

COMPILATION OF COMMENTS ON DRAFT INSTRUMENT ON PRTR

CEP/WG.5/AC.2/2001/3
CEP/WG.5/AC.2/2001/6
CEP/WG.5/AC.2/2001/7

GENERAL COMMENTS**Belarus**

The Republic of Belarus as a part of European and international community is interested in progress in information system development and global chemical safety achievement. We are sure that Pollutant Release and Transfer Register is the main step to this goal.

We are agreed with all regulation of this document. Unfortunately, we have to establish a fact, that Republic of Belarus is not ready to realize all demands of Convention. We are sure that more active participation of our republic experts in working group activity will accelerate this process in our republic.

The Republic of Belarus faces an extremely complex ecological situation. Except chemicals enumerated in Enclosure III fine-dispersed protein inclusive duct and antibiotics (especially dangerous substance according to our classification) are actual for control very much as we note mark increase of allergic pathology in our country. This tendency takes place not only in our country but all over the world. So we propose to discuss a possibility to include these substances in list for control.

Creation of international Pollutant Release and Transfer Register is timely. It's realization will allow to improve informational providing of environmental measures notably as in national so in international level. It is very important that the document contains the mechanism of person and non-governmental organization access to document.

We haven't any remarks to the list of chemicals.

But we consider that including in Document the concept "transfer" and its interpretation is debatable. In document the transfer most likely means a transference as it concern only the cases then the recipient is known. But it is impossible to foresee a "recipient" of air emission and to include it in Register. It is very labour-intensive task to track and record all transference of a hundreds of substances from object to object. May be it is reasonable to part this task on stage according to substance dangerous degree and it's control difficulty.

The absence of methodology of information receiving (about emission) could be to refer to demerits of Document.

We consider that Document in whole deserve to be supported.

Germany

The ECE Secretariat's proposal in its current form does not correspond to the progressive step-by-step approach provided for in Article 5 paragraph 9 of the Aarhus Convention and the recommendations of the second Conference of Signatory States. The proposal goes far beyond regulating the key elements of a PRTR.

Germany understands the progressive step-by-step approach to be taken in accordance with Art. 5 para. 9 of the Convention in such a way that **in the first step reporting on the key areas** should be required. These are data on pollutant releases into water, air and soil as well as off-site transfers of wastes as far as they have major environmental impacts. We welcome that the Secretariat has included all the substances of the EPER of the European Community and most of the corresponding thresholds. In our view the PRTR instrument should be as compatible as possible with the EPER. It would be very difficult to justify to reporting enterprises and to the public that on top of an already existing environmental register, a second register is to be created with deviating reporting requirements. Therefore the obligatory requirements of the first step of the PRTR should comprise only the

substances and thresholds of EPER. Such an approach would allow all the Signatory States to arrive at a common level before moving to the second step. During this first step reporting on other pollutants such as pollutants from diffuse sources could be possible but should not be required.

We are very much concerned that an “oversized” PRTR, which already includes several steps, might overwhelm all participants and would not result in a transparent process for the public. A step-by-step approach to the implementation of a PRTR also includes allowing countries sufficient time in the introductory phase when setting a reporting period in order to learn from experience gained from collecting, compiling, validating and disseminating data. This is particularly the case when the amount of data to be generated/reported is increased to a large degree as compared to existing systems. Therefore, during the first step the **period between first and second reporting** should be sufficiently long for facilities, bodies and authorities to be able to establish functioning structures for reporting, compiling and presenting the data. In this respect we consider an annual period to be too short. At least in the introductory phase, the reporting period should be three years. This can be amended to a shorter reporting period at a later date while all Parties can report within a shorter reporting period from the outset if they wish so.

Before proceeding to **the second step** with further reporting requirements the success of this first step should be evaluated carefully. Once the structures of data collecting, validation and dissemination have been successfully implemented during the first step in all Signatory States in a harmonised and complete manner, future requirements according to Article 5(9) of the Aarhus Convention “may be included”.

Specific comments regarding the provisions:

We recommend to postpone the discussion on the recitals until the wording for the main part of the instrument is agreed upon. We consequently limit our comments to the main body of the Instrument. We have, however added one recital at the end of the preambulatory part, which was removed, from the operative part of the text. Furthermore our comments to the Annexes are of a general nature and for reasons of transparency refer to their numbering in the document CEP/WG.5/AC.2/2001/3 and not the revised numbering in document CEP/WG.5/AC.2/2001/7. To keep our comments simple and focused on the content we have, at this point, also refrained from suggesting a revised structure for the instrument. We do, however, believe that Articles 3 through 8 could be simplified and their content concentrated into fewer Articles once agreement has been reached on the content of the instrument.

Italy

We are in favour of the preparation of a Protocol to the Aarhus Convention on pollutant release and transfer registers (PRTRs), to be ready for adoption at the fifth Ministerial “Environment for Europe” Conference (Kiev, 2003) and consider such a Protocol an important instrument ensuring the informative system targeted by the Aarhus Convention.

We believe that the European Pollutant Emission Register (EPER), as referred to in the EC Directive concerning Integrated Pollution Prevention and Control, 96/61/EC (IPPC), would serve as a valuable tool to inspire the preparation of the draft Protocol.

However it should be born in mind that, accordingly to the decisions of Signatories, the Protocol should be signed in 2003, and probably will not enter into force before 2007.

Consequently, in our opinion the Protocol should be wider and more ambitious than the European instrument.

Moreover, even if the Protocol will be gradually implemented, we support the definition in the Protocol of precise long term objectives, with time deadlines for their achievement, allowing Parties to make the due arrangements.

In the Light of the above mentioned remarks, we consider the document submitted by the Secretariat (CEP/WG.5/AC.2/2001/3, CEP/WG.5/AC.2/2001/6, CEP/WG.5/AC.2/2001/7) a good starting point.

Our comments on the technical issues, in the line with these preliminary observations, will be submitted during the negotiations.

UK

A number of EU countries have met to see if it was possible to agree a common line on the working document. This proved to be very productive, and I have since seen returns from the German and Belgian delegations that reflect the discussion we had earlier this month.

Rather than repeat the points made in those returns, I would simply report that the UK endorses the points made in those returns. There are, however some minor editorial suggestions that I would like to make to the returns [see below].

US

Although the United States has not yet made a decision whether to participate in negotiations to develop a UNECE agreement on PRTR, the United States has been participating as an observer in the working group meetings to date, given our international leadership in the field of PRTRs.

Based on fourteen years of operating the Toxics Release Inventory (TRI), which is the name of the PRTR in the United States, we offer the following preliminary comments on the draft agreement. If the United States decides to participate in the negotiation, we are likely to bring forward additional comments.

The United States notes that the current draft is structured in a manner that would require each Party to apply the PRTR obligations to an agreed list of chemicals and industries, and that such a list would evolve over time. We note that such an approach could prove very difficult to negotiate and may not be well-suited to developing an instrument that could be broadly ratified. We believe that alternative structures should be considered: for example, the instrument could establish an agreed set of core structural requirements (each Party would have to establish a PRTR, the PRTR would have to be publicly available and meet other core requirements, etc.), but would include only a non-binding indicative list of industries and chemicals. Alternatively, the instrument could include a core set of mandatory industries and chemicals (perhaps together with a much larger indicative list of optional industries and chemicals), but individual Parties could be allowed to opt-out of requirements with respect to particular chemicals or facilities. Many similar variations on these themes are possible. We believe that alternative approaches such as these would build flexibility into the instrument in a manner that would open the agreement to ratification by the largest number of countries, while avoiding protracted negotiations on difficult issues, such as agreed criteria for adding new chemicals to the list.

We have not identified each instance in the text where changes would be required if a different model were adopted, but there are many such points (e.g., article 4(1)(a)). Similarly, negotiation of the criteria for adding new substances to the list will depend to a large extent on the structure of the agreement. For that reason, the United States suggests that these fundamental issues (e.g., scope, structure, criteria) be considered at an early state in the working group's work, before any detailed review of the Secretariat's draft text be undertaken.

The United States notes that, as drafted, the text is structured as a protocol to the Aarhus Convention. Furthermore, it incorporates many of the obligations of that Convention by reference. That structure would cause a potentially significant barrier to entry to countries that might participate in a PRTR agreement, but are not parties to the Aarhus Convention. Furthermore, it is not clear that it is necessary to incorporate any terms or obligations from other instruments in order to create a free-standing text that is focussed on PRTRs. We believe that this instrument can be compatible with the Aarhus Convention, but should recognize the more limited scope of a PRTR instrument calls for not broadly incorporating large parts of the Convention. The United States is open to discussing alternate language for each of the issues noted below to consider alternate provisions more appropriate to achieving the objectives of this instrument.

The United States notes that in some cases the instrument refers to "release" thresholds. We believe that the threshold should be based on the manufacture/process/use of a chemical for the following reasons: 1) a facility must first determine its use of a chemical before it can determine its releases or transfers; 2) it is the United States' experience that facilities that focus only on those environmental media for which a release is expected can have significant omissions of unexpected releases; 3) release thresholds can result in the reporting for only one or more environmental media thus preventing a multi-media picture of the releases and transfers from a facility; and 4) a manufacture/process/use threshold requires a facility to review its entire operations, thus facilitating the identification of pollution prevention and pollution control opportunities. In addition, use thresholds are already used in a number of functioning PRTR systems, including the Toxics Release Inventory in the United States.

As currently structured, the instrument does not provide an explicit exclusion for small enterprises. Note that our TRI system includes a minimum size cut-off for firms with less than 10 full-time employee equivalents that serves this goal.

The use of the term "storage" in the instrument is not clear. The term "storage" can be used for both wastes and commodities. For example, storage can be used as a means of disposal, such as for mixed hazardous/radioactive waste. There may also be temporary storage of pollutants in a waste storage pile pending transfer off-site for waste management. "Storage" may also be used as an activity by petroleum terminals and chemical wholesalers. There may also be speculative "storage" of commodities pending change in pricing. The United States believes that the first type generally should be included only in releases and transfers and the second type generally should be included in activity thresholds. Further, the United States believes that the term storage needs to be clarified in this instrument.

The United States believes that the draft text currently includes numerous elements that go beyond the scope of a PRTR. A PRTR is a register for the releases and transfers of chemicals. It is a system to collect information about how a facility manages its releases and transfers of chemicals, to allow the government, the public and other users of the data to understand how chemicals are managed at particular facilities or throughout a community, region or the country. Therefore, the United States proposes to delete references to water, energy, resources, noise, electromagnetic radiation, and GMOs.

The United States also believes that references to products should be deleted because the focus of this instrument should be on releases and management of chemicals at facilities.

The United States questions whether it is appropriate to include diffuse sources in this instrument. Moreover, the concept of diffuse sources is currently so broad that is unclear as to whether this fits appropriately into the context of a PRTR.

The United States envisions an alternate structure to the PRTR agreement as described above, but notes that any structure that would propose to expand the list over time would require criteria. If criteria are to be included, we believe that this is a negotiating priority that should be focused on in the near future.

REC for Central and Eastern Europe

In connection with the decision taken at the first meeting of the Aarhus Convention Working Group on Pollutant Release and Transfer Registers (PRTR), the Regional Environmental Center for Central and Eastern Europe (REC) hereby submits to the Aarhus Convention Secretariat preliminary comments on the elements for a draft instrument (CEP/WG.5/AC.2/2001/3), as follows:

We welcome the text of the elements for a draft instrument on Pollutant Release and Transfer Register prepared by the Secretariat and we believe that it is an excellent basis for developing the final text.

We support the formulation of the elements in a structure of a protocol and believe it to be the most feasible and appropriate form for the future instrument. The final form of the text should reflect all the details of the issues needed to be discussed in order to have an efficient instrument. To this end, we believe that some further additions to some of the articles might be needed, and it is of particular

importance that the step-by-step approach is clearly explained and various phases are established in an agreed time-frame.

While in the development of the future instrument compatibility with various existing reporting requirements should be ensured and duplication of efforts should be avoided, the instrument can and should go beyond and be more forward-looking than such existing requirements.

The instrument should be developed in a step by step approach gradually phasing in the different requirements, however it should determine clearly concrete deadlines for various phases. The instrument should aim at establishing over an agreed time-frame a full-fledged PRTR including all the elements indicated in the current draft of the Art. 5.

At the same time, the crucial elements vital for achieving the goals of the Aarhus Convention and the instrument should be already ensured in the first phase. These, in our opinion, should include at least:

- integrated multi-media approach covering all media including air, water, land and underground injection
- facility specific and substance-specific approach
- releases
- on-site and off-site transfers
- both point and diffuse sources
- annual reporting and timing
- public accessibility, dissemination of the data
- public participation in the development and operation of the national PRTR

It is possible to develop and establish different time-frames for a few elements which seem to be more difficult to be covered at the time of the agreement on the instrument, for example: products, reduction targets, water, energy and resource use, radioactive substances, radiation, noise and GMOs. In case such approach is taken, the Art. 5.1 and Art. 8.5 should explicitly require that the registers established in the first phase provide links to the existing national level registers and databases on radioactive substances, radiation and GMOs.

We believe the reporting should be done on an annual basis starting from the phase one. The inclusion of the reported data in the register should be required in as short time as possible. An upper time limit of 5 months following the reporting year should be fixed in the document to ensure timeliness of information. It could be left to each party to set a time limit for facilities or other reporting bodies to submit their reports. There should be an obligation to make the data publicly accessible as soon as is it in the register (Article 4.4).

We strongly support inclusion of specific provisions on access to information, public participation and access to justice in the text of the instrument in separate articles (Art. 10, 11, 12) Such approach would allow for a greater elaboration of certain details, more narrowly focused on the needs of establishing and operating an efficient PRTR. These articles also should reflect that the PRTR is basically a public right to know instrument and should guarantee rights for the public to access the PRTR data, participate in the development and operation of the national PRTRs and have rights of access to justice if their respective rights have been infringed as foreseen in the current draft of Art. 12. Since the instrument will be opened for signature by the non-Parties of the Convention the spelling out of these provisions will have an additional value.

CEFIC and ICCA

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.

European ECO Forum

We welcome the document and thank the Secretariat for the work on this issue.

As drafted, the working document has considerable breadth and we fully support the inclusion of all the elements therein. Lower priority has been given to some aspects, but we have always recognised that an ambitious and fully comprehensive pollution inventory would not be achieved in one single step.

