Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC

(COM(2004) 634 final — 2004/0231 (COD))

(2005/C 255/10)

On 4 February 2005, the Council decided to consult the European Economic and Social Committee, under Article 175(1) of the Treaty establishing the European Community, on the abovementioned communication.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 March 2005. The rapporteur was Ms Sánchez Miguel.

At its 416th plenary session, held on 6 and 7 April 2005 (meeting of 6 April), the European Economic and Social Committee adopted the following opinion by 131 votes to none, with 11 abstentions.

1. **Introduction**

1.1 The Århus Convention ([1]), which recognised the right to access to information, public participation in decision-making and access to justice in environmental matters, marks a new phase in the EU, with an attempt to create instruments that provide the public and other environmental stakeholders with the necessary means to obtain reliable information, which will enable preventive measures to be taken and, above all, achieve positive results in reducing environmental pollution.

1.2 Articles 5(9) and 10(2) of the Århus Convention provide for the creation of instruments facilitating public access to information and public participation; registers are amongst the most useful of these instruments, because they contain data that are reliable and comparable with the data provided both by businesses and by the competent authorities. It should be noted that, in other Community policies, the use of data registers has helped to improve access to information and the legal security of the data they contain.

1.3 Specifically as regards pollutant release and transfer, other international instruments exist, in particular the Bahía Intergovernmental Forum on Chemical Safety (2000), which included priority actions to be implemented as of 2000 as a means of achieving the aims that had been set; the 2001 Stockholm Convention on persistent organic pollutants and the control of transboundary movements of hazardous wastes and their disposal; the OECD's work (2002) on analysis of the costs and benefits of pollutant release and transfer registers.

1.4 However, the most important international instrument in the field of pollutant waste and transfer registers is the UN/ECE Protocol signed in Kiev in 2003 ([2]). Its main aim is to promote information in this field by means of national registers that contain data provided by the parties concerned and which also help to prevent and reduce environmental pollution; it recommends that such registers also be established at international level in order to make it easier to compare data held at supra-national level.

1.5 The Kiev Protocol can be considered to be a model for this proposed European PRTR regulation, in particular the content of the annexes, which help to achieve the desired aim: to harmonise the data held in the registers, be they national, European or international. There are two aspects, however, which differ in the proposed regulation: the first concerns the list of priority substances contained in the Water Framework Directive (WFD), with the addition of new ones ([3]), and the second is the recommendation to bring the entry into force forward to 2007, so that notification in accordance with the new procedure coincides with the final EPER report.

1.6 In addition to these international agreements, there are the European regulations currently in force which already contain the requirement for a European Pollutant Emission Register (EPER) ([4]) as set out in Article 15(3) of Directive 96/61/EC (IPPC — Integrated Pollution Prevention and Control) ([5]), which has been operational since 23 February 2004. To date, the first reports were submitted by Member

([1]) Århus Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed on 25 June 1998 by most EU Member States, and the proposals for directives – (OJ C 117 of 30.4.2004).

([2]) The Protocol on pollutant release and transfer registers to the Convention on access to information, public participation in the decision-making process and access to justice in environmental matters. (Kiev, 21 May 2003) was signed at the 5th Ministerial conference on 'Environment for Europe'.

([3]) Annexes IX and X of the Water Framework Directive (WFD) (Directive 2000/60/EC) set down the list of priority substances, whilst the PRTR contained in the UN/ECE Protocol adds three new ones and also requests information on five further substances.

([4]) Commission Decision 2000/479/EC of 17 July 2000, OJ L 192 of 28.7.2000.

([5]) See (OJ C 80 of 30.3.2004).

States for data from 2001, whilst data for the second reporting year, which covers 2004, should be submitted by Member States by June 2006, and the third reporting year is scheduled for 2007, to be published in 2008. It should be pointed out that the EPER, the content of which will be expanded to comply with the Kiev Protocol, forms a good basis for the proposed E-PRTR.

2. **Gist of the proposal for a regulation**

2.1 The aim of the regulation is to create a Community pollutant release and transfer register, which will enable Europe to comply with the Kiev Protocol. To this end, it sets out an exhaustive list of definitions of terms that may differ in several instances from the IPPC Directive terms and it covers both the pollutants (substances) and activities (facilities) to which the Regulation would apply, whether they be in the public or private sector, and arranges the information that the PRTR (Art. 3) must contain under three headings:

— Pollutant releases, as specified in Article 5(a) from activities listed in Annex I

— Off-site transfers of waste and untreated waste water, as set out in Articles 5(1)(b) and (c) from activities listed in Annex I

— The release of pollutants from diffuse sources.

