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## Economic Commission for Europe

Conference of the Parties to the Convention on the  
Transboundary Effects of Industrial Accidents

### Working Group on the Development of the Convention

#### Sixth meeting

Geneva, 30 November–2 December 2015

Item 5 of the provisional agenda

#### Amendment to the Convention

## Revised draft amendment to the Convention

### Note by the secretariat

#### *Summary*

At its eighth meeting (Geneva, 3–5 December 2014) the Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents requested the Working Group on the Development of the Convention to prepare a draft amendment to the Convention, for review and adoption at the ninth meeting of the Conference of the Parties (ECE/CP.TEIA/30, paras. 40–41).

The present note contains updated draft text for an amendment, revised following Parties' comments at and following the fifth meeting of the Working Group (Geneva, 11–13 May 2015). The consolidated draft amended text contained in annex I has been prepared by the secretariat and incorporates draft amended text for article 9 prepared by a small group of legal experts. Annex II contains a shorter alternative draft text for article 9 prepared by the secretariat.

The Working Group will be invited to discuss the draft amendment and to agree on the draft revised text for amending the Convention.



## Introduction

1. At its eighth meeting (Geneva, 3–5 December 2014), the Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents (Industrial Accidents Convention) requested the Working Group on the Development of the Convention (Working Group on Development) to prepare a draft amendment on articles 1 (definitions), 9 (information to, and participation of the public), 18 (Conference of the Parties) and 29 (ratification, acceptance, approval and accession) of the Convention, considering also related provisions, articles and annexes, for adoption at the ninth meeting of the Conference of the Parties. This decision was based on a recommendation by the Working Group, as set out in an annex to the report of its fourth meeting (ECE/CP.TEIA/WG.1/2014/3, annex II). The Working Group was also requested to prepare draft text to open the Convention for accession by Member States of the United Nations beyond the United Nations Economic Commission for Europe (ECE) region, as part of the amendment.

2. At its fifth meeting (Geneva, 11–13 May 2015), the Working Group on Development considered an initial draft text for amending the Convention, prepared by the secretariat in cooperation with a legal expert (ECE/CP.TEIA/WG.1/2015/4, annex), provided comments and agreed on the subsequent steps. On that basis, the Working Group requested a small group of legal experts<sup>1</sup> to prepare a revised draft amendment to article 9 and the provisions, articles and annexes related to articles 1, 9, 18 and 29. The secretariat was requested to prepare a consolidated revised draft amendment comprising all the articles to be revised, and the related changes, for review and discussion at the Working Group's sixth meeting.

3. The present document sets out the mandate from the Conference of the Parties and the previous considerations by the Working Group, while providing an explanation of the draft revised text contained in the annexes. The draft amended articles themselves are presented in annex I in a consolidated manner, showing changes to the Convention text. This includes changes agreed at the Working Group's fifth meeting and subsequent changes proposed by the secretariat and the small group of legal experts, in line with the Working Group's requests. The proposed amended text for article 9 as included in annex I is based on the version prepared by the small group of legal experts, in response to the request by the Working Group at its previous meeting. Exceptionally, as this text was very heavily changed from the previous version, the entirety of article 9 is shown as bold, or new, text. In addition, the secretariat has prepared, as an alternative, a shorter draft text amending article 9 presented in annex II, indicated as bold text which is not marked up to show changes with any previous versions.

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<sup>1</sup> The Working Group on Development at its fifth meeting established the small group of legal experts. In accordance with its terms of reference (ECE/CP.TEIA/WG.1/2015/3, annex I), the small group is open-ended and comprised of experts from the following Parties: Azerbaijan, Belarus, Croatia, Germany, Italy, Kazakhstan, Latvia and the United Kingdom of Great Britain and Ireland. In addition, representatives of non-Parties (Georgia, Turkey) and non-governmental organizations (the European Bank for Reconstruction and Development; the European Environmental Bureau; Journalists for Human Rights; Justice and Environment; and the Regional Environmental Centre for Central and Eastern Europe) take part as observers in the work of the small group to provide additional expertise. Nominations for small group members and observers have been forthcoming through the network of focal points of the Industrial Accidents Convention and the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

## **I. Article 1**

### **A. Mandate**

4. At its third and fourth meetings (Geneva, 3–4 September 2013 and 28–29 April 2014, respectively), the Working Group on Development discussed the need for revised and additional definitions for article 1 of the Convention, considering that:

(a) An amendment of the current definition of the “public” (art. 1, para. (j)) could ensure alignment with the definition of the public in the ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and the other ECE multilateral environmental agreements (MEAs) that had adopted the definition in the Aarhus Convention;

(b) A further update of the definition of “effects” (art. 1, para. (c)) could also be considered, as the definition was outdated and did not reflect the current state of the art, in order to adapt it to current technical progress;

(c) There was a confusion, evident in the national implementation reports of several Parties, between the notification requirement set out in article 4, paragraph 1, regarding hazardous activities and the notification requirement set out in article 10, paragraph 2, concerning industrial accidents.

