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Meeting of the Parties to the Protocol on Pollutant Release and Transfer Registers to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environment Matters

Working Group of the Parties

Fourth meeting

Madrid, 26 November 2015

Item 5 of the provisional agenda

Compliance and reporting mechanisms

Draft systemic issues concerning the implementation of the Protocol and recommendations on how to address them

Prepared by the Compliance Committee

Summary

The present document examines systemic challenges faced by countries in implementing the Protocol on Pollutant Release and Transfer Registers to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. It identifies implementation challenges, provides recommendations on how to address them and lists selected good practices linked to different aspects of the Protocol's implementation.

The document was prepared by the Compliance Committee under the Protocol, with the assistance of the secretariat, in close cooperation with the Bureau, and with the involvement of other Parties and stakeholders, pursuant to the request of the Meeting of the Parties to the Protocol at its second session (Maastricht, the Netherlands, 3–4 July 2014) (see ECE/MP.PRTR/2014/4, para. 35, and ECE/MP.PRTR/2014/4/Add.1, sect. G).

The Bureau of the Meeting of the Parties considered the document at its eighth meeting (Geneva, 19 May 2015) and decided to submit it to the Working Group of the Parties at its fourth meeting for consideration.

The Working Group is expected to consider the draft document with a view to its

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approval for submission to the Meeting of the Parties at its third session in 2017 for consideration.

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I. Introduction

A. Functions of the Compliance Committee

1. Article 22 of the Protocol on Pollutant Release and Transfer Registers (Protocol on PRTRs) to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) requires the Meeting of the Parties to establish arrangements for reviewing compliance with the Protocol. At its first session (Geneva, 20–22 April 2010), the Meeting of the Parties adopted decision I/2 (see ECE/MP.PRTR/2010/2/Add.1), which established the Compliance Committee and the procedures for the review of compliance.

2. Like other Committees established under multilateral environmental agreements, the Protocol's Compliance Committee plays a facilitative role. Article 22 expressly provides that the procedures within which the Committee operates are to promote compliance with the Protocol. The Committee has particular facilitative functions with respect to reporting (decision I/2, annex, para. 13 (c)) and assistance to individual Parties (*ibid.*, para. 40 (a)). But that facilitative role can be developed still further, as the Committee may examine any compliance issues not expressly referred to in its functions (*ibid.*, para. 14 (b)) and may also carry out any other functions that may be assigned to it by the Meeting of the Parties (*ibid.*, para. 13 (e)).

B. Mandate of the Compliance Committee

3. At the third meeting of the Compliance Committee (Maastricht, Netherlands, 3–4 July 2014), the Chair presented a note on the possible role of the Committee in facilitating implementation of the Protocol (PRTR/C.1/2014/Inf.1).¹ It was suggested that the Committee could undertake a technical assessment of the Protocol's provisions, identify the systemic challenges to full implementation of the Protocol and develop recommendations on how to address them.

4. The Committee expressed its general support for the document, and agreed that it had a potential role to play in facilitating the Protocol's implementation. The Meeting of the Parties at its second session (Maastricht, Netherlands, 3–4 July 2014) subsequently welcomed the note (ECE/MP.PRTR/2014/4, para. 35).²

C. Purpose of this document

5. Against that background, this document has been developed by the Committee to help Parties to implement and comply with the Protocol. It draws on individual contributions provided by Committee members, and is based on an analysis of the information contained in the national implementation reports (NIRs)³ in the 2014 reporting cycle under the Protocol, as well as on comments made by Parties.

6. Chapter II describes general systemic issues that have been identified and suggests ways to tackle them. Chapter III describes issues that arise with respect to particular provisions in the Protocol, also with some suggestions about how to address those issues.

¹ Available from http://www.unece.org/prtrmopp2_docs.html (category II document).

² Available from http://www.unece.org/prtrmopp2_docs.html.

³ All NIRs from the 2014 reporting cycle are available from http://www.unece.org/env/pp/prtr_reports_implementation_2014.html.

Chapter IV introduces a list of selected good practices, structured according to different work areas related to the Protocol's implementation.

