

Juan Luis Martin Ortega
Chair of the Compliance Committee under 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

Madrid, 05 May 2023

Dear Ms. Kyreieva,

The Compliance Committee, at its thirteenth meeting (Geneva, 7-8 March 2023), held hearings with regard to the communication (PRTRPCC/C/2020/1 (Ukraine))¹ and with regard to the request for advisory support (PRTRPCC/A/2022/1 (Ukraine))² with the presence of the Party concerned and the communicant for the communication (PRTRPCC/C/2020/1 (Ukraine)). The Committee clarified a number of issues and considered that it requires more information with regard to the communication (PRTRPCC/C/2020/1 (Ukraine)) and with regard to the request for advisory support (PRTRPCC/A/2022/1 (Ukraine)). The Committee agreed to send questions to the Party concerned to seek additional information. Please find enclosed the questions prepared by the Committee for your attention.

The Committee would be very grateful to receive your replies on or before 30 June 2023. Please send your replies to prtr.survey@un.org and do not hesitate to contact the secretariat if you have any questions regarding the above.

Yours sincerely,

Juan Luis Martin Ortega

Enc.: Questions from the Committee to the Party

Ms. Viktoriia Kyreieva
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Department of Industrial Pollution Prevention and Climate Policy
Ministry of Environmental Protection and Natural Resources
Kyiv
Ukraine



¹ See https://unece.org/env/pp/protocol-on-prtrs/cc/pre.prtrpcc.c.2020.1_ukraine.

² See <https://unece.org/env/pp/protocol-on-prtrs/protocol-bodies/cc/advice-or-assistance-Ukraine>.

Advisory support PRTRPCC/A/2022/1 (Ukraine)

Questions from the Protocol on PRTRs Compliance Committee to the Party concerned after the hearings, held on 7 March 2023

The current document contains the questions prepared by the Protocol on PRTRs Compliance Committee for Ukraine under advisory support procedure concerning assessment of the Law of Ukraine on National PRTR vis-à-vis the provisions of the Protocol on PRTRs (PRTRPCC/A/2022/1 (Ukraine)). The questions are formulated per article of the Protocol and are accompanied with a brief explanatory note on the context of each question. The questions are prepared after the hearing concerning the above communication, held on 7 March 2023 at the Committee's 13th meeting.

Article 2 - Definitions

During the hearing, Ukraine clarified to the Committee that when defining the term 'release,' no indication is made that subject to reporting are deliberate releases, because the notion of releases as a result of human activity covers these instances. It was also indicated the remaining terms 'facility', 'pollutants' and 'transfer' are in line with the definitions of the PRTR Protocol.

Meanwhile, it is the Committee's understanding that in the definition 'facility' no mention is made of 'adjoining sites' which is important to determine the boundaries of the facility and, respectively, for any movement to be classified as 'on-site' or 'off-site' transfer. Also, in the definition of the term 'transfer of pollutants and waste' it is indicated that the transfer is the movement outside of "industrial site" and not the 'facility.'

Lastly, the wording of the definition of the term 'pollutants' does not emphasize that the substances have negative impact on the environment and human health both because of their properties and the introduction into environment.

***Question 1:** Could you please clarify to the Committee the reasons for the above-mentioned deviations? For example, because these terms were already defined in this way in other pieces of Ukraine's legislation? If yes, please provide references (with copies or links) to the relevant legislation.*

Article 3 - General provisions

Article 3, paragraph 3 of the PRTR Protocol requires that employees of a facility and members of the public who report to public authorities a violation by a facility of national laws implementing the Protocol are not penalized, persecuted, or harassed by that facility or public authorities for their actions in reporting the violation.

Question 2: *Could you please clarify if the legislation of Ukraine ensures protection of employees of a facility and members of the public who report a violation by a facility of national laws implementing the Protocol to public authorities from being penalized, persecuted or harassed by that facility or public authorities for their actions in reporting the violation? If yes, please provide references (with copies or links) to the relevant legislation (for example, legislation protecting whistle-blowers).*

Article 4 – Core elements

During the hearing, Ukraine informed the Committee that PRTR data will be freely available to the general public and all kinds of users. However, the Committee would like to note that in relation to the public access to the register, in several instances (e.g., Article 13, paragraph 1, Article 14, paragraphs 3 (3) and (11) U-PRTR Law refers to provision of access of PRTR data to the *users*, separately from provision of access to the general public. Similarly, the last sentence of Article 14, paragraph 11 indicates that the rights and obligations of the *users* of the register are determined by the Law of Ukraine “On public electronic registers” and “On access to public information”.

