

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**

Fifth meeting
Geneva, 11-13 November 2002

Working paper*
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11 November 2002

Proposal for a provision on access to information

submitted by the Environmental Law Center, Wroclaw, Poland

Article 11 bis

Access to information

“1. The person who suffered damage and/or who is entitled to a right of recourse under the Protocol may, in bringing the claim for compensation, request the competent court or arbitral tribunal established under article 13 (bis) to order an operator to disclose the specific information in so far this is necessary to identify the scope of liability.

2. The operator shall bear the costs of preparing the information, unless the claim for compensation proves to be unwarranted.”

* This document has not been formally edited.

Explanatory Note:

1. The Working Group recognized, in principle, the need to include a provisions on access to information in the Protocol.

2. In the 4th meeting the WG discussed briefly 2 different written proposals for the text of the article 11 bis on access to information (submitted by Germany and by the European Eco-Forum); both of them are based on the provisions of the Aarhus Convention.

3. Both proposals were found to be too extensive, so the Working Group discussed how to treat the text of this article in order to maintain a balance of the entire instrument. It was also mentioned that the provisions of article 11 bis should perhaps introduce new concepts (other than proposals based on the Aarhus) which would be tailor-made for the Protocol. Such short and tailor-made proposal was submitted orally at the WG by the representative of the Environmental Law Center and hereby is submitted in written form.

4. The proposed text of the article 11 bis is based on Art. 327 of the Polish Environmental Protection Act of 27 April 2001 (which is the softened and more precise version of Art. 16.1 of the Lugano Convention) but it is tailor-made for the Protocol.

The proposal uses terminology of the Protocol, refers to other relevant articles, and most importantly: following the entire Protocol, it concerns relations between two private persons: persons who suffered damage and operator potentially liable for it.

5. The proposed text:

- may either complement any of the 2 already submitted proposals for Article 11 bis, or be treated as a self-standing alternative version of this article