



Item 3

Amendment to the Convention: Article 9 (Information to and participation of the public)

Presentation by Ms. Claudia Kamke,
UNECE Industrial Accidents Convention Secretariat

5th meeting of the
Working Group on Development
11-13 May 2015
Geneva





Table of Content

I. General introduction

II. Article 9 – Information to the public

III. Article 9 bis – Public participation

IV. Article 9 ter – Access to justice





I. Background

- COP-7 (Nov 2012) requested the Working Group on Development (WGD), among others, to evaluate the need for amending the Convention to strengthen public participation
- WGD discussed the issue at its third (Sep 2013) and fourth (Apr 2014) meetings, recommending to COP-8 (Dec 2014) that there was a need to amend art. 9 of the Convention (information to, and public participation of the public)
- COP-8 mandated WGD to prepare a draft amendment revising art. 9, considering also related changes in the Convention, for adoption at its ninth meeting





I. Rationale for amending current art. 9 of the Convention

- Contributing to better participatory democracy and access to justice in the pan-European region
- Consistency between legal instruments
- Aligning the Industrial Accidents Convention with the Aarhus Convention
- Keep compatibility with the Seveso III Directive





I. What is proposed?

- Replace art. 9 with 3 separate articles that refer to the three pillars of the Aarhus Convention
- New art. 9 proposed as follows:
 - Art. 9 – Information to the public
 - Art. 9 bis – Public participation
 - Art. 9 ter – Access to justice
- Introducing separate articles is in line with approach of the Aarhus Convention





II. Art. 9 (public information): rationale for the amendment

- Analysis as set out in background information for WGD-3 (Sep 2013) and WGD-4 (Apr 2014) inter alia found that the Convention text as it stands:
 - Focuses rather on the substance while neglecting details on how or when to inform the public
 - Does not use the term “the public” in a consistent way (e.g. also “population” is used) in the Convention and its annexes (e.g. annex V, VIII)
- On this basis, WGD-4 recommended to COP-8 (Dec 2014) to amend art. 9 of the Convention to strengthen public participation and COP-8 mandated WGD accordingly





II. Art. 9: Proposed amendment – What is in the Convention? –

What is already in the Convention?

- Public information covered by art. 9, para 1, and annex VIII:
- Parties shall ensure that adequate information is given to the public in the areas capable of being affected by an industrial accident
- Information shall include the elements contained in annex VIII and should take into account matters set out in annex V, paragraph 2, subparagraphs (1) to (4) and (9)

Proposed amendment

- Replace current art. 9 with 5 new paras on public information





II. Art. 9: Proposed amendment – Not yet in the Convention –

Para 1

- Parties to make the information permanently available, incl. electronically
- Parties to periodically review and update the information provided, including after modifications on the hazardous activity

Para 2:

- Parties concerned to ensure that the public in the areas capable of being affected by an industrial accident receives regularly, and in the most appropriate form, without having to request it, clear and intelligible information on safety measures and the requisite behaviour in the event of an accident (particularly the info in annex VIII)
- Parties concerned to supply the above information to all buildings and areas of public use, including schools and hospitals, and all neighbouring establishments where the risk or consequences of an industrial accident may be increased because of the geographical position and the proximity of such establishments





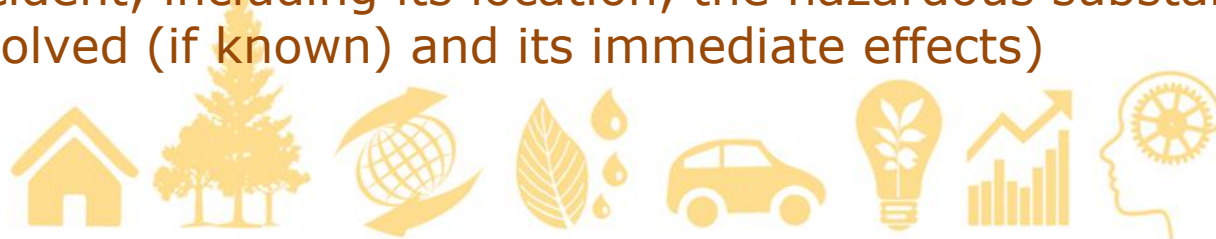
II. Art. 9: Proposed amendment – Not yet in the Convention –

Para 2 (continued):

- Parties concerned shall ensure that the information is supplied at least every five years, and is periodically reviewed and, where necessary, updated, including in the event of modifications referred to in annex V, para 2, subpara 16

Para 3:

- Parties to provide information to the public not only in case of an industrial accident but also an imminent threat thereof
- New text specifies the minimum information to be provided to the public in the event or imminent threat thereof:
 - In accordance with annex VII, para 5 (f) and annex VIII, para 6-7
 - At least brief description of the circumstances of the industrial accident, including its location, the hazardous substances involved (if known) and its immediate effects)





