

Unofficial English translation

The Ministry of Natural Resources and Ecology of the Russian Federation

The Federal Service for Environmental, Technological and Nuclear Supervision (Rostekhnadzor)

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RNNBO 00083701 PNRN 1047796607650
TIN/RRC 7709561778/770901001

12.08.2015 # 00-03-04/790

In reply to: # 05-10-53/17390 of 28.07.2015

Re: amendments to the Convention on the Transboundary Effects of Industrial Accidents.

The Federal Service for Environmental, Technological and Nuclear Supervision has reviewed letter # 05-10-53/17390 of the RF Ministry of Ecology of 28.07.2015 on draft amendments to Article 9 of the Convention on Transboundary Effects of Industrial Accidents (referred hereinafter to as the Convention) and provides the following information, as concerns its sphere of competence:

In the course of drafting comments and proposals to shape the position of the Russian Federation in discussions on potential options for an amendment to the Convention, the unofficial translation of the Reviewed Draft Amendment to Article 9 the Convention on the Transboundary Effects of Industrial Accidents was used - the translation contained multiple omitted words and ambiguities.

As concerns amendments to paragraph j) "The Public" and adding paragraph k) "Concerned Public" into Article 1 "Definitions", we believe that the proposed harmonisation of provisions of the Convention with the Aarhus Convention, Espoo Convention and legal acts of the European Union cannot be considered fully appropriate, as the range of Parties of the Convention is not limited to EU member-states only.

In the current valid version of the Convention, the "public" is defined as "one or more natural or legal persons" that include now *inter alia* any non-governmental organisations promoting environmental protection, public health or safe operations of an industrial facility.

Besides that, the said international treaties have different subject matters, different participants, spheres of coverage and stipulate different international rights and commitments.

Therefore, a formal adoption of terms and their wrong interpretation in connection with provisions of the Convention may skew its subject-matter and the sphere of coverage.

As concerns Article 9 "Information to the Public", we provide the following information:

We propose the following wording of paragraph 1:

"The Party of origin shall ensure that adequate information, including information referred to in Annex VIII to this Convention, is available to the public in the areas capable of being affected by an industrial accident arising out of a hazardous activity.

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The information shall:

- a) be easily accessible to the public, including through electronic databases;
- b) be periodically reviewed, and, where necessary, updated, at least every five years."

We propose to exclude paragraphs 2, 3 and 4 of the draft Article 9, as - in addition to schools, hospitals and public facilities - areas potentially affected by an accident actually include multiple other facilities of social significance (kindergartens, nursing facilities for the elderly, hotels, catering facilities, etc.), while development and implementation of off-site contingency plans are already stipulated in paragraph 3 of Article 8 of the current valid version of the Convention.

We propose the following wording for paragraphs 5 and 6 of Article 9 of the Convention:

"Information, provided according to paragraph 1, may also take into account matters referred to in subparagraphs 1 to 4 and 9 of paragraph 2 of Annex V, while complying with national legal provisions on protected types of information."

As concerns amending the Convention text by Article 9 bis "Public discussion and participation in decision making", Article 9 ter "Access to justice" and Article 9 quarter "Equivalent opportunities", we consider these changes as unjustified because no analysis of enforcement practices is available in connection with Article 7 "Decision making on siting", Article 8 "Emergency preparedness" and Article 9 "Information to, and participation of the public" of the current valid version of the Convention.

Now, there are no convincing facts suggesting impossibility to settle matters and (or) obstruction by interested Parties in connection with provision of due information to the public in areas capable of being affected by accidents, public participation in relevant procedures on prevention and preparedness to accidents, as well as in connection with limitation of public access to administrative and (or) court procedures and access to justice.

Accounting for the above considerations, we think that it is not appropriate to amend now paragraphs 2 and 3 of Article 9, and they should be retained in their wording of the current valid version of the Convention.

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