



**Economic and Social
Council**

Distr.
GENERAL

ECE/EB.AIR/WG.5/2007/5
1 February 2007

Original: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

**EXECUTIVE BODY FOR THE CONVENTION ON LONG-RANGE
TRANSBOUNDARY AIR POLLUTION**

Working Group on Strategies and Review

Thirty-ninth session
Geneva, 18–20 April 2007
Item 7 of the provisional agenda

**OPTIONS FOR AMENDMENT PROCEDURES FOR THE 1998 PROTOCOL ON
PERSISTENT ORGANIC POLLUTANTS**

Note by the Chair of an ad hoc group of legal experts

1. At its twenty-fourth session, the Executive Body requested the Working Group on Strategies and Review to consider, on the basis of the report of the ad hoc group of legal experts (ECE/EB.AIR/WG.5/2006/11), the possibility of an expedited procedure, including *inter alia* in combination with existing procedures, regarding amendments of the annexes to the Protocol on Persistent Organic Pollutants (POPs).
2. The present document has been drafted to assist the Working Group in its consideration of the possibility of an expedited amendment procedure. The views expressed here are without prejudice to possible further deliberations in, or recommendations by, the ad hoc group of legal experts, and they do not represent a national or European Community position.

3. This note outlines how an expedited amendment procedure with an opt-out clause can be introduced into the Protocol on POPs. Two possible options are elaborated. Section I addresses the option in which the expedited amendment procedure with an opt-out clause is part of a new, second Protocol. Section II sketches the option in which such a procedure is introduced as an amendment (or part of a set of amendments) to the current Protocol.

I. OPTION ONE: AN EXPEDITED AMENDMENT PROCEDURE IN A NEW PROTOCOL ON PERSISTENT ORGANIC POLLUTANTS

4. For easy reference, the numbering of the Articles in this option follows the numbering of the current Protocol. An article on amendments in a new, second Protocol would differ from the current Article 14 in three ways:

(a) The references to annexes I–IV, VI and VIII would not appear in paragraph 3 of the Article, because amendments to those annexes would no longer follow the procedure of depositing an instrument of acceptance.

(b) A paragraph 5bis would make it clear that the expedited procedure with an opt-out clause, which already exists for annexes V and VII, will also apply to amendments to annexes I–IV, VI and VIII, albeit with the possibility of a different time frame. A longer time frame (possibly necessary to allow for domestic legislative preparations and implementation of amendments to annexes I–IV, IV and VII) could be part of these annexes.

(c) The third difference is the provision that allows a Party to indicate that it does not wish to follow the expedited approach for amendments to annexes I–IV, VI and VIII. Such a wish would be expressed in a declaration made upon ratification of the (new) Protocol. The Parties concerned would continue to express their consent to be bound to amendments of these annexes by way of depositing their instruments of acceptance.

5. Including the above three elements and highlighting the differences with the current provision, the article on amendments of a new Protocol on POPs might read as follows:

"Article 14

AMENDMENTS

1. Any Party may propose amendments to the present Protocol.

2. Proposed amendments shall be submitted in writing to the Executive Secretary of the Commission, who shall communicate them to all Parties. The Parties meeting within the Executive Body shall discuss the proposed amendments at its next session, provided that the proposals have been circulated by the Executive Secretary to the Parties at least ninety days in advance.

3. Amendments to the present Protocol [~~delete: and to annexes I to IV, VI and VIII~~] shall be adopted by consensus of the Parties present at a session of the Executive Body, and shall enter into force for the Parties which have accepted them on the ninetieth day after the date on which two thirds of the Parties have deposited with the Depositary their instruments of acceptance thereof. Amendments shall enter into force for any other Party on the ninetieth day after the date on which that Party has deposited its instrument of acceptance thereof.

4. Amendments to annexes V and VII shall be adopted by consensus of the Parties present at a session of the Executive Body. On the expiry of ninety days from the date of its communication to all Parties by the Executive Secretary of the Commission, an amendment to any such annex shall become effective for those Parties which have not submitted to the Depositary a notification in accordance with the provisions of paragraph 5 below, provided that at least sixteen Parties have not submitted such a notification.