II. Art. 9: Proposed amendment – Not yet in the Convention –

Para 3 (continued):

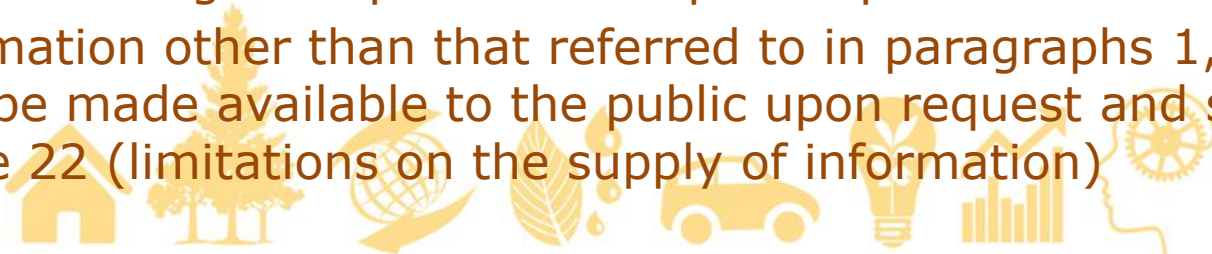
- Parties to disseminate the information immediately and without delay to the public in the areas capable of being affected

Para 4:

- Similar text already in the Convention (art. 9, para 1) requesting that the info provided to the public shall include the elements contained in annex VIII and should take into account matters set out in annex V, para 2, subparas (1) to (4) and (9)
- New text extends this obligation also to the new paras 1-3 of art. 9

Para 5:

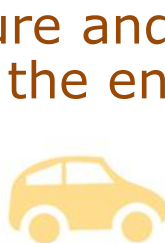
- Distinction between information to be provided to the public without having to request it and upon request
- Information other than that referred to in paragraphs 1, 2 and 3, shall be made available to the public upon request and subject to article 22 (limitations on the supply of information)





II. Amending art. 9

- Initial proposed amendment for consideration by representatives of the Parties available in [ECE/CP.TEIA/WG.1/2015/4](#)
- Additional issues for possible consideration:
 - Timeframes for responding to information requests from the public
 - Obligation to, where possible, separate out confidential information and make available remainder of information
 - Obligation to interpret limitations on supply of information in art. 22 restrictively, taking into account the public interest in disclosure and whether the information relates to emissions into the environment





III. Art. 9 bis (public participation): rationale for the amendment

- Analysis as set out in background information for WGD-3 (Sep 2013) and WGD-4 (Apr 2014) found that inter alia the Convention text as it stands:
 - Is not aligned with the UNECE Aarhus Convention and other instruments (e.g. EU Seveso III Directive)
 - Is legally not always clear (e.g. it combined the use of legally binding wording like “shall” with much softer expressions like “whenever possible and appropriate”)
 - Could benefit from including details on procedures for public participation that clarify how the public can participate
- On this basis, WGD-4 recommended to COP-8 (Dec 2014) to amend art. 9 of the Convention to strengthen public participation and COP-8 mandated WGD accordingly





III. Art. 9 bis: Proposed amendment – What is in the Convention? –

What is already in the Convention?

- Public participation in art. 9, para 2 and 3, and annex VI, para 2
- Art. 9, para 2, refers to the public's opportunity to participate in relevant procedures
- Public in the areas capable of being affected can participate in relevant procedures with the aim of making known its views and concerns on prevention and preparedness measures
- Parties shall ensure that the opportunities given to the public of the affected Party are equivalent to that given to the public of the Party of origin

Proposed amendment

- Add art. 9 bis with 6 paras on public participation

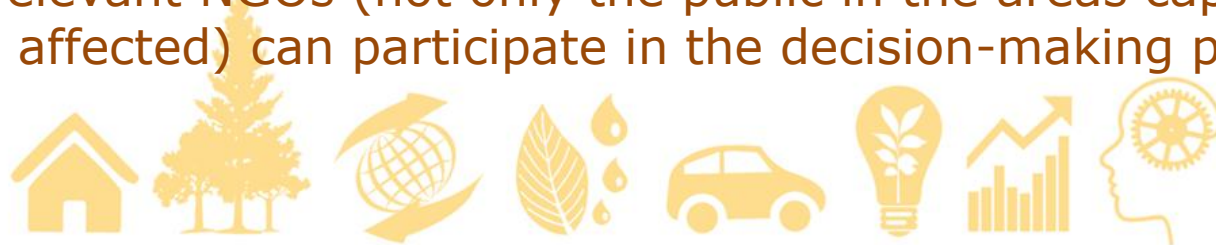




III. Art. 9 bis: Proposed amendment – Not yet in the Convention –

Para 1:

