

HSA

Intermediate Temporary Storage under COMAH

A Policy Position for Approval by the L&G
Committee

Setting and Communicating the policy on the interpretation of the Intermediate Temporary
Storage exclusion under the COMAH Regulations of 2015

Intermediate Temporary Storage under COMAH

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‘Intermediate Temporary Storage’ under the Chemicals Act (Control of Major Accident Hazards Involving Dangerous Substances) Regulations, S.I. 209 of 2015

1. The Business Model

An Irish company and its European partner have plans to provide liquified natural gas (LNG) in ISO containers, with associated vapourising equipment, to industrial customers unable to avail of the natural gas network.

A significant element of the business model will be to use ISO containers for transport of the LNG to the customer and for its subsequent storage at the customer location, prior to its vapourisation at the point of use. A typical set-up is envisaged to be two 20-tonne ISO containers at the customer site. Application of the COMAH Regulations requires the presence of at least 50 tonnes of LNG.

It is intended to import the ISO containers through Dublin Port. Dublin Port Company has advised that, under byelaws, the containers may be stored within the unloading area for a maximum of 3 days, at which point they will have to be moved on.

The company has indicated it will comply fully with the ADR¹ provisions. They have stated that the ISO containers will comply with the Pressure Equipment Directive - PED (ISO containers should comply with 2014/68/EU and SI 233/2017. A declaration of conformity from an approved Notified Body will be required - see appendix 1). No approval is required from the HSA for the use of certified ISO containers.

The importing company has indicated they do not intend to use an intermediate storage location within Dublin Port area for the storage of the ISO containers prior to dispatch to customers, but that they will reside at an, as yet, undisclosed location ‘as part of the ADR supply chain provisions’.

2. The Policy Issue for Consideration

The issue under consideration is whether, or at what point, the storage of significant quantities of LNG (or indeed other dangerous substances subject to the Seveso Directive) under the provisions of ADR removes the legal responsibility to comply with the COMAH Regulations.

¹ ADR is the acronym given to The European Agreement Concerning the International Carriage of Dangerous Goods **by Road**, which was made at Geneva in 1957 by United Nations Economic Commission for Europe, and amended April 1985.

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The company view is that full ISO containers in excess of the COMAH threshold may be stored in a location that is not a dock, wharf or marshalling yard but subject to the ADR. They posit that such a location should not be subject to the COMAH Regulations, as it constitutes a part of the transport chain and the application of COMAH is excluded in such situations by Regulation 3(3)(c) of the COMAH Regulations which implements Article 2(2)(c) of the Seveso Directive.

3. Intermediate Temporary Storage under ADR and COMAH

The presence of three 20-tonne ISO LNG containers will exceed the lower threshold² for application of the COMAH Regulations. However, under the COMAH Regulations, *directly related temporary intermediate storage* in the transport chain is excluded³ from application.

Flammable gases above a threshold of 3,000 litres (for LNG this approximates to less than 1.5 tonnes) fit the definition of *'high consequence dangerous goods'* under ADR and are thus subject to the ADR security provision of Chapter 1.10. Such locations will therefore have to comply with ADR 1.10.1.3 and *'be properly secured, well-lit and, where possible and appropriate, not accessible to the general public'*. In addition, a security plan in accordance with ADR 1.10.3.2 (see appendix 2 security plan provisions) will be required.

At present, there are no such locations (intermediate location, in the transport chain, with sufficient dangerous substances to exceed the COMAH threshold) within the jurisdiction where this issue is relevant, so there is no precedent to build on.

4. The COMAH Application Case

The long-term presence of LNG ISO containers (albeit not always the same ISO containers for the whole duration) presents a serious on-site and off-site risk to human health. If such locations are not subject to the ADR exclusion set out in Regulation 3(3)(c) of the COMAH Regulations, they would constitute COMAH establishments once the qualifying threshold is exceeded. If they constitute COMAH establishments then planning controls and the other COMAH provisions will apply.

Central to the issue is the interpretation of the phrase *'directly related intermediate temporary storage'*, which is used in the exclusions from application in Regulation 3(3)(c) of the COMAH Regulations.

No timescale is assigned to *'directly related intermediate temporary storage'* in the COMAH Regulations or the Seveso Directive.

² Natural gas is named substance 18 in Part 2 of Schedule 1 to the Regulations. The thresholds are 50 tonnes and 200 tonnes.

³ Reg 3.3.c: *the transport of dangerous substances and directly related intermediate temporary storage by road, rail, internal waterways, sea or air outside establishments defined in Regulation 2(1), including loading and unloading and transport to and from another means of transport at docks, wharves or marshalling yards;*

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According to the HSE (England & Wales) guidance on this topic⁴ *Directly related intermediate temporary storage* is storage that is required as part of a transport activity, which takes place for no longer than is necessary as part of the transport activity.

The UK guidance notes that directly related intermediate temporary storage is intended to include:

- driver rest breaks and daily/weekly rest periods,
- time required to transfer a load from one form of transport to another,
- time required to amalgamate or break down loads of packaged goods or
- waiting time while transferring from one mode of transport to another.