2.2 The structure of the E-PRTR (Art. 4(1)) is based on the mandatory reporting of data by businesses which, because of their sphere of activity, specifically those set out in Annex I, have their substances and waste monitored in accordance with the European regulations in force. If these substances are measured, calculated or estimated for reporting purposes, the method of analysis or calculation must be stated, with reference to the values set out in Annex II.

2.3 The data reporting will be undertaken in the Member States and conveyed to the Commission electronically, keeping to the timetables set out in Article 7 (the first reporting year will be 2007). Data will be reported in two sections — one dealing with releases to land (Art. 6) and the other dealing with releases from diffuse sources (Art. 8).

2.4 The necessary rules have been drawn up with great care to ensure that the content of the register meets the requirements of all public information systems, in terms of:

— the quality of the data, which will be assured by the operator and assessed by the competent authorities as to how up-to-date they are and as regards their completeness, reliability, comparability and transparency;

— ease of public access to the information contained in the registers, assured by the Commission, with the European Environment Agency providing assistance with this task;

— the confidentiality that will be applied to data that companies have classified as confidential, taking account, for this purpose, of the provisions of Article 4 of Directive 2003/4/EC.

2.5 Other rules contained in the E-PRTR Regulation refer to public participation (Art. 12) and access to justice (Art. 13), as recognised in the Århus Convention and in Directive 2003/4/EC. The Commission must establish appropriate arrangements for this, and issue periodical reports providing information on the outcome of such public participation (Art. 12(2)).

2.6 Member States will have to provide additional information every three years (Art. 16), once the regulation has entered into force, assessing practices in their countries and compliance with mandatory data reporting by the companies concerned. Furthermore, they will have to set effective, proportionate and dissuasive sanctions that will apply in the event of non-compliance with the requirements (Art. 20).

2.7 Lastly, the Commission will be assisted by a Committee, as set out in Decision 1999/468/EC (Art. 19).

3. **General comments**

3.1 The EESC can, in principle, accept the aim of a European Pollutant Release and Transfer Register that is in line with the international agreements signed by the European Community and thus replaces the current EPER, especially since this does not entail further obligations for the parties concerned than under current Community legislation. Harmonising data collection and information reporting will ensure the quality and comparability of such information and will thus make it more effective and, above all, more accessible.

3.2 The legal base adopted by the Commission for this proposal for a regulation is Article 174(1) in conjunction with Article 300 of the EC Treaty, which authorises it to propose rules for compliance with international agreements that the EC signs with international organisations. In this case, the agreements in question are not only to protect the environment against pollution, but also to facilitate information, public participation and access to justice.

3.2.1 The Commission looked at various options for implementing the UN-ECE Protocol; firstly, it studied the possibility of reforming the current EPER without proposing a new regulation but, given the need to reform the IPPC Directive anyway, not only this time but each time that changes are made to the Kiev Protocol, which is the basis of this proposal, it deemed it more appropriate to propose a new legislative instrument so as to avoid further legal uncertainty amongst the parties affected by these continuous reforms. For this reason and on the basis of Article 175(1) TEC, this draft regulation was submitted as the legislative instrument best suited to meet the requirements for the harmonised implementation of the international agreements.

3.2.2 The upshot is that all Member States will implement the Kiev Protocol by means of a Community law that will also guarantee that the Protocol's content is consistent with current Community legislation in this field and that it will apply to all Member States immediately, and not have to wait until the Protocol is ratified at a later date, upholding the common position adopted by national representatives when they negotiated and signed the Protocol.

3.3 It must be borne in mind, however, that the current situation in the Member States, including those that have recently joined the EU, varies considerably in the degree to which they comply with the obligations imposed by the EPER, ranging from some countries such as the United Kingdom which have a broader register to others such as Hungary which was asking voluntarily to be part of the scheme even before joining the EU. There are also differences in the degree of compliance by the parties concerned: whereas major corporations and industrial groups and facilities under the IPPC Directive comply fully, (even producing annual environmental reports), SMEs, small operators outside the IPPC and some local authorities — provided they operate municipal waste water treatment plants — lack the means to be able to comply with all the bureaucracy that this obligation entails.

