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## Economic Commission for Europe

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

#### Tenth meeting

Geneva, 4–6 December 2018

Item 12 (a) of the provisional agenda

#### Activities of the Working Group on Implementation

## Activities of the Working Group on Implementation in 2017–2018

### Note prepared by the Chair and the Vice-Chairs of the Working Group on Implementation

#### *Summary*

At its ninth meeting (Ljubljana, 28–30 November 2016), the Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents adopted amended terms of reference for the Working Group on Implementation (ECE/CP.TEIA/32, para. 52 and ECE/CP.TEIA/32/Add.1, decision 2016/3). Among other things, this extended the term of office of members of the Working Group and strengthened the Group's mandate to engage with countries on implementation issues. At the same meeting, the Conference of the Parties also adopted a decision on reporting requirements under the Convention (ECE/CP.TEIA/32/Add.1, decision 2016/2), in which it requested the Working Group to prepare the next overall report on the implementation of the Convention for review and adoption by the Conference of the Parties at its eleventh meeting in 2020, in view of the amended length of the reporting period.

The present report sets out the progress made and activities carried out by the Working Group during the biennium 2017–2018, particularly with a view to facilitating both reporting on implementation of the Convention and the Working Group's engagement with Parties, committed countries and other reporting countries. Annexed to the report is a draft template for the notification of hazardous activities. The Conference of the Parties is invited to take note of the report and its annex and to consider recommending the draft template for use by Parties and other countries.

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## Introduction

1. The present report presents the work of the Working Group on Implementation during the biennium 2017–2018 and the status of completion of the tasks entrusted to it by the Conference of the Parties to the United Nations Economic Commission for Europe (ECE) Convention on the Transboundary Effects of Industrial Accidents (Industrial Accidents Convention) at its ninth meeting; see ECE/CP.TEIA/32).
2. During the biennium 2017–2018, the Working Group held the following five meetings:
  - (a) Thirty-second meeting (Geneva, 31 January 2017), as a joint meeting with the Bureau;
  - (b) Thirty-third meeting (Geneva, 1 February 2017);
  - (c) Thirty-fourth meeting (Stockholm, 26–27 September 2017);
  - (d) Thirty-fifth meeting (Geneva, 20–21 February 2018); and
  - (e) Thirty-sixth meeting (Munich, Germany, 13–14 June 2018).
3. At its ninth meeting, the Conference of the Parties elected or re-elected the following members of the Working Group for the period 2017–2020: Mr. Buljan (Croatia); Mr. Chukharev (Belarus); Ms. Fridh (Sweden); Mr. Gonzalez (Switzerland); Mr. Iberl (Germany); Ms. McCann (United Kingdom); Ms. Milutinovic (Serbia); Ms. Tsarina (Russian Federation); Ms. Vizbule (Latvia); and Mr. Westerbeek (Netherlands). At its thirty-third meeting, the Working Group elected Mr. Iberl as its Chair and Mr. Chukharev and Mr. Gonzalez as its first and second Vice-Chairs, respectively, for the period 2017–2020.
4. During the biennium 2017–2018, the Working Group, pursuant to its amended terms of reference, engaged with Parties, committed countries and other reporting countries and explored possibilities to facilitate reporting on implementation of the Convention. Further information on progress in that regard is provided in the following sections of the present report.

## **I. Support for Parties, committed countries and other reporting countries**

### **A. Engagement with countries on implementation issues and a more rigorous approach to monitoring of the Assistance Programme**

5. The Working Group focused on the development and implementation of an engagement strategy in order to reach out increasingly and more systematically to Assistance Programme beneficiary countries on issues related to implementation of the Convention. To that end, it:
  - (a) Divided the four ECE subregions (the Caucasus, Central Asia, Eastern Europe and South-Eastern Europe) among its members in order to strengthen and improve monitoring of the Assistance Programme. It also prepared the country dossiers, which contain comprehensive data on implementation of the Convention and relevant assistance projects, based on a template developed by the Central Asia subgroup. The members in charge of each subregion placed in the dossiers all relevant information on the countries under their supervision, including the country's competent authority and focal point, and its point of contact for the Industrial Accident Notification (IAN) system; participation in

meetings of the Conference of the Parties; submission of national implementation reports, self-assessments and action plans and progress in their implementation; Assistance Programme activities; comments and analyses and follow-up thereto; and the engagement strategy for the country;

(b) Developed and agreed on a modus operandi for pursuing and strengthening its cooperation with Parties, committed countries under the Convention's Assistance Programme and other reporting countries, in accordance with its amended terms of reference (see annex I to the present report);

(c) Conducted teleconferences with the focal points for Albania (at its thirty-fifth meeting) and for Armenia and the Republic of Moldova (at its thirty-sixth meeting). This gave the Working Group a better understanding of the status of implementation in those countries, including documentation submitted under the Assistance Programme (self-assessments, action plans and project proposals).

