

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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**PROPOSAL REGARDING ARTICLE 11bis ON ACCESS
TO INFORMATION AND JUSTICE ACCORDINGLY**

Working paper prepared by the secretariat

Introduction

At its third and fourth meetings, the Working Group considered a proposal by Germany on access to information and access to justice accordingly (see working paper WP.WAT/AC.3/2002/WP.8 – CP.TEIA/AC.1/2002/WP.8). While agreeing in principle on the insertion of such an article, several delegations were concerned about the inclusion of the original wording of such an article as proposed in the working paper. Reasons included the length of the original proposal, taken from the Aarhus Convention, and the reference to “environmental information”.

At the fourth meeting, the Working Group invited Germany to convene a meeting of interested delegations during the fifth Working Group meeting to draw up a new text proposal for this article. The secretariat offered its assistance to Germany to prepare a revised proposal. A consultation was held with the German delegation on 18 October 2002 during which a new draft text has been prepared as set out below.

The secretariat proposal is intended to assist interested delegations to draw up a new text for article 11bis for consideration by the Working Group at the fifth meeting. It mainly draws on the provisions of the 1999 Protocol on Water and Health, in particular, article 4, paragraph 7, and article 10.

Article 11bis

Access to information and justice accordingly

1. As a complement to the requirements of this Protocol for Parties to make available specific information or documents, each Party shall take steps within the framework of its legislation to make available to the public information as is held by public authorities and is reasonably needed to inform public discussion of civil liability and adequate and prompt compensation for damage resulting from the transboundary effects of industrial accidents on transboundary waters.
2. Where a Party to this Protocol is a Party to the 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter referred to as 1998 Aarhus Convention), compliance by public authorities of that Party with the requirements of that Convention in relation to public information under paragraph 1 of this article and access to justice shall satisfy the requirement in respect of this article.
3. Where a Party to this Protocol is not a Party to the 1998 Aarhus Convention, the Party shall provide access to information and access to justice in accordance with annex IV of this Protocol.

Annex IV

Provision of access to information and access to justice by non-Parties to the 1998 Aarhus Convention

1. Each Party that is not a Party to the 1998 Aarhus Convention shall ensure that public authorities, in response to a request for information relevant to civil liability and adequate and prompt compensation for damage resulting from the transboundary effects of industrial accidents on transboundary waters, make such information available within a reasonable time to the public, within the framework of national legislation.

2. The Parties shall ensure that information referred to in paragraph 1 of this annex shall be available to the public at all reasonable times for inspection free of charge, and shall provide members of the public with reasonable facilities for obtaining from the Parties, on payment of reasonable charges, copies of such information.
3. Nothing in this Protocol shall require a public authority to publish information referred to in paragraph 1 or make this information available to the public if:
 - (a) The public authority does not hold the information;
 - (b) The request for the information is manifestly unreasonable or formulated in too general a manner; or
 - (c) The information concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure.
4. Nothing in this Protocol shall require a public authority to publish information relevant to civil liability and adequate and prompt compensation for damage resulting from the transboundary effects of industrial accidents on transboundary waters or make this information available to the public if disclosure of the information would adversely affect:
 - (a) The confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law;
 - (b) International relations, national defence or public security;
 - (c) The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;
 - (d) The confidentiality of commercial or industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions and discharges which are relevant for the protection of the environment shall be disclosed;
 - (e) Intellectual property rights;

(f) The confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for in national law;

(g) The interests of a third party which has supplied the information requested without that party being under, or being capable of being put under, a legal obligation to do so, and where that party does not consent to the release of the material; or

(h) The environment to which the information relates, such as the breeding sites of rare species.

These grounds for not disclosing information shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information relates to emissions and discharges into the environment.

5. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 11bis has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law. In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law. Final decisions under this paragraph shall be binding on the public authority holding the information. Reasons shall be stated in writing, at least where access to information is refused under this paragraph.