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## Economic Commission for Europe

### Executive Body for the Convention on Long-range Transboundary Air Pollution

**Thirty-sixth session**

Geneva, 15 and 16 December 2016

## Report of the Executive Body on its thirty-sixth session

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## **I. Introduction**

1. The thirty-sixth session of the Executive Body for the Convention on Long-range Transboundary Air Pollution (Air Convention) was held on 15 and 16 December 2016 in Geneva, Switzerland.

### **A. Attendance**

2. The session was attended by representatives of the following Parties to the Convention: Albania, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Canada, Croatia, Czechia, Denmark, Estonia, European Union, Finland, France, Georgia, Germany, Hungary, Italy, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Republic of Moldova, Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Ukraine, United Kingdom of Great Britain and Northern Ireland and United States of America. A delegate from Israel also attended the meeting.

3. Also present at the meeting were representatives of the European Environmental Bureau, the European Federation of Clean Air and Environmental Protection Associations, the International Cryosphere Climate Initiative, the Meteorological Synthesizing Centre-East and the United Nations Environment Programme (UNEP).

### **B. Organizational matters**

4. The Executive Body adopted the agenda for its thirty-sixth session (ECE/EB.AIR/136).

5. The Executive Body adopted the report of its thirty-fifth session (ECE/EB.AIR/135).

## **II. Report on credentials**

6. Delegations were invited to submit their credentials during the session. The officers of the session reported that, of the 42 Parties to the Convention present at the session, 34 Parties had credentials. The Executive Body adopted the report on credentials.

## **III. Matters arising from meetings of the Eighth Environment for Europe Ministerial Conference**

7. In a panel discussion moderated by the Executive Secretary of the United Nations Economic Commission for Europe (ECE), representatives of Georgia, Germany, Switzerland and the United States presented progress made on the actions committed to under the Batumi Action for Cleaner Air (BACA) initiative (ECE/BATUMI.CONF/2016/7), launched at the Eighth Environment for Europe Ministerial Conference (Batumi, Georgia, 8-10 June 2016).

8. The representative of Georgia reported on progress made with regard to its air quality monitoring system, specifically the installation of new automated monitoring stations and the introduction of an electronic air pollution data reporting system. Furthermore, as of 2017, Georgia was planning to introduce new air quality standards as required in the Association Agreement with the European Union. Coming into effect on

1 January 2017, Georgia had also introduced new fuel quality standards to reduce sulphur emissions.

9. A representative of Germany said that the BACA initiative had inspired Germany to commit to a new project to support the ratification of protocols under the Convention. As the workshop to promote the understanding and implementation of best available techniques across the ECE region, with a focus on countries in Eastern Europe, the Caucasus and Central Asia (Workshop on BAT) (Berlin, 20-22 April 2016) had highlighted the needs of countries in the area of permitting, Germany would carry out three exemplary bilateral advisory assistance activities on implementing best available techniques using integrated permits in Eastern and South-Eastern Europe and the Russian Federation, starting in early 2017.

10. A representative of Switzerland remarked that the Batumi Ministerial Conference had helped to raise awareness about air pollution at the highest level. In Switzerland, that had helped to accelerate the process of ratification of the amended protocols to the Convention. It was expected that the Protocol on Heavy Metals would be ratified in 2017, and the Protocol on Persistent Organic Pollutants and Protocol to Abate Acidification, Eutrophication and Ground-level Ozone (Gothenburg Protocol) would be ratified in 2018. In addition, Switzerland pledged a contribution of 60,000 Swiss francs to support international cooperation on air pollution, namely to facilitate capacity-building and participation by Central Asian countries and Azerbaijan in the meetings under the Convention.

11. The representative of the United States commended the BACA initiative for raising awareness on the issue of air pollution. The United States had accepted the amendments to the Protocol on Persistent Organic Pollutants and would soon accept the amendments to the Protocol on Heavy Metals and the Gothenburg Protocol. In addition, the country had adopted new analytical tools to integrate air pollutants and greenhouse gas abatement and had developed new source performance standards for residential wood heaters. Coupled with the public education programme “Burn wise”, the new standards should reduce emissions of fine particles significantly and avoid costs. She also mentioned international cooperation in relation to the United Nations Environment Assembly resolution 1/7 on air pollution.

12. Representatives of several Parties welcomed the BACA initiative as a means to raise awareness on the topic of air quality and reported on progress on their respective commitments.

13. The Executive Body took note of the BACA commitments presented and Parties’ progress in implementing them, and supported their further implementation. It also encouraged those countries that had not yet submitted BACA commitments to consider developing and submitting such commitments in accordance with the applicable template (ECE/BATUMI/CONF/2016/7, annex).

#### **IV. Review of implementation of the 2016-2017 workplan**

14. The Executive Body was briefed by the chairs of the subsidiary bodies and the secretariat on the implementation of the 2016-2017 workplan (ECE/EB.AIR/133/Add.1). It requested the Bureau of the Executive Body, in collaboration with the subsidiary bodies and supported by the secretariat, to elaborate a draft 2018-2019 workplan for the implementation of the Convention, for the consideration and adoption by the Executive Body at its thirty-seventh session (Geneva, 11-14 December 2017).

## A. Science

15. The Chair of the Executive Body informed participants about the launch of *Towards Cleaner Air: Scientific Assessment Report 2016* (2016 Assessment Report)<sup>1</sup> (Brussels, 31 May 2016). The 2016 Assessment Report provided the up-to-date achievements of the Convention in mitigating the air pollution and its adverse effects and underlined the remaining challenges and scientific priorities.

