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Access to Justice in Environmental Matters

Working Group on Pollutant Release and Transfer Registers  
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Item 4 of the provisional agenda

**OPTIONS FOR FINANCIAL ARRANGEMENTS UNDER THE PROTOCOL  
ON POLLUTANT RELEASE AND TRANSFER REGISTERS\***

Prepared by the secretariat

**INTRODUCTION**

1. Under article 17, paragraph 2 (h), of the Protocol on Pollutant Release and Transfer Registers (PRTRs), the Meeting of the Parties to the Protocol is required to consider establishing financial arrangements by consensus to facilitate implementation of the Protocol. At its second meeting, the Working Group on PRTRs requested the secretariat to prepare an analytical paper on financial arrangements which would provide the basis of a draft decision to be presented for review and

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\* This document was submitted on the above date to enable consultations with the relevant international experts on financial arrangements for multilateral environmental agreements.

possible adoption at the first session of the Meeting of the Parties. The present document has been prepared by the secretariat in response to that request.

2. Section I of the document, supported by the annex, reviews arrangements being applied by some multilateral environmental agreements, giving particular attention to the experience of the scheme of financial arrangements adopted under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention). Section II addresses a number of issues which the Working Group will need to discuss in preparing a scheme of financial arrangements under the Protocol, notably whether the scheme should be mandatory or voluntary, whether it should prescribe or give guidance as to the amount each Party or contributing entity should give, who should contribute, to what purposes the funds should be directed, and some considerations concerning the management and monitoring of funds and reporting on their use.

## **I. FINANCIAL ARRANGEMENTS UNDER THE AARHUS CONVENTION AND OTHER INSTRUMENTS**

3. An overview of financial arrangements under different UNECE instruments and other comparable instruments was undertaken by the secretariat in 2002 in preparation for the first meeting of the Parties to the Aarhus Convention (CEP/WG.5/2002/4). The following year, the World Health Organization (WHO) carried out a similar review for the Intergovernmental Negotiating Body on the WHO Framework Convention on Tobacco Control, which resulted in the report "Financial Arrangements for Convention Secretariats during the Interim Period and on a Permanent Basis: Precedents in Multilateral Environmental Agreements" (A/FCTC/INB6/INF.DOC/3 at [www.who.int/gb/fctc/PDF/inb6/einb6id3.pdf](http://www.who.int/gb/fctc/PDF/inb6/einb6id3.pdf)). This exercise is not repeated here because much of the information contained in those documents is current enough to serve as a background reference. However, some significant recent developments with respect to the UNECE environmental conventions are noted in the annex, which should be read in conjunction with the documents mentioned earlier in this paragraph.

### **A. General considerations applying to UNECE environmental conventions**

4. The Executive Secretary of the UNECE provides secretariat functions for all environmental conventions and protocols negotiated under the auspices of UNECE. Some resources are provided by UNECE from the United Nations regular budget to service each convention and protocol. These cover the costs of some professional staff, secretarial support, office space and equipment. The United Nations regular budget contributions also cover the costs of the provision of conference services by the United Nations Office at Geneva, including meeting rooms and interpretation, and the costs of the processing and distribution of official documents and publications.

5. Notwithstanding this support from the regular budget, all of the Conventions rely to varying degrees upon extrabudgetary sources of funding. This is provided in the form of mandatory or voluntary contributions by the Parties, paid into specifically established trust funds.

6. Three types of funding mechanisms are used for UNECE Conventions and Protocols:
- a) Mandatory contributions to a central fund (the EMEP<sup>1</sup> Protocol to CLRTAP<sup>2</sup>);
  - b) Voluntary contributions to a central fund (a mechanism used by CLRTAP, the Espoo Convention,<sup>3</sup> the Industrial Accidents Convention<sup>4</sup> and the Aarhus Convention); and
  - c) Direct sponsorship on a voluntary basis by countries of particular activities in the work plan (the Water Convention).<sup>5</sup>

Each type of arrangement with its particular mechanism or mix of mechanisms has its advantages and disadvantages, which are discussed further in section II. The arrangements for specific conventions are described in the annex.

## **B. Financial arrangements under the Aarhus Convention**

7. The financial arrangements established under the Aarhus Convention itself clearly provide the most relevant point of reference at the outset of the process of developing a scheme of financial arrangements under the Protocol. This does not preclude the possibility that the Parties to the Protocol might choose a different approach, and indeed the scheme established under the Convention through decisions I/13 and II/6 is an interim one that is itself subject to further changes. However, one would expect considerable overlap in the Parties to the two instruments, and thus a brief review of the evolution of the scheme under the Convention, along with an evaluation of how it is functioning, seems to be a useful starting point.