We support the notion of phasing in particular elements, but argue that reports on *on-site transfers* should be required in the first phase, in line with off-site transfers which are equivalent activities¹. We are assuming that we “every day” movements of chemicals within a site are excluded from the definition of on-site transfer, but that treatment/disposal activities are covered.

We would also note that, whilst the document has broad scope, much of the test of the pollution inventory will lie in the numbers of reports ultimately generated, reliant on the detail to be included in the Annexes. The broad scope will not count for much if only a very limited number of substances or activities is incorporated in the final document.

We support the establishment of a mandatory list annexed to the instrument as a minimum reporting requirement, while allowing for the possibility of including additional substances, taking into account specific national circumstances. We consider that the “optional” Annex could in the longer term become mandatory.

As a useful exercise, we propose that we will produce a draft electronic reporting form for consideration at a Working Group session, considering possible other database fields that would be necessary for operational purposes (such as who to contact at the reporting facility in case of query by the database compiler or indeed the public).

Reduction targets for criteria pollutants should be mandatory in national reporting systems wherever required by other legal instruments (e.g., Kyoto Protocol), and otherwise voluntarily

¹ The public’s needs and rights to have such information on such transfers for purposes of planning public safety and emergency response measures are widely recognized in the US for example (e.g., Emergency Planning and Community Right-to-Know SARA Title III – Risk Management Planning). Similarly, the view that “whatever goes on within a facility’s boundaries is its own business” is without merit whenever significant risks to the environment or health are posed by the existence of pollutants within a facility, even where no actual releases take place or are planned.

included in such systems. The inclusion of reduction targets in the US TRI System has proved a useful stimulus to voluntary pollutant emission reductions and promotes integration of PRTR data into facility-based environmental management systems (e.g., ISO 14000). Such targets may be set at zero, usually in recognition of past progress in achieving sustainable production goals.

SPECIFIC COMMENTS

on UN DOCUMENT
CEP/WG.5/AC.2/2001/3

Preamble

US notes that the Preamble is typically negotiated last, after the substantive agreement is concluded. We would have comments on many of the draft clauses, but believe that attention should focus for the time being on the core elements of the text, after which the preamble can be revisited. In general, we note that the draft preamble is unnecessarily lengthy, and includes several contentious elements. A satisfactory and comprehensive preamble could include only the 2nd, 14th, and 15th recitals.

CEPIC/ICCA For the time being, we do not wish to provide textual suggestions on the preamble. However, we would advise to include references to the appropriate recitals in the Aarhus Convention.

The Parties to this instrument,

Recalling article 5, paragraph 9, and article 10, paragraph 2, of the 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters,

Having regard to principle 10 of the Rio Declaration on Environment and Development, which states *inter alia* that each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and that States shall facilitate and encourage public awareness and participation by making information widely available,

Having regard to the principles and commitments agreed to at the United Nations Conference on Environment and Development of 3-14 June 1992, in particular the provisions in chapter 19 of Agenda 21, in which governments with the cooperation of industry were called upon *inter alia* to improve and develop databases and information systems on toxic chemicals, such as emission inventory programmes, and programmes to promote the public's and workers' right to know, the broadest possible awareness of chemical risks being a prerequisite for chemical safety,

Having regard also to the Programme for the Further Implementation of Agenda 21, adopted by the General Assembly at its nineteenth special session (23-28 June 1997), in which it reaffirmed all the principles contained in the Rio Declaration on Environment and Development and called for enhanced national capacities and capabilities for information collection, processing and dissemination, to facilitate public access to information on global environmental issues through appropriate means, including high-tech information and communication infrastructure related to the global environment, in the light of country-specific conditions, using, where available, such tools as geographic information systems and video transmission technology, including global mapping,

Taking into account the work of the Intergovernmental Forum on Chemical Safety and the Inter-Organization Programme for the Sound Management of Chemicals,

Republic of Moldova propose to change this recital to read as follows:

“Taking into account the work of the Intergovernmental Forum on Chemical Safety and, in particular, the principle related to PRTR, public right to know about chemical safety and to participate in meaningfully in decision about chemical safety, stipulated in Bahia Declaration on Chemical Safety, and and also the Inter-Organization Programme for the Sound Management of Chemicals”

*Taking into account also the principles and information contained in the *Pollutant Release and Transfer Registers (PRTRs), A Tool for Environmental Policy and Sustainable Development, Guidance Manual for Governments*, published by the Organisation for Economic Co-operation and Development (OECD), and taking note of OECD Council recommendation C(96)41 on implementing pollutant release and transfer registers, which calls upon member countries to take steps to establish as appropriate, implement and make publicly available national pollutant release and transfer registers and promote comparability among such national registers and the sharing of data from these registers between neighbouring countries,*

Having regard to decision 2000/479/EC of 17 July 2000 of the Commission of the European Communities on the implementation of a European pollutant emission register,

Having regard also to resolutions 97-04 and 00-07 of the Council of the North American Commission for Environmental Cooperation on promoting comparability of pollutant release and transfer registers and on such registers generally,

Wishing to provide a mechanism contributing to the realization of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, by assuring the development of publicly accessible environmental information systems,

Wishing also to ensure that the development of such systems takes into account principles contributing to sustainable development such as the precautionary principle, the polluter-pays principle and the principle of internalizing environmental costs,

Recognizing the link between adequate environmental information systems and the exercise of the rights contained in the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters,

Recognizing also the importance of preventing and reducing pollution from industrial and other sources in protecting the environment and the health of present and future generations,

Recognizing further that reducing, and as far as possible eliminating, potentially harmful releases and transfers of pollutants is a foundation for achieving environmentally sound and sustainable development,

Belgium, France, UK propose a further recital as follows:

“Recognising the necessity to take into account the extent of risks and the potential benefit and costs of action or lack of action,”

*According to **Belgium and France** it is more appropriate to insert the precautionary principle in the*

Preamble of the Protocol, instead of in Article 3, para. 5.

Switzerland *Risk and cost/benefit considerations should be taken into account as proposed by UK.*

Noting that the public availability of information through the mechanism of pollutant release and transfer registers has contributed to a substantial and quantifiable reduction of pollution in those countries where it has been implemented,

Convinced of the value of pollutant release and transfer registers as a cost-effective tool for encouraging improvements in environmental performance, for providing the public with access to information on pollutants released into and transferred in and through their communities, and for use by Governments in tracking trends, demonstrating progress in pollution reduction, monitoring compliance with certain international agreements and setting priorities and evaluating progress achieved through environmental policies and programmes,

Believing that pollutant release and transfer registers can bring tangible benefits to industry through improved management of chemicals,

Noting the opportunities for using data from pollutant release and transfer registers, when combined with health, environmental, demographic, economic or other types of relevant information, for the purpose of gaining a better understanding of potential problems, identifying ‘hot spots’, taking preventive and mitigatory measures, and setting environmental management priorities,

Belgium, UK *The word ‘mitigatory’ should be replaced with ‘mitigating’.*

European ECO Forum *proposes three further recitals:*

“Acknowledging that the state of knowledge about the risks of many chemicals is incomplete and that lack of full scientific certainty about their effects should not be used to deny public information,”

“Noting that the presence of dangerous chemicals can lead to serious accidents affecting both facilities and surrounding communities and that awareness of the risks can encourage measures to reduce these risks, “

“Recognising that more efficient use of energy, water and resources will contribute to achieving environmentally sound and sustainable development,”

Recognizing the need to develop internationally compatible national pollutant release and transfer register systems to increase the comparability of data,

Noting that many ECE member States, the European Community and the Parties to the North American Free Trade Agreement are acting to collect data concerning pollutant releases and transfers from various sources and to make these data publicly accessible, and recognizing especially in this area the long and valuable experience in certain countries,

Germany *suggests the addition of the following recital at the end of the preamble. Its content is currently foreseen as Art. 3, para. 5:*

“Determined that in the application of this instrument to particular facilities, activities or substances, each Party shall apply the precautionary principle. Lack of full scientific certainty shall not be used as a reason for excluding particular facilities, activities or substances from the scope of this

instrument.”

Have agreed as follows:

Article 1

OBJECTIVE

In order to prevent and reduce pollution of the environment and to protect the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the right of public access to information concerning the release and transfer of pollutants to the environment and within and between facilities, and to information concerning water, energy and resource use, through the establishment of a coherent, integrated, nationwide pollutant release and transfer register in accordance with the provisions of this instrument.

Belgium *suggests reordering of the paragraph as follows:*

“Each Party shall guarantee the right of public access to information concerning the release and transfer of pollutants to the environment, and to information concerning pollutant release and transfer, through the establishment of a coherent, integrated, nationwide pollutant release and transfer register in accordance with the provisions of this instrument. The establishment of a pollutant release and transfer register can contribute to prevent and reduce pollution of the environment and contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.”

France *suggests the paragraph as follows (It aligns with article 1 of Aarhus Convention),*

“Each Party shall guarantee the right of public access to information concerning the release and transfer of pollutants to the environment through the establishment of a coherent, integrated, nationwide pollutant release and transfer register in accordance with the provisions of this instrument. The establishment of a pollutant release and transfer register can contribute to prevent and reduce pollution of the environment and contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.”

Germany *As was agreed at the second meeting of the PRTR Working Group the rights of the public (information and public participation) should be at the forefront of the instrument and public participation should be emphasized. The reduction of pollution and the sustainable protection of the environment constitute a secondary objective which might follow from the granting of access to information and public participation (see para. 25 et seq. CEP/WG.5/AC.2/2001/5). To reflect this process we propose the reordering of the paragraph.*

In our opinion “transfer” only encompasses the off-site transfer of waste. Furthermore “water, energy and resource use” are issues of environmental management and not of pollution. The references to on-site transfer and to environmental management issues should thus be deleted.

We therefore suggest the following wording for the paragraph:

“Each Party shall guarantee the right of public access to information concerning the release and transfer of pollutants to the environment through the establishment of a coherent, integrated, nationwide pollutant release and transfer register in accordance with the provisions of this instrument. The establishment of a pollutant release and transfer register can stimulate the reduction of pollution releases and transfers and thereby contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.”

UK suggests reordering of the paragraph as follows:

“Each Party shall guarantee the right of public access to information concerning the release and transfer of pollutants to the environment and within and between facilities, and to information concerning water, energy and resource use, through the establishment of a coherent, integrated, nationwide pollutant release and transfer register in accordance with the provisions of this instrument. The establishment of a pollutant release and transfer register can contribute to the prevention and reduction of pollution of the environment and contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.”

US As with the Preamble, the United States believes that the Objective is too lengthy and contains controversial references (e.g., the right to an adequate environment). Moreover, the Objective is currently styled as a freestanding overarching obligation, rather than as an Objective. The United States believes that the following revisions would significantly simplify and clarify this provision:

“The objective of this agreement is to provide public access to information concerning the release and transfer of pollutants to the environment and within and between facilities through the multilateral establishment of a coherent, integrated, nationwide pollutant release and transfer register in accordance with the provisions of this instrument.”

CEFIC/ICCA

“In order to prevent and reduce pollution of the environment and to protect the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the right of public access to information concerning the release and transfer of pollutants to the environment through the establishment ...”

For further details on “water, energy and resource use”, see comments under article 7.3; on “transfers” see comments under article 8.1 (6).

Article 2

DEFINITIONS

1. “Party” means, unless the text indicates otherwise, a Contracting Party to this instrument;
2. “Convention” means the 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters;
3. “Public”, “public concerned”, “public authority” and “environmental information” shall have the meanings given to the respective terms in article 2 of the Convention;

The United States would like to express its concern with incorporating terms exactly from the Aarhus Convention. At least with respect to “Environmental Information”, we believe this incorporates provisions beyond the scope of a PRTR, and we would suggest it be defined more narrowly to be consistent with the needs of this instrument.

4. “Facility” means an industrial or agricultural complex with one or more installations on the same site, or on contiguous or adjoining sites, that are operated by the same natural or legal person and where one or more activities which may result in a release or transfer of any pollutant are carried out;

Belgium, France suggest reading this paragraph as follows:

““Facility” means an industrial or agricultural complex with one or more installations on the same site, or on contiguous or adjoining sites, that are operated by the same natural or legal person and where one or more activities listed in Annex II (Activities for facility reporting), are carried out;”

Germany It should be made clear that facilities to be considered are listed in Annex II. We propose the following wording:

““Facility” means an industrial or agricultural complex with one or more installations on the same site, or on contiguous or adjoining sites, that are operated by the same natural or legal person and where one or more activities listed in Annex II are carried out.”

US The definition of “facility” should be revised. As written, it is too narrow, and should be expanded to “owned or operated by the same natural person”. In addition, the reference to “release or transfer” should be deleted as this is not relevant to the definition. A facility may use or manufacture a chemical without releases or transfers and limiting the definition to this activity can limit the information available through a PRTR. The definition therefore should end after the phrase “the same natural or legal person.”

CEFIC/ICCA

“Facility” means an industrial complex—with one or more installations on the same site, or on contiguous or adjoining sites, that are operated by the same natural or legal person and where one or more activities listed in the List of Activities in Annex II; which may result in a release or transfer of any pollutant; listed in Annex IV are carried out. “

At present, agricultural complexes as such are not part the Annex II “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 II “List of Activities” or not and regardless of whether a pollutant is emitted below a threshold given under the instrument. We would therefore propose the text above, including references to the Annexes.

5. “Competent authority” means the national authority or authorities designated by a Party as responsible for managing a national pollutant release and transfer register system;

6. “Pollutant” means a substance that is potentially harmful to the environment on account of its physical, chemical or biological properties;

Belgium suggests amending this paragraph as follows:

““Pollutant” means a substance which may cause harm to the environment on account of its concentration, physical, chemical or biological properties and listed in Annex IV (Mandatory substances for reporting);”

France, Germany propose the following definition:

““Pollutant” means a substance which may cause harm to the environment on account of its concentration, physical, chemical or biological properties that is introduced into the environment by man and which is listed in Annex IV;”

Explanations:

Germany The instrument should refer to a finite list of substances as does the EPER (Decision 2000/479/EEC). Furthermore “pollutant” is not used coherently throughout the instrument. For example Art. 2, para. 8 uses the phrase “potential pollutants” where pollutants are already described as “potentially harmful to the environment”.