5. On that basis, the Conference of the Parties at its eighth meeting mandated the Working Group on Development to draft an amendment of article 1 of the Convention to align it with other ECE Conventions (i.e., the Aarhus Convention and the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)), to adjust the definitions in accordance with internationally accepted developments, to improve clarity and legal certainty and to enhance internal consistency.

### **B. Consideration by the Working Group at its fifth meeting**

6. At its fifth meeting, the Working Group on Development agreed on the amended definition of “the public” as proposed, while suggesting changes to the definition of “effects” in order to achieve closer alignment with the Protocol on Strategic Environmental Assessment (Protocol on SEA) to the Espoo Convention. The secretariat was tasked with reviewing the alignment with other ECE MEAs and to prepare, on that basis, a revised draft for review at the Working Group’s sixth meeting.

7. The Working Group on Development discussed the need for adding definitions on the “notification of hazardous activities” and “notification of an industrial accident” to article 1. It requested the Working Group on Implementation to assess the confusion between the two types of notifications by several countries and to subsequently inform the secretariat and the Working Group on Development of its conclusions. The secretariat was requested to prepare, with due regard to the analysis of the Working Group on Implementation, options for possible ways forward, for review at the Working Group on Development’s sixth meeting.

### **C. Rationale for the revised draft text**

8. The revised draft text for the definition of “effects” takes into account the deliberations by the Working Group on Development at its fifth meeting, wishing to achieve alignment, to the extent possible, with other ECE MEAs. To this end, as agreed by the Working Group, the proposed replacement of “flora and fauna” by “biological diversity

and its components” was retained in order to ensure alignment with the Aarhus Convention. Based on the secretariat’s review of the definitions of impacts and effects, as respectively contained in the Espoo Convention and its Protocol on SEA, it is proposed to add in subparagraphs (c) (ii) and (iii) “climate” and “natural sites”, respectively, in order to achieve closer alignment with these legal instruments. The effects on “human health” which are also included in the definition of “Environmental, including health effects” in the Protocol on SEA are proposed not be explicitly added in the definition of “effects” under the Industrial Accidents Convention, as this aspect is already encompassed by effects on “human beings” more generally in paragraph (c) (i). It is also proposed to change the sequence of subparagraphs (iii) and (iv) and add to the new subparagraph (iv) a reference to the previous subparagraph (iii), in order to capture the interaction between all factors listed above.

9. The Working Group at its fifth meeting agreed with the proposal to amend the definition of “the public” in article 1, in order to achieve alignment with the Aarhus Convention and other ECE MEAs, as proposed.

10. When preparing a draft amendment of article 9, to ensure consistency with changes to article 1, the small group of legal experts proposed to add to the definitions “the public concerned”, in line with the Aarhus Convention, while using the terminology employed in the Industrial Accidents Convention. This definition is meant to cover both the public in the Party of origin and the public in the affected Party.

11. Following the request by the Working Group on Development at its fifth meeting, the Working Group on Implementation assessed at its twenty-eighth meeting (Geneva, 30 June–1 July 2015) the confusion between the terms “notification of hazardous activities” and “notification of an industrial accident” evident in several national implementation reports. The Working Group on Implementation found that the confusion by countries seemed to be linked to an insufficient understanding of the provisions of the Convention. It considered that such a confusion could be addressed most appropriately by engaging in a dialogue with the reporting countries. The Working Group on Implementation was planning to enhance its dialogue with reporting countries, considering the related request by the Conference of the Parties at its eighth meeting (ECE/CP.TEIA/30, para. 30). The Working Group on Implementation therefore concluded that there was not a need to include additional definitions of the two terms.

12. On the basis of the conclusions of the Working Group on Implementation, the proposed addition of definitions on “notification of hazardous activities” and “notification of an industrial accident” was not retained. Taking into account the discussions at the fifth meeting of the Working Group on Development, it is proposed to add the term “notification” in the heading of article 4, in order to improve clarity and visibility with regard to the notification requirement in article 4, distinct from the industrial accident notifications covered by article 10.

