

## Chapter Fifteen

# Procedures and Mechanisms for Review of Compliance under the 2003 Protocol on Pollutant Release and Transfer Registers to the 1998 Aarhus Convention

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### 1. BRIEF INTRODUCTION TO THE PROTOCOL ON POLLUTANT RELEASE AND TRANSFER REGISTERS TO THE AARHUS CONVENTION

The Protocol on Pollutant Release and Transfer Registers (PRTRs)<sup>1</sup> is an element of the international effort to prevent pollution from the release into the environment of dangerous substances, through the establishment of national registers of the release and transfer of certain pollutants. The basic idea is that enhancement of transparency and broad public access to emission data would put pressure on economic actors to reduce emissions in order not to publicly appear as “polluters”. The Protocol has been developed in the framework of the Aarhus Convention whose Article 5.9 requires each Party to

“take steps to establish progressively, taking into account international processes where appropriate, a coherent, nationwide system of pollution inventories or registers on a structured, computerized and publicly accessible database compiled through standardized reporting. Such a system may include inputs, releases and transfers of a specified range of substances and products, including water, energy and resource use, from a specified range of activities to environmental media and to on-site and offsite treatment and disposal sites.”

Article 10.2(i) also states that the Parties, at their first meeting, shall review their experience in implementing these provisions and

“consider what steps are necessary to develop further the system referred to in that paragraph, taking into account international processes and developments, including the elaboration of an appropriate instrument concerning pollution release and transfer registers or inventories which could be annexed to the Convention.”

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<sup>1</sup> Protocol on Pollutant Release and Transfer Registers (Kiev, Ukraine, 21 May 2003), not yet in force. Figures on status of ratification may be found at <<http://www.unece.org/env/pp/ratification.htm>> (visited 24 January 2008).

On this basis the Signatories to the Convention at their first meeting established a Task Force to review national experience with PRTRs.<sup>2</sup> Lately, it was proposed that this body should be replaced by an intergovernmental working group on PRTRs, charged with the task of preparing a legally binding instrument on PRTRs under the auspices of the Convention, with a view to its being ready for adoption at the fifth Ministerial Conference “Environment for Europe” to be held in Kiev in May 2003.<sup>3</sup> The UNECE Committee on Environmental Policy endorsed this proposal and established the Working Group that was lately reconvened as a Working Group on PRTRs under the Aarhus Convention in 2002 after the latter entered into force.<sup>4</sup> An extraordinary meeting of the Parties to the Aarhus Convention took place in Kiev back to back with the fifth Ministerial Conference “Environment for Europe”, and the PRTRs Protocol was adopted.<sup>5</sup>

Although being negotiated on the basis and in the framework of the Aarhus Convention, the Protocol is a fully self-standing instrument: it is open to accession by all States (and certain regional economic organizations) whether or not they are Parties to the Aarhus Convention or UNECE members.

The Protocol has the objective of securing the establishment and maintenance of comprehensive and easily accessible national registers of the release and transfer of certain pollutants. At present Annex II to the Protocol covers eighty-six pollutants, covering greenhouse gases, acid rain pollutants, ozone-depleting substances, and certain heavy metals and carcinogens.

The mechanism is based on the obligation to be placed by Parties on owners and operators of certain facilities within their jurisdiction to report annually detailed information (Article 7, paras. 5 and 6) on the release and transfer of covered pollutants to national authorities. Parties have a choice between two systems for singling out concerned facilities, provided that these exercise an activity included in Annex I.<sup>6</sup> The first method (Article 7.1(a)) is based on a combination between the capacity of the facility and the release or transfer of covered pollutants and hazardous wastes above established thresholds. The second method (Article 7.1(b)) is based on the combination between a minimum number of employees and the manufacture, processing or use of covered pollutants in certain threshold quantities. Reporting obligations arise only with respect to the pollutants for which thresholds are exceeded. A mechanism of review of the type of facilities, of the type of pollutants and of the relevant thresholds is provided (Article 6.2). Parties shall also take measures to ensure the quality of reported data (Article 10).

