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Meeting of the Parties 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, 14–16 February 2007
Item 4 (a) of the provisional agenda

**FURTHER ANALYSIS OF OPTIONS FOR THE ESTABLISHMENT OF SUBSIDIARY
BODIES TO THE PROTOCOL***

Prepared by the Bureau

1. According to its mandate under article 17, paragraph 2 (e), of the Protocol on Pollutant Release and Transfer Registers (PRTRs), the Meeting of the Parties to the Protocol may establish such subsidiary bodies as it deems necessary. Such bodies may provide an effective structure to oversee activities under the auspices of the Protocol between the sessions of the Meeting of the Parties.

* This document was submitted on the above date to enable consultations with relevant international experts on subsidiary bodies to multilateral environmental agreements.

2. At the third meeting of the Working Group, the secretariat introduced a paper providing an analysis of options for the establishment of subsidiary bodies to the Protocol (ECE/MP.PP/AC.1/2006/7). The Working Group then invited delegations to respond in writing to the secretariat by 10 October 2006 to three questions:

- (a) Which issues would need to be dealt with on the international level in the periods between sessions of the Meeting of the Parties?
- (b) On the basis of the answer to question (a), is there any need for the first session of the Meeting of the Parties to establish a subsidiary body, and if so, on which basis, standing or ad hoc?
- (c) On the basis of the answer to question (a), is there a need for a separate technical subsidiary body or bodies, and if so, on which basis, standing or ad hoc?

It further requested that the Bureau, with the assistance of the secretariat, summarize the answers and, on the basis of them, prepare a further analysis of the issue, including alternative options as necessary. This document provides the requested summary and analysis.

3. Responses to the three questions were received from Italy and from Finland on behalf of the European Union (EU).

A. Which issues should be dealt with at the international level intersessionally?

4. The following issues were mentioned as having to be dealt with between the sessions of the Meeting of the Parties:

- (a) Monitoring of the status of implementation;
- (b) Preparation of the next session of the Meeting of the Parties and, in particular, drafting of a programme of work under the Protocol;
- (c) Drafting of assessment report(s) regarding the experience gained in development of national PRTRs according to article 6, paragraph 2, of the Protocol; and
- (d) Drafting of recommendations on technical issues to the Meeting of the Parties based on the assessment report(s).

5. For items (c) and (d), the EU recommends that the Meeting of the Parties consider establishment of a subsidiary body at its second session. The first set of national assessment reports would only be submitted to the secretariat for the second session, and the EU makes the point that any recommendations based upon them would only be drafted after the second session, which is likely to be held in 2011 or 2012, three years after the first session.

6. Additional issues that could be dealt with either at sessions of the Meeting of the Parties or at workshops, seminars and conferences organized intersessionally involve information exchange at a technical level. Examples listed in the EU submission include:

- (a) How to identify PRTR reporting facilities;
- (b) The use of electronic tools;
- (c) How to measure, calculate and estimate releases and transfers;

- (d) Which releases from diffuse sources to identify and how;
- (e) How to present the data on releases and transfers;
- (f) How to organize public participation in the development of PRTRs;
- (g) Economic and social impacts of PRTRs.

7. For exchange of information on such technical issues, Parties could also use the well-organized information exchange tool provided via the United Nations Institute for Training and Research (UNITAR) website (“Virtual Classroom on PRTR”). In this regard, it is noted that the Meeting of the Parties is required to consider establishing financial arrangements and technical assistance mechanisms. Under article 17, paragraph 3, of the Protocol, the Meeting of the Parties is required to facilitate the exchange of information on the experience gained in reporting transfers. Such exchange could also be facilitated by electronic means.

8. For the issues referred to in paragraph 6 above, the importance of ensuring appropriate participation by the Parties, Signatories and other stakeholders involved in the Working Group on PRTRs should be noted.

B. Is there any need for the first session of the Meeting of the Parties to establish a subsidiary body, standing or ad hoc?

