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Transboundary Effects of Industrial Accidents

Working Group on the Development of the Convention

Seventh meeting

Geneva, 12–14 April 2016

Report of the Working Group on the Development of the Convention on its seventh meeting

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Introduction

1. The seventh meeting of the Working Group on the Development of the Convention (Working Group on Development) under the Convention on the Transboundary Effects of Industrial Accidents (Industrial Accidents Convention) was held from 12 to 14 April 2016 in Geneva, Switzerland. Mr. Chris Dijkens (Netherlands) chaired the meeting.

2. The meeting was attended by representatives of the following United Nations Economic Commission for Europe (ECE) member States: Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Kazakhstan, Kyrgyzstan, Netherlands, Poland, Republic of Moldova, Russian Federation, Serbia, Slovakia, Slovenia, Switzerland, the former Yugoslav Republic of Macedonia and the United Kingdom of Great Britain and Northern Ireland. A representative of the European Union also participated in the meeting.

3. In addition, the meeting was attended by a legal expert providing advice to the negotiations (Jerzy Jendrośka) and a consultant engaged by the European Investment Bank to develop a guidance document on safety and land-use planning (Lorenzo van Wijk), as well as the rapporteurs of a small group of legal experts (Erol Mertcan, United Kingdom) and a small group of experts on land-use planning (Michael Struckl, Austria), both bodies having been established by the Working Group on Development at its fifth meeting (Geneva, 11–13 May 2015).

4. Furthermore, representatives from the European Investment Bank, the International Society of City and Regional Planners, the Joint Environment Unit of the United Nations Environment Programme and the United Nations Office for the Coordination of Humanitarian Affairs, Studio D — Centre for Development and Dialogue, the World Chlorine Council and Zoi Environment Network participated in parts of the meeting.

I. Opening of the meeting and adoption of the agenda

5. The Chair opened the seventh meeting of the Working Group.

6. The agenda for the meeting (ECE/CP.TEIA/WG.1/2016/1) was adopted without modification. The secretariat indicated that all presentations delivered during the meeting would be posted on the Convention's web page for the meeting.¹

II. Amendment to the Convention

7. The Chair recalled that the Working Group on Development had considered draft text for an amendment to the Convention, prepared by the secretariat in cooperation with the small group of legal experts and a legal consultant, as well as draft text submitted by Parties, at its fifth and sixth meetings (Geneva, 11–13 May and 30 November–2 December 2015, respectively). The majority of the draft text had already been agreed. At the present meeting the Working Group would focus on reaching agreement on the outstanding proposed changes to the preamble and some elements of article 9.

8. The Working Group considered the draft text for articles 9 and 9 bis prepared by the small group of legal experts in accordance with its mandate to review the text for legal clarity and to replace specific references to the principles of articles 5 and 6 of the

¹ Available from www.unece.org/index.php?id=41518 and www.unece.org/index.php?id=41522.

Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) with text reflecting selected key principles extracted from those articles. The Working Group thanked the small group for its work, which provided useful input to the debate, and agreed on the draft amendment to the Convention, following changes made at the meeting (see annex I).

A. Article 9 — Information to the public

9. The Working Group agreed that the term “Parties concerned” should be used in the first sentence of article 9, paragraph 1, to clarify that both the “Party of origin” and the “affected Party” have an obligation to provide adequate information to the public in the areas capable of being affected by an industrial accident arising out of a hazardous activity. The Working Group also agreed that the principles for providing information to the public in article 9, paragraph 1, should be timeliness, effectiveness and adequacy, avoiding the term “transparency”, which some Parties considered as lacking conceptual clarity.

10. In addition, the Working Group agreed to changes in article 9, paragraph 2, with the understanding that the information provided to the public in the case of an industrial accident should generally be disseminated by the competent authorities of affected countries, while retaining flexibility regarding the submission of information directly to the public in the areas capable of being affected in situations where such communication channels might not be established or functioning. The Working Group also agreed on editorial adjustments to the text and requested the secretariat to make sure that the Russian translation of the amendment to article 9, paragraph 2, would use the terms employed in annex VIII, paragraph 7, with regard to “actions” and “behaviour”, rather than the term “measures”.