## **II. Article 9**

### **A. Mandate**

13. The Working Group on Development at its third and fourth meetings discussed the need and possibilities for strengthening the Convention’s public participation provisions. It agreed that article 9 of the Convention should be amended in order to achieve consistency

with other relevant legal instruments, in particular the Aarhus Convention, as well as the European Union (EU) Seveso III Directive.<sup>2</sup> Furthermore, amending the Convention to strengthen its public participation provisions could contribute to better participatory democracy and access to justice in the pan-European region. The Working Group considered that these goals could be achieved by referring separately to the three pillars of the Aarhus Convention: access to information, public participation in decision-making; and access to justice.

14. The Conference of the Parties at its eighth meeting mandated the Working Group on Development to amend article 9 of the Convention to strengthen the provisions on public participation.

## **B. Consideration by the Working Group at its fifth meeting**

15. At its fifth meeting, the Working Group considered options for revising article 9 based on an initial draft prepared by the secretariat, in cooperation with a legal expert. Working Group members exchanged views and raised several concerns, requesting the small group of legal experts to prepare a revised draft amended text of article 9, proportionate to the Convention's objectives and taking into account the mandate received from the Conference of the Parties as well as the discussions held at the Working Group's fifth meeting. The secretariat was requested to circulate a consolidated revised proposal during the week commencing 20 July 2015 to all Parties for their review, with Parties to provide preliminary comments to the secretariat by 24 August 2015. The secretariat was also requested to prepare, on the basis of the draft by the small group of legal experts and the comments received from Parties, a consolidated revised proposal for an amendment of article 9 to be included in an official document to be issued in the English, French and Russian languages in time for consideration at the sixth meeting of the Working Group at which representatives of the Parties would provide further comments.

## **C. Rationale for revised draft text**

16. Following the Working Group's fifth meeting, the small group of legal experts prepared a revised draft proposal for amending article 9, under the leadership of its rapporteur (United Kingdom of Great Britain and Northern Ireland), and in cooperation with the ECE secretariat, based on an updated draft prepared by the legal expert. In preparing the revised draft, the small group took into account the views and concerns raised by delegates during the fifth meeting of the Working Group, as well as the written comments submitted thereafter. It also kept in mind the underlying rationale for the revision, notably to align the Industrial Accidents Convention with the Aarhus Convention, to maintain compatibility with the Seveso III Directive and to contribute to better participatory democracy and access to justice in the pan-European region.

17. Only the Russian Federation provided preliminary comments to the secretariat by the 24 August 2015 deadline. Belgium provided written comments thereafter. Other Parties indicated informally that they would not be in a position to provide their comments by the

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<sup>2</sup> Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC.

deadline, but would submit them in advance of the Working Group's sixth meeting when the substantive discussion would take place.<sup>3</sup>

18. In their communications with the secretariat, several Parties indicated that they still considered the revised draft text for article 9 prepared by the small group to be too detailed and lengthy. On this basis, and with due regard for the previous comments by some Parties,<sup>4</sup> the secretariat prepared a shorter version of article 9, which makes direct reference to the relevant provisions of the Aarhus Convention (see annex II). This approach avoids an unnecessary duplication of provisions of the Aarhus Convention by which the majority of the Parties to the Industrial Accidents Convention are already bound, while achieving an alignment and strengthening of the current provisions of the Industrial Accidents Convention.

19. As confirmed by the United Nations Office of Legal Affairs, the approach of referring to another legal instrument is legally valid under international treaty law, and is not in conflict with any international law norm, including treaty law norms; it rests on the will and consent of the Parties. Furthermore, the amendment would be an integral part of the Industrial Accidents Convention and, as such, it would not create any legal relationship with the Aarhus Convention. Therefore, the amendment would bind all Parties to the Industrial Accidents Convention that give their consent to be bound by the amendment in accordance with article 26 of the Convention, regardless of whether or not they are Parties to the Aarhus Convention. In order to clarify that reference is made to the corresponding provisions of the Aarhus Convention at the time of the adoption of the amendment by Parties to the Industrial Accidents Convention, a respective paragraph is proposed to be included (see annex II, article 9 quinquies).

### **III. Article 18, paragraph 1**

#### **A. Mandate**

20. At its third and fourth meetings, the Working Group on Development discussed whether there was a need to clarify the frequency of meetings as set out in article 18, paragraph 1, of the Convention, which required annual meetings, despite the current practice of the Conference of the Parties meeting only every two years. The Working Group agreed to recommend to the Conference of the Parties to amend the text of article 18 accordingly. At its eighth meeting, the Conference of the Parties mandated the Working Group to amend article 18 to ensure that the current practice of meeting every two years would comply with the Convention.

