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Meeting of the Parties to the
Convention on Access to Information,
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Access to Justice in Environmental Matters

Working Group on Pollutant Release and Transfer Registers
Third meeting
Geneva, 17–19 May 2006

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

Prepared by the secretariat

1. Under article 17, paragraph 2 (e), of the Protocol, the Meeting of the Parties may establish such subsidiary bodies as it deems necessary. An effective structure to oversee activities under the auspices of the Protocol between the sessions of the Meeting of the Parties is essential to enable the Parties to fulfill the objectives of the programme of work and contribute to the efficient implementation of the instrument.

* This document is being issued on the above date because of processing delays.

2. The issue of subsidiary bodies was discussed during the negotiation of the Protocol, and at one stage there was a concrete proposal to introduce provisions into the Protocol itself that would establish an open-ended subsidiary body to provide advice on scientific and technical matters (CEP/WG.5/AC.2/2002/11, draft article 20; MP.PP/AC.1/2002/3, draft article 20). However, the relevant text was deleted during the final session of the ad hoc drafting group in which the negotiations were conducted, thereby leaving the matter to be addressed by the Meeting of the Parties using its mandate under article 17, paragraph 2 (e).

3. This paper has been prepared in accordance with the indicative work plan adopted by the Working Group at its second meeting, with a view to providing the basis for development of a draft decision on the topic (ECE/MP.PP/AC.1/2005/2, para. 22).

4. A guiding principle should be that any unnecessary proliferation of subsidiary bodies should be avoided, that such bodies should only be created where they serve a definite purpose that furthers the implementation of the Protocol, and that they should only meet where there is a clear benefit from doing so. This principle should be set against the recognition that subsidiary bodies can be important in maintaining momentum between the sessions of the governing body.

5. Another general observation is that the need to establish subsidiary bodies and empower them to act is inversely proportional to the frequency of sessions of the Meeting of the Parties. The longer the interval between those sessions, the more important it is to have in place a structure that can take decisions and move the process forward in the intersessional period.

6. The issue of subsidiary bodies is closely linked to the functions assigned to the Meeting of the Parties by the Protocol. Article 17, paragraph 2, assigns to the Meeting of the Parties the following functions:

- (a) review of the development of pollutant release and transfer registers
- (b) establishing guidelines facilitating reporting by the Parties
- (c) establishing a programme of work
- (d) strengthening international cooperation
- (e) consideration and adoption of proposals for amendments to the Protocol and its annexes
- (f) consideration of financial arrangements
- (g) consideration of technical assistance mechanisms
- (h) seeking the services of other relevant international bodies
- (i) consideration and taking of additional action to further the objectives of the Protocol, such as the adoption of guidelines and recommendations to promote its implementation.

7. In addition, under article 17, paragraph 3, the Meeting is required to facilitate the exchange of information on the experience gained in reporting transfers using the pollutant-specific and waste-specific approaches, and to review that experience in order to investigate the possibility of convergence between the two approaches.¹

8. In order to reflect technical and scientific progress, the Protocol should be open to further developments. 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, as well as the inclusion of other relevant aspects such as information on on-site transfers, storage, the specification of reporting requirements for diffuse sources and the development of criteria for including pollutants under the instrument.

9. Under article 22 of the Protocol, the Meeting of the Parties is required to establish institutional arrangements to assess and promote compliance with the provisions of the Protocol. This may involve the establishment of a compliance review body, which may or may not be considered to be a subsidiary body. While the possibility of such a body being established is relevant to this paper, the topic has been addressed in some detail in another paper (ECE/MP.PP/AC.1/2006/4) and is therefore not considered here, beyond the observation that it would be useful to clarify the relationship between any compliance review body and any (other) subsidiary bodies established by the Meeting of the Parties.

10. The functions assigned to the Meeting of the Parties may broadly be categorized according to whether they are primarily legal or administrative or are more scientific or technical in nature. The former encompass those matters that support the internal operation of the instrument, while the latter entail review of technical developments that may inform the future development of the Protocol. Provisionally, the functions in paragraphs 6–9 above may be grouped as follows:

- (a) Legal-administrative
 - i. Review of compliance
 - ii. Reporting by Parties on implementation of the programme of work
 - iii. International cooperation/seeking the services of other international bodies
 - iv. Proposals for amendments to the Protocol
 - v. Financial arrangements

¹ Article 3, paragraph 6, states the general obligation “to achieve convergence among national pollutant release and transfer registers”.

(b) Technical

- i. Review of the development of PRTRs, in particular of their scope and the treatment of diffuse sources
- ii. Proposals for amendments to the Protocol, especially to annexes
- iii. Technical assistance mechanisms
- iv. Recommendations to promote implementation
- v. Convergence between the two approaches for reporting of transfers

11. Some aspects of implementation may have a dual aspect and involve legal or quasi-judicial work on the one hand and technical work on the other. Clear interlinkages can be seen between some legal-administrative and technical functions, such as compliance review, preparation of certain types of draft amendment and development of recommendations.

12. Some other instruments dealing with related topics have established, or foreseen the need to establish, subsidiary bodies with a technical brief. For example :

(a) Under the Stockholm Convention on Persistent Organic Pollutants (POPs), the Parties have established a “science-based” process for identifying candidate POPs. Article 8 and annexes D, E and F of the Stockholm Convention establish rules for identifying and listing additional POPs to that instrument. The Parties have further established a Persistent Organic Pollutants Review Committee (POPRC) to facilitate this process.

(b) Regulation (EC) No. 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register sets out a procedure for adapting the annexes to this Regulation to scientific and technical progress. A committee is thereby established which is assigned the role of advising the European Commission on amendments to the annexes (which transpose annexes I and II of the Protocol).

13. An argument in favour of separating out scientific and technical functions and assigning them to a specialized subsidiary body dealing with such issues is that it reduces the need for chemical experts to sit through meetings which are primarily discussing legal or political issues. Conversely, legal experts might benefit from reduced exposure to detailed technical discussions on chemical issues.

14. In addition to a scientific or technical subsidiary body, there may be merit in establishing a subsidiary body with a more general mandate that would deal with the legal and administrative issues and serve as the main preparatory body for the sessions of the Meeting of the Parties. Such a body would play a role similar to that played by the Working Group of the Parties to the Convention, with a mandate to oversee the work of a more technical body as well as any ad hoc task forces or expert groups that might be established from time to time.

15. The two aforementioned bodies could report directly to the Meeting of the Parties, with an equal status. Alternatively, the technical body could be given more of an advisory character,

being given assignments by and reporting to either the Meeting of the Parties or the more general subsidiary body.

16. It is worth noting that, whereas intergovernmental working groups benefit from interpretation at meetings and translation of documentation, under current UNECE rules, expert groups and task forces do not. This would need to be taken into account in deciding upon the status of whatever subsidiary bodies are to be established.