



**Economic and Social
Council**

Distr.
GENERAL

CEP/WG.5/AC.2/2002/7
25 April 2002

ORIGINAL: ENGLISH

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
(Fifth meeting, Geneva, 24-28 June 2002)

**DRAFT PROTOCOL ON POLLUTANT RELEASE AND TRANSFER REGISTERS:
SCOPE OF REGISTER, REPORTING REQUIREMENTS, REPORTING CYCLE,
MONITORING AND RECORD-KEEPING, AND QUALITY ASSESSMENT**

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

1. The drafting group established by the Working Group at its third session (CEP/WG.5/AC.2/2001/9, paras. 56 and 58) held its second meeting in Geneva, on 9-12 April 2002. Members of the drafting group participated in a personal capacity. The group focused on articles 5 to 9 of 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 or the drafting group and the Working Group's discussions. The group also discussed the overall structure of the protocol. The present document is based upon the work of the drafting group and has been finalized by the Chairperson of the Working Group with the support of the Chairperson of the drafting group and the secretariat.

2. This document aims on the one hand to present a coherent, overall structure for the protocol, and on the other to put forward possible text for certain operative provisions. Only articles 6 to 10 are presented in full. Article 6 would replace article 6 of document CEP/WG.5/AC.2/2002/3 and article 10 would replace its unnumbered article on quality assessment. The titles of the remaining articles, the preamble and the annexes are listed in order to indicate a possible structure for the protocol and in some cases to make clear the purpose of certain cross references in the elaborated articles. Their content was not discussed by the drafting group except where indicated in the footnotes.

CONSOLIDATED TEXT

Preamble

Articles 1 to 5: text as in CEP/WG.5/AC.2/2002/3 except where indicated in footnotes:

Article 1	Objective
Article 2	Definitions <u>1/</u>
Article 3	General provisions <u>2/</u>
Article 4	Core elements of a PRTR system
Article 5	Design/structure <u>3/</u>

1/ Pursuant to footnote 13 of document CEP/WG.5/AC.2/2002/3, the drafting group considered, both at its meeting and in subsequent e-mail discussion, the merits and possible content of a definition of 'environmental media'. After initial attempts to formulate a definition, broad support emerged for addressing the need for provision of differentiated information through the operative provisions rather than through a definition which could have an unintended restrictive effect. Specifically, it was proposed that in article 5, paragraph 1, of document CEP/WG.5/AC.2/2002/3, the words 'the environmental medium into which the pollutant is released' should be replaced by 'and according to whether the release is to air[, [distinguishing between][including] fugitive releases and stack releases], to water[, [distinguishing between][including] surface releases and underground releases], [or] to land[, [distinguishing between][including] surface and sub-surface releases] [or by underground injection]' as a basis for further discussion. (See also article 7, para. 5 (b), of this document.)

2/ Pursuant to footnote 16 of document CEP/WG.5/AC.2/2002/3, the following text was put forward in the drafting group as a possible alternative to article 3, paragraph 3, of that document: '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.'

3/ See footnote 1.

Article 6

SCOPE OF REGISTER 4/

FIRST STEP:

1. Each Party shall ensure that its register includes the information on:
 - (a) Releases of pollutants 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 : 5/] [diffuse source categories specified in annex VI]]].

SUBSEQUENT STEPS: 6/

[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 required to be reported under article 7, paragraph 2;
- (b) [Information on on-site transfers
Alternative 1:
[of “pollutants/waste”] 7/
Alternative 2:
[in accordance with article 7, paragraph 1];]
- (c) [Information on releases of pollutants from diffuse source categories specified in annex VI;]
- (d) [Facility-specific information, as specified in article 7, paragraph 5 (e), on:

4/ This article sets out various options for a step-by-step approach. It was noted that deletion of certain items from an earlier step might be accompanied by agreement to their inclusion in a subsequent step. Delegations proposing the inclusion of certain elements in the first step but failing to obtain the agreement of the Working Group on this might wish those elements to be at least included in one of the subsequent steps. This could have been reflected by repeating those elements in square brackets in each of the steps where the elements in question might eventually end up. However, to avoid over-complicating the text with square-bracketed language, not all possible permutations have been reflected and, on the assumption that some items might move down the steps if agreement cannot be reached on their current position, items on one step have not generally been repeated in subsequent steps except where (as in the case of diffuse sources) their treatment under the different steps would be rather different.

