



**UN ECE PRTR – Elements for a Draft Instrument on PRTR  
(CEP/WG.5/AC.2/2001/3, 26.01.2001)**

**CEFIC and ICCA Comments**

***General Comments***

CEFIC together with ICCA, its international organisation, supports and promotes the development and use of properly designed emission reporting programmes.

*Such programmes can provide valuable information that can help document and stimulate reduction in emissions; assist industry and government to manage and control sources of pollution; and improve public awareness and understanding of emissions.*

Emission reporting programmes should focus on environmental releases of the industrial site as a whole, not on in-plant processes or material use.

*Releases are directly related to pollution. Materials use, however, does not imply pollution and the collection of such data only increases the administrative burden while adding little useful information relating to actual pollution.*

Emission reporting programmes should aim to include a manageable number of substances whose hazard characteristics and probable release quantities suggest a need for surveillance and control.

*Attempts to cover too many substances of limited public relevance result in rising costs for both industry and government with limited return in useful information.*

Emission reporting programmes should not be limited to industrial emissions.

*Other sources such as transportation, agriculture, commercial and housing contribute a significant proportion of total emissions. In order to provide a comprehensive picture of total emissions, a PRTR must include such sources where appropriate.*

Emission reporting programmes should be tailored to meet local, regional or national conditions.

*Environmental issues and priorities vary between countries and regions, so that it would be counterproductive to attempt to develop a universal specification*

*for a useful PRTR. Each country must decide how much information is needed; what sources should be included; what should be spent on collecting, maintaining and disseminating the information; and what are the ultimate goals of the programme.*

## ***Specific Comments***

### **Preamble**

For the time being CEFIC and ICCA do not want to comment on the recitals, but nevertheless wants to state that the recitals of the Aarhus Convention itself should be taken as much as possible and applicable especially when the recitals are to state more general considerations.

### **Article 1 – Objective**

„Transfers“ have been a rather controversial issue at the last WG meeting. Consequently the report of the first meeting of the PRTR Working Group (18) states: *„The Working Group agreed that both releases and transfers should be covered, though an appropriate definition of transfers must be found.“* In order not to pre-empt the finding of such a definition we propose to delete *“and within and between facilities”*, and put in the relevant text after a definition has been agreed.

Likewise, before the inclusion of any reporting requirements on resource use has been agreed we propose to delete *“and to information concerning water, energy and resource use”*, and insert appropriate text once it has been agreed to include such requirements.

### **Article 2 – Definitions**

#### **4. “Facility”**

At present, agricultural complexes as such are not part the Annex I *“List of Activities”*. Unless the List of Activities is extended to cover such activities, we propose to delete *“or agricultural complex”*.

The proposed definition of “facility” will cover any facility whether it is listed in the Annex I *“List of Activities”* or not and regardless of whether a pollutant is emitted below a threshold given under the instrument. Therefore we propose to replace *“which may result in a release or transfer of any pollutant are carried out”* by *“listed in the List of Activities in Annex I of the convention”*.

## 6. “Pollutant”

The proposed definition would cover all substances which are potentially harmful to the environment even if they are not released or transferred. We propose to restrict the definition to substances which **are** released: “*Pollutant*” means a substance that is potentially harmful to the environment and which is directly or indirectly introduced, as a result of human activity into the environment, on account of its physical, chemical or biological properties”. (The wording is taken from the definition of the EU IPPC Directive (Article 2.33).

## 8. “Transfer”

As said before this was one of the most contentious issues at the last WG and the definition proposed here does not reflect the range of opinions so far. As a starting definition we propose therefore to refer only to movement of wastes to on- or off-site final treatment operations, i.e. incineration or disposal, and therefore to delete all other operations: “~~(a) on- or off-site movement of potential pollutants for use, reuse, storage, treatment, incineration with or without energy recovery, recycling or disposal.~~  
~~(b) Off-site movement of potential pollutants in or as products; and~~  
~~(c) On Site movement of potential pollutants for treatment, energy recovery, recycling or disposal;”~~”

Of course if a more extensive understanding of transfer has been agreed this has to be reflected in the definition.

## 9. “Diffuse sources”

Diffuse sources should be defined as non-point sources dependent on whether and how they are to be included in the instrument.

## Article 3 – General Provisions

### 2., 2<sup>nd</sup> sentence:

The broad term “*public awareness*” in the first sentence includes already the specific group “*workers at facilities*”. There is no need to provide specific arrangements for the access of workers about their specific facility since the access to information in general is covered elsewhere in the PRTR instrument. The company internal provisions for training of employees likewise should not be covered in an PRTR instrument. Therefore we proposed to delete this second sentence.