16. The Chair of the Steering Body to the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP) reported on the outcomes of the second joint session of the EMEP Steering Body and the Working Group on Effects (Geneva, 13-16 September 2016), focusing on the conclusions and recommendations for the Executive Body's consideration (see ECE/EB.AIR/GE.1/2016/2-ECE/EB.AIR/WG.1/2016/2). In particular, she highlighted a new format introduced during the joint event, namely three thematic sessions with in-depth discussions on air pollution and climate change interactions; benzo(a)pyrene and wood burning; and ozone. A considerable part of the joint session was devoted to outreach and cooperation opportunities with partner organizations including the Arctic Monitoring and Assessment Programme, the Climate and Clean Air Coalition, the Copernicus Atmosphere Monitoring Service and the North-East Asian Subregional Programme for Environmental Cooperation.

17. The Chair of the Working Group on Effects provided an overview of the effects-related activities under the Convention. She elaborated on the three pillars of the effects activities — monitoring, modelling and mapping — as implemented by the International Cooperative Programmes, the Joint Task Force on the Health Aspects of Air Pollution and the Joint Expert Group on Dynamic Modelling. She presented the highlights of the effects work in 2016-2017, including the key publications and reports, and stressed the need for ensuring long-term financing of the effects activities both from national and international funding sources.

18. A representative of the European Environmental Bureau provided information on air pollutant emissions from ships, focusing on sulphur, nitrogen oxides and fine particulate matter. In Europe, emissions from international shipping were estimated to cause some 50,000 premature deaths per year due to fine particulate matter (PM<sub>2.5</sub>). There was a need to further reduce shipping emissions, especially of nitrogen oxides, through dedicated measures (e.g., stricter emission standards and extension of emission control areas in European seas).

## B. Policy

19. The Chair recalled that, at its thirty-second session (Geneva, 9–13 December 2013), the Executive Body had decided that the sessions of the Working Group on Strategies and Review would serve as the format for reporting on strategies, policies and measures to implement obligations under the Convention and its protocols, and that it would evaluate the effectiveness of that approach at its thirty-fourth session (see ECE/EB.AIR/122/Add.1, decision 2013/2). At its thirty-fourth session (Geneva, 18 December 2015), the Executive

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<sup>1</sup> Rob Maas and Perine Grennfelt, eds. (Oslo, 2016), available from <http://www.unece.org/environmental-policy/conventions/envlirtapwelcome/publications.html> (accessed 22 February 2017). There is a separate report for North America by the United States Environmental Protection Agency and Environment and Climate Change Canada *Towards Cleaner Air: Scientific Assessment Report 2016 — North America* (2016, online report).

Body had postponed the evaluation of decision 2013/2 until the present session (ECE/EB.AIR/133, para. 16).

20. The Chair of the Working Group on Strategies and Review reported on the implementation of workplan item 2, dedicated to policy, and the new format for reporting. Since 2013, at the fifty-first to fifty-fourth sessions of the Working Group, 37 Parties and two non-Parties had shared their experiences, lessons learned and good practices related to strategies, policies and other measures to implement obligations under the Convention and its protocols. It was important to continue that exchange of information on experiences and good practices, with a focus on dedicated themes. At its fifty-fourth session (Geneva, 13-14 December 2016), the Working Group had decided that the theme of the information-sharing session in 2017 would be agriculture and air pollution.

21. The secretariat then presented an overview of the status of reporting (ECE/EB.AIR/2016/8), which it had prepared with a view to assisting the Executive Body's deliberations.

22. The Executive Body evaluated the effectiveness of decision 2013/2, taking into account the information presented by the Chair of the Working Group and the secretariat. It decided to continue the information sharing on policies, strategies and measures as part of sessions of the Working Group on Strategies and Review, with a focus on thematic sessions. The Executive Body adopted decision 2016/3 on improving the effectiveness of reporting on strategies, policies and other measures to implement obligations under the Convention and its protocols (see annex I). It furthermore invited the secretariat to present and update the table on reporting by countries of experiences and challenges related to the implementation of the Convention and its protocols at sessions of the Working Group on Strategies and Review (ECE/EB.AIR/2016/8, annex) on the Convention website, including links to the respective information presented, and to refer to it when inviting Parties to report on policies, strategies and measures in advance of sessions of the Working Group.

23. The Executive Body adopted the Guidelines for Estimation and Measurement of Emissions of Volatile Organic Compounds, as agreed by the Working Group on Strategies and Review at its fifty-fourth session (ECE/EB.AIR/139).

24. A representative of the ad hoc policy review group preparing a policy response to the 2016 Scientific Assessment presented a brief overview of the progress made by the group and the envisaged next steps. The Executive Body took note of the presentation and invited the Group to highlight issues requiring further discussion with regard to the long-term strategy for the Convention, in advance of its thirty-seventh session.

25. In a special segment, the Executive Body considered the linkages between the Convention and the Sustainable Development Goals and took note of the related presentation made by the secretariat.