9. With regard to the second question, Italy sees merit in constituting a subsidiary body to the Protocol at the first session of the Meeting of the Parties as a standing body. The EU expresses its willingness to consider the possibility of establishing, as appropriate, at either the first or the second session of the Meeting of the Parties, a subsidiary body as an ad hoc group with a time-limited and clearly defined mandate.

10. The mandate for any time-limited subsidiary body could be limited to a single intersessional period. Assuming the first session of the Meeting of the Parties is held in 2008 and the second session three years later, the intersessional period would be no greater than three years, allowing the Meeting of the Parties to conclude or renew the mandate as it deems appropriate.

11. When the length of the mandate is specified, there should be careful consideration of appropriate terms of reference for the body.

C. Is there a need for a separate technical subsidiary body, standing or ad hoc?

12. Italy considers that the Protocol should have only one permanent subsidiary body – the Working Group on PRTR. As a guiding principle, any unnecessary increase of subsidiary bodies should be avoided.

D. Further considerations regarding ad hoc subsidiary bodies

13. A subsidiary body may be mandated during the intersessional period for a limited duration, in which case it could be constituted as an ad hoc technical expert group assigned to address specific priority issues of the programme of work. The establishment of such ad hoc technical expert groups may be guided by the following considerations:

- (a) The ad hoc technical expert groups should draw on the existing knowledge and competence available within, and should liaise with, international, regional and national organizations, including non-governmental organizations and the scientific community in fields relevant to the Protocol.
- (b) The ad hoc technical expert groups should all be composed of experts competent in the relevant field of expertise, with due regard to geographical representation and to the special conditions of least-developed countries and countries with economies in transition.
- (c) When establishing such expert groups, the approval of the Meeting of the Parties to the Protocol should specify the exact duration and specific terms of reference.
- (d) Expert groups should be encouraged to use innovative means of communication and to minimize the need for face-to-face meetings.
- (e) The convening of such expert groups should be subject to the amount of resources designated by the Meeting of the Parties in the budget of the programme of work of the Protocol and the availability of extrabudgetary resources.
- (f) The ad hoc technical expert groups may also convene meetings parallel to the proceedings of the Meeting of the Parties to the Protocol.

14. Under article 6, paragraph 2 (d), the Meeting of the Parties is required to consider revision of the lists of activities specified in annex I and the lists of pollutants specified in annex II and the associated thresholds.

15. Experience gathered from other multilateral environmental agreements dealing with pollutants, such as the Stockholm Convention¹ and the Rotterdam Convention,² suggests that procedures for review of technical annexes would need to be agreed by the Meeting of the Parties before such any such review were undertaken. A standing body – the Persistent Organic Pollutants Review Committee – is mandated under article 8 of the Stockholm Convention to review proposals for listing chemicals in relevant annexes of that instrument and make proposals and evaluations of the Committee available to the Conference of the Parties. Similarly, under the Rotterdam Convention, the Chemical Review Committee is established as a standing subsidiary body of the Conference of the Parties (COP). Its responsibilities include reviewing notifications and proposals from Parties and making recommendations to the COP on the addition of chemicals to Annex III of that instrument (article 6, para. 5). Although at present no revisions to

¹ Stockholm Convention on Persistent Organic Pollutants (POPs).

² Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

the Protocol's annexes are foreseen, procedures would need to be considered before any future review of the annexes to the Protocol.

16. The existence of such standing technical review bodies under other multilateral environmental agreements dealing with pollutants may provide an opportunity for the Meeting of the Parties to the Protocol to seek, where appropriate, the services of relevant international bodies in the achievement of the objectives of the Protocol, as set out in article 17, paragraph 2 (i), of the Protocol. Making good use of existing technical expertise and intergovernmental processes could reduce the need to unnecessarily increase subsidiary bodies and could avoid potential duplication of activities.