3.4 The EESC considers that the approach, in terms of both access to information and public participation, is correct and fulfils the aims set out in Directive 2003/4/EC. Furthermore, it is satisfied with the obligation to inform the public on the outcome of its participation so that this participation can be assessed. Nevertheless, it must be pointed out that, in order to provide Internet access to the greatest possible number of people, the number of languages used for consultation would have to be increased to cover all the official languages.

3.5 An extremely important issue — the economic impact — appears to have been thoroughly evaluated by the Commission ([6]) which concluded that, since the Member States and parties concerned were already obliged to implement the EPER and thus to report all the data it required, the costs would only apply to new arrangements between the Commission and Member States for the transfer of the stored data; the Commission will have to bear the brunt of the costs, especially for setting up and maintaining the web page, with each Member State thus having to pay only a very small part. Nevertheless, it is also important to mention that, for operators outside of the IPPC Directive, monitoring and reporting of their releases and transfers form a new cost item and administrative burden.

([6]) See the document: *Analysis of the Cost and Benefits of PRTRs* produced by the Economic Analysis Division in 2002. CEP/WG.5/AC.2/2002/4.

4. **Specific comments**

4.1 The EESC considers that the PRTR Regulation will result in a marked improvement to the approach initiated by the EPER; firstly, because it ensures that more information is provided on releases to air and water by including releases to land and releases from diffuse sources and also because it adapts EU legislation to international legislation, with particular reference to the Århus Convention and more specifically, to the Kiev UN-ECE Convention.

4.2 Nevertheless, the EESC wishes to state that the current EPER must be consolidated in order to make it as easy as possible for the parties concerned to comply with the reporting obligation, as set out in the new provisions. The PRTR's scheduled entry into force (2007, although it will not be operational until 2009) will allow time to supplement and correct the current register and to gradually incorporate the new reports and the parties newly required to report. Finalising the EPER's content and publishing it on the web page will cut costs and, above all, prevent confusion arising between current information and new information.

4.3 As regards the inclusion of more new pollutants to be reported (a further 36 with the UN-ECE Protocol), two comments should be made: a) many of them are pesticides no longer used or marketed in the EU and b) the obligation to report is tied to compliance with the reporting thresholds set out in Annex I for activities and in Annex II for pollutants.

4.4 The EESC believes it would be advisable to standardise as far as possible the content of the reports to be submitted by the parties concerned (Annex III) and to simplify reporting for SMEs and farmers, so as not to impose further bureaucracy and expense on those concerned. For this reason and in order to ensure that the data contained in the registers are comparable, the best technology available should be used for determining the annual quantities. Consistency between the various national registers and the European register is another requirement for ensuring that these are standardised and comparable with one another.

4.5 The EESC is particularly sensitive to the confidentiality of data that must be included in the reports by the parties concerned. As set out in Article 11, it is the Member States that will decide on keeping any given data confidential, at the request of the parties concerned, and provided that they comply with the exceptions set out in Article 4 of Directive 2003/4/EC, although the last sentence states that *the reasons for the refusal* shall be given, whereas Recital 14 of the proposed regulation states that *Access to information provided by the European PRTR should be unrestricted and exceptions from this rule should only be possible where explicitly granted by existing Community legislation*. This difference between the two provisions must be resolved because, as set out in the last sentence of Article 11, those parties who wish certain data to remain confidential have to justify their request, otherwise it could lead to the false assumption that these data are not covered by Article 4 of Directive 2003/4/EC because, if they are regulated by a legal provision, there is no need to give a reason.

4.6 The EESC appreciates the efforts made in the E-PRTR proposal to put the reported data into their proper context and to gradually reduce potential risks of misinterpretation of such data. Further improvements in this direction would be sincerely appreciated.

5. **Conclusions**

In conclusion, transparency in the notification of emissions and the transfer of pollutants, in the form proposed in the E-PRTR, by the parties concerned, i.e., businesses, farmers and public authorities, can be said to perform a two-fold task:

— to publicise, within the internal market, the environmental practices of all those parties and their compliance with the relevant European legislation, so that competitors, consumers and citizens can easily assess these practices and act accordingly;

— to bring added value to the competitiveness of European companies, whatever their activity, in both European and international markets, and provided that data remains standardised and comparable, as set out in 'Specific comments'. The Section considers that the transparent information that the E-PRTR can provide will help to strengthen common positions on voluntary agreements by production sectors, will make it easier to comply with environmental legislation and, through the publicity provided by the registers improve public knowledge on local facilities, enhance the Corporate Social Responsibility concept amongst operators and facilitate trust building amongst civil society actors.

Brussels, 6 April 2005

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND