

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**

Fourth meeting
Geneva, 2-4 September 2002

Working paper*
MP.WAT/AC.3/2002/WP.13
CP.TEIA/AC.1/2002/WP.13
ENGLISH ONLY

2 August 2002

POSITION OF THE EUROPEAN ECO-FORUM

**Article 11 bis
Access to information, public participation and access to justice**

* This document has not been formally edited.



Pan-European Coalition of Environmental Citizens Organisations

POSITION OF THE EUROPEAN ECO-FORUM

Further implementing the right of non-governmental organisations to take part in the development and implementation of the legally binding instrument on civil liability for transboundary damage caused by hazardous activities within the scope of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes and Convention on the Transboundary Effects of Industrial Accidents, the European ECO-Forum would like to propose the following:

Article 11 bis

Access to information, public participation and access to justice

1. Each Party shall ensure that public authorities, in response to a request from any member of the public for information in its possession related to matters falling within the scope of this Protocol, including:

- a) industrial accidents;
- b) their transboundary effects on transboundary waters and damage resulting from such effects;
- c) measures of reinstatement;
- d) response measures;
- e) financial security,

make such information available to the person requesting it.

Each Party shall also ensure that any operator, in response to a request from any member of the public for information on financial security under the Protocol, makes such information available to the person requesting it.

2. The information referred to in paragraph 1 above shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.

3. Where a public authority does not hold the information requested, it shall, as promptly as possible, inform the applicant of the public authority, if any, which it believes to hold the information requested or transfer the request to that authority and inform the applicant accordingly.

4. In the event of any industrial accident or imminent threat to human health or the environment caused by hazardous activities within the scope of this Protocol, each Party shall ensure that all information which could enable the public to take measures to prevent or mitigate harm arising from the threat or that is relevant to the cause or extent of the accident and its effects is disseminated immediately and without delay to members of the public who may be affected.

5. Each Party shall provide opportunities for the public to participate, at an early stage when all options are open and effective participation can take place, in decisions by public authorities on matters falling within the scope of this Protocol.
6. The procedures for public participation referred to in paragraph 5 shall include:
- a) timely and effective notification of the proposed decision and the opportunities for participation;
 - b) opportunities for the public to submit in writing such comments, information, analyses or opinions as it considers relevant;
 - c) a requirement that in the decision due account is taken of the outcome of the public participation;
 - d) prompt notification of the decision along with the reasons and considerations on which the decision is based.
7. Each Party shall ensure that in deciding claims brought in accordance with this Protocol due account is taken of local knowledge.
8. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under paragraph 1 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of paragraphs 1-3 above, has access to a review procedure before a court of law or another independent and impartial body established by law.
9. In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law. Final decisions under this paragraph shall be binding on the public authority/operator holding the information.
10. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned 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 paragraphs 5-7 and, where so provided for under national law of other relevant provisions of this article.
11. In addition and without prejudice to paragraph 8, the procedures referred to in paragraphs 8-10 shall provide adequate and effective remedies, including injunction relief as appropriate, and be fair, equitable, timely and not prohibitively expensive.
12. In order to further the effectiveness of the provisions of this article, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.