B. Article 9 bis — Public consultation and participation in decision-making

11. The Working Group discussed the proposed text in square brackets in article 9 bis, paragraph 1, prepared by the small group of legal experts in accordance with its mandate to extract principles from article 6 of the Aarhus Convention. Some Parties requested further clarification on several principles included to strengthen public participation and expressed concerns with regard to the level of detail employed in the proposed text. Despite the fact that several Parties recognized the added value of the text proposed by the small group of legal experts, the Working Group could not reach agreement on the wording. Taking into account the concerns expressed, the Working Group agreed not to include the proposed text, stressing the need to keep an appropriate balance between descriptive text and retaining flexibility in the implementation of the provisions by Parties. It was also decided not to include the text in square brackets in article 9 bis, paragraph 3.

C. Preamble

12. The Working Group continued its discussion on the inclusion of a reference to the Aarhus Convention in the preamble, on which it could not reach agreement previously. Some Parties expressed concern with regard to mentioning any legal instruments in the preamble to which they were not a Party, as they felt that would create confusion with regard to countries’ obligations to implement those instruments at the national level. The secretariat clarified that there would be no commitment to implement legal instruments to which countries were not a Party solely because they were mentioned in the preamble, recalling that that was already the case for the Convention on Environmental Impact

Assessment in a Transboundary Context (Espoo Convention), which was mentioned in the original text of the preamble. Nevertheless, taking into account the concerns expressed by some Parties, the Working Group agreed not to add references to the Espoo Convention's Protocol on Strategic Environmental Assessment (Protocol on SEA) or the Aarhus Convention in paragraph 6 of the preamble.

D. Article 26 — Amendments to the Convention

13. The secretariat drew attention to the need to make a related change in paragraph 1 of article 26, due to the amendment agreed in paragraph 1 of article 18 that meetings of the Conference of the Parties would be held every two years, rather than annually. The Working Group agreed to amend article 26, by deleting the word "annual" in the second sentence of paragraph 2, and requested the secretariat to include that change in the draft amendment.

E. Draft decision amending the Convention

14. The Working Group discussed the draft decision amending the Convention, as prepared by the small group of legal experts, in cooperation with the secretariat. The rapporteur of the small group introduced the draft decision. In accordance with the wishes expressed during the Working Group's discussions on the opening of the Convention and the request made to the small group at its sixth meeting, the small group had also included a paragraph on the need to put in place relevant safeguards to address any potential adverse financial implications for States or organizations that were already Parties to the Convention. For editorial reasons, the European Union proposed to change the term "safeguards" to "measures" in the seventh preambular paragraph of the draft decision. Several Parties expressed concern regarding that proposal, which they considered would change the meaning. The Working Group decided not to include the proposed change, while stressing the need to engage in a discussion on the approach and strategy with regard to the opening at the ninth meeting of the Conference of the Parties. It also decided to make a change in operational paragraph 4, emphasizing that in particular those United Nations Members States bordering the ECE region were encouraged to accede to the Convention. With that additional change, the Working Group agreed on the draft decision amending the Convention to be presented to the Conference of the Parties at its ninth meeting.

15. The Chair informed Parties that, for the amendments to be considered for adoption by the Conference of the Parties at its ninth meeting (Ljubljana, 28–30 November 2016), one Party to the Convention would need to propose them. The secretariat explained that, in accordance with article 26 of the Convention, the text of any proposed amendment to the Convention should be submitted in writing "to the Executive Secretary of ECE, who shall circulate it to all Parties". The secretariat also explained that the Conference of the Parties could discuss proposed amendments at its next meeting only if the proposed amendments were circulated to the Parties by the Executive Secretary of ECE at least 90 days in advance, i.e., by no later than 30 August 2016.

16. The Chair invited Parties to indicate their interest in proposing the amendments to the Executive Secretary of ECE in writing. The European Union and its member States expressed their readiness to do so, inviting other Parties to join them. The Working Group on Development welcomed the proposal by the European Union and its member States to submit the text of the proposed amendment to the Executive Secretary and the invitation to other Parties to join them in that submission.

III. Joint guidance and workshop on land-use planning, the siting of hazardous activities and related safety aspects

17. A one-day workshop on land-use planning, the siting of hazardous activities and related safety aspects was organized on 13 April 2016, in the framework of both the Working Group on Development's seventh meeting and the fifth meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment under the Espoo Convention (Geneva, 11–15 April 2016). The workshop, organized in cooperation with the ECE Committee on Housing and Land Management and the European Investment Bank, served as a platform for participants to discuss the related draft guidance under preparation by consultants to the ECE secretariat that drew on, among others, information gathered from focal points and stakeholders through a survey. The workshop was co-chaired by Mr. Dijkens and Ms. Migle Masaityte (Lithuania), Chair of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment under the Espoo Convention and its Protocol on SEA.

