

**ECONOMIC COMMISSION FOR EUROPE**

**MEETING OF THE PARTIES TO THE  
CONVENTION ON THE PROTECTION  
AND USE OF TRANSBOUNDARY  
WATERCOURSES AND  
INTERNATIONAL LAKES**

**CONFERENCE OF THE PARTIES TO  
THE CONVENTION ON THE  
TRANSBOUNDARY EFFECTS OF  
INDUSTRIAL ACCIDENTS**

**Intergovernmental Working Group  
on Civil Liability**

Third meeting  
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Working paper\*  
MP.WAT/AC.3/2002/WP.12  
CP.TEIA/AC.1/2002/WP.12

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**PROPOSALS FOR AMENDMENTS OF THE  
DRAFT LEGALLY BINDING INSTRUMENT ON CIVIL LIABILITY FOR  
TRANSBOUNDARY DAMAGE CAUSED BY HAZARDOUS ACTIVITIES, WITHIN  
THE SCOPE OF BOTH CONVENTIONS (MP.WAT/2002/4 - CP.TEIA/2002/4)**

Submitted by the delegation of Hungary

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\* Apart from editorial changes, this working paper is reproduced in the form as received by the secretariat.

## **PREAMBLE**

### **For the 6<sup>th</sup> preambular paragraph:**

*Considering risks imposed on public safety and security, human health, environment, sustainability of water uses - especially those serving drinking, bathing and aquaculture demands - by pollution of transboundary waters caused by industrial accidents (corrected according to the proposal of Germany accepted by the WG)*

### **Continue the 5<sup>th</sup> preambular paragraphs as follows:**

Mindful of the obligations under the convention on the Protection and Use of Transboundary Watercourses and International Lakes and under the Convention on the Transboundary Effects of Industrial Accidents and especially of the key role public authorities of the Parties shall play in prevention and mitigation as well as restoration of damages arising due to pollution of transboundary waters caused by industrial accidents (having in mind the above mentioned proposal of Germany as well as the newly published draft EC Directive on environmental liability with regard to the prevention and restoration of environmental liability with regard to the prevention and restoration of environmental damage)

## **ARTICLE 2**

### **For paragraph 2 (d) substitute:**

“Mitigation and response measures” means any reasonable measures taken by public authorities, operators or other involved legal or natural persons following an industrial accident to minimize or limit possible loss or damage referred to under Art. 2. para 2 (b) due to the industrial accident, or to arrange for environmental clean-up; (having in mind the proposal of Canada)

### **Add the following definitions:**

para 2 (b) (vi) The cost of extraordinary response measures taken by the public authorities of the affected Party to control emergency situations due to pollution of transboundary waters caused by industrial accidents, especially those involving large quantities of toxic or other hazardous substances

para 2 (i) “Industrial accident” means an uncontrolled departure from permitted operating conditions of a hazardous activity causing pollution of waters

para 2 (h) “Operator” means any legal or natural person permitted by the competent public authorities of the Party or origin to control in technical and financial terms the hazardous activity that may impose risk on the territory of the affected Party;

para 2 (j) “Pollution of transboundary waters caused by industrial accidents” means the introduction of toxic or other hazardous substances into waters due to an industrial accident occurring within the territory under the jurisdiction or control of

the Party of origin and causing significant damage within the territory under the jurisdiction or control of the affected Party(ies);

para 2 (k) “Risk” means the combined effect of the probability of occurrence of an industrial accident and the volume of the possible loss or damage referred to under Art. 2 para 2 (b) likely to arise due to the industrial accident;

para 2 (l) “Party of origin” means the Party within the territory and under the jurisdiction or control of which pollution of transboundary waters caused by and industrial accident occurred;

para 2 (m) “Affected Party” means the Party within the territory of which significant transboundary damage occurred due to pollution of transboundary waters caused by an industrial accident whether or not this Party shares a common border with the Party of origin;

### **ARTICLE 3**

#### **For paragraph 1 substitute:**

The Protocol shall apply to loss or damage referred to under Art. 2 para 2 (b) due to pollution of transboundary waters caused by industrial accidents;

#### **For paragraph 2 substitute:**

The Protocol shall apply only to damage as referred to in paragraph 1 suffered in an area under jurisdiction or control of an affected Party and arising from an industrial accident occurring in an area under the jurisdiction or control of the Party of origin.

### **ARTICLE 4**

#### **For paragraph 1:**

After the text commonly agreed by the WG “The operator shall be liable for the damage”  
**insert**

Parties to this Protocol may provide that direct liability of an insurance company or of a compensation fund shall be wholly or partly substituted for the liability of the operator.

### **ARTICLE 8**

#### **Add a new paragraph 4:**

Public authorities of the Parties shall provide for close cooperation in every case when pollution of transboundary waters caused by industrial accidents arises.

### **ARTICLE 11**

#### **Redraft paragraph 1 as follows:**

1. Operators during the period of the time limit of liability referred to under Art. 10 shall provide for financial security covering their liability referred to under Art. 4 for amounts not less than the limits specified in paragraph 3 of Annex II. Parties to this Protocol may provide for different forms of financial security such as liability

indurance, third party liability, bonds, compensation funds or other financial guarantees.

Without prejudice to article 4, any person shall be liable for damage

**In the second sentence, delete the square brackets.**