UK Redraft as follows:

” ”Pollutant” means a substance, listed in Annex IV (Mandatory substances for reporting), which may cause harm to the environment on account of its concentration, physical, chemical or biological properties.”

US Among other problems, the United States believes that this definition is overly broad, potentially allowing for overly broad non-specific groupings of substances (e.g., heavy metals instead of chromium and its compounds or mercury and its compounds) and inclusion of non-chemicals in the instrument.

CEFIC/ICCA

“ ”Pollutant” means a substance that is potentially harmful to the environment on account of its physical, chemical or biological properties, which is directly or indirectly introduced, as a result of human activity into the environment, and is listed in Annex IV. “

The original definition covers any substances which is potentially harmful to the environment even if it is not released or transferred. CEFIC/ICCA would propose to restrict the definition to substances which are released, by using the same wording of of the EU IPPC Directive (article 2.33)).

7. “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, underground injecting, escaping, evaporating, leaching, dumping or disposing into the environment (including the abandonment or discarding of barrels, containers and other closed receptacles or resulting from the off-site use of products), whether deliberate or accidental, routine or non-routine;

Belgium, France, Germany Delete the text between brackets.

Explanations:

Germany See also our comments on para. 8.

US Delete the phrase “or resulting from the off-site use of products” for the reasons described above in our general comments.

8. “Transfer” means:
 (a) Off-site movement of potential pollutants for use, reuse, storage, treatment, 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;

Belgium, France, Germany For Article 2, para. 8, the following should be substituted:

“ ”Transfer” means off-site movement of waste or off-site movement of waste water to public waste water treatment plants.”

Explanations regarding off-site movement:

Belgium, France

Off-site movements are of prime interest for the public as far as waste and waste water is concerned. The inclusion of products is not possible as the data cannot be retrieved. (If “transfer” is in part defined as the off-site-transfer of waste then a definition of waste needs to be included in Art. 2 of the Instrument (see below at our proposal for Art. 2, para. 11).

Germany

Off-site movements are of prime interest for the public as far as waste is concerned. The inclusion of products is not possible as the data cannot be retrieved. (If “transfer” is defined as the off-site-transfer of waste then a definition of waste needs to be included in Art. 2 of the Instrument (see below at our proposal for Art. 2, para. 11).

Switzerland *This paragraph should be discussed based on the report of the corresponding expert group.*

UK *suggests that for Article 2(8), the following should be substituted:*

““Transfer” means:

- (a) Off-site movement of wastes and by-products for use, reuse, storage, treatment, energy recovery, recycling or disposal;
- (b) On-site movement of wastes and by-products for use, reuse, storage, treatment, energy recovery, recycling or disposal;”

We require further clarification of the concepts behind this before providing final comments on the text.

US *Revise the definition of “transfer” and references to products. The new definition reads as follows:*

“Transfer means:

- (a) Off-site movement of pollutants for treatment, combustion for energy recovery, recycling or disposal or other types of release;
- (b) on-site movement of pollutants for treatment, combustion for energy recovery and recycling.”

Disposal has been dropped from on-site transfers because it already is included in the definition of release.

CEFIC/ICCA

““Transfer” means: off-site movement of potential pollutants for final treatment. “

See comments under article 8.1 (b). As a starting definition CEFIC/ICCA proposes to refer only to movement of wastes to off-site final treatment operations, i.e. incineration or disposal. Emissions from a final disposal operation on-site (e.g. from an incinerator on the site) would be covered by the site report itself. So we do not see the need to report on on-site transfers of waste.

European ECO Forum *The word “substances” might be preferable to “potential pollutants” (and would be defined by the annex). This assumes that individual substances are tracked rather than broad waste categories.*

For the definitions, our view is that it is important to permit the tracking of treatment/disposal methods on-site in the same way as they would be for movements to off-site treatment/disposal facilities. It is not necessarily appropriate to track all individual movements of substances on-site.

9. “Diffuse sources” means the many smaller or scattered sources from which pollutants may be released to land, air and water, whose combined impact on those media may be significant;

Switzerland *This paragraph should be discussed based on the report of the corresponding expert group.*

US *Delete. The United States questions the inclusion of diffuse sources in this instrument for the reasons described above.*

CEFIC/ICCA *No textual comments at this stage. However, the combined impact of diffuse sources can be a significant component of total emissions of certain pollutants. In order to present a comprehensive picture, a PRTR should include some information on the diffuse emission of such pollutants, e.g., an estimate of the total emissions of these pollutants from transport. However, collection of data to provide full details of emissions from diffuse sources would be a major undertaking. It is recommended that diffuse sources should be tackled in a later phase.*

European ECO Forum *A definition related to that discussed in the note on diffuse sources is suggested:*

“Diffuse sources” means the many smaller or scattered sources of pollutants, for which it is impractical to collect reports from each individual source so that releases and/or transfers are estimated based on activity levels for the sources in a defined unit of geographical area;”

10. The terms “national” and “nationwide” shall, with respect to the obligations on regional economic integration organizations arising under this instrument, be construed as applying to the region in question unless otherwise indicated.

Belgium, France, Germany *suggest the insertion of the following definition of waste in accordance with Art. 2 Basel Convention:*

“11. “Wastes” are substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law.”

Article 3

GENERAL PROVISIONS

1. Each Party shall take the necessary legislative, regulatory and other measures, as well as proper enforcement measures, to establish and maintain a publicly accessible, transparent and consistent framework to implement the provisions of this instrument, including measures to achieve compatibility between the provisions of this instrument and the Convention.

US *Delete the last clause, referring to compatibility with the Convention. It is not necessary, and could impede joining by non-parties to the Convention.*

2. Each Party shall promote public awareness of the pollutant release and transfer register (PRTR) referred to in article 4 and shall ensure that assistance and guidance are provided to the public in accessing the register and in understanding and using the information contained therein.

The United States *would like to delete this paragraph 2. because employees are already covered under this instrument as part of the public.*

Belgium, France, Germany *suggest to insert as a second sentence Article 10, para. 2, rewritten as follows:*

“The register shall be designed for maximum ease of public access. The design shall allow the information on the register to be progressively available through electronic means.”

UK *Editorial: This paragraph contains three issues, and we propose the second and third issues should be deleted for the reasons specified.*

We agree with the principle set out in the first part, but question the supposition that there should only be one register. The “Register” should be able to be made from several subsidiary registers, according to local need, for example, air, water, waste. Large, single databases or data warehouses

are difficult to construct and many end in failure. Given the more readily available technology of linking electronic databases, the option should be kept open to deliver the requirements of this instrument with several separate registers.

We suggest that after “register” the words “or registers” should be inserted.

European ECO Forum *Our preference is to retain the term “pollutant release and transfer register” (as in Article 1) where the term “register” is used to denote a coherent national system, irrespective of whether there may be a number of components (e.g. a number of database tables, or subdivisions by geographical region or media; duplicate copies of the register). This is to help ensure against diverging structures even within one country.*

The UK text proposed for article 4.2 would also support this in our view.

Each Party shall also ensure that workers at facilities required to report to the pollutant release and transfer register receive training and access to information from the facility managers concerning their monitoring, record-keeping and reporting obligations, as well as easy access to the release and transfer data collected at that facility.

Belgium, France, Germany, Switzerland, UK, CEFIC/ICCA *Delete this sentence.*

Explanations:

Belgium, France *Because of the insertion of the above new sentence.*

Switzerland *Workers are already covered as members of the public and there are already specific regulations for the protection of workers.*

UK *There is potential overlap with health and safety legislation, which does not seem appropriate for this instrument.*

CEFIC/ICCA *The broad term “public” 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.*

European ECO Forum *We support specific mention of workers at reporting facilities, because staff:*

a) need to know their individual responsibilities with respect to the reporting process;

b) have a very specific interest in the reported data from the facility where they work;

c) often have particular insight into management of chemicals and reduction of hazards at the facility;

d) have an important role as a “watch-dog” with respect to the accuracy of submitted data.

We read this paragraph as being specifically about PRTR data under the protocol.

Each Party shall develop capacity-building programmes, publish guidance documents and ensure that the necessary personnel are designated to achieve the ends referred to in this paragraph.

Belgium, France, Germany, Switzerland, UK *Delete this sentence.*

Explanation:

Belgium, France *Because of the insertion of the above new sentence.*

Switzerland *This paragraph creates an additional, unnecessary requirement.*

UK *It creates an additional, unnecessary requirement in respect of large process industries.*

3. The provisions of this instrument shall not affect the right of a Party to maintain or introduce a more extensive or more publicly accessible pollutant release and transfer register than required by this instrument.

UK *Again, we suggest that “or registers” should be added after “register”.*

CEFIC/ICCA *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). The insertion of a “non-applicability clause” should be considered.*

4. Each Party shall ensure that persons reporting violations of national laws to public authorities shall not be penalised, persecuted or harassed in any way for their actions.

Belgium, France, Germany, Switzerland, UK *propose the wording in the Convention, Article 3, para.8:*

“Each Party shall ensure that persons exercising their rights in conformity with the provisions of this (instrument/ protocol) shall not be penalised, persecuted, or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings.”

Explanation:

UK *The type of national laws should be clarified.*

US *This paragraph should be restricted so as to ensure employees who report violations to public authorities do not face penalties, but should not be so broad as to allow employers to escape penalties for self-disclosed violations. The United States proposes the following as a replacement:*

“Each party shall require that employees of a facility who report violations by that facility of national laws to public authorities shall not be penalized, persecuted, or harassed in any way by that facility for their actions.”

5. In the determination of the application of this instrument to particular facilities, activities or substances, each Party shall apply a precautionary approach. Lack of full scientific certainty shall not be used as a reason for excluding particular facilities, activities or substances from the scope of this instrument.

*According to **Belgium** it is more appropriate to insert the precautionary principle in the Preamble of the Protocol, instead of in Article 3, para. 5. (see Preamble for text)*

France *suggests that this article should be deleted and the precautionary principle should be referred to in the preamble.*

Germany *suggests the deletion of this paragraph as an operative clause and its insertion as a preambulatory clause (see above).*

Switzerland *proposes to use “precautionary principle” rather than “precautionary approach”.*

UK *Any reference should be to the “precautionary principle” rather than to the “precautionary approach”. Whilst we are committed to the application of the principle, we consider this paragraph*

should be deleted because it would undermine the legal certainty of the instrument by creating doubt about its scope.

US Delete.

CEFIC/ICCA *suggests the deletion of this paragraph. CEFIC/ICCA does 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.*

6. In the implementation of this instrument, each Party shall promote the principle of internalizing environmental costs, including with respect to the costs of monitoring, record-keeping, reporting and affording public access to facility monitoring information, as well as the costs of establishing and maintaining a national pollutant release and transfer register that is publicly accessible.

Belgium, France, Germany *suggest to delete this paragraph, considering that it is up to each Party to determine the costs and prices of charges.*

Switzerland *supports the comment of the UK.*

UK proposes:

“...to the costs of monitoring, calculating and estimating, record-keeping...”

US Delete.

CEFIC/ICCA *suggests to delete this paragraph. The so-called principle of “internalising environmental costs” is entirely inappropriate in this context. Operators of facilities bear the costs of measuring, record-keeping and reporting emissions data to the competent authorities. It would be unreasonable to require the operators also to pay the costs for the work of authorities, e.g., for collecting, compiling, assessing and distributing data. These activities are carried out as a public service and the costs must be met entirely by the competent authorities.*

Article 4

OBLIGATION TO ESTABLISH A PUBLICLY ACCESSIBLE POLLUTANT RELEASE AND TRANSFER REGISTER

1. Each Party shall establish a coherent, publicly accessible and user-friendly national register of:
 - (a) Releases and transfers of pollutants specified in article 7 from facilities of the types specified in article 6;
 - (b) Use of water, energy and resources specified in article 7 by facilities of the types specified in article 6; and
 - (c) Releases of pollutants specified in article 7 from types of diffuse sources listed in annex III, in accordance with the provisions of this instrument.

Belgium, France, Germany, CEFIC/ICCA *propose to rewrite Art. 4 para. 1 as follows:*

“1. Each Party shall establish a coherent, publicly accessible and user-friendly national register of releases and transfers of pollutants specified in article 7 from facilities of the types specified in article 6.”

Explanations:

Belgium, France, Germany *Regarding 1 b:*

The use of water, energy and resources are questions of resource management and not of pollution prevention.

Belgium, Germany *This information has to be reported under an environmental management system, by another tool than a PRTR..*

Belgium, France, Germany *Regarding 1 c:*

In a first step the releases of pollutants from diffuse sources should only be included in the Register on a voluntary basis. (See our proposal for Art. 5 para. 2 below).

CEFIC/ICCA *We oppose the inclusion of the use of water, energy and resources (see our comments under article 7.3) and the release of pollutants from diffuse sources (see our comments under article 7.4).*

Switzerland *Paragraph 1 should be amended as follows:*

“1. Each Party shall establish a coherent, publicly accessible and user-friendly national register according to the stepwise approach to be specified after each step:”

Details of (b) and (c) still have to be specified based on the experience of the preceding step(s) and additional issue specific information.

US *Para 1(a): The United States would advocate consideration of an alternate to the legally binding list as described in our general comments.*

Para 1(b): Delete. While the U.S. supports public access to information of environmental concern, a PRTR is a register for the releases and transfers of chemicals. Data on water, energy and resources is beyond the scope of a PRTR.

We suggest a new paragraph 1(b) to add the reporting of future estimates as a replacement for some of the text we propose deleting in Article 5. The concept of estimating future releases and transfers presently is included in the draft text Article 5 as “reduction targets”. Rather than reduction targets, which may not always be possible or desirable, the goal is for facilities to consider future releases and transfers by making estimates for the next two years. The new sentence for 1(b) reads:

“Estimates for the next two reporting years of the releases and transfers for each pollutant, excluding those due to catastrophic releases.”

Para 1(c): The United States questions the inclusion of diffuse sources in this instrument for the reasons described above, and would prefer to delete references to diffuse sources at this time. We suggest a new paragraph 1 (c) to incorporate language we remove from Article 5 as follows:

“Each Party shall ensure that by 27 months following the end of the first full reporting year after this instrument enters into force for that Party, the national PRTR contains information for the previous year concerning releases and transfers in accordance with article 6.”

European ECO Forum *Add:*

“(d) Maximum quantities of substances specified in article 7 present on-site at any one time during the reporting year.”