8. At their first meeting, the Parties to the Convention established through decision I/13 an interim voluntary scheme of financial arrangements to fund activities under the work programme that were not covered by the United Nations regular budget. The decision on the scheme of financial arrangements was closely linked to decision I/12 on the work programme for the period 2003–2005, in that the latter identified the estimated costs (“core” and “overall”) of the activities in the work programme that would be covered through the scheme of financial arrangements. Decision I/13 was based upon the notion that Parties, Signatories and other interested States would contribute “shares” of US\$ 20,000 per year. However, contributions could be for multiple shares or for fractions of shares, and no guidance was provided as to the amount that any given Party should contribute, other than the general stipulation that no contribution should be less than US\$ 200. Contributions could be made in cash, through the Convention’s trust fund, or in kind.

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<sup>1</sup> The Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe.

<sup>2</sup> The Convention on Long-range Transboundary Air Pollution.

<sup>3</sup> The Convention on Environmental Impact Assessment in a Transboundary Context.

<sup>4</sup> The Convention on the Transboundary Effects of Industrial Accidents.

<sup>5</sup> The Convention on the Protection and Use of Transboundary Watercourses and International Lakes. Some multilateral environmental instruments, such as the United Nations Framework Convention on Climate Change, are supported through external mechanisms (in the case of UNFCCC, the Global Environment Facility). The Convention foresaw financial assistance from Parties with more resources to those less endowed and more vulnerable. Developed-country Parties (Annex II Parties) provide financial resources to help developing-country Parties implement the Convention. To facilitate this, the Convention established a financial mechanism to provide funds to developing-country Parties. The Parties to the Convention assigned the operation of the financial mechanism to the Global Environment Facility (GEF) on an ongoing basis, subject to review every four years.

9. At their second meeting, the Parties extended the interim scheme of voluntary contributions through decision II/6 (ECE/MP.PP/2005/2/Add.10) for a further intersessional period. However, in order to broaden the funding base, it was agreed to introduce a differentiated system of shares, with “Type A” shares valued at US\$ 20,000 and “Type B” shares at US\$ 500.

10. Both decisions committed the Parties to exploring in the longer term the possibility of establishing stable and predictable financial arrangements based on the United Nations scale of assessment or other appropriate scales. Through decision II/6, the Meeting of the Parties instructed the Working Group of the Parties to prepare recommendations on this and other matters with a view to their possible adoption at the third meeting of the Parties. The preparation of those recommendations is expected to take place within approximately the same time frame as the preparation of a draft decision on financial arrangements with respect to the Protocol.

11. Some observations may be made concerning the functioning of the scheme to date:

- (a) The level of contributions through the trust fund has consistently fallen somewhat short of the estimated core requirement under the work programme, and significantly below the estimated overall requirement.
- (b) Approximately half of the Parties have not contributed at all to the scheme, and among those that have contributed, there are significant disparities in the levels of contributions, whether assessed in gross, per capita or GDP terms or according to a putative application of the United Nations scale of assessments to Parties and Signatories to the Convention. Thus it may be concluded that the scheme has failed to achieve its stated goal of achieving a “fair sharing of the burden”.
- (c) The “shares” system does not provide guidance on how much any given Party should contribute. Few Parties have contributed an exact number of “shares” or have referred to the shares system in making their contributions. Indeed, it is not clear how important the “shares” concept is to the functioning of the scheme. However, if even a few Parties find this concept useful and others do not feel constrained by it, it could be seen as marginally beneficial.
- (d) Notwithstanding the limitations described in (a) and (b), more resources have been raised through the Convention’s scheme of voluntary contributions than through the scheme of any other UNECE environmental convention for its respective work programme. While this may reflect the political priority accorded to the Aarhus Convention rather than any particular feature of its scheme of financial arrangements, the scheme does not seem to have discouraged a significant number of countries from contributing.

## **II. ELEMENTS FOR FINANCIAL ARRANGEMENTS UNDER THE PROTOCOL**

### **A. General principles**

12. In preparing a decision on financial arrangements, the Working Group may wish to consider for inclusion in the preamble underlying principles of financial arrangements. These could include elements such as stability, certainty, transparency, predictability, accountability and a fair sharing of the burden.

