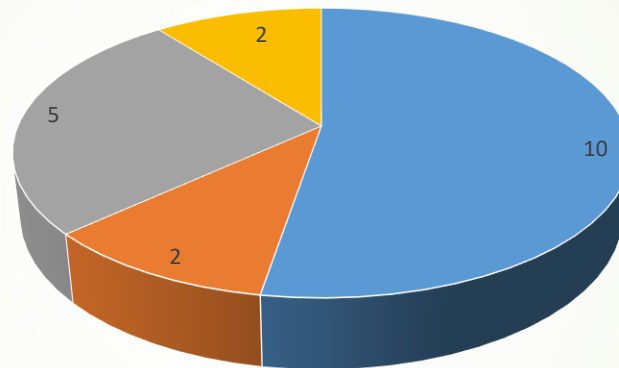
## Formal, comprehensive operating permit



- The Seveso competent authority issues a formal operating permit that includes conditions associated with the presence of hazardous substances
- Another competent authority issues the formal operating permit that includes conditions associated with the presence of hazardous substances
- Another competent authority issues the formal operating permit but it does NOT include conditions associated with the presence of hazardous substances
- Other

# Background

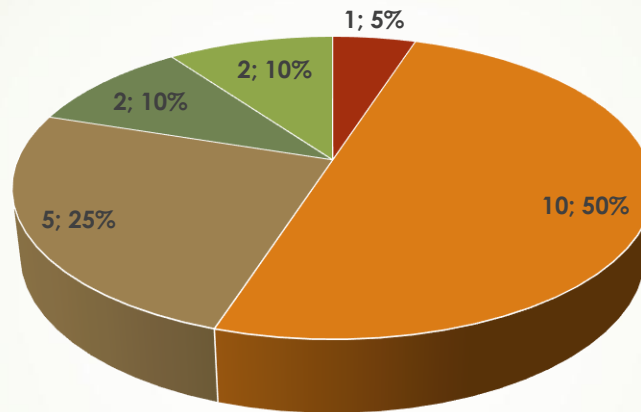
Who can initiate the prohibition of use?



- Seveso inspectorate
- Another Seveso competent authority (other than the inspectorate)
- Seveso inspectorate + Another Seveso competent authority (other than the inspectorate)
- Other

# Background

Prohibition in practice

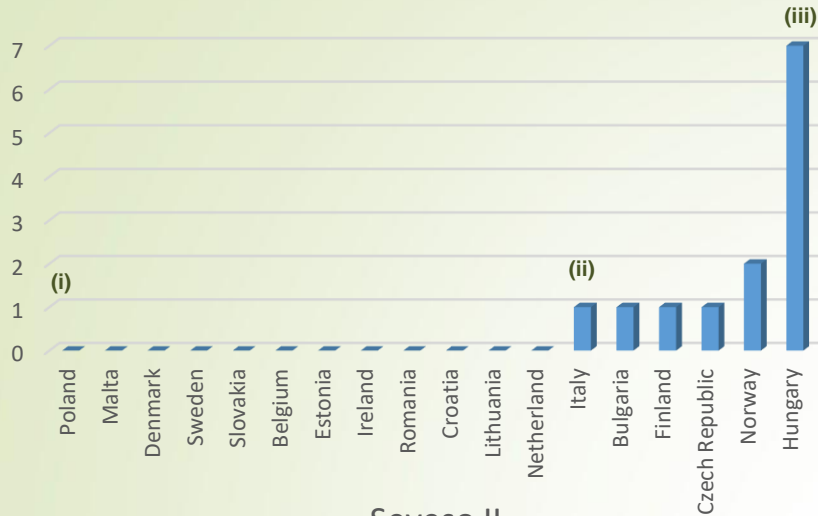


- By the suspension/revocation of the operating permit
- The Seveso competent authority prohibits operation by a decision
- By the suspension/revocation of the operating permit & The Seveso competent authority prohibits operation by a decision
- The Seveso competent authority prohibits operation by a decision & by a court prosecution
- Other

