

**To:**  
 Compliance Committee  
 of the Protocol on Pollutant Release and Transfer Registers  
 through the Secretary to the Aarhus Convention  
 United Nations Economic Commission for Europe  
 Environment and Human Settlement Division  
 Room 332, Palais des Nations  
 CH-1211 Geneva 10, Switzerland

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**From:**  
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### **Comments to the Law of Ukraine ‘On the National Pollutant Release and Transfer Register’**

Environment-People-Law welcomes the requests for advice from Ukraine for the PRTR Protocol Compliance Committee’s review of the Law of Ukraine on National PRTR. In light of the upcoming hearing of the compliance case (PRTRPCC/C/2020/1) and the review of the said law by the PRTR Protocol Compliance Committee within the request for advice proceedings (PRTRPCC/A/2022/1) we would like to bring to the Compliance Committee’s attention a few aspects of our concern.

#### **1. Definition of ‘release’**

The Law of Ukraine ‘On the National Pollutant Release and Transfer Register’ (hereinafter - the PRTR Law) contains a definition of ‘release’ that in our opinion might not be in line with the relevant definition in the PRTR Protocol.

In particular, whereas the PRTR Protocol’s definition includes **any introduction** of pollutants into the environment **whether deliberate or accidental, routine or non-routine**, the PRTR law defines release as **introduction** of pollutants into the environment, **in particular, releases, exceeding the normative limit values, accidental releases.**

<b>THE LAW OF UKRAINE On the National Pollutant Release and Transfer Register - <i>unofficial translation of the law provided by the Party concerned</i></b>	<b>THE LAW OF UKRAINE On the National Pollutant Release and Transfer Register - <i>official text of the PRTR Law in Ukrainian</i></b>	<b>PROTOCOL ON POLLUTANT RELEASE AND TRANSFER REGISTERS</b>
release - introduction of pollutants into the environment as a result of human activity, <b>in particular, releases, exceeding the normative limit values,</b>	викид - потрапляння забруднювачів у довкілля в результаті антропогенної діяльності, <b>зокрема наднормативні, залпові викиди,</b> включаючи розлиття, закачування, видалення, у тому числі	“Release” means <b>any</b> introduction of pollutants into the environment as a result of any human activity, <b>whether deliberate or accidental, routine or non-routine,</b> including spilling, emitting, discharging, injecting,

<b>accidental releases<sup>1</sup></b> , including spillage, injection, disposal, including landfilling, deposition of extractive industries waste in heaps, discharge into water bodies or discharge through sewage systems without final return (wastewaters) waters treatment;	захоронення, розміщення у відвалах відходів, скид у водні об'єкти чи скидання через системи каналізації без остаточного очищення зворотних (стічних) вод;	disposing or dumping, or through sewer systems without final waste-water treatment;
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According to *Methodology for calculating the amount of compensation for damages caused to the state as a result of releases, exceeding the normative limit values, of pollutants into the atmospheric air* (approved by the Order of the Ministry of Environmental Protection of Ukraine № 277, 28.04.2020) ‘releases, exceeding the normative limit values’, mean

- releases of pollutants that exceed the emission limit values established by a permit;
- releases of pollutants for which there is no permit, including certain pollutants, the emissions of which are subject to regulation in accordance with legislation;
- releases that are carried out in excess of the technological norms of permissible emissions of polluting substances, discharged from certain types of equipment, structures at the place of their exit from the installation, established in the permit;
- releases that are carried out in case of failure to fulfil planned measures to reduce emissions of polluting substances within the time limits established in the permit;
- emergency releases (the releases of polluting substances into the atmospheric air at a stationary source of release which occurred as a result of an industrial accident that led to failure of dust-and-gas cleaning equipment).

In our opinion, by omitting the word ‘any’ in relation to introduction of pollutants into the environment and naming only illegal and non-routine types of introductions in the definition of ‘release’ the PRTR law allows for a legal uncertainty as to whether “release” includes introduction of pollutants into the environment as a result of normal operation conditions within the emission limit values established by the respective permits.

## 2. Environmental information

In Article 14 para 11 the PRTR Law provides that data on releases and transfers of pollutants and waste contained in the Register, **except for** the data specified in part three of Article 16 and points 1-4 of part three of Article 17 of this Law, constitute environmental information. The official Ukrainian text of the law clearly says ‘крім даних’ which translates as ‘except for the data’.

