

Chemical security as a public matter. Entrepreneurs' duties and good practices

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A manager of an enterprise falling under Title IV of Environment Protection Act [2], colloquially – subject to the Seveso Directive, knows own obligations towards preventing industrial accidents. While those obligations don't extend to any under-the-threshold entities, expectations towards such companies to undertake similar, albeit adjusted to size and risk, actions are expected [3]. The same rationale applies to the intentionally caused industrial accidents or derived actions. Such fortunately rare cases include misuse of chemical substance or diversion of process/infrastructure [4]. Entrepreneur's role in preventing and deterring such intentional activities is rarely enforced by law. Such law is either object oriented [5 – 7], or subject oriented [8 – 9]. In each of the above a part of public life or sector of economy is regulated. In analogue to what was said about industrial accidents – those who are not covered by particular acts but handle hazardous materials, in particular if causing public damage when misused, should undertake preventive action of scope proportional to volume and threat. The general rules of law also require some degree of pro-activity with regard to incident prevention even when not imposing any verification regime. That situation may, in the case of companies with low level of security culture lead to a reactive approach, if any. It is of course a false attitude. Lack of institutional verification implies that incident verifies the prevention measures. Lack of preventive activity may be legally qualified as recklessness – when awareness about possibility and consequences existed, or negligence – when there was no awareness but presumptions did exist. Both attitudes may be subject to penal responsibility. Whether effect of an incident was a result of a lack of preventive measures caused by recklessness, negligence or simply pure coincidence is to be assessed by investigation and eventual court trial. In the worst case lack of prevention in face of an intended action may be qualified as participation. The types of penalized actions quoted in Polish penal code include (i) causing mass damage through explosion or release of energy (Art. 163 of the code), (ii) releasing toxic or corrosive agents (Art. 165) and (iii) manufacturing or marketing of substances harmful to health (Art. 171). Categorizing of lack of preventive action may depend on general public security assessment. The higher public alert level – the more requirements are laid on those who handle hazardous materials. Probability of intentional actions is non-measurable so such categorizing is left to subjective assessment unlike in the process safety where derived probability is an accepted factor in calculating acceptable risk and adopting risk reducing measures. It is thus impossible, when not undertaking security measures, to present measurable proof legitimizing lack of action.

The activities to be undertaken by an entrepreneur handling hazardous materials or running hazardous processes are multifaceted. First element is to analyze site vulnerability, both material and organisational. Vulnerability is a result of present sources of hazard in the context of location, neighbourhood, protection and physical security measures, level of security culture and awareness of the staff, level of turnover, frequency of trainings, personnel attitudes, external circumstances, visibility and profile of a company. The consequent

element is security of material introduced on the market and subsequent is security of material in transport. The latter is most vulnerable part of production and distribution process. Security of information is another important domain. It pertains to all forms: non-recorded, cyber- and hardcopy recorded. Scope of information, an offender may make use of extends to the clients, suppliers and contractors. The full range of issues, the vulnerability reduction consists of and measures to be considered or undertaken is presented in the Guidelines for Small and Medium Entrepreneur [10]. The Guidelines may be accessed or downloaded from the portal network.iccss.eu [10] after registering and being approved by the network administrator.

Literature

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