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<sup>2</sup> *Report on the First Meeting of the Signatories*, doc. CEP/WG.5/1999/2 (5 July 1999), Annex, paras. 41–44.

<sup>3</sup> *Report on the Second Meeting of the Signatories*, doc. CEP/WG.5/2000/2 (19 July 2000), paras. 25–28.

<sup>4</sup> See *Decision I/2 on Pollutant Release and Transfer Registers*, doc. ECE/MP.PP/2/Add.3 (2 April 2004).

<sup>5</sup> *Report of the First Extraordinary Meeting of the Parties*, doc. ECE/MP.PP/4 (5 August 2003), para. 23.

<sup>6</sup> The Annex mentions, *inter alia*, thermal power stations, refineries, mining and metallurgical industries, chemical plants, waste and waste-water management plants, and paper and timber industries.

The data collected shall then be organised, together with certain data on pollution from diffuse sources, by the designated national competent authority (subject to public participation requirements, Article 12) in a register that shall be accessible to the general public (Article 11), especially through electronic means and public telecommunication services (i.e., internet) (Article 11.1), in a way that permits the retrieval of the emission information in a variety of forms, including points of emission (i.e., specific facilities), owner or operator, type of pollutants and medium of release (air, water, soil, etc. ...) (Article 5). Confidentiality may be maintained on certain grounds, but these must be interpreted restrictively (Article 12).

The Protocol establishes an institutional structure composed of the Meeting of the Parties and a Secretariat, whose functions are carried out by the Executive Secretary of the UNECE. The MOP may establish subsidiary bodies.

## 2. LEGAL BASIS OF THE MECHANISM AND NEGOTIATING HISTORY

Under the heading “Review of Compliance”, Article 22 of the Protocol states that:

“At its first session, the Meeting of the Parties shall by consensus establish cooperative procedures and institutional arrangements of a non-judicial, non-adversarial and consultative nature to assess and promote compliance with the provisions of this Protocol and to address cases of noncompliance. In establishing these procedures and arrangements, the Meeting of the Parties shall consider, *inter alia*, whether to allow for information to be received from members of the public on matters related to this Protocol.”

This provision, which fails to make a mandatory reference to public involvement and to the option of communications from the public, has been described by NGOs<sup>7</sup> as weakening previous drafts<sup>8</sup> and a serious step back from the mechanism already established under the Aarhus Convention.<sup>9</sup>

At the request of the Signatories to the Protocol,<sup>10</sup> the Parties to the Convention established a Working Group on Protocol on PRTRs<sup>11</sup> with, *inter alia*, the task of drafting the legal documents regulating the procedure envisaged in Article 22. The Working Group requested the Secretariat to prepare a paper describing possible options, especially with regard to the relationship with the non-compliance

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<sup>7</sup> *Report on the Second Meeting of the Working Group on Pollutant Release and Transfer Registers*, doc. MP.PP/AC.1/2003/2 (12 August 2003), para. 73.

<sup>8</sup> See *Elements for Final Provisions of a Draft Instrument on Pollutant Release and Transfer Registers (PRTR) Prepared by the Secretariat*, doc. CEP/WG.5/AC.2/2001/6 (7 May 2001), Annex, Art. 20.

<sup>9</sup> On which see C. Pitea, “Procedures and Mechanisms for Review of Compliance under the 1998 Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters”, *supra* 221–249.

<sup>10</sup> *Resolution on Pollutant Release and Transfer Registers*, doc. MP.PP/2003/1/Add.1/Rev.1 (21 August 2003), para. 1(a)(iii).

