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**ECONOMIC COMMISSION FOR EUROPE
COMMITTEE ON ENVIRONMENTAL POLICY**

Meeting of the Signatories to the
Convention on Access to Information,
Public Participation in Decision-making and
Access to Justice in Environmental Matters

Working Group on Pollutant Release and Transfer Registers
(Geneva, 16-17 September 2002)

**DRAFT PROTOCOL ON POLLUTANT RELEASE AND TRANSFER REGISTERS
CONSOLIDATED TEXT**

Presented by the Chair person of the Working Group on the basis of preparatory work by a small drafting group with the support of the secretariat

PREAMBLE

The Parties to this Protocol,

Recalling article 5, paragraph 9, and article 10, paragraph 2, of the 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters,

Having regard to principle 10 of the Rio Declaration on Environment and Development [, which states inter alia that each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and that States shall facilitate and encourage public awareness and participation by making information widely available],

Having regard also to the principles and commitments agreed to at the United Nations Conference on Environment and Development of 3-14 June 1992, in particular the provisions in chapter 19 of Agenda 21, in which governments with the cooperation of industry were called upon inter alia to improve and develop databases and information systems on toxic chemicals, such as emission inventory programmes, and programmes to promote the public's and workers' right to know, the broadest possible awareness of chemical risks being a prerequisite for chemical safety,

[Taking note of the Programme for the Further Implementation of Agenda 21, adopted by the General Assembly at its nineteenth special session (23-28 June 1997), in which it called for, inter alia, enhanced national capacities and capabilities for information collection, processing and dissemination, to facilitate public access to information on global environmental issues through appropriate means,]

Having regard to the Plan of implementation of the 2002 World Summit on Sustainable Development, which encourages the development of coherent, integrated information on chemicals, such as through national pollutant release and transfer registers,

Taking into account the work of the Intergovernmental Forum on Chemical Safety, in particular the Bahia Declaration on Chemical Safety, the Priorities for Action Beyond 2000 and the Action Plan on Pollutant Release and Transfer Registers/Emission Inventories,

Taking into account also the activities undertaken within the framework of the Inter-Organization Programme for the Sound Management of Chemicals,

*Taking into account furthermore, the work of the Organisation for Economic Co-operation and Development (OECD), in particular the principles and information contained in its *Pollutant Release and Transfer Registers (PRTRs), A Tool for Environmental Policy and Sustainable Development, Guidance Manual for Governments* and OECD Council recommendation C(96)41 on implementing pollutant release and transfer registers, which calls upon member countries to take steps to establish as appropriate, implement and make publicly available national pollutant release and transfer registers and promote comparability among such national registers and the sharing of data from these registers between neighbouring countries,*

[Having regard to decision 2000/479/EC of 17 July 2000 of the Commission of the European Communities on the implementation of a European pollutant emission register,]

[Having regard also to resolutions 97-04 and 00-07 of the Council of the Commission for Environmental Cooperation of North America on promoting comparability of pollutant release and transfer registers and on such registers generally,]

[Wishing to provide a mechanism contributing to the realization of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, by assuring the development of publicly accessible environmental information systems,]

[Wishing also to ensure that the development of such systems takes into account principles contributing to sustainable development such as the precautionary principle, the polluter-pays principle and the principle of internalizing environmental costs,]

Recognizing the link between adequate environmental information systems and the exercise of the rights contained in the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters,

Recognizing also the importance of preventing and reducing pollution from industrial and other sources in protecting the environment and the health of present and future generations,

Recognizing further that reducing, and as far as possible eliminating, potentially harmful releases and transfers of pollutants is a foundation for achieving environmentally sound and sustainable development,

[Noting that the public availability of information through the mechanism of pollutant release and transfer registers has contributed to a substantial and quantifiable reduction of pollution in those countries where it has been implemented,]

Convinced of the value of pollutant release and transfer registers as a cost-effective tool for encouraging improvements in environmental performance, for providing the public with access to information on pollutants released into and transferred in and through their communities, and for use by Governments in tracking trends, demonstrating progress in pollution reduction, monitoring compliance with certain international agreements and setting priorities and evaluating progress achieved through environmental policies and programmes,

Believing that pollutant release and transfer registers can bring tangible benefits to industry through improved management of [pollutants][chemicals],

Noting the opportunities for using data from pollutant release and transfer registers, when combined with health, environmental, demographic, economic or other types of relevant information, for the purpose of gaining a better understanding of potential problems, identifying 'hot spots', taking preventive and mitigatory measures, and setting environmental management priorities,

Recognizing the need to develop internationally compatible national pollutant release and transfer register systems to increase the comparability of data,

Noting that many ECE member States, the European Community and the Parties to the North American Free Trade Agreement are acting to collect data concerning pollutant releases and

transfers from various sources and to make these data publicly accessible, and recognizing especially in this area the long and valuable experience in certain countries,

Have agreed as follows:

Article 1

OBJECTIVE

The objective of this Protocol is to enhance the rights of the public to have access to information through the establishment of a coherent, integrated, nationwide pollutant release and transfer register (PRTR) in accordance with the provisions of this Protocol, which could facilitate public participation in environmental decision-making as well as contribute to the prevention and reduction of pollution of the environment [and thereby contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being].