5/ Under this option, the sentence would be completed by a reference to certain categories of diffuse source. See also footnote 16.

6/ Some members of the drafting group considered the options presented in paragraphs 2 and 3 of this article to be mutually exclusive whereas others did not.

7/ The formulation “pollutant/waste” is used here and in other parts of the text (also in the plural) as a temporary marker phrase pending further progress in resolving the policy differences on the question of what it is that should be measured in a transfer, i.e. whether it is the amount of each individual pollutant, the amount of waste within a given waste category or some combination of these. It is not intended that the phrase would appear in the final draft of the protocol.

- (i) [Water use];
- (ii) [Energy use]; [and]
- (iii) [Resource use];]
- (e) [Information on releases and transfers of pollutants in or as products in accordance with article 7, paragraph 5 (c); and]
- (f) [Information concerning the storage of pollutants in accordance with article 7, paragraph 5 (d)].]

[Option: Mandate of the Meeting of the Parties]

[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. ...8/

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 specified in annex I[, part one,] [above the activity thresholds, if indicated][and manufacture, process or use any pollutant specified in annex II[, part one,] in quantities exceeding the thresholds]; [and]

[(b) Release or transfer any [“pollutant/waste”] in quantities exceeding the thresholds specified in annex II[, part one]],

8/ The drafting group briefly discussed the content of such a paragraph but due to time constraints was not able to draft specific proposals.

to submit to its competent authority the information specified in paragraphs 5 and 6 below with respect to those [“pollutants/wastes”] for which thresholds were exceeded.

[2. Pursuant to article 6, paragraph 2, each Party shall, from the time of the Xth reporting year under this Protocol, expand the requirements referred to in paragraph 1 above on either the owners or the operators of facilities to include:

- (a) The activities [and thresholds] specified in annex I, part two; [and]
- (b) The pollutants [and thresholds] specified in annex II, part two[; and]
- (c) The information required in paragraph 8 below].]

[3. Pursuant to article 6, paragraph 2, each Party shall, from the time of the Xth reporting year under this Protocol, require either the owners or the operators of facilities identified as:

- (a) Undertaking one or more of the activities specified in annex I; and
- (b) Using [water,] [energy,] [or resources] in quantities exceeding the thresholds specified in annex V,

to submit to its competent authority the information specified in paragraph 5 (e) below.]

[4. Having regard to article 6, 9/ each Party shall designate one or more public authorities or bodies to report on releases of pollutants from diffuse sources which are subject to reporting under this Protocol.]

5. [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[s] 1[, 2 and 3] above to complete and submit to its competent authority [according to the format specified in annex IV], the following information on a facility-specific basis:

- (a) [The name of and numerical identifier for each pollutant required to be reported pursuant to paragraphs 1 [and 2];]
- (b) The [name and] amount of each pollutant required to be reported pursuant to paragraphs 1 [and 2] released [on-site] to the environment in the reporting year, both in aggregate and according to whether the release is to air[, [distinguishing between][including] fugitive releases and stack releases], to water[, [distinguishing between][including] surface releases and underground releases], [or] to land[, [distinguishing between][including] surface and sub-surface releases] [or by underground injection];
- (c) The [name and] amount of each [“pollutant/waste”] required to be reported pursuant to paragraphs 1 [and 2] transferred in the reporting year[, distinguishing between on-site and off-site transfer [and according to whether the [“pollutants/wastes”] are destined for [storage,] [use, reuse,] recycling, treatment, [including waste-water treatment,] [incineration with or without energy recovery,][energy recovery,] [final treatment,] [disposal] [or release][or other type of release resulting from transfers] [, or are transferred in or as products]], and the name, address and location of the site receiving the transferred [“pollutant/waste”]]];

9/ A more specific reference to a particular provision in article 6 could be added at a later stage when it becomes clear at what stage, if any, diffuse sources would be covered by the reporting regime under the protocol.

(d) [The [name and] amount of each pollutant required to be reported pursuant to paragraphs 1 [and 2] present on-site in the reporting year that is not otherwise accounted for under the transfers reported in subparagraph (c);]

(e) [The amount of [water,] [energy] [and] [resources] used in the reporting year and required to be reported pursuant to paragraph 3;]

(f) The type of methodology used to derive the information referred to in subparagraphs (a) to (e), whether based on [measurement, calculation or estimation][monitoring data, emission estimates, mass balance] [or other techniques];

(g) [Starting with the second reporting year, the amounts required to be reported pursuant to subparagraphs (b) and (c), for the previous reporting year, aligned in the register to allow for comparison with the same amounts reported for the current reporting year].