#### **B. Consideration by the Working Group at its fifth meeting**

21. The Working Group agreed with the proposal for amending article 18 submitted to it at its fifth meeting (see ECE/CP.TEIA/WG.1/2015/4, annex).

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<sup>3</sup> Comments by Parties, received by the secretariat in advance of the sixth meeting of the Working Group on Development are being made available on the meeting website: [www.unece.org/index.php?id=36738](http://www.unece.org/index.php?id=36738).

<sup>4</sup> The Russian Federation, in its written comments sent to the secretariat following the fifth meeting of the Working Group, and the European Union, at that meeting, proposed including a more general reference to the principles, provisions and commitments of the Aarhus Convention.

## **IV. Article 29**

### **A. Mandate**

22. At its third and fourth meetings, the Working Group on Development discussed whether there was a need to amend article 29 of the Convention to clarify the application of amendments to new Parties and agreed that such an amendment was needed. On that basis, the Conference of the Parties at its eighth meeting mandated the Working Group to prepare draft text to amend the Convention to ensure that when new Parties ratified, acceded to or approved the Convention, they automatically ratified, acceded to or approved amendments to the Convention. The Conference of the Parties also requested the Working Group to prepare draft text to open the Convention to accession by Member States of the United Nations from outside the ECE region.

### **B. Consideration by the Working Group at its fifth meeting**

23. At its fifth meeting, the Working Group on Development agreed with the proposed revisions to article 29 with regard to the application of amendments to new Parties (see ECE/CP.TEIA/WG.1/2015/4, annex), with the reservation that the reference to article 27 be deleted if it was decided to open the Convention for accession by Member States of the United Nations from outside the ECE region.

24. Furthermore, the Working Group agreed in principle with the proposal to amend article 29 if it was decided to open the Convention, by adding either a paragraph 2 bis, as proposed, with editorial improvements as discussed at the meeting, or by adding at the end of the current paragraph 2 “as well as by any other State that is a Member of the United Nations”.

### **C. Rationale for revised draft text**

25. The revised draft text for the application of amendments to new Parties and for the opening of the Convention for accession by Member States of the United Nations beyond the ECE region reflects the editorial changes agreed at the fifth meeting of the Working Group on Development.

26. In addition, the revised draft text for the opening of the Convention includes an additional reference to regional integration organizations constituted by sovereign United Nations Member States outside the ECE region to provide them with the same possibility to accede to the Convention as such organizations in the region

## **V. Proposals for amendments in related provisions and annexes**

### **A. Mandate**

27. In addition to requesting the Working Group to prepare a draft amendment on articles 1, 9, 18, paragraph 1, and 29 of the Convention, at its eighth meeting the Conference of the Parties asked that it should consider also “related provisions, articles and annexes of the Convention”. Parties judged that changes to related provisions of and annexes to the Convention might be necessary to ensure consistency with the amendments proposed to be made or to otherwise update the Convention.

## **B. Consideration by the Working Group at its fifth meeting**

28. At its fifth meeting, the Working Group discussed a number of proposed changes, expressing general support for an amendment to the preamble. Delegations indicated concerns with regard to replacing “people” with “human beings” which would have a different meaning in Russian, or likewise replacing “people” or “affected population” with “the public”, “the public in the area capable of being affected” or “human beings”. Concerns were also raised about deleting the phrases “on people and the environment” and “on the population and the environment” in annexes V and VIII of the Convention to align the meaning of the term “effects” in the annexes with the definition in article 1 and, as such, broaden the scope of its meaning. In the light of the comments made at the meeting, the Working Group requested the small group of legal experts, in accordance with its terms of reference, to review the provisions, articles and annexes related to all amendments, in order to achieve alignment with the entire draft amendment.

## **C. Consideration by the small group of legal experts**

29. Following its review of the provisions, articles and annexes related to articles 1, 9, 18 and 29, the small group of legal experts came to the following conclusions:

(a) The changes proposed in the definition of “effects” in article 1 would ensure alignment with the Aarhus and Espoo Conventions and the Protocol on SEA by introducing the additional substantive elements and, enlarging the scope of the current definition, in line with the request by the Working Group at its fifth meeting;

(b) The amendment of the current definition of “the public” and the inclusion of the definition “the public concerned” under article 1 would ensure alignment with the Aarhus Convention;

(c) As a result of the introduction of “the public concerned” in the definitions listed under article 1, paragraphs 6 and 7 of annex VIII to the Convention should be updated by replacing “affected population” with “public concerned” to ensure consistency in the terminology;

(d) A proposed amendment to include “notification” in the title of article 4 would be useful, as it reflects the scope of the article and contributes to improved clarity;

(e) There were no objections to the proposed amendments to the preamble and articles 18 and 29;

(f) It was not necessary to replace “people” with “human beings” in annex V or elsewhere in the Convention;

(g) It was recommended to retain after the word “effects” the additions “on people and the environment” in paragraph 7 of annex V and “on the population and the environment” in paragraph 5 of annex VIII. It was felt that leaving these additions out might lead to uncertainty about the nature of the effects and a lack of clarity regarding to what the provisions referred.