Possibly (c) and (d) should be reversed in order.

2. The register referred to in paragraph 1 shall be mounted on a structured, computerized database and maintained by the competent authority through periodic reporting from facilities and from the authorities or bodies designated to collect information concerning pollutants from diffuse sources in accordance with article 6, paragraph 2.

Belgium, France suggest to delete this paragraph, because this requirement is already stated in Article 3, para. 2 of this Protocol (the current Article 10, para. 2).

Germany suggests to delete this paragraph, because this requirement is already stated in Article 3, para. 2 of this Instrument (the current Article 10, para. 2). Concerning diffuse sources see comments on Art. 5 para.2.

UK refers to previous comments on one database (under art. 3, para. 2). We propose:
 “The register referred to above shall be made available electronically as one database or several linked databases, according to local needs. The register shall be maintained by the competent authority through periodic reporting from authorities or bodies designated to collect information concerning pollutants from diffuse sources in accordance with article 6, paragraph 2.”

US Shorten this paragraph so that it ends after “competent authority.” The rest of the language is already covered by other sections of the draft text.

3. Each Party shall take the necessary legislative measures to ensure that the data required to maintain the register referred to in paragraph 1 are collected in accordance with article 9 and submitted to the competent authority in accordance with article 8.

US Delete. The requirements outlined in this paragraph are redundant of other sections of the draft text.

4. Each Party shall ensure that the data are reported, compiled and presented on the register on an annual basis, by calendar year. The Parties shall ensure that the reported information is placed on the register as soon as possible after it is reported by each facility or other reporting body.

Except with respect to Parties that are regional economic integration organizations, the data for a particular calendar year shall be reported to the competent authority at the latest by 1 April of the year following the reporting year and incorporated on the register by 1 June of that year.

Each Party that is a regional economic integration organization shall ensure that the data for a particular calendar year are reported to its competent authority by 1 June of the following year and placed on the register by 1 August of that year.

Belgium, Germany suggest that Art. 4, para. 4 be reworded as follows:

“Each Party shall ensure that the data are publicly available, compiled and presented on the register on an annual basis, by calendar year, except for the first reporting period, which will be a three year period. The Parties shall ensure that the reported information is placed on the register as soon as possible after it is reported by each facility or other reporting body.

Except with respect to Parties that are regional economic integration organizations, the data for a particular calendar year shall be incorporated on the register by 31December of the year following the reporting year.

Each Party that is a regional economic integration organization shall ensure that the data for a particular calendar year be incorporated in the register by 1 June of the second year following the reporting.”

Explanations:

Belgium Annual reporting poses a very high demand on enterprises and authorities. Therefore reporting in the first phase should be on a three year basis and not annually. Furthermore the time period between reporting and incorporating of the data into the register should be longer.

Germany *Annual reporting poses a very high demand on enterprises and authorities. Therefore reporting in the first phase should be on a three year basis and not annually. This can be amended to a shorter period at a later date once the system has proved to be workable. Furthermore the time period between reporting and incorporating of the data into the register should be longer.*

France *is concerned that time scales are too tight. Annual reporting poses a very high demand on enterprises and authorities. Therefore reporting for the first time should be on a three year basis. This can be amended to a shorter period afterwards, once the system has proved to be workable. Furthermore the time period between reporting and incorporating of the data into the register should be longer. We therefore suggest that Art. 4 paragraph 4 should be reworded as follows:*

“Each Party shall ensure that the data are reported, compiled and presented on the register on annual basis, by calendar year, except for the first reporting period, which will be a three year period.). The Parties shall ensure that the reported information is placed on the register as soon as possible after it is reported by each facility or other reporting body.

Except with respect to Parties that are regional economic integration organizations, the data for a particular calendar year shall be incorporated on the register by 31 December of the year following the reporting year.

Each Party that is a regional economic integration organization shall ensure that the data for a particular calendar year to be incorporated in the register by 1 June of the second year following the reporting.”

Switzerland *The foreseen time schedule seems to be too tough. Therefore Switzerland proposes the following timing:*

1 October instead of 1 June and

1 December instead of 1 August.

For a first round also the foreseen reporting of the facilities by 1 April seems to be too tough.

UK *Editorial: this should be three sub-paragraphs.*

(i) *Agree, with the exception of certain information which does not change on an annual time scale, e.g. radiation from diffuse sources and background levels. We propose that after “calendar year” there should be inserted “except where the information does not change annually”.*

(ii) *We are concerned that the time scales are too tight. From our experience, data should be submitted by 1 April, but not presented until 30 September. So we propose the substitution of “30 September” for “1 June”.*

(iii) *See above. We propose the substitution of “30 September “ for “1 June” and “1 November” for “1 August”.*

US *This paragraph is overly prescriptive and does not recognize that some PRTRs have different reporting cycles. Replace the paragraph with the following,*

“Each Party shall require that the data are reported, compiled and presented to the register on an annual basis. Each Party may modify the frequency upon making the finding that the modification is consistent with its national PRTR and based upon experience of data previously submitted. Any modification made under this paragraph must be reviewed by the Party every five years to ensure the modification continues to be consistent with the PRTR of that Party. The Parties shall take steps to ensure that information is reported to the competent authority by six months following the reporting year, and incorporated on the register by fifteen months after the reporting year has ended.”

CEFIC/ICCA

“Each Party shall ensure that the data are reported, compiled and presented on the register on a tri-annual basis, by calendar year. .. The Parties shall ensure that the reported information is placed on the register as soon as possible after it is reported by each facility or other reporting body.

Except with respect to Parties that are regional economic integration organizations, the data for a particular calendar year shall be reported to the competent authority at the latest by 1 April of the year following the reporting year and incorporated on the register by 1 June of that year.

Each Party that is a regional economic integration organization shall ensure that the data for a particular calendar year are reported to its competent authority by 1 June of the following year and placed on the register by 1 August of that year.”

CEFIC/ICCA proposes, 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.

5. Each Party shall ensure that the data held on the register referred to in paragraph 1 are presented in both aggregated and non-aggregated forms, so that releases and transfers can be identified according to facility, company, pollutant (including individual chemicals), precise geographical location and destination of the release or transfer, such as air, land, water or product. As a minimum, the register shall progressively include the elements listed in annex I, in accordance with the timetable set out in article 5. The register shall be designed taking into account future expansion of reporting requirements as set out hereunder, as well as the possibility of including additional facilities subject to reporting, additional pollutants and future changes in thresholds for pollutants.

Belgium, France, Germany suggest the following changes:

- the deletion of the text between brackets, having defined pollutants in Article 2, para. 6;
- the deletion of the wording “or products”
- the deletion of this last sentence, because each Party should be free to go further in the design of a PRTR. This however should be mentioned in a separate Article, we propose Article 15.

Switzerland The discussion of the inclusion of “products” should be postponed to step three. Therefore “products” should not be included in this text.

UK We do not agree with the inclusion of products in this way (see previous comments). The words “precise geographical location” might cause difficulties. Some facilities are large, and while they can be accurately identified, location of releases (say to accuracy of 400 metres can be difficult, e.g. landfills, large chemical facilities. We therefore suggest the insertion of the words “where possible” after “geographical location”.

We disagree with the use of the term “destination”, and wish this to be replaced with “pathway”.

UK [2] Delete the word “precise”.

US Delete the last two sentences because they are redundant of other provisions in the agreement (provisions which we have concerns about below), and revise the first sentence to exclude references to “products” as follows:

“Each Party shall require that the data held on the register referred to in paragraph 1 are presented in both aggregated and non-aggregated forms, so that releases and transfers can be identified according to facility, company, and pollutant, including the facility identification (name, address), the precise geographical location of the facility, the environmental medium into which the pollutant is released (air, water, land), the method of waste management for which a pollutant in waste is transferred, the facility identification (name, address) to which a pollutant in waste is transferred off-site, and the precise geographic location to which a pollutant in waste is transferred off-site.”

European ECO Forum *propose insertion:*

“...can be identified according to facility, company and ultimate parent company, pollutant...”

6. Each Party shall ensure public accessibility of the data held on the register and public participation in related decision-making processes, as specified in articles 10 and 11.

Belgium, France, Germany *suggest to delete this paragraph considering this already mentioned in para. 4 of this Article.*

US *Delete. Redundant to other provisions.*

7. National PRTR systems shall include data handling and management capabilities that allow for verification of reporting.

Belgium, France, Germany *suggest to add the following sentences:*

“...The specifications and the public and/or private authorities and/or bodies that verify the reporting shall be defined by the Parties. The Parties shall verify, in particular, the completeness, consistency and the plausibility of the data. The meeting of the Parties shall consider developing Guidelines for the verification of reporting.”

To contribute to the harmonisation of national validation requirements guidelines could be developed according to Article 15 para. 6 c).

UK *proposes a separate discussion of ‘verification’, and inclusion in definitions. Provided agreement can be reached on this term, then we agree with the concept.*

US *Delete. The requirements of this paragraph are not explained. It is unclear what is required.*

8. To reduce duplicative reporting, PRTR systems may be integrated to the degree practicable with existing information sources such as reporting mechanisms under licences or operating permits, provided these are mandatory. Reporting requirements and emission reduction goals under other multilateral environmental agreements shall be taken into account in the implementation of this instrument, including when deciding on additional pollutants and facilities.

Belgium, Germany, UK *Editorial: replace ‘duplicative’ with ‘duplicate’.*

US *End the first sentence after “...operating permits,” and delete the remainder of the sentence.*

Article 5

PROGRESSIVE ESTABLISHMENT OF REGISTERS

UK *Whilst supporting Article 5 in principle, we suggest that it should be amended to reflect the following points:*

- *There should be three, rather than the proposed two, steps for implementation*

- *The provision should not relate to products, data on on-site transfers, electromagnetic radiation or GMOs.*
- *“Noise” should be excluded, as it would not be possible to produce annual average statistics on noise.*

Our proposal for a re-draft is as follows:

“PROGRESSIVE IMPLEMENTATION OF REGISTERS

1. Each Party shall ensure that, from 1 June following the first full calendar year after this instrument enters into force for that Party, the national pollutant release and transfer register contains information for the previous year concerning releases and off-site transfers of pollutants from facilities in accordance with articles 6 and 7, except with regard to releases from, and transfers through or as, products.

2. Each Party shall ensure that, from 1 June following the third full calendar year after this instrument enters into force for that Party, the national pollutant release and transfer register contains, in addition to the elements listed in paragraph 1:

- Facility-specific information on water, energy and resource use as specified in articles 6 and 7;
- Pollutant release and water, energy and resource use reduction targets in accordance with article 8, paragraph 3; and
- Releases and transfers of radioactive substances and radiation.

3. Each Party shall ensure that, from 1 June following the fifth full calendar year after this instrument enters into force for that Party, the national pollutant release and transfer register contains, in addition to the elements listed in paragraphs 1 and 2, data with respect to pollutants from diffuse sources in accordance with articles 6 and 7, and data on releases and transfers of pollutants in or as products in accordance with articles 6 and 7.”

US Delete this entire article for the following reasons:

Para 1: This language is redundant to those obligations set out in Articles 6 and 7 or contains references to products that should not be included for the reasons described above.

Para 2: Most of these items should be removed for reasons described previously. Other requirements, such as that for on-site transfers, could be more appropriately set out in the case of on-site transfers in Article 4.

The United States does not support inclusion of “reduction targets” in this instrument.. We believe that a PRTR is a reporting mechanism, not a mechanism to set “reduction targets”, which are better handled in other regulatory instruments. TRI data in the United States has, however, been used by other voluntary programs to set a baseline and goals for reduction of pollutant releases and transfers.

Para 3: The United States does not include radioactive substances in its TRI and does not support inclusion of radioactive substances in this instrument. For reasons described previously, delete this entire paragraph.

1. Each Party shall ensure that, from 1 June following the first full calendar year after this instrument enters into force for that Party, the national pollutant release and transfer register contains information for the previous year concerning releases and off-site transfers of pollutants from facilities in accordance with articles 6 and 7, except with regard to releases from, and transfers through or as, products.

Belgium, France, Germany *For reasons mentioned above (Art. 4 para 4) we suggest to rewrite this paragraph as follows:*

“Each Party shall ensure that, from 31 December following the three full calendar years after this instrument enters into force for that Party, the national pollutant release and transfer register contains information for the first full calendar year concerning releases and off-site transfers of waste and waste water from facilities in accordance with articles 6 and 7.”

Switzerland *Article 5 should be rewritten.*

“ The progressive establishment of registers should be managed by the Meeting of the Parties to this instrument in a stepwise procedure. After each step the MoP should evaluate the results of the preceding step and then decide what should be included in the next step e.g. issues, substances, categories of activities.”

This should be clearly stated in the first paragraph.

Again we propose 1 October instead of 1 June.

European ECO Forum *On-site transfers should be reported in parallel with off-site transfers, rather than delayed to a later stage. It is often relatively large facilities that have on-site treatment and disposal facilities, thus the burden of reporting should not be undue, and the competent authority will in any case have set up reporting forms and procedures for off-site transfers. Thus amend to:*

“... releases and on-site and off-site transfers of pollutants...”

We also see no reason to delay reporting on releases of radioactive substances: these may be internationally important and from major facilities such as nuclear power stations which would reasonably be expected to be monitoring and reporting their releases and transfers in any case.

2. Each Party shall ensure that, from 1 June following the third full calendar year after this instrument enters into force for that Party, the national pollutant release and transfer register contains, in addition to the elements listed in paragraph 1:

- (a) Facility-specific information on water, energy and resource use as specified in articles 6 and 7;
- (b) Pollutant release and water, energy and resource use reduction targets in accordance with article 8, paragraph 3;
- (c) Data with respect to pollutants from diffuse sources in accordance with articles 6 and 7;
- (d) Data on releases and transfers of pollutants in or as products in accordance with articles 6 and 7; and

Data on on-site transfers of potential pollutants.

Belgium, France, Germany *suggest to replace the current paragraph with the following:*

“Each Party shall progressively extend the national pollutant release and transfer register to include information on data with respect to pollutants from diffuse sources in accordance with articles 6 and 7.

Each Party that progressively extends its pollutant release and transfer register shall designate one or more public or private authorities or bodies to report on the releases of pollutants specified in article 7 from diffuse sources.”