7. The document will be reviewed and refined periodically, on the basis of input from all Parties and stakeholders; in this way it will be improved continuously and its value will increase. Not only will it serve as a freestanding resource, it may also provide a contribution to the Committee's work on providing advisory support to Parties and other States wishing to accede to the Protocol, as well as on strengthening expert capacities.

8. The Working Group of the Parties at its fourth meeting is expected to consider the document with the view to its approval and submission to the Meeting of the Parties at its third session for consideration.

II. Systemic issues relating to the implementation of the Protocol

A. Ensuring the quality and completeness of reported information

9. The general value of pollutant release and transfer registers (PRTRs) depends on the usability and comparability of the data provided. Although experience with the operation of PRTRs is increasing, it is still a challenge to ensure that complete and quality-controlled data can be made available to the public. In order to ensure the completeness of PRTRs, it is desirable that claims of confidentiality for PRTR data are in general not authorized or authorized only in a very restrictive way. To keep information held on the register confidential, article 12 of the Protocol must be fully respected.

Recommendations

10. Parties should strive for systematic quality assessment of the data contained in their PRTR; the methodology for this should be continuously improved. In this context the full implementation of article 10 is essential.

11. In order to avoid giving the false impression of completeness of a PRTR, Parties should ensure that the lack of public access to specific PRTR data be clearly marked in the register, by applying paragraph 3 of article 12.

B. National pollutant release and transfer registers

12. NIRs from a number of Parties suggested that there may be issues to address concerning the fulfilment of the obligation to establish national PRTRs, as opposed to only reporting on regional obligations, such as those arising under the European Pollutant Release and Transfer Register (E-PRTR).

Recommendation

13. Parties should consider the extent to which the E-PRTR implements their obligations arising under the Protocol and to report accordingly.

C. Reporting on diffuse sources

14. The inclusion of diffuse sources is one of the core elements of a PRTR. Diffuse sources means the many smaller or scattered sources from which pollutants may be released to land, air or water, whose combined impact on those media may be significant and for which it is impractical to collect reports from each individual source (art. 2, para. 9).

15. Compared to the integration of larger point sources, such as facilities, competent authorities must take a different approach with regard to data on diffuse sources of pollution. However, reporting on diffuse sources may turn out to be challenging and resource intensive. Parties need to identify possible sources and make decisions with regard to their national priorities. This can include clarifying which diffuse sources can be covered and how their emissions can be quantified in a reasonable way. Estimating the possible impact of a diffuse source of pollution on human health and the environment might help to identify national priorities.

Recommendations

16. To ensure completeness of reporting with respect to PRTRs where diffuse sources have not been integrated into a PRTR system, Parties should start the inclusion process and be able to give a timeline for its implementation, and strive to achieve consistency and reliability. They should not hesitate to seek initial advice from Compliance Committee experts and can draw on a number of resources related to the issue, such as the 2008 *Guidance on Implementation of the Protocol on Pollutant Release and Transfer Registers* (ECE/MP.PP/7, p. 63 ff.),⁴ and resources from those Protocol Parties that are more advanced in the field and make related documents available on their PRTR web pages. A listing of such resources should be compiled, for example, on the PRTR.net web portal,⁵ and Parties should provide the secretariat with relevant information and weblinks to this end.

D. Reporting on releases to land

17. The absence of information about good practices or challenges related to the reporting on releases to land in NIRs might indicate that many PRTR systems are incomplete and Parties can still improve their understanding of the matter. The causes for this may include regulatory and legislative complexity, the need for investment in technical infrastructure and limited scientific research in the field. In this context, the problematic issue of how to deal with contaminated sites, e.g., storage places, such as abandoned industrial or former military sites, also needs to be addressed. These sites might contribute significantly to local pollution.

Recommendations

18. Challenges related to the reporting on releases to land must be discussed at the national and international levels and the underlying challenges identified and addressed in order to enable Parties to fulfil the Protocol's provisions and make knowledge on releases of pollutants to land available to the public.

19. Parties should consider integrating information on storage sites in PRTRs, where appropriate. It should be considered a priority to help make information on this issue accessible for the public through PRTRs.