30. The members of the small group of legal experts did not express their views with regard to the substantive additions proposed in article 8 and annex VIII, which were discussed at the Working Group’s fifth meeting, as the Parties should express their views and determine a way forward.

## **D. Rationale for the revised draft text**

31. Based on the comments received by the Working Group on Development at its fifth meeting and the above conclusions by the small group, the secretariat updated the text as set out below.

### **1. Preamble**

32. At the fifth meeting of the Working Group it was proposed to amend the sixth preambular paragraph in order to align the preamble with developments in international law concerning related issues and thus to acknowledge other ECE legal instruments of special relevance to the Convention. No further changes were made to the preamble, as agreed at the Working Group's fifth meeting. The Working Group is invited to revisit the reference to the Protocol on SEA, which had been placed in square-brackets following the indication by the EU that more time was required for it to express its views.

### **2. Article 8**

33. It is proposed to insert a sentence in article 8, paragraph 2, to align the provision with EU legislation, which requires the involvement of the personnel working on-site in the preparation of the on-site contingency plans. The proposed amendment is based on the wording employed in article 12, paragraph 4, of the Seveso III Directive, and reflects the editorial changes made at the fifth meeting of the Working Group on Development.

34. It is also proposed to insert wording in paragraph 3 to provide for opportunities for the public to participate, as their participation in the preparation of plans "relating to the environment" is required by article 7 of the Aarhus Convention. In line with this obligation, public participation in the preparation of the external emergency plans is also required by article 12, paragraph 5, of the Seveso III Directive. The wording of the proposed amendment is also consistent with the proposed addition of an article 9 bis on public participation. The text reflects also the editorial changes made at the fifth meeting of the Working Group on Development.

### **3. Annex V**

35. The original Convention text was retained in annex V, paragraphs 3 (b), 6, 7 and 9, resulting into no changes in the text compared with the current provisions of the Convention.

### **4. Annex VIII**

36. The text of annex VIII retains the phrase "on the population and the environment" after "effects" in paragraph 5, as included in the Convention text. It is also proposed to retain the addition "and control measures to address the industrial accident" at the end of paragraph 5, in order to use the same wording employed in annex V, part 2, paragraph 1, of the Seveso III Directive.

37. It is also proposed to amend annex VIII, paragraph 9, to align the wording with the Seveso III Directive, which includes similar wording in its annex V, part 2, paragraph 3. In addition, following the conclusions by the small group of legal experts, it is proposed to replace "affected population" by "public concerned" in paragraphs 6 and 7.

## Annex I

### Revised draft amendment to the Convention on the Transboundary Effects of Industrial Accidents

#### A. Article 1

1. In article 1, paragraph (c) (i), replace “flora and fauna” with “biological diversity and its components”.
2. In paragraph (c) (ii), replace “and” by “,” and add at the end “and climate”.
3. Replace in paragraph (c) (iii) “and” by “,” and add at the end “and (iv)”.
4. In the beginning of paragraph (c) (iv), add “Natural sites.”
5. As a result of the above changes, the text in article 1, paragraph (c) should read as follows:

(c) “Effects” means any direct or indirect, immediate or delayed adverse consequences caused by an industrial accident on, inter alia:

(i) Human beings, ~~flora and fauna~~ **biological diversity and its components;**

(ii) Soil, water, air ~~and~~, landscape **and climate;**

~~(iv)~~ **(iii) Natural sites, material assets and cultural heritage, including historical monuments;**

~~(iii)~~ **(iv) The interaction between the factors in (i) ~~and~~, (ii) and (iii).**

6. In paragraph (j) after “persons”, insert: “and, in accordance with national legislation or practice, their associations, organizations or groups”, to read as follows:

(j) “The public” means one or more natural or legal persons **and, in accordance with national legislation or practice, their associations, organizations or groups;**

7. After paragraph (j), insert:

(k) “The public concerned” means the public affected [or capable of being affected]/[or likely of being affected]<sup>5</sup> by an industrial accident arising out of a hazardous activity, or having an interest in decision-making pursuant to Article 6, Article 7 or Article 8, paragraph 3; for the purposes of this definition, non-governmental organizations promoting environmental protection or public health or safety and meeting any requirements under national law are deemed to have an interest.

