



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.5.2003
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Proposal for a

COUNCIL DECISION

**on the signature, on behalf of the European Community of the Protocol on civil liability
and compensation for damage caused by the transboundary effects of industrial
accidents on transboundary waters**

(presented by the Commission)

EXPLANATORY MEMORANDUM

Following the Baia Mare cyanide spill in Romania in January 2000 and subsequent initiatives taken by the Government of Switzerland, the governing bodies of the 1992 Helsinki UN/ECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (“Water Protection Convention”) and of the 1992 Helsinki UN/ECE Convention on the Transboundary Effects of Industrial Accidents (“Industrial Accidents Convention”), decided, that an intergovernmental negotiation process be entered into aimed at adopting a legally binding instrument on civil liability for transboundary damage caused by hazardous activities, within the scope of both Conventions.

Negotiations on this legally binding instrument (hereafter the protocol) on civil liability and compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters began in 2001 and completed in February 2003 in the framework of the UN/ECE. Acceding countries and Candidate countries participated in the negotiations. The Protocol is due to be open for signature at the fifth Ministerial Conference ‘Environment for Europe’ to be held in Kiev in May 2003.

The value of applying the principles of that environmental damage should, as a priority, be rectified at its source, of preventive action to be taken and of “polluter should pay” are essential to environmental protection and have been widely recognised as a basis for international and national liability regimes.

The Protocol intends to regulate civil liability for damage resulting from cases that fall under the scope of the two Conventions mentioned above. Thus, the objective of the protocol is to provide for a comprehensive civil liability regime and for adequate and prompt compensation for damage caused by transboundary effects of industrial accidents on transboundary waters suffered in a Party other than the Party where the industrial accident has occurred.

The Protocol grants legal standing before a court of law against the polluter and third party that caused the damage. The notion of damage covers traditional damage (personal injury and property damage), as well as environmental damage (as compensation for the costs of reinstatement and response measures). For this purpose the protocol establishes financial limits to the operator’s strict liability and unlimited fault-based liability complemented by a system of compulsory financial security.

There is also question of granting access to information and accordingly access to justice, in order to promote the objectives of the protocol (Article 8.5). In this respect the protocol is fully compatible with existing EC legislation on access to environmental information¹.

As far as procedures are concerned, the protocol contains, *inter alia*, provisions dealing with competent courts (Article 13), arbitration (art.14), Lis – pendens and related actions (Article 15) and mutual recognition and enforcement of judgements (Article 18).

The Protocol foresees a specific article laying down the relationship of the Protocol and existing EC rules on matters falling under its exclusive competence (jurisdiction, related

¹ *Official Journal of the European Union* L 41, 14/2/2003, p. 26. Directive 2003/4/EC of 28 January 2003 on public access to environmental information

actions, recognition and enforcement of judgments). In these matters EC rules will take precedence over the application of the Protocol provisions in the conditions foreseen under the Protocol itself.

It should also be noted that the protocol aims to avoid discriminatory treatment between national and transboundary victims for the same incident by granting the later victims at their request, a "*choice of law*".

The European Community is a contracting party to both the Water Protection Convention and Industrial Accidents Convention. As all Parties, the Community is bound by their common provision, by which "The Parties shall support appropriate international efforts to elaborate rules, criteria and procedures in the field of responsibility and liability".

As a result of these factors, and because the Protocol will strengthen existing measures concerning safety and prevention of damage caused by industrial accidents it will contribute to the achievement and the implementation of the objectives of the environmental policy of the Community, in accordance with Article 174 of the Treaty.

In view of the above considerations, it is appropriate for the Community to sign, subject to subsequent conclusion, the Protocol on civil liability and compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters . It should be noted in this respect that as a Party, the Community would be bound by the Protocol's requirements to the extent that its activities fell within its scope.