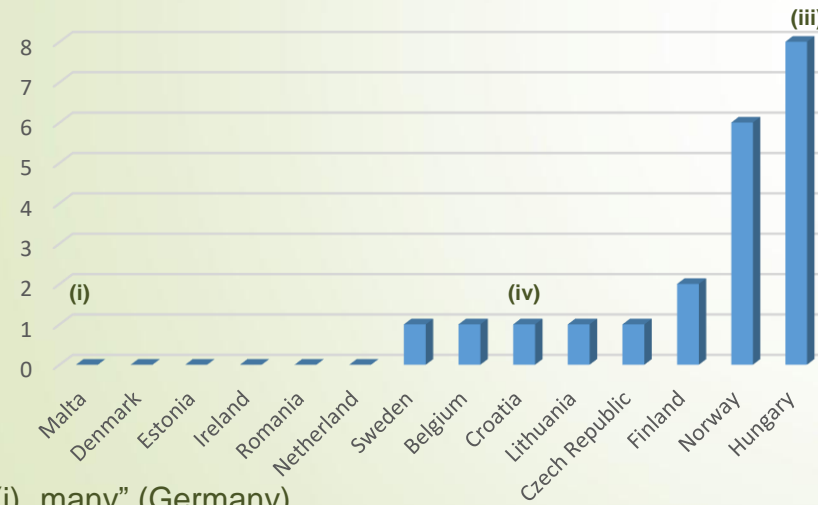


# Case studies

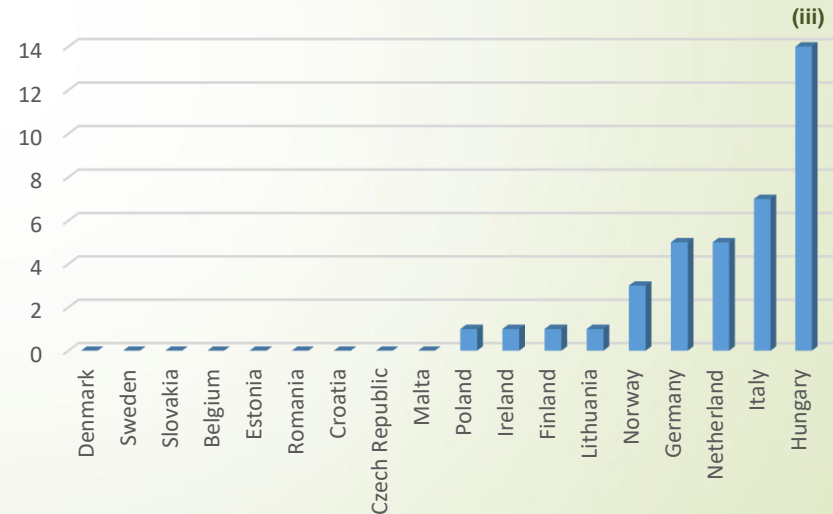
Aftermath of an accident



Seveso II



Seveso III (past 5 years)



Seveso III (past 5 years)	Seveso II + III (past decade)	Aftermath of an accident	Efficiency
38	35 + "many"	13 + "many"	92%

(i) „many” (Germany)

(ii) prohibition of use made as a precaution, by the competent technical authority, following the major accident

(iii) „Member States shall prohibit the use or bringing into use of any establishment, installation or storage facility, or any part thereof...”

(iv) prohibition of use was issued as inspectors' decision because the operator had performed activities in the installation which include the presence of dangerous substances (petrochemical site) without having obtained approval of the Safety Report; after prescribed timeframe the operator got the approval of Safety report and continued to work)

# Case studies – additional information

**Belgium:** The permit was temporarily suspended and the company needed to make the necessary repairs and modifications to the installations in order to restart operation. After Seveso inspectors had verified that the necessary measures were taken, the company received its permit to operate again. Some parts however were never taken into service again (decision of the company).

**Finland:** If there has occurred an accident: Quite often the company has told itself that they do not continue the process until they know it is safe enough. Or the process has been destroyed so bad that it was not needed to prohibit the process.

**Germany:** We mostly propose a prohibition of use after an incident. The Prohibition of use is often not valid for the whole plant, but some parts of it (critical installations, single processes)

**Hungary:** We had just one case study when the court decided to change the decision of the authority, therefore the establishment remained operating.

**Italy:** The Seveso Directive in Italy involves various competent Authorities. The Competent Authority, for the upper-tier establishments, is the Regional Technical Committee (CTR, within the Regional Directorate of Fire Brigades – almost 1 per region), for the lower-tier establishments the Competent Authority is the Region. ISPRA is not always the recipient of information relating to local decisions.

