

# AMENDMENT OF ARTICLE 9

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The work of the small group of legal experts

# Mandate and terms of reference

As regards Article 9 the objective of the small group of legal experts (SGLE) was:

*'The small group will prepare and review the draft amendments to article 9, as well as the provisions, articles and annexes related to articles 1, 9, 18 and 29, in accordance with the mandate from the Conference of the Parties at its eighth meeting. It will provide advice to the Working Group with regard to the specific legal considerations that need to be taken into account'.*

# Method of work

- The SGLE worked by e-mail and through telephone/video conference meetings, which was not always easy due to the incompatibility of the technology, on occasion.
- The membership of the SGLE was diverse and included representatives from the Parties and also members of NGOs.
- I was selected as the *rapporteur* at the first meeting and as such chaired and co-ordinated the remaining meetings.
- The SGLE established a sub-group which took principal responsibility for taking forward actual drafting following a meeting of the SGLE or receipt of written comments.
- The work was also condensed into a very short time-frame at the end of June and July.

# Goals of the SGLE

The SGLE identified some priorities in its early deliberations, focusing on:

- Rationale of WGD 4 to align with Seveso III and Aarhus Convention
- CoP decision to amend Article 9
- Creation of three articles
- Views of Parties, and in particular that:
  - aligned does not mean the ‘copy out’ of those documents
  - what was proposed previously was too prescriptive as an approach
  - ‘public’ was drawn too widely and the need to maintain the territorial principle
  - concerns expressed about information sharing and national security

# The draft produced by the SGLE

Article 9 has been expanded into four free standing articles as follows:

- **Article 9:** former paragraph 1 of Article 9 has been expanded into six paragraphs.
- **Article 9 bis Public consultation and participation in decision-making:** former paragraph 2 has been expanded into four paragraphs.
- **Article 9 ter Access to justice:** former paragraph 3 has been expanded into three paragraphs.
- **Article 9 quater Equivalent opportunities.**

# Observations on the draft

- It achieves alignment with Seveso III and Aarhus whilst being considerably shorter and is by no means a copy out of the latter.
- The references to the public are nuanced and maintain the principle of territoriality.
- Its key virtue is that it offers clarity. The obligations placed on the Parties are clear on the face of the draft and are unlikely to cause doubt in the future.