<sup>11</sup> *Report of the First Extraordinary Meeting of the Parties*, doc. ECE/MP.PP/4 (5 August 2003), para. 23.

mechanism under the Aarhus Convention.<sup>12</sup> On this basis<sup>13</sup> the Working Group agreed on the establishment of a separate committee and procedure, albeit based on that under the Convention.<sup>14</sup> A first draft was then presented<sup>15</sup> singling out some discrete issues to be decided upon: whether there is a need for a specific provision on objectives; number of members and regional representation; entitlement to nominate candidates; capacity and expertise (scientific, technical, legal) of members; frequency of meetings; public trigger and any “grace” period; confidentiality; relative functions of the Committee and the MOP; range of measures to be taken to address non-compliance.<sup>16</sup> A Contact Group was then established to further negotiate the text.<sup>17</sup> After extensive negotiations the Contact Group reached an agreement on a compromise text that was submitted to the fifth meeting of the Working Group on PRTRs.

### 3. THE TEXT ESTABLISHING THE MECHANISM

The Draft Decision on Review of Compliance prepared by the Contact Group, which establishes the Compliance Committee and determines its structure and functions in its Annex hereinafter, Draft Decision,<sup>18</sup> was endorsed by the Working Group on PRTRs at its fifth meeting, where it was agreed to submit it to the Parties at their first meeting.<sup>19</sup>

### 4. THE PRINCIPLES GOVERNING THE MECHANISM AND THE PROCEDURE

Article 22 of the Protocol describes the procedures and institutional arrangements as cooperative and of a non-judicial, non-adversarial and consultative nature. The Draft Decision does not contain a section on objective and/or principles, but some other principles emerge, particularly transparency.

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<sup>12</sup> *Report of the First Meeting of the Working Group on Pollutant Release and Transfer Registers*, doc. MP.PP/AC.1/2004/2 (18 March 2004), para. 44.

<sup>13</sup> *An Analysis of Options for a Compliance Mechanism to the UNECE Protocol on Pollutant Release and Transfer Registers (PRTRs)*, doc. ECE/MP.PP/AC.1/2005/4 (4 April 2005).

<sup>14</sup> *Report of the Second Meeting of the Working Group on Pollutant Release and Transfer Registers*, doc. ECE/MP.PP/AC.1/2005/2 (20 May 2005), para. 18.

<sup>15</sup> *Draft Decision I/[...] on Review of Compliance*, doc. ECE/MP.PP/AC.1/2006/4 (8 March 2006).

<sup>16</sup> *Explanatory Note on Draft Texts on Compliance Mechanism and Rules of Procedure for the Protocol on Pollutant Release and Transfer Registers*, doc. ECE/MP.PP/AC.1/2006/5 (8 March 2006), para. 14.

<sup>17</sup> *Report of the Third Meeting of the Working Group on Pollutant Release and Transfer Registers*, doc. ECE/MP.PP/AC.1/2006/2 (28 July 2006), para. 15 ff.

<sup>18</sup> *Draft Decision on Review of Compliance*, doc. ECE/MP.PP/AC.1/2007/L.10 (18 July 2007) and Annex. In the following text, references to the Draft Decision and related numbering of the paragraphs must be understood as referring to the Annex.

<sup>19</sup> *Report of the Working Group on Pollutant Release and Transfer Registers on its Fifth Meeting*, doc. ECE/MP.PP/AC.1/2007/4 (4 March 2008), para. 24.

## 5. INSTITUTIONAL ASPECTS

### 5.1 The Compliance Committee

#### a) *Composition*

The Committee will be composed of nine members (para. 1), elected by the MOP by *consensus* (para. 7). After lengthy discussion, the issue whether NGOs may nominate candidates or propose candidatures to individual Parties has been agreed upon, allowing only Parties to nominate candidates, but “taking due account of any proposal for candidates made by Signatories or by non-governmental organizations qualified or having an interest in the fields to which the Protocol relates.” This wording reflects the approach already adopted in the non-compliance procedure under the Protocol on Water and Health<sup>20</sup> and does not restrict such entitlement only to “environmental” NGOs, as requested by the latter. Candidates “shall be persons of high moral character and recognized competence in the fields to which the Protocol relates, including persons having technical or legal experience” (para. 2). No two members may have the same nationality (para. 3) and geographical balance and diversity of experience in the composition are encouraged (para. 4). The Committee elects its own Chairperson and vice-chairperson (para. 8), meets at least once a year (para. 11) and may, in appropriate circumstances, undertake some of its activities through electronic communications (para. 12).