Question 3: *Since the U-PRTR Law does not define the term ‘users,’ could you please clarify the scope of the entities considered as “users” of PRTR data in the meaning of the U-PRTR Law, and the ways in which the “users” are different from the “general public”?*

Article 5 – Design and structure

In the paragraphs 1 and 2 of Article 14 and in some other provisions (e.g., Article 2, paragraph 1; Article 10, paragraph 2(1); Article 13, paragraphs 7(5) and 11) of the U-PRTR Law, the term “objects” is used, which, however, is not defined in the law.

Question 4: *Could you, please, clarify what “objects” mean in the context of the U-PRTR Law, and how different are they from the facilities?*

Article 7 – Reporting requirements

1. According to the U-PRTR Law, reporting is required for the pollutant releases and transfers covered by article 7 and above the applicable capacity thresholds specified in Annex I of the law for:

- a. releases of pollutants above Annex 2, column 1 thresholds;
- b. transfer off-site of hazardous waste exceeding the threshold of Article 7, paragraph 1 (a) (iii);
- c. transfer off-site of pollutants specified in Annex II in waste water exceeding the quantities of Annex 2, column 1(b); as well as for
- d. diffuse sources.

Article 7, paragraph 5 of the Protocol on PRTRs has a reference to Annex III (Waste disposal and recovery operations), while Annex III is not part of the U-PRTR Law. During the hearing, it was clarified by the

Party concerned that the lists of waste recovery and disposal operations is covered by the Law of Ukraine "On Waste Management".

Question 5: Could you, please, furnish the Committee with the list of recover and disposal operations as it appears in the Law of Ukraine "On Waste Management"?

2. Also, paragraph 3(6) of Article 17 of the U-PRTR Law on reporting the volume of each pollutant by the operators does not require the operator to submit PRTR data both in aggregate and in accordance to whether the release is into air, water, and land. The latter is one of the reporting requirements enshrined in Article 7, paragraph 5(c) of the Protocol.

Question 6: Could you clarify to the Committee if the operators will be required to submit data both in aggregate form and per environmental media? If yes, please provide references (with copies or links) to the relevant legislation.

Article 8 – Reporting cycle

According to the paragraph 2 of Article 8 of the Protocol, each Party (that is not a regional economic integration organization) shall ensure that the information is incorporated into its register within fifteen months from the end of each reporting year. However, the information for the first reporting year shall be incorporated into its register within two years from the end of that reporting year. It is the Compliance Committee's understanding, based also on the information provided to the Committee at the hearing, that U-PRTR law contains no provision on the timeline of incorporation of the data into the register, including for the first reporting year, except for diffuse sources (August 1 of the year following the reporting year).

Question 7: Could you, please, clarify if the Committee's understanding is correct. If yes, please, elaborate on the timeline within which the data will be incorporated into the register and provide references (with copies or links) to the relevant legislation?

Article 11 – Public access to information

1. In line with Article 11, paragraph 1 of the Protocol, Ukraine's PRTR is designed to be freely accessible to the public and other users to the PRTR data via Unified State Web Portal of Open Data and on the official website of competent authority, except for information with limited access (relevant for article 12 of the Protocol). Meanwhile, paragraphs 2, 3 and 4 of Article 11 of the Protocol envisage that:

- where the information contained in its register is not easily publicly accessible by direct electronic means, each Party shall ensure that its competent authority upon request provides that information by any other effective means, as soon as possible and at the latest within one month after the request has been submitted;
- access to information contained in its register is free of charge, but each party may allow its competent authority to make a charge of a reasonable amount for reproducing and mailing the specific information referred to in paragraph 2, but such charge shall not exceed a reasonable amount.

At the hearing, Ukraine informed the Committee that, though U-PRTR Law does not define the timelines for receiving the requested PRTR data (environmental information), and makes no reference to the power of competent authority to make a charge for reproducing and mailing the specific information, the respective requirements of the Protocol are covered by the Law of Ukraine "On Access to Public Information".

Question 8: *Could you please confirm that the Committee's understanding of the situation is correct? If yes, could you provide the Committee with the respective sections of the Law of Ukraine "On Access to Public Information".*

2. Also, during the hearings, Environment-People-Law NGO informed the Committee that in the draft U-PRTR Law the term 'крім даних' in Article 14 paragraph 11 of the original text of the law in Ukrainian means not '**in addition**', as translated in English version of the U-PRTR Law, but '**except for**'.