Proposal for a

COUNCIL DECISION

on the signature, on behalf of the European Community of the Protocol on civil liability and compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular article 175 paragraph 1 and article 67, in conjunction with article 300 paragraph 2, first sentence of the first subparagraph thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The European Community is a contracting party to both UN/ECE Conventions on the protection and use of transboundary watercourses and international lakes² and the Convention on the Transboundary Effects of Industrial Accidents³. The European Community is bound to their common provision in order to support appropriate international efforts to elaborate rules in the field of liability;
- (2) By virtue of a Council Decision of 24th February 2003, the Commission participated on behalf of the Community, in consultation with the representatives of the Member States, in the negotiations in the open-ended working group on Protocol on civil liability and compensation for damage caused by the transboundary effects of industrial accidents transboundary watercourses;
- (3) As a result of those negotiations the text of the Protocol was finalised on 27th February 2003 and the Protocol will be open for signature on the occasion of the fifth Ministerial Conference 'Environment for Europe' at Kiev, Ukraine, on 21-23 May 2003;
- (4) The Protocol will help to protect the environment by providing for effective application of the principles of that environmental damage should, as a priority, be rectified at its source, of preventive action and of "polluter should pay"; The European Community, in accordance with the Treaty establishing the European Community, and in particular Article 175 (1) thereof, is competent for entering into international agreements, and for

² Official Journal L 186, 05/08/1995 p. 0042 - 0058

³ Official Journal L 326, 03/12/1998 p. 0001 - 0004

implementing the obligations resulting therefrom, which contribute to the pursuit of the objectives listed in Article 174 (1) of the EC Treaty.

- (5) Articles 13, 15 and 18 of the Protocol regulate matters which affect Community rules as laid down in Regulation 44/2001 on jurisdiction and recognition and enforcement of judgements in civil and commercial matters⁴. However the protocol contains necessary provisions enabling the application of existing Community rules instead of the relevant provisions of the Protocol .
- (6) The Commission has negotiated on behalf of the Community an agreement 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 the Convention on the transboundary effects of industrial accidents.
- (7) It is convenient that the Protocol on civil liability and compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters be signed, on behalf of the Community, subject to subsequent conclusion.

HAS DECIDED AS FOLLOWS:

Sole Article

The President of the Council is hereby authorised to designate the person or persons empowered to sign on behalf of the Community, subject to subsequent conclusion, the Protocol on civil liability and compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters, as attached in annex A and to confer upon them the powers necessary for that purpose.

Done at

*For the Council
The President*

⁴ *Official Journal L 12, 16/1/2001 p. 001-0023*

ANNEX A:

**DRAFT PROTOCOL ON CIVIL LIABILITY AND COMPENSATION FOR DAMAGE
CAUSED BY THE TRANSBOUNDARY EFFECTS OF INDUSTRIAL ACCIDENTS ON
TRANSBOUNDARY WATERS**

The Parties to the Protocol,

Recalling the relevant provisions of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, in particular its article 7, and of the Convention on the Transboundary Effects of Industrial Accidents, in particular its article 13,

Having in mind the relevant provisions of principles 13 and 16 of the Rio Declaration on Environment and Development,

Taking into account the polluter pays principle as a general principle of international environmental law, accepted also by the Parties to the above-mentioned Conventions,

Taking note of the UNECE Code of Conduct on Accidental Pollution of Transboundary Inland Waters,

Aware of the risk of damage to human health, property and the environment caused by the transboundary effects of industrial accidents,

Convinced of the need to provide for third-party liability and environmental liability in order to ensure that adequate and prompt compensation is available,

Acknowledging the desirability to review the Protocol at a later stage to broaden its scope of application as appropriate,

Have agreed as follows:

Article 1

Objective

The objective of the present Protocol is to provide for a comprehensive regime for civil liability and for adequate and prompt compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters.

Article 2

Definitions

1. The definitions of terms contained in the Conventions apply to the present Protocol, unless expressly provided otherwise in the present Protocol.
2. For the purposes of the present Protocol:
 - (a) “The Conventions” means the Convention on the Protection and Use of Transboundary Watercourses and International Lakes and the Convention on the Transboundary Effects of Industrial Accidents, done at Helsinki on 17 March 1992;
 - (b) “Protocol” means the present Protocol;
 - (c) “Party” means a Contracting Party to the Protocol;
 - (d) “Damage” means:
 - (i) Loss of life or personal injury;
 - (ii) Loss of, or damage to, property other than property held by the person liable in accordance with the Protocol;
 - (iii) Loss of income directly deriving from an impairment of a legally protected interest in any use of the transboundary waters for economic purposes, incurred as a result of impairment of the transboundary waters, taking into account savings and costs;
 - (iv) The cost of measures of reinstatement of the impaired transboundary waters, limited to the costs of measures actually taken or to be undertaken;
 - (v) The cost of response measures, including any loss or damage caused by such measures, to the extent that the damage was caused by the transboundary effects of an industrial accident on transboundary waters;
 - (e) “Industrial accident” means an event resulting from an uncontrolled development in the course of a hazardous activity:
 - (i) In an installation, including tailing dams, for example during manufacture, use, storage, handling or disposal;
 - (ii) During transportation on the site of a hazardous activity; or
 - (iii) During off-site transportation via pipelines;
 - (f) “Hazardous activity” means 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 and which is capable of causing transboundary effects on transboundary waters and their water uses in the event of an industrial accident;