## **B. Effectiveness of the Assistance Programme**

6. At its ninth meeting, the Conference of the Parties had endorsed three steps aimed at increasing the effectiveness of the Assistance Programme (ECE/CP.TEIA/32, para. 62). In Step 2, the Bureau and the Working Group had asked the secretariat to request high-level feedback from beneficiary countries on their progress and specific assistance needs. In May 2017, the secretariat had sent the high-level representatives of 16 countries official letters and subsequent reminders, to which 10 replies were received. The Working Group's analysis of and conclusions regarding the responses, as well as information gathered at meetings and from other sources (such as focal points and teleconferences) are summarized in annex II to the present report.

## **C. Notification of hazardous activities**

7. In light of the needs expressed by beneficiary countries of the Assistance Programme at national expert group meetings under the Project on strengthening the implementation of and accession to the UNECE Convention on the Transboundary Effects of Industrial Accidents in Central Asia and at the subregional workshops for South-Eastern Europe (Zagreb, 21–23 February 2017) and for Eastern Europe and the Caucasus (Minsk, 11–13 April 2017) on industrial accidents prevention, the Working Group endorsed a draft template for the notification of hazardous activities to potentially affected Parties (annex III to the present report). The draft template was developed jointly by the Working Group, experts who were preparing an implementation guide as part of the abovementioned project, and the secretariat. The Conference of the Parties is invited to take note of the draft template and to consider recommending its use by Parties and other countries.

## **II. Reporting on implementation of the Convention**

8. At its thirty-third meeting, the Working Group decided to analyse the implementation reports from the eighth reporting round that had been submitted after the deadline. It discussed those reports at its thirty-fourth meeting and concluded that their analysis had been extremely useful in light of the Group's strengthened mandate to engage with Parties, committed countries and other reporting countries. It particularly welcomed the implementation report submitted by the European Union and expressed the hope that similar reports would be submitted in the future. It regretted, however, that Bosnia and

Herzegovina, as the only Party, had not been in a position to submit an implementation report in the eighth reporting round.

9. During the biennium 2017–2018, the Working Group also considered ways to further facilitate reporting under the Convention through the use of online tools. Various options were explored, their advantages and disadvantages were analysed and some of them were tested with the support of the secretariat. In light of the sensitive nature of the data, the lack of dedicated funding and the amount of time required, the Group concluded that it would be impossible to develop an online reporting system in time for the next reporting round. It therefore decided to continue to send the report forms by email, presumably in early 2019, while exploring possibilities for the establishment of an online system for future reporting cycles.

### **III. Other issues**

10. Paragraph 1 of the terms of reference for the Working Group states: “In case a representative of a Party is unable to complete his or her term of office or to perform his or her functions, the Party may appoint another representative. In this case the Party shall notify the Chair and the secretariat without undue delay and at least 14 days before the next meeting”. Mr. Westerbeek (Netherlands) had attended only one of the five meetings of the Working Group during the biennium 2017–2018. Having been made aware of this situation by the Chair of the Convention’s Bureau, the Chair of the Working Group and the secretariat, the Government of the Netherlands is in the process of appointing a member to the Working Group who will regularly attend its meetings and fulfil the role of a nominated member.

## Annexes

### Annex I

#### **Draft modus operandi for the Working Group on Implementation's engagement with Parties, committed countries and other reporting countries, following the review carried out at its thirty-fifth meeting (Geneva, 20–21 February 2018)**

##### **I. Introduction and mandate**

1. At its ninth meeting (Ljubljana, 28–30 November 2016), the Conference of the Parties adopted amended terms of reference strengthening the mandate of the Working Group on Implementation. According to the amended terms of reference (ECE/CP.TEIA/32/Add.1, decision 2016/3), the members of the Working Group shall serve for one (four-year) term of office, which shall commence at the end of an ordinary meeting of the Conference of the Parties and shall run until its second ordinary meeting thereafter. In addition, the Working Group's responsibilities have been expressly expanded to include, among other things, engagement with Parties, committed countries and other reporting countries on implementation issues and monitoring of the Assistance Programme and its Strategic Approach. According to paragraph 4 of its terms of reference, the Working Group shall:

(a) Monitor the implementation of the Convention;

[...]

