

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 23 April 1991

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL CONCERNING THE
NEGOTIATIONS FOR AN INTERNATIONAL CONVENTION ON
DAMAGE RESULTING FROM ACTIVITIES DANGEROUS TO THE ENVIRONMENT

- COUNCIL OF EUROPE -

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

1. The Committee of Ministers of the Council of Europe set up a Committee of experts on compensation for damage caused to the environment (CJ - EN) in 1987.

Instructed by the European Committee on Legal Cooperation of the Council of Europe the CJ-EN prepared a draft Convention on this subject in November 1989 and presented it in July 1990. This draft was further discussed in December 1990.

The current schedule anticipates a definitive draft for the end of 1991.

2. The text of the last available draft of the Convention, entitled, draft Convention on damage resulting from activities dangerous to the Environment, dated 23 January 1991, is annexed.

The draft contains provisions for a strict liability of the operator in charge of a dangerous activity, for damage caused to the environment. A wide range of dangerous activities is covered, eg. dealing with dangerous substances, dealing with genetically modified organisms or dangerous micro-organisms, and the operations of waste installations.

The possibility is foreseen that national law may limit the liability of the operator. The Contracting Parties have the obligation to ensure, under certain conditions, that the operators concerned have insurance or other financial security to cover the liability under the Convention. Moreover there are provisions on access to information, jurisdiction, a Standing Committee and other procedural clauses. The draft Convention provides for the membership of the European Economic Community (article 36). Moreover it contains a provision for the EEC to exercise voting rights concerning the implementation and modification of the Convention (article 29, para 9)

3. In the EEC Council Directive 84/631/EEC of 6 December 1984 on the supervision and control within the European Community of the transfrontier shipments of hazardous waste (OJ L326 of 13.12.84, p.31) there is an instruction to the EEC Council to determine the conditions for implementing the civil liability of the producer or any other person accountable for damage caused by waste. As a sequel to this instruction the European Commission has submitted to the Council the draft Directive on civil liability for damage caused by waste 1 September 1989 (OJ C 251 of 4.10.89, p.3). In addition the provisions figuring in the draft Convention on access to information are already the subject of existing Community legislation, namely the Council Directive 90/313/EEC on the freedom of access to information on the environment, of 7.6.90 (OJ L 158 of 23.6.90)

4. In view of the above it is necessary that the Community should fully participate in the negotiations for the preparation of this Convention, specially with a view to ensuring compatibility between the provisions of the Convention and Community legislation.

5. In the light of the foregoing, the Commission recommends the Council to decide that:

- The Community shall negotiate, in the framework of the Council of Europe, with regard to matters covered by Community competence, the preparation of an International Convention on damage resulting from activities dangerous to the environment;

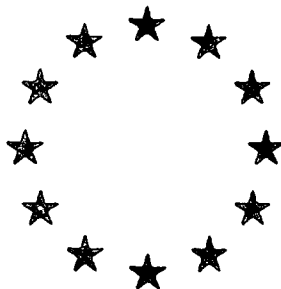
- The Commission shall conduct these negotiations in consultation with the Member States and in conformity with the directives attached hereto;

Negotiating Directives

1. The Commission shall ensure that the provisions of the Convention are compatible with the existing legislation and the objectives of the environmental policy of the Community.
2. The Commission will ensure that the Convention will provide for the participation of the EEC as a contracting party.
3. The Commission shall report regularly to the Council on the progress of the negotiations.

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COUNCIL
OF EUROPE



CONSEIL
DE L'EUROPE

Strasbourg, 23 January 1991
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DRAFT CONVENTION ON DAMAGE RESULTING FROM
ACTIVITIES DANGEROUS TO THE ENVIRONMENT

PLEASE NOTE:

This draft Convention on damage resulting from activities dangerous to the environment has been prepared by the Committee of experts on compensation for damage caused to the environment (CJ-EN).

The draft has been published in its present form following the authorisation of the Committee of Ministers to enable the Committee of experts to proceed to the necessary consultations with interested circles and to take account of any views expressed when preparing the final text.

Once the Committee of experts has completed the draft, it will be examined by the European Committee of Legal Co-operation (CDCJ) and submitted to the Committee of Ministers of the Council of Europe for adoption.

Publication at this stage does not imply the agreement of the Committee of Ministers with the contents of the draft Convention nor does it in any way engage the political responsibility of the Committee of Ministers and the member States of the Council of Europe.