**Lithuania:** numbers were relating to the prohibition of the use of the certain part (certain hazardous equipment) of Seveso hazardous establishment.

**Netherland:** No prohibition were successfully implemented since they are first announced to the company and 3 companies reacted but stopping those parts of the company themselves so it was not implemented. 2 companies besides stopping the activities also made a legal case against the prohibition of use. 1 was denied after several years and the other was redrawn after a while.

**Norway:** two establishments followed up to our satisfaction, the third establishment closed after a long period of fighting our order.

**Sweden:** In Sweden, it is very rare for the supervisory authority to use prohibition.

# Positive examples



## **Example of Decision for revocation of the Operating Permit (Bg)**

- an accident happened in a high risk potential establishment
- as a result of an inspection, the CA prescribed to the operator to apply for revision of the Operating Permit
- the revision procedure ended with a decision for revocation of the Operating Permit
- the decision was appealed in court by the operator
- the Supreme Administrative Court confirmed the decision of the Seveso competent authority.

## **Example of prohibiting the operation of one part of a Seveso site (H)**

- during an inspection at a fertilizer production plant, found leakage of toxic hydrogen-sulfide gas from a process tank (odor was observed and dead birds were found around)
- the authority took action on-site to safely shut down the technology and issued a prohibition decision on the equipment until the failure was corrected
- the decision to suspend the operation of the hazardous facility concerned was challenged judiciary but confirmed by the court

## **Example for a second instance decision (Cr)**

In the above-mentioned case, the second-degree authority in the Ministry of environment and nature protection reject the appeal of the operator and confirmed the inspectors' decision.

## **Example for stricter measures (NI)**

Recently the court not only the company but also fined the director and safety manager of a company for not doing enough (not taking enough measures).



# Negative examples

## Example of Decision for modification of the Operating Permit (Bg)

- A high risk potential establishment got a modified operation permit from the CA.
- After appealing the decision in court by the operator, the Decision of the Supreme Administrative Court annulled the modified permit with some exceptions (e.g. to reduce the amount of stored explosives in the warehouses)
- According to the stated reasons of the court, the conditions have been revoked due to the lack of reasons in the decision on these conditions and **the created ambivalence on the basis of what criteria and considerations the CA has issued** them.

## Example of prohibiting the operation of a Seveso site (H)

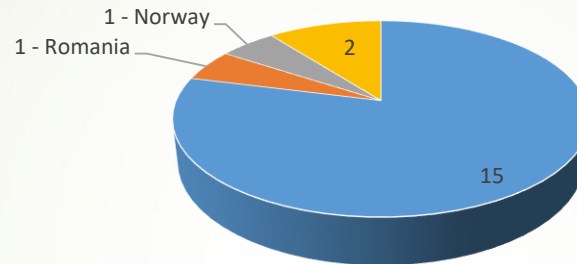
- The authority intends to revoke the permit of the dangerous establishment, thus closing the entire plant, as it considers that the serious condition of aging phenomena has taken off and that both personal and material conditions for safe operation have been lacking.
- However, the court annulled the official decision to close the plant. They said that proofs were not sufficiently proved.

## Example for suspension of the decision by the Court (I)

- A case of suspension of the decision of the CA by the Regional Administrative Court occurred in 2019.
- In this case, the operator was able to demonstrate that, despite the state of corporate crisis, he had already taken action in implementing what was requested.

# Criteria for „measures are seriously deficient”

Legal references or guidance



- There are no specific criteria or conditions established. The decision is made on a case-by-case basis.
- Criteria and/or conditions for making this determination are given in legislation
- Criteria and/or conditions for making this determination are given in a guidance document
- Other

## Others:

Finland: In Finnish, we have criteria for what kind of improvements are demanded from the company after inspections. Usually, we give the deadline and if the company doesn't react in time → 1. fines 2. prohibit of operation

Slovakia: (1) imminent threat to human life or health, the environment, or property (2) the operator has not taken measures to remedy serious violations of obligations or serious deficiencies in operations



# Legal criteria system - *Romania*

**ORDER no. 784/91/2021 for the approval of the Procedure for prohibiting the use or putting into service of a site, installation or storage area or any part thereof; July 8, 2021**

## Organizational

- lack of notification, MAPP, safety report (SR), internal emergency plan (IMP)
- lack of the minimum information (also referred to SMS) in MAPP, SR, IMP
- failure to perform a risk analysis
- non-establishment of the private service for emergency situations