E. Public participation and awareness

20. A lack of public interest in PRTRs can be observed in many countries. The general public seems often unaware of the existence of PRTR systems. This puts at stake the

⁴ Available from <http://www.unece.org/env/pp/prtr.guidancedev.html>.

⁵ See <http://www.prtr.net/en/>.

intentions of the Parties and Signatories to the Protocol on PRTRs. Public participation and awareness is crucial for PRTRs to become effective tools to change the behaviour of polluters and influence decision makers, and thereby reduce the release of pollutants to air, land and water.

21. The Compliance Committee understands that first steps in the implementation of PRTRs are mostly of a technical and administrative nature. Results from the 2014 reporting cycle show that when a PRTR system fulfils the technical requirements, Parties' efforts need to shift focus towards the provisions formulated in article 15 related to creating public awareness, by promoting PRTRs and providing assistance and guidance in understanding and using the information they contain.

22. It needs to be noted that in some countries access to information technology (IT) infrastructure is still scarce, which reduces the impact of the electronic tools made available to help the public to access data and participate in the use and development of PRTRs. General efforts to improve public access to IT infrastructure are thus welcome as they will help increase access to PRTR systems.

Recommendations

23. In addition to the promotion of the Protocol and capacity-building activities, and with the aim to enable to implement article 15, it seems appropriate for Parties to the Protocol to:

- (a) Measure stakeholder awareness;
- (b) Analyse how PRTR systems are used;
- (c) Analyse how existing PRTR systems can be more useful for different groups of stakeholders;
- (d) Identify ways to foster public involvement, including the tools and best practices for doing so.

24. In this context, it is recommended that efforts be made at the national as well as at international level to:

- (a) Identify potential stakeholder groups;
- (b) Collect and share information about what kind of PRTR-related information the public and other stakeholders already consult;
- (c) Understand what kind of further information they would like to consult.

III. Specific issues regarding particular provisions

A. General provisions, core elements and design and structure of a pollutant release and transfer register system — articles 3, 4 and 5

1. Search categories for the database

25. Some Parties only partially cover the search categories listed in the Protocol under article 5, paragraph 1, and a few Parties have no national database with appropriate search functions as required by the Protocol.

26. Reasons for the inability of some Parties to fully implement these provisions may include a lack of resources and/or technical capacities, the chosen approach for establishing

the national PRTR system or the specifics of national reporting systems (e.g., combination of data generated under different reporting obligations).

Recommendations

27. In relation to the search categories for the database, it is recommended that:

- (a) Technical and/or financial support be provided to Parties that need assistance in the development of their national databases with appropriate search functions;
- (b) The specific problematic areas presenting challenges to the elaboration of search categories in national reporting systems should be identified and addressed;
- (c) Parties should share good practices in this area, including with other interested States.

2. Protection of whistle-blowers

28. There were significant discrepancies in the responses provided by Parties in the 2014 reporting cycle related to the protection of whistle-blowers, as well as a lack of information provided about such cases, which makes it impossible to draw conclusions about systemic challenges in this context. However, some Parties reported that no measures had been taken with respect to this issue. Many Parties referred to the general constitutional or other legislation for citizens exercising their rights. Some Parties reported that the protection of whistle-blowers was implemented via anticorruption legislation or rights of the public to appeal violations of their rights or interests; however, this leads to the question whether such protection is relevant only in cases of a violation of rights or interests, or whether anybody can report the violation of national law without a need to prove an interest. For the assessment of potential systemic challenges, more details are also needed with regard to protection of employees of a facility who report a violation of national laws by that facility.

Recommendations

29. Regarding the protection of whistle-blowers it is recommended that:

- (a) Additional information be provided on the specific legislation, practical measures and related cases;
- (b) A system that allows for the identification and collection of information on such cases, whether positive or negative, should be established.