DRAFT CONVENTION ON DAMAGE RESULTING FROM ACTIVITIES

DANGEROUS TO THE ENVIRONMENT

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Noting that one of the aims of the Council is to contribute to the quality of life of human beings, in particular by promoting a natural, healthy and agreeable environment;

Realising that the public, the environment and property are exposed to specific dangers caused by dangerous activities;

Considering that the emission of pollutants in one country may cause damage in another country and that, therefore, the problems of compensation for such damage are also of an international nature;

Having regard to the desirability of providing for strict liability in this field taking into account the "Polluter Pays-Principle";

Mindful of the work which has already been carried out at an international level, in particular to prevent damage and to deal with damage caused by nuclear substances and the carriage of dangerous goods;

Recognising the need to adopt further measures to deal with grave and imminent threats of damage from dangerous activities and to facilitate the burden of proof for persons requesting compensation for such damage;

Have agreed as follows:

CHAPTER I: GENERAL PROVISIONS

Article 1 (Object and purpose)

This Convention aims at ensuring adequate compensation for damage resulting from dangerous activities and provides for means of prevention [of damage to the environment] and reinstatement [of the environment].

Article 2 (Definitions)

For the purpose of this Convention:

1. Dangerous activity means one or more of the following activities provided that it is performed professionally, including activities conducted by public authorities:

- a. the handling, storage, production or discharge of one or more dangerous substances or any operation of a similar nature dealing with such substances;
- b. the handling, storage, production or discharge of one or more dangerous genetically modified organisms or dangerous micro-organisms or any operation of a similar nature dealing with dangerous genetically modified organisms or dangerous micro-organisms;
- [c. activities involving technologies producing dangerous radiations [as specified][such as those specified] in Annex II].
- d. the operation of an installation or site for the incineration, treatment, handling or recycling of waste such as those installations or sites specified in Annex III, provided that the quantities involved pose a significant risk to man, the environment or property.
- e. the operation of a waste disposal installation or site.

2. Dangerous substances mean:

- a. substances which have properties which constitute a significant risk to man, the environment or property, such as substances which are [flammable, explosive, corrosive, oxydizing, irritating, carcinogenic, mutagenic, toxic, ecotoxic and radioactive] within the meaning of Annex I (A) to this Convention;
- b. substances specified in Annex I (B) to this Convention. Designation of a substance as dangerous may be restricted to certain quantities or concentrations, certain risks or certain situations in which the substance may be found without prejudice to the application of sub-paragraph (a).

3. Dangerous genetically modified organism means an organism in which the genetic material has been altered in a way that does not occur naturally by mating and/or natural recombination and which poses a significant risk to man, the environment or property. Excluded from techniques of genetic modification referred to in the previous sentence are mutagenesis and cell fusion, including protoplast fusion, or cells from plants, which can be produced by traditional breeding methods.

A genetically modified organism poses a significant risk to man, property or the environment if the newly created organism (or its issue) acquires properties that make it more harmful than the original organism to man, animals, plants or ecosystems or if another organism acquires properties which have a harmful effect on the environment by the transfer of genetically modified material.

4. Dangerous micro-organism means a micro-organism which poses a significant risk to man, the environment or property such as micro-organisms that are pathogenic or that produce toxins including those which are listed in Annex 1 (c) to this Convention.

[5. Dangerous radiations mean radiations which have properties which constitute a significant risk to man, the environment or property].

[6. Operator means the person who exercises the actual control of a dangerous activity].

7. Person means any individual or partnership or any body governed by public or private law, whether corporate or not, including a State or any of its constituent subdivisions.

8. Damage means:

- a. loss of life or personal injury;
- b. loss or damage by impairment of the environment provided that compensation for impairment of the environment, other than loss of profit for such impairment, shall be limited to the costs of measures of reinstatement actually undertaken or to be undertaken;
- c. loss or damage to property other than to the installation itself or property held in the custody or under the control of the operator, at the site of the dangerous activity;
- d. the costs of preventive measures and further loss or damage caused by preventive measures;

to the extent that the loss or damage referred to in sub-paragraphs (a) to (c) of this paragraph arises out of or results from the hazardous properties of the dangerous substances, dangerous genetically modified organisms or dangerous micro-organisms or arises or results from radiations or waste.

9. Measures of reinstatement means any reasonable measures aiming to reinstate or restore damaged or destroyed natural resources or, where reasonable, to introduce the equivalent of these resources into the environment.

10 Preventive measures means any reasonable measures taken by any person after an incident has occurred to prevent or minimise damage.

11. Environment includes natural resources both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors, property which forms part of the cultural heritage and the characteristic aspects of the landscape.

[12. Incident means any sudden occurrence or continuous occurrence such as an explosion, fire, leak or emission or any series of occurrences having the same origin, which causes damage or creates a grave and imminent threat of causing damage].

Article 3 (Geographical scope)

Without prejudice to the provisions of Chapter IV this Convention shall apply:

- a. when the incident occurs in the territory of a Contracting Party, as determined in accordance with Article 39 regardless of where the damage is suffered; or
- b. when the incident occurs outside the territory referred to in sub-paragraph a) and the conflict of laws rules lead to the application of the law in force for the territory referred to in sub-paragraph a).

