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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
(Second meeting, Geneva, 5-6 July 2001)
(Item 3 of the provisional agenda)

**ELEMENTS FOR FINAL PROVISIONS OF A DRAFT INSTRUMENT ON POLLUTANT
RELEASE AND TRANSFER REGISTERS (PRTR)**

Prepared by the secretariat

1. At its first meeting, the Working Group on Pollutant Release and Transfer Registers (CEP/WG.5/AC.2/2001/2, para. 45) requested the secretariat to prepare a draft text of final provisions for an instrument on pollutant release and transfer registers, based on the protocol model, to supplement the text contained in Elements for a Draft Instrument on Pollutant Release and Transfer Registers (CEP/WG.5/AC.2/2001/3).
2. A draft text of such provisions is presented in the annex below. This text would continue from the end of article 14 of document CEP/WG.5/AC.2/2001/3 and would replace its article 15.

3. Although the final provisions presented in the annex below have been prepared using the protocol model as requested, the term 'instrument' has been used in recognition of the fact that no decision on the form of the instrument has yet been taken. If the Working Group decides to develop the draft text along the lines of a protocol to the Convention, the word 'instrument' will need to be replaced with the word 'Protocol' not only in the annex below but also in document CEP/WG.5/AC.2/2001/3.

4. At the first meeting of the Working Group, a number of delegations were in favour of keeping open the possibility for States which were not Party to the Convention and non-ECE States to become Party to the instrument. In line with this, article 22 in the annex does not restrict the right to sign the instrument to Parties to the Convention (as is done in the equivalent article in some other instruments). Taken together with article 24, paragraphs 1 and 2, it provides for the possibility for non-Parties to the Convention to become Parties to the instrument. Similarly, article 24, paragraph 3, provides for the possibility of accession by non-ECE States.

5. The text of article 15 ('Meeting of the Parties') has been developed using two assumptions:

(a) In order to minimize the proliferation of additional bodies and procedures each time a new legal instrument is adopted, the Meeting of the Parties to the Convention would serve as the Meeting of the Parties to the instrument;

(b) The Parties to the instrument, and only the Parties to the instrument, would make decisions when the Meeting of the Parties to the Convention serves as the Meeting of the Parties to the instrument.

The attempt to reconcile these two assumptions leads to some complications, as some Parties to the Convention might not be Parties to the instrument and vice versa. There are other models where a similar approach has been taken, notably the Cartagena Protocol developed under the Convention on Biological Diversity (see www.biodiv.org/biosafety/protocol.asp), and the text presented here has drawn from those.

6. If the approach described in the previous paragraph were pursued, this would have implications for the rules of procedure of the Meeting of the Parties to the Convention. Indeed, it would be possible to address the substance of paragraphs 2 and 3 of article 15 within the rules of procedure of the Meeting of the Parties to the Convention instead of in the PRTR instrument, or to provide for special rules of procedure to be drawn up for the Meeting of the Parties to the Convention when it serves as the Meeting of the Parties to the instrument. Either way, if it is decided to pursue the approach set out in the previous paragraph, the attention of the Working Group on Compliance and Rules of Procedure would need to be drawn to these questions.

Annex

DRAFT FINAL PROVISIONS

Article 15

MEETING OF THE PARTIES

1. The Meeting of the Parties to the Convention shall serve as the Meeting of the Parties to this instrument in accordance with the procedures set out in the paragraphs below.
2. When the Meeting of the Parties to the Convention serves as the Meeting of the Parties to this instrument, only those Parties to the Convention that are also Parties to the instrument shall be entitled to participate in a decision-making capacity, as shall those Parties to this instrument that are not Parties to the Convention. Any Party to the Convention that is not also a Party to this instrument may nevertheless participate as an observer in those proceedings.
3. Any member of the Bureau of the Meeting of the Parties to the Convention representing a Party to the Convention which is at that time not a Party to this instrument shall be replaced by a member elected by and from among the Parties to this instrument when the Bureau is acting on behalf of the Meeting of the Parties to this instrument.
4. Subject to the provisions of paragraphs 2 and 3 above, the rules of procedure of the Meeting of the Parties to the Convention shall be applied, *mutatis mutandis*, when that Meeting serves as the Meeting of the Parties to this instrument, except as may otherwise be decided by consensus by the Parties to this instrument.
5. The first meeting of the Parties to this instrument shall be convened by the Meeting of the Parties to the Convention no later than two years after the entry into force of this instrument. Thereafter, ordinary meetings of the Parties to this instrument shall be held in conjunction with ordinary meetings of the Parties to the Convention, unless otherwise decided by the Parties to this instrument. The Meeting of the Parties to this instrument shall hold an extraordinary meeting if it so decides in the course of an ordinary meeting or at the written request of any Party provided that within six months of it being communicated to all Parties, the said request is supported by at least one third of these Parties.
6. The Meeting of the Parties to this instrument shall keep under continuous review the implementation and development of the instrument on the basis of regular reporting by the Parties, and, with this purpose in mind, shall:
 - (a) Review the policies for and legal and methodological approaches to the development of PRTR systems and promote their progressive strengthening and convergence;
 - (b) Establish guidelines on reporting by the Parties to the Meeting of the Parties, bearing in mind the need to avoid duplication of effort in reporting requirements;