<b>THE LAW OF UKRAINE</b> <b>On the National Pollutant Release and Transfer Register</b> - <i>unofficial translation of the law provided by the Party concerned</i>	<b>THE LAW OF UKRAINE</b> <b>On the National Pollutant Release and Transfer Register</b> - <i>official text of the PRTR Law in Ukrainian</i>
Article 14	Стаття 14

<sup>1</sup> We believe **accidental releases** is not a correct translation of ‘залпові викиди’ (releases exceeding the levels under normal operating conditions, for example in case of start up and shut down of air emission sources), a more accurate translation would be abnormal releases or non-routine releases.

<p>11. Data on releases and transfer of pollutants and waste contained in the Register, <b>in addition</b><sup>2</sup> to the data specified in part three of Article 16 and points 1-4 of part three of Article 17 of this Law, refer to information on the state of the environment (ecological information).</p>	<p>11. Дані про викиди та перенесення забруднювачів і відходів, що містяться у Реєстрі, <b>крім даних</b>, зазначених у частині третій статті 16 та пунктах 1-4 частини третьої статті 17 цього Закону, відносяться до інформації про стан довкілля (екологічної інформації).</p>
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The PRTR Law thus establishes that the following information included in the PRTR register **does not** constitute environmental information:

- 1) name, address (location) of the object<sup>3</sup>, geographic coordinates of the industrial site;
- 2) data on the operator, specified in point 9, part five, Article 14 of this Law;
- 3) name of the parent company of the operator (if available);
- 4) type or types of activity, defined by the list of types of activities that are carried out at the facility, in respect of which the operator's report is submitted.

In our opinion, given the special relation of the PRTR Protocol and Article 5.9. of the Aarhus Convention the above-mentioned provision is not in line with the PRTR Protocol and the Aarhus Convention.

### 3. Confidential information

In our opinion the PRTR Law does not implement Article 12 of the PRTR Protocol on confidentiality fully.

#### 3.1. Regarding a decision to keep information held on the register confidential

According to Article 17.6 of the PRTR Law the operator is entitled to exclude from the operator's report any data that in their opinion is classified as information with limited access<sup>4</sup>. By doing so the PRTR Law creates a system where a competent authority will not be able to access to, compile or act upon information on pollutants release and transfer that the operators deem limited access (whether the operator claims it to be a state or a commercial secret). This information will not be included in the report by the operator, and it will not appear on the PRTR register.

Under the Law the competent authority is not vested with neither the authority, nor adequate information to make a decision on keeping information to be included in the register confidential. The PRTR law does not authorize the competent authority to assess the reasons provided by an operator for not including a certain data into their report, to reject the operator's report or to order to release the information in case the competent authority is not satisfied with the operator's justification for excluding the data.

<p><b>THE LAW OF UKRAINE</b>  <b>On the National Pollutant Release and Transfer Register -</b>  <i>unofficial translation of the law provided by the Party concerned</i></p>	<p><b>PROTOCOL ON POLLUTANT RELEASE AND TRANSFER REGISTERS</b></p>
<p>Article 17</p>	<p>Article 12</p>

<sup>2</sup> Incorrect translation, shall read 'except for'

<sup>3</sup> In some cases, translated as 'facility'

<sup>4</sup> 'Information with limited access' is a generic term in the Ukrainian legislation covering all types of exceptions in access to information

<p>...</p> <p>6. The operator has the right not to include in the operator's report the data provided for in part three of this Article, provided that such data is classified as information with limited access in accordance with part three of Article 13 of the Law of Ukraine "On Information". The operator must provide the competent authority with an explanation justifying the reason for not including the specified data in the operator's report.</p> <p>...</p> <p>11. The grounds for refusing to accept the operator's report are:</p> <p>1) submission of an operator's statement and report by a person who did not have the right to submit such documents;</p> <p>2) detection of inaccurate information in the operator's statement and report submitted by the operator;</p> <p>3) the presence of circumstances provided for in part five of Article 20 of this Law.</p> <p>...</p>	<p>1. Each Party may authorize the competent authority to keep information held on the register confidential where public disclosure of that information would adversely affect...</p>
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*3.2. Regarding interpreting the exceptions in a restrictive way*

Furthermore, the PRTR law does not include requirements of Article 12.1 para 2 of the PRTR Protocol regarding interpreting the exceptions in a restrictive way, taking into account the public interest served by disclosure and whether the information relates to releases into the environment as well as of Article 12.2 of the PRTR Protocol regarding considering for disclosure of any information on releases which is relevant for the protection of the environment.

February 10, 2023