5. Any Party that is unable to approve an amendment to annex V or VII shall so notify the Depositary in writing within ninety days from the date of the communication of its adoption. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for its previous notification and, upon deposit of an instrument of acceptance with the Depositary, the amendment to such an annex shall become effective for that Party.

[insert:] 5bis. The proposal, adoption and entry into force of amendments to annexes I-IV, VI and VIII shall be subject to the same procedures as for the proposal, adoption and entry into force of amendments to annex V and VII, set out in paragraphs 4 and 5, except that

- (a) the time frame of ninety days referred to in paragraphs 4 and 5 shall be the specific time frame established upon adoption of the amendment; and*
- (b) an amendment to these Annexes shall not enter into force with respect to any Party that has made a declaration with respect to an amendment to those Annexes in accordance with paragraph (x) of Article 16, in which*

case any such amendment shall enter into force for such a Party on the ninetieth day after the date of deposit with the depositary of its instrument of ratification, acceptance, approval or accession with respect to such amendment. [end of insert]

6. In the case of a proposal to amend annex I, II or III by adding a substance to the present Protocol:

- (a) The proposer shall provide the Executive Body with the information specified in Executive Body decision 1998/2, including any amendments thereto; and
- (b) The Parties shall evaluate the proposal in accordance with the procedures set forth in Executive Body decision 1998/2, including any amendments thereto.

7. Any decision to amend Executive Body decision 1998/2 shall be taken by consensus of the Parties meeting within the Executive Body and shall take effect sixty days after the date of adoption.”

"Article 16

RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

[add:] (x) In its instrument of ratification, acceptance, approval or accession, any Party may declare that, with respect to it, any amendment to Annexes I–IV, VI and VIII shall enter into force only upon the deposit of its instrument of ratification, acceptance, approval or accession with respect thereto. [end of added material]”

II. OPTION TWO: AN EXPEDITED AMENDMENT PROCEDURE IN THE CURRENT PROTOCOL ON PERSISTENT ORGANIC POLLUTANTS

6. Instead of a new Protocol, an expedited amendment procedure with an opt-out mechanism could be introduced into the current Protocol. This can be done by inserting into Article 14, between paragraphs 5 and 6, a new paragraph which could read as follows:

5bis. The proposal, adoption and entry into force of amendments to annexes I–IV, VI, and VIII shall be subject to the same procedures as for the proposal, adoption and entry into force of amendments to annexes V and VII, except that the time frame of ninety days referred to in paragraphs 4 and 5 shall be the specific time frame established upon adoption of the amendment.

7. Additional provisions, such as Articles 5bis and 16.x set forth in section I above to allow Parties to use the traditional ratification procedure, are not needed in this option. Here Parties not wanting to adhere to an expedited amendment procedure for annexes I–IV, VI and VIII would simply not ratify Article 5bis set out above in paragraph 6 and would continue to follow the existing approach to ratification.

8. It is clear that the introduction of an expedited procedure, were it to occur, will not be the only revision to the current Protocol. Therefore any amendment introducing an expedited amendment procedure should be separated from other amendments/revisions. Such a separation would allow a Party that does not wish to accept an expedited procedure to ratify other revisions to the current Protocol.

III. CONCLUDING REMARKS

9. From a legal perspective there is little difference between the two options. However, they do differ in one important way. Following the current practice, the threshold for entry into force of a new Protocol (as proposed in section I) is ratification, acceptance, approval or accession by *sixteen* Parties. However, an amendment to the current Protocol, such as the one proposed in section II, would enter into force after *two thirds* of the Parties had accepted it (see Article 14, paragraph 3 of the Protocol).

10. Both options, once in effect, allow for bundled and separate amendments. In other words, the Parties to the Protocol may decide, on a case-by-case basis, to list new substances in one amendment or to adopt an amendment for each substance.