#### b) *Status of Members*

The Committee’s Members “shall serve in their personal capacity” (para. 1). Contrary to what happened in other negotiations this solution was easily accepted from the very beginning of the negotiation. It remains to be seen whether it will be interpreted, as in the Aarhus Convention non-compliance procedure, as precluding civil servants from being members or whether a more flexible understanding will prevail, as in other settings. At their first meeting the Parties shall elect four members for a full term of office and five members for a half term of office. Subsequently, the MOP shall elect for a full term new members to replace those whose term has expired (para. 8). A full term of office begins at the end of an ordinary session of the Meeting of the Parties and runs until the second ordinary session of the Meeting of the Parties thereafter, meaning that the normal term of office is four years. Outgoing members may be re-elected once for a further full term of office, unless in a given case the Meeting of the Parties decides otherwise (*ibid.*). As already happens in the Aarhus and Water and Health committees, if a member is unable to complete its term, a substitute for the remainder shall be appointed by the Bureau, subject to the approval of the Committee (*ibid.*).

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<sup>20</sup> See C. Pitea, “Procedures and Mechanisms for Review of Compliance under the 1999 Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes”, *supra* 251–262, at 254.

c) *Observers*

The Draft Decision does not envisage explicitly the admission of observers. However, provisions on the openness of meetings constitutes a sound basis for NGOs or other actors to participate in the Committee’s meetings.

## 5.2 **The Secretariat**

The Secretariat acts as the administrative body of the mechanism. It receives candidatures for the Committee (para. 5(a)), arranges for and services its meetings (para. 11) and acts as a liaison between Parties and the public and the Committee in the handling of non-compliance cases (paras. 15, 16 and possibly 19). In addition, it has its own triggering function (para. 17).

## 5.3 **The Meeting of the Parties**

The MOP has the power to request the Committee to prepare reports on compliance with or implementation of provisions of the Protocol (para. 13(a)) or to assign to it any other compliance-related function (para. 13(e)). Upon recommendation of the Committee it decides on compliance matters, including the response measures to be taken (para. 41).

## 6. FUNCTIONS OF THE COMMITTEE

The main function of the Committee is to consider issues of non-compliance by a Party with any conventional provision that has been brought to its attention in conformity with the Draft Decision (para. 13(a)). In this framework it shall take facilitative response measures under para. 40 (para. 13(d)) and may make recommendations to the MOP including on measures under para. 41 (para. 14(a)).

The Committee shall monitor, assess and facilitate the implementation of and compliance with the Protocol reporting requirements (para. 13(c)) and prepare, at the request of the MOP, a report on compliance with or implementation of the provisions of the Convention (para. 13(b)).

The Committee may perform any other function assigned to it by the MOP (para. 13(e)) and may examine any other compliance issues not referred to in the Draft Decision (para. 14(b)).

## 7. TRIGGER MECHANISM

### 7.1 **Submission by a Party (Party-to-Party Trigger and Self-Trigger)**

“Submission” refers to an issue of compliance brought before the Committee by a Party having reservations on another Party’s compliance (Party-to-Party trigger) (para. 15) or concluding that, despite its efforts, is itself unable to comply with the

Protocol (self-trigger) (para. 16). Submissions must be made in writing to the Secretariat and be supported by corroborating information or, in self-triggering cases, by the specific circumstances that the Party considers to be the causes of its non-compliance.