3. Influence of the public on PRTR design and structure

30. A lack of opportunity for the public to participate in the development and modification of a PRTR could be an issue of concern. A number of European Union (EU) countries reported that the E-PRTR Regulation⁶ applies directly in their national legal system and is part of the national PRTR regulatory system. It needs to be assessed whether, where there is no national PRTR, the public at the national level is allowed and has the opportunity to participate and how it is ensured that the public can influence the process of development and modification of a PRTR, e.g., by providing comments in the case of significant changes, or whether the public can suggest modifications, such as to the list of substances, accessibility, etc.

⁶ Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC, 2006 O.J. (L 33), pp. 1–17.

Recommendations

31. Recommendations regarding the influence of the public on PRTR design and structure include:

(a) The issue of limitations on public participation might need to be examined for countries that directly implement the EU E-PRTR Regulation and base their PRTR system on E-PRTR only;

(b) In reporting on public participation in PRTR development, additional information should be provided on:

(i) Relevant legislative provisions;

(ii) Practical measures;

(iii) Best practices.

(c) Specific guidance on public participation in the development and modification of PRTR would be useful.

B. Reporting requirements — article 7**1. Lists of activities and pollutants**

32. With regard to annexes I (activities) and II (pollutants) of the Protocol, the 2014 reporting cycle showed that almost all Parties exceed the minimum requirements of the Protocol and have added substances or activities to their national legislation on PRTRs. Meanwhile discussions have started on the merits of realizing synergies between the Protocol and other international instruments, including the Economic Commission for Europe (ECE) Convention on Long-range Transboundary Air Pollution.

Recommendation

33. Given that the minimum requirements set out in the Protocol for activities and pollutants to be covered by their PRTRs are exceeded by almost all Parties, Parties should exchange information and views, as provided for in article 6, paragraph 2, of the Protocol, and consider whether to revise annexes I and II by adding additional activities and/or substances.

2. Diffuse sources

34. Some Parties already included data on emissions on diffuse sources; others have not started the process of inclusion. Data on diffuse sources have to be included in PRTRs provided that:

(a) The Party determines that data are being collected by the relevant authorities, which means that there are data (e.g., from other reporting obligations or from research projects);

(b) The data can practicably be included.

Where no data are available, the Party must take measures to initiate the collection of emissions from one or more diffuse sources in accordance with its national priorities (art. 7, para. 7).

35. Emissions from diffuse sources are essential for a complete picture of pollutant sources. Some key pollutants originate to a higher ratio from diffuse sources than from facilities. Examples are nitrogen oxides (NO_x) from traffic or ammonia (NH₃) from agriculture. Including emissions from diffuse sources into the national registers, however,

takes time because methodologies have to be developed or adapted and the data have to be collected.

Recommendations

36. Parties should consider if more guidance on inclusion of emissions from diffuse sources is needed. Methodological and technical exchange among the Parties and with other ECE multilateral environmental agreements could be helpful in combination with sharing of good practices and software tools for the graphic display of data from diffuse sources.

3. Scope of information required under the national PRTR system

37. As described in the synthesis report on the implementation of the Protocol (ECE/MP.PRTR/2014/5),⁷ some Parties do not seem to comply with all the requirements of article 7, paragraphs 5 and 6. These paragraphs set out the general scope for reporting on transfers or releases of pollutants.

Recommendations

38. Parties should carefully check if they need to undertake efforts to fully comply with the requirements of article 7, paragraphs 5 and 6.

39. In order to make the PRTRs more useful, Parties should consider providing additional, optional information, such as:

- (a) The number of employees or production volume;
- (b) Energy and water consumption;
- (c) Fuel provided (energy sector);
- (d) Lower thresholds for waste amounts;
- (e) Waste codes;
- (f) Regional codes;
- (g) The river basin district;
- (h) NACE⁸ codes.

40. Upon request, the Compliance Committee or the Bureau could offer preliminary assistance in order to find appropriate solutions for good practice.

C. Reporting cycle — article 8

41. No specific systemic challenges with regard to the Protocol's provisions on the reporting cycle (art. 8) were identified in the NIRs submitted for the first reporting cycle (2014). Nevertheless, the benefit to be had from exceeding the Protocol's provisions and making good quality data available in a timely manner to all stakeholders was also evident.

⁷ Available from http://www.unece.org/prtrmopp2_docs.html#/ (category II document).