Article 4 (Exceptions)

This Convention shall not apply:

1. to damage arising from carriage, not being carriage by pipeline, unless such carriage is performed entirely in an installation or on a site inaccessible to the public, is accessory to other activities and is an integral part thereof. Carriage includes the period from the beginning of the process of loading until the end of the process of unloading.
2. to damage caused by a nuclear substance:
 - i. if liability for such damage is regulated either by the Paris Convention of 29 July 1960 on Third Party liability in the field of nuclear energy and its Additional Protocol of 28 January 1964, or by the Vienna Convention of 21 May 1963 on civil liability for nuclear damage or any amendments to those Conventions; or
 - ii. if liability for such damage is regulated by a specific national law provided that such law is in all respects as favourable with regard to compensation for damage as either the Paris or the Vienna Convention referred to under (i) above.
3. to the extent that it is incompatible with the rules of the applicable law relating to workmen's compensation or social security schemes.

Article 5 (Incidents to which the Convention applies)

This Convention shall apply only to incidents occurring after its entry into force with respect to a Contracting Party. When the incident consists of a continuous occurrence or a series of occurrences having the same origin and part of these occurrences took place before the entry into force of this Convention, this Convention shall only apply to damage caused by occurrences or part of a continuous occurrence taking place after the entry into force.

CHAPTER II: LIABILITY**Article 6 (Liability in respect of substances, organisms, and certain waste installations)**

1. Except as provided for in Article 8 and in Article 9, the operator in respect of a dangerous activity mentioned under Article 2, paragraph 1, sub-paragraphs (a) to (d) shall be liable for the damage caused by the activity as a result of incidents at the time or during the period when he is in control of that activity.
2. a. If an incident consists of a continuous occurrence, all operators successively in control of the dangerous activity shall be jointly and severally liable. However, the operator who proves that the occurrence during the period when he was in control of the dangerous activity could have caused only a part of the damage, shall only be liable for that part of the damage.

b. If an incident consists of a series of occurrences having the same origin, the operators at the time of any such occurrence shall be jointly and severally liable. However, the operator who proves that the occurrence at the time when he was in control of the dangerous activity could have caused only a part of the damage, shall only be liable for that part of the damage.
3. If the damage resulting from a dangerous activity becomes known after all such dangerous activity at the site or installation has ceased, liability shall rest with the last operator. However, if he or the person who suffered the damage proves that the damage resulted from an incident which occurred at a time when another person was the operator, this operator shall be liable.
4. Nothing in this Convention shall prejudice any right of recourse of the operator against any third party.

Article 7 (Liability in respect of waste disposal installations or sites)(1)

1. Except as provided for in Article 8 and in Article 9, the operator of a waste disposal installation or site at the time when damage caused by waste deposited at that installation or site becomes known, shall be liable for this damage. Should the damage caused by waste deposited before the closure of such an installation or site become known after that closure, the last operator shall be liable.
2. Nothing in this Convention shall prejudice any right or recourse of the operator against any third party.
3. Article 6 shall not apply if an operator is liable under this Article.

(1) This Article and the following Articles have been renumbered by the Secretariat.

Article 8 (Exemptions) (1)

No liability (2) shall attach to the operator if he proves that:

- a. the damage resulted exclusively from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional inevitable and irresistible character; or
- b. the damage was exclusively caused by an act done with the intent to cause damage by a third party, despite safety measures appropriate to the type of dangerous activity in question;
- c. the damage was exclusively caused by an act performed in compliance with an express order or provision of a public authority;
- d. the damage was caused by pollution at tolerable levels to be anticipated under local [relevant] circumstances.

Article 9 (Fault of the person who suffered the damage)

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

(1) The following texts will also be examined:

e. [the damage is caused by a dangerous activity taken in the interests of the injured party himself, whereby it was reasonable towards him to expose him to the danger of damage].

f. Alternative I

[f. it was impossible, in the case of damage caused by a dangerous activity mentioned under Article 2, paragraph 1, sub-paragraph (a) and (b) to discover the existence of the dangerous properties of the substance or organism on the basis of the state of scientific and technical knowledge, at the time of the incident].

f. Alternative II

[in the case of damage caused by a dangerous activity mentioned under Article 2, paragraph 1, sub-paragraphs (a), (b) and (c), that the state of scientific and technical knowledge at the time of the incident was not such as to enable the existence of the dangerous properties of the substance, organism, or radiation to be discovered].

[g. in the case of damage caused by a dangerous activity mentioned under Article 2, paragraph 1, sub-paragraph (a) and (b), that the presence of the dangerous substances or organisms was due to a defect in a product put into circulation by a third party and that he could not reasonably have knowledge of that defect].

(2) Unless a reservation is made in this respect. See Article 40 below.

Article 10 (Causality)

When considering evidence of the causal link between the incident and the damage, the court shall take due account of the increased danger of causing such damage inherent in the dangerous activity.

Article 11 (Plurality of installations)

1. When incidents have occurred in several installations or sites where dangerous activities are conducted, and damage results therefrom, the operators of the installations or sites concerned shall be jointly and severally liable for all such damage. However, the operator who proves that only part of the damage could have been caused by an incident in the installation or site where he carries out the dangerous activity, shall only be liable for that part of the damage.