6. The information referred to in paragraph 5 (b) and (c) shall include information on releases [and transfers] resulting from [accidents or] extraordinary events [and distinguish between releases [and transfers] resulting from routine and deliberate activities and those resulting from [accidents or extraordinary events][catastrophic or other one-off events that are not associated with the production process].]

7. [[Beginning with the [first][Xth] reporting year for a Party, that] [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 following information:

(a) The aggregate yearly releases of such pollutants to air, water and land, 10/ separated out by pollutant and diffuse source[, where those releases constitute a significant proportion of the total national releases of the particular pollutant];

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

(c) The type of methodology used to derive the above information].]

[8. 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 catastrophic or other one-off events; 11/ and

(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

10/ The drafting group considered that this text should be revisited in the light of the issues referred to in footnote 1.

11/ The drafting group felt that the placing of this subparagraph would need further consideration.

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.] 12/

[9. 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.] 13/

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. [A Party may modify its reporting frequency through a process open to public participation. The Party shall review any modification of the reporting frequency at least once every five years.]

3. Each Party [that is not a regional economic integration organization] shall ensure that the information is incorporated into its register within [twelve][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.]

[4. 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

MONITORING AND RECORD-KEEPING

1. Each Party shall require the owners or operators of the facilities subject to the reporting requirements of article 7 [to monitor, with appropriate frequency, their releases of pollutants and transfers of [“pollutants/waste”] subject to reporting in accordance with article 7 and] to keep[, for a period of [three][five] years,] records of the data from which the reported information was derived. These records shall also include the methodology used for data gathering. [These records shall be publicly accessible in accordance with article 11.]

12/ The drafting group did not fully discuss this paragraph.

13/ The drafting group felt that the placing of this paragraph would need further consideration, especially in the light of the outcome of discussions on article 12.

2. Each Party shall require the reporting facilities 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, [are [responsible][accountable] for][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 [plausibility][credibility]], taking into account any guidelines that may be developed by the Meeting of the Parties.

Article 11 Access to information 14/

Article 12 Public participation

Article 13 Access to justice

Article 14 Regional register

Article 15 Capacity-building

Article 16 International cooperation

Article 17 Meeting of the Parties

Article 18 Right to vote

Article 19 Status of annexes

Article 20 Amendments to the Protocol
Amendments to the annexes
[Possible opt-out provision for specific pollutants or activities] 15/

14/ The drafting group felt that the following text, adapted from article 8, paragraph 5, of document CEP/WG.5/AC.2/2001/3, should be included for further consideration in the context of the proposed article on access to information: '[Each Party shall provide links in its register to [any of] its [relevant] existing publicly accessible databases containing information on releases and transfers of [radioactive substances,] [radiation,] [genetically modified organisms and products containing or derived from genetically modified organisms].]'

15/ The United States proposed the following text for an 'opt-out' provision, which was not discussed: 'Any Party may, at any time, submit a declaration to the secretariat that the provisions of articles 6 and 7 shall not apply to it with respect to a specific pollutant listed in annex [X – the list of pollutants] or activity listed in annex [Y], where such a pollutant or activity is not included in, or has been removed from, its national PRTR in accordance with its national laws.'

Article 21	Secretariat
Article 22	Review of compliance
Article 23	Settlement of disputes
Article 24	Signature
Article 25	Depositary
Article 26	Ratification, acceptance, approval and accession
Article 27	Entry into force
Article 28	Withdrawal
Article 29	Authentic texts
Annexes	
Annex I	Activities [Part One: (step 1 activities) Part Two: (step 2 activities)]
Annex II	Pollutants [Part One: (step 1 pollutants) Part Two: (step 2 pollutants)]
[Annex III	Criteria for selection of pollutants]
[Annex IV	Reporting form/format]
[Annex V	Reporting thresholds for water, energy and resource use]
[Annex VI	Categories of diffuse sources] <u>16/</u>
Annex VII	Arbitration

16/ The drafting group considered that it would be useful to provide an indicative list. 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.