### 3. *More extensive PRTRs*

We very much encourage the idea that each country should establish a PRTR system appropriate to its needs. Nevertheless, this should give the Contracting Party more freedom than just to extend an already very prescriptive system. Consequently,

we ask to closely consider how the elements of this instrument could be adapted to those needs (see our comments e.g. on the list of substances).

### 5. *Precautionary Approach*

We do not see the need to mention a “*precautionary approach*” in this context. Usually this approach is applied if the consequences of no action would be severe. We do not think that a single pollutant not reported by a particular facility would have any such consequences. Moreover, facilities or activities are extensively covered by Annex I of the Convention, and a List of Pollutants will be annexed to the instrument.

In addition, here and in many other cases we propose to use “*pollutant*” instead of “*substance*”, since the PRTR instrument is about the release and transfer of pollutants.

### 6. *Principle of “ internalising environmental costs”*

The so-called principle of “ internalising environmental costs” should not be interpreted as that the company which is asked to provide data has also to pay also the costs for the work of authorities e.g. for collecting, compiling, assessing and distributing the data. This costs have to be covered entirely by the competent authorities.

## **Article 4 – Obligation to Establish a Publicly Accessible PRTR**

1.

#### (b) *Radioactive Substances, Noise, GMOs*

We recommend at least for the first step of the PRTR not to include the use of water, energy and resources (see our comments under Article 7.3).

#### (c) *Diffuse Sources*

We recommend at least for the first step of the PRTR not to include the release of pollutants from diffuse sources (see our comments under Article 7.4).

### 4. *Annual Basis*

We propose, in analogy to the EU EPER to start with a tri-annual reporting cycle which might be shortened to e.g. an annual reporting cycle after the first round and in the light of experience gained. The arguments brought forward in the PRTR WG (see 20) that “*the instrument would not enter in force for many years by which time prospective parties would have had ample time to prepare for annual reporting*” does not take into account the need to get practical hands-on experience with the establishment of a PRTR. Consequently, the first reporting cycle needs to be longer. Moreover at least in the first run, data validation will take some additional time.

## **Article 5 – Progressive Establishment of Registers**

### 2. *Additional Elements*

- (a) see comments under Article 7.3
- (b) see comments under Article 8.3
- (c) see comments under Article 7.4
- (d) see comments under Article 8.1
- (e) see comments under Article 8.1

### 3. *Additional Elements* – Radioactive Substances and Radiation, Noise, Genetically Modified Organisms (GMOs)

None of these elements should be considered for inclusion in a PRTR instrument:

- (a) If radioactive substances constitute relevant emissions, they should be covered in the list of pollutants. Therefore no extra mentioning is necessary. Radiation as such cannot be considered as a **pollutant** release or transfer and should not be covered by a PRTR instrument.
- (b) Noise is not a **pollutant** release or transfer according to the definition and should not be covered by a PRTR instrument.
- (c) GMOs as organism can not be considered as **pollutants** and should not be covered by a PRTR instrument.

Additionally, any of those elements need in-depth discussion on the practicalities of their inclusion. If contracting parties deem such elements necessary, a different instrument should be considered.

Since we question the inclusion of all additional elements other than emissions and transfers of pollutants mentioned under Article 5.1 in a PRTR the remaining text could be moved to Article 7 or 8.

### **Article 6 – Obligation to Report**

1.

- (c) Since we question the inclusion of water, energy or resources use (see our comments on Article 7.3) we propose to delete that subparagraph.

### 2. *Diffuse Sources*

See our comments under Article 7.4.

### **Article 7 – Range of Pollutants and Resources Subject to Reporting**

#### 2. Annex IV part 2 *Optional Substances for Reporting*

We question the need to include an optional list for reporting (Annex IV). Moreover, a contradiction terms exists: If the list in Annex IV is optional i.e. might be included or not, Article 7.2 should not require the owners or operators to report such substances. At best they could be asked to consider those substances in their voluntary reporting schemes.

### 3. *Water, Energy, Resource Use*

We does not support the requirement to report on water, energy and resource use. Non or those parameters can be considered as pollutants according to the definition of Article 2 and should not be covered by a PRTR. As discussed at length at the last WG PRTR meeting to include these reporting parameters would overburden the system too much. Additionally, especially to report on use of resources (i.e. feedstock) would require the chemical industry to reveal the formulation of products, which might be disastrous in a competitive situation.

### 4. *Diffuse Sources*

Diffuse sources are in many cases more relevant than point sources. Nevertheless, this is one of the elements which in our opinion could be considered for inclusion in a second step. Far more in-depth discussion would be needed to deliver meaningful results.

## **Article 8 – Scope of Reporting**

1.