2. In case of joint and several liability, each operator shall be entitled to the limitation of liability applicable to by virtue of provisions of national law pursuant to Article 12.

Article 12 (Limitation of liability)

Alternative I

Provisions of national law may limit the liability of the operator to a maximum amount, [provided that such maximum is not fixed at a level lower than what can reasonably be covered by insurance or by a similar financial security].

Alternative II

1. The liability of the operator for claims arising from any one incident may be limited by provisions of national law. However, this limit shall not be less than:
 - a. with respect to claims for death or personal injury ...
 - b. with respect to claims for any other damage
2. The operator shall not be entitled to limit his liability under this Convention if it is proved that the damage resulted from his personal act or omission or an act or omission of his servants or agents, committed with the intent to cause the damage or recklessly and with knowledge that such damage would probably result, provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment.

CHAPTER III: COMPULSORY INSURANCE OR OTHER FINANCIAL SECURITY

Article 13

Alternative I

1. a. To cover the liability under this Convention, the Contracting Parties shall require the operator carrying out a dangerous activity on its territory to have and maintain insurance or other financial security of such type and terms as the competent public authority of such a Contracting Party shall specify.

b. A Contracting Party may limit the obligation to maintain insurance or any other financial security to operators carrying out particularly dangerous activities on its territory which it has defined as such; [these activities shall in any case include the activities dealing with dangerous substances mentioned in Annex IV].

[2. The insurance or financial security shall cover the compensation payable for damage up to amounts not less than the following:

a. in respect of death or personal injury:

for one victim
for each incident

b. in respect of other damage:

for each incident

3. (or 2.) No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided for in paragraph 1 of this Article without giving notice in writing of at least [2] months to the competent authority.

4. (or 3.) The sums provided by insurance or by other financial security maintained in accordance with paragraph 1 of this Article shall be available only for satisfaction of claims under this Convention.

Alternative II

A Contracting Party shall ensure that where appropriate, taking due account of the risks of the activity and of the financial capacity of the operator, operators carrying out a dangerous activity on its territory be required to have and maintain insurance or other financial security up to a certain limit and of such type and terms as specified by the competent public authority, to cover the liability under this Convention. [This requirement shall in any case apply to the activities dealing with dangerous substances mentioned in Annex IV].

CHAPTER IV: ACCESS TO INFORMATION

Article 14 (Definition of public authorities)

For the purpose of this chapter "public authorities" means any public administration of a Contracting Party at national, regional or local level with responsibilities, and possessing information relating to the environment with the exception of bodies acting in a judicial or legislative capacity.

Article 15 (Access to information held by public authorities)

1. Any natural or legal person shall, at his request and without his having to prove an interest, have access to information relating to the environment held by public authorities.

The Contracting Parties shall define the practical arrangements under which such information is effectively made available.

2. The right of access may be restricted under national law where it affects:

- the confidentiality of the proceedings of public authorities, international relations and national defence;
- public security;
- matters which are or have been subjudice, or under enquiry (including disciplinary enquiries), or which are the subject of preliminary investigation proceedings;
- commercial and industrial confidentiality, including intellectual property;
- the confidentiality of personal data and/or files;
- material supplied by a third Party without that Party being under a legal obligation to do so;
- material, the disclosure of which would make it more likely that the environment to which that material related would be damaged.

Information held by public authorities shall be supplied in part where it is possible to separate out information on items concerning the interests referred to above.

3. A request for information may be refused where it would involve the supply of unfinished documents or data or internal communications, or where the request is manifestly unreasonable or formulated in too general a manner.

4. A public authority shall respond to a person requesting information as soon as possible and at the latest within two months. The reasons for a refusal to provide the information requested must be given.

5. A person who considers that his request for information has been unreasonably refused or ignored, or has been inadequately answered by a public authority, may seek a judicial or administrative review of the decision in accordance with the relevant national legal system.

6. The Contracting Parties may make a charge for supplying the information, but such a charge may not exceed a reasonable cost.

[7. These rules may be amended or supplemented by the [Governments of the Parties to this Convention] [the Standing Committee] (1).

Article 16 (Access to information held by bodies with public responsibilities for the environment)

On the same terms and conditions as those set out in Article 15 any natural or legal person shall have access to information relating to the environment held by bodies with public responsibilities for the environment and under the control of a public authority. Access shall be given via the competent public administration or directly by the body itself.

Article 17 (Access to information through the intervention of a public law corporate body)

1. National law may provide that the right of access to information held by public authorities or held by bodies with public responsibilities for the environment and under the control of public authority may, instead of or in addition to the possibilities under Articles 15 and 16, be exercised through the intervention of a public law corporate body. The public law corporate body shall exercise its functions independently of the executive control.

2. The right of access through a public law corporate body may be restricted to situations where damage within the meaning of the present instrument has been caused or is impending and it may then be requested by those persons only who are concerned by the damage or impending damage, including the persons referred to in Article 18, paragraph 2.