⁸ NACE is the “statistical classification of economic activities in the European Community” (“nomenclature statistique des activités économiques dans la Communauté européenne”).

Recommendations

42. Data should be made available as soon as possible in order to increase the usefulness of the database to the public. For example, a significant number of Parties reported in the 2014 reporting cycle that they made data available within 12 months after the end of the reporting year. Parties might also be able to share insight with interested peers about practical arrangements related to this practice, including, e.g., on how to achieve a 100 per cent rate for electronic submission of PRTR data.

D. Access to justice — article 14

43. No specific systemic challenges have been identified through the NIRs for the first reporting cycle with regard to access to justice. The only reason for potential concern is the complete absence or non-identification of cases. There may be different reasons for this — it could be due to a lack of user friendliness of a PRTR for the general public, the technical nature of the register, etc., or it could simply be the non-availability of statistical data on the actual cases.

Recommendations

44. Noting that almost all the Parties to the Protocol on PRTRs are also Parties to the Aarhus Convention, any systemic challenges that Parties may face, as well as solutions and recommendations to overcome them, regarding access to justice can be sought in the work of the Task Force on Access to Justice under the Convention. The provisions of the Aarhus Convention's article 9 are broader and cover almost all the issues that may arise in relation to accessing justice in environmental information cases.

E. International cooperation — article 16

45. While the benefits of cooperating with other Parties is widely recognized by Parties, bilateral approaches are often limited due to a lack of financial resources and capacity of staff.

Recommendations

46. In the light of the general issue of limited resources for international cooperation, Parties should more actively exchange information with other Parties and combine their efforts with the aim of more easily overcoming common obstacles. Obstacles occur in the process of implementing the Protocol as well as in operating a PRTR system. Parties can work together, for example, through:

- (a) Sharing experience more widely using electronic means;
- (b) Creating a working group with neighbouring countries to combine limited resources and make use of synergies;
- (c) Making information available in ECE languages such as English, provided that there are available resources to do so;
- (d) Participating in sessions and workshops, e.g., of the Parties to the Protocol on PRTRs and the international PRTR coordination group;
- (e) Including a component on PRTR cooperation in economic cooperation plans, e.g. trade agreements;

(f) Using PRTR data as basis for cross-border cooperation, e.g., related to projects for water protection or reducing emissions to air, or in the framework of other conventions, such as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention).

47. Parties are also encouraged to use existing tools, such as the PRTR capacity-building database and PRTR:learn.⁹ In that context, feedback from users will help to develop such tools and further and increase their value in solving PRTR-related problems.

IV Selected good practices

48. The sharing of good practices among Parties and stakeholders is a key factor for good cooperation under the Protocol. Parties and stakeholders are encouraged to submit good practices to the secretariat.¹⁰ All incoming suggestions will be analysed and made available on the global PRTR portal, PRTR.net. Furthermore, Parties are encouraged to promote their work, including activities that go beyond the Protocol and the use of the recommendations addressed in this document, by making their efforts public and sharing their experience through PRTR.net or the Protocol's website. The selected good practices are structured according to the seven topic areas set out in sections A to G below.

A. Organization of work at the national level

49. Good practices regarding the organization of work at the national level include:

(a) Establishing working groups to deal with the implementation of a PRTR (e.g., see the NIR submitted by Spain);

(b) Forming a PRTR stakeholder group, which includes representation from all competent authorities, regularly meets to consider all aspects of PRTR data (e.g., trends, issues and improvements) and takes joint steps to secure uniform action (e.g., see the NIRs submitted by the United Kingdom of Great Britain and Northern Ireland or the EU).

B. Database design

50. Among good practices regarding the database design are to:

(a) Use open source software for cost reduction and possible cooperation in the further development of the database software (e.g., see the NIR submitted by Germany);

(b) Use an integrated reporting form for all environmental data and store the information in a database that is searchable from different points of view and for different reporting obligations (e.g., see the NIRs submitted by the Flemish and Walloon Regions of Belgium). Key aspects related to this practice are:

(i) To avoid double reporting;

(ii) Have the same source data for all reporting requirements, resulting in the process being transparent (enabling to trace all data), consistent, comparable, reported and backed by the facility operator (Tier 3 detailed information) and verified and validated by the competent authority;

⁹ See <http://apps.unece.org/ehlm/pp/NIR/RLsearch.asp> and prtr.unitar.org, respectively. Both websites are also available on the PRTR.net web portal (<http://www.prtr.net/>).