18. The Working Group on Development welcomed the holding of the joint workshop and took note of the co-Chairs' summary of the workshop (annex II).

IV. Input from the Working Group to the ninth meeting of the Conference of the Parties

19. The Chair recalled the mandate of the Working Group on Development, received from the Conference of the Parties at its eighth meeting (Geneva, 3–5 December 2014), comprising the drafting of amendments to the Convention, the development of guidance and consideration of the opening of the Convention. He suggested that he could present the work and considerations of the Working Group to the Conference of the Parties at its ninth meeting. The Working Group agreed with that proposal and requested the secretariat to prepare the parliamentary documentation containing the draft text and decision amending the Convention for consideration by the Conference of the Parties at its ninth meeting.

V. Review of decisions taken and closure of the meeting

20. The Working Group agreed on the main decisions taken at the meeting and entrusted the secretariat to finalize the report after the meeting, in consultation with the Chair.

21. The Chair thanked all participants for their active involvement in the discussions, including at previous meetings, which had made it possible to reach agreement on the first amendment to the text of the Convention, excluding annex I. The Chair also thanked the secretariat for the excellent preparation and support provided for all meetings of the Working Group during the biennium, before closing the seventh meeting of the Working Group on Development.

Annex I

Proposed amendment to the Convention agreed by the Working Group at its seventh meeting

This annex contains the proposed draft amendment to the Convention, as agreed by the Working Group on Development at its seventh meeting. Article by article, it describes proposed changes vis-à-vis the original Convention text, and then (where relevant for clarity) presents the proposed changes integrated into the original text, with new text indicated in boldface and text to be deleted struck through. Exceptionally, as the agreed changes to article 9 were extensive, to avoid confusion the changes are not described individually and the instruction simply provides for article 9 to be replaced with new articles 9, 9 bis and 9 ter. The comparison text following the instruction shows all the changes to the original article 9 in detail. Finally, the additional changes to related articles and annexes, necessary to ensure harmonization of the amended text with the Convention as a whole, are provided.

A. Article 1

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. As a result of the above changes, article 1, paragraph (c), should read as follows:
 - (c) “Effects” means any direct or indirect, immediate or delayed adverse consequences caused by an industrial accident on, inter alia:
 - (i) Human beings, ~~flora and fauna~~ **and biodiversity**;
 - (ii) Soil, water, air and landscape;
 - ~~(iv)~~**(iii)** Material assets and cultural heritage, including historical monuments;
 - ~~(iii)~~**(iv)** The interaction between the factors in ~~(i) and (ii)~~ **(i), (ii) and (iii)**.
5. In paragraph (j) after “persons”, insert “and, in accordance with national legislation or practice, their associations, organizations or groups”.
6. As a result of the above change, article 1, paragraph (j), should read as follows:
 - (j) “The public” means one or more natural or legal persons **and, in accordance with national legislation or practice, their associations, organizations or groups**.

B. Article 4

7. Replace the heading of article 4 by a new heading reading “Identification, notification, consultation and advice”.

C. Article 9

8. Replace the 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 which 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 modifications 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 modification 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.

9. Set out below, for information, is a comparison of these new articles 9, 9 bis and 9 ter with the original text of article 9:

Article 9

Information to, ~~and participation of~~ 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) ~~shall include~~ the elements contained in Annex VIII hereto; ~~and should~~
- (c) Take into account matters set out in Annex V, paragraph 2, subparagraphs (1) to ~~(4)~~ and (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 which 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

~~2.1.~~ The Party of origin shall, in accordance with the provisions of this Convention ~~and whenever possible and appropriate,~~ 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 modifications 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 modification 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

3.—The Parties shall, in accordance with their legal systems and, if desired, on a reciprocal basis provide ~~natural or legal persons who are~~ **the public** being or ~~are~~ 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.

D. Article 18

10. In article 18, paragraph 1, replace “a year” with “every two years”.
11. As a result of the above change, article 18, paragraph 1, should read as follows:
 1. The representatives of the Parties shall constitute the Conference of the Parties of this Convention and hold their meetings on a regular basis. The first meeting of the Conference of the Parties shall be convened not later than one year after the date of the entry into force of this Convention. Thereafter, a meeting of the Conference of the Parties shall be held at least once ~~a year~~ **every two years** or at the written request of any Party, provided that, within six months of the request being communicated to them by the secretariat, it is supported by at least one third of the Parties.