- (g) “Measures of reinstatement” means any reasonable measures aiming to reinstate or restore damaged or destroyed components of transboundary waters to the conditions that would have existed had the industrial accident not occurred, or, where this is not possible, to introduce, where appropriate, the equivalent of these components into the transboundary waters. Domestic law may indicate who will be entitled to take such measures;
- (h) “Response measures” means any reasonable measures taken by any person, including public authorities, following an industrial accident, to prevent, minimize or mitigate possible loss or damage or to arrange for environmental clean-up. Domestic law may indicate who will be entitled to take such measures;
- (i) “Unit of account” means the special drawing right as defined by the International Monetary Fund.

Article 3

Scope of application

1. The Protocol shall apply to damage caused by the transboundary effects of an industrial accident on transboundary waters.
2. The Protocol shall apply only to damage suffered in a Party other than the Party where the industrial accident has occurred.

Article 4

Strict liability

1. The operator shall be liable for the damage caused by an industrial accident.
2. No liability in accordance with this article shall attach to the operator, if he or she proves that, despite there being in place appropriate safety measures, the damage was:
 - (a) The result of an act of armed conflict, hostilities, civil war or insurrection;
 - (b) The result of a natural phenomenon of exceptional, inevitable, unforeseeable and irresistible character;
 - (c) Wholly the result of compliance with a compulsory measure of a public authority of the Party where the industrial accident has occurred; or
 - (d) Wholly the result of the wrongful intentional conduct of a third party.

3. If the person who has suffered the damage or a person for whom he or she is responsible under domestic law has by his or her own fault caused the damage or contributed to it, the compensation may be reduced or disallowed having regard to all the circumstances.

4. If two or more operators are liable according to this article, the claimant shall have the right to seek full compensation for the damage from any or all of the operators liable. However, the operator who proves that only part of the damage was caused by an industrial accident shall be liable for that part of the damage only.

Article 5

Fault-based liability

Without prejudice to article 4, and in accordance with the relevant rules of applicable domestic law including laws on the liability of servants and agents, any person shall be liable for damage caused or contributed to by his or her wrongful intentional, reckless or negligent acts or omissions.

Article 6

Response measures

1. Subject to any requirement of applicable domestic law and other relevant provisions of the Conventions, the operator shall take, following an industrial accident, all reasonable response measures.

2. Notwithstanding any other provision in the Protocol, any person other than the operator acting for the sole purpose of taking response measures, provided that this person acted reasonably and in accordance with applicable domestic law, is not thereby subject to liability under the Protocol.

Article 7

Right of recourse

1. Any person liable under the Protocol shall be entitled to a right of recourse in accordance with the rules of procedure of the competent court or arbitral tribunal established under article 14 against any other person also liable under the Protocol.

2. Nothing in the Protocol shall prejudice any right of recourse to which the person liable might be entitled either as expressly provided for in contractual arrangements or pursuant to the law of the competent court.

Article 8

Implementation

1. The Parties shall adopt any legislative, regulatory and administrative measures that may be necessary to implement the Protocol.
2. In order to promote transparency, the Parties shall inform the secretariat, as defined in article 22, of any such measures taken to implement the Protocol.
3. The provisions of the Protocol and measures adopted under paragraph 1 shall be applied among the Parties without discrimination based on nationality, domicile or residence.
4. The Parties shall provide for close cooperation in order to promote the implementation of the Protocol according to their obligations under international law.
5. Without prejudice to existing international obligations, the Parties shall provide for access to information and access to justice accordingly, with due regard to the legitimate interest of the person holding the information, in order to promote the objective of the Protocol.

Article 9

Financial limits

1. The liability under article 4 is limited to the amounts specified in part one of annex II. Such limits shall not include any interests or costs awarded by the competent court.
2. The limits of liability specified in part one of annex II shall be reviewed by the Meeting of the Parties on a regular basis taking into account the risks of hazardous activities as well as the nature, quantity and properties of the hazardous substances that are present or may be present in such activities.
3. There shall be no financial limit on liability under article 5.