26. Several Parties reported on how the Sustainable Development Goals were impacting national policies. A representative of Germany reported that the national strategy on sustainable development was related to all the Sustainable Development Goals and that the Goals were strongly influencing German national policies. A delegate of Sweden reported that the country had established an interministerial committee to develop a national plan for the implementation of the Sustainable Development Goals. A representative of the European Union stated that sustainable development was at the heart of the European project and that the Sustainable Development Goals offered an opportunity to highlight the work under the Convention that should not be missed. A representative of the United States concurred that the work under the Convention should also be highlighted in other forums, such as the United Nations Environment Assembly. A delegate representing France highlighted the linkages between the Paris Agreement adopted by the Conference of the

Parties to the United Nations Framework Convention on Climate Change at its twenty-first session (Paris, 30 November-11 December 2015) and the Sustainable Development Goals.

27. The Executive Body recognized the numerous linkages between the Sustainable Development Goals and the Convention, in particular with Goals 2, 3, 7, 9, 11, 12, 13, 14 and 15, and recommended to increasingly reflect those linkages in the future work of the Convention, including in the workplan.

28. In a special segment following the panel discussion on the BACA initiative (see section III above), the Executive Body considered the status of ratification, acceptance and approval of, or accession to the three latest, amended Protocols — namely the Gothenburg Protocol, the Protocol on Heavy Metals and the Protocol on Persistent Organic Pollutants. At its thirty-fifth session (Geneva, 2-4 May 2016), the Executive Body had invited all Parties to provide to the secretariat short informal reports on their progress in the ratification of those Protocols by 30 November 2016 (ECE/EB.AIR/135, para. 19). The Chair reported that about 20 Parties had submitted such informal reports.

29. In total, 17 ratifications were required for the entry into force of the amended Gothenburg Protocol. One Party (Sweden) had already accepted the amendments to the Protocol. Fifteen Parties indicated that they would ratify the amended Protocol in 2017 and 14 Parties reported that they were planning to ratify the amended Gothenburg Protocol in 2018.

30. In total, 22 ratifications were required for the entry into force of the amended Protocol on Heavy Metals. Seven Parties had accepted the amendments. Sixteen Parties indicated that they were planning ratification of the amended Protocol in 2017 and five Parties in 2018.

31. In total, 19 ratifications were required for the entry into force of each amendment to the Protocol on Persistent Organic Pollutants. With regard to the amendment to annexes I and II to the Protocol (decision 2009/2), five Parties had accepted them. For the amendments to annexes I to IV, VI and VIII to the Protocol (decision 2009/1), 10 Parties had already accepted them. Eleven Parties indicated that they were planning to ratify the amended Protocol on Persistent Organic Pollutants in 2017.

32. The European Union informed the Executive Body that the new National Emission Ceilings Directive<sup>2</sup> had been adopted and would enter into force on 31 December 2016. That would pave the way for the European Union and its member States to ratify the amended Gothenburg Protocol.

33. The Executive Body encouraged Parties that had not yet reported on their progress in ratification of the three latest, amended Protocols to send their short informal reports to the secretariat after the session. The Executive Body also invited Parties to report again on their ratification progress at the Executive Body's thirty-seventh session.

## C. Compliance

34. The Chair of the Implementation Committee reported to the Executive Body on workplan item 3, dedicated to compliance, presenting the outcomes of the Committee's thirty-seventh session (Geneva, 13-15 September 2016), as contained in the Committee's nineteenth report (ECE/EB.AIR/2016/7). Out of 12 cases concerning compliance with

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<sup>2</sup> Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants, amending Directive 2003/35/EC and repealing Directive 2001/81/EC.

emission reduction obligations, the Committee had been able to close four: Italy, Latvia and Liechtenstein had reached compliance with the Protocol on Persistent Organic Pollutants and Liechtenstein had reached compliance with the Protocol on Heavy Metals.

35. Out of 14 cases involving Parties under review for non-compliance with reporting obligations, 7 cases — concerning Croatia (2 cases), the European Union, Greece, Hungary, Luxembourg and Monaco — had been closed following the submission of the missing data.

36. The Committee had also proposed a decision by the Executive Body on compliance by the European Union with the Gothenburg Protocol, interpreting the ceilings listed for the European Community in annex II to the Gothenburg Protocol as representing the sum of the emission ceilings of the 15 individual Parties that had been member States of the European Community at the time the Gothenburg Protocol had been agreed and when the European Community had acceded to it.

37. On that basis, the Executive Body adopted decision 2016/4 concerning compliance by the European Union with the Gothenburg Protocol (ref. 5/13 NO<sub>x</sub>) (see annex I). It furthermore invited the European Union to consider ways forward regarding possible procedures by which the ceilings of the Gothenburg Protocol could be adjusted to reflect European Union membership, and to report back to the Executive Body at its thirty-seventh session.

38. The Executive Body took note of the report of the Implementation Committee presented by the Committee Chair. It then proceeded with the election of officers, recalling that at its thirty-fifth session it had re-elected two members of the Implementation Committee for a third term, and had elected five new members of the Implementation Committee. It had then postponed the election of one remaining Committee member to its thirty-sixth session. On that basis, the Executive Body:

(a) Elected Spain (Mr. Martin Fernandez Diez-Picazo) for a first term on the Implementation Committee;

(b) Re-elected Norway (Ms. Alice Gaustad) for a third term.

39. In response to the request by the Executive Body at its thirty-fourth session (Geneva, 18 December 2015), the Chair of the ad hoc group of legal experts presented a note prepared by the group regarding questions raised by Luxembourg about the Gothenburg Protocol (see ECE/EB.AIR/133, para. 41). Luxembourg thanked the ad hoc group of legal experts for their work.