Article 2

DEFINITIONS

For the purposes of this Protocol,

1. “Party” means, unless the text indicates otherwise, a Contracting Party to this Protocol;
2. “Convention” means the 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters;
3. “The public” means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;
4. “Facility” means one or more installations on the same site, or on adjoining sites, that are owned or operated by the same natural or legal person [and where one or more activities [listed in annex I] are carried out];
5. “Competent authority” means the national authority or authorities, or any other competent body or bodies, designated by a Party to manage a national pollutant release and transfer register system;
6. “Pollutant” means [a substance or a group of substances, including any chemical elements and their compounds,] [an individual chemical, a category of chemicals or an individual chemical

within a chemical category] that may be [harmful][hazardous] to the environment or to human health on account of its physical, chemical, biological or other intrinsic properties [and of its introduction into the environment [through human activity]] [and for which reporting is required under this Protocol];

7. “Release” means any introduction of pollutants into the environment [as a result of any human activity] [, whether deliberate or accidental, routine or non-routine], including [spilling, emitting, discharging, injecting, disposing [,] [or] dumping [, or discarding of any closed receptacles]];
8. “Off-site transfer” means the movement of
[**option 1:** pollutants]
[**option 2:** either pollutants [in waste] or waste]
beyond the boundaries of the facility [for [storage,] [use, reuse,] recycling, treatment, [including waste-water treatment,] [incineration with or without energy recovery,] [final treatment] [or disposal] [or release]];
9. [“On-site transfer” means the movement of
[**option 1:** pollutants]
[**option 2:** either pollutants [in waste] or waste]
within the boundaries of the facility [for [storage,] [use, reuse,] recycling, treatment, [including waste-water treatment,] [incineration with or without energy recovery,] [final treatment] [or disposal] [or release]]];
10. [“Transfer through products” means off-site movement of pollutants in or as products;]
11. [“Diffuse sources” means the many smaller or scattered sources from which pollutants may be released to land, air or water, whose combined impact on those media may be significant and for which it is impractical to collect reports from each individual source;]
12. The terms “national” and “nationwide” shall, with respect to the obligations on regional economic integration organizations arising under this Protocol, be construed as applying to the region in question unless otherwise indicated;
13. [“Waste” means substances or objects [which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law] [so defined by the provisions of national law and which are intended to be recovered, incinerated or disposed of] and references to “waste” include waste-water destined for waste-water treatment plants;] 1/
14. [“Hazardous waste” is waste that is defined as hazardous by the provisions of national law.
15. “Other waste” is waste that is not hazardous waste.]

Article 3

GENERAL PROVISIONS

1. Each Party shall take the necessary legislative, regulatory and other measures, and appropriate enforcement measures, to implement the provisions of this Protocol.
2. The provisions of this Protocol shall not affect the right of a Party to maintain or introduce a more extensive or more publicly accessible pollutant release and transfer register than required by this Protocol.
3. Each Party shall take the necessary measures to ensure that employees of a facility and members of the public who report a violation by a facility of national laws implementing this Protocol to public authorities are not penalized, persecuted or harassed by that facility or public authorities for their actions in reporting the violation.
- [4. In the determination of the application of this Protocol to particular facilities, activities or substances, each Party shall apply [a] [the] precautionary [approach][principle]. Lack of full scientific certainty shall not be used as a reason for excluding particular facilities, activities or substances from the scope of this Protocol.]
5. To reduce duplicative reporting, PRTR systems may be integrated to the degree practicable with existing information sources such as reporting mechanisms under licences or operating permits.
6. Parties shall strive to achieve convergence among national pollutant release and transfer registers[, in particular through [investigating routes to increase comparability between][progressively requiring both] pollutant-specific and waste-specific reporting for transfers].

Article 4

CORE ELEMENTS OF A PRTR SYSTEM

In accordance with this Protocol, each Party shall establish and maintain a publicly accessible national pollutant release and transfer register which shall:

- (a) Be facility-specific with respect to reporting on point sources;
- (b) [Accommodate reporting on diffuse sources];
- (c) Be pollutant-specific [[and][or] waste-specific, as appropriate];

- (d) Be multimedia, distinguishing among releases to air, land and water;
- (e) Include information on transfers;
- (f) Be based on mandatory reporting on a periodic basis;
- (g) Include standardized and timely data, a limited number of standardized reporting thresholds and limited provisions for confidentiality, if any;
- (h) Be coherent and designed to be user-friendly and publicly accessible, including in electronic form;
- (i) Allow for public participation in its development and modification; and
- (j) Be a structured, computerized database or several linked databases maintained by the competent authority.

Article 5

DESIGN/STRUCTURE

1. Each Party shall ensure that the data held on the register referred to in article 4 are presented in both aggregated and non-aggregated forms, so that releases and transfers can be searched and identified according to facility and its geographical location, activity, operator and/or owner, [company,] pollutant [or waste as appropriate], each of the environmental media into which the pollutant is released, and, as specified in article 7, paragraph 3, the destination of the transfer. 2/ [Each Party shall also ensure that the data can be searched and identified according to those diffuse sources which have been included in the register.]
2. Each Party shall design its register taking into account the possibility of its future expansion [and ensuring that reporting data from [at least the ten previous reporting years][all previous reporting periods] are publicly accessible].
3. The register shall be designed for maximum ease of public access through electronic means, such as the Internet. The design shall allow that, under normal operating conditions, the information on the register is continuously and immediately available through electronic means.
4. Each Party [shall][may] provide links in the register to [any of] its [relevant] existing, publicly accessible databases containing information on releases and transfers of radioactive substances, radiation, and genetically modified organisms and products containing or derived from genetically modified organisms.
5. Each Party shall provide links in its register to the pollutant release and transfer registers of other Parties to the Protocol and, where feasible, to other countries' pollutant release and transfer registers.