Article 10

Time limit of liability

1. Claims for compensation under the Protocol shall not be admissible unless they are brought within fifteen years from the date of the industrial accident.
2. Claims for compensation under the Protocol shall not be admissible unless they are brought within three years from the date that the claimant knew or ought reasonably to have known of the damage and of the person liable, provided that the time limits established pursuant to paragraph 1 are not exceeded.
3. Where the industrial accident consists of a series of occurrences having the same origin, time limits established pursuant to this article shall run from the date of the last of such occurrences. Where the industrial accident consists of a continuous occurrence, such time limits shall run from the end of that continuous occurrence.

Article 11

Financial security

1. The operator shall ensure that liability under article 4 for amounts not less than the minimum limits for financial securities specified in part two of annex II is and shall remain covered by financial security such as insurance, bonds or other financial guarantees including financial mechanisms providing compensation in the event of insolvency. In addition, Parties may fulfil their obligation under this paragraph with respect to State-owned operators by a declaration of self-insurance.
2. The minimum limits for financial securities specified in part two of annex II shall be reviewed by the Meeting of the Parties on a regular basis taking into account the risks of hazardous activities as well as the nature, quantity and properties of the hazardous substances that are present or may be present in such activities.

3. Any claim under the Protocol may be asserted directly against any person providing financial cover under paragraph 1. The insurer or the person providing the financial cover shall have the right to require the person liable under article 4 to be joined in the proceedings. Insurers and persons providing financial cover may invoke the defences that the person liable under article 4 would be entitled to invoke. Nothing in this paragraph shall prevent the use of deductibles or co-payments as between the insurer and the insured, but the failure of the insured to pay any deductible or co-payment shall not be a defence against the person who has suffered the damage.

4. Notwithstanding paragraph 3, a Party shall by written notification to the Depositary at the time of signature, ratification, approval of or accession to the Protocol, indicate if it does not provide for a right to bring a direct action pursuant to paragraph 3. The secretariat shall maintain a record of the Parties that have given notification pursuant to this paragraph.

Article 12

International responsibility of States

The Protocol shall not affect the rights and obligations of the Parties under the rules of general international law with respect to the international responsibility of States.

PROCEDURES

Article 13

Competent courts

1. Claims for compensation under the Protocol may be brought in the courts of a Party only where:

- (a) The damage was suffered;
- (b) The industrial accident occurred; or

(c) The defendant has his or her habitual residence, or, if the defendant is a company or other legal person or an association of natural or legal persons, where it has its principal place of business, its statutory seat or central administration.

2. Each Party shall ensure that its courts possess the necessary competence to entertain such claims for compensation.

Article 14

Arbitration

In the event of a dispute between persons claiming for damage pursuant to the Protocol and persons liable under the Protocol, and where agreed by both or all parties, the dispute may be submitted to final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment.

Article 15

Lis pendens - related actions

1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Parties, any court other than the court first seized shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established.
2. Where the jurisdiction of the court first seized is established, any court other than the court first seized shall decline jurisdiction in favour of that court.
3. Where related actions are pending in the courts of different Parties, any court other than the court first seized may stay its proceedings.
4. Where these actions are pending at first instance, any court other than the court first seized may also, on the application of one of the parties, decline jurisdiction if the court first seized has jurisdiction over the actions in question and its law permits the consolidation thereof.
5. For the purposes of this article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgements resulting from separate proceedings.

Article 16

Applicable law

1. Subject to paragraph 2, all matters of substance or procedure regarding claims before the competent court which are not specifically regulated in the Protocol shall be governed by the law of that court, including any rules of such law relating to conflict of laws.
2. At the request of the person who has suffered the damage, all matters of substance regarding claims before the competent court shall be governed by the law of the Party where the industrial accident has occurred, as if the damage had been suffered in that Party.

Article 17

Relationship between the Protocol and the applicable domestic law

The Protocol is without prejudice to any rights of persons who have suffered damage or to any measures for the protection or reinstatement of the environment that may be provided under applicable domestic law.