3. Public administrative authorities [may] (2) deny the public law corporate body access to their information to the extent only that such access would seriously affect:

- [- the confidentiality of the proceedings of public authorities, international relations and national defence;
- public security;
- matters which are or have been subjudice, or under enquiry (including disciplinary enquiries), or which are the subject of preliminary investigation proceedings;
- commercial and industrial confidentiality, including intellectual property;
- the confidentiality of personal data and/or files;
- material supplied by a third Party without that Party being under a legal obligation to do so;
- material, the disclosure of which would make it more likely that the environment to which that material related would be damaged].

(1) This question will be reviewed when the question of amendments has been considered.

(2) It is to be taken into account that must be taken of the rules in Article 15(2).

4. However, the public law corporate body shall transmit to the applicants only such information that may help to ascertain the cause of the damage, the extent of such damage, any causal connection between the occurrence and such damage, the operator, the installation or the site where the damage originated. It [may] (1) eliminate from the information any items which would affect the interests referred to in paragraph 3.

5. When the right of access is refused, this refusal shall be notified to the applicant in writing indicating the reasons for the refusal and within a reasonable delay. A remedy against this refusal shall be given.

6. Article 15, paragraphs 4, 5 and 6 shall apply *mutatis mutandis*.

7. The public law corporate body may make a charge for supplying the information but such a charge may not exceed a reasonable cost.

8. Each State shall communicate to the Secretariat of the Council of Europe the name and address of the public law corporate body which has the task to ensure indirect access to information.

[9. These rules may be amended or supplemented by [the Governments of the Parties to this Convention] [the Standing Committee] (2).

Article 18 (Access to information held by operators)

1. The person who suffered damage may, at any time, request a court to order an operator to provide him with specific information, in so far as this is necessary to establish the existence of a claim to compensation under the present Convention. The information shall be restricted to particulars of the equipment or machinery used, the kind and concentration of the dangerous substances employed or released and the other effects produced by the installation or site.

2. Where a claim for compensation based upon the present Convention is brought against an operator, he may, at any time, request a court to order another operator to provide him with specific information, in so far as this is necessary to establish the extent of his obligation to compensate the person who has suffered the damage, or of his own right to compensation from the other operator.

3. These measures shall not affect measures of investigation which may legally be ordered under internal law.

[4. The court may refuse a request which places an unreasonable burden on the operator taking into account all the interests involved].

(1) In brackets as account must be taken of the rules in Article 15 (2).

(2) This question will have to be reviewed once the question of amendments has been considered.

5. In addition to the restrictions under paragraph 3 of Article 15, which shall apply *mutatis mutandis*, an operator may refuse to provide information where such information would incriminate the operator.

6. Any reasonable charge shall be paid by the person requesting the information. The operator may require an appropriate guarantee for such payment. However a court, when allowing a claim for compensation, may establish that this charge shall be borne by the operator, except to the extent that the request resulted in unnecessary costs.

CHAPTER V: CLAIMS AND ACTIONS

Article 19 (Limitation periods)

1. Actions for compensation under this Convention shall be subject to a limitation period of [three] [five] years from the date on which the claimant knew or ought reasonably to have known of the damage and of the identity of the operator.

2. However, in no case shall actions be brought after thirty years from the date of the incident which caused the damage. Where this incident consists of a series of occurrences, the thirty years' period shall run from the date of the last of such occurrences.

Article 20 (Action by organisations)

1. Any association or foundation which according to its statutes takes care of the protection of the environment and which complies with any further conditions of national law of the State Party where the action is brought is entitled to bring an action in court or before a competent administrative authority requesting:

- a. a prohibition of a dangerous activity which is unlawful and poses a grave threat of damage to the environment; or
- b. an order to the operator to take measures to prevent an incident or damage; or
- c. an order to the operator to reinstate or clean up the damaged environment.

2. National law may stipulate cases where the action is inadmissible.

3. Before deciding upon a request mentioned under paragraph 1 the court may, in view of the general interests involved, hear the competent public authorities with respect to the measures requested.

4. When the national law of a Contracting State referred to in paragraph 1 requires that the association or foundation has its registered seat or the effective centre of its activities in that State, such State may declare at the time of signature, ratification or accession that an association or foundation having its seat or centre of activities in another State Party and complying in that other State with the other conditions mentioned in paragraph 1 of this Article shall have the right to take action in accordance with paragraphs 1 and 2. The associations or foundations having their seat or centre of activities in a State Party which has made such declaration will have the same right in any other State which has made the same declaration.

Article 21 (Jurisdiction)

1. Actions for compensation under this Convention may only be brought within a State Party at the court of the place:

- a. where the damage was suffered; or
- b. where the the dangerous activity was conducted; or
- c. where the defendant has his habitual residence.

2. Actions for access to information held by operators under paragraphs 1 and 2 of Article 18 of this Convention may only be brought within a State party at the court of the place:

- a. where the defendant has his habitual residence; or
- b. where the dangerous activity is conducted.