E. Article 29

12. 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”.
13. As a result of the above change, article 29, paragraph 2, should read as follows:
 2. This Convention shall be open for accession by the States and organizations referred to in article 27 **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.**
14. In article 29, after paragraph 4, insert a new paragraph reading:
 5. 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.

F. Related articles and annexes

1. Article 26

15. In article 26, paragraph 2, delete the word “annual” in the second sentence.
16. As a result of the above change, article 26, paragraph 2, should read as follows:
2. The Conference of the Parties shall discuss proposed amendments at its next ~~annual~~ meeting, provided that such proposals have been circulated to the Parties by the Executive Secretary of the Economic Commission for Europe at least ninety days in advance.

2. Annex VIII

17. In annex VIII, paragraph 5, after “environment” insert “and measures to address the industrial accident”.
18. As a result of the above changes, annex VIII, paragraph 5, should read as follows:
5. The general information relating to the nature of an industrial accident that could possibly occur in the hazardous activity, including its potential effects on the population and the environment **and measures to address the industrial accident;**
19. In annex VIII, paragraph 9, after “accident” insert “. This should include advice to cooperate with any instructions or requests from the emergency services”.
20. As a result of the above changes, annex VIII, paragraph 9, should read as follows:
9. General information on the emergency services’ off-site contingency plan, drawn up to cope with any off-site effects, including the transboundary effects of an industrial accident. **This should include advice to cooperate with any instructions or requests from the emergency services;**

Annex II

Co-Chairs' summary of the workshop on land-use planning, the siting of hazardous activities and related safety aspects

I. Introduction

1. A workshop on land-use planning, the siting of hazardous activities and related safety aspects was organized on 13 April 2016 under the joint framework of the Protocol on SEA and the Industrial Accidents Convention, in cooperation with the ECE Committee on Housing and Land Management and the European Investment Bank. It also covered, to the extent possible, relevant experience in the application of the Espoo Convention in relation to the siting of hazardous activities. The workshop served as a platform for participants to discuss the related draft guidance under preparation by consultants to the ECE secretariat which drew, among others, on information gathered from focal points and stakeholders through a survey.

2. The workshop was co-chaired by Ms. Masaityte (Lithuania), Chair of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment under the Espoo Convention and its Protocol on SEA, and Mr. Dijkens (Netherlands), Chair of Working Group on Development of the Industrial Accidents Convention.

II. Summaries of the presentations

3. Opening remarks were made by Mr. Dijkens, Ms. Masaityte, a representative of ECE and Mr. B. Judd of the European Investment Bank. They all highlighted the importance of promoting synergies between the Protocol on SEA and the Industrial Accidents Convention, and raising awareness among experts at the national level in the area of land-use planning and siting of hazardous activities.

4. Introductory presentations were given on the relevant ECE instruments and their interrelationship by Ms. J. Karba, Chair of the Conference of the Parties to the Industrial Accidents Convention, Ms. Masaityte and Mr. Jendroška, one of the experts contributing to the guidance under preparation.

5. Ms. Karba provided an overview of the land-use planning and siting obligations arising for Parties to the Industrial Accidents Convention with a view to minimizing the risk for the population and the environment. She presented the conclusions of the joint seminar on land-use planning around hazardous industrial sites, organized under the Industrial Accidents Convention and the Committee on Housing and Land Management from 11 to 12 November 2010 in The Hague, in particular that safety aspects were not well integrated in land-use planning. Recommendations had also been developed on that occasion, aiming, among others, at promoting cooperation and transparency in the sharing of responsibilities among stakeholders at the national and international levels.

6. Ms. Masaityte presented an outline of the strategic environmental assessment (SEA) procedure under the Protocol on SEA, with a focus on town and country planning or land use, the economic sectors where the SEA procedure was mostly used, and the related obligations for Parties that aimed to integrate environmental, including health, considerations into land-use plans and programmes at an early stage of their development. She highlighted the benefits of the procedure, including an enhanced quality of information, the prevention of costly mistakes, the identification of issues and the formulation of mitigation measures, all leading to efficient spatial planning.