¹⁰ Please use prtr.survey@unece.org to submit any suggestions for good practices.

(c) Provide owners and/or operators and the competent authorities with simplified reporting and easy access through the design of the electronic reporting system (e.g., see the NIRs submitted by Austria, Serbia or Spain);

(d) Aim for 100 per cent online reporting;

(e) Provide the possibility to download PRTR search results in file format (e.g., see the NIRs submitted by Spain or Switzerland).

C. Data quality

51. Selected good practices regarding data quality include:

(a) Expansion of the E-PRTR cross-pollutant-check tool¹¹ (e.g., see the NIR submitted by Germany);

(b) Improvement of applied emission factors, which are used in reporting tools (e.g., see the NIR submitted by Germany).

D. Pollutants, activities and emissions from diffuse sources

52. Good practices regarding pollutants, activities and emissions from diffuse sources include:

(a) Making a periodic analysis of reporting to the PRTR system and adjusting practices according to the results, as appropriate, to effectively reflect new developments (e.g., see the NIR submitted by Serbia);

(b) Including data on diffuse emissions from products, considering the gradual improvement of methodologies for obtaining such data (e.g., see the NIR submitted by Denmark).

E. Website design and improved usability

53. Good practices for website design and improving the usability of the PRTR are:

(a) A multilingual design and/or the availability of information in several languages, including English and national language(s) (e.g., see the NIRs submitted by Serbia, Spain or Switzerland);

(b) To test the website among people outside the organization or agency setting up the PRTR before launching the site. This can provide useful information on how to build a user-friendly website with quick and easy access to emission data (e.g., see the NIR submitted by Norway);

(c) To provide information on various chemical substances used in production processes and emitted from their use, as well as their possible impacts on human health. This is a relevant tool to inform the public according to its needs and demands (e.g., see the NIRs submitted by Latvia or Spain);

¹¹ Available from http://forum.eionet.europa.eu/x_e-prtr-reporting/library/e-prtr/e-prtr-incompleteness-check/cross-pollutant-check/e-prtr-cross-pollutant-check-methodology-background-report-and-manual-v3.

(d) To supply additional explanations and/or information for the public, e.g., a section of the website with material containing relevant legal and technical references;

(e) To include tools for data visualization, for example, the possibility to view graphics showing time series data (e.g., see the NIR submitted by Spain);

(f) To provide more possibilities for searching, consultation, or queries than foreseen in the Protocol (e.g., see the NIRs submitted by France, Germany, Ireland, the Netherlands, Norway, Spain or Sweden).

F. Promotion of pollutant release and transfer registers and awareness-raising

54. In promoting PRTRs and awareness-raising, among others, it is a good practice to:

(a) Strengthen international activities to promote the national register (e.g., see the NIRs submitted by Germany, Spain or Sweden);

(b) Collect and analyse statistics about visitors or users of PRTR webpages, their queries and other related information (e.g., see the NIRs submitted by Spain or Switzerland).

G. International cooperation

55. Good practices regarding international cooperation include:

(a) Pragmatic cooperation between neighbouring countries (e.g., the Nordic PRTR group, comprising Denmark, Finland, Norway and Sweden; Switzerland allowing Liechtenstein to use its electronic database for reporting; and countries sharing data with their neighbours through E-PRTR);

(b) Where there are other relevant fields of cooperation, such as economic cooperation, including a component for cooperation regarding PRTRs, as has been done between Israel and Japan under the coordination of the Israeli Foreign Ministry (see the NIR submitted by Israel);

(c) Use PRTR data as basis for cross-border cooperation, e.g., related to projects for water protection or reduction of emissions to air, and in the framework of other agreements, such as the Basel Convention.