(d) Engage with Parties, committed countries and other reporting countries where the Working Group becomes aware of possible difficulties in the implementation of the Convention, to understand the situation in these countries more accurately and to provide advice and make recommendations on the implementation of the Convention, share good practices and draw attention to existing guidance and tools;

(e) Engage with Parties, committed countries and other reporting countries, based on the review of the national implementation reports, to gather information about innovations, good practices, national guidelines and other materials of interest;

[...]

(g) Monitor the Convention's Assistance Programme, including the application of the Strategic Approach, and review national self-assessments and action plans;

(h) Review the substance and eligibility of project proposals submitted within the framework of the Assistance Programme and its Strategic Approach;

(i) Monitor the progress of assistance activities within the programme of work under the Convention and, if no progress is made in the implementation of the Convention, request the countries benefitting from such activities to provide an explanation;

[...].

2. Paragraph 5 of the terms of reference states: "Parties, committed countries and other reporting countries will respond on a voluntary basis to requests by the Working Group further to items 4 (d) and (e) above".

3. The present document sets out basic rules and procedures for the Working Group's engagement with Parties, committed countries and other reporting countries on the aforementioned issues, subject to the availability of resources. It is intended to be a living document and may be amended at any time if the Working Group considers it useful to do so.

## **II. Objectives and nature**

4. The objective of the Working Group's engagement with Parties, committed countries and other reporting countries is to assist them in their efforts to implement the provisions of the Convention. Its engagement consists of the provision of advice and assistance, which may vary depending on the specific conditions and needs of the country concerned and may address scientific, technical, legal and administrative issues.

5. This engagement does not by any means constitute a compliance review procedure. It is not inquisitorial and its objective is not to establish whether a country is compliant or non-compliant with the Convention's provisions. It is guided by simple, facilitative, non-adversarial and cooperative principles and by the understanding that countries respond to requests by the Working Group on a voluntary basis.

6. The approach is informal, beginning with emails from members of the Working Group with copies sent to the secretariat. A more formal approach could be pursued where deemed beneficial in order to draw the attention of national officials to the request for engagement. In exceptional cases, the Working Group may request the secretariat to send official letters to its counterparts at the appropriate level of national administrations. These cases may include but are not limited to issues that require high-level decision-making or are sensitive for the countries concerned.

## **III. Criteria for the Working Group's engagement with countries**

7. Decisions as to which country should be invited to engage with the Working Group may be taken at its regular meetings or by email in accordance with the following criteria:

### **1. Implementation of the Convention**

8. The Working Group should focus on countries with a lower level of implementation of the Convention or with implementation difficulties. It may also engage with countries where good progress has been made or where progress has been uneven across the various areas of work under the Convention. When engaging with countries, the Working Group will consider the information at its disposal, including national implementation reports; self-assessments and action plans; reports on workshops, exercises and inspections; contacts with national focal points; and other documents.

### **2. Pace of progress following the provision of assistance**

9. The Working Group should focus on countries that have made little or no progress in implementing the Convention following the provision of assistance. It may also engage with countries that have made or are making steady progress in order to encourage the relevant national authorities to pursue their ongoing efforts.

### **3. Availability of information on countries' implementation of the Convention**

#### **(a) Availability of information under the Strategic Approach**

10. In its monitoring of the use of the Strategic Approach under the Assistance Programme, the Working Group should continue to focus on engaging with those countries that have submitted a self-assessment and/or an action plan on a regular basis or those that have previously submitted a project proposal. Where challenges in implementation of the Strategic Approach are identified, the Working Group should offer to support the countries concerned in their efforts to use the Approach. It may also engage with countries that have not yet submitted any of the aforementioned documents.

#### **(b) Availability of national implementation reports**

11. The Working Group should focus on countries that have submitted national implementation reports on a regular basis. It should also consider engaging with countries that have submitted implementation reports sporadically or have provided only limited information in their reports and those that had difficulties to provide the information requested or to understand some of the questions.

### **4. Compilation of good practices**

12. The Working Group should engage with countries in order to gather additional information on their innovations, good practices, national guidelines and other materials of interest based on national implementation reports and on information shared by Parties, presented at meetings of the Working Group or gathered within the framework of other meetings and workshops under the Convention and appropriate organizations.

### **5. Request for assistance**

13. The Working Group should focus on countries which have requested assistance in implementing the provisions of the Convention.

### **6. Other important criteria**

14. The Working Group may decide to engage with other countries in order to support their implementation of the Convention where warranted by important developments concerning or within these countries.