Article 6

SCOPE OF REGISTER

FIRST STEP:

1. Each Party shall ensure that its register includes the information on:

(a) Releases of pollutants [and, where applicable, waste] required to be reported under article 7, paragraph 1;

(b) [On- and] off-site transfers required to be reported under article 7, paragraph 1;

[(c) [Releases of pollutants from diffuse sources for which that Party determines that data are being collected by the relevant authorities and can be practicably included. Where the Party determines that no such data exist, it shall take measures to initiate reporting on releases of relevant pollutants from one or more [diffuse sources] [of the [following diffuse sources: 3/] [diffuse source categories specified in annex IV]]]. 4/

SUBSEQUENT STEPS:

[Option: Deferred obligation/automatic trigger]

[2. Each Party shall ensure that, from its Xth reporting year onwards under this Protocol, its register includes:

(a) [The information on on-site transfers required to be reported under article 7, paragraph 1;]

(b) [The information on releases of pollutants from diffuse source categories specified in annex IV;]

(c) [Facility-specific information on:

(i) [Water use];

(ii) [Energy use]; [and]

(iii) [Resource use];]

(d) [Information on transfers through products; and]

- (e) [Information concerning the storage of pollutants required to be reported under article 7, paragraph 3 (e).]

[Option: Mandate of the Meeting of the Parties] 5/

[3. Having assessed the experience gained with the implementation of this Protocol and taking into account relevant international processes, the Meeting of the Parties shall, no later than at its Xth ordinary meeting, review the reporting requirements under this Protocol, and consider the following issues in the further development of the Protocol:

- (a) [Specification of a reporting requirement on diffuse sources;]
- (b) Revision of the activities specified in annex I;
- (c) Revision of the pollutants specified in annex II;
- (d) Revision of the thresholds in annexes I and II[; and]
- (e) [Specification or addition of reporting obligations concerning:
 - (i) Radiation, including electromagnetic radiation;
 - (ii) Genetically modified organisms and products containing or derived from genetically modified organisms;
 - (iii) Water and energy use;
 - (iv) Resource use;
 - (v) Transfers of pollutants in products;
 - (vi) Storage of pollutants].]

[RECOMMENDATORY STEP]

[4. Each Party should progressively extend its national pollutant release and transfer register to include information on:] 6/

Article 7

REPORTING REQUIREMENTS

1. Each Party shall require either the owners or the operators of all individual facilities within its jurisdiction that:

(a) Undertake one or more of the activities [as] specified in annex I [above the activity thresholds, if indicated][and manufacture, process or use any pollutant specified in annex II in quantities exceeding the thresholds]; [and]

[(b) Release any pollutant [or, where applicable, waste] or transfer [off-site] [any pollutant][either any pollutant [in waste,] or waste] in quantities exceeding the thresholds specified in annex II],

to submit to its competent authority the information specified in paragraphs 3, 4 and 6 below, and in accordance with the requirements therein [, with respect to those pollutants [or wastes] for which thresholds were exceeded].

2. Having regard to article 6, paragraph 1 (c), each Party shall designate one or more public authorities or competent bodies to fulfil its obligations under this Protocol with respect to diffuse sources and to submit to the register the information specified in paragraph 5.

3. [Beginning with the first reporting year for a Party, that] [Each] Party shall require the owners or operators of the facilities required to report under paragraph 1 above to complete and submit to its competent authority, the following information on a facility-specific basis:

(a) The name, street address, geographical location and the activity or activities of the reporting facility, and the name of the operator and/or owner;

(b) The name of and numerical identifier for each pollutant required to be reported pursuant to paragraph 1;

(c) The amount of each pollutant required to be reported pursuant to paragraph 1 released from the facility to the environment in the reporting year, both in aggregate and according to whether the release is to air, to water or to land, including by underground injection;

(d) OPTION 1:

[The amount of each pollutant required to be reported pursuant to paragraph 1 that is transferred [on-site and] off-site for [storage,] recycling, energy recovery or treatment, or transferred off-site for disposal [and the name, address and location of the site receiving the transfer];]

[*OPTION 2*:

[Either

(i) The amount of each pollutant required to be reported pursuant to paragraph 1 that is transferred [on-site and] off-site for [storage,] recycling, energy recovery or treatment, or transferred off-site for disposal [and the name, address and location of the site receiving the transfer]; or

- (ii) Beginning with the first reporting year, the amount of waste transferred [on-site or] off-site for [storage,] recycling, energy recovery, or treatment, or transferred off-site for disposal, and the amount of metals and metal compounds designated in annex II, column X, that is transferred [on-site and] off-site for [storage,] recycling or transferred off-site for disposal [and the name, address and location of the site receiving the transfer]. Beginning with the fourth reporting year, the amount of each pollutant required to be reported pursuant to paragraph 1 that is transferred [on-site and] off-site for [storage,] recycling, energy recovery or treatment, or transferred off-site for disposal]. [A Party may, for a period of up to ten years, delay the pollutant-specific reporting requirements of this subparagraph;]