- (c) Establish a programme of work, including projects to be carried out jointly under this instrument and the Convention;
- (d) Take measures to strengthen transboundary and international cooperation in accordance with article 14;
- (e) Share information on experience gained in concluding and implementing bilateral and multilateral agreements or other arrangements having relevance to the purposes of this instrument and to which one or more of the Parties are a party;
- (f) Establish such subsidiary bodies as it deems necessary;
- (g) Consider and adopt proposals for such amendments to this instrument and its annexes as are deemed necessary for the purposes of this instrument, in accordance with the provisions of article 18;
- (h) Keep the annexes to the instrument under continuous review, notably:
 - (i) Annex II, in particular in order to determine whether to amend the annex to include any additional activities that involve significant releases, transfers or storage of one or more pollutants included in annex IV, or that use significant amounts of water, energy or resources; and
 - (ii) Annex IV, in particular in order to determine whether to amend the annex to include any additional pollutants the release, transfer or storage of which entails a significant risk to human health or the environment, taking into account the criteria set out in annex IV, part I, and the reporting requirements and emission reduction targets existing under relevant international agreements applicable within the ECE region, to include additional resources in the light of emerging resource depletion data, or to amend the thresholds provided in the annex;
- (i) At its first meeting,
 - (i) Review the experience with reporting on releases from diffuse sources, with a view to adopting more precise criteria and thresholds so as to further harmonize reporting in this area;
 - (ii) Review the experience with the application of article 5, paragraph 3, and consider what further steps might be taken to harmonize monitoring and reporting obligations and methodologies in the areas of radiation and radioactive substances, noise and genetically modified organisms;
 - (iii) Consider the adoption of measures to improve the harmonization of methodologies for determining releases, transfers and resource use, such as the establishment of guidelines, taking into account guidance established in other

international processes; and

(iv) Consider establishing financial arrangements and technical assistance mechanisms to facilitate the implementation of the instrument;

(j) Seek, where appropriate, the services of relevant ECE bodies and other competent international bodies and specific committees in all aspects pertinent to the achievement of the purposes of this instrument;

(k) Consider and take any additional action that may be required to further the objectives of this instrument, such as the adoption of guidelines and recommendations which promote its implementation.

Article 16

RIGHT TO VOTE

1. Except as provided for in paragraph 2 of this article, each Party shall have one vote when decisions are taken by the Meeting of the Parties to this instrument.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 17

ANNEXES

The annexes to this instrument shall constitute an integral part thereof.

Article 18

AMENDMENTS TO THE INSTRUMENT

1. Any Party may propose amendments to this instrument.
2. Proposals for amendments to this instrument shall be considered at a meeting of the Parties to this instrument.
3. The text of any proposed amendment to this instrument shall be submitted in writing to the secretariat, which shall communicate it to all Parties at least ninety days before the meeting at which it is proposed for adoption.

4. The Parties shall make every effort to reach agreement on any proposed amendment to this instrument by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.

5. An amendment to this instrument adopted in accordance with paragraph 4 above shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties. On the ninetieth day after the receipt by the Depositary of notification of their ratification, approval or acceptance by at least three fourths of these Parties, an amendment to this instrument other than that to an annex shall enter into force for Parties having ratified, approved or accepted the amendment. Thereafter it shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval or acceptance of the amendment.

6. Any Party that is unable to approve an amendment to an annex to this instrument shall so notify the Depositary in writing within twelve months from the date of the circulation of the adoption by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for its previous notification and, upon deposit of an instrument of acceptance with the Depositary, the amendments to such an annex shall become effective for that Party.