40. The Executive Body invited the secretariat to make the note by the ad hoc group available in the three official ECE languages (see annex II), recognizing its usefulness to Parties under the Convention.

41. Moreover, the Executive Body invited Parties to consider nominating additional experts to the ad hoc group of legal experts.

#### **D. Capacity-building to promote ratification and implementation in Eastern and South-Eastern Europe, the Caucasus and Central Asia**

42. The Chair of the Coordinating Group on the promotion of actions towards implementation of the Convention on Long-range Transboundary Air Pollution in Eastern Europe, the Caucasus and Central Asia (Coordinating Group) informed the Executive Body about the Group's activities in 2016. Back to back with its annual meeting, the Coordinating Group and the Task Force on Techno-economic Issues had organized a joint workshop (Saint Petersburg, Russian Federation, 19-20 October 2016) to discuss the implementation of best available techniques in Eastern Europe, the Caucasus and Central

Asia and the results of the Berlin Workshop on BAT (see para. 9 above). The Chair of the Coordinating Group stressed the need to continue exchanging experience on the implementation of best available techniques and to build capacity of the target countries in that regard. He also suggested that the flexibility provisions of the revised protocols could be expanded even further in order to facilitate ratification by countries in Eastern Europe, the Caucasus and Central Asia.

43. The representative of Armenia expressed the country's appreciation to the secretariat and the Russian Federation for the support provided to improve national emission inventories. The representative of Azerbaijan thanked the secretariat for facilitating the development of national emission inventories, which had resulted in improved reporting under the Convention. He pointed out the importance of introducing BAT in a number of activity sectors, and the need for support in analysing related national legislation and making recommendations on its possible revision. The representative of Kazakhstan expressed her appreciation to the secretariat for the analysis of the national legislation and for presenting the results at a round table in Astana in September 2016. She also thanked the organizers of the Workshop on BAT and expressed the need for similar workshops in the future. The representative of the Republic of Moldova informed the Executive Body about the country's progress towards ratification, in particular, its accession to the Protocol on Long-term Financing of EMEP (EMEP Protocol) and the expected ratification of the Gothenburg Protocol in 2018. She shared information on the ongoing institutional reform and the work to transpose the European Union directives, including those related to air quality, to the national legislation. The representative of Ukraine thanked the secretariat for the support in improving the national reporting under the Convention. That work had revealed the need for further improvement of the national inventories, and she therefore asked the secretariat to consider organizing activities in future to address those needs. The representative of Ukraine also expressed appreciation to the organizers of the Berlin Workshop on BAT and stressed the need for acquiring hands-on experience in the implementation of best available techniques and the introduction of permitting procedures, including visits to installations.

44. The secretariat reported on its activities during the period May-November 2016, in particular:

- (a) A consultation organized in Armenia to further improve national emissions reporting;
- (b) An analysis of the national air quality management policies and legislation in Kazakhstan along with a round table to discuss the key recommendations;
- (c) A subregional workshop "Get your right to a healthy community" (Minsk, 19-21 September 2016), which it had co-organized with the secretariat to the Protocol on Pollutant Release and Transfer Registers to the Convention on Access to Information, Public Participation and Decision-making and Access to Justice in Environmental Matters;
- (d) Support provided to the Coordinating Group for the organization of its Saint Petersburg meeting;
- (e) Awareness-raising efforts at the Batumi Ministerial Conference.

45. The secretariat noted that further information on its capacity-building and awareness-raising activities during 2014-2016 were set out in an informal document for the meeting. The secretariat's capacity-building activities in Eastern Europe, the Caucasus and Central Asia had been possible thanks to financial contributions provided by the European Union, the Netherlands, Norway, the Russian Federation and Switzerland.

46. The Executive Body recognized the importance of the ongoing efforts to build capacity and raise awareness in Eastern Europe, the Caucasus and Central Asia aimed at



improved ratification and implementation of the Convention and its protocols and emphasized the need to continue that work. It thanked the Parties providing contributions and encouraged the continuation of the capacity-building programme to support countries in Eastern Europe, the Caucasus and Central Asia.

## **E. Communication and outreach**

47. The Executive Body welcomed the report presented by the secretariat on communications and outreach activities to implement workplan item 5. The European Union, in particular, highlighted the continued importance of raising the visibility of the Convention and expressed appreciation for the related outreach and communication activities carried out by the secretariat.

48. The Executive Body encouraged Parties to continue to promote the Convention through communication and outreach, and to support the secretariat in its efforts.

49. A representative of UNEP informed the Executive Body about the planning for the third session of the United Nations Environment Assembly. The Executive Body welcomed the plans for the third session (Nairobi, 4-6 December 2017), which would address pollution as the main theme (including air pollution), and invited the secretariat to collaborate with UNEP in organizing the session.

## **V. Financial requirements for the implementation of the Convention**

50. The secretariat introduced the note on the financial requirements for the implementation of the Convention (ECE/EB.AIR/2016/6 and Corr.1) and informed the Executive Body about the status of Parties' contributions to the trust funds for financing the Convention's implementation, the use of resources in 2015 and the proposed level of contributions in 2017.

51. The Executive Body took note of the information provided by the secretariat on the amount of contributions made by Parties to the trust fund for effects-oriented activities in the 2008-2015 period, and in 2016 as of 30 November (estimated at \$483,475). The Executive Body expressed concern over the downward trend of the financing of effects-related activities and, in particular, the substantial decrease in the financing of the Coordination Centre for Effects. The Executive Body decided to continue the general discussion on the financing of science and effects-related activities, and the financing of different task forces under the Convention, at its thirty-seventh session.

52. The former Chair of the Working Group on Effects presented information about the key activities and the financing of the Coordination Centre for Effects. Since its foundation in 1990, the Centre had been the central body under the Convention responsible for the development of modelling and geographic mapping methodologies for the assessment of air pollution-related effects in Europe. Several Parties and the Nordic Council of Ministers had made voluntary contributions to support the functioning of the Centre in 2017, but there remained a need to find a new host for the Centre. A few Parties had expressed potential interest in hosting the Centre, but no firm pledges had yet been made.

53. With respect to the financing of EMEP activities (see ECE/EB.AIR/2016/6, para. 11), the Executive Body:

(a) Adopted, in accordance with article 4, paragraph 3, of the EMEP Protocol, and the 2015 United Nations scale of assessments,<sup>3</sup> the amended annex, which now included the Republic of Moldova, as set out in the annex to document ECE/EB.AIR/2016/6;

(b) Decided on the detailed use of resources in 2017 as set out in table 2 of document ECE/EB.AIR/2016/6, and on the scale of mandatory contributions as set out in table 3 of that document;

(c) Supported the Steering Body's call on the Parties to the EMEP Protocol to consider making additional voluntary contributions, in kind or in cash through the trust fund, to ensure that the work in 2017 could be accomplished as foreseen in the 2016-2017 workplan for the implementation of the Convention;

(d) Requested the Steering Body, with the assistance of its Bureau, to present the details of the 2018 budget for approval by the Executive Body at its thirty-seventh session;

(e) Urged Parties that had not yet done so to pay their 2016 contributions in cash to the trust fund and, in 2017, to pay their contributions so that they reached the trust fund in the first half of the year.

54. With respect to effects-oriented activities (ibid., para. 21), the Executive Body:

(a) Took note of the contributions made to the trust fund for effects-oriented activities for 2016 and welcomed the payments made, but also expressed disappointment at the lack of response by many Parties;

(b) Urged all Parties that had not yet done so to consider providing the recommended contributions to the trust fund for the financing of core activities without undue delay;

(c) Decided that the essential international coordination costs for financing the core activities of the Convention and its protocols, other than those covered by the EMEP Protocol, would be \$2,152,700 in 2017, and would provisionally be \$2,152,700 in 2018 and \$2,152,700 in 2019;

(d) Decided to apply the 2015 United Nations scale of assessments in calculating the recommended contributions for 2017-2018, in accordance with table 11 of document ECE/EB.AIR/2016/6;

(e) Took note of the information provided by the secretariat on the amount of contributions made to trust fund for effects-oriented activities as of 30 November 2016, recommended using that amount as a basis to co-fund the effects-oriented activities in 2017 and invited the secretariat to provide information on the amount of contributions made to the trust fund for effects-oriented activities as of 30 November 2017 at its thirty-seventh session;

(f) Requested the secretariat to inform Parties of the recommended contributions to the trust fund to meet the 2017 budget, inviting them to make them as agreed in revised decision 2002/1;

(g) Encouraged Parties to make the recommended contributions to the trust fund before 30 November each year;

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<sup>3</sup> See General Assembly resolution 70/245.

(h) Noted with appreciation the essential support provided to the Convention and its bodies by lead countries, countries hosting coordinating centres and those organizing meetings, and countries that funded activities of their national focal centres/points and also the active participation of national experts.

55. With respect to promotion and implementation of the Convention (*ibid.*, para. 28), the Executive Body:

(a) Reiterated its support for the work on promotion and implementation, underlining that an enlarged implementation of the Convention in countries in transition of Eastern and South-Eastern Europe, the Caucasus and Central Asia was crucial for the future of the Convention;

(b) Invited all Parties, but especially those that led task forces and expert groups, to promote activities such as special workshops in countries of Eastern and South-Eastern Europe, the Caucasus and Central Asia, and to collaborate with the secretariat in developing and carrying out such projects;

(c) Welcomed the contributions to the trust fund, and thanked those countries that had contributed.

56. Moreover, the Executive Body:

(a) Acknowledged the voluntary financial contributions totalling more than €170,000 by France, Germany, the Nordic Council of Ministers, Norway, Sweden and Switzerland to support the priority tasks to be accomplished by the Coordination Centre for Effects in 2017, following the request of the EMEP Steering Body and the Working Group on Effects at their second joint session, and noted that further tasks from the 2016-2017 workplan would not be accomplished by the Centre;

(b) Encouraged Parties to consider providing resources for the long-term financing of the effects-oriented activities currently performed by the Coordination Centre for Effects;

(c) Also noted the lack of sufficient funding for activities carried out by the Task Force on Reactive Nitrogen and encouraged Parties to provide financial support to that Task Force;

(d) Encouraged Parties to provide additional extrabudgetary financing to support capacity-building and communication and outreach activities carried out by the secretariat, including the financing of extrabudgetary staff positions, and for financing participants from countries in Eastern Europe, the Caucasus and Central Asia to attend meetings under the Convention.

## **VI. Election of officers**

57. The Chair recalled that, in accordance with rule 17 of the rules of procedure (ECE/EB.AIR/106/Add.1, decision 2010/19), the Executive Body had elected its Chair at its thirty-third session for an initial term of two years. Further to the same rule, it had elected two Vice-Chairs at its thirty-second session and one Vice-Chair at its thirty-third session. In accordance with rule 21, it had elected a Chair of the Working Group on Strategies and Review at its thirty-first session for a first term, re-electing him for a second term at its thirty-third session.

58. The secretariat informed participants of the following nominations: Anna Engleryd (Sweden), for Chair of the Executive Body; Richard Ballaman (Switzerland), Sergey Vasiliev (Russian Federation) and Katherine Weber (United States) for Vice-Chairs of the

Executive Body; and Jennifer Kerr (Canada) for Chair of the Working Group on Strategies and Review.

59. The Executive Body re-elected Ms. Engleryd (Sweden) as its Chair for a second term. It elected Ms. Weber (United States), and re-elected Mr. Ballaman (Switzerland) and Mr. Vasiliev (Russian Federation), as Vice-Chairs. It elected Ms. Kerr (Canada) as Chair of the Working Group on Strategies and Review.

## **VII. Other business**

60. During the session, several delegations raised issues concerning the draft list of participants, with reference to the composition of the delegation of the Russian Federation and in particular to the affiliation of one of its members. In their statements, the delegations of Canada, the European Union, the Russian Federation, the United States and Ukraine referred to United Nations General Assembly resolution 68/262 on the territorial integrity of Ukraine and exchanged their views on the matter, which differed. The ECE Executive Secretary explained that the ECE secretariat followed the above-mentioned resolution in the finalization of the list of participants. Regarding the composition of delegations, the secretariat followed the “guidelines on procedures and practices for ECE bodies” (E/2013/37-E/ECE/1464), which placed no limitations on the composition of delegations. Following a discussion, the list of participants was revised to reflect the comments received. A final list of participants was circulated and accepted by all Parties. The Chair concluded the discussion, by referring to the collaborative spirit among Parties in deliberations on policy and technical matters of relevance to the Convention and expressed her hope that that would be maintained in the future. The Executive Body took note of the views exchanged.

## **VIII. Adoption of decisions taken at the thirty-sixth session**

61. The Executive Body adopted its decisions and agreed on the recommendations of its thirty-sixth session.

## Annex I

### Decisions adopted by the Executive Body at its thirty-sixth session

#### Decision 2016/3

#### Improving the effectiveness of reporting on strategies, policies and other measures to implement obligations under the Convention and its Protocols

*The Executive Body,*

*Recalling* its decision 2013/2 on reporting on strategies, policies and other measures to implement obligations under the Convention and its Protocols, in which it decided to use the sessions of the Working Group on Strategies and Review as the format for reporting on strategies, policies and measures and to evaluate the effectiveness of such an approach at its thirty-fourth session,

*Recalling* its decision at its thirty-fourth session to postpone the evaluation of the effectiveness of decision 2013/2 until its thirty-sixth session (ECE/EB.AIR/133, para. 16),

*Welcoming* the reporting that has taken place so far,

*Noting* the overview of the status of reporting on strategies, policies and measures to implement the Convention and its protocols in line with decision 2013/2 included in document ECE/EB.AIR/2016/8, and in particular the issues identified for consideration on the organization of future sessions for exchange of information on policies, strategies and measures in the framework of the Working Group on Strategies and Review,

1. *Requests* the Working Group on Strategies and Review to review the structure and usefulness of the template used for the submission of examples and good practices of strategies, policies and measures at its next session in 2017, and to revise it if appropriate;

2. *Further requests* the Working Group on Strategies and Review to make relevant information on measures shared at the sessions of the Working Group available on the website of the Clearing House of Control Technologies established under the Task Force on Techno-economic Issues;

3. *Encourages* the Working Group on Strategies and Review to organize dedicated thematic (or subregional) sessions related to policies and measures to abate air pollution at its future sessions and requests that the themes be communicated in advance;

4. *Decides* that the period for reporting the information referred to in article 5, paragraph 1 (a), of the 1994 Protocol on Further Reductions of Sulphur Emissions, article 7, paragraph 1 (a), of the Protocol on Heavy Metals, article 9, paragraph 1 (a), of the Protocol on Persistent Organic Pollutants and article 7, paragraph 1 (a), of the Protocol to Abate Acidification, Eutrophication and Ground-level Ozone (Gothenburg Protocol) is at least once every four years;

5. *Invites* States and organizations referred to in article 14, paragraph 1, of the Convention that are not Parties to these four Protocols to provide information on strategies, policies and measures to abate air pollution at the sessions of the Working Group on Strategies and Review;

6. *Further decides* to evaluate again the effectiveness of decision 2013/2, as amended, once the amendments to the Protocol on Heavy Metals, the Protocol on Persistent Organic Pollutants and the Gothenburg Protocol have entered into force or at its session in 2020, whichever is later.

#### **Decision 2016/4**

#### **Compliance by the European Union with the Protocol to Abate Acidification, Eutrophication and Ground-level Ozone (ref. 5/13 (NO<sub>x</sub>))**

*The Executive Body,*

*Acting* in accordance with paragraph 11 of the structure and functions and procedures for review of the Implementation Committee under the Convention on Long-range Transboundary Air Pollution (ECE/EB.AIR/113/Add.1, decision 2012/25, annex),

*Recalling* its decision 2013/14 concerning compliance by the European Union with the Protocol to Abate Acidification, Eutrophication and Ground-level Ozone (Gothenburg Protocol),

*Also recalling* paragraphs 42 to 45 of its report on its thirty-third session (ECE/EB.AIR/127), and in particular paragraph 45, in which the Implementation Committee was requested to continue to review the compliance of the European Union with article 3, paragraph 1, of the Gothenburg Protocol and to report the results of its further consideration to the Executive Body,

1. *Takes note* of the information contained in the nineteenth report of the Implementation Committee regarding the follow-up to Executive Body decision 2013/14 on compliance by the European Union with its obligation under article 3, paragraph 1, of the Gothenburg Protocol, based on the information provided by the European Union in September 2016 (ECE/EB.AIR/2016/7, paras. 54-58);

2. *Decides* to interpret the ceilings listed for the European Community in annex II to the Gothenburg Protocol as representing the sum of the emission ceilings of the 15 individual Parties that were member states of the European Community at the time the Gothenburg Protocol was agreed and when the European Community (as replaced and succeeded by the European Union in 2009) acceded to the Gothenburg Protocol in 2003.

## Annex II

### Note by the ad hoc group of legal experts on obligations under the Gothenburg Protocol

#### I. Background and problem identification

1. At its thirty-fourth session (Geneva, 18 December 2015), the Executive Body to the Convention on Long-range Transboundary Air Pollution asked the ad hoc group of legal experts to provide advice on obligations under the Protocol to Abate Acidification, Eutrophication and Ground-level Ozone (Gothenburg Protocol) pursuant to a request submitted by Luxembourg to the secretariat (ECE/EB.AIR/133, para. 41).
2. Luxembourg is a Party to the Gothenburg Protocol, having signed it on 1 December 1999 and ratified it on 7 August 2001.
3. In 2012, the Parties to the Gothenburg Protocol adopted Executive Body decision 2012/2, which provides for the amendment of the text of and annexes II to IX to the Protocol and the addition of new annexes X and XI (“the 2012 amendments”). These amendments will enter into force on the ninetieth day after the date on which two thirds of the Parties to the Protocol have deposited their instruments of acceptance with the Depository (see article 13, paragraph 3, of the unamended Protocol and decision 2012/2).
4. This note will distinguish between the Gothenburg Protocol in its current form (“the unamended Protocol”) and the Gothenburg Protocol as it would stand were the 2012 amendments to enter into force (“the amended Protocol”).
5. Under the unamended Protocol, a Party having an emission ceiling in any table in annex II is required to reduce and maintain the reduction in its annual emissions in accordance with that ceiling and the timescales specified in that annex (see article 3, paragraph 1, of the unamended Protocol). Annex II gives Luxembourg a ceiling for nitrogen oxides of 11 kilotons with a timescale of 2010. This 2010 ceiling was derived from the national emission totals and projections calculated on the basis of fuels used in Luxembourg.
6. To date, Luxembourg has checked compliance with its 2010 emission ceiling for nitrogen oxides using national emission totals calculated on the basis of fuels used in its geographic area (“the fuels used basis”). This can be distinguished from checking compliance on the basis of fuels sold in a Party’s geographic area (“the fuels sold basis”).
7. Under the amended Protocol, a Party that ratified the unamended Protocol prior to 2010 would have an obligation to comply with its 2010 ceilings up to 2020 (see article 3, paragraph 1, annex II, paragraph 2, and table 1 of the amended Protocol). A Party to the amended Protocol would also have emission reduction commitments which would require it to reduce its emissions of certain substances, including nitrogen oxides, by a certain percentage from its 2005 emissions by 2020, and to maintain that reduction thereafter (see article 3, paragraph 1, annex II, paragraph 3, and tables 2-6 of the amended Protocol).
8. Table 3 of annex II to the amended Protocol specifies emission reduction commitments for nitrogen oxides for 2020 and beyond. For Luxembourg a reduction of 43 per cent from 2005 emission levels is specified. The table lists emission estimates for 2005. For Luxembourg an estimate of 19 kilotons of nitrogen oxides in 2005 is listed. This estimate was derived on the fuels used basis. Paragraph 4 of annex II provides that these estimates are for information only and may be updated if better information becomes

available. This paragraph also provides that the 2020 emission reduction commitments are applicable to the most up-to-date estimates of the 2005 estimates as reported by the Party.

9. In its letter to the secretariat, Luxembourg asked the following questions:

If Luxembourg decides to change its base to assess its compliance on the scenario “fuel sold”, would such a change mean that the maximum nitrogen oxide emissions from 2020 would have to be calculated on the basis of fuel sold in 2005? In other words, in this case, would Luxembourg be no longer bound from 2020 by the provision of the 1999 Protocol that “Each Party having an emission ceiling in any table in annex II shall reduce and maintain the reduction in its annual emissions in accordance with that ceiling and the timescales specified in that annex?”

10. The ad hoc group of legal experts corresponded with Luxembourg to clarify this question. Luxembourg confirmed that it was seeking advice on whether, if it accepted the 2012 amendments, its 2010 ceiling would continue to apply in 2020 and beyond. If so, Luxembourg also asked for advice on whether it could use the fuels used basis for checking compliance with its 2010 ceiling while using the fuels sold basis for checking compliance with the 2020 emission reduction commitment. This note will address these questions.