8. Insert in the title of article 4 “notification,” between “Identification,” and “consultation”, to read as follows:

#### Article 4

Identification, **notification**, consultation and advice

<sup>5</sup> The term “the public capable of being affected” is aligned with the terminology in the Industrial Accidents Convention, while the term “the public likely to be affected” is used in the Aarhus Convention.

## B. Article 9

9. Replace article 9 by the following text:

### **Article 9**

#### **Information to the public**

1. The Party of origin shall ensure that adequate information, including the information referred to in annex VIII hereto, is made available to the public. The information shall be:

(a) Easily accessible to the public, including through electronic databases;

(b) Periodically reviewed and, where necessary, updated at least every five years.

2. The Party of origin shall provide the public concerned with the information referred to in paragraph 1 of this article on a regular basis, at least every five years. This shall include all schools, hospitals and areas of public use and all hazardous activities where the risk or consequences of an industrial accident may be increased because of the geographical position and the proximity of such hazardous activities.

3. The Parties shall ensure that information concerning industrial accidents in accordance with article 1, paragraph (a), hazardous activities in accordance with article 1, paragraph (b), prevention in accordance with article 6, decision-making on siting in accordance with article 7 and emergency preparedness in accordance with article 8 is made available to the public in a timely manner upon request.

4. In the event of an industrial accident or imminent threat thereof, the Parties concerned shall ensure that all information that is held by their authorities that could enable the public to take measures to prevent or mitigate harm arising from the industrial accident or imminent threat thereof is disseminated immediately and without delay to the public concerned. This information shall include at least a brief description of the circumstances of the industrial accident or imminent threat thereof, including its location, the hazardous substances involved (if known) and its immediate effects as well as the information referred to in annex VIII, paragraphs 6 and 7, including clear instructions [on the actions the public should take and behaviour they should adopt].

5. The information to be provided in accordance with paragraphs 1 to 4 of this article should also take into account the matters set out in annex V, paragraph 2, subparagraphs (1) to (9).

6. Nothing in this article prevents the rights of Parties to protect from disclosure certain information in accordance with article 22. With respect to requests for information under paragraph 3 of this article, any ground for protection from disclosure shall be interpreted in a restrictive way, taking into account the public interest served by disclosure. If information protected from disclosure can be separated out without prejudice to its confidentiality, authorities shall make available the remainder of the information requested.

**Article 9 bis**

**Public consultation and participation in decision-making**

**1. The Party of origin shall ensure that the public concerned is given early and effective opportunities to participate in:**

(a) Decision-making procedures regarding the siting of hazardous activities referred to in article 7;

(b) Decision-making procedures regarding significant modifications to existing hazardous activities referred to in article 7;

(c) The development of prevention measures pursuant to article 6, whenever possible and appropriate;

(d) The development or significant modification of off-site contingency plans referred to in article 8, paragraph 3;

and the Party of origin shall ensure that the opportunities given to the public concerned of the affected Party are equivalent to those given to the public concerned of the Party of origin.

**2. The affected Parties shall ensure that, in the establishment of policies pursuant to article 7 on significant developments in areas which could be affected by transboundary effects of an industrial accident arising out of a hazardous activity, the public concerned is given early and effective opportunities to participate.**

**3. With regard to paragraphs 1 and 2 of this article, the public concerned shall be informed by public notices or other appropriate means, including electronic media where available, and in an adequate, timely and effective manner of the following information:**

(a) The proposed activity;

(b) The nature of the possible decisions or, where there is one, the text of the draft decision;

(c) Details of the competent authority responsible for making the decision;

(d) An indication of what environmental information relevant to the proposed activity is available, including, where applicable, the fact that the activity is subject to an environmental impact assessment;

(e) An indication of the times and places where, or means by which, relevant information will be made available;

(f) Details of the arrangements for public participation and consultation;

(g) An indication of how the public concerned will be notified of the conclusion of the decision.

**4. The Party of origin, pursuant to paragraph 1 of this article, and the affected Party, pursuant to paragraph 2 of this article, shall ensure that the public concerned:**

(a) Is allowed sufficient time to prepare and participate effectively;

(b) Is provided with access for examination, free of charge and as soon as it becomes available, to all information relevant to the decision-making

referred to in paragraph 1 or paragraph 2 of this article that is available at the time of the public participation procedure;

(c) Is entitled to express comments and opinions to the competent authority responsible for making the decision when all relevant options in relation to the decision are open;

(d) Is provided by the responsible competent authority, after the relevant decision has been taken, with the text of the decision taken and the reasons on which the decision is based;

and that the results of the public participation held pursuant to paragraph 1 or paragraph 2 of this article are duly taken into account in the taking of the decision.