7. On the expiry of twelve months from the date of its communication by the Depositary as provided for in paragraph 5 above an amendment to an annex shall become effective for those Parties which have not submitted a notification to the Depositary in accordance with the provisions of paragraph 6 above, provided that not more than one third of the Parties have submitted such a notification.

8. For the purposes of this article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article 19

SECRETARIAT

1. The Executive Secretary of the Economic Commission for Europe shall carry out the following secretariat functions for this instrument:

- (a) The convening and preparing of meetings of the Parties;
- (b) The transmission to the Parties of reports and other information received in accordance with the provisions of this instrument;
- (c) Such other functions as may be determined by the Meeting of the Parties on the basis of available resources.

2. The secretariat shall report to the Parties on the elements of and the modalities for carrying out the programme of work referred to in article 15, paragraph 6 (c).

Article 20

REVIEW OF COMPLIANCE

The Meeting of the Parties to this instrument shall review the compliance of the Parties with the provisions of this instrument. At their first meeting, the Parties to this instrument shall establish cooperative procedures and institutional mechanisms of a non-judicial nature to promote compliance with the provisions of this instrument and to address cases of non-compliance. These procedures and mechanisms shall allow for appropriate public involvement, including consideration of communications from members of the public on matters related to this instrument.

Article 21

SETTLEMENT OF DISPUTES

1. If a dispute arises between two or more Parties about the interpretation or application of this instrument, they shall seek a solution by negotiation or by any other means of dispute settlement acceptable to the parties to the dispute.
2. When signing, ratifying, accepting, approving or acceding to this instrument, or at any time thereafter, a Party may declare in writing to the Depository that, for a dispute not resolved in accordance with paragraph 1 above, it accepts one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:
 - (a) Submission of the dispute to the International Court of Justice;
 - (b) Arbitration in accordance with the procedure set out in annex II to the Convention, except that references to the Convention in that annex shall be construed as references to this instrument.
3. If the parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 above, the dispute may be submitted only to the International Court of Justice, unless the parties agree otherwise.

Article 22

SIGNATURE

This instrument shall be open for signature in Kiev (Ukraine) on ____ May 2003 on the occasion of the Fifth Ministerial Conference "Environment for Europe," and thereafter at United

Nations Headquarters in New York until 31 December 2003, by States members of the Economic Commission for Europe, by States having consultative status with the Economic Commission for Europe pursuant to paragraph 8 of Economic and Social Council resolution 36 (IV) of 28 March 1947 and by regional economic integration organizations constituted by sovereign States members of the Economic Commission for Europe to which their member States have transferred competence over matters governed by this instrument, including the competence to enter into treaties in respect of these matters.

Article 23

DEPOSITARY

The Secretary-General of the United Nations shall act as the Depositary of this instrument.

Article 24

RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. This instrument shall be subject to ratification, acceptance or approval by signatory States and regional economic integration organizations.
2. This instrument shall be open for accession as from 1 January 2004 by the States and organizations referred to in article 22.
3. Any other State, not referred to in paragraph 2 above, that is a Member of the United Nations may accede to the instrument upon approval by the Meeting of the Parties to this instrument.
4. Any organization referred to in article 22 which becomes a Party without any of its member States being a Party shall be bound by all the obligations under this instrument. If one or more of such an organization's member States is a Party, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this instrument. In such cases, the organization and the member States shall not be entitled to exercise rights under this instrument concurrently.
5. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations referred to in article 22 shall declare the extent of their competence with respect to the matters governed by this instrument. These organizations shall also inform the Depositary of any substantial modifications to the extent of their competence.

Article 25

ENTRY INTO FORCE

1. This instrument shall enter into force on the ninetieth day after the date of deposit of the

sixteenth instrument of ratification, acceptance, approval or accession.

2. For the purposes of paragraph 1 of this article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by the States members of such an organization.

3. For each State or organization which ratifies, accepts or approves this instrument or accedes thereto after the deposit of the sixteenth instrument of ratification, acceptance, approval or accession, the instrument shall enter into force on the ninetieth day after the date of deposit by such State or organization of its instrument of ratification, acceptance, approval or accession.

Article 26

WITHDRAWAL

At any time after three years from the date on which this instrument has come into force with respect to a Party, that Party may withdraw from the instrument by giving written notification to the Depositary. Any such withdrawal shall take effect on the ninetieth day after the date of its receipt by the Depositary.

Article 27

AUTHENTIC TEXTS

The original of this instrument, of which the English, French, and Russian texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this instrument.

DONE in Kiev, thisth day of May, two thousand and three.