[OPTION 3:

[Either

- (i) The amount of each pollutant required to be reported pursuant to paragraph 1 that is transferred [on-site and] [off-site] for [storage,] recycling, energy recovery or treatment, or transferred [off-site] for disposal [and the name, address and location of the site receiving the transfer]; or
- (ii) The amount of waste [and the amount of [metals and metal compounds][pollutants designated in annex II, column X] contained within the waste] required to be reported pursuant to paragraph 1 transferred [off-site] in the reporting year [distinguishing between hazardous waste and other waste] according to whether the waste is destined for [storage,] disposal or recovery 8/ [and the name, address and location of the site receiving the transfer.]] 9/

(e) [The maximum amount of each pollutant required to be reported pursuant to paragraph 1 stored on-site in the reporting year ;] and

(f) The type of methodology used to derive the information referred to in subparagraphs (c) to (e)[, according to article 9, paragraph 2, indicating [, where appropriate,] whether the information is based on measurement, calculation or estimation].

4. [The information referred to in paragraph 3 (c) and (d) shall include information on total releases and transfers whether resulting from routine activities or extraordinary events [not resulting from such activities], and distinguish between releases and transfers resulting from routine activities and those resulting from extraordinary events].

5. Each Party shall present on its register, in an adequate, spatial disaggregation, the information on releases of pollutants from diffuse sources required by article 6, including the information on the type of methodology used to derive the information[, and, where available,

(a) The aggregate yearly releases of such pollutants to air, water and land, separated out by pollutant and diffuse source[, where those releases constitute a significant proportion of the total national releases of the particular pollutant]; and

(b) A comparison of the amounts for a given reporting year with amounts from the previous reporting year].

[6. Pursuant to article 6, paragraph 2, beginning with the Xth reporting year for a Party, that Party shall also require reports under paragraph 1 to include, for each pollutant required to be reported, the following information:

(a) Estimates of the amount of the releases, including off-site transfers for disposal, and estimates of the amount of transfers for treatment, energy recovery and recycling, expected to be reported for the next two reporting years;

(b) The total amount of releases from the facility, including the on-site releases and the transfers for disposal, but excluding releases from extraordinary events;

(c) A ratio of production in the current reporting year to production in the previous reporting year, calculated in a manner that reflects all activities involving the pollutant. Where a feedstock or some variable other than production is the primary influence on the quantity of the pollutant released or transferred, a ratio based on the primary variable for each pollutant may be used;

(d) The following amounts, aligned in the register to allow for comparison with the same amounts reported for the current reporting year:

(i) The sum of releases in paragraph 3 (c), and the transfers off-site to disposal reported under paragraph 3 (d), excluding the releases resulting from extraordinary events, for the previous reporting year;

(ii) The amounts transferred off-site for the previous reporting year, distinguishing whether the pollutant was transferred off-site for treatment, energy recovery, recycling, disposal or other type of release; and

(iii) The amounts transferred on-site for the previous reporting year, distinguishing whether the pollutant was transferred for treatment, energy recovery or recycling.]

[7. Each Party shall have in place and regularly review a national list of pollutants [and resources] required to be reported on its register pursuant to the provisions of this Protocol. Such lists may include additional pollutants [and resources] and lower thresholds to reflect national priorities.]

Article 8

REPORTING CYCLE

1. Each Party shall ensure that the information required to be incorporated in its register is publicly available, compiled and presented on the register by calendar year. The reporting year is the calendar year to which that information relates. For each Party, the first reporting year is the calendar year after the Protocol enters into force for that Party. Reporting under the Protocol shall be annual. However, the second reporting year may be the second calendar year following the first reporting year.
2. Each Party that is not a regional economic integration organization shall ensure that the information is incorporated into its register within fifteen months from the end of each reporting year. However, the information for the first reporting year shall be incorporated into its register within two years from the end of that reporting year.
3. Each Party that is a regional economic integration organization shall ensure that the information for a particular reporting year is incorporated into its register six months after the Parties that are not regional economic integration organizations are required to incorporate their information.

Article 9

DATA COLLECTION AND RECORD-KEEPING

1. Each Party shall require the owners or operators of the facilities subject to the reporting requirements of article 7 to [collect the data needed to determine][identify], in accordance with paragraph 2 below and with appropriate frequency, the facility's releases and [off-site] transfers subject to reporting under article 7 and to keep available for the competent authorities the records of the data from which the information was derived for a period of [three][five] years, starting from the end of the reporting year concerned. These records shall also include the methodology used for data gathering.
2. Each Party shall require the owners or operators of the facilities subject to reporting under article 7 to use the best available information, which may include monitoring data, emission factors, mass balance equations, indirect monitoring or other calculations, engineering judgments and other methods. Where appropriate, these should be carried out in accordance with internationally approved methodologies.

Article 10

QUALITY ASSESSMENT

1. Each Party shall ensure that the owners or operators of the facilities subject to the reporting requirements under article 7, paragraph 1, assure the quality of the reported data.
2. Each Party shall ensure that the data contained in its register are subject to quality assessment by the competent authority, in particular as to their completeness, consistency and credibility, taking into account any guidelines that may be developed by the Meeting of the Parties.

Article 11

PUBLIC ACCESS TO INFORMATION

1. Each Party shall ensure that the public has access, without an interest having to be stated, to information contained in its pollutant release and transfer register according to the provisions of this Protocol, primarily by ensuring that the register provides for direct electronic access through public telecommunications networks.
2. Where the register is not easily accessible to the public by direct electronic means, each Party shall ensure that the competent authorities provide any person requesting specific information with that information by any other effective means, as soon as possible and at the latest within one month after the request has been submitted.
3. Subject to paragraph 4, each Party shall ensure that access to information contained in the register is free of charge.
4. Each Party may allow its competent authority to make a charge for supplying [copies of] the specific information referred to in paragraph 2, but such charge shall not exceed a reasonable amount.
5. [Each Party shall facilitate electronic access to its register in publicly accessible locations, for example in public libraries, offices of local authorities and other appropriate places.]

Article 12

CONFIDENTIALITY

1. Each Party may authorize the competent authority to keep information held on the register confidential where public disclosure of that information would adversely affect: 10/

- (a) [International relations, national defence or public security;]
- (b) [The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;]
- (c) The confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest;
- (d) [Intellectual property rights;]
- (e) [The confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for in national law.]

The aforementioned grounds for confidentiality shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information relates to releases into the environment.

2. [Within the framework of paragraph 1 (c),] information [other than the specific chemical name] on releases [and off-site transfers] [which is relevant for the protection of the environment] shall be disclosed.
3. [Where a claim of confidentiality is upheld, the [information][specific chemical name] [shall][may] be withheld from the public and included in the register in a form that does not permit public access. In such cases, the chemical names of particular pollutants shall be replaced in the public part of the register with the generic chemical names.] Where [any information][a specific chemical name] is withheld from the public part of the register, the register shall indicate [what type of information][that it] has been withheld, for what reason it has been withheld [and the adverse health and environmental hazards associated with the pollutants on which the information is being withheld].

Article 13

PUBLIC PARTICIPATION IN THE DEVELOPMENT OF NATIONAL POLLUTANT RELEASE AND TRANSFER REGISTERS

1. Each Party shall ensure appropriate opportunities for public participation with respect to measures taken to implement this Protocol and with respect to significant changes in [the reporting requirements of] its national pollutant release and transfer register, [according to its national provisions][within the framework of its national law].
- [2. Each Party shall notify the public, in an effective manner and early in the decision-making process, of its intention to establish or significantly change a national pollutant release and transfer register. The notification shall include information on the envisaged procedure, including the

opportunities for and the modalities of public participation, and on the availability of further relevant information and the means to obtain it.]

[3. In addition to any information required to be publicly available under the Protocol , each Party shall ensure that, in the process of establishing or significantly changing the national PRTR, the public has timely access, free of charge, to information on the proposed scope, nature, structure, functioning and content of the register and to any changes proposed to these elements.]

4. For the purpose of paragraph 1, each Party shall [give the public the opportunity][entitle the public] to submit any comments, information, analyses or opinions that it considers relevant to the decision-making process, and the relevant public authority shall take due account of the public input to the process.

[5. Each Party shall ensure that, when the decision to establish or significantly change the register has been taken, the public is promptly informed of the decision, of the reasons and considerations on which it is based and of the way in which the public input has been taken into account.]

[6. Each Party shall ensure that the public may petition the competent authority to change the national pollutant release and transfer register.]

Article 14

[ENFORCEMENT AND] ACCESS TO JUSTICE

1. [Each Party shall ensure that its relevant public authorities have sufficient powers and opportunities to initiate administrative, civil or criminal proceedings in order to enforce the obligations of facilities to report full and accurate information.]

[2. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her [request for][right of access to] information under article 11[, paragraph 2,] [or opportunity to participate under article 13] has been refused, hindered or impeded has access to a review procedure before a court of law or another independent and impartial body established by law.]

Article 15

REGIONAL REGISTER

1. A register shall be established for the ECE region containing the totality of the data existing on the national registers of the Parties. The regional register will be maintained by [name of responsible body] and will meet all relevant criteria applicable to national registers.
2. By 1 June of each year following the first full calendar year after entry into force of this instrument, each Party shall submit the data from its national register to [name of responsible body] for inclusion in the regional register.
3. The Parties shall cooperate with [name of responsible body] to facilitate the harmonization of data collection and presentation methods.]

Article 16

CAPACITY-BUILDING

1. Each Party shall promote public awareness of its pollutant release and transfer register, and shall ensure that assistance and guidance are provided to the public in accessing the register and in understanding and using the information contained in it.
- [2. Each Party shall ensure that it provides adequate capacity-building for and guidance to the responsible authorities and bodies to assist them in carrying out their duties under this Protocol and that the necessary personnel are designated to achieve the ends referred to in this article.]

Article 17

INTERNATIONAL COOPERATION

1. The Parties shall, as appropriate, cooperate and assist each other:
 - (a) In international actions in support of the objectives of this Protocol;
 - (b) [On request, in implementing national systems in pursuance of this Protocol;]
 - (c) In sharing information under the Protocol concerning releases and transfers within border areas; and
 - (d) In sharing information [under the Protocol] concerning [the route and destination of] transfers among Parties.

2. The Parties shall encourage cooperation among each other and with the relevant international organizations, as appropriate, to promote:

- (a) Public awareness at the international level and the transfer of technology; and
- (b) The provision of technical assistance to developing Parties and Parties with economies in transition in matters relating to the Protocol.

Article 18

MEETING OF THE PARTIES

1. A Meeting of the Parties is hereby established. The first session of the Meeting of the Parties to this Protocol shall be convened no later than two years after the entry into force of this Protocol. Thereafter, ordinary sessions of the Meeting of the Parties shall be held sequentially with ordinary meetings of the Parties to the Convention, unless otherwise decided by the Parties to this Protocol. The Meeting of the Parties shall hold an extraordinary session if it so decides in the course of an ordinary session or at the written request of any Party provided that, within six months of it being communicated to all Parties, the said request is supported by at least one third of these Parties.

2. The Meeting of the Parties shall keep under continuous review the implementation and development of this Protocol [on the basis of regular reporting by the Parties], and, with this purpose in mind, shall:

- (a) Review the policies for and legal and methodological approaches to the development of PRTR systems and promote their progressive strengthening and convergence;
- (b) Establish guidelines on reporting by the Parties to the Meeting of the Parties, bearing in mind the need to avoid duplication of effort in reporting requirements; 11/
- (c) Establish a programme of work;
- (d) Take measures to strengthen transboundary and international cooperation in accordance with article 17;
- (e) [Share information on experience gained in concluding and implementing bilateral and multilateral agreements or other arrangements having relevance to the purposes of this Protocol and to which one or more of the Parties are a party;]
- (f) Establish such subsidiary bodies as it deems necessary;

(g) Consider and adopt proposals for such amendments to this Protocol and its annexes as are deemed necessary for the purposes of this Protocol, in accordance with the provisions of articles 21 and 22;

(h) [Keep the annexes listing pollutants and activities to which the Protocol applies under continuous review in the light of technological and scientific advances and having regard to the precautionary approach;]

(i) At its first session, consider and adopt by consensus rules of procedure for its meetings and the meetings of subsidiary bodies under this Protocol, taking into account any rules of procedure adopted by the Meeting of the Parties to the Convention;

(j) At its [first][Xth] meeting,

(i) Review the experience with reporting on releases from diffuse sources, with a view to adopting more precise criteria and thresholds [so as to further harmonize reporting in this area];

(ii) [Review the experience with the application of article 5, paragraph 3, 12/ and consider what further steps might be taken to harmonize monitoring and reporting obligations and methodologies in the areas of radiation and radioactive substances, noise and genetically modified organisms];

(iii) Consider the adoption of measures to improve the harmonization of methodologies for determining releases, transfers and resource use, such as the establishment of guidelines, taking into account guidance established in other international processes; and

(iv) Consider establishing financial arrangements and technical assistance mechanisms to facilitate the implementation of the Protocol;

(k) [Seek, where appropriate, the services of relevant ECE bodies and other competent international bodies and specific committees in all aspects pertinent to the achievement of the purposes of this Protocol;]

(l) Consider and take any additional action that may be required to further the objectives of this Protocol, such as the adoption of guidelines and recommendations which promote its implementation; [and]

[(m) Consider the establishment of a regional register]. 13/

3. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State or regional economic integration organization entitled under article 26 to sign this

Protocol but which is not a Party to it, and any intergovernmental organization qualified in the fields to which the Protocol relates, shall be entitled to participate as observers in the meetings of the Parties.

4. Any non-governmental organization, qualified in the fields to which this Protocol relates, which has informed the Executive Secretary of the Economic Commission for Europe of its wish to be represented at a meeting of the Parties shall be entitled to participate as an observer unless one third of the Parties present in the meeting raise objections.

Article 19

RIGHT TO VOTE

1. Except as provided for in paragraph 2 of this article, each Party to this Protocol 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 20

SUBSIDIARY BODY FOR SCIENTIFIC AND TECHNICAL ADVICE

1. A subsidiary body, to be called the Subsidiary Body for Scientific and Technical Advice, is hereby established. It shall be open to participation by all Parties, as well as by non-Parties and representatives of intergovernmental organizations, international organizations and non-governmental organizations.
2. Under the authority of, and in accordance with the relevant decisions by the Meeting of the Parties, the Subsidiary Body for Scientific and Technical Advice shall provide the Meeting of the Parties, and, as appropriate, other subsidiary bodies under the Protocol, with timely advice on scientific, technical and technological matters relevant to the implementation and development of this Protocol.
3. At its first session, the Meeting of the Parties shall consider and decide on the further terms of reference, organization and operation of the Subsidiary Body for Scientific and Technical Advice.]

Article 21

AMENDMENTS TO THE PROTOCOL

1. Any Party may propose amendments to this Protocol.
2. Proposals for amendments to this Protocol shall be considered at a meeting of the Parties.
3. The text of any proposed amendment to this Protocol shall be submitted in writing to the secretariat, which shall communicate it to all Parties at least [ninety days][six months] before the meeting at which it is proposed for adoption.
4. The Parties shall make every effort to reach agreement on any proposed amendment to this 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. An amendment to this Protocol adopted in accordance with paragraph 4 above shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for ratification, acceptance or approval. On the ninetieth day after the receipt by the Depositary of notification of their ratification, approval or acceptance by at least three fourths of these Parties, an amendment shall enter into force for Parties having ratified, approved or accepted it. Thereafter it shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval or acceptance of the amendment. 14/
6. For the purposes of this article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.
- [7. The Parties shall establish a procedure for accepting and considering proposals from members of the public to amend the Protocol.]

Article 22

ADOPTION AND AMENDMENTS OF ANNEXES

1. Annexes to this Protocol shall form an integral part thereof [and, unless expressly provided otherwise, a reference to this Protocol constitutes at the same time a reference to any annexes thereto.]
2. The following procedure shall apply to the proposal, adoption and entry into force of additional annexes and amendments to annexes:
 - (a) Additional annexes and amendments to annexes shall be proposed and adopted in accordance with the procedure laid down in paragraphs 1 to 4 of article 21;

(b) Any Party that [has not submitted the notification referred to in article 28, paragraph 5, and that] is unable to accept the additional annex or the amendment to an annex shall so notify the Depository in writing within twelve months from the date of the circulation of the adoption by the Depository. The Depository shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for its previous notification and, upon deposit of an instrument of acceptance with the Depository, the additional annex or the amendment to an annex shall become effective for that Party;

(c) On the expiry of twelve months from the date of its communication by the Depository as provided for in paragraph 5 of article 21, the additional annex or the amendment to an annex shall become effective for those Parties which have not submitted a notification to the Depository in accordance with the provisions of subparagraph (b) above, provided that not more than one third of the Parties at that time have submitted such a notification.

3. [With respect to any Party that has made a declaration in accordance with paragraph 5 of article 28, additional annexes or amendments to annexes shall enter into force for such a Party on the ninetieth day after the date of deposit with the Depository of its instrument of ratification, acceptance, approval or accession with respect to such an additional annex or amendment to an annex.]

4. [If an additional annex or an amendment to an annex is related to an amendment to this Protocol, the additional annex or amendment to an annex shall not enter into force until such time as the amendment to this Protocol enters into force.]

Article 23

SECRETARIAT

1. The Executive Secretary of the Economic Commission for Europe shall carry out the following secretariat functions for this 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 this Protocol;
- (c) Such other functions as may be determined by the Meeting of the Parties on the basis of available resources.

[2. The secretariat shall report to the Parties on the elements of and the modalities for carrying out the programme of work referred to paragraph 2 (c) of article 18.]

Article 24

REVIEW OF COMPLIANCE

At its first session, the Meeting of the Parties shall by consensus establish cooperative procedures and institutional arrangements of a [non-judicial][non-adversarial] nature to assess and promote compliance with the provisions of this Protocol and to address cases of non-compliance. [These procedures and arrangements shall allow [for appropriate public involvement, including] consideration of [inter alia] communications from members of the public on matters related to this Protocol.]

Article 25

SETTLEMENT OF DISPUTES

1. If a dispute arises between two or more Parties about the interpretation or application of this 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 this 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 above, 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 procedures to be adopted at the [first] session of the Meeting of the Parties in an annex [as soon as practicable] [having regard to the Permanent Court of Arbitration Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment].

[3. If the parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 above, the dispute may be submitted only to the International Court of Justice, unless the parties to the dispute agree otherwise.]

Article 26

SIGNATURE

This Protocol shall be open for signature in Kiev (Ukraine) on ____ May 2003 on the occasion of the Fifth Ministerial Conference “Environment for Europe,” and thereafter at United Nations Headquarters in New York until 31 December 2003, by all States which are members of the United Nations and by regional economic integration organizations constituted by such States.

Article 27

DEPOSITARY

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

Article 28

RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. This Protocol shall be subject to ratification, acceptance or approval by signatory States and regional economic integration organizations.
2. This Protocol shall be open for accession as from 1 January 2004 by the States and organizations referred to in article 26.
3. Any organization referred to in article 26 which becomes a Party without any of its member States being a Party shall be bound by all the obligations under this Protocol. If one or more of such an organization’s member States is a Party, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Protocol. In such cases, the organization and the member States shall not be entitled to exercise rights under this Protocol concurrently.
4. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations referred to in article 26 shall declare the extent of their competence with respect to the matters governed by this Protocol. These organizations shall also inform the Depositary of any substantial modifications to the extent of their competence.
5. [In its instrument of ratification, acceptance, approval or accession, any Party may declare that, with respect to it, any additional annex or amendment to an annex shall enter into force only upon the deposit of its instrument of ratification, acceptance, approval or accession with respect thereto.]

Article 29**ENTRY INTO FORCE**

1. This 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. For the purposes of paragraph 1 of this article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by the States members of such an organization.
3. For each State or organization which ratifies, accepts or approves this 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 reservations may be made to this Protocol.

Article 31**WITHDRAWAL**

At any time after three years from the date on which this Protocol has come into force with respect to a Party, that Party may withdraw from the Protocol by giving written notification to the Depositary. Any such withdrawal shall take effect on the ninetieth day after the date of its receipt by the Depositary.

Article 32**AUTHENTIC TEXTS**

The original of this 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 this Protocol.

DONE in Kiev, thisth day of May, two thousand and three.

Annexes

Annex I Activities

Annex II Pollutants 15/

[Annex III Reporting thresholds for water, energy and resource use]

[Annex IV Categories of diffuse sources]

Annex V Arbitration

Notes

1/ Currently the operative provisions of the text treat transfers of waste and transfers of waste water in the same manner. The deletion of “and waste-water destined for waste-water treatment plants” from the previous draft of the definition of ‘off-site transfer’ and the inclusion of the reference to waste-water being covered in the definition of waste is consistent with that approach. However, it was brought to the attention of the drafting group at a late stage in the drafting process that several countries do not report transfers of waste and transfers of waste water in the same manner. Specifically, several countries that report transfers of waste water report it in a pollutant-specific manner as opposed to by waste category. The drafting group did not have time to insert this policy option into the text, but noted that, should the Working Group agree on such an option, changes would need to be made throughout the text.

2/ The drafting group considered that the reference to article 7, paragraph 3, should be reconsidered in the light of the outcome of the discussions on that provision. Furthermore, as noted in footnote 2 of document CEP/WG.5/AC.2/2002/10, the drafting group felt that if it were considered necessary to clarify that destinations outside the country of origin were covered by the term “destination” (i.e. for transboundary transfers), this paragraph might be the appropriate place to do it.

3/ As noted in document CEP/WG.5/AC.2/2002/7, footnote 16, the drafting group already considered at its second session that it would be useful to provide an indicative list. At that session, a small group within the drafting group was requested to explore the question and prepared the following list, which was not discussed by the drafting group due to the lack of time:

- Traffic and transport;
- Small and medium-sized enterprises (SMEs) not otherwise covered as point sources;
- Agricultural (pesticides, fertilizers and sediment) runoff;

- Non-industrial point sources like airports and hospitals not otherwise covered as Point sources;
- Construction.

4/ The drafting group noted that the structure of the main operative provisions relating to diffuse sources, namely article 6, paragraph 1 (c), and article 7, paragraphs 2 and 5, was not consistent with the structure of the corresponding provisions relating to point sources, namely article 6, paragraph 1 (a) and (b), and article 7, paragraphs 1, 3, 4 and 6. For reasons of transparency, it was agreed that the provisions could be adjusted at a later stage, without affecting the substance, in such a way that article 6, paragraph 1 (c) would follow the same logic as paragraph 1 (a) and (b) of article 6. The adjusted article 6, paragraph 1(c), would then state that the information on diffuse sources required to be submitted to the competent authority would be required to be placed on the register; that article 7, paragraph 2, would state who was responsible for submitting the information on diffuse sources; and that article 7, paragraph 5, would state what information on diffuse sources should be submitted, and if necessary, depending upon the outcome of the discussions on article 6, paragraph 2 (b), within what time frame.

5/ See footnote 13.

6/ The drafting group proposed this text as a possible introductory sentence should the Working Group decide to include a recommendatory step.

7/ Three distinct options for this provision concerning what information on transfers will be reported, representing three distinct policy options, were considered by the drafting group and are reflected here for consideration by the Working Group. Option 1 represents the approach of reporting on pollutants in transfers. Option 2 represents an initial two-track approach and requires that full pollutant reporting in waste occur after four years, or later if the last bracketed sentence of option 2, (ii), is accepted. Option 3 represents an open-ended two-track approach. It also (in brackets) provides for reporting on metals (yet to be identified) in transfers of waste. Option 2 and option 3 (if the metals option is accepted) would imply a correlating change to the substance annex to accommodate the metals to be reported. The Working Group may wish to consider these options and ask, pursuant to the outcome of such consideration, the contact group to elaborate on the annexes to reflect the options above.

8/ Within the drafting group, a proposal was made to specify that the disposal and recovery should be pursuant to sections A and B of annex IV to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 22 March 1989. It was noted that such a reference would need to be framed in the appropriate treaty language.

9/ The drafting group noted that should the protocol require reporting on transfers by waste category and distinguish between hazardous waste and other waste, annex II should include 'hazardous waste' and 'other waste', with appropriate thresholds. At the sixth meeting of the

Working Group, thresholds of 2 ton and 2,000 ton were proposed for hazardous waste and other waste respectively. The title of annex II would need to be changed accordingly.

10/ The following exemptions provided for in the Aarhus Convention, article 4, paragraph 4, were considered by the drafting group not to be relevant or appropriate:

- The confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law;
- The interests of a third party which has supplied the information requested without that party being under or capable of being put under a legal obligation to do so, and where that party does not consent to the release of the material; or
- The environment to which the information relates, such as the breeding sites of rare species.]

Some exemptions are in square brackets in the body of the text as the drafting group considered that they needed further reflection or analysis.

11/ The term “requirements” might not be appropriate here, as “reporting requirements” elsewhere in the draft text refers to something quite different from what is intended in this subparagraph. Furthermore, there could be a discrepancy between the term “requirements” (binding connotations) and the term “guidelines” (non-binding connotations). This question would need to be addressed at a later stage.

12/ This cross reference is to article 5, paragraph 3, in document CEP/WG.5/AC.2/2001/3.

13/ Article 18, paragraph 2 j (i) and (ii), and article 6, paragraph 3, have some overlap which would need to be addressed when final decisions are taken on these provisions.

14/ The Working Group may wish to consider whether States or regional economic integration organizations becoming Party to the protocol after certain amendments have already entered into force (in the sense of the 'three-fourths' target having been met and 90 days having elapsed for each such amendment) would have the choice to ratify, accept or approve the amendment, as provided for in the present text, or whether becoming a Party to the protocol at that stage would imply being bound by any amendments which have already entered into force (again, in the sense of the 'three-fourths' target having been met and 90 days having elapsed for each such amendment).

15/ The exact title of the annex would need further consideration.