## 7.2 Referrals by the Secretariat

“Referral” refers to the issue of compliance brought to the Committee’s attention by the Secretariat when it becomes aware of possible non-compliance by a Party, when the matter is not settled through consultation with the Party concerned (para. 17). The Secretariat’s triggering power is not limited to issues emerging from the examination of Parties’ reports, though special attention should be placed on such issues.

## 7.3 Communications from the Public

The introduction of a trigger by non-State actors has been one of the most controversial negotiating issues. Several options had been proposed, including a system of communications from the public, similar to that under the Aarhus Convention and the Protocol on Water and Health, or granting NGOs entitlement to initiate the procedure.

Finally, an Aarhus Convention-like system of communications from the public has been included, with a one-year “grace” period and the possibility of opting-out from it for a period not longer than four years.

## 7.4 Initiation *Proprio Motu*

The explicit recognition of a Committee initiative, which was flagged in some previous drafts, has not been included in the final Draft Decision since it was conceived as an alternative to the system of communications from the public or NGOs. However, the Draft Decision provides that the Committee may examine any compliance issue other than those explicitly envisaged in the Draft Decision (para. 14(b)).

## 8. THE PROCEDURE BEFORE THE COMPLIANCE COMMITTEE AND PROCEDURAL SAFEGUARDS

### 8.1 Sources of Procedural Rules and General Remarks

The procedure will be regulated by the Draft Decision establishing the Committee and the Rules of Procedure of the MOP should be applicable *mutatis mutandis*, with some exceptions.<sup>21</sup>

#### Party-to-Party submissions

“shall be addressed in writing to the secretariat and supported by corroborating information. The secretariat shall, within two weeks of receiving a submission, send a copy of it

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<sup>21</sup> See *Draft Decision on Rules of Procedure*, doc. ECE/MP.PP/AC.1/2007/L.9 (18 July 2007), rule 23.

to the Party whose compliance is at issue and, for the purposes of information, to the Committee. Any reply and supporting information shall be submitted to the secretariat and to the Parties involved within three months or such longer period as the circumstances of a particular case may require, but in no case later than within six months. The secretariat shall transmit the reply and supporting information to the Committee, which shall consider the matter as soon as practicable, unless the submission is manifestly ill-founded or *de minimis*” (para. 15).

### Self-submissions

“shall be addressed in writing to the secretariat and should explain, in particular, the specific circumstances that the Party considers to be the cause of its non-compliance or potential non-compliance. The secretariat shall transmit the submission to the Committee, which shall consider the matter as soon as practicable” (para. 16).

Communications from the public must be made in writing, also in electronic form, to the Committee through the Secretariat. To be admissible, Communications must not be (a) anonymous communications, (b) an abuse of the right to make such communications, (c) manifestly unreasonable, (d) incompatible with the provisions of this decision or with the Convention, (e) manifestly ill-founded, or (f) *de minimis* (para. 20). The two latter grounds are not found in either the non-compliance mechanism of the Aarhus Convention or that of the Protocol on Water and Health and they replicate those provided for Party-to-Party submissions. A soft requirement of exhaustion of domestic remedies is also set (para. 19).

## 8.2 Procedural Safeguards

### a) *Due Process and Fairness of Proceedings*

The Party concerned has the right to be promptly informed of any referral, submission or communication made in its respect. Arguably, this includes the right to receive all the relevant information and documents available to the Committee and to respond to it in a set time framework (paras. 14, 15, 22 and 23). Together with the submitting Party or the communicant, it is entitled to participate in the Committee’s meetings when the case is discussed (para. 36), with the exception of the sessions in which findings and recommendations are prepared (para. 37). The Party concerned and the submitting Party or the communicant, as applicable, are entitled to receive a copy of any draft findings and recommendations for comments (para. 38).