Explanations:

Belgium *The incorporation of data on diffuse sources should only be required during the second step and after a careful assessment of the first step. During the first step its collection and incorporation should only be voluntary.*

We also suggest to delete Annex III, dealing with categories of diffuse sources [see below]. In accordance with our proposal, Belgium suggests to delete the subparagraphs (a) (d). The information under subparagraphs (a) and (b) has to be reported under an environmental management system, by another tool than a PRTR.

France *We also suggest to delete Annex III, dealing with categories of diffuse sources [see below].*

Germany *Data pertaining to the use of resources (subpara. a) and b)) concerns environmental management systems and should not be dealt with in this instrument.*

The incorporation of data on diffuse sources (subpara. c) should only be required during the second step and after a careful assessment of the first step. During the first step its collection and incorporation should only be voluntary. For reasons of coherence the body or authority designated to report on that data should also be dealt with here. We thus moved para. 2 of Art. 6 here and amended its wording to allow the Parties to designate private bodies for the reporting on diffuse sources if they so wish.

We also suggest to delete Annex III, dealing with categories of diffuse sources [see below].

Switzerland

“Each Party shall ensure that, from 1 October following the third full calendar year after this instrument enters into force for that Party, the national pollutant release and transfer register contains, in addition to the elements listed in paragraph 1

- (a) Facility-specific information on water, energy and resource use as specified in articles 6 and 7;
- (b) Data with respect to pollutants from diffuse sources in accordance with articles 6 and 7;”

Reduction targets should not be required in a PRTR instrument.

ISO 14000 and EMAS are better suited for this purpose.

The possible inclusion of releases and transfers of pollutants in or as products should be postponed to step three. The collection of data on releases and transfers of pollutants in or as products is still in an early stage of development and should therefore be discussed in working groups in depth for possible future inclusion in the instrument. The possible inclusion of on-site transfers of pollutants should be postponed to step three.

CEFIC/ICCA *Delete the entire paragraph.*

- (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. Each Party shall progressively extend the national pollutant release and transfer register to include information on:

- (a) Releases and transfers of radioactive substances and radiation (including electromagnetic radiation);
- (b) Noise; and
- (c) Genetically modified organisms and products containing or derived from genetically modified organisms.

Belgium, France, Germany, CEFIC/ICCA *suggest to delete this paragraph.*

Explanations:

Belgium *In accordance with our proposal.*

Germany *Radiation, Noise and GMOs are not “pollution” as defined in this instrument.*

The Parties could make this information available by setting up links to existing national information tools.

CEFIC/ICCA *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 a **pollutant** release or transfer and therefore cannot be covered by a PRTR instrument.*

*(b) Noise is not a **pollutant** release or transfer according to the definition and therefore cannot be covered by a PRTR instrument.*

*(c) GMOs as organism cannot be considered **pollutants** and therefore cannot be covered by a PRTR instrument.*

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

Switzerland

“The Meeting of the Parties to this instrument shall progressively decide on the extension of the PRTR instrument based on the evaluation of the preceding steps and further specific information. The introduction of new issues should be prioritised. Issues might include:

- (a) Data on on-site transfers of potential pollutants.*
- (b) Data on releases and transfers of pollutants in or as products in accordance with articles 6 and 7; and*
- (c) Releases and transfers of radioactive substances and radiation (including electromagnetic radiation);*
- (d) Noise; and*
- (e) Genetically modified organisms and products containing or derived from genetically modified organisms.”*

European ECO Forum *Amend to:*

“(a) radiation (including electromagnetic radiation)”

[assuming that radioactive substances are included in Annex IV, part 1]

Add:

“Parties shall review their progress in meeting the requirements of this paragraph at the Meetings of Parties.”

Article 6

OBLIGATION TO REPORT

The United States *believe that article 6(1) and article 7(1) should:*

- (a) be combined into a single article for the sake of clarity;*
- (b) exclude references to “water, energy, or resources” for reasons described elsewhere in our comments; and*
- (c) be drafted in a manner that would require a Party to base its reporting thresholds on use criteria.*

In addition, language for this provision will depend upon the decisions made in drafting the instrument that are described in the general comments above.

1. Each Party shall require the owners or operators of all individual facilities within its jurisdiction that

- (a) Undertake one or more of the activities listed in annex II;
- (b) Release or transfer any pollutant in quantities exceeding threshold limits in accordance with article 7; or

(c) Use water, energy or resources in quantities exceeding the threshold limits specified in annex IV, part 3,
to submit to the competent authority the information specified in article 8.

Belgium, France, Germany *Consider that the obligations of this Article should only apply to the Parties and not the owners or individual operators of the facilities. Therefore we suggest that “require” will be replaced by “ensure that”.*

Belgium, France, Germany, CEFIC/ICCA *Suggest to delete the subparagraph (c).*

Explanations:

Germany *We reserve our position on this Article until discussions are complete on the Annexes and propose to discuss this Article after the completion of the Annexes (like UK).*

In any case we suggest to delete para. 1 (c) as it deals with data on resource management.

CEFIC/ICCA *Since we question the inclusion of water, energy or resources use (see our comments on Article 7, para. 3), we propose to delete subparagraph (c).*

Switzerland *This provision should be discussed after the content of the annexes is agreed upon.*

UK *We reserve our position on this Article until discussions are complete on the Annexes. As a matter of procedure, we suggest this provision should be discussed after the Annexes. This article provides for the requirements of Article 6 of Aarhus to be exceeded by extending the list of substances thresholds, and activities. As it is drafted, annexes II and III would have to differentiate the facilities with point sources from diffuse sources (such as roads, airports).*

European ECO Forum *Add at (b):*

“or alternatively use, manufacture or otherwise produce any pollutant in quantities exceeding the threshold limits in accordance with article 7.”

This proposes an alternative system of defining thresholds not by the amount released or transferred, but by the amount used (or generated) at a facility. Such a system is in use by the US, Canadian and Australian pollution inventories. In our view, this would generate a better picture of the production of pollutants. With a “release threshold” system, facilities that curb their releases below the thresholds will disappear from the system, rather than being seen as examples of good practice. This would also fit in more neatly with the (possible) later introduction of reporting on actual quantities used: the efficiency of incorporation or transformation would be clear, and larger facilities with correspondingly larger releases would be seen as such. To ensure that smaller-scale “users” of a substance but with high releases/transfers do not fall outside the net, it may be necessary to have both “use” thresholds and “release thresholds”.

2. Each Party shall designate one or more public authorities or bodies to report on the releases of pollutants specified in article 7 from the categories of diffuse sources listed in annex III.

Belgium, France, Germany, CEFIC/ICCA *suggest to delete this paragraph.*

Explanations:

Germany *See our proposal for Art. 5 para. 2 above.*

CEFIC/ICCA *See comments under Article 7, para. 4.*

Article 7

RANGE OF POLLUTANTS AND RESOURCES SUBJECT TO REPORTING

Germany, CEFIC/ICCA Delete "...AND RESOURCES...".

Explanation:

Germany See our comments to Art. 4, para. 1b.

Switzerland Article 7 should be discussed after the content of Annex IV is agreed upon.

US Change the word "resources" in title to "sources" to more accurately reflect a PRTR.

1. The Parties shall require the owners or operators of the facilities subject to reporting under article 6 to report on each pollutant included in annex IV, part 1, that is released or transferred in quantities exceeding the thresholds contained therein.

Belgium, Germany consider that the obligations of this Article should only apply to the Parties and not the owners or individual operators of the facilities.

Therefore we suggest that "require" will be replaced by "ensure that".

We consider that there should only be one list of mandatory substances to be reported following the Annex IV.

The "optional substances" should be determined by each Party for its own PRTR-system, on a voluntary basis, in accordance with Article 15. (deletion of Annex II, part 2)

The "reporting thresholds for water, energy and resource use" are not a part of our proposal. (deletion of Annex II, part 3)

Therefore we suggest to delete "part 1" in the Secretariat text.

France considers that there should only be one list of mandatory substances to be reported following the Annex IV. The "optional substances" should be determined by each Party for its own PRTR-system, on a voluntary basis, in accordance with Article 15. (deletion of Annex II, part 2)

Therefore we suggest to delete «part I» in the text. We suggest:

"The Parties shall ensure that the owners or operators of the facilities subject to reporting under article 6 to report on each pollutant included in annex IV that is released or transferred in quantities exceeding the thresholds contained therein."

The other paragraphs of the article 7 should be deleted.

Germany The last part of the sentence should read:

"...that is released in quantities exceeding the thresholds contained therein and on off-site transfer of waste."

UK We reserve our position on this Article until discussions are complete on the Annexes. Again, we propose that this provision should be discussed after the Annexes.

US Delete, in accordance with our comments under article 6(1).

CEFIC/ICCA Delete this paragraph.

We question the need to include an optional list for reporting (Annex IV). Moreover, a contradiction in 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.

See comments under Article 7.4

2. Incrementally, and as soon as possible, the Parties shall require the owners or operators of the facilities subject to reporting under article 6 to report on each pollutant included in annex IV, part 2, that is released or transferred in quantities exceeding the thresholds contained therein.

Belgium, Germany suggest to delete this text, considering the remarks made in para. 1 of this Article in relation to Annex IV.

France Delete.

US The language in this paragraph describes a mandatory obligation for Parties to take action “as soon as possible” to include Annex IV Part 2 substances. The obligations that are described are in contradiction to the proposed title for this annex, “Optional Substances for Reporting”.

CEFIC/ICCA Delete this paragraph. See explanation before (for p.2)

European ECO Forum Insert:

“Incrementally, and as soon as possible, and no later than the 1 June following the fifth full calendar year after this instrument enters into force for that Party, the Parties shall require...”

3. The Parties shall require the owners or operators of the facilities subject to reporting under article 6 to report on water, energy and resource use where these are used in quantities exceeding the thresholds contained in annex IV, part 3.

Belgium, Germany suggest to delete this text, considering the remarks made in para. 1 of this Article in relation to Annex IV.

France Delete.

US Delete this paragraph as it is beyond the scope of a PRTR.

CEFIC/ICCA Delete this paragraph. We do not support the requirement to report on water, energy and resource use. None of those parameters can be considered 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 the 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. Each Party shall require its public authorities or other bodies designated in accordance with article 6, paragraph 2, to report on releases from diffuse sources of each pollutant that appears in annex IV, part 1, where the aggregated releases of that pollutant from the category of diffuse source in question constitute a significant proportion of the total national releases of that pollutant.

Belgium, Germany suggest to delete this paragraph, considering that Article 5, para. 2 includes these requirements.

Explanations:

Belgium The incorporation of data on diffuse sources should only be required during the second step and after a careful assessment of the first step. During the first step its collection and incorporation should only be voluntary

France Delete.

Switzerland *The term “significant” should be specified in this context.*

UK *We propose discussion and agreement of what is meant by ‘significant’. This would be a major undertaking, currently only carried out in respect of a limited range of pollutants to air in the UK.*

The United States *questions the inclusion of diffuse sources in this instrument for the reasons described above, and would prefer to delete references to diffuse sources at this time.*

CEFIC/ICCA *Deleting this paragraph.*

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.

5. Each Party shall regularly review its national pollutant and resource lists and update these lists in accordance with nationally established criteria and criteria established under this instrument.

Belgium *Considering the new text of Article 5, para. 2, Belgium suggests to delete this paragraph.*

France *Delete.*

Germany *proposes to replace the paragraph by the following:*

“Each Party shall regularly review its national pollutant lists and update these lists in accordance with nationally established regional or international criteria.”

US *The last clause on “criteria established under this instrument” should be revisited after the structure of such criteria have been finalized.*

Article 8

SCOPE OF REPORTING

1. Each Party shall require the owners or operators of the facilities required to report under article 6 to complete and submit to the competent authority, by 1 April each year, according to the format contained in annex V, part 1, and having regard to the phased requirements set out in article 5, the following information with respect to the preceding calendar year on a facility-specific basis:

Belgium, France, Germany *suggest that the title reads:*
SCOPE OF REGISTER

We propose to rephrase the text as follows:

“ Each Party shall ensure that the owners or operators of the facilities required to report under article 6 to complete and submit to the competent authority.”

Switzerland *For a first round the foreseen reporting of the facilities by 1 April seems to be tough.*

UK *considers that references to owners or operators of facilities should be removed. It is over prescriptive.*

US *Replace text with,*

“Each party shall require the owners or operators of the facilities required to report under Article 6 to complete and submit to the competent authority, by six months following each reporting year, according to the format contained in annex V, part 1, the following information:”

(a) The amount of each pollutant required to be reported pursuant to article 7 released directly to the environment in the relevant period, both in aggregate and for total releases to each environmental medium, separating the data, as a minimum, for releases to air, water, land and through underground injection;

Belgium, France, Germany *Proposition to replace “land” by “soil”, considering this is also used in the Aarhus text.*

US *Delete the word “directly”, since its use here is redundant and could be confusing.*

CEFIC/ICCA

“... and for total releases to each environmental medium, as specified in Annex IV;”

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.

European ECO Forum *proposes amendment to distinguish further categories of releases:*

“...separating the data, as a minimum, for releases to air (distinguishing between point air releases and fugitive air releases), water (distinguishing between releases to freshwater, estuarial waters and marine waters), land and through underground injection;”

(b) The amount of each pollutant required to be reported pursuant to article 7 that the owner or operator of the facility expects will be released by any product containing the substance through off-site use and disposal over the course of its life cycle, where a life-cycle analysis has been carried out for that product;

Belgium, France, Germany, UK, CEFIC/ICCA *propose to delete this paragraph.*

Explanations:

France *disagrees with the inclusion of the word “product”.*

Germany *disagrees with the inclusion of products.*

UK *disagrees with the inclusion of products (see above).*

CEFIC/ICCA *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 contain “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 (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, most of these analyses only relate 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.

Switzerland *The inclusion of “products” should be discussed in a later step and thus releases of pollutants by products should not be included in the present text.*

US *Delete this paragraph on products for reasons described earlier.*

(c) The amount of each potential pollutant required to be reported pursuant to article 7 transferred in the relevant period, distinguishing between on-site and off-site transfer and according to whether the potential pollutants are for use, reuse, storage, treatment, energy recovery, recycling, disposal or in or as products;

Belgium, Germany *To read the text as follows:*

“The off-site transfers of waste and waste water to public treatment plants required to be reported pursuant to article 7 in the relevant period;”

France *disagrees with the inclusion of the words potential in “potential pollutant”. Paragraph (c) should read as follows :*

“ The off-site transfers of waste and waste water to treatment plant required to be reported pursuant to article 7 in the relevant period;”

Switzerland *The inclusion of ”products” and “on-site transfers” still remains to be discussed.*

UK , CEFIC/ICCA *This paragraph should be deleted.*

Explanations:

UK *Disagree with the inclusion of products (see above). Disagree with the inclusion of pollutants in by-products and wastes (see comments above).*

CEFIC/ICCA *Pollutants Transferred On-/Off-Site.*

As a general point, if a potential pollutants 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, H₂SO₄) 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 for treatment 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 as only the final release of 10 tons 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.