The Seveso Directive makes reference to the activity of *directly related intermediate temporary storage* at the locations of *docks, wharves or marshalling yards*. As these are clearly defined locations within the transport chain, the need for this provision can be easily comprehended for those locations as it is storage required as part of the transport activity. Therefore, the exclusion applies to the berths in Dublin Port and as noted above, Dublin Port Company allows a maximum time of 72 hours for intermediate storage there.

The EU Commission has attempted to provide some informal guidance on how to handle the presence of LNG in ports⁵, but it is not helpful for the situation under consideration.

It is a reasonable interpretation of the available guidance that the term ‘directly related intermediate temporary storage’ does not include the storage of dangerous substances once they have reached their destination point or consignee (however short the duration of their storage) or the storage of dangerous substances that have been consigned but not yet begun their transport journey. It also does not include activity to decant /dilute or otherwise alter the dangerous substances from the form in which they arrive for use on site.

The EU Commission, through the *Seveso Expert Group*, has provided a ‘Questions & Answers’ guidance on the Seveso Directive which provides some assistance on interpretation:

035	<p>Question: Can transit storage in a warehouse benefit from the exemption in Article 2(2)(c)⁶?</p> <p>Example: An operator of a warehouse stores 20 tonnes of very toxic substances, 15 tonnes of which are claimed to be storage in the transport chain (often called “transit storage”).</p> <p>Answer: The warehouse is to be considered as an establishment in the sense of article 3(1). Its purpose is to store dangerous substances. 20 tonnes of very toxic substances are present on a continuous basis. Exclusion 2(2)(c) refers to the necessary intermediate storage in the transport chain outside establishments, not</p>
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⁴ <http://www.hse.gov.uk/comah/assets/documents/comah-transport-pipelines-additional-information.pdf>

⁵ [https://circabc.europa.eu/webdav/CircaBC/env/seveso_seg/Library/seg/SEG-05%20Brussels%20\(19%20January%202017\)/02%20Commission%20activities/2.2.5%20-%20draft%20document%20on%20LNG%20bunkering%20v0-5.docx](https://circabc.europa.eu/webdav/CircaBC/env/seveso_seg/Library/seg/SEG-05%20Brussels%20(19%20January%202017)/02%20Commission%20activities/2.2.5%20-%20draft%20document%20on%20LNG%20bunkering%20v0-5.docx)

⁶ (Regulation 3(3)(c) of COMAH implements Article 2(2)(c) of the Directive)

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	to the storage in warehouses or other places specifically designed and used for the storage of dangerous substances on a regular basis. <i>Concluded at:</i> CCA-16 & CCA-17, amended at SEG-06
045	<p>Question: Do substances temporarily present in a location need to be considered for the calculation of thresholds?</p> <p>Example: A lorry carrying dangerous substances is parking overnight in the premises at a facility holding dangerous substances below the thresholds in Annex I of the Seveso-III-Directive. The lorry will not be unloaded or loaded at this site but the total of the load and the dangerous substances already present in the facility would surpass the relevant threshold.</p> <p>Answer: As the goods are not handled in the facility and their stay is clearly time-limited, the scenario in the example can in principle be considered as directly related intermediate temporary storage which is excluded from the scope by Article 2(2)(c). However, the final assessment may depend also on the frequency of such situations at a given location and the overall duration of the presence of dangerous substances above the threshold. (<i>Concluded at:</i> SEG-06)</p>

The UK HSE provides a number of examples in its guidance on their interpretation of the provision. In the UK (unlike Ireland), the storage of dangerous substances above specified thresholds requires a formal planning consent. Their *Planning (Hazardous Substances) Regulations 2015* provide a specific exemption for *the temporary presence of a hazardous substance during the period between its being unloaded from one means of transport and loaded onto another, including if it is in directly related intermediate temporary storage, while it is being transported from one place to another.*

One of the examples given in the UK guidance in particular is worth noting: *A site is storing dangerous substances. These substances may be awaiting purchase, onward delivery to a final customer or drawing off by a customer as dictated by business need. The site does not unpack / repack / dilute or otherwise alter the dangerous substances from the condition from which they arrive. This site is considered within scope of COMAH if the quantities exceed threshold levels. The activity is not transport or directly related intermediate temporary storage but storage. The dangerous substances have arrived at an end point in their journey; this is not altered by the fact that the dangerous substances may only be present for a short period of time.*

The UK guidance does not provide any specific timeframe related to intermediate temporary storage and the application of the Seveso Directive.

The approaches of Austria and Denmark were presented at a *Seveso Inspection Technical Working Group* meeting in 2018, and they reflect the wide range of interpretations across the Union. In Denmark, storage outside of recognised port areas and marshalling yards above the threshold for a period greater than 5 hours for more than 5% of the time is considered to be in scope of the Seveso Directive while in Austria storage up to 28 days is regarded as transport and therefore out of scope.