### b) *Transparency and Confidentiality*

Transparency emerges as a fundamental principle of the procedure: as a rule, the Committee’s meetings shall be open (para. 33), except when findings and recommendations are prepared (para. 34(b)), no information held by the Committee shall be kept confidential (para. 27) and the Committee’s reports shall be made available to the public (para. 39). These general statements are limited by the provisions on



confidentiality. These appear to reverse the rule in self-submission cases, since the “Committee and any person involved in its work shall ensure the confidentiality of information that has been provided to it in confidence by a Party when making a submission in respect of its own compliance” (para. 30). In other cases, confidentiality of information may be requested by a Party submitting the information when the disclosure may impact on the protected interest listed in para. 28, when information concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law or customary practice. If the Committee, taking into account general interests in disclosure, has concerns about the request to keep a certain piece of information confidential it shall enter into consultation with the relevant Party in order to obtain a restrictive application of the confidentiality rules (para. 29). Finally, the confidentiality of information may be also requested by any submitting person because of a concern that any member or members of the public may be penalized, persecuted or harassed as a result of disclosure.

When rules of confidentiality apply the Committee shall hold closed sessions – if necessary (para. 34(b)) – and relevant information cannot be included in the Report (para. 32). However, such information must be put at the disposal of the Parties upon request, provided that confidentiality is ensured by the accessing Party. This does not apply to confidentiality requested to safeguard the safety of persons involved under para. 31 (*ibid.*).

The principle of the openness of meetings is counterbalanced by the discretion the Committee enjoys in holding closed sessions in any cases where it deems it appropriate to do so, taking into account the desirability of the transparency of proceedings (para. 35).

## 9. SOURCES OF INFORMATION

The Draft Decision affords the Committee with broad powers to request, gather and consider information, through written proceedings, oral hearings and, with the consent of the Party concerned, on-site activities (paras. 25–26). Information from non-governmental sources, although not explicitly mentioned, are covered.

## 10. DECISION-MAKING

The Draft Decision contains a general rule on decision-making, stating that the Committee shall make every effort to adopt its decisions and recommendations by consensus. Other decisions should be taken in accordance with the Rules of Procedure of the MOP, e.g., three-fourths majority vote of the Parties present and voting for substantive decisions (Rule 35.4) and a simple majority vote of the Parties present and voting for procedural decisions (Rule 35.3).

The provision on activities undertaken through electronic communications enables the Committee to develop procedures for decision-making by e-mail or other similar means.

## 11. OUTCOMES

As usually found in compliance mechanisms, the Draft Decision provides for two kinds of measures which may result from the procedure. Those of a facilitative nature are directly entrusted to the Committee (para. 40), which can: provide advice and facilitate assistance on compliance to the Party concerned; request it to develop an action plan to restore compliance, to submit progressive reports on the action taken and to appear before the MOP and make a presentation concerning the matter raised; and make recommendations on specific measures for addressing the matter raised.

In addition to these measures, and other facilitative ones relating to financial and technical assistance, capacity building and technology transfer, the MOP is empowered to take measures of the second kind, i.e., stronger measures (para. 41) including: the issuance of declarations of non-compliance or cautions; the decision on special forms of publicity for a given case; and the suspension of special rights and privileges in accordance with general international law.

The powers afforded to the Committee are broad. It can address recommendations directly to the Party concerned, and this power is not “provisional” nor subject to the Party’s cooperation or consent, which is instead what happens in the non-compliance procedure under the Aarhus Convention. For political and legal reasons the MOP is left with the power to decide, at the Committee’s recommendation, those measures possibly requiring additional financial efforts by the Parties and those that are more enforcement-oriented.

The use, in para. 40, of the expression “the Committee decides upon one or more of the following measures” should not be interpreted as implying that the Committee’s “decisions” are binding upon the Party concerned. This may be easily understood by considering that the measures the Committee may “decide upon” are facilitative and cooperative and that the object and purpose of the mechanism, as clearly envisaged in Article 22, excludes the adoption of binding decisions by the Committee. Finally, the reference to “special rights and privileges” seems to suggest that treaty-based rights, such as the right to vote in the MOP, cannot be suspended.