The United States offers the following language to describe on- and off-site transfers in the system:

“ The amount of each pollutant required to be reported pursuant to article 7 that is

- (a) Transferred off-site, according to whether the pollutant is transferred off-site for, treatment, energy recovery, recycling, disposal or other type of release; and
- (b) Transferred on-site, according to whether the pollutant is treated, combusted for energy recovery or recycled”

European ECO Forum proposes amendment to distinguish further between types of transfers:

“...distinguishing between on-site and off-site transfer and according to whether the potential pollutants are for use, reuse, storage, surface impoundment, treatment at sewage treatment works, thermal treatment with energy recovery, thermal treatment without energy recovery, other treatment, disposal to landfill, other disposal, recycling, or in or as products;”

Note: These could be further sub-divided (as in the US TRI), but it is suggested that further categorisation could be a matter for individual states, or for later development of the protocol.

- (d) The amount of each potential pollutant required to be reported pursuant to article 7 present on-site in the relevant period that is not otherwise accounted for under the transfers reported in subparagraph (c) above;

Belgium, France, Germany, UK, CEFIC/ICCA Delete this paragraph.

Explanations:

UK This is registering material retained on site. A PRTR is for releases and transfers.

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

Switzerland The inclusion of “products” and “on-site transfers” still remains to be discussed.

US Delete this paragraph as unnecessary.

- (e) The amount of water, energy and resources required to be reported pursuant to article 7 used in the relevant period;

Belgium, France, Germany, CEFIC/ICCA Delete this paragraph.

Explanations:

Germany This paragraph pertains to resource management.

CEFIC/ICCA See our comments under article 7.3.

US Delete this paragraph as these are outside the scope of a PRTR.

- (f) A comparison of the amounts in subparagraphs (a) through (e) with figures from the previous reporting period;

Belgium, France, Germany suggest to delete this paragraph.

US The paragraph as now written does not achieve the goal of highlighting progress on pollution prevention or pollution control activities at a facility. It is preferable, for example, that this

comparison does not include one-time catastrophic releases. In addition, a sum of the releases of a pollutant is appropriate for this comparison. The new subparagraph should read:

“A comparison of the sum of releases in subparagraph (a) and the transfers off-site to disposal, excluding any releases that result from catastrophic events, with the sum of the releases from the previous reporting year, with the exception of any releases that result from catastrophic events, and a comparison of the amount for each transfer method in subparagraph (c) with the amount from the previous reporting year.”

CEFIC/ICCA *Consequently, change:*

“A comparison of the amounts in subparagraphs (a) and (b).”

(g) The methodology used to derive the above information, whether based on measurement, calculation or estimation.

Belgium *suggests to replace “methodology” by “type of methodology”.*

France *Delete.*

UK *Before “methodology” insert “type of”. We agree if this means only indicating the type of methodology, not recording details. The details remain the responsibility of the producer of the data.*

US *Broaden this section to end with,*

“... based on measurement, calculation, estimation, or other means.”

In addition, the United States does not believe this requirement should be extended to the requirements of paragraph 1 above.

2. The reports referred to in paragraph 1 shall distinguish between releases and transfers resulting from routine and deliberate activities and those resulting from accidents or extraordinary events.

Belgium, France *reserve their opinion, since it is not clear what should be understood under “accidents” or “extraordinary events”.*

Germany *reserves her opinion on this provision, as it needs further clarification. It is not clear what should be understood under “accidents” or “extraordinary events”.*

Switzerland *“Accidents” are “extraordinary events” and should be identified by corresponding remarks.*

US *Change the word “accident” to “catastrophic”. Accident is a word that is too broad. The concept covered by this paragraph is to separate out data on truly extraordinary events, not spills or leaks.*

3. In accordance with the phased requirements set out in article 5, the reports referred to in paragraph 1 shall include reduction targets for releases and transfers of pollutants, and for water, energy and resource use, required to be reported under articles 6 and 7. These reduction targets may be non-binding.

Belgium, France, Germany, CEFIC/ICCA *suggest to delete this paragraph.*

Explanations:

Belgium *Considering the fact that this information has to be reported under an environmental management system, by another tool than a PRTR.*

France *This paragraph should be deleted, since it is not binding.*

Germany *In accordance with our comments made to Art. 5.*

CEFIC/ICCA *We challenge the inclusion of mandatory requirements to report on targets:*

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 doubt whether this would be acceptable to authorities or the public at large.

We are even more concerned about the 2nd sentence “reduction targets may be non-binding”, since this 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. Of course, if authorities want to establish mandatory emission reduction targets, the acceptable way would be to include such a target in the permit for that plant.

Switzerland *We disagree with the concept of including reduction targets within a PRTR instrument.*

UK *We agree with the concept of including targets. However, we reserve our position pending further discussion on targets. Some industries have already made all the achievable environmental gains in certain areas. We would propose a system of benchmarking for various industry sectors and processes. Whatever the solution, it must be based on an estimation of the risk or impact, costs and benefits.*

US *Delete this text in accordance with our general comments and comments on article 5.*

4. Each Party shall require its public authorities and other bodies designated under article 6, paragraph 2, to complete and submit to the competent authority, by 1 April each year, according to the format contained in annex V, part 2, and having regard to the phased requirements set out in article 5, the following information with respect to the preceding calendar year:

Belgium, France, Germany *suggest to replace this paragraph by the following sentence:*

“ Each Party shall require its public or private authorities or bodies designated under Art. 5, paragraph 2, to include pollution from diffuse sources in accordance with the phased requirements set out in Art. 5”.

Switzerland *For a first round the foreseen reporting of the facilities by 1 April seems to be too tough.*

UK *Agree the principle, but not the dates. See comments on dates, above.*

The United States *questions the inclusion of diffuse sources in this instrument for the reasons described above, and would prefer to delete references to diffuse sources at this time.*

CEFIC/ICCA *See our comments under article 4 para 4. We propose to change article 8 para 4 to:*

“Each Party shall require its public authorities and other bodies designated under article 6, paragraph 2, to complete and submit to the competent authority, according to the timetable contained in article 4 and to the format contained in annex V, part 2, and having regard to the phased requirements set out in article 5, the following information with respect to the preceding calendar year: “

(a) The aggregate yearly releases of each pollutant listed in annex IV, part 1, from the diffuse sources listed in annex III to air, water and land, separated out by pollutant, where those releases constitute a significant proportion of the total national releases of the pollutant in question;

Belgium, Germany, CEFIC/ICCA *suggest to delete this paragraph.*

Explanations:

Belgium *See above.*

Switzerland *The term “significant” should be specified in this context.*

UK *See comments on “significant” above.*

(b) A comparison of the amounts reported in each year with figures from the previous reporting period; and

(c) The methodology used to derive the above information.

UK *Agree with comparison. We propose the type of methodology may be referred to, and published elsewhere.*

CEFIC/ICCA *To delete this paragraph. See our comments under article 8, para 1 (a).*

5. Each Party shall ensure that the necessary monitoring and reporting regime exists, on a mandatory basis, in order to guarantee the supply of the data on radioactive substances and radiation, noise and genetically modified organisms and products containing or derived from genetically modified organisms needed to fulfil the requirements of article 5, paragraph 3. Pending a requirement to include this information in the national pollutant release and transfer register, each Party shall provide links in the register to other databases containing such information if these exist.

Belgium, France, Germany, CEFIC/ICCA *To delete this paragraph.*

Explanations:

CEFIC/ICCA *See our comments under article 4, (a) – (c)*

Switzerland *The monitoring and reporting of data for issues as mentioned in article 5, paragraph 3 should only be mandatory after the Meeting of the Parties to this instrument has decided to include such a issue based on a thorough assessment.*

UK *disagrees with the inclusion of products. See comments on products, and structure of register and links. All references to “products” in this paragraph should be deleted.*

US *Delete this paragraph for the reasons described above.*

Article 9

MONITORING AND RECORD KEEPING

1. Each Party shall require the owners or operators of the facilities subject to the reporting requirements of article 6 to undertake, with appropriate frequency, self-monitoring of the releases and transfers of the pollutants subject to reporting in accordance with article 7 and to keep detailed records, including of the overall amounts of releases and transfers for each pollutant. Such information shall also include the methodology of arriving at the total amounts, whether by measurement, calculation or estimation.

Belgium *proposes to rewrite the text as follows:*

“ Each Party shall ensure that the owners or operators of the facilities subject to the reporting requirements of article 6 to undertake, with appropriate frequency, self-monitoring (measuring, calculating or estimating) of the releases and transfers of the pollutants subject to reporting in accordance with article 7 and to keep detailed records, including of the overall amounts of releases and transfers for each pollutant. Such information shall also include the methodology of arriving at the total amounts, whether by measurement, calculation or estimation.”

France suggests:

“Each Party shall ensure the owners or operators of the facilities subject to the reporting requirements of article 6 to undertake, with appropriate frequency, self-monitoring (measuring calculating or estimating) of the releases and transfers of the pollutants subject to reporting in accordance with article 7 and to keep detailed records, including of the overall amounts of releases and transfers for each pollutant. Such information shall also include the methodology of arriving at the total amounts, whether by measurement, calculation, or estimation.

Germany propose to rewrite the text as follows:

“ Each Party shall ensure that the owners or operators of the facilities subject to the reporting requirements of article 6 to undertake, with appropriate frequency, self-monitoring (measuring, calculating or estimating) of the releases and transfers of the pollutants subject to reporting in accordance with article 7 and to keep detailed records, including of the overall amounts of releases and transfers for each pollutant. Such information shall also include the type of methodology of arriving at the total amounts.”

Switzerland agrees with operators keeping records, but the period should be specified, e.g. 5 or 10 years.

UK Editorial: *This paragraph needs dividing.*

We disagree. Monitoring is not always the most cost-effective or accurate way of quantifying releases. We do agree with operators keeping records, but the period should be specified. We propose 7 years.

US *This paragraph could be read to require monitoring and therefore should be made more clear. In some situations such monitoring may be necessary, but in other situations the use of estimates or calculations may be more appropriate.*

The second part of the first sentence and the second sentence are redundant and should be deleted. For a facility to “maintain full supporting documentation of its reporting documentation” (see second sentence), that facility must “keep detailed records, including of the overall amounts of releases and transfers for each pollutant” (see first sentence).

Each Party shall require the owners or operators of the facilities to maintain full supporting documentation of its periodic PRTR reports. The information gathered according to this paragraph shall be publicly accessible in accordance with article 10.

Belgium suggests to include a time-limit of 5 years in this subparagraph.

France does agree with operators keeping records, but the period should be specified. We propose 10 years.

Germany does agree with operators keeping records, but the period should be specified. We propose 5 years.

UK proposes to delete “require” and replace with “ensure that”. We propose keeping for 7 years.

US Delete the last sentence. The government is responsible for making data available to the public, not the reporting facility. In addition, evidence used by the company to determine this information may be confidential. The government has the authority to inspect facilities to determine compliance. In sum, the paragraph should look like the following:

“...of article 6 to report, using the best available information (which may include monitoring or other appropriate estimation techniques) releases and transfers of pollutants under this instrument. Each Party shall require the owners or operators of the facilities to maintain full supporting documentation of its PRTR reports.”

2. With respect to releases of pollutants from diffuse sources, the reporting bodies may use a combination of monitoring data, existing statistical data and emission factors to make estimates of releases based on activity areas, converted by statistical means into most probable indications of total releases from diffuse sources, which should be aggregated at the most local level practicable.

Belgium, France, Germany suggest the following text amendment:

“With respect to releases of pollutants from diffuse sources, the reporting bodies may use standardised methods as mentioned in Guidelines.”

The United States questions the inclusion of diffuse sources in this instrument for the reasons described above, and would prefer to delete references to diffuse sources at this time.

CEFIC/ICCA suggests deleting. See comments on article 4.1 (c).

3. The Parties shall require that monitoring as well as measurement, calculation and estimation, are carried out in accordance with internationally approved methodologies, when available, in order to determine the data to be reported.

Belgium, France, Germany suggest to delete “as well as measurement, calculation and estimation”, since this is already incorporated in para. 1.

Switzerland Internationally approved methodologies shall be used, unless local, adequate alternatives have been developed.

UK We disagree. This does not allow for local situations and is a barrier to development. We propose that internationally approved methodologies shall be used, unless local alternatives have been developed. All methodologies shall be open to the public.

US Refer to the point made in article 9, paragraph 1. Because each facility may have different operations, prescribing the estimation method may reduce, rather than increase, the accuracy of the data. Monitoring data, while often providing the most accurate data, sometimes is less accurate than other methods. Rewrite to:

“With respect to releases and transfers of pollutants, the reporting facility shall use the best available information, which may include monitoring data, emission factors, mass balance equations, indirect monitoring or other calculations, engineering judgements and other methods. Where appropriate, these should be carried out in accordance with internationally approved methodologies.”

We note that this release estimation categorization has been agreed to within the OECD PRTR Task Force on Release Estimation Techniques.

European ECO Forum Add:

“Details of all methodologies used shall be available to the public.”

Article 10

PUBLIC ACCESS TO INFORMATION

1. Without prejudice to the additional requirements contained in the remaining paragraphs of this article, the relevant provisions of the Convention shall provide a minimum legal framework governing public access to and the availability of environmental information under this instrument.

US Delete references to the Aarhus Convention in accordance with our general comments above. We are open to discussing alternative language that is more appropriate to a PRTR instrument.

2. The register shall be designed for maximum ease of public access through the Internet, other computer means and on paper. The design shall allow the information on the register to be continuously and immediately available through electronic means.

Belgium suggests to delete this paragraph, because this requirement is already stated in Article 3, para. 2 of this Protocol.