17. The International Pollutant Release and Transfer Registers Coordinating Group may provide a useful forum for promoting international cooperation and technical assistance, as set out in articles 16 and 17 (h) of the Protocol. The Coordinating Group serves *inter alia* to promote capacity-building for PRTR systems in developing countries and countries with economies in transition through intergovernmental coordination. It also enjoys wide participation by countries which have established PRTR systems or are involved in the development of PRTRs internationally. The possible linkage between the Coordinating Group and any subsidiary body established under the Protocol is addressed in another document (ECE/MP.PP/AC.1/2007/L.5) and is therefore not considered here, beyond the observation that it would be useful to clarify the relationship between such international coordination and capacity-building bodies and any subsidiary body established by the Meeting of the Parties to the Protocol.

E. The possible role of the Bureau to the Protocol

18. Theoretically, the functions listed under items (a) and (b) in paragraph 4 above could be carried out by the Working Group of the Parties to the Aarhus Convention. However, the Working Group agreed at its second meeting that, because of the technical nature of the Protocol, its rules of procedure and compliance mechanism should provide for a separate bureau and compliance committee respectively (ECE/MP.PP/AC.1/2005/2, para. 18). Furthermore, given the open nature of the Protocol and the possibility that over time its membership will become different from that of the Convention, the establishment of separate rules of procedure and a separate bureau was considered most appropriate for the governance of the instrument.³ If the alternative of assigning functions (a) and (b) listed in paragraph 4 above to the Working Group of the Parties to the Convention were adopted, this would imply that the Bureau to the Protocol would report to that body, which would appear to contradict the understanding that the governance structure for the Protocol should remain relatively independent from that of the Convention.

³ As of 21 December 2006, three States (Bosnia and Herzegovina, Montenegro and Serbia) not signatory to the Aarhus Convention were Signatories to the Protocol, whereas six States (Albania, Iceland, Kazakhstan, Kyrgyzstan, Liechtenstein and Turkmenistan) signatory to the Convention were not signatory to the Protocol.

19. If no subsidiary body is established under the Meeting of the Parties to the Protocol, the Bureau to the Protocol could be required to report directly to the Meeting of the Parties. In this case, the Bureau would need to be large enough to effectively carry out its assigned role and functions.

20. The experience with the Aarhus Convention and with other multilateral environmental agreements may be relevant to the question of determining the appropriate size of such bodies. The Aarhus Convention Bureau consists of seven members and one representative from non-governmental organizations who participates as an observer and, like the members, is elected by the Meeting of the Parties. The Compliance Committee of the Aarhus Convention, which reports directly to the Meeting of the Parties, presently consists of eight members. However, the Meeting of the Parties has increased the size of the Committee to nine with effect from the third ordinary meeting of the Parties in order to spread the workload and ensure that expertise from different subregions is adequately represented (ECE/MP.PP/2005/2/Add.6).

21. The Strategic Approach to International Chemicals Management (SAICM) operated with an expanded Bureau during the preparation of the SAICM agreements.⁴ Pursuant to Rule 10.2 of the Preparatory Committee's Rules of Procedure, an "expanded bureau" was convened seven months before the first session of the International Conference on Chemicals Management. The expanded Bureau consisted of the SAICM Bureau plus two additional Government representatives from each SAICM region and a selection of non-governmental and intergovernmental participants. In all, 16 Government members participated in the expanded Bureau. The Subsidiary Body on Scientific, Technical and Technological Advice of the Convention on Biological Diversity, in its *Modus Operandi*, specifies that no more than 15 experts competent in the relevant field of expertise may participate in that body.

22. The experience of the contact group formed by the third meeting of the Working Group and charged with drafting two draft decisions under the Protocol may also provide guidance on the size of membership needed to ensure balanced representation in the operation of an expanded bureau. Fourteen Member State delegations (and the European Community) participated in the intersessional meeting of the contact group held on 13–15 September 2006; two observer organizations were also represented in the ad hoc body.

23. The Bureau of the Working Group on PRTRs has three members. To ensure adequate capacity and distribution of the workload, as well as geographical balance, the Bureau of the Meeting of the Parties to the Protocol may need to be expanded significantly, in particular if no subsidiary body is established.

⁴ Adopted at the first session of the International Conference on Chemicals Management (Dubai, 4–6 February 2006).