7. Mr. Jendroška presented the main interlinkages, synergies and complementarities among the relevant ECE instruments in the field of land-use and safety. In particular, there were parallels between the Industrial Accidents Convention and the Protocol on SEA regarding land-use planning, and between the Industrial Accidents Convention and the Espoo Convention regarding the siting and modification of hazardous activities. In that respect, he guided participants through the steps of the environmental impact assessment (EIA) or SEA procedure (screening, scoping, etc.), as relevant, and noted how industrial accidents and safety concerns could be best addressed, stressing the establishment of procedural safeguards, including the enhanced role of competent safety authorities. The key role of the Aarhus Convention in matters of information flow, public participation and access to justice was also mentioned.

8. The lead consultant, Mr. van Wijk, and experts, Mr. Jendroška and Mr. J. Dusik, then proceeded with a comprehensive presentation of the related guidance under preparation.

9. Mr. van Wijk informed participants about the mandate, methodology and structure of the draft guidance, and the timeline for its completion in summer 2016. The legal and policy aspects of the draft guidance were shaped by the main findings of the survey that had taken place from December 2015 to February 2016, while the technical parts of the guidance drew on information on Parties' approaches to risk assessment. It had been deemed necessary to make a distinction between the legal and policy parts of the guidance and the technical aspects of the guidance, and their respective annexes.

10. Mr. Dusik, who participated in part of the workshop via audio conference, and Mr. Jendroška presented the legal and policy part of the guidance.

11. Mr. Dusik spoke about the good practice developed in applying SEA procedures to land-use plans. Land-use planning was the most streamlined process across the ECE region and the number of SEA procedures applied to land-use planning (new plans and their modifications) was considerably larger than in any other sector of the economy. He went through the various land-use planning and SEA processes and provided insights on how to best coordinate and align industrial safety considerations in the assessment carried out through the SEA procedure on land-use planning.

12. Mr. Jendroška noted that there was a difference between the planning or siting of hazardous activities and their modifications and developments in the vicinity of hazardous activities. In either case, drawing on the general obligations to develop and implement policies and strategies, and to take appropriate measures to improve the prevention of, preparedness for and response to industrial accidents, he distinguished between substantive and procedural obligations for the Parties to ensure that safety concerns from the Industrial Accidents Convention were duly taken into account in the impact assessment in land-use planning or siting decision-making. A substantive obligation, for instance, would be one where there was a legal requirement that safety distances had to be taken into account by planning authorities. A procedural obligation, for example, would be a legal requirement that the safety authorities had to be involved directly in the decision-making. In conclusion, he pointed out that industrial safety issues (annexes V and VI to the Industrial Accidents Convention) formed screening criteria during the EIA or SEA procedure, that safety authorities participated in all stages of the procedure and that there needed to be a coordinated flow of information among authorities and with the public.

13. Mr. van Wijk elaborated on the technical aspects of the guidance. The methods employed by countries in the ECE region to verify whether the level of risk was appropriate and acceptable for the different land-use zones existing in the vicinity of a hazardous activity could be broadly grouped into four main approaches, i.e.: the deterministic (Germany, Republic of Moldova); the consequence-based (France before the Toulouse

accident in 2001, Serbia); the risk-based (Netherlands, United Kingdom of Great Britain and Northern Ireland); and the semi-quantitative (or semi-probabilistic) (Italy, France). Some countries used a combination of two or more methods. Different approaches would lead to different outcomes. Especially in transboundary matters, which were relevant under the ECE instruments, the concerned countries should exchange information on models and data for risk analysis and land-use compatibility criteria.

14. In the afternoon session, Mr. M. Struckl (Austria), Chair of the ad hoc small group of experts on land-use planning established under the Working Group on Development, gave an overview of experiences and lessons learned on land-use planning and siting in the European Union, where member States had to transpose and apply the Seveso III,¹ EIA² and SEA³ Directives, all requiring some form of environmental or risk assessment. Although there had already been 20 years of experience in applying the Seveso Directive, risk indicators and risk criteria were still not harmonized at the European level, nor at the international level for that matter. Land-use planning had a strong political component and was a sensitive topic (e.g., owing to issues of value loss). There was no indication that European Union member States would agree to revise their established systems. In his view, there was no single best practice in land-use planning risk assessment methodology.

15. Country representatives then had an opportunity to present their experiences and lessons learned in applying the Protocol on SEA, the Espoo Convention and the Industrial Accidents Convention with regard to land-use planning and siting, based on the good practices identified through the survey.