5. Proposed Approach

Taking account of the situation as outlined above, the potential location of intermediate temporary areas in populated areas or areas with sensitive environmental and human receptors in the vicinity, the limited guidance available on the topic and the varied approaches within the European Union, the Central Competent Authority for the Seveso Directive, based on its experience and technical competence in this area, proposes to take the following approach.

For locations that are not docks, wharves or marshalling yards, an assessment of these locations will be made, based on:

- the duration that any particular number of containers of dangerous substances will be present at the location;
- the duration for which the COMAH threshold will be exceeded.

Where the COMAH threshold would be exceeded for a period of 3 consecutive days or for a total of 18 days in any 12 month period ($18/365 \approx 5\%$), the COMAH Regulations will be interpreted to apply and the location operator (that is, the entity with economic control) will be required to make a formal notification under the COMAH Regulations.

This may trigger consequent land-use planning, emergency response planning and public information requirements arising from the Regulations.

6. Communication of CCA Position

If approved, the policy will be communicated through the COMAH & the ADR pages of the HSA website, as set out in appendix 3.

Appendix 1- the PED Requirements for ISO Containers

With regard to pressure containers, the duty holder under PED is the manufacturer of the container. It is they who must ensure that their product complies with the essential health and safety requirements of the directive before placing the product on the market.

The conformity assessment procedure for PED requires the involvement of a notified body. No consent is required from the MSA (Market Surveillance Authority). The manufacturer is required to issue a Declaration of Conformity stating that their product complies with the Directive.

The EU publishes a list of approved standards (ENs) in the official journal. These are termed harmonised standards. Not all ISO standards are harmonised.

If a suitable harmonised standard exists for a particular product type, then the manufacturer can design and construct their product to this standard. This in turn gives presumption of conformity to the Directive.

Appendix 2- The Security Plan Required under ADR

1.10.3.2.1 Carriers, consignors and other participants specified in 1.4.2 and 1.4.3 engaged in the carriage of high consequence dangerous goods (see Table 1.10.3.1.2) or high consequence radioactive material (see 1.10.3.1.3) shall adopt, implement and comply with a security plan that addresses at least the elements specified in 1.10.3.2.2.

1.10.3.2.2 The security plan shall comprise at least the following elements:

- (a) Specific allocation of responsibilities for security to competent and qualified persons with appropriate authority to carry out their responsibilities;
- (b) Records of dangerous goods or types of dangerous goods concerned;
- (c) Review of current operations and assessment of security risks, including any stops necessary to the transport operation, the keeping of dangerous goods in the vehicle, tank or container before, during and after the journey and the **intermediate temporary storage of dangerous goods during the course of intermodal transfer or transshipment between units** as appropriate;
- (d) Clear statement of measures that are to be taken to reduce security risks, commensurate with the responsibilities and duties of the participant, including:
 - training;
 - security policies (e.g. response to higher threat conditions, new employee/employment verification, etc.);
 - operating practices (e.g. choice/use of routes where known, access to dangerous goods in intermediate temporary storage (as defined in (c)), proximity to vulnerable infrastructure etc.);
 - equipment and resources that are to be used to reduce security risks;
- (e) Effective and up to date procedures for reporting and dealing with security threats, breaches of security or security incidents;
- (f) Procedures for the evaluation and testing of security plans and procedures for periodic review and update of the plans;
- (g) Measures to ensure the physical security of transport information contained in the security plan; and
- (h) Measures to ensure that the distribution of information relating to the transport operation contained in the security plan is limited to those who need to have it. Such measures shall not preclude the provision of information required elsewhere in ADR.

Appendix 3- Communication of the Policy Position

Interpretation of the exclusion related to 'directly related temporary intermediate storage'

Regulation 3(3) of the Chemicals Act (Control of Major Accidents Involving Dangerous Substances) Regulations, S.I. 209 of 2015 ([Links to Regulations and to Guide](#)) set out a number of exclusions from application of the regulations.

Regulation 3(3(c)) excludes: *the transport of dangerous substances and directly related intermediate temporary storage by road, rail, internal waterways, sea or air outside establishments defined in Regulation 2(1), including loading and unloading and transport to and from another means of transport at docks, wharves or marshalling yards;*

Directly related intermediate temporary storage is interpreted by the Central Competent Authority to include:

- driver rest breaks and daily/weekly rest periods,
- time required to transfer a load from one form of transport to another,
- time required to amalgamate or break down loads of packaged goods or
- waiting time while transferring from one mode of transport to another.

It does **not** include:

- storage of dangerous substances once they have reached a destination point or consignee (however short the duration of their storage)
- storage of dangerous substances that have been consigned but not yet begun a journey
- activity to decant /dilute or otherwise alter the dangerous substances from the form in which they have been transported.

Where the quantity of dangerous substances stored at a location would exceed the COMAH threshold:

- for a period of 3 consecutive days or
- for a total of 18 days in any 12- month period

the COMAH Regulations will be deemed to apply and the operator of the location (that is, the entity with economic control) will be required to make a formal notification under the COMAH Regulations ([Link to Notification form](#)).

This may trigger consequent land-use planning ([Link](#)), emergency response planning ([Link](#)) and public information requirements ([Link](#)) arising from the Regulations.