Question 9: *In regard to the comment from Environment-People-Law NGO, could you, please, clarify to the Committee whether the data listed in part three of Article 16 and points 1-4 of part three of Article 17 of the U-PRTR Law are exempted from the scope of environmental information?*

Article 12 - Confidentiality

The instances when information held on the Ukraine's PRTR may be kept confidential are not listed in the U-PRTR Law. Instead, Article 14 of the law refers to the Law of Ukraine "On Access to Public Information" where grounds for confidentiality may be found. Also, the U-PRTR Law contains no provision on the need to interpret the confidentiality grounds in a restrictive way, considering the public interest served by disclosure and whether the information relates to releases into the environment. During the hearings, Ukraine informed the Committee that those grounds and the scope of their interpretation are in line with the requirements of the Protocol.

Question 10: *Could you, please, provide the Committee with the section(s) of the Law of Ukraine "On Access to Public Information" which lists down the grounds for keeping certain PRTR data confidential and requires such grounds to be interpreted in a restrictive way?*

Article 13 – Public participation

It is the Committee's understanding that U-PRTR law does not regulate the process of informing the public about the final decision to establish or introduce significant changes to the PRTR and about the considerations on the basis of which such decisions have been taken, as it is required by Article 13, paragraph 3 of the Protocol. Also, it is neither specified in the U-PRTR law that such information should be made publicly available in a timely manner nor the deadlines and timeliness of providing information on changes to the PRTR are indicated.

Question 11: *During the hearings, Ukraine informed the Committee that the public is informed about the decisions of the Government of Ukraine and the consideration on the basis of which such decisions are*

taken via the official online platform and the templates where the information on the grounds of decision-making are collected. Could you please provide the Committee with information on:

- *opportunities for public participation in the development of its national pollutant release and transfer register, within the framework of its national law.*
- *opportunity for free public access to the information on the proposed measures concerning the development of national pollutant release and transfer register and for the submission of any comments, information, analyses or opinions that are relevant to the decision-making process,*
- *how the relevant authority shall take due account of such public input.*
- *when a decision to establish or significantly change its register has been taken, how information on the decision and the considerations on which it is based are made publicly available in a timely manner*

Please provide references (with copies or links) to the relevant legislation regarding the above points.

Article 15 – Capacity-building

U-PRTR law does not regulate the measures to promote public awareness about Ukraine’s PRTR, including the measures to facilitating public access, understanding and use of the information contained in the register. Additionally, the matter of enhancing the capacities of the responsible authorities and bodies to duly carry out their duties under the U-PRTR law is not covered by this law. During the hearings, Ukraine informed the Committee that to enhance the capacities of the responsible authorities, Ukraine plans to adopt methodological recommendations. Also, to promote public awareness a new platform “Ecosystem” will be created, where PRTR data will be available.

Question 12: *Could you provide the Committee with more details on how Ukraine plans to promote public awareness about Ukraine’s pollutant release and transfer register, and on accessing, understanding and using the information contained in it. Also, does Ukraine plan to carry out other capacity building of the relevant public authorities? Lastly, does any law/policy/regulation address the issue of capacity building?*

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Communication PRTRPCC/C/2020/1 (Ukraine)
**Questions from the Protocol on PRTRs Compliance Committee to the
Party concerned after the hearings, held on 7 March 2023**

The current document contains the questions prepared by the Protocol on PRTRs Compliance Committee for Ukraine in relation to the Communication PRTRPCC/C/2020/1 (Ukraine). The questions are formulated per article of the Protocol and are accompanied with a brief explanatory note on the context of each question. The questions are prepared after the hearing concerning this communication, held on 7 March 2023 at the Committee's 13th meeting.

Articles 3 (1) and 4

- In its 2021 national implementation report, Ukraine stated that:

“The Ministry is currently working to implement the PRTR Protocol and establish a national PRTR system as it develops and implements the single environmental platform “Eko.Diia” to collect, process, store and analyse data on the condition of the environment, the national environmental automated informational and analytical system to provide access to environmental data.”

