



**Economic and Social
Council**

Distr.
GENERAL

MP.WAT/AC.3/2003/6
CP.TEIA/AC.1/2003/6

24 January 2003
ORIGINAL: ENGLISH

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

Seventh meeting,
Geneva, 26-27 February 2003

Item 4 of the provisional agenda

**ANNEXES I, II AND III
TO THE DRAFT LEGALLY BINDING INSTRUMENT ON CIVIL LIABILITY FOR
TRANSBOUNDARY DAMAGE CAUSED BY HAZARDOUS ACTIVITIES, WITHIN
THE SCOPE OF BOTH CONVENTIONS**

Revised text prepared by the secretariat

Annex I**HAZARDOUS SUBSTANCES AND THEIR THRESHOLD QUANTITIES FOR THE PURPOSE OF DEFINING HAZARDOUS ACTIVITIES**

1. The threshold quantities set out below relate to each activity or group of activities.
2. Where a substance or preparation named in part two also falls within a category in part one, the threshold quantity set out in part two shall be used.

PART One*Categories of substances and preparations not specifically named in part two*

<i>Category</i>	<i>Threshold Quantity (Tons)</i>
I. Very toxic	20
II. Toxic	200
III. Dangerous for the environment.....	200

PART Two*Named substances*

<i>Substance</i>	<i>Threshold Quantity (Tons)</i>
Petroleum products:	25,000
(a) gasolines and naphthas,	
(b) kerosenes (including jet fuels),	
(c) gas oils (including diesel fuels, home heating oils and gas oil blending streams)	

**Notes on the indicative criteria for the categories
of substances and preparations given in part one:**

In the absence of other appropriate criteria, such as the EU classification criteria for substances and preparations, Parties may use the following criteria when classifying substances or preparations for the purposes of part one of this annex.

I. VERY TOXIC

Substances with properties corresponding to those in table 1 or table 2 below, and which, owing to their physical and chemical properties, are capable of creating industrial accident hazards:

Table 1

LD ₅₀ (oral) mg/kg body weight LD ₅₀ ≤ 25	LD ₅₀ (dermal) mg/kg body weight LD ₅₀ ≤ 50
LD ₅₀ oral in rats LD ₅₀ dermal in rats or rabbits	

Table 2

Discriminating dose mg/kg body weight	< 5
where the acute oral toxicity in animals of the substance has been determined using the fixed-dose procedure.	

II. TOXIC

Substances with properties corresponding to those in table 3 or 4 and having physical and chemical properties capable of creating industrial accident hazards:

Table 3

LD ₅₀ (oral) mg/kg body weight 25 < LD ₅₀ ≤ 200	LD ₅₀ (dermal) mg/kg body weight 50 < LD ₅₀ ≤ 400
LD ₅₀ oral in rats LD ₅₀ dermal in rats or rabbits	

Table 4

Discriminating dose mg/kg body weight = 5
where the acute oral toxicity in animals of the substance has been determined using the fixed-dose procedure

III. DANGEROUS FOR THE ENVIRONMENT

Substances showing the values for acute toxicity to the aquatic environment corresponding to table 5:

Table 5

LC ₅₀ mg/l LC ₅₀ ≤ 10	EC ₅₀ mg/l EC ₅₀ ≤ 10	IC ₅₀ mg/l IC ₅₀ ≤ 10
LC ₅₀ fish (96 hours) EC ₅₀ daphnia (48 hours) IC ₅₀ algae (72 hours)		
where the substance is not readily degradable, or the log Pow > 3.0 (unless the experimentally determined BCF < 100)		

List of abbreviations:

- Pow - partition coefficient octanol/water
- BCF - bioconcentration factor
- LD - lethal dose
- LC - lethal concentration
- EC - effective concentration
- IC - inhibiting concentration

Annex II

**LIMITS OF LIABILITY AND
MINIMUM LIMITS OF FINANCIAL SECURITIES**

PART One

Limits of liability

1. For the purposes of defining the limits of liability under article 4, pursuant to article 9, the hazardous activities are grouped in three different categories, according to their hazard potential.
2. These categories are as follows:

Category A: Hazardous activities in which one or more hazardous substances falling into categories specified in part one of annex I are or may be present in quantities not exceeding four times the threshold quantities specified in annex I.