Article 18

Mutual recognition and enforcement of judgements and arbitral awards

1. Any judgement of a court having jurisdiction in accordance with article 13 or any arbitral award which is enforceable in the State of origin of the judgement and is no longer subject to ordinary forms of review shall be recognized in any Party as soon as the formalities required in that Party have been completed, except:

- (a) Where the judgement or arbitral award was obtained by fraud;
- (b) Where the defendant was not given reasonable notice and a fair opportunity to present his or her case;
- (c) Where the judgement or arbitral award is irreconcilable with an earlier judgement or arbitral award validly pronounced in another Party with regard to the same cause of action and the same parties; or
- (d) Where the judgement or arbitral award is contrary to the public policy of the Party in which its recognition is sought.

2. A judgement or arbitral award recognized under paragraph 1 shall be enforceable in each Party as soon as the formalities required in that Party have been completed. The formalities shall not permit the merits of the case to be reopened.

3. The provisions of paragraphs 1 and 2 shall not apply between Parties to an agreement or arrangement in force on the mutual recognition and enforcement of judgements or arbitral awards under which the judgement or arbitral award would be recognizable and enforceable.

Article 19

Relationship between the Protocol and bilateral, multilateral or regional liability agreements

Whenever the provisions of the Protocol and the provisions of a bilateral, multilateral or regional agreement apply to liability and compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters, the Protocol shall not apply provided the other

agreement is in force for the Parties concerned and had been opened for signature when the Protocol was opened for signature, even if the agreement was amended afterwards.

Article 20

Relationship between the Protocol and the rules of the European Community

on jurisdiction, recognition and enforcement of judgements

1. The courts of Parties which are members of the European Community shall apply the relevant Community rules instead of article 13, whenever the defendant is domiciled in a member State of the European Community, or the parties have attributed jurisdiction to a court of a member State of the European Community and one or more of the parties is domiciled in a member State of the European Community.
2. In their mutual relations, Parties which are members of the European Community shall apply the relevant Community rules instead of articles 15 and 18.

FINAL CLAUSES

Article 21

Meeting of the Parties

1. A Meeting of the Parties is hereby established.
2. The first meeting of the Parties shall be convened no later than eighteen months after the date of the entry into force of the Protocol and, if possible, in conjunction with a meeting of the governing body of one of the Conventions. Thereafter, ordinary meetings shall be held at dates to be determined by the Meeting of the Parties to the Protocol and, as appropriate, in conjunction with a meeting of the governing body of one of the Conventions. Extraordinary meetings of the Parties shall be held at such other times as may be deemed necessary by the Meeting of the Parties, or at the written request of any Party, provided that, within six months of such a request being communicated to them by the secretariat, it is supported by at least one third of the Parties.
3. The Parties, at their first meeting, shall adopt by consensus rules of procedure for their meetings and consider any necessary financial provisions.
4. The functions of the Meeting of the Parties shall be:
 - (a) To review the implementation of and compliance with the Protocol including relevant case law provided by the Parties;
 - (b) To consider and adopt, if necessary, proposals for amendment of the Protocol or any annexes and for any new annexes;
 - (c) To consider and undertake any additional action that may be required for the purposes of the Protocol.

Article 22

Secretariat

The Executive Secretary of the Economic Commission for Europe shall carry out the following secretariat functions for the Protocol:

- (a) The convening and preparing of meetings of the Parties;
- (b) The transmission to the Parties of reports and other information received in accordance with the provisions of the Protocol;
- (c) The performance of such other functions as may be determined by the Meeting of the Parties on the basis of available resources.

Article 23

Annexes

Annexes to the Protocol shall constitute an integral part thereof.

Article 24

Amendments to the Protocol

1. Any Party may propose amendments to the Protocol.
2. Proposals for amendments to the Protocol shall be considered at a meeting of the Parties.
3. Any proposed amendment to the Protocol shall be submitted in writing to the secretariat, which shall communicate it at least six months before the meeting at which it is proposed for adoption to all Parties, to other States and regional economic integration organizations that have consented to be bound by the Protocol and for which it has not yet entered into force and to Signatories.
4. The Parties shall make every effort to reach agreement on any proposed amendment to the Protocol by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.
5. For the purposes of this article, “Parties present and voting” means Parties present and casting an affirmative or negative vote.
6. Any amendment to the Protocol adopted in accordance with paragraph 4 shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties, to other States and regional economic integration organizations that have consented to be bound by the Protocol and for which it has not yet entered into force and to Signatories.
7. An amendment, other than one to annex I or II, shall enter into force for those Parties having ratified, accepted or approved it on the ninetieth day after the date of receipt by the Depositary of the instruments of ratification, acceptance or approval by at least three fourths of those which were Parties on the date of its adoption. Thereafter it shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, acceptance or approval of the amendment.
8. In the case of an amendment to annex I or II, a Party that does not accept such an amendment shall so notify the Depositary in writing within twelve months from the date of its circulation by the Depositary. The Depositary shall without delay inform all Parties of any such notification received. A Party may at any time withdraw a previous notification of non-acceptance, whereupon the amendment to annex I or II shall enter into force for that Party.
9. On the expiry of twelve months from the date of its circulation by the Depositary as provided for in paragraph 6, an amendment to annex I or II shall enter into force for those Parties which have not submitted a notification to the Depositary in accordance with paragraph 8,

