



## Economic and Social Council

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### Economic Commission for Europe

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

##### **Ninth meeting**

Ljubljana, 28–30 November 2016

Item 7 (b) of the provisional agenda

##### **Development of the Convention: amendment to the Convention**

### **Draft decision on amending the Convention on the Transboundary Effects of Industrial Accidents**

### **Submitted by the Bureau of the Conference of the Parties and the Working Group on the Development of the Convention**

#### *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).

Accordingly, the Working Group agreed a draft amendment, prepared with the support of a small group of legal experts in cooperation with the secretariat.

On 24 June 2016, the European Commission, on behalf of the European Union and its member States, submitted in writing to the Executive Secretary of the United Nations Economic Commission for Europe the text of a draft amendment to the Convention, and proposed that the Parties amend the Convention accordingly at the ninth meeting of the Conference of the Parties. The proposal was supported in writing by Norway, the Republic of Moldova, Serbia and Switzerland.

In accordance with article 26, paragraph 2, of the Convention, the Executive Secretary circulated the submission on 9 August 2016 — that is, over 90 days in advance of the ninth meeting — to all Parties.

The Conference of the Parties is invited to consider the proposed amendments and the adoption of the draft decision contained herein.

GE.16-15165(E)



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*The Conference of the Parties,*

*Expressing* the firm belief that cooperation among States on measures for the prevention of, preparedness for and response to industrial accidents with transboundary effects contributes to sustainable development,

*Recalling* the special importance of protecting people and the environment against the effects of industrial accidents,

*Considering* the conclusions reached by the Working Group on the Development of the Convention at its fifth, sixth and seventh meetings held in the biennium 2015–2016,

*Wishing* to strengthen and clarify the provisions of the Convention, in particular those related to public participation,

*Desiring* to promote cooperation beyond the United Nations Economic Commission for Europe (ECE) region on measures for the prevention of, preparedness for and response to industrial accidents with transboundary effects and to share its experience with other regions,

*Wishing* to allow Member States of the United Nations not members of ECE to become Parties to the Convention,

*Conscious* of the need for relevant safeguards to be in place to address any potential adverse financial implications for States or organizations that are already Parties to the Convention arising from the opening of the Convention to States not members of ECE,

1. *Adopts* the amendment to the Convention, as contained in the annex to this decision;
2. *Calls* upon Parties to the Convention to deposit their instruments of acceptance of the amendment rapidly;
3. *Urges* any State that ratifies, accepts or approves the Convention to simultaneously ratify, accept or approve the above amendment until its entry into force;
4. *Encourages* United Nations Member States, in particular those bordering the ECE region, to accede to the Convention;
5. *Invites* interested United Nations Member States to take part in the Convention's meetings as observers and to participate in the activities under the Convention's workplan;
6. *Requests* the secretariat to inform the United Nations Treaty Section about this procedure so that appropriate arrangements can be made, and to disseminate information on the procedure to interested Member States of the United Nations that are not members of ECE.

## Annex

### **Amendment to the Convention on the Transboundary Effects of Industrial Accidents**

1. In article 1, paragraph (c) (i), replace “, flora and fauna” by “and biodiversity”.
2. In article 1, paragraph (c), reverse the order of subparagraphs (iii) and (iv).
3. In article 1, new paragraph (c) (iv), replace “(i) and (ii)” by “(i), (ii) and (iii)”.
4. In article 1, paragraph (j), after “persons” insert: “and, in accordance with national legislation or practice, their associations, organizations or groups”.
5. Replace the heading of article 4 by a new heading reading: “Identification, notification, consultation and advice”.
6. Replace article 9 and its title with the following new articles 9, 9 bis and 9 ter:

#### **Article 9**

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

1. The Parties concerned shall ensure that adequate information is given in a timely and effective manner to the public in the areas capable of being affected by an industrial accident arising out of a hazardous activity. This information shall:

- (a) Be transmitted through such channels as the Parties deem appropriate;
- (b) Include the elements contained in annex VIII hereto;
- (c) Take into account matters set out in annex V, paragraph 2, subparagraphs (1) to (9);
- (d) Without prejudice to article 22, be easily accessible and preferably also be made available in electronic databases;
- (e) Be periodically reviewed and updated as necessary.

2. In the event of an industrial accident or imminent threat thereof, the Parties concerned shall provide without delay, through their competent authorities, the information that gives the public in the areas capable of being affected the possibility to take necessary actions and behave as needed to prevent or mitigate harm arising from the industrial accident.

#### **Article 9 bis**

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

1. The Party of origin shall, in accordance with the provisions of this Convention, give the public in the areas capable of being affected an early, adequate and effective opportunity to participate in relevant procedures with the aim of making known its views and concerns on prevention and preparedness measures.

2. The Parties shall ensure that consultation and participation as outlined in paragraph 1 takes place at least in decision-making procedures concerning:

- (a) The development or significant modification of measures taken for the prevention of industrial accidents to reduce the risk of industrial accidents in accordance with article 6;

(b) Siting in accordance with article 7, including decisions on significant modifications to existing hazardous activities;

(c) The development or significant modification of off-site contingency plans referred to in article 8, whenever possible and appropriate.

and shall ensure that the opportunity given to the public of the affected Party is equivalent to that given to the public of the Party of origin.

3. The Parties shall ensure that consultation and public participation procedures established under this article provide that the public in the areas capable of being affected is given at least the information referred to in article 9, paragraph 1.

### **Article 9 ter**

#### **Access to justice**

The Parties shall, in accordance with their legal systems and, if desired, on a reciprocal basis, provide the public being or capable of being adversely affected by the transboundary effects of an industrial accident in the territory of a Party with access to and treatment in the relevant administrative and judicial proceedings, including the possibilities of starting a legal action and appealing a decision affecting their rights, equivalent to those available to persons within their own jurisdiction.

7. In article 18, paragraph 1, replace “a year” with “every two years”.
8. In article 26, paragraph 2, delete the word “annual” in the second sentence.
9. In article 29, paragraph 2, after “Article 27” insert: “as well as any other State that is a Member of the United Nations and regional economic integration organizations constituted by sovereign States Members of the United Nations”.
10. In article 29, after paragraph 4, insert a new paragraph reading:
11. Any State or organization 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;
  - (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 annex VIII, paragraph 5, after “environment” insert: “and measures to address the industrial accident”.
13. In annex VIII, paragraph 9, after “accident” insert: “. This should include advice to cooperate with any instructions or requests from the emergency services”.