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## **Economic Commission for Europe**

### **Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents**

#### **Bureau**

##### **Twenty-second meeting**

Stockholm, 27–28 June 2012

Item 3 (i) of the provisional agenda

##### **Seventh meeting of the Conference of the Parties**

##### **Possible amendments to the text of the Convention**

## **Possible amendments to the Convention**

### **Note by the secretariat**

The Bureau requested the secretariat to prepare a draft paper on amendments for its consideration. These amendments might be considered in addition to the possible revision of Annex I to bring it into line with the Globally Harmonised System of Classification and Labelling of Chemicals and the European Union (EU) “Seveso III Directive”. Some possible additional alignments with the Directive might be considered appropriate, with examples set out below.

### **I. Land-use planning**

The November 2010 joint seminar on land-use planning around hazardous industrial sites, held under the Convention and the United Nations Economic Commission for Europe (ECE) Committee on Housing and Land Management, highlighted the need to address industrial safety in land-use planning. This need has largely been met in the “Seveso Directive” (art. 12 and, to a lesser degree, art. 14). Parties might consider that a similar approach should be taken under the Convention.

### **II. Public participation and information**

Most Parties to the Industrial Accidents Convention are also party to the ECE Aarhus Convention. The latter’s obligations to supply information to the public and to allow public participation in decision-making relating to the transboundary effects of industrial accidents might also be reflected in the Industrial Accidents Convention. This approach has been taken with the “Seveso Directive” (art. 13, art. 14).

### **III. Definitions**

The definition of “the public” in Article 1 might be revised to align with the definition used in other multilateral environmental agreements and EU law.

At the end of Article 1 (j), after “persons” insert “and, in accordance with national legislation or practice, their associations, organizations or groups”.

Further revisions or additions to the definitions might also be considered, for example of “Competent authority”.

#### **IV. Scope**

Parties to the Convention have, through the work of the Joint Expert Group under the Industrial Accidents and Water Conventions, expressed their desire to apply the principles of the Industrial Accidents Convention to tailing management facilities and pipelines. There is no consensus as to whether the Convention currently applies to these types of activities.

In Article 2 (Scope), in paragraph 2(c), after “with the exception of” insert “tailing management facilities and” and, at the end of paragraph 2(d), insert “(iii) pipelines;”.

The will of the Conference of the Parties to apply the Convention to these types of activities might in addition be expressed in a decision, pending entry into force of an amendment.

Other exclusions to the scope in article 2 might be reviewed in the light of the clustered recommendations from recent workshops under the Convention.

#### **V. Mutual assistance**

The provisions set out in article 12 and annex X might be considered of value when providing mutual assistance even when no transboundary effect is possible; delays in deploying assistance sometimes occur pending resolution of issues such as conditions for entry, transit and liability. The provisions might even be considered of value in the event of other environmental or humanitarian emergencies, besides industrial accidents, where rapid agreement is also needed for the deployment of assistance.

In Article 12 (Mutual Assistance), at the end of the article, insert a new paragraph reading

3. This Article may be applied in the event of an industrial accident irrespective of whether it is capable of causing transboundary effects.

#### **VI. Frequency of meetings**

The Conference of the Parties has met every two years whereas the Convention requires annual meetings, which Parties have considered unnecessary and onerous. The relevant provision could be amended in line with the Convention’s Protocol, or to reflect practice.

In Article 17 (Conference of the Parties), in paragraph 1, replace “at least once a year” by “at dates to be determined by the Conference of the Parties” or by “at least once every two years”.

#### **VII. Reporting**

Most Parties are respecting their obligations under article 23, but this obligation to report could be made clearer. Most Parties have obligations under the Aarhus Convention or related EU legislation to provide access to environmental information; these obligations, in the field of the transboundary effects of industrial accidents, might in part be satisfied by an explicit requirement in the Industrial Accidents Convention.

In Article 23 (Implementation), after “Convention” insert “, at intervals and in a format determined by the Conference of the Parties”. Insert at the end of the article a sentence reading “Reports on implementation shall be made available to the public.”

## VIII. Review of compliance

Unlike the other ECE multilateral environmental agreements, the Convention lacks a compliance procedure to review and bring about compliance with its provisions.

In Article 23 (Implementation), number the current paragraph and, at the end of the article, insert new paragraphs reading

2. The Parties shall review the compliance of the Parties with the provisions of this Convention on the basis of, but not limited to, the reports referred to in paragraph 1. Multilateral arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance shall be established by the Conference of the Parties [at their ... meeting]. These arrangements shall allow for appropriate public involvement.

3. The compliance procedure shall be available for application to any protocol adopted under this Convention.

## IX. Accession by other Member States of the United Nations

In the preamble to the Convention, Parties take into account the fact that the effects of industrial accidents may make themselves felt across borders, and require cooperation among States. To date the Convention has only allowed this principle to be applied between member States of the Economic Commission for Europe, whereas the effects of industrial accidents may also be felt across borders with States neighbouring the region, and beyond.

The text below, including the text in square brackets, reflects the wording used in the Convention's Protocol.<sup>1</sup> However, the need for approval by the governing body of an accession by an "other" State may be seen as unfair as no equivalent requirement exists for member States of the Economic Commission for Europe.<sup>2</sup>

In Article 29 (Ratification, acceptance, approval and accession), after paragraph 2, insert a new paragraph reading

3. Any other State, not referred to in paragraph 2, that is a Member of the United Nations may accede to the Convention [upon approval by the Conference of the Parties. In its instrument of accession, such a State shall make a declaration stating that approval for its accession to the Convention has been obtained from the Conference of the Parties and shall specify that date on which approval was received].

and renumber the remaining paragraphs accordingly.

## X. Application of the amendment to new Parties

To promote an even application of the Convention, States acceding to the Convention once the amendment has entered into force should automatically accede also to the amendment.

<sup>1</sup> Amendments to the Water and Espoo Conventions have included a different second sentence reading "The Conference of the Parties shall not consider or approve any request for accession by such a State until this paragraph has entered into force for all the States and organizations that were Parties to the Convention on (*date of adoption of the amendment*).” However, this has proven problematic because of the need for all Parties at the time of adoption of the amendment to ratify (etc.) the amendment before the governing body can consider approval of requests for accession.

<sup>2</sup> The Working Group on Development might also seek that advice of the international environmental lawyers involved in the Water Convention on a suitable wording for the opening up.

At the end of Article 29 (Ratification, acceptance, approval and accession), insert a new paragraph reading

5. Any State or organization that ratifies, accepts or approves this Convention shall be deemed simultaneously to ratify, accept or approve the amendment to the Convention adopted at the eighth meeting of the Conference of the Parties.

## **XI. Governance structures under the Convention**

The Working Group on Development could also review the structure of subsidiary bodies to the Conference of the Parties, their mandates and rules of procedure, and make proposals to the Conference of the Parties at its eighth meeting. The Convention is unusual in not having a subsidiary body that is open-ended (i.e. where all Parties are represented.)

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