provided that, at that time, not more than one third of those which were Parties on the date of the adoption of the amendment have submitted such a notification.

10. If an amendment to an annex is directly related to an amendment to the Protocol not referring to annex I, II or III, it shall not enter into force until such time as the amendment to the Protocol enters into force.

Article 25

Right to vote

1. Except as provided for in paragraph 2, each Party shall have one vote.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 26

Settlement of disputes

1. If a dispute arises between two or more Parties about the interpretation or application of the Protocol, they shall seek a solution by negotiation or by any other means of dispute settlement acceptable to the parties to the dispute.
2. When signing, ratifying, accepting, approving or acceding to the Protocol, or at any time thereafter, a Party may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:
 - (a) Submission of the dispute to the International Court of Justice;
 - (b) Arbitration in accordance with the procedure set out in annex III.
3. If the parties to the dispute have accepted both means of dispute settlements referred to in paragraph 2, the dispute may be submitted only to the International Court of Justice, unless the parties to the dispute agree otherwise.

Article 27

Signature

1. The Protocol shall be open for signature at Kiev (Ukraine) from 21 to 23 May 2003 and thereafter at United Nations Headquarters in New York until 31 December 2003 by States members of the Economic Commission for Europe, as well as States having consultative status with the Economic Commission for Europe pursuant to paragraph 8 of Economic and Social Council resolution 36 (IV) of 28 March 1947, and by regional economic integration organizations constituted by sovereign States members of the Economic Commission for Europe to which their member States have transferred competence in respect of matters governed by the Protocol, including the competence to enter into treaties in respect of these matters.

2. Upon signature, a regional economic integration organization shall make a declaration specifying the matters governed by the Protocol in respect of which competence has been transferred to that organization by its member States, the nature and extent of that competence, including the competence to enter into treaties in respect of these matters.

Article 28

Ratification, acceptance, approval and accession

1. The Protocol shall be subject to ratification, acceptance or approval by the signatory States and regional economic integration organizations referred to in article 27, provided that the States and organizations concerned are Parties to one or both of the Conventions.
2. The Protocol shall be open for accession by the States and organizations referred to in article 27, provided that the States and organizations concerned are Parties to one or both of the Conventions.
3. Any other State, not referred to in paragraph 2, that is Member of the United Nations may accede to the Protocol upon approval by the Meeting of the Parties. In its instrument of accession, such a State shall make a declaration stating that approval for its accession to the Protocol had been obtained from the Meeting of the Parties and shall specify the date on which approval was received.
4. Any organization referred to in article 27 which becomes a Party to the Protocol without any of its member States being a Party shall be bound by all the obligations under the Protocol. If one or more of such organization's member States is a Party to the Protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Protocol. In such cases, the organization and the member States shall not be entitled to exercise rights under the Protocol concurrently.
5. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations referred to in article 27 shall declare the extent of their competence with respect to the matters governed by the Protocol. These organizations shall also inform the Depositary of any substantial modification to the extent of their competence.

Article 29

Entry into force

1. Subject to paragraph 2, the Protocol shall enter into force on the ninetieth day after the date of deposit of the sixteenth instrument of ratification, acceptance, approval or accession.
2. Article 2, paragraph 2 (e) (iii), shall enter into force when thresholds, limits of liability and minimum limits of financial securities for pipelines are set in annexes I and II in accordance with article 24, paragraphs 8 and 9.
3. For the purposes of paragraph 1, any instrument deposited by an organization referred to in article 27 shall not be counted as additional to those deposited by States members of such an organization.
4. For each State or organization referred to in article 27 which ratifies, accepts or approves the Protocol or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, the Protocol shall enter into force on the ninetieth day after the date of deposit by such State or organization of its instrument of ratification, acceptance, approval or accession.