## Technical

- failure to ensure the fire protection
- failure to protect the installations with safety equipment
- failure to ensure the operation of equipment above
- failure to alert the population
- failure to ensure measuring and control equipment
- non-implementation of the technical measures identified by the CA

## Location

- Maintaining territorial incompatibilities between establishment and surrounding areas through non-implementation of the measures established by the CAs
- failure to ensure adequate safety distances between the site and existing residential areas, buildings and areas frequented by the public, recreational areas, and important transport routes after modification of an installation, an establishment or a storage facility

# The joint procedure, describing the criteria system - *Norway*



The Seveso competent authorities have a joint procedure describing the criteria (not public).

The procedure should be used when an authority identifies obviously inadequate measures for the prevention and mitigation of major accidents.

The procedure shall contribute to the competent authorities to ensure:

- consistent understanding of the situation,
- appropriate follow-up of the operation,
- implementation of decisions on prohibition, when necessary.

## **Inadequate measures for the prevention and mitigation of major accidents:**

- serious system deviations,
- extensive organizational or technical changes that are considered to affect the safety level,
- operational (organizational, technical) deficiencies that are not followed up after supervision by the given deadlines,
- serious incidents,
- **messages of concern that are considered serious?**

# Suggestions on criteria



- failure to provide Seveso documents in case of a new establishment: notification, major-accident prevention policy, safety report, emergency plan, and public information
- conditions do not comply with the information in the decision for approval of the safety report
- dangerous equipment in-use, not considered in the safety report
- dangerous equipment does not meet the relevant technical and regulatory requirements
- lack of sufficient trained staff
- lack constant human presence or full remote control
- systematic non-compliance of monitoring, controlling, and maintaining the equipment
- systematic non-compliance with the procedures of the process control
- absence of emergency plans
- absence of necessary safety measures
- serious accidents
- ageing caused by lack of maintenance
- major changes in the surrounding areas that violate the safety distances
- deviation from the advanced technologies, in the case of a safety-relevant part of the establishment
- unacceptable risk according to the criteria and this risk cannot be reduced to a tolerable level
- violation of specific provisions in legal acts (e.g.: failed tests of pressure equipment, missing critical firefighting means, lack of specifically trained and qualified personnel)
- repetitive major violations during a certain period
- failures to take appropriate corrective actions in case of major violations
- ineffective or insufficient secondary containment (bund walls and floor)
- lack of overfill protection on primary storage tanks
- insufficient fire-fighting infrastructure
- lack of emergency preparedness



# In addition



- It should be noted that our **legislation usually provides** (before the prohibition to exercise) an **initial request to comply with the required measures, within a set deadline.** (I)
- Legal prosecution or prohibition of use have up to now only been considered for companies **where other more stringent inspection strategies** (such as frequent inspections, taking formal declarations from top managers) **didn't lead to satisfying results.** In other words: the decision is more strategy-driven than deficiency-driven. (B)
- I cannot imagine that in practice prohibition of use would be used for one specific deficiency. It would only be considered for 'very poor performers', **companies who typically have issues with a lot of technical as well as managerial measures.** (B)
- Furthermore, I believe it would be very difficult to apply prohibition of use in a case where there are only procedural deficiencies and no technical deficiencies. In other words, **there needs to be a real, tangible safety problem, not just a paper problem.** (B)
- Everything related to the implementation of the SMS or a Safety measure is, in general, **not easily managed by judges or lawyers**, so any doubt in instituting a criminal case based on arguments that have no clearly defined boundaries is understandable. When dealing with the missing implementation of SMS measures or safety measures, the **Prosecutor usually prefers to leave to the Seveso competent authority any verification of the adequacy of the application of requested preventive measures**, (this approach is considered immediate and effective). (I)
- Courts find Seveso very difficult to understand and define when major accidents could happen or what are all measures which are needed. This has positive and negative aspects. (NI)
- We **wouldn't use "Soft skill deficiencies"** (e.g. lack of competence); they are hard to demonstrate at court. Mostly we use **technical deficiencies, with help of external experts** (case by case reports). (G)
- **After an incident we prohibit the use of the installation** until technical measures to mitigate a further accident have been taken; this works mostly (nearly perfect) without court (G)

# Thank you for your attendance!