## **IV. Modalities for engaging with countries**

15. Engagement shall, in most cases, take the form of a dialogue with focal points via videoconference or teleconference during meetings of the Working Group. It may also entail contacts by email, telephone or any other means considered suitable.

16. Based on a decision of the Working Group, the secretariat should email the focal point(s) of the country concerned and schedule the videoconference or teleconference with them. The Group should be responsible for determining, together with the focal point(s), the content and substantive issues to be discussed. Once a country has confirmed its availability, the Working Group should email the national focal point(s), with a copy sent to the secretariat, to set the agenda of the virtual meeting and consult the focal point(s) regarding the other competent authorities (if any) to be included in the discussion.

17. During bienniums in which the Working Group reviews national implementation reports in order to prepare its report on the implementation of the Convention and its decision on strengthening the implementation of the Convention, its engagement with

countries should focus on the information provided by reporting countries. During other bienniums, its engagement should focus on countries' implementation of the Strategic Approach and on the provision of advice and recommendations.

## **V. Advice and recommendations**

18. When the Working Group becomes aware of possible difficulties in implementation of the Convention, it should provide advice and make recommendations to countries, for example, during teleconferences or videoconferences and by email. These contacts may include, among other things:

- Sharing information on the experience of Parties or other countries in implementing the Convention
- Informing the country about upcoming activities under the Convention and encouraging its participation
- Facilitating contacts with focal points or other counterparts in countries that have faced similar challenges with a view to the transfer of knowledge
- Supporting the development of and advocacy for project proposals that address the country's needs and providing advice on project implementation upon request
- Recommending and supporting or taking part in a working visit or (high-level) mission
- Providing advice on policymaking; institutional coordination; the development of self-assessments, action plans and project proposals; and the implementation of assistance activities
- Preparing the Working Group's report on the implementation of the Convention and its decision on strengthening the implementation of the Convention for adoption by the Conference of the Parties.

## **VI. Conflict of interest**

19. With respect to subregional monitoring and review of the Strategic Approach, members of the Working Group should avoid direct or indirect conflicts of interest. To that end, self-assessments, action plans, project proposals and other documents submitted by a country should not be reviewed by a representative of that country.

## **VII. Final Provisions**

20. The working language of correspondence should normally be English. It may also be Russian if the procedure concerns Russian-speaking countries and the capacities of the Working Group or the secretariat allow for this option.

## Annex II

### **Conclusions and country needs drawn from the replies to the high-level letter of May 2017 by beneficiary countries under the Assistance Programme and from other sources**

- (a) Ten of the 16 countries that were requested to provide high-level feedback on their progress and specific assistance needs replied prior to the thirty-sixth meeting of the Working Group (Munich, Germany, 13–14 June 2018).
- (b) Belarus, Serbia and Uzbekistan provided detailed descriptions of how they had used the tools provided and the capacity-building events organized within the framework of the Convention – i.e. the indicators and criteria contained in the note by the Bureau entitled *Benchmarks for the implementation of the Convention on the Transboundary Effects of Industrial Accidents (ECE/CP.TEIA/2010/6)*;<sup>1</sup> the Strategic Approach for the Assistance Programme (ECE/CP.TEIA/2008/5) with its self-assessments and action plans; and the organization of seminars, workshops, training sessions and fact-finding and high-level awareness-raising meetings – in order to improve their legislation and institutional capacities in areas related to implementation of the Convention. The three countries considered that cross-border and multilateral cooperation were particularly important in that regard.
- (c) Bosnia and Herzegovina and the Republic of Moldova reported that they had not appointed, respectively, a competent authority and a focal point under the Convention.
- (d) Georgia reported on its participation in twinning projects aimed at bringing its domestic law into line with European Union legislation, including 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 (the Seveso III Directive) and Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (the CLP Regulation), and declared its willingness to ratify the Industrial Accidents Convention.
- (e) Kyrgyzstan and Tajikistan presented the amendments to domestic law adopted after their participation in Assistance Programme seminars. Both countries stressed the need to strengthen regional cooperation and the exchange of information and knowledge.
- (f) Ukraine reported on the Project on hazard and crisis management in the Danube Delta (2011–2015) involving the Republic of Moldova, Romania and Ukraine,<sup>2</sup> including a 2017 proposal for a follow-up project, and on an upcoming high-level awareness-raising meeting (Kyiv, 19 April 2018).
- (g) In addition, the following country needs were expressed:

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<sup>1</sup> A user-friendly version entitled “Benchmarks in the implementation of the UNECE Convention on the Transboundary Effects of Industrial Accidents” is available at <http://www.unece.org/env/teia/ap/tools.html>.

