

Convention on Long Range Transboundary Air Pollution

48th Meeting of the Working Group on Strategies and Review

**Informal Document 26: Advice of the Ad Hoc Group of Legal Experts on Procedural Requirements
for Amendments to the Gothenburg Protocol**

Advice

1. Given that there is still sufficient time to follow the procedures foreseen by the Gothenburg Protocol (GP) and by recently adopted Rules of Procedure¹, it is recommended that the Parties follow option (a) below – namely a Party submit to the Secretariat a proposal for amendment of the GP before 12th August 2011. Procedurally this is the safest option as it ensures that the relevant procedures are followed and additionally places the EB in a position to be able to adopt the amendments to the GP at the EB in December 2011. This would also be consistent with the procedure used in respect of the recent amendments to the POPs Protocol.

Rationale

2. Article 13.2 of the Gothenburg Protocol provides that proposed amendments shall be submitted in writing to the Secretariat. The Secretariat is required by virtue of the same article to circulate such proposals to the Parties at least 90 days before the session of the Executive Body at which they are to be discussed.
3. It is a further requirement of Article 13 that proposals for amendment be submitted by a Party. As previously discussed in the context of the POPs Protocol, the GP does not therefore provide for an amendment proposal to be submitted by the WGSR itself.
4. The process of revision of the Protocol was commenced in 2007 in accordance with Article 3.12 following the conclusion of the review foreseen in Article 10.2. Although discussions have been ongoing, as yet no formal amendment proposal has been made.
5. We have considered two options which would enable the amendments currently under discussion to be considered and adopted by the Executive Body in December 2011:
 - a. A Party takes the output of WGSR48 on the Gothenburg Protocol and submits it as an amendment proposal to the Secretariat no later 12th August 2011 and in any event in enough time for the Secretariat to circulate the proposal to the Parties in all three official languages at least 90 days prior to the scheduled commencement of the EB session on 12th December, 2011. Such a proposal would preferably be submitted as soon as possible after WGSR48 to enable negotiations to continue on the basis of this proposal at WGSR49 and, if necessary, at the EB in December 2011. This would fulfil the requirements of Article 13.2 and would also meet the requirements of Article 28.2 of the Rules of Procedure adopted by the Executive Body in December 2010 - namely the requirement for Parties to submit any

¹ Decision 2010/19.

amendment proposal four months before the date of the Executive Body to allow sufficient time for it to be translated into the official languages of the UNECE before the meeting at which it is to be considered.

- b. The Parties to the Protocol could take a decision not to apply the procedures set out in Article 13.2 GP and Rule 28.2 RoP as regards the current amendment proposals. Such a decision would have to be taken by consensus of all Parties to the Protocol at a session of the Executive Body. It is clear from Decision 1999/2 (which sets out the roles of the subsidiary bodies to LRTAP) that WGSR does not itself have the power to take such a decision. At a minimum this would require all Parties to agree to waive the rules and the procedural requirements of the GP, and any disagreement could result in a delay of consideration of the proposed amendments. Furthermore, there is also a risk that any decision to disregard the amendment procedure under the GP could later be challenged as procedurally incorrect, which could threaten the integrity of the amendments. The potential risks of such a route therefore outweigh any possible benefits.
6. It has been suggested that the procedure in Article 13.2 does not have to be followed given that the amendments currently under consideration originate in the review provided for under Article 3.12. It should be noted, however, that Article 3.12 does not provide for a derogation from the procedures set out in Article 13 and in the absence of an express derogation, which could easily have been included when the Protocol was drafted, the assumption must be that the intention was to follow the usual procedures.