Article 30

Reservations

No reservation may be made to the Protocol.

Article 31

Withdrawal

1. At any time after three years from the date on which the Protocol has entered into force for a Party, that Party may withdraw from the Protocol by giving written notification to the Depositary.
2. Any such withdrawal shall take effect one year from the date of its receipt by the Depositary, or on such later date as may be specified in the notification.

Article 32

Depositary

The Secretary-General of the United Nations shall act as the Depositary of the Protocol.

Article 33

Authentic texts

The original of the Protocol, of which the English, French and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed the Protocol.

DONE at Kiev, this twenty-first day of May, two thousand and three.

Annex I

HAZARDOUS SUBSTANCES AND THEIR THRESHOLD QUANTITIES FOR THE PURPOSE OF DEFINING HAZARDOUS ACTIVITIES

1. The threshold quantities set out below relate to each hazardous activity or group of hazardous activities.
2. Where a substance or preparation named in part two also falls within a category in part one, the threshold quantity set out in part two shall be used.

Part One

CATEGORIES OF SUBSTANCES AND PREPARATIONS NOT SPECIFICALLY NAMED IN PART TWO

<i>Category</i>	<i>Threshold quantity (tons)</i>
I. Very toxic	20
II. Toxic	200
III. Dangerous for the environment.....	200

Part Two

NAMED SUBSTANCES

<i>Substance</i>	<i>Threshold quantity (tons)</i>
Petroleum products:	25,000
(a) Gasolines and naphthas,	
(b) Kerosenes (including jet fuels),	
(c) Gas oils (including diesel fuels, home heating oils and gas oil blending streams)	

**Notes on the indicative criteria for the categories
of substances and preparations given in part one**

In the absence of other appropriate criteria, such as the European Union classification criteria for substances and preparations, Parties may use the following criteria when classifying substances or preparations for the purposes of part one of this annex.

I. VERY TOXIC

Substances with properties corresponding to those in table 1 or table 2, and which, owing to their physical and chemical properties, are capable of creating industrial accident hazards:

Table 1

LD ₅₀ (oral) mg/kg body weight LD ₅₀ ≤ 25	LD ₅₀ (dermal) mg/kg body weight LD ₅₀ ≤ 50
LD ₅₀ oral in rats LD ₅₀ dermal in rats or rabbits	

Table 2

Discriminating dose mg/kg body weight	< 5
where the acute oral toxicity in animals of the substance has been determined using the fixed-dose procedure	

II. TOXIC

Substances with properties corresponding to those in table 3 or 4 and having physical and chemical properties capable of creating industrial accident hazards:

Table 3

LD ₅₀ (oral) mg/kg body weight 25 < LD ₅₀ ≤ 200	LD ₅₀ (dermal) mg/kg body weight 50 < LD ₅₀ ≤ 400
LD ₅₀ oral in rats LD ₅₀ dermal in rats or rabbits	

Table 4

Discriminating dose mg/kg body weight = 5
where the acute oral toxicity in animals of the substance has been determined using the fixed-dose procedure

III. DANGEROUS FOR THE ENVIRONMENT

Substances showing the values for acute toxicity to the aquatic environment corresponding to table 5:

Table 5

LC ₅₀ mg/l LC ₅₀ ≤ 10	EC ₅₀ mg/l EC ₅₀ ≤ 10	IC ₅₀ mg/l IC ₅₀ ≤ 10
LC ₅₀ fish (96 hours) EC ₅₀ daphnia (48 hours) IC ₅₀ algae (72 hours)		
where the substance is not readily degradable, or the log Pow > 3.0 (unless the experimentally determined BCF < 100)		

List of abbreviations

Pow	-	partition coefficient octanol/water
BCF	-	bioconcentration factor
LD	-	lethal dose
LC	-	lethal concentration
EC	-	effective concentration
IC	-	inhibiting concentration

Annex II

**LIMITS OF LIABILITY AND
MINIMUM LIMITS OF FINANCIAL SECURITIES**

Part One

LIMITS OF LIABILITY

1. For the purposes of defining the limits of liability under article 4, pursuant to article 9, the hazardous activities are grouped in three different categories, according to their hazard potential.