### **B. Mandatory versus voluntary contributions**

13. One of the first questions that the Working Group and eventually the Meeting of the Parties will need to address is whether a scheme of financial arrangements established under the Protocol should be mandatory or voluntary. The tendency in recent years has been towards voluntary schemes, but some mandatory schemes (e.g. under the EMEP Protocol) remain in place, and therefore their merits and demerits deserve consideration.

14. Mandatory funding mechanisms are a stable and predictable source of financing and should, in theory, be able to ensure full coverage of the required resources. They can ensure that the burden of costs is distributed fairly among the Parties. In some countries, their legally binding nature may streamline the internal process of releasing funds for their designated use.

15. On the other hand, legally obligatory mechanisms require considerable time and resources to prepare, not least because their legally binding nature may make them more difficult to negotiate. The national laws or policies of some countries may not allow them to enter into international agreements that require mandatory financing. Furthermore, a legally binding mechanism generally involves a process whereby each Party must individually ratify the financing agreement before it enters into force, which may take months or years following the adoption of the agreement.

16. A mandatory mechanism would generally not extend beyond the Parties to the treaty to cover non-Party Signatories and other observer States or entities.

17. Some Parties to the Convention have argued that they could not accept an obligation to commit as much money under a mandatory scheme as they might actually contribute under a voluntary scheme, precisely because the former is mandatory, and that in practice a mandatory scheme might yield less revenue, at least from their countries.

18. Funding through voluntary contributions to a trust fund is a more flexible approach, with the resulting advantages and disadvantages. A collective decision of the Parties can have immediate effect, putting a scheme in place without any need to wait for ratifications to accumulate. Some Parties have said that voluntary contribution schemes simplify internal decision-making procedures concerning funding and enable the use of funds that would not otherwise be available. A voluntary scheme does not need to be limited to Parties.

19. On the other hand, schemes based wholly on voluntary contributions make the forecasting of revenue less reliable and place a greater burden on the planning and implementation of programme activities. Some Parties have argued that voluntary schemes would result in smaller amounts of funds being given to the instrument, due to competition from other, obligatory demands placed upon state budgets. As was mentioned, experience with the current voluntary scheme under the Convention shows that even the core budgetary needs identified by the Meeting of the Parties have never been fully covered by the voluntary contributions from the Parties (see ECE/MP.PP/2005/10 and ECE/MP.PP/WG.1/2006/8), though this fact is open to different interpretations.

20. One form of voluntary approach is that initially relied upon by the Water Convention, namely identification of a lead country for each activity within the work plan, which takes responsibility for funding that activity. A disadvantage of this approach is that it does not address the problem of how to fund activities for which there is no lead country. It also effectively prevents less wealthy countries from taking on leadership roles.

21. The previous paragraphs indicate not only that there are different arguments for and against mandatory and voluntary schemes, but that their impacts might be different in different countries due to differences in domestic decision-making processes.

22. The possibility of a hybrid system, with a mandatory component and a voluntary component, has a logical appeal and may be worth considering as a “best of both worlds” option. Such a system might cover core or essential requirements through mandatory contributions by Parties, and a wider range of non-core activities either through a scheme of voluntary contributions by Parties, Signatories and other entities or through earmarked subsidizing of particular activities by certain countries.

23. If the option of a mandatory scheme were to be pursued, the form of the instrument would need to be considered. A pragmatic approach would be to amend article 17, paragraph 2 (h), of the Protocol in such a way that it required Parties to contribute an amount that would be set and periodically revised by consensus through decisions of the Meeting of the Parties at successive sessions, thereby combining the legal requirement to contribute with the flexibility for the Meeting of the Parties to adjust the actual amount to be contributed in line with changing requirements.

### **C. Who should contribute?**

24. Any arrangement involving a scheme of mandatory contributions would probably apply only to the Parties to the Protocol, or as many of them as chose to ratify the financing agreement. (Theoretically it could be possible for a State to become a Party to a financing agreement linked to the Protocol without being a Party to the Protocol itself, but this is not likely.)

25. A voluntary contribution scheme could allow for contributions both by Parties and by non-Parties, even if these contributions were not necessarily covered by the same conditions. This would take advantage of the willingness of donor countries and private philanthropy to make further contributions.

26. Contributions in kind made by Parties to the instrument could be correlated with activities of the work programme in order to be counted towards discharging whatever commitments Parties have under the scheme. Contributions in kind made by non-Parties could also be taken into account.

