

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**

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Working paper

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CP.TEIA/AC.1/2003/WP. 26
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Proposal by the Netherlands for article 11, paragraph 2

In article 11, paragraph 2, of document MP.WAT/AC.3/2003/2-CP.TEIA/AC.1/2003/2, the last sentence should be deleted and replaced by the following:

The insurer or person providing financial security may invoke the defenses that the person liable under article 4 would be entitled to invoke (other than his bankruptcy or winding up), but not any other defense which he might have been entitled to invoke in proceedings brought against him by the person liable under article 4.

Explanation

The protection of the person who suffered the damage is important. If the insured has not met his obligations under the insurance contract, the insurer could use this against the insured. This could result in the damage not being paid. Such result is not justified in cases where the failure of the insured was only minor and incidental, for example, when the insured person had only once forgotten to pay his premium or when he had forgotten to notify the insurer in time of the damage. Therefore, this proposal states that the insurer or person providing financial security may invoke the defenses that the person liable under article 4 would be entitled to invoke (other than bankruptcy or winding up), but not any other defense which he might have been entitled to invoke in proceedings brought against him by the person liable under article 4.

This does not lead to a too heavy burden on insurers because normally the insurer will warn the insured if he does not meet his obligations under the insurance contract. If the insured does not fulfill his obligations on a regular basis the insurer will have the right to terminate the contract.

The wording of this proposal is in line with article 12, paragraph 8, of the HNS Convention.