[3. Actions by organisations under Article 20 of this Convention may only be brought within a State Party at the court or, if national law so provides, before a competent administrative authority of the place:

- a. where the defendant has his habitual residence; or
- b. where the defendant carries out the dangerous activity].

Article 22 (Notification)

The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

Article 23 (Lis pendens)

1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Contracting States, any court other than the court first seised shall of its own motion stay its proceedings until such time as

2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 24 (Related actions)

1. Where related actions are brought in the courts of different Contracting States, any court other than the court first seised may, while the actions are pending at first instance, stay its proceedings.

2. A court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the law of that court permits the consolidation of related actions and the court first seised has jurisdiction over both actions.

3. 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 judgments resulting from separate proceedings.

Article 25 (Recognition and enforcement)

1. Any judgment given by a court with jurisdiction in accordance with Article 21 where it is no longer subject to ordinary forms of review, shall be recognised in any Contracting Party, unless:

- a. such recognition is contrary to public policy in the State in which recognition is sought;
- b. it was given in default of appearance, if the defendant was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence;
- c. the judgment is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought;
- d. the judgment is irreconcilable with an earlier judgment given in another State involving the same cause of action and between the same parties, provided that this latter judgment fulfils the conditions necessary for its recognition in the State addressed.

2. A judgment recognised under paragraph 1 of this article which is enforceable in the State of origin shall be enforceable in each Contracting Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

Article 26 (Other Conventions relating to jurisdiction, recognition and enforcement)

Whenever two or more States Parties are bound by an international Convention establishing rules of jurisdiction or providing for recognition and enforcement in a State of judgments given in another State, the provisions of those instruments replace the corresponding provisions of Articles 21 to 25 of this Convention.

CHAPTER VI: RELATIONS BETWEEN THE CONVENTION AND OTHER PROVISIONS**Article 27 (Relations between the Convention and the internal law of the Parties)**Alternative I

This Convention shall not affect any rights which a person suffering damage may have under the law on contractual or extra-contractual liability or under any special rules of liability.

Alternative II

1. This Convention shall not affect any rights which a person suffering damage may have according to the [ordinary] rules of contractual or extra-contractual liability.
2. This Convention shall not prevent the Contracting Parties from maintaining or adopting [a special liability system] [provisions] (1) more favourable to persons suffering damage.
3. Each Contracting Party shall communicate to the Secretary General of the Council of Europe any text adopted in accordance with paragraph 2 of this Article or a statement of the contents of the law.

Article 28 (Relations between the Convention and other international agreements and arrangements)1. Alternative 1

This Convention shall not prejudice the application of international agreements to which a Party is, or becomes a party.

Alternative 2

The possibilities of compensation provided by this Convention do not limit, nor are they limited by those contained in existing or future international agreements between the Parties concerned.

Alternative 3

This Convention shall not exclude the possibility of relying on any other international agreement for the purpose of obtaining compensation for damage resulting from a dangerous activity.

Alternative 4

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which compensation may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

Alternative 5

Whenever two or more States Parties are bound by another international Agreement [establishing rules of or providing for] the provisions of that instrument shall replace [the corresponding provisions of Articles of] this Convention.

(1) If the word "provisions" is adopted, sub-paragraphs b to d of paragraphs 1 of Article 40 (reservations) should be deleted.

2. In their mutual relations, Parties which are members of the European Economic Community shall apply Community rules and shall therefore not apply the rules arising from this Convention except in so far as there is no Community rule governing the particular subject concerned. (1)

3. In the case of bilateral agreements, this Convention shall not alter the rights and obligations of Parties which arise from such agreements and which do not affect the enjoyment of other Parties of their rights or the performance of their obligations under this Convention.

CHAPTER VII: THE STANDING COMMITTEE

Article 29 (The Standing Committee)

1. For the purposes of this Convention, a Standing Committee shall be set up.

2. Each Contracting Party may be represented on the Standing Committee by one or more delegates. Each delegation shall have one vote.

3. Any State referred to in Article 36 which is not a Party to this Convention may be represented on the Standing Committee by an observer.

4. Unless, at least one month before the meeting, a Contracting Party has informed the Secretary General of its objection, the Standing Committee may invite the following to attend as an observer all its meetings or one or part of a meeting:

- any non-Contracting State;
- any international or national, governmental or non-governmental body technically qualified in the fields covered by this Convention.

5. The Standing Committee may seek the advice of experts in order to discharge its functions.

6. The Standing Committee shall be convened by the Secretary General of the Council of Europe. It shall meet whenever one third of the Parties or the Committee of Ministers of the Council of Europe so requests.

7. A majority of the Parties shall constitute a quorum for holding a meeting of the Standing Committee.

8. Subject to Articles 32 to 35 the decisions of the Standing Committee shall be taken by a majority of three-quarters of the members present.

(1) See also Article 36 of the draft Convention.