Category B: Hazardous activities in which one or more hazardous substances falling into categories specified in part one of annex I are or may be present in quantities exceeding four times the threshold quantities specified in annex I.

Category C: Hazardous activities in which one or more hazardous substances named in part two of annex I are or may be present in quantities at or in excess of the threshold quantity specified in annex I.
3. The financial limits for the three categories of hazardous activities are as follows:

Category A hazardous activities10 million units of account
Category B hazardous activities40 million units of account
Category C hazardous activities40 million units of account

PART Two

Minimum limits of financial securities

1. For the purposes of defining the minimum limits of financial securities under article 11, the hazardous activities are grouped in three different categories, according to their hazard potential.

2. These categories are as follows:

Category A: Hazardous activities in which one or more hazardous substances falling into categories specified in part one of annex I are or may be present in quantities not exceeding four times the threshold quantities specified in annex I.

Category B: Hazardous activities in which one or more hazardous substances falling into categories specified in part one of annex I are or may be present in quantities exceeding four times the threshold quantities specified in annex I.

Category C: Hazardous activities in which one or more hazardous substances named in part two of annex I are or may be present in quantities at or in excess of the threshold quantity specified in annex I.

3. The financial limits for the three categories of hazardous activities are as follows:

Category A hazardous activities	2.5 million units of account
Category B hazardous activities	10 million units of account
Category C hazardous activities	10 million units of account

Annex III

ARBITRATION ¹

1. In the event of a dispute being submitted for arbitration pursuant to article 22, paragraph 2 of this Protocol, a party or parties shall notify the secretariat of the subject-matter of arbitration and indicate, in particular, the articles of this Protocol whose interpretation or application is at issue. The secretariat shall forward the information received to all Parties to this Protocol.
2. The arbitral tribunal shall consist of three members. Both the claimant party or parties and the other party or parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the president of the arbitral tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.
3. If the president of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Executive Secretary of the Economic Commission for Europe shall, at the request of either party to the dispute, designate the president within a further two-month period.
4. If one of the parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other party may so inform the Executive Secretary of the Economic Commission for Europe, who shall designate the president of the arbitral tribunal within a further two-month period. Upon designation, the president of the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. If it fails to do so within that period, the president shall so inform the Executive Secretary of the Economic Commission for Europe, who shall make this appointment within a further two-month period.
5. The arbitral tribunal shall render its decision in accordance with international law and the provisions of this Protocol.
6. Any arbitral tribunal constituted under the provisions set out in this annex shall draw up its own rules of procedure.
7. The decisions of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.
8. The tribunal may take all appropriate measures to establish the facts.

¹ This annex reproduces the text on arbitration as contained in the Water and Industrial Accidents Conventions. Underlines text passages highlight changes to be made for inclusion in the Protocol.

9. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:
 - (a) Provide it with all relevant documents, facilities and information;
 - (b) Enable it, where necessary, to call witnesses or experts and receive their evidence.
10. The parties and the arbitrators shall protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.
11. The arbitral tribunal may, at the request of one of the parties, recommend interim measures of protection.
12. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to render its final decision. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings.
13. The arbitral tribunal may hear and determine counter-claims arising directly out of the subject-matter of the dispute.
14. Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.
15. Any Party to this Protocol which has an interest of a legal nature in the subject-matter of the dispute, and which may be affected by a decision in the case, may intervene in the proceedings with the consent of the tribunal.
16. The arbitral tribunal shall render its award within five months of the date on which it is established, unless it finds it necessary to extend the time limit for a period which should not exceed five months.
17. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon all parties to the dispute. The award will be transmitted by the arbitral tribunal to the parties to the dispute and to the secretariat. The secretariat will forward the information received to all Parties to this Protocol.
18. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.