2. These categories are as follows:

Category A: Hazardous activities in which one or more hazardous substances falling into categories specified in part one of annex I are or may be present in quantities not exceeding four times the threshold quantities specified in annex I;

Category B: Hazardous activities in which one or more hazardous substances falling into categories specified in part one of annex I are or may be present in quantities exceeding four times the threshold quantities specified in annex I;

Category C: Hazardous activities in which one or more hazardous substances named in part two of annex I are or may be present in quantities at or in excess of the threshold quantity specified in annex I.

3. The limits of liability for the three categories of hazardous activities are as follows:

Category A hazardous activities10 million units of account;

Category B hazardous activities40 million units of account;

Category C hazardous activities40 million units of account.

Part Two

MINIMUM LIMITS OF FINANCIAL SECURITIES

4. For the purposes of defining the minimum limits of financial securities under article 11, the hazardous activities are grouped in three different categories, according to their hazard potential.

5. These categories are as follows:

Category A: Hazardous activities in which one or more hazardous substances falling into categories specified in part one of annex I are or may be present in quantities not exceeding four times the threshold quantities specified in annex I;

Category B: Hazardous activities in which one or more hazardous substances falling into categories specified in part one of annex I are or may be present in quantities exceeding four times the threshold quantities specified in annex I;

Category C: Hazardous activities in which one or more hazardous substances named in part two of annex I are or may be present in quantities at or in excess of the threshold quantity specified in annex I.

6. The minimum limits of financial securities for the three categories of hazardous activities are as follows:

Category A hazardous activities2.5 million units of account;

Category B hazardous activities10 million units of account;

Category C hazardous activities10 million units of account.

Annex III

ARBITRATION

1. In the event of a dispute being submitted for arbitration pursuant to article 26, paragraph 2, a party or parties shall notify the secretariat of the subject matter of arbitration and indicate, in particular, the articles of the Protocol whose interpretation or application is at issue. The secretariat shall forward the information received to all Parties to the Protocol.

2. The arbitral tribunal shall consist of three members. Both the claimant party or parties and the other party or parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the president of the arbitral tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

3. If the president of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Executive Secretary of the Economic Commission for Europe shall, at the request of either party to the dispute, designate the president within a further two-month period.

4. If one of the parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other party may so inform the Executive Secretary of the Economic Commission for Europe, who shall designate the president of the arbitral tribunal within a further two-month period. Upon designation, the president of the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. If it fails to do so within that period, the president shall so inform the Executive Secretary of the Economic Commission for Europe, who shall make this appointment within a further two-month period.

5. The arbitral tribunal shall render its decision in accordance with international law and the provisions of the Protocol.

6. Any arbitral tribunal constituted under the provisions set out in this annex shall draw up its own rules of procedure.

7. The decisions of the arbitral tribunal, both on procedure and on substance, shall be taken by majority vote of its members.

8. The tribunal may take all appropriate measures to establish the facts.

9. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

- (a) Provide it with all relevant documents, facilities and information;

- (b) Enable it, where necessary, to call witnesses or experts and receive their evidence.
10. The parties and the arbitrators shall protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.
 11. The arbitral tribunal may, at the request of one of the parties, recommend interim measures of protection.
 12. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to render its final decision. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings.
 13. The arbitral tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.
 14. Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.
 15. Any Party to the Protocol which has an interest of a legal nature in the subject matter of the dispute, and which may be affected by a decision in the case, may intervene in the proceedings with the consent of the tribunal.
 16. The arbitral tribunal shall render its award within five months of the date on which it is established, unless it finds it necessary to extend the time limit for a period which should not exceed five months.
 17. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon all parties to the dispute. The award will be transmitted by the arbitral tribunal to the parties to the dispute and to the secretariat. The secretariat will forward the information received to all Parties to the Protocol.
 18. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first .

ANNEX B:

**DECLARATION BY THE EUROPEAN COMMUNITY IN ACCORDANCE WITH
ARTICLE 27 OF THE PROTOCOL ON CIVIL LIABILITY AND COMPENSATION
FOR DAMAGE CAUSED BY THE TRANSBOUNDARY EFFECTS OF INDUSTRIAL
ACCIDENTS ON TRANSBOUNDARY WATERS**

The European Community declares that, " in accordance with the EC Treaty and in particular its articles 175 and 67, the European Community is competent for entering into international agreements which contribute to the pursuit of its objectives in these areas".