France This should relate to Aarhus Convention Article 4, where information may be requested in another form. We agree with the internet format, but provision on paper should only be according to Aarhus. This paragraph should be deleted since the requirements are already stated in Article 3, paragraph 2.

Germany agrees with the internet format, but provision on paper should only be according to Aarhus. Otherwise vast amounts of paper records are produced and never used. Since the paragraph deals with the design of the register we propose to delete it in its current place and insert an amended version into Art. 3 para. 2. (see above).

Switzerland The register shall be designed for maximum ease of public access. Usually public access should be through the Internet or other computer means. Paper copies should be available on request.

UK This should relate to Aarhus Convention, Article 4, where information may be requested in another form. We agree with the internet format, but provision on paper should only be according to Aarhus. We foresee vast amounts of paper records produced and never used.

We propose that the following should be substituted:

“ Each Party shall ensure that the register shall be designed for maximum ease of public access through the Internet and other computer means. The design shall allow the information on the register to be continuously and immediately available through electronic means.”

US Rephrase this wording to keep it from being too prescriptive. Use of the “Internet” should not be required since this mode of communication may be supplanted in the future. The intent of the present Internet use is provided in the second sentence. The reworded first sentence would be: “..public access through telecommunications, such as the Internet, and on paper.”

Delete the terms “continuously and immediately” from the second sentence.

3. Subject to paragraph 6 below, information held in the national pollutant release and transfer register shall be fully accessible to the public in electronic format, and for inspection in paper format, free of charge. In addition, copies of the information in paper format shall be available to the public concerned free of charge.

Belgium, Germany *suggest to delete this paragraph.*

Explanations:

Germany *See above.*

France *Paper versions should only be available on request. See above. This paragraph should be deleted since the requirements are already stated in Article 3, paragraph 2.*

Switzerland *subjects to paragraph 6 below, information held in the national pollutant release and transfer register shall be fully accessible to the public.*

UK *Paper versions should only be available on request. See above. The words “and for inspection in paper form” should be deleted.*

US *Change the last sentence to reflect those instances when unreasonable requests would result in daunting costs to the government. The last sentence to:*

“In addition, copies of the information in paper format shall be available to the public at a minimal fee.”

4. The Parties shall require the competent authority to compile and publish data in the pollutant release and transfer register in paper form no later than six months after the reporting deadline for the applicable period. Each Party shall also produce a report interpreting the data reported to the national pollutant release and transfer register within one year after the reporting deadline for the applicable period.

Belgium, France, Germany *suggest to delete this paragraph.*

Explanations:

Germany *See comments above concerning the paper format. Furthermore we do not support that Parties should prepare reports on interpreting the data. This would be too costly. Also it is precisely the intention of the PRTR to provide data so that the public and the interested parties can come to their own conclusions about the environmental effects of pollutants and transfers.*

Switzerland

“The Parties shall require the competent authority to compile and publish data in the pollutant release and transfer register no later than six months after the reporting deadline for the applicable period.”

a) Electronic means should be applied if possible; paper should only be used if electronic means are not feasible.

b) The way of reporting the data and their interpretation should be left to the national authorities.

UK *Disagree. See comments on dates above.*

US *Change the timeline to*

“... no later than fifteen months from the end of the reporting year.”

5. Each Party shall develop electronic information points providing public access to PRTR databases. Such information points may be installed in public libraries, offices of local authorities and other appropriate places, taking into account the need to facilitate public access outside normal office hours.

Belgium, France, Germany, Switzerland *This paragraph should be deleted.*

Explanations:

Belgium, France, Germany *This requirement is already stated in Article 3, para. 2 of this Protocol.*

Switzerland *The installation of information points under this PRTR instrument should not be mandatory if public access is guaranteed by other means.*

6. Where the confidentiality of commercial or industrial information is protected by law in order to protect a legitimate economic interest, the Parties may provide for consideration by the competent authority to consider claims of confidentiality by the owners or operators of facilities with respect to specific information concerning on-site transfers or on specific chemical inputs to the production process.

Confidentiality may not be claimed with respect to information on releases or off-site transfers.

Claims of confidentiality shall be considered in a restrictive way, taking into account the public interest served by disclosure. Where a claim of confidentiality is upheld, the information shall be withheld from the public and included in the register in a form that does not permit public access. In such cases, the chemical names of particular pollutants shall be replaced in the public part of the register with category identifiers, together with information about the adverse health and environmental hazards associated with the pollutant. Where any information is withheld from the public part of the register, the register shall indicate what type of information has been withheld.

Belgium, France *suggest the following text:*

“The confidentiality of commercial and industrial information may be claimed by owners or operators of facilities where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions into the environment and off-site transfers which is relevant for the protection of the environment shall be disclosed.”

Claims of confidentiality shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.”

Explanations:

Belgium *Since Belgium does not want to exceed the requirements of Aarhus in a first step to a PRTR*

France *Since the EU does not want to exceed the requirements of Aarhus in a first step to a PRTR.*

Germany *We don't agree with the inclusion of on-site transfers and propose according to the convention the following wording:*

“The confidentiality of commercial and industrial information may be claimed by owners or operators of facilities where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions into the environment and off-site transfers which is relevant for the protection of the environment shall be disclosed.”

The second sentence should be deleted. See above.

The last sentence should be amended according to the wording of the Convention:

“Claims of confidentiality shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.”

Switzerland *This paragraph should be formulated as paragraph 4 d) and e) of article 4 of the Aarhus Convention. Switzerland supports the proposal of UK.*

UK *We reserve our position on this paragraph. The UK would need to be convinced why this section exceeds the Aarhus Convention. The section needs clarifying, particularly the last points: (where information is withheld) the chemical names shall be replaced with category identifiers.*

We would prefer:

“Parties may provide for competent authorities to omit from the register information that would adversely affect the confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions which is relevant for the protection of the environment should be disclosed. Parties may also provide for competent authorities to omit from the register information that would adversely affect intellectual property rights.”

US *End the first sentence after the words “...or operators of facilities.” Delete the rest of this sentence because the text is overly prescriptive. In the second sentence, please delete “off-site” as a modifier to “transfers”.*

CEFIC/ICCA *The second sentence should be deleted.*

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 true even more in conjunction with article 10.6, which explicitly states that for off-site transfers confidentiality cannot be claimed at all. Regardless whether the requirements in the previous articles are to stay or not article 10.6 2nd sentence has to be deleted.

Moreover, the 3rd sentence “Claims of confidentiality shall be considered in a restrictive way” sufficiently cares for concerns that such requests would be handled too loosely.

7. Each Party shall ensure that the environmental information gathered in accordance with article 9 is made accessible to the public on the terms applicable under the Convention to environmental information held by public authorities, irrespective of whether the information is actually held by a public authority or remains only in the possession of the facility or other reporting body which is not a public authority. Where the information in question is not in the possession of a public authority, it shall be made accessible to the public by the facility or other reporting body on terms equivalent to those that would apply if the information were being made publicly accessible by a public authority. Where the information gathered according to article 9 is made accessible to the public directly by the facility or other reporting body rather than by a public authority, the Parties may provide that the facility or other reporting body may exempt from disclosure specific information, which it deems to be confidential.

Belgium, France, Germany *Delete this paragraph.*

Explanations:

France, Germany *do not see any reason to oblige facility operators to make the information that they have already submitted for the PRTR separately available to the public. This would pose an unnecessary burden on the facility operators.*

Germany *The purpose of the PRTR is to provide the information in one centralised spot.*

Switzerland reserves her position on this paragraph. In any case it should be reformulated.

US Delete this paragraph as it is overly burdensome and appears to require facilities to respond at any time with information about facility operations. A PRTR provides the public with information about releases and transfers of chemicals; encourages public participation; encourage cleaner production or reductions in releases of releases and transfers; and improves communication between the public and industry. However, requiring facilities to carte blanche provide this type of information is beyond the goal of a PRTR. It is appropriate for a facility to indicate the method or methods used to make an estimation. This information, which can be reported on the PRTR report can be made publicly available by the government through the publication of the PRTR data.

Article 11

PUBLIC PARTICIPATION IN THE DEVELOPMENT OF NATIONAL POLLUTANT RELEASE AND TRANSFER REGISTERS

For the reasons described above, **the United States** would like to delete all references in this article to obligations under the Aarhus Convention to allow this instrument to be open to non-Parties to the Convention. This instrument should explicitly set out how it will incorporate public participation in a manner agreeable to all participants.

1. Without prejudice to the additional requirements contained in the remaining paragraphs of this article, the relevant provisions of the Convention shall provide a minimum legal framework governing public participation with respect to measures taken to implement the provisions of this instrument.

Germany regards the PRTR as a tool, which should facilitate public information and public participation. This is also apparent from the establishment of a PRTR being provided for in Art. 5, para. 9 of the Convention, which deals with public information. The PRTR Instrument should not establish new requirements for public participation that go beyond the Convention's requirements for public participation. We therefore propose to delete paras. 1 – 5 of Art. 11 and replace them with the following single paragraph:

“The relevant provisions of the Convention shall provide a minimum legal framework governing public participation with respect to measures taken to implement the provisions of this instrument. This does not prevent Parties from regulating additional requirements for public participation in their national PRTR.”

US Delete

2. Each Party shall notify the public concerned, in an effective manner and early in the decision-making process, of its intention to establish or modify a national pollutant release and transfer register. The notification shall include information on the envisaged procedure, including the opportunities for and the modalities of public participation, and on the availability of further relevant information and the means to obtain it.

Belgium suggests to delete paragraphs 2 to 5.

Germany suggests to delete this paragraph. See above. Furthermore Art. 3 para. 2 already deals with this.

3. In addition to any information required to be publicly available under the Convention or under article 10, each Party shall ensure that, in the process of establishing or modifying the national PRTR,

the public has timely access, free of charge, to information on the proposed scope, nature, structure, functioning and content of the register and to any changes proposed to these elements, from the time at which this information becomes available, without prejudice to the right of Parties to refuse to disclose certain information under the Convention.

Germany suggests to delete this paragraph. See above. Furthermore providing information free of charge (which is not already on the register) goes beyond the Convention's requirements (Art. 4, para. 8).

US Delete for reasons described above and due to redundancy.

4. The public shall be entitled to submit any comments, information, analyses or opinions that it considers relevant to the decision-making process, and the body or bodies responsible for establishing or modifying the register, while respecting the minimum legal framework provided by this instrument, shall take due account of the public input to the process.

Germany suggests to delete this paragraph. See above.

US The language is too broadly stated to allow for public comment on even the most mundane issues and thereby delaying release of data. The scope could be somewhat limited by adding the following to the beginning of the paragraph:

"When changes to the PRTR requirements for reporting are made, the public shall be entitled ..."

5. Each Party shall ensure that, when the decision to establish or modify the register has been taken, the public is promptly informed of the decision, of the reasons and considerations on which it is based and of the way in which the public input has been taken into account.

Germany suggests to delete this paragraph. See above.

Article 12

ENFORCEMENT AND ACCESS TO JUSTICE

1. Each Party shall ensure that its relevant public authorities have sufficient powers and opportunities to initiate administrative, civil or criminal proceedings in order to enforce the obligations of facilities to report full and accurate information and to make such information available to the public.

Intentional false reporting shall be considered a criminal offence.

Belgium, France, UK suggest to delete the entire Article 12.

Germany suggests to delete the second sentence. It should be left up to the Parties how their legal system enforces the PRTR obligations.

Switzerland Article 12 should not go further than Article 9 of the Aarhus Convention.

France, UK do not see the need to go further than Article 9 of Aarhus with respect to this Article.

US Delete the last sentence on false reporting. National governments should decide how to enforce such laws.

CEFIC/ICCA

“Each Party shall ensure that its relevant public authorities have sufficient powers and opportunities to initiate administrative, civil or criminal proceedings in order to enforce the obligations of facilities to report full and accurate information and to make such information available to the public. Intentional false reporting shall be considered a offence.”

In order to adapt to the legislative system of the respective Contracting Party we propose to amend the 2nd sentence.

European ECO Forum *Article 9 of the Convention itself is not simple to interpret or obvious in its practical implementation, and it is important that this protocol lays out clear provisions.*

2. Each Party shall guarantee the right of any person to petition the competent authority for a review of the claims of confidentiality under article 10, paragraph 6. When reviewing such claims, the relevant authority shall take into account the public interest in disclosing information. Final decisions under this paragraph shall be subject to review by a court of law or other independent and impartial body established by law.

Germany *This only makes sense in conjunction with Art. 10 para. 6 (see comments above): We suggest to delete the paragraph in its current form and insert the following paragraph instead:*

“Article 9 paragraph 1 of the Convention shall provide a minimum legal framework governing the access to justice with respect to the public access to and the availability of information under this instrument and apply mutatis mutandis to the respective rights granted in this instrument.”

US *Delete paragraph, issue is covered in modification of para 3 below.*

3. Where information has been exempted from disclosure by a facility or other body which is not a public authority in accordance with article 10, paragraph 7, the public shall be entitled to make such a decision subject to review by a court of law or other independent and impartial body established by law.

Germany *suggests to delete this paragraph as we have already suggested the deletion of Art. 10 para. 7.*

UK *See above.*

US *Please replace the current paragraph with following text:*

“Where submitted information has been asserted as confidential by a facility or other body which is not a public authority in accordance with article 10, paragraph 6, either the public authority on its own initiative, or the public at large before the relevant public authority, shall be entitled to challenge the legal sufficiency of the confidential claim, subject to review by a court of competent jurisdiction or other independent and impartial body established by law.”

4. Each Party shall guarantee the right of any person to petition the competent authority for a review of whether the governmental or facility-related obligations set out in this instrument for the development and maintenance of a pollutant release and transfer register, including the obligations concerning access to information and public participation arising under articles 10 and 11, have been met. Final decisions under this paragraph shall be subject to review by a court of law or other independent and impartial body established by law.

Germany proposes to delete this paragraph because it is in the responsibility of the compliance regime according to Article 20 to review of whether the obligations set out in this instrument have been met.

UK See above.

US Delete the final sentence of this paragraph. The current structure would allow extremely broad access to court reviews that could tie up the system with trivial petitions.

Article 13 REGIONAL REGISTER

1. A register shall be established for the ECE region containing the totality of the data existing on the national registers of the Parties. The regional register will be maintained by [name of responsible body] and will meet all relevant criteria applicable to national registers.

