

**ECONOMIC COMMISSION FOR EUROPE**

**MEETING OF THE PARTIES TO THE  
CONVENTION ON THE PROTECTION  
AND USE OF TRANSBOUNDARY**

**WATERCOURSES AND  
INTERNATIONAL LAKES**

**CONFERENCE OF THE PARTIES TO  
THE CONVENTION ON THE  
TRANSBOUNDARY EFFECTS OF  
INDUSTRIAL ACCIDENTS**

**Intergovernmental Working Group  
on Civil Liability**

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**PROPOSALS FOR AMENDMENTS OF THE  
DRAFT LEGALLY BINDING INSTRUMENT ON CIVIL LIABILITY FOR  
TRANSBOUNDARY DAMAGE CAUSED BY HAZARDOUS ACTIVITIES, WITHIN  
THE SCOPE OF BOTH CONVENTIONS**

**PREAMBLE**

**Continue the 5th preambular paragraph as follows:**

„...and especially of the key role that public authorities of the Parties shall play in prevention, mitigation and restoration of damage arising from the pollution of transboundary waters caused by industrial accidents .”

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\* This document has not been formally edited.

## ARTICLE 2

### **Insert the following word in paragraph 2(b) (iv):**

„...of reasonable measures...”

### **For paragraph 2(b) (v):**

The words “[preventive][mitigation]” in the first line should be deleted.

### **For paragraph 2(b) (vi):**

The square brackets should be deleted and the text amended as follows:

The cost of extraordinary response measures taken by the public authorities of the affected Party to control emergency situations arising from pollution of transboundary waters caused by industrial accidents (especially those involving large quantities of toxic or other hazardous substances)

### **For paragraph 2(c):**

Regarding the Netherlands proposal, Hungary proposes to draw up a definition of ‘measures of reinstatement’

### **Substitution for paragraph 2 (d) Alternative 2:**

*“Mitigation and response measures” means any reasonable measures taken by public authorities, operators or other involved legal or natural persons following an industrial accident to minimize or limit possible loss or damage referred to under article 2, paragraph 2(b) due to the industrial accident, or to arrange for environmental clean-up.*

### **For paragraph 2 (g):**

The definition of “unit of account” drafted by the International Monetary Found should be cited in the paragraph.

### **Add the following definition to paragraph 2(h):**

“Operator” means any legal or natural person permitted by the competent public authorities of the party of origin to control in technical and financial terms the hazardous activity that may impose risk on the territory of the affected Party;

### **Add the following definition to paragraph 2(i):**

“Industrial accident” means an uncontrolled departure from permitted operating conditions of a hazardous activity causing pollution of waters.

### **New paragraph 2(j) or instead of paragraph 2(i):**

“Pollution of transboundary waters caused by industrial accidents” means the introduction of toxic or other hazardous substances into waters due to an industrial accident occurring within the territory under the jurisdiction or control of the Party of origin and causing significant damage within the territory under the jurisdiction or control of the affected Party(ies);

**New paragraph 2(k):**

“Risk” means the combined effect of the probability of occurrence of an industrial accident and the volume of the loss or damage likely to arise due to the industrial accident.

**New paragraph 2(l):**

“Party of origin” means the Party within the territory and under the jurisdiction or control of which pollution of transboundary waters caused by and industrial accident occurred.

**New paragraph 2(m):**

“Affected Party” means the Party within the territory of which significant transboundary damage occurred due to pollution of transboundary waters caused by an industrial accident whether or not this Party shares a common border with the Party of origin.

**New paragraph 2(n):**

“State of origin” should be defined because of the reference of Article 17.

### ARTICLE 3

**Substitution for paragraph 1:**

The Protocol shall apply to *loss or damage referred to under article. 2 paragraph 2 (b), due to pollution of transboundary waters caused by industrial accidents.*

**Substitution for paragraph 2:**

The Protocol shall apply only to damage as referred to in paragraph 1 suffered in an area under jurisdiction or control of an affected Party and arising from an industrial accident occurring in an area under the jurisdiction or control of the Party *of origin.*

### ARTICLE 4

**Article 4. Paragraph 1.**

After the text commonly agreed by the Working Group : “The operator shall be liable for the damage” insert :

Parties to this Protocol may provide that direct liability of an insurance company or of a compensation fund shall be wholly or partly substituted for the liability of the operator.

### ARTICLE 6

The title of the article – depending on the definition - could be as follows:

“Mitigation and response measures”

In this case, the text of paragraph 2 should be amended accordingly, furthermore the expression “...mitigation and response measures or contingency plans,...” should be inserted into the last line.

## ARTICLE 8

### **Add a new paragraph 4:**

Public authorities of the Parties provide for close cooperation in order to promote fair legal proceedings in the cases of pollution of transboundary waters caused by industrial accidents.

## ARTICLE 10

The title of the article should be amended as follows: Time limit for submission of claims.

## ARTICLE 11

### **Redraft paragraph 1 as follows:**

Operators during the period of the time limit of liability shall *provide for* financial security covering *their liability referred to* under article 4 for amounts not less than the limits specified in paragraph 3. of Annex II. *Parties to this Protocol may provide for different forms of financial security such as liability insurance, third party liability, bonds, compensation funds or other financial guarantees.*

## ARTICLE 12

Text relating to State responsibility may need additional explanatory comments to be compiled by the secretariat.

## ARTICLE 20

### **For paragraph 3:**

Square brackets should be inserted as follows (no difference should be made between the amendment procedures of the text of the Protocol and its Annexes): “For amendments to this Protocol [- other than those to annexes I and II, for which the procedure is described in paragraph 4 of this article]: