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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  
(Fourth meeting, Geneva, 26 – 28 March 2002)

**DRAFT PROTOCOL ON POLLUTANT RELEASE AND TRANSFER REGISTERS:  
OBJECTIVE, DEFINITIONS, GENERAL PROVISIONS, CORE ELEMENTS,  
STRUCTURE, FIRST STEP, QUALITY ASSESSMENT AND CAPACITY-BUILDING**

Presented by the Chairperson of the Working Group on the basis of the preparatory work by a  
small drafting group with the support of the secretariat <sup>1/</sup>

**Article 1**

**OBJECTIVE**

The objective of this Protocol is to [provide][guarantee the right of] public access to information concerning the release and transfer of pollutants [to the environment and within and

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<sup>1/</sup> The drafting group established by the Working Group at its third session (CEP/WG.5/AC.2/2001/9, paras. 56 and 58) met in Ottawa, 9-11 January 2002, at the invitation of the Government of Canada. The meeting was chaired by Mr. Maas Goote (Netherlands). All participants participated in a personal capacity. The group focused on document CEP/WG.5/AC.2/2001/3 while taking account of the other official documents prepared for the Working Group, the written comments and expert group papers submitted to the Working Group and the Working Group's discussions. Articles 1 to 6 of the present document are intended to effectively replace articles 1 to 4 of document CEP/WG.5/AC.2/2001/3 as a basis for further discussions in the Working Group. The drafting group agreed that it was useful to provide some annotations to the new draft text to identify those issues upon which it had no time to reflect extensively and which would therefore require a more detailed discussion at a later stage. The annotations also aim to clarify options and the linkages between them where such clarification is considered useful. They are not meant to provide a full reflection of the discussion. The drafting group did not discuss or formally agree upon the annotations.

between facilities,] [and to information concerning water, energy and resource use], through the establishment of a coherent, integrated, nationwide pollutant release and transfer register in accordance with the provisions of this Protocol, [[with the aim of] [facilitating][which could facilitate] public participation in environmental decision-making as well as] [contributing][contribute] to the prevention and reduction of pollution of the environment[ and thereby [contributing][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;

#### **option 1:**

[3. “Public”, “public concerned”, “public authority” and “environmental information” shall have the meanings given to the respective terms in article 2 of the Convention;] 2/

#### **option 2:**

[3. “The public” means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;]

[3bis. “The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest;]

[3ter. “Public authority” means:

- (a) Government at national, regional and other level;
- (b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;

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2/ Three options were considered for dealing with these definitions, to reflect three different policy preferences: first, a direct cross-reference to the Convention (option 1); second, incorporation of the text of the definitions used in the Convention verbatim (option 2, with the cross-reference to article 17 in article 2, paragraph 2 (d), of the Convention amended accordingly – see footnote 3/); and third, elaboration of separate definitions which would not necessarily be identical to the corresponding definitions used in the Convention. There was agreement that the text of the definitions in the Convention could serve as a starting point for future discussions. It was felt that further work would be needed to determine which definitions were really required. Most participants felt that no definition of the term “environmental information” was needed.

(c) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b) above;

(d) The institutions of any regional economic integration organization referred to in article 22 3/ which is a Party to this Protocol.

This definition does not include bodies or institutions acting in a judicial or legislative capacity;]

[3quater. “Environmental information” means any information in written, visual, aural, electronic or any other material form on:

(a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;

(c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above;]

4. “Facility” means an [industrial [,][or] agricultural [or other complex]][establishment] 4/ with one or more installations on the same site, or on adjoining sites, that are [owned or] 5/ operated by the same natural or legal person [and where one or more activities listed in annex II are carried out];

3/ This refers to article 22 of document CEP/WG.5/AC.2/2001/6.

4/ The square brackets here reflect two main options. Under the first option, the text would refer explicitly to industrial and agricultural complexes, with two sub-options according to whether or not the definition might also encompass other categories of complexes (e.g. aquacultural). The second option would simply refer to ‘establishment’.

5/ The group noted that the inclusion of the words ‘owned or’ would raise the question as to how, and on the basis of which criteria, ownership would be determined. Some participants felt that introducing the concept of ownership next to that of the operator might result in a legally unclear situation. It was felt important to clarify that including ‘owned or’ in the definition of ‘facility’ would not necessarily impose a reporting obligation on owners. That question would be addressed in a later provision of the protocol. Rather, it would affect the delineation of what constitutes a single facility and, in some cases, could affect whether or not a complex counted as a facility or not. For example, in some cases, including ‘owned or’ might lead to two adjoining complexes managed by different operators but under common ownership being classified as a single facility delivering a single report aggregating data from the two complexes when they might otherwise be classified as two facilities, each with separate reporting obligations entailing the inclusion of slightly more differentiated information on the register. On the other hand, in some cases two such complexes which, when considered separately, might fall below the reporting threshold might, when considered as a single facility, exceed the relevant thresholds, in which case the inclusion of ‘owned or’ would entail reporting which would not otherwise occur.

5. “Competent authority” means the national authority or authorities designated by a Party to

manage a national pollutant release and transfer register system;

6. “Pollutant” means

[**option 1:** a substance that may be harmful to the environment or to human health on account of its [physical, chemical or biological][intrinsic] properties [and of its introduction into the environment through human activity] [and that is listed in annex IV]]

[**option 2:** an individual chemical, a category of chemicals or an individual chemical within a chemical category that is listed in annex IV]

[**option 3:** any substance that is harmful or potentially harmful to the environment or to human health [as listed in annex IV, part 2]] 6/

[**option 4:** a substance which is harmful or potentially harmful to the environment or to human health and has one or several of the properties listed in annex IV, part 1]; 7/ 8/

7. “Release” means

[**option 1:** any spilling, leaking, pumping, pouring, emitting, emptying, discharging, underground injecting, escaping, evaporating, leaching, dumping or [directly] disposing into the environment [(including the abandonment or discarding of barrels, containers and other closed receptacles [or resulting from the off-site use of products])], whether deliberate or accidental, routine or non-routine]

[**option 2:** any introduction of pollutants into the environment as a result of any anthropogenic activity];

8. “Off-site transfer” means the off-site movement of 9/

*what is transferred?* 10/

[**option 1:** pollutants]

[**option 2:** pollutants in waste]

[**option 3:** waste]

[**option 4:** waste and waste water destined for public waste water-treatment plants]

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6/ The reference to ‘annex IV, part 2’ in option 3 was intended to refer to a mandatory list of substances for reporting.

7/ The reference to ‘annex IV, part 1’ in option 4 was intended to refer to a list of possible criteria for selection of substances.

8/ References to the annexes or parts of annexes might lead to some confusion at this stage, as a revision to the scheme of annexes set out in annex IV to document CEP/WG.5/AC.2/2001/3 had been proposed in document CEP/WG.5/AC.2/2001/7 and that this proposal had not been decided upon by the Working Group. For easier and more consistent reference to annexes, the drafting group agreed that a list of the annexes and their topics should be drawn up and used for future discussions.

9/ To avoid a complicated and lengthy definition of “transfer”, and also to avoid possible semantic problems, it was decided to draft, at least for the time being, individual definitions of “off-site transfer”, “on-site transfer” and “transfers through products.” In the latter part of the discussion, it was noted that an overarching definition of “transfer” might be needed in addition to address contexts where the word was used on its own, but time did not permit further exploration of this. Furthermore, at a later stage, the meaning of the terms “off-site” and “on-site” may warrant further consideration, in particular to take account of, and ensure consistency with, the usage of the word “site” in article 2, paragraph 4.

10/ The grouping of various options under explanatory headings in italics (*what is transferred?/for what purpose?*) in paragraphs 8 and 9 is intended to enhance readability. Obviously, these headings would not appear in the final text of the protocol.

*for what purpose?*

[**option 1:** for any purpose]

[**option 2:** for [storage,] [use, reuse,] recycling, treatment, [including waste-water treatment,] [incineration with or without energy recovery,] [final treatment] [or disposal][or release]]; 11/ 12/

9. “On-site transfer” means the on-site movement of

*what is transferred?*

[**option 1:** pollutants]

[**option 2:** pollutants in waste]

[**option 3:** waste]

*for what purpose?*

[**option 1:** for any purpose]

[**option 2:** 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 13/ may be significant and for which it is impractical to collect reports from each individual source;] 14/

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[;] 15/

[13. “Waste” is 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 which are intended to be recovered, incinerated or disposed of]].

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11/ In addition to options 1 and 2 (the latter of which runs to ‘[or release]’), a third option of not specifying the purpose for which the transfer is made, i.e. deleting both options 1 and 2, which would link with the fourth option under the heading ‘what is transferred?’, was considered to be implicit in the text.

12/ It was considered that the substantive point behind the proposal in the Working Group to include transboundary transfers in the definition would be better addressed in the operative provisions rather than the definitions.

13/ The drafting group considered that it might be useful to insert a definition of the term “media” so as to avoid repeated references to a list of media in individual provisions.

14/ This paragraph is bracketed because a final decision on whether or not to include diffuse sources in the protocol has yet to be taken. In addition, the drafting group felt that the words “significant” and “impractical” might have to be revisited and clarified at a later stage.

15/ The drafting group considered that it would be helpful if the European Union and its member States would address the issue raised in this paragraph internally, after which the wording could be revisited.

### 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 ensure that persons reporting violations of national laws to public authorities shall not be penalized, persecuted or harassed in any way for their actions.] 16/

[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.] 17/

5. [In the implementation of this Protocol, each Party shall promote the principle of internalizing environmental costs, including with respect to the costs of monitoring, [calculating and estimating.] record-keeping, reporting and affording public access to facility monitoring information, as well as the costs of establishing and maintaining a national pollutant release and transfer register that is publicly accessible.] 18/

6. [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.]

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16/ The drafting group felt that if such a provision were to be included in the protocol, it should be located within the article on general provisions. However, time did not permit detailed work on the paragraph and it was agreed that further work would be needed to reflect the various policy options put forward.

17/ The drafting group considered that if such a provision were to be included, both the wording and the placement would need to be revisited. Possible alternative locations for such a provision would be the preamble, the article on lists of pollutants referring to review at national level and the article on the meetings of the Parties referring to review of lists of pollutants, facilities and so on.

18/ The wording of this provision was not discussed. Its placement was however discussed briefly, and the drafting group felt that the provision should be placed in the article on general provisions, at least for the time being.

## 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 [or waste-specific, as appropriate];
- (d) Be multi-media, 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, activity, operator, [company,] [owner,] pollutant [or waste as appropriate], the environmental medium into which the pollutant is released,

[*Option A:* geographical location and the destination of the transfer]

[*Option B:* including the facility's name, address and location, the method of waste management for which [a pollutant in waste][waste] is transferred, and the name, address and location of the site to which [a pollutant in waste][waste] is transferred off-site]. <sup>19/</sup>

[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. <sup>20/</sup>

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<sup>19/</sup> As regards the destination of the transfer, it was 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.

<sup>20/</sup> It was noted that the proposal made at the third meeting of the Working Group that there be an explicit requirement that reporting data from all previous reporting periods other than the most recent be included on the register was not yet reflected in the text and would need to be addressed at a later stage if deemed necessary.

## **Article 6**

### **FIRST STEP 21/**

Each Party shall ensure that its register includes data on:

- (a) Releases of pollutants in accordance with article [...];
- (b) [On- and] off-site transfers in accordance with article [...];

[(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][diffuse sources categories listed in annex III]]. 22/

## **Article [...]**

### **QUALITY ASSESSMENT 23/**

Each Party shall ensure that data quality assessments are conducted on data submitted for its register[, in particular on their completeness, consistency and [plausibility][credibility] of the data], taking into account any guidelines that may be developed by the Meeting of the Parties.

## **Article [...]**

### **CAPACITY-BUILDING 24/**

1. Each Party shall promote public awareness of the pollutant release and transfer register (PRTR) referred to in article 4 and shall ensure that assistance and guidance are provided to the public in accessing the register and in understanding and using the information contained therein.
2. Each Party shall also ensure that workers at facilities required to report to the pollutant release and transfer register receive training and access to information from the facility managers concerning their monitoring, record-keeping and reporting obligations, as well as easy access to the release and transfer data collected at that facility.
3. Each Party shall develop capacity-building programmes, publish guidance documents and ensure that the necessary personnel are designated to achieve the ends referred to in this article.

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21/ The drafting group only had time to discuss a first paragraph of this article.

22/ Annex III according to the scheme of annexes set out at the end of document CEP/WG.5/AC.2/2001/3.

23/ The positioning of this article would have to be decided at a later stage. At the current stage of discussions, the drafting group felt it would probably fit best after the provisions on reporting requirements.

24/ The text of this article, which originally appeared as article 3, paragraph 2, of document CEP/WG.5/AC.2/2001/3, was not discussed by the drafting group.