France reserves her position on this paragraph. France needs to be convinced that there is an interest in establishing this regional register.

Germany proposes to delete the whole article since there is no further special interest of the public for an ECE-wide register.

The United States is still reviewing and considering the advantages and disadvantages of the structure of this instrument as described above as well as the implication of submitting all data on national registers to the register for this instrument as compared to Parties only reporting on a certain agreed list. We have two comments on this section:

- (1) Since the agreement will not be limited to ECE countries, please delete the words “the ECE region containing the totality”.
- (2) The regional register should meet requirements or relevant criteria set out in this instrument, not those “applicable to national registers”.

2. By 1 June of each year following the first full calendar year after entry into force of this instrument, each Party shall submit the data from its national register to [name of responsible body] for inclusion in the regional register.

France, Switzerland, UK See comments on dates.

3. The Parties shall cooperate with [name of responsible body] to facilitate the harmonization of data collection and presentation methods.

Article 14 INTERNATIONAL COOPERATION

1. The Parties shall cooperate and, as appropriate, assist each other:
 - (a) In international actions in support of the objectives of this instrument;
 - (b) On request, in implementing national systems in pursuance of this instrument.

France, Germany It should be clarified that international cooperation does not necessarily require financial assistance.

2. The Parties shall share periodically the results of the implementation of PRTR systems among themselves and with non-Parties, with particular emphasis upon the sharing of data from border areas among neighbouring States.

Germany suggests to delete this sentence. When PRTRs are made publicly available (e.g. by Internet) there is no need afterwards to establish additional information pathways.

UN DOCUMENT
CEP/WG.5/AC.2/2001/6

Article 15 MEETING OF THE PARTIES

Belgium, France would like to insert a paragraph in this article, which will stimulate the Parties to go further than the requirements of this Protocol, in the development of their national PRTR system on a voluntary basis.

Republic of Moldova Take article 15 in square brackets in goals of further discussion of provisions of the above-mentioned article.

Paras 1-5: **The United States** notes that these paragraphs assume that the PRTR agreement would be styled as a protocol to the Aarhus Convention, and incorporate directly many elements of the Convention. The United States questions whether that approach might result in a barrier to entry by governments that are not Party to the Convention, notwithstanding the rules in these paragraphs that are designed to draw a distinction between meetings of the parties to both instruments. At a minimum, paragraph 4, regarding the application of the rules of the Convention to the meetings of the Parties to the PRTR agreement, should be revised to provide for the adoption of rules of procedure, by consensus, by Parties to the PRTR agreement.

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.

Republic of Moldova Amend paragraph 1 with following words:
“The Meeting of the Parties to the Convention shall serve as the Meeting of the Parties to this Protocol in accordance with the procedures set out in the paragraphs below”.

CEFIC/ICCA At present CEFIC and ICCA would like to wait for the outcome of the discussion on article 1 to 14 before providing comments on the development of the instrument. We would need to have a better idea how especially the “step-by-step approach” will be developed.

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.

Republic of Moldova Amend paragraph 2 with following words:
“When the Meeting of the Parties to the Convention serves as the Meeting of the Parties to this Protocol, only those Parties to the Convention that are also to the Protocol shall be entitled to participate in a decision-making capacity, as shall those Parties to this Protocol that are not Parties to the Convention. Any Party to the Convention that is not also a Party to this Protocol may nevertheless participate as an observer in those proceeding”.

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.

Republic of Moldova *Amend paragraph 3 with following words:*

”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 Protocol shall be replaced by a member elected by and from among the Parties to this Protocol when the Bureau is acting on behalf of the Meeting of the Parties to this Protocol”.

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.

Republic of Moldova *Amend paragraph 4 with following words:*

”Subject to the provisions of paragraphs 2 and 3 above, the rules of procedure of the Parties to the Convention shall be applied, *mutatis mutandis*, when that Meeting serves as the Meeting of the Parties to this Protocol, except as may otherwise be decided by consensus by the Parties to this Protocol”.

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.

Republic of Moldova *Amend paragraph 5 with following words:*

”The first meeting of the Parties to this Protocol shall be convened by the Meeting of the Parties to the Convention no later than one years after the entry into force of this Protocol. Thereafter, ordinary meetings of the Parties to this Protocol shall be held in conjunction with ordinary meetings of the Parties to the Convention, unless otherwise decided by the Parties to this Protocol. The Meeting of the Parties to this Protocol 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:

Germany *suggests the following rewording:*

“...shall regularly review the implementation and...”

Republic of Moldova *Change some provisions of paragraph 6 of article 15 in following redaction:*

“ The Meeting of the Parties to this Protocol shall keep under continuous review the realisation of the provisions of the Protocol on the basis of regular reporting by the Parties, and shall make, within its

mandate, the decisions necessary to promote its effective implementation, and, with this purpose in mind, shall:

The United States *believes that this paragraph should be revisited once there has been further work to elaborate the core elements of the PRTR agreement. As it stands, the paragraph is overly prescriptive, redundant of other provisions in the text, and incorporates by reference many contentious elements that are addressed elsewhere in our comments (e.g., on scope and criteria). In addition, it makes reference to other obligations that are not otherwise addressed in the text (e.g., monitoring).*

(a) Review the policies for and legal and methodological approaches to the development of PRTR systems and promote their progressive strengthening and convergence;

Republic of Moldova

“Review the policies, measures, and legal and methodological approaches to the effective implementation and 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;

Republic of Moldova *Without change yet;*

(c) Establish a programme of work, including projects to be carried out jointly under this instrument and the Convention;

Germany *This point needs clarification. We do not understand what this could cover that is not already covered by other provisions.*

Republic of Moldova

“Establish a programme of work for next year, including projects to be carried out jointly under provisions of this Protocol and the Convention;”

(d) Take measures to strengthen transboundary and international cooperation in accordance with article 14;

Republic of Moldova

“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;

Republic of Moldova

“Share information on experience gained in concluding and implementing bilateral and multilateral agreements or other arrangements having relevance to the purposes of this Protocol and to which one or more of the Parties are a party;”

(f) Establish such subsidiary bodies as it deems necessary;

Germany *We do not oppose this paragraph. However we would like to stress that as far as possible use should be made of existing bodies and institutions.*

Republic of Moldova

“Establish necessary subsidiary bodies for implementation and development of this Protocol ;”

(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;

Republic of Moldova

“Consider and adopt proposals for such amendments to this Protocol and its annexes as are deemed necessary for the purposes of this Protocol, in accordance with the provisions of article 18;”

(h) Keep the annexes to the instrument under continuous review, notably:

Germany *reserves her position on this paragraph until discussions are complete on the Annexes and propose to discuss this paragraph after the completion of the Annexes.*

Republic of Moldova

“Keep the annexes to the Protocol under permanent 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

Germany *does not agree with the inclusion of storage, transfers (other than transfers of waste off-site), the use of water, energy and resources and suggest the deletion of these elements.*

Republic of Moldova *Amend this paragraph with new provision:*

“Consider and adopt by consensus the rules of procedure of meetings and establish the organisms for implementation of this Protocol”

(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;

Germany *proposes the deletion of “transfers or storage” and the deletion of “to include additional resources in the light of emerging resource depletion data”. See above.*

(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;

Germany *It is probably too early to review the experience with reporting on releases from diffuse sources at its first meeting.*

Switzerland *After each step the next step should be planned in a meeting based on the experience gained in the preceding step; i.e. at the first meeting the implementation of the second step should be agreed on.*

(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;

Germany *With regard to the proposed German amendments to Art. 5 (see above) “article 5, paragraph 3” should be changed to “article 5, paragraph 2”. The reference to “radiation, noise and GMOs” should be deleted as already proposed for Art. 5 para 3.*

(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

Germany *The word “resource use” should be deleted. See above.*

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

Germany *This subparagraph should be deleted.*

Republic of Moldova *Amend this paragraph with new provision:*

“Consider establishing financial arrangements and technical assistance mechanisms to facilitate the implementation of the Protocol by Parties representing countries with economies in transition and developing countries;”

(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;

Germany *proposes the deletion of this subparagraph.*

Republic of Moldova

“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 Protocol;”

(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.

Germany *This subparagraph should be deleted because it is already covered by the first sentence of this paragraph and by subparagraph c)*

Republic of Moldova

“Consider and take any additional action that may be required to further the objectives of this Protocol, such as the adoption of guidelines and recommendations, which promote its implementation.”

European ECO Forum *The following addition is proposed:*

“Consider opportunities for sharing experiences in implementing PRTRs both within and external to the ECE region;”

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

*Paras 6-7: **The United States** believes these provisions should be revisited once there has been further work to elaborate the core elements, and in particular, the structure of the PRTR agreement. Depending on the ultimate structure of the agreement, this formulation -- whereby amendments to annexes will become binding on Parties who fail to affirmatively object to them -- may be difficult for some governments to accept. In any event, the provisions will need to be redrafted to address certain drafting anomalies (e.g., under paragraph 6, an amendment to an annex could become effective within less than a year for a Party that objects and then withdraws its objection, whereas under paragraph 7 the amendment can become effective for Parties that remain silent at the earliest only one year after its adoption, and indeed may not become effective at all).*

1. Any Party may propose amendments to this instrument.

***Germany** would like to insert a paragraph in this article, which will stimulate the Parties to go further than the requirements of this Protocol, in the development of their national PRTR system on a voluntary basis.*

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;

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.

Germany recommends that the compliance mechanism established under this instrument should, to the extent possible make use of the Compliance Mechanism to be established under the Convention.

At this point we are not convinced that separate procedures and especially institutional arrangements are needed for the PRTR Instrument. In our view existing mechanism should be used as far as possible.

We therefore propose that Art. 20 be replaced by the following:

“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 consider the necessity of establishing 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. The procedures and mechanisms to review compliance shall allow for appropriate public involvement, including consideration of communications from members of the public on matters related to this instrument. To the extent possible procedures and mechanisms established under the Convention shall be relied upon.”

Republic of Moldova *Change name of the Article 20 as “COMPLIANCE”. Change paragraph 1 in following redaction:*

“Compliance by each Party with its obligations under the present Protocol shall be reviewed regularly. At their first meeting, the Parties to this Protocol shall establish subsidiary body and cooperative procedures and mechanisms to promote compliance with the provisions of this Protocol 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 Protocol”.

The United States *believes that this provision should be revisited once there has been further work to elaborate the core elements of the agreement. In particular, the United States believes that the last sentence of this provision requires clarification.*

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 Depositary 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 Depository. Any such withdrawal shall take effect on the ninetieth day after the date of its receipt by the Depository.

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.

Annexes According to CEP/WG.5/AC.2/2001/3

Annex I

CONTENTS OF NATIONAL POLLUTANT RELEASE AND TRANSFER REGISTERS

Annex II

ACTIVITIES FOR FACILITY REPORTING

(Possible reference list: annex I to the Convention, minus some elements, plus some other elements)

Annex III

CATEGORIES OF ACTIVITIES FOR REPORTING ON DIFFUSE SOURCES

Germany, CEFIC/ICCA *This annex should be deleted.*

Explanations:

Germany *In the first step categories for diffuse sources should not be included in an annex. They could, however, be included in guidelines to be developed by an appropriate body.*

CEFIC/ICCA *See comments on the article 7.4. Unless reporting on diffuse sources will be required, we propose to delete Annex III.*

Annex IV

Part 1: MANDATORY SUBSTANCES FOR REPORTING

Germany *We believe that during the first step only mandatory substances, as currently set out in Annex IX should be part of an instrument. Optional substances for reporting or criteria etc. can be included as annexes in the next step. For now they could, however, be included in guidelines to be developed by an appropriate body.*

Part 2: OPTIONAL SUBSTANCES FOR REPORTING

(Possible reference list: annex A1 to decision 2000/479/EC of 17 July 2000 of the Commission of the European Communities)

Germany, CEFIC/ICCA *This annex should be deleted.*

Explanations:

Germany *See above.*

CEFIC/ICCA *See comments on the article 7.2.*

Part 3: REPORTING THRESHOLDS FOR WATER, ENERGY AND RESOURCE USE

Germany *This annex should be deleted. See above.*

Annex V

Part 1: FORM FOR REPORTING BY FACILITIES

Germany *This annex should be deleted. Contents of the PRTR are already described in Annex I. Details of the form for reporting should be left to each Party to open the possibility to consider national particularities.*

Part 2: FORM FOR REPORTING ON DIFFUSE SOURCES

Germany, CEFIC/ICCA *This annex should be deleted. See above.*

CEFIC/ICCA *See comments under article 7.4.*

European ECO Forum *We would drop the reference to the Form for Reporting on Diffuse Sources. However, the instrument should incorporate a duty to gather data on diffuse sources as listed in Annex III, which seems to be achieved in Article 6.2.*

UN DOCUMENT
CEP/WG.5/AC.2/2001/7

European ECO Forum

Substances

1. Whilst the draft instrument has broad scope, much of the test of the pollution inventory will lie in the numbers of reports ultimately generated, reliant on the detail to be included in the Annexes. The broad scope will not count for much if only a very limited number of substances or activities is incorporated in the final document². Thus we fully support the inclusion of the 131 substances listed in Annex III [of CEP/WG.5/AC.2/2001/7] (derived from international instruments or authoritative lists) for mandatory reporting, but in addition would include the radioactive substances from Annex IV (numbers 1 – 26).
2. Annex III (the mandatory list) should be established as a minimum reporting requirement, while allowing for the possibility of including additional substances on a national basis.
3. The “recommendatory” Annex IV should become mandatory in the longer term.

Criteria

4. It should be possible to review the lists of substances, and we support the Annex II criteria as a useful reference point for amendment.

² As an example of a proven manageable list, the US Toxics Release Inventory sets a bench-mark for being a working inventory with around 650 substances, although we also note that there are thousands of chemicals in commercial use currently.

Transfers

5. Further definition of the pathways should be considered, and we have proposed alternative text in our comments on the document CEP/WG.5/AC.2/2001/3. Useful classes for transfers would be: use, reuse, storage, surface impoundment, treatment at sewage treatment works, thermal treatment with energy recovery, thermal treatment without energy recovery, other treatment, disposal to landfill, other disposal, recycling, or in or as products.

6. These classes could be further sub-divided (as in the US TRI), but it is suggested that further categorisation could be a matter for individual states, or for later development of the protocol.

Activities

7. We support this list of activities, and note the importance in any case of paragraph 11.