9. Within the areas of its competence the European Economic Community shall exercise its right to vote in the Standing Committee with a number of votes equal to the number of its member States which are Parties to this Convention. It shall not exercise its right to vote in cases where the member States exercise theirs and conversely. If the Community is not a Party it may be represented on the Standing Committee by an observer.

10. Subject to the provisions of this Convention, the Standing Committee shall draw up its own Rules of Procedure.

Article 30 (Functions of the Standing Committee)

The Standing Committee shall keep under review problems relating to the application of this Convention. It may, in particular:

- a. ensure the uniformity of national legislation implementing the Convention by making recommendations to the Parties concerning the application and the interpretation of the Convention;
- b. suggest any necessary amendments to the Convention including its Appendices in accordance with Articles 32 to 35.

Article 31 (Reports of the Standing Committee)

After each meeting, the Standing Committee shall forward to the Committee of Ministers of the Council of Europe a report on its discussions and any decisions taken.

CHAPTER VIII: AMENDMENTS TO THE CONVENTION

Article 32 (Amendments to the Articles)

1. Amendments to this Convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or the Standing Committee.
2. Any proposal for amendment shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe, to the European Economic Community, and to every non-member State which has acceded to or has been invited to accede to this Convention in accordance with the provisions of Article 38.
3. Any amendment proposed in accordance with the provisions of the preceding paragraphs shall be examined by the Standing Committee. It shall be communicated to the Standing Committee at least two months before the meeting at which it is to be considered.
4. The Standing Committee shall submit the text of an amendment adopted by two-thirds majority of the votes cast by the Contracting Parties to the Committee of Ministers for approval.

Article 33 (Amendment of Annex I) (1)

1. Annex I referred to in Article 2, paragraphs 2 and 4 shall be maintained by the Secretary General of the Council of Europe.
2. Any amendment to the list proposed by a Contracting Party shall be submitted to the Secretary General and circulated by him to all Contracting Parties at least [two months] prior to its consideration by the Standing Committee.
3. The Secretary General shall convene a meeting of the Committee to consider the amendment not later than [six months] after he has circulated the amendment in accordance with paragraph 2 of this Article.
4. Amendments shall be adopted by a [two-thirds] majority of the Contracting Parties present and voting in the Standing Committee on condition that at least one-half of the Contracting Parties shall be present at the time of voting.
5. Any amendment adopted in accordance with paragraph 4 of this Article shall be notified by the Secretary General to all Contracting Parties. The amendment shall be deemed to have been accepted at the end of a period of [eighteen months] after the date of notification, unless within that period not less than [one-quarter] of the Parties that were Contracting Parties at the time of adoption of the amendment by the Standing Committee have communicated to the Secretary General that they do not accept the amendment in which case the amendment is rejected and shall have no effect.
6. An amendment deemed to have been accepted in accordance with paragraph 5 of this Article shall enter into force [eighteen months] after its acceptance for all Contracting Parties [, with the exception of those which before that date have made a declaration of non-acceptance of the said amendment].
7. A Contracting Party which has accepted an amendment shall, after it has entered into force, apply only the amended list except in relation to damage sustained and to preventive measures to prevent or minimise such damage taken in the territory of a State which has not accepted the amendment. A Contracting Party which has not accepted an amendment is not to be considered a Contracting Party in respect of any dangerous substances which by such an amendment have been included in the list (2).

(1) The text is based on the assumption that the list to be annexed to the future Convention will not correspond in every detail to any existing list, amendment of which might automatically entail amendment of the list annexed to the Convention.

(2) The effect of deleting the last two lines of paragraph 6 and the whole of paragraph 7 would be to avoid differing lists of dangerous substances being in force in respect of different Contracting Parties at the same time. As an alternative to these provisions the following text may be considered:

7. All Contracting Parties shall be bound by the amendment, unless they denounce this Convention in accordance with Article 41 at least [six months] before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

8. A Party acceding to this Convention shall be bound by any amendment which has been accepted in accordance with paragraph 5 of this Article. When an amendment has been adopted by the Standing Committee but has not been accepted in accordance with that paragraph, a Party acceding to this Convention shall be deemed to have accepted such amendments, unless that Party declares upon deposit of its instrument of accession that it does not accept it.

Article 34 (Amendment of Annexes II to IV)

(To be considered at a later stage).

Article 35 (Amendments to the limits on amounts which may be claimed)

(To be considered at a later stage).

CHAPTER IX: FINAL CLAUSES

Article 36 (Member States)

This Convention shall be open for signature by the member States of the Council of Europe and non-member States which have participated in its elaboration and by the European Economic Community. Up until the date when the Convention enters into force it shall also be open to signature by any other State so invited by the Committee of Ministers. The Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 37 (Entry into force)

1. This Convention shall enter into force on the first day of the month following the expiration of a period of 3 months after the date on which three States, including at least two member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of Article 36.