16. Ms. D. Käger (Estonia) presented the role of the Rescue Board — i.e., the authority responsible for assessing safety in matters of fire and chemicals — in land-use planning decisions as a good example of inter-agency cooperation and the legal requirement that safety authorities had to be consulted and could deny approval of a decision. Ms. M. do Carmo Figueria (Portugal) described the approach of Portugal in integrating major accidents prevention in the SEA for land-use plans, with the development of national guidelines in that respect, thus allowing for effective inter-agency coordination and integrated decision-making in impact assessment procedures for land-use planning or siting with safety concerns arising from hazardous activities.

17. Ms. A. Raap (Netherlands) and Mr. L. Prevors (France) provided more details on their countries' approaches to assessing risk, following the risk-based and semi-quantitative methodologies, respectively (see para. 13 above). Ms. Raap explained how the Netherlands, given its geopolitical situation, had developed legislation and practice to incorporate risk assessment into SEA and EIA for decision-making in land-use planning, and the role of distances for safety. Mr. Prevors provided an extensive overview of the legislation and regulations for the integration of safety considerations into land-use planning.

18. Mr. M. Bogaert (Belgium) presented the approach of the Flanders Region. He provided information about the institutional and legal elements regarding the integration of safety into land-use planning. He explained the role of the safety authority, the consideration according to the law of industrial activities ("Seveso test") in the screening

¹ Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC.

² Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014.

³ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

and scoping phases of the SEA procedure, the references of the SEA report to the relevant safety report(s), and the public participation, consultations and transboundary procedures. He also explained the risk-based approach followed, highlighting the good cooperation of the land-use planning and safety authorities and also the need for improved communication with real estate developers.

19. Ms. S. Stirbu (Republic of Moldova) presented the quite elaborate national legislation on the application of safety distances and definition of safety zones, with a focus on areas and water protection strips, rivers and water basins. Finally, Ms. S. Milutinovic (Serbia) described the national legal framework, the role of the competent authorities in prevention and emergency preparedness and those consulted in the EIA or SEA procedure. She also explained how industrial safety considerations were integrated into the land-use planning by means of SEA, EIA or a separate assessment of industrial safety. Safety distances, consultations, a better understanding of the EIA and SEA procedures and cooperation between the land-use planning and safety authorities still needed to be addressed for enhanced integration of safety considerations in impact assessment.

20. A presentation was also delivered by Ms. Kornilovich (Russian Federation) with regard to State land supervision in the Russian Federation. To facilitate the further exchange of experience presented and mainstream input to the draft guidance, Mr. Judd moderated a discussion in the afternoon session.

III. Conclusions by the co-Chairs and input for the draft guidance

21. Mr. Dijkens presented the conclusions of the discussions, including directions for the consultants regarding the further development of the draft guidance. It was acknowledged that important linkages existed among the ECE instruments. Participants agreed that the workshop provided an opportunity for experts at the national level (especially national focal points under the relevant instruments) to cooperate and jointly reflect on national law and practice in implementing international obligations. Participants considered it useful to continue to exchange experiences and good practice on legal and policy aspects of the implementation of the legal instruments and the relevant technical aspects, and also to promote the implementation of the guidance, once finalized.

22. On the legal and policy aspects, although several Parties had integrated industrial safety considerations into SEA or EIA, it became clear that more work was required to better integrate industrial safety considerations into SEA or EIA for land-use planning and/or siting, where feasible. Moreover, the participants recognized the need to improve cooperation and consultation among land-use planners, environmental assessment experts and industrial safety specialists.

23. Some of the challenges mentioned included, but were not limited to, a lack of or low awareness about the need to take hazards and risks of industrial accidents into account in the decision-making for land-use and siting, a lack of coordination among the authorities, complicated legislation and little experience. Among the good practices mentioned were the formal inclusion of Industrial Accidents Convention considerations in the different stages of the EIA or SEA procedures, increased coordination among all competent authorities and a coordinated or a single approach in carrying out public participation or transboundary procedures. Countries were invited to apply the good practices to the extent possible and according to their national circumstances.

24. On the technical aspects, participants agreed that the different methodologies in risk analysis led to different outcomes. In transboundary procedures, the countries involved

should exchange information on the risk analysis used for evaluating industrial accident hazards.

25. At the end of the workshop, participants provided additional feedback on the draft guidance to be taken up by the consultants in its further development and finalization. Participants were invited to provide their written comments by the beginning of May 2016.