## **II. The status of the 2010 ceilings in 2020 and beyond**

11. Both the unamended and amended versions of the Protocol include obligations to comply with the 2010 ceilings, but these obligations differ in duration. The obligation in the unamended Protocol applies for an unlimited period. By contrast, the obligation in the amended Protocol would only apply until 2020.

12. If Luxembourg were to accept the 2012 amendments, whether it would be bound by the 2010 ceilings in 2020 and beyond would depend on the extent to which other Parties also accept those amendments and whether and when those amendments will enter into force.

13. There are three potential scenarios:

(a) The two-thirds threshold for securing entry into force of the 2012 amendments is not reached;

(b) The two-thirds threshold is reached, but not all Parties to the unamended Protocol accept the 2012 amendments;

(c) All Parties to the unamended Protocol accept the 2012 amendments.

### **(a) The two-thirds threshold for securing entry into force of the 2012 amendments is not reached**

14. Unless and until the two-thirds threshold is reached, the rights and obligations of Luxembourg would continue to be governed by the unamended Protocol; Luxembourg would thus be obliged to comply with the 2010 ceilings.

### **(b) The two-thirds threshold for securing entry into force of the 2012 amendments is reached, but not all Parties to the unamended Protocol accept the 2012 amendments**

15. If the two-thirds threshold were reached but not all Parties were to accept the 2012 amendments, the rights and obligations of Luxembourg would be governed by both the unamended and amended versions of the Protocol.

16. The amended Protocol would govern the rights and obligations of Luxembourg in relation to the other Parties that had accepted the 2012 amendments. However, the



unamended Protocol would apply in relation to Parties that had not accepted the amendments.<sup>4</sup>

17. In relation to the first set of Parties to the amended Protocol, Luxembourg would be obliged to comply with its 2010 ceilings up until 2020, and to comply with its 2020 emission reduction commitments thereafter. In relation to the second set of Parties, Luxembourg would be obliged to continue to comply with its 2010 ceilings. This would remain the case until all of those Parties had accepted the 2012 amendments.

**(c) All Parties to the unamended Protocol accept the 2012 amendments**

18. If all of the Parties to the unamended Protocol were to accept the 2012 amendments, then the amended Protocol would govern their rights and obligations to one another. Luxembourg would be obliged to comply with its 2010 ceilings up until 2020, and to comply with its 2020 emission reduction commitments thereafter.

### III. Fuels used versus fuels sold

19. If a Party were faced with a situation in 2020 and beyond in which it was bound by both the 2010 ceilings and the 2020 emission reduction commitments, it would be necessary to check its compliance with both obligations.

20. Neither the unamended nor the amended version of the Protocol explicitly addresses the issue of using the fuels used or fuels sold basis for compliance checking.

21. The issue is addressed in paragraph 23 of the Guidelines for Reporting Emissions and Projections Data under the Convention on Long-range Transboundary Air Pollution (ECE/EB.AIR/125), which provides:

For Parties for which emission ceilings are derived from national energy projections based on the amount of fuels sold, compliance checking will be based on fuels sold in the geographic area of the Party. Other Parties within the EMEP region may choose to use the national emission total calculated on the basis of fuels used in the geographic area of the Party as a basis for compliance with their respective emission ceilings.

A footnote names the other Parties within the EMEP region: Austria, Belgium, Ireland, Lithuania, Luxembourg, the Netherlands, Switzerland and the United Kingdom of Great Britain and Northern Ireland.

22. In accordance with these Guidelines, the ad hoc group of legal experts understands that the rationale for the use of the fuels used method by Luxembourg for compliance checking with its 2010 ceiling for nitrogen oxides is that the ceiling was derived on that basis. In both the amended and unamended versions of the Protocols, the 2010 ceiling for nitrogen oxides for Luxembourg is expressed as an absolute number which the ad hoc group of legal experts understands to have been derived on a fuels used basis. Using the fuels used basis therefore allows a proper comparison to be made between the 2010 ceiling

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<sup>4</sup> The Vienna Convention on the Law of Treaties addresses the situation where some but not all Parties to a multilateral treaty become Parties to an agreement to amend that treaty. In such a case “the amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement”. The mutual rights and obligations of a Party to both the original agreement and the amending agreement, on the one hand, and a Party to the unamended agreement only, on the other, will be governed by the treaty to which both are Parties (i.e., the original agreement) ((United Nations, Treaty Series, vol. 1155, p. 331, art. 40, para. 4, and art. 30, para. 4 (b)).

for Luxembourg and its annual emissions in order to assess whether the ceiling is being adhered to.

23. The amended Protocol would provide scope for Luxembourg to use the fuels sold basis for checking compliance with its 2020 emission reduction commitment for nitrogen oxides. Under the amended Protocol a Party would be able to provide updated estimates of its 2005 emissions of nitrogen oxides and, if this occurred, the 2020 emission reduction commitment would be applicable to those updated estimates. This would allow a Party whose 2005 emissions were estimated on a fuels used basis to update these estimates on the fuels sold basis and to use that same basis for checking its compliance with the 2020 emission reduction commitment.

24. The group considered that if Luxembourg were to use the fuels sold basis for checking compliance with its 2020 emission reduction commitment, this would not oblige it to adopt the same basis for checking compliance with its 2010 ceiling. The obligation of Luxembourg to comply with its 2010 ceiling would be a separate obligation, and the rationale for using the fuels used basis for checking compliance with that obligation, as described above, would still apply.

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