

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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Working paper*
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CP.TEIA/AC.1/2002/WP.6

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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 (MP.WAT/2002/2 - CP.TEIA/2002/2)**

Submitted by the delegation of Hungary

* Apart from editorial changes, this working paper is reproduced in the form as received by the secretariat.

PREAMBLE

For the 5th preambular paragraph substitute:

Taking note of the 1990 *joint UNECE/UNEP Code of Conduct on Accidental Pollution of Transboundary Inland Waters (E/ECE/1225 – ECE/ENWVA/16)*,

For the 6th preambular paragraph substitute, and place it after the 8th preambular paragraph:

Considering risks imposed on public safety and security, human health, environment, sustainability of water uses - especially those serving drinking, bathing and aquaculture demands - by accidental pollution of transboundary waters,

Insert new preambular paragraph before the 9th preambular paragraph:

Understanding that public authorities of the Parties responsible for implementation of policies for prevention and mitigation of damage arising from accidental pollution of transboundary waters may take appropriate measures in order to avoid accidents as well as to mitigate or limit their harmful consequences,

ARTICLE 1

For the existing text substitute:

The objective of this Protocol is to provide for a comprehensive regime *of* liability and for adequate, *prompt and effective* compensation for damage resulting from the transboundary effects of accidental pollution of transboundary waters.

ARTICLE 2

For paragraph 2 (d) substitute:

“Mitigation” means any reasonable measures taken by public authorities, legal or natural persons in response to an industrial accident in order to minimize or limit possible damage due to the industrial accident, or to arrange for environmental clean-up;

Add the following definitions:

para 2. (b) (vi) The cost of extraordinary measures taken by the public authorities of the affected Party in order to control emergency situations caused by accidental pollution of transboundary waters;

para 2. () “Accident” means an uncontrolled departure from permitted operating conditions of a hazardous activity causing water pollution;

para 2. () “Accidental pollution of transboundary waters” means the introduction of hazardous substances into waters as a result of accidents 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);

para 2. () “Risk” means the combined effect of the probability of occurrence of an accident and the volume of the damage likely to arise as a consequence of the accident;

para 2. () “Party of origin” means the Party within the territory and under the jurisdiction or control of which accidental pollution of transboundary waters occurred;

para 2. () “Affected Party” means the Party within the territory of which significant transboundary damage occurred due to accidental pollution of transboundary waters whether or not this Party shares a common border with the Party of origin;

para 2. () “Operator” means any natural or legal 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;

ARTICLE 3

For paragraph 1 substitute:

The Protocol shall apply to damage caused by accidental pollution of transboundary waters;

For paragraph 2 substitute:

The Protocol shall apply only to damage as referred to in paragraph 1 suffered in an area under the 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

For paragraph 1 substitute:

“The operator shall be liable for the damage.

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.

For the beginning of paragraph 2 substitute:

No liability in accordance with this article shall attach *to the operator*, if he or she proves that the damage was:

For sub-paragraph 2 (c) substitute:

The result of compliance *with an enforcement measure taken or a permission issued by a competent* public authority of the *Party of origin* or

ARTICLE 5

For the beginning of the first sentence substitute:

Without prejudice to article 4, *any person* shall be liable for damage

In the second sentence, delete the square brackets.