- Parties shall ensure that the public is given early and effective opportunities to participate in the relevant decision-making procedures regarding (no ambiguous language and unclear legal status any more)
- Clarification as to what public participation refers to => Possibility for the public to participate in the decision making procedures regarding the siting of hazardous activities (art. 7) and off-site contingency plans (art. 8)
- Details on procedural details (e.g. on how and by whom to inform the public, on how the public can submit views and concerns etc.)
- Also relevant NGOs (not only the public in the areas capable of being affected) can participate in the decision-making procedures





III. Art. 9 bis: Proposed amendment – Not yet in the Convention –

Para 2:

- Adds procedural details on how to inform the public (e.g. by public notices,...including electronic media...in an adequate, timely and effective manner...early in the decision-making procedure)
- Also adds matters of which the public shall be informed: subject matter; CA responsible for the decision-making, from which information can be obtained or to which it could be submitted; nature of/draft decision; times/places for making the information available; details for public participation/consultation

Para 3:

- Provides the public with access to examination which was previously not covered by the Convention (only through giving the public an “opportunity to participate in relevant procedures”)





III. Art. 9 bis: Proposed amendment – Not yet in the Convention –

Para 4:

- Specifies how the public can participate to express its views and concerns: in writing, at a public hearing
- Public will be entitled to express “any comments and opinions”, incl. (but not only) views and concerns” on prevention and preparedness measures
- Specifies to whom public can express comments/opinions (competent authority) and when the public shall be given this opportunity (before a decision is taken)
- Parties shall ensure that the outcome of public participation is duly taken into account in taking a decision





III. Art. 9 bis: Proposed amendment – Not yet in the Convention –

Para 5:

- CAs shall make certain information available when a decision has been taken: content of and reasons and considerations for taking the decision/plan, results of the public participation before the decision making and how they were taken into account

Para 6:

- Inclusion of reference to reasonable time frames, allowing for informing the public and for the public to prepare and participate effectively in the decision-making





III. Amending art. 9 bis

- Initial proposed amendment for consideration by representatives of the Parties available in [ECE/CP.TEIA/WG.1/2015/4](#)
- Additional issues for possible consideration:
 - Include additional details on procedures for public participation, such as a list with minimum information that must be provided to the public for examination





IV. Art. 9 ter (access to justice): rationale for the amendment

- Analysis as set out in background information for WGD-3 (Sep 2013) and WGD-4 (Apr 2014) found that the Convention text as it stands:
 - Addresses access to justice in a rather limited way (e.g. reference to “rights”, not to “rights and interests” like in the Aarhus Convention)
 - Provides the public of another country with rights to access to justice only “on a reciprocal basis” (no mention of the non-discrimination principle included in the Aarhus Convention)
- On this basis, WGD-4 recommended to COP-8 (Dec 2014) to amend art. 9 of the Convention to strengthen public participation and COP-8 mandated WGD accordingly





IV. Art. 9 ter (access to justice) – – What is in the Convention? –

What is already in the Convention?

- Access to justice covered by art. 9, para 3
- Persons who are being or are capable of being adversely affected by the transboundary effects of an industrial accident have the right to access to justice

Proposed amendment

- Add art. 9 ter with 3 paras on public participation





IV. Art. 9 ter (access to justice) – Not yet in the Convention –

Para 1:

- Introduces access to review procedures for information available upon request and regarding the active disclosure of information by competent authorities

Para 2:

- Members of the public having an interest or maintaining impairment of a right have the right to access to justice
- NGOs are also deemed as having rights and interests
- Provides the public with the possibility to challenge any decision, act or omission, subject to the provisions of art. 9 bis (i.e. not only for specific individual activities – decision-making on siting – but also for general plans and programmes – off-site contingency plans)





IV. Art. 9 ter (access to justice) – Not yet in the Convention –

Para 3

- Almost identical with current text in art. 9, para 3 but including “NGOs” and adding “justice” behind “access to”
- Current text refers to natural and legal persons only and it does not require Parties to provide the public of another Party with access to, and treatment in the relevant administrative and judicial proceedings
 - Now “any person seeking information pursuant to article 9 has access to review procedures before a court of law...”





IV. Amending art. 9 ter

- Initial proposed amendment for consideration by representatives of the Parties available in [ECE/CP.TEIA/WG.1/2015/4](#)
- Additional issues for possible consideration:
 - Include provisions to ensure that the procedures for exercising the right of standing are fair; equitable; timely; not prohibitively expensive; and provide for adequate and effective remedies





Thank you for your attention