2. In respect of any signatory State or the European Economic Community which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of 3 months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 38 (Non-member States)

1. After the entry into force of this Convention the Committee of Ministers of the Council of Europe, after consulting the Contracting Parties, may invite to accede to the Convention any non-member State of the Council of Europe which, invited to sign in accordance with the provisions of Article 36, has not yet done so, and any other non-member State.

2. In respect of any acceding State or, should it accede, the European Economic Community, the Convention shall enter into force on the first day of the month following the expiration of a period of 3 months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 39 (Territories)

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of 3 months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of 3 months after the date of receipt of such notification by the Secretary General.

Article 40 (Reservations)

1. Each State may declare, at the moment of signature or at the moment of the deposit of its instrument of ratification, acceptance, approval or accession, that it reserves the right:

- [a. to apply Article 3 (a) to damage suffered in the territory of non-contracting parties only on the basis of reciprocity];
- b. not to apply one or more of the provisions of Article 8 (1);
- c. to apply its domestic law insofar as it allows compensation for injury or death to be reduced or disallowed only in such cases where the person suffering damage or the person entitled to compensation has been grossly negligent.
- [d. to replace the liability of the operator, in a principal or subsidiary way, wholly or in part, in a general way, or for certain risks only, by the liability of a guarantee fund or other form of collective guarantee, provided that the victim shall receive protection at least equivalent to the protection he would have had under the liability scheme provided for by this Convention].

(1) This paragraph is an alternative to Article 23, alternative II, paragraph 2.

2. A State which makes use of any of the reservations provided for under paragraph 1 shall notify the Secretary General of the Council of Europe of the contents of its domestic law.

3. No reservation shall be made to the provisions of this Convention except those mentioned in this Article.

4. The Contracting State which has made one of the reservations mentioned in this Article may withdraw it by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective the first day of the month following the expiration of a period of one month after the date of its receipt by the Secretary General.

Article 41 (Denunciation)

1. Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of 3 months after the date of receipt of notification by the Secretary General.

Article 42 (Notifications)

The Secretary General of the Council of Europe shall notify the member States of the Council, any signatory State, the European Economic Community, if a signatory of this Convention, and any Contracting Party of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance, approval or accession,
- c. any date of entry into force of this Convention in accordance with Articles 37, 38 and 39;
- d. any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at, the, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to this Convention].

A N N E X I

DANGEROUS SUBSTANCES AND DANGEROUS MICRO-ORGANISMS

- [A. Criteria and methods to be applied to categories of dangerous substances: The categories referred to in Article 2, paragraph 2, shall be determined by the criteria and methods referred to in or annexed to the Directive of 18 September 1979 of the European Community Nr. L 259/10) amending for the sixth time Council Directives 67/548/EEC on the approximation of laws, regulations and administrative packaging and labelling of dangerous substances, and in the Directive of 29 July 1983 of the European Community adapting to technical progress for the fifth time Council Directive 67/548/EEC.
- B. List of dangerous substances: The substances listed in the Annex I of Directive 67/548/EEC of 27 June 1967 and its amendments.
- C. List of dangerous micro-organisms: The micro-organisms classified in risk group II, III and IV as adopted by the World Health Organisation.]

ANNEX II
DANGEROUS RADIATIONS

[Preliminary suggestion of matters which might be suitable for consideration under Article 2 (1) (c) above].

Technologies producing dangerous substances:

- radiological laboratories*
- nuclear energy plants*
- industrial applications of radioactive substances*
- conventional energy plants*
- fertiliser industries*
- high energetic lasers
- transport of electricity
- strong radiofrequency
- generation of ultraviolet light
- generation of x-rays
- generation of microwaves

* caused by radioactive substances

A N N E X I I I

INSTALLATIONS OR SITES FOR INCINERATION, TREATMENT,
HANDLING OR RECYCLING OF WASTE

[See Article 2(1)(d) above]

[These proposals were made by one expert].

Designation

Installations for a partial or complete disposal of solid or liquid substances by incineration

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[Installations for a thermal decomposition of flammable solid or liquid substances under a lack of oxygen (pyrolysis installations)]

[] partly covered by Article 2, § 1 a

=====

[Installations for a recovery (recycling) of certain components from solid substances by means of burning,

with the exception of furnaces for a recovery (recycling) of precious metals provided that the quantities involved are less than 200 kg per day].

[] partly covered by Article 2, § 1 a

=====

Installations for a treatment of solid waste provided that the output is not lower than 1t per hour,

with the exception of those installations which, by mere sorting, recover substances from household waste.

=====

Installations for a handling of solid waste having a capacity not lower than 100t per day,

with the exception of those installations which are used to handling soil to to handling rocks resulting from a winning or treatment of mineral resources.

=====

Compost installations

=====

Stationary installations for thermal treatment of household waste

=====

Installations used for a treatment of car wrecks.

A N N E X I V

SPECIFICATION OF THE ACTIVITIES REFERRED TO IN ARTICLE 13,
Alternative I, paragraph (1)(b) or Alternative II