## 12. COORDINATION WITH DISPUTE SETTLEMENT PROCEDURES AND OTHER NON-COMPLIANCE PROCEDURES

As usually found in this kind of mechanism, the Draft Decision specifies that the compliance procedure shall be “without prejudice” to the dispute settlement clause of Article 23 of the Protocol (para. 42).

Drawing on the precedent of the non-compliance procedure of the Aarhus Convention, in order to promote the efficiency and consistency of the various mechanisms the Procedure enables the Committee to communicate with other compliance bodies according to the specific directions of the MOP (para. 43).

### 13. PARTICIPATION OF THE EUROPEAN COMMUNITY

The European Community is a signatory to the Protocol and it has already deposited its instrument of approval (e.g., ratification).<sup>22</sup> In accordance with Articles 26.3 and 26.4 of the Protocol,<sup>23</sup> it declared upon approval, *inter alia*, that the Community “is responsible for the performance of those obligations resulting from the Convention which are covered by Community law in force” and that “it has already adopted legislation, binding on its Member States, covering matters governed by this Protocol and will submit and update, as appropriate, a list of that legislation in accordance with Article 26.4 of the Protocol.”

When the negotiations for an instrument on PRTRs began in the UNECE framework, the only provision in community law addressing the issue was Article 15.3 of the IPPC directive requiring Member States to inventory and supply data on principal emissions and responsible sources. This led in 2000 to establishment of a European Public Emissions Register (EPER) through Decision 2000/479/EC.<sup>24</sup> After the negotiations for the Protocol ended successfully, Regulation 166/2006/EC<sup>25</sup> establishing a European Pollutant Release and Transfer Register (E-PRTR) was adopted. To bring EC law fully in line with the PRTRs Protocol, the E-PRTR Regulation extends the number of facilities included and the substances to be reported and provides additional coverage of releases to land, off-site transfers of waste and releases from diffuse sources, public participation and annual instead of triennial reporting.

Although established at the Community level and through Regulation, thus leaving no room for legislative implementation at the national level, the E-PRTR heavily relies upon the activity of information gathering on emissions from the facilities covered and, when applicable, from diffuse sources. The information so collected will be regularly reported to the Commission and introduced into the database.

An EU Member State that is also a Party to the Protocol should therefore be held accountable, possibly jointly with the EC, for non-compliance with the obligations

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<sup>22</sup> *Council Decision 2006/61/EC of 2 December 2005 on the conclusion, on behalf of the European Community, of the UN-ECE Protocol on Pollutant Release and Transfer Registers*, OJ (2006) L 32/54. The Protocol is open to signature by “regional economic integration organizations constituted by sovereign States members of the United Nations to which their member States have transferred competence over matters governed by this Convention, including the competence to enter into treaties in respect of these matters” (Art. 23). This organization may become a Party upon ratification, acceptance or approval (Art. 23.1) or accession (Art. 19.2).

<sup>23</sup> If the organization becomes a Party without any of its Member States being a Party, it shall be bound by all the obligations under the Protocol. If, along with the Organization, also one or more of its Member States are Parties, “the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Convention” (Art. 26.3). When becoming a Party the organizations “shall declare the extent of their competence with respect to the matters governed by this Protocol” and subsequently “inform the Depositary of any substantial modification to the extent of their competence” (Art. 19.5).

<sup>24</sup> *Commission Decision of 17 July 2000 on the implementation of a European pollutant emission register (EPER) according to Article 15 of Council Directive 96/61/EC concerning integrated pollution prevention and control (IPPC)*, OJ (2000) L 192/36.

<sup>25</sup> *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*, OJ (2006) L 33/1.

under the Protocol when this relates, for example, to a concrete failure to report correct data by a facility which is situated in the territory of that particular State.

#### 14. FINANCIAL ASPECTS

No information is available on the financial aspects of the procedure, but it is foreseeable that the issues will be similar to those raised under the non-compliance procedure of the Aarhus Convention.