<sup>2</sup> [www.unece.org/env/teia/ap/ddp.html](http://www.unece.org/env/teia/ap/ddp.html).

- i. Georgia: training of trainers in several fields (e.g. on risk assessment and conducting inspections) and sharing experience (e.g. on the preparation of safety reports and the implementation of accident prevention policies);
  - ii. Kyrgyzstan: organization of a subregional seminar in order to exchange experience with regional partners (scheduled to be held in 2019).
  - iii. Serbia: training on the notification of hazardous activities;
  - iv. The Former Yugoslav Republic of Macedonia: practical implementation of operative standards under the Industrial Accident Notification System and organization of a study tour to a European Union country on harmonization of the provisions of the Seveso III Directive with those of the Industrial Accidents Convention;
- (h) The following needs are drawn from comments made at meetings, during teleconferences and in other forms of communication with national focal points:
- i. Azerbaijan, the Republic of Moldova, Serbia and, informally, other countries: strengthened governance and inter-agency cooperation and the establishment of national policy dialogues;
  - ii. Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan: improved safety of tailings management facilities and prevention of accidental water pollution;
  - iii. Countries from the four ECE subregions (South-Eastern Europe, Eastern Europe, the Caucasus and Central Asia): further enhancement of transboundary cooperation.

## **Annex III**

### **Notification of hazardous activities in accordance with article 4 of and annex III to the ECE Convention on the Transboundary Effects of Industrial Accidents**

*TEMPLATE*

**Sender:**

**Receiver:**

**Date:**

- 1. Please use the following form to provide notification of hazardous activities (proposed or existing)**

## NOTIFICATION OF HAZARDOUS ACTIVITIES

| No. | Hazardous activity <sup>1</sup> | Full name and address of the operator of the hazardous activity (proposed or existing) | Location (address) of the hazardous production facilities and distance from the border of the potentially affected country (air or water path, as appropriate) <sup>2</sup> | Name of the hazardous substances / categories of substances or mixtures in quantities at or in excess of the threshold quantities listed in Annex I to the Convention | Possible transboundary effect <sup>3</sup> in the event of an industrial accident, pursuant to annex III, paragraph 3 (a), to the Convention |
|-----|---------------------------------|--|---|---|--|
| 1   |                                 | 1.1  | 1.1.1   | A)  |  |
|     |                                 |  |   | B)  |  |
|     |                                 |  |   | ...   |  |
|     |                                 |  | 1.1.2   | A)  |  |
|     |                                 |  |   | ...   |  |
| 1.2 | 1.2.1                           | ...  | ...   |   |  |
|     |                                 | A)   |   |   |  |

<sup>1</sup> Article 1 of the Convention defines “hazardous activity” as “any activity in which one or more hazardous substances are present or may be present in quantities at or in excess of the threshold quantities listed in Annex I hereto, and which is capable of causing transboundary effects” and “operator” as “any natural or legal person, including public authorities, in charge of an activity, e.g. supervising, planning to carry out or carrying out an activity”.

<sup>2</sup> Location criteria for identification of possible transboundary effects of industrial accidents are provided in the Guidelines for Location Criteria, adopted through decision 2000/3 (ECE/CP.TEIA/2, annex IV) as amended by decision 2004/2 (ECE/CP.TEIA/12, annex II). The criteria should be applied without prejudice to article 5 of the Convention on voluntary extension, which stipulates that “[...] Where the Parties concerned so agree, this Convention, or any part thereof, shall apply to the activity in question as if it were a hazardous activity”.

<sup>3</sup> Article 1 of the Convention defines “effects” as “any direct or indirect, immediate or delayed adverse consequences caused by an industrial accident on, inter alia:

- (i) Human beings, flora and fauna;
- (ii) Soil, water, air and landscape;
- (iii) The interaction between the factors in (i) and (ii);
- (iv) Material assets and cultural heritage, including historical monuments”

and “transboundary effects” as “serious effects within the jurisdiction of a Party as a result of an industrial accident occurring within the jurisdiction of another Party”.

|     |     |       |     |
|-----|-----|-------|-----|
|     | ... | ...   | ... |
| 2   | 2.1 | 2.1.1 | A)  |
|     |     |       | B)  |
|     |     |       | ... |
|     | 2.2 | 2.2.1 | A)  |
|     |     |       | ... |
|     | ... | ...   | ... |
| ... |     |       |     |

**2. Please reply to the sender within [1/2/3] months of receipt of this notification, acknowledging its receipt and indicating whether you intend to enter into consultation pursuant to paragraph 4 of annex III to the Convention.**