***Question 1:** During the hearings of the above communication, held on 7 March 2023, Ukraine informed the Committee that the single environmental platform “Eko.Diia” was replaced by the new platform “EcoSystem”. National PRTR system will be a component of “EcoSystem”. The new platform “EcoSystem” is online, but its PRTR component is not yet online. Could you please confirm that the Committee’s understanding of these statements is correct? If the PRTR component is now online, please provide the Committee with the link to this component.*

- Also, in its national implementation report, Ukraine stated that:

- “The draft regulation of the Cabinet of Ministers “On approving the Concept of digital development and digital transformation in the sphere of environmental protection, rational resource use, ensuring environmental safety of human livelihood” has been developed and referred for approval to the concerned authorities (hereinafter during the hearing and thereafter: “Draft Regulation on approving the concept of digital development”).
- The draft Plan to implement digital development and digital transformation in the sphere of environmental protection, rational resource use, ensuring environmental safety of human livelihood has been developed (hereinafter during the hearing and thereafter: “Draft Plan to implement digital development and digital transformation”).
- The draft order on the single environmental platform “Eko.Diia” has been developed and referred for approval to the concerned authorities (hereinafter during the hearing and thereafter “draft order on “Eko.Diia”).

Question 2: During the hearings held on 7 March 2023, Ukraine informed the Committee that since the platform “Eko.Diia” was replaced by the platform “EcoSystem”, some of the above draft regulations are not relevant anymore. Could you please confirm that the Committee’s understanding of these statements is correct and provide the Committee with an update on the status of each of the following, and, if relevant, the expected timeline for the adoption and entry into force of :

- “Draft Regulation on approving the concept of digital development”;
 - “Draft Plan to implement digital development and digital transformation”;
 - “Draft order on “Eko.Diia”?
- Regarding article 3(1), the Ministry of Environmental Protection and Natural Resources of Ukraine informed the Secretariat that it plans to develop during 2023 the following regulations:
- Resolution of the Cabinet of Ministers of Ukraine on approval of the procedure for maintaining the Register;
 - Resolution of the Cabinet of Ministers of Ukraine on approval of the requirements for the report of the authorized body, the procedure for drawing up and publishing such a report;
 - Decree on approval of the operator's report form;
 - Decree on the approval of the form of the certificate on diffuse sources, the procedure for drawing up and submitting such certificates to the authorized body;
 - Decree on the approval of the form of the protocol on the violation by the operator of the requirements of legislation in the field of registration of emissions and transfer of pollutants;
 - Methodological recommendations in the field of registration of emissions and transfer of pollutants.

Question 3: During the hearings held on 7 March 2023, Ukraine informed the Committee that due to cyber-attack on governmental website the webpages of the Ministry were not accessible. Therefore, the above draft regulations are planned to be made available online for possible comments by the public by 7 April 2023. Could you please inform the Committee if the drafts have been made available online for possible comments and: (i) if yes, when and for how long; or (ii) if not, what were the reasons? Can you also provide an update on the status of development and plans for adoption of the above-listed regulations?

- In its response to an information request sent by the communicant on 27 May 2020, the Ministry of Energy and Environmental Protection of Ukraine replied that, in order to fulfil the obligations under the Protocol on PRTRs,
- (a) Draft Law “On Batteries and Accumulators”,
 - (b) Draft Law “On Wastes of Electrical and Electronic Equipment”,
 - (c) Draft Law “On Packaging and Packaging Waste”,
- had been developed and submitted for adoption, and number of laws, including, and not limited to the
- (a) Law “On waste disposal”,
 - (b) Law “On waste incineration”,
 - (c) Law “On waste oil”,
 - (d) Law “On waste management of the extractive industry”.
- are in the process of drafting.

Question 4: During the hearings held on 7 March 2023, Ukraine informed the Committee that the above draft laws are not relevant anymore as they were superseded by the Law of Ukraine “On National Pollutant Release and Transfer Register” and Law of Ukraine “On Waste Management”. Could you please confirm that the Committee’s understanding of this statement is correct and the above draft laws are not relevant anymore in the context of articles 3 (1) and 4 of the Protocol? If they are still relevant, can you provide an update on the status of development, adoption or entry into force of these laws?

Question 5: *Could you please inform the Committee what are other measures taken or planned to be taken by Ukraine, including institutional, technical or practical ones, in order to implement article 3(1) of the Protocol (for example, trainings, seminars etc)?*

- With regard to Article 4(i), which states: “In accordance with this Protocol, each Party shall establish and maintain a publicly accessible national pollutant release and transfer register that:
...(i) Allows for public participation in its development and modification;”

Question 6: *Could you please explain what opportunities the public has to participate in the development and modification of national pollutant release and transfer register? Is this provided through legislation, regulations, or other measures?*