### (a) *Pollutants to be Reported*

We recommend that the list of parameters in Annex IV should already indicate whether releases to air, water, land and through underground injection are expected to be relevant. Therefore we propose to reward (a): “... *and for total releases to each environmental medium, as specified in Annex IV ~~separating the data, as a minimum, for releases to air, water, land and through underground injection;~~*”

### (b) *Pollutants Transferred in Products*

We challenge the inclusion of “pollutants transferred in products” for several reasons:

- Article 5.2 (d) requires that PRTRs have to report on “*data on releases and transfers of pollutants in or as products*”. Since the List of Pollutants will certainly contain not only parameters like PAHs but also many products which at the same time are potential pollutants (possibly e.g. solvents, metals, complexing agents, oxidising substances, pesticides), this requirement will result in the de-facto establishment of a product register. This will in many cases seriously hurt justified commercial interests, e.g. when the composition of a formulation with regard to

listed components (“*transfer of pollutants in products*”) would have to be revealed. Similarly, in a highly competitive market it might be detrimental to put into the open e.g. the amount of pesticides sold (“*transfer of pollutants as products*”).

- Life-cycle analysis on products are generally not widely available, in most cases only specific aspects have been studied (e.g. use of a material in packaging). Moreover, those analyses are only related to products, e.g. packaging materials, not to substances (or “pollutants” in the PRTR context).
- In those many cases where such an analysis does not exist, a meaningful assessment of transferred pollutants cannot be undertaken. Expected releases by products would have to be guessed, and would be highly dependent on the use of the product and its final disposal (incineration, landfill).
- Additionally, as said before, to include pollutants transferred in products would overburden the instrument with additional requirements.

#### *Pollutants Transferred On- / off-site*

As a general point, if a potential pollutant is transferred on- or off-site to another facility the substance normally would not be released into the environment. If in the course of processing this substance a release would occur, this release to the environment would of course be covered by the PRTR. In our opinion only the off-site transfers of wastes to final disposal (e.g. incineration, landfill) should be considered for inclusion in the instrument. For all other off-site transfers see our comments under Article 8.1 (b).

On-site transfers should not be included into a PRTR instruments for several reasons:

- Several of the possible listed “potential pollutants” are feedstock in an integrated chemical industry site or used as intermediates in another production process. If for instance a typical production in the pharmaceutical industry would comprise of 10 – 15 synthesis steps, each of those intermediates handled within the unit, facility or site would have to be reported without any environmental gain.
- Several of the possible listed “potential pollutants” e.g. acids (HCl, H<sub>2</sub>SO<sub>4</sub>) or solvents are transferred in closed cycles e.g. in pipelines around an integrated site. For these substances the report would be even more meaningless, and would entail mostly double counts.
- The transfer of wastewater to be treated in a wastewater treatment plant (WWTP) on-site likewise should not be reported. Otherwise inevitably double counting would occur, e.g. with a 90% elimination efficiency of a WWTP plant with regard to a certain parameter and a waste water stream of 100 tons a transfer of 100 tons plus a release to the environment of 10 tons would have to be reported, where only the final release would be of relevance for the environment and for the public.

In the case of a WWTP off-site (e.g. a municipal WWTP) it might be

considered to report the emission of that WWTP taking into account the elimination efficiency of that WWTP.

(d) *All Pollutants On-site*

We think that no such catch-all phrase is needed.

(e) See our comments under Article 7.3.

### 3. *Targets*

We challenge the inclusion of mandatory requirements to report on targets for several reasons:

- If an increase of production volumes is foreseen within a reporting cycle the requirement to report of absolute reduction targets would mean to report an increase in emission. We are doubtful whether this would be acceptable to authorities or the public at large.
- We are concerned even more about the 2<sup>nd</sup> sentence “*reduction targets may be non-binding*”, since it would offer Contracting Parties the option to establish “binding reduction targets”. If this means that a projected emission target has to be fulfilled no company would dare to report such a target. Consequently, if authorities want to make the fulfilment of a reported emission reduction target mandatory, the only acceptable way would be to include such a target in the permit for that plant.

### 4. *Annual reporting*

See our comments under Article 4.4.

(a) *Releases to Air, Water, Land etc.*

See our comments under Article 8.1 (a).

### 5. *Radioactive Substances, Noise, GMOs*

See our comments under Article 4.3. (a) – (c)

## **Article 10 – Public Access to Information**

### 6. Confidentiality

As said in our comments on Article 8.1 (b) we are very much concerned about the requirement to report on off-site transfers of pollutants in or as products. This is even more severe in conjunction with Article 10.6, which explicitly states that for those off-site transfers of products confidentiality cannot be claimed at all. If the requirements in the previous articles are to stay, at least Article 10.6 2<sup>nd</sup> sentence has to be deleted. Anyway, the 3<sup>rd</sup> sentence “*Claims of confidentiality shall be considered in a restrictive*

*way*” would sufficiently care for concerns that such requests would be handled too loosely.