#### Article 9 ter

##### Access to justice

1. Each Party shall, within the framework of its national legislation, ensure that any person requesting information pursuant to article 9 has access to a review procedure before a court of law or another independent and impartial body established by law, where that person considers that their request for information 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.

2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned:

(a) Having a sufficient interest; or

(b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition;

have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission, subject to the provisions of article 9 bis. What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public wide access to justice.

3. The procedures referred to in paragraphs 1 and 2 of this article shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.

#### Article 9 quater

##### Equivalent opportunities

The Party of origin shall ensure that the opportunities for the public concerned of the affected Party to have access to information, to participate in decision-making and to have access to justice pursuant to articles 9, 9 bis and 9 ter are equivalent to those given to its public concerned.

### C. Article 18, paragraph 1

10. In paragraph 1 replace “a year” with “every two years”, to read as follows:

1. The representatives of the Parties shall constitute the Conference of the Parties of this Convention and hold their meetings on a regular basis. The first meeting of the Conference of the Parties shall be convened not later than one year after the date of the entry into force of this Convention. Thereafter, a meeting of the Conference of the Parties shall be held at least once ~~a year~~ **every two years** or at the written request of any Party, provided that, within six months of the request being communicated to them by the secretariat, it is supported by at least one third of the Parties.

### D. Article 29

11. Insert at the end of article 29 a new paragraph reading:

**5. Any State or organization [referred to in article 27] that ratifies, accepts or approves this Convention, failing an expression of a different intention by that State or organization, shall be considered:**

**(a) A Party to the Convention as amended by any amendment that has entered into force; and**

**(b) To have ratified, accepted or approved any amendment to the Convention that has been adopted but has not yet entered into force.**

12. In paragraph 2, after “article 27”, insert: “as well as by any other State that is a Member of the United Nations”, or “as well as by any other State that is a Member of the United Nations and by regional economic integration organizations constituted by sovereign States members of the United Nations”, to read as follows:

2. This Convention shall be open for accession by the States and organizations referred to in article 27 **[as well as by any other State that is a Member of the United Nations]/[as well as by any other State that is a Member of the United Nations and by regional economic integration organizations constituted by sovereign States members of the United Nations].**

13. Alternatively to inserting text at the end of paragraph 2, a new paragraph could be inserted after paragraph 2 reading:

**2 bis. In addition, any other State not referred to in paragraph 2 above that is a Member of the United Nations [and regional economic integration organizations constituted by sovereign states members of the United Nations] may accede to the Convention.**

### F. Related articles and annexes

#### 1. Preamble

14. At the end of the sixth preambular paragraph add “and its Protocol on Strategic Environmental Assessment, as well as the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters” to read as follows:

*Conscious* of the role played in this respect by the United Nations Economic Commission for Europe (ECE) and recalling, inter alia, the ECE Code of Conduct

on Accidental Pollution of Transboundary Inland Waters and the Convention on Environmental Impact Assessment in a Transboundary Context **[and its Protocol on Strategic Environmental Assessment]**, as well as the **Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters**,

## 2. Article 8

15. In paragraph 2 insert after the first sentence the text: “The plans shall be drawn up in consultation with the personnel working [on the industrial site.]/[on-site, including long-term relevant subcontracted personnel.]”, to read as follows:

2. The Party of origin shall ensure for hazardous activities the preparation and implementation of on-site contingency plans, including suitable measures for response and other measures to prevent and minimize transboundary effects. The plans shall be drawn up in consultation with the personnel working **[on the industrial site.] [on-site, including long-term relevant subcontracted personnel.]** The Party of origin shall provide to the other Parties concerned the elements it has for the elaboration of contingency plans.

16. In paragraph 3 insert in the second sentence after these “plans,” the following words: “opportunities for the public shall be provided [in accordance with article 9 bis] and”, to read as follows:

3. Each Party shall ensure for hazardous activities the preparation and implementation of off-site contingency plans covering measures to be taken within its territory to prevent and minimize transboundary effects. In preparing these plans, opportunities for the public shall be provided **[in accordance with article 9 bis]** and account shall be taken of the conclusions of analysis and evaluation, in particular the matters set out in annex V, paragraph 2, subparagraphs (1) to (5). Parties concerned shall endeavour to make such plans compatible. Where appropriate, joint off-site contingency plans shall be drawn up in order to facilitate the adoption of adequate response measures.