27. Non-governmental organizations (NGOs) participate in all the activities under the Convention, including preparations for entry into force of the Protocol. In some cases, private foundations and NGOs provide grants in cash to organizations or individuals working to implement the Convention or to assist with preparation for entry into force of the Protocol. Assuming that such bodies will engage in activities supporting the implementation of the Protocol after its entry into force, their work might be seen as a contribution in kind.

#### **D. How much should be contributed?**

28. One option is to adopt a scheme of financial arrangements that provides no guidance as to how much any given Party should contribute. As was already mentioned, the current “shares” scheme under the Convention falls into this category. While appearing to give some kind of guidance, the scheme does not in fact do so, as is shown by the fact that the secretariat regularly receives requests for clarification from Parties on how much they are expected to contribute.

29. If the scheme is to provide guidance on or (in the case of a mandatory scheme) prescribe how much any given Party should contribute, then the question arises as to which scale should be used. The only scale explicitly referred to in decisions I/13 and II/6 of the Meeting of the Parties to the Convention is the United Nations scale of assessments, though theoretically it would be possible to use a different scale. A scheme based on the United Nations scale of assessments, whether on a voluntary or a mandatory basis, would involve using the budget corresponding to the elements of the work programme as a starting point, but in this case the burden of costs would be shared according to the United Nations scale of assessments for Parties and other States having opted to participate in the scheme. The scheme could set a minimum amount for any contribution, taking into account the costs of processing the contribution. It could also set a maximum percentage of the total budget that any Party may contribute.

#### **E. What could the financial mechanism fund?**

30. The main objective of a financial mechanism under the Protocol could be to cover the costs of the activities under the work programme, or at least the core activities, if a distinction between core and non-core is made. A work programme could be adopted at each session of the Meeting of the Parties for the ensuing intersessional period. Other activities would not necessarily be covered by these financial arrangements, and countries could contribute to these on an ad hoc basis.

31. Presumably the scheme of financial arrangements would cover the costs of holding sessions of the Meeting of the Parties and any subsidiary bodies established under its auspices, to the extent that these are not covered by the regular budget, as well as the costs of secretariat staff providing technical support. Less clear is the extent to which the scheme would cover expenditure on activities addressing the substantive issues of compliance, implementation and capacity-building at the national level. While the activities at the international level are important, the success of the

Protocol depends most of all upon the establishment of PRTRs at the national level, and many countries may need financial and technical assistance in order to achieve conformity with the requirements of the Protocol.

32. With respect to the Convention, only a limited proportion of the funds channelled through the trust fund are directed at national-level capacity-building, and this proportion can be increased only if there is a substantial increase in the total amount of funding provided to the fund. Most of the external funding for national capacity-building activities in support of more effective implementation of the Convention does not pass through the trust fund or fall within the framework of the Convention's work programme, but rather is provided directly by the funding organization to the project team in the country or managed directly by the capacity-building partner. The Convention secretariat services a coordination framework for these activities but generally does not manage the funds.

33. The model used for the Convention could also be followed for the Protocol. Alternatively, a technical assistance mechanism could be established within the framework of the work programme and funded through contributions (mandatory or non-mandatory) under the scheme of financial arrangements.

34. The scheme could accommodate contributions made in cash or in kind. Contributions in kind would presumably have to correlate with activities of the work programme in order to count towards discharging the commitment (whether voluntary or mandatory) under the scheme. Contributions in cash could be made to a separate section of the local trust fund used for the Aarhus Convention, earmarked for the Protocol.

#### **F. Management, monitoring and reporting**

35. The secretariat could be mandated to manage the funds in accordance with the decisions of the Parties, to monitor the expenditure of the funds and to prepare a report on how contributions to the Protocol have been spent and which countries have contributed to the budget of the Protocol and to related activities. The report could reflect contributions in kind made in accordance with the work programme.

36. In managing the funds, priority would be given to financing "priority" or "core" elements of the work programme, taking into account the need to provide the secretariat and the Bureau with some flexibility in making financial decisions.

37. On the basis of the experience under the Convention, the Parties could be invited to consider whether it is useful to establish a budget containing "core" and "overall" budget columns, disaggregated by activity line, and whether such a budget contributes to predictability and transparency in the budgeting process; or whether, on the contrary, it unnecessarily complicates the process and obscures understanding of the Protocol's funding requirements.



## Annex

### Financial Arrangements under Other UNECE Multilateral Environmental Agreements

1. The financial arrangements relating to the other UNECE multilateral environmental agreements illustrate various options for dealing with the issue under the Protocol.

#### I. Convention on Long-range Transboundary Air Pollution (CLRTAP)

2. The Convention does not address the financing of its administration. However, in order to finance the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP), the Protocol on Long-term Financing of the EMEP was adopted in 1984; it entered into force in 1988. EMEP covers the annual costs of the international centres cooperating within EMEP for the activities appearing in the work programme of the Steering Body of EMEP. The scale for calculating mandatory contributions is contained in the text of the Protocol itself, in the annex, and applies only to countries within the geographic scope of EMEP. Parties outside EMEP's geographic scope, namely Canada and the United States, provide voluntary contributions. At intervals of no more than six years, the Executive Body considers whether there is a need to amend the annex to the Protocol containing the EMEP scale of contributions. As has been noted by the secretariat, much of the work of EMEP relies on extrabudgetary contributions. At its twenty-second session, the Executive Body requested the secretariat to apply the 2004 United Nations scale of assessments as a basis for calculating the EMEP scale of mandatory contributions from 2006 onwards.

3. Core activities not funded through the EMEP Protocol are financed on a voluntary basis through a decision by the Executive Body of the Convention on financing the core activities of the Convention and its protocols. Decision 2001/5 of December 2001 sets out in an annex the recommended scale of contributions, which is based on the United Nations scale of assessments.

4. Voluntary contributions may be made in cash or in kind for activities specified in the work programme. Subject to approval by the Executive Body, voluntary contributions may be used to reduce mandatory contributions or to finance specific activities within the scope of EMEP. In-kind contributions for the most recent reported period (2004–2005<sup>6</sup>) comprised over half of total contributions (EB.AIR/2005/2, paras. 16 and 18).

5. To support activities in countries with economies in transition and to assist participation at sessions of the Executive Body sessions and its main subsidiary bodies, the secretariat established a Trust Fund in 2002.

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<sup>6</sup> Through 16 September 2005.

6. At its twenty-third session, the Executive Body reviewed the use of earmarked and non-earmarked cash contributions in 2000–2005. The secretariat had noted that, as contributions were received throughout the year with no advance notice of amounts to be received, it was not possible to plan for contracts with the programme centres related to core activities not funded through the EMEP Protocol. Contracts are drawn up on an ad hoc basis when sufficient funds are available.

## **II. Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)**

7. The Convention itself does not address the financing of its administration. The Third Meeting of the Parties decided that the Parties and others should be urged to make contributions to the budget on a voluntary basis. The contributions are now made to the UNECE Trust Fund for Local Technical Cooperation (Espoo Convention) (decision III/10). The Meeting of the Parties adopts a work plan covering the activities under the Convention until the next meeting of the Parties.

8. At their third meeting (1–4 June 2004), the Parties introduced a share-based system whereby countries choose to make contributions equivalent in value to a number of shares of the budget, each of US\$ 1,000. This system is intended to provide stable and predictable funding and a fair sharing of the burden of the budget and financial arrangements for the period until the fourth meeting of the Parties, including the resources needed for implementing the activities in the work plan. In the work plan, which was adopted in decision III/9, activities are assigned priorities from 1 to 3.

9. In-kind contributions, according to the secretariat, vary in nature, form and specificity, which may hinder planning and project management. In-kind contributions are not always costed, which makes it difficult to assess consistently the contributions made by the Parties. In addition, earmarking confuses the prioritization of activities in the work plan.

10. The Meeting of the Parties is expected to consider a draft decision on financial arrangements at its fourth session. This decision might confirm the system of shares endorsed by decision III/10 and might also confirm the strengthened reporting of income and expenditure that has applied since April 2005.

## **III. Convention on the Transboundary Effects of Industrial Accidents**

11. The financial arrangements reported previously (CEP/WG.5/2002/4), namely voluntary contributions made financially and/or in kind to the budget of the work programme and the practice of countries taking the lead in specific projects under the work programme, were reiterated in decision 2004/5 adopted at the third meeting of the Parties (14 February 2005).

#### **IV. Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention)**

12. Annex II of decision III/2 (adopted 26–28 November 2003) established a trust fund for voluntary contributions under the Convention, “providing it with a tool to meet demands in a flexible way and to allow for a transparent management of financial resources” (ECE/MP.WAT/15/Add.1). The trust fund can be used for technical support to Parties, particularly to countries in transition through the organization of seminars and workshops and other training activities.

13. Under the original scheme of financial arrangements, where lead countries were expected to finance activities, no clear mechanism existed for countries with economies in transition to lead activities. Through donations to the trust fund, donor countries are now able to cover the costs of countries in transition wishing to lead activities.