## 3. Annex VIII

17. In paragraph 5, insert at the end of the paragraph “ and control measures to address the industrial accident”.

18. In paragraph 6, replace the words “affected population” with “public concerned”.

19. In paragraph 7, replace the words “affected population” with “public concerned”.

20. At the end of paragraph 9, delete “;” and insert “. This should include advice to cooperate with any instructions or requests from the emergency services at the time of an accident”.

21. With regard to the above changes, the above paragraphs in annex VIII would read as follows:

5. The general information relating to the nature of an industrial accident that could possibly occur in the hazardous activity, including its potential effects on the population and the environment **and control measures to address the industrial accident;**

6. Adequate information on how the ~~affected population~~ **public concerned** will be warned and kept informed in the event of an industrial accident;

7. Adequate information on the actions the ~~affected population~~ **public concerned** should take and on the behaviour they should adopt in the event of an industrial accident;

...

9. General information on the emergency services' off-site contingency plan, drawn up to cope with any off-site effects, including the transboundary effects of an industrial accident. **This should include advice to cooperate with any instructions or requests from the emergency services at the time of an accident;**

## Annex II

### Shorter draft revised article 9 of the Convention

Set out below is a shorter draft text for an amended article 9 to the Convention prepared by the secretariat. It was prepared following the receipt of preliminary comments from Parties on the draft revised text circulated to them as prepared by the small group of legal experts, indicating that the text could be shortened, and based on previous comments received by Parties at and after the fifth meeting of the Working Group on Development, proposing to make direct reference to the provisions of the Aarhus Convention. The text has been indented solely to offset it from the main document. Text that appears in brackets is suggested, but not essential.

#### Article 9

##### Information to the public

1. The Party of origin shall ensure that adequate information, including the information referred to in annex VIII hereto, is available to the public in accordance with article 5, paragraphs 1 to 3, of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). The information shall be:

(a) Easily accessible to the public, including through electronic databases;

(b) Periodically reviewed and, where necessary, updated at least every five years.

2. The Party of origin shall provide the public concerned with the information referred to in paragraph 1 of this article on a regular basis, but at least every five years. This shall include all buildings and areas of public use and all hazardous activities where the risk or consequences of an industrial accident may be increased because of the geographical position and the proximity of such hazardous activities.

3. The Parties shall ensure that information concerning industrial accidents, hazardous activities and prevention in accordance with article 6, decision-making on siting in accordance with article 7 and emergency preparedness in accordance with article 8 is made available to the public in a timely manner upon request. This information shall be deemed to be environmental information under article 2, paragraph 3, of the Aarhus Convention and shall be made available to the public upon request in accordance with article 4 of the Aarhus Convention.

4. In the event of an industrial accident or imminent threat thereof, the Parties concerned shall ensure that all information that is held by their authorities that could enable the public to take measures to prevent or mitigate harm arising from the industrial accident or imminent threat thereof is disseminated immediately and without delay to the public concerned. This information shall include at least a brief description of the circumstances of the industrial accident or imminent threat thereof, including its location, the hazardous substances involved (if known) and its immediate effects, as well as the information referred to in annex VIII, paragraphs 6 and 7, including clear instructions [on the actions the public should take and the behaviour it should adopt].

5. The information to be provided in accordance with paragraphs 1 to 4 of this article should also take into account the matters set out in annex V, paragraph 2, subparagraphs (1) to (9).

**Article 9 bis**  
**Public participation**

Each Party shall apply article 6, paragraphs 2 to 10, of the Aarhus Convention to decisions subject to articles 7 and 8, paragraph 3, hereto, as well as, where possible and appropriate, to decisions subject to article 6 hereto.

**Article 9 ter**  
**Access to justice**

1. Each Party shall apply article 9, paragraphs 1 and 4, of the Aarhus Convention to information requests under article 9, paragraph 3, hereto.

2. Each Party shall apply article 9, paragraphs 2 and 4, of the Aarhus Convention to decisions subject to articles 6, 7 and 8, paragraph 3, hereto.

**Article 9 quater**  
**Equivalent opportunities**

Each Party shall apply articles 9, 9 bis and 9 ter hereto, in accordance with article 3, paragraph 9, of the Aarhus Convention.

**Article 9 quinquies**  
**Application of the provisions**

Each Party shall apply the articles of the Aarhus Convention referred to in articles 9, 9 bis, 9 ter and 9 quater above, as in force at the time of the adoption of this amendment.

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